

## IACHR - ANNUAL REPORT 2008

### CHAPTER IV - HUMAN RIGHTS DEVELOPMENTS IN THE REGION

#### HAITI

##### I. INTRODUCTION

247. The Commission decided to include a report on the situation of human rights in Haiti in its 2008 Annual Report pursuant to the persistence of temporary and structural situations that seriously affect the enjoyment of fundamental rights enshrined in the American Convention.

248. In its recent reports on Haiti, the Commission has examined the human rights situation generally and has consistently expressed its concern for the grave situation of human rights and, in particular, the loss of civilian life due to armed gang violence, the inability of the State to guarantee public security, the lack of accountability for perpetrators, the absence of an effective legal remedy for victims, excessive periods of pretrial detention, poor prison conditions, and the incapacity of the State to provide basic social services to the majority of the population. The Commission has consistently emphasized the impact of such conditions on vulnerable groups, especially women, children, human rights defenders, and journalists.

249. Haiti was characterized in 2008 by significant political instability, and suffered a series of natural disasters that were devastating, all of which compounded Haiti's already difficult human rights challenges. Haiti experienced five months of political instability following the removal by the Senate of then Prime Minister Jacques Edouard Alexis from office. This decision occurred, in part, as a result of public demonstrations in several cities to protest the increase in the price of basic food staples, especially rice. On September 5, the legislature approved the appointment of Michelle Pierre-Louis as Prime Minister. Although the phase of political instability came to a close, the government was charged with taking immediate and long-term measures to address the food shortage and with responding to the humanitarian crisis caused by the four consecutive hurricanes that swept through Haiti between August and September.

250. The four hurricanes – Fay, Gustav, Hanna, and Ike – caused devastation in the country, especially in the town of Gonaïves and the South/South-East region, and significantly exacerbated the already grave human rights problems. Many schools were destroyed by the hurricanes and those left standing became temporary shelters for Haitians made homeless by the hurricanes. Authorities declared that the hurricanes caused 326 deaths, 50 missing, 286 injured and 850,000 homeless. The United Nations Stabilization Mission in Haiti (MINUSTAH) estimated the damage to be at least 1 billion USD. Areas such as Saint Marc and Gonaïves were isolated by the destruction of roads and bridges. Police stations, courts and jails, especially in Gonaïves, were damaged. In mid-October, there were still 10,000 people living on roofs, in tents or in fragile shacks in Gonaïves. Given Haiti's limited resources, the impact of the hurricanes presented an additional challenge for the State to meet the immediate needs of the population.

251. Haiti's social and economic situation remains extremely fragile, creating a serious risk to citizen security, and further obstructing Haitians' access to an effective administration of justice. The impact of political instability coupled with the domestic food crisis and the severe damage caused by the hurricanes presented Haiti with new challenges and worsened social and economic conditions. For example, the Commission received

numerous accounts from people living in and outside of Port-au-Prince that due to the food crisis, more and more families were unable to afford to send their children to school.

252. Although the public security situation improved slightly from that of 2007, 2008 was characterized by periods of heavy violence and numerous acts of kidnapping. At the same time, the National Police continued to function with limited resources and state institutions remained weak, resource deficient, and in need of structural reforms and both immediate and long-term assistance. The Commission remains concerned as well by the profound deficiencies in the administration of justice.

253. During 2008, the Commission continued to closely monitor the human rights situation in Haiti, paying particular attention to the State's efforts to provide adequate public security and specific measures to strengthen and reform the Haitian National Police. The Commission also closely observed developments in the design and implementation of plans to strengthen and reform State entities and institutions charged with the administration of justice and the rule of law.

254. The Commission has prepared this section of Chapter IV of its 2008 Annual Report in accordance with Article 57(1)(h) of its Rules of Procedure and has based its analysis on information obtained during its on-site visits and session hearings described below as well as on other reliable, publicly-available sources. On January 13, 2009, the Commission sent the State a draft copy of the present section of Chapter IV, in accordance Article 57(1)(h), and asked it to submit its observations on the section within thirty days. The State did not submit observations within that time limit.

255. The Commission's primary sources of information for its assessment include a working visit in May 2008 by members of the Executive Secretariat to obtain information on children in Haiti and to conduct a training seminar with State entities and civil society members on the rights of the child. Furthermore, the Commission held several hearings on Haiti during its 131<sup>st</sup> and 133<sup>rd</sup> regular periods of sessions, where advocates and representatives of the State shared information about the current conditions and developments in the country, including the situation of the Haitian justice system, impunity, and violence against women and girls.

## **II. SUMMARY OF KEY EVENTS IN HAITI DURING 2008 RELATIVE TO HUMAN RIGHTS**

256. As noted above, Haiti experienced renewed instability when the Senate issued a vote of no confidence in then Prime Minister Jacques Edouard Alexis due to claims that his government failed to adopt measures to address the rising cost of food staples and failed to prevent ensuing violence from erupting across the country. As a result, between the months of April and August, the post of Prime Minister remained vacant despite President Preval's numerous proposals for candidates for Prime Minister. Due to this political impasse, the Government was largely prevented from pursuing its normal course of business. Specifically, a conference of high-level donors was postponed and a number of aid projects were suspended. Furthermore, key bills, such as the draft 2008 revised budget, could not be submitted to parliament. The special legislative commissions charged with reviewing the qualifications of candidates eventually approved Ms. Michelle Pierre-Louis' and her *politique generale* or statement of government policy, which emphasized national economic growth and poverty-reduction. On September 5, 2008, she was appointed Prime Minister after receiving a majority vote in both legislative chambers.

