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# HAITI

## HUMAN RIGHTS AFTER PRESIDENT ARISTIDE'S RETURN

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## I. SUMMARY AND RECOMMENDATIONS

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In the year since President Jean-Bertrand Aristide returned to Haiti, there has been marked, concrete improvement in respect for human rights and the government has launched institutional reforms that should bring lasting change. The reign of terror perpetuated by Haitian soldiers and their paramilitary counterparts was brought to a close with the September 19, 1994 multinational intervention led by the United States and authorized by the United Nations Security Council.

Haiti today is vastly different from the Haiti where a three-year military dictatorship claimed an estimated 3,000 to 4,000 lives and where arbitrary arrests, torture, rape, beatings, and extortion were the frequent tools of state repression. The extreme conditions under the military government ultimately forced some 100,000 Haitians to seek refuge abroad, while another 300,000 became internally displaced. One year after the restoration of Haiti's democratically elected president, the Haitian people have rediscovered their rights to freedom of expression, association, and assembly, and a free press has flourished. Heated discussions over the country's future and the government's practices can occur without fear of government reprisal. Grassroots organizations, formerly the primary targets of government repression, are flowering once again. While there are shortcomings in present human rights protections in Haiti and in government plans for institutional reforms, we applaud the vigorous efforts of the Haitian government to address human rights concerns.

In this report, we note several cases of improper use of force and other problems with the interim and new national police forces. Interim police have been involved in several shooting incidents where officers reported that criminals had fired at them, but witnesses disputed the officers' versions. Interim police responsible for unlawful acts have not been subject to any sanction other than removal from the force. The reported use of excessive force by some of the new police officers, together with the Haitian government's decision to appoint either lawyers or former military officers -- with no police training -- to command posts, may undermine the successful establishment of a lawful police institution. The failure to subject former Haitian army officers who are under consideration for leadership positions in the new police to particularly vigorous human rights screening is also cause for concern. Judicial authorities have ordered arrests in some cases where evidence was lacking and proper procedures were not followed. While press freedoms have improved significantly, some problems have emerged, including the slanting of election coverage by the state media in favor of the Aristide backed Lavalas platform.

The marked decrease in human rights violations in Haiti overall undoubtedly is due in large measure to the support given Haiti by the international community; first through the deployment of the multinational force (MNF), and then through the presence of the United Nations Mission in Haiti (UNMIH) peacekeepers and the U.N. Civilian Police monitors (CivPol). The U.N./OAS International Civilian Mission in Haiti (Mission Civile Internationale en Haïti OEA/ONU, MICIVIH), an international human rights monitoring team that currently has 190 observers, was present in Haiti for two periods under the military government and returned to Haiti following the multinational intervention.

President Jean-Bertrand Aristide returned from three years and fifteen days of exile on October 15, 1994. Although some grave human rights abuses had persisted in the first weeks of the multinational intervention, by the time Aristide arrived the situation had improved significantly.<sup>1</sup> The restored government's prompt dismantling of the military leadership and the gradual dissolution of the Haitian Armed Forces (Forces Armées d'Haïti, FAd'H) have greatly reduced state-sponsored violence. While there have been many cases of vigilante violence against suspected criminals, their occurrence is diminishing with reforms of the Haitian police and judiciary. Since January 1995, approximately twenty people have been slain "execution-style" in cases that are not clearly linked to economic motivations. The Aristide government has not been linked credibly to any of these cases. Further allegations, that the Haitian government is responsible for eighty political killings, are unfounded.

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<sup>1</sup> In September and October 1994 military officers and section chiefs in several incidents shot and killed citizens demonstrating and rejoicing at Aristide's impending return.

President Aristide has taken several measures in pursuit of accountability for crimes committed under military rule, including investigations into political assassinations of the military period, the creation of complaint bureaus, and the establishment of a National Commission for Truth and Justice. These initiatives have begun to address the issue of accountability for the crimes of the past, but much work remains. In many cases the willingness of judges, lawyers, and witnesses to prosecute human rights abuses is diminished by a fear of retaliation after the departure of peacekeeping troops. Nonetheless, there have been some arrests and convictions in cases of past human rights violations, including one conviction in the prominent case of Antoine Izméry (an Aristide supporter who was slain on September 11, 1993). At least seventeen people have been tried and condemned *in absentia* for murders committed under the military government.<sup>2</sup>

Haiti's political foundations and democratic institutions are fragile. The government has undertaken dramatic efforts to create successful new institutions, including the training and deployment of a new police force. The force, which will serve as an independent, civilian alternative to Haiti's repressive military, is expected to be at its full strength of 5,000 members by February 1996. Concurrently, the Aristide government virtually dismantled the entire Haitian military. Most of these former soldiers are now enrolled in a demobilization retraining program, but many are obviously dissatisfied with the loss of their former jobs (which has led to some threats of violence, and evidence of involvement in the shooting of a U.N. CivPol officer in August 1995). Meanwhile, some former soldiers remain on the streets as part of the interim police force, although they are being gradually replaced by officers of the new national police force.

Efforts to reform the justice system are underway but not at the same rapid pace as police reforms. In this report, we identify persistent problems requiring further attention and examine some weaknesses of the present judicial reform efforts. While the Haitian government has taken some prompt, concrete steps to improve the judicial system, for example raising the wages of all court officials, in many districts the courts barely function. The lack of basic materials and funds for travel continue to hinder their effectiveness. Judges remain generally ill-trained. The Haitian legal system's reliance on public denunciations (*la clameur publique*) still substitutes for criminal investigations or rigorous proof. The extremely limited calendar allocated to criminal trials virtually ensures lengthy pre-trial incarceration of any person charged with a violent crime. U.S.-sponsored plans for reforming the administration of justice (which include a major U.S.-Agency for International Development contract that was awarded to the Checchi company in August) appear to have been designed with little input from Haitian legal practitioners who are most familiar with the judiciary's weaknesses.

The Haitian government initiated prison reform with several concrete steps, such as creating a new civilian prison authority, and raising the salaries of prison guards. International assistance has played a dramatic role in prison reform, particularly in the treatment of detainees and the provision of material goods for physical repairs and to feed and house prisoners. While the participation of some minimally screened former soldiers in the new prison authority is troubling, prison conditions have improved significantly.

Since Aristide's return, the Haitian government created a new electoral law and named a Provisional Electoral Council (Conseil Électoral Provisoire, CEP). The CEP was charged with preparing and running parliamentary and local elections that were held, after several delays, on June 25, 1995. Although there was wide participation in the election, with twenty-five political parties and over 10,000 candidates, the CEP's poor management led to widespread dissatisfaction with the election. The chaos that characterized election day resulted in a severely contested vote and prolonged the absence of a functioning parliament. Despite some political parties' claims of CEP-organized fraud, further evidence has not emerged to link the CEP or any other group with a systematic effort to influence the vote. The CEP's management failures did result in a lost opportunity to build a credible electoral body and create an environment

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<sup>2</sup> While Human Rights Watch and the National Coalition for Haitian Refugees encourage the establishment of legal responsibility for human rights violations, we regret that courts have in some cases conducted trials of former soldiers with the defendant in absentia, thus calling into question the sufficiency of due process protections for the accused. In cases where the accused has fled the country, or gone into hiding, we urge the government to issue arrest warrants and utilize extradition agreements in order to bring the defendant into court before taking additional legal steps.

in which lively and serious political debate could have occurred. Make-up and second-round elections held in August and September proceeded smoothly, albeit with lower voter turnout. Protest against the CEP led to its president's removal, and with a new president in place, it now must organize presidential elections for late 1995. Following these elections, the Haitian government must follow constitutionally mandated procedures for establishing a permanent electoral council.

Human rights conditions in Haiti in the future will be shaped by the success or failure of Haitian government and international efforts to end impunity for past abuses and to reform repressive state institutions. This report addresses our concerns regarding the present human rights situation, institutional reform efforts, and international and U.S. policy regarding Haiti, and makes several specific recommendations on each of these issues. We urge the adoption of the following measures:

### **Recommendations Regarding Accountability**

- Two and a half months remain of the National Commission for Truth and Justice's nine-month mandate. Without additional funding the commission will find it difficult to complete its work. International donors should consider a donation of several hundred thousand dollars to allow the truth and justice commission to fulfill its mandate successfully.
- The Justice Ministry should develop and institutionalize a program of witness protection that would protect witnesses to human rights abuses who want to testify from retribution. At least one police officer should be assigned to provide security during working hours at each courthouse in Haiti. Judges or prosecutors who receive threats should be assigned police protection.
- The government, together with the parliament promptly should seek to establish the Office for the Protection of the Citizenry, as stipulated in the Haitian constitution. Establishing the rule of law depends as much on the state's obligation to uphold it as the ability of the citizen to hold the State accountable for violating it. The Office for the Protection of the Citizenry can potentially play a significant role in fulfilling that need by offering assistance to people seeking to redress abuses perpetrated against them or their loved ones.
- President Aristide should name a working group to study the issue of reparations, investigate possible sources of funding, and develop uniform and just criteria for the allocation of what will probably be scarce funds.
- Progress toward the creation of an independent, impartial, and efficient judiciary should be recognized as a vital prerequisite to prosecutions for human rights violations. Special efforts to investigate and prosecute human rights abusers should be integrated with efforts to reform and modernize the judiciary system as a whole. Judges and prosecutors should receive training specifically geared to improving their handling of all aspects of cases against abusers.
- *In absentia* trials in criminal cases, especially those involving notorious human rights violations, should be avoided. Trials where the defendant is absent do not afford full due process guarantees and do not advance the cause of justice in Haiti. The government should make every effort to apprehend those charged of crimes; if the suspect is outside Haiti, then extradition should be sought. If trials *in absentia* are held, then the case should be reopened if the defendant returns to Haiti and the defendant be allowed to contest the charges and present a full defense.
- The U.S. should fulfill its prior commitment to provide financial support to the truth and justice commission. Other U.S. institution building efforts in Haiti, including the administration of justice program, consistently should encourage the establishment of accountability for human rights violations in Haiti. The U.S. should demonstrate its concrete support for ending impunity for human rights violations in Haiti by cooperating fully with Haitian investigations, particularly with regard to materials in its possession that document human rights abuses committed by the FAd'H or FRAPH.<sup>3</sup>
- The U.S. should explain any role it may have played in the release from prison of accused assassin Marcel Morissaint, and any payments of U.S. funds to Morissaint from 1991 until 1995. The U.S. should turn over any information now in its possession regarding Morissaint's whereabouts or his alleged participation in the assassination of Justice Minister Guy Malary to Haitian prosecutors.

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<sup>3</sup> The Front for the Advancement and Progress of Haiti (Front pour l'Avancement et le Progrès d'Haïti, FRAPH), is a play on the Haitian Créole term *frape*, to beat. FRAPH emerged under military rule as a particularly violent paramilitary organization.

- Beyond addressing the issues that fall strictly within its mandate, the truth and justice commission should also consider the issue of forced migration as a human rights violation. The military government's repressive method of terrorizing the population resulted in internal displacement of over 300,000 Haitians (a process which served the military's aims by dividing families and disrupting popular organizations).<sup>4</sup>

### **Recommendations Regarding the Haitian Armed Forces**

- The Haitian government should make every effort to establish responsibility for human rights violations committed by former Haitian soldiers and their associates. While many former soldiers were removed from the military, they were not held accountable for their actions during military rule and they may pose a threat to the civilian population if their earlier actions remain unpunished. Establishing accountability for human rights violations will reduce popular resort to vigilante justice.
- No soldier who is implicated in human rights violations should be invited to participate in the International Organization of Migration (IOM) sponsored reintegration training program. Any former FAd'H soldier participating in the program should be removed if credible information appears regarding his involvement in such abuses.
- The Haitian government should investigate thoroughly all threats of violence made by former soldiers or members of groups linked to the military, including FRAPH. UNMIH should assist these investigations.
- The Haitian government and international forces in Haiti should engage in vigorous efforts to disarm former soldiers and paramilitaries as the date nears for the withdrawal of U.N. forces.
- To guard against rearmament, the Haitian government should intensify surveillance for possible arms smuggling along the border with the Dominican Republic and in the principal coastal cities. Parliament should review and update laws restricting the importation and possession of firearms. Penalties for violation of these regulations, including related corruption on the part of border officials, should be severe.

### **Recommendations Regarding the Interim Police**

- All interim police shootings should be investigated independently, with civilian oversight, and any cases of wrongdoing should result in the dismissal of the responsible officer and his or her prosecution for the relevant offense. No officer found responsible for abuses while serving as an interim police officer should be admitted to the IOM reintegration program.
- The directors of the interim police and the national police should improve coordination when the interim police are demobilized and the Haitian National Police (HNP) deployed. All interim police must turn in their weapons and other police equipment.

### **Recommendations Regarding the Haitian National Police**

- The selection, training and supervision of recently placed recruits should place additional emphasis on respect for human rights. The financial investment in training a new police officer is insufficient justification for keeping a potentially or obviously abusive recruit in the academy and later rewarding that person with a post in the new force.
- The Haitian government should establish a transparent process to select police leaders and subject these leaders to independent review that focuses on their ability to ensure human rights guarantees are respected under their command. All candidates should pass the same series of exams given to all members of the new police force, and all new leaders of the Haitian National Police (HNP) must be provided with sufficient training. All former Haitian army officers should be rigorously scrutinized, and undergo additional training, before being offered a leadership post in the HNP. Any U.S. Department of Justice's International Criminal Investigations and Training Assistance Program (ICITAP) decisions to select police cadets for leadership training must be ratified by the Haitian government.
- The discipline failures of the newly deployed HNP must be fully investigated, and any serious abuses should result in suspensions, public prosecutions, and ultimately the dismissal of the abusive officers. The Haitian government's

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<sup>4</sup> See Human Rights Watch/Americas, National Coalition for Haitian Refugees, and Jesuit Refugee Service/USA, *No Port in a Storm: The Misguided Use of In-country Refugee Processing in Haiti* (New York: Human Rights Watch, National Coalition for Haitian Refugees, and Jesuit Refugee Service/USA, September 1993).

prompt response to these deficiencies will not only remove abusive officers quickly from the force, but will also have crucial symbolic value in demonstrating that the police cannot be above the law.

