

ORGANIZATION OF AMERICAN STATES
INTER-AMERICAN COMMISSION ON HUMAN RIGHTS



OEA/Ser.L/V/II.131
doc. 36
2 March 2008
Original: English

**OBSERVATIONS OF THE INTER-AMERICAN COMMISSION
ON HUMAN RIGHTS UPON CONCLUSION OF
ITS APRIL 2007 VISIT TO HAITI**

GENERAL SECRETARIAT
ORGANIZATION OF AMERICAN STATES
1889 F. St. N.W.
WASHINGTON, D.C. 20006
2008
Internet: <http://www.cidh.org>

iachr

OAS Cataloging-in-Publication Data

Inter-American Commission on Human Rights.

Observations of the Inter-American Commission on Human Rights upon conclusion of its April 2007 visit to Haiti = Observaciones de la Comisión Interamericana de Derechos Humanos sobre su visita a Haití en abril 2007 = Observations de la Commission Interaméricaine de Droits de l'Homme à l'issue de sa visite en avril 2007 en Haïti / Inter-American Commission on Human Rights.

p. ; cm. (OEA Documentos Oficiales; OEA Ser.L) (OAS Official Records Series; OEA Ser.L)

ISBN 978-0-8270-5171-3

1. Human rights--Haiti. 2. Civil rights--Haiti. I. Title. II Series.

OEA/Ser.L/V/II.131

OBSERVATIONS OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS UPON CONCLUSION OF ITS APRIL 2007 VISIT TO HAITI

1. The Inter-American Commission on Human Rights (herein after "IACHR" or "the Commission") visited the Republic of Haiti from April 16-20, 2007 at the invitation of the government of that country. The delegation was led by Sir Clare K. Roberts, Commissioner and Rapporteur for Haiti and comprised of staff members of the Executive Secretariat.

2. The IACHR is the principal organ of the Organization of American States (OAS) responsible for promoting the observance and protection of human rights in the Hemisphere. The seven members of the Commission are elected in their personal capacity by the OAS General Assembly for a four-year term. The Commission's terms of reference are derived from the OAS Charter and the American Convention on Human Rights, treaties ratified by the Republic of Haiti.

3. The Commission conducted the visit pursuant to its mandate and functions under the OAS Charter and the American Convention on Human Rights, as well as OAS General Assembly resolution AG/RES. 2058 (XXXIV-O/04) and subsequent resolutions, concerning the strengthening of democracy in Haiti, in which the General Assembly urged the IACHR to monitor and report on the human rights situation in Haiti and to contribute to the promotion and observance of those rights.

4. The draft report on the Commission's observations of the human rights situation in Haiti during its on-site visit in April 2007 was approved by the IACHR on September 5, 2007. In accordance with Article 58 of the Commission's Rules of Procedure, this Report was transmitted to the Government of Haiti on November 28, 2007, with a request that it submit the observations and comments deemed pertinent within a period of one month. As of December 28, 2007, the IACHR had not received a response from the State. On March 2, 2008 the Commission decided to publish this report pursuant to Article 58 of its Rules of Procedure.

5. The objectives of the visit included receiving information on the present situation of human rights in Haiti, particularly in light of the first year in office of the Preval government; to conduct follow-up observations and discussions with Haitian authorities on the situation of the administration of justice; to specifically assess the situation of women and children, namely collect information on the forms of discrimination and violence against this group and the state response; and to engage in additional promotional activities on the Inter-American system of human rights. Based upon the information gathered, the Commission is encouraged by the state's demonstrated efforts, adopted since early 2007, to exert control over once gang-ridden areas of Port-au-Prince, to ensure greater public security for Haitians and to apprehend, prosecute and punish suspected criminals. Nevertheless, the Commission considers that in order to ensure a climate of lasting peace and long-term stability and growth in the country, immediate and long-term measures must be taken by the government of Haiti, with the critical support of the international community. These include the development and implementation of comprehensive plans and policies for longer term reform in the security sector and the justice system. Equally, the IACHR reiterates its concern for the fundamental deficiencies in public healthcare, employment and education and urges the state to take immediate and long-term measures. In light of its observations regarding the situation of women and children, which constitutes a particular concern for the Commission due to the escalated and sustained figures of victims of sexual violence since early 2004, the Commission considers that urgent measures are required to provide adequate legal, medical and related services for women and children victims and to ensure that the rights of these groups to be free from abuse and discrimination are adequately protected under the law.

6. During the visit, the IACHR met with representatives of the Haitian government and members of civil society as well as representatives of international organizations. The Commission

met with the President of the Republic of Haiti, His Excellency René Prével, the Prime Minister, His Excellency Jacques Edouard Alexis, the Minister of Foreign Affairs, Jean Renald Clerisme, the Minister of Justice and Public Security, Rene Magloire, the Minister of Social Affairs and Labor, Gerald Germain, Minister of the Status of Women and Women's Rights, Marie Laurence Josselyne Lassegue, the President (a.i.) Supreme Court, Mr. George Moise, the Secretary of State for Justice, Mr. Daniel Jean, the Secretary of State for Public Security, Mr. Luc Eucher Joseph, the General Direction of the National Police, Mr. Mario Andresol, the State Prosecutor for Port-au-Prince, Mr. Claudy Gassant, the Special Representative for UN Secretary General, Mr. Edouard Mulet, the Gender Advisor to the UN SRSG, the United Nations Stabilization Mission in Haiti (MINUSTAH), the Chief of the Justice section, MINUSTAH, the Chief of the Human Rights section, MINUSTAH, the Police Chief Marie Louise Gautier, National Coordinator of Women's Affairs of the Haitian National Police, the Police Chief of the Children's Division and members of Haitian human rights and women's rights organizations. The Commission's planned visit to the National Penitentiary in Port-au-Prince was postponed due to an attempted prison break by a detainee one hour prior to the delegation's scheduled visit on the final day of the official visit, Friday, April 20th. The IACHR's assessment is derived from information from government authorities and national and international human rights observers.

7. As part of its efforts to follow-up on its findings and recommendations in its 2006 administration of justice report, the Commission organized a roundtable event on the situation of the administration and the reform of the justice system, to encourage dialogue between the various sectors and to further identify potential reforms that would render the Haitian justice system more efficient in its capacity to deliver justice. The Rapporteur on Haiti reviewed the report's key findings, while representatives from the judicial branch, the President of the Supreme Court, the executive branch, the Secretary of State for Justice, and the Forum du Citoyen, a civil society network advocating for justice sector reform, shared views on deficiencies in the system and priority areas for reform. Speakers at the event echoed the expressed concern during the visit regarding the necessity to adopt a national strategy and establish a comprehensive plan to reform the justice system in Haiti, noting antiquated legal texts and overly formalistic and time consuming procedures, and the equal importance of allocating adequate resources to develop and strengthen the judiciary in order for the justice system to effectively respond to modern standards of justice.

8. As part of its promotional activities, the IACHR conducted a two-day training seminar on the inter-American human rights system with officials and functionaries from various government ministries and agencies. In addition, the Minister of Foreign Affairs took decisive steps towards the establishment of an inter-ministerial working group to coordinate the Haitian State's international human rights responsibilities. As a complement to this initiative, the government expressed its commitment to ratify the regional human rights treaties to which Haiti is not yet a party, a measure that will further assist in consolidating the protection of fundamental rights and the rule of law in Haiti. The Commission commends the State for its commitment to these initiatives and hopes that these treaties will soon be ratified and necessary measures adopted to ensure their domestic application and implementation.

9. The following observations highlight the Commission's most important areas of concern regarding the long-term stability of Haiti, namely, the need to develop a comprehensive strategy to address the root causes of violent crime and gang or organized criminal activity, which has led to outbreaks of armed violence in urban centers and the significant loss of civilian life in recent years; the need to continue to strengthen and professionalize the police force; the need to allocate resources to implement long-term reform of the justice system and adopt measures to address deficiencies in the administration of justice; the need to implement programs aimed at providing basic social services to meet the fundamental needs of Haitians, especially the severe shortfalls in the access to adequate shelter and potable water, health care, education and employment .

10. Most individuals and groups with whom the Commission met emphasized the importance of implementing both immediate and long-term solutions in order for Haiti to maintain durable peace and ensure economic prosperity. In particular, many individuals expressed frustration with the tendency of the international community to channel assistance in an uncoordinated manner, mismatched with Haitian priorities and frequently devised to meet short-term objectives, resulting in attempts to address the symptoms of socio-economic problems rather than the root causes and institutional weaknesses. The following observations relate findings in the area of public security; the administration of justice; the situation of women; the situation of children, and concludes with a number of specific recommendations to address noted deficiencies in the State response to these issues.