257. The four hurricanes that struck Haiti between August and September caused severe flooding, death, injuries, homelessness and destruction, including widespread crop damage. As a result, the government declared a state of emergency on September 9. On September 12, 150,000 persons were reported living in temporary shelters. As many schools were being used as temporary shelters for the homeless, the start of classes was postponed from September to October. The hurricanes exacerbated the food shortage causing food prices to rise by 70%.

258. The Commission notes that the situation in Haiti, namely the social and economic conditions continued to deteriorate during 2008, especially with the rise in global energy and food prices. Reports indicate that the number of Haitians affected by food insecurity rose from 500,000 in 2007 to 2.5 million in 2008. A recent study shows that Haiti's food comes from local production (43%), international food aid (5%), and food imports (52%). More than 80% of the rice consumed in Haiti is imported and 100% of fuel is imported. In addition, 2008 was marked by Haiti's trade deficit increasing, inflation doubling, and the value of the gourde weakening by 10%.

259. Overall, the security and human rights situation in 2008 remained a serious concern for the Commission due to sustained levels of deadly violence. This year was marked by numerous cases of kidnapping, rape, murder, and abusive treatment by gangs, similar to those reported in 2007. While the Haitian National Police, with the support of MINUSTAH, continued its efforts to combat violent crime and to apprehend suspected criminals, the judiciary was not able to respond effectively or swiftly due to a lack of resources, support, and sufficient planning on how to handle the influx of persons in the criminal justice system. While ongoing measures to strengthen the National Police are necessary, the sustainability of improvements in the security situation will depend on the judiciary's ability to respond effectively.

260. Over the past year, developments at the national level have also been accompanied by the presence of MINUSTAH, which was initially authorized for six months beginning on June 1, 2004, and whose mandate has since been extended on numerous occasions, including most recently an extension effective until October 15, 2009. Recently, a United Nations Resolution requested MINUSTAH to improve efforts in the implementation of the National Police Reform Plan, and to continue providing technical support to the Government to reform its rule of law institutions. The resolution also announced the deployment of 16 maritime patrol boats to support Haiti's Coast Guard and called on MINUSTAH to provide technical expertise to support Government efforts to pursue an integrated border management program. In addition, the resolution called for MINUSTAH forces of up to 7,060 troops of all ranks and for a total of 2,091 police. According to public activity reports, MINUSTAH has engaged in a variety of initiatives to implement its mandate.

261. With respect to Haiti's participation in the Caribbean Community (CARICOM), Haiti's Parliament ratified the Revised Treaty of Chaguaramas in October of 2007 and Foreign Minister Jean Renald Clerisme presented the published Notice of Ratification to the Chairman of the Caribbean Community Council of Ministers, on February 7, 2008, clearing the way for the country's full participation in the Single Market and Economy (CSME). CARICOM has also embarked on a special and targeted intervention to assist Haiti in improving efficiency and professionalism in its Public Sector. In addition, the Caribbean Forum of African, Caribbean, and Pacific (ACP) States (CARIFORUM) and the European Commission, recently signed a Financing Agreement totaling US\$ 2.45 million to support the Caribbean Region in the Sustainable Management of its Energy Resources.

262. For its part, the General Assembly of the OAS adopted Resolution AG.RES.2424 (XXXVIII)-O/08, during its 37th regular session convened from June 1-3, 2008 in Medellin, Colombia. Therein, the General Assembly commended the adoption of the National Growth and Poverty Reduction Strategy Paper (DSNCRP), as well as the efforts to implement it as a framework for the social and economic policy of the Haitian Government and for international cooperation with Haiti. The resolution committed the OAS to support to the Government in its efforts to reform and reinforce state institutions, in particular, the justice system, the Haitian National Police, and the penitentiary system. Finally, the resolution urged Haiti's partners, including international financial institutions, to continue to coordinate with the Haitian Government, in support of the principles expressed in the Paris Declaration, on channels and procedures for the delivery of aid.

263. Haiti has experienced serious challenges to its capacity to protect human rights due to political instability and the continuing humanitarian crisis. The Commission encourages the international community to continue supporting Haiti as the Government confronts these challenges and, specifically, help it achieve progress and national development, promote human rights and tackle longstanding weaknesses in state institutions. Specifically, the Commission reiterates the importance of maintaining and enhancing state-sponsored efforts to ensure long-term peace and stability, an effective judiciary and access to basic social services.

### **III. ACTIVITIES OF THE IACHR CONCERNING HAITI DURING 2008**

264. During 2008, the Commission continued to closely monitor the human rights situation and to emphasize the importance of the role of the state in addressing longstanding weaknesses in the areas of administration of justice, public security and respect for social and economic rights. In addition, the Commission continued to monitor and report on the situation of vulnerable groups, including women, children, and human rights defenders.

265. From May 27 to 31, 2008, members of the Executive Secretariat conducted an advance fact-finding visit to Haiti to obtain information on the situation of the rights of the child in anticipation of that scheduled on-site visit by the Commission's two Rapporteurs. Secretariat staff met with a range of actors including with representatives of the Institute for Social Welfare and Research, the Ministry of Social Affairs, Haitian and international NGOs, UNICEF, and MINUSTAH's sections on child protection, human rights and justice. The Secretariat staff visited the state-run shelter for children in Carrefour, outside of Port-au-Prince, and Gonaïves. The specific issues that appeared to be the most significant included: the right to identity, social and economic rights (education, food, and health), children in conflict with the law, and violence against children.

