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HAITI

Unfinished Business: justice and liberties at risk

INTRODUCTION

Political context

After nearly two years of political paralysis in Haiti, dating from 1997 allegations of electoral fraud and the resignation of then-Prime Minister Rosny Smarth, the Haitian Parliament approved the nomination of Jacques Edouard Alexis to the post of Prime Minister. However, after President René Préval failed to extend the mandates of the Haitian Parliament and local elected officials following the 11 January 1999 expiry date set by the 1995 electoral law, Alexis' appointment was never ratified as required by the Haitian Constitution. Without a Parliament, President Préval basically ruled by decree throughout 1999, assisted by his Prime Minister and newly-named cabinet.

In response to expressions of concern at the absence of constitutional government, President Préval publicly declared his intention to hold prompt elections to fill the empty legislative and local posts. By decree of 16 March 1999, he appointed a nine-member *Conseil Electoral Provisoire (CEP)*, Provisional Electoral Council, to organize elections for seats in the Senate; the Chamber of Deputies; the governing councils of the *sections communales*, or communal sections; the municipal councils; the assemblies of the communal sections; the municipal and departmental assemblies; the departmental councils; and the interdepartmental council.

The political sector during this time was marred by a series of violent incidents affecting public figures. While it was difficult to determine who was responsible for the incidents, there was concern that some at least were linked to political instability and the upcoming elections. In the most serious of these events, on 1 March 1999 Jean-Yvon Toussaint, senator of the opposition party *Organisation du Peuple en Lutte (OPL)*, Organisation of People in Struggle, was killed by unidentified gunmen outside his house. Several other opposition figures reported receiving threats or coming under attack in the months that followed.

Meanwhile, preparations for the elections continued, and on 4 August 1999, the CEP published the list of electoral officials for Haiti's nine departments. The same day, there was an arson attack by unidentified individuals on *the Bureau Electoral Départemental (BED), Departmental Electoral Office, in Gonaïves*, but a security guard and residents managed to put out the fire. In the following weeks, unknown persons tried unsuccessfully to burn down the BED in Jacmel, and in Port-au-Prince shots were reportedly fired in front of the home of a CEP official. In spite of sporadic reports of violence, threats or acts of aggression against officials, however, the electoral process continued to move forward.

At the same time, some Haitian NGOs, journalists and opposition parties, as well as representatives of the international community, expressed concern at the apparent tendency of popular organizations supporting the *Fanmi Lavalas* (Lavalas Family) party of former President Jean Bertrand Aristide to resort to intimidation and violent demonstrations. Opposition sectors in particular voiced fears that elements of the *Fanmi Lavalas* party might try to postpone local and legislative elections until the presidential ones scheduled for end 2000, in the hopes that Aristide's presidential campaign would boost the chances of the party's candidates for other posts. On 24 October 1999, the ceremony to open the civic education campaign leading up to the elections was violently disrupted by individuals shouting pro-Aristide slogans; the *Fanmi Lavalas* party later disclaimed responsibility. Significant police presence at subsequent election events and rallies contributed to a decrease in incidents of violent disruption; an opposition rally of several hundred people held in Port-au-Prince on 29 November was reportedly the scene of minor disturbances, quickly contained by the police, between participants and individuals claiming to be Aristide supporters.

In this context, the United Nations Independent Expert on Haiti called for restraint among political actors:

"The independent expert expresses hope that all actors will help create conditions that will allow the electoral process to continue without incident so that free, democratic

and transparent elections can be held with the broadest possible participation by the Haitian people.”¹

On 4 January 2000 several parties signed a Code of Ethics developed by the CEP; the code required parties and candidates to abstain from spreading opinions or encouraging actions that would endanger the sovereignty, public order, integrity or security of the country. Parties, candidates or their supporters were forbidden to disrupt meetings organized by rival parties or candidates. Weapons were forbidden in public gatherings linked to the elections. The *Espace de Concertation* (Consultation Forum) and OPL did not sign, citing lack of confidence in the CEP’s ability to enforce the code; *Fanmi Lavalas* and other parties did sign. Meanwhile, several human rights non-governmental organizations (NGOs) and others expressed their intention to carry out electoral observation.

Turnout for registration of candidates was unexpectedly high. As of early February 2000 reports indicated that, some logistical difficulties aside, voter registration was proceeding apace, with solid levels of voter turnout. Some isolated violent incidents involving destruction of registration materials or conflict over electoral staff were reported, but did not seem to hinder the overall progress of the electoral process.

¹Report to the UN General Assembly of the Independent Expert on Haiti, UN Doc. A/54/366, 20 September 1999, para. 78.

Pressure on institutions in the electoral context

In the absence of Parliament, a key element in Haiti's system of checks and balances, state institutions were perceived as ever more vulnerable to outside interests. Both police and judiciary came under increasing pressure from sectors apparently interested in undermining their independence and impartiality.

Following the 20 April 1999 shooting death of activist Michel Ange "Bora" Phillis in Bel Air, there were violent clashes between *Fanmi Lavalas* supporters and police, who the activists accused of being responsible for the death. The joint Organization of American States / United Nations human rights field operation *Mission Civile Internationale en Haïti OEA/ONU* (MICIVIH), OAS/UN International Civilian Mission in Haiti, later indicated that investigation indicated the killing was a result of a dispute with a street vendor.² From this point on, the police were the target of increasing public criticism, including violent demonstrations, largely from popular organizations linked to *Fanmi Lavalas* and from party leaders. In April, leaflets denouncing the police leadership were found during a routine search of the car belonging to a press attaché of the National Palace, who was also news director at the radio station affiliated with former President Aristide's *Fanmi Selavi* project for street children.



The public criticism, ostensibly focussed on alleged police corruption and inefficiency in fighting crime, was attributed in some international and Haitian press and international mission reporting to efforts to undermine the neutrality and effectiveness of the force in the runup to the elections. It included repeated calls for the resignation of the police leadership, in particular Pierre Denizé, Director General; Luc Eucher Joseph, Inspector-General; and

² "Human Rights Review: a quarterly report by the OAS/UN International Civilian Mission in Haiti (MICIVIH)," April-June 1999, p. 1.

Robert Manuel, Secretary of State for Public Security, most notably in charge of the issues of security during the elections and the campaign against drug trafficking.

Though by the end of 1999 the police force had taken a more active approach towards carrying out its security responsibilities at election rallies and other public events, in a series of incidents earlier in the year police officers had seemed reluctant to confront violent, generally pro-*Fanmi Lavalas*, protestors. This trend culminated at a demonstration organized by conservative business interests on the Champs de Mars on 28 May 1999, which was violently broken up by counter-demonstrators claiming to be *Fanmi Lavalas* supporters. The regional police director called a halt to the demonstration; agents of the *Compagnie d'Intervention et de Maintien de l'Ordre (CIMO)*, Rapid Intervention Force, reportedly beat several demonstrators, and the Port-au-Prince police commissioner Jean Coles Rameau, later arrested in connection with the Carrefour-Feuilles killings (see below) was said to have struck a journalist who was taking photographs of the CIMO's use of force.

MICIVIH criticized the intolerance of the counter-demonstrators in breaking up the gathering, noting in a 31 May 1999 press release,

"Five years ago, possessing a photo of then-President Jean Bertrand Aristide was treated as an offense, and assembly on his behalf was forbidden and immediately repressed by the security forces. It is regrettable that today, when in general public liberties are guaranteed, some display his photo and chant slogans attacking those who exercise their own rights of assembly and free speech."³

Secretary of State for Public Security Robert Manuel resigned in October 1999, reportedly following disagreement with President Préval. Jean Lamy, an HNP advisor rumoured to be a possible replacement, was assassinated the next day in a targeted, well-carried-out hit. Mario Andresol, head of the Judicial Police charged with investigating the killing, escaped unhurt when shots were fired at his car several days later. Finally, HNP director Pierre Denizé was

³International Civilian Mission in Haiti OAS/UN, "Communiqué de Presse," 31 May 1999, ref. CP99/09 (unofficial translation from the French).

forced to flee the 16 October funeral of Jean Lamy when violent protesters claiming to be *Fanmi Lavalas* partisans disrupted the ceremony.⁴

Following these events, Amnesty International received communications from numerous sources within Haiti expressing fear at a perceived growth in political intolerance, particularly given the recent demonstration of the police's own vulnerability to violent pressure. During an October 1999 visit by AI, the Minister of Justice, former human rights lawyer Camille Leblanc, discussed measures to lessen police and judicial vulnerability to political pressure during the electoral period. The *Ecole de la Magistrature*, Magistrates College, inaugurated 3 July 1995 in accordance with article 176 of the Haitian Constitution, held courses on the electoral law for justice and police officials.

⁴See Amnesty International, 'Haiti: a worrying increase in violence', News Service 195/99, AI Index: AMR 36/06/99, 18 October 1999 and 'Haiti: human rights efforts at risk', News Service 205/99, AI Index: AMR 36/07/99, 2 November 1999.

