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**HAITI: FAILED JUSTICE OR THE RULE OF LAW?
CHALLENGES AHEAD FOR HAITI AND THE
INTERNATIONAL COMMUNITY**

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EXECUTIVE SUMMARY

1. For over forty years, the Inter-American Commission on Human Rights has monitored the situation of human rights in the Republic of Haiti. For much of this period, the people of Haiti have faced many hardships, including political instability and violence, serious human rights abuses with no accountability, and exploitation and degradation of the country's economy and infrastructure. Unfortunately, Haiti's recent history has not revealed much progress in reversing this course. Based upon its longstanding experience in Haiti and other countries of the Hemisphere, the Commission considers that efforts to address the country's current and longstanding problems will not succeed without urgent reforms to strengthen the administration of justice and the rule of law in Haiti.

2. In this context, the present report provides an evaluation of the current status of the administration of justice in the Republic of Haiti in light of the fundamental rights and freedoms protected under the American Convention on Human Rights and other relevant human rights instruments to which Haiti is bound. The report is based upon investigations undertaken by the Commission between 2003 and 2005, including information gathered during four visits to the country as well as reports and other information provided by a variety of international and local governmental and nongovernmental organizations.

3. The report provides a detailed analysis of three key aspects of administration of justice in the country: law enforcement and the Haitian National Police; the judiciary; and the system of detention facilities and prisons. As part of this analysis, the Commission addresses the particular problem of impunity and lack of public confidence in the justice system as well as the involvement of the international community in Haiti.

4. Based upon its analysis, the Commission reached the following main conclusions:

- The Haitian National Police force suffers from inadequate staffing and resources, an absence of appropriate vetting and training programs, and a clear and enforced hierarchy of command and control, and instances of corruption and human rights abuses by police officer have severely tainted the police force and have not been the subject of effective investigation and, where appropriate, discipline and prosecution.
- The working conditions for magistrates at all levels are substandard, with shortages of space and basic resources, a lack of proper training for judges, and inadequate security for judges and court facilities. Further, the independence of the

judiciary continues to be imperiled through potential inadequacies in security of tenure, allegation of interference by the executive branch in the assignment of specific cases before the courts, and the absence of a proper and functioning oversight mechanism for the judiciary, among other factors.

- These and other inadequacies in Haiti's court system, including the outdated nature of many of Haiti's laws, lack of effective access to legal assistance, and the failure of police to execute judicial orders, have created chronic and unacceptable delays in the processing of cases in the court system, have resulted in a pervasive problem of prolonged pre-trial delay, where an estimated 85 to 90% of detainees have not been tried. These deficiencies have also undermined the ability of the justice system in Haiti to effectively ensure and protect the fundamental rights and freedoms to which Haitians are entitled, resulting in a pattern of impunity in Haiti for violations committed by both state and non-state actors.
- Several of the prisons and other detention facilities in Haiti are not functional, including the prison for women and children in Fort National, and those prisons that are serviceable suffer from overcrowding and do not have the resources necessary to meet minimum standards of sanitation and other fundamental requirements, including access to fresh air, light and potable water, bedding, nutrition, and health care. Further, there are serious weaknesses in security at prisons and associated training for prison guards, which has resulted in several major security incidents in Haiti over the past two years, resulting in the death and wounding of inmates and the escape of hundreds of prisoners, many of who have not yet been recaptured.
- The absence of a functional rehabilitation center for minors, together with the fact that the court for minors has been unable to function due to security concerns, has resulted in the detention of minors in a manner inconsistent with Article 5(5) of the American Convention and corresponding provisions of the Convention on the Rights of the Child.
- Past efforts by the international community to assist deficiencies in Haiti's justice system have failed to result in lasting change, due in part to the short term nature of some projects and associated funding, the absence of ongoing technical and other support, and a lack of coordination on common issues and activities between and within various international and regional organizations agencies operating in Haiti. Further, a considerable portion of the funds pledged to

Haiti by donors in July 2004 remains undelivered despite the urgent need for projects to address basic services such as electricity, sanitation, and hospital and school facilities as well as longer-term initiatives for capital investment and capacity-building among public and private actors and institutions.

5. In light of its conclusions, the Commission made several recommendations to the Republic of Haiti, which include:

- urgently providing the police and judiciary with the basic facilities and resources necessary to perform their functions and responsibilities, including appropriate training and oversight through proper and effective functioning of the Police Academy, the Inspector General's Office, the Department of Judicial Police of the HNP, the Magistrate's School, and the *Conseil Supérieur de la Magistrature*
- immediately addressing the situation of individuals in the justice system who have been detained for prolonged periods without having been brought before a judge or tried, through independent and impartial reviews conducted by judges or other officers authorized by law to exercise judicial power, and through the establishment of an effective system of legal aid or public defenders
- ending impunity for past human rights violations, which may include the establishment of a specially-constituted panel or chamber of the civilian courts and international participation in the investigation or trial of these crimes
- urgently improving the living and security conditions in the prisons and other detention facilities throughout the country, including rendering operational the detention facility for women and children at Fort National and the official rehabilitation center for minors, the *Institut de Bien Être Social*.

6. The Commission also made several recommendations concerning the role of the international community in Haiti, including other OAS Member States, which include

- expediting measures to ensure the delivery and distribution of funds pledged to Haiti on an urgent basis through projects that address the most immediate needs of the Haitian people in the areas of health care, education and job training and creation.
- International organizations and agencies should attempt to develop coordinated and multidisciplinary approaches to

providing assistance and support to Haiti in order to avoid duplication and maximize impact. In addition, the mandates given to institutions and agencies should acknowledge and reflect the interconnections between security, the right to political participation, the administration of justice, and the realization of economic, social and cultural rights, all of which must be addressed in order to achieve long term stability in Haiti.

7. The Commission wishes to express its appreciation to the Government and people of Haiti for the cooperation, facilities and hospitality provided in the course of the Commission's visits, to the nongovernmental organizations, civil society institutions, and international organizations concerned, notably the OAS Special Mission, for their valuable assistance and participation, and to the Government of France for its financial assistance.

HAITI: FAILED JUSTICE OR THE RULE OF LAW? CHALLENGES AHEAD FOR HAITI AND THE INTERNATIONAL COMMUNITY

I. INTRODUCTION

1. The purpose of this report is to provide an overview and analysis of the current status of administration of justice in the Republic of Haiti, in light of Haiti's international human rights obligations under the American Convention on Human Rights (the "American Convention" or the "Convention") and other applicable international instruments, norms and standards. In view of dramatic events in Haiti over the past three years, including the departure of former President Jean Bertrand Aristide in February 2004, the subsequent installation of a transitional government, and the deployment of another United Nations peace operation, the analysis in this report focuses upon circumstances during the period 2003 to 2005. To this end, the report draws upon information gathered from visits conducted by the Commission during this period, as well as reports from other intergovernmental organizations, international and domestic nongovernmental organizations, the media and other publicly-available sources.

2. Since the Inter-American Commission's creation in 1959, it has monitored the situation of human rights in the Republic of Haiti, initially under the American Declaration of the Rights and Duties of Man¹ and subsequently under the American Convention following Haiti's accession to that instrument in 1977.² Over this time period, the Commission has conducted 15 on-site visits and has issued 7 country reports and numerous other publications on the state of human rights in the country.³

3. As a review of the Commission's publications indicates, the people of Haiti have faced many difficult challenges over the past 50 years. For much of this period, the country has been governed by dictatorial regimes

¹ For example, the Commission adopted its first reports on Haiti in the 1960's, prior to Haiti's accession to the American Convention, despite consistent refusals by the government to permit the Commission to visit the country. See IACHR, Report on the Human Rights Situation in Haiti, OEA/Ser.L/V/II.8, Doc. 5 (19 November 1963); IACHR, Report on the Human Rights Situation in Haiti, OEA/Ser.L/V/II.21, Doc. 6 Rev. (21 May 1969).

² The Republic of Haiti deposited its instrument of accession to the American Convention on Human Rights on September 27, 1977 and accepted the contentious jurisdiction of the Inter-American Court of Human Rights on March 20, 1998. See Basic Documents Pertaining to Human Rights in the Inter-American System, OAS Doc. OEA/Ser.L/V/II.4 rev. 10 (31 May 2004).

³ The Commission conducted visits to the Republic of Haiti in 1978, 1987, 1988, 1990, 1991, 1993, 1994, 1995, 2000, 2002, 2003, 2004 and 2005, and issued reports and observations on the human rights situation in Haiti, in 1969, 1979, 1988, 1990, 1993, 1994, 1995, 2004 and 2005. For a list of the on-site visits conducted by the Commission, see <http://www.cidh.org/visitas.eng.htm>. For a list of the country reports adopted by the Commission, see <http://www.cidh.org/pais.eng.htm>.

characterized by corruption and widespread and serious human rights violations. The economy has been exploited and degraded, and basic social and economic rights, including adequate nutrition, public sanitation, safe and available healthcare, and basic education, have been denied to much of the Haitian population. These circumstances in turn have required repeated intervention by the international community through the deployment of multinational forces and other initiatives by international organizations and their member states.⁴

4. Unfortunately, Haiti's recent history has not revealed a significant departure from this pattern. As discussed in more detail in Part III of this report, at the beginning of 2004 the country experienced a violent uprising that led to the departure of its former President and exacerbated the political polarization and instability in the country. Since then, two additional multinational forces have been deployed⁵ and serious human rights violations have continued to take place, due largely to a lack of effective security throughout the State's territory and uncontrolled and escalating violence in volatile neighborhoods of Port-au-Prince.⁶ Further, the population of the country continues to suffer from poor nutrition, health, sanitation, and unemployment, among other problems, and urgent financial and technical assistance is necessary to prevent further degradation of, and in many instances to reestablish, the state's governmental and economic infrastructure.

5. Haiti has historically experienced political, economic and social fragility and upheaval, placing it among the world's most troubled countries. Moreover, as successive governments have been plagued by incompetence and corruption, and as political power has been routinely seized and maintained through violence and political repression, the infrastructure of the country's national and local governments has consistently been prevented from fully developing and becoming strong, independent and fully functional institutions. Decades of corruption and political instability have likewise undermined the economic foundation of the country, which has had no meaningful opportunity to recover or develop. Through these cycles of violence and instability, the people of Haiti have continued to suffer from the worst standards of living in

⁴ For example, between 1993 and 2000, four United Nations operations have been deployed in Haiti: the United Nations Mission in Haiti (UNMIH) from September 1993 to June 1996; the United Nations Support Mission in Haiti (UNSMIH) from July 1996 to July 1997; the United Nations Transition Mission in Haiti (UNTMIH) from August to November 1997; and the United Nations Civilian Police Mission in Haiti (MIPONUH) from December 1997 to March 2000. Additional information on these operations is available at <http://www.un.org/Depts/dpko/dpko/index.asp>.

⁵ A Multinational Interim Force was deployed in Haiti from February to May 2004, followed by the installation of the United Nations Stabilization Mission in Haiti from June 2004 to the present. For additional information, see <http://www.un.org/Depts/dpko/missions/minustah/background.html>.

⁶ See, e.g., IACHR Press Release 20/05, "IACHR Calls for Immediate Measures to Quell Unprecedented Violence in Haiti," (July 22, 2005), available at <http://www.cidh.org/Comunicados/English/2005/29.05eng.htm>.

the Hemisphere and are systematically deprived of basic requirements of nutrition, medical care, employment and education. Furthermore, the Commission has observed the near total absence of state presence in the form of local civil authorities, police officers, courts, schools, and medical facilities in certain sectors of the country, and where existent, are grossly inadequate and ineffective to address the needs of the people of Haiti. Consequently, such conditions illustrate the increasing inability of the state to govern and guarantee public security for its inhabitants, creating a vacuum and leading to the acute rise in criminality, the proliferation of armed gangs, the uncontrolled drug and arms trade and the corruption of state institutions, especially the police. Such conditions have contributed to the increase in violence in the country and persistent impunity for human rights abuses and crimes.

6. Potentially relevant to these circumstances is the possible emergence in the modern community of states of what have been referred to "fragile," "failed," or "collapsed" states, namely those states that are at risk of or have for all practical purposes lost the ability to govern.⁷ Indeed, the deteriorating ability of some states to maintain their basic functions and institutions has counted among the factors justifying collective intervention by the international community through such measures as peacekeeping, peace enforcement, and humanitarian intervention. In the context of fragile and collapsed states in particular, some States have suggested that action on the part of the international community may also arise from a specific and shared responsibility toward the people who are the victims of state failure.⁸

7. The merits of the "failed state" theory and its possible application to the situation in Haiti are issues that cannot be resolved within the parameters of this report. It can be said, however, that intensive and ongoing support by the international community in most aspects of Haiti's governmental and economic infrastructure and institutions will be essential if Haiti is to have any chance of breaking with the cycles of the past. It is also apparent to the Commission, based upon its more than 40 years of monitoring the situation in Haiti, that past strategies, largely due to short-term planning by the international community, have not been sufficient and must be reevaluated. In particular, in past instances in which the international community has provided support to Haiti, many corresponding advances have proved temporary, have not resulted in deep-seated change, and have frequently lacked effective coordination within and between contributing states and international organizations.

8. The Commission therefore considers that the international community must take a renewed approach in Haiti that incorporates a more

⁷ See generally Daniel Thürer, *The "failed state" and international law*, International Review of the Red Cross No. 836, pp. 731-761 (December 31, 1999).

⁸ See, e.g., Canada's International Policy Statement, "A Role of Pride and Influence in the World", (2005), p. 13, available at <http://www.dfait-maeci.gc.ca/cip-pic/IPS/IPS-Overview.pdf>.

intensive and sustained engagement with the people of the country and their governmental, economic and social institutions. This in turn suggests that future assistance must be provided and implemented in a manner that will render progress sustainable in the longer term, for example through multi-year projects that are followed by continued technical and other support, and by sustained efforts to build the local capacity of state institutions and the Haitian civil society, so as to enable them to directly engage in and decide national priorities in the area of governance, and social and economic development. In addition, the approach by the international community must be accompanied by greater inter-state and inter-organizational coordination and cooperation. In this regard, the Commission is aware that both the UN Security Council and the OAS General Assembly have in their recent resolutions on Haiti emphasized the need for enhanced cooperation between and within international organizations in order to improve the effectiveness of the international community's response in Haiti.⁹ The Commission emphasizes that such efforts must be continued and strengthened in future initiatives in the country if long term stability is to be achieved, and is hopeful that the present report will assist Haiti and the international community in identifying imperative initiatives in the area of the administration of justice.

9. One of the critical areas in which longstanding human rights problems continue to exist in Haiti is the administration of justice in Haiti. For as long as the Commission has been evaluating the human rights situation in Haiti, fundamental deficiencies in the Haitian justice system have been included among the matters of greatest concern,¹⁰ and these concerns have continued to the present day.¹¹ Particularly serious and recurring issues relating to the administration of justice have included severe shortages of adequate resources, abuses and corruption on the part of security forces, unacceptable delays in criminal proceedings, and failures to investigate, prosecute and punish serious violations of human rights. Over time, these deficiencies have undermined public confidence in Haiti's justice system and have systematically deprived victims and witnesses of politically-motivated and other human rights abuses of judicial protection and the rights to the truth, reparations and non-repetition of violations. The issue of the administration of justice is particularly significant

⁹ See, e.g., UN Security Council Resolution 1542 (2004), UN Doc. S/1542/2004 (30 April 2004); OAS General Assembly Resolution AG/RES.2147 (XXXV-O-05), "Strengthening Democracy in Haiti" (June 7, 2005).

¹⁰ See, e.g., IACHR, Report on the Human Rights Situation in Haiti 1979, OEA/Ser.L/V/II.46, Doc. 66 rev. 1 (13 December 1979), Chapter III; IACHR, Report on the Human Rights Situation in Haiti 1990, OEA/Ser.L/V/II.77, Doc. 18 Rev. 1 (8 May 1990), Chapter III; IACHR, Report on the Human Rights Situation in Haiti 1995, OEA/Ser.L/V/II.88, Doc. 10 Rev. (9 February 1995), Chapter V.

¹¹ See, e.g., "IACHR Expresses Concern Regarding Trial for the Murder of Haitian Activist Antoine Izméry," Press Release 17/04 (20 August 2004), available at <http://www.cidh.org/Comunicados/English/2004/17.04.htm>; "IACHR Expresses Concern Over the Situation of Yvon Neptune", Press Release 19/05 (May 6, 2005), available at <http://www.cidh.org/Comunicados/English/2005/19.05.htm>.

owing to the crucial role that the justice system and its institutions play in ensuring respect for fundamental rights and freedoms as well as the full realization of democracy and the rule of law.¹² Indeed, based upon its longstanding experience in Haiti and other countries of the Hemisphere, the Commission considers that absent effective measures to address deficiencies in Haiti's justice system, the country will have little chance to confront the broader political, social and economic difficulties as well as those relating to the security of the population.

10. Therefore, regardless of the turmoil that Haiti might face or the government that may be in power, the proper administration of justice must be ensured if true stability and the full protection of human rights and freedoms is to be achieved – the consolidation of the rule of law and democracy cannot be achieved without guaranteeing justice and security. Accordingly, the Commission has considered it timely, and indeed vital, to produce a report that specifically addresses the current status of administration of justice in Haiti.

11. At the outset, the Commission wishes to emphasize that the analysis and recommendations in this report are based upon international human rights commitments, including the rights and obligations under the American Convention on Human Rights, that are binding on the Haitian State regardless of the government that may be in power. It is well-established that the international legal responsibilities of a state, including its human rights commitments, are not affected by changes in the head of state or the internal form of government.¹³ This includes a continuing obligation on the part of current and future governments to address human rights violations that may have been committed or tolerated by a prior administration.¹⁴

12. Accordingly, the findings and recommendations in this report should be taken into account and implemented by present and future authorities in the Republic of Haiti. In this respect, the Commission hopes that this report will assist in providing a blueprint for identifying areas in which the justice

¹² As the Inter-American Court has observed, the right to judicial protection under Article 25 of the American Convention is "one of the basic pillars, not only of the American Convention, but of the very rule of law in a democratic society in the terms of the Convention." See I/A Court H.R., *Loayza Tamayo Case*, Judgment of November 27, 1998, para. 169.

¹³ See, e.g., IAN BROWNLIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 80 (5th ed., 1998).

¹⁴ See I/A Court H.R., *Velásquez Rodríguez Case*, Judgment of July 29, 1988, para. 184 (observing that "[a]ccording to the principle of the continuity of the state in international law, responsibility exists both independently of changes of government over a period of time and continuously from the time of the act that creates responsibility to the time when the act is declared illegal. The foregoing is also valid in the area of human rights although, from an ethical or political point of view, the attitude of the new government may be much more respectful of those rights than that of the government in power when the violations occurred." See similarly Case 11.228, 11.229, 11.231, 11.182, Report N° 34/96, Irma Meneses Reyes, Annual Report of the IACHR 1996, paras. 84-86.

system in Haiti must be reformed, as a central component of efforts to achieve short and long term stability in the country.

13. The analysis in the report begins with a brief background of the Commission's activities in Haiti, key events over the past two years in the country, and the Commission's methodology in preparing the report. This is followed by a contextual overview of the present political, security, and economic and social situation in Haiti, as well as the framework of Haiti's international legal obligations and the Haitian justice system. The report then provides a more detailed analysis of four key aspects of administration of justice in the country: law enforcement and the Haitian National Police; the courts; the system of detention facilities and prisons; and the problem of impunity and lack of public confidence in the justice system. Finally, the report provides a number of recommendations for addressing the problems identified in the area of administration of justice in Haiti.

II. BACKGROUND

A. Events in Haiti, 2003 - 2005

14. Since 2003, numerous significant events have occurred in Haiti that form an important background for analyzing the present state of the administration of justice as well as other human rights issues in the country.

15. The year 2003 was characterized by a rising political crisis in Haiti, with growing expressions of discontent with the government of former President Jean-Bertrand Aristide who had been re-elected to office in November 2000 and increasing instances of politicized violence.¹⁵ The crisis deepened in late 2003 and early 2004, with more violent protests,¹⁶ some of which were accompanied by acts of sabotage against journalists and media assets.¹⁷

16. On February 5, 2004, conflict broke out in the northern city of Gonaïves when armed opponents of the government attacked police stations and court houses, forcing the police and local authorities to flee. The leaders of the insurgency included former members of the Haitian National Police (HPN)

¹⁵ See, *e.g.*, IACHR Press Release 24/03, IACHR Press release on completion of its on-site visit in August 2003 (August 22, 2003), available at <http://www.cidh.org/Comunicados/English/2003/24.03.htm>.

¹⁶ See, *e.g.*, IACHR Press Release 33/03, "IACHR Concerned by Recent Events in Haiti" (December 9, 2003), available at <http://www.cidh.org/Comunicados/English/2003/33.03.htm> (expressing concern over an incident in December 2003 in which numerous individuals were injured and property was destroyed during a student protest in Port-au-Prince).

¹⁷ See IACHR Special Rapporteurship on Freedom of Expression, "Office of the Special Rapporteur Deplores Attacks on Freedom of Expression in Haiti", Press Release 98/04 (22 January 2004), available at <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=121&IID=1>. See also, Office of the Special Rapporteur, Report on the Situation of Freedom of Expression in Haiti (July 2003) available at <http://www.cidh.org/relatoria>

and paramilitary groups such as the Front Révolutionnaire Armé pour le Progrès (FRAPH), among others. Over the next three weeks, the violence escalated and spread to other parts of the country. Police and other government authorities were ousted, court houses, police stations, prisons, and other government properties were looted and destroyed, and prisoners escaped. More than 200 people were estimated to have been killed. During this period, the Commission urged the parties to resolve their differences peacefully, democratically and constitutionally in accordance with the Inter-American Democratic Charter and the American Convention on Human Rights.¹⁸

17. On February 29, 2004, as the insurgents threatened to advance on Port-au-Prince, former President Aristide left Haiti in disputed circumstances.¹⁹ Within a few hours of Aristide's departure, Supreme Court President Boniface Alexandre was sworn in as the new Interim President. On March 4, 2004, a Tripartite Council was established, consisting of three members: one representative of former President Aristide's Fanmi Lavalas Party, one of the Democratic Platform, a group opposed to former President Aristide, and one representative of the international community. The next day, the Tripartite Council selected seven eminent persons from key sectors of society to constitute a Council of the Wise and charged it with selecting an Interim Prime Minister. Gérard Latortue, a businessman and consultant with the United Nations living in the United States, was appointed as Prime Minister on March 9, 2004, and a transitional government was formed one week later.

18. In an effort to build a broad political accord, a "Consensus on Political Transition Pact" was signed on April 4, 2004 by Prime Minister Latortue on behalf of the 13 member transitional cabinet, members of the Council of the Wise, and representatives of various political groups and civil society organizations, with the exception of Fanmi Lavalas. The Pact set out measures to be undertaken concerning such issues as security, fight against impunity and corruption, elections, judicial reform, reintegration of former armed elements, professionalization of the Haitian National Police, and victim support assistance. The Pact also called for the holding of municipal, parliamentary and presidential elections in 2005, which were scheduled for, respectively, October 9, 2005, November 6, 2005 and December 11, 2005, with the new government to assume power on February 7, 2006. A Provisional Electoral Council (PEC) was established to advance these goals.

¹⁸ See "Press Release on Haiti by the Inter-American Commission on Human Rights", Press Release 4/04 (26 February 2004), available at <http://www.cidh.org/Comunicados/English/2004/4.04.htm>; "The IACHR Insists on the Respect for Human Rights during Haiti's Crisis," Press Release 7/04 (11 March 2004), available at <http://www.cidh.org/Comunicados/English/2004/7.04.htm>.

¹⁹ OAS General Assembly Resolution AG/RES.2058 (XXXIV)-O-04, "Situation in Haiti: Strengthening of Democracy" (8 June 2004), available at <http://www.oas.org/main/main.asp?sLang=E&sLink=http://www.oas.org/consejo/GENERAL%20ASSEMBLY/default.asp> (taking note of "subsequent questions" surrounding the resignation of former President Aristide).

19. Efforts to organize elections proved difficult, however, and were hampered by delays. The electoral law was not passed until February 2005, the voting registration process did not commence until April 2005, and by mid-summer many registration centers had still not been established. In August 2005, the deadline for registration was extended from mid-August to mid-September and local elections previously scheduled for October 9 2005 were postponed. As of the date of the present report, approximately 3 million of an estimated 3.4-3.7 million eligible voting citizens had been registered, and the number of registration posts reached 720 across the country, including Cite Soleil in mid-October, while more than 40 political leaders had announced their candidacy for the presidency, and 40 political parties had been registered and permitted to participate in the elections, including Fanmi Lavalas.

20. As described in more detail below, during 2004 and 2005 the people of Haiti continued to face serious threats to their lives and personal security owing to several factors, including the proliferation of illegal arms in the country, escalating violence on the part of armed groups and gangs, a lack of state presence in many parts of the country, and severe shortages in police personnel and resources.²⁰

21. The events at the domestic level in Haiti over the past two years have been accompanied by significant developments in the international community's involvement in the country. In particular, on February 29, 2004, the date of former President Aristide's disputed departure from Haiti, the United Nation's Security Council adopted Resolution 1529 (2004)²¹ authorizing the immediate deployment of a multinational interim force (MIF) for a period of three months. The troops began deploying the same day. This was followed by the adoption by the UN Security Council on April 30, 2004 of Resolution 1542 (2004) creating the United Nations Stabilization Mission in Haiti (MINUSTAH), a UN stabilization force consisting of a projected 6,700 military personnel, 1,622 civilian police and additional local civilian staff.²² The mission was initially authorized for six months beginning on June 1, 2004, and has since been extended on three occasions, once on November 29, 2004 with an extension to June 1, 2005, again on May 31, 2005 with a brief extension to June 24, 2005, and most recently on June 22, 2005 with an extension

²⁰ See, *e.g.*, IACHR Press Release 22/04, IACHR Expressed concern over the Situation in Haiti during its 121st Regular Period of Sessions (October 28, 2004), available at <http://www.cidh.org/Comunicados/English/2004/22.04.htm>.

²¹ See UN Security Council Resolution 1529 (2004), UN Doc. S/RES/1529 (2004) (29 February 2004), available at <http://daccessdds.un.org/doc/UNDOC/GEN/N04/254/10/PDF/N0425410.pdf?OpenElement>.

²² See UN Security Council Resolution 1542 (2004), UN Doc. S/RES/1542 (2004) (30 April 2004), available at <http://ods-dds-ny.un.org/doc/UNDOC/GEN/N04/332/98/PDF/N0433298.pdf?OpenElement>.

to February 15, 2006.²³ The latter resolution also enhanced “for a temporary period” the military component of MINUSTAH from 6,700 to up to 7,500 troops and its civilian police component from 1,622 to up to 1,897 members. MINUSTAH’s mandate has been defined by the Security Council to include ensuring a secure and stable environment for the constitutional and political process in Haiti, to aid the transitional government in reforming the Haitian National Police, and to assist with comprehensive and sustainable disarmament, demobilization and reintegration programs, among other tasks. As of July 31, 2005, 6, 264 troops and 1,401 civilian police had been deployed to Haiti.²⁴

22. Other intergovernmental organizations have also reacted to the current circumstances in Haiti. The Caribbean Community (CARICOM), of which Haiti is a member, condemned the circumstances which led to the departure of former President Aristide in February 2004 and subsequently decided not to allow the transitional government to participate in its Councils. At the conclusion of the 26th General Meeting of Heads of Government in July 2005, the Community did not readmit Haiti to its meetings, but decided that CARICOM would be ready to participate in the international observation of elections “when the conditions on the ground were conducive.”²⁵

23. For its part, the General Assembly of the Organization of American States (OAS) adopted two resolutions on Haiti, the first, Resolution AG/RES.2058 (XXXIV)-O-04,²⁶ during its thirty-fourth regular session convened from June 6 to 8, 2004 in Quito, Ecuador, and the second, Resolution AG.RES.2147 (XXXV)-O/05,²⁷ during its thirty-fifth regular session convened from June 5 to 7, 2005 in Fort Lauderdale, Florida. In both resolutions, the General Assembly identified the primary concern of the OAS in Haiti to be the full restoration of a lasting democratic order and the economic, social as well as political well-being of the citizens of Haiti. The General Assembly also instructed the Secretary General to establish the necessary coordination with the Secretary General of the United Nations and to identify the areas of

²³ See UN Security Council Resolution 1576 (2004), UN Doc. S/RES/1576 (2004) (29 November 2004); UN Security Council Resolution 1601 (2005), UN Doc. S/RES/1601 (2005) (31 May 2005); UN Security Council Resolution 1608 (2005), UN Doc. S/RES/1608 (2005) (22 June 2005, available at <http://www.un.org/Depts/dpko/missions/minustah/res.html>).

²⁴ See MINUSTAH, Facts and Figures (as of July 31, 2005), available at <http://www.un.org/Depts/dpko/missions/minustah/facts.html>.

²⁵ See CARICOM, Communiqué issued at the Conclusion of the Twenty-sixth Meeting of the Conference of Heads of Government of the Caribbean Community (CARICOM, 3-6 July 2005, Gros Islet, Saint Lucia, Press 151/2005 (7 July 2005), available at http://www.caricom.org/pres151_05.htm).

²⁶ OAS General Assembly Resolution AG/RES.2058 (XXXIV)-O-04, “Situation in Haiti: Strengthening of Democracy” (8 June 2004), available at <http://www.oas.org/main/main.asp?sLang=E&sLink=http://www.oas.org/consejo/GENERAL%20ASSEMBLY/default.asp>.

²⁷ OAS General Assembly Resolution AG/RES.2147 (XXXV)-O-05, “Strengthening Democracy in Haiti” (7 June 2005), available at <http://www.oas.org/main/main.asp?sLang=E&sLink=http://www.oas.org/consejo/GENERAL%20ASSEMBLY/default.asp>.

collaboration between the Special Mission of the OAS and the United Nations, especially those related to the strengthening of democratic institutions, the holding of elections and the promotion of human rights. Furthermore, the General Assembly urged the IACHR to continue to monitor and report on the human rights situation in Haiti and to work with the OAS Special Mission in the promotion and observation of those rights.

