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## **Haiti**

### **Disarmament delayed, justice denied**



Public  
AI Index: AMR 36/005/2005



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# HAITI

## Disarmament delayed, justice denied

### INTRODUCTION

Haitians remain mired in a human rights crisis despite the presence of a UN peacekeeping force, the Stabilization Mission in Haiti (MINUSTAH). In fact, little tangible progress has been made to protect human rights since the interim government took office in early March 2004 and in the year since MINUSTAH arrived in the country. Violent crime, confrontations between armed groups and gangs, and unlawful use of force by police continue to claim the lives of civilians on a daily basis.

Haiti's human rights problems could worsen in the run-up to elections scheduled for the end of 2005. Politically motivated arbitrary detentions, ill-treatment, extrajudicial executions, deliberate and arbitrary killings of civilians, rape, death threats and intimidation are routine and are perpetrated with impunity. The abuses are taking place against a background of increased insecurity and endemic criminal violence. The alleged perpetrators include armed gangs with or without political ties to former President Jean-Bertrand Aristide, rogue police officers, former rebels and demobilized members of the former Haitian Armed Forces (Forces Armées d'Haïti, FADH), and organized crime.

Much of the current crisis stems from the armed rebellion that forced out former President Aristide in February 2004 and from the dispute within Haiti over the legitimacy of the interim government headed by Gérard Latortue. Since 30 September 2004, hundreds of people have reportedly been killed in an upsurge of political violence that followed a series of demonstrations organized by Jean-Bertrand Aristide's Fanmi Lavalas Party to commemorate the 13th anniversary of the military coup that deposed President Aristide in 1991. Many of the killings are believed to have been carried out by armed gangs allegedly supporting Jean-Bertrand Aristide and by Haitian National Police (HNP) officers. These gangs are said to be responsible for numerous killings, including of policemen.

Haiti's recurring political crises are rooted in long-term patterns of human rights abuses committed with impunity. The current crisis is no exception.

The political violence is compounded by a grave humanitarian crisis. Haiti is the poorest country in the Americas and ranks 153 in the world in terms of the Human Development Index. Life expectancy at birth, for men and women alike, is less than 50 years, while infant mortality was 79 per 1000 live births in 2002. Illiteracy is widespread and nearly two-thirds of the population live under the national poverty line. Rates of illiteracy and poverty are highest in the countryside where around two-thirds of the 8 million population lives. Haiti has also the

highest prevalence (5.6 per cent) of HIV-AIDS outside the sub-Saharan region. Access to retrovirus medicine remains scarce as the national health system is severely under-funded.<sup>1</sup>

This appalling situation compelled the international community to mobilize its resources. On 19 and 20 July 2004, at the International Donor's Conference in Washington DC, the international community addressed the enormous task of rebuilding Haiti. Amnesty International urged participants to support plans to protect and promote human rights and to ensure that adequate funds were made available to this end. The response was generous and exceeded expectations. However, the succeeding months have seen only limited fulfilment of the promises made. Meanwhile, Haitians continue to face enormous problems in all aspects of their lives.

The proliferation of arms has exacerbated the political crisis. In view of this, disarmament has become the main and most pressing issue as Haiti heads towards elections in October and November 2005 that should mark a return to democratic rule.

In a June 2004 report, UN Secretary-General Kofi Annan concluded that "a long-term effort and an international commitment are needed to rebuild the economic and social structures, and support the Government and people of Haiti in building democratic institutions together".<sup>2</sup> This commitment was reiterated on 12 January 2005 by the UN Security Council, which expressed "its support for United Nations presence in Haiti as long as necessary".<sup>3</sup>

### **Background**

In early 2004 popular discontent and protest against Jean-Bertrand Aristide's government was rapidly gaining momentum. Repression of government opponents was harsh, carried out by police and armed gangs known as *chimères*, reportedly in the pay of the administration. On 5 February, conflict broke out in the city of Gonaïves and the insurgency quickly spread to other regions. Insurgents were mainly officials of the former Haitian Armed Forces, disbanded in 1995, members of the disbanded paramilitary organization Revolutionary Front for the Progress and Advancement of Haiti (Front Révolutionnaire pour l'Avancement et le Progrès d'Haïti, FRAPH) and a criminal gang based in Gonaïves that called itself the Cannibal Army (Armée cannibale). The armed rebels operated under the leadership of Guy Philippe, former National Police Commissioner, and Louis-Jodel Chamblain, former second in command of the FRAPH and a convicted perpetrator of human rights abuses.

On 29 February, President Aristide left the country in disputed circumstances while the rebels were threatening to march into Port-au-Prince. Boniface Alexandre, President of the Supreme Court, was quickly sworn in as the new transitional President. The same day, a US-led

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<sup>1</sup> UN Development Programme (UNDP), Human Development Reports for Haiti, 2003. Available at: [http://hdr.undp.org/statistics/data/cty/cty\\_f\\_HTI.html](http://hdr.undp.org/statistics/data/cty/cty_f_HTI.html).

<sup>2</sup> Economic and Social Council, "Long-term programme of support for Haiti", Report of the Secretary-General, 16 June 2004 (E/2004/80), para. 44.

<sup>3</sup> UN Security Council, "Statement by the President of the Security Council", 12 January 2005 (S/PRST/2005/1).

Multinational Interim Force (MIF) was deployed in the country on a three-month mission authorized by the UN Security Council. On 9 March, Gérard Latortue was appointed interim Prime Minister.

In June MINUSTAH took over from the MIF with a mandate, among other things, to support the transitional government in ensuring security and stability and to assist in the reform of the Haitian National Police (HNP).

Political violence increased dramatically in the capital after 30 September when there was a mass demonstration by Fanmi Lavalas Party supporters. After that, numerous abuses, including the decapitation of three policemen, were allegedly committed by members of armed gangs supposedly linked to the Fanmi Lavalas Party. Members of the HNP also allegedly committed several abuses, including extrajudicial executions. In October, UN Civilian Police (CIVPOL) and HNP agents began joint operations in poor neighbourhoods of the capital in an attempt to curb endemic violence while in several regions of the country, demobilized soldiers and former rebels acted as the *de facto* authorities posing a serious threat to human rights.

### ***Amnesty International***

An Amnesty International delegation visited Haiti in March and April 2004. Its delegates received numerous testimonies about grave human rights abuses perpetrated by the national police, rebels and armed gangs of rival political views in the context of the violent rebellion in February 2004. Information gathered during the visit was published by Amnesty International on 21 June 2004 in a report, *Breaking the cycle of violence: A last chance for Haiti?*<sup>4</sup>

In October and November 2004 Amnesty International delegates returned to the country to look into ongoing human rights concerns. The delegation visited Port-au-Prince (the capital), and the cities of Mirebalais, Hinche, Cap Haitien, Gonaïves and Petite-Goâve. Delegates met government authorities, police officials, MINUSTAH officials, human rights organizations, victims and families of victims, human rights lawyers and activists, including women's rights activists, and groups helping to rehabilitate victims of human rights abuses. The delegates found that serious violence, blatant impunity and the absence of the rule of law were widespread across the country. Some of the material used to compile this report was collected during this visit. Other material is the result of the organization's ongoing research. The cases cited provide illustrative examples of some of the patterns of human rights violations that Amnesty International has identified.

Amnesty International is publishing this report to draw the attention of the international community to the continuing and unresolved human rights concerns in Haiti. The organization also seeks to highlight the serious abuses committed by armed gangs, as well as MINUSTAH's setbacks in protecting the lives of civilians and re-establishing the rule of law. Amnesty International hopes that information published in this report will encourage

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<sup>4</sup> AI Index: AMR 36/038/2004

MINUSTAH to take adequate measures to prevent abuses against unarmed civilians. It also hopes to contribute to a debate within Haiti to end the culture of impunity and long history of serious human rights abuses.

## **1. THE IMPERATIVE FOR DISARMAMENT**

*“The proliferation of weapons and armed groups and the climate of impunity which continue to prevail have impeded the respect for human rights.”<sup>5</sup>*

*“The unified commitment of the interim government to a comprehensive approach to disarmament, demobilization and reintegration was found questionable.”<sup>6</sup>*

The consolidation of peace, security and the rule of law is contingent on the successful disarmament, demobilization and reintegration (DDR) of all armed groups. All initiatives aiming to restore basic human rights must be based on effective DDR which must, therefore, be the priority for the interim government, for Haitian society, for MINUSTAH and for the international community in general.

The control of arms has been a major concern since Jean-Bertrand Aristide was reinstalled as President in 1994 after the military that deposed him three years earlier was removed from power by a US-led military invasion. A huge quantity of arms and small weapons is circulating in Haiti in the hands of former rebels and former military, criminal gangs with and without political affiliation, security guards and civilians. All Haitians have the constitutional right to possess firearms with an authorization from police authorities but the circulation and possession of arms, largely on an illegal basis, has become widespread over the years.

