

HAITI

THIRST FOR JUSTICE

A Decade of Impunity in Haiti

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*The one who delivers the blow forgets. The one who bears its mark remembers.
Bay kou bliye. Pote mak sonje.*

I. SUMMARY AND RECOMMENDATIONS

Summary

Haiti's turmoil over the last decade demonstrates the insidious effect of impunity for violent human rights abuse. Despite repeated official promises of justice and untold opportunities to fulfill those vows, prosecutions for human rights crimes have been rare. As each new military leader took up residence in Port-au-Prince's sparkling Presidential Palace, the unmistakable lesson of the past was that there would be no serious price to pay for political violence. Getting away with murder was the rule.

Haiti's two democratically elected governments have struggled under the weight of entrenched impunity, making tentative steps toward ending the legacy of failed justice. Today, conditions are better than ever for breaking Haiti's pattern of impunity. Unfortunately however, Haiti's government, by failing to make ending impunity a top priority, is letting the opportunity to establish accountability slip away. And the U.S. government, to its great shame, has erected its own roadblocks to truth and justice in Haiti.

The duty to prosecute and punish human rights violators is solidly grounded in international law. The Haitian government's obligation also arises directly from the suffering of tens of thousands who faced death, torture, rape, or arbitrary detention at the hands of Haitian troops and their allies. Haitian victims are thirsty for justice and deserve their government's and the international community's best efforts to provide an accounting of their ordeal and those responsible for it. Beyond truth-telling, the Haitian government should also make every effort to prosecute the perpetrators of human rights violations, to the full extent of the law and with full due process protections. General amnesties, such as those encouraged by the U.S. government in Haiti but ultimately rejected by the Haitian parliament, are anathema to a society that is respectful of human rights, since they seek to deny individual victims the right of redress for their suffering. Of even greater danger to Haiti today is the prospect of a de facto amnesty through multiple failures to embrace a comprehensive policy against impunity.

Human Rights Watch/Americas recognizes that amnesties and other measures designed to preclude the transparent establishment of responsibility for human rights crimes frequently are embraced in the name of avoiding "insecurity" and "instability." But as Haiti's tumultuous history amply shows, a government's decision to forsake accountability for political expediency only encourages further abuse and instability. Only the establishment of the rule of law offers the prospect of breaking the cycle of abuse and amnesia that has condemned Haiti to the deadly pattern detailed in this report.

Under Haiti's military rulers, in the absence of the rule of law and an official moral order against which to stigmatize abusive officials, efforts to establish the truth were half-hearted and unsuccessful. The few show trials did little to illuminate the workings of past repressive governments and produced few convictions. Investigative commissions either whitewashed the army's role in abuse or dissolved without a trace. More commonly, repressive military leaders were simply sent into exile as a substitute for justice and full exposure of their crimes.

Persistent impunity also contributed to periodic spasms of vigilante violence and summary revenge. Seeing no prospect of justice in the Haitian courts, the Haitian people periodically took matters into their own hands. This vigilante violence reinforced the army's determination not to relinquish power and undermined the difficult, painstaking work of building the rule of law.

For most of the past ten years, the U.S. government—by far the dominant external force in Haiti—pursued a strategy of placating the very forces that were ruthlessly suppressing the democratic aspirations of the Haitian people. Washington's readiness to overlook official violence stemmed from its willingness to oversee a superficial "transition to

democracy” on the cheap. Convinced that the right combination of persuasion and enticement could convince the army and its violent allies to tolerate civilian rule, Washington resisted pressing to bring the military authors of past abuses to justice. Illustrative was the U.S. government's hard push for a broad amnesty for the Haitian military officials who were responsible for the three-year reign of terror following President Jean-Bertrand Aristide's ouster in September 1991. Washington's reasons ranged from a misguided belief that the army was the only institution capable of securing order in Haiti to a realpolitik calculation that the army was necessary to keep leftist political forces in check. The U.S. also contributed to the formation of organizations that were later responsible for severe human rights abuses, including the National Intelligence Service (*Service d'Intelligence Nationale*, hereafter SIN) and the paramilitary Front for the Advancement and Progress of Haiti (*Front pour l'Avancement et le Progrès d'Haïti*, hereafter FRAPH), and then downplayed abuses to justify denying terrorized Haitians refugee status.

This year, for the first time, one freely elected Haitian president, Jean-Bertrand Aristide, has handed the reins of power to another freely elected president, René Préval. The restoration of Aristide to power on October 15, 1994, and the peaceful transition to Préval, on February 7, 1996, represents Haiti's best opportunity to take a firm stand against impunity. As political repression has diminished, civil society has flourished. More the statesman after three years in exile, Aristide during most of his sixteen months back in office repeatedly and insistently preached the need to avoid the popular killings that had marred his first year in office and that so often stymied past efforts to establish justice. “No to violence, yes to reconciliation” became his mantra. But while Aristide and Préval regularly urged reconciliation and justice, they failed in large part to follow through on their rhetoric. The government prosecuted a handful of minor actors in some of the most prominent human rights violations, but for the most part, impunity remained the rule and human rights victims were left thirsting for justice.

The Haitian government made other efforts to establish accountability, but all of these have been half-hearted. For example, President Aristide backed the formation of a truth and justice commission in 1994. After stumbling for several months, the commission gathered sufficient funds, conducted field research, and ultimately prepared a lengthy report on human rights violations under the military government. While the Préval government released the commission's recommendations, the remainder of the commission's 1,200-page report has not been published and remains shelved in the Justice Ministry. President Aristide also opened complaint offices (*bureaux de doléances*) for human rights victims, but these were mismanaged, underfunded, and then closed, with little effort to transfer files to local prosecutors. Scores of victims who had come forward to give their testimony on abuses during the military government to representatives of the truth commission or complaint bureaus, or who had reported abuses to human rights observers with the International Civilian Mission of the Organization of American States and the United Nations (*Mission Civile Internationale en Haïti, OEA/ONU*, hereafter MICIVIH), wrongly presumed that their cases would be investigated further, that they might receive reparations, and that their abusers would face criminal penalties. The justice minister declared in June 1996 that an earlier promise to use a portion of the ministry's budget for reparations could not be fulfilled because the funds had never been allocated. Scores of victims who presented criminal complaints in Haitian courts met similar inaction in most cases.

Nonetheless, the successful prosecution of even a few human rights offenders demonstrated the possibility that when the government chose to do so, it could make genuine progress against impunity. While the government's rhetorical commitment to end impunity was applauded at the outset, its failure to follow through and provide justice, or even truth, for victims of the military government called into question its determination to tackle this fundamental problem.

Haiti's return to democratic government was made possible by a substantial international presence. However, Washington and the international community seemed content to settle for the arrival of elected government with little regard for establishing accountability for past human rights violations. The multinational forces leading the intervention routinely detained suspected human rights violators, but released them without turning them over to the Haitian legal system. Even today, as Haiti's army has been effectively dismantled and an international military presence has at least temporarily pushed abusive forces aside, Washington's apparent belief that democratic institutions and the

rule of law can be built without accountability for the atrocities of the recent past continues to jeopardize Haiti's future. As noted, the U.S. government continued to support the adoption of a broad amnesty as Aristide returned to Haiti.

More troubling still, the U.S. government directly impeded the prosecution of human rights crimes in Haiti by refusing to return documents seized from FRAPH and Haitian military headquarters and by reaching a secret settlement with FRAPH's leader, Emmanuel Constant, which allowed Constant to remain in the United States with a work permit while evading deportation to Haiti and criminal prosecution for human rights abuses there. The U.S. government's cover-up of the crimes of FRAPH, which was founded by Constant while he was allegedly on the Central Intelligence Agency (CIA) payroll, suggests that the U.S. government is trying to prevent revelation of its own complicity in violent abuses in Haiti. For example, U.S. officials who were negotiating with the Haitian government regarding the return of the FRAPH documents, while conceding that the material belongs to the Haitian government, have maintained that U.S. citizens' names must be redacted from the materials before they are returned to Haiti. Removing names would conceal whether U.S. citizens were themselves party to human rights crimes in Haiti. By delaying the return of these materials to Haiti for almost two years, the Clinton administration has denied the truth commission and Haitian prosecutors an extremely rich source of information on recent human rights abuses, including the critical question of chain of command.

Furthermore, while the U.S. government made significant contributions to institution building in Haiti, Washington apparently did not consider accountability a top priority. Washington's multimillion dollar aid package for the new government included only \$50,000 for the truth commission, and this sum was offered only a month before the commission's mandate expired and for materials previously provided by other donors. The U.S. funded a five-year \$18 million program for the administration of justice that the U.S. ambassador called Washington's most significant contribution to ending impunity. However, this program was poorly conceived and poorly administered in its first year, and did not dedicate resources directly to the prosecution of past human rights violations. At the end of the first year, the U.S. government had replaced several staff members. It is too soon to tell whether this program will make an effective contribution against impunity in Haiti.

Haiti's democratic governments' failures to hold past human rights violators accountable for their actions once again has raised the spectre of insecurity in Haiti. Having never faced prosecution for human rights abuses, demobilized Haitian soldiers and former paramilitary troops find few impediments to continuing criminal acts. This impunity has undermined historic steps taken by Haiti's democratic government. Aristide dismissed virtually the entire military leadership (every officer above the rank of major), abolished for a second time the post of section chief and, despite the Clinton administration's desire to maintain a military counterbalance to popular rule, effectively dissolved the army. Yet, the lack of prosecutions and trials of soldiers dismissed from the security forces, and the failure to disarm them, left an alienated, disgruntled, and dangerous opposition to civilian rule that has already plagued the fledgling elected government and may contribute to greater problems once international troops depart.

Haiti's experience illustrates the dangers of ignoring accountability for past violent abuse in the haste to secure a transition to democracy. Each time a supposedly reformist regime took power, Haitians were asked to forget the past, to look forward to a new era. But rather than build the rule of law, sooner or later this impunity emboldened reactionary forces to resume political killing. It is time for this official indulgence of political killers to end.

Recommendations

To the Haitian Government

- As a first step toward establishing accountability, the government must make known all that can be reliably established about gross abuses of human rights. For this reason, we urge the prompt public release of the report of the Commission for Truth and Justice, *Si M Pa Rele* ("If I Don't Cry Out," from a familiar Haitian proverb highlighting the need to speak out about injustice).

- The president should provide full support for the prompt initiation of criminal proceedings against alleged perpetrators of serious human rights abuses named in the truth commission report. Given the number of cases, the government should establish special criminal court sessions in all departments or a special tribunal to handle criminal complaints, as recommended by the truth commission. Those human rights violations that the commission described as crimes against humanity should be prosecuted as a matter of utmost urgency.
- The president should persist in seeking the return of documents that U.S. troops seized from FRAPH and Haitian military headquarters in the fall of 1994.
- The government should provide a staff, financial backing, office space and full support to the committee headed by former truth commissioner and justice minister René Magloire to ensure adoption of the truth commission recommendations.
- Similarly, the Office of Citizen Protection, under the direction of Louis Roy, should be given sufficient resources to assist citizens complaining of human rights abuses.
- The government should act promptly to ratify both the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Optional Protocol to the International Covenant on Civil and Political Rights.
- Urgent steps should be taken to establish accountability for sexual violence committed by the military government and paramilitary agents. The government's ratification this year of the Inter-American Convention for the Elimination of Violence against Women is an important step that should be followed by: the enactment of legislation to redefine rape as a crime against the person rather than a crime against morals; steps to improve victims' access to forensic examinations; the devotion of sufficient resources to train and sensitize judicial and police personnel on documenting sexual violence; and a campaign to publicize prohibitions of sexual violence.
- A comprehensive policy against impunity is needed to overcome a weak judicial system plagued by minimal material resources and a history of corruption; infrequent criminal court sessions; and poor investigative capacity. The government should devote sufficient resources to building the independence of the judiciary; increasing the number and efficiency of prosecutors; ensuring that legal proceedings are fully understandable to those who speak only Haitian Creole; mobilizing police to prevent acts of popular violence; and modernizing Haiti's archaic legal codes to enshrine full due process protections for all defendants.
- As the government faces the challenge of prosecuting past human rights abusers and trying to establish the rule of law in Haiti, it should ensure that full due process protections are available to all defendants. We urge the Justice Ministry to take steps to prevent the issuance of arrest warrants with insufficient justification, as has occurred in several cases. The Justice Ministry also should make special efforts to ensure the security of victims, witnesses, and judicial authorities.
- More frequent criminal court sessions are desperately needed, since the enormous delays between sessions now contribute to lengthy pre-trial detentions and long delays in concluding criminal cases.
- Abusive members of the Haitian National Police rarely have been brought to trial. We recommend that the Justice Ministry adopt a vigorous and public posture against ongoing police abuse and prosecute each case to the full extent of the law. It is also important to commence criminal prosecutions in all cases of vigilante violence.
- We urge the government to issue arrest warrants and invoke extradition agreements to secure custody of indicted defendants. The government should request the extradition of Col. Michel François (the former Port-au-Prince police chief) and Franck Romain (the former mayor of Port-au-Prince who was implicated in a 1988

massacre) from Honduras and should submit a revised extradition request for FRAPH leader Emmanuel Constant to the United States government.