24. Since June 2004, numerous initiatives have been undertaken by the organs and institutions of the OAS to implement the terms of General Assembly's Resolution. A delegation of the OAS Permanent Council conducted a visit to Haiti from September 9 to 11, 2004 in order to assess the situation and impress the need to foster the full restoration of democracy in Haiti. Further, on November 3, 2004, the OAS General Secretariat and the UN signed an agreement to cooperate on organizing, monitoring and conducting the elections in Haiti scheduled for 2005. In this respect, the OAS, in cooperation with the United Nations and the PEC, provided strategic assistance, resources, training and technical support for the voter registration process. These efforts included the development and issuance of registration cards that will be used not only for the elections but as a national identity card for Haitian citizens. Further, on July 5 and 6, 2005, the newly-elected Secretary General of the OAS, José Miguel Insulza, headed a delegation of the General Secretariat on a visit to Haiti, which held meetings with government officials and representatives of civil society, political parties, the international community and agencies of the inter-American system and urged all political and social groups to play an active part in the election process.

25. Haiti was also the victim of severe natural disasters in 2004, first in May by the floods caused by torrential rains in the area bordering the Dominican Republic in which more than 1,700 people died. This was followed by Tropical Storm Jeanne, one of Haiti's worst natural disasters, which resulted in an estimated 1,900 dead and 900 missing and presumed dead. These disasters and their after effects, including the lack of adequate food, shelter, hygiene and health services and associated spread of illnesses and disease, have exacerbated the problems facing Haiti and its need for strong and decisive international assistance.

26. In this respect, during an international donor's conference in Washington, D.C. in July 2004, over US \$1 billion was pledged to Haiti. This was followed by two follow up donors meetings, the Ministerial Meeting on Aid for the Reconstruction of Haiti in Cayenne, French Guyana in March 2005 and the Montreal International Conference on Haiti in Montreal, Canada on June 16 and 17, 2005. According to the World Bank Country Director for the Caribbean, as of May 2005 approximately \$400 million of the total money pledged had been disbursed in Haiti through an Interim Cooperation Framework. Projects for which these funds have been earmarked include repairing public buildings and infrastructures, public education, and police training.

27. Over the past two years, therefore, Haiti has experienced many difficult changes and the government and people of the country continue to face serious challenges. The security situation is dire and adequate measures to suppress violence and disarm illegal armed groups and gangs have not been taken. In addition, Haitian politics remains highly polarized and few effective efforts have been made to attempt to bring all sectors of Haitian society together to construct a more peaceful path for the future. Nevertheless, opportunities for change and progress remain open, through elections and through proactive and sustained cooperation by the international community. Against this backdrop, the Commission will provide an analysis of the situation of administration of Justice in Haiti.

B. Sources of Information in Preparing the Report

28. The analysis in the present report is based upon numerous sources of information. This includes data gathered during four visits made to Haiti between August 2003 and July 2005, as well as other publicly-available sources of information.

29. Prior to the events of February 2004, the Commission conducted an on-site visit in Haiti from August 18 to 22, 2003, at the invitation of the former government and with the valuable assistance of the OAS Mission in Haiti. During this visit, the Commission met with officials of the previous government, including members of the police and the courts, as well as representatives of non-governmental organizations, bar associations, and political parties. A central purpose of the visit was to gather information concerning the situation of administration of justice under the previous government, and in its press release issued following the visit,²⁸ the Commission expressed numerous concerns relating to the justice system, including the large number of persons detained in jails without having been brought before a judge, significant limitations on the independence of the Haitian judiciary, and the general absence of legal assistance for individuals in criminal prosecutions.

30. Following the installation of the transitional government in March 2004, the Commission continued to monitor events in Haiti and gather information through a variety of activities. These included three visits conducted by the Commission in 2004 and 2005 at the invitation of the government of Haiti and with the financial support of the Government of France, the first from September 1 to 3, 2004, the second from April 18 to 22, 2005 and the third from July 11 to 15, 2005. These visits were conducted in accordance with the IACHR's mandate and functions under the OAS Charter and the American Convention on Human Rights, as well as pursuant to the terms of the OAS General Assembly Resolutions AG/RES.2058 of June 8,

²⁸ IACHR Press Release 4/03 (August 22, 2003), available at <http://www.cidh.org/Comunicados/English/2003/24.03.htm>.

2004 and AG.RES.2147 of June 7, 2005. During these visits, the Commission delegations endeavored to obtain information on the status of human rights protections in Haiti in the aftermath of the events of February 2004 as well as the particular situation of the administration of justice in the country. To this end, the delegations met with representatives of the transitional government,²⁹ the Conseil de Sages, Judges of the Court of First Instance, Court of Appeal, and Supreme Court, members of civil society,³⁰ associations of judges, lawyers and magistrates, and representatives of other international organizations, including MINUSTAH and the United National Development Program, visited the National Penitentiary and other pertinent locations and gathered relevant documentation. During these visits, the Commission also conducted three training seminars on the Inter-American human rights system, with officials and functionaries from various government ministries and agencies and with representatives from a variety of nongovernmental organizations.³¹

31. The Commission issued press releases³² following each of the visits and, in the case of its September 2004 and April 2005 visits, released preliminary observations on the situation of human rights in Haiti,³³ the former

²⁹ Government officials with whom the Commission met included the President of the Republic, Mr. Boniface Alexander; the Prime Minister, Mr. Gérard Latortue; the Minister of Foreign Affairs and Worship, Mr. Yvon Siméon and his successor, Mr. Hérard Abraham; the Minister of Justice and Public Security, Mr. Bernard Gousse and his successor, Mr. Henri Dorléans, the Minister of the Interior, Territorial Collectivities and National Security, Mr. Georges Moise, the Minister of Women's Affairs, Mrs. Adeline Magloire Chancy; the Chief Prosecutor of Port-au-Prince, the Director General of the National Police of Haiti, Mr. Leon Charles; the Inspector General of the Police, Mr. Franz Jean François; the Director of Prisons Commissioner Wilkins; and the Ombudsman of Haiti, Mr. Necker Dessables.

³⁰ Nongovernmental organizations with whom the Commission met included: Comité des Avocats pour le Respect des Libertés Individuelles (CARLI); Groupe d'Appui aux Réfugiés et Rapatriés (GARR); Centre Ecuménique de droits de l'Homme; Centre Toussaint Louverture pour les droits de l'Homme, la Démocratie et le Développement (CTDH); La Plate Forme des Organisations Haïtiennes des Droits Humains (POHDH); Enfoam; MOUFED; CONOCS; Réseau National de Défense des Droits Humains (RNDDH, formerly Coalition Nationale pour les Droits des Haïtiens); Bureau des Avocats International; and la Commission Episcopale Nationale de Justice et Paix.

³¹ See "IACHR Completes Visit to Haiti," Press Release 19/04 (7 September 2004), available at <http://www.cidh.org/Comunicados/English/2004/19.04.htm>.

³² See "IACHR Completes Visit to Haiti," Press Release 19/04 (7 September 2004), available at <http://www.cidh.org/Comunicados/English/2004/19.04.htm>; "IACHR Calls for Greater International Action in Haiti: Press Release 16/05 (April 22, 2005); available at <http://www.cidh.org/Comunicados/English/2005/16.05eng.htm>; "IACHR Calls for Immediate Measures to Quell Unprecedented Violence in Haiti", Press Release 29/05, July 22, 2005, available at <http://www.cidh.org/Comunicados/English/2005/29.05eng.htm>.

³³ See "IACHR Completes Visit to Haiti," Press Release 19/04 (7 September 2004), available at <http://www.cidh.org/Comunicados/English/2004/19.04.htm>; "Inter-American Commission on Human Rights Releases Preliminary Observations on its April 2005 Visit to Haiti", Press Release 20/05 (June 6, 2005, available at <http://www.cidh.org/Comunicados/English/2005/20.05.htm>.

of which were formally presented to the OAS Permanent Council during a regular meeting of the Council on September 7, 2004.³⁴

32. In addition to its on-site visits, the Commission gathered documentation and other information at general hearings on the situation of human rights in Haiti that were convened in Washington, D.C. during the Commission's 121st and 122nd regular periods of sessions,³⁵ and has drawn upon other publicly-available sources of information. These have include reports and other documents issued by other intergovernmental organizations such as the United Nations,³⁶ and international and domestic nongovernmental organizations such as the International Crisis Group,³⁷ Amnesty International,³⁸ the Robert F. Kennedy Memorial Center for Human Rights,³⁹ the Haiti Democracy Project,⁴⁰ IFES,⁴¹ the Office of the Ombudsman⁴², Forum Citoyen Pour la Reforme de la Justice,⁴³ and Le Comité des Avocats pour le Respect des Libertés Individuelles (CARLI),⁴⁴ as well as information reported in the general press and media. In addition, some information considered in this report

³⁴ See Agenda of the September 7, 2004 Regular Meeting of the OAS Permanent Council, OAS Doc. OEA/INF.505/704 (September 1, 2004) available at <http://www.oas.org/main/main.asp?sLang=E&sLink=http://www.oas.org/consejo>.

³⁵ See "IACHR Expresses Concern Over the Situation in Haiti During its 121st Regular Period of Sessions," Press Release 22/04 (28 October 2004), available at <http://www.cidh.org/Comunicados/English/2004/22.04.htm>.

³⁶ See, e.g., Situation of Human Rights in Haiti, Report Prepared by the Independent Expert, Louis Joinet, U.N. Doc. E/CN.4/2005/123 (24 January 2005); Report of the UN Security Council Mission to Haiti, 13-16 April 2005, U.N. Doc. S/2005/302 (6 May 2005); Report of the UN Secretary General on the UN Stabilization Mission on Haiti, U.N. Doc. S/2005/313 (13 May 2005), and U.N. Doc. S/2005/313/Add.1 (23 June 2005).

³⁷ See International Crisis Group, *A New Chance for Haiti?*, ICG Latin America/Caribbean Report No. 10 (November 18, 2004); ICG, *Spoiling Security in Haiti*, Latin America/Caribbean Report No. 13 (May 31, 2005); ICG, *Can Haiti Hold Elections in 2005?*, Latin America/Caribbean Briefing No. 8 (August 3, 2005).

³⁸ See, e.g., Amnesty International, *Breaking the cycle of violence: A Last Chance for Haiti?*, AI Index: AMR 36/038/2004 (June 21, 2004); Amnesty International, *Haiti: Disarmament Delayed, Justice Denied* (August 2005).

³⁹ See, e.g., Robert F. Kennedy Memorial Center for Human Rights, *A Framework for Reevaluating MINUSTAH: Illegal nature of mission will lead to a failed intervention in Haiti* (November 8, 2004).

⁴⁰ See, e.g., Haiti Democracy Project, *Report of Ambassadors' Delegation to Evaluate Progress Toward Elections*, February 17-23, 2005 (March 6, 2005).

⁴¹ IFES, State of the Judicial Report: Haiti 2002-2003 (Léon Saint-Louis, April 2004).

⁴² Prison Conditions in Haiti : SOS Individual Freedoms, Ombudsman Office (OPC), November 2004.

⁴³ See, e.g., Reform Citoyen pour la Reforme de la Justice, *Vers la construction d'un système d'enquête efficace et respectueux de la dignité humaine* (June 2005); Reform Citoyen pour la Reforme de la Justice, *Vers la construction de l'indépendance du pouvoir judiciaire* (September 2004).

⁴⁴ See, e.g., CARLI, *Monthly Reports on Human Rights in Haiti*.

was gathered from sources which the Commission considers to be reliable but on condition of anonymity or confidentiality for security and other reasons.

C. Processing and Approval of the Report

33. The draft Report on the situation of the administration of justice in Haiti 2005 was approved by the Commission on October 26, 2005. In accordance with Article 58 of the Commission's Rules of Procedure, this Report was transmitted to the Government of Haiti on December 7, 2005, with a request that it submit the observations and comments deemed pertinent within a period of one month.

34. As of January 7, 2006, the Commission had not received a response from the State. Notwithstanding the absence of observations from the State, the Commission has considered it important to mention several significant developments relating to the main topics outlined in this Report that have taken place in Haiti since the Report was approved on October 26, 2005 until February 1, 2006. These developments are summarized below.

Elections

35. At the time of this writing, the first round of presidential and parliamentary elections, which had been scheduled for January 8, was postponed for a fourth time to February 7, 2006. According to information available, the delays have resulted from several factors, including complications in the distribution of 3.5 million electoral cards, other technical and organizational challenges in establishing voting centers and electronic voter database, and, as discussed below, ongoing concerns about the security situation in the country.

36. The Commission, like other members of the international community, has been concerned about the electoral delays as well as the challenges faced by authorities in ensuring that the elections proceed in a fair and effective manner. Accordingly, the Commission takes this opportunity to once again stress the importance of conducting timely, free and fair elections in Haiti in order for the state to proceed with accomplishing the task of strengthening its democratic institutions, the rule of law and taking the necessary steps to improve the country's ever worsening social and economic conditions. In the Commission's view, it is of paramount importance that elections be conducted expeditiously and at the same time take place in a manner that complies with international standards, and the Commission urges those involved in organizing the elections to take due account of both of these fundamental considerations in moving forward with the electoral process.

Situation of Insecurity

37. The Commission has received reports that the security situation in Haiti has remained serious in the weeks leading up to scheduled elections.

According to information in the media and from local and international governmental and nongovernmental organizations, drug trafficking remains a prevalent problem, and additional civilians and members of the UN Stabilization Force have been injured and have lost their lives. In addition, the number of kidnappings has remained significant despite the HNP's efforts to curtail this category of crime. According to public reports, there were 40 reported cases of kidnappings between November 20 and December 5, 2005. Of particular concern to the Commission in this respect was the kidnapping on December 29, 2005 of two electoral officers employed by the Organization of American States. In a press statement on December 30, the OAS Secretary General Jose Miguel Insulza expressed strong condemnation of the abduction. On December 31, 2005, the OAS issued notice of the safe release of the victims in which it also reiterated its condemnation of this violent incident against persons working to organize the national elections in the country.

38. The Commission has received information indicating that in response to the insecurity, the newly installed Director General of the Police Mario Andresol had taken some concrete steps to investigate and apprehend suspects of kidnappings. The HNP also published the findings of its investigation into the Martissant murders in August 2005, which claimed a dozen lives during a confrontation between police and armed gang members during a football match in the Martissant neighborhood of Port-au-Prince. The report's conclusions indicate the involvement and culpability of several police officers during an operation to apprehend suspects in these murders and recommended sanctions against twenty officers, including suspensions and termination of employment with the force. Further, the HNP announced the opening of two new police stations in Port-au-Prince.

39. While the Commission is encouraged by these developments, it remains the case that additional and significant efforts are necessary to curb the violence in Haiti, to adequately tackle the challenge of impunity for kidnapping and other serious crimes, and to guarantee the public security necessary in order for the national elections to be carried out within an environment that is fair and free of intimidation. As outlined in the Commission's report, these measures must include additional timely and impartial investigations and prosecution of serious crimes, providing enhanced and ongoing professional and human rights training and equipment to the police, and establishing a stronger command and control structure in order to ensure that police policies and regulations are strictly respected.

Justice System

40. The Commission learned that on December 9, 2005, the interim President of the Republic of Haiti issued an executive order that formally 'retired' five judges who sit on the Supreme Court in Haiti. Although the order cited various articles from the Haitian Constitution, it was not apparent from the information available that the requirements of the Constitution governing the removal of Supreme Court judges had been satisfied. In particular, section

174 of the Constitution prescribes a 10 year term for each of its 12 Supreme Court judges, and section 177 of the Constitution requires a judge's consent for transferring his position or evidence of physical or mental incapacity before his or her mandate can be terminated before the ten year term is completed. It does not appear from the circumstances of the "retirement" of the 5 judges that either of these conditions had been satisfied.

41. In response to the removal of the five former judges and the Haitian President's immediate issuance of another order naming a Vice-President of the Court and five replacement judges, the judges association ANAMAH and the women's judges' association called a five-day strike beginning on December 13, 2005 to protest what they interpreted to be an unconstitutional act, which paralyzed the country's judicial system. In addition, civil society groups and the UN High Commissioner for Human Rights issued public statements criticizing the act, a demonstration was organized to prevent the inauguration of the new judges, and the Conseil des Sages threatened to disband in protest of the executive's decision.

42. Also, in light of this development, the Commission issued a press release on December 16, 2005⁴⁵ in which it expressed its alarm for the retirement of the judges and stressed the importance of the independence and impartiality of the judiciary in Haiti in order to achieve an effective administration of justice in Haiti. Despite these national and international expressions of concern, the executive proceeded to swear in five new judges to the Supreme Court.

43. As the Commission indicated in its press release, these recent developments challenge efforts to reinforce the justice system in Haiti and call into question the present government's commitment to judicial independence and the rule of law. They also reinforce the importance of the conclusions and recommendations in this report indicating that the Haitian judiciary requires adequate reforms in order to further guarantee its independence, impartiality and integrity in order for it to become a credible and impartial institution that inspires public confidence in the justice system.

Prisons

44. During the month of November 2005, the Commission conducted a joint visit to Haiti with UNICEF's Office for Latin America and the Caribbean which focused on assessing the situation of violence against children in Haiti and was the subject of a joint press release following the visit.⁴⁶ During

⁴⁵ See IACHR Press Release 39/05 IACHR alarmed by the retirement of five Supreme Court judges in Haiti, available at: <http://www.cidh.oas.org/comu.eng.htm>.

⁴⁶ See IACHR Press Release 37/05, "Inter-American Commission on Human Rights and UNICEF Regional Office in Latin America and the Caribbean Conclude their Visit to Haiti" (November 5, 2005), available at: <http://www.cidh.org/Comunicados/English/2005/37.05eng.htm>.

this visit, the Commission noted the recent completion of the detention facility for minors in Delmas. The facility is one of the newest in Haiti and although overcrowding and access to adequate recreation and education remain issues to be addressed, conditions have improved significantly from the time when these minors were held in old, dilapidated and dysfunctional cells behind the Delmas 33 police station. One issue noted by the Commission during this visit was the continuing problem of prolonged pre-trial detention, including the prolonged detention of children. In particular, children complained to the Commission that a legal assistant would visit them from time to time but no advancement in their cases had been reported. Some youths also indicated that they had been detained for over one year without having been formally charged for a crime and they indicated that they did not know for how much longer they would be detained under these conditions. Accordingly, the Commission reiterates its call for urgent measures to address the problem of prolonged pre-trial detention in Haiti and urges the government to give particular priority to the situation of minors, in light of the special protections to which they are entitled under Haitian law as well as the Convention on the Rights of the Child, the UN Standard Minimum Rules for the Administration of Juvenile Justice, and other international human rights instruments.

III. ANALYSIS OF THE ADMINISTRATION OF JUSTICE IN HAITI

A. Context for Analysis

45. Before entering into a detailed discussion of the situation of the administration of justice in Haiti, the Commission considers it important to place the topic in the context of several other human rights issues in the country that, while not the focus of this report, have a direct and significant impact upon the justice system and therefore must be taken into consideration in fully and properly understanding the challenges facing Haiti in this area. These issues include the political situation and the right to political participation, the security situation and the right to life and physical integrity, and guarantees for fundamental economic, social and cultural rights.

1. Political Situation

46. As noted above, since 2004 the political situation in Haiti has been highly unstable. While some progress has been made toward holding national elections, politics in the country remains highly polarized and, as has been the case through much of Haiti's history, corruption and violence continue to poison the country's political culture. Consequently, lasting political stability will be difficult to attain and will take considerable time and effort.

47. These problems are relevant to a proper evaluation of the state of justice in Haiti in large part because the unstable political situation has not only impeded the full and effective exercise by the Haitian people of their right to political participation, but has also hinder opportunities and efforts to make needed and lasting changes to the country's infrastructure, including the

administration of justice. Further, many of the fundamental changes that the Commission has identified as necessary in order to move the system toward international standards require long term and sustained developments implemented by a democratically-elected government that is committed to the rule of law, as well as a population committed to peaceful reconciliation. In the same vein, the Commission considers that the convocation of free and fair elections and measures to bring the various political parties and other groups together are crucial steps that must be taken if effective and lasting reform to the administration of justice system in Haiti is to be realized. Particular measures must be taken to address disadvantages that are faced by women in the area of political participation. As confirmed by information gathered by the United Nations Development Program, patterns of inequality against women can be identified in a variety of areas of Haitian society, including participation in public institutions and political processes.⁴⁷

48. In this regard, a “National Dialogue” initiative was launched on April 7, 2005 through the nomination by the transitional government of a 12-member commission from different sectors of Haitian society, with the objective of providing a forum for all Haitians, including its various political groups, toward reconciliation, which is essential to the future stability and peace in the country. While it appears from the information presently available that the National Dialogue has not moved forward significantly since its inception, the Commission understands that in mid-April 2005 17 political parties, including moderate representatives of the Lavalas Party, signed a non-binding Code of Ethical Conduct, which commits to non-violence and other crucial aspects of proper and effective a democratic electoral process.

49. The Commission is encouraged by these developments and hopes that the National Dialogue will be implemented swiftly and will succeed in moving all Haitians, including its various political groups, toward reconciliation, which is essential to the future stability and peace in the country, the consolidation of the rule of law, and the entrenchment of an effective justice system.

2. Security Situation

50. As indicated above, the security situation has been among the most pressing problems facing Haiti over the past three years. As noted by the Commission on numerous occasions, Haiti has been plagued by widespread and escalating violence arising from conflicts between law enforcement authorities and illegal armed groups and gangs as well as increases in crimes such as

⁴⁷ *Id.* See also United Nations Development Program, Human Development Report 2004, Country Fact Sheets, Haiti, available at http://hdr.undp.org/statistics/data/country_factsheets/cty_fs HTI.htm (ranking Haiti 123rd out of 144 countries and the worst performer in Latin America and the Caribbean in terms of building the capabilities of women, with 9.1% of seats in Parliament held by women, an estimated female earned income of US \$1,170.00, and a ratio of female earned income to male earned income of 0.56).

murder, torture, kidnappings, and car jackings, particularly in the capital of Prince-au-Prince.⁴⁸ The impact of the violence has been widespread and has resulted in many casualties among civilians as well as members of the police and UN peacekeeping forces. The violence has also affected human rights defenders, journalists, judges, and other particularly vulnerable groups, in many instances for political reasons. At the same time, security measures for the population have been inadequate, owing in large part to a lack of state presence in many parts of the country following the rebellion in February 2004, coupled with the uncontrolled proliferation of illegal armed across the country and the violent conduct of armed groups, gangs and drug traffickers.

51. These sources of violence and insecurity have had a mutually reinforcing effect and have been exacerbated by a number of additional factors, including deficiencies in personnel, resources and training for the National Police. Also contributing to the situation of insecurity has been the poor conditions of the State's prisons, which has resulted in violence within the prisons as well as the escape of detained persons into the general population.

52. With respect to the situation of women and children in particular, the Commission has expressed particular concern over information indicating that the perpetration of rape by members of armed groups and gangs continues to be a widespread abuse and is frequently used as a political weapon.⁴⁹ Further, information suggests that children are increasingly incorporated into gangs and are the victims of gang-related and other violence.⁵⁰

53. The serious implications of this security situation for efforts to improve the administration of justice are self-evident and are described in more detail in Part D below concerning the main segments of the justice system. Most directly, the violence threatens the safe and free participation of key actors in the justice system, including judges, lawyers, victims and witnesses. More broadly, for as long as the security situation remains precarious in Haiti, it will remain very difficult to reform and to restore public confidence in the police, the judiciary and other components of the State's justice system. In addition, without exercising effective authority over security, the government is not in a position to fulfill its obligation to guarantee the full and free exercise of

⁴⁸ For example, it was reported by the United Nations that between May and August 2005, approximately 120 kidnappings were reported in Haiti and US \$6 million in ransom had been paid by the families of kidnapping victims. Rapt en Haïti: Six Millions de Dollars Versés pour Libérer des Otages, AFP, August 25, 2005. See also "IACHR Deplores Escalating Violence in Haiti", Press Release 22/05 (June 23, 2005), available at <http://www.cidh.org/Comunicados/English/2005/22.05eng.htm>; "IACHR Calls for Immediate Measures to Quell Unprecedented Violence in Haiti", Press Release 29/05 (July 22, 2005), available at <http://www.cidh.org/Comunicados/English/2005/29.05eng.htm>.

⁴⁹ Interview with MOUFHED (April, July 2005)

⁵⁰ Interview with MOUFHED (April, July 2005)

human rights by the Haitian people, including those relating to the administration of justice. Urgent and effective measures must therefore be taken by the State, in cooperation with the international community and consistent with applicable principles of international human rights law, to suppress crime and violence and assert control over security in all part of the country.

54. In this regard, the Commission is aware that on February 5, 2005, a National Commission for Disarmament, Demobilization and Reintegration was created with the objective of ensuring the diminishment of the number of illegal arms circulating in the country. However, it appears for the information available to the Commission that no comprehensive or systematic disarmament plan has been developed and that little, if any, progress has been achieved in this area, due in part to insufficient resources. As the Commission has emphasized on numerous occasions, an effective disarmament, demobilization and reintegration program must be implemented rapidly in respect of all armed groups, including the former military and gangs, if the State is to have any chance of quelling the violence and unrest in the short and long term. Further, in the present climate, it seems certain that a sustained and active international presence will be necessary beyond the present February 2006 expiration of the mandate of MINUSTAH if effective and lasting control over security by the Haitian State is to be achieved. The Commission notes in this respect that in August 2004, the UN Special Representatives to Haiti, Juan Gabriel Valdés, recommended a long-term extension of UN peacekeeping forces in Haiti.⁵¹

3. Situation of Economic, Social and Cultural Rights

55. A third matter that must be considered in analyzing the issue of administration of justice in Haiti is the critical economic and social situation in the country.

56. As noted above, through the decades of violence and instability in Haiti, the people of the country have continued to suffer from the worst standards of living in our Hemisphere⁵² and the present living conditions in Haiti remain deplorable. According to the United Nations Development Program's Human Development Report for 2004, Haiti ranked 153rd out of 177 world countries and had the worst performance in Latin America and the Caribbean under the Human Development Index (HDI). The HDI, which measures three dimensions of human development, longevity and health of life, education, and standard of living, also ranked Haiti 146th in the world for life expectancy at

⁵¹ See, e.g., "UN envoy proposes extension of peacekeeping forces presence in Haiti," Xinhua News Service, August 23, 2005.

⁵² See, e.g., IACHR, Report on the Human Rights Situation in Haiti 1979, OEA/Ser.L/V/II.46, Doc. 66 rev. 1 (13 December 1979), Chapters VIII, IX; Annual Report of the IACHR 1998, Ch. IV "Haiti", paras. 19-24.

birth (49.4 years), 145th for combined primary, secondary and tertiary gross enrolment ratio (52), and 143th in GDP per capita (US \$1,610.00 per person).⁵³ Further, according to information provided by the government of Haiti, as of February 2003 the child mortality rate in Haiti was 80 deaths per 1,000 births, there were 1.2 doctors, 1.3 nurses and 0.04 dentists per 10,000 Haitians, and 40% of the population was without access to primary health care.⁵⁴ In addition, Haiti's national HIV/AIDS infection rate was between 4.5 to 6% with rates as high as 13% in rural areas, giving the country the highest HIV infection rates in the Western Hemisphere, with approximately 300,000 Haitians living with HIV/AIDS.⁵⁵ The Commission considers that the perpetuation of these conditions in Haiti is a disgrace for our Hemisphere and illustrates most starkly the enduring inequities in income and resource distribution in our region.

57. These tragic deficiencies have also exacerbated the problems relating to security, the administration of justice, and other failures in the guarantee of basic political, civil, economic, social and cultural rights. Inadequacies in basic social services have exacerbated the situation of insecurity among the population of Haiti, including women and children who are especially disadvantaged by and vulnerable to deficiencies in state assistance and protection. As the Commission has previously observed, for individuals facing these egregious conditions, achieving justice for fundamental human rights violations such as extrajudicial executions and rape is all the more elusive in the face of their daily struggle to survive. Without addressing the most immediate social and economic deficiencies, there is little hope of solid and sustained improvements in the state of security, justice and the rule of law.⁵⁶

58. As will be discussed further below, the absence of sufficient economic resources has also contributed directly to the problems in security and the administration of justice, where the police and courts are severely under-staffed and under-resourced and, in some areas of the country, there is an almost complete absence of functioning state institutions.

59. Principally for these reasons, any efforts to improve the administration of justice in Haiti, if they are to be sustained, must be accompanied by measures to addressing Haiti's social and economic problems through the urgent provision of financial, technical and related assistance from the international community. The Commission has previously emphasized in this

⁵³ United Nations Development Program, Human Development Report 2004, Country Fact Sheets, Haiti, available at http://hdr.undp.org/statistics/data/country_facts_sheets/cty_fs HTI.htm.

⁵⁴ See Embassy of the Republic of Haiti in Washington, D.C., The AIDS Crisis and the Embassy of Haiti, available at <http://www.haiti.org/Whatsnew/aids.htm>.

⁵⁵ *Id.*

⁵⁶ See IACHR, Preliminary Observations of the IACHR on its April 2005 Visit to Haiti (June 6, 2005), available at <http://www.cidh.org/Comunicados/English/2005/20.05.htm>.

respect that substandard social and economic conditions have long prevented the people of Haiti from fully realizing their fundamental democratic and human rights. Member States of the OAS have likewise acknowledge, in Article 13 of the Inter-American Democratic Charter, that “[t]he promotion and observance of economic, social, and cultural rights are inherently linked to integral development, equitable economic growth, and to the consolidation of democracy in the states of the Hemisphere.”

60. Therefore, in order to make enduring improvements to the rule of law and democracy in Haiti, OAS Member States and others in the international community must target both short and long-term economic and social projects that will draw upon and empower the commitment, ingenuity and creativity of the Haitian people. As noted by the Commission in the past, these should include projects that will reinforce and strengthen resources available to the police, courts, prisons, legal assistance, and other key aspects of the justice system, as well as other crucial social necessities, such as opening and staffing schools, making basic medical care available in all regions of the country, delivering clean water, food, electricity and sanitation, and developing immediate and realistic job opportunities through public work and other projects.⁵⁷

B. Framework of Haiti’s International, Regional and Constitutional Human Rights Obligations relating to the Administration of Justice

1. International Instruments

61. Haiti is State Party to a number of international treaties pertinent to the issue of the administration of justice. Haiti is a Member State of the United Nations, having ratified the UN Charter on October 24, 1945, and, like other states, is bound by the rights enshrined under the Universal Declaration of Human Rights (“UDHR”).⁵⁸ These include the right under Article 3 to life, liberty and security of the person, the right under Article 5 not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment, the right under Article 9 not to be subjected to arbitrary arrest, detention or exile, and the right under Article 10 of every person in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

⁵⁷ See IACHR, Preliminary Observations of the IACHR on its April 2005 Visit to Haiti (June 6, 2005), paras. 55, 56, available at <http://www.cidh.org/Comunicados/English/2005/20.05.htm>.