The rise in political tensions takes place in a situation of increasing criminality which is bringing its own pressures to bear on the police, judicial and penal institutions. Though crime in Haiti is reportedly low compared to other countries in the region, the country is said to have become an increasingly important crossing point on drug import routes into the United States of America; according to a recent media report, the deputy director of the USA White House Office for National Drug Control Policy estimated that 12% of the cocaine that reaches the USA from Colombia each year passes through Hispaniola, the island made up of Haiti and the Dominican Republic.⁵ With the drug trade, the accessibility and use of firearms has increased markedly; this, coupled with economic crisis, has led to more frequent armed crime, including against the middle class, formerly protected from it. Some sources speak as well of gangs incorporating criminal deportees from the USA and Canada. Still others express fears that incidents of political violence may be occurring under the guise of common crime.

International human rights and police monitors

1999 saw a series of changes to the international presence in Haiti. Following reductions in USA funding to the organization, the Organization of American States (OAS) was obliged to withdraw almost all of its personnel from MICIVIH as from 1 July 1999, leading to the closure of five of nine MICIVIH regional bases: Port-de-Paix, Fort Liberté, Hinche, Jacmel and Jérémie. Bases in Port-au-Prince, Les Cayes, Gonaïves and Cap Haïtien remained open, and MICIVIH continued as a joint UN/OAS mission.

In September 1999, a new Representative of the UN Secretary General, Alfredo Lopes Cabral, was appointed. The mandate of UN Civilian Police Mission in Haiti, *Mission de police civile des Nations Unies en Haïti (MIPONUH)*, was due to expire on 30 November 1999, and that of the MICIVIH at the end of the year; both were extended until 15 March 2000 after vote by the UN Security Council. The missions will then be replaced by a new *Mission internationale civile d'appui en Haïti (MICAH)*, International Civilian Support Mission in Haiti, with an initial mandate of one year; it will include police, human rights and judicial advisers.

⁵“Three Colombians face drug charges in Haiti,” Reuters wire service, 14 February 2000.

International aid

In 1998 Haiti ranked 152nd out of 174 countries surveyed under the Human Development Index, based on indicators of longevity, education and per capita income.⁶ The World Bank noted that “the overwhelming majority of the Haitian population are living in deplorable conditions of extreme poverty.”⁷ Though some progress has been made in collecting tax revenues and some projects undertaken, the Haitian state does not begin to meet basic needs in the areas of education, housing, health care and basically every other aspect of public service. Malnutrition is endemic in parts of Port-au-Prince and elsewhere in the country.

In December 1999 the United Nations Development Program (UNDP) reported that considerable foreign aid had been withheld in response to the instability of the political infrastructure. According to press reports between US\$ 250 million and US\$ 500 million in potential aid is in limbo pending parliamentary ratification or has been lost over the past two and a half years.

On 27 July 1999, the UN Economic and Social Council (ECOSOC) adopted a resolution on a pilot UN-sponsored long-term aid program in Haiti. The program, if implemented, would focus on education, peace building, poverty eradication, social integration, employment, commercial exchanges, long term development and institution-building. It is unclear what follow-up is planned to this resolution.

⁶*Human Development Report 1999: “Globalization with a Human Face,”* 12 July 1999, UN Publications: Oxford University Press.

⁷*Haiti: The Challenges of Poverty Reduction*, Document of the World Bank, Report No. 17242-HA, August 1998.

HAITIAN NATIONAL POLICE

A. Background of the institution

As then-President Aristide returned to Haiti in October 1994, the leaders of the Haitian military fled the country. Six months later, after a series of reductions in troop numbers, Aristide officially announced the abolition of the Haitian armed forces, the *Forces Armées d'Haïti (FADH)*, including the military police, the *Police Militaire*. An Interim Public Security Force (IPSF), composed of ex-soldiers and former refugees recruited in the camps on the USA base at Guantanamo, was created to ensure security until a new police force could be trained and deployed.

In November 1994 a law creating the new *Police Nationale d'Haïti*, Haitian National Police (HNP), was passed. In 1995 a *Code de Déontologie* (Code of Conduct) was published and an *Inspection Générale* (Office of the Inspector-General) established. Successive classes of recruits began receiving a four-month training (partly at the *Académie Nationale de Police* in Petionville and partly, at pressure from the USA to increase numbers and speed deployment, in facilities within the USA). As successive graduating classes were deployed, the IPSF was gradually demobilized and finally dissolved by presidential decree of 6 December 1995. A reported 1,500 of its members were integrated into the HNP. The HNP reached a total of 5,000 police officers in the summer of 1996. On 28 October 1999 the government announced plans to increase its size to between 9,000 and 10,000 police officers by the year 2003, in an effort to combat increasing crime.

The abolition of the military police and creation of a new police force under civilian control⁸ and mandated to guarantee public order and protect Haiti's citizens⁹ represented a departure from Haiti's long history of repressive public force at the service of political power. This was an extremely important step towards the construction of an environment in which human

⁸The Ministry of Justice, as per article 269 of the Constitution of the Republic of Haiti: "la Police est un Corps Armé. Son fonctionnement relève du Ministère de la Justice."

⁹Article 269-1 of the Constitution of the Republic of Haiti: "Elle [la police] est créée pour la garantie de l'ordre public et la protection de la vie et des biens des citoyens. Son organisation et son mode de fonctionnement sont réglés par la Loi."

rights could be fully respected in Haiti. At the same time, the new force was created quickly and out of a situation of necessity following Aristide's disbanding of the FADH. The HNP was as such not the product of an open public debate, but rather a rapid response to the need to ensure public security. It was met from the beginning by a degree of distrust from a public unused to anything but repression. This fear was heightened for some by the inclusion of some former FADH members in the new force, and by the close involvement of the USA, which was known to have formerly trained the Haitian military, in its development.

B. Current situation

In the five years since its inception, HNP members have committed serious human rights violations.¹⁰ The scale of violations attributed to the HNP is much lower than that which pertained under the *de facto* military government before the return of Aristide, or under the preceding Duvalier regimes; and the HNP continues to make efforts to promote respect for human rights, for example by including human rights in its training program and by investigating allegations of abuse. However, during 1999 fears about police misconduct were expressed more frequently, largely due to high-profile human rights violations described below. Another contributing factor is public awareness of the lack of legislative oversight of the Executive, the Ministries or the institutions under them, as mandated by the Constitution.¹¹ There is great concern that this leaves the HNP and other institutions unsupervised and vulnerable to outside pressure or internal manipulation.

With the reported increase in activity by armed criminal gangs in Haiti, the Haitian public has criticized the HNP for inadequate presence and failure to provide sufficient protection. Twenty police officers were killed in 1999, contributing to public fears of criminal violence. The implication of some police officers in drug trafficking, the lack of investigative capacity and other factors have hampered efforts to combat the drug trade; however in 1999 the HNP,

¹⁰ See Amnesty International, *Haiti: A Question of Justice*, AI Index: AMR 36/01/96, January 1996; and *Haiti: Still Crying Out for Justice*, AI Index: AMR 36/02/98, July 1998.

¹¹ Article 93 of the Constitution of the Republic of Haiti: "la Chambre des Députés, outre les attributions qui lui sont dévolues par la Constitution en tant que branche du Pouvoir Légitif, a le privilège de mettre en accusation le Chef de l'Etat, le Premier Ministre, les Ministres, les Secrétaires d'Etat par devant la Haute Cour de Justice, par une majorité de 2/3 de ses Membres."

with the USA Drug Enforcement Agency, engaged in a well-publicized anti-trafficking campaign known as “Operation Columbus.”

An effective response to violence and criminal activity is hampered by the weakness of the judiciary, itself a legacy of past regimes. Unlike the HNP, the justice system did not undergo a complete overhaul following the return to democracy. Consequently, improvements in efficiency and independence achieved by the HNP are to a certain extent hamstrung by the dysfunction still afflicting the justice system (see below). Individuals arrested by the police are at times released through judicial corruption or inefficiency, increasing the temptation for police officers to ‘take justice into their own hands’ by killing suspects that they consider dangerous outright. Sources in Haiti also attribute frequent ‘popular justice’ killings of suspected criminals to lack of public faith in judicial process. Judicial officials, for their part, at times accuse the police of corruption or failing to fulfill their share of the work in investigating crimes. These differences between the two institutions continue to be detrimental to the overall respect for human rights available to Haitian citizens.

C. Primary human rights concerns

1. Extrajudicial executions and other killings in suspicious circumstances

1999 saw a worrying rise in killings by the police in disputed circumstances, in some cases suggesting extrajudicial execution. MICIVIH reported 66 killings apparently involving police in 1999, up from 31 reported killings by police in 1998. This figure includes alleged human rights violations as well as killings in legitimate self-defense and accidental and other killings by police. Extrajudicial executions were relatively rare, peaking between April and June 1999 and declining considerably after the arrest of some of the police officers involved; they were not political in nature, but involved suspected criminals, particularly those believed to have been implicated in killings of police officers.