To the United States

- We urge the U.S. government immediately to return to the Haitian government all materials that were seized from FRAPH and Haitian military offices in the fall of 1994, without any redaction of information or U.S. citizens' names. The return of these materials would assist the Haitian government in prosecuting abusive former Haitian soldiers and members of FRAPH.
- We urge the U.S. government promptly to deport FRAPH leader Emmanuel Constant to Haiti, where he is wanted for human rights abuses, including torture and extrajudicial execution. The U.S. government should offer full collaboration to the Haitian government to ensure Constant's safety and right to a fair trial. Meanwhile, the details of any settlement or agreement between Constant and the U.S. government should be made public, particularly any details regarding Constant's relationship with the CIA.
- The U.S. government must examine its own involvement in human rights abuses in Haiti. The Clinton administration should launch a thorough and impartial investigation into allegations that agents or units funded by the CIA, the Drug Enforcement Administration (DEA), and the Defense Intelligence Agency (DIA) were involved in serious human rights violations. The findings of such an investigation should be made public and disciplinary or criminal action taken where appropriate. U.S. government documents regarding human rights violations committed by the SIN (the National Intelligence Service) and FRAPH should be declassified to allow informed public debate about U.S. policy towards Haiti.
- The U.S. government should, at a minimum, demonstrate support for the truth commission by offering the Haitian government sufficient funding for the publication and distribution of the text and annexes of the report.

To the European Union, Canada and other countries

- International funding is urgently needed to support the Haitian judicial system. A primary focus of this assistance should be the establishment of regular criminal court sessions throughout Haiti (the last one in Gonaïves was held in 1991), as well as special criminal court sessions or the creation of a special tribunal for the purpose of prosecuting human rights abuses.
- Known perpetrators of serious human rights violations, such as Col. Michel François and Franck Romain have fled criminal prosecutions in Haiti. François and Romain first sought refuge in the Dominican Republic and then were granted political asylum in Honduras. Like FRAPH leader Emmanuel Constant, who remains in comfortable exile in the United States, these notorious human rights violators should be returned to Haiti to stand trial.

II. IMPUNITY SINCE THE FALL OF THE DUVALIER FAMILY DICTATORSHIP

The Twenty-Nine Year Duvalier Dictatorship Ends with Jean-Claude Duvalier's Flight, February 7, 1986

Haiti's modern pattern of impunity began with the failure to prosecute those responsible for severe human rights abuses committed during the ruthless twenty-nine-year Duvalier dynasty.¹ "President-for-Life" François (Papa

¹ This report draws extensively on a series of reports published by Human Rights Watch, through its regional division,

Doc) Duvalier, who assumed power in 1957, and his son, Jean-Claude (Baby Doc) Duvalier, who took office at the age of nineteen upon his father's death in 1971 and remained in power until February 7, 1986, are estimated to have ordered the deaths of between twenty and thirty thousand Haitian civilians. The brutality of their government created the modern Haitian diaspora, driving hundreds of thousands of Haitians into exile in Canada, France, the United States, the Dominican Republic, and elsewhere. Official torture and murder were commonplace. The Duvaliers stunted civil society with harsh repression of any signs of independence among political parties, trade unions, and the press.

The Duvaliers created multiple military and paramilitary institutions to impose their will on the civilian population and to avoid creating a single center of power outside the presidency. These included several units of the army: the Presidential Guard, the Casernes Dessalines, the "Léopards," and the police (which was part of the military). As a counterweight to the army, Duvalier *père* created the paramilitary Volunteers for National Security, the so-called Tontons Macoutes, whose membership and power ultimately dwarfed that of the army. At the local level, section chiefs (*chefs de sections*, rural sheriffs) exercised control and presided in often corrupt and violent fashion over each of Haiti's 565 rural sections.

The Duvaliers' firm control of governmental institutions extended to the prisons and the judicial system, both of which took an active role in state repression. Rather than serve a public desperate for justice, the courts and prison authorities collaborated in a system of corruption, extortion, torture, and death. Their actions, and those of their military and paramilitary counterparts, enjoyed absolute impunity.

Human Rights Watch/Americas (formerly Americas Watch), together with the National Coalition for Haitian Rights (formerly the National Coalition for Haitian Refugees). Reports relied upon include: Human Rights Watch/Americas and National Coalition for Haitian Rights, "Haiti: Human Rights After President Aristide's Return" (October 1995); Human Rights Watch/Americas and National Coalition for Haitian Refugees, "Haiti: Security Compromised: Recycled Haitian Soldiers on the Police Front Line" (March 1995); Human Rights Watch/Americas and National Coalition for Haitian Refugees, "Rape in Haiti: A Weapon of Terror" (July 1994); Human Rights Watch/Americas and National Coalition for Haitian Refugees, "Terror Prevails in Haiti: Human Rights Violations and Failed Diplomacy" (April 1994); Americas Watch and National Coalition for Haitian Refugees, *Silencing a People: The Destruction of Civil Society in Haiti* (February 1993); Americas Watch, National Coalition for Haitian Refugees, and Physicians for Human Rights, *Return to the Darkest Days: Human Rights in Haiti Since the Coup* (December 1991); Americas Watch, National Coalition for Haitian Refugees, and Caribbean Rights, "Haiti: The Aristide Government's Human Rights Record" (November 1991); Americas Watch and National Coalition for Haitian Refugees, "In the Army's Hands: Human Rights in Haiti on the Eve of the Elections" (December 1990); Americas Watch, National Coalition for Haitian Refugees, Caribbean Rights, and the International Commission of Jurists, "Reverting to Despotism: Human Rights in Haiti" (March 1990); Americas Watch, National Coalition for Haitian Refugees, and Caribbean Rights, *The More Things Change...Human Rights in Haiti* (February 1989); Americas Watch and National Coalition for Haitian Refugees, "Haiti: Terror and the 1987 Elections" (November 1987); Americas Watch and National Coalition for Haitian Refugees, *Haiti: Duvalierism Since Duvalier* (October 1986).

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Despite the transparent brutality of the Duvalier dictatorship, the Reagan administration regularly certified that the human rights practices of the Duvalier government were improving sufficiently to warrant the granting of economic assistance. U.S. aid to Haiti was conditioned by law on a presidential determination that the Haitian government was “making progress toward improving the human rights situation in Haiti.”² But the Reagan administration’s overriding concern with staving off a possible leftist government in Haiti and the flow of Haitian “boat people” to the United States left the truth, not to mention any quest for justice, an early casualty of the certification process.³

Visible discontent with the Duvalier dynasty began to grow in the 1980s. The spark that ignited Haiti's nascent opposition movement was the army's killing of four high-school students while suppressing a demonstration in the central Haitian city of Gonaïves in November 1985. When in late January 1986 the Reagan administration finally decided not to certify the Duvalier government’s compliance with U.S. human rights conditions, the dictator's fate was sealed. Jean-Claude Duvalier and his family fled Haiti on February 7, 1986, boarding a U.S. military plane on the first leg of their trip to comfortable exile in France. He faced no criminal actions for the atrocities he directed and successfully evaded civil suits brought by human rights victims and subsequent Haitian governments.

Frustrated by the overriding absence of justice following twenty-nine years of repression, Haitians engaged in spasms of vigilante violence—a pattern that was to prove recurrent. From the day of Duvalier’s departure, many Haitians embraced the concept of *dechoukage*, “the uprooting of the old order.” Beyond advocating political changes, some Haitians periodically attacked suspected “Macoutes” and, in some cases, hacked their presumed former persecutors to death. Needless to say, this did nothing to establish the rule of law.

The National Governing Council, under Gen. Henri Namphy, Assumes Control, February 1986

With the active involvement of the Reagan administration, a National Governing Council (CNG) was formed shortly after Jean-Claude Duvalier's flight from Haiti. The CNG was headed by Lt. Gen. Henri Namphy, an uninspiring figure from the Duvalier army; the new minister of defense and the interior was Col. Williams Régala, who boasted a long history of abuse with Duvalier’s secret police. Although the CNG vowed to make a “clean break with the Duvalierist past,” its failure to end impunity for past wrongs and continued human rights abuses overshadowed positive steps, such as the adoption of a new Constitution. The CNG reacted violently to the Haitian public's fervor to acknowledge past human rights abuses. On April 26, 1986, the army fired on a crowd of several thousand who had gathered in Port-au-Prince for a memorial to the victims of the Duvalier dictatorship, killing eight.⁴

Little effort was made to punish those who had presided over the violent crimes of the Duvalier era. There was no truth commission, no investigation or exposure of past atrocities, and no systematic quest for justice. The CNG allowed Duvalier’s secret police chief, Col. Albert Pierre, and the head of the Tontons Macoutes, Rosalie Adolphe, to leave the country. The Macoutes, while officially disbanded, were not disarmed, let alone prosecuted.

² Section 540 of the Foreign Assistance Act.

³ Americas Watch and National Coalition for Haitian Refugees, *Duvalierism Since Duvalier*, pp. 67-68.

⁴ “8 Reported Dead as Haitian Protesters Clash with Soldiers,” *Chicago Tribune*, April 27, 1986.
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The sole exceptions to this pattern of impunity were trials of two former Duvalier officials: Luc Désyr, Duvalier's notorious former secret police chief, and Col. Samuel Jérémie, who was believed to have ordered the killing in Léogane of over one hundred civilians for prematurely celebrating the downfall of the Duvalier dictatorship in late January 1986. The CNG had not originally planned to arrest Désyr but was compelled to do so "for his own safety" after some ten thousand Haitians stormed the Port-au-Prince airport to prevent his flight. His trial was a twenty-four-hour marathon, with little regard for due process or the presentation of competent evidence. The charges for a double murder committed over two decades earlier seemed designed to quench the popular thirst for vengeance while avoiding exposure of the involvement of senior military officials in the atrocities of the Duvalier era. Désyr was found guilty and sentenced to death, even though the death penalty had been formally abolished in Haiti. His execution was never carried out. He remained in prison until he was released by the sympathetic military government in December 1991. The three-day trial of Jérémie, while somewhat more dignified, also focused on an isolated act of torture and murder, without formally addressing his then-recent involvement in the massacre at Léogane. He was handed a fifteen-year prison term that ended prematurely with his release by the military in 1991.⁵

The CNG also responded violently to the emerging Haitian civil society's exercise of modest political freedoms. The army shot at peaceful demonstrators and church facilities, leaving several hundred dead during the first twenty-one months of military rule. Instead of expressing regret, the CNG blamed "agitators and provocateurs" and defended its actions. Haitians soon spoke of "Duvalierism without Duvalier." Yet, the Reagan administration continued to certify that Haiti's human rights record was improving—and, for the first time in years, convinced Congress to provide military assistance.

The CNG permitted the drafting of a new Constitution, which was approved overwhelmingly in a March 1987 referendum. The Constitution included provisions prohibiting arbitrary detention and beatings, and precluding arrests between the hours of 6:00 p.m. and 6:00 a.m. The Constitution also provided for the creation of an Office of Citizen Protection, an ombudsman for civilian complaints about government abuses, but that office was not actually created until 1996 and remains unfunded. The new Constitution also contained a provision designed to establish a modicum of accountability for past abuses by barring human rights violators from running for elected office, but the CNG actively opposed the exercise of this provision. The constitutionally created Provisional Electoral Council (CEP) was charged with disqualifying any candidate who had been an "architect" of the Duvalierist dictatorship or had been involved in the torture or murder of political prisoners. In June 1987, fearing the independent exercise of this power, the CNG attempted by decree to usurp the CEP's control of the electoral process. It relented only after three weeks of public protest in which troops killed some thirty-five Haitians.