⁵⁸ Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948).

62. Haiti is also a State Party to the International Covenant on Civil and Political Rights ("ICCPR"),⁵⁹ having acceded to that instrument on May 6, 1991. The ICCPR incorporates and elaborates upon the provisions of the UDHR pertaining to the administration of justice, principally in Articles 6 (right to life), Article 7 (right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment), Articles 9 and 10 (the right to liberty and security of person and the rights of persons deprived of their liberty), and Article 14 (right to a fair trial).

63. As will be elaborated upon in the present report, the provisions of the UDHR and the ICCPR relating to the administration of justice have been complemented by a range of pertinent UN thematic treaties and other instruments. These include the International Convention on the Elimination of All Forms of Racial Discrimination,⁶⁰ ratified by Haiti on January 18, 1973, the Convention on the Elimination of All Forms of Discrimination Against Women,⁶¹ ratified by Haiti on September 3, 1981 and the Convention on the Rights of the Child,⁶² ratified by Haiti on July 8, 1995, as well as United Nations resolutions and other international instruments that address, *inter alia*, the conduct of law enforcement officials⁶³ and lawyers,⁶⁴ the independence of the judiciary,⁶⁵ and preventing, investigating, prosecuting and providing remedies for human rights violations.⁶⁶

⁵⁹ International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* March 23, 1976

⁶⁰ International Convention on the Elimination of All Forms of Racial Discrimination, G.A. res. 2106 (XX), Annex, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1966), 660 U.N.T.S. 195, *entered into force* Jan. 4, 1969.

⁶¹ Convention on the Elimination of All Forms of Discrimination against Women, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, *entered into force* September 3, 1981

⁶² Convention on the Rights of the Child, G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), *entered into force* Sept. 2 1990.

⁶³ See, e.g., Code of Conduct for Law Enforcement Officials, G.A. res. 34/169, annex, 34 U.N. GAOR Supp. (No. 46) at 186, U.N. Doc. A/34/46 (1979); Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, U.N. Doc. A/CONF.144/28/Rev.1 at 112 (1990).

⁶⁴ See, e.g., Basic Principles on the Role of Lawyers, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, U.N. Doc. A/CONF.144/28/Rev.1 at 118 (1990).

⁶⁵ See, e.g., Basic Principles on the Independence of the Judiciary, Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August to 6 September 1985, U.N. Doc. A/CONF.121/22/Rev.1 at 59 (1985).

⁶⁶ See, e.g., Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, E.S.C. res. 1989/65, annex, 1989 U.N. ESCOR Supp. (No. 1) at 52, U.N. Doc. E/1989/89 (1989); Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, G.A. 40/34, annex, 40 U.N. GAOR Supp. (No. 53) at 214, U.N. Doc. A/40/53 (1985); Basic Principles and Guidelines on the Right to a Remedy and Reparation for

Continued...

2. Regional Instruments

64. Member States of the OAS such as Haiti have undertaken to respect and ensure the fundamental rights of all persons subject to their jurisdiction, including rights pertaining to the administration of justice. Respect for human rights is a fundamental principle of the Organization, guiding the actions of each member State. Pursuant to Article 3(I) of the Charter of the Organization of American States, which Haiti ratified on March 28, 1951, "[t]he American States proclaim the fundamental rights of the individual without distinction as to race, nationality, creed or sex." The fundamental rights of man are also referred to, *inter alia*, in the preamble of the Charter and Articles 17, 45, 47 and 49, as well as in those articles which address the role of the Commission as the principal organ charged with the promotion and protection of human rights in the hemisphere.

65. The Member States have given specificity to the rights generally referred to in the Charter, initially through the American Declaration of the Rights and Duties of Man, and subsequently through the adoption of the American Convention on Human Rights. Haiti acceded to the American Convention on September 27, 1977 and accepted the contentious jurisdiction of the Inter-American Court of Human Rights on March 20, 1998.

66. Both the American Declaration and the American Convention, like the UDHR and the ICCPR, contain provisions relevant to the administration of justice, including, *inter alia*, the rights to:

- life, liberty and security of person (American Convention, Arts. 4, 5, 7; American Declaration, Article I)
- humane treatment, including the right not to be subjected to torture or other cruel, inhuman or degrading punishment or treatment (American Convention, Article 5; American Declaration, Articles XXV, XXVI)
- equality before the law and to have the rights and duties respected and ensured in the Declaration and the Convention, without discrimination of any kind (American Convention, Articles 1(1), 24; American Declaration, Article II)

...Continuation

Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, C.H.R. res. 2005/35, U.N. Doc. E/CN.4/2005/ L.10/Add.11 (19 April 2005).

- measures of special protection for children and women (American Convention Article 19; American Declaration, Article VII)
- recognition everywhere as a person having rights and obligations, and to enjoy basic civil rights (American Convention, Article 3; American Declaration, Article XVII)
- judicial protection, namely to resort to the courts to ensure respect for one's legal rights; likewise, there should be available a simple brief procedure whereby the courts will protect the person concerned from acts of authority that, to their prejudice, violate any fundamental constitutional rights (American Convention, Articles 25; American Declaration, Articles XVIII)
- personal liberty, including the prohibition against arbitrary arrest and imprisonment (American Convention, Art. 7; American Declaration, Article XXV)
- a fair trial and to freedom for ex post facto laws (American Convention, Articles, 8, 9, American Declaration, Articles XVIII, XXVI)

67. Further, under Articles 1(1) and 2 of the American Convention, Haiti has specifically undertaken to respect and to ensure the free and full exercise of the rights and freedoms under the Convention without discrimination and, according to Article 2:

[w]here the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.

68. Also relevant to Haiti's human rights obligations in the inter-American system is the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (the "Convention of Belem do Pará), which Haiti ratified on June 2, 1997 and which creates certain specific obligations relating to the administration of justice as it pertains to violence against women. These include, *inter alia*, the obligations under Article 7 to apply due diligence to prevent, investigate and impose penalties for violence against women, and to establish fair and effective legal procedures for women who have been subjected to violence which include, among others, protective measures, a timely hearing and effective access to such procedures. Moreover, on June 13, 1986, Haiti signed the Inter-American Convention to Prevent and

Punish Torture. Therefore, in accordance with Article 18 of the Vienna Convention on the Law of Treaties,⁶⁷ Haiti is obliged to refrain from acts that would defeat the object and purpose of that treaty, pending its ratification, acceptance or approval.

69. Finally, certain resolutions adopted by the OAS General Assembly are relevant to and should be considered in evaluating the situation of the administration of justice in Haiti. These include, *inter alia*, the resolutions from the regular meetings of the General Assembly in 2004 and 2005 that specifically addressed strengthening democracy in Haiti⁶⁸ as well as those concerning the work of ombudsmen and other human rights defenders⁶⁹ and protecting human rights and fundamental freedoms while countering terrorism.⁷⁰

3. Constitution of Haiti

70. The current Haitian Constitution of 1987⁷¹ contains a number of protections reflecting the human rights protected in the American Convention, and specifically, the right to life, the right to personal liberty, and due process protection for those going before the courts and/or coming into conflict with the law. Finally, the Constitution also includes specific provisions protecting economic, social and cultural rights. Among the protections relevant to the Commission's report are the following:

⁶⁷ Vienna Convention on the Law of Treaties, 1155 U.N.T.S. 331, Article 18 (providing: "A State is obliged to refrain from acts which would defeat the object and purpose of a treaty when: a. It has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty; or b. It has expressed its consent to be bound by the treaty, pending the entry into force of the treaty and provided that such entry into force is not unduly delayed").

⁶⁸ See Resolution AG/RES.2058 (XXXIV)-O-04, "Situation in Haiti: Strengthening Democracy" (June 8, 2004); Resolution AG.RES.2147 (XXXV)-O/05, "Strengthening Democracy in Haiti", June 7, 2005).

⁶⁹ See, e.g., Resolution AG.RES.2067 (XXXV-O/05), "Human Rights Defenders: Support for the Individuals, Groups and Organizations of Civil Society Working to Promote and Protect Human Rights in the Americas" (June 7, 2005).

⁷⁰ See Resolution AG/RES.2035 (XXXIV)-O-04, "Protecting Human Rights and Fundamental Freedoms While Countering Terrorism" (June 8, 2004); Resolution AG.RES.2143 (XXXV)-O/05, "Protecting Human Rights and Fundamental Freedoms While Countering Terrorism", June 7, 2005).

⁷¹ Constitution of the Republic of Haiti, Title III : Basic Rights and Duties of the Citizen, given at the Legislative Palace, in Port-au-Prince, the seat of the Constituent National Assembly, on March 10, 1987, in the One Hundred Eighty-Fourth Year of Independence available on Internet at <http://www.haiti.org/constitu/constabl.htm> [hereinafter Constitution of Haiti or Constitution of the Republic of Haiti]. See also *Code d'instruction criminelle, Annoté par Menan Pierre-Louis*, 1995, Chapters VII and VIII.

Arrest, Detention, Abuse of Force**Article 19:**

The State has the absolute obligation 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.

Article 24:

Individual liberty is guaranteed and protected by the State.

Article 24-1:

No one may be prosecuted, arrested or detained except in the cases determined by law and in the manner it prescribes.

Article 24-2:

Except where the perpetrator of a crime is caught in the act, no one may be arrested or detained other than by written order of a legally competent official.

Article 24-3:

For such an order to be carried out, the following requirements must be met: a) It must formally state the reason in Creole and in French for the arrest or detention and the provision of the law that provides for punishment of the act charged. b) Legal notice must be given and a copy of the order must be left with the accused at the time of its execution; c) The accused must be notified of his right to be assisted by counsel at all phases of the investigation of the case up to the final judgment; d) Except where the perpetrator of a crime is caught in the act, no arrest by warrant and no search may take place between six (6) p.m. and six (6) a.m.; e) Responsibility for an offense is personal, and no one may be arrested in the place of another.

Article 25:

Any unnecessary force or restraint in the apprehension of a person or in keeping him under arrest, or any psychological pressure or physical brutality, especially during interrogation, is forbidden.

Article 25-1:

No one may be interrogated without his attorney or a witness of his choice being present.

Article 26:

No one may be kept under arrest more than forty-eight hours unless he has appeared before a judge asked to rule on the legality of the arrest and the judge has confirmed the arrest by a well-founded decision.

Article 26-2:

If the arrest is found to be illegal, the judge will order an immediate release of the detainee.

Prison standards**Article 44:**

Persons detained temporarily awaiting trial must be held separately from those who are serving sentence.

Article 44-1:

Prisons must be operated in accordance with standards reflecting respect for human dignity according to the law on this subject.

Article 45:

No penalty may be established except by law nor applied except in cases that the law determines.

Article 50:

A jury trial is established for criminal matters, particularly, for crimes of blood and for political offenses.

Judiciary**Article 173:**

The Judicial Power shall be vested in the Supreme Court (Cour de Cassation), the Courts of Appeal, Courts of First Instance, Courts of Peace and special courts, whose number, composition, organization, operation and jurisdiction are set by law.

Economic, Social, Cultural Rights**Article 19:**

The state has an obligation to protect the right to health.

Article 22:

The State recognizes the right of every citizen to decent housing, education, food and social security.

Article 23:

The State has the obligation to ensure for all citizens in all territorial divisions appropriate means to ensure protection, maintenance and restoration of their health by establishing hospitals, health centers and dispensaries.

C. Overview of the Justice System in Haiti

71. The following discussion provides a brief overview of the main components of the justice system in Haiti, including the system of laws, the police, the system of prisons and detention centers, and the judiciary. Further details and analysis of each component is provided in Part D below on the main topics concerning the administration of justice in Haiti.

72. As a former colony of France until it gained its independence in January 1804, Haiti adopted a judicial system largely modeled after the French civil law system, including the judicial structure and the form of the laws, a codification system of laws that encompasses the general principles and rules of law in the key texts such as the civil code, criminal code and criminal procedure code. In particular, the civil code is modeled after the Napoleonic Code of 1804. Whereas Haiti's legal texts are modeled after the French codes dating from the 1800's, minimal judicial reform of these codes have never taken place, resulting in laws which in many instances have not adequately reflected or addressed the significant social and economic developments in Haitian society over the past 200 years and which do not reflect modern standards of justice and human rights. As discussed further in this report, numerous studies and authorities on reform of the judiciary indicate the imperative of judicial reform in Haiti as well as the need to adopt additional legislation to address areas where current laws are silent.

73. The Minister of Justice, like other members of the Prime Minister's Council of Ministers, is chosen by the Prime Minister with the approval of the President and a vote of confidence from the Parliament Pursuant to Section 158 of the 1987 Constitution, and is principally responsible for justice-related issues in Haiti. In this respect, the Justice Minister is also currently acts as the Secretary of State for Public Security and is a leading member of the Superior Council for the National Police, and is responsible for oversight of the Haitian National Police (the "HNP") and the Department of Prison Administration. The HNP is the law enforcement institution in Haiti, which is led by the Director General, appointed by President of the Republic, and is comprised of various departments, including the Central Department of Judicial Police charged with conducting preliminary criminal investigations, the Central Department of Research and Investigations charged with the task of national intelligence, the special crowd control unit referred to by its French acronym, CIMO, and the Inspector General's office, which is charged with internal investigations of police misconduct. The Superior Council is a body which provides policy guidelines and direction on security issues for the HNP

and typically includes the Minister of Justice, the Secretary of State for Public Security, the Director General of the police and the Inspector General of the police. With respect to prisons, the Department of Prison Administration, once an independent entity formerly referred to as APENA, is now organized under the Haitian National Police, and is the authority that manages Haiti's 22 prisons across the country. The Department of Prison Administration, referred to by its French acronym, DAP, is led by a Director who answers to the Director General of the HNP and is comprised of specialized staff and officers charged with the task of prison administration and security.

74. The hierarchy of the courts in Haiti, as provide for under Chapter IV of the 1987 Constitution and other pertinent laws, is characterized by four tiers of courts. The Supreme Court or "Cour de Cassation", housed in the *Palais de Justice* in Port-au-Prince, is the highest court in the country and its decisions are final. It is comprised of two chambers with a total of nine judges, including a President and Vice-President, who, in accordance with Section 175 of the Constitution, are appointed by the President from a list of at least three candidates submitted by the Senate. The terms for judges run for ten years and are in the discretion of the President of the Republic to renew these terms.⁷² This court hears constitutional law issues and those relating to the interpretation or application of the law, as well as hearing matters dealing with complaints concerning the conduct of judges from lower courts or the misconduct of officers of the public ministry, and finally, this instance provides a last recourse in matters decided at the appeal's court level.⁷³

75. Also modeled after the French structure, the Superior Council of Magistrates is the body charged under a law of 1920 with the authority to select, discipline or remove judges from their posts. At the present time in Haiti, a separate Superior Council of Magistrates does not exist. Rather, this task has been assigned to the Supreme Court to sit as the Council to hear matters that address disciplinary actions and dismissals of judges. The Council reviews complaints received directly or via the Minister of Justice, who conducts an initial review of the complaint and forwards it onto the Council. The Commission understands, however, that the Supreme Court has not been performing this function in practice.

76. Second to the Supreme Court are the five regional appeal courts, each with a president and two judges, and which are situated in (1) Port-au-Prince (competent to hear matters presented by the lower courts in the jurisdictions of Port-au-Prince, Petit-goave and Jacmel); (2) Cap-Haitian (hearing matters from lower courts in Cap-Haitian, Fort-Liberte); (3) Gonaives (hearing matters from lower courts in Gonavies, Saint-Marc, Port-de-Paix); (4) Cayes

⁷² Interview with President of the Republic of Haiti, Boniface Alexandre (April 2005)

⁷³ See Haitian Constitution, Articles 173, 174 ; See also "Organisation Judiciaire" on www.juristehaitien.ht ; See also « *Presentation Generale du Conseil Constitutionnel* » at www.accpuf.org/hai/present.htm.

(hearing matters from lower courts in Cayes, Aquin, Jeremie, Anse a veau); and finally (5) Hinche (hearing matters from Hinche and Mirebalais). Pursuant to Section 174 of the Constitution, the term for judges of the First Instance Courts is seven years. A public prosecutor's office is designated for each of these courts, staffed with the public prosecutor for the jurisdiction and his assistants. Also sitting at the First Instance Court level are examining magistrates, which are primarily tasked with conducting investigations in criminal matters and issuing formal charges at the conclusion of such investigations. Their term lasts three years.⁷⁴

77. The third tier of courts encompasses the 14 courts of first instance, each with one judge presiding over cases and each court located in a different judicial jurisdiction. These courts are competent to hear cases brought for the first time regarding civil, commercial or criminal matters from any of the jurisdictions. Typically, cases from the same jurisdiction are heard together.

78. Finally, the last tier in the court structure is comprised of the justice of the peace courts, of which there are between 170 and 180 situated among the 165 administrative communal sections of the country. The competency of these courts is limited to hearing minor matters, usually civil and commercial claims not exceeding 5,000 gourdes. Where minor criminal offenses are presented, the court is referred to as court of simple police (tribunal de simple police).⁷⁵

79. An office of the public prosecutor, representing the interests of the people in criminal matters, is provided for in each judicial jurisdiction in Haiti, of which there are fourteen. There is also one office corresponding to the Supreme Court, the appeal's courts and each of the courts of first instance. Where the prosecutor receives information regarding a crime committed within his jurisdiction, his prosecutor office has the authority to initiate an investigation.⁷⁶

80. In addition to the regular courts, there are three specialized courts, (1) the special labor tribunal; (2) the court for minors; (3) and a specialized court situated in Gonaives that deals with issues of land ownership. Finally, a Superior Court of Accounts has been established, housed within the Supreme Court, to address administrative matters and oversee public expenditures by the state.

⁷⁴ See "Rule of Law Technical Assistance in Haiti: Lessons Learned," Jamal Benomar, July 8-12, 2001.

⁷⁵ See "*Organisation Judiciaire*" *supra*. See also "Rule of Law Technical Assistance in Haiti: Lessons Learned" *supra*.

⁷⁶ See "*Organisation Judiciaire*" *supra*.

D. Main Topics Concerning the Administration of Justice

81. The following assessment of the state of the administration of justice in Haiti, its weaknesses, and possible solutions, entails a closer analysis of the three main factors affecting the efficient and effective administration of justice in Haiti: (1) law enforcement and public security; (2) the court system; and (3) the state of Haitian prisons and other detention facilities. In each instance, the assessment is guided by the various pertinent international human rights treaties and related instruments as well as relevant provisions under Haitian law.⁷⁷

1. Law Enforcement, the Haitian National Police and Public Security

82. The Commission has repeatedly emphasized the obligation of governments to maintain public order to protect the life and the security of its inhabitants in a manner consistent with the rights protected under the American Convention and other pertinent instruments.⁷⁸ The Commission has indicated in this regard that governments must prevent and suppress all incidents of violence, regardless of their origin⁷⁹ or political motivation.⁸⁰ This obligation applies to all threats to a State's populations, whether presented by state or non-state actors, and it can fail in its duty both by action and by omission.⁸¹

83. Further, both the Commission and the Court have consistently pointed out that the State has a duty to prevent and investigate acts of violence committed by state agents or private parties and to prosecute and punish the perpetrators accordingly.⁸² The State has both a national and international obligation to confront individuals or groups who use violent methods to create terror among the populace, and to investigate, try, and punish those who commit such acts means that it must punish all the guilty,

⁷⁷ See paras. 61-69 of this report detailing the rights protected under international and regional conventions that relate to the administration of justice. « *de ce rapport, l'énumération des droits protégés en vertu des conventions régionales relatives à l'administration de la justice* ».

⁷⁸ IACHR, Annual Report 1980-1981, Ch. V: "General Situation of Human Rights in the Member States of the OAS and areas in which further steps are needed to give effect to the Human Rights set forth in the American Declaration of the Rights and Duties of Man and the American Convention on Human Rights"; See also, IACHR, Report on Terrorism and Human Rights, OEA/Ser. L/V/II.116, Doc. 5 rev. 1 corr., 22 October 2002, Introduction, para. 3.

⁷⁹ *Idem*, Annual Report 1980-1981.

⁸⁰ See IACHR, Ten Years of Activities 1971-1981, section V, p. 341.

⁸¹ *Id.* At 333, *citing* the Annual Report of the IACHR, 1975, para. 22.

⁸² See generally, *Velasquez Rodriguez v. Honduras*, Inter-American Court of Human Rights, 1988 (4 Inter-Am. Ct.H.R. (ser.C)).

but only the guilty. The State must function within the rule of law, punishing only the guilty and refraining from punishing the innocent.⁸³

84. As noted in the previous section, the situation of insecurity in Haiti has constituted one of the foremost challenges over the past two years. In this respect, the State has been largely unable to fulfill its obligation to protect its population from violence. There are several reasons for the persisting violence in Haiti, stemming from the social, economic and political problems as well as the lack of strong state institutions to appropriately contain criminal activity. Several human rights groups who met with the Commission attributed the unabated violence to a variety of factors, including conflicts between armed groups and gangs and armed resistance movements motivated by political differences, the lack of responsibility of authorities to carry out their mandates, and impunity for human rights violators, as well as the marginalization of society, the economic crisis, poverty, and the uncontrolled trafficking of arms and drugs.⁸⁴

85. Deficiencies in the HNP, as the institution principally responsible for guaranteeing public security, are among the most significant problems contributing to the security crisis in Haiti. As described in more detail in this section, the HNP suffers from shortages in personnel and resources and continues to be the subject of allegations of corruption as well as human rights abuses such as arbitrary detention, torture and extrajudicial killings. These problems are exacerbated by the absence of an effective system over oversight and discipline for the police.

a. Situation of Insecurity

86. Guaranteeing public security, especially in Port-au-Prince, has become a significant challenge for the fledgling HNP struggling to contain what has become a growing situation of instability characterized by violent outbreaks, confrontations with armed groups and large demonstrations, which often result in numerous casualties, and frequent acts of murder, rape, kidnapping, public lynching, and abuse, contributing to the crime rate that has been steadily rising for the past two years, and more acutely since January 2005. Although figures vary, a report by the Justice and Peace Commission (JPC) in Haiti recorded 2015 cases of violent deaths in Port-au-Prince over the past 3 years and 1151 of those deaths were recorded between March 2004 and June 2005 and of these, 79 occurred in May 2005, and 90 in June 2005, although actual figures are likely to be higher, as not all cases are reported. The number of violent deaths is largely due to confrontations between armed groups and the police, making it difficult to ascertain which group is responsible

⁸³ IACHR, Annual Report 1999, Report N° 49/00, Case 11.182, Carlos Florentino Molero Coca, Rodolfo Gerbert Asencios Lindo, Rodolfo Dynnik Asencios Lindo, Marco Antonio Ambrosio Concha v. Peru, para. 58.

⁸⁴ See Episcopal National Commission of Justice and Peace report, 1 (2005).

for the casualties. Further, as explained further below, some of the violence is indiscriminate or related to common crime, while other instances are politically-motivated and designed to destabilize the present government and planned elections.

87. The fact that the level of crime and the frequency of human rights violations being perpetrated in Port-au-Prince has reached levels rarely observed previously by the Commission is a serious cause for concern.⁸⁵ The Commission received information about the police's operations to apprehend criminals, which often involves violent confrontations with armed groups and frequently results in the excessive use of force and numerous casualties. Further, numerous reported accounts of abuse of force and extra-judicial killings by police suggests an unwillingness or inability to contain the violence by using adequate security measures or to arrest suspects and proceed with their prosecution according to the due process of law.⁸⁶

88. Since January 2005, the level of violence in Port-au-Prince has become widespread and indiscriminate, affecting all areas of the city. This is largely due to increased tensions between the HNP, illegal armed groups and members of the former military. The illegal armed groups are known to be heavily armed and are concentrated in the Cite Soleil and Bel Air districts. Some of these groups are essentially criminal, engaging in the trading of arms and drugs, and kidnapping individuals for significant ransoms, while others have strong political motivations and aim to intimidate the population and further destabilize the country in pursuit of their demand for the return of former president Aristide. These tensions have only increased in the months drawing towards the November election, causing the HNP to employ more aggressive tactics and the armed groups to respond with a vengeance. Consequently, while estimates are difficult to obtain, the Commission understands that more than 50 police officers have been killed on duty since the transitional government assumed power in 2004. The nature of these deaths has been gruesome, where several have been tortured, mutilated, decapitated, and burnt alive. In return, officers have reportedly responded with excessive force in certain cases, at times resulting in the extrajudicial killing of suspected criminals and their associates as well as causing significant numbers of civilian casualties wounded by stray bullets. Although there is no accurate breakdown of the number of casualties caused from bullets shot by armed groups and the police, reports indicate that both groups are responsible for causing significant collateral damage during their interventions.⁸⁷

⁸⁵ See "IACHR Calls for Immediate Measures to Quell Unprecedented Violence in Haiti", Press Release 29/05 (July 22, 2005), available at <http://www.cidh.org/Comunicados/English/2005/29.05eng.htm>.

⁸⁶ *Id.* at 8-12; See also, Haiti: Disarmament Delayed, Justice Denied, Amnesty International, 5-6 (2005).

⁸⁷ Following the July 6th killing of former gang leader Emmanuel Wilme, Medecins Sans Frontieres reportedly received 27 patients from gun wounds, many of whom were inhabitants of Cite Soleil.

89. Armed confrontations between the police and armed individuals, kidnappings, carjackings, and outbreaks of random shooting and alleged massacres, combined with the fact that few individuals have been successfully apprehended by the authorities and subsequently prosecuted and punished, has instilled a generalized state of fear for one's life amongst Haitians, causing a virtual paralysis of the general population. Due to the fact that the police have not succeeded in containing the violence, areas referred to as 'no-go' zones (*zones de non-droit*) have developed in various parts of the city, not necessarily concentrated in the gang dominated Cite Soleil and Bel Air districts.⁸⁸ These zones typically lack police presence and have largely come under the control of armed groups, causing large numbers of the population to abandon these areas.⁸⁹ Areas near the port, downtown Port-au-Prince, specifically surrounding the government ministries, lower parts of Delmas, and the route to the airport are just a few locations that most people avoid due to the high risk of danger.

b. Staffing and Working Conditions of the HNP

90. Among the most urgent problems afflicting law enforcement in Haiti is the seriously inadequate numbers of police in the country. Statistics on the total number of officers in the Haitian National Police force remain unclear, ranging between 3,000 and 5,000 for a total population of over 8 million. In this respect, the Minister of Justice suggested to the Commission that a state the size of Haiti should have up to 24,000 officers to provide adequate security for the country. The inadequate numbers of police officers resulted in part from the uprising in January and February 2004, during which all of Haiti's prisons were virtually emptied and many police officers in the HNP abandoned their posts due to the wave of destruction, death and abuse brought on by the uprising - prior to these events, the force was comprised of close to 6,000 officers.⁹⁰ Partly as a consequence, the police remain practically or entirely absent in some provinces.⁹¹

91. This in turn has allowed former military officers or illegal armed groups to fill the void in security. The Commission was told that in some communities, such as Petit-Goâve, the local population was grateful for the

⁸⁸ See Report of the Independent Expert Louis Joinet on the Situation of Human Rights in Haiti" Economic and Social Council, Human Rights Commission, E/CN.4/2005/123 24 January 2005; paras. 13-14.

⁸⁹ In this respect, in August 2005, the Commission granted precautionary measures in favor of a human rights group in Cite Soleil due to repeated death threats and attacks suffered by their members, apparently due to the group's outspoken criticisms of the violent crimes perpetrated by armed individuals and the resulting insecurity in the community.

⁹⁰ See Quarterly Report on Haiti of the OAS Secretary General Pursuant to AG/RES.2058 (XXXIV-04), OAS Doc. OEA/Ser.G/CP/doc.3942/04 corr. 1 (24 September 2004), para. 25.

⁹¹ Third Trimesterial Report of the OAS Secretary General on the Situation in Haiti and the Work of the OAS Special Missions for the Reinforcement of Democracy in Haiti, Pursuant to Resolution AG/RES.2058 (XXXIV-04), OAS Doc. OEA/Ser.G/CP/doc.3992/04 corr. 1 (28 March 2005), para. 16.

presence of at least some form of control over security, while in other communities armed groups take advantage of the absence of police by terrorizing citizens. Further, due to this vacuum of state authority in remote localities, some former military officers have taken up positions in these areas as local authority figures known as 'section chiefs', and taking on the role of providing security for the community. Moreover, it is not uncommon for the former military to illegally issue and execute arrest warrants and arbitrarily detain individuals. For example, the OAS Special Mission in Haiti has reported that in some locales like Hinche, HNP offices have refused to continue to accept prisoners who have been arrested by members of the former military.⁹²

92. According to the Minister of Justice, the former Director General of the HNP, and other officials, one of the government's main tasks since taking office has been to rebuild the HNP by employing more officers, training them and providing them with sufficient equipment in order for them to adequately carry out their public security function. However, over the past two years the Commission has witnessed limited progress in this regard. While the Commission is encouraged by reports of the training and graduation of new officers from the police academy, including approximately 400 graduates in January 2005, this is far short of the number necessary to assert and maintain control over security across the country. The Commission notes in this regard that preparations for the elections alone will require a significant number of officers to be deployed to the various registration and voting stations across the country. Further, a comprehensive and strategic security plan does not appear to have been developed for the country, but rather senior HNP officers have been preoccupied with the daily challenge of providing security in an increasingly volatile environment.

93. In addition to inadequate staffing, the HNP is generally under-resourced, overworked, and under-compensated. At the same time, they are operating under dangerous conditions in which they have been tasked with maintaining public security, but where they themselves have been targeted by armed groups. In locations where the police are present, they suffer from serious deficiencies in resources and training.

94. In particular, the police lack sufficient basic tools necessary to fulfill their duties, such as firearms, vehicles for conducting patrols and for transporting detainees, radios, bullet proof vests, and working and living facilities. According to the former Director General of the Police, 25 vehicles and a small shipment of bullets, tear-gas launchers and other basic supplies were recently donated to the HNP by the U.S. government, but the need for essential equipment is still outstanding and greatly affects the HNP's capacity

⁹² Third Trimesterial Report of the OAS Secretary General on the Situation in Haiti and the Work of the OAS Special Missions for the Reinforcement of Democracy in Haiti, Pursuant to Resolution AG/RES.2058 (XXXIV-04), OAS Doc. OEA/Ser.G/CP/doc.3992/04 corr. 1 (28 March 2005), para. 16.

to provide security. Indeed, gang members frequently have access to weapons superior to those of the national police. One consequence of working under such conditions is the tendency for officers to feel especially vulnerable and therefore more readily abuse force to compensate for being ill-equipped and outnumbered. Incidents of abuse of force by police, especially in the densely populated areas of Cite Soleil, have been documented by human rights groups and are explained in more detail below.