Research by the Geneva-based Small Arms Survey (SAS) in 2004 and early 2005 indicates that in Haiti there are nearly 170,000 small arms in the hands of individuals, diverse armed groups and criminal gangs, security agencies and law enforcement officials.<sup>7</sup> According to SAS, there is no complete, accurate or updated registry of firearms; a national firearms registry did exist but was discontinued, although some permits were issued in early 2005.

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<sup>5</sup> Report of the UN Secretary-General on MINUSTAH, S/2004/908, para. 41.

<sup>6</sup> Report of the UN Security Council on its mission to Haiti, S/2005/302, 6 May 2005.

<sup>7</sup> Robert Muggah, *Securing Haiti's Transition: Reviewing Human Insecurity and the Prospects for Disarmament, Demobilization and Reintegration*, Small Arms Survey, 2005.



Official figures included in the report indicate that as of 2001, the national police had registered 20,300 legal weapons owned by civilians.<sup>8</sup>

The public display of weapons by former rebels and former military has been a recurrent phenomenon and has been tolerated by the authorities and MINUSTAH officials. Even though the government was frequently threatened with a coup by the former military, no persuasive action to disarm them or remove them from public buildings they were occupying (including police stations) was taken until December 2004.

Since the interim government took office in early March 2004, no serious efforts have been made to address the disarmament issue despite a sharp rise in violence and deaths by firearms. It became clear that the government lacked the political will to address the matter seriously even though it has the support of MINUSTAH in elaborating and implementing a DDR programme. The UN Secretary-General and the UN Security Council repeatedly called on the Haitian authorities to address the issue of disarmament with utmost urgency, but the implementation of a comprehensive DDR programme is still awaited.

The minimal DDR activity during a year of UN presence may have a profoundly negative impact on the political environment surrounding the forthcoming elections – and this needs to be addressed by the international community. Already, the dangerous mix of arms proliferation, high unemployment (nearly 60 per cent) and mistrust between different social and political sectors in Haiti has contributed to a highly volatile situation, only partially countered by the presence of MINUSTAH.

A limited attempt was made during 2004 to encourage Haitians to disarm voluntarily. However, the initiative lacked a specific framework within which to address broader issues of disarmament. The interim government set 15 September 2004 as the deadline for the voluntary handover of weapons. After that date, the authorities raised the possibility of more proactive action by the national police with the collaboration of MINUSTAH to disarm illegal armed groups. However, the deadline passed almost unnoticed and it became clear that neither the Haitian authorities nor MINUSTAH had developed a coordinated framework to start the disarmament process or, if it existed, it was not implemented.

Furthermore, it appeared that the Haitian authorities were tolerating some illegal armed groups, such as the former rebels and former military plus their acolytes, while simultaneously pursuing armed gangs allegedly supporting Jean-Bertrand Aristide. Amnesty International delegates observed in October/November 2004 that former FADH members displaying their weapons in public, in the capital and other cities, were not challenged by HNP or MINUSTAH officers. In the same period, before the MINUSTAH operation on 20 March 2005 that ended an occupation of the police station in Petite-Goâve, Amnesty International delegates observed that former military were enforcing the law, again without being challenged.

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<sup>8</sup> The Haitian National Police was created in 1995 and since then has been the only legal security force in Haiti. After the *de facto* military government was ousted by a US intervention, Jean-Bertrand Aristide returned from exile and in early 1995 he issued a presidential decree disbanding and demobilizing the Haitian Armed Forces who had ousted him on 30 September 1991.

As 2004 progressed, the interim government began to confront its ineffectiveness in relation to DDR, while MINUSTAH turned to small community-based projects to tackle criminality and the circulation of arms. The experience of an earlier UN Development Programme (UNDP) project in the area of Carrefour-Feuilles (south-west of Port-au-Prince) proved to be very valuable in terms of assessing the response from the communities targeted. The community was approached for over a year in order to establish a climate of confidence. Arms were turned over on a voluntary basis in exchange for access to micro-credit programs. The extension of this pilot project to other regions of the capital was being considered by MINUSTAH at the end of 2004.

The interim government's ability to address disarmament during 2004 was partially constrained by the lack of state authority throughout most of the country. Public services and public administration collapsed during the February 2004 rebellion; law enforcement officials fled; police stations, prisons and courts were looted, burned and destroyed; local delegates at different administrative levels went on the run or were removed from office. In this vacuum of state authority, former rebels and former military gained control over much of the country, arms in hand. However, as the first half of the year 2005 ended, it became clear that the interim government lacked the political will to address the disarmament, demobilization and reintegration issue in a comprehensive and systematic manner.

The former military, encouraged by their advantageous position, made the interim government accede to their demands for financial compensation and further integration into the national police for those who so desired. A Demobilized Soldiers Management Bureau (Bureau de gestion des militaires démobilisés) was set up to address the grievances of the former military. It asked for back pay since demobilization in 1995 and for payment of the military pension funds. The interim government agreed to pay in total US\$ 28 millions to the ex-FADH in three instalments. However, no measures have been taken to ensure that the former military will turn in their arms and no assurance of a final demobilization has been set as a condition for final payment. Although many former military expressed their desire to disarm and demobilize, there is disagreement between different factions and many have refused to hand over their weapons.

On 3 February 2005, nearly a year after the start of the rebellion that ousted President Aristide and his government, the interim government finally announced a presidential decree setting up the National Commission on Disarmament. A few weeks later, representatives of the government and civil society were nominated as members of the Commission. However, at the time of writing, the Commission did not have a DDR framework to implement, and lacked the necessary funds to operate and to sustain the reintegration of disbanded combatants – an essential element of the DDR process. In its mission report of April 2005, the UN Security Council expressed its concern about “the Commission’s limited scope and its ambiguous attitude to addressing the issue fully, particularly vis-à-vis the former military personnel.”<sup>9</sup>

On 12 March 2005, former military personnel symbolically turned in their weapons in Cap-Haitien, marking their return to civilian life. However, during the official ceremony attended

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<sup>9</sup> Report of the UN Security Council mission to Haiti, 13 to 19 April 2005, S/2005/302, para. 27.

by, among others, Prime Minister Gérard Latortue and Special Representative of the UN Secretary-General, Juan Gabriel Valdés, only seven decrepit weapons were turned in by 325 newly demobilized military. Concerns remain that arms are being transferred to other factions of former military or are being stored. The killing on 8 April 2005 of two leaders of the former military during confrontations with MINUSTAH and HNP officers, Ramisinthé Ravix and René Jean Anthony (alias “Grenn Sonnen”), could have repercussions on the future of the DDR programme aimed at the former military as the unity among this group over accepting to disarm may be compromised.

Disarmament, demobilization and reintegration also need development in terms of infrastructure, public services and institutions. Disarming and demobilizing combatants and reintegrating them into society cannot be done in a political and legal vacuum. The HNP cannot absorb all the candidates eligible for demobilization without a strategy and long-term programmes to provide adequate training and ensure professionalization. Promotion of sustainable employment and skills training should be a priority in reintegration programmes for former rebels and gang members, and should be aimed at ensuring their livelihood.

## **2. MINUSTAH, A YEAR ON**

June 2005 marked the first anniversary of the deployment of MINUSTAH in Haiti. The deployment of MINUSTAH, which began slowly in June 2004, had gathered pace by the end of 2004. By May 2005, 6,211 of the 6,700 military personnel authorized by the UN Security Council and 1,413 of the anticipated total of 1,622 UN Civilian Police (CIVPOL) had been deployed.<sup>10</sup> In June 2005, the remaining forces were still awaited while the UN Secretary-General, Kofi Annan, proposed in its 13 May 2005 report that the military power of the mission be increased to 7,500 troops.

Brazil assumed command of MINUSTAH military forces by sending more than 1,200 troops. Argentina, Uruguay and Chile also have an important military participation in MINUSTAH while Chilean, Juan Gabriel Valdés, is the Special Representative of the UN Secretary-General in Haiti and leads the mission.

The UN Security Council, in Resolution 1542 of 30 April 2004, mandated MINUSTAH to (among other things):

- Ensure a secure and stable environment to allow the political process to take place in Haiti by: helping the interim government extend state authority throughout Haiti; bringing about a process of national dialogue and reconciliation; and organizing, monitoring and carrying out free and fair elections.

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<sup>10</sup> Report of the Secretary-General on the UN Stabilization Mission in Haiti, S/2005/313, 13 May 2005; accessible at: <http://daccessdds.un.org/doc/UNDOC/GEN/N05/341/51/PDF/N0534151.pdf?OpenElement>.