Public Security

11. In 2007, the IACHR noted a visible improvement in the situation of public security in Haiti in comparison to previous years. During the visit, the delegation observed numerous police posted at fixed points around the city. Government sources reported and members of the population and civil society organizations confirmed that police presence in Port-au-Prince had notably increased since the beginning of 2007 and that police had adopted renewed efforts to apprehend suspected criminals. The Commission also received information that numerous arrests were made during January through April of suspected criminals and gang members who are believed to be principal perpetrators in the wave of kidnappings and other violent crimes that has swept the country since 2005. In this connection, the judiciary held criminal trial sessions in 2006 and 2007, which included the prosecution and punishment of seven individuals for the crime of kidnapping. Despite the fact that the State has taken steps to apprehend suspected criminals since early 2007, on the whole, the justice system has not had the resources or capacity to respond promptly to the demands for justice, thus, significant numbers of individuals are being arrested and held in detention for prolonged periods without being promptly or effectively charged or brought to trial, and therefore, this trend is perpetuating the large-scale situation of impunity in the country. Notwithstanding advances noted here, the security situation in Haiti remains fragile and in order to create durable conditions of peace and stability, it will be necessary for the State to adopt long-term and sustained measures to address both the underlying factors fueling and/or perpetuating violent crime and to reinforce accountability mechanisms in order to effectively hold perpetrators accountable for their crimes.

12. Over the past three years, the Commission has consistently expressed concern with the acute deterioration in public security, due to widespread violence by armed gangs and the ineffective control over certain sectors of Port-au-Prince and the provinces. Acts of kidnapping, rape, murder, beatings and mass destruction of property became common occurrences in recent years leading to record numbers of civilian casualties in 2005, with a further increase in violent crime recorded in 2006. During the transitional period, the ability of the police force to respond to the crime wave proved ineffective and the security vacuum was quickly filled by the proliferation of armed groups acting with impunity, organized criminal rings, and the ongoing drug trade that resulted in better equipped and organized armed groups employing force and intimidation to secure control over parts of Port-au-Prince. Consequently, since democratic governance was restored to Haiti in early 2006 and initial steps to curb violent crime appear to have contributed to the reduction of violence in the city of Port-au-Prince, Haitian authorities and the international community will now need to take appropriate preventative and curative measures to ensure long-term peace and stability through the adoption of a public security policy, strategy and plan that aim to address the key factors contributing to the persistence of violent crime in Haiti.

13. The State's decision to launch a special commission on disarmament and its inability to adequately respond to the current context to date is an example of how the public security issue in Haiti is a complex product of a number of social factors which requires a multi-faceted State

response. While the IACHR notes the primary goal of the National Commission on Disarmament to retrieve arms from street gangs and reintegrate them into society, it also notes that this mechanism responds to only one aspect of the problem and does not sufficiently respond to individuals' economic incentive to employ arms or the factors fueling arms proliferation, such as the drug trade, nor does it include an elaborated strategy and plan to hold perpetrators of serious crimes accountable for their actions.

14. Accordingly, during this visit, the President of the Republic of Haiti acknowledged that the public security issue is dependent on the State's ability to respond to the illegal arms and drug trade, the State's capacity to address organized crime through the building of a robust police force and equally functional justice system to ensure criminal accountability, and the provision of economic opportunities, job creation and the development of national industries to provide the population with constructive economic alternatives. In this regard, the Commission notes the State's initiative in March 2007 to organize a regional conference in the Dominican Republic on combating the illicit drug trade and involving the participation of representatives of the governments from the region, notably, Colombia, Dominican Republic, Haiti, Jamaica, and the U.S.. The IACHR hopes that this initiative marks the beginning of a relationship of close collaboration and coordination to develop an appropriate and multi-faceted approach to this regional problem.

15. In this connection, information received from several State and non-State sources highlighted the significant impact of the illicit drug and arms trade on the State's ability to carry out its normal functions free of intimidation and the temptation of corruption, and has particularly contributed to the weaknesses in the police and judiciary, as sources indicate that corruption is widespread and where instances of armed gang infiltration into the police have been documented. According to many of the individuals and groups the Commission met, the inability of the justice system to effectively investigate, prosecute and punish perpetrators of human rights abuses and crimes constitutes one of the main factors perpetuating violent and organized crime in Haiti. In this regard, the Commission emphasizes the importance for the State to take swift measures to prevent and punish criminal acts and acts of corruption and to adopt necessary measures to allocate sufficient resources to the police and to the judiciary in order for these institutions to build sufficient capacity to undertake the State's duty to investigate, apprehend, prosecute and punish human rights violations and crimes.

Administration of Justice

16. One of the Commission's principle objectives during the visit was to conduct follow-up observations on the Commission's previous report findings in the area of the administration of justice, published in early 2006 and designed to provide the newly elected government at the time, with a study of the issue and recommendations to be considered during the planning and reform process of the system. Accordingly, the Commission collected updated information on the functioning of the police, courts and prison systems and the level of coordination and cooperation between these three institutions to promote the rule of law and to ensure justice for victims of abuse, with special attention placed on measures adopted to address longstanding weaknesses previously identified, such as the chronic problem of prolonged pretrial detention, the lack of independence of the judiciary and impunity for human rights violations and crimes perpetrated by non-state actors. The following section summarizes the Commission's observations regarding the police force, the judiciary and the prison system in Haiti and specifically identifying notable advances and where applicable, reiterating recommendations for State action.

Law Enforcement and Haitian National Police

17. In comparison to the Commission's previous observations made in 2005 and 2006 regarding the capacity of the Haitian National Police to enforce the law, the IACHR noted the State's efforts to enhance police capacity since early 2007 to combat crime and ensure public safety. In April 2007, the IACHR received information that the total number of officers in the force was 7489, an increase from roughly 3,000-5,000 in April 2005. The Commission was also informed that the police academy facility was recently restored and the police training program reopened, having resulted in at least two graduating classes of new recruits. Nevertheless, the Commission finds that despite recent government efforts, many of the weaknesses previously identified, such as the lack of sufficient numbers of police in proportion to the national population of 8 million inhabitants, inadequate training and resources, the absence of a strong command and control structure, the existence of corrupt and criminal elements in the force, the abuse of force on individuals in police custody and the lack of proper record keeping continue to constitute challenges to the ultimate goal of creating a professional and credible police force. In this respect, police authorities informed the Commission that a strategy and national plan of action to strengthen the police force capacity to respond effectively to its mission and mandate while observing human rights standards has been developed and is expected to be implemented over the six-year term.

18. In light of previous observations, the IACHR wishes to highlight specific issues and recent trends that constitute a serious cause for concern for the role of the police in the administration of justice and the respect of human rights. While the Commission notes the police renewed efforts to combat crime in the urban centers of Haiti, the practice of mass and illegal arrests threatens the rights of individuals to be free from arbitrary arrest and detention provided for in article 7 of the American Convention. Interviews with the public prosecutor and police authorities confirmed that there is a large number of arrests being made without an arrest warrant, without sufficient evidence implicating the individual in criminal activity (*flagrant delit*), or arrest for 'investigation purposes', which is not mandated by the Haitian criminal code. Further, police have conducted mass arrests of between 20 to 50 individuals at once, with little if any evidence to support the legality of the arrests. Consequently, while certain individuals may be released soon after the arrest (in some cases dependent on the payment of a bribe), statistics show that the majority of individuals entering the criminal justice system, once arrested, remain in prolonged pretrial detention for several months to years, with little effective follow-up by judicial officials.

19. Joining illegal arrests and arbitrary detention, the Commission further received reports and accounts of abuse of force by officers at the time of arrest and during detention in the police station holding cells. Several cases of mistreatment, beatings and torture by HNP officers of individuals in custody have been documented by national and international human rights observers. These acts of abuse constitute violations of one's right to be free from cruel and unusual treatment or punishment under article 5 of the American Convention and obligate the state to take swift measures to investigate and sanction officers found responsible for these acts, while ensuring that the perpetrators are equally held accountable by the Haitian justice system. Accordingly, the police institution should establish and implement a no tolerance policy on the mistreatment of detainees in police custody and equally require officers to strictly adhere to the police code of conduct or face strict sanctions. Further, the command and control structures must be strengthened in order to ensure that the expressed will of the police leadership to create a professional and credible force is applied at all levels of the institution.