- ICITAP should train Haitian police trainers as a matter of urgent priority, so that when international trainers leave Haiti, the police academy can be sustained.
- A civilian police review commission should be promptly appointed to examine allegations of police brutality and wrongdoing and make necessary recommendations for establishing accountability for these acts, as well as for improving police training and supervision.
- ICITAP, in coordination with CivPol, should attempt to supervise newly deployed officers for a longer period. ICITAP and CivPol should recommend the immediate dismissal of new police who demonstrate disregard for the law or for proper police procedures, or a tendency to abuse police authority.
- Since their initial deployment in March, CivPol's impact has been limited by the inability of its non-French, Créole or English speaking members to communicate effectively. The U.N. must immediately place sufficient, qualified translators with every CivPol team, or increase the number of Créole or French speaking CivPol, to remedy this persistent problem. The CivPol leadership should also stress the importance of modeling appropriate police behavior for the new recruits, including details such as consistently wearing uniforms. CivPol officers, as well as ICITAP trainers, must be thoroughly trained in international human rights standards related to policing, so that they can explain and demonstrate these standards to their Haitian counterparts.

### **Recommendations for Reform of the Justice System**

- Extensive consultation between international experts and Haitian practitioners should precede all reform projects. Haitians, both government officials and nongovernmental actors, must have ownership in the effort, otherwise legal reform will become a foreign implant that will wither once foreign assistance ends. International donors must take into account Haitians' evaluations of the legal system's shortcomings and ranking of priorities.
- A multilateral approach is preferable to a U.S.-dominated reform program. The principal donors (U.S., Canada, France, Germany, and Japan) and the relevant U.N. agencies and mission (such as the U.N. Development Program [UNDP], the Human Rights Centre, the Crime Prevention and Criminal Justice Branch, and the MICIVIH) should consult frequently to coordinate assistance, avoid duplication and waste, and determine which donor is best suited for a specific reform project.
- The Haitian government should assess the competence and independence of all currently serving prosecutors (*commissaires du gouvernement*) and replace those deemed unfit to serve or those named by the illegal coup governments with new, recent graduates of Haiti's law schools. These new prosecutors should undergo an intensive training session on the rudiments of criminal investigation and procedure, preferably taught by experienced Haitian lawyers and prosecutors brought from France (or the Créole-speaking French Caribbean territories of Martinique, Guadeloupe, and French Guyana) or other civil law, Napoleonic code countries. Curriculum and lesson plans should be carefully planned to take account of Haiti's French-based Civil Law system and the special needs resulting from a deeply poor, largely illiterate population. International human rights law should be a central component of this training. Specialized expertise available through the U.N. Crime Prevention and Criminal Justice Branch in Vienna should also be sought.
- All judges should receive expedited training, preferably from senior Haitian judges with substantial participation from French or Créole-speaking judges, again from the French Caribbean to the greatest extent possible. Training should focus initially on the justices of the peace, who have by far the most frequent contact with the Haitian population and who are the least trained and most ill-equipped for their work, and then extend to investigating judges and senior trial and appellate court judges. International human rights law should be a central component of this training.
- Salaries should be raised for all judicial officials to a level commensurate with their education and experience.
- The government must create new judgeships, especially at the justice of the peace level. Port-au-Prince has only four justice of the peace courts for a population of at least one million; other jurisdictions suffer proportionately similar shortages. More investigating judges are also needed in every jurisdiction.
- Criminal court sessions must be held throughout the year and not just twice-yearly for brief periods as the law currently allows.

- International donors supporting judicial reform should provide basic equipment (or funds for the same) necessary to run a court system properly, including: copies of the basic legal codes for all judges and prosecutors, pens, paper, file cabinets, legal forms, copy machines, office furniture, vehicles, fax machines and computers. Funds to pay salaries on an emergency basis to prosecutors, judges, and Justice Ministry officials should be allocated so that the system can actually function and Haitians can see that the government is committed to reforming and reinforcing justice.
- The government should encourage the creation of alternative dispute resolution mechanisms that avoid the expense and delay of formal litigation. Arbitration, mediation, and counseling services could resolve a large number of disputes and be more appropriate in an impoverished country where most people cannot afford a lawyer.
- The government should launch a public education campaign on human rights and justice that would inform people about the steps undertaken to reform and revitalize justice in Haiti. All media should be used, especially the radio. The government should consult and work in close collaboration with Haitian human rights organizations. The Advisory Services of the U.N. Human Rights Centre in Geneva should be asked to lend its support to human rights education efforts. The MICIVIH should also contribute its expertise and rich human rights documentation to any education campaign.

### **Recommendations for Prison Reform**

- Permanent prison personnel (including guards, administrators, and inspectors) should be screened to exclude those with past involvement in human rights violations and those successfully vetted in must receive intensive training on proper prison administration. Any candidates from the former Haitian military should be carefully screened for involvement in human rights abuses.
- All unofficial detention centers must remain closed and the government should announce the locations of all the secret detention centers now known to have been used.
- A census of all prisons should be completed. Ongoing training to maintain properly the prison registries must be provided so that the justice system can readily determine who is in prison, and why, and the date of entry, and current judicial status.
- The International Committee of the Red Cross, the U.N. Crime Prevention and Criminal Justice Branch in Vienna, and others with relevant expertise should be sought to train prison personnel, help establish monitoring mechanisms, and help Haitian authorities establish the capacity to provide essential services, including drinking water, latrines, food, and medicine.
- All children in Haitian prisons should be immediately released and transferred to appropriate supervised shelters where juvenile offenders may receive counseling, rehabilitation, training and education programs. Children should never be held with adults.
- Male and female detainees should be held in separate facilities or in segregated sections if held in the same prison or detention center.
- The new prison administration authority should undertake special efforts to hire women prison guards, and wherever possible, these guards should have primary responsibility for women prisoners.

### **Recommendations for the Conduct of Elections**

- The Provisional Electoral Council (Conseil Électoral Provisoire, CEP) must ensure that there is ironclad compliance with all rules and regulations guaranteeing free and fair balloting, including proper training of poll workers, adequate security measures, and unrestricted access of accredited party representatives and independent observers. The CEP should undertake a significant voter education initiative, to ensure that voters understand the mechanics of marking a ballot and the extent of their electoral rights and responsibilities.
- The Haitian courts should ensure that fraud and violence directed against electoral officials or candidates, are properly punished, in order to deter the disruption of future elections.
- Freedom of expression should be scrupulously observed. Articles 118 and 119 of the current electoral law prescribing imprisonment for anyone found to have proffered "insults...either verbally or in writing...tending to compromise the honor and honesty (*delicatesse*) of a member of the CEP," should be repealed as inconsistent with the Haitian Constitution and international law.

- The CEP should uphold the right of qualified office seekers to campaign meaningfully, and ensure that there is adequate time for public debate, and reasonable access to the state media (radio, newspaper, and television).
- The electoral law should include procedures for vote recounts when there is sufficient evidence of questionable results and should allow enough time to resolve conflicts surrounding such disputes.
- The CEP should regularly brief the public on the electoral process to enhance the ability of voters to remain informed of developments.
- Parliament and the Aristide government should take appropriate measures to speedily establish a permanent electoral council, comprised of professional and permanent staff, able to learn from the past. The permanent electoral council should undertake a thorough review of the 1995 elections and release its findings for public scrutiny.

#### **Recommendations Regarding International Policy toward Haiti**

- Given the weakness of Haitian institutions, the presence in Haiti of former soldiers, and of attachés and FRAPH members, the uncertainty associated with the arrival of a new president and cabinet, and the presence of unresolved security concerns, such as disarmament, a gradual withdrawal of UNMIH and the MICIVIH is greatly preferable to an abrupt departure.
- U.S. institution building efforts in Haiti, including the administration of justice program, should consistently encourage the establishment of accountability for human rights violations in Haiti. The U.S. should demonstrate its concrete support for ending impunity by promptly providing Haitian investigators all materials seized from FRAPH headquarters in Port-au-Prince or Cap Haïtien in September or October of 1994 that would be useful in conducting prosecutions for human rights violations. The U.S. should also release any information now in its possession about accused assassin Marcel Morissaint's whereabouts or about responsibility for the assassination of Justice Minister Guy Malary.

#### **Recommendations relating to U.S. Refugee Policy**

- The U.S. government should give Haitians in its custody the opportunity to present a claim for refugee status in accordance with international refugee law. Haitian refugees requesting to speak with a representative of the UNHCR should be allowed to do so.
- The Justice and Defense Departments should release information regarding administrative segregation procedures and allegations of military abuses of minors in the Guantánamo camps. Any U.S. military personnel found responsible for ordering or taking part in these abuses should be prosecuted.

#### **Recommendation Regarding Dominican Government Expulsions of Haitians**

- The Dominican government should only expel Haitians from Dominican territory if it acts in full compliance with international and domestic law. The Dominican government must provide any person accused of illegal residence in the Dominican Republic with a full and fair opportunity to present evidence to the contrary. The citizenship of all Dominicans, particularly those of Haitian origin, must be respected fully. Expulsions should not serve as a pretext for police and military abuses or theft. The government should initiate immediate, thorough investigations of charges of forced labor of Haitian detainees occurring in the Dajabon prison or elsewhere, and should punish any authority found responsible.



## II. HUMAN RIGHTS OVERVIEW

The human rights situation in Haiti has improved dramatically since the demise of the military government in September 1994. The restored government has not committed systematic abuses like those that occurred under military rule including: extrajudicial executions, torture, arbitrary detentions, politically motivated rape, forced displacement, and the violent suppression of free expression. Groups now can meet, hold rallies, and express their views without fear. One reflection of this change is the fact that refugee outflow from Haiti has virtually ceased. Nonetheless, more work remains to ensure the full protection of human rights in Haiti. Among other concerns, Haiti's interim police and new National Police have been implicated in some cases of the use of excessive force, and the judiciary has failed on some occasions to follow appropriate arrest procedures.

The Haitian government has taken several critical steps to address the country's history of impunity for human rights violations. While Haiti's justice system historically has been burdened by corrupt practices and meager resources, the government has initiated efforts to improve it, with international support.<sup>5</sup> President Aristide has consistently spoken out on the subject of justice, urging the population: "no to violence, yes to reconciliation." In addition, the Haitian government established a truth and justice commission to document the human rights violations that occurred under the military government, arranged special prosecution teams for prominent human rights cases, and opened complaint bureaus throughout Haiti to receive other cases. While these efforts to establish accountability have some weaknesses, they are undoubtedly positive steps toward ending impunity in Haiti. Unfortunately, the U.S. government has not offered sufficient assistance to Haitian government investigations of human rights violations committed under the de facto government even where it reportedly possessed critical evidence.

The Haitian refugee crisis, sparked by the military government's repressive tactics, promptly subsided with the restoration of the Aristide government. Under military rule, Haitians fled their home in huge numbers: at least 100,000 left by boat or by land (across the border to the Dominican Republic), and some 300,000 more were internally displaced. In contrast, from October 1994 to October 1995, only 1,000 Haitians sought refuge outside their country.

## HUMAN RIGHTS VIOLATIONS

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<sup>5</sup> See discussion below, at *Institutional Reforms*.

The return of Haiti's constitutional government with support from a U.S.-led multinational military intervention brought a fairly swift halt to military and paramilitary-sponsored human rights violations that had been occurring on a daily basis under the three-year military government. Some grave abuses continued to occur in the first few months following intervention.<sup>6</sup> In September and October, military officers and section chiefs<sup>7</sup> shot and killed several people demonstrating to support Aristide's return. Despite their massive presence, the multinational force's neglect of Haitian prisons allowed inhuman conditions to continue in some detention centers for many months. But the overthrow of the military leadership and the gradual dissolution of the Haitian Armed Forces (Forces Armées d'Haïti, FAd'H) over the first few months of the new Aristide administration have greatly diminished state-sponsored violence. The dependence of paramilitary forces on the army was demonstrated by the diminishing role of FRAPH and other paramilitary groups as the army was dismantled. In a positive demonstration of its willingness to comply with international human rights instruments, the Haitian government prepared a human rights report in fulfillment of its requirements under the International Covenant on Civil and Political Rights and submitted that report to the U.N. Human Rights Committee (on February 28, 1995).

Restrictions on freedom of expression and association have largely ended. Popular and political organizations, repressed for three years, have reorganized. Political parties operate free of government interference, although popular hatred for supporters of the coup d'état (which was carried out by the military in 1991) has made it difficult for some to function. Freed from threat of violence, the media have ended self-censorship. Radio and television stations and news programs have returned to many provincial towns. The popular talk-show host Serge Beaulieu, a Duvalierist and former counselor to Gen. Raoul Cédras, returned to Port-au-Prince, reopened his radio station, and broadcasts freely.<sup>8</sup> The anti-Aristide weekly, *Haïti Observateur*, published in Brooklyn, New York, is widely distributed in Haiti. Former Haitian soldiers have organized into groups to defend their interests. Street demonstrations against Prime Minister Smarck Michel and several of his ministers and even against President Aristide have proceeded without incident.

