

## Haiti: Prison Reform and the Rule of Law

### I. OVERVIEW

Haiti's overcrowded, understaffed and insecure prisons are powder kegs awaiting a spark. Any explosion of violence or mass prisoner escape could undermine recent steps by the government and UN peacekeepers (MINUSTAH) to combat urban gangs and organised crime. The immediate needs are to ensure that the most dangerous prisoners, including newly arrested kidnap suspects, are held in maximum security cells; there are more guards to protect and ensure minimum care for prisoners; and a fast-track government/donor-financed plan to build more secure prisons begins. As President René Préval's government nears the end of its first year, failure to respond with greater urgency and resources to the prison crisis not only would complicate police and justice reform but could add to national insecurity.

Haiti's seventeen prisons hold more than 5,500 inmates but fewer than 10 per cent have been convicted and many are yet to be charged. In the National Prison in Port-au-Prince, which is filled to eight times capacity with 2,500 prisoners, there are only 25 guards, and disease is rampant. In the system countrywide access to food is minimal and to water insufficient, while 90 per cent of inmates have some form of scabies or chronic itching, and the risk of tuberculosis (TB) is far higher than the national norm. Prisoners have to take turns sleeping or sitting, and a walk to sanitation facilities – granted only once daily and for not more than 30 minutes – is often the prisoners' only opportunity to leave cells. The National Prison is a labyrinth of dormitories and yards, where the response as elsewhere in the system to crumbling walls and inadequate security is to keep prisoners penned in their cells. An obsession with escape feeds on and drives the cycle of misery, humiliation, frustration and violence.

Ironically the increase in arrests of gang members and serious crime convictions risk further aggravating prison overcrowding. The most dangerous offenders are not separated from petty criminals for lack of space. Justice and police reforms could fail if prison infrastructure is not immediately improved but neither donors nor the government are taking adequate account of the correctional element of security sector reform. The Interim Cooperation Framework (ICF) of 2004 identified basic commitments but the response has been minimal. While some technical support and emergency repairs have begun, only Canada

has pledged to pay for construction, maintenance and substantial modernisation. There have been no significant steps to rehabilitate prisons and none at all to build them.

The Préval government was to mark a new era: it recognised the need to fight impunity through comprehensive reform of the security/justice sector, including police, judiciary and prisons, but the latter have only recently drawn any attention. Stakeholders in justice reform, including MINUSTAH and donors, need to undertake the following immediately to ensure that the critical third leg of the security stool is solid:

- ❑ make certain the most dangerous prisoners are kept under adequate security in strengthened portions of the National Prison or moved to secure temporary facilities, while a maximum security prison is built;
- ❑ modernise existing prisons and concurrently plan for and begin to expand prison capacity to reduce overcrowding permanently;
- ❑ hold an emergency donors' conference to establish a prison construction fund to meet all urgent 2007 prison construction needs and pledge towards long-term prison reform requirements;
- ❑ give the new detention commission additional staff, advisers and computerised data bases, and monitor its efforts to identify prisoners who should be released on bail or unconditionally because no charges are pending, no trial has been held, they are not a threat to society or they have served their time; and
- ❑ bring guards more rapidly into the same vetting process as the Haitian National Police (HNP), as part of a comprehensive human resource plan to recruit, train and staff prisons.

### II. THE PRISON SYSTEM: A PERMANENT POWDER KEG

Although some progress was made on detention conditions between 1995 and 2004, the prison system<sup>1</sup> has deteriorated

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<sup>1</sup> There are seventeen functioning prisons: Anse-à-Veau, Arcahaie, Cap-Haïtien, Carrefour, Cayes, Coteaux, Delmas,

considerably in the past several years. The destruction of police buildings and archives and the absence of a nationwide system of judicial and civil registration make precise documentation and diagnosis difficult, but a dangerous cycle is apparent in which the overcrowding problem is “managed” through uncontrolled releases, and even the acceptance of escapes, all of which adds to the broader problems of impunity and insecurity that have undercut the country’s confidence in rule-of-law.