In early November, the CEP disqualified twelve of the thirty-five presidential candidates from the election scheduled for later that month. The night of the ruling, men armed with submachine guns torched the CEP's headquarters as well as the personal business of a CEP member. Raids were also launched against impoverished neighborhoods where opposition to military rule was most intense. The Reagan administration remained notably mute about the violence and numerous deaths and continued to deliver military aid. As one senior State Department official explained, "The army is necessary to hold the country together enough to hold elections."

Having failed to take serious action against human rights abusers within its ranks and bolstered by the Reagan administration's willingness to shield it from criticism of obvious repression, the CNG showed little restraint when faced with an election that might challenge its authority. On election day, November 29, 1987, thirty-four voters and election workers were murdered by armed thugs operating in apparent alliance with the army, including fourteen victims at a single Port-au-Prince polling place. To avoid further bloodshed, the CEP canceled the elections after three hours of voting. Only then did the Reagan administration cut off government-to-government aid.

⁵ Americas Watch and National Coalition for Haitian Refugees, *Duvalierism Since Duvalier*, pp. 33-42.

The CNG remained in power under General Namphy's control for nearly another year. An army-sponsored substitute election on January 17, 1988, was widely boycotted by voters and the leading candidates. Leslie Manigat, a professor and former Duvalier exile, was named the victor. But in June 1988, when he attempted to exercise authority by reshuffling the army's senior command and firing Namphy, Manigat was unceremoniously ousted. General Namphy formally assumed the reins of power himself, dissolved the parliament, and voided entire sections of the popularly enacted constitution.

Gen. Henri Namphy's Assumes Full Control, June 19, 1988

As he had done while directing the CNG, Namphy responded to periodic high-profile atrocities merely by announcing the launching of an investigation. This had occurred in response to the massacre of hundreds of peasants in Jean Rabel in July 1987, the murder of presidential candidates Louis Eugène Athis and Yves Volel in August and October 1987, the election day killings of November 1987, the murder of human rights lawyer Lafontant Joseph in July 1988, and the killing of four members of a youth organization in Labadie in August 1988. Invariably, no one was ever arrested or prosecuted.

Namphy's failure to take criminal action against his military and paramilitary colleagues was coupled with continued severe human rights abuses to quell popular opposition to the government. In September 1988, a band of armed thugs operating with the open support of the government attacked the Church of St. Jean Bosco in Port-au-Prince, where Father Jean-Bertrand Aristide, already an outspoken critic of military rule, was conducting mass. At least a dozen parishioners were killed, some seventy were wounded, and the church was burned to the ground. Father Aristide barely escaped with his life.

Gen. Prosper Avril Assumes Power, October 1988

The shocking brutality of this attack on unarmed churchgoers sparked a group of junior military officers to lead a coup that toppled Namphy on September 17, 1988. Believing there was little prospect of formal justice, Haitians launched another round of mob violence against suspected human rights violators, in this case targeting those suspected of complicity in the Namphy government's repression.

In October 1988, the officers behind the coup selected Gen. Prosper Avril, a senior military figure, as their leader. General Avril, portrayed as an enlightened statesman in contrast to the boorish Namphy, enjoyed an initial honeymoon in his relations with Washington, but demonstrated little genuine commitment to human rights.

Avril took some promising steps in his first year, including ratifying several human rights treaties, reinstating most of the portions of the Constitution that had been voided by Namphy, and initiating legal and administrative proceedings against forty-four soldiers for common crimes, although only one soldier was known to have been convicted and sentenced.⁶ However, the Avril government made no effort to check the army's persistent resort to political violence, let alone to hold it accountable for its unlawful actions under Namphy's command. Quite the contrary, gross abuses continued on a large scale, while Namphy and his chief aides were permitted to flee into exile to the neighboring Dominican Republic. An investigation into the St. Jean Bosco massacre was announced, but the results were never revealed. A few close associates of Namphy were dismissed from the army, but none was prosecuted, nor were their crimes exposed.

Two investigations that did yield public reports were whitewashes. In November 1988, the Avril government issued a report on the August 1987 murder of presidential candidate Louis Eugène Athis and two of his aides by thugs linked to rural section chiefs. The report concluded that the victims should have known better than to campaign in the area. The man who was widely believed to have been the mastermind of the killings, Section Chief David Philogène, was released from protective custody and allowed to flee to the Dominican Republic.

⁶ Americas Watch, National Coalition for Haitian Refugees, Caribbean Rights, and International Commission of Jurists, *Reverting to Despotism*, pp. 118-21.

A second report on the November 1987 election day massacre, released simultaneously, failed to identify a single participant in the slaughter. Two people with knowledge of the army's role in the election day killings were murdered in November 1988, shortly before the issuance of the investigative report.⁷ Drafted by a CNG-appointed commission, the report summarily rejected charges that the army had launched the killing in concert with right-wing forces. Instead, it blamed the army's critics for the army's failure to halt the violence. Popular outrage at the report led Avril to propose a new investigative commission, but his insistence that the commission complete its work within one month led Haitian human rights groups to reject the proposal. No further action was taken.

⁷ Col. Jean-Claude Paul, the feared commander of the Casernes Dessalines, was fatally poisoned in unclear circumstances. Roland Joseph, a former soldier and reputed hired assassin, was shot at his home by a military patrol. Human Rights Watch/Americas | September 1996, Vol. 8, No. 7 (B)

Emboldened by the unbroken precedent of impunity, the army used arrests, beatings, torture, and murder to suppress labor unions, peasant associations, church groups, independent journalists, literacy programs and democratic activists. As the repression worsened, popular pressure built for Avril, too, to step down. Avril did not fulfill his vow to hold elections. In November 1989, the Avril government responded to mounting discontent by arresting and brutally beating three popular leaders. Later investigations revealed that the military officers who had ordered the leaders' torture were receiving CIA payments at the time.⁸ International pressure led quickly to the lifting of the state of siege and the release of the imprisoned activists, but Avril's credibility as the guardian of a transition to democracy had been definitively tainted.

While the U.S. government had said nothing about mounting abuse during Avril's first year in power, it broke its silence with the November 1989 arrests and beatings. The shift coincided with the arrival in Port-au-Prince of a new U.S. ambassador, Alvin Adams, who initially showed himself to be a strong human rights advocate.⁹

Instead of facing prosecution, on March 10, 1990, Avril, like his predecessors, fled into exile, this time taking up residence outside Miami. The only trial he was to face was a civil suit brought by American lawyers in U.S. court on behalf of some of his victims. In 1994 the court entered a default judgement against Avril for \$41 million but Avril did not proffer any funds. Nor were any of his subordinates held accountable. The precedent of impunity remained unbroken.¹⁰

President Ertha Pascal Trouillot Takes Office, March 13, 1990

This time, the presidential torch passed to a civilian, Ertha Pascal Trouillot, a member of the Haitian Supreme Court with no prior political experience, who took office on March 13, 1990, in a power-sharing arrangement with a Council of State. The Trouillot government made minimal progress in establishing the rule of law. Even when military personnel were occasionally arrested—as were Marc-Antoine Lacroix, a police *attaché* who was arrested for killing seven people, and Elysée Jean-François, who was accused of taking part in the St. Jean Bosco massacre—their trials were not scheduled.¹¹ Those in Trouillot's government who wished to bring human rights offenders to justice were also stymied by the president's failure to implement the constitutional provision establishing civilian control over the police.

In March 1990, the Trouillot government dismissed six officers from the army. Some of the men had been publicly accused of mistreating prisoners, but the lack of official explanation or formal charges made these accusations impossible to verify. The senior officer among them was Maj. Isidore Pongnon, who had been commander of Fort Dimanche from 1986 to 1988, a time of regular reports of torture from that infamous Port-au-Prince military detention facility.

⁸ Tim Weiner, "CIA Formed Haitian Unit Later Tied to Narcotics Trade," *The New York Times*, November 14, 1993.

⁹ His predecessor, Brunson McKinley, distinguished himself by his faith in the Haitian military and his barely disguised view that Haitians were "not ready" for democracy. Americas Watch, National Coalition for Haitian Refugees, and Caribbean Rights, *The More Things Change*, pp. 121-22.

¹⁰ Avril later returned to Haiti under the 1991-94 military regime. He took refuge in the Colombian ambassador's residence after an arrest warrant was issued for him for alleged acts against the security of the state following the resumption of civilian rule.

¹¹ Americas Watch and National Coalition for Haitian Refugees, "In the Army's Hands," pp. 56-57. The two were ultimately sentenced to life in prison after trials under the Aristide government. Americas Watch, National Coalition for Haitian Refugees, and Caribbean Rights, "The Aristide Government's Human Rights Record," p. 31. Human Rights Watch/Americas

The greatest challenge to the rule of law came with the July 7, 1990 return to Haiti of Roger Lafontant, the ruthless former head of the Tontons Macoutes and a former Duvalier minister of defense and the interior. Lafontant had left Haiti in October 1985 in the midst of a Duvalier purge. The army refused to heed Interior Minister Joseph Maxi's efforts to arrest Lafontant at the airport. For the next six months, Lafontant held a series of public rallies for right-wing forces while the army pretended that he was nowhere to be found. In October, he filed a bid for the presidency, which was reviewed and rejected by the new electoral council. In total, the council rejected fifteen of twenty-six presidential candidates, all on technical grounds, and thereby avoided invoking the controversial constitutional provision against Duvalier collaborators.¹²

Elections were scheduled for December 16, 1990. Early in the campaign, the U.S.-supported candidate, Marc Bazin, led, but the presidential contest was transformed by the late entry of Father Jean-Bertrand Aristide, the charismatic priest who had been targeted in the St. Jean Bosco massacre. On election day, Aristide secured two-thirds of the vote in a heavy turnout.

But the failure to assert the rule of law before the balloting led directly to violence in the election's aftermath. On January 6, 1991, before Aristide's February 7 inauguration, Lafontant, still at large, launched a coup attempt. The Haitian public flooded into the streets demanding an end to the pre-emptive coup and respect for the results of the December election. Facing tens of thousands of demonstrators, the army put down the coup attempt and arrested Lafontant.

Meanwhile, the Trouillot government's earlier failures to satisfy the popular desire for justice led to a troubling wave of incidents in which the Haitian people took matters into their own hands. From Trouillot's inauguration through the December 1990 presidential election, some twenty-five Haitians, mostly presumed common criminals, were lynched. The failed coup unleashed another torrent of popular anger. Mobs killed some thirty suspected supporters of the coup.¹³

Jean-Bertrand Aristide Assumes Office as Haiti's First Democratically Elected President, February 7, 1991

President Aristide took office on February 7, 1991, and began a serious effort at institutional reform, focusing mainly on the army, the rural section chiefs and the prison administration. In his most dramatic move, he announced during his inauguration speech his "love" for Gen. Hérard Abraham, the army commander-in-chief, before asking Abraham to retire six of the seven ranking members of the armed forces. In April 1991, pending the enactment of a law separating the police from the army, Aristide began dismantling the system of rural section chiefs. These efforts paid off in a significant reduction in violent abuse and a virtual cessation of Haitian refugee flight.¹⁴

The Aristide government also made several symbolic efforts to address the atrocities of Haiti's past. It closed Fort Dimanche, the notorious detention center on the outskirts of Port-au-Prince where Duvalier prisoners were routinely tortured, executed, or left to die under horrendous conditions. Three Aristide government ministers also traveled to Jean-Rabel in Haiti's remote northwest on the anniversary of a July 1987 massacre there in which hundreds had been slaughtered. A funeral mass was held and the exhumation of a number of mass graves was begun.¹⁵

However, Aristide's efforts to investigate past crimes were less successful. In February 1991, he announced the formation of a commission to address major human rights abuses of the past. But because those named to the

¹² Memories of the violence that had met the electoral disqualifications in November 1987 undoubtedly added to the electoral council's unwillingness to disqualify on human rights grounds.

¹³ An additional twenty were lynched following false rumors on January 27 of another coup attempt.

¹⁴ Americas Watch, National Coalition for Haitian Refugees, and Caribbean Rights, "The Aristide Government's Human Rights Record," p. 10.

¹⁵ Niko Poitevien, a major landowner implicated in the Jean-Rabel massacre, was arrested in March 1991. He had not yet gone to trial when the Aristide government was overthrown in September 1991. The restored Aristide government recommended investigation of the Jean-Rabel killings.

commission were all government ministers with other pressing duties, it never got off the ground. A second commission, announced in August 1991, was composed of five prominent independent figures, but made no progress before another military coup intervened.