95. Many police stations were vandalized and ransacked during the armed violence in February 2004 and have not since been repaired. Accordingly, of the 133 police stations in the country, the Director General of the Police indicated that only 49 of these are functional at present. The current state of police stations across Haiti is seriously wanting, with little more than walls, doors, windows for infrastructure and some office furniture. Police stations lack necessary resources such as office equipment, computers, supplies, water, electricity, and adequate sanitation. The police, like other functionaries in the justice system, are underpaid for their hours of service and lack insurance or other means to cover their health needs and those of their families. At the same time, members of the police force are facing sharply increasing case loads and work hours without corresponding compensation in salary or other benefits. For example, officers' are supposed to work 8-hour shifts, but since the force is small and wanting in numbers, the Director General increased their shifts to 12 hours. According to interviews with some officers, no pay increase accompanied the augmented working hours. These substandard conditions not only impede the work of the police but also undermine their morale and efficiency and feed a climate conducive to corruption and other illegal activities on the part of officers, as discussed below. Further, the Commission understands that such conditions make it difficult to co-locate CIVPOL officers with HNP where this might be advisable. For all these reasons, restoration of police facilities and the provision of adequate resources and equipment are necessary to enable police officers to effectively carry out their mandate.

c. Abuses of Force Attributable to the HNP

96. In addition to the logistical weaknesses contributing to the lack of security in Haiti, allegations of abuse of force continue to be made against members of the HNP, including torture and extrajudicial executions.

i. Extrajudicial killings

97. Article 19 of the Haitian Constitution and Article 4 of the American Convention protect the right to life. Further, the Haitian criminal code

regulates state agents' use of force, making it a punishable offense proportionate to the degree of violence employed.⁹³

98. Article 4(1) of the American Convention provides that "[e]very person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life."

99. The right to life, the most fundamental of human rights protected in the instruments of the inter-American system, also governs the use of lethal force used by state agents by including the prohibition of the arbitrary deprivation of life and summary executions under any circumstances.⁹⁴ At the same time, in situations where a state's population is threatened by violence, the state has the right and obligation to protect the population against such threats⁹⁵ and in so doing may use lethal force in certain situations. This includes, for example, the use of lethal force by law enforcement officials where strictly unavoidable to protect themselves or other persons from imminent threat of death or serious injury.⁹⁶ However, the power of the state to use such force is limited to being employed under such exigent circumstances, it must be proportionate to the threat of harm and it must be employed only while the threat of harm is still present. Where the use of lethal force occurs outside of these conditions, both the Inter-American Court and Commission have found that death ensuing from such force could constitute an extra-judicial killing or a summary execution.⁹⁷

⁹³ See Articles 4, 5, 7 of the American Convention; See also, Articles 19, 25 Constitution of Haiti; See also Articles 147, 247 of the Criminal Code of Haiti.

⁹⁴ See Case 11.137, Report N° 5/97, *Abella* (Argentina), Annual Report of the IACHR 1997, para. 161; Case 10.559, Report N° 1/96, *Chumbivilcas* (Peru), Annual Report of the IACHR 1995, at 147-148.

⁹⁵ I/A Court H.R., *Neira Alegría Case*, Judgment of January 19, 1995, Ser. A N° 20, para 75; I/A Court H.R., *Velásquez Rodríguez Case*, Judgment of 28 July 1988, Series C N° 4, at para. 154; I/A Court H.R., *Godínez Cruz Case*, Judgment of January 20, 1989, Series C No. 5, para 162. See also Case 11.291, Report N° 34/00, *Carandiru* (Brazil), Annual Report of the IACHR 2000, at para. 62.

⁹⁶ For example, Principle 9 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials specifies that "enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life." Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, UN Doc. A/CONF.144/28/Rev.1 at 112 (1990).

⁹⁷ See I/A Court H.R., *Neira Alegría Case*, Judgment of January 19, 1995, Ser. A N° 20; Case 11.137, Report N° 5/97, *Abella* (Argentina), Annual Report of the IACHR 1997.

100. With respect to the situation in Haiti, the Commission is concerned regarding the number of extrajudicial killings and summary executions for which members of the HNP are alleged to be responsible, which are said to have occurred during raids in search of criminal suspects or as a tactic to cause fear and intimidation among the population to dissuade criminality. Since 2004, the Commission has received information alleging police responsibility for numerous summary executions,⁹⁸ including the following:

- In October 27, 2004, approximately eleven to thirteen persons at Fort National were reportedly tortured and summarily executed by HNP officers dressed in black during their search for a suspect. One of the perpetrators was identified as a police officer and was held in isolation at the Inspector General's office for questioning, even still, the investigation continues without any significant results.⁹⁹
- police allegedly killed two individuals on January 14, 2005 while conducting a security operation in Village de Dieu, a poor neighborhood in Port-au-Prince, and after the journalist Abdias Jean made attempts to report the incident, he is reported to have been killed by the same officers.¹⁰⁰
- The Haitian Police are alleged to have been responsible for the January 17, 2005 murder of Lavalas activist and journalist Jimmy Charles¹⁰¹
- It was reported that on April 27, 2005, 5 persons were killed and 4 other died later from their wounds when police allegedly fired indiscriminately on Lavalas demonstrators near UN headquarters in Port-au-Prince.¹⁰²

⁹⁸ See *Haiti: Disarmament delayed, justice denied, supra* at 8; See also Episcopal Justice and Peace Commission Report (2005), 16-17.

⁹⁹ Interview with Inspector General of the HNP, July 2005; Interview with Haitian NGOs, July 2005. See also, *Haiti: Disarmament delayed, justice denied, supra* at 8.

¹⁰⁰ Information received from CARLI; See also, *Haiti: Disarmament delayed, justice denied, supra* at 8

¹⁰¹ Interview with Mario Joseph, Bureau des Avocats International, July 12, 2005. See also, *Haiti: Disarmament delayed, justice denied, supra* at 8.

¹⁰² See *Haiti: Disarmament delayed, justice denied, supra* at 8.

- Statistics by the Episcopal Justice and Peace Commission claim that
 - o The Haitian police were responsible for at least 9 extrajudicial killings during the month of May 2005, eight of whom were youths. The circumstances of the deaths ranged from the execution of a suspect while conducting an arrest, the summary execution of individuals with no provocation and not in self-defense, the murder of a suspect while allegedly in the act of perpetrating a theft, and death caused by the exchange of fire between the police and the victim.¹⁰³
 - o 33 individuals were reportedly executed by police in June 2005, 20 of whom were allegedly killed during a single security operation of the police on June 3rd in the Belair district of Port-au-Prince.¹⁰⁴

101. Moreover, reports indicate that at times HNP wear face masks and dress in black attire to conceal their identities when perpetrating such abuses. As a result of these and other examples of excessive conduct, the Commission is deeply preoccupied with the possible excessive force employed by the HNP. As discussed further below, the Commission understands that one of the reasons for the persistence of these abuses may be due to the apparent lack of disciplinary action taken by police commanders and the Inspector General of the police to appropriately reprimand officers for such conduct.¹⁰⁵ At most, officers may be transferred to a different duty station, but according to information available, other measures within the capacity of the HNP Directors and Inspector General such as suspension, dismissal, placement in isolation, or demotion are not commonly applied.

102. Equally preoccupying to the Commission is the apparent lack of an effective investigation and prosecution of the perpetrators of these human rights violations. As stated in the landmark *Velásquez Rodríguez Case*, the Inter-American Court of Human Rights found that the state had the obligation to take reasonable steps to prevent human rights violations, which included to identify, prosecute and punish those responsible and to ensure adequate compensation for the victim.¹⁰⁶ Further, the Court found that the duty to ensure encompassed the obligation to investigate every situation involving a

¹⁰³ See Episcopal Justice and Peace Commission Report (2005), 16-17.

¹⁰⁴ *Id.*

¹⁰⁵ See the Annual Report of the Inspector General of the Police (for March 2004-June 2005), 2 (2005).

¹⁰⁶ See I/A Court H.R., *Velásquez Rodríguez Case*, Ser. C No. 4, paras. 174-176.

violation of the Convention.¹⁰⁷ Reflecting a similar opinion, the UN Human Rights Committee has stated, “[t]he deprivation of life by the authorities of the State is a matter of the utmost gravity,” and therefore, state parties have the obligation to prevent and punish acts of arbitrary killing by their security forces.¹⁰⁸

103. Accordingly, the Commission wishes to express its serious preoccupation with the reported incidents of extrajudicial killings by the HNP and the apparent denial of justice in these cases. The failure to effectively investigate, prosecute and punish atrocities committed by the police, the very institution responsible for protecting the population, perpetuates an already unreasonable degree of impunity in the country. In addition, the Haitian State must fortify its efforts to train members of the police in the use of force, crowd control and other crucial areas of law enforcement, and must enhance and enforce its chain of command and other measures to monitor and control the conduct of lower ranking officers and to take disciplinary action or other measures in cases of misconduct, including reporting incidents of extrajudicial killing and other serious human rights violations to appropriate judicial authorities for investigation.

ii. Torture and Other Forms of Cruel, Inhuman or Degrading Treatment

104. The right to be free from torture or other cruel and inhuman treatment or punishment is protected under Article 25 of the Haitian Constitution, which provides that “[a]ny unnecessary force or restraint in the apprehension of a person or in keeping him under arrest, or any psychological pressure or physical brutality, especially during interrogation, is forbidden.” In addition, Article 5 of the American Convention provides for the right to humane treatment in the following terms:

(1) Every person has the right to have his physical, mental, and moral integrity respected; (2) No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person (3) Punishment shall not be extended to any person other than the criminal; (4) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons, and shall be subject to separate treatment appropriate to their status as unconvicted persons; (5) Minors while subject to criminal proceedings shall be separated from adults and brought before specialized tribunals, as speedily as possible, so that they may be treated in accordance with their status as minors; (6) Punishments consisting of deprivation of

¹⁰⁷ *Id.* at 176.

¹⁰⁸ See Human Rights Committee, General Comment 6 (The Right to Life), UN Doc.HRI/GEN/1 at 5; para.3.

liberty shall have as an essential aim the reform and social readaptation of the prisoners.

105. Further, Haiti is a signatory to the Inter-American Convention to Prevent and Punish Torture¹⁰⁹ and is therefore obliged to refrain from acts that would defeat the object and purpose of that treaty pending its ratification, acceptance or approval. The central object and purpose of the Convention in turn is the prevention and punishment of torture, which is defined under Article 2 as

any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose. Torture shall also be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish. The concept of torture shall not include physical or mental pain or suffering that is inherent in or solely the consequence of lawful measures, provided that they do not include the performance of the acts or use of the methods referred to in this Article.

106. When analyzing allegations of violations of Article 5 of the American Convention, for example, the Inter-American Commission has taken into account decisions of the European Commission on Human Rights, according to which "inhuman treatment is that which deliberately causes severe mental or psychological suffering, which, given the particular situation, is unjustifiable" and that "treatment or punishment of an individual may be degrading if he is severely humiliated in front of others or he is compelled to act against his wishes or conscience."¹¹⁰ Practices that have been found to constitute torture or other cruel, inhuman or degrading punishment or treatment include beatings, or beatings while the victim's are hooded, rape, mock burials and executions.¹¹¹

107. Further, consistent with the provisions of the Inter-American Torture Convention, the Commission has defined torture to constitute an aggravated form of inhuman treatment committed to produce a specific result and the determination of which the Commission makes based on the existence of the following three elements: (1) it must be an intentional act by which

¹⁰⁹ See generally Inter-American Convention to Prevent and Punish Torture.

¹¹⁰ Case 10.832, Report N° 35/96, Luis Lizardo Cabrera (Dominican Republic), Annual Report of the IACHR 1997, para. 77, citing Eur. Com.. H.R., *The Greek Case*, 1969, 12 Y. B. Eur. Conv. on H.R. 12 [hereinafter *The Greek Case*], at 186.

¹¹¹ See IACHR, Report on Terrorism and Human Rights, OEA/Ser.L/V/II.116, Doc. 5 rev. 1 corr., 22 October 2002, para. 161.

physical and mental suffering is inflicted on a person; (2) it must be committed with a purpose to intimidate or with the intent to produce a specific result; and (3) it must be committed by a public official or private actor acting on behalf of a state agent.¹¹²

108. International standards on the use of force by law enforcement officials are grounded in principles of employing non-violent means and the use of force only when strictly necessary. In particular, principle 15 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials states that, "Law enforcement officials, in their relations with persons in custody or detention, shall not use force, except when strictly necessary for the maintenance of security and order within the institution, or when personal safety is threatened," and further states that the use of force may be employed only "...in self-defence or in the defence of others against the immediate threat of death or serious injury, or when strictly necessary to prevent the escape of a person in custody or detention presenting the danger referred to in principle 9." Finally, the HNP Code of Conduct adopts the same principles of non-violent conduct in policing, allowing the use of force only when strictly necessary and protecting from acts of abusive, cruel treatment of detainees.¹¹³ The Commission has observed that Haitian security forces have been known to abuse force and despite the state's duty to guarantee the security of its inhabitants, recent reports continue to suggest that Haitian security forces may be responsible for using excessive force while conducting security operations, such as while searching for criminal suspects, quelling violent demonstrations or while conducting arrests of individuals.¹¹⁴

109. With respect to the situation in Haiti, according to international monitors, physical abuse and beating of suspects by HNP officers during arrests is commonly practiced. While conducting visits to detention centers, monitors have observed that detainees have exhibited wounds from reported acts of ill-treatment. It has been reported that acts of torture and cruel and inhuman treatment have been employed by HNP to extract information from suspects regarding criminal activity or regarding particular individuals. The appearance that the HNP commanders are unwilling or unable to hold officers accountable for the violations of the police code of conduct and promptly report such

¹¹² Case 10.970, Report N° 5/96, Raquel Martín de Mejía (Peru), Annual Report of the IACHR (1995), at 185.

¹¹³ Police Code of Conduct, Haitian Ministry of Justice, Articles 9 and 10.

¹¹⁴ See IACHR Report on the Human Rights Situation in Haiti, OEA/Ser.L/II.85 Doc. 9 rev. 11 February 1994; para. 204-215; See also, Report of the Secretary-General on the United Nations Stabilization Mission in Haiti, S/2005/313, 13 May 2005 para. 29 ("The human rights situation remained alarming. Cases of summary execution, prolonged pre-trial detention, arbitrary arrest, disregard for due process, ill-treatment and rape continued to be reported."); See also "Haiti: Disarmament delayed, justice denied," Amnesty International; <http://web.amnesty.org/library/print/ENGAMR360052005>, 6 ("Reports suggest that when police carry out operations in such areas, they target young males as potential criminals and many are killed as a result of excessive use of force by police.").

incidents to the Inspector General for investigation, or to appropriate judicial authorities to determine criminal responsibility for these acts, is considered by the Commission to be a serious violation of the state's obligation to take all necessary measures to prevent human rights violations by its security forces and further perpetuates the cycle of impunity. Although further training of officers is necessary in order to instill a greater respect for the human rights of detainees, regardless of their criminal history, the Commission suggests that more adequate supervision by HNP commanders of acts of torture and ill-treatment committed by lower ranking officers is necessary. At the same time, in order to dissuade officers from engaging in such practices, HNP directors and the Inspector General of the HNP must act swiftly to reprimand these acts by employing both administrative disciplinary measures as well as by informing the appropriate judicial authorities to hold perpetrators accountable for their actions.

d. Arbitrary Arrest

110. Sections 24.1 and 24.2 of the Haitian Constitution provide that “[n]o one may be prosecuted, arrested or detained except in the cases determined by law and in the manner it prescribes” and that “[e]xcept where the perpetrator of a crime is caught in the act, no one may be arrested or detained other than by written order of a legally competent official.” In addition, domestic law in Haiti also requires the issuance of a warrant to execute an arrest of an individual, unless in *flagrant delit*. Further, arrests with an appropriate warrant are considered legal only where executed between 6 a.m. and 6 p.m.¹¹⁵

111. The right to personal liberty is also protected under Article 7 of the American Convention, which states:

(1) Every person has the right to personal liberty and security; (2) No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto; (3) No one shall be subject to arbitrary arrest or imprisonment; (4) Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him; (5) Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial; (6) Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful. In States Parties whose laws provide that

¹¹⁵ See Constitution of Haiti, Article 24.3 (d).

anyone who believes himself to be threatened with deprivation of his liberty is entitled to recourse to a competent court in order that it may decide on the lawfulness of such threat, this remedy may not be restricted or abolished. The interested party or another person in his behalf is entitled to seek these remedies; (7) No one shall be detained for debt. This principle shall not limit the orders of a competent judicial authority issued for nonfulfillment of duties of support.

112. These provisions seek the protection of persons from unlawful interferences with their liberty by the state, including detentions or arrests in the context of criminal proceedings,¹¹⁶ including the arbitrary arrest or imprisonment of persons. The Inter-American Commission has established that the term "arbitrary" is synonymous with "irregular, abusive, contrary to law".¹¹⁷ As affirmed by both the Inter-American Commission and Court, the Convention provides that no one shall be deprived of liberty except in cases or circumstances provided by law, and that any deprivation of one's liberty must strictly adhere to the procedures defined in the law.¹¹⁸ In this respect, States must prevent and sanction arbitrary arrest and detention by strictly regulating the grounds and procedures that govern deprivation of one's liberty, and the laws and regulations that govern the arrest and detention of individuals must comply with the principles embodied in the Inter-American Human Rights instruments.¹¹⁹ States must also ensure that all arrests are carried out in accordance with a warrant duly issued by its judicial authorities, except in instances when an individual is arrested *in flagrante delicto*.¹²⁰ As detailed more extensively in the following subsection, States must also ensure the prompt and effective judicial supervision of the legality of the detention.¹²¹

113. The Commission has emphasized that legal rights of a detainee as well as his or her personal integrity can be seriously jeopardized when a detention is not ordered or promptly supervised by a competent judicial authority, when the detainee is not informed of the reason for the detention,

¹¹⁶ See generally IACHR, Report on Terrorism and Human Rights, OEA/Ser.L/V/II.116, Doc. 5 rev. 1 corr., 22 October 2002, para. 118-129.

¹¹⁷ See IACHR, Report N° 35/96, Case 10.832, Luis Lizardo Cabrera, Dominican Republic, April 7, 1998, paras. 66 and 67, where the Commission added: "It has considered to be arbitrary any detention by the government of any person who has already served the court-imposed sentence or whose release has been ordered by a court and the imposing of measures to deprive a person of liberty for security reasons."

¹¹⁸ See, e.g., IACHR, Fifth Report on the Situation of Human Rights in Guatemala, OEA/Ser.L/V/II.111 doc. 21 rev., 6 April 2001, Chapter VII, para. 37, citing Case 11.245, Report N° 12/96, Jorge Alberto Jiménez (Argentina), Annual Report of the IACHR 1995; I/A Court H. R. *Suárez Rosero Case*, Judgment of November 12, 1997, Ser. C No. 35, para. 43.

¹¹⁹ *Idem*.

¹²⁰ See, for example, *Suarez Rosero Case*, Judgment of November 12, 1997, Series C No. 35, para. 44.

¹²¹ Case 11.205, Report N° 2/97, Jorge Luis Bronstein and others (Argentina), Annual Report of the IACHR 1997, para. 11.

when he or she may not have access to legal counsel and when the detainee's relatives or legal representatives may not have been able to locate the latter promptly.¹²²

114. When considering whether a specific deprivation of liberty complies with the provisions of Article 7 of the Convention, it must be determined whether the deprivation of liberty was executed in accordance with the prevailing norms of domestic law of the State concerned, whether such norms are compatible with the American Convention, and, when both above-mentioned conditions are fulfilled, whether, in the case under study, the deprivation was carried out in an arbitrary way.¹²³

115. According to information received by the Commission, the HNP commonly fail to comply with the fundamental provisions of international and domestic law governing the right to personal liberty. These are said to include the execution of arrests without a valid warrant and not necessarily while *in flagrante delicto*. Further, arrests are reportedly often executed outside the stipulated hours in the law. The Commission was told that in many cases individuals thought to possess information regarding a crime are arrested on the grounds of police investigations and are subsequently detained in prison detention cells throughout the investigation, which can last up to several months.¹²⁴

116. As the crime rate has increased in recent months, police have taken a more aggressive stance and have more commonly proceeded to make mass arrests of numerous individuals at once. It is alleged that in many instances, the police profit from such practices by extorting money from detainees in exchange for their release.¹²⁵ Notwithstanding the widespread nature of this problem, the information available indicates that the HNP Directors and the Inspector General overlook practice of arbitrary arrest. Indeed, the Inspector General's annual report for 2004 does not indicate sanctions issued for this type of offense.¹²⁶ This in turn exacerbates the lack of public confidence in the HNP and undermines the ability of the HNP's to effectively

¹²² IACHR, Fifth Report on the Situation of Human Rights in Guatemala, OEA/Ser.L/V/II.111 doc. 21 rev., 6 April 2001, Chapter VII, para. 37.

¹²³ See, e.g., IACHR, Case 11.565, Report N° 53/01, Ana, Beatriz and Celia González Pérez (Mexico), Annual Report 2001, para. 23. See also I/A Court H.R., *Gangaram Panday Case*, Judgment of January 21, 1994, Ser. C No. 16, para 47.

¹²⁴ Interview with CARLI, July 13, 2005; Interview with Bureau des Avocats Internationaux, April 21, 2005; Interviews with RNDDH (formerly NCHR), April 19, 2005, July 13, 2005. See also Report of the UN Independent Expert, Louis Joinet, on the Situation of human rights in Haiti, UN Doc. E/CN.4/2005/123 (January 23, 2005), paras. 53-58.

¹²⁵ Interview with CARLI, July 13, 2005.

¹²⁶ Annual Report of the Inspector General of the Haitian National Police (March 2004-June 2005)

investigate crimes, as victims and witnesses do not sufficiently trust the police to assist by coming forward with information.

117. Accordingly, the Commission considers that a much stronger and more concerted efforts is necessary in order to prevent and punish abuses by the police of the right not to be arbitrarily detained. These measures should include police training on arrest and detention standards under domestic and international law, including those set out in Articles 7 and 8 of the American Convention and corresponding jurisprudence as well as the American the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and strict supervision and enforcement of these standards through the chain of command of the HNP.

e. Police Misconduct and the HNP Disciplinary System

118. In light of the potential for human rights and other abuses such as those discussed above, the international community has acknowledged the importance of developing and enforcing proper standards of conduct for law enforcement authorities. In this respect, the United Nations has promulgated a Code of Conduct for Law Enforcement Officials, which prescribes the principal obligations of police and other law enforcement officials in executing their mandates and the need for appropriate authorities or organs with the power to review or remedy violations of such obligations.¹²⁷

119. The Haitian security forces have long suffered from corruption and criminal activities on the part of many of its members, including human rights violations.¹²⁸ Nearly all of the human rights groups with whom the Commission met as well as reports of other international observers¹²⁹ indicate that police officers have been implicated in disappearances, summary arrests and executions, torture, rape, and drug trafficking, among other crimes and human rights abuses. In many instances, these crimes are said to be perpetrated in collaboration with illegal armed groups and gangs. Reports of such atrocities as well as corruption on the part of the police are a cause of extreme concern for the Commission, not only because of the serious nature of the crimes themselves, but also because of the highly detrimental impact they have on the justice system. Illegal conduct by the police undermines the HNP's ability to carry out its mandate effectively, exacerbates, rather than alleviates, human rights violations, and further weakens the public's confidence in the force. As a consequence, the Haitian population remain reluctant or unwilling to

¹²⁷ UN Code of Conduct for Law Enforcement Officials, G.A. Res. 34/169, annex, 34 U.N. GAOR Supp. (No. 46) at 186, U.N. Doc. A/34/46 (1979).

¹²⁸ See IACHR Report on the Human Rights Situation in Haiti, 1995" OEA/Ser.L/v/II.88 Doc. 10 rev. 9 February 1995, para. 141-163.

¹²⁹ See, e.g., Report of the Security Council mission to Haiti, 13 to 16 April 2005, UN Doc. S/2005/302 (May 6, 2005), paras. 42-43; International Crisis Group, "Spoiling Security in Haiti?" (May 31, 2005), pp. 10-12.

cooperate with the HNP, which further undermine the ability of the police to investigate human rights abuses and other crimes. The increasing number of reports on corruption and criminalization within the national police indicate that this issue must be tackled with urgency and by strengthening the system of accountability and the issuance of disciplinary sanctions where appropriate.

120. The Police Code of Conduct is the internal regulation that governs police misconduct, including human rights abuses, corruption and criminal activities in which officers may be implicated. In such cases, the Inspector General of the HNP (IGHNP) is the body charged with investigating allegations of misconduct by officers. The IGHNP is designed to be an independent body of the HNP, with its own leadership that is charged with making independent decisions regarding the disciplinary action against officers. Accordingly, the IGHNP is located in a separate building from the general police headquarters and is comprised of its own staff who investigate the specific issue of police misconduct.

121. The IGHNP investigates matters through three main avenues: a citizen complaint system; discoveries of misconduct by the IGHNP during police station monitoring visits; and reports to the IGHNP by other members of the HNP of acts of misconduct. In the past, human rights organizations and other groups were able to report incidents of misconduct or human rights abuses to the IGHNP and request that an investigation be opened, however, during the Commission's most recent visit to Haiti, human rights groups raised the concern that the IGHNP no longer receives complaints from advocates on behalf of victims and only the victim is allowed to lodge a complaint.¹³⁰ This apparent change in practice could affect the number of complaints received by the IGHNP and consequently the office's effectiveness in carrying out investigations into police misconduct. In particular, members of the population are less likely than human rights groups to lodge complaints with the IGHNP because of a general lack of awareness of the IGHNP's role and because the physical location of the IGHNP is difficult for many people to reach. Moreover, despite the fact that the IGHNP is said to be independent, much of the population does not hold this view, believing rather that it is a corrupt, criminalized and politically guided force. Further, the lack of accountability for crimes committed by HNP officers causes the public to be highly skeptical of the police's capacity and willingness to investigate reports of human rights violations, corruption or other illicit activities involving officers. Due to these factors, members of the public refrain from coming forward to lodge a complaint against an officer for fear of reprisal attacks against them.

122. Although official statistics from the IGHNP's office indicate that the office received 241 complaints of human rights violations for the period between March 2004-June 2005, this does not necessarily reflect the true

¹³⁰ Interview with Haitian NGOs in July 2005 (Episcopal National Justice and Peace Commission, CARLI, Platform on Human Rights, RNDDH)

number of human rights abuses perpetrated on the Haitian population, due to the fact that the IGHNP's records are based on voluntary complaints by victims and the limited monitoring conducted by the IG staff themselves.¹³¹ These figures in comparison to the number of violent deaths recorded by human rights groups, suggest that the number of human rights abuses committed by police is significantly higher than the IGHNP annual report indicates. Further, according to other statistics collected by the IGHNP, of the 3376 complaints received for the year, 683 investigations were opened, 241 for human rights abuses¹³², 10 for drug related offenses, 126 for allegations of theft, fraud, or corruption, and the rest for other types of misconduct. However, of the 241 human rights investigations, only 47 were concluded, while none of the drug related offenses were concluded and only 29 of the cases involving theft, fraud or corruption were completed. In other words, of the 683 investigations opened, only 133 of these were completed during the year, and of these 133, disciplinary action was taken in only 57 cases, leaving the majority of investigations pending.

123. The Director General of the Police indicated that, of these actions, 50 officers had been dismissed from the force due to findings of misconduct, although no further details were provided as to the breakdown of this figure. According to these facts, the investigatory capacity of the HNP needs to be significantly enhanced to better equip the IGHNP to complete its investigations. Moreover, the lack of disciplinary action taken in the majority of investigations completed is also a source of concern for the Commission, suggesting an unwillingness and inability by the IGHNP to effectively address acts of misconduct by police officers. Such a practice encourages officers to continue violating their code of conduct and to commit crimes at will and without fear of a reprimand, while further discrediting the HNP and causing the public to lose all confidence in a credible security force charged with their protection. Further, the IGHNP did not indicate how many cases were transferred to the appropriate judicial authorities in order for them to initiate parallel criminal investigations and proceedings.

124. The Commission discussed three incidents in particular with the Inspector General, one involving the deaths of thirteen civilians at the hands of the police in October 2004 at Fort National,¹³³ and the two prison breaks from the National Penitentiary in December 2004 and February 2005. According to

¹³¹ See Annual Report of the Inspector General of the Haitian National Police (May 2004-June 2005), p. 2.

¹³² The Inspector General of the HNP indicated that their categorization of human rights abuses included: "domestic violence, threats against persons, and crimes, depending on how perpetrated," but did not indicate a definition upon which the HNP determined acts to constitute a violation of human rights. Accordingly, such a classification by the IGHNP suggests that further training in the area of human rights law and protection should be afforded all sections of the HNP in order to adequately protect the human rights of Haitians.

¹³³ See this report, section "Extrajudicial Killings" in "Law Enforcement, the Haitian National Police and Public Security"

the information provided, at least one member of the HNP is under investigation for the Fort National killings, although no results are yet available. According to the Inspector General, witnesses in the neighborhood have refused to provide information to the police, as they fear reprisal attacks by the perpetrators, and as a result little progress has been made in the investigation.

125. Regarding the prison break at the National Penitentiary in December 2004, where 10 inmates were allegedly killed, the Inspector General indicated that the investigation had been concluded, but that the findings were not yet made public. As of the present time, the Commission is not aware that a report on the investigation has yet been released. Finally, with respect to the February 19, 2005 prison raid, during which 481 detainees are estimated to have escaped, the Inspector General indicated that the matter was still under investigation and that two individuals has recently been arrested for their alleged involvement in masterminding the jail break, including Jean Claude Louis Jean, a suspected drug trafficker.