Establishing a coherent prison system as part of the overall justice sector complementing the police and judiciary should be a priority.<sup>2</sup> Once adequate prisons have been set up and strengthened, it will be possible to conceptualise how alternatives to imprisonment might be incorporated into the system. Some might be considered early in the judicial process, though they will not replace a penal system. Organisations such as the National Centre for State Courts (NCSC) have already suggested alternatives to improve case management at a later stage of the judicial process – for instance, “simple pre-trial release options that could be used for defendants who do not pose a significant risk to community safety”.<sup>3</sup> However, the Haitian state does not yet have sufficient financial and human resources to reintegrate criminals, as specified in the prison administration’s regulations,<sup>4</sup> or to conduct a comprehensive non-custodial policy<sup>5</sup> as part of the justice system.

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Fort-Liberté, Grande Rivière du Nord, Hinche, Jacmel, Jérémie, Mirebalais, Pétiön-Ville, Port-au-Prince, Port-de-Paix, Saint-Marc. Fort National is no longer included in the DAP list, and three, Gonaïves, Aquin and Petit Goâve are not functioning (see below).

<sup>2</sup> For earlier reporting on police and justice reform, see Crisis Group Latin America/Caribbean Briefing N°12, *Haiti: Security and the Reintegration of the State*, 30 October 2006; and Crisis Group Latin America/Caribbean Briefing N°14, *Haiti: Justice Reform and the Security Crisis*, 31 January 2007.

<sup>3</sup> “Pre-trial detention in Haiti”, NCSC/USAID, 15 May 2006, p. 35. Notably, the report proposes “releasing an arrestee to a family member or a neighborhood church pastor, with the understanding that the third person would be responsible for ensuring the defendant’s appearance when required”.

<sup>4</sup> Règlements De Discipline Générale, 2001 And Règlements Internes Des Etablissements Pénitentiaires, 1999.

<sup>5</sup> Crisis Group interview, international human rights experts, Port-au-Prince, 20 March 2007. Vivien Stern, “Alternatives to prison in developing countries”, *Punishment and Society*, vol.1, no 2 (1999), pp. 231-241; “The Use of Non-Custodial Measures in the Administration of Justice”, in “A Manual on Human Rights for Judges, Prosecutors and Lawyers”, at [www.ochr.org/english/about/publications/docs/CHAPTER\\_9.pdf](http://www.ochr.org/english/about/publications/docs/CHAPTER_9.pdf); “Making Standards Work: An International Handbook on Good Prison Practice”, Penal Reform International, 2001.

Prisons<sup>6</sup> are managed by the Prisons Administration Directorate (DAP), under the General Directorate of the Haitian National Police (HNP), which reports to the ministry of justice. The DAP has no authority over police holding cells in HNP commissariats, where overcrowding and human rights violations have been reported repeatedly. The prison system faces two main problems, both of which are paralysing.<sup>7</sup> The first is overcrowding,<sup>8</sup> which carries the serious risk that the prison administration will simply be overwhelmed in the buildings it controls. The second is the impunity phenomenon,<sup>9</sup> illustrated by how remarkably few detainees the country of 8.5 million has.<sup>10</sup>

Haiti’s chronic insecurity has put added pressure on the HNP since late 2006 to make more arrests<sup>11</sup>. However, the buildings to hold those arrested and convicted are too few and inadequate to cope with the influx. Shortage of space is a key constraint at all levels on the prison system’s ability to fulfil its mandate, namely to “execute sentences to limit freedom in a secure, human environment that aims at supporting the criminals to become a citizen respecting the law”.<sup>12</sup> The DAP lacks space to do its job

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<sup>6</sup> In Haiti one can differentiate, in practice, between prisons and holding cells, where according to the constitution (Article 26) those arrested must not be detained longer than 48 hours. Even though Article 44 of the constitution also requires that pre-trial detainees be separated from convicted prisoners, in reality they are not. This report deals mostly with prisons and detainees who are or should be held in prisons. To avoid confusion, the term “jail” has not been used.

<sup>7</sup> Abuse committed during police detention has been regularly denounced by the Inter-American Commission on Human Rights. (IAHCR); see its “Annual Report”, 2006, para. 117, at <http://www.cidh.org/annualrep/2006eng/Chap.4d.htm>.

