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# HUMAN RIGHTS WATCH NATIONAL COALITION FOR HAITIAN REFUGEES

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## RAPE IN HAITI A Weapon of Terror

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## I. INTRODUCTION

We are in a country where the military does what it wants. I think rape of women by soldiers and police is a frequent problem, not a systematic practice, but definitely a widespread one.<sup>1</sup>

The military *coup d'état* against President Jean-Bertrand Aristide on September 30, 1991, plunged Haiti into a maelstrom of state-inflicted and state-sanctioned human rights abuses. These abuses have included numerous political assassinations, arbitrary arrests and detentions, and the torture of prisoners. Following the coup d'état, the military authorities suspended virtually all constitutionally guaranteed rights and procedures. Since the end of 1993, documented cases of politically motivated rape, massacres, forced disappearance, and violent assaults on entire neighborhoods have increased greatly.

Both women and men suffer abuse at the hands of the military and police forces, their armed civilian auxiliaries — commonly known as *attachés* — and bands of thugs called *zenglendos*.<sup>2</sup> More recently, the Front for the Advancement and Progress of Haiti (Front pour l'Avancement et le Progrès d'Haïti, FRAPH) has been implicated in gross abuses of human rights, including assassinations and forced disappearances, the December 27 arson and murders in Cité Soleil and, with the army, the April massacre in Raboteau, Gonaïves.<sup>3</sup> Like men, women have been killed, arrested for their actual or imputed political views, beaten while in detention, forced into internal hiding (called *marronage*), disappeared, and denied the most basic civil and political rights to political expression, humane treatment and due process.

Reports from women's rights groups in Haiti reveal that women also are targeted for abuse in ways and for reasons that men are not. Uniformed military personnel and their civilian allies have threatened and attacked women's organizations for their work in defense of women's rights and have subjected women to sex-specific abuse ranging from bludgeoning women's breasts to rape. Rape also is a part of apparently random violence committed by bands of *zenglendos*. Social unrest, which is both fostered and exploited by the military authorities in order to repress opposition to their rule, has contributed to increased levels of seemingly random violence. A Port-au-Prince gynecologist with a private practice told Human Rights Watch (HRW) and the National Coalition for Haitian Refugees (NCHR) that he has seen one or two cases of rape every month since the coup d'état, and believes that violence attributed to *zenglendos* "includes military and attachés."<sup>4</sup>

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<sup>1</sup> Interview, human rights monitor, Gonaïves, February 12, 1994.

<sup>2</sup> According to the UN/OAS International Civilian Mission, the word *zenglendo* "denotes criminals who are recruited from groups ranging from the marginal social strata found in working-class districts to police officers themselves usually acting at night, in civilian clothes and with official weapons." *Interim Report by the International Civilian Mission to Haiti* for the period of 9 February - 31 May 1993, A/47/960, p.8.

<sup>3</sup> In the second half of 1993, bands of civilian thugs armed by the Haitian military were fashioned into the quasi-political organization known as the Front for the Advancement and Progress of Haiti (FRAPH). FRAPH's membership includes long-time Duvalierists, as well as Tontons Macoutes, attachés, and other army supporters. The organization's co-founders are Jodel Chamblain, a former Tonton Macoute, and Emmanuel Constant, the son of an army commander under François Duvalier — Papa Doc. FRAPH has been nurtured by the military since its emergence in September 1993. For details on FRAPH's involvement in human rights abuses, see Human Rights Watch/Americas and National Coalition for Haitian Refugees, *Terror Prevails in Haiti: Human Rights Violations and Failed Diplomacy* (New York: Human Rights Watch, 1994).

<sup>4</sup> Interview, Port-au-Prince, February 11, 1994.

In February 1994, the Americas and Women's Rights divisions of HRW conducted a joint fact-finding mission to Haiti with NCHR to investigate reports that state agents were using rape as a political weapon against women. We interviewed women's rights activists, human rights monitors, U.S. and other officials, journalists, doctors and women victims of sexual assault. This report documents first-hand nearly a dozen rape and attempted rape cases in the period between August 1992 and February 1994. It includes instances of vaginal and anal rape, one case of a woman who became pregnant following her assault, and one case of a woman who died as a result of vaginal hemorrhaging following rape. In one instance, a woman was raped not only because of her suspected political affiliation and her gender, but also seemingly because of the fact that she was light brown-skinned.

The investigative efforts of the United Nations/Organization of American States' International Civilian Mission (MICIVIH) add to increasing reports of state agents engaging in the rape of perceived political opponents. The Mission's October 1993 report included several instances of rape. Further, since its return to Haiti at the end of January 1994, MICIVIH has collected evidence of another sixty-six rapes "of a political nature."<sup>5</sup> In a separate investigation conducted from May 16 through 20, the Inter-American Commission on Human Rights documented first-hand twenty-one instances of rape by the military and its auxiliaries.

Our findings, combined with recent reports from local human rights monitors, the press and the UN/OAS Civilian Mission in Port-au-Prince, all point to a disturbing pattern of rape by police and attachés acting with impunity. HRW and NCHR found that military forces and attachés use rape and sexual assault to punish and intimidate women for their actual and imputed political beliefs, or to terrorize them during violent sweeps of pro-Aristide neighborhoods. Rape also functions as punishment for the political beliefs and activities of the victims' male relatives.

To our knowledge, the military authorities have never publicly denounced these practices nor fully disciplined those state agents known to have engaged in them. The military authorities' use and tolerance of rape fuels the reluctance of rape victims to report such abuse. Victims of rape by state agents or their auxiliaries fear that lodging a complaint will only further endanger their and their family's lives. Moreover, they do not expect to see their attackers caught or disciplined. Their fears are well-founded. According to former President of the Haitian Supreme Court André Cherilus, it is "not worthwhile for the victim of rape to go to the police to report the crime in the current situation. It would be even worse for the woman, given the extremely high probability of retaliation."<sup>6</sup>

The participation of state agents and their armed civilian auxiliaries in the rape of women violates Haiti's international obligations to refrain from persecuting its citizens for their political beliefs and from subjecting them to torture and other cruel, inhuman or degrading treatment.<sup>7</sup> Further, the military authorities' failure to investigate and prosecute rape and other violence against women, especially where state or state-supported actors are involved, violates domestic and international guarantees of due

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<sup>5</sup> See UN/OAS International Civilian Mission in Haiti Press Release, Ref. CP/94/28, June 17, 1994; Press Release, Ref. CP/94/20, May 19, 1994; Press Release, Ref. CP/94/8, March 21, 1994.

<sup>6</sup> Telephone interview, May 25, 1994.

<sup>7</sup> These rights are protected by the International Covenant on Civil and Political Rights (ICCPR), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW).

process and equal protection under law for all citizens.<sup>8</sup>

This report concludes that documented accounts of rape by uniformed military personnel and their allies are on the rise, that no action has been taken by the military authorities to denounce rape or to punish those who engage in it, and that the military authorities have failed to provide Haitian women with judicial redress as required under both international and domestic law. Although the evidence does not suggest that Haitian military leaders are actively promoting an explicit policy of rape, they are presiding over a campaign of systematic violations of human rights that clearly includes rape.

HRW and NCHR call on the military leaders of Haiti to denounce, investigate and prosecute state and state-supported agents who engage in rape and to ensure that women can report rape without fear of reprisal. We also call on the Clinton administration to demonstrate its commitment to respect for human rights by publicly denouncing serious abuses as they occur. We further urge the administration specifically to recognize and denounce rape as a tool of political persecution in Haiti and to ensure that women who suffer or have a well-founded fear of persecution based on gender will receive fair and full consideration of their asylum claims.

## II. BACKGROUND

The military officers who ousted Jean-Bertrand Aristide in September 1991 have withstood international efforts to unseat them, skirting a U.N.-mandated oil and arms embargo and renegeing on the U.S.-brokered Governors Island Accord of July 3, 1993, which was designed to induce the military high command to step down and to restore Aristide to power by October 30, 1993.<sup>9</sup>

Since the unraveling of the Governors Island Accord, unchecked repression has escalated, as is evident in the high-profile political assassinations of Aristide's Justice Minister Guy Malary on October 14, 1993 and political supporter Antoine Izmerly on September 11, 1993.<sup>10</sup> The UN/OAS Civilian Mission, deployed throughout the country to monitor the protection of human rights since March 1993, evacuated its personnel in October out of concern for their safety. Since the return of some thirty observers in late January 1994, the mission has had a permanent presence only in Port-au-Prince and has had to limit its investigative trips to the countryside due to concerns about security, the lack of communication equipment for the rural areas, and the lack of authorization from the UN to station Mission observers in other parts of the country.<sup>11</sup>

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<sup>8</sup> The 1987 Haitian Constitution, Chapter II, Section A, Article 19 obliges the state to "guarantee the right to life, health, and respect of the human person for all citizens without distinction in conformity with the Universal Declaration of Human Rights."

<sup>9</sup> The Agreement called for Aristide to propose a new Prime Minister; the Haitian Parliament to approve the nominated Prime Minister; sanctions to be lifted, after the approval of the new Prime Minister; foreign aid to be resumed to Haiti; a presidential amnesty to be granted for those military figures involved in the coup d'état against Aristide, within the parameters of the 1987 Constitution; the military high command to resign, allowing Aristide to name a replacement who would then go on to restaff the high command; and President Aristide to return to power on October 30, 1993.