Carl Edwin Etienne and Marc Antoine Posy were apparently summarily executed by police in the Fontamara area of Port-au-Prince.¹² The bodies of the two, shot in the neck and bearing signs of having been hit in the face with rifle butts, were found 9 April 1999 at the scene of

¹²See Amnesty International: Urgent Action, 79/99, AI Index: AMR 36/03/99, 19 April 1999.



an earlier shoot-out between police and a criminal gang. During that exchange of fire, a CIMO agent had been killed; CIMO units later returned to the area to investigate the incident, and it was at this stage that Etienne and Posy were shot. On 15 April, an HNP spokesman denied that CIMO members were

involved in the killings and blamed the criminal gang. However, witnesses reported hearing a vehicle pull up and men shouting orders to lie down, followed by four or five gunshots. One witness claimed to have heard one of the victims pleading for his life, protesting that he was not a thief and offering to show his identity papers. The HNP reportedly opened an investigation into this killing, though the outcome was not known as of this writing.

On 28 May 1999 in the Carrefour-Feuilles neighbourhood of Port-au-Prince, 11 people¹³ were shot dead by police in circumstances suggesting that they were summarily executed.¹⁴ Police claimed that three of them had been killed in a shoot-out, but witnesses testified that police shot the men while they were in custody and lying on the ground. Police then reportedly arrested eight others. Family members and witnesses who saw the bodies in the city morgue stated that 10 of the 11 had been shot once in the head, and one of them in the heart. A police officer who claimed to have initiated the investigation in the neighbourhood, and who subsequently escaped from custody in unexplained circumstances, sent a tape to the media claiming that police leadership had ordered the killings; police authorities denied this accusation. Violent street demonstrations followed the killings. Prime Minister Alexis and Minister of Justice Leblanc were forced by protesters to leave the funeral ceremony for the victims.

The Minister of Justice announced the opening of a three-judge commission of inquiry into the Carrefour-Feuilles killings, and the HNP Inspector-General announced that an internal

¹³ Victims were Monfils 'Calypso' Alexandre; Issé 'Ti-Tonton' Austin; 'Dadou'; Lionel 'Nene' Louis; Dieumaitre Charles; Dieunord Voltaire; Michael Louis; Eddy 'Rasta' Saint Jean; Saint Fils Gilles; Mira Registre; and Joseph Gilbert Gilles.

¹⁴See Amnesty International, Urgent Action:, 129/99, AI Index: AMR 36/05/99, 3 June 1999.

investigation had been opened as well. In a positive development, seven police officers suspected of involvement were detained, including Port-au-Prince Commissioner Rameau following his arrest in and extradition from the Dominican Republic, and an arrest warrant issued for an eighth who managed to escape from detention previously. Following the arrests of these police officers, several of whom had been implicated in earlier killings, reports of extrajudicial executions by the police declined. In October 1999 the Minister of Justice told AI that the investigation, conducted by a commission of three judges, was finished and that they were waiting for the ballistic evidence to complete the trial order. For its part, the office of the Inspector-General submitted its report to the director general of the police and the Minister of Justice. No findings were made public, and no official action taken as of this writing.

In May 1999 MICIVIH observers found two bodies at the Titanyen body dump, of persons believed to have been apprehended from the Bois Neuf area by a group of armed men including two in police uniform. In a July 1999 press release, MICIVIH drew attention to 16 killings in the preceding two months attributed to a *brigade de vigilance* (vigilance brigade)¹⁵ said to be made up of police and armed civilians operating in Cité Soleil. These killings subsided after the arrests in the Carrefour-Feuilles case and publicizing of the issue.

¹⁵The *brigade de vigilance* is traditionally a non-formal neighborhood watch group which can also at times operate under the auspices of or with the collaboration of state agents. According to reports, such groups have at times been responsible for killings of suspected delinquents and others.

2. Possible “disappearances”

On 16-17 April 1999, eight young people were reportedly arrested from a house in Croix des Missions believed to have been rented by gang leader Hippolite Elizé, alias ‘Chuck Norris,’ who police believed had been involved in the killing of the CIMO agent described above. (‘Chuck Norris’ was later killed in the course of a 19 April police operation.) No record of their arrest or subsequent detention was recovered. In June 1999 several bodies were found in Titanyen, a notorious dumping ground for bodies under the military regime, outside of Port-au-Prince; a MICIVIH investigation established links between some of the bodies and the eight young people. A reported eyewitness to the arrest of the young people was interviewed by the public prosecutor’s office; and neighbours and others close to the missing individuals were said to have recognized or described clothing found on the bodies in Titanyen.¹⁶

An internal police investigation was opened, and preliminary examinations conducted by police technical research units. However, no results have been made public; and the Minister of Justice, in response to AI questions, seemed eager to dismiss the reports, leading to concern about a possible lack of will on the part of the authorities to adequately investigate and follow up on the claims.

3. Torture and ill-treatment

The systematic torture and brutal beatings which characterized Haiti’s military regime ended with the disbanding of the armed forces. However, in 1999 human rights NGOs and MICIVIH reported some isolated incidents of torture, such as burnings with cigarettes. Moreover, it is clear that detainees, particularly those suspected of gang activity, violent crime or aggression against the police, at times risk beatings either during arrest or during the early period of detention in police custody.

In prison interviews in several localities during its October 1999 visit, AI met several detainees who said that they had been subjected to ill-treatment during arrest or in police

¹⁶“Human Rights Review: a quarterly report by the OAS/UN International Civilian Mission in Haiti (MICIVIH),” April-June 1999, pp. 4-5.

detention. In one case, a 15-year-old boy reported being beaten by police officers during his arrest several weeks before. He claimed that police arrested him because they believed him to be a member of a gang of street children engaged in theft. He said that they arrested him at a bus stop in mid-afternoon, handcuffed him, made him lie down in the street and beat him with another set of handcuffs before taking him to the police station. This boy had marks on his arms and elbows consistent with his story.

In another case in Mirebalais, staff of the *parquet*, the public prosecutor's office, told AI that St. Victor Saintilus, a Saut d'Eau resident accused of murder, was provisionally released on 15 October 1999 given concerns for his health. Prison officials told AI that he had reportedly been badly beaten during arrest. The public prosecutor's office was investigating the case.

4. Excessive use of force during demonstrations and protests

Within the HNP, specific crowd control units have been put in place. While generally commended for restraint in dealing with at times violent demonstrations, they have at times been criticized for their failure to intervene in violent demonstrations (see Introduction). There have also been some incidents in which police used unnecessary or disproportionate force in dealing with demonstrators or public disturbances. The National Coalition for Haitian Rights (NCHR) reported, for example, that on 26 November 1998, an agent of the *Unités départementales de maintien d'ordre (UDMO)*, the Departmental Units to Maintain Order, reportedly wounded two people when he shot into a demonstration of school children. In response, residents of Plaisance apprehended him and beat him badly. In reprisal, police staged a night-time operation in the area in which numerous people, including children and elderly, reported being beaten. The Office of the Inspector-General investigated the incident, after which the police commissioner was removed.

In another incident highlighted by NCHR, a 24 January 1999 car crash in Pilate, Department of the North and the subsequent lynching of the car's driver, Joseph Kerilus, touched off confrontation between the populations of Pilate and neighbouring Limbé. HNP officers became involved, and in reprisal, Limbé residents invaded the police station on 26 January. On 28 January, HNP and CIMO officers, in response to alleged rock-throwing from the

population, responded violently themselves; windows of several cars were broken and several residents claimed to have been beaten.

5. Arbitrary detention

Arrest procedures and the constitutionally-guaranteed right to *habeas corpus* within 48 hours of arrest are not always respected, leading to some cases of arbitrary detention. In some instances, following arrest police failed to bring individuals before judicial authorities within 48 hours. Some detainees reported that they were presented at court within the required time frame, but that judicial officials were either not present or did not give them a hearing. At times, in spite of the lack of judicial detention order, detainees were reportedly taken to prison rather than back to the police station.

At times the provisions for arrest without warrant in cases of *flagrant délit* were misused, with individuals being arrested 'for investigation' without specification of the concrete grounds for their arrest. Some cases were reported of minors temporarily detained without charge, as a disciplinary measure requested by their families. There were also reports of collective warrants being used for arrests, a practice which is contrary to Haitian law.

D. Response of the Office of the Inspector-General

The establishment of the HNP Office of the Inspector-General, charged with investigating misdoing by police officers, imposing administrative sanctions and collecting information on criminal infractions for prosecution by the judicial system, marks a break with Haiti's past system of impunity. Its functioning is an indication of will to officially hold police officers accountable for their actions. While recognizing these gains, observers agree that there is room for substantial improvement.