The deployment in December of the interim police, a force of "recycled" soldiers under international supervision, led to improvement in the treatment of detainees, and the more recent deployment of the newly formed Haitian National Police and the National Penitentiary Authority brought further improvements. Many, if not most, people taken into custody are brought before a judge within two days following their arrest, as mandated by the Constitution. Cruel and inhuman treatment of detainees has become the exception rather than the rule.

Despite the overwhelmingly positive human rights trends in Haiti in the past year, there are some grounds for continued concern. While there is no evidence of systematic human rights abuses, there are some cases of abuse by the interim and new national police, including the excessive use of deadly force and the mistreatment of detainees. Judicial authorities have ordered arrests in some cases where evidence was lacking and proper procedures were not followed. Although press freedom is extensive, independent journalists express some concern over the state-run media's tendency to allow government views to dominate news coverage. They were particularly concerned by the seizure in July by Information Minister Henry Claude Ménard of 1,500 copies, or most of the press run, of the government newspaper *L'Union*. Editor Pierre Clitandre had written a front-page story criticizing the "abandonment" of the newspaper by the

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<sup>6</sup> See "Human Rights Concerns in Haiti," a briefing paper by Human Rights Watch/Americas and the National Coalition for Haitian Refugees, December 6, 1994.

<sup>7</sup> Section chiefs, also called rural police, were members of the army whose position allowed them to exercise near-total control over the citizens in their communal sections. Haiti has 565 such sections, roughly analogous to townships.

<sup>8</sup> Duvalierists are supporters of the Duvalier family regime that ruled Haiti from 1957 until 1986. François Duvalier, "Papa Doc," was followed in the presidency by his teenage son Jean-Claude, "Baby Doc," in 1971. Gen. Raoul Cedras led the coup d'état that toppled the Aristide government, and remained in authority for the three years of military rule.

government. National Television of Haiti coverage of the June campaign during nightly newscasts was clearly skewed in favor of the Lavalas Platform, a coalition of parties supporting President Aristide.

Since the multinational intervention, as human rights violations in Haiti have diminished there has been an increase in crime in Haiti, some of which has been linked to former Haitian soldiers. Moreover, approximately twenty people have been slain "execution-style" in cases that are not clearly tied to economic motivations. The Haitian government and international forces in Haiti, including the U.S. government, have taken steps to limit the cases of crowd killings of suspected criminals. The prosecution of all people involved in vigilante violence is a necessary step toward ending this practice.

### **Problems with the Haitian Police and Judiciary**

Some members of the interim police (Interim Public Security Force, IPSF), which includes a majority of former Haitian soldiers and approximately 900 former Haitian refugees recruited at the U.S. Naval base in Guantánamo, have been involved in unnecessary use of deadly force in apprehending suspects. On June 28, an interim police officer (a former Guantánamo refugee) shot and killed a man who had run off when discovered allegedly stealing used clothing from a truck. No disciplinary action was taken. A disturbed man who had been arrested for burglary was shot and killed by another interim police officer, when he broke out of his restraints and fled from a courthouse in Port-au-Prince. In a number of other cases interim police shot and killed alleged criminals they claim were firing at them, but witnesses dispute the officers' version. Several members of the interim police force have been disciplined and removed from their positions for the use of excessive force toward fleeing suspects or other abuses of authority. Unfortunately, the results of internal interim police investigations have rarely been made public, and none of those disciplined have been prosecuted.

The Haitian public has welcomed the creation and deployment of the new National Police force. However, the new force has been involved in a handful of shooting incidents, some of which reportedly were of fleeing suspects. The Haitian government is now investigating these cases, and two new officers were suspended from the force on September 18, 1995, for their involvement in one of these cases.<sup>9</sup> In a case that heightened tensions between the interim force and the new police in September, a national police officer shot and wounded an interim police officer, Cazy Fulter, reportedly after Fulter failed to follow an order to stop beating his wife. The interim police director reported that the injured officer was handcuffed and did not receive prompt medical attention.<sup>10</sup> The director of the national police apologized to the interim police for the incident, but it is not clear that the government has initiated a full investigation to determine whether or not the shooting was justified. An investigation is now underway of the potential involvement of another new police officer in the shooting death of Odinette Emilcar in early October in Gonaïves. The dead woman's body was found in the home of a new officer.<sup>11</sup>

The rampant abuse of prisoners that existed under the military government and for the first months of the multinational intervention (before the multinational force investigated all the Haitian prisons) has diminished dramatically.<sup>12</sup> During a transfer of prisoners in early May, some interim police officers reportedly kicked and beat

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<sup>9</sup> Ambassador Colin Granderson, Executive Director, MICIVIH, remarks to TransAfrica Forum, Washington, D.C., September 21, 1995, and Sandra Marquez, "Haiti's New Police Struggle to Set New Standard," Reuters News Service, August 7, 1995. For further detail on problems with the new national police force, see discussion and recommendations below at *Haitian National Police*.

<sup>10</sup> "Un policier intérimaire blessé par balles à Port-au-Prince," Agence Haitienne de Presse, September 22, 1995, and Sandra Marquez, "Haiti: Tensions Mount between Haiti's Two Police Forces," Reuters News Service, September 22, 1995.

<sup>11</sup> "Shooting Incidents Raise Fears over New Haiti Police," Reuters News Service, October 2, 1995.

<sup>12</sup> For details on the creation of a new prison authority, see below at *Restructuring Haiti's Prison System*.

detainees with rifle butts while they were handcuffed and tied together at the ankles. The same officer the detainees accused of ordering their mistreatment was later named to head the new Fort National prison for women and minors. Prison guards at the Fort National prison reportedly groups of minors on at least two occasions in June 1995.

Judicial officials have ordered some arrests of questionable legality.<sup>13</sup> The best known such case is that of Capt. Patrick Bastien and Dieumâitre Lucas, who were arrested in February 1995 for allegedly plotting against state security. The warrant contained no details regarding specific acts, dates, or places, nor did it identify which sections of the penal code had been violated. The men were provisionally released seven months later in September 1995 (charges are pending against them and the case is still under investigation).

### **Charges of State-sponsored Killings**

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<sup>13</sup> MICIVIH expressed concern about illegal arrests based on collective warrants and the continuation of practices such as arresting people based only on denunciations. Press Release, MCIVIH, August 16, 1995.

In early August 1995, U.S. columnist Robert Novak charged the Aristide government with responsibility for eighty murders "traceable to close associates" of the Haitian government since Aristide's return. Novak's allegations were echoed by congressional Republican leaders and cited as fact by several news sources, inside and outside Haiti.<sup>14</sup> Nonetheless, Novak's exaggerated charges, about which he provides scant detail, are unsupported by the evidence.

Since February 1995, there have been some twenty victims of what the MICIVIH describes as "commando-style executions," murders committed with heavy weaponry where robbery does not appear to have been a motive. The victims include one former army general, two former colonels, three interim police officers, one former refugee, three gas station owners or employees, and three former *attachés* (paramilitary agents linked to the FAd'H). The MICIVIH public statement on these deaths concluded: "To date, no set of elements has emerged to link these cases together and the identities of the killers remain unknown."<sup>15</sup> Specific allegations of the involvement of agents of the Aristide government have emerged only with regard to the slaying of lawyer and anti-Aristide activist Mireille Durocher Bertin and pilot Eugene "Junior" Baillergeau, who were killed on March 28, 1995. Some U.S. officials implicated the interior minister, former army Col. Mondesir Beaubrun, in these killings. No further evidence has emerged to date to verify these allegations, and the F.B.I. team in Haiti assigned to the case has not provided any more information. On September 19 the four suspects who had been held for alleged involvement in the killing were released provisionally for lack of evidence.<sup>16</sup> We urge that investigations of each of these killings should be carried out rigorously and in good faith, and that those found responsible should be punished in accordance with Haitian law and international standards of due process.

### Violence a Continuing Problem

Although human rights violations have greatly diminished, other kinds of violence continue to plague Haiti. The end of the military government coincided with a dramatic rise in crime, particularly robberies often accompanied by murder, as well as the cases referred to above where robbery does not seem to have been a motive. In March 1995, at the height of the crime wave, there were a total of fifty-two killings reported by CivPol. Murders and other serious crimes subsided after March, due to more aggressive policing by the interim police and CivPol and the gradual deployment of the new police.

Accompanying the rising crime rate was an increase in beating and stoning deaths of presumed criminals by crowds. From forty-five cases in March, the number of vigilante killings fell to eighteen in July, and dropped to eight in August. Many, if not most, of these killings result from a popular perception that the justice system is not working, and that criminals turned in are likely to be let go. The government, including the interim police, has publicly condemned such killings, but legal action has rarely been taken against the participants in vigilante killings. In most cases, killings have been carried out by crowds spontaneously. Haitian police and CivPol have been working with the neighborhood watch committees, or *brigades de vigilances*, in many parts of Haiti, instructing them in the proper role of citizens' watch groups, in an effort to curb lynchings. Both President Aristide and the U.S. military command have supported the formation of neighborhood watch groups as an essential supplement to police efforts to control crime. In a few areas, the watch groups have been suspected of carrying out acts of violence, including in some cases where former *attachés* or FRAPH members had created the local brigades.

At least fifteen people have been killed in land disputes, mainly in the lower Artibonite region, since Aristide's return. In the past, such disputes often turned violent following a change of government. Although police and multinational forces have not always taken swift, adequate measures to stop the violence, the Aristide government is

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<sup>14</sup> Robert Novak, "U.S. Ignores Rising Murders Linked to Aristide's Allies," *Chicago Sun-Times*, August 7, 1995. Novak discussed human rights in Haiti with Sen. Jesse Helms (R-NC) and Sen. Robert Dole (R-KS) on the "Larry King Live" television show on September 12, 1995.

<sup>15</sup> Press Release, MICIVIH, September 12, 1995.

<sup>16</sup> Eddy and Patrick Moïse, and Haitian-Americans Claude and Evelyn Douge were freed on September 19, 1995. Sandra Marquez, "Four Haitian Suspects Freed for Lack of Evidence," Reuters News Service, September 20, 1995.

attempting to mediate and resolve several of the worst cases. Government delegations have met with contending parties in several cases. A January 1995 decree authorized the state-run Organism for the Development of the Artibonite Valley (Organisme pour le Développement de la Vallée de l'Artibonite, ODVA) temporarily to take over management of disputed lands until judicial authorities resolved pending claims. ODVA has done this in two cases. Resolution of land disputes is hampered by the lack of a functioning land court (*tribunal terrien*) in St. Marc. A national land reform program was inaugurated in April.

## ESTABLISHING ACCOUNTABILITY FOR HUMAN RIGHTS VIOLATIONS

For three years after the overthrow of President Jean Bertrand Aristide, Haitians lived under a brutal military dictatorship. An estimated 3,000 to 4,000 people lost their lives in political violence, most of it sponsored directly or indirectly by the army. Thousands more who survived suffered arbitrary arrests, rape, beatings, and torture, and an even larger number faced threats, extortion, and destruction or confiscation of property. Some 100,000 Haitians fled their country as refugees, while an estimated 300,000 sought safety in distant towns and country regions inside Haiti.

President Aristide's October 15, 1994 return brought an end to most of these abuses but provided no immediate redress to the victims and their family members. The justice system, always ineffectual and beholden to the military and the wealthy, had been rendered all but toothless by the three years of military governments. The most important military and paramilitary leaders fled Haiti before or just after Aristide's return. State coffers were nearly empty, and with so many urgent priorities, the Haitian government proposed funds for reparations for human rights violations but took no concrete steps in that direction.

President Aristide returned pledging justice and reconciliation. Although the U.S. negotiating team led by former President Carter urged an amnesty upon the government as a condition for the departure of military leaders, much of the Haitian population and human rights groups strongly opposed any law that would deprive the victims of human rights violations of their right to justice.<sup>17</sup> The amnesty that passed the parliament in October 1994 providing unconditional amnesty only for acts against the state, not for human rights violations committed against civilians.

The Haitian government has taken several measures in pursuit of accountability for human rights crimes committed under military rule. The most prominent of these steps was the December 1994 announcement of the formation of a National Commission for Truth and Justice (Commission Nationale de Vérité et Justice), presided by Haitian sociologist Françoise Boucard. A small working group began to develop the structures of the commission, and on March 28, 1995, a presidential decree outlined the commission's mandate and named three foreign and three Haitian commissioners to serve with Boucard. During nine months, the commission was to document the most serious human rights violations committed under military rule, paying special attention to "crimes against humanity" and "aggressions of a sexual nature" against women. It was to investigate the nature of paramilitary groups, seek to identify the authors of serious abuses, and finally, prepare a public report of its findings together with recommendations to the Haitian government about reparations and rehabilitation for victims, and legal and administrative measures to prevent the reoccurrence of such violations. Boucard announced in September that the commission's report would identify perpetrators by name where there was sufficient evidence to do so.<sup>18</sup> The commission was not given the power to initiate prosecutions.

Plagued by insufficient means and initial disorganization, investigators did not begin to conduct field investigations on rights abuses until July. In September, at the commission's request, forensic anthropologists from Argentina and Guatemala examined remains discovered in several sites. At the end of its first six months, the commission was still badly in need of funds to complete its work. The commission has received cash contributions only from the Haitian,

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<sup>17</sup> See "A Program on Accountability for Human Rights Crimes in Haiti," a statement issued by Human Rights Watch/Americas and National Coalition for Haitian Refugees, October 7, 1994.

<sup>18</sup> Sandra Marquez, "Bones Provide Missing Link in Rights Investigation," Reuters News Service, September 25, 1995.