<sup>10</sup> See HRW/Americas and NCHR, *Terror Prevails in Haiti*.

<sup>11</sup> The UN/OAS International Civilian Mission now has approximately sixty to seventy people in Haiti.

Local government has come under the total control of the military authorities. The mayor of Port-au-Prince, Evans Paul, for example, is a mayor without power and without office. He has no control over the daily administration of the city, which instead is conducted by allies of the military regime, including members of FRAPH. Further, the military provides Haiti's only police, even though the 1987 Haitian Constitution mandates the separation of civilian police and the military.<sup>12</sup>

As the human rights situation in Haiti has deteriorated, the Clinton administration has considered military intervention to oust the military regime and has endorsed United Nations trade sanctions that took effect on May 21. The Haitian military authorities remain defiant in the face of mounting international pressure. On May 11, 1994, Haitian parliamentarians allied with the army installed a civilian provisional president, Judge Emile Jonassaint, a known Aristide foe who was appointed head of the Haitian Supreme Court after Aristide's ouster. This action was an attempt to put a civilian face on Haiti's military rulers as well as to legitimize the ouster of Aristide.<sup>13</sup>

Meanwhile, the Haitian military authorities preside over relentless and brutal attacks on civilians. In March and April of 1994, disfigured, mutilated corpses of Aristide supporters began to appear frequently in the Port-au-Prince slum Cité Soleil.<sup>14</sup> On April 22-23, Haitian soldiers and FRAPH participated in the massacre of residents of the seaside slum of Raboteau, in the northern town of Gonaïves.<sup>15</sup> Several bodies bearing gunshot wounds washed up on the beach front. Although the exact number of people massacred has not been tabulated, credible estimates range between fifteen and thirty dead.<sup>16</sup>

The onslaught since the failure of the Governors Island Accord has created increasing numbers of internally displaced people, described as "in hiding" or *en marronage*. The forced displacement of tens, if not hundreds of thousands of Haitians is part of the military's strategy to destroy all forms of social and political organization. Although men are the majority of those driven into hiding, women often are kept from taking this drastic, but often life-saving, measure by their responsibility for their children. Thus women become *de facto* single parents, forced to shoulder the economic burden that marronage creates and to live with the uncertainty of not knowing whether their husbands or partners are alive or dead. The high level of internal displacement has resulted in severe economic hardship as families are separated and lose their already limited sources of income.

### **Women Under the Cédras Regime**

In the course of the military crackdown, women often are targeted for sex-specific forms of abuse. Women left behind by men driven into hiding are terrorized and attacked by local sections chiefs,

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<sup>12</sup> The Governors Island Accord also required that a separate civilian police force be trained and operate independent of the military.

<sup>13</sup> This action was rejected as illegitimate by the international community. No country has recognized the Jonassaint-led government.

<sup>14</sup> UN/OAS International Civilian Mission in Haiti, Press Release, Ref. CP/94/5, March 16, 1994; Amy Wilentz, "Haiti's Death Mask," *The New York Times*, March 24, 1994.

<sup>15</sup> Michael Norton, "Soldiers Kill More Than 23 Following Raid on Pro-Aristide Slum in Gonaïves," AP Wire Report, April 25, 1994.

<sup>16</sup> See UN/OAS International Civilian Mission in Haiti, Press Release, Ref. CP/94/17, May 2, 1994.

attachés and uniformed soldiers. Women's rights organizations have been intimidated or destroyed, and women's rights activists report being attacked with beatings on their breast and abdomen. Increasingly, the military's weapon of choice is rape.

The forced absence of the husband or partner exposes the woman to an additional risk of rape and other types of physical abuse. According to several women's rights groups, women often are raped when attachés, police or soldiers arrive at the homes of people who have gone into hiding to ascertain their whereabouts or to ensure that they do not return. The UN/OAS Civilian Mission underscored this in a recent press release:

...the scenario is always substantially the same. Armed men, often military or FRAPH members, burst into the house of a political activist they seek to capture. When he is not there and the family cannot say where he is, the intruders attack [rape] his wife, sister, daughter or cousin.<sup>17</sup>

Women suffer human rights abuses not only as those left vulnerable by the high level of marronage, but also as those who fight against repression and defend women's human rights through participation in women's organizations. Women's rights groups have been the targets of political repression since the coup d'état as a part of an overall strategy of the military authorities to uproot and close down all popular organizations. All the women's rights groups with which we spoke reported a sharp decrease in membership since the coup d'état, citing their members' fear of being associated with any popular organization, regardless of its political agenda, if any. According to many activists, members fear attending meetings given the violence with which the military regime has targeted any exercise of the rights to freedom of association or expression. Consequently, mobilization around women's issues has decreased dramatically, making the documentation of abuses against women doubly difficult.

Women's rights activists also reported specific incidences in which their members or organizations had been targeted. The head of one Haitian women's rights organization reported that her house was ransacked and that, in September 1993, she received a late-night telephone call, in perfect French, from a man identifying himself as being aligned with the military authorities. He threatened to rape her if she continued her work on behalf of women.<sup>18</sup> The headquarters of another Haitian women's rights group was burned down in the early morning hours of December 13, 1993. Although their office was one of several in a building, it was the only office completely destroyed by the fire.<sup>19</sup>

Members of another women's rights group reported that they have received numerous accounts of their members being targeted for violence. This is so especially in the countryside where activists are more easily identified. They believe that "this repression is especially directed at women because in this society women have no right to organize."<sup>20</sup>

Interviews with women's right groups in Port-au-Prince also revealed a startling picture of women

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<sup>17</sup> UN/OAS International Civilian Mission in Haiti, Press Release, Ref. CP/94/20, May 19, 1994.

<sup>18</sup> Interview, Port-au-Prince, February 16, 1994.

<sup>19</sup> Interview, KAY FANM, Port-au-Prince, February 11, 1994.

<sup>20</sup> Interview, Port-au-Prince, February 16, 1994.

activists being attacked in sex-specific ways, including rape and beatings of their breasts and abdomens. One women's rights activist told us that activists often are "beaten in their female parts — primarily their breasts and abdomen."<sup>21</sup> Arrested by soldiers in Gonaïves on November 21, 1993, Alourdes Metayer was beaten so badly in the abdomen that she miscarried.<sup>22</sup> Members of one Haitian women's rights group recounted another assault in which a woman who was beaten by a group of soldiers was told, "We'll beat you until you can't have kids, until you can't have kids like yourself [militant]."<sup>23</sup>

Reports of sex-specific types of violence, including the use of rape against female Aristide supporters, are becoming more frequent. The UN/OAS Civilian Mission recently condemned "these unacceptable violations of the rights of Haitian women, which appear to form an integral part of the political violence and terror" and noted that attachés, FRAPH and the Armed Forces of Haiti (Forces Armées d'Haïti, FAD'H) have been implicated in the assaults.<sup>24</sup>

### III. CASES OF SEXUAL ASSAULT

This section documents rapes committed by state and state-supported actors as well as by zenglendos. The greatest number of rapes documented by HRW and NCHR were committed by attachés, followed by rapes committed by police and soldiers, and then by rapes committed by zenglendos. Although crimes committed by zenglendos are not as clearly attributable to the military, rape committed by zenglendos is reported here because HRW and NCHR are particularly concerned that these crimes appear to flourish under cover of impunity assured by the military authorities.

Documenting rape by police and soldiers is especially difficult, given the climate of fear and repression under which most women's rights activists operate, as well as the rape victims' fear of reprisal which has long prevented them from reporting rape. According to one Haitian human rights activist who has worked with the Platform of Haitian Human Rights Organizations,<sup>25</sup> the use of rape as a political weapon against women is not a recent development in the Haiti conflict, but, until recently, it has gone largely unreported. Moreover, there exists little likelihood that soldiers will be disciplined.

Despite the continuing threat of retaliation, however, a local activist told us:

Women are finding the courage to tell what has happened to them. They realize that they are not alone and that there are people interested in helping them through this terrible event. They realize that it is not right that soldiers and others who are supposed to protect us get away with doing us a great deal of harm.<sup>26</sup>

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<sup>21</sup> Interview, Port-au-Prince, February 11, 1994.

<sup>22</sup> HRW/Americas and NCHR, *Terror Prevails in Haiti*, p. 31.

<sup>23</sup> Interview, Port-au-Prince, February 16, 1994.

<sup>24</sup> UN/OAS International Civilian Mission, Press Release, ref. CP/94/8, March 21, 1994.

<sup>25</sup> A Port-au-Prince-based, nine-member, human rights coalition.

<sup>26</sup> Telephone interview, May 24, 1994.

## Assaults by the Military

Assaults on women in their homes often are accompanied by the destruction of the house and personal belongings and assaults on other family members. Such search and destroy missions are carried out by the military, often with the assistance of FRAPH and other armed groups.