In 1998, the HNP reportedly dismissed 220 police officers, 35 of them for human rights abuses.¹⁷ In October 1999 the Office of the Inspector-General indicated that a total of 407 police officers had been dismissed for various reasons as a result of its investigations since the

¹⁷Report of the UN Independent Expert on Haiti, UN Doc. A/54/366, 20 September 1999, para. 33.

creation of the HNP, while another 266 police officers had been dismissed in that time on the decision of the *Direction Générale*, the police leadership, primarily for abandonment of post; MICIVIH indicated that of the total dismissals, at least 130 involved human rights violations.¹⁸ In spite of efforts to sanction some perpetrators of human rights violations, other serious cases remained unpunished.

Some sources indicated that police investigators give more priority to sanctioning corruption and involvement in the drug trade than to following up cases of human rights violations, particularly incidents of beatings during or following arrest. Cases from the provinces are sometimes not investigated, as they can only be channelled to the Office of the Inspector-General through departmental police directors who are said to be at times reluctant to do so. Human rights organizations in general, however, speak positively of the unit's efforts. In a positive move, the Office of the Inspector-General has placed two police officers at the disposal of the *Office de la Protection du Citoyen*, the ombudsman's office, and of human rights NGOs, for attention to human rights claims.

In a conversation with AI, the Inspector-General summarized the role of his unit as serving as a control of the public force by carrying out internal investigations of the police and reporting conclusions to the police Director General and the Ministry of Justice. He said that in cases of criminal infraction, the public prosecutor's office is systematically informed so that a judicial investigation can be carried out concurrently. In the event of violent death involving the police, the public prosecutor's office is mandated by law to open an investigation. However, representatives of different sectors agree that public prosecutors very rarely open investigations into alleged human rights violations by the police. The result is that police officers found guilty of misdoing are fired, but rarely tried; this enforces the public impression that they are 'above the law.'

Some attribute the lack of judicial prosecution of police officers to judges' continuation of practices learned under the FADH, when military and police acted with impunity; others cite the general dysfunction of the justice system. In some cases police themselves have resisted judicial efforts to oversee their activities. In one particularly disturbing case, the Ministry of

¹⁸“Human Rights Review: a quarterly report by the OAS/UN International Civilian Mission in Haiti (MICIVIH),” October - December 1999, p. 8 and appendix.

Justice itself moved to close an investigation of alleged ill-treatment initiated by a *juge d'instruction*, investigating magistrate, in Cap Haitien with regard to the Municipal Police Commissioner. The investigating magistrate was reportedly summoned by the Minister of Justice and advised to drop the claim; when he refused, the Ministry ordered his transfer and fired him when he declined it. When AI asked about the case, the Minister claimed that the judge's 'will to engage in confrontation' was politically motivated, as he belonged to an organization close to *Fanmi Lavalas*, engaged in a campaign to undermine the police. This version was contested by other sources.

THE PRISON SYSTEM

A. Background of the institution

The *Administration Pénitentiare Nationale* (APENA), National Penitentiary Administration, was created in June 1995 to oversee functioning of prisons, which had formerly been in the hands of the armed forces. In April 1997, a presidential decree integrated APENA into the HNP, as the *Direction de l'Administration Pénitentiaire* (DAP), Direction of Penitentiary Administration. This shift became fully effective in early 1999. Over this period, prison population increased markedly; on the occasion of the fourth anniversary of the prison administration's inception, its director noted that in that time the prison population had more than doubled, from 1,500 to 3,700 detainees.

Substantial resources have been put into the prison system, and improvements made in the physical structure of some prisons. A civilian prison administration has basically been created from scratch, with its own internal regulations and oversight body under the Office of the Inspector-General. Continuing efforts, however, have been hampered by reductions in international financial support over the last year. UNDP and DAP, with participation of MICIVIH, conducted a training programme for a new class of prison guard recruits in August 1998, and prison clerks, also received training in complying with a manual on prison record keeping. Unfortunately the DAP training centre was closed in December 1998, and training efforts have yet to resume. The lack of training has delayed the deployment of new recruits as well as of new supervisors and inspectors, selected in competitive examinations from among the existing staff in early 1999. This, combined with the significant rise in the prison population, has led to a staffing shortage, which has had some ramifications for how prisons are run.

B. Current situation

In a country in which resources are scarce, detainees and other low-profile, potentially low-priority populations face heightened risk of deprivation. This situation is not helped by the fact that, due to Haiti's lack of a functioning legislature, the prison budget has reportedly been carried over unchanged every year since 1995, regardless of the fact that the prison population has more than doubled in the same time period. Matters are further complicated

by the failings of the justice system, which have direct and immediate consequences on the prisons. Prison overcrowding -- due in significant measure to lack of judicial attention to cases -- and detainee frustration at the perceived corruption and ineptitude of the justice system contribute to tension between detainees and guards, increasing the risk of riots and other violence on one hand and human rights violations on the other.

Of the current prison population, around 1,200, or roughly a third, are in pre-trial detention of over one year. Three out of five detainees are in Port-au-Prince, distributed between the National Penitentiary, Fort National, or facilities in Delmas, Petionville and Carrefour. Of these, only about 300, roughly 13% of the total, were serving sentences; most of those had been transferred from the provinces. DAP staff pointed out that the obvious conclusion is that those arrested in Port-au-Prince are rarely tried. In the face of this situation, DAP has attempted to contribute to a solution by deploying ten legal assistants to Port-au-Prince prisons, with the task of helping channel cases through the appropriate courts.

The country's largest prison, the National Penitentiary, has a capacity of 1000. The day that AI met DAP staff there, the population was at 1,813. National Penitentiary staff said that they were concerned at the rise in tensions from overcrowding, and steps have reportedly been taken with regard to crisis management planning in the prison. This situation does not just affect Port-au-Prince; the Hinche prison, built in 1837, houses three times its capacity, according to one NGO source. Prisons elsewhere are similarly strapped, though to a somewhat lesser degree.

C. Primary human rights concerns

1. Ill-treatment of detainees

There have been several serious incidents in which prison guards beat detainees, in most cases as punishment. In Les Cayes, two inmates were allegedly beaten by prison guards following a July 1999 escape attempt; this, combined with frustration at overcrowding and poor conditions, provoked a riot by other inmates in which they broke out of their cells into the prison courtyard. They were later persuaded by prison officials to return to their cells. To reduce overcrowding, some were transferred to Port-au-Prince, where several were reportedly beaten upon arrival in retribution for the incident.

In Hinche, detainees reported being tear-gassed following a September 1999 escape attempt by several inmates; those involved in the escape attempt and subsequent aggression against a prison guard were reportedly handcuffed and beaten while lying on the ground, before being transferred. Prison guards denied that unnecessary force had been used.

The Director of the National Penitentiary and 17 prison staff were dismissed following investigation by the Office of the Inspector-General into allegations of beatings of detainees following an April 1998 escape attempt from the Carrefour prison. There has been no judicial follow-up on the case to date.

2. Conditions of detention

Physical conditions

Overcrowding coupled with outdated facilities and lack of resources has created conditions that are far below the level required by the Standard Minimum Rules for the Treatment of Prisoners¹⁹ and in some instances constitute cruel, inhuman and degrading treatment. These include insufficient ventilation and light, acute shortage of bedding and lack of medical attention.

In Fort National, for example, which as the women's and children's prison seems to benefit from greater material and human resources than other facilities, one of two boys' cells has been closed since damages incurred in a breakout. As a consequence, all the boys are housed in one dormitory room; the day of AI's visit, they numbered 38. Prison guards showed AI the remains of broken down beds which they said had been removed from the boys' dormitory two years before, after the boys had dismantled them and used the parts to fight. The beds were never replaced, and though some boys slept on mattresses on the concrete floor, there were not enough for everyone. Prison officials said that they raised the matter with DAP authorities, who replied that there were no funds to buy additional mattresses. There was insufficient lighting from the one bare overhead bulb, and this was dependent on electricity service to the neighbourhood, said by staff not to exceed a few hours a day. The generator

¹⁹ Approved by the UN Economic and Social Council, resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

has been broken for months, and requests to the prison administration for assistance in repairing it had not been answered.

Food

International organizations expressed concern at malnutrition among the prison population, which in some cases has reportedly contributed to deaths in detention. Authorities in all prisons visited told AI that they lacked resources to consistently provide inmates with the requisite two meals per day, following the end in August 1999 of an aid programme from the Dutch NGO *Bureau de nutrition et de developpement* (BND) that had been providing 75% of the prison system's food. The difficulty reportedly had to do with delays in approval of disbursements by the Ministry of Finance. Detainees reported relying heavily on food brought by family members; for those whose family lived in remote areas, or who had been transferred to the capital from the provinces, the situation was all the more grim.

