

HAITI

Open letter to the President of the Republic of Haiti, René García Prével regarding Amnesty International's recommendations for the protection and promotion of human rights

Dear President Prével,

As Secretary General of Amnesty International I would like to address this letter to you and the members of your government with the aim of initiating a dialogue and presenting our concerns regarding the country's human rights situation.

Amnesty International would also like to take this opportunity to urge the members of your government to consider effective measures for the promotion and protection of the whole range of human rights for all Haitians. It is crucial that your government shows a strong commitment and determination in pursuing such goals.

As you know, Amnesty International is an international human rights movement with more than 1.5 million members in over 140 countries throughout the world which works to ensure that all the rights enshrined in the Universal Declaration of Human Rights and other international human rights instruments are observed and respected. It is an organization independent of any government, political ideology, economic interest or religious creed. It is concerned solely with the impartial protection of human rights, including civil and political rights as well as economic, social and cultural rights.

Amnesty International has had long-standing concerns regarding the human rights situation in Haiti despite the fact that the Haitian State has been a party to important international treaties for more than 15 years. Amnesty International has noted with concern the failure of successive governments to accompany Haiti's international obligations with effective action in protecting and promoting human rights, in particular ending impunity for past human rights violations, ending violence against women and promoting an administration of justice in line with international standards. We sincerely hope that your government will uphold its international commitments in order to protect the human rights of all and every Haitian, independently of their political allegiance, social or economic background, religious creed or beliefs, gender and race.

This appeal focuses on action which Amnesty International believes must be taken now by the Government of Haiti to ensure that human rights are protected. I believe the set of recommendations hereafter could be implemented in the short-term, with the collaboration of

MINUSTHA and the international community and employing the resources already available to your government.

Amnesty International's recommendations refer not only to the need to put an end to impunity and bring to justice those responsible for past human rights abuses but also the need to halt the human rights abuses which have continued under the present government, in particular, abuses committed by police officers, judicial authorities and non-state actors. As long as these abuses persist and the rule of law is breached they will form major obstacles in restoring faith among Haitians in the reconciliation process your government is willing to induce.

We therefore call upon you to implement a set of recommendations in relation to the following issues:

1. Impunity

Impunity literally means exemption from punishment. It refers to the failure of the state to redress human rights abuses by bringing suspected perpetrators to justice and to otherwise repair the harm suffered by victims. Allowing perpetrators to commit abuses, however clearly prohibited by law, without consequences for themselves, perpetuates their crimes. By contrast, ensuring that perpetrators are brought to justice sends a message throughout a society that abuses of human rights will not be tolerated, thereby helping to prevent future abuses. Impunity denies justice to the victims of human rights abuses, robbing them a second time of their rights. Impunity denies the victims and their relatives the right to have the truth established and acknowledged, the right to see justice done and the right to an effective remedy. Because those responsible for human rights violations are seldom punished, public confidence in the administration of justice and the rule of law has been undermined. The knowledge that crimes will go unpunished has not only contributed to the escalation of human rights violations; it is also a factor behind the spiral of violence in Haitian society.

In the past, small but positive steps have been accomplished in fighting impunity in Haiti by bringing to trial alleged perpetrators in key cases such as Raboteau and Carrefour-Feuilles killings. However, it is Amnesty International's greatest concern to notice that justice in Haiti has been inflicted a major defeat during the previous years, particularly during the transitional government that succeeded the departure of Jean-Bertrand Aristide. Not only impunity prevailed but was also reinforced by political decisions affecting the justice system and by judicial decisions that have been taken in total disregard of the Haitian Constitution and laws.

Amnesty International remains seriously concerned about the pervasiveness of impunity for these and past human rights abuses in Haiti and wishes to remind your government that it is the first duty of the state to fight it and prosecute state and non-state actors alike responsible for human rights abuses. Victims of such abuses shall also benefit from state sponsored programs for reparation, restitution and rehabilitation.

Amnesty International is aware that effectively bringing impunity to an end will require genuine reforms to Haiti's judicial system and welcomes the nomination of Daniel Jean as Secretary of State for Judicial Reform. The organization believes that until a thorough reform

is completed, some steps could be taken immediately with good political will on the part of the authorities to re-establish the rule of law.

Recommendations to fight impunity for human rights abuses

▪ **Publicly condemn all human rights violations and refrain from taking any measures which grant impunity**

The Government of Haiti should send a clear and strong message to Haitian society that human rights violations whether committed by state or non-state actors will not be tolerated in Haiti under any circumstances and that those responsible for past and present human rights violations will have to face justice.