- Assist the interim government in monitoring, restructuring and reforming the Haitian National Police (HNP) through vetting, training, monitoring and mentoring of police officers.
- Assist the interim government and the HNP with comprehensive disarmament, demobilization and reintegration (DDR) programmes, and the restoration of the rule of law, public safety and public order.
- “Protect civilians under imminent threat of physical violence within its capabilities”,<sup>11</sup> support the interim government and Haitian NGOs in promoting and protecting human rights, and ensure individual accountability for human rights abuses and redress for victims.
- Monitor and report on the human rights situation, including the situation of returned refugees and displaced persons.

MINUSTAH’s mandate strongly emphasized the need to support the interim government while inaction by the Haitian authorities on several key matters, such as DDR, restoration of the rule of law and individual accountability for human rights abuses, could be detrimental to the mission’s efforts in these areas. Furthermore, poor relations between the interim government and civil society could hamper efforts to implement a national dialogue and reconciliation process, and to protect and promote human rights.

Given the human rights situation in Haiti, MINUSTAH has been criticized for its lack of strong action to prevent human rights abuses, principally those perpetrated by Haitian police officers.<sup>12</sup> MINUSTAH personnel told Amnesty International’s delegation that the mission lacks the executive power to undertake independent policing activity and to comply fully with specific provisions in its mandate, particularly to protect civilians under imminent threat. The support that MINUSTAH may have from the Haitian population fades away with every abuse reportedly committed with impunity by the national police. Support has also faded away among inhabitants of deprived neighbourhoods and among Lavalas supporters – presently the largest political force in Haiti – because MINUSTAH is mandated to assist the national police, which continues to commit widespread abuses against members of both these sectors of the population.

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<sup>11</sup> UN Security Council Resolution 1542 (2004). Chapter VII of the UN Charter: Action With Respect To Threats To The Peace, Breaches Of The Peace, And Acts Of Aggression.

<sup>12</sup> See, for example, reports of the Center for the Study of Human Rights, University of Miami School of Law, “*Haiti. Human Rights Investigation: November 11-21, 2004*” (available at [www.law.miami.edu/cshr/CSHR\\_Report\\_02082005\\_v2.pdf](http://www.law.miami.edu/cshr/CSHR_Report_02082005_v2.pdf)); and Harvard Law Student Advocates for Human Rights and Centro Justiça Global, “*Keeping the Peace In Haiti?*” (available at: [www.law.harvard.edu/programs/hrp/CAP/Text/Haiti\\_English\\_Final.pdf](http://www.law.harvard.edu/programs/hrp/CAP/Text/Haiti_English_Final.pdf)).

## **Securing the country**

Some progress has been made towards creating a secure environment in which humanitarian assistance is assured. This has been particularly important since the floods in Gonaïves in September 2004. However, much remains to be done as threats against civilians, mainly in the capital, are persistent and have increased since March 2005. Common criminality, including kidnapping of civilians and armed attacks against civilians, continue to create fear and panic among the population. It also poses a threat to the forthcoming elections. The number of kidnappings for ransom is increasing and in early May, for the first time, foreign MINUSTAH civilian workers were held hostage.

The 25 February 2005 report from the UN Secretary-General conveys an improved security situation in Haiti.<sup>13</sup> It notes that “significant improvement has been achieved since late November 2004, with the increased military and civilian police manpower allowing MINUSTAH, in cooperation with the Haitian National Police (HNP), to conduct successful security operations, thus clearing the way towards improved stability.” However, until the DDR process is completed and sufficient police officers are deployed, the security situation will remain volatile.

One of the difficulties MINUSTAH continues to face is a lack of military power and intelligence to secure the areas where violence affects Haitians every day. This was, and to some extent still is, the case in deprived neighbourhoods of Port-au-Prince, such as Cité Soleil, Bel-Air, Martissant, Delmas and Village de Dieu. Civilians are the daily victims of armed gangs and of repressive operations by police. Although MINUSTAH maintains a minimal presence in such areas, the impact of its military presence is limited to the main streets where its patrols are present. In the small winding alleys that stretch throughout Cité Soleil, the civilian population continues to suffer grave abuses as the armed gangs kill, rape, burn and loot with impunity. In other deprived neighbourhoods of the capital, security is compromised by armed gangs operating there and by police operations that are conducted without the presence of a MINUSTAH/CIVPOL counterpart.

On 20 March 2005, MINUSTAH suffered its first casualties during separate operations to take back into state control two police stations in Petite-Goâve and Terre-Rouge. The police stations had been occupied by former military since November 2004 and no police officers were present. Law enforcement was carried out by the former military without any legitimacy. Acts of intimidation, harassment and reprisal against Lavalas supporters were reported to Amnesty International’s delegation in Petite-Goâve in November. The Justice of the Peace of Petite-Goâve had to rely on the former military to make arrests and deliver summons. Former military were holding in custody four people in the occupied police station. Similar situations existed in different areas throughout the country where the former military were strong despite MINUSTAH presence.

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<sup>13</sup> See reports of the Secretary-General on MINUSTAH from November 2004 (S/2004/908) and from February 2005 (S/2005/124).

## **Protecting civilians**

Reports during the initial stages of MINUSTAH's deployment suggested an overemphasis on protecting MINUSTAH and other UN personnel and assets in Port-au-Prince and Gonaïves, to the detriment of the civilian population. Some MINUSTAH contingents reportedly failed to assist civilians who were being openly harassed or threatened by police officers or criminals even when they were nearby. This could have been the result of a misunderstanding of MINUSTAH's rules of engagement or of a strict compliance to the mandate provision stating that the civilians should be protected from "imminent threat of violence... without prejudice to the responsibilities of the Transitional Government and of police authorities." However, on 4 March 2005, MINUSTAH military personnel reportedly did interpose themselves between pro-Lavalas demonstrators and HNP officers who had been deployed to control the crowd. The MINUSTAH manoeuvre was praised by the demonstrators but created tension between MINUSTAH officials and government authorities who qualified it as a breach of MINUSTAH's mandate. The incident took place a few days after HNP officers reportedly killed at least one person during a peaceful demonstration that was being observed by MINUSTAH personnel.

On occasion there has been tension between the role of protecting civilians on the one hand and supporting the HNP on the other. With the former, there was a clear incentive to develop a conciliatory relationship with residents from deprived neighbourhoods in particular and gain their trust, but such an approach could inhibit the full support of police operations in the area. Some MINUSTAH forces were reported to be actively patrolling areas in the capital and forging a good relationship with civilians.

## **Protecting and promoting human rights**

One of the most serious concerns about the implementation of MINUSTAH's mandate has been the absence of frequent, comprehensive and public reports during the first 10 months by the Special representative of UN Secretary-General and by CIVPOL's Commissioner. The absence of such public reports means it has been difficult to find out what steps have been taken to protect and promote human rights. As of April 2005, there had been almost no public reporting containing comprehensive information about human rights implementation in accordance with MINUSTAH's mandate as outlined in Resolution 1542.

In November 2004, Amnesty International urged the Haitian authorities to establish a thorough, independent and impartial inquiry into allegations of human rights violations committed by Haitian police officers, including the reported extrajudicial executions at Fort National (see Section 3). Amnesty International welcomed the announcement made by a CIVPOL spokesperson in November 2004 of an investigation into the executions at Fort National. However, no information on the progress of this investigation has been made public. Similarly, no findings of the investigation into the killing by police of at least seven prisoners at the National Penitentiary on 1 December 2004 have been published.

Amnesty International believes that the results of such investigations should be made public to ensure the maximum impact on the general population in Haiti and the perpetrators of

human rights violations, whether they be state agents or civilians. Such reports should be broadly disseminated nationally and internationally.

Amnesty International has repeatedly recommended that peacekeeping operations issue frequent and comprehensive public reports of their activities and findings, especially in the area of human rights. The organization is concerned that silence will send a message of tolerance of abuses. MINUSTAH's publicity of human rights abuses perpetrated by state and non-state agents would help combat impunity and raise awareness of human rights in Haiti. A broad dissemination to national and international audiences would send a clear message of the mission's commitment to uphold human rights and tackle impunity.

### **3. HAITIAN NATIONAL POLICE AND HUMAN RIGHTS**

*“Lè yo rentre nan zòn la, tout moun viktim”*

*(When they [the policemen] come here, everybody is a victim)<sup>14</sup>*

*“The mission was struck by statements by interim authorities that no human rights violations in the country were committed by the State.”<sup>15</sup>*

International standards governing the use of force and firearms make clear that deadly force should be used only as a last resort in response to imminent threat of death or serious injury and only when all other measures have been exhausted.<sup>16</sup> Police officers in Haiti, however, regularly flout these standards in their use of lethal force, as well as national law and the 1995 internal ethic code, including the police's motto *“Protéger et servir”* (protect and serve).