In a few human rights cases, criminal investigations were commenced. Arrest warrants were issued for Franck Romain, the former mayor of Port-au-Prince who was widely believed to have masterminded the 1988 St. Jean Bosco massacre, and Gen. Williams Régala, the defense minister under the CNG and Namphy governments. Both fled the country before they could be arrested. A summons was issued for Col. Joseph Baguidy, the former commander of the police's Criminal Research Bureau (*Recherches Criminelles*), who was a prime suspect in the 1987 murder of presidential candidate Yves Vollel, but he refused to return to Haiti from a diplomatic post in the Dominican Republic

With courtroom justice in short supply, the issue of "popular justice" remained a potent one during Aristide's tenure. From his inauguration on February 7 to his ouster by a military coup on September 30, some twenty-five people were lynched at the hands of Haitian mobs, although at least eighteen of them were common criminal suspects. None of these lynchings was ordered by Aristide, and at times members of Aristide's government would speak out against them. But the president never threw his considerable moral authority behind the condemnation. Indeed, at times, Aristide seemed to endorse the threat of vigilante violence as a legitimate political tool.¹⁶ Aristide claimed that threats of popular violence were needed to counter behind-the-scenes pressure allegedly exerted on the judiciary by repressive forces, but in one highly visible case—the July 1991 trial of Roger Lafontant for his January 1991 coup attempt—Aristide's endorsement of the threats of vigilante violence against the judiciary further undermined its independence.¹⁷ Aristide also counter-aimed popular violence against the freely-elected parliament at a time when it was considering impeaching his prime minister, René Préval.

Gen. Raul Cédras, Lt. Col. Michel François, and Gen. Phillippe Biamby Lead a Coup d'Etat Forcing President Aristide into Exile, Sept. 30, 1991

Once the coup was launched, the army's atrocities quickly dwarfed Aristide's worst failings. An estimated one thousand were slaughtered in the month following the coup, and an estimated two to three thousand more lost their lives to political violence over the next three years. Thousands more suffered "disappearance," torture, beatings, rape, threats, arbitrary detention, and extortion. In large part to escape this repression, some 100,000 would flee the country by land or sea, and another 300,000 would be forced to hide in internal exile, a phenomenon referred to by Haitians as *marronage*. The principal target of the repression was the vigorous civil society that had taken root in Haiti and formed the core of Aristide's support. The army banned virtually all forms of independent assembly and association. Peasant associations, church groups, trade unions, student organizations, and the independent press were terrorized and shut down.¹⁸ Poor neighborhoods assumed to be loyal to Aristide were ruthlessly attacked.

The army's goal was to return Haitian society to the atomized state of the Duvalier era in order to neutralize the popular unrest that had brought down previous dictatorships. Regular army troops were assisted in their repression by newly reinstated section chiefs, *attachés* (civilians used by the military to intimidate and extort) and, beginning in September 1993, an allied paramilitary organization known as FRAPH, an acronym that played on the French verb *frapper*, to hit. The U.S. reportedly kept FRAPH founder Emmanuel Constant on the C.I.A. payroll and favored FRAPH's formation as a counterbalance to Aristide's alleged extremism. The paramilitary group was used to provide a facade of deniability for army repression.

¹⁶ Two such speeches stand out. The first was in July 1990 when Aristide endorsed a crowd's threatening conduct outside Roger Lafontant's trial (which contributed to the judge imposing sentence beyond that allowed by law) and the second was on September 27, 1991, just after Aristide's return from a triumphal appearance before the U.N. General Assembly, while rumors spread of an impending coup. Referring to "a beautiful instrument" which "smells good"—an apparent allusion to necklacing with a burning tire—he repeatedly called on his followers, "Don't neglect to give him [a false supporter] what he deserves."

¹⁷ Anne-Christine d'Adesky, "Haiti: Titid! President Jean-Bertrand Aristide," *Interview*, October 1991.

¹⁸ For a chronicle of the popular organizations attacked, see Americas Watch and National Coalition for Haitian Refugees, *Silencing a People*.
Human Rights Watch/Americas

Needless to say, the limits of past efforts to establish accountability were apparent as those who had been swept from power but not tried or imprisoned retook their posts and resumed their violent ways. Among those attacked were lawyers representing victims of military violence, so that few were willing to take on new clients who had been beaten, detained or disappeared. Similarly, physicians refused to conduct medical examinations needed to establish the severity of injuries. Members of the judiciary who were not already complicit with the military were intimidated into acquiescence. Victims, in turn, rather than coming forward to file formal complaints, were driven into hiding.

Meanwhile, the army dismantled the minimal gains of the Aristide government. The military declared a 1991 Christmas Eve amnesty for all prisoners convicted of "political" offenses. Among those freed were Luc Désyr, the former Duvalier secret police chief who had been convicted in 1986; Col. Samuel Jérémie, also convicted in 1986; over half of the twenty-one men found guilty with Roger Lafontant of participating in the attempted coup of January 1991; and Isidore Pongnon, the former commander of Fort Dimanche whom the Aristide government had arrested. Lafontant was murdered in his cell at the National Penitentiary as the coup unfolded.¹⁹

Washington initially expressed its determination to reestablish elected government in Haiti but this concern was soon superseded by its preoccupation with stemming the vast flow of would-be refugees fleeing the country. Under a 1981 agreement between the Reagan administration and the Duvalier government, Washington traditionally dealt with Haitian "boat people" by interdicting them on the high seas and, after cursory screening aboard U.S. Coast Guard cutters, returning the vast majority to Port-au-Prince.²⁰ The refugee problem led both the Bush and Clinton administrations to downplay the severity of human rights abuses in Haiti and, accordingly, the importance of bringing military officials to justice for their crimes. Washington thus sought to portray the violence as the uncoordinated acts of low-level soldiers rather than the systematic attack on Haiti's civil society that it was. For example, a State Department asylum opinion issued in December 1991 preposterously claimed that "we have no reason to believe that mere identification of an individual as an Aristide supporter puts that individual at particular risk of mistreatment or abuse."²¹

In part because of this whitewash and in part because of the need to ensure the army's continued willingness to accept the return of would-be refugees, both the Bush and Clinton administrations pressed President Aristide to share power with Haiti's murderous military leaders and to abandon his insistence on the right to bring them to justice. Part of this effort seemed to be repeated efforts to challenge President Aristide's sanity. Finally, however, CIA agent Brian Latell, the chief proponent of the theory that Aristide was mentally ill and had been institutionalized in Canada, admitted that he had lied to Congress and relied on information gathered by sources sympathetic to the military government.

¹⁹ The prison's warden, an army officer, admitted ordering the murder but claimed that Aristide telephoned him and ordered him to do so under threat of death. The warden's story was unlikely, given that at the time Aristide, his own life in jeopardy, was either in military custody or surrounded by army troops. Moreover, the army had a clear motive to rid itself of Lafontant, a potentially powerful rival.

²⁰ According to State Department figures, only twenty-eight of the 22,716 Haitians interdicted between 1981 and the September 1991 coup were allowed to enter the United States to pursue asylum claims. AW, National Coalition for Haitian Refugees, Jesuit Refugee Service/USA, "No Port in a Storm: The Misguided Use of In-Country Refugee Processing in Haiti" (September 1993).

²¹ An April 12, 1994 cable from the U.S. Embassy to Secretary of State Christopher acknowledged increasing human rights violations but expressed skepticism about victims' reports of abuse: "The Haitian left manipulates and fabricates human rights abuses as a propaganda too..." Regarding political rapes, the cable stated: "We are, frankly, suspicious of the sudden, high number of reported rapes, particularly in this culture, occurring at the same time that Aristide activists seek to draw a comparison between Haiti and Bosnia." The cable was written by U.S. human rights officer Ellen Cosgrove, approved by Amb. Swing, reviewed by in-country processing Refugee Coordinator Luis Moreno, and leaked to the press in May 1995.

The United Nations also was prepared to sacrifice any hope for accountability in the name of an elusive agreement by the army to leave power. The principal negotiator for the U.N. and the OAS, former Argentine Foreign Minister Dante Caputo, even went so far as to present the army with model amnesty laws drawn from other countries.²² Indeed, by suggesting that an amnesty would cover even contemporary human rights crimes, the international community seemed to be facilitating the abuses that a U.N.-OAS human rights observer mission in Haiti was in the process of documenting and trying to stop. Instead of urging accountability for human rights abuse, Washington and its international partners spoke of the need to “professionalize” the army—a goal that left vague whether dismissal and prosecution of abusive officers, rather than mere training, would be required.

Despite his spotty record in the Presidential Palace, Aristide in exile never relinquished his quest for justice. His firm refusal to endorse a broad amnesty became the principal sticking point during lengthy negotiations with the army leading up to the Governor's Island Accord of July 1993. Aristide insisted that no general amnesty was permissible, despite substantial pressure from the Clinton administration for a blanket amnesty. In a compromise, the accord called for an amnesty to be granted in accordance with the Haitian constitution, Article 147 of which allows the president to amnesty political offenses but not common crimes. On October 3, 1993, Aristide decreed an amnesty for political offenses committed between the date of the coup and the signing of the Governors Island Accord, which would apply to acts of rebellion or treason, but he maintained that common crimes, such as murder, torture, and rape, even if politically motivated, could be the subject of prosecution.²³

Aristide's position could be justified by the distinction between crimes against the state, which the state is entitled to pardon, and crimes against individuals, which the state should have no right to forgive. Although Haiti at the time lacked the judicial resources to ensure fair prosecution of any more than a handful of cases, the principle that the state should be able if possible to prosecute cases of political murder was an important one to preserve.

²² Lawyers Committee for Human Rights, *Haiti: Learning the Hard Way: The OAS/U.N. Mission in Haiti*, (January 1995), p. 142.

²³ Human Rights Watch/Americas and National Coalition for Haitian Refugees, "Terror Prevails in Haiti," pp. 35-36; Lawyers Committee for Human Rights, *Learning the Hard Way*, pp. 105-10, 144. The Governors Island Accord also required "implementation of the other instruments which may be adopted by the parliament on this question" -- a loophole that might have led to a blanket amnesty. Washington and its international partners pressed the Haitian parliament to adopt a broad amnesty that would have included murder, disappearance, torture and rape. *Learning the Hard Way*, pp. 144-45. But the legislature, despite military intimidation, never adopted an amnesty law until after the U.S.-led military intervention and then it tracked the constitutional distinction between political and common crimes. William G. O'Neill, "Human Rights Monitoring vs. Political Expediency," 8 *Harvard Human Rights Journal* (Spring 1995), pp. 122-23.

The signing of the Governors Island Accord began a period of repression which intensified with the approach of October 30, 1993, the date envisioned under the accord for the army to relinquish power. Because of the presence of international observers, much of the repression was carried out by *attachés* and paramilitary groups acting in concert with the army, rather than by uniformed soldiers, to enable the army, while broadening its repressive reach, to deny responsibility. Among the more brazen murders: in September, three people were murdered as Port-au-Prince mayor Evans Paul attempted to regain his office, and a prominent businessman and Aristide supporter, Antoine Izméry, was assassinated by men in plainclothes operating with military assistance; and in October, the Aristide-selected justice minister, Guy Malary, was gunned down. MICIVIH reported that in a small number of cases the army had informed it of the arrest of soldiers allegedly responsible for abuse, but in no case were these soldiers known to have been brought before a court.²⁴

Aristide's last point of principle, his insistence that the mass murderers of the Haitian army would not be amnestied, was an obvious target for Clinton's compromisers. The vehicle was former President Jimmy Carter. Accompanied by Senator Sam Nunn and retired Gen. Colin Powell, Carter traveled to Haiti on the eve of a planned U.S. military invasion to topple the coup regime for a last-ditch effort to convince the military leadership to step down voluntarily. On September 18, 1994, he succeeded. But the price, agreed to by the Clinton administration, was the promise of a general amnesty—not only for crimes against the state but also for the crimes of murdering, disappearing, torturing and raping individuals. Aristide was not even consulted as the principle he had upheld during three years of exile was abandoned over a single weekend.