266. In an effort to maintain an active engagement in Haiti --to further promote the Inter-American Human Rights system and to enhance human rights protection-- the Executive Secretariat, together with UNICEF-Haiti, organized a training seminar for approximately 30 government officials and members of civil society on the rights of the child and the Inter-American Human Rights system.

267. Following its visit to Haiti in May, the Commission received and granted a request for precautionary measures on behalf of all the detainees being held at the Gonaïves prison facility due to extremely poor conditions. The communication to the Government made a specific request for urgent measures to be adopted in favor of children being held with adults, persons suffering from serious and/or contagious illnesses, and women and elderly persons. The Commission has not received a response from the State on

this matter, nor has it received updated information from the parties on the conditions of persons deprived of liberty in Gonaïves following the hurricanes that swept through in August and September, and which severely affected the town of Gonaïves.

268. The Commission considered the situation in Haiti during its 131<sup>st</sup> and 133<sup>rd</sup> regular periods of sessions in March and October 2008, respectively. At the conclusion of these sessions, the Commission issued press releases including a specific reference on the situation in Haiti.

269. Based on its visits and other activities relating to Haiti during 2008 and its observations on the human rights situation in Haiti in previous years, the Commission continues to monitor key areas of concern including public security, the administration of justice, the rule of law, impunity, rights of vulnerable persons and social and economic conditions. It is important to note that many of these problems are long-standing and deeply rooted, stemming from structural deficiencies and institutional weaknesses resulting from a history of political crisis, authoritarian regimes and corrupt institutions. Accordingly, state institutions would benefit from serious evaluation, strategic and long-term planning, and structural reforms in order to effectively respond to the widespread nature of human rights violations occurring daily.

#### **IV. OBSERVATIONS ON THE SITUATION OF HUMAN RIGHTS IN HAITI DURING 2008**

270. During 2008, the Commission observed serious challenges that affected Haiti's capacity to pursue its national economic and development agenda and that further prevented it from fully protecting the civil, political, social and economic rights of the Haitian people. The year was dominated by serious concerns over the dire social and economic conditions in the country and by the humanitarian crisis that resulted after the hurricanes, prompting the Government to declare a State of Emergency. On this point, the Commission observes that Prime Minister Pierre-Louis has prioritized the implementation of a national policy of poverty reduction and economic growth. The National Growth and Poverty Reduction Strategy Paper, recently adopted by the Government of Haiti, is the principal mechanism outlining national development goals and strategic policies in the economic, governance and social sectors. The implementation of the Strategy Paper is significant in terms of the future of Haiti's development and of ensuring that adequate financial assistance is channeled accordingly.<sup>16</sup> In this connection, it is expected that the international community and international financial development institutions will contribute support for the implementation of the Strategy Paper.

271. Additionally, the Commission notes the outpouring of assistance to Haiti by the international community following the four hurricanes. In particular, the Commission commends the efforts of a long-term and preventative nature to address the food crisis in Haiti and the related environmental degradation in the country.

272. Weaknesses in the administration of justice and impunity for human rights violations remain primary concerns. The government continues to face significant challenges in ensuring conditions of peace and security in the country over the long term. According to the President of the Republic, Rene Preval, the combination of the drug trade in Haiti, corruption in state institutions and poor social and economic conditions have cultivated high levels of criminality and impunity. The Commission observes the State's ongoing efforts to tackle these issues and emphasizes the need to allocate resources to the planning and implementation of effective state policies, legislation and mechanisms in these areas. The problems defining the human rights situation in Haiti will require long-term institutional

reforms and sustained international assistance. For this reason, the Commission encourages relevant State institutions supported by the international organizations working in Haiti, notably MINUSTAH and related UN agencies, to maintain their efforts to reinforce the Haitian National Police and the judiciary, and especially to develop a comprehensive approach to ensuring sustainable peace and security, including domestic job creation and the development of national industries.

273. In this connection, due to an imbalance in the allocation of resources, financial support, technical assistance and training between the national police and the judiciary (national police receiving the majority of the budget under the Ministry of Justice and Public Security), the judiciary has not had the adequate capacity or resources to respond promptly or effectively, resulting in a backlog of cases and the unprecedented number of persons in detention in Haiti's prison facilities, the majority of whom have been detained arbitrarily and for excessive periods. The Commission recommends that additional resources, equipment and adequate infrastructure be provided to the judiciary in order for it to function adequately and for criminal cases to be handled promptly and effectively.

#### **A. Public Security**

274. Over the years, the situation of public security in Haiti has been among the Commission's principal concerns. In particular, the Commission has consistently expressed concern over the frequent acts of deadly violence and the ineffective control that security forces maintain over certain sectors of Port-au-Prince and the provinces. While Haiti has previously witnessed high levels of political violence during times of political transition, acts of criminal violence, such as kidnapping, rape, murder, beatings and destruction of property have become common occurrences in recent years. According to MINUSTAH, there were 413 reported murders and 70 cases of public lynchings in Haiti during 2008.

275. Specifically, during the first six months of 2008 the number of kidnappings increased, as an average of 30 people per month were reportedly victims of kidnapping. Thereafter, MINUSTAH reported 42 kidnappings from the beginning of June to the middle of August. In June, hundreds of people protested in the capital of Port-au-Prince against the problem of kidnapping. Official figures for all of 2008 are not yet available, however, the current figures appear lower than those of 2006 (722 kidnappings) and similar to that of 2007 (293 kidnappings).