One of the main challenges for the interim government was to ensure the respect and protection of human rights, as the HNP had been responsible for numerous human rights violations under the previous government. Amnesty International had documented patterns of excessive force and made recommendations to the Haitian authorities to make police accountable to the rule of law.

This challenge is particularly important given the increasing insecurity created by waves of political violence and organized crime that have spread throughout the capital and other parts of the country. Police officers often find themselves fighting against gangs that are heavily

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<sup>14</sup> Amnesty International interview with victim of police repression in Bel-Air, October 2004.

<sup>15</sup> Report of the UN Security Council mission to Haiti, S/2005/302, para. 42.

<sup>16</sup> These standards include the UN Code of Conduct for Law Enforcement Officials and the UN Basic Minimum Standards on the Use of Force and Firearms.

armed and better equipped than they are. Several police officers have been killed in these confrontations.

The police force is understaffed, badly equipped and insufficiently trained despite sustained efforts by the international community to assist in their training and professionalization since it was created in 1995. The high degree of politicization during Aristide's government, linked to high levels of corruption within the HNP, was in part responsible for its poor performance. Allegations of serious human rights violations committed by the police continued.



**Picture 1.** Hooded police officers in a police vehicle pass by AI's delegation. Port-au-Prince. © AI.

Many Haitians in deprived neighbourhoods of the capital described the police to Amnesty International not as protectors, but as something to be feared, almost akin to a hostile force. Parents and friends of people killed by police officers told Amnesty International of their distress at being targeted solely for their political opinions or social status. In poor neighbourhoods of the capital, gang members – mostly young males and children – survive through crime. Reports suggest that when police carry out operations in such areas, they target young males as potential criminals (“bandits”) and many are killed as a result of excessive use of force by the police.

Police accounts of confrontations or “shoot-outs” with “bandits” continue to be disputed in many cases by witnesses. Amnesty International considers that the manner in which deadly force is frequently employed and the absence of prompt, thorough and effective investigations is consistent in many instances with a pattern of unlawful killings or extrajudicial executions.

Such cases include the killing of at least 11 people at Fort National and Carrefour Péan in October 2004. Until now, the findings of investigations have not been made public nor has anyone been held to account. First-hand information gathered by Amnesty International delegates, including from witnesses, implicates police officers in these killings, contradicting official denials.

Amnesty International is gravely concerned that the transitional authorities are failing to prevent serious human rights violations by the national police. The organization raised these and other concerns directly with the Haitian authorities, with the Special Representative of the UN Secretary-General in Haiti and CIVPOL's Commissioner in the hope that allegations of extrajudicial executions and other grave human rights violations would be investigated and the perpetrators held to account.



A number of police officers wear balaclavas, which is perceived by some civilians and human rights defenders as intimidating. Amnesty International delegates observed that police agents were not displaying any kind of personal identification or badge other than, occasionally, the police logo. Thus it is virtually impossible to identify an officer by rank, name or number. Victims of police abuses therefore often have no means of identifying their assailants, severely curtailing their ability to file complaints against HNP officers. Victims of police abuses usually have to seek the support of national or international NGOs to raise their cases with the authorities, but the possibilities for redress remain extremely limited.

Amnesty International believes that there is a lack of political will, resources and mechanisms to establish whether police officers are responsible for human rights violations. An independent commission to investigate police abuses has not been established despite commitments from the interim Prime Minister, Gérard Latortue. Prosecutions for extrajudicial killings, ill-treatment and other human rights abuses remain notional. Investigations more often than not fail to establish who the suspected perpetrator was and do not conform to international standards. The scenes of shootings are not protected; forensic and ballistics evidence is contaminated, removed or disappears. Victims of firearms are normally brought to the Haitian State University Hospital (*Hôpital de l'Université d'État d'Haïti*, HUEH) morgue but autopsy reports are non-existent.<sup>17</sup> Some parents of victims refrain from going to the morgue for fear of reprisals or because they cannot afford to pay the sum needed to take the corpse away for a proper burial. Unclaimed bodies at the morgue are reportedly disposed of at Titanyen, a wasteland North of Port-au-Prince, along with other waste material from the hospital.<sup>18</sup> Some victims are allegedly brought from the crime scene directly to Titanyen, and thus “disappear”.

### ***Haitian law and state obligations***

The Haitian Constitution guarantees the right to life.<sup>19</sup> It also defines the police as an armed body operating under the Ministry of Justice and “established to ensure law and order and protect the life and property of citizens”.<sup>20</sup>

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<sup>17</sup> There are reportedly two trained forensic doctors in Haiti capable of conducting an autopsy; one is the HNP’s spokeswoman.

<sup>18</sup> For several consecutive months in 2004, the disposal of bodies at the morgue became problematic because the refrigeration chamber was out of service; as a result, decomposing bodies were reportedly piled up in parking lots.

<sup>19</sup> In its Preamble, the Haitian Constitution defines the right to life as “inalienable and imprescriptible”. Similarly, Article 19 of the Constitution reads: “The State has the absolute obligation to guarantee the right to life, health, and respect of the human person for all citizens without distinction, in conformity with the Universal Declaration of the Rights of Man.”

<sup>20</sup> Haitian Constitution, Article 269.

Police agents are reportedly operating under a Code of Deontology (an internal set of moral rules or duties) approved in 1995. Breaking these rules can result in disciplinary measures or criminal punishment.

*“When he’s authorized by law to use force and in particular to use his firearms, the police agent can only make the strictly necessary use and proportionate to the goal he wants to achieve” (Article 9 of the 1995 Code of Deontology).*<sup>21</sup>

The Haitian Criminal Code has provisions to counter violence by state agents:

*“When a state employee, or a civil servant, or an administrator, or an agent or employee from the government or the police, or an executor of judicial warrants or of judgements, a commander in chief or sub-commander from public office, had, without a legitimate motive used or ordered to use violence against persons in the exercise or at the occasion of the exercise of its functions, he would be punished, according to the nature of the violence...”*<sup>22</sup>

Where abuse by state agents results in death, the Criminal Code prescribes forced work for life, the maximum punishment under Haitian law since the death penalty was abolished.<sup>23</sup>

Haiti is a party to several international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. As such, it has pledged to observe the fundamental freedoms and human rights laid down in these standards, including the right to life, liberty and security of person. Provisions on the right to life are also included in the American Convention on Human Rights, ratified by Haiti in 1977.

Amnesty International is concerned that in several cases the security forces have contravened national and international laws prohibiting the arbitrary deprivation of life and acted outside the limits set by international standards governing the use of deadly force. The standards relevant to the use of firearms against citizens are laid down in the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

The government’s responsibility in relation to extrajudicial executions is further spelled out in the UN Human Rights Committee’s General Comment on Article 6 of the ICCPR:

*“The protection against arbitrary deprivation of life ...is of utmost importance. The Committee considers that States parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces. The deprivation of life by the authorities of the State is a matter of the utmost gravity. Therefore, the law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities”.*

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<sup>21</sup>Ministry of Justice. Direction Générale de la Police Nationale d’Haïti, Code of Deontology. Available at: <http://www.un.org/rights/micivih/livrets/codepol.htm>

<sup>22</sup> Unofficial translation, Haitian Criminal Code, Article 147.

<sup>23</sup> Haitian Criminal Code, Articles 247 and 249.

The conduct of HNP agents does not appear to have conformed to Article 3 of the Code of Conduct which says that force may only be used “when strictly necessary”. The official commentary on the Code of Conduct says that the use of force should be “exceptional”, and that it should only be used for two purposes: the “prevention of crime” and “effecting or assisting in the lawful arrest of offenders or suspected offenders”. The Code of Conduct says that the force used should be proportional to the objective, ie it should only be used “*to the extent required*” for the performance of officials’ duties while enforcing the law.

The Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions include, among other things, the investigation of extrajudicial executions and the legal proceedings needed to bring the perpetrators to justice. The Principles also spell out the right to fair and adequate compensation for the families and dependents of victims.<sup>24</sup>

Amnesty International is concerned that none of these Codes or principles are respected by the HNP and are not duly implemented by the Haitian authorities.