Fortunately, the Clinton administration lacked the power to implement this retreat from accountability. Since under the Haitian constitution the legislature must enact a general amnesty, Haitian parliamentarians were handed this presumably perfunctory step. They refused. Instead, in October 1994, they passed an amnesty largely along the lines on which Aristide had long insisted, covering unconditionally only crimes against the state, not human rights abuses against individuals. On September 19, the senior officials of the military junta—Gen. Cédras, Gen. Philippe Biamby, and Port-au-Prince police chief Col. Michel François—had little choice but to hand over power. However, because the U.S. government was committed to granting them amnesty, U.S. troops did not stand in the way of their flight into exile. Once more, the architects of repression had escaped justice.

III. IMPUNITY FOLLOWING PRESIDENT JEAN-BERTRAND ARISTIDE'S RETURN ON OCTOBER 15, 1994, AND PRESIDENT RENÉ PRÉVAL'S INAUGURATION ON FEBRUARY 7, 1996

The restoration of President Jean-Bertrand Aristide to power on October 15, 1994, and the peaceful transition to Haiti's second democratically elected president, René Préval, on February 7, 1996, presented Haiti with a significant opportunity to take a firm stand against impunity. Once more, civil society flourished as political repression waned. But while the government successfully prosecuted a handful of prominent human rights violations, persistent impunity left human rights victims thirsting for justice.

The government-supported truth commission barely got off the ground. When it did marshal sufficient resources to take complaints and prepare a detailed report of human rights violations under the military government, the 1,200-page report remained filed away from public scrutiny in the Justice Ministry. Scores of victims who had come forward to give their testimony about abuses to representatives of the truth commission or complaint bureaus, or who had reported abuses to MICIVIH during the military government, wrongly presumed that their cases would be investigated further, that they might receive reparations, and that the perpetrators of violence would face criminal penalties. Victims who presented criminal complaints in Haitian courts met inaction in all but a handful of cases. While the governments' initiatives against impunity were applauded at the outset, its failure to follow through and

²⁴ U.N. Secretary-General, *The Situation of Democracy in Haiti*, A/48/1993 (New York: UNIPUB, Oct. 25, 1993); O'Neill, "Human Rights Monitoring vs. Political Expediency," pp. 111-12.

provide justice, or even truth, for victims of the military government called into question its will to tackle this fundamental problem.

Searching to explain this abdication of responsibility by Haiti's democratic governments, many fingers pointed toward the United States. Even as Aristide returned to Haiti, the U.S. government continued to support the adoption of a broad amnesty. More troubling still, the U.S. government directly impeded the prosecution of human rights crimes in Haiti by refusing to return documents seized from FRAPH and Haitian military headquarters and by reaching a secret settlement with FRAPH's leader, Emmanuel Constant, which allowed Constant to remain in the United States with a work permit while evading deportation to Haiti and criminal prosecution for human rights abuses there.²⁵ The U.S. government's actions with regard to FRAPH, which was founded by Constant while he reportedly was on the CIA payroll, suggest the U.S. government is engaged in a cover-up of its own illegal actions in Haiti.

In 1996, impunity for human rights violators has again raised the specter of insecurity. Having never faced prosecution for human rights abuses, demobilized Haitian soldiers and former paramilitaries have been implicated in continuing criminal acts, including some directly threatening the security of the state.²⁶ The lack of prosecutions of soldiers dismissed from the security forces, and the failure to disarm them, left an alienated, disgruntled, and dangerous opposition to civilian rule that has already plagued the fledgling elected government and may contribute to greater problems once international troops depart. In September 1996, attacks in Port-au-Prince on government offices and on political leaders from an opposition party created a strong feeling of insecurity once again.

A new civilian police force, the Haitian National Police, was created to replace the army and gradually reached a full strength of over 5,000 officers. During the year that the police force was formed, law enforcement was delegated to an Interim Public Security Force of former soldiers. Only perfunctory efforts were made to screen out soldiers who had been involved in violent abuse or to train those selected.²⁷ Predictably, given the lack of vigorous screening, the interim police force was responsible for the occasional use of excessive force. While these incidents usually led to disciplinary action and dismissal from the force, prosecutions were not forthcoming.²⁸ As the new force reached its full complement of officers in the summer of 1996, it already was implicated in serious, although not systematic, abuses of the civilian population. At the same time, the police were targeted by unknown assailants, and eight officers were killed between March and August. While the investigative and disciplinary actions of an internal inspector general's office were encouraging, the judicial system once again lagged behind and made little progress on criminal prosecutions of abusive police officers.²⁹

²⁵ Marcia Myers, "Haitian's Deal with U.S. could let him avoid trial in atrocities," *The Baltimore Sun*, July 27, 1996, and Farhan Haq, "Une entente secrète pour libérer le chef du FRAPH selon les critiques," *Le Nouvelliste*, June 26, 1996.

²⁶ For example, on the night of August 18-19, 1996, approximately twenty men wearing khaki uniforms, reportedly former soldiers, attacked the central Port-au-Prince police station, killing a boy who was sleeping nearby, and fired shots at the National Palace.

²⁷ The U.S. Justice Department's International Criminal Investigations and Training Assistance Program (ICITAP) conducted a limited review of the human rights record of applicants to the force, but the screening was generally confined to a two-week period with little input from independent sources.

²⁸ Americas Watch, National Coalition for Haitian Refugees, and Caribbean Rights, "Human Rights After President Aristide's Return," pp. 10-11.

²⁹ For a detailed discussion of human rights abuses committed by the Haitian National Police force, see the forthcoming report on police abuses by Human Rights Watch/Americas, National Coalition for Haitian Rights, and Washington Office on Latin America (publication expected in October 1996).

The Haitian public's frustration with the judiciary's historic corruption and complicity with the military, which ensured impunity for human rights abuses and common crimes, has contributed to recurring incidents of vigilante violence. Yet, rather than return to the overtly political *dechoukage* of the post-Duvalier years, the most frequent scenario today involves public accusations of thievery after which mobs descend on and beat the accused to death. A disturbing number of these incidents occurred in the spring of 1995, peaking with forty-five killings in March.³⁰ One significant outburst of violence against those linked to the former military regime occurred in November 1995. Following the November 7 murder of parliamentarian Jean Hubert Feuillé, a close ally of President Aristide, the president broke with his careful discouragement of popular retaliation. During a November 11 eulogy, Aristide recklessly urged his followers to assist the police with disarmament. Roadblocks were promptly set up, houses were burned, and eight people were murdered, including six victims who were believed to have collaborated with the deposed military government.³¹ Following these incidents, vigilante killings continued but did not return to the high levels of earlier in the year. Nevertheless, the death of three prisoners in June 1996, who were dragged from a prison cell in the southern town of Roseaux prior to trial and hacked to death, highlighted the public's continued reliance on popular "justice" and deep distrust of the judicial system. Disappointingly, the impunity that gave rise to these killings also has been extended to those responsible for vigilante violence.

The Haitian Commission for Truth and Justice Report Held Hostage

In December 1994, the Aristide government announced the formation of a National Commission for Truth and Justice (*Commission Nationale de Verité et de Justice*), under the direction of Haitian sociologist Françoise Boucard. In March 1995, three Haitian and three foreign commissioners were named to serve with Boucard. The commission was supposed to document the most serious human rights violations committed during the three years of military rule (though not under the Aristide or earlier governments) and to prepare a public report of its findings together with recommendations about reparations, the rehabilitation of victims, and legal and administrative measures to prevent the recurrence of gross abuses. In September 1995, Boucard announced that the commission's report would identify perpetrators by name when the evidence permitted, although the commission lacked the power to initiate prosecutions. The commission was plagued by inadequate resources, including delayed international financial support, poor management and shortage of time, materials, and staff, and was under considerable pressure to deliver its report before the end of Aristide's presidential term in February 1996. The commission completed its 1,200-page report *Si M Pa Rele* ("If I Don't Cry Out...") shortly before Aristide stepped down and the report was passed on to the Préval government.³²

The commission's mandate prohibited it from initiating prosecutions of any of the 8,652 human rights cases it documented, but expectations were high that its report would at least provide a public accounting of gross human rights violations under the military government. However, over seven months after the report's completion it has yet to be published and has had no visible impact. Only the recommendations were released, which one human rights advocate likened to a doctor providing a prescription without a diagnosis. The recommendations standing alone did little to address the root causes of human rights abuse in Haiti, nor did they provide an opportunity for victims' stories to be told in an official forum. Meanwhile, human rights victims and the courts have no access to potentially useful documentation of human rights crimes.

President Préval's justice minister, Pierre Max Antoine, attributed the failure to publish the report to the excessive cost of photocopying such a hefty tome and offered to provide computer copies of the document to anyone who would provide the ministry with diskettes. Human Rights Watch/Americas delivered diskettes to the ministry in June and, despite repeated follow-up visits and calls, had not received a copy of the document as this report went to

³⁰ Americas Watch, National Coalition for Haitian Refugees, and Caribbean Rights, "Human Rights After President Aristide's Return," pp. 12, 21; Human Rights Watch/Americas and National Coalition for Haitian Refugees, "Security Compromised," pp. 16-17, 20-21.

³¹ "Aristide Critics See Intimidation As Pre-Election Violence Flares," *The New York Times*, November 16, 1995.

³² The report title refers to a Haitian Creole saying: *Si m pa rele, m'ap toufe*. Highlighting the need to speak out against injustice, the saying is translated as, "If I don't cry out, I will suffocate."

press. Asked whether the U.S. Embassy would consider financing such an endeavor, given its earlier failure to support the truth commission, Amb. William Lacy Swing told Human Rights Watch/Americas that the U.S. government had more urgent priorities.

Human Rights Cases in the Haitian Courts

Haitian courts have made limited progress in pursuing scores of criminal complaints presented by human rights victims since President Aristide's return. These complaints represent only a fraction of the human rights violations inflicted by the military government, including between 3,000 and 4,000 extrajudicial executions, and thousands of beatings, torture, rape and arbitrary detentions. Undoubtedly, many more cases would have been filed had there been less confusion about the role of the truth commission, the complaint bureaus that were briefly opened under Aristide, and MICIVIH. Victims, who in many cases were reluctant to come forward due to fear of retaliation from former soldiers or paramilitary members, expressed frustration at the lack of results. Witnesses, judges and other judicial staff also expressed nervousness about possible repercussions if they were to take part in human rights cases. Many of those who had presented their cases to the truth commission, the complaint bureaus, and MICIVIH, did not realize that they also needed to file separate criminal complaints, or they simply were disheartened at the prospect of presenting another complaint with limited hope of results.³³ By late 1996, prosecutors attained criminal convictions in approximately thirty cases nationwide of abuses committed by soldiers, *attachés*, section chiefs, and FRAPH members, who in most cases received short-term prison sentences relative to the severity of the crime. The Haitian government also had limited success in prosecuting a handful of prominent cases, detailed below. The vast majority of criminal complaints, however, did not lead to further investigation, arrest warrants, detentions, or criminal trials.

Under significant international pressure to hold elections and enact economic reforms, the Aristide and Préval governments' unwillingness to make the prosecution of these cases a top priority impeded significant progress. A comprehensive policy against impunity is needed to overcome a weak judicial system plagued by minimal material resources and a history of corruption; infrequent criminal court sessions; poor investigative capacity; the absence of potentially crucial evidence seized from FRAPH and military headquarters by U.S. troops in October 1994 and not yet returned to Haiti; and, the U.S. government's refusal to deport or extradite FRAPH leader Emmanuel Constant to face criminal charges in Haiti. Nonetheless, the successful prosecution of even a few human rights cases demonstrated the possibility that, when it chose to do so, the Haitian government could make genuine progress against impunity.

While Haiti's judicial system suffered from continued material and human resource deficits, domestic and international efforts contributed to some improvement in its functioning. The Justice Ministry distributed basic legal codes and office supplies to courthouses and provided salary increases for a judiciary that was historically susceptible to corruption and political influence. Aristide's government replaced many judges named by the military, although many others perceived as sympathetic to the military and "Macoutes" remain -- a significant deterrent to the bringing of criminal complaints by human rights victims. Meanwhile, inadequate police training in investigative techniques and police frustration with the inefficiencies and corruption of the courts contributed to failures to observe proper arrest procedures and an emerging practice of police beatings during interrogation.