126. Deficiencies in investigations into complaints received by the Inspector General's Office are related to a large extent to its lack of capacity and resources. According to the Inspector General, as of July 2005 his office was comprised of four inspectors¹³⁴ and a staff of 91 officers and 29 administrative personnel, to monitor and investigate the conduct of thousands of HNP members. In this connection, the Inspector General informed the Commission that while his office is supposed to be represented in all of the ten administrative departments across the country and to undertake regular oversight visits to police stations in order to monitor compliance with the police code of conduct, the Office has no representation outside of Port-au-Prince and lacks the staff and resources, including vehicles, to deploy agents outside of the capital. Consequently, the Inspector General's Office only has the capacity to send investigators into the field to respond to specific complaints or intervention requests from the public or HNP members, and is unable to make regular visits to police stations to monitor police activities. As noted above, other difficulties for the Inspector General's office stem from lack of knowledge, reluctance, or unwillingness on the part of victims, witnesses and the general population to filed complaints and cooperate with investigations, and several non-governmental organizations suggested the Office suffers from an unclear chain of command, an absence of effective follow up, and a general lack of will to change the situation.¹³⁵

127. In light of these problems and the significant challenges in ensuring that the Haitian police themselves operate within the boundaries of the

¹³⁴ "Inspector" signifies a superior police ranking within the HNP. The hierarchy within the HNP is as follows: Agent 1 (lowest), Agent 2, Agent 3, Agent 4, Inspector 1, Inspector 2, Inspector 3, Commissioner 1, Commissioner 2, Director, Departmental Director, Director General of the HNP.

¹³⁵ Interview with RNDH, July 13, 2005; Interview with *Justice et Paix*, July 13, 2005.

law, the Commission considers it imperative that the office of the Inspector General should receive the State's full support in hiring and training more staff and obtaining the necessary technical assistance, investigatory equipment, and other required resources to improve its capacity to receive and investigate complaints. Further, the Commission strongly believes that the IGHNP must more actively issue disciplinary and other appropriate measures against officers found to have violated the code of conduct and, where crimes and human rights abuses are involved, ensure that immediate and appropriate measures are taken to prosecute and punish those violations. Finally, the former Director General of the HNP suggested to the Commission that an immediate solution to the problem of police misconduct could involve enhanced forms of cooperation with members of the UN forces, such as co-locating CIVPOL members with HNP members at police stations. While the Commission is not in a position to pass judgment on the possibility or potential effectiveness of such arrangements, it notes that they only constitute temporary or short-term measures. Significant training of the HNP leadership in the immediate and long term remains crucial if police oversight is to be sustainable beyond the expiration date of the U.N. mandate, and to effectively build a truly professional and independent police force.

f. Measures Necessary to Guarantee Public Security and Develop a Professional Police Force

128. Based upon the above observations, it is imperative that the HNP be immediately equipped to address the problem of violence by illegal armed groups and gangs if the security of the Haitian population is to be ensured. Although the HNP Director indicated that there are efforts to address the staffing problem by graduating two more classes of 400 new recruits each from the police academy by the November 2005 election, much more support and assistance to the police is required in order for it to fully and effectively carry out its public security mandate. In particular a strategic, comprehensive and long-term security plan should be designed and implemented that which is not limited to isolated operations that tend to result in numbers of civilian casualties. In order for the government to comply with its obligation to provide protection and security of all of the people of Haiti, the Ministry of Justice in particular, as well as relevant authorities, should begin to tackle this issue and the various factors that have caused this problem to persist, namely, the implementation of an effective national disarmament program, the establishment of control over the arms and drug trade in the country and finally to end the cycle of impunity by arresting suspects, conducting effective investigations and prosecutions of criminals.

129. Also central to reinforcing the HNP and thereby enhancing public security are efforts to improve the degree and nature of training provided to the forces, in part through the assistance of CIVPOL and other international bodies and governments. In this connection, the Commission understands from the former Director General of the HNP that in general recruits receive six months of training prior to graduating as officers (4 months at the police

academy and 2 months on the streets), and that police training includes instruction on international human rights standards. In light of continuing weaknesses in public security, deficiencies among officers in their knowledge of basic laws and police procedures, and allegations of misconduct on the part of HNP members, however, the Commission is concerned that the period and/or content of the training may not be sufficient. The Commission was told, for example, that many officers remain unaware that under the Haitian Constitution individuals may not be detained for more than 48 hours before being brought before a judge and are unfamiliar with basic techniques for gathering evidence at crime scenes, and that there is a general absence of the recording of work being conducted on the ground, as well as the lack of reporting through the chain of command to verify such work.

130. The Commission acknowledges the need to enhance the number of police officers in Haiti as expeditiously as possible, but emphasizes that this must also be balanced against the obligation to ensure that each new officer is provided with sufficient instruction and testing as to the substance and methodology of law enforcement, including respect for basic human rights. Accordingly, the Commission encourages the State to undertake a comprehensive review of its police training program in order to ensure that members are receiving the basic training necessary to carry out their duties in full compliance with applicable national and international law and standards, including the use of force. In this respect, the Commission was informed that in July 2004 the Canadian government had submitted a plan for the professionalization of the Haitian police and that the HNP had recently adopted the plan, but that the initiative may be affected by the revised mandate provided to CIVPOL in UN Security Council Resolution 1608 of June 22, 2005. The Commission is hopeful that this and other initiatives will be pursued expeditiously.

131. Closely connected to the issue of training is the need for a more effective and comprehensive method of vetting new police recruits as well as existing members of the HNP who were appointed in the absence of a proper vetting procedure. In this respect, the Commission was informed that between April 2004 and April 2005, more than 400 police officers had been removed from the police force ranks for various reasons including human rights violations and involvement in corruption and criminal activity. At the same time, the Commission encountered difficulties in obtaining clear or consistent information concerning all of the processes employed by the State in vetting present and prospective members of the Haitian national police, and several nongovernmental organizations suggested that the vetting process has not been comprehensive and, in some instances, has not been conducted in a sufficiently serious manner.

132. Upon the Commission's last visit to Haiti in July 2005, a CIVPOL official indicated that due to the recent Security Council Resolution 1608 (2005), the UN mandate was enhanced by increasing the numbers in the military to a total of 7,500 troops and civilian police force to a total of 1,897

officers, while at the same time granting more authority to maintain the peace and assist the state in this regard.¹³⁶ Specifically, the resolution reaffirmed the UN's mandate "to vet and certify new and existing HNP personnel" and encouraged the government of Haiti to implement technical recommendations from MINUSTAH including the recommendation to exclude uncertified individuals from the HNP.¹³⁷ Accordingly, CIVPOL representatives indicated that a more comprehensive vetting process would be undertaken in coordination with the HNP and with the assistance of the human rights section of MINUSTAH, to provide information regarding the human rights records of members of, or candidates for the police force. The Commission therefore encourages the State, in cooperation with the international community, to reinforce such efforts to vet present and future members of the police, including those potentially implicated in past human rights violations, and to enhance its cooperation with international organizations and other experts in this endeavor.

133. A further factor that presents a challenge to maintaining security is the fact that thousands of illegal arms are being circulated and used by various groups. According to reports by Amnesty International and the Small Arms Survey, there are approximately 170,000 small arms circulating in Haiti.¹³⁸ According to Medecins Sans Frontieres, which runs a free medical clinic for victims of violence, the number of casualties from gunshot wounds was estimated at over 600 from December 2004 to May 2005. Clearly, then, an effective disarmament program that targets all armed groups and gangs is crucial in order for the State to regain control over security in the country. In this respect, the Commission has been encouraged by the establishment of the National Commission for Disarmament, Demobilization, Reintegration and Rehabilitation (NCDDRR) in February 2005. At the same time, during its various visits to Haiti over the past year, the Commission, like other international observers, remains uncertain as to the legal status and authority of the Commission¹³⁹ and has witnessed little progress in implementing this program or otherwise disarming individuals in possession of weapons. Separate from the disarmament program, the state commenced a compensation program to issue back payments to members of the military who were dismissed when former president Aristide dissolved the military in 1995. The compensation program was not, however, accompanied by the requirement to hand over arms or uniforms. According, based upon information available to the Commission, disarmament efforts have been largely insufficient and ineffective, and the

¹³⁶ See U.N. Security Council Resolution 1608 (2005), S/RES/1608 (2005), 22 June 2005, para 2.

¹³⁷ *Id.* at para 8.

¹³⁸ See *Haiti: Disarmament delayed, justice denied*, Amnesty International, 2 (2005).

¹³⁹ See, e.g., UN Security Council, "Report of the Security Council Mission to Haiti, 13 to 16 April 2005:", UN Doc. S/2005/302, 6 May 2005, para. 19; International Crisis Group, *Spoiling Security in Haiti*, Report No. 13 (31 May 2005), p. 9.

Commission calls upon the State, in cooperation with the international community, to design and implement as expeditiously as possible a comprehensive and inclusive disarmament program.

134. Improved coordination between the HNP and MINUSTAH forces is another area that appears to require improvement in order for the HNP to adequately carry out its function of ensuring public security. While the U.N. peacekeepers are charged with, *inter alia*, assisting with the restoration and maintenance of the rule of law, public safety and public order in Haiti¹⁴⁰, the primary responsibility for guaranteeing public security lies with the Haitian state. Information received by the Commission points to certain weaknesses in communication, coordination and collaboration between these two forces, which if improved, could improve the capacity of both forces to adequately quell the violent disturbances occurring in the capital. Some of the difficulty in coordination is due to language barriers, as most of the forces are non-French speaking or Creole speaking, making coordination with HNP counterparts difficult if not impossible at times. Further, UN forces face similar challenges when patrolling city streets or making interventions in dangerous neighborhoods, where the handicap of not speaking or understanding the language of the people significantly prevents them from engaging in security operations effectively. In many cases, criminal suspects are not clearly distinguishable from other civilians in the densely populated city slums or 'popular neighborhoods' where many of these individuals reside. Consequently, according to information provided to the Commission, the exchange of gunfire between UN troops and armed gangs frequently causes significant casualties and property damage.¹⁴¹ Under such circumstances, the assistance of the HNP, who speak Creole, the language of 95% of the population, and who are familiar with the layout of the city could greatly reduce the danger factor presented during such operations. In addition, the Commission emphasizes the need for all security operations to be conducted in full compliance with the rights, principles and standards prescribed under the American Convention and other applicable human rights instruments, including limitations of the use of lethal force.

135. Moreover, the strategy of the HNP and MINUSTAH to address the violence in the city appears to be limited to isolated interventions in city slum areas where many of the gang leaders reside. Such operations seem to have taken the place of the development and implementation of a more sustainable, comprehensive security plan for the country, including the implementation of an effective disarmament program. Select interventions do

¹⁴⁰ See UN Security Council Resolution 1529 (2004) S/RES/1529 (2004) 29 February 2004, para 2 (a); See also, UN Security Council Resolution 1542 (2004) S/RES/1541 (2004), 30 April 2004, para 7 (l).

¹⁴¹ Interview with CARLI, July 13, 2005; Interview with CONOCS, April 19, 2005. See similarly International Crisis Group, "Spoiling Security in Haiti" (May 31, 2005), pp. 7-8; Joe Mozingo, "Horrors Persist in Forsaken Slum", Miami Herald (May 31, 2005).

not, however, suggest a sustainable solution to the problem and, indeed, may lead to more violence and retaliation by gang members against the HNP and MINUSTAH. Accordingly, it appears that greater cooperation between these forces is necessary in order to develop a comprehensive and longer-term security plan for the country.

2. The Court System in Haiti and the Problem of Impunity

a. Legal Framework

136. Before undertaking an analysis of the main issues in the court system in Haiti, it is necessary to place the issue in the context of applicable international norms and related jurisprudence. In particular, the right to equality before the law, the right to personal liberty, the right to a fair trial and the due process of law are the cornerstone principles that guide the analysis that follows and constitutes the foundation for an assessment of this subject. These standards are drawn from the American Convention as well as other related human rights instruments, including the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights. Further, the United Nations Basic Principles on the Independence of the Judiciary comprise internationally recognized guidelines setting forth the necessity of an independent functioning judiciary.¹⁴²

137. Article 8 of the American Convention provides for the right to a fair trial in the following terms:

1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature. 2. Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees: a. the right of the accused to be assisted without charge by a translator or interpreter, if he does not understand or does not speak the language of the tribunal or court; b. prior notification in detail to the accused of the charges against him; c. adequate time and means for the preparation of his defense; d. the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel; e. the inalienable right to be assisted by counsel provided by the state, paid or not as the domestic law provides, if the accused does not defend himself personally or engage his own counsel within the time period established by law; f. the right of the defense to examine witnesses present in the court and to obtain the appearance, as witnesses, of experts or other

¹⁴² United Nations Basic Principles on the Independence of the Judiciary,

persons who may throw light on the facts; g. the right not to be compelled to be a witness against himself or to plead guilty; and h. the right to appeal the judgment to a higher court. 3. A confession of guilt by the accused shall be valid only if it is made without coercion of any kind. 4. An accused person acquitted by a nonappealable judgment shall not be subjected to a new trial for the same cause. 5. Criminal proceedings shall be public, except insofar as may be necessary to protect the interests of justice.

138. Further, Article 25 protects the right to judicial protection:

1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties. 2. The States Parties undertake: a. to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state; b. to develop the possibilities of judicial remedy; and, c. to ensure that the competent authorities shall enforce such remedies when granted.

139. Judicial independence and impartiality are two of the elements necessary to guarantee the right to a hearing by a competent, independent and impartial tribunal and which are crucial to the proper administration of justice and protection of human rights.¹⁴³ These prerequisites in turn require that the “judge or tribunal not harbor any actual bias in a particular case, and that the judge or tribunal not reasonably be perceived as being tainted with any bias.”¹⁴⁴ The Commission has also held that the requirement of independence necessitates that courts be autonomous from the other branches of government, free from influence, threats or interference from any source and for any reason, and benefit from other characteristics necessary for ensuring the correct and independent performance of judicial functions, including tenure and appropriate professional training.¹⁴⁵ The Basic Principles on the Independence of the Judiciary similarly reinforce the need to maintain an independent judiciary by requiring that judges decide matters impartially, “on the basis of facts and in accordance with the law, without any restrictions,

¹⁴³ See IACHR Report on Terrorism and Human Rights (2002), *supra*, paras. 228-229.

¹⁴⁴ Case 11.139, Report N° 57/96, William Andrews (United States), Annual Report of the IACHR 1997, paras. 159-161. *See similarly* Eur. Court H.R., Findlay v. UK, 25 February 1997, Reports 1997-I, at 281, para. 73.

¹⁴⁵ *See, e.g.*, IACHR, Report on the Situation of Human Rights in Chile, OEA/Ser.L/V/II.66, doc. 17, 1985, Ch. VIII, para. 139; IACHR, Report on the Situation of Human Rights in Haiti (1995), OEA/Ser.L/V/II.88, February 9, 1995, Ch. V, paras. 276-280; IACHR, Report on the Situation of Human Rights in Ecuador (1997), 24 April 1997, OEA/Ser.L/V/II.96, Doc. 10 rev. 1, Ch. III; IACHR, Report on the Situation of Human Rights in Mexico (1998), September 24, 1998, OEA/Ser.L/V/II.100, Doc. 7 rev. 1, Ch. V, paras. 393-398.

improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.”¹⁴⁶

140. As reflected in Article 8 of the Convention, the right to due guarantees of a fair trial reflects the various rights of the accused including the presumption of innocence, the right to be notified of the charges against him, and the right to legal counsel and a translator. In addition, both the Commission and the Inter-American Court have observed in this respect that in criminal proceedings and those relating to rights and obligations of a civil, labor, fiscal or any other nature, an indigent has the right to legal counsel free of charge where such assistance is necessary for a fair hearing. Among the factors that bear on the determination of whether free legal representation is necessary for a fair hearing are the significance of a legal proceeding, its legal character, and its context in a particular legal system.¹⁴⁷

141. The right to a hearing within a reasonable time is also incorporated within the right to a fair trial under Article 8 of the American Convention as well as the right to personal liberty under Article 7 of the Convention. The standard for reasonableness varies depending on the facts of each case, and the Inter-American Court and Commission have held that particular considerations in this regard include the complexity of the matter, the conduct of the interested party and the conduct of the authorities.¹⁴⁸ According to the Commission, the fact that a judicial system is overburdened or has inadequate resources cannot in itself justify lengthy delays in criminal processes in light of the obligation of states to regulate the elements of their criminal procedural machinery to ensure that individuals are tried within a reasonable time.¹⁴⁹ Further, in certain cases a prolonged delay in itself can constitute a violation of the right to a fair trial, where a state has failed to provide an explanation and proof as to why it has taken more time than normally required to issue a final judgment in a particular case.¹⁵⁰ The Commission has observed

¹⁴⁶ Basic Principles on the Independence of the Judiciary, Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August to 6 September 1985, U.N. Doc. A/CONF.121/22/Rev.1 at 59 (1985), paras 2, 4, 5, 6.

¹⁴⁷ See I/A Court H.R., Hilaire, *Constantine and Benjamin et al. Case*, Judgment of 21 June 2002, Series C No. 94, paras. 148; I/A Court H.R., Advisory Opinion OC-11/90, Exceptions to Exhaustion of Domestic Remedies (Articles 46(1), 46(2)(a), and 46(2)(b) American Convention on Human Rights), August 10, 1990, Series A No 11, paras. 25-29; Report on the Situation of Human Rights in Suriname (1983), OEA/Ser.L/V/II.61, doc.6 rev. 1, 5 October 1983, at 68.

¹⁴⁸ See, e.g., I/A Court H.R., *Genie Lacayo Case*, January 29, 1997, Series C No 30, para. 77, citing Eur. Court H.R., *Motta v. Italy*, 19 February 1991, Series A No 195-A, para. 30; Eur. Court H.R., *Ruiz-Mateos v. Spain*, 23 June 1993, Series A No 262, para. 30. See also Case 12.023, Report No 41/00, Desmond McKenzie (Jamaica), Case 12.044, Report No 41/00, Andrew Downer y Alphonso Tracey (Jamaica), Case 12.107, Report No 41/00, Carl Baker (Jamaica), Case 12.126, Report No 41/00, Dwight Fletcher (Jamaica), and Case 12.146, Report No 41/00, Anthony Rose (Jamaica), Annual Report of the IACHR 2000, paras. 258, 259.

¹⁴⁹ Desmond McKenzie Case, *supra*, paras. 262.

¹⁵⁰ I/A Court H.R., Hilaire, *Constantine and Benjamin et al. Case*, Judgment of 21 June 2002, Series C No. 94, paras. 143-145. See similarly Desmond McKenzie Case, *supra*, para. 260.

that a pattern of unreasonable delays in the prosecution of suspected human rights violations contributes to a climate of impunity for those crimes.¹⁵¹

142. The right to judicial protection under Article 25 of the American Convention is intimately tied to the right to a fair trial. According to these provisions, not only do states have the paramount responsibility to conduct themselves so as to ensure the free and full exercise of human rights,¹⁵² but also an implicit duty to organize the governmental apparatus and all the structures through which public power is exercised so that they are capable of juridically ensuring the free and full enjoyment of those human rights.¹⁵³ In this sense, the availability of recourse to an effective and independent legal system to evaluate and enforce these obligations serves as a crucial fortification for the protection of human rights. These commitments also require that states use the means at their disposal to prevent human rights violations and to provide effective remedies for any violations that do occur, including undertaking thorough and effective investigations capable of identifying and punishing persons responsible for human rights infringements.¹⁵⁴ In this respect, the Inter-American Court has recognized an inherent interconnection between member states' duties to respect, ensure, and give effect to human rights and to provide effective judicial protection for rights in accordance with the requirements of due process, as provided for in Article 1(1), 8 and 25 of the American Convention.¹⁵⁵

143. In the context of these fundamental principles, the Commission will undertake an evaluation of the principal weaknesses in the court system in Haiti and the manner in which weaknesses have perpetuated a pattern of impunity for serious violations of human rights in the country.

b. Analysis of the Court System in Haiti

144. As with the police, the court system in Haiti is afflicted with serious shortfalls in resources and training, and much of the information received from international and domestic organizations emphasized the need for immediate and effective reform to the courts and other aspects of the legal system. The key weaknesses in the administration of justice identified by the

¹⁵¹ See, e.g., IACHR, Third Report on the Situation of Human Rights in Colombia, OEA/Ser.L/V/II.102 doc. 9 rev. 1, 26 February 1999, Ch. IV, para. 62.

¹⁵² I/A Court H.R., *Velásquez Rodríguez Case*, Judgment of 28 July 1988, Series C N° 4, para. 167.

¹⁵³ *Id.* See also ; I/A Court H.R., Advisory Opinion OC-11/90, Exceptions to Exhaustion of Domestic Remedies (Articles 46(1), 46(2)(a), and 46(2)(b) American Convention on Human Rights), August 10, 1990, Series A N° 11, para. 23.

¹⁵⁴ I/A Court H.R., *Velásquez Rodríguez Case*, Judgment of 28 July 1988, Series C N° 4, paras. 172-174.

¹⁵⁵ I/A Court H.R., *Velásquez Rodríguez Case*, Judgment on Preliminary Objections, June 26, 1987, Ser. C N° 1, para. 90.

State itself as well as by local and international governmental and non-governmental organizations, include the poor working conditions of judges and other threats to the independence of the judiciary, prolonged pre-charge and pre-trial detention and its causes, including the absence of legal representation for indigent criminal defendants, and the need for extensive law reform. There problems in turn contribute to the larger problem of impunity for human rights violations and other crimes.

i. Working Conditions for Judges and the Capacity of Judges to Carry Out their Mandate

145. According to the information gathered by the Commission, the working conditions for judges in Haitian courts are seriously lacking, rendering the work of the judges extremely challenging and contributing to the slow progress in the treatment of cases. The infrastructure of the court houses themselves is characterized by serious neglect, with many lacking the basic office furniture, supplies and equipment such as computers, typewriters, writing materials, fax machines, photo copiers, furniture such as desks, chairs and filing cabinets, and adequate office space for the magistrates. For example, according to the association of magistrates in July 2005, the 13 examining magistrates for Port-au-Prince are required to share 6 offices in the Palais de Justice and are forced to provide their own office supplies, including paper and pens.¹⁵⁶ Due to the limited availability of electricity in the country, the limited number of electronically-operated equipment such as computers, faxes and photocopiers available are of limited value.

146. Consequently, magistrates, generally with no assistants to provide valuable support, are expected to solely take on all the tasks of investigation, research, conducting hearings and the drafting of opinions by hand. Thus, under these conditions and without paralegal assistance, the treatment of a single case is extremely time consuming, causing a backlog and delay in the judge's ability to decide and dispense with his docket of cases promptly, as required in Articles 8 and 25 of the American Convention. Judges and public prosecutors also lack access to vehicles in order for them to effectively carry out their functions and in order to transport detainees from the prisons to the courts when they are called for hearings or to respond to investigations by examining magistrates. In interviews with human rights organizations and the judges' association, the Commission was informed of several examples of cases in which detainees could not be brought before the court at the designated time due to lack of transportation, creating the need to reschedule a hearing for a later date and causing a further delay in the prompt treatment of their case.¹⁵⁷

¹⁵⁶ Interview with ANAMAH, July 13, 2005; Interview with MOUFED, July 12, 2005.

¹⁵⁷ Interview with ANAMAH, July 13, 2005.

147. According to information provided to the Commission, measures have been taken to address the problem of wages for judges. For example, the Chief Judge of the Court of First Instance in Port-au-Prince indicated that three new examining magistrates had been appointed within his jurisdiction and that judges had received a small increase in salary under the new government. Despite this slight increase in 2004, judges' salaries remain the lowest of all government functionaries and according to members of the judges' association, are not sufficient to cover the basic living expenses of judges, such as housing costs and covering school fees for their children. According to a study of the judicial sector conducted by IFES in 2002-2003, the annual salary of judges at the Court of Cassation was 30,000 gourdes (US\$726)¹⁵⁸, while the judges at the Court of Appeals received 20,000 gourdes (US\$484) and judges sitting in the first instance courts received between 12,500 gourdes (US\$300) and 14,500 gourdes (US\$350), and finally, the justices of the peace received 6,000 gourdes (US\$145) to 10,500 gourdes (US\$448). Prosecutors at the various levels received on average 20,000 gourdes (US\$484).¹⁵⁹ The officials with whom the Commission met, including the President, the Minister of Justice, and magistrates' association, and the judges of the Supreme Court and Court of Appeal, all agreed that these salaries were inadequate and had to be rectified. Related to this, judges complain about the lack of a formal status that affords them special privileges and benefits as is afforded to members of the executive and legislative branches. They further complain about the lack of career development opportunities provided for them. State authorities and advocates alike admit that such a low level of compensation for members of the judiciary, lower than that which representatives of the other branches receive, creates a situation ripe for corruption and that which, as described further in the next section, has already begun to characterize the Haitian judiciary.

148. The lack of proper security for judges is another serious issue affecting the quality of judges' working conditions as well as the effectiveness and independence of the judiciary. At present, there is little or no police presence at the various court houses in Port-au-Prince or in the provinces, owing largely to the general deficiency in the number of police officers throughout the country. In their meetings with the Commission, the association of magistrates as well as individual judges of the Supreme Court and the Court of Appeal expressed concern for their physical safety and the negative effect that these fears have upon their work.¹⁶⁰ In this respect, the Commission was told that five magistrates who were assigned to one court house were forced to abandon that facility due to security concerns and report to the already-

¹⁵⁸ As of September 12, 2005 the exchange rate was \$1.00 = 41.30 gourdes (30,000 gourdes = \$726.48) <http://www.xe.com/UCC>.

¹⁵⁹ See generally *IFES report, supra*.

¹⁶⁰ Interview with ANAMAH, July 13, 2005; interviews with Judges of the Supreme Court and Court of Appeal, April 20, 2005.

overburdened Court of First Instance in Port-au-Prince due to security concerns, and similarly, that the court for minors in Port-au-Prince has ceased to operate due to the widespread violence in the area and its sessions have also been transferred to the civil court in Port-au-Prince where there is a severe shortage of space.¹⁶¹

149. The absence of security for judges is further exacerbated by the culture of impunity in Haiti, where attacks against judges are rarely investigated or prosecuted. An example of such acts of intimidation was brought to the attention of the Commission by a judge in Jeremie who reported that an armed attack was carried out on his home by a group of unidentified gunmen in March 2005 but that, despite complaint to the authorities, no investigation has been carried out and no security had been provided to him. As a consequence, the Commission granted precautionary measures in favor of the judge in August 2005, asking the Haitian State to take the measures necessary to protect the judge's life and physical integrity and to investigate the previous attacks and prosecute and punish those responsible.

150. The Commission emphasizes in this connection that by the nature of a judge's mandate, and particularly where a judge is assigned sensitive human rights cases or other matters implicating persons with political or economic influence, the provision of adequate security is critical to the effective and independent exercise of the judge's duties and must be ensured by the State. According to the Minister of Justice, his Ministry is in the process of developing a plan to create a special unit of the HNP to provide security to judges handling sensitive cases.¹⁶² The Commission looks forward to following up on this important initiative.

151. Also undermining the effectiveness of the judiciary are frequent failures on the part of the police to execute orders and other decisions of the judiciary. Magistrates have complained that the police do not cooperate with them, fail to execute their orders and fail to execute arrest or search warrants according to the law or promptly. As a result, some individuals who have been ordered released on the judges orders remain in detention, arrests are made not according to the law, and when crimes occur the police fall short of informing the proper judicial authorities in a timely fashion or at all so that a proper legal record can be made, especially in cases where death occurs.¹⁶³ The Commission views omissions of this nature with serious concern and urges the State to take measures necessary to ensure that the police comply effectively and promptly with the directions of the judiciary.

¹⁶¹ Interview with MOUFED, July 12, 2005.

¹⁶² Interview with Minister of Justice, July 12, 2005.

¹⁶³ Interview with ANAMAH, July 13, 2005.

152. An additional resource deficiency within the courts that was raised with the Commission is a lack of access by judges to specialized and on going legal training, in order to develop and maintain a high level of competency to investigate and prosecute cases appropriately. The Commission received information in meetings with the President of the Republic and judges of the Supreme Court and the Court of Appeal, among others, indicating that the level of training for the judiciary is seriously deficient, particularly among the examining magistrates and the justices of the peace, many of whom are not required to have a legal license and grapple with basic levels of competency and literacy.¹⁶⁴ Connected with his problem are complaints that many judges lack access to the basic legal texts and therefore are forced to hear cases and issue decisions based on their memory of the legal provisions. The Commission witnessed for itself the absence of basic legal texts and other resources, including access to the treaties and jurisprudence of the inter-American Human rights system, when its visited the Palais de Justice in April 2005.

153. Based upon the information presented, it is starkly evident that the court system in Haiti is in urgent need of basic resources and training. In this respect, the Commission notes that Section 176 of the Constitution of Haiti calls for the creation of a Magistrates' School ("Une Ecole de la Magistrature"), with principal responsibility for ensuring that judges satisfy the conditions necessary to carry out their responsibilities. The Commission understands that although the Magistrate's School was functional for a time, having succeeded in graduating three classes of magistrates, it has since become non-operational and lacks the necessary legal statute and financial support for it to operate, and indeed that the actual building where the school is housed has been occupied by former military officers since December 2004. The Commission was informed that the French government has expressed intentions to assist with the training of judges once the school becomes operational again however. In a similar vein, the Commission was told that with the support of the OAS and the government of Chile, five magistrates traveled to Chile in the spring of 2005 for specialized training on penal investigations and to learn about judicial reform in Chile.¹⁶⁵ The Commission considers that the proper training of judges is an essential element in improving the effectiveness of the justice system in Haiti, as is strengthening the infrastructure of the court system. The Commission is therefore hopeful that the State, in cooperation with the international community, will follow through with measures to reestablish the magistrate's school and to provide judges with the financial, technical and other support necessary to adequately carry out their judicial functions.

¹⁶⁴ Interview with the President of Haiti, April 19, 2005; Interview with judges of the Supreme Court and Court of Appeal, April 20, 2005.

¹⁶⁵ Interview with AMAMAH, April 20, 2005.

ii. Independence of the Judiciary

154. As noted above, institutional independence of the judiciary relates to the structure and organization of the judiciary and its separation from the other branches of government. In this respect, Article 8 provides for the right to be tried by a “competent, independent and impartial tribunal,” which the Commission has held necessitates that courts be autonomous from the other branches of government, free from influence, threats or interference from any source and for any reason, and benefit from other characteristics necessary for ensuring the correct and independent performance of judicial functions, including tenure and appropriate professional training.¹⁶⁶ Respect for judicial independence is also reflected in Section 60 of the Haitian Constitution of 1987, which stipulates of the three branches of government that “each power is independent of the other two, and carries out its responsibilities separately.”¹⁶⁷ Despite this provision in the Constitution, however, the Commission is concerned about several structural aspects of the court system in Haiti, particularly in light of the highly politicized and volatile environment in the country, including weaknesses in the appointment of judges and other aspects of its relationship with the executive, bribes, threat and other improper influences on the courts, and the absence of an effective oversight mechanisms for the judiciary.