### **Extrajudicial executions and unlawful killings**

Extrajudicial executions continue and are routinely denied by the police. Amnesty International has raised several cases with the authorities where it believed that police may have used excessive force during law enforcement operations. These include:

- On 27 October 2004, four young men were reportedly summarily executed in broad daylight in the Carrefour Péan suburb of Port-au-Prince. According to testimonies gathered by Amnesty International at the site of the killing, about 15 police agents in five police cars arrived in the area at around 11am. Two of the cars were parked perpendicular to the wall. The four young men were taken to between the cars and shot dead. One of them had his hands tied behind his back. Shortly after the cars left, police in another car arrived and fired indiscriminately into houses in an adjacent street. Several houses had bullet holes and bullets remained implanted in walls. The four bodies were left in the street on display; they were only picked up by the police two days later. The identity of the victims remains unknown to local residents and Amnesty International. The authorities deny that such an operation ever took place.
- In November 2004, according to reports received by Amnesty International, police officers wearing plain-clothes from the Company for Intervention and Maintenance of Order (*Compagnie d'intervention et de maintien de l'ordre*, CIMO) – a HNP special unit – some hiding their faces with balaclavas, killed at least six people in Village de Dieu, a poor neighbourhood of Port-au-Prince. There has been no official acknowledgement of

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<sup>24</sup> Amnesty International's 14-point Program for the Prevention of Extrajudicial Executions (AI Index POL 35/03/93), is based on these principles and available at: <http://web.amnesty.org/pages/aboutai-recs-executions-eng>.

the incident nor have all the victims been formally identified. The authorities deny that such an operation took place.

- On 14 January 2005, police officials conducted an operation in Village de Dieu apparently aimed at deterring armed “bandits” in the area. Two youths were reportedly killed by the police. Abdias Jean, a journalist who investigated the incident, was reportedly killed by the same police officers. To date, no one has been held to account for the killings.

Picture 2. **Victims of an alleged extrajudicial execution by Haitian Police officers. Carrefour Péan, Port-au-Prince.** © Reed Lindsay

### **Case example: Killings in Fort National**

Thirteen young people were apparently shot dead by police in cold blood in the Fort National neighbourhood of Port-au-Prince on 26 October 2004. Not all the bodies have been found, and not all the details are clear, but the names of nine victims, are known to Amnesty International: Réginald François; Wilfrid Pierre; “Jean Jean”, aged 25; Laura, a 17-year-old woman; Francisco; Jephthé; Fanfan Versius, aged 22; Enzo; and Ricardo.

The killings happened after four police vehicles and an ambulance arrived in the afternoon at Estimé Street, Fort National. The occupants of the police vehicles were reportedly wearing black uniforms with the word “POLICE” written on the back. They had their faces covered with balaclavas. Some took up firing stances on the street, others entered one of the narrow alleys that are typical of Port-au-Prince’s poorest neighbourhoods.

According to testimonies, the police went to the house of Ti Richard. He was out, but 13 other people were there. The police allegedly ordered them to lie on the ground and shot them without provocation or apparent motive.

The bodies of four of the people in the house were later found at the morgue of the Haitian State University Hospital. Others have never been found – they are widely believed to have been taken to Titanyen, a dump in the outskirts of Port-au-Prince where bodies are often left.

Despite numerous witnesses and other evidence, the department director of the HNP, Renan Étienne, stated that he had not ordered any operation at Fort National on 26 October. An HNP spokeswoman stated on 28 October that she had “contacted the police units carrying out operations that day, but there was no reported incident in Fort National, and there was no police action in this neighbourhood”.<sup>25</sup>

Other cases of possible extrajudicial executions and unlawful killings in 2005 include:

- On 5 January, Jimmy Charles was arrested by soldiers from MINUSTAH and handed over to the HNP. He was taken to the Anti-Gang police station in Port-au-Prince. He was later released but his bullet-ridden body turned up at the national hospital morgue on 14 January.

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<sup>25</sup> *Haïti Progrès*, 3 to 9 November 2004, p.1.

- On 30 January, 17-year-old Wilken Bosse was dragged out of his house in Corridor Bassia and shot dead on the street reportedly by police officers. At 5am on the same day, 46-year-old Rodrigue Bonin (also known as La Rivière) was dragged out of his house and shot twice in the head allegedly by police officers. He died in hospital on 4 February.
- On 4 February, a 14-year-old boy, Jeff Joseph, was killed, reportedly by police officers on his way to a shop on San Fil Road, Bel-Air.
- On 5 February, Steve Blemey, aged 21, was killed, reportedly by police officers wearing black uniforms, in Fontforts Street, Bel-Air, Port-au-Prince.
- On 28 February, police officers opened fire on a peaceful pro-Lavalas demonstrators in Bel-Air (Port-au-Prince) killing at least one person.
- On 27 April, police officers reportedly fired indiscriminately on peaceful pro-Lavalas demonstrators near the UN headquarters in Port-au-Prince killing at least five people and wounding several others. Four died later from their wounds. The victims, one woman and eight men, were: Reginald Colon, aged 32; Stevenson St-Cloud, 21; James Lahens; Mackenzie André; Roland Gustave; Nelson Auguste; “Ti Jelé”; Claudine Joseph; and Delage Mesnel.

## **Arbitrary arrests**

The police and judicial authorities have a long tradition of arresting people as a preventive measure, without any legal grounds or based on any accusation. Detainees can then be locked away for long periods. In many cases, they have to pay for their release or to be brought before a judge to rule on the legality of their detention. The majority of the detainees cannot afford any legal counsel.<sup>26</sup>

Haitian law stipulates that an arrest can be carried out when executing a warrant issued by a judicial authority or when someone is caught in the act of committing a crime. Despite these clear provisions, numerous arrests are made without either of these conditions being respected.

Lavalas supporters have been targeted in police sweeps across poor neighbourhoods of the capital where support for their party is strong. In other regions, where the police presence is smaller, Lavalas supporters are targeted for arrest by former military and their attachés.

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<sup>26</sup> According to the Independent Expert, Louis Joinet, there are only 750 trained lawyers in Haiti. Source: *Situation of human rights in Haiti. Report prepared by the independent expert, Louis Joinet*, E/CN.4/2005/123, 24 January 2005. Available at: <http://daccessdds.un.org/doc/UNDOC/GEN/G05/104/45/PDF/G0510445.pdf?OpenElement>.

Hundreds of people remain in prison. Most have not been formally charged. Some are still being held despite a direct order for their release issued by the judicial authorities.

## **4. HUMAN RIGHTS ABUSES BY ARMED GROUPS AND GANGS**

Since the beginning of 2004, violence by illegal armed groups and gangs has soared in the capital, at times paralysing economic activities in the downtown area.

Diverse armed groups involved in the rebellion that ousted Jean-Bertrand Aristide and the armed gangs that supported him are at the root of this violence. These groups include the Cannibal Army, renamed the Artibonite's Resistance Front (Front de Résistance de l'Artibonite); the former military regrouped under the leadership of Louis-Jodel Chamblain and Guy Philippe, known as the (Northern Resistance Front); as well as the armed gangs loyal to Jean-Bertrand Aristide known as *chimères*. All are responsible for numerous human rights abuses. Amnesty International is deeply concerned that these groups and gangs are still armed and active, and continue to commit human rights abuses with impunity.

### **Armed gangs**

From 30 September 2004, the criminal activities of armed gangs became evident, in particular during the demonstrations to commemorate the 13th anniversary of the military coup that toppled Jean-Bertrand Aristide in 1991, and which marked the outbreak of several violent incidents allegedly carried out by armed gangs supporting Jean-Bertrand Aristide. The authorities moved swiftly to curb the criminality and violence in downtown Port-au-Prince through large scale police operations.

However, the outcome of police interventions did not bring security to citizens and traders working in the affected areas. On the contrary, the operations were marred by serious human rights violations, including illegal arrests, ill-treatment and unlawful killings.

The inter-gang warfare seems to have abated with the killing by rival gang members, on 31 March, of Thomas Robinson, alias "Labanye", who controlled the Boston neighbourhood in Cité Soleil and who reportedly had allegiances with the former opposition to Lavalas and the current government. In spite of this, the population of Cité Soleil in particular, continues to be the victim of human rights abuses by the gangs controlling the area. Violence against women in this deprived neighbourhood is a major concern (see section 6).

### **Former military personnel**

The interim government and MINUSTAH appear to be showing increasing leniency towards the former military and other illegal groups. In particular, they have failed to prevent them from engaging in illegal activities and committing human rights abuses such as arbitrary

killings, arrests and holding prisoners without any legal basis, intimidating the population, and threatening to depose the interim government.

Tensions between the government and the former military continue to pose a threat to the restoration of lasting peace and democracy. There is reported to be growing resentment among the former military over recent compensation given to those who were demobilized in 1995. Former military personnel who were dismissed before the demobilization decree was issued also demanded compensation, which the government has refused. As a result, they are threatening to oppose any DDR programme.

The number of demobilized members of the former Haitian army that have regrouped into armed factions is estimated to be between 3,000 and 5,000 men across the country. Larger numbers are quoted by the former military, who say that not all the men bearing arms were in the army in 1995. Amnesty International's delegates observed that many of the so-called former military were too young to have been enrolled in the army in 1995.