20. While the police force has received considerable pressure to provide an adequate response to the recent increase in criminal violence in the country, in order to ensure an effective state response that will likely result in the appropriate judicial follow-up of cases, it will be equally important for the police force to place particular emphasis on developing and institutionalizing the investigation procedures, practices and techniques of members of the police force and the

specialized units of the police, such as the judicial police. To date, the HNP and corresponding offices charged with investigation functions, such as the public prosecutor's and investigating judges, have remained severely under-resourced, ill-equipped and insufficiently trained, which contributes significantly to the poor, faulty and lengthy preparation of criminal cases, which in many instances result in the acquittal of defendants for the lack of sufficient evidence for prosecution of the suspect. Accordingly, the police leadership should develop and implement a plan to ensure that the specialized units of the police are sufficiently trained and equipped to conduct effective criminal investigations. Equally, the Ministry of Justice should redouble its efforts to ensure that all relevant individuals and offices within the criminal justice system should receive specialized training and technical and financial assistance to enable the criminal justice system to effectively respond to its investigatory and prosecutorial functions.

21. Related to the problem of effective criminal investigation, the lack of close coordination and cooperation, and most recently a deterioration in the relations between the HNP and other offices or individuals within the criminal justice system has caused a near paralysis in the handling of cases. Tensions between key institutions within the criminal justice system have long been documented by the Commission, but recent clashes have had a paralyzing effect on the normal functioning of the system and highlight the importance of the State's proactive efforts to improve police-justice relations. Consequently, it is of principal importance that police and judicial institutions take immediate and long-term measures to forge a close collaborative and professional relationship that will allow the smooth and swift handling of cases by the criminal justice system. In this connection, joint training programs and/or specialized joint initiatives, such as the creation of the police-justice kidnapping cell, may provide practical opportunities for the two institutions to forge closer and more complementary working relations.

22. The internal investigatory body of the HNP, the General Inspector's office, is charged with monitoring and sanctioning police misconduct, including human rights violations committed by police officers. Upon receiving information about potential misconduct of an officer, the General Inspector's office conducts an investigation and prepares a report with recommendations to the General Director on the form of sanctions to be adopted. Transparency regarding the results and decisions from the investigations from the Inspector General's office is a concern however. Such reports are considered internal, while decisions to sanction officers are also not publicized, thereby preventing the victims and population at large to be informed of the outcomes of investigations and related assurance of adequate police sanctions taken against delinquent officers. The confidentiality of reports also limits the impact of sanctions on other members of the force, which otherwise would reinforce a no tolerance policy of police misconduct. As an administrative agency of the police, the General Inspector only has the authority to make recommendations to the General Director of the Police on the results of internal investigations and the suggested sanctions. Recommendations for corresponding judicial investigation and prosecution by the justice system are also communicated to the prosecutor's office of Port-au-Prince, but the General Inspector's office has no authority of ensuring the judicial follow-up of cases.

23. Noting these concerns, the IACHR has a number of recommendations to ensure greater transparency in the investigation and the effective application of its report findings. The Commission recommends that the General Inspector's reports on cases of misconduct should be made public, while the final decisions adopted by the General Director of the Police regarding police sanctions should also be made public, namely to ensure transparency and public accountability of state obligations to sanction delinquent officers, to inspire greater public confidence in the integrity, credibility and professionalism of the police force, and specifically for the victims of human rights abuses, and to publicly report on appropriate sanctions adopted. Equally, in order to ensure the victim's right to a legal remedy, the Commission considers that the State must place special emphasis and enhance efforts to guarantee proper judicial follow-up of human rights violations. Linked to the issue of transparency and public accountability, the results of the police vetting

activities should be made public, especially where contracts for employment have been terminated, to ensure public awareness that certain individuals have effectively been sanctioned for their misconduct and no longer pertain to the HNP. Such practices will strengthen the HNP mandate and further inspire public confidence in the police force.

Court system

24. Since publication of its study on the administration of justice in 2006, "Haiti: Failed Justice or the Rule of Law: Challenges Ahead for Haiti and the International Community", which included an analysis of the weaknesses in the courts system, the Commission takes note of the special appointment of Secretary of State for Justice, charged with designing a plan for reform of the justice system, although the Commission expresses concern for the apparent lack of technical and financial assistance to this post, and stresses the importance of the State to allocate sufficient resources to the mission of the Secretary of State for Justice. In this connection, the Commission further notes the Justice Ministry's efforts to propose legislation aimed to improve certain aspects of the judiciary in relation to the statute of magistrates, the creation of a superior council of magistrates to oversee and sanction misconduct by judges, and the legal framework to establish a school for magistrates. The Commission hopes that these drafts laws will be swiftly adopted and duly implemented.

25. Notwithstanding these recent steps adopted by the State to address certain aspects of the functioning of the judiciary, the Commission remains concerned with the lack of an overall elaborated, robust and coordinated response by the State to tackle longstanding issues requiring, in some instances, further strengthening, and in other instances, all-out reforms of institutional structures, procedures and practices. While the Ministry of Justice and Public Security has largely focused its attention and resources on addressing public security through law enforcement thus far, justice sector strengthening and reform has not received the equivalent degree of attention or allocation of sufficient resources to implement programs to adequately address the deficiencies identified in the Commission's 2006 report. Despite the fact that State representatives have indicated that justice sector strengthening and reform are a government priority, the government has been unable to specify areas of priority attention and strategies for their improvement or implementation, nor has the State officially presented an elaborated plan of action for judicial sector strengthening and reform. Further, judicial officials and members of civil society commented that there has been virtually no consultation by the Ministry of Justice and Public Security with key individuals in the justice sector, nor non-governmental justice and human rights specialists on recommended areas and strategies for reform. Consequently, the Commission observed that previously identified deficiencies in the courts system largely persisted in April 2007.

26. According to information provided during the visit, the State has recently adopted measures to address issues such as the backlog of cases, the lack of independence of the judiciary, the statute of judges and the training of judges. In particular, the Commission notes the presentation to parliament of draft legislation on the independence of the judiciary (creation of the Superior Council of Magistrates), the statute of judges, and the establishment of the school of magistrates. The Commission wishes to stress the importance of the creation of the Superior Council of Magistrates as the primary mechanism expected to elaborate a code of conduct for judges, monitor and sanction the misconduct of judges, including widely criticized cases of corruption of the judiciary, and to oversee the administration of resources for the proper functioning of the court system in Haiti. Equally, the Commission recognizes the importance of creating a statute for magistrates, which expects to reinforce the independence of judges and establish greater protection for the working conditions of the judiciary. The Commission is encouraged by these efforts and hopes that the State will allocate sufficient resources to the creation of necessary implementation mechanisms called for in these texts.

27. Regarding the backlog of cases at the courts, and particularly at the court of first instance in Port-au-Prince that has an especially large docket, information received indicated that the court of first instance in Port-au-Prince and the Supreme Court in Haiti have recently made special efforts to hold additional hearings and criminal trial sessions, the most recent criminal trial session (without jury) held in February 2007 and including cases of theft, rape, criminal association, kidnapping, murder, and possession of illegal weapons. The Commission commends judicial officials and in particular the Dean of the Court of First Instance of Port-au-Prince and the President (a.i.) of the Supreme Court, despite limited resources, for their diligence and commitment to review and swiftly dispense with cases in order to ensure the individual's right to due process, including the right to a prompt and fair trial.

28. While the issue of backlog of cases is slowly being addressed, the issue of one's access to justice is especially highlighted now that the judiciary is attempting to hold more frequent trial sessions per year. Judicial officials, civil society members and the Female Association of Judges have all expressed concern with the lack of a developed legal aid service, and in cases where *pro bono* legal defense counsel is provided for defendants at trial, with the poor quality and preparation of the representation, typically lacking adequate experience or means to properly prepare a defense. In this connection, the Commission underscores the need to increase the budget for the courts system, in particular the creation of a state-sponsored legal aid program for the indigent, and increasing the capacity of the judiciary in order to respond to current demands for justice.

29. Working conditions in the courts remain to be addressed, in particular, areas that continue to require attention and resource allocation are the court facilities and infrastructure, the lack of equipment and resources for judicial officials to carry out their functions effectively, the salary of judges, the independence of judges, and the lack of a robust and standardized training curriculum at a permanent training institution designed to ensure a high standard of specialized training for all judicial officials, regardless of rank or jurisdiction, and including public prosecutors. In this respect, the Commission hopes that the bill on the statute of magistrates and the bill to establish the School for Magistrates are adopted by the legislature swiftly and that sufficient resources are allocated to the opening of the school and the development of a dynamic and rigorous curriculum, incorporating human rights law and mechanisms for their effective protection domestically. In addition, the IACHR calls on the international community in particular to support the restoration of the courts physical infrastructure, especially the Palace of Justice in Port-au-Prince and courthouses in the main provincial towns of the country. Office equipment, materials and legal texts are also urgently needed to ensure that judges and their staff have access to necessary resources to carry out their functions effectively.