International support allowed for improvements in the functioning of the Haitian courts and the prison system. The Canadian government offered assistance to rehabilitate all fourteen provincial civil court tribunals. A five-year \$18 million U.S. "Administration of Justice" program that began in September 1995 promised equipment, training, administrative reforms, and mentoring for some judges and prosecutors. The U.S. program got off to a slow start, stunted by minimal prior consultation with Haitian governmental representatives, staff who were insufficiently familiar with the Haitian legal system, and breakdowns of communication with the Haitian Justice Ministry and other international actors. At the end of the first year of the program, the U.S. Agency for International Development (US-AID) contractor, the Checchi company, had little to show beyond two small scale initiatives to provide legal assistance to prisoners. In light of persistent criticisms of the program, in mid-1996 US-AID insisted on personnel changes,

³³ MICIVIH has offered restricted access to its files of human rights complaints to the truth commission, the Justice Minister and judges (with specific requests), the Special Investigative Unit, and victims of human rights abuses. MICIVIH only releases the names of witnesses with their express permission to do so.

including replacing the program director. In a separate initiative, the U.S. Department of Justice collaborated in a program for training judges that was well-received. France provided month-long training sessions at its prestigious National Judges' Academy (*Ecole Nationale de la Magistrature*).

Aristide's creation of a National Penitentiary Administration (*Administration Penitentiaire Nationale*, APENA) marked an encouraging departure from horrendous prison conditions and practices in Haiti's past. The staff of the new prison authority received training from French experts and undertook important reforms, including the creation of regularized prison registries. The International Committee of the Red Cross, working with the Haitian Public Works Ministry, undertook physical rehabilitation of several prisons. While overcrowding and substandard conditions persist in some prisons, the prison system overall has improved a great deal, there are fewer escapes, and the APENA prison guards have not been implicated in systematic human rights abuses like those committed by their military predecessors.

In spite of these and other barriers, a fervent desire for justice inspired scores of Haiti's many thousands of human rights victims to present criminal complaints directly to the courts, either on their own or with the assistance of nongovernmental organizations, after the return of democratic government.³⁴ However, victims of political rape were extremely reluctant to seek prosecution of their attackers, and few have done so. Women who had been raped were dissuaded from making criminal complaints due to the severe trauma induced by the attack, the shame still linked to sexual crimes, the difficulty of identifying attackers, and the challenge of providing forensic evidence of rape (particularly when, at the time of the crime, few victims had access to medical treatment or were willing to risk reprisals to obtain it). Victims of human rights abuses, especially those who had become physically impaired as a result of torture or who had lost family members, also were interested in receiving compensation for the damages inflicted upon them.

While these complaints occasionally resulted in arrest warrants or summonses being issued, most did not ultimately lead to criminal trials. The Justice and Peace Commission assisted over fifty human rights victims file criminal complaints, beginning as early as November 1994, but as of June 1996 these complaints had not led to a single criminal conviction or successful provision of reparations. Nonetheless, while figures were difficult to verify, courts reportedly convicted former soldiers, *attachés*, FRAPH members, or other military allies in approximately thirty cases of abuses committed under the military government. However, these cases reportedly were marked by procedural irregularities and light sentences relative to the gravity of the offenses.³⁵ In a number of cases where alleged human rights violators fled the Haitian justice system, the government resorted to prosecution of absent defendants (*in absentia*, such as Col. Michel François). While this provided an important opportunity to bring absent defendants into court, the government should make every effort to bring suspected criminals into court for trial before turning to *in absentia* trials as a secondary option.³⁶ In many court cases, the judiciary faced pressures both from victims and from supporters of the military government.

³⁴ The Catholic Justice and Peace Commission (*Commission Justice et Paix*) and the Peasant Movement of Papaye (*Mouvman Peyizan Papay*) have undertaken the most extensive efforts to assist human rights victims wishing to file criminal complaints.

³⁵ In some cases, judges sympathetic to the military dismissed cases by invoking a military-endorsed provision creating a three-year statute of limitations that is no longer valid. Telephone interview with Denis Racicot, Ombudsman for Truth Commission Follow-Up, MICIVIH, September 10, 1996.

³⁶ Haitian criminal law permits defendants convicted *in absentia* to seek a new trial within five years of their conviction. Human Rights Watch/Americas September 1996, Vol. 8, No. 7 (B)

The most recent trial leading to conviction for a human rights abuse committed by the military government occurred in July 1996 in the Central Plateau town of Hinche. The case illustrates some of the problems facing the few human rights victims who have seen their cases go to trial. Four men linked to the military government were indicted for the January 18, 1994 murder of Eluckner Elie, a leader of the Peasant Movement of Papaye (*Mouvman Peyizan Papay*, MPP).³⁷ At trial, the judge reportedly limited the opportunities for witness testimony making it more difficult for prosecutors to build their case. Garnier Hillaire, a former soldier, and Bethany Pierre, a former assistant to a section chief, were convicted of the murder while the two other suspects were acquitted. The trial judge, who was perceived as sympathetic to the former military, then imposed a sentence of only three years for the crime for which the prescribed sentence is forced labor for life.³⁸ The demand for \$250,000 Haitian dollars in damages remains unresolved.³⁹

The government's first prosecutorial initiative upon President Aristide's return was the creation of complaint offices (*bureaux de doléances*). These offices were to provide legal assistance to help victims of the military regime initiate prosecutions. The offices met with mixed success. They were plagued by insufficient funding, poor public awareness of their existence and function, an unclear mandate and relationship to local courts, and later, an abrupt demise, with little attention paid to the status and security of the recorded complaints. The offices did assist with filing some 200 cases while Aristide was in office, resulting in the detention of several dozen lower-level military and paramilitary operatives. Further success was stymied by a lack of resources, difficulty in locating defendants, and a failure of judicial will to follow through with criminal prosecutions.

Aristide also convened a special team of foreign lawyers to prepare a small number of cases of the most notorious political murders under the Cédras government: those of Justice Minister Guy Malary in October 1993, Aristide financial supporter and political advisor Antoine Izméry in September 1993, long-time Aristide ally Father Jean-Marie Vincent in August 1994, and teacher and activist Jean-Claude "Claudy" Museau in January 1992. With time, the international lawyers have taken on responsibility for additional prominent cases, including the 1994 massacre in Raboteau and the FRAPH arson in Cité Soleil in December 1993 (which killed approximately fifty residents and destroyed hundreds of homes), and began assisting the Special Investigation Unit (SIU, discussed below) as consultants to the Ministry of Justice. As detailed below, this legal team has been the driving force behind the Haitian government's convictions in the Museau and Izméry cases.

The government's success in these cases was dimmed, however, by the fact that all but one of the convictions were of defendants tried *in absentia*. Also, the legal team suffered a resounding defeat with the acquittal of two suspected participants in the assassination of Justice Minister Guy Malary. Nor has the team made notable progress on the case of Father Jean-Marie Vincent, who was killed on August 28, 1994, as he attempted to enter his residence in Port-au-Prince. Vincent had faced death threats for years arising out of his work with peasant organizations in Jean-Rabel, the site of a brutal 1987 massacre, and his friendship with President Aristide. Although President Clinton highlighted his death as one of the justifications for the American intervention in Haiti, and his case was included in Aristide's list of priority investigations, the Haitian government has not arrested or brought to trial any suspect in his killing. The lawyers' efforts to move forward on a number of these cases reportedly have been stymied by a lack of sufficient resources and staff, and intermittent support from the Justice Ministry.

³⁷ Elie, a trainer and organizer with MPP, had emerged from hiding in Port-au-Prince to visit his family in Bassin Zin, near Hinche, when he was killed. MPP representatives reportedly were instrumental in moving this case forward.

³⁸ Title II, Chapter I of the Haitian Penal Code (*Code Pénal*) details crimes against the person. Section 1 (1) defines murder and the penalty for it.

³⁹ Telephone interview with Denis Racicot, September 10, 1996.
Human Rights Watch/Americas

President Aristide created a Special Investigation Unit in late 1995 to investigate politically motivated crimes committed before, during, and after the period of military rule.⁴⁰ The SIU has worked collaboratively with the international lawyers team. The unit operates with international support, including two U.S. government staff, and is assisted by approximately thirty-five policemen (known as the criminal brigade, *brigade criminelle*).⁴¹ In November 1995 the justice minister delivered a list of seventy-seven human rights crimes to be investigated by the brigade. The list included a series of massacres as well as murders of prominent individuals, including several assassinations committed since Aristide's return.⁴² In the short period before Aristide stepped down, the unit was responsible for the arrest of two suspects and conducted investigations resulting in the issuance of four other arrest warrants in connection with the murder of legislator Jean Hubert Feuillé. The SIU received FBI assistance for an investigation of the March 1995 killing of a prominent pro-military attorney, Mireille Durocher Bertin, and her client, a pilot with possible links to drug-traffickers, Eugène Baillergeau. Initial allegations that President Aristide's interior minister, Mondésir Beaubrun, may have had some role in the killing were never confirmed, and the case remains open. The FBI team completed its investigation and provided an oral briefing of its findings, but no material evidence, to Haitian investigators in December 1995.⁴³

Activist Claudy Museau

The first prominent trial for human rights abuses committed under the military government occurred on June 29, 1995, in Les Cayes. Lieutenant Jean-Emerly Pyram was sentenced *in absentia* to sixty years at hard labor for the murder of the teacher and activist Jean-Claude "Claudy" Museau, who died in January 1992 after being severely tortured. President Aristide had selected Museau's case as one of the government's high priority cases in January 1995. Although others allegedly participated in Museau's torture, no one else has been tried in this case.

Aristide Supporter Antoine Izméry

Antoine Izméry, a prominent supporter of President Aristide, was dragged from a memorial church service honoring victims of a 1988 massacre, forced to kneel in the street, and shot point blank in the head on September 11, 1993. The assassins acted in a highly organized fashion, blocking access to the area, sending armed men onto the church grounds, and disregarding the presence of domestic and international human rights observers and the press. Police vehicles escorted the assassination team to and from the site. A MICIVIH investigation concluded that "the elaborate plan to assassinate Antoine Izméry could not have been carried out without the complicity, if not the participation, of highly placed members of the Haitian armed forces."⁴⁴

⁴⁰ The SIU priority cases are listed at section VI of this report.

⁴¹ The U.S. supported two staff at the SIU who worked on cases arising in the period following President Aristide's return from exile, particularly the Durocher Bertin killing.

⁴² The Dole Amendment to the Fiscal Year 1996 Foreign Operations Appropriations Act required the suspension of U.S. foreign assistance to Haiti unless the Haitian government investigated a number of cases of reportedly politically motivated killings, most of which occurred following President Aristide's return. The most prominent of these cases was the March 1995 murder of Mireille Durocher Bertin and Eugène Baillergeau.

⁴³ Interview with U.S. Ambassador William Lacy Swing, June 24, 1996.

⁴⁴ OAS/UN International Civilian Mission in Haiti, *Report on the Assassination of Antoine Izméry*, November 1993. ~~Antoine Izméry's brother Georges, who resembled him, was assassinated on September 26, 1992.~~
Human Rights Watch/Americas

On August 25, 1995, one of over fifteen implicated by MICIVIH in carrying out the killing, *attaché* Gérard "Zimbabwe" Gustave, was convicted of Izméry's assassination and sentenced to life imprisonment. The next month, seven others were convicted and sentenced to life imprisonment *in absentia* for the Izméry murder, including former Port-au-Prince police chief Col. Michel François, the former commander of the police's Anti-Gang Service, Capt. Joanis Jackson, and the second-ranking leader of FRAPH, Louis Jodel Chamblain.⁴⁵ In April 1996, François fled the Dominican Republic for exile in Honduras, where, despite his notorious human rights record, the Honduran government granted him political asylum. Franck Romain, another high-profile Haitian human rights abuser, also fled the Dominican Republic for political asylum in Honduras. Haitian and U.S. government sources concurred in stating that, while François and Romain escaped the Haitian justice system, the Haitian government favored the move to distance itself from an imposing threat to stability. However, Haiti's long-term stability would be better served by the prosecution and punishment of François, Romain, and other notorious human rights violators who have sought exile in other countries.

Justice Minister Guy Malary

The Aristide government's justice minister, Guy Malary, was assassinated on October 14, 1993. His driver and a bodyguard were also killed. The police blocked international human rights observers from the scene for over an hour. When finally granted access, MICIVIH observers saw the commander of the Investigation and Anti-gang Service of the police (*Service d'investigation et de recherches Anti-gang*) ordering the round-up of frightened witnesses. Since the restoration of democratic government to Haiti, government attorneys have accused three individuals of participation in the assassination: Marcel Morissaint, Robert Lecorps, and Jean-Ronique Antoine. Morissaint was released from custody in questionable circumstances in October 1995, and Lecorps and Antoine were acquitted of participation in the killing on July 23, 1996.