The former military have sporadically been seen patrolling the streets of Port-au-Prince, carrying arms and wearing military fatigues. They were reportedly unchallenged by the HNP or MINUSTAH military personnel even though they had legal basis and were therefore illegally armed. This complacency by the government has allowed the former military to compete with the police, thereby consolidating their presence and authority at a local level. In several municipalities the former military were the *de facto* authorities because the police was not present since February 2004. Amnesty International observed that former military were actively involved in issuing "arrest warrants", maintaining security and illegally detaining and imprisoning members of the community.

The responsibility for these abuses lies ultimately with the government (for failing to take action to disarm and dismantle these groups and bring those responsible for abuses to justice) and MINUSTAH (because it is mandated to protect civilians and help establish and maintain the rule of law). According to the Platform of Haitian Human Rights Organizations (Plateforme d'organisations Haïtiennes des droits humains, POHDH), in July 2004, between 60 and 70 per cent of reported human rights abuses were perpetrated by former military. Despite this information and the cases documented by POHDH, none of the perpetrators has been held to account by the authorities.

Amnesty International hopes that a clarification of the interim government's policy vis-à-vis the activities of former military will result in a cessation of human rights abuses and illegal activities, and in turn, greater security for all Haitians.

## **Section chiefs**

The sinister reputation of rural section chiefs and their "attachés" is forged on numerous reports of abuse, extortion, killings and other human rights violations during the Duvalier regime and the military rule of 1991-1994.<sup>27</sup> Disbanded once in early 1991 and then again in

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<sup>27</sup> "Attachés" were civilians hired as henchmen regrouped under the orders of the section chief. They were recognizable by the green hats they worn and the clubs they wielded.

1995 by President Aristide, they have made a comeback in several parts of the country, particularly in the Central Department. Taking advantage of the vacuum of authority that prevails in some areas since the departure of Jean-Bertrand Aristide, several section chiefs have been reinstated by local former military commanders or on their own initiative but with the endorsement of the commanders.

At the beginning of the year, section chiefs were reported “in office” in some communes of the Central Department: Ranquitte, Savanette, Belladère, Thomonde, Grand-Bois region, Las Cahobas, Source Carbajal and Cerca Carbajal.<sup>28</sup> Other communes outside the Central Department where they have been reportedly operating are Chantal (Southern Department), Trou du Nord, Milot, Grande Rivière du Nord, Plaine du Nord, Pignon, Accul du Nord, La Victoire, and Sainte Suzanne. The Police are absent from these communities as are other state representatives.

Most of the section chiefs took control where elected delegates to the Administrative Council of the Communal Section (Conseil d’Administration de la Section Communale) had abandoned their positions for fear of retaliation or were simply dismissed when the interim government took office. According to reports from remote areas, MINUSTAH and police personnel are seldom seen outside the departmental capitals thus leaving most of the sections distant from important urban centres without state authority and at the mercy of illegal armed gangs.

**Picture 3. The presumed robber was killed by the section chief when he tried to escape. © Private**

**Picture 4. A peasant is held in captivity at the section chief’s house in Ranquitte. He was allegedly accused of stealing. © Private**

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## **5. ADMINISTRATION OF JUSTICE**

The interim government has repeatedly stated its commitment to prevent and punish violations of human rights in Haiti. However, crimes such as unlawful killings, arbitrary and illegal detentions, ill-treatment of prisoners and deaths in custody are still commonplace and remain unpunished. The response of the authorities to these events has been a tendency to justify police actions and discredit the victims, systematically labelling them as “bandits”.

There is no doubt that failure to address impunity for these crimes in the past resulted in continuing human rights abuses and has prolonged the conflict. Durable peace will not be achieved unless those responsible for crimes under national and international law are held to account, and the victims gain redress.

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<sup>28</sup> The administrative division of Haiti is comprised of nine departments which are further divided into “Arrondissements” and several communes. Under the Duvalier’s regime and during the *de facto* government, each communal section had a “chief” who acted as a law enforcement official and responded to the military regional commanders. They were also known as rural police and had total power over their “constituencies”.



There are several human rights guaranteed by international standards that aim to safeguard people during the investigation of an offence. These include the presumption of innocence; the prohibition against torture and cruel, inhuman or degrading treatment; the prohibition against compelling people to confess guilt or testify against themselves; and the right of access to legal counsel.

Article 25 of the American Convention on Human Rights states:

*“Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.”*

Furthermore, states parties to the Convention undertake to develop the possibilities for judicial remedy and ensure that the competent authorities enforce such remedies.

The administration of criminal justice in Haiti remains highly dysfunctional. The independence and impartiality of the judiciary have been put to the test, particularly in the many cases that have a political nature.

The weakness of the judiciary continues to be a cause of serious concern. Amnesty International received reports of a series of arrests and detentions that possibly have political connotations. Delays in bringing detainees before a judge and lack of judicial supervision are common in the administration of justice. People have been detained on the basis of a single denunciation and with no preliminary inquiry. An order to appear before a judge (*mandat d’améner*) issued by a justice of the peace often turns into an arrest followed by long-term pre-trial detention.

Amnesty International is concerned by the large number of arbitrary arrests and about ill-treatment during arrest and in detention; restricted access to lawyers, families and adequate medical care; and the inability of detainees to challenge the legality of their detention.

## **Long-term and preventive detention**

Long-term and preventive detentions remain the rule and not the exception in Haiti. The prisons are crowded with detainees arbitrarily arrested and held for long periods without being able to challenge the legality of their detention.

Haitian law prohibits indefinite and arbitrary detention, and requires that all those arrested be brought before a judge within 48 hours.<sup>29</sup> This legal limit is routinely ignored.

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<sup>29</sup> Article 26 of the Haitian Constitution states: “[N]o one may be kept under arrest more than forty-eight hours unless he has appeared before a judge asked to rule on the legality of the arrest and the judge has confirmed the arrest by a well-founded decision.”

**Case example: former Prime Minister Yvon Neptune**

The most notorious case of long-term preventive detention involves former Prime Minister Yvon Neptune. He surrendered himself to police on 27 June 2004 after he was accused by a local human rights organization of masterminding the reprisal killings of opposition activists in the La Scierie neighbourhood of Saint-Marc on 11 February 2004. It took nearly a year before appearing before a judge and be formally charged.

On 9 July 2004 his lawyers filed a motion challenging the jurisdiction of St-Marc judges on the grounds that Yvon Neptune would not receive a fair trial. Six months later the Supreme Court (*Cour de Cassation*) dismissed the motion saying that a minimal filing fee had not been paid.

On 19 February 2005, five armed men took control of the National Penitentiary in Port-au-Prince where Yvon Neptune was detained. Nearly 500 prisoners were set free and Yvon Neptune was taken from the prison by the attackers. He contacted MINUSTAH and presented himself once again to the authorities.

On 22 April, Yvon Neptune was brought to Saint-Marc to appear before the investigating judge. Reportedly, his lawyers were not informed so could not accompany him, but the case could not be heard because the investigating judge did not show up at the court. Soon after Yvon Neptune was transferred to an annex of the National Penitentiary where he remains under custody. He went on hunger strike to protest against the delays in his case and to seek release. On 1 May, he was told he could be transferred to a hospital in the Dominican Republic on medical grounds. He refused to leave Haiti. Finally, on 25 May, Yvon Neptune appeared before the investigating judge in Saint-Marc.

Amnesty International believes that Yvon Neptune has been denied many rights, including equality before the law, the presumption of innocence, the right to be tried without undue delay, and the right to a fair and public hearing by a competent, independent and impartial tribunal established by law. It also believes that Yvon Neptune is being detained on the basis of his political views and considers him a political prisoner of the interim government. Amnesty International urges the judicial authorities and the interim government to release Yvon Neptune pending trial, which should comply with international standards of fairness.

## **6. WOMEN AND CHILDREN FACING ABUSES**

In times of conflict and political violence, women and girls often suffer disproportionately. This is exactly what has happened in Haiti. The open conflict that raged across the country in early 2004 has given way to random violence with political overtones, but throughout women have been victims of human rights abuses.

Human rights abuses against women, including rape and other sexual abuse, and domestic violence, are difficult to document comprehensively. Only a fraction of such abuses are reported to human rights and women's organizations as the victims fear for their lives or reprisals from their aggressors. In virtually all cases, the perpetrators get away with their crimes. Most of the survivors interviewed by Amnesty International said that reporting their cases to the police was not only useless but might compromise their safety. Barely any cases of rape or other violence against women have been reported in the local press.

Similarly, street children are also highly vulnerable to political violence and armed conflict. In Port-au-Prince, 3,000 children are estimated to live in the streets and are severely marginalized by the population. Not infrequently, they are the target of vigilante groups.