30. On the issue of public confidence in the justice system and in order to address the distrust of the Haitian population in the capacity to deliver fair justice in a reasonable period of time, the Commission considers that the State must place emphasis not only on the elaboration of a comprehensive policy and plan for strengthening the justice system, but to make the effort to hold public consultations with members of the judiciary, civil society, and other rule of law and human rights specialists in order to develop a system that adequately and appropriately responds to the interests of justice of the Haitian people and ensures a transparent and participatory process. Broad application of the plan at a national level will ensure that reforms do not remain solely on paper or confined to Port-au-Prince. Consequently, the Commission urges the State, with the support of the international community, to place special priority on the elaboration of a detailed agenda for judicial sector strengthening and reform with an emphasis on the aspect of implementation, to establish a mechanism for close communication and collaboration with donors and international partners accompanying the process, and to set clear goals, benchmarks, and deadlines for its activities. An impact assessment component to measure the achievements of the process would also be advisable. In particular, improved coordination and collaboration between members of the

international community in respect to the Haitian government priorities for reform is crucial to the elaboration of a comprehensive and unified process.

Prison system and detention conditions

31. Since the Rapporteur's last official visit conducted in April 2005, the conditions in Haiti's prisons have increasingly worsened in large part due to a significant rise in the prison population and no adequate improvements made to the infrastructure of the prison facilities to accommodate this considerable increase.¹ The National Penitentiary in Port-au-Prince and several other facilities in the provinces are in need of urgent repair, expansion or relocation to new facilities that respond to international standards on the treatment of detained persons. The prisons in Gonaives and Saint-Marc for example, were destroyed in 2004 and never restored or reconstructed. Consequently, detainees in these two towns are being held in make-shift facilities which lack necessary security and are wholly inadequate to house individuals over a long period of time, thus creating inhumane conditions for the detainees.

32. In April 2007, total figures for the National Penitentiary, a facility built to hold 800, was recorded to house 2582 detainees. Sources indicated that the prison facilities in the country have not been the object of any significant and comprehensive reconstruction programs, resulting in the increasingly poor State response to accommodate the growth in the national prison population and the corresponding increase in the crime rate. Consequently, conditions in Haiti's prison facilities are characterized by severe shortages of potable water, food, adequate access to bathing and sanitation facilities, and no access to leisure time. Due to the continuously deteriorating facilities, security is a prime concern, with numerous prison escapes documented in 2005-2006, the limited number of prison guards and the lack of specially trained personnel to handle security threats, forces authorities to maintain detainees in their cells on a permanent basis with no access to previously mandated leisure and visitors time in the main courtyard of the prison facility. Moreover, the National Penitentiary lacks an adequate security structure and sufficient guards, which have contributed to the number of prison breaks in recent years.

33. Regarding the situation of persons deprived of liberty, reports from human rights monitors are alarming, documenting a generalized poor state of health of detainees, severe overcrowding in cells with poor ventilation and lighting, and no space for detainees to sleep. Such conditions contravene protection for persons deprived of their liberty contained in article 7 of the American Convention and fall short of Haiti's obligations to adhere to the UN Standard Minimum Rules for the Treatment of Prisoners. Consequently, the Commission reiterates its previous findings made in its 2006 report on the administration of justice, that the government of Haiti with the support of the international community, to take urgent steps to restore dysfunctional prisons facilities in the country in order to guarantee minimum standards of treatment and ensure proper measures of security. Further, the Commission encourages the state to place emphasis on the renewed hiring and training of prison personnel.

¹ In an effort by the Commission to conduct follow-up observations of the situation in Haiti, since the publication of its report on the Administration of Justice in 2006, the Rapporteur on the Rights of Persons deprived of Liberty conducted an onsite visit to Haiti from June 17-20, 2007 to observe the situation of persons deprived of liberty in select detention centers in Port-au-Prince. Information received during the visit indicated that the pre-existing problems of overcrowding, harsh living conditions, and excessive periods of prolonged pretrial detention persisted, despite government attempts to address these problems. In particular, the Commission noted that "the prison population in the 17 prisons throughout Haiti, increased from 2,586 to 6,047 persons between July 2005 and June 2007" and "in June 2007, 84% of the prison population had not been formally charged, and the percentage of persons in detention without having been convicted is estimated at 98% for boys in the Prison for Minors in Delmas; 95% in the case of women deprived of liberty in Petion-ville; and 96% in the case of persons deprived of liberty in the National Penitentiary. See also IACHR Press Release N° 32/07 "Rapporteur on the Rights of Persons deprived of Liberty Concludes Visit to the Republic of Haiti" available at: <http://www.cidh.oas.org/Comunicados/English/2007/32.07eng.htm>.

34. Due in part to the increase in the number of arrests since early 2007, and the lack of a prompt and effective response by the justice system to investigate, prosecute and punish criminal suspects, this has also created a crisis in the State's capacity to hold a significantly higher number of detainees in its facilities. International and national human rights observers have issued reports and expressed alarm with the current conditions of detainees being held in prolonged periods of pre-trial detention in the police holding cells. These cells have been designed exclusively to hold individuals temporarily for the constitutionally mandated 48 hour period after which, based on a judge's determination, individuals are either released or transferred to State prison facilities to await trial.² Due to the overcrowding of Haiti's prison facilities however, judges have recently adopted the practice of issuing the '*mandat de depot*' or detention order for the police holding cells rather than the legally mandated prison facilities resulting in the prolonged detention of individuals in grossly inadequate facilities.

35. As to the conditions within the police holding cells, they are small, typically no larger than 10x12 feet, have no windows, no natural or artificial lighting, and no space for beds. The police stations have no budget to maintain detainees over a long period of time, such as having the budget to provide detainees with potable water, food, access to bathing and sanitation. Sources indicate that the police stations lack adequate security measures to hold detainees for long periods of time, therefore, individuals are typically contained in the cells permanently. Most police stations have no more than two holding cells per station, at times used to separate adult men from adult women, or to separate adult men from minors. It is understood that detainees are now being held in police holding cells while criminal investigations are conducted by judicial authorities, however, according to the criminal procedural code, although there is no designated limit to extending this period, criminal investigations can last from two months to well beyond two months in practice. The consequences of the recent police practice of holding individuals for prolonged periods in police holding cells may have a severe effect on the life and physical integrity of the detained individuals. Thus the current situation must be addressed immediately, in order to protect the right to be free from cruel and unusual punishment or treatment as provided for in the American Convention.

Prolonged pretrial detention and the special commission on detention

36. One of the IACHR's primary concerns remains the high percentage of persons held in prolonged pretrial detention in Haiti's detention facilities. In April 2007, of the total prison population recorded at 5480 detainees, 4642 were awaiting trial and in Haiti's National Penitentiary, of the total 2582 detainees, only 112 were serving a criminal sentence, while in the prison for minor boys, only 2 out of the total 125 detainees had been convicted. As previously noted, many individuals, including minors in detention, have been held for one to two years without trial, and in several instances, individuals have been detained longer than their would-be sentence. In other instances, several individuals are being held on minor or faulty charges, files have been misplaced or lost, or are absent of any evidence, thereby creating an even greater injustice, as in many of these cases no apparent legal basis exists to maintain individuals in detention under these circumstances. Such situations are created due to a lack of a national filing and tracking system, the lack of sufficiently trained and diligent legal assistants charged with organizing and monitoring the cases and maintaining a good level of communication and coordination with appropriate judicial authorities

² Specifically, during the June 2007 visit of the Rapporteur on Persons deprived of Liberty, the Commission observed conditions in the Delmas police station, in which women, men and children shared a common cell, without water, food or any other basic service. Also during the visit to the Delmas police station, the Commission was informed about 13 individuals who had been held in detention in the Delmas station since May 23, 2007 without trial, prior to which, the individuals had spent three months in the detention cell of the Carrefour police station. The delegation was informed that these individuals had originally been arrested by MINUSTAH soldiers in possession of illegal firearms, which were confiscated by the military soldiers at the time of the arrest. According to the Haitian National Police, the investigation in this case could not proceed without access to key evidence in the case.

on the efficient and speedy handling of the cases, as well as the lack of diligent and responsible judicial officials to regularly review files and hold hearings.