276. The Commission also received information that the illicit drug and arms trade continues to thrive with little government control. In this regard, the Commission notes that in 2007, the State took the initiative to organize a regional conference in the Dominican Republic, which resulted in the Santo Domingo Declaration. The Declaration reflected commitment by the States to adopt measures to combat the illicit drug trade. The Commission has not received updated information about the outcome of this initiative and its implementation in Haiti, but it takes this opportunity to encourage the State of Haiti to adopt policy, legislative, administrative, judicial and other measures to give effect to the Declaration.

277. More precisely, an essential aspect of guaranteeing security is the need to reinforce the Haitian National Police force. Equally important is the provision of sufficient resources, training and equipment to the judiciary in order to enable it to respond effectively to the cases that confront it. During 2008, the HNP continued to demonstrate efforts to respond to criminal violence, despite limited resources and a relatively young and inexperienced force. Reports indicate that 930 arrests warrants were executed by the Haitian National Police during the months of June to August 2008. With the technical

support of MINUSTAH, the implementation of a program to vet human rights abusers and to tackle corruption in the force continued. The vetting progressed slowly, however: in August, 2,350 files in which 360 officers were suspected of wrongdoing were pending decision before an independent commission. After issuing a recommendation on a case, this commission transfers it to the Superior Council of the Haitian National Police for a final decision; however, the commission has not yet been established. Consequently, the officers suspected of wrongdoing remain on the force.

278. Another aspect critical to ensuring public security and preventing recurring crime is the ability of the justice system to function effectively and ensure criminal accountability for perpetrators. The justice system remains weak, under-resourced, ill-equipped and under-staffed, as previously noted in the Commission's report on the administration of justice and the Commission's observations following the visit by the Country Rapporteur in April 2007. In this connection, the Commission continues to be concerned with the State's failure to allocate sufficient resources to the judiciary in order to reinforce its capacity, and improve the administration of and access to justice. This includes reconstruction and reorganization of the courts, the allocation of material and equipment, and ongoing training, while at the same time, addressing labor conditions for members of the judiciary.

279. Finally, the Commission acknowledges that the United Nations Stabilization Mission in Haiti has demonstrated a strong commitment to ensuring conditions of peace and security in the country since the creation of its mandate in 2004, and has undertaken notable efforts to improve the public security situation by supporting the HNP in its efforts to prevent crime, and by placing greater emphasis on institution strengthening and reform of the police and the judiciary. Such efforts complement more long-term programs carried out by the UN agencies, such as the United Nations Development Program, in the area of the rule of law and support to the prison administration. In effect, MINUSTAH retains a robust presence in the country and continues to provide support to Haiti's disarmament program.

## **B. Administration of Justice**

280. The sources available to the Commission indicate that during 2008, the State, with support from the international community, maintained its efforts to address select deficiencies in the judicial system. Notably, this year registered a significant achievement with the adoption of a set of laws on the independence of the judiciary, progress towards the establishment of the magistrate's school and the Superior Council on the Judiciary, and the conclusion of the work of the special commission to address the problem of prolonged pretrial detention.

281. Specifically, the magistrates' school has developed its academic curriculum and drafted its internal rules. During July and August of 2008, while the principal school facility was being renovated, a group of justices of the peace was identified and selected for a preliminary training session in July. Similarly, efforts to set up the Superior Judicial Council were also planned. However, with respect to achievements in the area of judicial reform, the Commission did not receive updated information about the outcome or progress made by the special commission on judicial reform and the role of the Secretary of State on Justice.

282. Overall, the Commission affirms its previous findings that the justice system remains extremely inefficient and slow, and continues to suffer from fundamental weaknesses that include the lack of independence of the judiciary, corruption and

misapplication of the law. In addition, a severe shortage of resources for judges, magistrates, courts, and the police have resulted in prevalent due process violations, such as the prolonged detention of individuals before they are brought before a judge. While the Commission previously reported that corruption across the public sector is widespread, the Commission hopes that the adoption of the laws to establish the Superior Council of Magistrates, the School of Magistrates and the Statute on Magistrates, will result in marked improvements in this area, as they will include a procedure to enforce a professional code of conduct and to sanction acts of corruption or breaches of judicial integrity.

283. With respect to the larger issue of judicial reform and the longstanding problem of lack of independence of the judiciary, the Commission continued to receive information on State initiatives. The Commission received information that, following the development of a plan of action by the Ministry of Justice in 2007, a special commission on judicial reform was established. This commission, which includes the participation of civil society, constitutes a sign of progress toward much needed judicial reform. Furthermore, three bills on the independence of the judiciary, the status of judges and constitutional procedures for appointment, terms and removal from office were adopted by parliament in 2008. The Commission is particularly encouraged by the adoption of these legal instruments and hopes that equal importance is given to their effective implementation. The Commission recognizes the importance of initiatives adopted by the Government of Haiti to promote judicial reform, and calls on the international community to support these initiatives with the technical assistance and resources that are needed to implement profound changes in the judicial system.

284. The Commission continues to be concerned about reports of arbitrary arrests and detentions, as well as the abuse of force at the time of arrest. The Commission notes that the carrying out of arbitrary arrests and detentions is not a new problem in Haiti. Accordingly, while recognizing the need to apprehend dangerous criminals to ensure public security for the population, the Commission emphasizes the prohibition against arbitrary arrests and detentions enshrined in Article 7 of the American Convention, and it reiterates the State's obligation to ensure that its efforts to investigate and prosecute crimes are undertaken through demonstrably fair and effective procedures that conform to international standards of due process, including a detainee's right to be promptly notified of the charge or charges against him and to be brought promptly before a judge.

