

## ***Lave Men, Swiye Atè: Taking Human Rights Seriously***

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The United States has historically advanced civil and political human rights in Haiti, by pushing dictators out the door, financially supporting law enforcement and encouraging respect for human rights norms.<sup>1</sup> At the same time, we have also undermined human rights by supporting the very same dictatorships, blocking urgently needed development assistance to democratic governments and inducing politicians to represent our interests over those of Haitian voters. Such flexibility may serve short-term, shifting U.S. interests well, but its long term consequence is what Haitians call *lave men, swiye atè*: wash your hands, dry them in the dirt. The harmful policies not only cancel out the positive contributions, they leave poor Haitians more vulnerable to human rights violations than they would be without U.S. interventions. Over the long term, the policies decrease stability in Haiti, frustrate the development of sustainable institutions that support human rights, and undermine the effectiveness of both past and future positive measures

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### **E. The *De Facto* Dictatorship**

Prosper Avril's ouster in March 1990 led to Haiti's first ever democratic Presidential elections the following December. The interlude was, however, brief, as another military junta, known as the "*de facto* regime," overthrew the elected officials on September 30, 1991. The ensuing three years were among the bloodiest periods in modern Haitian history, with an estimated 5,000 killed, and hundreds of thousands tortured, imprisoned, or forced into internal or external exile.<sup>2</sup>

The U.S. condemned the *de facto* dictatorship quickly and forcefully. It continued to denounce human rights violations throughout the regime, and participated in UN and OAS sanctions. It financially supported MICIVIH, the UN/OAS human rights observation mission to Haiti. American troops led the UN-sponsored multinational force that chased the *de facto* regime from power in September of 1994. But alongside these positive efforts, the U.S. also provided moral, financial and other support to the *de facto* regime and its paramilitary allies. This support certainly prolonged the dictatorship's duration, and most likely allowed it to increase its terror.

The most striking example of U.S. inconsistency on human rights was the support for FRAPH, the Revolutionary Front for the Advancement and Progress of Haiti (at one time the "Armed Revolutionary Front of the Haitian People"), and its founder, Emmanuel Constant. FRAPH was the principal paramilitary ally of the *de facto* dictatorship. Secretary of State Warren Christopher described it as "a paramilitary organization whose members were responsible for numerous human rights violations in Haiti in 1993 and 1994."<sup>3</sup> A less restrained U.S. Embassy cable called FRAPH a group of "gun carrying crazies," eager to "use violence against all who oppose it." Numerous monitors, including MICIVIH, the Organization of American States, Amnesty International, and Human Rights Watch documented FRAPH's multitude of atrocities.<sup>4</sup>

FRAPH targeted Americans as well as Haitians. In October 1993, a FRAPH mob turned back the USS *Harlan County*, carrying American soldiers sent to help implement the Governor's Island Accords, a U.S.-sponsored attempt to negotiate the *de facto* regime's departure. FRAPH members, some armed, assembled at Haiti's principal port, brandishing their arms and shouting "Kill whites, Kill whites" in English.<sup>5</sup> The *Harlan County* turned back, and the dictatorship endured another year. A year later, after President Clinton ordered U.S. troops to lead the multinational force into Haiti, Constant declared: "Each FRAPH man must put down one American soldier."<sup>6</sup> When American troops stormed the FRAPH headquarters, Constant threatened foreign journalists with: "Everybody who is reporting the situation bad... by the grace of God, they will end up in the ground." After the troops arrested some FRAPH leaders, Constant threatened to break out weapons and begin an all-out war against the foreigners.<sup>7</sup>

Despite his public animosity towards the U.S., Constant was in fact a paid CIA operative who regularly met with U.S. officials, some of whom encouraged his activities.<sup>8</sup> Constant admits that U.S. intelligence operatives encouraged him to delay the return of the Constitutional authorities, and that he in turn kept them informed of his activities, including his plans to demonstrate against the *Harlan County*.