Canadian, and Swiss governments. The Inter-American Commission on Human Rights, the MICIVIH, and several arms of the United Nations have contributed personnel and equipment. While the United States made a pledge in May 1995 to support the commission with US\$250,000, that pledge was later rescinded. Well after the commission was underway, in September 1995, the U.S. said it would contribute US\$50,000 to the commission's work and also assist in preparing cases for prosecution.

President Aristide also initiated the opening of Complaint Offices (Bureaux de Doléances) in every department, where citizens could seek legal assistance in filing claims with judicial authorities. However, the offices opened in only a few towns, with little publicity, and have had limited impact. The Cap Haïtien office has had some success, including assistance to an activist whose complaint of an illegal arrest and a beating in April 1992 formed the basis for arrest warrants that were issued in May 1995 for four former attachés.

In May 1995, seemingly impatient with the languid pace of efforts at justice, President Aristide convened a special group of foreign lawyers with experience in criminal prosecutions to investigate a small number of the most notorious extrajudicial executions of the coup period: those of Justice Minister Guy Malary, Antoine Izméry, Father Jean Marie Vincent, and Claudy Museau. With a small staff, the lawyers' group has succeeded in uncovering some information about these cases, some of which was used in the September 1995 trial of attaché Gérard Gustave, known as "Zimbabwe," for the assassination of Antoine Izméry.

Unfortunately, the prosecution of these prominent cases has been stymied partially by the U.S. failure to turn over evidence seized from U.S.-led raids of FRAPH headquarters in Port-au-Prince and Cap Haïtien in September and October of 1994, which could help the prosecutors. *The Nation* magazine reported that U.S. officials in Haiti confirmed that Marcel Morissaint, the alleged gunman in the 1993 assassination of the minister of justice, Guy Malary, was an informant paid by the U.S. Drug Enforcement Agency (DEA) from 1991 until 1995. Shortly before Morissaint was to be interviewed about the Malary killing, and about information he might provide about Izméry's and Vincent's deaths, the Justice Minister, Jean-Joseph Exumé told *The Nation* that Morissaint had been "under U.S. protection" and was removed from custody with U.S. assistance.<sup>19</sup> National Security Advisor Anthony Lake denied *The Nation* report, saying, "I can state absolutely that he [Morissaint] had no association whatsoever with the U.S. at the time of the tragic assassination of Guy Malary."<sup>20</sup> Lake also stated, "...it is absolutely untrue that the United States in any way helped that person [Morissaint] to leave the justice system here."<sup>21</sup>

In several towns, citizens, usually with the support of local popular organizations, have filed complaints against former soldiers, FRAPH members and others for serious human rights violations. In some cases summonses or arrest warrants have been issued, often with little results. The investigating judge in Port-de-Paix issued warrants for the arrest of several men in connection with the July 23, 1987, massacre of some 200 peasants in Jean Rabel, but the resulting publicity apparently forewarned the accused men, who evaded arrest.<sup>22</sup>

Some judges, especially in northern Haiti, refuse to investigate and prosecute reputed members of the paramilitary, the infamous attachés, and former members of the Haitian military, fearing retribution after the international forces depart in February 1996. One judge refused to investigate charges of brutality, including rape, brought against four Haitian soldiers, noting that "one day the American soldiers will leave." A witness in the case who also was reluctant to participate stated: "We feel that if the situation is ever reversed, we'll be very easy, very public targets of the military."

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<sup>19</sup> Allan Nairn, "Our Payroll, Haitian Hit," *The Nation* (New York), October 9, 1995, p. 1.

<sup>20</sup> "Article says Suspect in Haiti Assassination Freed," Reuters News Service, September 22, 1995.

<sup>21</sup> Ibid.

<sup>22</sup> The Haitian authorities issued warrants for Nikol Poitevien, Patrick Rémy, Léonard Lucas, Prosper Gentilhomme, Erilien Derilien, Wilson Hérard, Lourdy Hérard. Charges against these men were actually initiated in 1991; some of the accused were arrested but they were released following the coup d'état.

Nonetheless, the Haitian government has moved forward on several cases, leading to arrests of suspected human rights violators. The first important trial for human rights abuses committed during the coup period concerned the January 1992 death following torture of teacher and activist Claudy Museau. After Museau's family filed a complaint in early 1995, a judge in Les Cayes issued summonses for three former Haitian soldiers, Lt. Pyram Jean-Emery, Commander Jose Eugene, and Corporal Eliscar. None of the accused responded, and the judge proceeded with the case against Pyram Jean-Emery alone, eventually sentencing him in absentia to sixty years at hard labor.<sup>23</sup>

In a second case, attaché Gérard Gustave was found guilty in the September 11, 1993 murder of businessman and prominent Aristide supporter Antoine Izméry and sentenced to life at hard labor. On September 25, 1995, seven other men closely linked to the military government -- including former Port-au-Prince police chief, Col. Michel François; the former commander of the Anti-Gang Service, Capt. Joanis Jackson; and the number two leader of FRAPH, Louis Jodel Chamblain -- also were convicted *in absentia* of killing Izméry and were sentenced to life imprisonment.

FRAPH leader Emmanuel "Toto" Constant has a pending warrant for his arrest in Port-au-Prince for charges brought in November 1994 by an organization called Anti-FRAPH. There is wide public feeling that he should also be tried for FRAPH's role in hundreds of killings, and cases of torture and illegal arrest during the military period. Constant fled Haiti in December 1994, entered the United States on a tourist visa, which U.S. immigration authorities later said was a mistake, and was arrested in Queens, New York, on May 10. The Haitian government has filed for Constant's extradition to Haiti. A U.S. immigration judge in Baltimore on September 5 ordered Constant, a CIA informant who may have embarrassing information about U.S. involvement in Haiti to disclose, deported to Haiti. Constant's case is the most egregious of hundreds of potential cases against FRAPH members that would benefit by the immediate release of documents now held by the U.S. government to Haitian prosecutors.

The Haitian government also has made progress on several less well-known cases.

- Interim police arrested former Capt. Castera Cenafils, on May 26 in Petionville. He was directly implicated in the April 1994 mass killings in the Raboteau neighborhood of Gonaïves. Two others, including reputed attaché Jean Tatoune, were also arrested in connection with the same killings.
- Section chief Onondieu Paul of Marchand Dessalines, accused of murder and numerous other grave abuses, was arrested March 21 but then released on April 24. Protests led to his re-arrest as well as the arrest of St. Marc prosecutor Antoine Jean-Charles and several others who were implicated in the alleged bribery and document forgery that led to his release.
- Former section chief Adrien Magny was arrested in Hinche based on allegations of torture and forced disappearance in 1993. He escaped from the Hinche prison on May 18. Some interim police were jailed for having allowed the escape.
- Four FRAPH members were arrested June 5 in Cayes-Jacmel following complaints by two victims of human rights violations.<sup>24</sup> The local court ordered their release several days later for lack of evidence.
- Interim police arrested the FRAPH coordinator for Jacmel, André Calixte, on May 30 on charges of distributing electoral leaflets containing death threats and then held him for presumed involvement in a disappearance in November 1993.
- Two interim police officers were arrested in the Central Plateau on May 20, accused of stealing from the office of the National Peasant Congress Movement of Papaye (Mouvement Paysan Nationale Congrès Papaye, MPKNP, formerly the Papaye Peasant Movement, (Mouvement Paysans de Papaye, MPP) at the time of the coup d'état.

## II. INSTITUTIONAL REFORMS IN HAITI

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<sup>23</sup> Jean-Emery had been arrested in November 1994 in Jérémie by members of the multinational forces but was released apparently without judicial proceedings. He was sentenced on June 29, 1995.

<sup>24</sup> The arrested FRAPH members were Romilance Raymond, Veletain Pierre, Andreus Hubert, and Mona Charles.



The reform of Haiti's traditionally corrupt institutions, particularly the military, police, and judiciary, holds the potential to end the long cycle of government repression directed against Haiti's civilian population. Since President Aristide's return, the Haitian government has largely dismantled the military, dismissed the despised section chiefs, and with U.S. assistance, is now forming a new civilian police force. With international support, the government also has undertaken major reform efforts to improve the justice and prison systems, two key elements in past human rights abuses in Haiti. Reforms already have led to fundamental changes in the government's treatment of the Haitian population and a dramatic decrease in human rights abuses. The restored government also has addressed the issue of electoral reform and, in addition to passing a new electoral law, named a Provisional Electoral Council (Conseil Électoral Provisoire, CEP). While the CEP's running of the June 1995 local and parliamentary elections was an organizational fiasco, its performance in two subsequent elections was better. The CEP will be responsible for presidential elections late in 1995, after which the government must follow constitutionally mandated procedures for the formation of a permanent electoral council.

### **SECURITY FORCES: FORMER SOLDIERS AND NEW POLICE**

Since October 1994, the restored Haitian government and international forces in Haiti, particularly the U.S. government, have undertaken a dramatic reshaping of Haiti's security forces.<sup>25</sup> While half of the former military remains in uniform as part of an interim police force, new Haitian National Police officers, who are largely U.S.-trained, gradually are displacing these "recycled" soldiers. Approximately 5,000 new police are scheduled to be in place by February 1996, in time for the planned withdrawal of U.N. peacekeeping and civilian police forces from Haiti. The ability of the largely untested force to aid in a peaceful transition to a new government and to assume full responsibility for Haiti's security will depend not only on the quality of their training and leadership, but also on less predictable external factors. Among the potential threats are a possible resurgence of the military and paramilitary forces, particularly in light of lackluster disarmament efforts and limited prosecutions of soldiers or paramilitary agents for human rights abuses committed during the military government.

#### **The Haitian Military**

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<sup>25</sup> For a detailed discussion of the formation of Haiti's interim police force of "recycled" soldiers, see Human Rights Watch/Americas and National Coalition for Haitian Refugees, *Security Compromised: Recycled Haitian Soldiers on the Police Front Line* (New York: Human Rights Watch and National Coalition for Haitian Refugees, March 1995).

The dismantling of the Haitian armed forces has been extensive and undoubtedly contributes to an improved human rights situation in Haiti. The most prominent members of the symbiotic military-police structure, Gen. Raoul Cédras and Gen. Philippe Biamby, and Port-au-Prince police chief Michel François, fled into exile and freedom from prosecution in Haitian courts shortly after the arrival of the U.S.-led multinational force in September 1994. The Haitian government dismissed the remaining members of the officer corps by early 1995, abolished the notorious section chiefs, and demobilized half of the military, many of whom have participated in retraining programs run by the International Organization of Migration (IOM) with U.S. funds.<sup>26</sup> Nonetheless, almost one-third of the former military is still in uniform as members of Haiti's interim police force.<sup>27</sup> With the installation of Haiti's new parliament, the government probably will take definitive steps toward the dissolution of the army (via a constitutional amendment) or further weakening of the institution (via revisions to the military's implementing legislation) that will leave it with a skeletal structure.

Unfortunately, even as the Haitian government and international allies weaken Haitian military structures, they have focused inadequate attention on human rights concerns, and particularly the question of accountability for past abuses.<sup>28</sup> Former Haitian soldiers became interim police officers following nominal Haitian and U.S. efforts to screen them for past human rights violations. The Haitian government, in conjunction with international forces, invited a small number of interim police to serve as prison guards, but did not comprehensively review these former soldiers' human rights backgrounds despite the history of severe military abuses of detainees in Haitian prisons.

As of early October 1995, no member of Haiti's armed forces had been successfully prosecuted and sent to prison for human rights abuses committed under military rule, thereby continuing a legacy of impunity.<sup>29</sup> The most serious penalty imposed on most former soldiers has been the loss of their jobs. Yet, demobilized soldiers are eligible to participate in a retraining program offered by the International Organization of Migration (IOM). As long as the soldiers attend classes during the six-month training period, the Haitian government provides them with a stipend and IOM covers food, transportation and tuition costs. Undoubtedly, a fundamental reason for offering former soldiers retraining is to discourage them from using their skills to negative effect, what IOM describes as "possible social unrest." The increase in Haiti's crime rate in the first few months of 1995 has been attributed in part to underemployed former FAd'H. At the same time, Haiti's crumbling economy and the history of military repression have made the reintegration programs unpopular with the Haitian public, who would like to see abusive soldiers face indictments, severe reprimands, or other disciplinary measures. At the same time, former soldiers are becoming increasingly dissatisfied with the IOM program, charging that they have not been paid on time and that they are being trained for jobs that do not exist. Recent trainee protests led the IOM to announce the potential cancellation of the program if threats and harassment of its staff did not cease. Disgruntled soldiers have become increasingly vocal, and at least two organizations of former FAd'H have emerged. When a French member of CivPol was shot and critically wounded in Petit Goâve in August, in a rare violent incident directed against the UNMIH forces, written materials purporting to be from one of these organizations were found at the scene of the shooting.<sup>30</sup> UNMIH security forces believe that the

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<sup>26</sup> As of August 3, 1995, IOM had 2,788 former soldiers attending its training sessions (276 of these were former interim police). One hundred twenty-seven former soldiers had completed training and were eligible for IOM's Opportunity and Referral Services, to assist them in finding work and "maintaining stability." International Organization for Migration, "IOM Demobilization and Reintegration Programme Monthly Report"(Haiti: July 1995), pp. 17-18.

<sup>27</sup> See discussion below, at *Interim Public Security Force*.

<sup>28</sup> See discussion of accountability above, at *Establishing Accountability for Past Human Rights Violations*.

<sup>29</sup> In our view, in absentia trials call due process protections into question. Accountability is better served by issuing arrest warrants and pursuing extradition in order to bring the defendant into court before taking additional legal steps.