285. In this connection, the problem of persons in prolonged pretrial detention in Haiti continues to be a primary concern of the Commission. On September 11, 2008, 8,077 persons were reportedly being held in detention facilities across Haiti, and only 1,478 of these were serving criminal sentences. Thus more than 80% of persons deprived of liberty in Haiti were being held in pretrial detention. To address this problem, a special commission on prolonged pretrial detention was launched in 2007, and it issued a report with its findings and recommendations in 2008. The special commission sought to reduce the number of persons in prolonged pretrial detention by reviewing the files of detainees and dispensing with certain cases, especially those that were minor or appeared unfounded or in which the period of pre-trial detention had surpassed the sentence that would have been imposed for the crime charged. This procedure would be implemented in Haiti's largest prison, the National Penitentiary, and subsequently replicated in other prisons. Accordingly, the special commission reportedly decided to release 892 detainees between June 2007 and March 2008 during its review process.

286. The IACHR recognizes the value of adopting urgent measures such as the creation of the special commission on prolonged pretrial detention to respond to the critical situation of persons deprived of liberty in Haiti, and urges the Government, with the support

of the international community, to adopt measures to improve the situation of prolonged pretrial detention pursuant to the special commission's recommendations. At the same time, the Commission stresses that fundamental and/or structural reforms must be made to ensure that persons deprived of liberty are guaranteed their right to fair trial and judicial guarantees.

287. With respect to prison conditions, the Commission received information that reflected a situation that has progressively deteriorated since last year. In June 2007, the Rapporteur on Persons Deprived of Liberty expressed alarm with respect to the deplorable situation in the National Penitentiary, characterized by unprecedented conditions of overcrowding. This situation was aggravated by an outdated structure in a state of disrepair, and extremely poor health and sanitary conditions, and the lack of access to potable water, adequate food or medical attention. At the time, information provided to the Commission by prison guards indicated that these factors had resulted in frequent deaths in this facility. The Commission received information that while 3,800 persons were being held in the National Penitentiary in Port-au-Prince in June 2008, the number of prison wardens remained at 22 for the entire facility. This created a ratio of one warden for every 170 detainees, which is far below relevant international standards. Although acts of violence and poor conditions in prisons are not new problems in Haiti, the Commission observes a worrisome deterioration in the situation of persons deprived of liberty in terms of overcrowding and failure to provide for the basic needs of detainees.

288. The Commission therefore strongly reiterates its call for the State to ensure that persons subject to detention or imprisonment are not subjected to conditions that fail to satisfy minimum international standards for the treatment of detainees, and that they are not the victims of violence or other ill-treatment at the hands of state agents or other inmates. These specialized standards include the UN Standard Minimum Rules for the Treatment of Prisoners and the Commission's Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas.

289. The growing number of detainees has directly affected the State's capacity to accommodate them in its facilities. Information from 2008 indicates that as the National Penitentiary in Port-au-Prince has reached capacity, authorities have begun to transfer detainees to prisons in other provinces. It is important to note that none of the prison facilities have undergone significant reconstruction or repair in several years and many were not constructed for the purposes for which they are being used. During the IACHR Executive Secretariat's visit to Haiti in May 2008, the delegation was able to observe a serious humanitarian situation in the prison of Gonaïves, which had been adapted to accommodate the government's need for a detention facility. The original prison of Gonaïves was destroyed in 2004 and a new facility has not been constructed. In May, the delegation observed detainees held in approximately five small unventilated, dark rooms containing roughly 20-25 people each. The rooms did not have natural lighting, electricity, running water, beds or any other amenities for the detainees. Authorities confirmed the dire situation of the facility. Due to the lack of security of the facility, detainees were confined to these cells all day without any possibility for recreation. In the absence of sanitation facilities, the detainees were forced to relieve themselves in the cells. Further, authorities confirmed that there was no official budget to run the facility, as it was intended as a temporary solution in 2004.

290. As to conditions in the police holding cells, these are small and have no windows, no natural or artificial lighting, and no space for beds. The police stations have no budget to maintain detainees over a long period of time, or to provide them with potable water, food, access to bathing and sanitation. Police authorities indicate that the police

stations lack adequate security measures to hold detainees for long periods of time; therefore, individuals are typically contained in the cells with no time for exercise. Most police stations have no more than two holding cells per station, at times used to separate adult men from adult women, or to separate adult men from children. It is understood that detainees are frequently held in police holding cells while criminal investigations are conducted by judicial authorities. Yet while the criminal procedural code provides for investigations that take place over two months, this period can be extended, and investigations can last well beyond it.

291. All of these conditions fall far below international minimum standard rules for the detention of individuals, and they constitute serious threats to the physical integrity of those detained. This situation must be addressed immediately by appropriate authorities so that the pertinent rights protected by the American Convention are duly respected, including the rights to judicial guarantees, due process, and to be free from cruel and unusual punishment or treatment.

### **C. Impunity**

292. Of utmost concern to the Commission is the persistent problem of impunity for past human rights abuses and crimes. Throughout the period in which the Commission has monitored the human rights situation in Haiti, it has found that impunity for human rights abuses and criminal acts is systematic and widespread. The Commission considers it important to emphasize the State's responsibility to investigate and prosecute human rights abuses in accordance with international standards. While the courts have demonstrated initial efforts to address this issue by holding criminal trials and successfully prosecuting certain criminals, these measures need to be redoubled, and the judicial process continues to be fraught with irregularities and delays that often result in impunity. At the same time, the Commission congratulates the Government of Haiti for the recent adoption of the Act to Establish the Superior Judicial Council. The Council, expected to be launched in October, is charged with oversight of the judiciary and incorporates mechanisms to establish its independence. Finally, the Commission urges Haiti to allocate adequate resources both to the establishment of the Council and to the judiciary as a whole in order to ensure that the Haitian court system functions properly and efficiently.