155. In particular, the Commission is concerned that the terms for which some judges are appointed, when considered in the present context in Haiti, may not be sufficient to ensure independence. According to Articles 174 and 175 of Haiti’s Constitution, Judges of the Supreme Court and the Courts of Appeal are appointed by the President for terms of ten years and the Judges of the Courts of First Instance are appointed for seven years. The Commission was told that examining magistrates serve a 3 year term and that no term is provided for the appointment of justices of the peace, and the President of the Republic informed the Commission that as a consequence, justices of the peace may generally be removed at any time, while it is in the complete discretion of the President not to renew the terms of judges sitting at other levels.¹⁶⁸ The President also criticized that fact that magistrates are appointed by his office and suggested that the Supreme Court itself should be responsible for both nominating and sanctioning judges in order to maintain judicial independence.¹⁶⁹ In the Commission’s view, the lack of tenure for justices of the peace and the apparent absence of criteria for the appointment or reappointment of judges at other levels present a potentially serious threat to the independence of judges in Haiti, taking into account that the notion of independence and impartiality in

¹⁶⁶ See, e.g., IACHR, Report on the Situation of Human Rights in Chile, OEA/Ser.L/V/II.66, doc. 17, 1985, Ch. VIII, para. 139.

¹⁶⁷ See Article 60, Constitution of Haiti and IFES Report *supra* at 16.

¹⁶⁸ Interview with President of the Republic, April 19, 2005.

¹⁶⁹ Interview with President of the Republic, April 19, 2005.

the judiciary has been weakened due to years living under authoritarian regimes and that politics continue to significantly affect the effective and transparent functioning of Haitian institutions. Accordingly, the Commission recommends that the terms and criteria for the appointment of judges at all levels should be reviewed in order to ensure that they are consistent with minimum standards governing the independence of the judiciary.

156. Furthermore, the Commission understands that two executive decrees were issued in 1984 and 1995, which could provide further opportunities for the executive branch to exert improper influence over the court system.¹⁷⁰ In particular, the 1984 decree relating to the organization of the judiciary calls on the President of the Supreme Court to take oath in the presence of the President of the Republic and members of the legislature, prompting some analysts to interpret this provision to suggest an allegiance by the appointed judges to the executive.¹⁷¹ Further, the 1995 decree refers to public prosecutors as “agents of the Executive.”¹⁷² While it is not unusual for prosecutors to be employed under the Ministry of Justice or other executive department, the highly politicized environment in Haiti, coupled with ongoing weaknesses in the justice system, can create a risk of political interference in decisions relating to the investigation and prosecution of crimes. Indeed, as discussed further below, the Commission received information that the Ministry of Justice has intervened directly in the management by the judiciary of politically sensitive cases.¹⁷³ This in turn threatens the need for criminal prosecutions to be treated strictly according to the due process of law guarantees contained in the Constitution and the American Convention. The Commission therefore considers that additional legal reforms and related safeguards may be necessary in order to clarify the independence of judges and their management of the cases before them from the other branches of government.

157. The Commission received mixed information concerning the actual existence of interference with the independence of the judiciary. Members of the Supreme Court, for example, indicated that they were entirely independent and that there had been no political interference with their work under the present government. At the same time, the association of magistrates complained that the Ministry of Justice has interfered in the work of the judiciary by requesting the Court of First Instance in some jurisdictions to re-assign certain cases among the investigating magistrates. While government officials, including the Prime Minister and the Minister of Justice, acknowledged that such initiatives had been taken, they explained that the measures were

¹⁷⁰ See IFES report, *supra*, at 16.

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ Interview with ANAMAH, Episcopal Commission for Justice and Peace, Réseau National des Droits Humains Haitiens (RNDDH), Bureau des Avocats International, July 2005.

necessary in order to address the problem of corruption, which they declare remains prevalent among some magistrates.¹⁷⁴ The Commission must emphasize that executive intervention of this nature in the management of specific cases before the courts is inappropriate and constitutes a serious threat to the independence and impartiality of the courts. Should concerns arise regarding the possible existence of corruption within the judiciary, they should be addressed through the development and implementation of a proper system of judicial oversight, as discussed below.

158. Information available to the Commission indicates that threats of improper influence over the work of the judiciary also arise from sources outside of the government, including pressure from individuals and groups with political and economic influence and threats and acts of violence by armed gangs and other sources in order to influence the outcomes of decisions or to prevent the completion of an investigation and prosecution. At the same time, as discussed above, the State has failed to provide adequate security for the safety of judges.

159. Further, the Commission has received reports from various sources including human rights advocates, members of the international community and confirmed by select members of the transitional government, that corruption is a problem within the judiciary and attempts to bribe members of the judiciary in exchange for favorable decisions on the party's behalf is commonplace. The fact that judges' salaries are so low, working conditions are extremely difficult and the state's lack of capacity to adequately provide security for its population contribute to an environment conducive to bribery and submission to political pressure on the part of judges, as magistrates are often left with no other option than to submit to such interventions in order to support themselves and their families and to avoid physical attacks and intimidation.

160. In order to address this phenomenon, the Commission believes that numerous measures are necessary. A functional and dynamic Conseil Supérieure de la Magistrature, as discussed below, could significantly reduce the tendency of outside actors to influence magistrates. The CSM could be especially effective by conducting a close monitoring of the judges and the courts, and by developing a code of ethics or conduct for judges, which judges would be expected to adhere to and reprimanded if they are found to act in violation of the code, as well as charges those who attempt to bribe or threaten judges. In this regard, according to members of human rights organizations and members of the HNP, there is no evidence indicating that a judge has ever been prosecuted on charges of corruption.¹⁷⁵ This information shows that the

¹⁷⁴ Interview with Prime Minister, April 21, 2005; Interview with Minister of Justice, April 22, 2005.

¹⁷⁵ Interview with MOUFHED, July 12, 2005; Interview with Inspector Coicou, Department of Research, HNP, July 11, 2005.

perceived problem of corruption in the judiciary is going unchecked, relating the message that this practice is acceptable, and thereby perpetuating a cycle of corruption and impunity for such offenses. This practice greatly impacts the public's confidence in the integrity of the judiciary and results in the distrust and disengagement of the population with the courts. Furthermore, security in the courts and for judges appears necessary to address the physical threat posed to judges. In this connection, representatives of the judges association as well as the Supreme Court and the Court of Appeal in Port-au-Prince expressed the need to secure a more robust police presence in the courts,¹⁷⁶ possibly through a specialized unit of the police to guarantee the safety of judges, especially when the rate of gang violence and intimidation of the population has acutely increased since January 2005 and the police force has not demonstrated the capacity to contain violent attacks in the country.

iii. The Lack of an Effective Oversight Body for the Judiciary

161. The Commission understands that the Conseil Supérieur de la Magistrature (CSM) is the body charged under Haitian law with the role of oversight of the judiciary, and that under a law of May 12, 1920 as supplemented and modified by two further laws dated January 12, 1925 and June 28, 1925, the role of the CSM was assigned to the Supreme Court (Cours de Cassation). The Commission also understands that in practice, the Supreme Court has not effectively exercised this mandate, and as a consequence there has been no proper mechanism available to supervise and rectify many of the problems relating to the role of judges in the court system. This is a serious deficiency in the court structure and the Commission urges the State to take measures to develop an effective system of oversight for the judiciary consistent with applicable international standards, including those under the Basic Principles on the Independence of the Judiciary.¹⁷⁷

162. In particular, information available suggests that the CSM, if rendered functional, has the potential of playing a significant role in promoting reforms to render the court system much more efficient, while keeping the misconduct in the courts in check. When functional, it would be possible for the CSM to implement structural, regulatory and administrative reforms such as

¹⁷⁶ Interview with ANAMAH, April 20, 2005, July 13, 2005; Interview with judges of the Supreme Court and Court of Appeal, Port-au-Prince, April 20, 2005.

¹⁷⁷ For example, Articles 17 to 20 of the Basic Principles on the Independence of the Judiciary address the discipline, suspension and removal of judges in the following terms: "17. A charge or complaint made against a judge in his/her judicial and professional capacity shall be processed expeditiously and fairly under an appropriate procedure. The judge shall have the right to a fair hearing. The examination of the matter at its initial stage shall be kept confidential, unless otherwise requested by the judge. 18. Judges shall be subject to suspension or removal only for reasons of incapacity or behaviour that renders them unfit to discharge their duties. 19. All disciplinary, suspension or removal proceedings shall be determined in accordance with established standards of judicial conduct. 20. Decisions in disciplinary, suspension or removal proceedings should be subject to an independent review. This principle may not apply to the decisions of the highest court and those of the legislature in impeachment or similar proceedings."

calling for regularized and standardized salaries for magistrates according to their rank, as well as improving their salaries, overseeing the overall functioning of the courts by enforcing the payment of court fees as well as making the appropriate changes in the court fees to reflect present day standards in the cost of living and which would constitute a stable source of revenue that would enable the courts to function properly and for judges to improve their performance. In order to address the common complaints from judges regarding working conditions and the lack of respect for their professional status due to the lack of a special ranking system with respective benefits and privileges, the CSM can serve the judiciary by improving the conditions for judges as well as enforce regulations that would render the judiciary much more efficient.

163. Most importantly, in order to combat the culture of corruption within the court system and to monitor the conduct of the judiciary in general, the CSM can be instrumental in the development and enforcement of a code of ethics for judges, and more precisely, the CSM could play a crucial role in the oversight of the conduct of magistrates by exercising the power to initiate investigations and issue sanctions for those who have been reported for misconduct. It appears to the Commission that the allocation of technical and financial assistance for the establishment and proper functioning of the CSM should rank high on the list of priority areas for the state and the international community where the objective is to render the justice sector operative and efficient.

iv. Prolonged Pre-charge and Pre-trial Detention and Lack of Access to Justice

164. Prolonged preventative detention, prolonged pre-trial delay, and substandard prison conditions are long standing problems in Haiti's prison system and indeed was observed by the Commission in its last report on the human rights situation in the country in 1995.¹⁷⁸ Information received during its most recent visits to the country confirm that these problems persist and have not been adequately addressed. It is essentially the responsibility of the state of Haiti to initiate long-overdue reforms of the judicial system in order to address the weaknesses that lead to slow judicial processes and the absence of investigations and prosecutions, and which result in widespread impunity.

165. In this respect, Article 7 of the American Convention similarly provides that any person detained shall be brought promptly before a judge and shall be entitled to be tried within a reasonable time. Article 26 of the Haitian Constitution stipulates more specifically that "no one may be kept under arrest more than forty-eight hours unless he has appeared before a judge to rule on the legality of the arrest and the judge has confirmed the arrest by a well founded decision." However, according to information available to the

¹⁷⁸ See IACHR "Report on the Situation of Human Rights in Haiti" OEA/Ser.L/v/II.88 Doc. 10 rev. 9 February 1995, para 281-295.

Commission, these requirements are systematically violated in Haiti. Observations made by groups monitoring human rights in Haiti have reported that detainees can easily spend between 3-5 months in detention cells within the capitol city's police stations before they are seen by a judge.¹⁷⁹ According to a November 2004 report prepared by the Office of the Ombudsman, for example, an average of approximately 85% of individuals held in detention centers in Haiti's 10 geographic departments have not been tried or convicted. This situation was also confirmed during the Commission's visit to the National Penitentiary in April 2005, where it discovered that of the 1,052 inmates in the prison only 9 were convicted of any crime. Similarly, according to the Minister of Justice, of the 117 women held in Petionville prison for women, only 4 had been sentenced.¹⁸⁰ Further, detainees are known to suffer delays from several months to years before seeing a judge and are frequently subjected to periods of pre-trial detention that are longer than the sentences they would have received if convicted.

166. A closer review of the situation indicates that many factors have contributed to making prolonged pre-trial detention a systemic and widespread problem in Haiti. For example, nongovernmental organizations informed the Commission that in some cases individuals are arrested en masse and detained in police detention cells on the grounds that the police are conducting investigations and are holding the persons for questioning. On this basis, individuals are held for months and subsequently released without ever seeing a judge. In other cases, the backlog on the judge's docket combined with the neglect by judges to effectively grant prompt Article 26 hearings, initiates delays in the ensuing process, such as the subsequent opening of an investigation and charging of the individual. Accordingly, the consistent neglect of deadlines, which has been observed by numerous human rights organizations in Haiti, is one factor that causes the delay in prompt hearings by judges.

167. According to representatives of the magistrate's association, there are four main factors that contribute to the delay in the criminal justice system. They are:

- (1) the extremely limited working hours of the courts. In this respect the Commission understands that traditionally court hearings are only held in the morning and that a recent effort to convene hearings in the afternoons has not been successful because the same number of judges were asked to remain for the afternoon hearings without receiving an accompanied wage for the additional hours of service.¹⁸¹ The magistrate's association has suggested that sufficient resources

¹⁷⁹ See *Persistance du Climat de Violence et d'Insecurite et Violations des Droits Humains des Personnes privees de liberte: NCHR lance un S.O.S.*, NCHR, Rap/NO1/A05), 5.

¹⁸⁰ Interview with Minister of Justice, July 12, 2005.

¹⁸¹ Interview with MOUFED, July 12, 2005.

should be provided to ensure that substitute judges are available 24 hours per day for emergency matters;¹⁸²

- (2) judges have failed to use the available mechanisms in the law to expedite cases. In particular, the Commission was told that there exists an expedited process envisioned for the “*delit correctionnelle* and arrest in flagrant *delit*” for minor offenses which allows such matters to be addressed by the judge immediately (“*comparution immediate*”) and gives the judge the power to release the individual if there is insufficient evidence or to go to trial immediately. ANAMAH suggests this should be applied more often so as to avoid the backlog in the system;¹⁸³
- (3) the lack of motivation of judges. According to the magistrates, this problem is linked to the poor working conditions for judges, low salaries, lack of public confidence in the system, and the fact that judges lack a special title with special privileges as magistrates, instead they are treated like any other civil servant. Further, ANAMAH judges indicated that a lack of an adequate salary means that judges spend their time doing other things (other jobs) and are not able to be fully committed to fulfilling their duties as a judge;¹⁸⁴
- (4) the lack of legal representation for indigent defendants. Under Haitian law and according to provisions in the American Convention, criminal defendants have the right to be assisted by legal counsel in their legal proceedings before the courts. In Haiti, although this is a state obligation, there is a severe lack of legal representation made available to criminal defendants and therefore this greatly inhibits the ability of judges to conduct prompt hearings before the courts. This problem is due to the fact that Haiti lacks an adequate number of trained lawyers to provide representation, the judiciary lacks the budget to supply adequate legal representation to defendants, and Haiti does not have a developed notion or practice of free legal aid services or pro bono counsel to fill the gap of representation by the state. Further, without legal representation, detainees are virtually dispossessed of the right to challenge the legality of their detention through the writ of habeas corpus, a right protected under Articles 7, 8 and 25 of the American Convention, and advocates confirm that writs of habeas corpus are rarely used in Haiti. In the few cases where such a writ is presented however, legal practitioners indicate that such requests for review are generally denied by the Haitian judiciary. In an effort to address this problem, the magistrate’s association developed a proposal, with the assistance of the National Center for State Courts based in the United States, to install a public defenders service in Haiti in order to ensure that the state fulfills its obligation under domestic and international law of providing competent legal counsel to criminal suspects and defendants. The plan is to compensate the lawyers according to the

¹⁸² Interview with ANAMAH, July 13, 2005.

¹⁸³ Interview with ANAMAH, July 13, 2005.

¹⁸⁴ Interview with ANAMAH, July 13, 2005.

number of cases treated per week. The status of this initiative was uncertain at the time of the Commission's visit in July 2005, as the then newly-appointed Minister of Justice still needed to review the proposal and funding needed to be secured, before it could be implemented. If implemented however, this proposal could go some way to alleviating the longstanding problem of access to justice by criminal defendants and satisfy the State's commitments under international and national law.

168. One notable case that many observers have criticized in the context of delay in the Haitian justice system has been the June 2004 arrest and subsequent detention of former Haitian Prime Minister Yvon Neptune, apparently in connection with his suspected involvement in the killing of approximately 15 individuals in La Scierie, near Gonaïves in February 2004.¹⁸⁵ It has been alleged that Mr. Neptune did not see a judge until May 2005 and therefore in clear violation of section 26 of the Haitian Constitution. On September 14, 2005, Neptune and 29 others were indicted for their suspected involvement in the La Scierie killings and ordered to be brought to trial without a jury. The Commission has received a petition on behalf of Mr. Neptune on this issue, which is currently being processed in accordance with the American Convention and the Commission's Rules of Procedures.

169. The investigation capacity of the police authorities, specifically the Central Department of Judicial Police, and the examining magistrates is another area cited by human rights observers in Haiti as an area that requires immediate attention and support in order to render the work of these individuals much more effective and efficient. According to information gathered during its most recent trip to Haiti in July 2005, the Commission was informed that the Judicial Police, who are charged with conducting preliminary investigations into crimes committed, frequently fail to complete investigations in a timely fashion, thereby allowing suspects or other individuals detained on the grounds of investigation, to languish in police detention cells for months at a time under inhumane conditions and in violation of Article 26 of the Constitution.

170. The pre-charge process before the examining magistrates is similarly lengthy. According to government officials and nongovernmental organizations,¹⁸⁶ an examining magistrate hand is given an initial two months to conduct a preliminary investigation, since the date from which the file is communicated to him/her by the public prosecutor. This stage of the investigation allows the judge to collect the necessary evidence in order to determine whether there is sufficient evidence to charge the suspect. According to the Haitian Code of Criminal Procedure, upon completion of the 2 months, the judge's opinion is communicated to the public prosecutor who is

¹⁸⁵ See IACHR Press Release 19/05, "IACHR Expresses Concern over the Situation of Yvonne Neptune," May 6, 2005.

¹⁸⁶ Interview with Bureau des avocats internationaux, July 12, 2005; interview with Minister of Justice, July 12, 2005.

given one month to communicate his opinion/recommendation on the issue to the examining magistrate. If the prosecutor is satisfied with the investigation, the examining magistrate is then expected to issue her final decision of charging the suspect or not. Alternatively, if the prosecutor is unsatisfied with the adequacy of the investigation, he can address a request to the examining magistrate to obtain evidence specific to a particular matter, who has one month to respond. During this period, a defendant is normally held in detention. In this respect, the Commission was told that although Article 80 of the Code of Criminal Procedure permits the provisional release of a defendant during a magistrate's investigation, it is entirely in the discretion of the magistrate and is not frequently used.¹⁸⁷

171. In addition to the procedure stipulated in the Haitian criminal procedure code, the lack of resources suffered by both the police investigators and the examining magistrates, is an added factor leading to an excessively long period of a pre-charge investigation of a suspect. Police and examining magistrates would benefit from receiving enhanced specialized training, equipment and facilities that would assist them in their task of conducting adequate investigations into crimes committed. For example, there is an acute need to further develop the area of forensic testing of physical evidence that is quite essential for criminal investigations. Further, the capacity to conduct autopsies in murder cases and medical or blood testing, in cases of rape specifically, is seriously lacking and leads to inadequate or even the lack of conclusive results in criminal investigations.

172. As a result of these factors, there are a large number of cases that languish in court for excessive periods, or alternatively, cases for trial are ill-prepared and defendants are thus released on the basis of the lack of sufficient evidence for a conviction. The lack of adequate investigatory capacity and consequently the lengthy periods for preparation of cases for trial are reflective in the number of cases typically scheduled for trial in the criminal assises (special criminal trial sessions held annually). For example, in August 2004, there was a total of six trials held for the year of 2004, of which, one case was not heard on the grounds that the file was not sufficiently prepared to go to trial, another case was not heard because the defendant was not present at trial (escape from prison), three others were heard with the defendants in absentia due to their escape from prison, and finally, the case of Jackson Joanis and Louis Chamblain was heard in which the two were acquitted for lack of sufficient evidence to convict them for the murder of Antoine Izmary in 1993.¹⁸⁸ The latter case was particularly controversial because both of the defendants are former leaders of the paramilitary group, FRAPH, and are suspected of being responsible for a number of human rights violations, including massacres of civilians, extrajudicial killings of political opponents,

¹⁸⁷ Interview with Bureau des avocats internationaux, July 12, 2005.

¹⁸⁸ See *Justice: La Première Assise Criminelle de l'ère post-Aristide Souleve l'Indignation Générale*, NCHR, 1 (2004).

torture, rape and massive destruction of property.¹⁸⁹ Likewise, no more than ten cases were prepared to be heard in the *assises criminelles* held this past August 2005. Meanwhile, there existed approximately 1000 detainees in the National Penitentiary with only a handful convicted of crimes and serving their criminal sentences.

173. Based upon the information gathered, it is clear to the Commission that urgent reforms are necessary at all levels of the court system in order to address the problem of prolonged detention. These measures should include, among others, expediting a review of the legal status of all persons presently in detention in Haiti, streamlining and enforcing the procedures by which individuals are processed at and following their arrests, and providing sufficient resources to ensure that all detainees are brought promptly before a judge and tried within a reasonable time in compliance with national and international legal standards.

v. Law Reform

174. One of the recurring concerns received by the Commission during its several visits to Haiti over the past two years has been the need for extensive reform to the country's antiquated laws. As indicated in Part IV(C) of this report, most of Haiti's legal texts are modeled after the French codes dating from the 1800's and very few reforms have since taken place, resulting in laws which in many instances do not adequately reflect or address developments in Haitian society over the past 200 years and do not reflect modern standards of justice and human rights. During its meetings with the Supreme Court, the Court of Appeal and the Court of First Instance in Port-au-Prince in April 2005, judges lamented the lack of legislative reforms in the country and confirmed that the absence of law reform has undermined their effectiveness in many ways. In particular the judges indicated that the legal processes stipulated in Haiti's civil code are very complicated and time consuming and result in significant and largely unnecessary delays in the adjudication of civil cases. The President of the Republic, formerly the President of the Supreme Court, echoed these concerns and provided examples of anachronisms in civil and criminal proceedings that, in his view, must be changed if the legal system is to move forward.¹⁹⁰

175. The Commission is particularly concerned in this respect with the failure of Haitian laws and procedures to reflect modern developments

¹⁸⁹ See *Pere Jean-Marie Vincent Assassine Une Deuxieme Fois: Le RNDDH denonce le caractere complaisant de l'Arret-Ordonnance de la Cour d'Appel de Port-au-Prince et crie au scandale*, RNDDH, (2005) ; See also, *Release of Former Paramilitary Leader Draws Condemnation*, Amy Bracken, VOA News, 26 August 2005.

¹⁹⁰ The President referred, for example, to provisions in the civil code requiring a written document and a payment in gourdes for certain transactions, where the value of the sum has fallen over time and the requirements are applied in circumstances where they are no longer practicable. Interview with the President of Haiti, April 19, 2005.

pertaining to the rights of women, as nongovernmental organizations who work in this area indicate that both laws and those responsible for applying them, including judges and police, are not sensitized to issues of domestic violence and other problems faced by women in Haiti and women are frequently the victims of discrimination and other disadvantages in the application of laws. For example, notwithstanding the fact that rape and other forms of sexual violence are a widespread problem in Haiti, victims frequently do not have access to medical certificates and are unable to present timely declarations to the authorities.¹⁹¹

176. Accordingly, there appears to be general agreement among national as well as international authorities that measures must be taken to design and implement a comprehensive study and reform of Haiti's laws. In the Commission's view, this initiative must focus upon simplifying and modernizing the rules and procedures in order to ensure that legal processes are both fair and expeditious, and must also ensure that the laws protect and ensure the rights provided for under the American Convention and other pertinent human rights instruments in accordance with Article 2 of the American Convention.

vi. Impunity for Human Rights Violations

177. Among the serious effects of longstanding deficiencies in the Haitian justice system has been the perpetuation of impunity for present and past human rights violations, as well as deterioration of public confidence in the system. This problem has stemmed from deficiencies in mechanisms to monitor, investigate, prosecute and punish human rights violations, including such atrocities as extrajudicial executions, torture, and widespread crimes of sexual violence, including rape, as well as shortfalls in government policies and commitments in these areas.

178. As suggested by the observations above, the justice system in Haiti presently lacks the capacity to undertake accurate and effective measures to monitor compliance with human rights protections and to investigate, prosecute, and punish violations of those protections. Neither the police nor the courts have sufficient resources or training to fulfill these obligations. In addition, the failure to successfully prosecute crimes begins at the very outset of the process, as inadequacies in initial investigations frequently result in the dismissal of charges due to insufficient information. These systemic deficiencies, coupled with the lack of political will on the part of the Haitian authorities to conduct such investigations, perpetuate the cycle of impunity.

179. Impunity for human rights violations and other crimes is not a new phenomenon in Haiti, but rather has been a long term problem monitored

¹⁹¹ Interview with MOUFED, SOFA and Enfofam, April 19, 2005.

by the Commission and other observers over many years.¹⁹² The Commission's discussion below indicates, high profile cases of atrocities that lack any effective investigation or prosecution are numerous and stretch back into much of Haiti's recent history. Unfortunately, the Commission's investigations indicate that this deficiency has continued to the present day. During its visits to Haiti over the past two years, the Commission continued to receive reports of failures on the part of authorities in Haiti to effectively investigate, prosecute and punish serious violations of human rights, as well as claims that criminal proceedings have been pursued for political or other inappropriate purposes. The lack of effective measures to address impunity has also had the effect of further deteriorating public confidence in Haiti's justice system and deterred people from coming forward as victims or witnesses to complain about present or past human rights violations.

180. In this respect, the Commission reiterates and emphasizes the State's obligation to end impunity for all human rights abuses through demonstrably fair and effective procedures that conform with international standards, as well as the corresponding right of all persons to due process of law and to be heard by a competent, independent, and impartial tribunal, without discrimination of any kind. As the Prime Minister noted during his meeting with the Commission in April 2005, it is crucial that all cases of human rights abuses be investigated and prosecuted on an equal basis in order to ensure that justice is done.¹⁹³

181. To illustrate the pervasive problem of impunity in Haiti's justice system, the Commission has highlighted particular cases which have recently suffered significant setbacks or have witnessed no significant progress and which perpetuate the cycle of impunity for human rights violations. The Commission notes that these are exemplary cases illustrating the various delays and irregularities that occur more broadly in the court system in Haiti.

Raboteau Massacre 1994 - As previously documented by the Commission, in April 1994, members of the paramilitary group *Front Pour l'Avancement et le Progres d'Haiti* (FRAPH) entered the town of Raboteau near Gonaives and proceeded to commit numerous acts of violence against the inhabitants, including murder, rape, torture, and the destruction of property.¹⁹⁴ In April 1999, results of the investigation into the Raboteau massacre were sent to the

¹⁹² See, e.g., IACHR, Report on the Human Rights Situation in Haiti 1979, OEA/Ser.L/V/II.46, Doc. 66 rev. 1 (13 December 1979), Chapter III; IACHR, Report on the Human Rights Situation in Haiti 1990, OEA/Ser.L/V/II.77, Doc. 18 Rev. 1 (8 May 1990), Chapter III; IACHR, Report on the Human Rights Situation in Haiti 1995, OEA/Ser.L/V/II.88, Doc. 10 Rev. (9 February 1995), Chapter V.

¹⁹³ Interview with the Prime Minister of Haiti, April 21, 2005.

¹⁹⁴ The Commission first made reference to the killings in Raboteau in its country report of 1995. See IACHR "Report on the Human Rights Situation in Haiti" OEA/Ser.L/V/II.88, Doc. 10 rev. 9 February 1995, para. 155-161.

Criminal Court for prosecution of the suspects and in November 2000 during a special session of the Criminal Court in Gonaïves, a trial by jury was held leading to the convictions of 15 individuals for their involvement in the Raboteau massacre. Several of these were sentenced in absentia, as they were not present in the country. In Haiti where impunity has become widespread, the Raboteau trial, which concluded in 2000, stands out as a landmark case amongst the many cases that continue to languish in Haitian courts.

However, on May 3, 2005, a decision by the *Cour de Cassation* (highest court in the country) caused grave concern in the human rights community in Haiti and international rights advocates when it overturned the trial by jury decision by the Gonaïves Criminal Court, citing a lack of jurisdiction by the lower court. Particularly, the Court of Cassation applied article the law of March 29, 1928 and 110 of the Criminal Procedure Code, to conclude that in a case dealing with 'connexite' (a crime involving numerous victims and numerous perpetrators shall be tried by a judge alone and not by a jury), and if one of the infractions is determined to be a crime, the investigating judge, may remand the entire case to the lower court to be tried without a jury. According to this doctrine, the Gonaïves Criminal Court jury trial decision was rendered null and void. According to international monitors and Haitian advocates, the decision by the judge of the Court of Cassation is based on a law that pre-dates the Haitian Constitution and conflicts with Section 50 of the Constitution calling for jury trials in criminal matters that involve "crimes of blood" ("crimes de sang") or political offenses¹⁹⁵. Consequently, the decision by the Court of Cassation indicates a conflict with the guarantees in the Haitian Constitution, the highest law in the land.