<sup>30</sup> Marquez, "U.N. Peacekeeper Shot in Head in Haiti," Reuters News Service, September 1, 1995.

papers were planted at the scene, and they have pointed to responsibility of a local, right wing political party, the Mobilization for National Development (Mobilisation pour le Développement, MDN). This incident has heightened concern that demobilized soldiers might act as a destabilizing force, particularly after the withdrawal of UNMIH.

While Haitians and international governmental representatives have devoted a great deal of energy to the demobilization of the military, they have not made similar efforts to unravel the parasitic paramilitary structures (including attachés, *tonton macoutes*,<sup>31</sup> and members of FRAPH) that functioned in close coordination with the Haitian military, and were responsible for severe human rights abuses during the military period.<sup>32</sup> The demise of the military undoubtedly has weakened these organizations, but in many cases they remain armed and simply have gone into hiding. Haitians and the international forces in Haiti echo concerns that they remain armed and potentially pose a threat to Haiti's stability following UNMIH's departure.

### **Interim Public Security Force**

Haiti's 2,600-person interim police force, composed of recycled soldiers and, in small portion, of former Haitian refugees held at the Guantánamo naval base, has struggled to earn credibility.<sup>33</sup> Public recognition of their past role in the military dramatically undercut public respect for the force, leading several communities to reject its presence. In several areas, the interim police refused to patrol. Nonetheless, under the leadership of Maj. Dany Toussaint, the force has taken several positive steps, including disciplining some agents, detaining common criminals, conducting street patrols, and organizing community policing. In the past several months, there have been some accusations of abuses by the interim police, including seven or eight incidents in which officers shot fleeing suspects, and some apparently arbitrary round-ups or detentions.<sup>34</sup> The results of internal investigations of the shootings have not yet been made public, but there is clearly a need for greater independent, civilian oversight of the interim police. While the interim police have not been a particularly effective force, neither have they been responsible for systematic, repressive human rights abuses like those committed previously by the Haitian military. The presence of international police forces, first the International Police Monitors (until March 1995) and then CivPol, contributed to this improved human rights record. The role of the interim police is diminishing over time as the new Haitian National Police (HNP) gradually are trained and deployed, but they will remain Haiti's front-line security force for the critical period of the next six months, and CivPol will continue to monitor their performance.

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<sup>31</sup> The tonton macoutes were created by François Duvalier as a paramilitary organization that was formally known as the Volunteers for National Security. They were responsible for gross human rights violations under the Duvalier governments until they were disbanded in 1986. They were not disarmed however, and their influence is still widely feared.

<sup>32</sup> In March 1995, the Arias Foundation for Peace and Human Progress conducted a national poll of 1,200 Haitians. After poverty and unemployment, survey respondents identified armed civilians, attachés, tonton macoutes, and the military as Haiti's most significant problems. The respondents strongly concurred that these groups should be disarmed by the Haitian government and international forces in Haiti. Arias Foundation, "Republic of Haiti National Survey of Public Opinion," March 1995.

Despite voluminous evidence of FRAPH's close links with the Haitian military and brutal human rights practices, when the U.S. intervened in Haiti in September of 1994, the U.S. government initially insisted that FRAPH (whose leader Emmanuel Constant was at one time on the CIA payroll and later was permitted entry to the U.S. on a reinstated visa) was a legitimate Haitian political movement. On October 3, 1994, the U.S.-led multinational forces conducted raids of FRAPH offices in Port-au-Prince and Cap Haïtien, but most of these detainees were released on the same day, and the U.S. has not turned over all the materials seized from these raids to the Haitian justice system.

<sup>33</sup> For a complete discussion of the selection, training, and deployment of the interim police see, Human Rights Watch/Americas and National Coalition for Haitian Refugees, *Security Compromised*.

<sup>34</sup> Interview with Lizbeth Cullity, Metropolitan Port-au-Prince Coordinator, U.N./OAS International Civilian Mission (MICIVIH), July 26, 1995.

We have received reports that in some cases the transfers of authority from the interim police to the newly placed Haitian National Police has heightened interim police frustration with the loss of their jobs. On September 29, 1995, the commander of the interim force, Maj. Dany Toussaint urged the incorporation of the remaining interim police into the new police force, and threatening to resign if they were demobilized. He stated: "I have no intention of betraying these men...."<sup>35</sup> Some interim police were disappointed by their failure to qualify for the HNP, particularly after they had been led to believe (in some cases by Haitian and international trainers hoping to minimize their fears about the future) that they had good prospects. The HNP qualifying examination eliminated the vast majority of the interim police from consideration.

Several of the interim police who will serve in the HNP have been selected for leadership positions, since the new force has no prior leaders. As they assume these critical posts in Haiti's new police force, the human rights records of these former soldiers should be carefully reexamined, and they should be required to pass all police academy entrance examinations and complete the four-month police training course. Once they assume their positions, they should be monitored closely to ensure that they do not impose the historically abusive military culture on the new police.

### **Haitian National Police**

Cognizant of the military's historic failings, particularly its tendency to overthrow civilian leaders and systematically abuse human rights, the restored Aristide government worked with parliament to pass a law mandating the creation of a new national police force in December of 1994. The government intends to deploy a force of approximately 5,000 officers, gradually displacing the recycled soldiers now serving as interim police. The structural shift from an autonomous, abusive military to a police force that will be answerable to civilian authority and subject to its laws is a positive development in Haiti, but to date the force is largely untested. Nonetheless, greater attention to human rights concerns in the selection of recruits and leaders, and in the training and deployment of the new police will improve chances that the force does not fall into the repressive habits of its predecessors.

Ironically, the U.S. government is once again playing a leading role in the formation of Haiti's newest security force, much as they did early this century with the creation of the FAd'H. The Haitian government reluctantly acknowledges that it does not have the resources to undertake a training effort of such magnitude, but it has insisted on maintaining access to all selection and training sites and personnel files, controlling the placement of new police agents, and selecting police leaders, known as "commissioners." The U.S. Justice Department's International Criminal Investigations and Training Assistance Program (ICITAP) runs every stage of the selection, training, and on-the-job training of the Haitian National Police. When the Haitian and U.S. governments agreed that a full complement of new officers needed to be on the streets quickly (ideally before UNMIH's withdrawal), ICITAP argued that they could not find any suitable additional training sites in Haiti and half the sixteen week course was then moved to a U.S. military base, Fort Leonard Wood, Missouri. ICITAP's decision to postpone the preparation of trainers for the permanent police academy will slow the turn-over from U.S. to Haitian control of the police training process. Members of the Haitian government have expressed discomfort with ICITAP's dominant role in the police training, particularly with the move to Fort Leonard Wood, problems with the Haitian Cr le interpreters there, and ICITAP's selection of over forty police cadets in the third class for "leadership" training. ICITAP initiatives to select and train cadets for supervisory positions and as judicial police were suspended as of mid-September 1995 while discussions continued with the Haitian government.

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<sup>35</sup> "Le Major Dany Toussaint contre toute nouvelle d mobilisation dans les rangs de la police int rimaire," Agence Haitienne de Presse, September 30, 1995.

Tens of thousands of Haitians have applied for the police academy. The aspiring candidates have varied motivations, reflecting not only Haiti's severe unemployment but also an energetic commitment to ending government repression and to building democracy. The ICITAP led recruitment relies on a rigorous academic and physical examination and a psychological test to determine eligibility for the academy.<sup>36</sup> Unfortunately, the evaluation of candidates does not fully explore human rights concerns and largely uses materials prepared by the candidate to explore his or her background. Haiti's National Police director acknowledged in March that due to limited resources, after a police cadet completes two weeks in the academy, the government will probably not conduct further investigations of his or her human rights record. We encourage the Haitian government and ICITAP trainers to remain vigilant beyond this two week window, and promptly to dismiss from the academy any cadet whose past or present behavior demonstrates a propensity to disregard the law, or misuse authority.

Cadets are required to complete sixteen weeks of training at two ICITAP- directed centers, the first half at the police training center (*Camp d'Application*) in Haiti, and the second half at Fort Leonard Wood in Missouri. Twenty-four hours of the coursework are devoted to human dignity and human rights, and ICITAP instructors have integrated practical training on the respect for human rights into other courses. The academy now includes a "Wednesday Night Forum" where representatives of Haitian civil society, including human rights organizations, describe their work and their expectations of the new police, and answer the new cadets questions. Additional coverage of human rights in the later stages of the course would add still more to the cadets' understanding of these principles.<sup>37</sup>

Since the HNP is a newly created force, it has not yet produced experienced leaders. The police law provides that the initial HNP officers, who are known as commissioners, should be selected from the former military's officer corps, provided they previously received training at a "recognized foreign institution" and their record is approved by the Superior Council of the National Police.<sup>38</sup> The Haitian government named several former FAd'H to commissioner posts, without requiring these military officers to undergo police training or intensive human rights screening. Extreme care must be taken in the selection of these officers so that the new police are not tarnished by the abusive practices of Haiti's military. The Haitian government has already begun installing civilians in HNP leadership posts and should continue to do so provided those civilians receive sufficient training in police matters.<sup>39</sup> The naming of a civilian lawyer, Eucher Jean-Luc, to direct the police Inspector General's office reinforces the importance of subjecting the police to civilian authority.

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<sup>36</sup> The selection process is detailed in a recent report, Washington Office on Latin America (WOLA), *Policing Haiti: Preliminary Assessment of the New Civilian Security Force* (Washington, D.C.: WOLA, September, 1995).

<sup>37</sup> For example, the forty hours that are now devoted to forensics (despite the absence of appropriate facilities in Haiti for forensic research, which had been promised earlier by the U.S. government) could be shortened slightly to allow more extensive discussions of human rights and human dignity.

<sup>38</sup> Article 64-2 of the "Law Regarding the Creation, Organization, and Functioning of the National Police," December 1994. See discussion of this issue in WOLA, *Policing Haiti*, pp. 25-28.

<sup>39</sup> Interview with Colonel Nias Mohammed Khan Khattack, Pakistan Armed Forces, UNMIH Commander for Cap Haïtien, and Major Thomas Melena, U.S. Army Civil Affairs Officer, Cap Haïtien, August 3, 1995. Col. Khattack was unimpressed with the performance of the civilian commissioners in the Cap Haïtien area, pointing to their lack of discipline, and weak administrative and leadership skills.

The fifth class of police cadets will graduate in mid-October 1995, placing approximately 2,275 new police agents in the field. ICITAP field training officers and the CivPol are supervising the on-the-job training of the newly deployed officers. Some CivPol and UNMIH observers have pointed to serious initial discipline problems with the new officers. In a positive step, two officers implicated in a shooting incident in Cap Haïtien were suspended from the national police force on September 18, 1995.<sup>40</sup> Following the example of the September case, all emerging problems with the new police should promptly be addressed with immediate disciplinary action. The failures of discipline also highlight a need for ICITAP and CivPol to resume their initial plan of staying in the field for at least two months with each class. Some new police have failed to use arrest warrants, wear uniforms or properly carry weapons. The HNP also have been involved in a handful of shooting incidents in disputed circumstances that are now under investigation.<sup>41</sup> Seven cases of alleged police brutality are being investigated as well.<sup>42</sup> Additional problems have arisen including the disappearance of police radios, untrained drivers crashing police vehicles, and poor administrative skills. One UNMIH commander warned that failures to properly supervise the recruits would create "a breeding ground for FAd'H style policing."<sup>43</sup> While some reports on the HNP point to a troubling lack of discipline, their public reception has been overwhelmingly positive. With adequate training and supervision over the long-term, and greater care taken in the selection of leaders, the HNP should contribute successfully to improved security in Haiti.

## REFORMING HAITI'S JUSTICE SYSTEM

Among Haiti's many pressing priorities, reforming the legal system is among the most urgent.<sup>44</sup> The Duvaliers' and subsequent military dictatorships intentionally undermined the rule of law and kept the legal system weak and ineffective. Impunity for gross human rights violations encouraged and emboldened the military and its civilian allies, fueling a cycle of violence and cynicism. The chief deficiencies of this "legal system" included: interference and intimidation from the most powerful sectors of Haitian society; incompetent and venal personnel; severe underfunding and a shortage of judges; rampant bribery and extortion; and an intensely personal law enforcement with denunciation, rumor or payment of bribes substituting for criminal investigations. Deep structural weaknesses in a justice system cannot be erased overnight. Equally daunting is the challenge of creating a human rights and rule of law culture in a country that has experienced violence and ruthless authority for so many years. In this period of transition from a military dictatorship to a democracy, reforms to the Haitian justice system are urgently required to show that the government intends to make a definitive break from the past.

The Haitian people understandably have enormous contempt for a legal system that is anything but just. This attitude has contributed to, but in no way excuses, the fact that there have been repeated cases of vigilante violence in the last ten years. Several cases of vigilante violence followed the restoration of constitutional government to Haiti, although not to the same extent that had been suggested by some observers. In March 1995, the U.N./OAS human rights mission in Haiti reported dozens of instant executions of suspected thieves by angry crowds, especially in or near

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<sup>40</sup> Remarks by Ambassador Colin Granderson, Executive Director of MICIVIH, to the TransAfrica Forum, Washington, D.C., September 21, 1995.

<sup>41</sup> In at least one of these incidents, the Haitian authorities concluded that a bystander had been accidentally killed by a ricocheting bullet. Interview with Lizbeth Cullity, Metropolitan Port-au-Prince Coordinator, MICIVIH, July 26, 1995.

<sup>42</sup> Sandra Marquez, "Haiti's New Police Struggle to Set New Standard," Reuters News Service, August 7, 1995.