▪ **Set up a national “Program to end impunity”**

The Government should set up a “Programme to end impunity”, including a timetable to bring forward investigations and prosecutions. Within this program, the Government should create a special task force of magistrates and judges recognized for their integrity that would take a more proactive role in investigating allegations of abuses and in bringing such cases promptly before the courts in conformity with international standards. As a first step, this programme should move ahead in those cases where some procedures have already taken place or action is pending, such as, but not limited to:

- The Carrefour Péan, Fort National, Grande Ravine and La Scierie killings;
- the Raboteau trial;
- the murders of Jean Dominique, Jean-Claude Louissant, Brignol Lindor, Abdias Jean, Jean Roche and Antoine Izméry among others;
- the cases investigated by the National Commission for Truth and Justice;
- the cases of all current prisoners held in long-term pre-trial detention and those held without formal charges;
- relevant authorities should identify any other cases where procedures were initiated but not pursued for whatever reason and set them in motion again.

The national program to end impunity should also provide adequate remedies and ensure reparation for all the victims of human rights abuses.

▪ **Implement recommendations from the National Commission for Truth and Justice**

Take decisive steps towards implementing the full range of recommendations pertaining to the fight against impunity set forth by the National Commission for Truth and Justice (*Commission Nationale de Vérité et de Justice*) and by the successive reports made by Special Rapporteurs and Independent Experts mandated by the Office of the United Nations High Commissioner for Human Rights.

2. Violence against women

Amnesty International is gravely concerned at continuing reports of abuses against women, particularly in the deprived neighbourhoods of the capital. During political turmoil and heightened armed violence women are particularly vulnerable to sexual and gender-based violence, including rape. Over the past two years, Amnesty International and other human rights organizations have documented numerous instances of rapes committed by armed gangs and other non-state actors. Figures on sexual abuse published by Haitian women's organizations are alarming but probably underestimate the problem significantly since the stigma of sexual violence and the lack of confidence in the administration of justice prevent many women from speaking out. This makes sexual violence and rape particularly severe crimes but what is of greater concern is that those cases reported are not adequately investigated and the perpetrators are not brought to justice.

In Haiti, the chances that victims of sexual abuse have access to the courts and secure justice are small. Although changes have been made to the Penal Code by redefining rape as a criminal offence instead of a moral one, in practice little substantial change has taken place and survivors of sexual violence are still denied justice.

The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment defines torture as an act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person, for purposes such as obtaining information, punishment, intimidation or coercion, or for any reason based on discrimination of any kind. Rape causes severe physical or mental suffering, is a deliberate act by the perpetrator and is carried out with the intention to intimidate, degrade or humiliate the victim.

In Amnesty International's view, rape of women by private individuals (non-state actors) who are not public officials constitutes torture for which the state is responsible if the state has not acted with due diligence to prevent, punish or redress the crime.

Amnesty International holds states responsible when they fail to take measures to protect the human rights of women. States have a duty under international law to take effective measures to prohibit and prevent sexual violence and to respond to instances of rape, regardless of where it takes place and whether the perpetrator is an agent of the state, a violent husband or a total stranger. Furthermore, as state party to the Convention on the Elimination of All Forms of Discrimination against Women (hereafter, UN Women's Convention) since 1981, Haiti is legally bound to put its provisions into practice and take stronger measures to protect women against discrimination and violence.

Immediate steps are needed to confront and eradicate all forms of violence against women. The following recommendations are well within the powers of the Government of Haiti to implement and do not require a huge investment of resources. They do require political will and the determination that violence against women, particularly rape and killings, can no longer be allowed to continue. However, these measures will not end these forms of violence against women unless the discrimination underlying these abuses is addressed.

Recommendations in relation to violence against women

▪ **Condemn publicly all acts of violence against women**

The government of Haiti should clearly and publicly condemn all acts of violence against women, whether committed by law enforcement agents or private individuals. In conjunct efforts with women's organizations, it should develop policies and disseminate materials to promote women's safety in the home, community and in detention, and undertake legal literacy campaigns to inform men and women of their legal rights.

▪ **Set a “National Program to Stop Violence against Women”**

The Government of Haiti should set up a National Program to Stop Violence Against Women comprising a task force of government officials from relevant ministries, magistrates, judges, police officers, health practitioners, forensic experts and members of women's and grass-roots organizations. The National Program to Stop Violence against Women should be mandated to accompany women and girl survivors of sexual violence through the process of seeking justice and reparation. This program could also benefit from the creation of special court to deal with cases of sexual violence and mandated to prosecute and punish the perpetrators of sexual and gender-based violence. Furthermore, through the National Program to Stop Violence against Women the Government of Haiti should:

- Maintain reliable, up-to-date statistics on the incidence of complaints relating to violence against women. Incidents of sexual violence must be fully and thoroughly investigated, recorded and evidence must be gathered and preserved.
- Ensure that survivors of violence have access to the services and resources they need, as well as rehabilitation, and include special measures to protect women and girls from communities at particular risk as a result of armed violence;
- Guarantee free and timely access to counselling, information, tests and treatment for STDs, including HIV/AIDS, as well as emergency contraception. Where it is recommended by doctors, post-exposure prophylactic drugs in the 72-hours after the rape should be made available free of charge to prevent possible HIV infection;
- Ensure access to reliable and appropriate services that can provide victims with psychological help and social support for their rehabilitation and integration;
- Provide effective training programs for personnel from the public health system on how to care for victims of sexual violence;
- Implement education programs aimed at public and community leaders on the importance of not stigmatizing victims of sexual and gender-based violence and take action to empower women and girls to enable them to seek help and adequate support.