<sup>8</sup> The ICRC calculates the overcrowding rate on the population in detention centres: people detained/official holding capacity x 100. “Water, sanitation, hygiene and habitat in the prisons”, ICRC, 2004.

<sup>9</sup> IAHCR, op. cit., para. 117 cites the case of police officers released in 2006 by judges despite strong evidence.

<sup>10</sup> The detention rate is near 64 detainees for 100,000 inhabitants, DAP figures given by UNDP to Crisis Group on 18 April 2007. The figures do not include roughly 200 detainees in police holding cells in Gonaïves, Aquin and Petit Goâve. The actual average detention rate is likely slightly higher than the official one. The International Centre for Prison Studies cited 52 detainees for 100,000 in September 2006. By way of comparison, the rate per 100,000 is 143 in the Dominican Republic, 54 in Guatemala, 174 in Salvador and 25 in Liberia, <http://www.prisonstudies.org/>. There is disparity by region: some 400 of Artibonite’s 1.1 million population are detained (36 per 100,000). Crisis Group interview, MINUSTAH, Gonaïves, 4 March 2007.

<sup>11</sup> According to MINUSTAH monthly arrests related to kidnappings rose from 126 in January 2007, to 157 in February and 210 in March. HNP gives a total arrest figure for March of 1270. MINUSTAH, local radio monitoring.

<sup>12</sup> Règlements de Discipline Générale, DAP, 2001, Article 1.

while respecting detainees' rights. Indeed, conditions are as unacceptable for prison staff as for detainees.

## A. OVERBURDENED AND VULNERABLE DETENTION FACILITIES

The number of arrests and the length of sentences for serious crimes are both rising. Between 2004 and 2006, the prison population grew by 1,500 annually. It is now some 5,500, and the DAP expects it to be 8,000 to 10,000 by 2010.<sup>13</sup> A concurrent increase in both economic and human costs can be assumed.

All facilities are under-protected, under-supervised and over-crowded. Excluding non-surveillance personnel such as medical and administrative staff, there are officially 531 DAP guards for the entire country. At the "National Penitentiary" (*pénitencier national*)<sup>14</sup> 25 guards manage 2,500 prisoners, one for every 100, an imbalance so severe that guards are at constant risk of losing control. According to an international observer, "it is a miracle that the prison population has not burst out".<sup>15</sup>

Cells average 0.77m<sup>2</sup><sup>16</sup> of space per inmate. Extreme cases can be less than 0.5m<sup>2</sup>. The UN Development Programme (UNDP) minimum recommendation is 4.5m<sup>2</sup>. The International Committee of the Red Cross (ICRC) states that even in the worst circumstances, each detainee should have at least two square metres,<sup>17</sup> a standard not met in any Haitian prison. A DAP official says that "even if we had enough money, we could not install beds in the detention facility because we lack space".<sup>18</sup>

### 1. Space shortages

The National Penitentiary holds approximately half of all detainees. With 1,400m<sup>2</sup> for cells, it is desperately stretched, three to eight times beyond the minimum,

depending on whether the UNDP or ICRC norm is used.<sup>19</sup> Conditions are particularly harsh in the "Titanic", a poorly-ventilated, three-storey building where most Port-au-Prince gang members are held. Each dormitory contains some 350 prisoners, under surveillance of one or two guards and accessed through a single door.<sup>20</sup>

One prison, Delmas 33, has been enlarged with money from the U.S. Agency for International Development (USAID) and is specifically for minors; some are younger than ten but they have no special support program. The UN peacekeepers (MINUSTAH) and the parliament have recently alerted the authorities to the need to assist detained minors.<sup>21</sup> The Interamerican Commission for Human Rights (IACHR) and UNICEF have repeatedly denounced violations of children rights under Haitian law and international norms.<sup>22</sup> Because of lack of space at the women's prison in Pétion-Ville, some detainees sleep on the ground in the visit rooms, which are transformed into cells at night.<sup>23</sup>