37. In response to the current situation, the State has organized a special detention review commission, launched in March 2007, to review all the cases of detainees and to organize them according to the complexity of the matter, dispensing with cases swiftly and fast-tracking the most serious or egregious matters. The detention commission, comprised of members of the judiciary, prosecutor's office, police and prison institutions, the ombudsman office and civil society members is supported by MINUSTAH justice section and coordinated by the Minister of Justice, is an encouraging sign by the state to take urgent steps to address the current crisis of the majority of detainees awaiting trial. The Commission hopes that this detention commission will complete its mission swiftly while at the same time observing the individual's right to judicial guarantees and due process contained in the American Convention, and will significantly alleviate overcrowding in the police holding cells and detention facilities. Equally, the Commission hopes that the relevant authorities, with the assistance of the international community, will also develop long-term solutions and strategies, which may include developing alternative penalties to incarceration as one option to prevent this phenomenon of excessive periods of prolonged pretrial detention.

38. One of the Commission's primary concerns regarding the human rights situation in Haiti is the pervasive culture of impunity, namely the lack of the justice system to effectively investigate, prosecute and punish perpetrators. The problem of widespread impunity is a result of several factors, including faulty police practices, and deficiencies in the justice system. The collection of sufficient credible evidence for a criminal case is in many instances the most important aspect to ensuring a conviction for a crime, however, this aspect is one of the primary weaknesses of the police and relevant judicial officials charged with criminal investigations. While the visit and this document does not allow the Commission to fully analyze the causes and potential solutions to this problem, the Commission wishes to stress its concern with the lack of judicial follow-up on a number of past human rights cases, and calls on the state to find appropriate solutions to address these outstanding violations, in order to fulfill its duty to investigate, apprehend, prosecute and punish the perpetrators, while ensuring the victim's right to a remedy pursuant to international human rights law principles. Information received indicates that each year the number of unresolved cases increases, fueling the culture of impunity and social tolerance towards these acts and creating a context where perpetrators circulate freely and victims continue to be denied their right to a legal remedy and financial compensation for damages. The Haitian government has an ongoing duty to deliver justice in the numerous cases of past human rights violations. In this respect, the Commission is encouraged by the President of the Republic's recent statement to re-launch the investigation and render justice in the case of prominent journalist and social activist, Jean Dominique, and hopes that this same will be translated into a more comprehensive initiative and strategy to address outstanding cases of human rights violations. With respect to this issue, the Commission would like to reiterate its recommendation from its 2006 report proposing the composition of a specially constituted panel or chamber of the civilian courts and international participation in the investigation or trial for past human rights abuses.

Situation of Women

39. The Commission is especially concerned with the prevalence of discrimination and violence against women and young girls in Haitian society and the deficient state response towards these problems. The failures of the health, education and justice sectors in Haiti have and still particularly affect women and young girls. While the acts of kidnappings, rape, murder and intimidation in recent years have affected the majority of the Haitian population in Port-au-Prince, different sources revealed that women and girls are particularly vulnerable to acts of violence and abuse in Haitian society due to deep-seated social-cultural discriminatory norms, patterns and practices based on the concept that women are inferior. The adoption by the Haitian state of

international instruments such as the Convention of Belém do Pará and the Convention on the Elimination of all Forms of Discrimination against Women (“CEDAW”) reflect an acknowledgement of the discriminatory treatment that women have traditionally received in this society, which has exposed them to various forms of violence and an abusive treatment of their bodies, and the commitment of the State to act with due diligence to prevent, investigate, sanction and redress these acts. A preliminary assessment of the situation of discrimination and violence against women and girls in Haiti and the current legislative, institutional and judicial response to these problems is provided in this analysis. The current review will be followed by a detailed report on the subject in the following months.

40. The IACHR observed that discrimination against women in Haiti is a widespread and tolerated phenomenon, based on stereotypical concepts of the inferiority and subordination of women that remain ingrained in the culture. It is mainly manifested in structural inequalities between men and women in the Haitian society in the economic, education, health, justice, labor and decision-making sectors. Information available indicates, that compared to their male counterparts, women continue to be underrepresented in decision-making positions in the executive, legislative and judicial branches; their work is frequently undervalued and underpaid, they face scarce professional opportunities and their work is often confined to the domestic sphere; they have an unequal access to educational opportunities at all levels; they lack basic information about the health, education and justice services available; and they receive an unequal treatment within their families. They suffer acts of discrimination when they seek to access basic services in the areas of health, education and social services, and they lack an effective judicial protection to redress violations of their fundamental rights.

41. The Minister of Women’s Status and Women’s Rights noted the lack of women represented in government and leadership positions and the absence of a gender perspective in public policies and programs, while female members of the judiciary expressed discontent with the lack of female representation in the justice system, and provided numerous examples of unequal treatment compared to their male colleagues. The Ministry of Social Affairs confirmed that the levels of education for women are lower than those of men and parents with limited means prefer to invest in the education of male children instead of that of girl children based on the belief that girls will be taken care of by men in the future. Therefore, Haitian women still live in a context when they cannot exercise their basic rights under the American Convention, the Convention of Belém do Pará and CEDAW.

42. Moreover, the circumstances that have historically exposed Haitian women and girls to discrimination and subjected them to social stereotypes, an inferior treatment and the civil, political, economic and social consequences of these disadvantages, still expose them to acts of physical, sexual and psychological abuse in the public and private spheres. The figures have notably and steadily increased in recent years with the rise in poverty across the country, the wealth gap, the proliferation of arms, violent crime, the lack of adequate crime prevention measures and the absence of effective accountability mechanisms in the country. In this context, discrimination and the resulting acts of violence continue to be tolerated in Haitian society which in turn perpetuates a climate of impunity towards these acts and their repetition.

43. The rates of violence against women in the public and private spheres remain alarmingly high and were reported by a variety of sectors to have increased over the past three years, since 2004. For example, the civil society and services organization Solidarite Fanm Ayisyen (Haitian Women in Solidarity), SOFA, which provides medical and legal assistance to victims of violence against women, recorded 396 cases nationally of violence against women and young girls during the period of July and December of 2006. The United Nations Independent Expert for Haiti reported in 2006 that considering all forms of violence together women are victims in 85% of the cases and men are the aggressors in 88.8% of the cases.

44. The delegation received consistent reports of the increase of rapes since 2004 by armed groups or gangs from a variety of sources, including civil society, the United Nations and the Ministry of the Status of Women and Women's Rights. Both State and non-State sources confirmed the prevalence of violent activity in certain sectors of the metropolitan area, mostly perpetrated by different kinds of armed groups and particularly affecting women due to the discrimination and inferior treatment they have traditionally suffered in Haitian society. Rape, when used by armed groups, is said to be employed as part of a strategy to gain and retain power and control over the victim and her community. For example, rape has been perpetrated against victims of kidnappings, the figures of which have reportedly increased consistently since 2004. Women have also been forced to perform different duties for these groups such as cooking, caretaking, sexual services, and serving as accomplices in the perpetration of the acts.

45. The Division for Minors of the Haitian National Police reported a national increase in rape cases of young girls between 4 to 17 years of age during the period 2004-2006. The division received 23 similar reports in 2004, 26 reports in 2005, 34 reports in 2006 and 12 reports in 2007, while the Haitian Police received reports of 82 cases of rape in 2006 and of 50 cases in 2005, although authorities indicated that these figures do not reflect the actual numbers of rapes perpetrated in the country, as most rape victims do not report these acts to the authorities. Furthermore, the network *Table de Concertation Nationale*, composed of the Ministries of the Status of Women and Women's Rights, Security, Justice and Public Health and civil society organizations, reported on November of 2005, the growing number of rape cases by gangs and armed actors, how almost half of the rape victims are below the age of 18 years, and that the majority of cases of sexual violence are carried out against women. Service providers confirmed that this situation has remained largely the same in 2007. Most of these acts are not reported to the State due to fear of reprisals by the aggressors and the social rejection the victim can receive from her partner, family and community. There is also an evident mistrust that the justice system can offer an effective remedy for the acts suffered.

46. The delegation also received reports of the prevalence of interpersonal and intrafamily violence. This issue, however, does not have the same level of visibility as sexual violence perpetrated by the armed groups. State and non-state sources reported that this is still a very silent issue due to dominant social belief that such behavior is private and does not constitute criminal action, thereby creating a tendency of the victim not to report such incidents to government officials. Further, due to the taboo nature of this form of violence, the victim may face fierce ostracism when reporting the crime and potential reprisals from the aggressor. The phenomenon of domestic violence is widely tolerated in Haitian society and it is one of the worst manifestations of the discrimination women have and still suffer.