▪ **Submit overdue reports to the Committee on the Elimination of Discrimination against Women**

The Government of Haiti should submit overdue reports as soon as possible to the Committee. Haiti ratified the Convention on the Elimination of All Forms of Violence

against Women in 1981. The Convention is legally binding on the State of Haiti and according to Article 18 Haiti is also committed to submit periodic national reports (at least every four years) on the measures the government has taken to comply with the treaty obligations. Haiti has not yet submitted a single report since it became a state party to the Convention.

- **Ratify the Optional Protocol to the UN Convention on the Elimination of All Forms of Discrimination Against Women**

3. Administration of justice

Amnesty International recognizes the many complex issues that surround the process of justice in Haiti, as well as the continuing challenges to the judicial system in terms of the inadequacy of resources for dealing with an enormous caseload. The organization urges the Government of Haiti to rectify past abuses, to accelerate trials without sacrificing standards of fairness, and to continue raising awareness and encouraging debate among the population on issues of justice and human rights.

An independent and impartial judiciary is the cornerstone of the right to a fair trial in international law. It ensures that the interests of justice and the requirements of fairness and rule of law are served in a broad sense, including by preventing abuse of power by executive authorities at all levels and other political influences over law enforcement and justice.

Amnesty International believes that the Government of Haiti should conduct a comprehensive review of all laws and procedures in order to bring them into conformity with human rights law and standards. Haiti is a state party to the International Covenant on Civil and Political Rights (ICCPR) and the Inter-American Convention on Human Rights. Both treaties are legally binding for the State of Haiti and make provisions for the protection of the rights of individuals facing the justice system. Furthermore, according to the Haitian Constitution (article 276.2) all international treaties ratified by Haiti form part of its national legislation. The Haitian justice system has therefore at its disposal all the essential tools needed to ensure that the administration of justice protects the fundamental rights of all Haitians.

Recommendations on the administration of justice

- **Implement a judicial reform to strengthen the justice system**

The authorities must give the highest priority to the process of judicial reform, acting as quickly as possible on the reform law. Every effort must be made to strengthen the independence, impartiality and effectiveness of the justice system so that it can attend to respect for human rights, in accordance with the principles of the *International Covenant on Civil and Political Rights*, the *Basic Principles on the Role of Lawyers*, the *Basic Principles on the Independence of the Judiciary*, and the *Guidelines on the Role of Prosecutors*. Within those efforts, special attention must be paid to ensuring the impartiality and independence of public prosecutorial authorities and investigative

magistrates (*juges d'instruction*). Training and recruitment of new judges and magistrates must be carried out in a way as to ensure political impartiality. The government should ensure that members of the judiciary receive proper training in all aspects of human rights.

▪ **End arbitrary and long-term pre-trial detention**

Measures must be taken to guarantee that no one is arbitrarily detained, and that anyone arrested on a criminal charge be presented promptly before a judge. Ensure that all detainees have the right to challenge the lawfulness of their detention before a court, and ensure that they be released if their detention is found to be illegal. All detainees must be guaranteed a fair trial, in accordance with the provisions of articles 14 of the ICCPR and 8 of the Inter-American Convention on Human Rights, within a reasonable time frame. In addition, alternatives to detention should be incorporated in Haitian legislation, in accordance with the UN *Standard Minimum Rules for Non-custodial Measures*.

▪ **Establish a public defense**

Efforts to establish a system of public defense should receive adequate financial and institutional support.

▪ **Develop a national policy on prosecution of human rights abuses.**

The Haitian state must establish a clear policy on prosecution of past and current human rights violations in accordance with its international obligations. Court and prosecutorial authorities must fulfil their duties by taking a more proactive role in investigating allegations of abuses and in bringing such cases before the courts in conformity with international standards. The victims of human rights violations committed by agents of the State, or by individuals acting with the State's consent, should receive adequate reparation.

4. Police reform

Amnesty International wishes to reiterate its concerns with regard to the failure of the state to effectively and thoroughly investigate and punish those responsible for several extrajudicial executions allegedly committed by Haitian National Police (HNP) officers during the transitional government. These and other concerns were made public in several Amnesty International reports, the latest being *Haiti: Disarmament delayed, justice denied* (AI Index AMR 36/005/2005). The accountability of state agents, particularly police officers, is the cornerstone to establish the rule of law in Haiti and the confidence of the Haitian population in this institution whose motto is 'to protect and to serve' (*Protéger et servir*).