293. With respect to certain human rights cases, the Commission recognizes the 2007 establishment of a special commission to support the investigation of assassinated journalists. Among the cases in which the special commission will assist Haitian authorities are those of Jean Dominique and Brignol Lindor. The Commission has not received updated information in 2008 with respect to the outcome of these investigations. On this point, the IACHR wishes to emphasize the duty of the State to effectively investigate, prosecute and punish crimes committed within its territory. For this reason, it is especially important to adopt corresponding measures to reinforce the principal state institutions charged with the administration of justice in Haiti, especially the judiciary, in order for it to function effectively and to deliver justice promptly.

294. On the other hand, the Commission continued to receive information regarding human rights abuses which have not received adequate attention or follow-up by judicial authorities. For example, the Haitian judiciary has not yet resolved cases of abduction and rape in which members of the HNP are suspected to be involved. The Commission expresses its concern over the continuing impunity of the perpetrators of these acts. As the Commission previously suggested, addressing the numerous unresolved human rights cases may require innovative approaches aimed not only at providing accountability and reparations, but also at preventing the recurrence of such acts.

295. With respect to these matters, the Commission reiterates its concerns regarding the State's obligation to end impunity for all human rights abuses through demonstrably fair and effective procedures that conform with international standards, as well as the corresponding right of all persons to due process of law and to be heard by a competent, independent, and impartial tribunal, without discrimination of any kind. In light of the task ahead, the Commission emphasizes the important role of the international community in supporting the reinforcement of the judicial system in Haiti, and hopes that it will donate financial resources and equipment to support the reconstruction of court houses, training and technical assistance for judges, and the implementation of reforms to transform an archaic judicial system into one that reflects the current standards of justice.

#### **D. Situation of Particular Persons and Groups**

296. The Commission's concerns during 2008 have also included circumstances relating to groups of particular focus in the Commission's work, including women, children, human rights defenders, and journalists.

297. During 2008, women in Haiti continued to face discrimination and gender-based violence. The Commission is especially concerned with the State's response to the prevalence of discrimination and violence against Haitian women and young girls. Additionally, the failures of the health, education and justice sectors in Haiti particularly affect women and young girls. While the acts of kidnappings, rape, murder and intimidation in recent years have affected the majority of the Haitian population in Port-au-Prince, State and non-State sources confirmed that women and girls are particularly vulnerable to acts of violence due to deep-seated sociocultural norms, patterns and practices that are based on the concept that women are inferior. The adoption by the Haitian state of international instruments such as the Convention of Belém do Pará and the Convention on the Elimination of all Forms of Discrimination against Women ("CEDAW") reflect an acknowledgement of the discriminatory treatment and violence that women have traditionally suffered in this society and the commitment of the State to act with due diligence to prevent, investigate, sanction and redress these acts.

298. The information received by the Commission indicates that the incidence of rape of women and children remains high in 2008, and social workers and human rights observers confirm that impunity for acts of violence against women perpetuates the problem. On this point, a handful of cases have been successfully prosecuted since the 2005 decree modifying the criminal sentence for rape. Nevertheless, the Commission notes the large gap between recorded cases and those which have reached the stage of prosecution and punishment. With respect to these problems, the Commission has reiterated the need for the State to take concrete steps to promote and protect the rights of women, which include the effective investigation and prosecution of complaints of sexual violence perpetrated against women and girls, as mandated by the Inter-American Convention on the Protection, Punishment, and Eradication of Violence Against Women, adopted by Haiti on June 2, 1997. In this sense, the Commission encourages the State's legislative initiatives in this area. The Commission specifically recommends that further steps be taken to introduce a specialized law on the protection of women from violence and discrimination.

299. On the other hand, the Commission is encouraged by initiatives taken by the Ministry of Women to adopt a policy and plan to eradicate violence against women and to secure adequate services for victims of sexual violence. Further, the Commission recognizes and values the Ministry's efforts towards the elimination of stereotypes that are discriminatory against women, in particular the legislative efforts made by the Ministry in

these areas, notably the Ministry's intent to prepare a draft bill on violence against women and girls.

300. Information received in 2008 on the situation of children builds upon the findings made in 2005 by the Rapporteur on Children.<sup>31</sup> Information received indicates that children continued to be subjected to child labor, organized trafficking, kidnapping, abuse, and arbitrary arrest and detention by police forces. In 2008, gang related violence against children was reported to have remained prevalent in urban centers, especially the kidnapping of children and related sexual violence against the victims.

301. Child trafficking has also been noted as a worrisome trend and threat to the protection of children, especially girls. Child rights advocates further indicate that, in some cases, orphanages are being used for illicit purposes, trafficking of children, prostitution and other forms of sexual exploitation of children. In this regard, Haitian authorities together with the International Organization of Migration and human rights organizations are working on domestic legislation to regulate the trafficking of persons. The Commission hopes that the process of evaluation and adoption of the text by parliament, as with the Children's Code awaiting parliament's review, will be swift and will contribute to greater protections for children.