### 2. Holding cells in lieu of prisons

During the disturbances around the fall of former President Aristide in February 2004, many prisons and police commissariats were ransacked.<sup>24</sup> The Gonaïves prison was burned by on 5 February<sup>25</sup> and no longer functions. Gonaïves detainees are kept in the commissariat holding cells in the HNP departmental directorate building, under police, not DAP surveillance. Their numbers have doubled since early 2006. On 14 February 2007, 115 were being held in cells designed for 35 to 40. Construction of a commissariat downtown will mean relocating the HNP departmental directorate but the DAP considers the present premises unsafe to use long-term. The DAP does not give anything to Gonaïves prisoners, unlike those in Aquin and Petit Goâve to whom it distributes food rations once a day. Only one DAP case registrar works in Petit Goâve

<sup>13</sup> Crisis Group interview, DAP senior official, Port-au-Prince, 3 April 2007.

<sup>14</sup> The main Port-au-Prince prison is commonly called the *pénitencier national* (National Penitentiary) although it is not a true penitentiary since it hosts both convicted and pre-trial detainees. Experts call it the *prison civile de Port-au-Prince*.

<sup>15</sup> Crisis Group interview, Port-au-Prince, 27 March 2007.

<sup>16</sup> Figures given by UNDP to Crisis Group, March 2007. According to the DAP, total holding space is 4,643m<sup>2</sup>. Crisis Group interview, Jean Roland Prévillon Célestin, DAP director, Port-au-Prince, 23 March 2007.

<sup>17</sup> "This figure of two square metres per person should under no circumstances be interpreted as a norm, but as a pragmatic indication reflecting the experiences of ICRC in serious crisis situations", ICRC, op. cit., p.19.

<sup>18</sup> Crisis Group interview, Port-au-Prince, 23 March 2007.

<sup>19</sup> Numbers vary from week to week: 2,370 on 6 March 2007, for example; 2,412 on 12 March and 2,444 on 19 March.

<sup>20</sup> In the "Hall" area, 110 and 115 prisoners were guarded by a single guard. In the "Titanic", DAP figures for the dormitories on 4 April were 388 and 365. The prisoners use hammocks to optimise space. Crisis Group interview, National Penitentiary, Port-au-Prince, 4 April 2007.

<sup>21</sup> MINUSTAH local radio monitoring and Crisis Group interview, international legal experts, Port-au-Prince, 22 March 2007.

<sup>22</sup> IACHR, op. cit., paras. 129 and 130.

<sup>23</sup> UNDP prison report shared with Crisis Group, 19 March 2007.

<sup>24</sup> Crisis Group, Latin America/Caribbean Report N°10, *A New Chance for Haiti?*, 18 November 2004.

<sup>25</sup> Members of the Artibonite/Gonaïves Resistance Front were responsible. Some 100 prisoners were freed, [http://www.nchrhaiti.org/article.php3?id\\_article=175](http://www.nchrhaiti.org/article.php3?id_article=175).

and Gonaïves.<sup>26</sup> In March 2007, transfers of detainees from Gonaïves to St Marc and l'Arcahaie prisons was stopped due to severe overcrowding there.<sup>27</sup> Pre-trial detention in Gonaïves, widely considered potentially explosive, averages three to four months.<sup>28</sup>

The Petit Goâve prison was looted and partially destroyed by demonstrators and armed groups in late February 2004, then occupied by former armed forces (ex-FADH) until spring 2005.<sup>29</sup> Around 40 detainees, packed in the single 6 x 4-metre cell in appalling hygienic conditions, take turns sitting or lying down. The sub-commissariat's holding cells have also been turned into prisons. When numbers exceed 40, the commissariat contacts judges and prosecutors to start transfers to the National Prison in Port-au-Prince.<sup>30</sup> One cell is reserved for women, from which transfers to the Pétion-Ville women's prison routinely take place.

In what remains of the Aquin civil prison adjoining the police commissariat, only three of five cells function.<sup>31</sup> On 30 March 2007, 22 detainees were being held there, although the number was as high as 60 in 2006.<sup>32</sup> The fourteen police from the commissariat have become de facto prison guards.