Amnesty International considers it to be of vital importance that actions of the Haitian National Police are carried out in line with the provisions of the *Code of Conduct for Law Enforcement Officials* and the *United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*. These international standards set strict limits on the use of force by law enforcement officials and establish that force may be used when strictly necessary and in proportion to the aim or threat in question, and that lethal force must only be used when essential to protect lives. Amnesty International also trusts the new Government of Haiti will ensure that impartial and independent bodies will rigorously investigate all allegations of extrajudicial executions and excessive use of force in accordance with the UN

Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions. Finally, Amnesty International wishes to emphasize that law enforcement officials are obliged to know, and to apply, international standards for human rights.

Recommendations regarding the police

▪ **Publicly condemn human rights abuses committed by police officers**

The Head of State, Director General of the HNP and the Inspector General of the HNP must send a strong and clear message to all police officers that extrajudicial executions, the unnecessary and disproportionate use of firearms, and ill-treatment will not be tolerated.

▪ **Strengthen police professionalism**

The Haitian authorities, with the assistance of MINUSTHA must take steps to strengthen the professionalism and public accountability of the police force by ensuring personal integrity through a complete vetting of current and future police officers and a comprehensive training on human rights issues and particularly on how to adequately respond to reports of gender-based violence.

▪ **Ensure police accountability**

HNP authorities must guarantee that any police officer suspected of committing human rights violations will be immediately suspended, an independent and impartial investigation carried out and those responsible brought to the courts for prosecution. Consideration must be given to the establishment of a complaints unit within the office of the Inspector General, to increase public recourse to the unit.

▪ **Uphold international policing standards**

All HNP personnel must be made fully aware of, and abide by, the *UN Code of Conduct for Law Enforcement Officials*, the *UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* and all other relevant international standards.

▪ **HNP officials must comply with Haitian law and Haiti's international obligations**

Both the HNP and the judiciary must be under strict orders to carry out arrests and searches solely in accordance with Haitian law and Haiti's obligations under the ICCPR and the Inter-American Convention on Human Rights.

5. Disarmament, demobilization and reintegration

Amnesty International is concerned at the lack of significant progress with regard to the disarmament of armed gangs and the security and protection of civilians. Therefore, the organization strongly believes that a disarmament, demobilization and reintegration program has to be implemented immediately and thoroughly, aiming at all sectors of society and at all armed groups independently of their political background or allegiance.

In the ongoing situation of violence and insecurity that affects all sectors of Haitian society, disarmament of all armed groups is the crucial first step towards ensuring the protection of civilians and restoring the rule of law in Haiti. The failure of previous governments to address this issue with strong political will and adequate resources has proven to have a negative impact in controlling the circulation of arms in current Haitian society. Killings by firearms have become a daily feature in Haitian media while behind what it newsworthy, armed violence is dramatically affecting the lives of thousands of Haitians, particularly women and children who are the most vulnerable. Arms fuel human rights abuses; they hamper peace, economic development and the national dialogue that your government is trying to promote. Disarmament is thus a precondition to ensuring a peaceful and secure environment for all Haitians.

While the issue of disarmament and arms control has been set aside by previous governments, Amnesty International welcomes your determination to implement a comprehensive disarmament program and the recognition that it is one of the most urgent issues needed to be addressed by your government. The organization wishes however to stress the imperative for the DDR program to be consistent with human rights principles, in particular for police officers to abide to the *UN Code of Conduct for Law Enforcement Officials* and the *UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* while enforcing the disarmament of members of armed groups and individuals.

Recommendations on disarmament, demobilization and reintegration

- **Provide adequate resources for disarmament, demobilization and reintegration**
The Government of Haiti, with the support of MINUSTHA and the international community must make available adequate resources to facilitate the disarmament, demobilization, and reintegration of gang members, children in particular, addressing their particular social, psychological and material needs.
- **Reducing the availability of arms**
The Government of Haiti should establish arms reduction programs, such as collection and destruction, in conjunction with DDR programs. New illegal in-flows of weapons should be prevented, and if discovered, reported to the UN Security Council for sanctions.
- **Ensure that the disarmament, demobilization and reintegration process is consistent with human rights principles**
The Government of Haiti should establish an independent and impartial body to investigate individuals entering the DDR process and against whom there are reasonable suspicions of having committed or participated in human rights abuses. These individuals should be held accountable for their actions.

It is our wish to contribute to efforts within Haiti to ensure a climate of respect for human rights. In that context, we thank you in advance for your kind attention to this letter and I

look forward to receiving your prompt response and discussing Amnesty International's recommendations at the earliest opportunity.

Yours sincerely,

Irene Khan
Secretary General