<sup>43</sup> Interview with UNMIH Commander Khattack, August 3, 1995.

<sup>44</sup> For an earlier discussion of judicial reform in Haiti, see National Coalition for Haitian Refugees, *No Greater Priority: Judicial Reform in Haiti* (New York: National Coalition for Haitian Refugees, March 1995).

the principal outdoor markets in Port-au-Prince. The reason most often heard was that the population had no faith that the justice system would punish the alleged thief and so took justice into its own hands.

Aristide and his principal international backers, especially the United States, have made legal reform a high priority. The disappearance of the Haitian military as an institution and the abolishing of the rural police known as section chiefs has decreased outside pressure and intimidation, increasing the chances for successful reform. Incipient reform efforts have started to address some of the system's deficiencies.

One of the initial steps in addressing problems with the judicial system was to replace some judges and prosecutors that were named by the illegal military government with the appointees named by President Aristide in 1991. The U.S. Agency for International Development (U.S.-AID) held round-table discussions for judges and prosecutors in each province. While not exactly training sessions, these meetings allowed judges and prosecutors to meet and exchange views for the first time in their professional lives. Teams of lawyers called up in the U.S. Army Reserves were deployed along with the U.S.-led multinational forces to "mentor" their Haitian counterparts from February to March 1995. Known as technical counselors, *conseillers techniques*, they attempted to provide advice, guidance, and immediate assessments of the legal system. While their inability to speak French or Créole and their lack of knowledge of the Napoleonic Civil Law system limited any mentoring, they did conduct a useful survey of the courts' material and logistical needs and the education level of justices of the peace.

In the past year, the Minister of Justice declared a salary increase for justices of the peace, and copies of the basic Haitian legal texts and office materials have been distributed to some courthouses. A judicial academy financed by the U.S. Justice Department opened in July 1995 to provide interim training to ninety prosecutors and judges. It is staffed by Haitian practitioners with experts from France and Canada participating periodically. A handful of Haitian prosecutors received a month's training at France's prestigious National Judge's Academy (*Ecole Nationale de la Magistrature*) in Bordeaux in June. Despite these efforts, problems persist:

- Many judges and prosecutors owe their jobs to some rich or powerful benefactor; some justices of the peace have no legal training and show little interest in receiving any; lack of motivation is a serious problem, with some judges working only a few hours each morning. Even today, in many districts, courts barely function. In Le Borgne, for example, the justice of the peace could not be found one morning at the courthouse. He was out working in his field while several people were waiting in front of the court for their hearing, including an injured young girl. Visiting a court after noon usually means finding a locked or empty building, the court staff and judge having gone home, assuming they arrived at all.
- A shortage of judges, especially in Port-au-Prince, combined with an extremely limited calendar to hear major criminal cases (one session every six months with each session rarely lasting more than two weeks) means a huge backlog of people in detention awaiting trial and then quick trials often lacking minimal due process guarantees.
- Public outcry or denunciation (*clameur publique*) frequently substitutes for criminal investigations and rigorous proof that the accused is criminally responsible. In the July 1995 criminal court session in Mirebalais, a murder trial resulted in two convictions based solely on testimony of the victim's relatives and public denunciations. Neither the police nor the investigating judge presented any evidence gathered through investigation. Police arrested Duly Brutus, a leader of the PANPRA, and Justice of the Peace Jacques LaGuerre in July in connection with the burning of the Communal Electoral Office in Limbé, apparently mainly on the denunciation of a local authority (*Vice Delegué*). Brutus was freed after a few days but LaGuerre remained in prison until August 31. Arrest warrants are issued on flimsy accusations and are exceedingly vague. Moreover, warrants continue to be issued by officials who do not have the legal authority to do so.<sup>45</sup> The MICIVIH issued a press release on August 16, 1995, expressing its concern about ongoing failure to follow prescribed legal procedures, thus undermining

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<sup>45</sup> In Haitian law, with one limited exception, only an investigating judge has the authority to issue an arrest warrant. Yet justices of the peace, mayors, and prosecutors continue to issue these warrants.

respect for human rights. The mission urged the Justice Ministry to guarantee due process rights, including the presumption of innocence and the right to a speedy trial before a competent, impartial, and independent tribunal.<sup>46</sup>

- Despite some distribution of equipment, lack of funds for travel and basic materials continue to hinder the courts' effectiveness. For example, a judge in Terrier Rouge has no materials at all, not even pens or paper. He, and many other judges, demand payment for issuing various judicial orders to pay for the paper they're written on. "The administrative costs of the judicial system are passed on to the plaintiffs and that shouldn't be," he stated. Others, less scrupulous, charge for their services not to recoup costs but to supplement their salaries. A justice of the peace in Mirebalais noted that he does not even have a bicycle for transport while his counterpart in Milot must rely on public transportation to cover three large districts.

U.S. AID has taken a leading role in judicial reform, to the consternation of some observers. AID has awarded an \$18 million "Administration of Justice" project to a U.S. consulting firm, Checchi. This six-year project is supposed to start in mid-October 1995 and covers virtually every aspect of legal reform: equipment procurement, training, printing codes, public education, legal services for the poor, management and administrative improvements in the Justice Ministry and the courts, and "mentoring" programs for judges and prosecutors. It will employ an array of sub-contractors, most from the U.S. While it is comprehensive, some worry that the vast differences between the U.S. common law system and the Haitian civil law system argue against a U.S.-dominated approach to legal reform. What is required, they contend, is close consultation in designing and implementing reform projects between Haitian practitioners and experts from countries that share Haiti's civil law traditions and jurisprudence, especially French and Créole-speakers from France, the Caribbean, francophone Africa, and Canada. For example, the Canadian Ministry of Justice has conducted extensive judicial training in francophone Africa. The Canadians have developed lesson plans, role playing, group exercises, even video-taped mock trials for their judges and prosecutor training. These African countries also inherited the French legal system and have largely poor and illiterate populations, so the Canadian training materials should be most relevant to Haiti. Créole-speakers from the French Caribbean share more than just a language with their Haitian peers, they also have close historical and cultural ties and are only an hour away by plane.

Legal reform must involve intense consultation and collaboration with Haitian jurists, which some assert has not happened. For example, a group of Haitian lawyers and law professors organized a three-day symposium on legal reform in early June. The discussions were intense, provocative, and illuminating. One of the organizers lamented, however, that despite receiving three invitations, no one from either AID or the U.S. embassy had attended the conference. When asked what they think of the AID judicial reform project, several prominent Haitian lawyers responded that they knew nothing about it so they could not comment. A senior official in the Haitian justice ministry said the same.

Another concern is some international donors' reluctance to fund improvements to the legal system's infrastructure. The Justice Ministry's appeal for money to refurbish courthouses, install telephone lines, purchase vehicles so judges and prosecutors can investigate crimes and obtain essential and inexpensive basic office equipment was contemptuously dismissed by some donors as "bricks and mortar." The Canadians, to their great credit, have agreed to rehabilitate all fourteen civil court tribunals in the provinces. The donors must balance efforts to improve the human and physical capital of the system in tandem. Newly trained judges and lawyers cannot return to the same dilapidated courthouses and same deficient equipment and be expected to maintain their motivation and apply their new skills. When the U.N. multinational forces arrived in Haiti in September 1994 one of their first acts was to repaint Haiti's hideous "urine yellow" police stations to a bright white and blue and to clean out and refurbish the interiors. It was as much a symbolic cleansing of these chambers of horror as it was a signal that a new era had arrived. Haiti's courts need just such a physical and symbolic transformation.

## RESTRUCTURING HAITI'S PRISON SYSTEM

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<sup>46</sup> See Press Release, MICIVIH, August 16, 1995.



Conditions in Haitian prisons and detention centers have long been inhumane and cruel. Prisons have traditionally lacked all basic services: electricity, potable water, toilets, and medical supplies, and fail to provide prisoners with food. Even in a country as desperately poor as Haiti, where most of the population does not have access to such facilities, the prisons are materially worse. Detainees are kept in close, overcrowded quarters; prisoners are forced to sleep on the floor where rats and other insects proliferate. Women prisoners have not usually been segregated from male prisoners. Sexual abuse is common; tuberculosis, HIV and other viral diseases are easily transmitted. Children are frequently detained with adults. Although Haitian law requires a separate facility for youthful offenders this requirement, like many provisions in law relating to core human rights, exists only on paper.

Although Haitian law creates elaborate procedures governing arrests, detention, and prison inspections and monitoring, all these procedures and protections were systematically breached during the military's reign. Most arrests were made without a warrant. The person arrested often had no idea why he or she was detained, and his or her family often did not know where the person was, or whether he or she had been detained or simply abducted.<sup>47</sup> Without a paper trail, the person slipped into the black hole of Haitian detention centers, both official and "unofficial."<sup>48</sup> These centers uniformly failed to keep registers as required under Haitian and international law.

Problems in the administration of justice continue to have an impact on detainees and the prisons. The constitutional requirement that every detainee be brought before a judge within forty-eight hours of arrest, to determine the legality of the arrest and detention, continues to be violated, although much less frequently than under military rule. Some detainees spend days and even weeks awaiting arraignment. Delays stem from some judges' unwillingness to work, poor record-keeping in the prisons, and a lack of vehicles to transport detainees to courts or judges to prisons. Prisoners rioted in the National Penitentiary in February and April 1995, partly because many did not know why they had been arrested and some had not been brought before a judge within forty-eight hours of arrest. A tiny percentage of those in Haitian prisons have actually been convicted of a crime; most are awaiting charge and trial. Judges compound the overcrowding by continuing to sentence debtors to prison despite the clear prohibition on imprisonment for debt in international law that is binding on Haiti.<sup>49</sup>

Several months after the arrival of the multinational forces in September and with the subsequent dissolution of the Haitian army, international military and police took control of the prisons. A U.S. Army captain, Lawrence Rockwood, was detained, forced to return to the U.S., and subsequently court-martialed for his efforts to visit the notorious National Penitentiary in Port-au-Prince shortly after the September 1994 intervention. Despite clear information on rights abuses in the penitentiary, the grave risk to Aristide supporters detained there, and army guidelines prescribing early intervention in prisons, Rockwood's superiors refused to allow him to visit the prison after repeated requests. Rockwood's case raises important questions concerning the obligations of peacekeeping forces to uphold international human rights law and the scope to disobey orders that undermine human rights protection.<sup>50</sup>

The Aristide government, with substantial assistance from the international community, has made some progress in addressing human rights violations in prisons. Coordination among donors and consultation between donors and Haitian officials (in the Justice, Planning and Public Works Ministries) has been intense.

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<sup>47</sup> In reality, there was no difference between these warrantless arrests and abductions.

<sup>48</sup> "Unofficial" detention centers were controlled the military government, or their paramilitary accomplices, but were not officially acknowledged.

<sup>49</sup> See International Covenant on Civil and Political Rights, art. 11; American Convention on Human Rights, art. 7(7).

<sup>50</sup> See Lawyers Committee for Human Rights, *Protect or Obey: The United States Army vs. Lawrence Rockwood*, (New York: Lawyers Committee for Human Rights, May 1995).

The multinational forces, followed by the UNMIH military and CivPol, have taken over essential prison administration and management. Unofficial detention centers have been closed. The Aristide government issued a decree in May creating a civilian agency within the Ministry of Justice responsible for penal administration (the National Penitentiary Administration, *Administration Penitentiaire Nationale*, APENA) pursuant to Article 272 of the 1987 Constitution.

After a three-week training course taught by Créole-speaking prison experts from France's Penal Administration, 480 interim prison guards and administrators have taken up duties in various prisons. Given the severe human rights abuses that occurred in Haitian prisons under the military government, the high proportion of interim police in these courses--at least 260 of the original recruits, most of whom are former soldiers (a smaller number are former refugees from Guantánamo who served in the interim police) -- is of concern. The criteria for the selection of any former soldier or civilian for the new prison authority should be public and procedures for recruitment should require a thorough examination of the applicants' past human rights records.

The prior performance of the interim police in guarding Haiti's prisons was not promising. From September 1994 through May 1995, when Haitian military or interim police, supervised by international forces, controlled prisons, hundreds of inmates escaped from jails in Port-au-Prince, Cap Haïtien and many smaller towns, thanks to corruption, laxity or crumbling physical infrastructure. In May, at least 216 prisoners fled from ten prisons and lockups, including fifty-eight in Cap Haïtien. APENA representatives replaced the interim police in most prisons during the month of June. Except for some escapes during the turnover period, when interim police officers deserted before APENA officers arrived, breakouts have decreased substantially. The prison authority has instituted some critical, immediate reforms, including the separation of women and children from adult males at the National Penitentiary in Port-au-Prince. (They were moved to Fort National.) However, several minors were reportedly beaten while in detention in June, and the failure to segregate prisoners persists in provincial prisons. While recent cases of the beating of prisoners highlight the necessity for improvement in the selection and training of APENA officers, the incidence of prisoner mistreatment has dropped dramatically in comparison with the years of the military government.

Several important steps have been taken by the Haitian government and by international organizations or governments to improve the conditions in Haitian prisons and to ensure that prisoners are detained for periods that are regulated by law. The MICIVIH, with assistance from the UNDP, met with representatives of the Haitian Justice Ministry and has designed a model prison registry, which it has distributed to each of Haiti's fourteen prisons. A senior prison administrator from the French prison service arrived in August to oversee training of permanent prison personnel, the up-keep of prison registers, and overall penal reform. The International Committee of the Red Cross, in conjunction with the Haitian Ministry of Public Works, has started rehabilitating seven prisons, installing water, toilets and showers, cooking facilities, and a medical dispensary. Cells are fumigated, stagnant pools of water filled in. Wooden doors are to be removed and doors with grilles installed in the cells to allow light and air to circulate. A European nongovernmental organization, the Nutrition and Development Office (*Bureau de Nutrition et de Développement*, BND), assures regular food delivery to prisons. Donors already have expressed concern about APENA's ability to feed prisoners once the BND project ends. Arrangements with local doctors provide for immediate medical care in emergency cases.