47. Despite the gravity and prevalence of acts of discrimination and violence against women, the Commission observes notable failures in the legislative, institutional and judicial response to these problems. The Commission received information confirming the existing voids in the existing legislative framework to address violence against women. Haiti lacks a comprehensive set of laws to address all forms of violence against women and the various contexts where they occur – in the public and private spheres. Furthermore, the current implementation of laws is challenged by the persistence of discriminatory sociocultural beliefs and practices that perpetuate the treatment of women as inferior and the social tolerance of different forms of violence against women. One of the only noticeable advances in the last two years has been a decree of July 2005 by the Executive Power which increased sentences for sexual assaults and prohibited discriminating treatment of women in such cases. However, this provision is rarely enforced considering that barely any cases of rape have been sanctioned, police and justice officials have not been trained on how to appropriately address these cases, and the public still lacks information about this new legislation.

48. Furthermore, the Minister of Women's Status and the Rights of Women confirmed that the State is currently unable to provide key services to victims of violence against women due to resource and capacity constraints. Some of the main consequences of violence against women, include both physical and psychological damage, and demand the need for multidisciplinary services. Some of the effects can include: the trauma that accompanies the act; the rejection and stigmatization by their communities, families and partners; unwanted pregnancies; sexually transmitted infections; chronic pain; physical disability; drug abuse; and depression. In the Haitian context, this has contributed to the increase in national figures of persons living with HIV/AIDS. The Commission has recognized the need for victims of violence against women to receive a range of specialized and multi-disciplinary State services to mitigate the impact of the acts suffered, including health services and information on where and how to file complaints to obtain a remedy. Currently, most services available for female victims of abuse are offered by civil society organizations. Furthermore, rudimentary and uncoordinated data systems make it difficult to obtain statistics on incidents and cases of violence against women. These statistics are essential to an examination of its causes and trends and to improve the judicial response toward these cases.

49. On the matter of prevention and protection, the Commission received information from the Ministry of Women's Status and the Rights of Women that State authorities fail to fulfill their duty to protect women victims of violence against imminent threats. The inaction on the part of State authorities, particularly the police, is partially attributable to the general resource constraints of the force and partly to an inherent tendency to be suspicious of the allegations made by women victims of violence and the perception that such matters are private and low priority within the larger context of insecurity. These circumstances further create a climate where women are disinclined to report cases of violence against women, thus, such cases are largely unreported to authorities.

50. Lastly, the failures of the administration of justice identified in previous reports of the IACHR on Haiti and women deeply affect the prevention, investigation, judgment and sanction of violence against women crimes in Haiti. Despite the criminalization of rape in 2005, a variety of sources confirmed that most cases of violence against women are still not investigated and sanctioned. While the failure to process cases involving violence against women quickly and effectively is often attributable to structural, economic and human resource factors, the failure to investigate the facts reported and the inefficacy of the justice system in prosecuting and punishing these cases is also attributable to discriminatory socio-cultural patterns that influence the behavior of officials at all levels of the judicial branch of government. Complaints by female victims are often trivialized. Justice officials, moreover, can disregard evidence that is critical in identifying the guilty parties and victims, and their next of kin can be mistreated and disrespected during the investigation phase of the justice process. In most cases that reach the justice system, parties are frequently willing to reach a financial settlement of the case in lieu of prosecution, a convenient arrangement proposed by the perpetrator to avoid punishment, and conceded to by the judge and the victim who receive monetary compensation. This practice is common precisely because authorities do not regard such acts of violence against women as equally serious as other crimes.

51. Furthermore, one of the most important challenges to the adequate investigation of cases is the increasing reliance on testimonial evidence due to the absence of resources, equipment and a strong forensic evidence system to obtain other kinds of evidence. The IACHR recommends that protocols are designed for all officials involved in the investigation, judgment and sanction of violence against women cases in order to facilitate and promote the effective, uniform, and transparent investigation of acts of physical, sexual and psychological violence.

52. In this connection, one notable advance is the authorization to all doctors to issue a medical certificate in the case of injuries linked to sexual assault, and the requirement that such certificate is granted free of charge by public health institutions. Most sources confirmed the

importance of this medical certificate in convicting perpetrators, due to the heavy emphasis placed on evidence of physical injury. This action was the result of a protocol signed between the Ministries of Health, Justice and of the Status of Women and Women's Rights to ensure that the certificate was free and a notice was placed in the newspaper to communicate this fact to the public. However, the Commission received alarming information indicating that the requirement of issuing this certificate free of charge is not being duly enforced.

53. In order to address the deficiencies noted in the current state response, the Ministry of Women's Status and the Rights of Women is undertaking a number of initiatives to promote the effective protection of the rights of women. These efforts include the drafting of new legislation addressing the problem of violence against women in a multidisciplinary fashion, incorporating all forms and contexts in which it occurs (including domestic, sexual, and criminal violence). Furthermore, the Ministry has submitted three draft laws for consideration by parliament, including one on domestic labor (*restavek*), a second on cohabitation (ensuring legal rights equivalent to legal marriage status), and the third on paternity (ensuring that fathers assume responsibilities for their children). The Ministry is also contemplating the submission of a law that legalizes abortion. These draft laws are part of a greater action plan by the Ministry of the Status of Women and Women's Rights, which includes the promotion of women's rights, increasing the public's awareness of the problem of violence against women, the analysis of the disparities between men and women in various sectors, and poverty reduction. Specifically with regard to violence against women, the Minister highlighted her concern with the state's incapacity to provide legal aid for indigent women and a shelter for abused women. The Commission therefore emphasizes the need for the national government to assign an adequate amount of resources to the Ministry in order for its initiatives to be duly and practically implemented in the future.

54. The Ministry of Women's Status and the Rights of Women is also working to make violence against women a priority issue to be addressed systematically and institutionally, with the support of international partners and in close collaboration with the civil society organizations. Accordingly, the Ministry has established an issue-specific network, the *Table de Concertation Nationale*, mandated to support victims of sexual violence, which is composed of representatives from the Ministries of the Status of Women and Women's Rights, Justice and Health, and several civil society organizations that provide direct services to victims of violence and implement outreach and sensitization initiatives. Among its main activities are the collection and systematization of the statistics available on different forms of violence in the country and the implementation of prevention and sensitization programs oriented towards the general population. The current President also issued a statement on November 25, 2006, the international day against violence against women, calling for action to address the prevalence of the issue.

Situation of Children

55. While the parameters of the 2007 visit did not allow the IACHR to conduct a detailed investigation into the situation of children in Haiti, the Commission received updated information on the conditions of minors, building on its findings in 2005 made by the Rapporteur on Children³ following his visit to examine the situation of violence against children. The Commission expects to make this subject the focus of a future visit and report to elaborate on the nature of violations against children and the State response to protect this vulnerable group.

56. The IACHR wishes to express its concern with the situation of children in conflict with the law, particularly the detention of minors in a prison facility rather than the legally mandated rehabilitation facility. Haiti's legal framework with respect to the protection of children in conflict

³ Paulo Sérgio Pinheiro also serves as the "United Nations Independent Expert, United Nations Secretary General's Study on Violence Against Children"

with the law is largely limited to the 1961 law on delinquent youth and children in conflict with the law, which adopts a rehabilitative approach to delinquent youths and calls for special protection of children in conflict with the law, in particular, the law provides for a rehabilitation center for children found to have committed a crime. Under sixteen years of age, children are not considered to be criminally responsible, and are expected to serve a term in a rehabilitation center rather than a detention facility. In meetings with government authorities, members of the judiciary and civil society, an overwhelming concern was expressed over the prolonged pretrial detention of minors in conflict with the law and the lack of an adequate and legally sanctioned rehabilitation center for this group as well as a shelter for abandoned and abused children. Such practice contravenes provisions of the American Convention on Human Rights and international standards of protection for minors in detention contained in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, providing for the detention of minors awaiting trial as a means of last resort, and if held in detention, requiring that the minor shall receive care, protection and all necessary individual assistance-social, educational, vocational, psychological, medical and physical-that they may require in view of their age, sex and personality.

57. With respect to the conditions for minors in detention, there were 125 boys held in the Delmas prison facility and 29 girls held in the Pétion-ville prison. Sources indicated that very limited services were offered to the boys, such as literacy classes and recreation programs, and no education or other services were available to the girls. Conditions in the facilities are poor, although one of the key concerns of child rights advocates, authorities of the Ministry of Social Affairs and Labor and judges at the Court for Minors is the degree of prolonged pretrial detention of minors and the lack of appropriate legal services available to minors in conflict with the law. In some cases, the charges are for minor offenses, and others have reportedly been arrested illegally, without an arrest warrant or on false charges. In April 2007, in the case of boys, only 2 of the total 125 detainees had been convicted, while in the case of girls, only 1 of 28 girls had been convicted.