Health

In addition to physical deficiencies in prison infrastructures, DAP officials reported that basic material, such as cleaning products, toilet paper and sanitary napkins for women, are not forthcoming from the prison administration, contributing to precarious sanitary conditions. Access to medical care is a serious problem. The post of head medical officer in DAP, charged with training and ensuring provision of medical supplies, was vacant from October 1998 to July 1999. The situation has improved somewhat since then, though in all prisons, an ongoing lack of medical supplies and shortage of staff was reported. Fort National was the most well-staffed prison in terms of medical personnel. In some areas there is no medical service available other than the public hospitals. In some locations, DAP personnel told AI that in needy cases they paid for medical services for detainees out of their own pockets; in others, DAP and staff of the public prosecutor's office admitted to releasing prisoners with serious health problems, as the prisons cannot provide adequate medical attention, lack staff to guard detainees in hospital, and have no quarantine capacity to protect other inmates in contagious cases. Also of concern was the situation of individuals arrested in remote communes, often held there for extended periods while awaiting transfer to the departmental prisons; due to lack of resources and infrastructure, they often arrive in a weakened state.

Overcrowding, combined with under staffing and a reported fear of escape attempts, contributed as well to a reluctance of guards in some prisons to let prisoners out of their cells, leading to concern about the impact of lack of exercise on their health.

3. Children in detention

Under international standards, pre-trial detainees must be separated from convicted prisoners, minors from adults and women from men. Haitian prisons comply with the latter. Separation of convicted prisoners is generally not practised, due in part, according to prison authorities, to overcrowding and lack of space. Only in Fort National is there a separate space for boys; and even there as elsewhere, women and girls are housed together.

AI interviewed minors in several prisons and spoke with NGOs and authorities about the current situation; the picture that emerges is worrying. The dire economic straits of families has historically pushed large numbers of Haitian children on to the street; what is newer, according to sources, is the apparently growing involvement of youth in gangs, and the increasing ease of access to firearms. The majority of children interviewed by AI had been charged with gang activity or related firearms charges.

In Haiti, individuals often lack birth registration and other personal identification proving their age. Reports indicate that generally it is the police, at the time of arrest, who evaluate whether an arrestee is a minor or not; medical examinations, or background checks with neighbours or family, are rarely used to determine age more exactly, though of course this determination is essential to deciding if and how a minor is to be tried. Under Haitian law, children under 16 should not be imprisoned; however, the lack of alternatives reportedly means that in practice even children as young as 10 are at times incarcerated.

The children interviewed by AI were with few exceptions patently unable to understand the workings of judicial procedure in their cases. Many came from struggling families, others directly from supporting themselves on the street. They had little if any schooling; some were unable to state their ages with any exactitude, and could not give anything but a vague estimate of the time that had passed since their arrest or their last appearance before a judge. Particularly with children who originate in the provinces and were subsequently arrested in the cities, there is no guaranteed mechanism for locating their families and informing them of

the child's situation. In the absence of a responsible adult, these children are clearly in need of outside assistance in representing their interests. Fort National officials have made a commendable effort, through the deployment of a legal assistant, to ensure that at the least, judicial dossiers are not overlooked in the system; the prison director told AI that she has requested a second legal assistant, but has had no reply from the prison administration. The larger need for adequate legal representation remains to be addressed.

D. Institutional and NGO response

A *Commission des Affaires Pénitentiaires*, Commission for Penal Affairs, has been set up within the HNP Office of the Inspector-General to investigate alleged violations or infractions by DAP personnel. The commission is staffed with three externally-hired lawyers, who took up their duties after completing training in February 1999.

In June 1999, the prison administration publicly released the *Règlements internes des Etablissements Pénitentiaires*, internal guidelines for prisons covering such issues as record keeping, detention conditions and disciplinary measures. UNDP, which collaborated on the project, is currently said to be working on transitional guidelines to assist staff in applying the regulations.

Haitian NGOs have set up a prison observation network to carry out prison monitoring in, at present, 11 of the country's 19 prisons; this is widely seen as a positive step toward both strengthening Haiti's internal human rights monitoring capacity and to leading to improvement of conditions within prisons. The director of the HNP Office of the Inspector-General told AI that his unit supports the NGO initiative, and works to ensure NGO access to prisons.

THE JUSTICE SYSTEM

A. Background of the institution

The lack of independent, impartial and accessible justice is perhaps the largest institutional blockage to respect for human rights in Haiti today. More than five years after the return to democracy, the justice system remains largely dysfunctional. This is a systemic problem resulting from Haiti's past, when successive military regimes used the courts as another arm of repression and disenfranchisement. Introduction of a new form of representative government has fundamentally shifted the role the judiciary is expected to fill, bringing with it new standards of independence, impartiality and effectiveness. As one commentator noted,

“The rule of law presupposes and requires a healthy, independent, effective judicial system which has the trust of the population. To work towards the rule of law presupposes a change in both the conception and exercise of power, which must cease being synonymous with repression and illicit self-enrichment in order to become a service and a catalyst to dynamically orient, coordinate and direct public action in the interest of the country as a whole.”²⁰

At the same time, the judiciary has been denied a structured framework for adapting to the new demands. As a result, other institutions' efforts to establish a framework of respect for human rights are not matched, and in concrete ways handicapped. Unlike the police force, created from scratch, if under a series of time, resource and political constraints, efforts to reform the judiciary have been piecemeal and sporadic. Several blueprints for reform have been proposed, but never fully implemented.

National Commission of Truth and Justice

²⁰ Werleight, Claudette, “Etat de droit en Haïti: état des lieux”, in *Etat de Droit en Haïti: bilan des 50 dernières années*, Office de Protection du Citoyen, Editions HSI, 1998 (unofficial translation).

In December 1994, then-president Aristide established by decree the *Commission nationale de vérité et justice (CNVJ)*, the National Commission of Truth and Justice. Its primary task was to investigate human rights violations committed under the de facto regime, but it was also mandated to recommend reparations for victims and reforms of state institutions.²¹ The final report, *Si M Pa Rele* (“If I Don’t Cry Out”), was submitted to then-president Aristide as he was leaving office in February 1996. Its recommendations for judicial reform aimed to create a judiciary independent from political influences; to end the cycle of impunity; and to establish a trustworthy judicial system that would sanction human rights violations and offer effective reparation for victims. Suggested measures covered the independence and impartiality of judges and *commissaires du gouvernement*, or public prosecutors; clarification of the roles of the police and judges; and legal reform, among others. The report advised that a follow-up committee be established to oversee the implementation of the recommendations.

In September 1996 then-Minister of Justice Pierre Max Antoine presented Parliament with a draft bill on judicial reform, which seemed to draw only partially on the CNVJ recommendations. A *Commission préparatoire à la réforme du droit et de la justice*, Preparatory Commission on Legal and Judicial Reform, was created to set out a plan, budget and timetable for reform measures; its report was finished in December 1997. On 7 April 1998, a judicial reform law was adopted, and in July 1998, the Preparatory Commission submitted short- and long-term strategic plans for reform. The Commission was followed by a *Unité de suivi et coordination pour la réforme du droit et de la justice*, Follow-up and Coordination Unit for Legal and Judicial Reform; in-depth reform, however, has not been possible in the absence of a functioning Parliament.

Following his designation as Minister of Justice in April 1999, former human rights lawyer Camille Leblanc, jointly with then-Secretary of State for Public Security Robert Manuel, announced a plan of action for improving the functioning of the justice system and counteracting insecurity in the country during the electoral period. This plan included several concrete and punctual measures aimed at improving the provision of justice. The Minister has also set up seven working groups of international and Haitian experts to address main issues

²¹See Amnesty International, *Haiti: A Question of Justice*, AI Index: AMR 36/01/96, January 1996; and *Haiti: Still Crying Out for Justice*, AI Index: AMR 36/02/98, July 1998.

of judicial reform, including independence of the judiciary, legal assistance and a judicial inspectorate.

A ‘day of reflection’ to discuss the creation of a legal aid system was organized by the Ministry of Justice and a French international aid agency was held on 25 June 1999, with participants from the bar associations, NGOs, the line ministry, the Magistrates’ College and MICIVIH. It was decided to channel the programme through the bar associations, and the newly-created *Fédération des Barreaux d’Haïti*, Federation of Haitian Bar Associations, is reportedly working on a proposal. The Ombudsman’s office, provided for in the 1987 Constitution and inaugurated in November 1997, is also involved in the issue.

B. Current situation

There is significant concern about the vulnerability of the justice system to political pressures.

Like the public force, the judiciary was historically an arm of the repressive regime. There is concern about political influence on judicial decisions, given that under the Constitution judges are named to fixed terms, by the president, from lists prepared by the Senate, departmental assemblies or communal assemblies.²² Moreover, justices of the peace can be revoked, making them vulnerable to pressure; other judges, though irremovable under the Constitution, are subject to renomination, so equally unlikely to challenge executive authorities.

The public prosecutor is empowered to be the agent of the executive branch vis-a-vis the courts and is charged, among other duties, with investigating and prosecuting all misdemeanours and criminal offenses and carrying out decisions taken by investigating magistrates; as such, this official is responsible for overseeing the working of the judicial police.²³ This role is at times open to pressure from the executive, resulting in a potential breakdown of the constitutionally-mandated separation of powers.²⁴ As noted by the CNVJ report,

²²Constitution of the Republic of Haiti, articles 174-175.