During visits to four prisons in July and August 1995, it was apparent that conditions had improved substantially since the end of military rule, but also that prisons do not yet meet the internationally accepted U.N. Standard Minimum Rules for the Treatment of Prisoners, nor comply with relevant provisions of the International Covenant on Civil and Political Rights. Prison cells in Cap Haïtien, Fort Liberté and Delmas were extremely overcrowded, with as many as twelve men sleeping in a ten-by-ten-foot cell. Almost no beds or mattresses were available at any prison visited. Prisoners generally received food twice a day and in most cases, had sufficient drinking and bathing water. At Fort Liberté, prisoners have only salt water to wash with and depend upon relatives to provide drinking water. Although arrangements have been made for local hospitals to see sick prisoners, only Cap Haïtien had funds for medicines. In

Gonaïves, after an attempted escape, guards locked several prisoners into a damp fifteen-by-six-foot isolation cell without light or ventilation. The new APENA officers also told us they recently held three minors, ages eleven, fourteen, and fifteen, in a cell with adult men for fifteen days. It took a visit by APENA chief Jean Baptiste Blaise, a former army lieutenant, to put an end to the use of the isolation cell and release the minors.

## ELECTIONS

Haiti's Provisional Electoral Council (Conseil Électoral Provisoire, CEP) held the first elections since Aristide's return on June 25, 1995.<sup>51</sup> The parliamentary and local elections were held despite several delays and considerable controversy over the CEP's handling of voter registration, decisions on the eligibility of political parties and candidates, and the printing of ballots. Although there was wide participation in the election, by twenty-five political parties<sup>52</sup> and over 10,000 candidates, the CEP's poor management led to chaos on election day, a strongly contested vote, and the prolonged absence of a functioning parliament.<sup>53</sup> Make-up and second round elections held in August and September proceeded smoothly, albeit with a lower voter turnout. Protest against the CEP ultimately led to its president's removal, and with a new council president in place, it now must organize presidential elections for late 1995. Following these elections, the Haitian government should follow constitutionally mandated procedures for establishing a permanent electoral council.

Despite some political parties' claims of fraud organized by the CEP or by President Aristide (which some referred to as a "coup d'état through the ballot box"), evidence has not emerged to link the CEP or any other group with a systematic effort to manipulate the vote. The June 25 electoral debacle can be attributed to incompetence and negligence on the part of the CEP, combined with attempts by various political parties to exploit the chaos and frustration that marred election day.<sup>54</sup>

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<sup>51</sup> Although Haiti's 1987 Constitution calls for the establishment of a permanent electoral council, the country's years of instability have prohibited the formation of a permanent, independent institution responsible for organizing elections. A Provisional Electoral Council was named early in 1995 to run parliamentary and local elections.

<sup>52</sup> Many of these "parties" do not have the popular support of a political party in the usual sense. They are dominated by individuals and have limited organization and structure.

<sup>53</sup> For a detailed discussion of human rights conditions prior to the June elections including pre-electoral violence and discussions of electoral procedures, see Human Rights Watch/Americas, *Human Rights Conditions Prior to the June 1995 Elections* (New York; Human Rights Watch, June 1995).

<sup>54</sup> For detailed accounts of the problems associated with the June 25 elections, see: reports from the OAS Electoral Observation Unit; MICIVIH; the Carter Center; and the Washington Office on Haiti/Witness for Peace delegations. Also see statements of Bruce McCollm, President, International Republican Institute, and Gay McDougall, Executive Director of the International Human Rights Law Group to the Senate Foreign Relations Committee, July 12, 1995.

Although there were several cases of violence prior to the June 25, 1995 elections (including attacks on CEP local staff members and some attacks on candidates or supporters of one party by members of other parties), the environment on voting day was not threatened by the violent, government-orchestrated military and paramilitary aggressions that disrupted past elections and in 1987 led to their cancellation. The National Police and the interim police force, together with international peacekeeping forces, cooperated to maintain a relatively peaceful climate as voters labored to find their way to the polls. Nevertheless, one candidate was shot and killed two days after the election, in the Grande Anse region, and later the same day, a former soldier was killed in Port-au-Prince.<sup>55</sup> In some areas, notably in the northwestern towns of Jean-Rabel and Bassin Bleu and in the northern towns of Limbé and Dondon, ballots were destroyed, and voting places and Communal Electoral Offices were attacked, causing the CEP to cancel the vote. Haitian poll watchers representing political parties turned out in impressive numbers to monitor the voting and counting sites, as did international nongovernmental and governmental observers.

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<sup>55</sup> Henock Jean-Charles was a candidate for deputy for the FNCD in Anse d'Hainault. Dumarsais Romelus had served as a colonel in the FAd'H. "Candidate of National Front for Change and Democracy Assassinated," EFE News Agency, June 28, 1995, and Sandra Marquez, "Political Violence on the Rise after Haiti Election," Reuters News Service, June 28, 1995.

The CEP's organizational and management lapses touched most aspects of the June 1995 vote. Registration of voters proceeded in a haphazard manner as the CEP tried to catch up with its own deadlines, faced labor disputes and wage demands from local employees, and contended with the protests of political parties asserting that the registration bureau employees were not politically neutral.<sup>56</sup> The CEP's compensation of voter registration workers for each person registered, which occurred during some portion of the registration process, may have resulted in improper registrations based only on names from lists, rather than on actual registrants. As registration wound down, the president of the CEP, Anselme Rémy claimed that about 1,000,000 voter registration cards had disappeared, and the CEP has not yet produced a satisfactory response to this assertion. Voting day highlighted CEP organizational failings. Ballots were delivered late or not at all in some areas and most voting stations did not open on time. Many registered voters were frustrated in their attempt to cast ballots because their names were not on the registration lists or their voting station had been moved to another location. Numerous candidates were wrongly left off the ballots, and many independent candidates were given generic symbols on the ballots, rather than their own emblem, making it difficult for illiterate voters to identify them. Lack of training in election procedures, from the vote itself to the count, was evident as election-day wore on. Many ballot boxes were not sealed and numbered after the votes had been count at each polling station.

The level of political party and candidate participation in the electoral process for the June elections was very high. Twenty-five political parties and over 12,000 candidates registered despite stringent requirements imposed by the electoral law. Some of the candidates who failed to comply with these requirements were removed during the CEP candidate review process. The CEP failed in most cases to justify the basis for candidate removals during the review period and did not provide sufficient time for appeals of these decisions. The CEP overstepped its authority under the electoral law when confronted with two factions of the same party, the Movement for National Reconstruction (*Mouvement pour la Reconstruction Nationale*, MRN), each claiming title to the party's leadership. Instead of referring the matter to the courts, the CEP ruled that participation in the elections would be allowed only if one faction agreed to being called the MRN Party (*partie*), and the other the MRN Group (*groupement*). The faction that was to be called GMRN agreed to the proposal, while the other rejected it and was then barred from participating by the CEP. Independent candidates had the additional burden of coming up with the equivalent of twenty-five times the fee paid by a candidate affiliated with a legally-admitted party.<sup>57</sup> Those who appealed successfully learned of the favorable decision just a few days before the vote actually occurred, causing them to lose several days of the already brief campaign period. Overall, the extremely short campaign period did not allow voters fully to identify the issues, nor candidates and their planks.

The failure of state television to give non-Lavalas candidates air time during the June election process to speak and debate the issues crucial to Haiti's democratic well-being was troubling. Instead, the national television station provided coverage that favored the Aristide-supported Lavalas coalition, both in terms of airtime and the type of coverage. Prior to the August 13 elections, Haiti's national radio station invited candidates to submit campaign spots.<sup>58</sup>

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<sup>56</sup> For a detailed discussion of the snafus associated with the voter registration process, see Human Rights Watch/Americas, "Human Rights Conditions...."

<sup>57</sup> For instance, candidates running for a deputy seat who claimed party affiliation had to pay 1,000 gourdes (U.S. \$71 at today's rate). An independent candidate running for the same office had to pay 25,000 gourdes (U.S. \$1,775).

<sup>58</sup> The electoral law permits candidates to "use collective means of communication to set out their program." Electoral Law of the Provisional Electoral Council, February 14, 1995, Article 97.

In the wake of the announcement by the CEP that the Around the Table (*Bo Tab La*) coalition had swept virtually all the seats in the June election, several political parties strongly condemned the results.<sup>59</sup> Leaders of twenty-three out of the twenty-five political parties registered with the CEP (all of which had suffered significant losses in the election) vowed to boycott future elections unless a new vote were held under a completely revamped electoral commission. Prospects that the political process could come to an abrupt halt, or unravel in political violence prompted the U.S. and the U.N. to press both President Aristide and political leaders for a compromise. The CEP took some measures to redress the problems, the most important of which were the resignation in late July of controversial CEP President Anselme Rémy and another of its contested members, Jean-Francis Mérésier. These changes undoubtedly contributed to the smoother running of make-up elections of August 13, and the second round of the parliamentary elections on September 17, 1995.

Make-up elections for areas where the vote had been canceled were held on August 13. The Organization of American States estimated the turnout at about 35 percent, noting that good security in all districts where the vote was held "contributed to the quiet situation that prevailed all over the country." Low voter interest may have been due to a political context dominated by recriminations from political parties, the absence of political campaigning, and a normal drop-off in interest in a second-round election. The CEP made minimal efforts to educate and inform the voting public. National Coalition for Haitian Refugee observers of the August elections noted key improvements in all areas where the June 25 elections had failed. Notably, voting stations opened as scheduled; by the time they opened, ballots had already been delivered and procedures were carefully followed, indicating that workers had received training and proper instructions. Voters did not have to wait long before they voted. Security was assured at all times by Haiti's National Police, interim police, and international forces, including after the polls closed and during transportation of ballots cast and other materials to the Communal Electoral Bureau. The well-managed vote proceeded with little controversy.

Second-round elections for the parliament were held in most of the country on September 17. The turnout was approximately 30 percent according to the CEP and there were scattered organizational foul-ups but generally the August 13 improvements held. The leadership of most political parties urged a boycott of the elections but at least half their candidates rejected the call and ran anyway.

#### IV. INTERNATIONAL AND U.S. POLICY

Beyond leading to the departure of prominent military leaders, the significant international presence first of the U.S.-led Multinational Force, followed by UNMIH, contributed to a marked reduction in human rights violations in Haiti. Yet, given the fragility of Haiti's nascent democratic institutions, the relative calm created by this presence may falter following the withdrawal of international forces. The United Nations now intends to pull out its 6,000 troops and 850 Civilian Police at the end of February 1996, shortly after the inauguration of the new Haitian president. We urge the U.N. to undertake a gradual removal of peacekeepers at that point, which will allow the recently installed Haitian government best to lay firm foundations for the future. We also recommend that the U.N./OAS International Civilian Mission in Haiti (MICIVIH) remain for several months beyond February 1996, when its mandate is currently due to expire.

Despite the presence of coordinated international efforts in Haiti, including those of the U.N., OAS, European Union and others, the high profile U.S. of involvement in Haiti overshadows that of other countries or institutions. The U.S. presence has included leadership of the multinational forces and the international police monitors, continued significant involvement in UNMIH (under U.S. Gen. Joseph Kinzer's command), with almost 3,000 U.S. troops (including several Special Forces teams), and touches virtually every aspect of institutional reform. As discussed

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<sup>59</sup> The Bo Tab La coalition includes the Lavalas Political Organization (*Organization Politique Lavalas*, OPL) and two smaller entities: Movement to Organize the Country (*Mouvement pour l'Organisation du Pays*, MOP), and Open Doors Party (*Pati Louvri Barye*, PLB). President Aristide endorsed the Bo Tab La coalition.

Under Haiti's electoral law, candidates for the Senate and the House who win an absolute majority (50 percent of the votes cast plus one) win the seat outright. Run-off elections are held between the two candidates with the most votes in the district where an absolute majority was not obtained by any candidate.

above, the U.S. government is shaping the evolution of Haiti's new National Police Force and reforms of the Haitian judiciary and prison system. These reforms are critical to Haiti's future, and particularly to the protection of human rights in Haiti. The U.S. also contributed significant funds directly to the Haitian electoral authority for local and parliamentary elections, and financed efforts by the International Republican Institute, the National Democratic Institute, and some elements of the OAS election monitoring effort. Among many other programs, the U.S. has supported privatization efforts, development projects, a communal governance program, and the IOM military demobilization effort.

The arrival of U.S. troops in Haiti in September 1994 dramatically improved Haiti's human rights situation. Yet, while the military leaders who had controlled Haiti fled, the MNF's initial rules of engagement called for a "cooperative" relationship between the U.S. forces and the Haitian soldiers who had repressed the population for the past three years. Cooperation ended shortly after the intervention when a Marine platoon in Cap-Haïtien shot and killed ten men who were members of the Haitian police or attachés after one of them made a threatening movement toward the Marines.