58. The other vulnerable categories of youths in Haiti are street children and *restavek*, or child domestic laborers. Some of the worst forms of abuse of children include child rape, child trafficking, child prostitution and the increased phenomenon of child kidnapping. There are an estimated 2,500 children living on the streets of Port-au-Prince, many of these children have left home due to family disputes, child abuse, economic hardship in the home, or abandonment. Homeless children are extremely vulnerable to abuse by state agents and/or by criminal gangs, especially since 2004 with the proliferation of arms and violent criminal gangs in parts of Port-au-Prince, many youths have been recruited into the gangs to accomplish criminal objectives. Children are employed by adults as human shields, decoys, all-purpose laborers for armed groups, and at times directly participate in gang rapes or other crimes committed by these groups. The Division of Minors of the Haitian National Police was specially created to respond to the problem of minors in conflict with the law and provide protection for especially vulnerable children, although it appears that this division requires continued training and increased resources and staff to ensure that child protection measures are effectively applied by the force at the national level. The Commission is encouraged by the recent initiative of the Ministry of Social Affairs and Labor, in collaboration with a number of children's groups, to devise a national plan of action on the protection of children and hopes that sufficient resources are allocated for the effective and prompt implementation of this plan.

CONCLUSIONS AND RECOMMENDATIONS

59. The Commission is pleased to report on a number of positive outcomes of the visit. These included the Haitian government's expressed undertaking to ratify the regional human rights treaties to which Haiti is not yet a party and the renewed commitment to establish an inter-ministerial committee to coordinate communications between the government of Haiti and human rights treaty bodies such as the Inter-American Commission on Human Rights. Other positive

aspects included a successful training conducted with government representatives on the Inter-American system of Human Rights and its procedures for processing petitions, and prospects to expand such initiatives to create a specialized training program on the inter-American system of human rights for other members of government, including police authorities and the judiciary, as well as for nongovernmental organizations with the aim to further enhance civil society's engagement with the inter-American human rights system.

60. The Commission is encouraged by the reports of the improved security situation, most notably the reduction since early 2007 in the level of violent crime that swept the country since 2004. This change is due in part to the renewed efforts by the Haitian National Police and MINUSTAH forces to apprehend criminal suspects largely believed to be responsible for the wave of kidnappings in Port-au-Prince that claimed hundreds of victims in previous years and caused widespread fear and intimidation within the population, and a near total paralysis of normal economic activities in the capital city. These efforts were accompanied by the initiative of the courts system to hold individuals accountable for their crimes by organizing more frequent hearings and criminal trial sessions, which resulted in a greater number of convictions in recent months than in previous years. Nevertheless, in order to maintain a lasting peaceful environment and to effectively address the phenomenon of organized crime in Haiti that has contributed to the high death toll in previous years, it will be essential for the State, with the critical support of the international community, to develop and implement a comprehensive public security policy and plan that addresses the underlying factors perpetuating armed, criminal and organized violence in the country, namely arms control and devising a national and regional approach to combat drug trafficking. More specifically, ongoing technical and financial support should be committed to strengthening the police force capacity to prevent and respond to public security threats, while ensuring that the fundamental rights of Haitians are duly respected.

61. In relation to the administration of justice, the Commission notes the government's steps to address longstanding issues such as prolonged pretrial detention in Haiti's prison facilities and the Commission recommends that such initiative receive the necessary technical and financial support to achieve its ends to reduce the numbers of individuals held under these conditions. Further, the Commission commends the state for its initiative to propose draft legislation seeking to ensure the independence of the judiciary, establish the official statute of judges and the formal establishment of the school for magistrates. Accordingly, the IACHR hopes that these bills are swiftly adopted by the legislature in order for these acts to be effectively and promptly enacted.

62. Notwithstanding these advances, Haiti's institutions remain weak, under-resourced, under-staffed, poorly trained and disorganized. As a result, state institutions are barely capable of performing their functions adequately, corruption is rife, and moreover, Haiti's institutions are largely incapable of providing basic services for the population in the area of health, education, and social welfare. Furthermore, many of the weaknesses identified by the Commission in the administration of justice institutions require extensive and long term reforms in order to provide the police and the courts in Haiti with the capacity to deliver effective and impartial justice to the population. While urgent measures are also necessary, they are not enough to address deep-seated institutional weaknesses, and therefore, quick-impact projects, such as the detention review commission, must be accompanied by long-term reforms that aim to adequately address longstanding weaknesses in the administration of justice, while at the same time, building the capacity and efficiency of Haiti's existing institutions. These efforts are likely to succeed with enhanced cooperation between the Haitian government and the international community, as well as additional resources from international donors.

63. As to measures adopted by the State to improve the situation of women in Haiti, the Commission commends the Ministry of the Status of Women and Women's Rights for its demonstrated commitment to improving the situation of women and girls in Haiti, by swiftly

elaborating and implementing a detailed plan of action incorporating elements of prevention, public education, poverty reduction, and protection for women. The Commission further notes the relationship of close collaboration and cooperation established by the Ministry to ensure greater protection for women, with other relevant sectors of the government and civil society, such as the Ministry of Justice and Public Security, the Ministry of Health, the Ministry of Social Affairs and Labor, and service groups providing invaluable legal aid and medical care to victims of violence. Such alliances have resulted in the recent appointment of a director for women's affairs at the Haitian National Police, a pilot project at two police stations to provide special treatment for female victims, and the adoption of a decision to authorize free medical certificates by state institutions for women who have been sexually assaulted and wish to pursue legal action.

64. Nevertheless, the IACHR is alarmed with the continuous reports of frequent and increasingly inhumane forms of abuse committed against women and girls and which continues to be largely tolerated by authorities and the society at large, due to discriminatory socio-cultural views that women are inferior to men and thus do not receive equal treatment and respect of their fundamental rights. As a result, the Commission observed a pattern of systematic impunity in cases involving female victims, resulting from the lack of investigation and punishment of these acts and communicating a social message that discrimination and violence against women is acceptable. In this respect, the Commission observed a notable gap between the commitments and formal recognition of the Haitian State of discrimination and violence against women as a priority issue and ensuring an effective judicial response. While the IACHR recognizes the efforts of the State, particularly of the Ministry of the Status of Women and Women's Rights, to adopt a legal, political and institutional framework and state programs to address the problem of gender-based violence, certain remedies continue to exist mainly on paper and not in practice. In particular, most complaints received by authorities are rarely investigated, prosecuted and punished by the administration of justice system. Thus, it is extremely important that the current initiatives are joined by implementation measures and mechanisms. Consequently, the Commission calls on the State to allocate adequate financial and human resources for these to become a reality. In this respect, the IACHR urges the Ministry of the Status of Women and Women's Rights to continue to work closely with relevant sectors, especially the Ministry of Justice and Public Security, to ensure a comprehensive state response to guarantee female victims equal access to effective legal remedies for human rights violations, as well as equal treatment by authorities of gender-related crimes and acts of discrimination against women.

65. Finally, the Commission wishes to stress the obligation and responsibility of the State to act with due diligence to prevent, investigate, sanction and redress acts of discrimination and violence against women and which is not being met at present. Further, the IACHR is extremely concerned with how this failure has a dire impact on the daily lives of Haitian women. This duty, as the Commission has previously established, obligates the State to organize its state structure and institutional apparatus to adequately respond to these problems in every state sector, including health, education and justice. It also obligates the States to modify legal and customary practices, which sustain the persistence and tolerance of acts of discrimination and violence against women. Therefore, it is important that the State considers the specific needs of women in its efforts to address the existing institutional and response challenges in every state sector. The absence of the state historically in addressing discrimination and violence against women creates a climate where these acts are persistently tolerated and repeated. Specifically, the Commission reiterates the need to undertake efforts to fill the voids in the legislative scheme to enhance protection of women from discrimination and violence; assign adequate resources to the current initiatives of the Ministry of the Status of Women and Women's Rights; and to create a public legal assistance program and open a shelter for women victims of violence.

66. The Commission expresses its appreciation to the Government and people of Haiti for the cooperation, facilities and hospitality provided in the course of the IACHR's visit, to the OAS

country office for its crucial assistance in organizing and executing the visit, and to the nongovernmental organizations, civil society institutions, and international organizations concerned for their valuable participation in the Commission's activities.