### 3. Vulnerable infrastructures

To reduce the possibility of disorder, the DAP limits time out of cells to fifteen to 30 minutes per day for use of toilets and showers – sometimes one or the other.<sup>33</sup> Two escapes were carried out in Aquin in the last few months.<sup>34</sup> In Saint Marc, the surrounding wall is crumbling from humidity and is totally inadequate. Mirebalais and Hinche

prisons lack proper security fences.<sup>35</sup> The situation in Hinche has been “temporary” since 2004. Rehabilitation of the building started a year ago but its Quick Impact Project (QIP) has been seriously delayed. Security is most alarming at the National Penitentiary, which has had repeated mass escapes. Rumours of breakouts circulate regularly and have intensified with the increasing presence inside of gang members, many of whom were arrested during the HNP's joint operation with MINUSTAH, which began in December 2006. The walls are extremely fragile and regularly dug through by detainees and rats.<sup>36</sup>

Overcrowding has dangerous consequences for prison security, enabling close contact among prisoners from which peer groups and new hierarchical relations are formed. It is believed some leaders, helped by access to mobile phones, continue to mastermind criminal operations from inside the prisons. During controls, guards have collected homemade weapons built out of metallic construction material.

## B. OPERATIONAL ISSUES

The space shortage is the cause of day-to-day operational problems within the prison system which give rise to frustration and violence. The poor conditions of the prisons have been repeatedly documented by NGOs and international organisations without resulting in any radical change.<sup>37</sup>

Detainees are not only kept in overcrowded conditions but also do not have access to outdoor recreation because the security infrastructure is too weak. Minimal services are provided: basic food; access to water once a day; and family visits.<sup>38</sup> Beyond this, each prisoner must pay for anything better, such as a private cell or a hot meal from local vendors. Legal defence is only for those who can

<sup>26</sup> Crisis Group interview, UNDP, Port-au-Prince, 27 March 2007.

<sup>27</sup> According to UNDP and DAP information shared with Crisis Group, St. Marc prison had 211 detainees on 12 March 2007, l'Arcahaie prison 85.

<sup>28</sup> Crisis Group interview, HNP senior staff member, Gonaïves, 14 February 2007.

<sup>29</sup> Crisis Group interviews, HNP official, Petit Goâve, 28 March and 10 April 2007.

<sup>30</sup> Crisis Group witnessed prisoners being transferred in the back of an HNP pick-up car.

<sup>31</sup> On 26 February 2004, a group claiming to be anti-government rebels broke into the prison after guards and police fled, freeing prisoners and looting cells and the commissariat. Crisis Group phone interview, HNP senior staff member, Aquin, 10 April 2007.

<sup>32</sup> When the current inspector took up his post on 24 June 2005, the cells hosted 43 detainees.

<sup>33</sup> Crisis Group interview, international prison experts, Port-au-Prince, 26 March 2007.

<sup>34</sup> Crisis Group interview, HNP senior staff member, Aquin, 30 March 2007. Three detainees escaped through the roof; six others sawed off bars in their cells.

<sup>35</sup> Crisis Group interview, international prison experts, Port-au-Prince, 26 March 2007.

<sup>36</sup> Crisis Group interview, National Penitentiary, Port-au-Prince, 4 April 2007. The 150-person La Salette block, which presented an especially high risk, was demolished in December 2006.

<sup>37</sup> See reports by the Commission Citoyenne pour l'Application de la Justice (CCAJ), “Documents à l'adresse des autorités de la justice et de la police”, February-March 2006; Save Justice, May-August 2006; and Réseau National de Défense des Droits Humains (RNDDH), which highlights prolonged pre-trial detention and holding conditions, October 2006, at [www.rnddh.org](http://www.rnddh.org).

<sup>38</sup> Much of this is the result of a community-based system which allows relatives to bring food and other material support to detainees, Crisis Group interviews, international prison experts and DAP senior staff member, Port-au-Prince, 26 and 27 March 2007.

afford it.<sup>39</sup> Those who cannot pay can only hope for visits from external monitors such as human rights and religious NGOs, MINUSTAH and the ICRC.