The Haitian public generally supported the U.S. presence but at times grew frustrated by the releases from custody of Haitians who had been accused of human rights violations and previously turned over to U.S. troops.<sup>60</sup> The MNF's reluctance in some parts of the country to search aggressively for weapons also disappointed some Haitians. Other issues, like the case of U.S. Capt. Lawrence Rockwood, the ties between FRAPH leader Emmanuel Constant and the CIA, and the recent revelation of links between the DEA and an alleged assassin of the Minister of Justice Guy Malary (on October 14, 1993), periodically have tarnished the U.S.'s image.<sup>61</sup> The population, however, credits the U.S.-led multinational force for ending the brutal military government.

The U.S. efforts at institutional reform are still evolving, but in some respects they have paid insufficient attention to human rights concerns. Despite earlier pledges to support the truth and justice commission with U.S.\$250,000, in September of 1995 (three months before the commission's mandate expires) the U.S. is now offering the commission U.S.\$50,000, and as of early October, the U.S. had yet to provide these funds to the commission.) The U.S. contribution to the creation of the interim police force, for example, included inadequate human rights screening of former Haitian soldiers for their involvement in previous human rights abuses.

The United Nations Security Council voted in July 1995 to extend the United Nations Mission in Haiti until February 29, 1996.<sup>62</sup> UNMIH's presence in Haiti has been positive, contributing to an environment of relative security, where individual freedoms have begun to flourish. While UNMIH's mandate prohibited its troops or CivPol from taking an active part in law enforcement, they have repeatedly filled that role, either by accompanying Haitian security forces or patrolling individually. The CivPol serve a particularly important function in Haiti in that they must act as role models and on-the-job trainers for Haiti's new police. In that respect, they have demonstrated strengths, particularly where French or Créole speaking CivPol are involved, and weaknesses, where units were limited by language barriers or demonstrated poor discipline themselves. Both UNMIH troops and CivPol contributed to the logistical and security apparatus for the parliamentary and local elections. In addition to the UNMIH presence, several United Nations agencies have contributed to the restructuring of Haiti. Most prominently, the U.N. continued to support the International Civilian Mission in Haiti (MICIVIH), a joint U.N. and OAS human rights monitoring mission. A U.N. Technical Assistance team worked side by side with the Provisional Electoral Council for the election effort.

The MICIVIH returned to Haiti in late 1994. The MICIVIH previously had completed two periods of human rights monitoring in Haiti, but had been expelled by the military government. The MICIVIH's leadership and significant,

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<sup>60</sup> In most of these cases, the U.S. military turned over detainees to the crumbling Haitian court system, that was still largely controlled by authorities appointed by and sympathetic to military rule.

<sup>61</sup> See discussion of this case above at *Restructuring Haiti's Prison System*.

<sup>62</sup> U.N. Security Council Resolution 1007, July 31, 1995.

respected work in Haiti has ensured that human rights concerns remain a critical focal point. At the same time, the MICIVIH has not fully taken advantage of its potential to act as a public voice for human rights concerns, preferring in most cases to work behind the scenes. The 190 MICIVIH monitors are posted throughout Haiti, gathering recent human rights information. Some MICIVIH staffers have been assigned to assist the truth and justice commission. The MICIVIH also has undertaken human rights education efforts and has provided support to nongovernmental organizations and others with human rights training. Given the limited resources of Haiti's nongovernmental human rights organizations, the MICIVIH could contribute a great deal to improved local human rights awareness, monitoring and advocacy by undertaking a stepped up program of human rights education outreach, and by preparing extensive courses to assist interested Haitians in forming and running nongovernmental human rights organizations.

As discussed above, the OAS Election Monitoring unit did an excellent job of posting a significant number of impartial observers throughout the country and thoroughly reporting on their findings. They are now preparing to monitor the presidential elections that probably will be held late in the year.

The European Union is beginning to play a more significant role in Haiti, particularly with development assistance. It has a special program to address human rights and elections concerns, but appears to be most active in the elections area, particularly with a grant to the CEP's Unit for Surveillance and Control and support for several members of the OAS's electoral observation team.

The list of countries contributing to reform, election, and development efforts in Haiti is long. On the human rights front, several countries stand out because they, unlike so many others, are supporting Haiti's truth and justice commission. Canada, France, and Switzerland are among the countries that have provided financial support for the commission. Most recently, the U.S. pledged U.S.\$50,000 to the commission.

### **U.S. Refugee Policy**

Three years of military repression drove tens of thousands of Haitians to flee the country, many in small boats. The U.S. government interdicted approximately 64,000 of these asylum-seekers.<sup>63</sup> Sea departures decreased dramatically after the September 1994 intervention; approximately 1,000 Haitians are known to have left by boat since the return of President Aristide in October 1994. Despite the diminished refugee crisis after the restoration of elected government to Haiti, the U.S. government continued practices violative of international refugee protections, particularly in the treatment of Haitian detainees at the U.S. Naval Base in Guantánamo, Cuba.

The U.S. Coast Guard interdicted fewer than 500 Haitians between October 1994 and September 1995. Approximately 200 of these were repatriated immediately, without the benefit of a refugee hearing (to determine whether the would-be refugee has a well-founded fear of political persecution) in violation of international law and despite the availability of shipboard refugee screening which have been in place since June for interdicted Cubans.<sup>64</sup>

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<sup>63</sup> Roughly 11,000 of these were brought to the U.S., including 10,500 from 1992 refugee pre-screening on Guantánamo and 604 approved refugees processed aboard the U.S.S. Comfort in June 1994.

<sup>64</sup> From October 1994 to September 1995, at least 280 interdicted Haitians were taken into INS custody: roughly 270 of these were found near U.S. beaches and can apply for asylum; about a dozen others were taken into custody in suspected smuggling cases. At least 203 Haitians interdicted at sea have been summarily repatriated since September 1994.



From 1991 to 1994, most Haitians fleeing by sea were interdicted (or in some cases rescued) by the U.S. Coast Guard which, for the first few months of the military government, took them to the U.S. Naval Base at Guantánamo Bay, Cuba. There, U.S. officials interviewed approximately 30,000 Haitians to determine whether they should be considered refugees. About one-third of these Haitians were admitted into the U.S. to pursue their claim to political asylum; the rest were repatriated. After adopting several other approaches, in June 1994, the U.S. opted for a safe haven policy, taking all interdicted Haitians to Guantánamo holding camps which would eventually hold more than 20,000 Haitians under this policy. The safe haven policy was appropriate to manage responsibly a large outflow of asylum-seekers. However, the U.S. refusal to conduct determinations of refugee status made the camps resemble detention centers more than safe havens, and forced Haitians to choose between indefinite detention and “voluntary” repatriation.<sup>65</sup> The administration thus hoped to discourage further sea departures and convince Haitians at Guantánamo to return voluntarily to Haiti. By the end of 1994, more than 15,000 of the camp’s total population had voluntarily returned.

In January 1995, the Clinton administration forcibly repatriated nearly 4,000 Haitians remaining in Guantánamo, disregarding their right to a fair hearing to determine their refugee status.<sup>66</sup> The repatriations prompted the United Nations High Commissioner for Refugees (UNHCR), in an extremely unusual move, to publicly disassociate itself from the repatriation process. U.S. officials justified the repatriations by saying that “democracy” had been restored to Haiti, but this explanation disregarded the fact that the right to an individual refugee hearing is not obviated by the presence of an elected government, under which individual acts of persecution can still occur. The ongoing insecurity and violence in the months following the military intervention highlighted the potential risk of persecution faced by repatriated Haitians.

The UNHCR did work with the U.S. government in a program to evaluate the refugee status of nearly 300 unaccompanied minors in light of their “best interests.”<sup>67</sup> Discrimination against Haitians became apparent when Attorney General Janet Reno granted Cuban unaccompanied minors, families and the elderly humanitarian parole into the U.S. because of harsh camp conditions in Guantánamo, but refused to extend similar relief to their Haitian counterparts. In contrast, Haitian minors who turned eighteen in the camps (according to U.S. records) were abruptly pulled from the unaccompanied minors program and forcibly returned to Haiti without regard to their claim to refugee status or the location of their family members.

In January and February 1995, there were credible reports that some American military personnel at Guantánamo were involved in incidents of physical and psychological abuse of the minors, including the use of solitary confinement, shackling, “cracking” (stepping on the back of a child cuffed and held supine), and verbal abuse. A military investigation into the allegations found no evidence of systematic abuse, serious assaults, or misuse of administrative detention, according to a March 1 press release by the U.S. Atlantic Command. Human Rights Watch/Americas’ April 1995 Freedom of Information Act (FOIA) petitions for copies of the military investigation report and resulting disciplinary action, and for Administrative Segregation Policies and Procedures, have been denied and are under appeal.

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<sup>65</sup> The determination of refugee status does not presume that would-be refugees have a right to be resettled in any particular country, but international law adopted by the U.S. should protect them from being forcibly returned to a country where they have a well-founded fear of persecution, known as the right of non-refoulement.

<sup>66</sup> Some of the Haitians were briefly interviewed by INS officials, a process which resulted in temporary exemption from forcible repatriation for just under one hundred people. Unaccompanied minors and those with specific medical conditions also were exempted temporarily from the repatriations.

<sup>67</sup> Of these, 132 were paroled into the U.S. and 159 repatriated (many reportedly involuntarily) to Haiti.

One of the serious problems with the Guantánamo camps through 1995 was the lack of reasonable access for independent monitoring. Nongovernmental organizations, with few exceptions, were allowed only brief visits which did not permit the private interviews and rigorous research methods that are the norm for field work by Human Rights Watch and the National Coalition for Haitian Refugees. Beginning in August 1994, we repeatedly requested permission to visit Guantánamo to interview Haitian and Cuban detainees. Our requests were not approved until nine months later, by which time the U.S. administration had forcibly repatriated most of the remaining Haitians. In early October 1995, only fifty-nine Haitians remained at Guantánamo. It is remarkable to note that of the over 20,000 Haitians taken to Guantánamo, not a single person left the camps as a recognized refugee in spite of having fled a brutal military government.

### **Recent Expulsions of Haitians by the Dominican Republic**

Haiti's closest neighbor, the Dominican Republic, continues to be a critical player in Haiti's internal politics. The country harbors several of Haiti's most notorious thugs, including former military officers and leaders of the tonton-macoutes. Recent incidents have highlighted tensions between the Dominican government and Haitians who legally reside in the Dominican Republic. On September 14, 1995, heavily armed agents of the National Directorate of Drug Control (*Dirección Nacional de Control de las Drogas*, DNCD) attempted to raid the home of one of the country's most prominent advocates for Haitian rights, Episcopalian priest Edwin Paraison. Paraison presented the agents with evidence of his diplomatic status as Haitian consul in the city of Barahona, and the agents then stated that they had mistaken Paraison's vehicle for that of an alleged drug trafficker.<sup>68</sup>

A Dominican government expulsion order, issued in 1991, remains in effect and has caused concern as approximately 1,000 Haitians (many of whom had obtained legal residency in the Dominican Republic) have been arrested, often mistreated, and then expelled from the Dominican Republic.<sup>69</sup> The Dominican authorities have expelled some Dominican citizens (who have one Haitian and one Dominican parent).<sup>70</sup> We have received credible reports that in some cases, the Dominican authorities exacted several days of forced labor from the Haitian detainees held at the Dominican prison in Dajabon before expelling them across the border, to the Haitian city of Ouanaminthe. In response to the high numbers of Haitians being brought to the border by Dominican authorities, frequently without any resources, or even sufficient clothing and shoes, the IOM announced an emergency program to assist repatriated Haitians in traveling to their hometowns and reinsertion in those communities. As of late August, the IOM program had provided assistance to approximately 500 expelled Haitians.<sup>71</sup>

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<sup>68</sup> "Perquisition policiere à la résidence du consul haitien en République Dominicaine," Agence Haitienne de Presse, September 22, 1995.

<sup>69</sup> Presidential Decree 233-91 of June 13, 1991 remains in effect. While the decree calls for the expulsions of foreigners working in the sugar cane industry who are under sixteen and over sixty, it has been used to justify the expulsion of Haitians of all ages. The Dominican government campaign carried out from June to September 1991 included the expulsion of approximately 8,000 Haitians or people of Haitian descent. Another 40,000 to 50,000 fled to Haiti, fearing expulsion and the police abuses accompanying the campaign.

<sup>70</sup> Dan Coughlin, "Haiti-Dominican Republic: Haitians Forcibly Repatriated," Inter Press Service, August 27, 1995.

<sup>71</sup> "Programme d'urgence de l'OIM en faveur des haïtiens refoulés de la Dominique," Agence Haitienne de Presse, August 22, 1995.

## V. ACKNOWLEDGEMENTS

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### *Human Rights Watch/Americas*

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Ann S. Johnson is the development director; Gara LaMarche is the associate director; Juan E. Méndez is general counsel; Susan Osnos is the communications director; and Derrick Wong is the finance and administration director. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. José Miguel Vivanco is executive director; Anne Manuel is deputy director; Joel Solomon is research director, James Cavallaro is Brazil director, Sebastian Brett, Sarah A. DeCosse, Robin Kirk, and Gretta Tovar Siebentritt are research associates; Michael Bochenek is the Leonard T. Sandler Fellow; Steven Hernández and Paul Paz y Miño are associates. Peter D. Bell is the chair of the advisory committee and Stephen L. Kass and Marina Pinto Kaufman are vice chairs.

### *National Coalition for Haitian Refugees*

The National Coalition for Haitian Refugees is a not-for-profit organization that seeks to promote and protect the rights of Haitian refugees and Haitian-Americans under U.S. and international law, advance respect for human rights, the rule of law, and support for civil and democratic society in Haiti. Its executive director is Jocelyn McCalla and its associate director is Anne Fuller. The NCHR has offices in New York and Port-au-Prince and publishes frequent reports on human rights and refugee affairs which are available upon request.