In Haiti, no meaningful distinction exists between the military and the police, despite superficial appearances to the contrary. In Port-au-Prince, for example, police ostensibly can be distinguished from soldiers by the colors of their uniforms: police wear blue and soldiers wear olive-green or khaki. But, in reality, the Haitian police are part of the army chain of command and are essentially soldiers carrying out police functions. Both forces arrest citizens for common offenses as well as offenses against the state regardless of their uniform color. As noted by one expert on the Haitian military:

In Haiti the military forces are the police. Even in major cities such as Port-au-Prince and Cap-Haitien the police departments function as units of the army. In the vast majority of Haitian cities and villages, the military basically has a police function.<sup>27</sup>

The army thus maintains control of the investigatory and enforcement aspects of the justice system.

An attack on August 14, 1993, demonstrates how the military — whether soldiers or police — and its civilian allies work together. Two soldiers, one policeman, and two attachés, all armed with pistols and rifles, broke down the front door of M.B.'s home and shot their way through the house as M.B. and her family slept. The men were looking for her father-in-law, who was constantly seen around the neighborhood discussing how much he anticipated Aristide's return. When they were unable to find him, they robbed his family, shot his twenty-three-month-old granddaughter, attempted to rape his daughter-in-law, M.B., and molested her cousin. M.B. told us:

My mother-in-law was downstairs sleeping with S.M., the baby who died. She got up and tried to warn us that there were intruders in the house. While she did this, the men entered the room where S., my husband's other child, and my cousin were sleeping.

My cousin was seventeen and they tried to rape her, but they realized she had her period and left her alone. They were screaming, "Where is the old man?"

One of the armed civilians put a gun across my cousin's legs and molested her. He put his hands under her gown and felt her breasts, and rubbed his hands over her stomach and thighs.<sup>28</sup>

The soldiers and attachés then ransacked M.B.'s house, terrorized her family with threats, called them "*Lavalas*," slapped and beat her and threatened to shoot her husband.<sup>29</sup> The soldiers and attachés dumped out sacks of flour and sugar from the family's store and filled them with radios and other items from the

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<sup>27</sup> Michel S. Laguerre, *The Military and Society in Haiti* (Knoxville, TN: The University of Tennessee Press, 1993), p. 125.

<sup>28</sup> Interview, Port-au-Prince, February 14, 1994.

<sup>29</sup> *Lavalas* is the Creole word meaning "flood" or "landslide;" as used colloquially, it refers to the broad-based popular movement that elected President Aristide.



house. Although only two of the men were uniformed, M.B. recognized another in civilian dress as a local policeman. M.B. told us:

I recognized the guy who was blocking the door of the bedroom, the one who pointed the gun at my husband. He was a policeman from the neighborhood and would buy goods from our little store. Although, that night he was dressed in civilian clothes.

They made me accompany them to the gate to let them out. By then it was about 4:00 A.M. or so. Once we arrived at the gate, one of the ones in uniform made me take off my underwear and was going to rape me. Luckily, I had my menstruation.

On the way out, the men warned M.B., "We know your father-in-law likes to talk about JBA. If Aristide comes back, we know you will seek revenge, but we will come back for you first."

Upon returning to her house, M.B. went to pick up her twenty-three-month-old daughter only to discover that the child was dead. The gunmen had shot her upon entering the house and covered her body with bed linen.

On August 15, a day after the murder and assaults, M.B. and her family left their home and went into hiding, staying at different times with various family members. M.B. explained her reluctance to report the assaults to the police:

We never went to the police. There would have been no use doing this. It would just have resulted in more hardship and terror for the family, and we were all too shocked by my daughter's death and everything else that happened. We were more concerned with our safety and with preventing further problems.

As of February 1994, M.B. and her family were in the process of applying for political asylum through the U.S. in-country processing program in Haiti. They have lost their store and virtually all means of maintaining themselves. M.B. declined to pursue an investigation because it would have been an "investigation involving the police basically investigating themselves, and that would only mean more bad news for me and my family."<sup>30</sup>

In another example of collaborative efforts between police and soldiers, on August 6, 1992, S.M., twenty-eight and the mother of three, was raped by a policeman when ten soldiers and police ransacked her house and took away her husband, accusing him of distributing Aristide tracts:

My husband has been a member of the Front National pour le Changement et la Démocratie (FNCD) since 1990. He enrolled people in civic training programs.

On August 6, 1992, at about 7:00 P.M., ten soldiers came to my house. The first person who entered started hitting me. He was a policeman — wearing blue. The others were busy looking around the house and breaking things. They said they were looking for Aristide tracts or pictures. They called my family "Lavalas" because we were members of the FNCD.

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<sup>30</sup> Interview, M.B., Port-au-Prince, February 14, 1994.

The policeman beat me and called me Lavalas. He then began pulling at my clothes, and I started to scream even louder. He told me to shut up and threatened to kill my children. I was dragged into a corner of the house and he continued to beat me and rape me. I felt humiliated and feared he would kill me and my children anyway.

After he finished, I remained crying in the corner. Several minutes later, my husband walked in and they immediately handcuffed him and took him away in a blue Toyota pickup.<sup>31</sup>

S.M.'s husband was taken to the local police headquarters known as the Cafeteria where he was beaten savagely all over his body, particularly on the thighs and buttocks. While being interrogated about his affiliation with the FNCD, he was tortured in the *djak* position: he was bound hand and foot, and a stick was placed behind his bent knees and over his bent arms to fix his whole body in a folded position, exposing in particular the back and buttocks. He was then beaten with a baton. He also was smacked upon both ears simultaneously, a common form of torture known as *kalot marasa*, and made to kneel and yell "Down with Aristide!" He was released the following day without charge.

Several months after the attack, S.M. and her husband decided that it was too dangerous to continue living in their home in the Port-au-Prince neighborhood of Croix Deprez, a neighborhood known for its support of Aristide. They moved first to Petionville, and subsequently changed their location several times.

In July 1993, armed civilians went to S.M.'s husband's workplace and warned people nearby that they were going to kill him. Soon after that, her husband fled to go into hiding alone. She has not heard from him again and does not know if he is alive or dead. S.M. now lives in Port-au-Prince with her children, fearing every day that the military will come looking for her. She never reported her rape to the police. She told us that she "feared for [her] life going there," and that "what had happened was bad enough."<sup>32</sup>

Given the overt and frequent involvement of law enforcement officials in rape and other forms of abuse, individual Haitians have nowhere to turn for help when they are attacked or when they witness attacks upon others. During our investigation, we obtained the following eyewitness testimony:

As my friend and I were returning to our hotel one night in late January 1994, we heard a woman screaming at the top of her lungs. We stopped and looked over to where the sound was coming from and saw a mixture of about eight to ten armed civilians and police milling near a car and not responding to the screams. We did not approach the car. These were armed men and police. I felt incapable of doing anything. I could not see well into the car, but the screams were piercing, and it looked like there were at least two uniformed policemen inside the car raping a woman.

I did not report what happened to the police. What would have been the use? They were the ones responsible. I can't even imagine what eventually happened to that woman.<sup>33</sup>

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<sup>31</sup> Interview, S.M., Port-au-Prince, February 16, 1994.

<sup>32</sup> Ibid.

<sup>33</sup> Interview with foreigner who spoke on the condition of anonymity, Port-au-Prince, February 15, 1994.

The October 1993 report on human rights in Haiti by the UN/OAS Civilian Mission documents several cases of soldiers raping women with impunity:

\* On June 10, a thirteen-year-old girl was raped by a corporal at the military post of Bayeux, Department of the North.

\* On July 24, a group of twenty armed men, some in uniform, surrounded the house of a Cité Soleil grass roots activist who was in hiding. Three went in and raped and threatened his wife.

\* A sixteen-year-old girl was raped by a soldier from the barracks of Fort Liberté at Dérec, Department of the Northeast.<sup>34</sup>

Between its return to Haiti at the end of January 1994 and May 1994, the UN/OAS Civilian Mission has documented sixty-six rapes of a political nature committed by the military and its auxiliaries.<sup>35</sup> During a separate May 1994 investigation in Haiti, the Inter-American Commission on Human Rights gathered evidence of twenty-one incidents of rape committed by the military, attachés and members of FRAPH between January and May 1994.<sup>36</sup>

### **Assaults by Army Attachés**

Attachés are civilians who are employed, armed and directed by the military and police. Attachés are omnipresent and abuse their enormous discretionary powers through murder, torture, arrests, beatings, extortion, imprisonment, and rape.

Interviews with Haitian human rights monitors, journalists and activists revealed a disturbing profile of attachés. According to one worker with the UN/OAS Civilian Mission in Haiti:

Although not a uniform practice, attachés are paid and carry an identification card. Some behavior is very common. They operate with absolute impunity or apparent acquiescence on the part of the military; they commit crimes in the presence of the military and police; they are heavily armed; and they act with an air of authority.<sup>37</sup>

In a country racked by generalized lawlessness, repression and terror, it is at times difficult to know who is an attaché and who is not. The military authorities benefit from keeping the identification of attachés as fluid as possible. In this way the military can intimidate the general population while disavowing any responsibility for the abuses committed by ubiquitous armed civilians.

M.G., seventeen, and a friend, eighteen, were leaving a Port-au-Prince party in mid-September, 1993, around midnight, when they were gang-raped by attachés wielding pistols:

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<sup>34</sup> International Civilian Mission Report on the Situation of Democracy and Human Rights in Haiti, October 25, 1993. p. 18.