## 1. Health concerns

The prisons have an irregular and insufficient water supply.<sup>40</sup> Disposal of waste water and human waste is a constant concern. The Petit Goâve holding cell's septic tank is not supplied with water and must be emptied every three weeks, either by MINUSTAH's Sri Lankan battalion or a local technician. Overcrowding complicates health and hygiene;<sup>41</sup> 90 per cent of detainees have fungicidal infections, chronic skin itching or scabies. Cells are badly lit and ventilated. TB and HIV/AIDS rates likely exceed the national average. In theory, DAP gives free TB treatment. In practice, detection and treatment is difficult due to administrative inertia and lack of empathy and motivation among the guards. Guards and detainees are fed on the same budget, and most of the latter suffer from nutritional shortages. Again, those without relatives or other resources to promote their case are those who suffer most.

## 2. Extreme working conditions

Guards receive \$263 to \$337 monthly for work in tough conditions, sometimes without access to sanitation facilities. Until recently, rats were eating archives in the National Penitentiary.<sup>42</sup> Guard space is limited, in one case by a MINUSTAH base, and simple tools such as pens, much less computers, are lacking, as is security and crowd control equipment.<sup>43</sup> The February 2005 mass

escape was followed by assassinations of guards<sup>44</sup> and links between escapees and the "Baghdad" operation<sup>45</sup> have been established. There are rumours of prisoners bribing guards.<sup>46</sup> DAP has an annual budget on paper of 446 million gourdes (\$11.7 million)<sup>47</sup> but it does not control this money. Authority to spend must be agreed by senior HNP officials before it can be requested from the ministry, and they tend to favour other directorates. A budget increase can be sought in principle but there has been no indication that the authorities are prepared to match the prison population growth with a rise in spending for the DAP.

## 3. Security risks

Prisons are vulnerable to massive uprisings,<sup>48</sup> corruption of guards and invasions from the outside, but also to violence among inmates. The escape of detainees charged with serious crimes is a threat to Haiti's overall security, as was demonstrated in spring 2005 after 493 prisoners escaped in February of that year.<sup>49</sup>

# III. REFORM EFFORTS

Prison authorities are aware of the scope of the problem. Donors praise DAP efforts to set democratic management norms.<sup>50</sup> However, nothing concrete has been done to tackle the crisis in detention facilities comprehensively.

<sup>39</sup> Crisis Group interview, international prison experts, Port-au-Prince, 16 March 2007.

<sup>40</sup> Crisis Group interview, international prison experts, Port-au-Prince, 26 March 2007. RNDDH states that "the majority of prisons are not always supplied with water", "RNDDH fait le point autour de la detention preventive prolongée et des conditions de detention des détenus", public report, RNDDH, October 2006.

<sup>41</sup> IACHR, op. cit., para. 120.

<sup>42</sup> Crisis Group interview, international prison expert, Port-au-Prince, 21 March 2007. The archives are now protected in metal cupboards.

<sup>43</sup> In Cap Haïtien, the guards' dormitory on the edge of the prison is part of the perimeter of MINUSTAH's regional base, depriving them of direct access to their quarters, toilets and showers. The DAP has not made an official complaint. In Hinche, the prison buildings were previously occupied by MINUSTAH. The prison currently occupies space provided by civil society. Crisis Group interviews, international prisons experts and DAP senior officials, Port-au-Prince, 21 and 26 March 2007. UNDP report and internal documents shared with Crisis Group, 19 March 2007.

<sup>44</sup> Crisis Group interview, DAP senior official, Port-au-Prince, 23 March 2007.

<sup>45</sup> Operation Baghdad is the name given to a violent campaign begun on 30 September 2004, the anniversary of the 1991 coup, during which more than 80 people were killed. The transitional government and the U.S. blamed it on Arisitide militants. Crisis Group Report, *A New Chance for Haiti?*, op. cit.

<sup>46</sup> Crisis Group interview, National Penitentiary staff, Port-au-Prince, April 2007.

<sup>47</sup> "Dépenses par instance et par alinéa, exercice 2006-2007", Ministry of Economics and Finance, 10 October 2006, for the period October 2006 to September 2007.