²³*Code d’Instruction Criminelle*, Haiti, 1958; articles 13, 18 and 198.

²⁴Constitution of the Republic of Haiti, article 59.

“The role of the prosecutor must be reviewed in light of one of the primary objectives of the Commission, namely the elimination of all political interference in the exercise of judicial power ... according to the personality of the Prosecutor, these can actively intervene in almost all domains. Given the prosecutor’s status as agent of the executive, this can lend itself to interference by the executive power, or at least give the impression of such interference.”²⁵

This issue is touched upon more concretely below, in the section on non-execution of release orders.

The debilitating lack of material resources that hampers the functioning of all Haitian institutions is compounded, in the case of the justice system, by the gap between caseload and capacity. The structure and size of the judiciary has basically remained the same in spite of population increases. As a result, there is insufficient number and staffing of courts for the population they serve. This is made worse in rural areas by the size and inaccessibility of some jurisdictions. Lack of resources also contributes to difficulties in holding criminal assizes to judge those accused of serious infractions. In addition, public mistrust of the justice system, and fear of reprisals in the event of conviction, make individuals unwilling to serve on juries; in October 1999, the Port-au-Prince assizes were temporarily delayed for this reason.

²⁵Commission Nationale de Vérité et de Justice, “*Si M Pa Rele*,” Haiti, 1995, p. 303 (unofficial translation).

During the AI mission, several issues were raised vis-a-vis human resources constraints. In some areas, judgeships are not filled, or in remote areas, those appointed do not appear regularly to fulfill their duties. This situation led the Minister of Justice, in the context of his April 1999 plan of action, to announce that he would begin obliging judicial staff to be present at their posts. Some sources questioned the professionalism and principles of judicial personnel. To counteract this situation, efforts have been made to strengthen the Magistrates College.²⁶ The Minister of Justice has introduced a competitive entrance exam and an extended training programme for new recruits (this affected the second group of trainees, the first having graduated in May 1998) in addition to ongoing training for older ones.

AI received numerous expressions of concern about corruption of judicial officials, from citizens as well as judicial and other authorities. Concern about corruption was said to be rising with the growing number of drug-related cases before the courts. The Minister of Justice has attempted to minimize the temptation by announcing an increase in base salaries for judges in August 1999. Concurrent with this problem is that of security; in areas with high incidence of crime justices of the peace have reportedly expressed fear of conducting investigations without police accompaniment.

C. Symptoms of judicial dysfunction

As of July 1999, Haitian and UN authorities indicated that four-fifths of the roughly 3,700 detainees in Haitian prisons and police stations had not been tried; nearly a third of all detainees had been waiting for judgment for more than one year. At times, detainees' time in pre-trial detention exceeds the maximum penalty for the crime with which they are charged. This constitutes a violation of the right not to be arbitrarily deprived of liberty and to trial within a reasonable time frame.

The delay is at times due to general judicial dysfunction; of particular concern is a lack of attention to the administration of justice in order to ensure that the legal delays, including the constitutionally-mandated 48-hour limit for detention without *habeas corpus* following

²⁶See Amnesty International, *Haiti: A Question of Justice*, AI Index: AMR 36/01/96, January 1996.

arrest,²⁷ for progression of a given case through the courts is respected. At other times, the delay seems deliberate, and linked to political or state security concerns.

²⁷Constitution of the Republic of Haiti, article 26: “nul ne peut être maintenu en détention s'il n'a comparu dans les quarante-huit (48) heures qui suivent son arrestation par devant un Juge appelé à statuer sur la légalité de l'arrestation et si ce Juge n'a confirmé la détention par décision motivée.”

In 1998 the Ministry of Justice set up the *Bureau de contrôle de la détention préventive (BUCODEP)*, Office to Control Pre-Trial Detention, to organize extraordinary hearings to settle cases of long-term pre-trial detention in the National Penitentiary. In December 1998, 102 people were released from the National Penitentiary in Port-au-Prince following intervention by BUCODEP. In September 1999 MICIVIH presented the Ministry of Justice with a list of 175 individuals held in pre-trial detention at the National Penitentiary since 1995 and 1996. BUCODEP then interviewed some of these detainees, but definitive judicial decision on their cases was not forthcoming.²⁸

Starting on 22 September 1999, 25 long-term prisoners at the National Penitentiary, led by former FADH Colonel Leopold Clerjeune, engaged in a hunger strike to demand judicial review of their cases. The strikers, most of whom were eventually released, included nine former military officials who were held for 15 months after protesting against non-payment of their pensions outside the Ministry of Finance. Although they were charged with state security offences, it was reported that no judicial dossiers had ever been opened. Another striker was Evans François, brother of former police chief Michel François. Evans François was imprisoned in April 1996, although there was reportedly no judicial dossier in existence. According to his personal doctor, he suffered a debilitating stroke during the hunger strike. In December 1999 the interim public prosecutor of Port-au-Prince released him and twenty other long-term detainees, justifying her decision on “humanitarian” grounds.

The Minister of Justice told AI in October 1999 that he had committed himself to significantly reducing pre-trial detention rates by the end of 1999. In a 5 November 1999 meeting with the country’s public prosecutors and *doyens de tribunaux civils*, senior judges of the Courts, the Minister of Justice formally requested that every effort be made to make decisions in the cases of pre-trial detainees before the end of 1999.

1. Non-execution of release orders

In addition to lengthy pre-trial detention, another issue of concern is that release orders issued by judges were ignored by public prosecutors, resulting in continued, and arbitrary, detention.

²⁸“Human Rights Review: a quarterly report by the OAS/UN International Civilian Mission in Haiti (MICIVIH),” July - September 1999.

This is particularly prevalent with regard to sensitive cases, for example, that of two men acquitted during the trial for the October 1993 murder of Minister of Justice Guy Malary.²⁹ The manner in which the case was investigated and the trial conducted was widely criticized; however, there were no legal *démarches* taken to justify continued detention of the two acquitted men following their acquittal in July 1996. The two were eventually released from detention in January 2000. Another detainee, former FADH general Claude Raymond, was detained in 1996 on charges of 'plotting against state security'. Several release orders were issued in his case, but were never acted on; on 9 February 2000 he died in detention.

²⁹See Amnesty International, *Haiti: on the Horns of a Dilemma: Military Repression or Foreign Invasion?*, AI Index: AMR 36/33/94, August 1994; and *Haiti: A Question of Justice*, 36/01/96, January 1996.

On numerous occasions the former Port-au-Prince public prosecutor did not take action on release orders issued by the senior judge, who in response was critical of the public prosecutor's office. The senior judge, Gabriel Castor, was replaced in May 1999; the prosecutor, Jean Auguste Brutus, was reassigned elsewhere on 1 October 1999, and five deputy prosecutors dismissed. In September 1999 MICIVIH submitted an *aide-mémoire* to the Ministry of Justice on 22 detainees with non-executed release orders, whose cases seem to have a political or security dimension.³⁰ In response the Minister of Justice also named a Commission to address this issue and told AI delegates in October 1999 that the Commission had submitted its final report. However, its results were apparently not made public. In his 5 November meeting with senior judges and public prosecutors, the Minister asked them to consider the cases of detainees holding non-executed release orders.

2. Inaction on possible HNP violations

With regard to the functioning of the police, the justice system has been highly criticized for its lack of involvement in investigations, particularly with regard to possible human rights violations. MICIVIH reported that the Office of the Inspector-General gave it a list of 32 dossiers passed to the Port-au-Prince public prosecutor's office in 1998; eleven apparently pertained to possible human rights violations. The public prosecutor's office confirmed having received 16, but as of end March 1999 only three had been transferred to the *Cabinet d'Instruction*, the investigating office. A judicial official reportedly told MICIVIH that twelve dossiers contained only photocopies, which were considered invalid.³¹

Though the public prosecutor, as head of the judicial police and privy to all Office of the Inspector-General investigations, has in addition the power to open an investigation of his own initiative, this rarely happens, with the result that the judiciary is seen as reluctant to exercise its oversight role or to take on cases involving the HNP. The result, in the public view, is a continuation of the traditional impunity of the armed force, as police accused of

³⁰ "Human Rights Review: a quarterly report by the OAS/UN International Civilian Mission in Haiti (MICIVIH)," July - September 1999.

³¹ "Human Rights Review: a quarterly report by the OAS/UN International Civilian Mission in Haiti (MICIVIH)," January - March 1999, p. 5.

misdoing are investigated and perhaps sanctioned by the police, but never judged. MICIVIH has recommended naming a specialized magistrate for HNP cases.

3. Women and children before the justice system

The women's NGO Kay Fanm told AI of efforts undertaken by a group of women's organizations to push for improvement of Haiti's legal code with regard to women's issues. Key concerns are revision of the status and work conditions for domestic personnel; decriminalization of adultery and abortion; and reclassifying of the crime of rape, currently defined restrictively and considered a "crime against honor" under the existing Penal Code. Work is also being carried out on a draft law on violence against women, and on a proposed Family Code. In June 1999, the UN Special Rapporteur on Violence against Women, Radhika Coomaravamy, visited Haiti at the invitation of the Minister of Justice.