<sup>35</sup> UN/OAS International Civilian Mission in Haiti, Press Release, Ref. CP/94/28, June 17, 1994.

<sup>36</sup> Inter-American Commission on Human Rights, Press Release No. 11/94, May 20, 1994.

<sup>37</sup> Interview, William O'Neill, former legal director of the UN/OAS Civilian Mission in Haiti, March 29, 1994.

Seven armed civilians stopped us. They surrounded us. One guy hit me with the butt of his gun and told me to lie down. They called us Lavalas, said we had money and asked why we were on the street so late at night. There was a blackout. Then, the one who had hit me with the butt of his gun grabbed me by the collar, threw me down, and raped me. Three of the men raped me and four raped my friend.<sup>38</sup>

M.G. is certain that the armed attackers were attachés. She told our mission, "[o]f course they were attachés, otherwise they would not have been armed and they would not have cared whether we were Lavalas. This has happened to a lot of girls. It just seems to be a common problem and...that is what attachés do at night."

M.G. is pregnant as a result of the gang rape. She has never been to a doctor, either for the injuries she sustained during the rape or for prenatal care.<sup>39</sup> Nor did M.G. go to the police to report her rape. She told us:

I did not file a police report because I feared they would come looking for me. I had another friend who was raped three times and finally decided to go to the police. She went to the police station to report it and they beat her. They would kill you.<sup>40</sup>

In another example of rape being used as punishment for political beliefs, F.F. was stopped and assaulted by two attachés on the evening of January 29, 1994, while returning home. F.F., a twenty-six-year-old student, was an active supporter of President Aristide. She and her fellow students organized demonstrations in support of Aristide's policies while Aristide was in office. The comments and actions of F.F.'s attackers illustrate the assumption made by the military, attachés and others that residents of poor neighborhoods necessarily are Aristide supporters. She told us:

It was about 7:00 P.M. and I was walking home from a visit at a friend's house. I saw two guys ahead of me and it looked like they were talking together. I tried to pass around them and one of them grabbed my arm.... They both had guns and asked me where I was coming from. Then they threatened me, saying if I screamed out they would kill me.

They asked me my name, where I lived, and what my political opinions were. When one asked about my political opinions, I thought to myself, "If he is just going to rob me why is he asking me this?" I said I was not political. They started looking through my purse, but I had no money and that is why I was walking. Then one said, "In the area where you live, I know you do not have any money, and I do not care what you say, I know everyone in your neighborhood supports Aristide."

While we were standing there I heard a gunshot. One of the guys said, "What's that noise?" and the other responded, "It is just the sergeant killing someone who resisted." They proceeded to inquire more about my political beliefs and they asked if I had a boyfriend, to which I responded

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<sup>38</sup> Interview, M.G., Port-au-Prince, February 15, 1994.

<sup>39</sup> Abortion is illegal in Haiti, except in cases where the mother's life is in danger.

<sup>40</sup> Interview, Port-au-Prince, February 15, 1994.

"yes". Then one said, "I am going to rape you. Tell your boyfriend and your 'Father' [a reference to Aristide] that I am going to rape you."

Both men raped F.F. After the rape, one wanted to kill her to prevent her from identifying him later. The other succeeded in dissuading him. They told her to walk "normal like nothing has happened to you." Once out of their sight, F.F. did not stop running until she reached her home.

F.F., unlike most of the women interviewed, sought medical attention. Her Port-au-Prince gynecologist treated her with antibiotics to prevent infection and tested her for sexually transmitted diseases. She did not, however, report the rape to the police:

I did not file a police report. I would never speak to the police. I have heard that it is worse when you talk to them. You really risk your life going to talk to them because everyone knows they are part of the crime problem.<sup>41</sup>

In another case, A.C., twenty-eight and the mother of one, was raped by two attachés on February 7, 1994, after four attachés broke into her house while she and her husband slept. A.C. heard the men yelling in the passageway between the houses, before they entered her house, that "these people are Lavalas." A.C.'s family was robbed of money and jewelry, and her husband was tied up and taken to another part of their home. She told us that:

One guy took me by the hands and led me to the front porch. He said lie down. He said, "If you don't I'll split your head open." I was in shock. I lay down. He pulled his pants down to his knees, lifted up my night gown, pulled down my underpants, and raped me. When he finished the second appeared right away. The second one raped me vaginally and then anally.<sup>42</sup>

A.C. described her family as not politically active, but living in a poor neighborhood.<sup>43</sup> She and her husband decided not to report the crimes to the police because, "Everybody knows that this is the way attachés and soldiers make more money. Where else would they have gotten their arms? Why else would they have been so fearless?" A.C.'s husband went on to add: "They [the police] are completely corrupt and normally the perpetrators of the violence."<sup>44</sup>

A.C. and her family went into hiding almost immediately after the incident. They are currently staying with friends. They feared the assailants would return and assault them, and since the intruders had also taken A.C.'s husband's wallet, they knew that he was a taxi-driver and exactly where they could find the family again.

G.C., also a rape victim, died on January 9, 1994, of hemorrhaging from the vagina and nose as a result of a beating and rape by attachés and soldiers in late December 1993. G.C. died at the home of a leaf

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<sup>41</sup> Interview, F.F., Port-au-Prince, February 16, 1994.

<sup>42</sup> Interview, Port-au-Prince, February 11, 1994.

<sup>43</sup> Such neighborhoods are generally considered by the military to be supportive of Aristide.

<sup>44</sup> Interview, Port-au-Prince, February 11, 1994.

doctor<sup>45</sup> in the town of Cabaret, Port-au-Prince, where she had gone to hide and seek medical treatment.

G.C. was an active member of the Federation of Peasant Groups Raising Consciousness in Saut d'Eau (Federasyon Gwoupman Peyizan Kombit Laveje Sodo, FGPKLS), an organization of the Central Plateau dedicated to training peasants in civic education, human rights and social development. She was also a member of a women's group in the area, Coordination of Women of the Lower Central Plateau (Kòdinasyon Fanm Ba Plato Sentral), where she sold produce and other goods to help feed women and their families who were in hiding in other parts of the country.

In early October 1991, soon after the September 1991 coup d'état, G.C. and her husband A.C were arrested by two attachés, Sené Jean Louis and Lanoix Pauyo, and other armed civilians, in the third section of Mardi Gras in Saut d'Eau. Pauyo is a former soldier at the Caserne Dessalines army garrison in Port-au-Prince. He is currently an attaché at the garrison near Mirebalais. Sené Jean Louis is a former Tonton Macoute and also an attaché for the garrison near Mirebalais.

G.C. and her husband were driven to a clandestine location nearby, where they were asked for a bribe to be released. They paid the equivalent of US \$50 and were freed unharmed.

They were arrested again on December 12, 1991, by First Sergeant Edouard Gideon in the presence of approximately ten attachés, including the two who had arrested them previously. They were taken to attaché Lanoix's house, where they were searched, beaten, and made to kneel and yell, "Down with Aristide!" They were released that same night, after having been forced to purchase "provisional liberty" with the equivalent of US \$400.

They then went into hiding in the West Department, in a little town called Des Orangers, in the second section of Croix des Bouquets. After living in hiding for almost two years, they returned to Saut d'Eau on September 26, 1993.

On October 30, 1993, the day deposed President Aristide was to return to Haiti under the Governors Island Accord, the local section chief, Floran Tellus, organized a demonstration in Saut d'Eau against Aristide, during which attachés and other armed civilians arrested and beat people who refused to participate. G.C. and her husband were attacked as they tried to escape through a back door of their house. Four attachés beat G.C. savagely, and one raped her. Her husband was able to escape into the woods, where he remained in hiding.

G.C. spent a week recovering in her father's house, after which time she reunited with her husband in Cabaret, where they had been previously in hiding.<sup>46</sup> She died there on January 9, 1994, from the injuries — including vaginal hemorrhaging — inflicted by the attachés.

### **Assaults by Zenglendos**

A UN/OAS Civilian Mission report describes the role and origin of zenglendos in Haitian society:

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<sup>45</sup> A leaf doctor is a person who practices traditional healing based on the use of herbs, plant extractions and other plant-based remedies.

<sup>46</sup> Interview, fellow activist and friend of G.C. who has been in hiding for eighteen months, Port-au-Prince, February 16, 1994.

The term "zenglendos" is used to refer to members of armed criminal groups, usually operating at night and particularly in the slums and working-class districts of Port-au-Prince. Some of this violence may be assumed to be purely criminal, without political motivation. However, it is widely believed in Haiti that even zenglendos operate under the cover, or with the express tacit consent of the police, and that their operation, while involving armed robberies, may also be intended to intimidate the population of localities most opposed to the post-coup authorities and committed to the return of President Aristide.<sup>47</sup>

Many Haitians believe that the army encourages and even participates in zenglendo violence as a means of further terrorizing the civilian population. A Haitian human rights attorney described the typical zenglendo as "an armed thief who works with the complicity of the army."<sup>48</sup> One Port-au-Prince women's rights activist told us that she believes

the military formed the zenglendos as a paramilitary force. All these people are connected with the military — they just do not have uniforms. The police let armed civilians do these things. They create an atmosphere in which lawlessness prevails. It is to their advantage to have the population cowed.<sup>49</sup>

HRW and NCHR cannot say with certainty that the zenglendos are directly backed by Haiti's military rulers. However, violence attributed to zenglendos, although apparently indiscriminate, often targets pro-Aristide activists who also are targeted by the army and is tolerated by the regime which has made no effort to curb such abuse.