### **Violence against women**

Violence against women is particularly prevalent in the absence of the rule of law, as is the case in much of Haiti. Women are victims of random violence in poor neighbourhoods of the capital and of terror campaigns using rape, murder, arson and looting. As the majority of heads of households in Haiti, women also bear the brunt of the increasing insecurity in the country, which has a direct impact on the economic activities in the informal sector in which most women derive their livelihood.

Politically motivated rapes have been reported during and shortly after the armed rebellion of February 2004. The high incidence of this form of violence against women remains of great concern. Women are targeted because their husbands or relatives are believed to support Lavalas Party.

First-hand testimonies gathered from survivors by Amnesty International, as well as information made available to the organization, suggest that the attacks against women are consistent with a number of patterns including extreme violence.<sup>30</sup> The women and girls are usually attacked in their homes or in the home of relatives or friends. The attack is often perpetrated by groups of heavily armed men who burst into the homes and subject their victims to gang rapes and other forms of sexual violence. The men are often masked, concealing their identity. Rapes are often carried out in front of the victim's children or other relatives.

Most women survivors of sexual violence have nowhere to go and so are forced to stay in their own homes, often where the attacks took place. Others, as a result of fear or pressure from their husbands or partners, are forced to abandon their homes. Cases have been reported where the husband has thrown his wife out of the house after she was raped fearing that she might be infected with sexually transmitted diseases or HIV.

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<sup>30</sup> See Médecins Sans Frontières, *Caught in Haiti's cross-fire*. Available at: <http://www.doctorswithoutborders-usa.org/news/2005/04-01-2005.cfm>

**Case example: Rape by unknown aggressors**

During the night of 22 September 2004, in Delmas 17, Port-au-Prince, four hooded and armed men wearing civilian clothes came to Jane's house (real name withheld). Her husband was out but three of her friends and her young son were sleeping there. Even though Jane was eight months pregnant she was forced to lie face down along with the other three women. They were beaten and kicked, and the men stepped on their backs before raping them. The young child witnessed the assault and was gagged with a scarf. The men left with all Jane's belongings, including the children's clothes.

Jane went to the hospital several times but could not get a medical examination to certify her condition following the attack. She subsequently gave birth to a baby who is reportedly suffering from severe health complications. She cannot afford to seek medical treatment for her baby.

When Jane's husband returned home, he reportedly threw her out of the house because she had been raped and "might have infections". Jane told Amnesty International that she felt too "humiliated and terrified" to report the attack to the police.

Many women cannot identify their attackers because the men conceal their identity under a mask. However, some women have said that their attackers were gang members who control their neighbourhood or members of a rival gang coming into their neighbourhood. This pattern seems to be the case in Cité Soleil, where gangs with different political allegiances confronted each other for more than a year with virtually no response from the authorities. Amnesty International is concerned that women in Cité Soleil remain extremely vulnerable in the context of generalized violence and lawlessness. It continues to receive reports of gang members raping and subjecting women to other forms of violence with total impunity.

Under Haitian law, rape is a crime punishable by imprisonment. However, there is an extremely low rate of conviction for rape. One reason is the failure of Haiti's authorities to prosecute reported cases of rape, particularly when state agents are implicated. This contributes to the perpetuation of violence against women. Women cannot seek redress nor, in most cases, do they receive adequate medical treatment and psychological support from public institutions. This is partly because of the scarcity of resources available in the public health system, a problem compounded by the high levels of poverty.

Women working in the informal sector, mainly as street vendors, are under constant threat of indiscriminate violence from armed "bandits" who create a climate of terror -- a situation that is rarely challenged by law enforcement officials.

**Case example: Rape allegedly by police officers**

On 9 July 2004, between 11pm and midnight, three men wearing black clothes and balaclavas raped and beat Mary (real name withheld) in her house in Delmas 33, Port-au-Prince. She was three months pregnant. The men were allegedly HNP officers who came looking for her husband, a former National Palace employee under the presidency of Jean-Bertrand Aristide. Mary was taken to the Haitian State University Hospital in Port-au-Prince where she received treatment and a medical certificate stating “possible sexual violence and genital infection”. She could not walk for more than two weeks after the attack and had to leave Port-au-Prince. Her husband was still in hiding when Amnesty International interviewed Mary. She said she was too scared to report the incident to the police.

**Case example: Rape by alleged gang members**

Nineteen-year-old D.P. (full name withheld) was raped in her house on the night of 13 September 2004. Around 11pm, five men who were hooded and wearing black clothes, broke into her house in Cité Soleil, Port-au-Prince, and raped her in front of her brothers who were held on the ground at gunpoint. The attackers threatened her with death if she reported the assault. In fear for their lives, the two brothers left the house and have since been living on the streets of Port-au-Prince. D.P. believes that her assailants are members of the local gang controlling the Brooklyn area of Cité Soleil.

Following the attack, D.P. did not receive any medical attention or psychological support as she could not afford to pay for the medical visit. At the time of the interview with Amnesty International, she was still suffering from pain in the pelvic region. She said other women had been similarly attacked in her neighbourhood.

**Violence against children**

Children living on the streets are particularly vulnerable to violence. In Haiti, they face profound discrimination and are commonly the targets of indiscriminate violence and repression by the police. Amnesty International has received several troubling reports of harassment, ill-treatment, “disappearances” and executions of street children and other minors.

A large proportion of current human rights violations against children, especially torture and unlawful killings, are being committed by police officers in the context of operations purported to be combating crime. In this context, children are indiscriminately being portrayed as criminals to justify police action, including serious human rights violations, against them.

The extent and scope of such violations may be much greater than available figures indicate. Experts in the field say that many cases are not reported because of the lack of witnesses, because many victims or their relatives live on the fringes of society, and because, with few family ties, the victims tend to remain anonymous and forgotten. Many victims and their

relatives, as well as witnesses, do not report the crimes because they are frightened or do not believe that they can obtain justice.

Other types of violations against children, such as arbitrary arrest and ill-treatment in custody, are committed by the police. In these cases, especially those involving torture, abuses occur during interrogation about criminal operations or the whereabouts of criminals.

## **CONCLUSIONS AND RECOMMENDATIONS**

The challenge to reverse the serious erosion of the fundamental human rights of Haitians is enormous and will require sustained commitment from the interim governments and the international community.

Haitian National Police (HNP) officers continue to arbitrarily detain, ill treat and unlawfully kill citizens and use excessive force on a regular basis. The police's poor performance in tackling crime, the high level of corruption reported within their ranks, and the routine human rights violations committed by the security forces pose further serious threats to the peace and stability of the country and foster an ever higher level of mistrust towards the security forces among Haitians.

Amnesty International calls on the interim government to reverse this deadly cycle of human rights violations by prioritizing the respect and protection of human rights when reforming the HNP.

Amnesty International is deeply concerned about the disregard for the lives and physical integrity of people in Haiti and reiterates its call on the interim government and MINUSTAH to conduct independent and thorough inquiries into all human rights violations.

Amnesty International believes that the interim government is failing to commit itself publicly and firmly to protecting human rights and ending the cycle of impunity. Perpetrators of serious human rights violations continue to roam freely across the country.

Amnesty International is dismayed that the interim government has not made a serious attempt to work with the MINUSTAH to establish a genuine and lasting disarmament, demobilization and reintegration programme which is an essential step towards restoring rule of law throughout the country.

### **Recommendations to the interim government**

Amnesty International is aware that some of these recommendations are only achievable in the medium or long term. However, with the support of MINUSTAH and the international community, the transitional government must seek to lay down the foundations for positive and effective change.

### **1. Condemn all human rights violations**

Condemn and demonstrate total opposition to all forms of human rights abuses. Make clear to all state and non-state agents that human rights abuses will not be tolerated under any circumstances. Show commitment to establishing respect for human rights in Haiti and to cooperating with MINUSTAH and the international community in this endeavour.

### **2. Implement a comprehensive DDR programme**

Take effective and immediate measures to develop, implement and monitor a comprehensive and sustainable disarmament, demobilization and reintegration (DDR) programme. At each stage, seek the assistance and integrate the expertise of the international community and MINUSTAH personnel. Apply the DDR programme in an evenhanded manner to all armed groups and civilians in possession of arms. Establish an independent commission of representatives from civil society, including the media, to inspect and monitor the DDR process and regularly inform the public on its progress.

### **3. End arbitrary detention**

Take effective measures to end the widespread practice of arbitrary detention by immediately introducing the following practical safeguards:

- all detentions should be recorded and monitored;
- detainees should be brought before a judge promptly; the Haitian Constitution establishes that detainees must be brought before a judge within 48 hours or released;
- detainees should be given access to lawyers and doctors of their choice as soon as they are detained;
- all detainees should be able to challenge the lawfulness of their detention;
- judges should take steps to ensure that detainees have not been tortured or ill-treated, and should institute criminal investigations where torture or ill-treatment are alleged to have taken place;
- institute a system of regular, independent, unannounced and unrestricted visits of inspection to all places of detention, including prisons under the auspices of the APENA (the National Penitentiary Administration), and police stations; such visits could be carried out by independent non-governmental organizations which should be authorized to have full access to all places of detention;
- accurate information about the arrest of any person and about his or her place of detention, including transfers and releases, should be made available promptly to relatives, lawyers and the courts;

- prisoners should be released in a way that allows reliable verification of their release and ensures their safety.