With the May 1999 inauguration of the *Tribunal pour mineurs*, the children's court in Port-au-Prince, Haiti has made a significant step in addressing children's access to justice. However, much remains to be done. Resources remain a problem; courts in other departments have difficulties transporting children to Port-au-Prince for trial, for example. The judge of the court also serves as the senior judge of the civil court, so cases are not turned over as quickly as could be wished. In Hinche, officials of the public prosecutor's office told AI that a detainee claiming to be a minor³² would be tried as an adult, since he had no birth record to prove his age.



D. Impunity for past abuses

In the context of negotiations leading up to his return, on 3 October 1994 then-president Aristide issued a decree giving amnesty for political offenses committed between the coup and a 3 July 1993 agreement with the

³²The age of criminal responsibility in Haiti is 16, though in certain cases it drops to 13.

military aimed at preparing the way for Aristide's return. Common crimes committed by the army or its supporters were not amnestied, and Haitian NGOs and victims' groups have continuously applied pressure on the state to investigate and prosecute such acts. Though since the return of then-president Aristide the state has provided some benefits to some areas hard hit by violations, these gestures have been criticized as inaccurate in scope and coverage.

More importantly, many sources perceive a lack of interest on the part of the government in bringing perpetrators to trial and in establishing a coherent policy for providing reparations for victims or their families.

An extensive report on impunity published by MICIVIH in September 1999 was based on a total of 394 judicial dossiers related to human rights violations in the period under *de facto* regime following the coup d'état, in Gonaïves, Hinche, Mirebalais, Port-au-Prince and Saint-Marc. The report noted that "in the great majority of cases, the submission to the court was made by the victim or the victim's family, demonstrating the lack of initiative on the part of public prosecutors in opening prosecutions *ex officio*."³³ This lack of initiative is part of a larger problem: "the absence of a clear, firm policy of public action on the part of state authorities, as well as the deficiencies of judicial authorities and the police with regard to investigations, are the principal functional obstacles to the struggle against impunity in Haiti."³⁴ From the totality of these judicial dossiers, only 50 individuals had been tried; 18 of these were tried in absentia. Only three victims received a judicial decision mandating reparations.

One notable exception to the reported inaction is described below.

1. Raboteau massacre trial

Over five years after the Raboteau massacre took place,³⁵ the case made significant advances with the completion of the examining judge's trial order and the public prosecutor's brief.

³³ MICIVIH, "Rapport sur la lutte contre l'impunité et pour la réparation en Haïti" (Septembre 1999), Résumé du rapport, des conclusions et des recommandations, para. 12 (unofficial translation).

³⁴ Ibid, para. 18 (unofficial translation).

³⁵ See Amnesty International, 'Haiti: Raboteau massacre -- 5 years on, time for justice,' News Service 074/99, AI Index: AMR 36/04/99, 22 April 1999; *Haiti: Still Crying Out for Justice*, AI Index:

Formal charges were brought against 22 defendants, while the legal action against eight others who had been arrested in the investigation was dismissed. Of the 22 who were indicted, 19 appealed; in December 1999 the appellate court recommended dropping charges against seven of them. As of this writing none of the detainees, however, had been freed, in spite of the release orders issued on their behalf. Efforts were under way to address the logistical and organizational demands of organizing this procedure, with over 50 plaintiffs and witnesses.

AMR 36/02/98, July 1998; *Haiti A Question of Justice*, AI Index: AMR 36/01/96, January 1996; and *Haiti: On the Horns of a Dilemma: Military Repression or Foreign Invasion?*, AI Index: AMR 36/33/94, August 1994.

In August 1999, human rights organizations had issued a joint *aide-mémoire* to the Ministry of Justice expressing concerns about the Raboteau process; the document was then released publicly on 3 September 1999.³⁶ They questioned the competence and credibility of the presiding public prosecutor and requested that he be removed; he was subsequently transferred. They also requested that documents related to the FADH, reportedly part of the National Archives, be incorporated into the case file, and made recommendations touching on the methodology and procedures to be followed. They noted that extradition requests submitted in 1998 to Honduras, Panama and the USA regarding high-ranking military officials had all been rejected for lack of proof or technical or procedural errors, and called for continuation of these efforts.

2. Efforts for the return of the FRAPH documents

On 4 November 1999, Adama Dieng, United Nations (UN) Independent Expert on Haiti, requested that the UN General Assembly urge the United States of America to return intact approximately 160,000 pages of documents and other materials confiscated from Haitian paramilitary and military headquarters by USA troops belonging to the Multinational Force (MNF) that restored then-President Aristide to power. The documents, subsequently transferred to the USA, are believed to contain information crucial to investigating past human rights violations in Haiti and bringing those responsible to justice.

The Haitian Government requested that the USA return the materials in their entirety. However, USA authorities reviewed the documents and reportedly blanked out sections of them, where reference is believed to have been made to USA citizens and possibly other matters relating to USA government activities in Haiti. In October 1996 the materials were transferred to the USA Embassy in Port-au-Prince but the Haitian Government has refused to accept them unless they are intact. In November 1999 AI joined other Haitian and international human rights organizations in urging the General Assembly to call on the USA to return the documents to Haiti in their entirety.³⁷

³⁶“Pour la réalisation d'un procès exemplaire du massacre de Raboteau, digne des sacrifices des victimes haïtiennes: inquiétudes sur l'évolution des préparatifs en vue de la tenue du procès du massacre de Raboteau”. Also cited in *Se Mèt Ko ki veye ko*, #2, PODHD, Haiti, September 1999.

³⁷ See Amnesty International, ‘Public Statement: Haiti: US must return documents intact to Haiti’,



3. Other efforts in Haiti

On 21 May 1999, former FADH sergeant Jean Fritznel Jean-Baptiste was found guilty of attempting to beat Steker Athis to death in January 1993, when Athis was held in the Camp Perrin Police station. He was condemned to 5 years' imprisonment and to a fine of 30,625 gourdes in damages for the victim. At the time of his arrest he was

reportedly working as a security agent at the National Palace.

On 23 July 1999, the Minister of Justice announced the formation of a judicial commission to oversee investigations into the 23 July 1987 massacre of over 200 peasants at Jean Rabel³⁸, as well as other massacres; however, no information on its functioning or the status of any investigations was available. In a separate development, the Minister of Justice and NGOs have reportedly engaged in discussions regarding creation of a *Commission nationale de réparation*, National Reparation Commission, as recommended in the CNVJ report.

News Service 207/99, AI Index: AMR 36/08/99, 4 November 1999.

³⁸See Amnesty International, *Haiti: Current Concerns*, AI Index: AMR 36/41/88, November 1988.

Meanwhile, NGOs such as *Fondation 30 Septembre* were commended for their efforts to bring continuous public pressure to bear on behalf of victims, mainly through weekly demonstrations in several Haitian cities patterned on the marches of the *Madres de la Plaza de Mayo* in Argentina. The Fondation was about to celebrate its second anniversary during the AI visit. The organization *M'ap Viv* continued to provide medical and psychological support for victims of past human rights violations as well as support to victims' networks; the organization *Haïti Solidarité International (HSI)* continued to collaborate, giving legal assistance. In 1998 the two organizations published a book on impunity and the question of reparation for victims of past abuses.³⁹

4. Efforts to bring Jean Claude Duvalier to justice

On 11 March 1999, former regime leader Jean Claude Duvalier was summoned before French courts following charges that he was illegally residing in France. He did not appear in court then or at a later court date in May; the suit against him was eventually rejected by the courts, reportedly on technical grounds. On 10 September four suits alleging crimes against humanity were registered in France on behalf of Haitians residents in France who had fled their country in the 1980s. On 17 November the court dismissed the case on the grounds that French jurisprudence does not cover "crimes against humanity" before 1994 except for those committed during World War II.

HUMAN RIGHTS DEFENDERS

Throughout 1999 there was increasing concern about the safety of human rights defenders in Haiti, who appeared to be at risk of abuse for denouncing political and other violence and misconduct by the government or its supporters. On 3 August 1998, Catholic priest Father Jean-Pierre Louis was shot and killed by two unidentified men as he left his car in Port-au-Prince. He had been a longtime activist and peasant organizer; some observers expressed the belief that the killing was political. After disturbances at the funeral service, Chenet Jean-Baptiste, then-head of the *Plateforme des organisations haïtiennes des droits de l'homme (POHDH)*, Platform of Haitian Human Rights Organizations, which has a human

³⁹ *Jalons pour une politique de réparation*, *M'ap Viv / Editions HSI*, Haiti, 1998.

rights observation network in 101 of a total of 133 communes in Haiti, publicly claimed to have received death threats from *Fanmi Lavalas* partisans, including former *attachés*, supporters of the past military regime.