In one example of zenglendo violence, S.E., twenty-four, and R.A., seventeen, were raped and beaten by four zenglendos on September 21, 1993, in Port-au-Prince. That day, four armed civilians broke into a church during a prayer service, demanded the church's collection plate, kicked and threatened the parishioners, demanding to know which of them was the pastor. The pastor of the church believes he was the actual target of the assault because he is a known Aristide partisan and keeps a picture of Aristide in his home.

The pastor told us:

They never asked for me by name. They kicked people and hit them with the butts of their rifles and with their fists. They also hit people in the head with their revolver butts.<sup>50</sup>

Eventually the men grabbed S.E. and R.A., took them outside the church and assaulted them. According to the pastor, "The girls tried to resist, but two men each forced them. When they left with the

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<sup>47</sup> International Civilian Mission Report on the Situation of Democracy and Human Rights in Haiti, October 25, 1993, A/25/532.

<sup>48</sup> Telephone interview with Raynand Piere, April 26, 1994.

<sup>49</sup> Interview, Port-au-Prince, February 16, 1994.

<sup>50</sup> Interview, Port-au-Prince, February 13, 1994.

girls, they said, 'You women who are watching, we are going to come back to get you to do the same.'<sup>51</sup>

According to S.E.:

I was the second girl they chose. The other girl had been lying near me and they chose her first. Before selecting her they said they were looking for a "*grimelle*."<sup>52</sup> They tried to force the other girl to walk, but she resisted. So they started pushing her and slapping her with their hands.

They took us to a location, a clearing, not far from the church. They tried to rape me but could not succeed. One came upon me as if to rape me, but since I am a virgin, I was too tight to be entered. Two of the men tried to rape me, while the other two raped the other girl. They asked me why my pastor had not tried to do this.

When the second one did not succeed in entering me, he started to beat me. He started hitting me with the butt of his pistol and with his fist. Then, the other one joined in, hitting me in the head and breasts. They also kicked me in the stomach and buttocks.

When they finally stopped beating me, they wanted to know where the pastor was and if I was a supporter of Aristide like my pastor.

During this time, the other two were raping the other girl. I could hear her screaming.<sup>53</sup>

After the rape, the men returned S.E. and R.A., both badly beaten and traumatized by the assaults, to the church. The assailants had threatened to "shoot up the place" if anyone came after them. Neither victim filed a police report. They told us they were "putting their faith in God." The next week, they both left for the provinces to stay with relatives. S.E. has since returned to Port-au-Prince, while R.A. has remained in the countryside.

The pastor went into hiding for one month after the incident, believing that he was being targeted for being an Aristide supporter. While he was in hiding, armed civilians went to his neighborhood searching for his house.

#### IV. IMPUNITY AND THE NON-REPORT OF RAPE

##### **Official Complicity and Corruption**

The pattern of impunity for abuse perpetrated by both state and non-state actors in Haiti is not unique to sexual assault. The Haitian military has been notoriously corrupt and is characterized by one prominent social scientist as "organized in practice, not in theory, on the basis of corruption.... [C]orruption is found in the process at all levels, from promotions to post assignments, and in the daily

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<sup>51</sup> Ibid.

<sup>52</sup> Someone with a light-brown complexion.

<sup>53</sup> Interview, Port-au-Prince, February 15, 1994.



routine of military life."<sup>54</sup>

The corruption of Haiti's military leaders also has infested the country's criminal justice system, from the police through the judiciary. The Haitian judicial system is widely regarded as corrupt and dominated by the army. Following the 1986 flight from Haiti of Jean-Claude (Baby Doc) Duvalier, each successive army-backed regime, despite lip service paid to the need for judicial reform, presided over a system utterly lacking in due process guarantees as well as dependent on and subservient to the military.<sup>55</sup>

Judicial redress in ordinary criminal and civil proceedings is difficult to obtain. Few cases are adjudicated each year, and prisoners are commonly held for lengthy periods without a trial or sentence. The resolution of these cases often depends more on money or power than on justice. Since before the coup d'état, "[t]he willful failure of the police to collect evidence handicaps criminal investigators from the outset." Moreover, "The [army] interferes in every aspect of the judicial process: judges, prosecutors and private attorneys are harassed, intimidated and punished for performing their duties. Military power perverts every stage of the criminal justice process: arrest, investigation, and decision."<sup>56</sup>

Since the September 1991 military coup d'état, attempts to modernize the judicial system have broken down. The current regime has further undermined the right of all Haitians to due process or redress for ordinary crimes or human rights violations. Attorneys and civil servants from the Aristide government have been persecuted, forced into hiding and exiled. Malval government Justice Minister Guy Malary was gunned down in October 1993. In February 1994, acting Port-au-Prince Public Prosecutor Laraque Exantus and his brother were forcibly disappeared. The army not only has impeded the operation of the legal system, but also has hindered UN/OAS Civilian Mission attempts to investigate reported violations around the country, including denying mission officials access to prisons and detainees.

In this context it is extremely unlikely that a victim of abuse by the military, police or others associated with the military authorities can expect justice. In fact, according to reports by HRW/Americas, NCHR and other human rights groups, despite an appalling record of human rights abuses over the past two and a half years, very few perpetrators have ever been held accountable.<sup>57</sup>

Rape is no exception to the general rule of impunity for human rights abuses in Haiti. According to the UN/OAS Civilian Mission's former director of legal services, William O'Neill, it is highly unlikely that the Haitian judicial system, in its current state, would be able to prosecute political sexual violence against women in the form of rape:

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<sup>54</sup> Laguerre, *The Military and Society in Haiti*, p. 155.

<sup>55</sup> Emile Jonassaint, recently appointed president by a group of parliamentarians allied with the army, was appointed head of the Supreme Court after the coup d'état against Aristide. For a detailed discussion of the Haitian legal system and its historical domination by the executive and the army, see Lawyers' Committee for Human Rights, *Paper Laws, Steel Bayonets: Breakdown of the Rule of Law in Haiti* (New York: November 1990).

<sup>56</sup> Ibid.

<sup>57</sup> See HRW/Americas and NCHR, *Terror Prevails in Haiti*; Americas Watch and the National Coalition for Haitian Refugees, *Silencing a People: The Destruction of Civil Society in Haiti* (New York: Human Rights Watch, 1993).

A system that already is so rife with intimidation, bribery, corruption, and outside pressures cannot ensure that victims' rights will be respected, and that perpetrators of assaults will be punished in accordance with the law. Even in business disputes and other simple crimes, there is just too much room for something to go wrong.

There is no reason for anyone, and especially a victim of rape, particularly if her assailants are the military, paramilitary forces, or anyone else even nebulously associated with the military, to believe that there is a chance for judicial redress. It just won't happen. Furthermore, the woman would probably be putting her life in danger. It is no accident that the justice system in Haiti does not work. The government [military authorities] has fostered this and benefits from it.<sup>58</sup>

One Haitian human rights activist explained that Haitians in general do not use the law to resolve disputes. The very poor, those who need the law the most, are not necessarily informed about what a lawyer does or how the judicial system is supposed to serve them. She noted:

Disputes are normally resolved in either of two ways: by brute force or by bribery. In any event, it is not the custom of the people, and especially women, to use lawyers and the judicial system. The law has never protected women. The solution is to bribe someone who is in power and in cases of political rape, you would be bargaining with the devil.<sup>59</sup>

Not everyone we interviewed shared this point of view. The president of the Port-au-Prince Bar Association, Louis Gary Lissade, told us that he believes strongly that any woman who had been raped by a soldier or attaché could go to the police to report her assault, would be appointed legal representation and could proceed with her trial. However, Mr. Lissade also added that the justice system was "weak" in general and that the investigation of a rape is affected by the wealth of the family:

If a [raped] woman belongs to a wealthy family, the family will finance the investigation. They can put a car and money at the disposition of the police. The policemen will have an incentive to conduct a thorough investigation. However, if the woman is from the lower class and does not know the author of the rape, the police will have no car, no gas (because of the embargo). It is all so expensive. It will be a difficult situation for the girl.<sup>60</sup>

### **Fear of Reprisal**

Nevertheless, Haitian women's rights activists and human rights monitors consider the judicial system an ineffective avenue to adjudicate rape cases for all women. As noted above, not one of the women we interviewed during our mission risked reporting her assault to the police. They all displayed an overwhelming lack of faith in the judicial system and were certain that the authorities would not protect them from further reprisals if they reported their assaults. One woman, raped by attachés, told us that going to the police would be the equivalent of a "death wish." In general, the women feared that the perpetrators would discover that they were pressing charges and return to do them greater harm.

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<sup>58</sup> Telephone interview, April 18, 1994.

<sup>59</sup> Telephone interview, May 24, 1994.