In September 1995, shortly before government attorneys hoped to interview Morissaint about his alleged participation in Malary's killing, the Port-au-Prince prosecutor, Jean-Auguste Brutus, authorized his release from prison, where he was being held on other charges. *The Nation* magazine reported that U.S. officials in Haiti confirmed that Marcel Morissaint, an *attaché* and the alleged gunman in Malary's assassination, was an informant paid by the U.S. Drug Enforcement Agency from 1991 to 1995. *The Nation* quoted then-Justice Minister Jean-Joseph Exumé alleging that Morissaint had been "under U.S. protection" and was removed from custody with U.S. assistance.⁴⁶ National Security Advisor Anthony Lake responded publicly that Morissaint had no association whatsoever with the U.S. at the time of the assassination of Guy Malary.⁴⁷ On a visit to Haiti, Lake also stated, "...it is absolutely untrue that the United States in any way helped that person [Morissaint] to leave the justice system here."⁴⁸ Morissaint remains at large and is presumed to have left Haiti.

⁴⁵ Fresnel Lamarre, aka Ti Lama, a suspect in the Izméry killing identified in the MICIVIH report, was shot to death on the night of May 2, 1995. He reportedly was killed by gunmen traveling in a Toyota pick-up but further details about his death and the killers' motives were unclear. His case is under investigation by the Special Investigation Unit.

⁴⁶ Allan Nairn, "Our Payroll, Haitian Hit," *The Nation*, October 9, 1995, p.1, and James Ridgeway and Jean Jean-Pierre, "Federal Bureau of Obfuscation: Aristide Investigates Crimes the U.S. Would Prefer Left Unsolved," *The Village Voice*, October 10, 1995. While imprisoned, Morissaint was charged with raping a fourteen-old-girl.

⁴⁷ "Article says Suspect in Haiti Assassination Freed," Reuters News Service, September 22, 1995.

⁴⁸ *Ibid.*

On July 23, 1996, Robert Lecorps and Jean-Ronique Antoine were tried and acquitted of participation in the assassination. The trial reportedly was poorly prepared by the international lawyers team and marred by prosecutor Brutus's lack of familiarity with the case. He reportedly was unable to recognize the prosecution witnesses (who he had not interviewed previously) and failed to object to the seating of a jury that openly sided with the defendants and badgered and intimidated the witnesses. The timeliness of the prosecution's proceeding to trial was called into question since the case relied solely on eyewitness testimony and did not provide any material evidence. The international lawyers' bureau preparing the case reportedly received minimal cooperation from the Haitian police charged with carrying out arrest warrants.⁴⁹ Brutus appealed the case based on alleged jury-tampering. The appellate court had not yet reached a decision as of this writing. Meanwhile, Lecorps and Antoine remain in prison on other charges. The Haitian government has not brought charges against those who masterminded the killing. Government representatives have argued that the U.S. failure to return materials seized from FRAPH and Haitian military headquarters has impeded their ability to document the intellectual authorship of this and other prominent assassinations.

April 1994 Massacre in Raboteau, Gonaïves

On April 22, 1994, Haitian soldiers and FRAPH members descended on the coastal community of Raboteau and opened fire on residents, killing between twenty-five and thirty.

On May 26, 1995, the Haitian government arrested Capt. Castera Cenafils for his alleged participation in the massacre. Since that time he has remained in pre-trial detention in Gonaïves along with two *attachés* also suspected of participating: Jean Tatoune and Ludovic Adolphe. Three other suspects in the case reportedly are being held in Port-au-Prince. However, the case has progressed slowly due to personnel changes, including the dismissal of the original judge. Furthermore, Gonaïves has not held a criminal court session since 1991, and the judicial authorities there still have not set a firm date for the Raboteau massacre to go to trial. A trial date is not expected before early 1997. The truth commission conducted an extensive investigation in this case, including forensic analysis of the site with assistance from international specialists, and the publication of their findings would undoubtedly contribute to the prosecution effort. Victims of the attack continue to press for the trial to go forward.

United States Government Impedes Accountability in Haiti

As with its earlier support for a broad amnesty, the Clinton administration's policy toward Haiti has neither embraced the principles of accountability nor supported concrete Haitian government efforts to establish responsibility for past human rights violations. Washington's refusal to return the FRAPH and Haitian military documents and to surrender one of Haiti's most notorious human rights violators, Emmanuel Constant, continues to obstruct justice and to impede accountability.

FRAPH and Haitian Military Documents Remain in U.S. Possession

U.S. soldiers seized approximately 160,000 pages of documents and other materials from FRAPH and Haitian military headquarters in the fall of 1994, including videotapes, photographs of "trophy" torture victims, membership applications for FRAPH, passports, identification cards, and business records. This concrete evidence of military-endorsed brutality has obvious evidentiary value for the prosecution of gross, systematic human rights violations. The failure to return these materials obstructs the Haitian government's efforts to establish accountability.

Although the U.S. government conceded that these materials are Haitian property, Washington insists that the Haitian government accept certain conditions for their return. In early 1996, Human Rights Watch/Americas obtained a draft "Memorandum of Understanding Concerning the Return of Haitian Documents and other Materials" (MOU) prepared for the signature of U.S. Amb. William Swing and then-Haitian Justice Minister René Magloire. In the MOU, the U.S. sought two conditions on the return of the documents. One limited access to the documents to certain Haitian governmental agencies -- investigative and prosecutorial authorities and the Haitian Truth and Justice Commission (which had already completed its work) -- with the apparent aim of avoiding summary popular retaliation against those named in the documents. In a February 27, 1996, letter to Secretary of State Christopher we urged that the legitimate

⁴⁹ The police assigned to the Special Investigative Unit, apparently following orders of the U.N. Civilian Police, reportedly initially refused to arrest any suspect in the case unless they could be assured that the suspect would be convicted at trial.

goal of protecting individuals from vigilante violence be pursued in a manner that maximizes the opportunity for the substance of the documents to be revealed to the Haitian people, even if safeguards are taken regarding the names of unindicted suspects. Public access to this information through a commission of inquiry or some similar body would contribute to truth-telling, a vital step in the process of reconciliation and justice. Furthermore, once a defendant is publicly identified for prosecution, there would be no further need to hide from the public the fact that his or her name might also appear in military documents.

The MOU's second set of conditions, which require the presumptive excising of the names and identifying information of all U.S. citizens, is far more objectionable, yet it is the condition on which the U.S. government has been most insistent. U.S. Ambassador William Swing and Assistant Secretary of State John Shattuck argued that this measure was necessary to protect U.S. citizens' privacy rights.⁵⁰ However, privacy concerns pale in the face of potential criminal conduct by U.S. citizens or the U.S. government. Ostensibly Washington also sought these conditions to protect U.S. citizens from summary retaliation. But in light of the protection inherent in the restrictions on the public revelation of any names listed in the documents, these additional restrictions apparently serve the separate and illegitimate purpose of covering up possible U.S. complicity in political murder and other abuses, particularly the apparent involvement of U.S. intelligence agents with the military regime and FRAPH. If U.S. government agents or associates participated in criminal actions during the period of military rule in Haiti, their illegal activities should be exposed and vigorously prosecuted under applicable Haitian and U.S. law. Once more, a U.S. administration is allowing political considerations to take precedence over building the rule of law.

The U.S. seizure of and subsequent failure to return tens of thousands of Haitian documents and other materials from FRAPH and Haitian military headquarters has directly impeded Haitian government efforts to investigate and prosecute human rights violators. Already, the Haitian Commission for Truth and Justice was denied an opportunity to review these materials and include them in its final report. In addition, criminal prosecutions of major human rights cases, including the assassinations of Antoine Izméry and Justice Minister Guy Malary, most probably could have been strengthened, and higher level defendants identified, with information contained in these documents.

FRAPH Leader Emmanuel Constant's Release and Non-deportation

Emmanuel Constant, the founder and leader of FRAPH (the Front for the Advancement and Progress of Haiti), has stated repeatedly that he received payments from the CIA from 1992 until 1994 (of U.S.\$500/month) and that he collaborated with the Defense Intelligence Agency (DIA) during that time. Constant identified DIA *attaché* Col. Patrick Collins as his handler.⁵¹

⁵⁰ Interview with Amb. Swing, Port-au-Prince, June 24, 1994, and briefing with Assistant Secretary for the Bureau of Democracy, Human Rights, and Labor, Washington, July 11, 1996.

⁵¹ The CIA previously was linked to another Haitian organization responsible for serious human rights abuses. The *New York Times* reported on November 14, 1993, that in the 1980s the CIA had created a special unit within the Haitian military known as the National Intelligence Service or SIN. While the service was intended to stem the flow of drug money through Haiti, it in fact became, in the words of the *Times*, "an instrument of political terror." Among the abuses committed by the SIN was the brutal interrogation and torture of Evans Paul, the mayor of Port-au-Prince.

In May 1996, the director general of the Haitian National Police ordered the disbanding of the SIN, a unit of approximately eighty-five official members. Police director Denizé and others had criticized the unit's possible involvement in violent incidents and lack of discipline (including issuing false identity cards to non-members). (Interview with Pierre Denizé, Haitian National Police Director General, Port-au-Prince, June 20, 1996). However, when Haiti's security situation grew worse in August 1996, Prime Minister Rosny Smarth announced that the SIN would be reestablished to respond to the security crisis. ("Destabilization and Terrorism," *Haiti Info*, September 7, 1996.) As this report went to press, it was not clear if the unit was functioning again.

Constant now has a warrant pending for his arrest in Port-au-Prince on charges of murder and torture based on November 1994 complaints by an organization known as Anti-FRAPH. FRAPH's brutal activities under the military government included political rapes and other torture, executions, and mutilations, and the notorious arson attack on Cité Soleil that killed at least fifty residents.⁵² As FRAPH's founder and president, Constant could face numerous additional criminal charges for his direct or command role in such abuses. The Haitian government formally requested Constant's extradition from the United States late in 1995.⁵³ Disturbingly, however, Washington repeatedly has extended its protection to Constant.

Shortly after the U.S. intervention in Haiti, the U.S. Embassy sponsored a press conference where Constant took center stage with a message that FRAPH was simply a political party. Constant entered the United States in December 1994, reportedly due to a "mistake" by immigration authorities. On March 29, 1995, Secretary of State Christopher wrote to Attorney General Janet Reno recommending Constant's prompt return to Haiti. In the letter, Secretary Christopher acknowledged that FRAPH was an "illegitimate paramilitary organization whose members were responsible for numerous human rights violations in Haiti in 1993 and 1994." He argued that: "To permit Mr. Constant to remain at large in the United States in these circumstances will appear as an affront to the Haitian government, and will cast doubt upon the seriousness of our resolve to combat human rights violations...."⁵⁴

Yet, several months after Constant was detained and found deportable by the U.S. immigration authorities, the Clinton administration decided to release him into the United States on June 14, 1996, rather than return him to Haiti. The decision to release Constant arose from the settlement of a civil suit for his "wrongful incarceration" that he had brought against Secretary Christopher and Attorney General Reno. At the time Constant brought the suit, in December 1995, he also volunteered to return to Haiti.⁵⁵ Despite the pending Haitian government extradition request and Constant's offer to return to Haiti, he remained in a U.S. detention center until June. In a secret agreement, the U.S. government released Constant to his mother's custody in Brooklyn, provided him with a work permit, and required only that he check in weekly with immigration authorities and abide by a gag order. Constant also retains the option to choose deportation to a country other than Haiti or the Dominican Republic, subject to U.S. approval.⁵⁶ These extraordinary developments, representing a marked departure from Secretary Christopher's March letter and from the U.S. government's obligations under the Convention against Torture, cast a pall on Washington's human rights policy in Haiti.⁵⁷ After a decade of Washington's forcibly returning desperate refugees to Haiti, the Haitian public regarded the U.S. decision not to send back a notorious human rights violator with cynicism and disdain.

⁵² Witnesses reportedly placed Constant at the scene of the December 1993 arson attack, which also destroyed hundreds of homes .

⁵³ The U.S. government notified the Haitian government that it considered that the request was insufficiently detailed. As of this writing, the Haitian government still had not submitted additional documentation. Nonetheless, Constant clearly remains deportable under U.S. law.

⁵⁴ Letter from Secretary of State Warren Christopher to Attorney General Janet Reno, March 29, 1995.

⁵⁵ William Branigan, "Foe of Aristide Plans Lawsuit, Return to Haiti," *The Washington Post*, December 12, 1995. Constant sued the U.S. government for \$50 million and concurrently withdrew his objections to the deportation order against him, volunteering to return to Haiti.