67. In light of its conclusions, the Commission recommends that the Republic of Haiti take the following measures:

1. With respect to public security, to elaborate a comprehensive security plan for the country, including strategies to control the growth of organized crime and illicit trafficking, and specifically, to adopt long-term and sustained measures to ensure adequate prevention and punishment of violent criminal acts, in particular, to reinforce accountability mechanisms in order to effectively hold perpetrators accountable for their crimes.
2. With respect to the police force, to maintain financial and technical assistance for the professional development of the Haitian National Police, and specifically, to take measures to enhance the police academy training curriculum, while also enforcing the chain of command in the force including the effective supervision and control of the conduct of officers and to adopt appropriate disciplinary action where necessary.
3. With respect to the court system, to elaborate a national, comprehensive judicial reform program and ensure the allocation of sufficient resources for the implementation of such a plan, including the provision of adequate technical and financial support to the Secretary of State for Justice.
4. With respect to the judiciary, to encourage the swift adoption of proposed draft bills on the statute of magistrates, the establishment of the school for magistrates and the creation of the Superior Council of Magistrates.
5. With respect to the prison system and persons deprived of liberty, to take urgent measures to improve the living and security conditions in Haiti's prison facilities and detention centers in order to ensure that facilities meet minimum international human rights standards, and in addition to the creation of the special detention commission, to adopt best practices and preventive measures on the long-term, which may include necessary institutional reforms, to reduce the period in which individuals are held in pretrial detention.
6. To swiftly adopt legislation that adequately protects women and girls from acts of discrimination and different forms of violence – physical, sexual and psychological – in the private and public spheres. To earmark sufficient resources, and to enact the necessary regulations to ensure their effective implementation nationwide.
7. To provide female victims with accessible and effective legal services free of charge to pursue a claim before the courts and to create specialized centers to provide multidisciplinary services to victims of violence, including legal, medical and psychological.
8. To develop educational programs for the public, from a formative and early age, in order to cultivate the respect for women as equals, the recognition of their particular needs, and their right to live free from violence and discrimination.
9. To adopt public policies and programs intended to reconfigure the stereotypes about the role of women in society and to promote the eradication of discriminatory social

patterns that obstruct their full access to justice; these public policies should feature training programs and comprehensive prevention policies.

68. In conclusion, the Commission emphasizes the importance of the international community role in supporting the Government of Haiti in the application of the recommendations contained here, and for the identification, elaboration and implementation of development programs that seek to improve the social and economic conditions of the people of Haiti and which also seek to build national capacity and lead to self-sufficiency for Haiti in the longer term.

*Explanation of Vote by Commissioner Freddy Gutiérrez Trejo on the Haiti Report
approved during the 129th Extraordinary Period of Sessions in September 2007
(Asunción, Paraguay)*

The Report on the current human rights situation in Haiti, submitted for our consideration, constitutes an objective detailed diagnosis in as much as it contrasts the views and plans of the government of President Préval, during his first year in office, with direct observation of the facts and the acts of his administration. It does not omit any essential detail and it delves in particular into the sensitive issues regarding the situation of the most vulnerable groups, administration of justice, and security. It concludes with general recommendations reached by consensus on each issue and underscores the need for international support to achieve the proposed goals. We cannot but acknowledge the notable results achieved by the mission headed by the rapporteur, Sir Clare K. Robert, who managed to complete a very tight agenda in an extremely short period of time.

My criticism refers, rather, to structural traits of the Commission, whose points of view preclude moving from item-by-item diagnoses, such as those furnished by the Clare Roberts Report, to diachronic analysis, that is to say, the analysis of processes. There are no indications of where we are coming from in order to know where we are heading. A text that might have served those purposes would have taken into consideration recent events that are indispensable for a grasp of the process that led to the restoration of democracy in Haiti under the presidency of Dr. René Préval. For the Commission, in the operative part of this text, there never was the invasion of the country by paramilitary groups, nor the destitution and kidnapping of the democratically elected President Aristide, nor was power usurped by irregular groups, which, once in power, invested themselves with all the majesty of the State and dubbed themselves the representatives of its sovereignty. No mention is made, either, of the deplorable performance of the United Nations in Haiti, acting through the unspeakable U.N. Stabilization Mission in Haiti (MINUSTAH). From this perspective, the factors in conflict are presented as abstract and independent entities, whose actions and possible interactions are defined by a largely random combination. From this point of view, it turns out to be impossible to even remotely understand the social, economic, political, or any other kind of roots of the conflict, and to keep track of its impact. Thus, the Secretariat's report is geared to producing diagnoses which, *in toto*, do not omit any essential factor but fail to provide a solid basis for pointing to a committed and realistic course of action conducive to effective solutions.

The roots of this tacit perspective of the Commission are structural, because they are based on the exclusively juridical approach of the inter-American system for the defense of human rights and the "objectivity" –unilateralism and distance with respect to the subject – that such an approach implies. Here, attention needs to be paid to the epistemological observation that understanding, in the humanities, is not acquired on the same terms as in the natural sciences and that, given its interpretative dimension, it is only possible if it is rooted in inter-subjectivity (Habermas) and history. So, international institutions for the defense of human rights need to adopt a trans-disciplinary approach and their reports and recommendations need to be enriched with core contributions from other disciplines, such as sociology, history, economics, law, social psychology, and other branches of knowledge.

Along the same lines, positions I recently put forward still hold:

1. In hearing, processing, admitting or ruling on a lawsuit, or in producing a report on events taking place between the first quarter of 2004 and the re-legitimation of democracy in 2006, the Commission cannot, in my opinion, ignore the context in which those events occurred, or the manner, time, and place in which they did so, or the atypical nature of what happened.

2. Indeed, it is not possible to omit the fact that President Jean Bertrand Aristide, who was elected in free and democratic elections, and the government that backed him, were the victims of a conspiracy by various sectors in Haiti with the collusion of international elements that prompted and achieved the removal of the President and the installation of a de facto government. The rule of law, even if it were considered precarious, was preferable to the de facto and disastrous state of affairs that followed it. The forces at work in Haiti were, as is well known, composed of paramilitary and unofficial police gangs that were armed on the border with the Dominican Republic and gradually but aggressively marched on the capital, Port-au-Prince, aided, moreover, by a media advocating violence and instigating people to commit crimes. The former rapporteurs for Freedom of Expression, along with other external elements, lent open and resolute support to the media that behaved in these ways, which violate express provisions of the American Convention.

3. In these circumstances, President Aristide, as he himself commented, was illegitimately deprived of liberty by armed agents of the United States of America, kidnapped, placed on a plane, and transported by force from his country to Africa. Immediately afterwards, occupation forces agreed upon and fostered by the United Nations – and known formally and socially as MINUSTAH – entered Haitian territory. The occupation forces cannot claim not to be a party to anything that happened in Haiti thereafter. Haiti was occupied territory. Who is accountable for human rights violations during an occupation?

4. It was public knowledge during the occupation that the population lived in terror, with women, men, children and adolescents – in short, the people of Haiti and Haitian society – living their lives in subhuman conditions: lacking the drinking water, food, housing, and minimum provisions needed to satisfy basic needs. The Commission itself knew what was going on and about the persecution unleashed against political sectors, like the LAVALAS political party. There was information on extrajudicial executions and massacres in districts of Port-au-Prince, such as Bel-Air, Cite Soleil, Delmas, Fort National, Grand Ravine, and Martissant, and others.

5. The news received and the files lying dormant in the Commission record barbaric acts committed by MINUSTAH and the involvement of this occupying force in cases of systematic violence. It was categorically asserted that the occupying forces lent support to those perpetrating persecutions, kidnappings, cruel and degrading treatment, illegitimate deprivation of liberty, and disregard for the physical, mental and moral integrity of persons in a context bereft of guarantees for the exercise of any rights. In other circumstances, the Commission was also told that the occupation force failed to act to prevent such acts from being perpetrated.

6. Under such circumstances, we may know who the victim is, but do we know with certainty who the murderer is? The simplest answer would be the State, but wasn't this State occupied and dismantled? *Mutatis mutandi*, let us ponder the current case of Iraq. Maybe we can come close to identifying the victims, but can we be satisfied with the answer: The murderer is Iraq? Can Iraq be an abstraction? Who is accountable? Going back to our Hemisphere, to Haiti, we know that there are victims of a situation that was brought about and is deplorable. Who will make good the damage done? Will it be the State of Haiti, presided over by Dr. René Préval, reconstructing itself by occupying the space that pertains to it, or will it be the occupier that still has not left the space it should never have occupied?