As a consequence of the highest court's decision on May 3, 2005 to reverse the jury trial decision of the lower court, Louis Chamblain was acquitted by the Appeal's Court of Port-au-Prince on July 26, 2005 and subsequently released from prison in August 2005. Chamblain, a former leader of the paramilitary group-FRAPH during the 1990s, and former leader of the armed uprising that led to the ouster of Jean-Bertrand Aristide in February 2004, is suspected of having been responsible for the commission of numerous human rights violations, such as killings and acts of torture of hundreds of persons during the military coup regime that lasted from 1991 to 1994. Chamblain is also accused of having been responsible for the murder of Antoine Izmerly in 1993, discussed below, and for the crime of arson in Cite Soleil in the same year, that which claimed the lives of several inhabitants and destroyed the property of hundreds. Although he was tried and sentenced on two counts of murder in April 2004, he was later acquitted due to a lack of sufficient evidence produced by the investigation. Chamblain's release in August 2005 resulted in strong criticism by the Haitian public and human rights advocates as illustrative of serious irregularities in the criminal justice process leading to widespread impunity for

¹⁹⁵ See Article 50 of the Constitution of Haiti ("jury trials are provided for criminal matters, specifically for crimes of blood and for political offenses.")

human rights violations and thereby encouraging individuals to act outside the law.¹⁹⁶

Antoine Izmerly - On September 11, 1993, Antoine Izmerly was assassinated by members of the Haitian paramilitary group FRAPH during Sunday mass at the Sacred Heart Church in Turgeau, Port-au-Prince.¹⁹⁷ According to witnesses, the perpetrators dragged him out of the church and shot him to death in the street. Subsequently, two former FRAPH paramilitaries, Jackson Joanis and Louis-Jodel Chamblain, were tried for Izmerly's murder, and in August 2004, the criminal court that heard the case decided to acquit the former leaders of FRAPH for their involvement in the murder of Antoine Izmerly, citing the lack of sufficient evidence produced by the examining magistrate to convict Chamblain and Joanis, the principle authors of the Izmerly murder. Accordingly, they were acquitted and ordered released from prison. Human rights organizations who have followed the developments in the Izmerly trial suggest a serious lack of will on the part of the judicial authorities to effectively render justice in this case, noting the authorities' complete lack of due diligence and willingness to obtain material evidence and secure the testimony of material witnesses. This Commission similarly observed based upon available information that the trial of Chamblain and Joanis was hastily organized, was held overnight, and only one witness testified for the prosecution, and that, when viewed in light of the circumstances of Mr. Izmerly's death "these accounts strongly suggest that inadequate efforts were undertaken to investigate, secure evidence and prosecute Mr. Izmerly's murder."¹⁹⁸

Father Jean Marie Vincent - Father Jean Marie Vincent, a catholic priest and supporter of former President Jean Bertrand Aristide, was assassinated on August 28, 1994.¹⁹⁹ Since the date of his death, an investigation was launched, but according to local nongovernmental organizations, has suffered a number of set-backs and irregularities. For example, sources indicate that the case has been transferred four times between different examining judges and one examining judge was forced into exile due to serious threats made against his person.²⁰⁰ This ultimately resulted in a decision by the Court of Appeals of

¹⁹⁶ See Alfred de Montesquiou, "Haiti frees rebel leader blamed in deaths", Associated Press, August 12, 2005.

¹⁹⁷ See IACHR reference to case of Antoine Izmerly in "Report on the Human Rights Situation in Haiti" OEA/Ser.L/II.85 Doc. 9 rev. 11 February 1994, para. 225; See also, IACHR press release No 17/04, "IACHR Expresses Concern Regarding Trial for the Murder of Haitian Activist Antoine Izmerly," (According to public accounts, former Haitian paramilitary leader.)

¹⁹⁸ IACHR Press Release 17/04, "IACHR Expresses Concern Regarding Trial for the Murder of Haitian Activist Antoine Izmerly," August 20, 2004.

¹⁹⁹ See IACHR reference to case of Jean Marie Vincent in "Report on the Human Rights Situation in Haiti, 1995" OEA/Ser.L/v/II.88, Doc. 10 rev. 9 February 1995, para. 151.

²⁰⁰ See Father Jean- Marie Vincent Assassinated a Second Time : RNDDH denounces the complacent character of the ruling of the Port-au-Prince Court of Appeals and issues an outcry; 6 July 2005.

Port-au-Prince to acquit the suspects in his murder case on June 1, 2005. After nine years of a prolonged investigation, the main suspect, Jackson Joanis, who was initially taken into custody by authorities, was ordered released on the grounds that there was insufficient evidence to charge him for this crime. According to human rights organizations monitoring the treatment of this case by the courts, material evidence was not considered by the Court of Appeals and consequently led to the finding of insufficient evidence to charge the suspects, Joanis and Yuri Latortue.²⁰¹

Jean Leopold Dominique & Jean Claude Louissaint - In April 2000, Jean Dominique, a prominent and outspoken journalist who owned and operated Radio Haiti Inter since the 1980's, was assassinated on the grounds of the radio station. An employee of the station, Jean Claude Louissaint, was also killed during the attack by unidentified armed individuals. The death of Dominique was a shock to the entire nation, as he was a known advocate for social justice during Haiti's repressive regimes in the 1980s and had gained the respect and support of the general population in Haiti. Five years since the death of Dominique, the Haitian justice system has not produced any significant results of the investigation into the murder nor a successful prosecution of the authors of this crime. According to reports by human rights organizations in Haiti, an investigation has been characterized by several irregularities and setbacks have delayed the process. In particular, the unexplained disappearance of material evidence in the hands of the authorities is highly suspect and has prevented the completion of a proper and effective investigation in this case. In a public statement issued in December 2004, the nongovernmental organization Réseau National de Défense des Droits Humains (RNDDH) cited several examples of the loss of evidence or the disappearance of material witnesses such as the disappearance of the vehicles used by the perpetrators that were in the custody of the judicial police at the time; the suspicious death of the principle suspect in the case, Jean Wilner Lalane; the murder of Panel Renel, a second suspect in the case and who was allegedly murdered while in the custody of the Leogane police; numerous threats made against Judge Gasant that led to the eventual abandonment of his post and flight from Haiti, and finally intervention by the executive branch.²⁰²

Guy Malary - Impunity in the case of Guy Malary is a source of particular concern for the Commission, as the circumstances of his murder are the subject of a report published by the Commission in 2002. According to the Commission's findings, Mr. Malary was ambushed and assassinated, together with his two bodyguards and driver, in Port-au-Prince on October 14, 1993.

²⁰¹ See "Father Jean- Marie Vincent Assassinated a Second Time" : RNDDH denounces the complacent character of the ruling of the Port-au-Prince Court of Appeals and issues an outcry; 6 July 2005.

²⁰² See Open Letter to the Minister of Justice and Public Security « Disappearance of Evidence in the Assassination of Jean L. Dominique and Jean-Claude Louissant » 8 December 2004.

The Commission has followed the case since 1994²⁰³ and, following the lodging of a petition in August 1994, published an admissibility report on the case in 2000²⁰⁴ and, subsequently, a merits report in 2002.²⁰⁵ In its decision on the merits, the Commission concluded that the state failed in its responsibility of protecting the right to life, fair trial and judicial protection and further recommended conducting a "full, prompt, impartial and effective investigation....in order to establish the responsibility of the authors of the violation of the right to life." Despite follow up procedures undertaken by the Commission in 2003 and 2004, the State has not provided any information as to measures taken to implement the Commission's recommendations.²⁰⁶

182. In addition to these prominent cases, there are numerous other examples of cases that do not appear to have been the subject of effective investigations by the authorities in Haiti. These include, as noted in Part IV(D)(1) above, the Fort National Massacre in October 2004 and the December 2004 prison break from the National Penitentiary that claimed the lives of 10 inmates. More recently, the people in Port-au-Prince have suffered from various violent incidents that have, as of this writing, gone uninvestigated and the perpetrators of these crimes remain at large. In particular, the burning down of the central market area *Marche Tete Boeuf* on May 31, 2005 shocked the population and deprived numerous market vendors from carrying on their livelihood. Ten deaths were also reported as a result of the act of arson on the market. In Village de Dieu, Port-au-Prince in April 2005, armed individuals are allegedly responsible for killing 15 civilians and wounding 30 others in unverified circumstances. Further, there were alleged reprisal killings of near fifty individuals following the murder of the gang leader, Emmanuel Wilmain, on July 6, 2005 in Cite Soleil, but as there is no sustained presence of the HNP or MINUSTAH in this gang ridden zone of the city, efforts to confirm these deaths have been largely ineffective.²⁰⁷ Finally, since early 2005 to the time of this writing, reports from Haitian authorities and NGOs alike reveal that all of the inhabitants of Port-au-Prince have been exposed to the rash of kidnappings that have been perpetrated on Haitian civilians, on an average of 5-10 kidnappings per day, and to date, the majority of these perpetrators remain at large while few of the perpetrators of these crimes have been prosecuted.

²⁰³ See IACHR, Report on the Situation of Human Rights in Haiti, OAS Doc. OEA/Ser.L/II.85 Doc. 9 rev. 11 February 1994, para 226.

²⁰⁴ Report N° 113/00, Case 11.335, Guy Malary (Haiti), Annual Report of the IACHR 2000, paras. 1-2.

²⁰⁵ See Report N° 78/02, Case 11.335, Guy Malary (Haiti), Annual Report of the IACHR 2002.

²⁰⁶ See Annual Report of the IACHR 2003, Chapter III(D); Annual Report of the IACHR 2004, Chapter III(D).

²⁰⁷ Interview with former Director General of the HNP, July 13, 2005; Interview with Collectif des Notables de Cite Soleil ("CONOCS"), July 14, 2005.

183. The authorities' apparent inaction in these cases leaves the victims without redress and the perpetrators at large to continue to commit crimes with impunity. The Commission does not at this stage propose to reach any conclusions as to the compatibility of these various proceedings with the American Convention on Human Rights. That said, the Commission wishes to express its provisional concern regarding the pattern that appears to be established by these cases, which suggests that no progress has been made to quell the impunity, and indeed that the State may be regressing in this area. In this respect, the Commission reiterates and emphasizes the State's obligation to end impunity for all human rights abuses through demonstrably fair and effective procedures that conform with international standards, as well as the corresponding right of all persons to due process of law and to be heard by a competent, independent, and impartial tribunal, without discrimination of any kind.

184. In light of the severe weaknesses in the Haitian judicial system, efforts to properly investigate, prosecute and punish these and other past atrocities might necessarily involve a role for the international community, as suggested by the proposal by the Acting Secretary General of the OAS to establish a mixed national-international commission to break the impasse over the situation of former Prime Minister Yvon Neptune. In this regard, the Prime Minister expressed to the Commission his willingness to consider well-reasoned proposals that might involve some form of cooperation or other involvement on the part of the international community in addressing all prominent cases of human rights violations. In the Commission's view, measures of this nature may include pursuing investigations through an independent commission of inquiry or similar procedure comprised of persons chosen for their recognized impartiality, competence and independence. Similarly, trials of individuals suspected of such atrocities might be conducted before a specially-constituted panel or chamber of the civilian courts, as has recently occurred, for example, in Sierra Leone and Cambodia. Also as in these examples, such a mechanism might incorporate some degree of international participation in the investigation and/or trial of human rights violations. In all instances, the procedures employed in investigating and trying all human rights violations must conform with the minimum standards of due process and the right to a fair trial under Article 8 of the American Convention including the right to be tried by a competent, independent and impartial tribunal.

vii. Recent State Measures to Improve the Administration of Justice in Haiti

185. The Commission acknowledges that some efforts have been made by the present government in Haiti and its institutions to attempt to address some of the problems in the administration of justice. These include a recent plan developed by the Ministry of Justice to target certain problem areas of the justice system, as well as the ongoing work of the Office of the Ombudsman ("OPC").

186. In particular, the Commission was encouraged by its meeting with the newly installed Minister of Justice in July 2005, in which the Minister informed the Commission about a plan of action developed by the Ministry and to be implemented immediately with the financial and technical assistance of the international community.²⁰⁸ The plan targets 12 objectives relating to the administration of justice, which include reducing the problem of prolonged pretrial detention, addressing impunity for human rights violations and crimes generally, reorganizing and reinforcing the capacity of the Ministry of Justice, taking steps to address the institutional independence of the judiciary by initiating respective legal reforms, the investment of resources in order to restore damaged court houses, offering specialized training for judges, and promoting the public's confidence in the justice system through improved access to justice and more efficient judicial processes. The Commission is encouraged by the State's endeavor and looks forward to receiving information as to its implementation and success. At the same time, the Commission is concerned that the plan's timeframes, which target completion of all objectives by December 2005, may be unrealistic. Rather, given the long term and fundamental problems in the justice system, it may be necessary to develop and expand the plan's objectives over a multi-year period, and to this extent may serve as a valuable starting point when a new government is elected.

187. Concerning some of the specific details in the plan, the first objective targets the pressing problem of prolonged pretrial detention of individuals. In particular, the plan envisions the creation of an ad-hoc committee to review all of the files of detainees in the prisons located in Port-au-Prince, where the great majority of the prison population is concentrated. The aim of the program is to quickly and efficiently reduce the percentage of the prison population in prolonged pretrial detention from 95% to 75% over the six months period between July and December.

188. As part of the first phase of the plan, the ad hoc committee, which would consist of the Chief Justice of the Court of the First Instance, the Public Prosecutor of the civil court of Port-au-Prince, a representative of the Bar Association, the Director of Judicial Affairs from the MOJ, the Director of the Prison Administration and two representatives of human rights organizations, was scheduled to visit all the prisons in Port-au-Prince to undertake an initial assessment and review of the files in the prisons, while the second phase entailed the actual review and decision on how to proceed with each of the files. In cases of minor offenses, the committee could dispense of these quickly, while the more serious cases would be assigned to specific judges to be fast-tracked in the courts. The review process would take place in the prison facilities, where a special ad-hoc hearing room would be set up for the committee to review files and the detainee was to be represented by legal

²⁰⁸ *Ministère de la Justice et de la Sécurité Publique, "Plan d'Action Semestriel, Juillet-Décembre 2005, Composante Justice, Matrice Operationnelle,"* provided at meeting with the Minister of Justice, July 12, 2005.

counsel arranged by the Bar Association. At the time of the Commission's visit in July, the committee had completed initial visits to the prisons in Petionville, Carrefour, Archaie and the National Penitentiary. The Commission also understands that the United States government has agreed to provide funding for the legal aid providers and that a donation of 4 vehicles for the transportation of detainees and/or judges between the respective courts and prisons in the city was received by DAP, although it was unclear whether there would be sufficient funds to support all aspects of this initiative.

189. Standardization of legal forms is another initiative taken by the MOJ in an effort to expedite the process of arrest and detention. These forms are expected to be available at police stations and in the courts for immediate access to the appropriate authorities. Such forms will cut down on the time it typically takes for such orders to be drafted and issued by authorities.

190. The Commission will follow up on the implementation of these measures with interest. At the same time, the Commission considers that this endeavor must be coupled with longer term initiatives to address the structural problems within the court and prison administration that, unless resolved, will continue to generate the problem of prolonged pre-trial detention.

191. According to the Ministry's plan, the second objective relates to the struggle against impunity for crimes committed on Haitian territory, and more specifically, gross human rights violations. In this respect, the plan proposes to expedite significant or high-profile cases, reinforce the investigatory capacity of the prosecutor's office, reinforce the criminal justice sector, train judges in the area of sexual based violence against vulnerable groups, and develop a procedure to treat and prosecute kidnapping cases, which have seen a significant increase since January 2005. As with the issue of prolonged detention, the Commission is encouraged by such initiatives and hopes that partner agencies will be in a position to support such initiatives in an effort to significantly advance the many human rights cases that have lingered in the courts for several years.

192. Finally, the Commission received information indicating that some measures have or will be taken in the area of law reform as well as reinforcing Haiti's international law commitments. Concerning law reform, which is addressed in part in objective 11 of the Ministry's plan, the Commission understands that a reform was recently made to the definition of rape in the criminal code, which broadened the definition to include sexual aggression and which addressing gender bias in the language of the original text which placed the burden of proof on the victim.²⁰⁹ The decree of July 6, 2005 was published in the *Moniteur*, the official government publication, on August 11, 2005, entitled « Decree to modify the law on sexual aggression and

²⁰⁹ Interview with the Minister of Women's Affairs, September 2004; Interview with MOUFED, July 12, 2005.

to eliminate discrimination against women.²¹⁰ In light of the serious problem of rape and other forms of sexual violence committed against women and girls in Haiti and the lack of accountability for perpetrators of these atrocities, the Commission urges the State to enact and enforce the law as quickly as possible. With respect to these and other legislative changes, the Commission appreciates that the legal impact of the reforms may be limited due to the absence of a sitting Parliament and the short term and exceptional nature of the present government. At a minimum, however, the decrees may serve as proposals for consideration and subsequent adoption when a new government is elected and facilitating the task of the newly elected parliament in promulgating necessary laws.

193. With respect to Haiti's international commitments in the area of human rights, in April 2005 the Prime Minister informed the Commission of his commitment to complete the ratification of all outstanding regional human rights treaties to which Haiti is not yet a state party, including the Protocol of San Salvador, the Protocol on the Abolition of the Death Penalty, the Inter-American Convention to Prevent and Punish Torture, the Inter-American Convention on Forced Disappearances of Persons, and the Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities. This initiative was also confirmed by the Minister of Foreign Affairs in July 2005, who further indicated that, at the Commission's suggestion, an interagency committee would be established in order to improve the coordination and interaction between the state institutions and the Commission regarding correspondence on human rights petitions, requests for information, and other matters. Indeed, the Commission understands that the government issued a number of decrees in April 2005 in connection with ratification of the Inter-American Convention Against Torture, the Inter-American Convention Against the Fabrication of the Traffic of Illicit Firearms, Ammunition, Explosives and Related Materials, and the Inter-American Convention Against the Trafficking of Minors.²¹¹

194. As with domestic law reforms, the Commission understands that the immediate impact of these measures relating to Haiti's international commitments may be limited, given their adoption by a transitional government and in the absence of a functioning Parliament. At the same time, the Commission is hopeful that these measures will form an important foundation that can be ratified and built upon when a new government is elected.

195. The Commission has also followed with interest the work of the Office of the Ombudsman over the past two years, particularly in relation to

²¹⁰ Interview with MOUFED, 12 July 2005.

²¹¹ See « *Le Moniteur* » : Official Journal of the Republic of Haiti 159th year, No. 2 (January 8, 2004) ; See « *Le Moniteur* » : Official Journal of the Republic of Haiti 160th year, No. 28 (April 11, 2005), See « *Le Moniteur* » : Official Journal of the Republic of Haiti 160th year, No. 30 (April 18, 2005).

such issues as prison conditions, prolonged pre-trial delay and the rights of women. In this respect, Chapter IV of the Haitian Constitution establishes the Office of the Ombudsman (“Office de la Protection du Citoyen” or “OPC”), with a mandate to protect all individuals against all forms of abuse by the public administration.²¹² The Ombudsman is appointed by consensus between the President of the Republic, the President of the Senate and the President of the Chamber of Deputies for a nonrenewable term of 7 years,²¹³ and has assumed an active role in the protection and promotion of human rights in Haiti. The Commission has long followed the developments of the Ombudsman’s office during its on-site visits and has noted during its most recent visits in 2005, the marked progress of the office in its role of protecting the human rights of Haitians, specifically, by the development of additional program areas and the office’s efforts at extending its promotional activities to cover Haiti’s 10 administrative departments.

196. In particular, during meetings in September 2004, April 2005 and July 2005, the Ombudsman and staff from his office informed the Commission that they had recently created a unit to focus its work on the situation of women, children, and prisons respectively. The Commission understands that the Ombudsman’s work on prisons focuses on providing legal assistance to persons being detained in Haiti’s prisons, assisting judges in the review of cases in order to expedite the process in cases where individuals have not been formally charged. Further, in November 2004, the OPC published a report on the issue of prolonged pre-trial detention in Haiti, which provided comprehensive statistics and analysis based on visits to twelve of Haiti’s main prison facilities, and were working on a second follow up report to that study. Further, the Ombudsman indicated that the office has carried out promotional activities in various departments of the country. Such initiatives on the part of the Ombudsman are valuable and the Commission encourages the State and members of the international community to maintain and enhance the resources available to the OPC to undertake its important work.

3. System of Prisons and other Detention Facilities

197. The third aspect of the administration of justice considered by the Commission is the system of prisons and other detention facilities. In this respect, the Commission has identified a series of concerns. In addition to the problem of prolonged pre-charge and pre-trial detention, which has been discussed above, the Commission has identified deficiencies in the conditions of detention, the security provided at prisons and other detention facilities, the situation of individuals who are deported back to Haiti and detained, and the treatment of children in conflict with the law.

²¹² Constitution of Haiti of 1987, Section IV, Article 207.

²¹³ Constitution of Haiti of 1987, Section IV, Article 207.1.

a. Legal Framework

198. The State is subject to specific obligations under international law relating to prisons and other detention facilities. Paramount in this respect is the right to humane treatment protected under Article 5 of the American Convention, which provides as follows:

1. Every person has the right to have his physical, mental, and moral integrity respected. 2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person. 3. Punishment shall not be extended to any person other than the criminal. 4. Accused persons shall, save in exceptional circumstances, be segregated from convicted persons, and shall be subject to separate treatment appropriate to their status as unconvicted persons. 5. Minors while subject to criminal proceedings shall be separated from adults and brought before specialized tribunals, as speedily as possible, so that they may be treated in accordance with their status as minors. 6. Punishments consisting of deprivation of liberty shall have as an essential aim the reform and social readaptation of the prisoners.

199. In addition, as the Commission observed in Part III, on June 13, 1986, Haiti signed the Inter-American Convention to Prevent and Punish Torture. Therefore, in accordance with Article 18 of the Vienna Convention on the Law of Treaties,²¹⁴ Haiti is obliged to refrain from acts that would defeat the object and purpose of that treaty, pending its ratification, acceptance or approval.

200. The Commission notes that although the Article 19 of the Constitution of Haiti of 1987 guarantees the right to life, health, and respect of the human person, and Article 25 forbids any unnecessary force or restraint in the apprehension of a person or in keeping him under arrest, or any psychological pressure or physical brutality, especially during interrogation, the Constitution or other national law does not appear to specifically provide for the right to be protected from torture and other cruel, inhuman or degrading treatment or punishment. In this regard, the Commission calls upon the government to amend its laws to provide for this fundamental protection, in accordance with its obligations under Articles 2 and 5 of the American Convention and other applicable instruments, and to ratify the Inter-American Convention to Prevent and Punish Torture.

²¹⁴ Vienna Convention on the Law of Treaties, 1155 U.N.T.S. 331, Article 18 (providing: "A State is obliged to refrain from acts which would defeat the object and purpose of a treaty when: a. It has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty; or b. It has expressed its consent to be bound by the treaty, pending the entry into force of the treaty and provided that such entry into force is not unduly delayed").

201. As noted previously, when analyzing allegations of violations of Article 5 of the American Convention, for example, the Inter-American Commission has taken into account decisions of the European Commission on Human Rights, according to which "inhuman treatment is that which deliberately causes severe mental or psychological suffering, which, given the particular situation, is unjustifiable" and that "treatment or punishment of an individual may be degrading if he is severely humiliated in front of others or he is compelled to act against his wishes or conscience."²¹⁵ Practices that have been found to constitute torture or other cruel, inhuman or degrading punishment or treatment include prolonged incommunicado detention, beatings, rape, mock executions, and deprivation of food and water.²¹⁶ These protections are particularly important in the case of persons who are imprisoned or otherwise detained, as they are wholly dependent upon the State for their living conditions. In this respect, and in light of the serious consequences for detainees of excessive or inappropriate uses of force by their custodians, the Commission has held that states are subject to a particularly strict duty to conduct proper and thorough investigation of allegations that detainees have been subjected to mistreatment by state officials and, if those allegations are determined to be well-founded, to take appropriate remedial measures.²¹⁷

202. Further, analysis of the state's human rights obligations should also be considered in light of the following international guidelines, the Standard Minimum Rules for the Treatment of Prisoners, which are based on general consensus and "set out what is generally accepted as being good principle and practice in the treatment of prisoners and the management of institutions".²¹⁸ In past cases the Commission has made specific reference²¹⁹ to the Rules as prescribing basic benchmarks against which to evaluate whether the treatment of prisoners satisfies the standards of humanity under the inter-American instruments in such areas as accommodation,²²⁰ hygiene,²²¹ clothing

²¹⁵ Case 10.832, Report N° 35/96, Luis Lizardo Cabrera (Dominican Republic), Annual Report of the IACHR 1997, para. 77, citing Eur. Com.. H.R., *The Greek Case*, 1969, 12 Y. B. Eur. Conv. on H.R. 12 [hereinafter *The Greek Case*], at 186.

²¹⁶ See IACHR, Report on Terrorism and Human Rights, OEA/Ser.L/V/II.116, Doc. 5 rev. 1 corr., 22 October 2002, para. 161.

²¹⁷ See Case 12.069, Report N° 50/01, Damion Thomas (Jamaica), Annual Report of the IACHR 2000, paras. 38.

²¹⁸ See Standard Minimum Rules for the Treatment of Prisoners, (hereinafter, "Rules") adopted Aug.30, 1955 by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, U.N. Doc. A/CONF/611, annex I, E.S.C. res 663C, 24 U.N. ESCOR Supp. (No.1) at 11, U.N. Doc. E/3048 (1957), amended E.S.C. res. 2076, 62 U.N. ESCOR Supp. (No.1) at 35, U.N. Doc. E/5988 (1977); para 1.

²¹⁹ See, e.g., Case 11.743, Report N° 38/00, Rudolph Baptiste (Grenada), Annual Report of the IACHR (2000), paras. 136 and following; I/A Court H.R., *Hilaire, Constantine and Benjamin et al. Case*, Judgment of 21 June 2002, Series C No. 94, Separate Concurring Opinion of Judge Sergio García Ramírez, para. 19.

²²⁰ UN Standard Minimum Rules for the Treatment of Prisoners, Rules 9, 10, 11.

²²¹ UN Standard Minimum Rules for the Treatment of Prisoners, Rules 12-16.

and bedding,²²² food,²²³ recreation,²²⁴ exercise and medical treatment,²²⁵ discipline, punishment and use of instruments of restraint,²²⁶ and the separation of convicted from unconvicted prisoners and minors from adults.²²⁷ In this latter respect, the Commission notes that both Article 5(5) of the American Convention and Article 37 of the Convention on the Rights of the Child, which Haiti ratified in June 1995, provide specific rules governing the treatment of children in detention, including the requirement that minors while subject to criminal proceedings be separated from adults and brought before specialized tribunals, as speedily as possible, so that they may be treated in accordance with their status as minors.²²⁸

203. Specifically regarding prison conditions, the rules require that a record or registry of all detainees be kept and maintained; that different categories of prisoners be held in separate institutions or parts of institutions; and where dormitories are provided for accommodation that prisoners are carefully selected to be placed together; that adequate sanitary facilities, bathing and showering facilities be provided in order for prisoners to maintain proper personal hygiene; that food of nutritional value for adequate health be provided; and finally that at least one medical practitioner, with knowledge of psychiatry, be present at each institution.²²⁹

204. Finally, the Rules contain provisions governing the discipline and punishment of prisoners, and state that discipline and order shall be maintained

²²² UN Standard Minimum Rules for the Treatment of Prisoners, Rules 17-19.

²²³ UN Standard Minimum Rules for the Treatment of Prisoners, Rule 20.

²²⁴ UN Standard Minimum Rules for the Treatment of Prisoners, Rule 21.

²²⁵ UN Standard Minimum Rules for the Treatment of Prisoners, Rules 21-26.

²²⁶ UN Standard Minimum Rules for the Treatment of Prisoners, Rules 27-34.

²²⁷ UN Standard Minimum Rules for the Treatment of Prisoners, Rule 8.

²²⁸ American Convention, Article 5(5). Article 37 of the Convention on the Rights of the Child also provides as follows: “States Parties shall ensure that:(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age; (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time; (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child’s best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances; (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.”

²²⁹ UN Standard Minimum Rules for the Treatment of Prisoners, paras. 7, 8, 9, 12, 13, 16, 20, 22.

“with no more restriction than is necessary for safe custody and well-ordered community life.”²³⁰ In this respect, Rules 30 and 31 provides as follows:

30(1) No prisoner shall be punished except in accordance with the terms of such law or regulation, and never twice for the same offence; (2) No prisoner shall be punished unless he has been informed of the offence alleged against him and given a proper opportunity of presenting his defense. The competent authority shall conduct a thorough examination of the case; (3) Where necessary and practicable the prisoner shall be allowed to make his defense through an interpreter.

31. Corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishments shall be completely prohibited as punishments for disciplinary offences.

b. Analysis of the System of Prisons and other Detention Facilities

i. Prison Conditions and Security

205. Based upon information received during its investigations, the Commission has serious concerns regarding both the general conditions and treatment of prisoners in prisons and other detention facilities as well as the adequacy of security at those facilities.

206. As provide for under Article 272 of the Constitution of 1987, Haiti’s prison system is managed by a specialized section of the Haitian National Police, the Department of Prison Administration (“*Département de l’Administration Pénitentiaire*” or “DAP”), which oversees the functioning of 22 prison facilities. According to the Director of the DAP, in July 2005 the prison population in Haiti was comprised of a total of 2,586 inmates, including 1,200 at the National Penitentiary in Port au Prince, 117 at the current facility for women and girls at Petionville, and 45 minors at the Delmas prison.²³¹ Also according to the Director, only 17 of Haiti’s 22 prisons are actually functional, as many of the prisons were emptied or destroyed during the violence of February 2004.²³² The prisons in Aquin and Gonaives, for example, are reported to have been completely destroyed in February 2004, while the designated prison for women and children, Fort National, is no longer functional and has ceased operating. Consequently, women and girls are now being held

²³⁰ UN Standard Minimum Rules for the Treatment of Prisoners, para. 27.

²³¹ Interview with Director of the DAP, July 11, 2005.

²³² Interview with Director of the DAP, July 11, 2005. Figures received from human rights groups indicate that only 9 of the facilities are functional. Interview with MOUFED, July 12, 2005. This suggests that the standards for declaring a facility functional differs between authorities and human rights groups. The Commission did not receive additional information on the state’s criteria for finding a facility functional and specifically whether the state’s criteria are based on the Standard Minimum Rules for the Treatment of Prisoners.

in the Petionville prison, while boys are being held in the Delmas prison. The Director of the DAP indicated that a plan has been developed to repair the prisons and was under consideration by the Ministry of Justice and the Ministry of Finance, although the present status of this initiative is unclear.²³³

207. The Commission is concerned regarding information indicating that security in the prisons has not been adequately guaranteed by government authorities. The Commission understands that although security in the prisons is normally provided by the prison administration, since February 2004 HNP officers have been present at the prisons for security purposes.²³⁴ In addition, information available to the Commission indicates that since February 2004, at least eight prison breaks from numerous facilities have been reported, including Jeremie, Cap Haitian, Port-de-Paix, Fort Liberte, Carrefour and the National Penitentiary.²³⁵ The National Penitentiary in particular, the largest prison in Haiti, has suffered three prison breaks in a span of one year, the most recent on February 19, 2005 where 481 prisoners were released when a group of armed men stormed the prison and one prison guard was killed during the attack. The Commission understands that few of the escaped prisoners have been re-apprehended. Also, in December 2004 there was a demonstration in the National Penitentiary that led to the deaths of 10 detainees. As indicated in Part IV(D)(1) of this report, investigations into these incidents have been slow and, at the time of this writing, findings were yet to be released to the public regarding the identity and prosecution of the perpetrators, and the Commission urges the State to take measures to ensure that the results of these investigations are published and that steps are taken to avoid similar incidents in the future.