<sup>60</sup> Telephone interview, May 4, 1994.

Another Haitian woman political activist who had been arrested and beaten on several occasions explained her reluctance ever to file a case against the soldiers who attacked her:

When you make a complaint to the justice of the peace, a military person follows your case. You are accusing a soldier. Now the soldier who is aware of the complaint being filed goes back to the military commander there and says that one of his soldiers is being named in a complaint. Then, they come after you.<sup>61</sup>

### **Failure to Investigate**

Despite the risks of abuse and harassment, some women do report rape to the authorities. In theory, these cases should be investigated by civilian authorities and tried in civilian courts. In practice, however, they are handled by the military, with the result that allegations of rape are seldom investigated formally and rapists are rarely brought to trial or punished for their crimes according to applicable law. The military's failure to ensure that rape cases are adjudicated by the proper civilian authorities clearly violates the 1987 Haitian Constitution, which specifies:

Cases of conflict between civilians and military personnel, abuses, violence and crimes perpetrated against a civilian by a member of the military in the performance of his duties are under jurisdiction of courts of ordinary law.<sup>62</sup>

The UN/OAS Civilian Mission reported two rapes committed by soldiers where the victims reported the assaults to military authorities who then conducted their own, informal investigations and never referred the cases to the civilian authorities.<sup>63</sup> In one case, a thirteen-year-old girl was raped in Bayeux, Department of the North, by a corporal at a military post. According to the UN/OAS Civilian Mission, "[t]he military authorities first tried to dismiss the rape by saying that the girl was not a virgin. The corporal was eventually given a punishment of ten days' detention."<sup>64</sup>

In the second case, a sixteen-year-old girl in the Department of the Northeast was raped by a soldier from the barracks of Fort Liberté. They then took her to see a doctor, who gave her a certificate confirming the rape. The young woman's family presented all the evidence to a regional commander, who promised to order an investigation. According to the UN/OAS Civilian Mission's report, "The soldier was arrested for a few days and then released. He has been seen since, in uniform, circulating freely in the area."<sup>65</sup>

The results of the military-conducted investigations in these cases differ from the requirements of Haitian criminal law. In the case of the thirteen-year-old who was raped, according to the Haitian penal code, the soldier, if found guilty, would have been sentenced to imprisonment and hard labor.<sup>66</sup> In the

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<sup>61</sup> Interview, activist, Port-au-Prince, February 14, 1994.

<sup>62</sup> The Haitian Constitution of 1987, Articles 42 and 43.

<sup>63</sup> International Civilian Mission Report on the Situation of Democracy and Human Rights in Haiti, Oct. 25, 1993, p.18.

<sup>64</sup> Ibid.

<sup>65</sup> Ibid.

<sup>66</sup> Article 279 of the Haitian penal code provides: "Whosoever commits the crime of rape, or who attempts other indecent

case of the sixteen-year-old who was raped, the soldier, if found guilty, would have been sentenced to imprisonment from three to nine years. Moreover, because soldiers and police act as public guardians and hold positions of trust and power over Haitian citizens, they, if convicted of rape, are subject to more severe punishment for abusing their positions of authority or guardianship.<sup>67</sup> Instead, the assailants in these two cases were detained for less than two weeks.

### **Procedural Hurdles**

When seeking redress for crimes committed against them, rape victims in Haiti confront not only the obstacle of a corrupt and ineffective judicial system, but also severe procedural hurdles in order to pursue their charges of rape. One of the greatest impediments is collecting the evidence necessary to support a rape allegation. Under Haitian law, a woman can go to a private doctor or hospital for an examination to certify that forcible sexual intercourse had occurred. However, the majority of Haitian women lack the economic resources to pay for a visit to a private doctor. Thus it is virtually impossible for them to obtain such an exam. According to one Haitian family law attorney, "It has always been a problem to prove a rape in Haiti. Material conditions prevent them [the women] from going to a doctor. A woman who has been raped will probably not be seen at the Port-au-Prince General Hospital, since they tend to treat only grave injuries, and she would be forced to go to a clinic or private hospital."<sup>68</sup>

Without corroborating physical evidence, a woman's charge of rape will not go far in the judicial system. According to one Haitian human rights attorney:

In Haiti, without a certificate confirming rape, a woman may try to proceed with filing a charge, but it will be exceedingly difficult, bordering on the impossible. It is not that she cannot file a complaint. It is that the complaint will go nowhere, or in the countryside, where medical certificates are difficult to get due to the absence of doctors, the judge hearing the case will be able to wield incredible discretionary power regarding the type of questions he subjects the women to. Without the corroborating evidence, it is the woman's word against the man's, and she is bound to lose.<sup>69</sup>

Minister of Public Health Dr. Jean Molière explained to HRW and NCHR that even doctors fear making out reports confirming injuries.<sup>70</sup> One doctor in St. Marc had been reproached by military authorities for allowing the UN/OAS Civilian Mission into the hospital to investigate allegations that a patient was there as a result of ill-treatment sustained while in custody. Later, that doctor's house was burned down. He was fired by Dr. Molière's predecessor.

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assaults, whether consummated or attempted, involving violence against individuals of either sex, will be punished with imprisonment." Article 280 further provides: "If the crime is committed against a minor under the age of fifteen, the guilty will be subjected to punishment of hard labor of limited duration."

<sup>67</sup> Section IV, Article 279 states that "The punishment shall be a life sentence of forced labor if the guilty one is of the class of those who have authority over the person towards that which they have committed the attack, if they are primary school teachers or wage servants, or if they are civil servants or clergy...."

<sup>68</sup> Telephone interview, March 13, 1994.

<sup>69</sup> Telephone interview, Piere Raynand, April 26, 1994.

<sup>70</sup> Dr. Molière was appointed by Prime Minister Malval under the Governors Island Accord.

## The Role of Discrimination and Stigma

At least four main factors influence the reporting and adjudication of rape cases which make it particularly difficult to obtain redress for such abuses. Of these, two affect the general population as well: the fear of reprisal for charging state or state-supported agents with abuse and the ineffectiveness of a military-dominated justice system. The remaining two, longstanding sex discrimination in the criminal justice system and the social stigma associated with rape, affect women victims of sexual assault in particular.

Rape, under the Haitian penal code, is among those crimes considered to be "assaults on morals." This classification of rape reflects the perception that the harm inflicted by the assault consists of damage to the victim's morals or honor, rather than to her physical integrity and well-being.<sup>71</sup> The investigation and prosecution of rape thus routinely stress not the physical harm done to the woman, but rather the status of her honor or morals. Consequently, women who allege rape must endure public scrutiny of their "morality;" the rape of a non-virgin may be considered a less serious offense because her honor is perceived to be already compromised. In the case of the thirteen-year-old raped in Bayeux described above, for example, military authorities tried to dismiss a rape accusation based on the assertion that the victim was not a virgin. In their eyes, her status as a non-virgin rendered her story not credible and meant that she could not be raped.

Assessing a woman's credibility in light of her status as a virgin, or non-virgin, reinforces the different standards by which men and women's behavior are judged. Sexual behavior is considered normal for a man, but undermines a woman's honesty and renders her sexually available. These different standards for assessing the behavior and credibility of women and men, when accepted by the courts, allow bias and discrimination to compromise the effective investigation and prosecution of women's allegations of rape.

Doctors and women's rights activists in Haiti told HRW and NCHR that the general reluctance to report rape is most likely to be overcome in cases where very young girls or virgins have been raped. According to the Haitian minister of public health, "The families of very young girls or virgins are likely to go to the hospital and report the rape. But parents fear reprisal. It is a taboo subject, and rape victims fear future family problems."<sup>72</sup>

Rape in Haiti, as in most of the world, is considered an extremely shaming act. Women, particularly unmarried women, do not want anyone to know that they have been raped. A Haitian human rights activist told us:

When a girl is about to get married, members on both sides of the family are anxious to know if she is a virgin. If she is not, this is a dishonor for the girl and especially for the family. You lose your honor when you have been violated. You do not want to give publicity to the action.<sup>73</sup>

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<sup>71</sup> For a discussion of the biases reflected in rape laws, see generally Dorothy Q. Thomas and Regan E. Ralph, "Rape in War: Challenging the Tradition of Impunity," *The SAIS Review*, vol. XIV, no. 1, (Winter-Spring 1994), pp.81-99.

<sup>72</sup> Interview, Dr. Molière, minister of public health, Port-au-Prince, February 11, 1994.

<sup>73</sup> Interview, human rights activist, March 18, 1994.