#### **4. Ensure fair and prompt trial**

Guarantee the fair and prompt trial of all prisoners, including political prisoners, with full rights of defence, including the right of appeal to a higher and independent judicial body. Release all political prisoners detained indefinitely without charge or held in prolonged pre-trial detention unless they are to be brought to trial promptly and fairly. Ensure that trials comply with internationally recognized standards for fair trial, including Article 14 of the ICCPR, to which Haiti is a state party.

#### **5. End torture and ill-treatment**

Take immediate measures to end torture and ill-treatment, including medical neglect of prisoners and life-threatening prison conditions. Introduce adequate safeguards to prevent these abuses in future, including full and immediate access for all prisoners to lawyers, families and medical services.

#### **6. Prevent extrajudicial executions**

Take immediate measures to prevent extrajudicial executions in accordance with the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions. Measures should include:

- publicly and energetically condemning extrajudicial executions;
- explicitly prohibiting such offences in law and ensuring that they are punishable by appropriate penalties which take into account the seriousness of the offences;
- ensuring that those in charge of the security forces maintain strict chain-of-command control to ensure that officers under their command do not commit extrajudicial executions;
- ensuring that law enforcement officials use force only when strictly necessary and only to the minimum extent required under the circumstances; lethal force should not be used except when strictly unavoidable in order to protect life;
- preserve forensic evidence until an adequate autopsy has been conducted by a suitably qualified doctor who is able to function impartially.

#### **7. Prevent human rights violations against women**



Special emphasis should be given to raise awareness among women of their rights and to make Haitian society at large conscious of its duty to respect the human rights and fundamental freedoms of women. Issues concerning the human rights of women should be integrated in all education and training policies at national level.

The interim government should take special steps to uphold the UN Declaration on the Elimination of Violence against Women. These steps should include a clear prohibition of gender-based violence, whether occurring in public or private life. The interim government should prioritize development assistance projects for the implementation of human rights particularly as they affect women and girls.

### **8. Investigate abuses**

All complaints and reports of human rights violations should be promptly, impartially and effectively investigated by a body that is independent of those allegedly responsible and has the necessary powers and resources to carry out the investigation. The methods and findings of the investigation should be made public. Complainants, witnesses and others at risk should be protected from intimidation and reprisals.

### **9. Prosecute**

Those responsible for human rights violations must be brought to justice. This principle should apply to all alleged perpetrators regardless of how much time has elapsed since the commission of the crime. Trials must be fair and in accordance with international standards. The perpetrators should not be allowed to benefit from any legal measures exempting them from criminal prosecution or conviction.

### **10. Individual responsibility**

The prohibition of human rights violations should be reflected in the training of all state agents, including police officers, judicial officials and prison guards. These officials should be instructed that they have the right and duty to refuse to obey any order to participate in a human rights violation.

### **11. Provide reparation**

Victims of human rights abuses and/or their dependants should be entitled to obtain fair and adequate redress from the state, including financial compensation.

### **12. Provide adequate training**

Ensure that the training of all members of the police and prison guards includes the prohibition of torture, extrajudicial executions and other human rights violations. Such training should be based on international standards relating to the treatment of detainees and the use of force and firearms by law enforcement officials including: the UN Code of Conduct for Law Enforcement Officials; UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials; the UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions; and the UN Standard Minimum Rules for the Treatment of Prisoners.

## **Recommendations to the UN Stabilization Mission in Haiti (MINUSTAH)**

MINUSTAH should continue to assist in the restructuring and training of the HNP and other law enforcement agents and ensure that this includes training in international human rights and humanitarian law. To ensure the restoration of good governance, the rule of law and respect for human rights in Haiti, it is essential to rebuild and train a professional, accountable police force.

### **1. Protection of civilians**

Urgently develop a strategy for the protection of civilians in joint operations with the HNP. Ensure that MINUSTAH staff from the Human Rights Section are integral to planning and executing such operations.

### **2. No international ‘silent witnesses’**

All MINUSTAH personnel, including those engaged in military, civilian and humanitarian operations, should report through clear and proper channels any human rights violations they may witness or serious allegations they receive. The UN should take appropriate steps, including preventive measures, to address any violations reported whether perpetrators are state or non-state agents.

### **3. Individual responsibility, investigation and justice**

Individual responsibility for human rights violations, past and present, must be made explicit. MINUSTAH should assist the interim government in establishing adequate mechanisms that ensure that allegations of human rights violations are systematically, thoroughly and independently investigated. The mission should ensure that any perpetrators of human rights violations are brought to justice.

#### **4. Effective and independent human rights verification**

Human rights monitors should carry out investigations, verify compliance with human rights obligations and take corrective action in respect of violations. They should have broad access to all sectors of society and relevant institutions and the full protection of those who are in contact with them must be assured.

#### **5. Frequent and public reporting**

To guarantee the effectiveness, security and credibility of MINUSTAH and its personnel, there must be frequent comprehensive public reports of their activities and findings which should be broadly disseminated nationally as well as internationally.

#### **6. International civilian police monitors**

Civilian police officers should monitor, supervise and train national police and security forces and verify their adherence to international human rights and criminal justice standards. Police monitors should cooperate fully with any human rights component or mechanisms and should themselves be trained in and fully respect international human rights and criminal justice standards at all times. There should be full public reporting of their activities.

#### **7. Long-term measures for human rights protection**

MINUSTAH should assist in the establishment of permanent, independent and effective national institutions for the long-term protection of human rights and the reinstatement of the rule of law, including an independent judiciary and fair criminal justice system. Other mechanisms, such as ombudsmen or national commissions, may be encouraged to reinforce respect for human rights. Such mechanisms must be impartial, independent and competent with the necessary powers and resources to be effective. They should conform to international guidelines and must never be a substitute for a fair and independent judicial system.

#### **8. Human rights education and advisory assistance programmes**

Public education and training on human rights standards and complaints procedures should be provided to all sectors, particularly the judiciary, lawyers and law enforcement officials. Other technical assistance programmes should be provided, including drafting legislation, in conformity with international standards and support for national human rights NGOs. Such programmes should not be a substitute for human rights verification by a specialized monitoring component.

## **9. Respect the human rights of women**

Measures should be taken to guarantee consideration and respect for the particular needs of women in Haiti's current situation. Peace-keeping personnel should receive information on local cultural traditions and should respect the inherent rights and dignity of women at all times. Human rights teams should include experts in the area of violence against women, including rape and sexual abuse.

## **Recommendations to the international community**

### **1. Maintain an effective and adequately funded international human rights presence in Haiti for as long as necessary**

The UN should give consistent and vigorous attention to human rights concerns in Haiti. The human rights section of MINUSTAH must play a crucial role in monitoring and reporting human rights abuses in Haiti and in promoting the respect and protection of human rights. Its presence during the transition to democratic rule and beyond remains essential and it must have adequate personnel and funding. The international community must be prepared to publicly condemn human rights violations during and after the transition process and to ensure that recommendations for institutional reform are fully and promptly implemented. Human rights protection measures should be kept under review, strengthened as necessary and properly evaluated at the end of the mission.

### **2. Structural and political independence of human rights section**

Ensure provisions for MINUSTAH's human rights section are explicitly and structurally independent from the political considerations of the mission.

### **3. Contribute towards rebuilding and strengthening the judicial and legal system**

The armed rebellion in Haiti has all but destroyed the judicial system. Courts have been burned or destroyed. The long-term protection of human rights depends on an effective legal system reinforced by an independent, impartial and accessible judiciary with adequate resources. The international community should contribute towards the reconstruction of an effective legal and judicial system in Haiti. These initiatives must, however, be coupled with a determined government policy to bring to justice those responsible for human rights abuses.

## **Recommendation to the UN Security Council**

The Security Council should urge the interim government to immediately:

- take steps to implement all outstanding recommendations made by the Independent Expert, Louis Joinet, including to respect the independence of the judiciary and to restrict the use of force by law enforcement officials in accordance with international standards;
- establish mechanisms that would ensure that all alleged human rights violations in Haiti are independently and fully investigated and that those responsible are brought before civilian courts in trials that meet international standards for fairness;
- provide redress, including compensation, to the victims of human rights violations and their families;
- guarantee everyone in Haiti the right to freedom of expression and association without fear of harassment, arrest, torture or ill-treatment, arbitrary imprisonment or extrajudicial execution.