208. In this respect, the Director of the Prison Administration indicated that a training seminar for prison guards is being developed in cooperation with the Government of Canada, MINUSTAH and international consultants in order to strengthen their capacity to handle these types of security threats.²³⁶ The Commission considers that it is important for the international community to work with Haitian authorities in these and other initiatives in order to channel sufficient resources and funding for the reinforcement of the prison administration and security.

²³³ Interview with Director of the DAP, July 11, 2005.

²³⁴ Interview with Director of the DAP, July 11, 2005.

²³⁵ In a meeting with the RNDDH on July 13, 2005, the following prison breaks were reported: May 30, 2004 (7 escaped, Jeremie); June 13, 2004 (5 escaped, Cap Haitian); September 21, 2004 (7 escaped, Port de Paix); January 31, 2005 (5 escaped, Fort Liberte); February 14, 2005 (4 escaped, Fort Liberte), February 19, 2005 (481 escaped, National Penitentiary); June 30, 2005 (2 escaped, Carrefour); In a meeting with the Director of the DAP on July 13, 2005, he indicated a general prison break from the country's prisons on February 29, 2004 and another at the National Penitentiary on December 1, 2004.

²³⁶ Interview with Director of the DAP, July 11, 2005.

209. Concerning the conditions of the prisons themselves, which has long been a matter of concern for the Commission,²³⁷ the information gathered by the Commission indicates that prison conditions in Haiti are substandard and in many instances constitute a serious threat to the physical health and integrity of detainees when measures against minimum international standards. Information received from the Ombudsman²³⁸ and confirmed by local organizations and the Commission's own experience, indicates that most prisons lack access to potable water and adequate sanitation, and cells are poorly constructed therefore preventing air circulation and affecting the quality of the air. There is also a lack of effective access to medical facilities, social workers or legal assistance in many of the prisons. Several cells within each of the prisons are non-functional, there is a lack of beds for detainees and in some prisons there is an absence of sleeping quarters for DAP guards. Furthermore, food shortages are not uncommon and therefore family members must supplement limited food rations in the prison. Due to the combination of these factors, the outbreak of disease and bacterial illnesses place the health of the prison population at serious risk. The National Penitentiary is the only prison that appeared to provide minimum services in such areas a food and health care, but the extent of these services remains inadequate in proportion to the number of detainees held there.

210. In light of these longstanding and serious deficiencies, the Commission reiterates its call for the State, in cooperation with the international community, to take urgent measures to develop and implement a plan to repair all of the prison and detention facilities in Haiti, improve the conditions and treatment of detainees, and effectively provide for the security of those institutions.

ii. Deportees

211. During the Commission's visits to Haiti in April and July, 2005, concerns were raised by the government and nongovernmental organizations regarding the situation of Haitian nationals who had previously left Haiti for other countries and were subsequently deported back to Haiti, in many cases after having been convicted and punished for serious crimes committed in the deporting state. The President of the Republic and the Minister of Justice, among others, informed the Commission that deporting countries often fail to provide complete information concerning the background of the detainees and that on many occasions deportees are detained upon their return to Haiti out of concern that if released, they may exacerbate the problem of crime in the

²³⁷ See, e.g. IACHR Report on the Situation of Human Rights in Haiti 1995, paras. 281-299.

²³⁸ *Etat des Lieux de l'Univers Carceral Haitien: SOS Libertes Individuelles, Office de la Protection du Citoyen (OPC)*, November 2004. (p. 3-12)

country.²³⁹ Indeed, the Commission was told that deportees are suspected of masterminding the wave of kidnappings in Haiti and to be involved in drug trafficking and the arms trade, based upon the experience that they have gained from their criminal activities in other countries. However, in the absence of a proper process under Haitian law for addressing these circumstances, the deportees are frequently detained with other prisoners in the National Penitentiary and their release is often secured through the payment of money rather than being processed through the court system.²⁴⁰ According to the Minister of Justice, as of July 2005 there were 126 deported persons imprisoned in Haiti.

212. The Commission appreciates that in Haiti, as in most countries, security concerns may arise with respect to individuals who present themselves for entry into the country, at the same time, it is unacceptable and inconsistent with the State's obligations under the American Convention and other applicable instruments for individuals to be incarcerated in prison following their return to Haiti with no process for authorizing, challenging or supervising the detention. Indeed, for Haitian citizens, Article 22(5) of the American Convention prohibits the State from depriving its nationals of the right to enter that State.

213. The Commission notes that it may be possible to subject individuals attempting to enter a state to preventive detention for the purpose, for example, of controlling the entry and residence of foreign nationals in the state's territory or for reasons relating to the protection of national security or public health.²⁴¹ At all times, however, such preventative detention must be consistent with the rights protection under the American Convention, including Articles 5 (right to humane treatment), 7 (right to personal liberty), 8 (right to a fair trial) and 22 (right to freedom of movement and residence). Accordingly, any instances of preventative detention must be based upon grounds and procedures set forth in law, may not be arbitrary, and must be subject to supervisory judicial control without delay and, in situations of continuing detention, supervision at regular intervals. Further, preventative detainees must be held in facilities separate from prisons and subject to treatment appropriate to their status.

214. Accordingly, the Commission calls upon the State to establish a mechanism, consistent with the standards under Articles 7 and 8 of the American Convention, for reviewing the legal status of individuals who are

²³⁹ Interview with President of the Republic, April 19, 2005; Interview with the Minister of Justice, July 12, 2005; Interview with MOUFED, July 12, 2005.

²⁴⁰ Interview with MOUFED, July 12, 2005.

²⁴¹ See, *e.g.*, IACHR, Report on the Situation of Human Rights of Asylum Seekers I the Canadian Refugee Determination System, OAS Doc. OES/Ser.L/II.106 Doc. 4 rev (February 28, 2000), paras. 134-142; Report 51/01, Case 9903, Rafael Ferrer-Mazorra *et al.* v. United States, Annual Report of the IACHR 2000, para. 210.

deported to Haiti from other countries, in order to determine whether and on what grounds the state may be justified in detaining those individuals.

iii. Children in Conflict with the Law

215. According to Article 16.2 of the Haitian Constitution of 1987, the age of majority is fixed at 18 years of age. The Commission also understands that under Haitian law²⁴², minors between the ages of 13 and 16 who are arrested for and accused of committing crimes or non-criminal offenses are to be held in a rehabilitation center and not detained in prison facilities. Also according to Haitian law, even where minors are charged and sanctioned for offenses, they committed, they are not to receive criminal punishment, but may receive a sentence to be served in a government designated rehabilitation center for delinquent youths. One challenge in implementing this law effectively is the youth's lack of an appropriate birth certificate to confirm their exact age, which prevents authorities from making an accurate determination of whether the individual should be held to the standards under the law of 1961 for minors or the criminal code applicable to adults.

216. The official rehabilitation center for minors in conflict with the law, the *Institut de Bien Etre Social*, falls within the mandate of the Ministry of Social Affairs and was formally inaugurated in at the end of 2004. Owing to a lack of funds, however, this center has never been functional.²⁴³ Therefore, in the absence of an appropriate facility to house and rehabilitate these individuals, juvenile offenders are systematically detained in prison often without being charged and in the majority of cases, for minor offenses.²⁴⁴

217. The absence of a functional rehabilitation center for youths result in the detention of minors in a manner contrary to national law and, to the extent that minors may be held together with adults, contrary to the requirements of Article 5(5) of the American Convention and other applicable instruments. The Commission was also told that the manner in which minors are presently detained exposes them to the systemic problem of prolonged pre-trial detention and has a negative impact on the social reintegration of youths, as they are encouraged to engage in criminal activity by their more seasoned

²⁴² See *Loi Sur L'Enfance Delinquante, En Danger Physique Ou Moral* (Law of Juvenile Delinquents and Youths at Physical and Moral Risk) (hereinafter, "Law of 1961").

²⁴³ Interview with MOUFED, July 12, 2005.

²⁴⁴ Formerly, juvenile offenders in Port-au-Prince were held at Fort National prison for women and children. Now, juvenile offenders in Port-au-Prince are held in Delmas prison, while juvenile offenders outside the capital city are held in prisons in the provinces that are generally established to house adults. Interview with the Director of the DAP, July 11, 2005. Staff with the Ombudsman's Office have indicated that juvenile offenders are often detained together with adults in the prisons outside of Port-au-Prince, as the facilities tend to lack sufficient space to hold detainees and sufficient secure mechanisms. Interview with the OPC, July 13, 2005.

peers in prisons.²⁴⁵ In light of these problems, the Commission urges the State, with the assistance of the international community, to render the rehabilitation center functional and provide young offenders in Haiti the specialized treatment to which they are entitled under Article 5 the American Convention, Article 37 of the Convention on the Rights of the Child, and other relevant instruments.

218. Also of concern to the Commission in this regard is information indicating that the established court for minors has been unable to function due to security concerns and that matters involving minors have been transferred to the court of first instance in Port-au-Prince. The Commission was told that there exists only one judge for minors in Port-au-Prince and that this, together with lack of access to legal representation and other deficiencies, has led to delays in the legal proceedings for juveniles. The Commission emphasizes in this respect the State's obligation under Article 5(5) of the Convention to bring minors before specialized courts, as speedily as possible, so that they may be treated in accordance with their status as minors, and urges the State, with the assistance of the international community, to take the measures necessary to render the court for minors functional and effective.

iv. Capacity Building

219. The numerous problems identified in relation to the system of prisons and other detention facilities in Haiti, like those in other areas of the justice system, point to the need for extensive and systemic reform in order to meet minimum standards prescribed under national and international law. In this regard, the United Nations Development Program ("UNDP") provided the Commission with information concerning ongoing measures that it has undertaken in conjunction with the government of Haiti to reform and improve the system of prisons. The Commission was informed that since 1995, the UNDP has had a prison assistance and reform program, as one component of a broader justice support initiative, which has focused upon the reconstruction of prison facilities, training of prison staff, enhancing the information technology capacity and the development of training modules. The Commission was also informed that the program was re-evaluated and renewed in 2004 and was to be the subject of an agreement with the Ministry of Justice, with a view to integrating the work of other UN agencies, including MINUSTAH, into the project.²⁴⁶ In this respect, the Director of the DAP indicated that his Department conducts a three month training program for the DAP prison guards and staff, which is carried out with the assistance of technical advisors from the UNDP.²⁴⁷ A proposal to establish a training program in stages is being discussed, as the Commissioner related that the DAP is facing new challenges in ensuring security in the prisons with several prison breaks occurring in the

²⁴⁵ Interview with MOUFHED, July 12, 2005.

²⁴⁶ Interview with UNDP, July 13, 2005.

²⁴⁷ Interview with Director of DAP, July 11, 2005.

last year. The staff is expected to receive specialized training in handling new security threats in the prisons. The Commission is encouraged by this development and emphasizes the need for further professionalization and human rights training for those working in the system of prisons and other detention facilities.

IV. CONCLUSIONS AND RECOMMENDATIONS

220. As with much its past, Haiti has faced many difficult challenges over the past three years. The Commission's investigations over this period have, like those of other international and local organizations, revealed several areas of particular concern, including the ongoing situation of insecurity causing significant loss to civilian lives, the highly volatile and polarized political environment, and the continued deprivation of fundamental economic, social and cultural rights among Haiti's population.

221. In the Commission's view, a necessary condition for resolving these problems in the immediate and long term requires a comprehensive strategy to address fundamental deficiencies in the administration of justice and the rule of law in Haiti. As noted in this report, the Commission has for many years monitored and reported upon problems that have plagued the Haitian justice system, including severe shortages of adequate resources, abuses and corruption on the part of security forces, unacceptable delays in criminal proceedings, and failures to investigate, prosecute and punish serious violations of human rights. Over time, these deficiencies have undermined public confidence in Haiti's justice system and have systematically deprived victims and witnesses of politically-motivated and other human rights abuses of judicial protection and the rights to the truth, reparations and non-repetition of violations. Without effective measures to address these problems, Haiti will have little chance to confront the broader political, social and economic difficulties as well as those relating to the security of the population.

222. Accordingly, at this juncture in Haiti's history, the Commission has considered it crucial to undertake a detailed evaluation of the administration of justice in the country and to issue the following conclusions and recommendations, which it considers fundamental in order to begin reinforcing justice and the rule of law in Haiti. If Haiti is to have any hope of overcoming the many challenges that face its population, immediate measures must be taken to address the deficiencies in its justice system regardless of what government may be in power. Moreover, lasting solutions are likely to be achieved only with long-term and sustained assistance and support from the international community, including the Organization of American States and its Member States.

A. Law Enforcement, the Haitian National Police and Public Security

223. The Commission's investigations indicate that the system of public security in Haiti, including in particular the Haitian National police, suffers from a number of fundamental deficiencies. These include inadequate staffing and resources and an absence of appropriate vetting and training programs, at a time when the country is facing escalating security threats from the proliferation of illegal arms as well as drug trafficking and other violent crimes. As a consequence, existing resources are being stretched to a breaking point, with little immediate relief in sight.

224. Structurally, the Haitian National Police lack a clear and enforced hierarchy of command and control. Moreover, corruption and abuses in the use of force, including extrajudicial killings and other crimes attributed to police officers, have severely tainted the police force. At the same time, the Office of the Inspector General, the mechanism principally responsible for investigating and disciplining officers, is severely under-resourced and has been unable or unwilling to adequately perform its functions in numerous areas, including human rights violations attributable to force members.

225. The Commission acknowledges that the Haitian State has made some efforts in recent months to address several of these shortfalls. These measures have included training and graduating hundreds of new recruits from the police academy, adding staff to the Inspector General's office, and cooperating with CIVPOL in efforts to vet existing officers and new recruits for past involvements in corruption and crimes including human rights violations. It is also evident to the Commission, however, that additional efforts are necessary if the serious shortfalls in Haiti's security forces are to be resolved in the long term.

226. Accordingly, in order to address the deficiencies relating to law enforcement and the Haitian National Police, the Commission recommends that the State take measures to:

1. increase the number of police officers significantly beyond their current number of approximately 4,000 to one appropriate to Haiti's population. In this regard, the Justice Minister estimated that the Haiti National Police, properly staffed, should be comprised of 24,000 officers.
2. strengthen and expand the training program for new recruits in the police academy, and ensure that the training encompasses fundamental human rights standards and protections under domestic and international law, including rules governing the arrest and detention of suspects, the treatment of detainees and prisoners, and the use of force.

3. develop and execute, in cooperation with the international community and consistent with international standards, an effective process for vetting existing officers and new recruits for possible past involvement in corruption, human rights abuses and other crimes.
4. provide police officers with the equipment necessary to perform their duties safely and effectively, including such items as firearms, radios, bullet-proof vests, and vehicles, as well as financial compensation commensurate with their duties and hours of work.
5. reestablish control over, refurbish and reactivate as quickly as possible the full number of police stations across the country and ensure that the Haitian National Police effectively control security in all regions of the country.
6. clarify and enforce the chain of command within the Haitian National Police, which should include effective measures to supervise and control the conduct of all officers, to ensure that all court orders are executed expeditiously, and to report, investigate and discipline and/or prosecute infringements of the Police Code of Conduct and other unprofessional, corrupt or criminal conduct on the part of any officer. In this connection, the State should take urgent measures to hire and train sufficient staff with the Inspector General's office to effectively investigate all complaints of police misconduct throughout the country and provide the support necessary to ensure that they can perform their duties effectively, independently, and without fear of reprisals.
7. improve coordination between the Haitian National Police and MINUSTAH forces in matters of security, which should include developing more effective lines of communication between the forces and with the Haitian population generally and, given the present circumstances in Haiti, maximizing opportunities for MINUSTAH forces to collaborate in providing security to the people of Haiti.

B. The Court System

227. According to the Commission's investigations, the court system in Haiti, like the system of public security, is burdened by several basic and longstanding shortfalls. The working conditions for magistrates at all levels are substandard, with shortages of space and basic resources such as computers, paper and pens, and the Commission received many complaints about the lack of proper training for judges. Court facilities are also deficient. Numerous court houses around the country were destroyed during the violence at the beginning

of 2004 and others cannot be utilized because they are located in dangerous areas, resulting in overcrowding in the facilities that are functional. In this connection, information received by the Commission indicates that court houses and the judges themselves lack adequate security, particularly those judges who handle sensitive or controversial cases. The Commission has also identified other concerns regarding threats to the independence of the judiciary in Haiti, arising from such factors as the low pay received by judges, potential inadequacies in security of tenure, allegation of interference by the executive branch in the assignment of specific cases before the courts, the lack of safeguards against the appointment of judges for improper motives, and the absence of a proper and functioning oversight mechanism for the judiciary.

228. The Commission has also highlighted other problems within the justice system that impede the courts from delivering efficient, effective and independent justice to the people of Haiti. As observers have emphasized in the past, many of the laws in Haiti are outdated, some having never been amended since their adoption in the 1800's. While the Commission was encouraged by the Haitian government's recent efforts to amend laws of particular concern to women, including those relating to sexual violence and divorce, it is clear that a serious and comprehensive law reform initiative is urgently needed to remove anachronistic laws and procedures that do not conform with today's realities and modern standards of justice and human rights. In addition, effective access to legal assistance is unavailable to most Haitians, including in particular those who have been arrested or charged with crimes, as the country lacks a system of legal aid or public defenders. Further, the police frequently fail to execute orders and other decisions issued by the judiciary, which in turn has exacerbated the delays and other defects in the processing of cases before the criminal justice system.

229. Taken together, the weaknesses and deficiencies outlined above have combined to create chronic and unacceptable delays in the processing of cases in the court system, and in many instances has undermined the ability of the justice system in Haiti to effectively ensure and protect the fundamental rights and freedoms to which Haitians are entitled, including most importantly the obligation to investigate, prosecute and punish serious violations of human rights. In its report, the Commission has highlighted several notorious extrajudicial executions and other serious human rights violations that have occurred over the past 15 years, in respect of which sufficient and effective measures to ensure accountability have not been taken. This in turn has given rise to a pattern of impunity in Haiti for violations committed by both state and non-state actors and has contributed to a general lack of confidence in, and indeed mistrust for, the institutions involved in the administration of justice among the population in Haiti.

230. Therefore, in light of the Commission's findings, in order to address the deficiencies relating to the judiciary, the Commission recommends that the State take measures to:

1. urgently provide the basic facilities and resources necessary for judges to properly and effectively perform their functions and responsibilities. This should include providing judges with necessary tool such as computers, office supplies and library materials, creating additional work space for judges which should include refurbishing and reactivating the full number of court houses across the country, including the court for minors, and providing judges and court houses with the security necessary to execute their responsibilities safely and without fears of reprisals.
2. make structural reforms to the judiciary in order to ensure that the courts are competent, independent and impartial. These initiatives should include providing for appropriate increases in the salaries of magistrates and justices of the peace, rendering the Magistrate's School fully functional with a modern curriculum that includes training in international human rights standards, and providing for an independent review of the methods of appointment and tenure of judges at all levels to ensure conformity with international standards relating to the independence of the judiciary. Also in this respect, the State should ensure the proper and effective operation of the Conseil Superieur de la Magistrature as the body principally responsible for oversight of the judiciary, together with the application and enforcement of a proper code of conduct for judges.
3. immediately address the situation of individuals in the justice system who have been detained for prolonged periods without having been brought before a judge or tried. This should include measures by which the legal status and grounds for detention of all detainees in the Haitian judicial system are reviewed on an urgent, independent and impartial basis by judges or other officers authorized by law to exercise judicial power, in accordance with the protections enshrined in Articles 7 and 8 of the American Convention. This should also include measures to ensure that instances of prolonged detentions do not continue to occur in the future. To this end, steps should be taken to improve communication between the judiciary and police in investigating criminal cases, to ensure that court hearings are convened throughout the regular business day, rather than only in the morning as has been the case in the past, and to put into place an effective system of legal aid or public defenders, for example through cooperation with the National Center for State Courts, to ensure that all criminal defendants are afforded their right to counsel in accordance with Article 8 of the American Convention and corresponding rights under domestic law.

4. undertake a comprehensive program of law reform, in order to up-date the country's criminal and other laws and procedures to reflect the present-day conditions in Haiti and modern human rights standards, including those pertaining to the rights of women. This initiative should be accompanied by the ratification and, where appropriate, incorporation into domestic law of all regional human rights treaties, as undertaken by the Prime Minister in his meeting with the Commission in April 2005, including the Optional Protocol to the American Convention on Economic, Social and Cultural Rights, the Inter-American Convention to Prevent and Punish Torture, the Inter-American Convention on Forced Disappearance of Persons, and the Inter-American Convention on the Elimination of all Forms of Discrimination against Persons with Disabilities.

5. end impunity for serious violations of human rights committed in Haiti, in the past, at present and in the future. Taken from a broad perspective, this recommendation requires compliance by Haiti with all of the recommendations provided for in this report, in order to render the justice system in Haiti capable of ensuring protection of the fundamental rights of Haitians in accordance with the terms of Article 1, 2 8, and 25 of the American Convention. From a more immediate perspective, Haiti must take effective and urgent measures to investigate, prosecute and punish serious violations of human rights such as extrajudicial killings, torture, rape and other forms of sexual violence that have taken place in all parts of the country, including the atrocities highlighted in the Commissions' report. Under present circumstances in Haiti, where established investigative procedures are inadequate due to lack of capacity, expertise or impartiality, this will likely require exceptional measures to investigate and try past atrocities. This may include pursuing investigations through an independent commission of inquiry or similar procedure comprised of persons chosen for their recognized impartiality, competence and independence. Similarly, trials of individuals suspected of such atrocities might be conducted before a specially-constituted panel or chamber of the civilian courts, as has recently occurred, for example, in Sierra Leone and Cambodia. Also as in these examples, such a mechanism might incorporate some degree of international participation in the investigation and/or trial of human rights violations. In all instances, the procedures employed in investigating and trying all human rights violations must conform with the minimum standards of due process and the right to a fair trial under Article 8 of the American Convention including the right to be tried by a competent, independent and impartial tribunal.

C. The System of Prisons and other Detention Facilities

231. As discussed in the Commission's Report, numerous problems exist within the system of prisons and other detention facilities in Haiti. These deficiencies not only present human rights concerns respecting the conditions and treatment of the persons held in those institutions, but have also contributed to the broader problems of insecurity in the country. Most fundamentally, the conditions with prisons and other facilities do not satisfy minimum international standards concerning the treatment of prisoners and detainees. According to the data received by the Commission, several of the detention facilities in Haiti are not functional, including the prison for women and children in Fort National, and those prisons that are being used suffer from overcrowding and do not have the resources necessary to meet minimum standards of sanitation and other fundamental requirements, including access to fresh air, light and potable water, bedding, nutrition, and health care. As noted above, between 85 and 90% of individuals held in detention centers have not been tried or convicted, although they are held in the same facilities and under the same conditions as condemned prisoners contrary to Article 5(4) of the American Convention. In addition, the information available indicates shortfalls in other international standards, including the requirement under Article 5(5) of the American Convention that minors be separated from adults.

232. In addition, lack of proper security in prisons and associated training for prison guards has resulted in several major security incidents in Haiti over the past two years, resulting in the death and wounding of inmates and the escape of hundreds of prisoners, many of who have not yet been recaptured. Also contributing to the security crisis in Haiti has been deportation to Haiti from other countries, including other OAS Member States, of Haitian nationals who have been convicted and punished for serious crimes in those countries. The Commission was told by high government officials that deporting countries frequently provide little or no information concerning the criminal and other background of the deportees and that as a consequence, the deportees they are often detained in the National Penitentiary following their return to Haiti for fear that they present a security risk. In this respect, the Commission was informed that some of the deportees who have been released have coordinated or otherwise taken part in kidnappings and other violent crimes that have proliferated in recent months in Port-au-Prince.

233. Further, the absence of a functional rehabilitation center for minors, together with the fact that the court for minors has been unable to function due to security concerns, has resulted in the detention of minors in a manner contrary to national law and international law and has deprived minors of their right to be brought before specialized courts, as speedily as possible, so that they may be treated in accordance with their status as minors, contrary to Article 5 the American Convention and corresponding provisions of the Convention on the Rights of the Child.

234. Given its conclusions regarding the system of prisons and other detention facilities in Haiti, the Commission recommends that the State take measures to:

1. amend its laws to provide for the right not to be subjected to torture or other cruel, inhuman or degrading punishment or treatment in accordance with its obligations under Articles 2 and 5 of the American Convention and other applicable instruments, and to ratify the Inter-American Convention to Prevent and Punish Torture;
2. urgently improve the living and security conditions in the prisons and other detention facilities throughout the country. This should include rendering operational all of the facilities that were damaged or destroyed during the uprising in 2004 and ensuring that all of the facilities meet minimum international standards under the American Convention on Human Rights, the UN Standard Minimum Rules for the Treatment of Prisoners, the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and other applicable instruments.
3. render operational the detention facility for women and children at Fort National and ensure that the facility satisfies minimum international standards pertaining to the detention of women and children. This should be combined with efforts to render functional the official rehabilitation center for minors, the Institut de Bien Etre Social, and thereby given effect to the requirement under Haitian law that minors in conflict with the law are to be held in rehabilitation centers rather than prison facilities, and ensure that the court for minors in Port-au-Prince is provided with sufficient security or relocated in order to reopen and function effectively.
4. continue to develop and implement effective training programs for prison guards and other individuals responsible for administering, supervising and operating prisons and other detention facilities, which should include instruction on international human rights standards in the areas of security maintenance, the use of force, and the humane treatment of detainees and prisoners. Past security incidents at prisons and detention facility should be fully and effectively investigated and appropriate measures should be taken to avoid similar incidents in the future.
5. establish a mechanism, consistent with the standards under Articles 7 and 8 of the American Convention, for reviewing the legal status of individuals who are deported to Haiti from other

countries, in order to determine whether and on what grounds the state may be justified in detaining those individuals. In this regard, it may be possible to subject individuals attempting to enter a state to preventive detention for the purpose, for example, of controlling the entry and residence of foreign nationals in the state's territory or for reasons relating to the protection of national security or public health.²⁴⁸ At all times, however, such preventative detention must be consistent with the rights protection under the American Convention, including Articles 5 (right to humane treatment), 7 (right to personal liberty), 8 (right to a fair trial) and 22 (right to freedom of movement and residence). Accordingly, any instances of preventative detention must be based upon grounds and procedures set forth in law, may not be arbitrary, and must be subject to supervisory judicial control without delay and, in situations of continuing detention, supervision at regular intervals. Further, preventative detainees must be held in facilities separate from prisons and subject to treatment appropriate to their status.

6. develop, in cooperation with other states and consistent with international standards governing access to information and privacy, effective methods of sharing information concerning persons deported or otherwise removed to Haiti, in order to facilitate any deportee review procedures that may be established by the State.

D. The Role of the International Community

235. As highlighted in the introduction to this report, the international community has over the past decade played a central role in efforts to address the difficulties in Haiti, through the deployment of UN peace operations, the establishment in Haiti of local offices of international and regional organizations and their institutions, and the delivery of financial, technical and other assistance. Notwithstanding this intensive international involvement, however, many of the problems remain in Haiti, and in some cases have worsened.

236. It does not fall within the scope of the present report to undertake a comprehensive analysis of the possible reasons underlying the shortfalls of international efforts in Haiti. Nevertheless, the Commission's investigations have revealed several aspects of the international community's

²⁴⁸ See, *e.g.*, IACHR, Report on the Situation of Human Rights of Asylum Seekers in the Canadian Refugee Determination System, OAS Doc. OES/Ser.L/II.106 Doc. 4 rev (February 28, 2000), paras. 134-142; Report 51/01, Case 9903, Rafael Ferrer-Mazorra *et al.* v. United States, Annual Report of the IACHR 2000, para. 210.

involvement in Haiti that can be the subject of conclusions and recommendations insofar as they relate to the administration of justice.

237. In particular, the Commission's analysis indicates that in numerous areas of the justice system in which the international community has provided assistance in the past, the corresponding changes have been temporary in nature and have not resulted in lasting change. For example, over the past 10 years international agencies have committed considerable funds, assets and technical support to the court system in Haiti. Yet today, the courts appear as though they had been neglected for decades. While some of these shortfalls have resulted from the violence and destruction that occurred during the insurrection in early 2004, it also appears that many of the improvements dissolved because of the short term nature of the international projects and associated funding and the absence of ongoing technical and other support.

238. Information received by the Commission also indicates that a considerable portion of the funds pledged to Haiti by donors in July 2004 remains undelivered despite the urgent need for projects to address basic services such as electricity, sanitation, and hospital and school facilities as well as longer-term initiatives for capital investment and capacity-building among public and private actors and institutions.

239. Further, the Commission has observed that in numerous instances there is a lack of coordination on common issues and activities between and within various international and regional organizations agencies operating in Haiti. This in turn has led to duplication in efforts, has inhibited opportunities to maximize the impact of international projects, and has led to frustration on the part of the population in Haiti, who are overwhelmed with many international initiatives but witness few results.

240. In light of the Commission's findings concerning past weaknesses in the role of the international community in Haiti, the Commission provides the following recommendations:

1. The international community, including Member States of the OAS, in cooperation with the Haitian government, must ensure the delivery and distribution of funds pledged to Haiti on an urgent basis through projects that address the most immediate needs of the Haitian people in the areas of health care, education and job training and creation. These projects should be implemented in a manner that will render them sustainable in the longer term, for example by funding them over a multi-year period and providing follow up technical and other support.
2. Haitian authorities and international organizations should design and implement a comprehensive security plan, including the implementation of a national disarmament program, while taking the necessary steps to implement the National Dialogue

initiative in order to foster greater inclusion of all parties and sectors.

3. Haitian authorities and international organizations and agencies should design and implement a comprehensive plan for development that will build national capacity and lead to self-sufficiency for Haiti in the longer term.
4. International organizations and agencies should attempt to develop coordinated and multidisciplinary approaches to providing assistance and support to Haiti in order to avoid duplication and maximize impact. This could include, for example, designating intermediaries between units of different organizations or institutions working on similar issues and facilitating the ongoing exchange of information between organizations, institutions, and agencies. In addition, the mandates given to institutions and agencies should acknowledge and reflect the interconnections between security, the right to political participation, the administration of justice, and the realization of economic, social and cultural rights, all of which must be addressed in order to achieve long term stability in Haiti.