⁵⁶ Myers, "Haitian's Deal with U.S. could let him avoid trial in atrocities," Haq, "Une entente secrète pour libérer le chef du FRAPH selon les critiques," and Nicholas Burns, U.S. Department of State Briefing, July 26, 1996.

⁵⁷ The Convention against Torture requires the U.S. either to extradite or to prosecute alleged torturers. These obligations are detailed in Articles 5, 6, and 7 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Article 9 details a state party's obligation cooperatively to provide countries trying to prosecute human rights violations with all evidence available for the prosecution. The U.S. is a party to this international treaty. We recommend that Haiti also ratify the Convention against Torture.

To justify its action, the U.S. government expressed concern that Constant's presence in Haiti would contribute to "instability" and "insecurity." In refusing to turn Constant over to the Haitian justice system in the process, Washington abandoned a commitment to international human rights principles and the rule of law that must form the basis of any lasting stability. The U.S. government also argued that Haiti's judicial and penal system were unable to handle Constant's case. Yet, despite weaknesses in those systems, the government has demonstrated a capacity to carry out prosecutions of human rights crimes. In conversations with Human Rights Watch/Americas, both President Préval and Justice Minister Antoine expressed their willingness to devote sufficient resources to provide Constant a fair trial and ensure his security in Haiti.⁵⁸ Amb. Swing was unable to specify when he thought conditions in Haiti would be appropriate for returning Constant to face trial.⁵⁹

Other Actions on Impunity

Beyond litigating cases in Haitian courts, Haitian and international human rights advocates creatively have pursued a number of strategies to advance the cause of truth and justice. In Haiti, victims of human rights crimes have formed organizations, including one composed of over one hundred survivors of political rape. Another organization, *MAP VIV* (the Movement for Support to Victims of Organized Violence, "I will live"), is addressing the need for survivors of political violence to receive medical, psychological and legal assistance. The Jean-Marie Vincent Foundation supports groups with which Fr. Vincent worked, including those dedicated to justice, popular education, and land reform. *Médecins du Monde* (Doctors of the World) has opened an office in Port-au-Prince and is providing direct services to victims of the coup d'etat. The Guy Malary Project for the Rule of Law in Haiti, sponsored by the Robert F. Kennedy Center for Human Rights, recently opened a legal library in Haiti and plans to conduct human rights training for Haitian lawyers.

There are approximately fifty Haitian human rights cases pending before the Inter-American Commission on Human Rights of the Organization of American States. FRAPH now faces a civil suit in the United States for having directed the brutal beating of a Haitian woman, Alerte Bélance, in 1993.⁶⁰ In Canada, the International Centre for Human Rights and Democratic Development sponsored a day-long mock trial of Haitian human rights violators, where victims of the terror in Haiti from 1991 to 1994 were able to present testimony of their experiences.

IV. CONCLUSION

Haiti's turmoil over the last decade demonstrates the insidious effect of impunity for violent human rights abuse. Despite repeated official promises of justice and untold opportunities to fulfill those vows, prosecutions for human rights crimes have been rare. As each new military leader took power, the unmistakable lesson of the past was that there would be no serious price to pay for government atrocities. Getting away with murder was the rule.

Haiti's two democratically elected governments have struggled under the weight of entrenched impunity, making tentative steps toward ending the legacy of failed justice. Today, conditions are better than ever for breaking Haiti's pattern of impunity. Unfortunately however, Haiti's government, by failing to make ending impunity a priority, is letting the opportunity to establish accountability slip away. And the U.S. government, to its great shame, has erected its own roadblocks to truth and justice in Haiti.

Haiti's experience illustrates the dangers of ignoring accountability for past violent abuse in the haste to secure a "transition to democracy." Each time a supposedly reformist regime took power, Haitians were asked to forget the past, to look forward to a new era. But rather than build the rule of law, sooner or later this impunity emboldened reactionary forces to resume political killing. It is time for this official indulgence of political killers to end.

⁵⁸ Interview with President René Préval, Port-au-Prince, June 20, 1996 and interview with Justice Minister Max Antoine, June 28, 1996.

⁵⁹ Interview with Amb. Swing, Port-au-Prince, June 24, 1996.

⁶⁰ This case was brought by the Center for Constitutional Rights, which previously won the successful judgement against Gen. Prosper Avril.
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V. ACKNOWLEDGMENTS

Sarah A. DeCosse, research associate with Human Rights Watch/Americas, and Kenneth Roth, the executive director of Human Rights Watch, wrote this report. Anne Manuel, the deputy director of Human Rights Watch/Americas, edited the report. The report draws on the collaborative efforts of Human Rights Watch/Americas (formerly Americas Watch) and the National Coalition for Haitian Rights (formerly the National Coalition for Haitian Refugees, NCHR) from 1986 to 1995. DeCosse conducted additional research. Steven Hernández, associate with Human Rights Watch/Americas, provided production assistance and Kathleen Schorsch provided research assistance. William G. O'Neill, consultant to the NCHR, reviewed an earlier version of this report.

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VI. APPENDIX

The Special Investigation Unit is charged with investigating the following seventy-seven cases (eighteen priority cases are marked with an asterix): Antoine Izméry* (Sept. 11, 1993); Guy Malary* (October 14, 1993); Jacques Derenoncourt (December 3, 1992); Sony Philogène (December 5, 1992); Felix Lamy; Georges Izméry* (September 26, 1992); Laraque Exantus and his brother* (February 1994); Charles Jean Baptiste (September 6, 1994); Jean-Marie Vincent* (August 28, 1994); Alerte Bélance (October 16, 1993); Raboteau massacre* (April 23, 1994); Cité Soleil massacre and arson* (December 27, 1993); murder of twelve youths* (February 2, 1994); Dady Pierre (March 16, 1994); murder of four members of O.P.S. in Cité Soleil* (May 23, 1994); Gervais massacre; Jean Rabel massacre* (August 28, 1989); St. Jean Bosco church massacre* (September 11, 1988); Gilbert Mesneo (July 29, 1995); Etienne Colas (July 27, 1995); Hans Plaisimond (July 25, 1995); Théagène Saint-Fleur (July 21, 1995); Désir Fosdus (July 21, 1995); Betty Maurice* (July 6, 1995); Yves Marie and Mario Beaubrun (July 4, 1995); Romulus Dumarsais* (June 27, 1995); Milo Gousse and Claudy Boucard (June 19, 1995); Wilfred Figareau (June 9, 1995); Leslie Grimar (June 9, 1995); Jacques Bastien (June 7, 1995); Ex-Lt. Col. Michel Hermann* (May 24, 1995); Michel Gonzalez* (May 22, 1995); Clerveaux Bonaparte (May 5, 1995); Vinel (aka Fresnel, Ti Lama) Lamarre (May 2, 1995); Philogène Lamour (April 29, 1995); Oscar Tiblanc (April 21, 1995); Mireille Durocher Bertin and Eugène Baillergeau* (March 28, 1995); Marc Claude (March 22, 1995); Erick Lamothe; Richard Andre Emmanuel (February 13, 1991); Bastien and Steven Desrosiers (July 26, 1991); Jacques Nelio and Pierre Shiler; Louis Walky (July 26, 1991); Sylvio Claude (September 29, 1991); Roger Lafontant (September 29, 1991); Sony Lefort (September 11, 1988); Ass. Dev. La Saline; Gilles Charles (October 10, 1991); Madame Pierre Racine Salam (November 7, 1995); Eddy "Ti Paul" Jerome (December 11, 1991); Domont Séraphin (July 24, 1993); Jean Robert Noel (October 4, 1991); Tissaint Eralier (February 10, 1992); St. Jean Denis (September 11, 1988); Joseph Israel Louis (October 24, 1991); Delima Macedoine (October 12, 1991); Céjuste Altero (April 5, 1995); Exavier Altero (November 20, 1994); Bonière Louis; Armand Verne (1988); Wescarline Delva (September 18, 1988); Célestin André (September 11, 1988); Jean Bossière (September 30, 1991); Jésula Jouissance; Yves Joseph (July 19, 1994); Pierre-Jacques Michel (October 5, 1991); Edly Jean François (September 5, 1993); Marie Thérèse Dumeus (October 2, 1991); Jacqueline Jacquet (September 30, 1991); Jean-Rony Blaise (November 12, 1992); Alexis Lamirodieu (September 30, 1991); Eluxius Pierre; Max Mayard* (October 10, 1995); and, Jean Hubert Feuillé* (November 7, 1995).

VII. WHAT YOU CAN DO

A Haitian proverb states "The one who delivers the blow forgets, the one who bears its mark remembers." In the past decade, Haitians who suffered under brutal governments have been asked over and over again to forget the past and look forward to a new era. But still they remember and they are thirsting for justice. Haiti's experience illustrates the dangers of ignoring accountability for past violent abuse in the haste to secure a transition to democracy. Rather than build the rule of law, sooner or later impunity emboldened reactionary forces to resume political killing. Haiti's government is letting the opportunity to establish accountability slip away. And the U.S. government, to its great shame, has erected its own roadblocks to truth and justice in Haiti. It is time for this official indulgence of political killers to end.

Appeals to the U.S. Government

The U.S. government directly has impeded the prosecution of human rights crimes in Haiti by refusing to return documents seized from the paramilitary organization FRAPH and Haitian military headquarters and by reaching a secret settlement with FRAPH's leader, Emmanuel Constant, which allowed Constant to remain in the United States with a work permit while evading deportation to Haiti and criminal prosecution for human rights abuses there. The U.S. government's cover-up of the crimes of FRAPH, which was founded by Constant while he was allegedly on the Central Intelligence Agency (CIA) payroll, suggests that the U.S. government is trying to prevent revelation of its own complicity in violent abuses in Haiti.

To protest these U.S. policies in Haiti, please direct politely worded letters, telephone calls, faxes, or emails to President Bill Clinton, The White House, 1600 Pennsylvania Ave., NW, Wash., D.C. 20506 (Tel: 202-456-1414, Fax: 202-456-2641, Email: President@whitehouse.gov), with copies to: Secretary of State Warren Christopher, U.S. Department of State, Wash., D.C., 20520 (Tel: 202-647-5291, Fax: 202-647-1533); Attorney General Janet Reno, Justice Department, Tenth St. & Constitution Ave. NW, Wash., D.C. 20530 (Tel: 202-514-2001, Fax: 202-514-4371), and Secretary of Defense William Perry, The Pentagon, Wash., D.C. 20301 (Tel: 703-695-5261, Fax: 703-695-1219).

You can recommend the following actions

- Return to the Haitian government all materials that were seized from FRAPH and Haitian military offices in the fall of 1994, without any redaction of information or U.S. citizens' names.
- Deport FRAPH leader Emmanuel Constant to Haiti, where he is wanted for human rights abuses, including torture and execution. The details of any settlement or agreement between Constant and the U.S. government should be made public, particularly any details regarding Constant's relationship with the CIA.
- Examine U.S. government involvement in human rights abuses in Haiti. The Clinton administration should launch a thorough and impartial investigation into allegations that individuals or units funded by the CIA, the Drug Enforcement Administration (DEA), and the Defense Intelligence Agency (DIA) were involved in serious human rights violations. The findings of such an investigation should be made public and disciplinary or criminal action taken where appropriate. U.S. government documents regarding human rights violations committed by the SIN (the National Intelligence Service) and FRAPH should be declassified to allow informed public debate about U.S. policy towards Haiti.
- You can also contact your congressional representatives and raise the issues described above at: Members of Congress (name of Member of Congress), U.S. House of Representatives, Washington, D.C., 20515, or name of Senator, U.S. Senate, Washington, D.C., 20510, general congressional information number: 202-224-3121.

Appeals to the Haitian Government

Please send politely worded appeals to the Haitian authorities: Ambassador Jean Casimir, Embassy of Haiti, 2311 Massachusetts Ave. NW, Washington, D.C., 20036 (Tel: 202-332-4090, Fax: 202-745-7215), requesting the following: to publish the report of the National Commission for Truth and Justice, *Si M Pa Rele* ("If I Don't Cry Out") and, to prosecute the alleged perpetrators of serious human rights abuses named in the Truth Commission report. Those human rights violations that the commission described as crimes against humanity should be prosecuted as a matter of utmost urgency.

For more information, contact Sarah DeCosse at (202) 371-6592, x111.

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