302. The Commission wishes to express its concern with the situation of children in conflict with the law. On this point, during the Secretariat's fact-finding visit in May 2008, the Commission's delegation was able to observe the problem of children being detained together with adults in the prison in Gonaives. At the time, 8 children were being held together with the Gonaives adult prison population. Also, the detention of children in a prison facility rather than in the legally mandated rehabilitation facility continues to be a central concern of the Commission. Haiti's legal framework with respect to the protection of children in conflict with the law is largely limited to the 1961 law on delinquent youth and children in conflict with the law, which adopts a rehabilitative approach to delinquent youths and calls for special protection of children in conflict with the law. In particular, the law provides that children under sixteen years of age are not criminally responsible and are expected to serve a term in a rehabilitation center rather than in a detention facility. In meetings with government authorities, members of the judiciary and civil society, an overwhelming concern was expressed over the detention of children in conflict with the law and the lack of an adequate and legally-sanctioned rehabilitation center for this group as well as the lack of shelters for abandoned and abused children.

303. These shortcomings contravene provisions of the American Convention on Human Rights and international standards of protection for children in detention contained in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, according to which the detention of children awaiting trial is a means of last resort. These provisions require that children held in detention shall receive care, protection and all necessary individual assistance-social, educational, vocational, psychological, medical and physical-that they may require in view of their age, sex and personality.

304. Additionally, during the fact-finding visit in May 2008, the delegation visited one of the only State-run shelters for abandoned children and children in conflict with the law in Carrefour, Port-au-Prince. The Director indicated that there are three sites managed by a religious Congregation (the Sisters and Brothers of Incarnation) by agreement with the Ministry of Social Affairs, two for boys in Port-au-Prince and one for girls in Hinche. The center in Carrefour is the largest and held 110 children on the date of the visit. Sixty-four children were being held in the Petit-Place Cazeau center in Port-au-Prince, which offers professional training for children. In Hinche there are 134 children (all girls). Nevertheless,

the day of the visit the delegation found several girls who were being housed at the same site as the boys. During the visit to the center in Carrefour, the delegation was able to observe that a number of girls and boys were being held in the same facility, while representatives of the center had indicated that girls were to be held separately from boys. Another issue of concern is that abandoned/street children were being held together with children in conflict with the law.

305. A central issue of concern is the fact that the facility is designed for children at risk (homeless, street children, runaways) and children in conflict with the law without any differentiation in the treatment of these children. For example, due to the fact that there are some children in the facility who are in conflict with the law, the facility's policy is not to allow any of the children the possibility of leaving the premises. The Director also indicated that the entrance is guarded at all times to prevent children from escaping.

306. As to conditions, the facilities required repairs and maintenance, while there appeared to be a severe lack of resources to provide adequate materials, supplies and equipment for the adequate operation of the facility. The classrooms were empty of any materials or supplies, except for several chairs (many half-broken) and blackboards that were propped up against the wall because their stands were too weak. At the same time, the Director showed the delegation new construction of latrines and a more spacious kitchen and dining hall.

307. One of the main challenges raised by the Director and his staff is the lack of sufficient resources allocated by the Ministry of Social Affairs to run the center, for example, the Ministry allocates 250 gourdes/per day/per child, which the Director indicated was insufficient to cover the actual costs of providing meals and basic amenities for the children. The center's staff also informed the delegation that they had not been paid their monthly salary for the past 5 months.

308. As the Commission has noted on previous occasions, children are among the most vulnerable members of our societies and are entitled to special protection from the State in order to effectively safeguard their rights. The Commission reiterates its concern for the precarious situation of children in Haiti and notes the near absolute lack of protection afforded to children. On this matter, the Commission urges the State to take all of the protective measures that are required by their condition as children so as to give full effect to the rights protected by Article 19 of the American Convention, as well as the rights and freedoms provided for in the Convention on the Rights of the Child, which Haiti ratified on July 8, 1995.

309. The social, economic, and political problems faced by Haiti in 2008 did not impact the exercise of the right to freedom of expression as much as they did in previous years, as there has been clear evidence of efforts to tackle some of the country's main challenges in this area.

310. In this connection, the Commission applauds the progress made in combating impunity in cases related to the murder of journalists. On January 23, 2008, the Petit-Goave criminal court convicted *in absentia* seven individuals charged in connection with the December 2001 murder of Brignol Lindor, of *Radio Echo 2000*. The suspects were identified as members of an armed militia known as *Dòmi nan Bwa*, said to be supporters of former Haitian President Jean-Bertrand Aristide. Two persons were sentenced to life imprisonment in December 2007 for the murder. And, in May 2008, the parents of Ricardo Ortega, the Spanish journalist killed in Haiti in 2004, disclosed the decision by the Haitian courts that, according to evidence gathered, the journalist may have been killed by bullets

fired by foreign soldiers. When he was killed, at the time Aristide left power, Ortega was covering pro- and anti-Aristide demonstrations. Initially, the investigations focused on supporters of the former Haitian president as possible suspects in the journalist's murder, but the courts noted that there was not enough evidence to charge the nine Haitians held as suspects. In July, the Spanish authorities announced the re-opening of the investigation.

311. Moreover, the Commission has received reports that show that journalists had been assaulted in 2008 while performing their duties. On April 8, 2008, *Le Matin* newspaper photographer Jean-Jacques Agustin and Channel 11 cameraman Leblanc Macaenzy were wounded after being shot with rubber bullets as they covered clashes between protesters and official Haitian and United Nations security forces in Port-au-Prince, according to reports. *Haiti Progrès* news photographer Yves Joseph was injured by pellets fired by demonstrators. These acts of aggression took place against the backdrop of series of violent protests against the René Prével government, denouncing food price hikes.