U.S. support for FRAPH became public after the U.S. troops arrived. American soldiers were told by their officers that FRAPH was a legitimate political party, and needed to be protected.<sup>9</sup> The U.S. even set up a press conference for Constant, in front of the National Palace, ringed by U.S. troops, to announce his entry into politics. Shocked and enraged Haitians rushed the barricades, shouting "assassin" and "murderer." The soldiers were forced to cut the press conference short and whisk Constant to safety.<sup>10</sup>

The U.S. has also protected Constant from the Haitian justice system. When an investigating judge invited him in for questioning, Constant fled to the U.S. Under pressure from Haitian officials, the U.S. Immigration and Naturalization Service ("INS") commenced deportation proceedings. The State Department publicly intervened in support of the move. Warren Christopher wrote a letter to the Court explaining that due to his terrorist activities in Haiti, Constant's "presence and activities in the United States have potentially serious adverse foreign policy consequences..." The Judge agreed, and added that "allowing [Constant] to remain in the United States fosters the impression that the United States endorses FRAPH and its actions."<sup>11</sup>

The Judge ordered Constant deported in September 1995. Three months later, while his case was on appeal and he was in a detention facility, Constant went on CBS' *60 Minutes* television program, admitted his relationship with U.S. intelligence officials, and hinted that he could divulge more.<sup>12</sup> Officials quickly offered Constant a deal: he could remain in the U.S., a free man, as long as he checked in regularly and did not talk about what he did in Haiti. A 30-year INS veteran who supervised Constant in detention "cannot understand why [Constant] is not rotting in a U.S. jail.... He was just treated differently than any other murderer or terrorist."<sup>13</sup>

In December 2000, a Haitian court convicted Constant *in absentia* in a Haitian courtroom of murder for FRAPH's role in the 1994 *Raboteau Massacre*, a military/paramilitary attack on a pro-democracy neighborhood. Despite repeated calls by human rights advocates and victims,<sup>14</sup> the 1995 deportation

order has not been executed. Constant has not, however, given up his political ambitions. In early 2001 he promised “I’m either going to be President of Haiti or I’m going to be killed.”<sup>15</sup>

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<sup>1</sup> This chapter will focus on civil and political human rights. Economic and cultural human rights are arguably more important, certainly in terms of numbers of people killed by violations of these rights (such as the development assistance embargo), and by the accounts of Haiti’s poor majority, but are treated elsewhere in this book (See Chapter X, *supra/infra*).

<sup>2</sup> Brian Concannon Jr., *Beyond Complementarity: The International Criminal Court and National Prosecutions, a View from Haiti*, COLUMBIA HUMAN RIGHTS LAW REVIEW, Vol. 32, n. 1 (2000) p. 203.

<sup>3</sup> Memorandum of Decision and Order by John F. Gossart Jr., U.S. Immigration Judge, in *In the Matter of Emmanuel Constant*, Case #A 74 002 009, September 1, 1995.

<sup>4</sup> See, Amnesty International USA, *United States of America: A Safe Haven for Torturers*, p. 33 (2002).

<sup>5</sup> David Grann, *Giving the Devil His Due*, THE ATLANTIC MONTHLY, June 2001 54, 59.

<sup>6</sup> *Id.* at 62.

<sup>7</sup> Department of Defense declassified intelligence report dated October 3, 1994, on file with author.

<sup>8</sup> Grann, *supra.*, at 64-66.

<sup>9</sup> Tracy Kidder, “The Trials of Haiti”, *The Nation*, October 27, 2003, p. 28; Stan Goff, “The Longest Day” in HAITI: A SLAVE REVOLUTION: 200 YEARS AFTER 1804, Pat Chin, Greg Dunkel, Sara Flounders and Kim Ives, eds. (2004) p. 180.

<sup>10</sup> *Id.* at 63.

<sup>11</sup> Memorandum of Decision, *supra* at 13-14.

<sup>12</sup> CBS *60 Minutes*, December 3, 1995.

<sup>13</sup> Grann *supra* at 68. In contrast, the U.S. Justice Department now requires the incarceration of all Haitian asylum seekers who enter the country without documents, even if they establish a *prima facie* case for asylum, even if a judge finds them eligible for release on bond. Susan Benesch, “Haitians Trapped by War on Terrorism,” *Amnesty Now*, fall 2003, p. 12-13.

<sup>14</sup> *United States of America: A Safe Haven for Torturers*, *supra* at 35.

<sup>15</sup> *Id.* at 75.