Nor do married women escape this consuming sense of shame. In cases where rape or other sexual assault has occurred and the woman is married or involved in a significant relationship, there is still the fear that the husband or boyfriend will abandon her if he discovers that she has been raped. Moreover, rape victims can expect very little moral support from their community. Often the people aware that a woman has been raped feel incapable of helping or providing counseling. One Port-au-Prince journalist told us that:

In Haitian culture once you know someone has been raped it is hard to give them moral support. You feel embarrassed for the person. And there are certainly cases where the husband leaves.<sup>74</sup>

One study conducted by a Haitian human rights organization explains the shame of the rape victims:

The taboo which surrounds the question of sexuality in Haiti causes the woman who is the victim of rape or sexual harassment to be constrained to silence, either because the judicial system doesn't protect her enough, or because in revealing the crime, she puts her whole future at stake. For the woman who is a victim of rape will find it difficult to find a suitable man to marry her. This situation affects the raped woman, not only in her femininity and her pride, but also in her morality and her psychological balance. She is obliged to repress her pain and live with her frustrations. She establishes mechanisms which bury her even further until she accepts the facts as inevitable fate.<sup>75</sup>

## V. U.S. POLICY<sup>76</sup>

When he took office, President Clinton promised to bring new energy and commitment to international efforts to restore democracy and President Aristide to Haiti. The Clinton administration led negotiations which resulted in the July 3, 1993, Governors Island Accord signed by President Aristide and Lt. Gen. Raoul Cédras. Far from addressing the human rights crisis under Haiti's military regime, the Accord extended to the Haitian parliament the option to institute a broader amnesty that would encompass serious human rights violations and lacked any direct reference to human rights concerns. At the same time, Clinton reneged on his campaign promise to end the Bush administration's policy of interdiction and summary repatriation of Haitians fleeing by sea and ordered U.S. Coast Guard cutters to surround the island, to stop Haitian boats and to return all passengers to Port-au-Prince.<sup>77</sup>

Following the signing of the Governors Island Accord, the Clinton administration actively pursued a policy that required concessions to Haiti's military rulers and sought a power-sharing arrangement between President Aristide and those who overthrew his government, in spite of indisputable evidence

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<sup>74</sup> Interview, journalist, Port-au-Prince, February 15, 1994.

<sup>75</sup> *Les Racines Socio-Juridiques de la Violence sur Les Femmes* (The Socio-Juridical Roots of Violence against Women), Special Document, The Lafontant Joseph Center for the Promotion of Human Rights (1993), p. 9.

<sup>76</sup> For a comprehensive analysis of U.S. foreign policy in Haiti, see HRW/Americas and NCHR, *Terror Prevails in Haiti*.

<sup>77</sup> At the same time, U.S. officials worked to expand the in-country-processing program (ICP), which continued to be grossly inadequate. See HRW/Americas and NCHR, *No Port in a Storm*.

of continuing and widespread human rights abuses perpetuated by the military regime. Further, the Clinton administration failed to insist on accountability for gross violations of human rights, promoting instead a broad amnesty that would pardon such crimes and that would allow the army to continue to commit abuses with impunity.<sup>78</sup>

Another disturbing aspect of U.S. policy has been the consistent downplaying by U.S. officials of the human rights crisis in Haiti.<sup>79</sup> Human rights organizations have suggested that one reason for the administration's minimization of the human rights disaster has been to justify the U.S. rejection of Haitian asylum-seekers.

On April 12, 1994, the U.S. Embassy in Haiti sent Secretary of State Warren Christopher a cablegram assessing the human rights situation.<sup>80</sup> Although the cable acknowledges that human rights violations are increasing, it expresses skepticism about victims' reports of abuse and seeks to discredit the work of human rights organizations:

The Haitian left manipulates and fabricates human rights abuses as a propaganda tool, wittingly or unwittingly assisted in this effort by human rights NGOs and by the ICM [UN/OAS Civilian Mission]. Migration is primarily caused by economic conditions, but is aggravated by violence....

Regarding rape, the embassy cable states:

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.<sup>81</sup>

Another State Department document does not directly challenge recent reports of rape, but does downplay this abuse by mentioning it only in passing and failing to take note of the dramatic rise in reports of rape by the military and their armed supporters. The May 5, 1994 State Department country conditions profile, prepared for use by INS officers to assess Haitian asylum claims, mentions rape only in general statements about an increase in abuses reported by the UN/OAS Mission and overall descriptions of rising levels of violence. Although the profile provides considerable detail about types of frequently heard claims not likely to qualify for asylum, it offers very little specific information about the abuses that are occurring that are likely to establish a claim of asylum. For example, the profile does not discuss the frequency and characteristics of sexual assaults against Aristide supporters. The inadequacies of the profile raise serious questions about asylum officers' knowledge and ability to review claims in which allegations of politically motivated rape play a part.

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<sup>78</sup> In compliance with the Governors Island Accord, President Aristide had already decreed a political amnesty in accordance with the Haitian constitution, which pardoned crimes against the state such as rebellion and sedition.

<sup>79</sup> See HRW/Americas and NCHR, *Terror Prevails in Haiti* for a critique of the Haiti section of the State Department's *Country Report on Human Rights Practices 1993*.

<sup>80</sup> The cablegram, written by human rights officer Ellen Cosgrove, approved by Amb. William Swing and reviewed by in-country processing Refugee Coordinator Luis Moreno, was leaked to the U.S. press in early May.

<sup>81</sup> Cablegram from U.S. Embassy in Haiti to Secretary of State Warren Christopher, April 12, 1994.

In response to criticism from human rights groups, members of Congress and the American civil rights community, President Clinton initiated important changes in U.S. policy toward Haiti in May 1994 when he replaced Special Envoy Lawrence Pezzullo with former Congressman William H. Gray III. On May 6, the administration backed UN Security Council Resolution 917 (1994), which extended the trade embargo to all but humanitarian goods, and took steps to enhance enforcement of the embargo. Targeted sanctions against the army and civilian members or backers of the illegal military regime were also imposed by the resolution, which called for the denial or revocation of visas and urged the freezing of assets.

The Clinton administration also has changed its policy of summary repatriation of Haitians fleeing by sea. Bowing to domestic pressure and confronted with reports of escalating human rights abuses, the administration announced on May 8 that Haitians interdicted at sea would be screened to determine whether they are political refugees.<sup>82</sup>

Beginning in June, the U.S., in consultation with the United Nations High Commission for Refugees (UNHCR) began screening fleeing Haitians' asylum claims on board a U.S. navy vessel anchored off Kingston, Jamaica.

### **The Asylum Process**

Review of Haitian asylum claims through in-country processing (ICP), which has been the only procedure available to fleeing Haitians, has been criticized as seriously flawed and incapable of providing consistently fair hearings for asylum applicants. The U.S. mischaracterization of the human rights situation, as described, has skewed the asylum process at every stage. HRW and NCHR have criticized the program's deficiencies, including its application of a stricter standard than that contemplated in the 1951 Convention Relating to the Status of Refugees and the apparent skepticism by U.S. interviewers regarding the veracity of Haitian claims of political persecution.<sup>83</sup> Although HRW and NCHR welcome the plans to screen seafaring Haitians interdicted by U.S. vessels in order to identify and protect those fleeing persecution, we remain concerned by indications that the new procedures may be influenced by the flawed human rights reporting by the U.S. Embassy and the State Department, as well as the inexperience of INS interviews assigned to the processing center on USNS Comfort.

HRW and NCHR are particularly concerned about the review of asylum claims involving rape. Numerous Haitian women are seeking political asylum on the grounds that they have been targeted and sexually assaulted as Aristide supporters. In February, the U.S. Embassy's refugee coordinator, Luis Moreno, estimated that 25 percent of the principal applicants for asylum were women and that approximately 5 percent of these claimed to have been raped for political reasons.<sup>84</sup>

Information provided recently to HRW by a confidential source familiar with the ICP program suggests that there has been a dramatic increase in the number of rapes being reported to the program since March 1993, with the majority of the assaults reported during the period immediately before and after Aristide's expected return to Haiti on October 30, 1993. This source estimates that the ICP program is receiving on

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<sup>82</sup> For a full description, see HRW/Americas and NCHR, *No Port in a Storm*.

<sup>83</sup> Ibid.

<sup>84</sup> Interview, Luis Moreno, refugee coordinator, Port-au-Prince, February 8, 1994.



average a half-dozen cases a week of women rape victims who either are pro-Aristide activists themselves or are female relatives of activists. According to the source, women activists seeking asylum have claimed that they were raped in a custodial situation — either by the guards of the prison or by male prisoners who bribe or pay the guard to give them access to the women. Women seeking asylum who have been targeted as relatives of activists report that they were raped in their homes by groups of armed men, usually in the presence of other family members. As described above, these rapes are usually accompanied by destruction of the home and the beating of other family members.

In our February interview, Moreno assured us that, "everything possible is done to steer these cases to women case workers...and the case workers are quite sensitized to the problem." Contrary to Moreno's assurances, the April cablegram described above suggests that the U.S. Embassy does not find the increasing reports of rape to be credible. Moreover, the May 5 country profile prepared for asylum officers described above barely mentions rape.