312. Other assaults on journalists were reported to the Commission. Pedro Edouard, a cameraman for the government-owned TV station TNH, was wounded when a police officer pushed a gun into his mouth, even though the weapon did not go off when the trigger was pulled. Photographer Evens Saint-Felix was accosted by foreign soldiers as he photographed them harassing Haitian plain-clothes policemen.

313. The IACHR reiterates the importance of Principle 9 of the Declaration of Principles on Freedom of Expression, which states that:

The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.

314. In comparison to previous years, the Commission received fewer complaints relating to violence and threats made in retaliation against human rights defenders for exercising their profession. In these areas, defenders are one of the only sources of information about human rights abuses being perpetrated in the country. The Commission has placed value on the important work of the defenders who, under difficult circumstances continue to promote and protect the rights of Haitians. In this sense, the Commission reminds the State of its duty to ensure the necessary conditions to facilitate the work of defenders. In 2007, the Commission learned of two cases of threatened human rights defenders, with respect to one of whom the Commission issued a request for information to the State. In this regard, the Commission expresses its preoccupation for the failure to respond to the request for information or to apply the request for precautionary measures in favor of defenders in Haiti since 2005. To date, the Commission has not received information from the State indicating the measures taken to protect the life and integrity of the petitioners in the cases with precautionary measures, noting specifically that information regarding the investigation into these matters has yet to be communicated to the Commission. Accordingly, the Commission emphasizes the extreme risks posed to petitioners who continue to exercise their profession without security measures adopted by the State to ensure their right to life and physical integrity.

## **V. CONCLUSION**

315. Based on its observation of the human rights situation in Haiti during the past several years, the Commission found that the situation in Haiti during 2008 was once

again characterized by significant challenges which compromised the State's capacity to ensure the full respect of the Haitian people's human rights. These included the food crisis and ensuing riots, the removal of former Prime Minister Alexis and its consequences on the political stability of the country, and the ensuing natural disasters which led the State to declare a State of Emergency. The combination of all these events significantly affected the State's capacity to guarantee the social and economic rights of Haitians in 2008. The Commission observes that the effects of these events have been devastating to the daily livelihood and survival of Haitians.

316. At the same time, the Commission recognizes the valuable support provided by the international community to the Haitian Government during this time of political transition and disaster recovery. However, the situation of peace and stability remains fragile, and the task of reinforcing Haiti's institutions and developing measures to address longstanding deficiencies is a process that will require time, adequate financial and human resources and a long-term commitment by the government and the international community. Accordingly, the Commission continues to emphasize the importance of the role of the State in pursuing the reinforcement of the rule of law and the administration of justice, efforts to strengthen and reform the public security force, and comprehensive measures to achieve progressive social and economic development, as well as ensuring Haitians' enjoyment of social and economic rights including access to employment opportunities. The Commission remains deeply concerned by the degree of widespread impunity for human rights abuses and crimes, the lack of effective protections for victims of human rights abuses, and extreme deficiencies in social and economic conditions severely depriving the majority of the Haitian population of access to basic social services, including adequate shelter and potable water, health care, education and employment.

317. The Commission emphasizes the importance of developing a long term strategy and policy of reform to address structural and legislative weaknesses in these areas. In this connection, the Commission reiterates the importance of the international community's role in providing critical financial and technical assistance to Haiti's mission to address longstanding issues and to achieve long-term change and stability, and in particular the need to develop programs in collaboration and coordination with the Haitian government and other key stakeholders. In light of its conclusions, the Commission recommends that the Republic of Haiti take the following measures:

1. With respect to public security, elaborate a comprehensive security plan for the country, including strategies to prevent the growth of organized crime and illicit trafficking, and specifically, adopt long-term and sustained measures to ensure adequate prevention and punishment of violent criminal acts, and reinforce accountability mechanisms in order to effectively hold perpetrators accountable for their crimes. Equally, maintain financial and technical assistance for the professional development of the Haitian National Police, and take measures to enhance the police academy training curriculum, while also implementing effective supervision and control of the conduct of officers and adopting appropriate disciplinary action where appropriate and with the necessary due process guarantees.
2. With respect to the court system, adopt immediate and long-term measures to address the deficiencies identified in the Commission's reporting on the administration of justice in Haiti, and specifically to ensure that adequate financial and human resources are allocated for the proper and efficient functioning of the courts. Take necessary measures to ensure the swift implementation of the recently adopted laws on the independence of the

judiciary, and adopt the measures necessary to ensure that the courts are capable of fulfilling their role, especially the duty to investigate, prosecute and punish persons responsible for human rights violations.

3. With respect to the prison system and persons deprived of liberty, take urgent measures to improve the living and security conditions in Haiti's prison facilities and detention centers in order to ensure that facilities meet minimum international human rights standards, and in addition to the creation of the special detention commission, adopt best practices and preventive measures including necessary institutional reforms, to reduce the duration of pretrial detention. To this end, improve the mechanism of coordination between international donors and agencies implementing humanitarian and social assistance programs in Haiti's prison system.
4. Swiftly adopt legislation that adequately protects women and girls from acts of discrimination and different forms of violence – physical, sexual and psychological – in the private and public spheres. In this connection, provide female victims with accessible and effective legal services free of charge to pursue a claim before the courts and to create specialized centers to provide multidisciplinary services to victims of violence, including necessary legal, medical and psychological support.

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