A leaflet containing threats against POHDH member organizations was found at the organization's offices on 1 March 1999. On 8 March Pierre Espérance, treasurer of the POHDH and Haiti director of the National Coalition for Haitian Rights (NCHR), a member organization, was wounded in an attack by unidentified gunmen in Port-au-Prince.⁴⁰ As he was travelling with a colleague by car, a Toyota sedan pulled in front of them and stopped. A man stepped out and began firing at the car with a machine gun. When Pierre Espérance tried to escape, the Toyota gave chase and the occupants began shooting again, wounding him. The NCHR's director in New York apparently said after the attack, "indications are that this [shooting] was a cold-blooded, premeditated attempt to murder a well-known human rights advocate." Following further death threats against Pierre Espérance, he temporarily left Haiti. He now lives in Port-au-Prince. Shortly after the attack, Pierre Espérance met with police officials responsible for investigating serious crimes; there is no information about the follow-up.

In early June 1999, anonymous leaflets containing threats against specific human rights activists and groups, as well as addresses, phone numbers and physical descriptions of NGO members, were again delivered to several organizations. Members of all human rights NGOs interviewed told AI delegates that they felt their organizations to be under pressure from groups who they say resent their criticism of the current government or believe them to be partisans of rival parties. A coalition of human rights organizations reportedly wrote a letter to President Préval requesting protection of human rights defenders. The organizations continued to carry out their work in spite of the climate of intolerance, and AI took special action through its Human Rights Defenders Program to help prevent further threats and intimidation.

⁴⁰ See Amnesty International: Urgent Action 45/99, AI Index: AMR 36/01/99, 10 March 1999.

The post of human rights ombudsman was created by presidential decree on 12 September 1995, and inaugurated on 4 November 1997.⁴¹ It is mandated by the Haitian Constitution to protect all individuals against all forms of abuse by the public administration.⁴² The Constitution provides for the Ombudsman to be named by consensus between the President of the Republic, the President of the Senate and the President of the Chamber of Deputies. This post, with competence to investigate Ministries, institutions under Ministries, autonomous state institutions, the police and the church, serves a potentially important role in the protection of human rights in Haiti. The office can receive denunciations, advise individuals about the recourse available, conduct investigations and serve as negotiator between the individual and the authority concerned. The ombudsman's office expanded its presence in 1999, opening its first field office, in Gonaives, on 5 November. The second regional office, in Jérémie, was scheduled for opening in 2000.

⁴¹ See Amnesty International, *Haiti: A Question of Justice*, AI Index: AMR 36/01/96, January 1996.

⁴² Constitution of the Republic of Haiti, article 207.

CONCLUSIONS AND RECOMMENDATIONS

The climate of respect for human rights in Haiti established since the country's 1994 emergence from military regime has been dealt a series of blows since the beginning of 1999. *In addition to a series of violent incidents involving political figures and authorities, Amnesty International is concerned at the apparent increase in intolerance among political sectors, evidenced by reported threats, acts of intimidation and violent demonstrations. Amnesty International is likewise concerned that the reversal of efforts to construct professional and independent police and judicial institutions could have a serious impact on the capacity of those institutions to ensure respect for human rights, particularly in the context of the upcoming elections.*

I. Recommendations to the Haitian authorities

Regarding the Police

1. Haitian authorities must take steps to strengthen the professionalism and public accountability of the police force. Recruitment of new members must be carried out in a way as to ensure their political impartiality.
2. 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, torture and ill-treatment, and "disappearances" will not be tolerated.
3. 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.

4. 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.
5. The Inspector General of the HNP must publish regular detailed reports of the status of investigations relating to police officers suspected of committing human rights violations. Adequate resources must be provided to the Office of the Inspector General so that it can carry out its work promptly and effectively throughout the country.
6. 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.

Regarding the Penal System

1. As a long-term aim but at the earliest possible opportunity, the authorities must seek, with the assistance of foreign governments and international organizations, to achieve prison conditions that are consistent with the UN Standard Minimum Rules for the Treatment of Prisoners and other relevant international standards.
2. The serious food shortage in detention facilities must be addressed as a matter of priority.
3. A separate rehabilitation facility for minors must be established as soon as possible, in accordance with the requirements of Haitian law. Every effort must be made to ensure that treatment of minors in detention complies in

every way with the requirements laid out in article 37 of the Convention on the Rights of the Child.

Regarding Justice

1. Every effort must be made to strengthen the independence, impartiality and effectiveness of the justice system. Within those efforts, special attention must be paid to ensuring the impartiality and independence of public prosecutorial authorities. Recruitment and training must be carried out in a way as to ensure political impartiality.
2. Legislation establishing clearly the roles and functions of the police, public prosecutors and the courts in investigations, particularly those involving allegations of police misconduct, must be adopted.
3. 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. 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.
4. Efforts to establish a system of public defense should receive adequate financial and institutional support.
5. 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 fulfill 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.

6. The authorities must give the highest priority to the process of judicial reform, acting as quickly as possible on the reform law. This reform should follow up on the recommendations of the National Commission for Truth and Justice, and take into account international standards regarding the judiciary such as the UN Basic Principles on the Independence of the Judiciary, the UN Guidelines on the Role of Prosecutors and the UN Basic Principles on the Role of Lawyers.
7. Haitian authorities must make every effort to ensure that treatment of minors by the justice system is in compliance with the requirements laid out in article 40 of the Convention on the Rights of the Child.

Regarding Human Rights Defenders

1. The Haitian government must take all possible steps to ensure that the principles contained in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, adopted by the UN General Assembly on 9 December 1998, are fully incorporated into national law and mechanisms. Authorities at all levels of government must commit themselves to promoting respect for human rights and to the protection of human rights defenders, including by investigating allegations of threats, intimidation or attack and bringing those responsible to justice.
2. The Haitian authorities should ensure that the scope of the mandate of the Ombudsman can address all types of human rights violations committed by state agents. Adequate funding should be provided to the Ombudsman and his staff to enable them to carry out their work.

Regarding the Electoral Process

1. Amnesty International calls on political parties to ensure that they and their partisans respect the rights to expression, assembly and association, so as to ensure that the electoral process proceeds in an open, transparent and peaceful manner.

Regarding other matters

1. The Haitian Government should ratify as soon as possible the UN Convention against Torture, the International Covenant on Economic, Social and Cultural Rights, the two optional protocols to the International Covenant on Civil and Political Rights, the Inter-American Convention to Prevent and Punish Torture and Inter-American Convention on the Forced Disappearance of Persons, and incorporate such standards, as well as those it has already ratified, into domestic legislation, including the Constitution.

II. Recommendations to the USA and Haitian authorities

1. The USA authorities should immediately return intact to the Haitian Government the 160,000 pages of documents and photographs seized by USA troops in 1994 from army, police and paramilitary offices in Haiti. Upon their return, as in the case of any such sensitive information, the Haitian Government should take appropriate measures to ensure the security of all those who might be identified in the documents as being responsible for human rights violations or other activities of an incriminating nature, as well as the security of the documents themselves. They should also ensure that any legal proceedings initiated on the basis of the information contained therein are carried out in accordance with international standards for a fair trial.
2. The USA authorities should also pass on to the Haitian authorities any other information in the possession of the CIA or other USA government agencies

which may shed light on the identity of those responsible for human rights violations in Haiti. USA Congress should consider conducting an independent investigation into the possible direct or indirect involvement of USA officials in human rights violations in Haiti at the time of the *de facto* military government. Any USA citizens found responsible for such violations should be held to account for their actions.

III. Recommendations to international organizations and governments providing economic and technical assistance to Haiti

1. International governmental and non-governmental organizations should continue to give the highest possible priority to assisting the Haitian Government in the task of judicial reform. International organizations and aid donors should work as closely as possible with the Haitian Government, as well as with each other, to ensure that projects that are under way to support judicial reform are both appropriate for Haiti and consistent with international standards. When evaluating their projects in Haiti, they should take into account evaluations of their programs that have been undertaken by Haitian NGOs and others.
2. The planned International Civilian Support Mission in Haiti must give precedent to the need for ongoing independent human rights monitoring and reporting. The UN should establish a long-term strategy for ensuring continued human rights monitoring and the protection of human rights defenders in Haiti.
3. International organizations and foreign governments assisting in the training of the Haitian National Police should continue to ensure that human rights training and education is incorporated into all aspects of such training and should encourage the Haitian authorities to bring to justice any police officer who is alleged to have committed or ordered human rights violations. If not already in place, consideration should also be given to developing joint training programs for the police and the judiciary so that each has a better understanding of the other's role.
4. Foreign governments, international governmental organizations and non-governmental organizations with appropriate expertise should help Haiti establish a recruitment and training program to train a greater number of Haitian defence lawyers.

5. International financial institutions should evaluate the possible impact of their programs on the ability of the Haitian Government to guarantee respect and protection of all human rights.