The U.S. asylum process not only disregards rape as a human rights abuse but also fails to understand its function as a tool of political persecution and hence its legitimacy as the basis for an asylum claim. Olen (Sam) Martin, who until recently was the INS officer-in-charge in Port-au-Prince, told HRW and :

[The women] mostly blame attachés. I don't know if it is true or not — it must be true in some cases, but women have a tendency to blame the worst person they can think of to justify why it happened. It's hard to sort out imagination and what really happens....They always say armed civilians, but again, it's perception versus whether they are really armed....Attachés live in the same neighborhoods, everyone knows everyone. There have been some [asylum] cases approved based on a rape argument. [There can be] story inconsistencies — if the husband is sitting there you can figure it out. The way the woman acts when she tells the story, etc.<sup>85</sup>

Martin apparently believes that rape is a basis for asylum only if it is both politically motivated and premeditated:

If people really went after someone and did it, then the victim [of rape] would certainly have a case. But you have the intentionality question, did they set out to do it? We look for why they [the alleged perpetrators] went there [to the house]. If they went with the intent to rape, if it was an attaché, etc. You see the section chiefs or the military disputing with people over property, for example. The cases are very complex.<sup>86</sup>

To our knowledge, no legal requirement exists that a victim of persecution show that his or her attacker had formulated a premeditated intent to commit assault of any kind. Rather, to make a successful asylum claim, an individual must demonstrate a well-founded fear of persecution based on the actual or imputed political opinion, or other recognized status, of the victim.<sup>87</sup> Thus an individual targeted by the military or its civilian allies for actual or perceived support of Aristide should have

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<sup>85</sup> Interview, Port-au-Prince, February 11, 1994.

<sup>86</sup> Ibid.

<sup>87</sup> Also eligible for asylum are those who fear persecution on the grounds of race, religion, nationality or membership in a particular social group.

his/her asylum claim reviewed on the basis of his/her ability to establish these criteria without distinction as to the type of abuse — whether rape, beating or arbitrary detention — suffered. This standard should be applied without discrimination and should not be altered in light of the kind of abuse, namely rape, underlying an asylum claim.

As the ICP program is now administered, HRW and NCHR doubt that women victims of political violence can receive a fair asylum hearing. Misconceptions about how rape functions as a form of political or other persecution and the lack of clear guidelines as to how to assess rape as the basis of an asylum claim can only hamper the process. These problems need to be remedied for those involved in the new screening procedures outside of Haiti, as well as those processing claims through ICP, so that female asylum-seekers will receive fair asylum hearings.

Asylum adjudicators should begin by looking at INS proceedings in which the nature of rape as a tool of political persecution has been acknowledged. In a May 1993 decision, the U.S. Board of Immigration Appeals (BIA) granted asylum to a Haitian woman who alleged that she had been gang-raped by three soldiers after they broke into her family home and identified her as an Aristide supporter. The board found that she had demonstrated a well-founded fear of persecution on the basis of political opinion because she "suffered grievous harm in direct retaliation for her support of and activities on behalf of Aristide." This is the first BIA decision that explicitly recognizes rape as a form of grievous harm that can be imposed in retaliation for political activities.<sup>88</sup> To our knowledge, this opinion has not been adopted as a precedent for consideration of other asylum claims, even though the BIA does have the authority to designate its decision as binding precedent.

In order to ensure that women's asylum claims are fairly interpreted and processed, we also urge the INS to adopt recently proposed guidelines for women's asylum claims.<sup>89</sup> The proposed guidelines provide a framework for analyzing the claims of female asylum-seekers by explaining how sex-specific forms of violence such as rape may constitute forms of persecution and how women may be targeted for persecution because of their gender. The guidelines also highlight procedural issues that may affect the outcome of women's asylum claims.

## VI. CONCLUSIONS AND RECOMMENDATIONS

Haiti's military regime is presiding over a campaign of human rights violations aimed at destroying all forms of opposition to their rule. As part of this campaign of terror, the military and its auxiliaries have targeted women known or perceived to be Aristide supporters with sexual assault. Soldiers, police and attachés also have attacked women activists working with women's rights organizations and other social or political groups. The military regime has failed both to denounce rape committed by its agents and to punish those responsible. In this environment — where no one is held accountable for gross

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<sup>88</sup> Deborah Anker, *Law of Asylum in the United States* (American Immigration Law Foundation, forthcoming June 1994) note on p. 117. We are grateful to Ms. Anker for her assistance in locating and analyzing this case.

<sup>89</sup> See Nancy Kelly (Women Refugees Project), Deborah Anker (Women Refugees Project) and Michele Beasley (Women's Commission for Refugee Women and Children), *Proposed Guidelines for Women's Asylum Claims*, presented to the Immigration and Naturalization Service on April 19, 1994. HRW/Women's Rights Project participated in the preparation of the proposed guidelines.

human rights abuses — women have no protection against rape and no way of seeking redress after they are assaulted.

Haiti's military regime has compromised the integrity and autonomy of the entire criminal justice system. The police operate as part of the military, and both lawyers and judges are constantly harassed and intimidated by soldiers and police. Thus all aspects of law enforcement in Haiti — from investigation of reported crimes to trying alleged criminals — are controlled by the military, which is itself responsible for perpetuating and sanctioning abuse. As a consequence, rape victims know that they cannot expect full and fair investigation of crimes committed against them. Moreover, women fear retaliation at the hands of police should they attempt to report rape. These factors, and the fact that women are stigmatized as rape victims, have made women extremely reluctant to report rape either to authorities or to those monitoring the human rights crisis in Haiti.

Nonetheless, the function of rape and sexual assault as weapons of political persecution in Haiti is becoming more visible. We commend the efforts of the UN/OAS Civilian Mission and the Inter-American Commission on Human Rights to document and denounce rape as an instrument of repression. Their documentation has been crucial to establishing the extent of the human rights crisis in Haiti and to identifying those responsible for abuse.

By contrast, the U.S. government has failed both to denounce adequately rape as a human rights abuse and to create conditions for the fair review of asylum claims based on sexual assault. HRW and NCHR are encouraged by the administration's recent changes in policy toward Haiti that end the practice of summary repatriation of refugees and that have tightened sanctions against members and supporters of the military regime, but we remain concerned that the U.S. is considering amnesty for officials responsible for serious human rights abuses. We also are troubled by indications that the asylum process is biased against Haitian refugees and, specifically, does not afford women victims of political or other persecution a fair hearing.

### **Military Regime**

1. The military leaders of Haiti should publicly denounce the use of rape by the military and its civilian allies, investigate allegations of abuse and prosecute those responsible.

### **Aristide Government**

1. The Aristide government should pledge to prosecute cases of rape aggressively when it returns to power and to interpret any amnesty provision narrowly so that acts of rape committed by the military, attachés or FRAPH members are not considered immune from prosecution.
2. The Aristide government should undertake to disarm and disband all those who have operated as attachés under the military regime.

### **United States**

1. The U.S. should publicly and vigorously condemn human rights abuses in Haiti, including rape.
2. The U.S. should oppose publicly and explicitly any broad amnesty that would absolve members of the Haitian armed forces and their supporters for serious human rights abuses committed since the September 1991 coup d'état.

3. U.S. officials should publicly retract the statements made in the April 12 cablegram expressing the embassy's skepticism about the veracity of allegations of politically-motivated rape and the integrity of human rights organizations reporting such abuse.
4. The U.S. should provide Haitians seeking asylum with a fair review of their claims. To this end, the U.S. should adopt the proposed guidelines for considering asylum claims based on gender-related persecution and should incorporate such materials into the training of all personnel involved in refugee processing.
5. U.S. Embassy reports on the human rights situation in Haiti must accurately reflect the magnitude and character of ongoing violations, and this information should be made available to INS officers involved in refugee processing.
6. The Bureau of Immigration Appeals should adopt as precedent its May 1993 decision recognizing rape as a form of political persecution. Asylum adjudicators examining claims, both in ICP and on board vessels, should follow that precedent.

#### **International Community**

1. The UN/OAS International Civilian Mission should include the subject of gender-specific abuse in its training of human rights monitors, and should continue to document these abuses.
2. The UN/OAS International Civilian Mission should designate a staff person/field researcher to track and document gender-specific abuses.
3. Any future training of Haitian security forces should occur only after such forces are purged of human rights violators and should stress respect for human rights and women's rights.

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*Human Rights Watch/Americas (formerly Americas Watch)*

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East, and among the signatories of the Helsinki accords. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Gara LaMarche is the associate director; Juan E. Méndez is general counsel; and Susan Osnos is the communications director. Robert L. Bernstein is the chair of the executive committee and Adrian W. DeWind is vice chair. Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Cynthia Arnson and Anne Manuel are the acting directors; Sebastian Brett, Robin Kirk and Gretta Tovar Siebentritt are research associates; Stephen Crandall and Vanessa Jiménez are associates. Peter D. Bell is the chair of the advisory committee and Stephen L. Kass and Marina Pinto Kaufman are vice chairs.

*Human Rights Watch Women's Rights Project*

The Women's Rights Project was established in 1990 to monitor violence against women and gender discrimination throughout the world. Dorothy Q. Thomas is the director; Regan E. Ralph is staff attorney; Sarah Lai is research associate; and Evelyn Miah is associate. Kathleen Peratis is chair of the advisory committee; Nahid Toubia is vice chair.

*National Coalition for Haitian Refugees*

The National Coalition for Haitian Refugees was established in 1982 and is composed of forty-seven legal, human rights, civil rights, church, labor, and Haitian community organizations working together to seek justice for Haitian refugees in the United States and to monitor and promote human rights in Haiti. Its executive director is Jocelyn McCalla and its associate director is Anne Fuller. In addition to periodic reports on human rights in Haiti, the publishes a monthly bulletin on human rights and refugee affairs which is available upon request.