<sup>48</sup> The most horrific, in December 2004, was the object of an inquiry which yielded no concrete results, Crisis Group Latin America/Caribbean Report N°14, *Spoiling Security in Haiti*, 31 May 2005; "Keeping the peace in Haiti?", Harvard Law Studies Human Rights Advocates and Centro de Justicia Global, March 2005, p. 41.

<sup>49</sup> Crisis Group Report, *Spoiling Security in Haiti*, op. cit. More recently, two detainees escaped from Mirebalais on 8 and 9 October 2006, and fifteen from the National Penitentiary in December 2006.

<sup>50</sup> Crisis Group interview, international prison expert, Port-au-Prince, 20 March 2007. The DAP director indicated that he has forbidden beatings in prisons since his appointment in October 2006, Crisis Group interview, Port-au-Prince, 23 March 2007.

Temporary strengthening of security by MINUSTAH and HNP personnel inside and outside prisons is not a sustainable solution and does not eliminate the risk of an explosion. Those who work in prisons acknowledge that overcrowding can only be addressed by expanding the system and/or reducing detainee numbers.<sup>51</sup>

## A. THE DETENTION COMMISSION

Prolonged pre-trial detention is often seen as the main cause of prison overcrowding.<sup>52</sup> Hence responses and expectations have so far focused primarily on judicial case management.<sup>53</sup> The functioning of the newly created detention commission will test the government's will to completely reform the justice system. Initial reports have not been encouraging. Haitian authorities and the international community need to exert strong pressure so that the commission works as a temporary but efficient, motivated and zealous body.

The commission was created in March 2007 by the ministry of justice, with donor support, to reduce pre-trial detentions. It will probably receive operating cost support from USAID via the NCSC. Some experts considered it an "artificial" structure, involving the same judges whom the criminal instruction code obliges to manage cases effectively as part of their job.<sup>54</sup> It has six members with a six-month mandate and was to be chaired

by the head of the court of first instance.<sup>55</sup> Basic case management tasks are to be handled by six legal assistants (three justice ministry employees, three from the MINUSTAH Justice Unit). Commission members, on the basis of files prepared by these assistants, are to make quick decisions on pending cases. Lists of detainees are to be prepared and prioritised according to urgency and status,<sup>56</sup> then examined by the public prosecutors and investigating magistrates. Pre-trial files sometimes will also need to be located within the judicial system. The judge in charge of a case is to work with the commission to update the file.

The commission began slowly. It was difficult to gather members for the first meetings to establish rules. Controversy then developed over whether members should be paid.<sup>57</sup> After terms of reference were finally clarified in early April, the ministry announced on 12 April the start of work.<sup>58</sup>

## B. UPGRADING INFRASTRUCTURE

The DAP relaunched building work on most prisons in late 2006 and intends to tender rehabilitation and construction contracts worth 42 million gourdes (some \$1.2 million) to increase the capacity of Carrefour, Hinche, Grande Rivière du Nord and Jérémie.<sup>59</sup> A new prison with very limited resources was opened in Mirebalais, and land is being sought for a new prison in Gonaïves.

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<sup>51</sup> "The fight against prison overcrowding", International Centre for Prison Study, orientation note no. 4, 2005.

<sup>52</sup> Crisis Group Briefing, *Justice Reform and the Security Crisis*, op. cit.; "Good Practices in Reducing Pre-Trial Detention", Penal Reform International, 2003. Crisis Group reporting has regularly denounced violations of detainees' rights and recommended emergency measures to limit prolonged pre-trial detention; see also Crisis Group, Latin America/Caribbean Briefing N°10, *Haiti after the Elections, Challenges for Préval's First 100 Days*, 11 May 2006, p. 2. A 2005 study in the National Penitentiary suggested it is necessary to seek additional causes for overcrowding: "It appears that prompt resolution of cases is more the norm than the exception". Moreover, "at least for the cases in the exit sample, none had been detained for a period of time that was clearly unreasonable or outside international norms". "Pre-trial detention in Haiti", op. cit., p. 33. The study was carried out during an accelerated case management phase, which may have affected findings. The author and other experts have stressed a need for more study to test these preliminary results. Crisis Group interview, MINUSTAH human rights staff, Port-au-Prince, 18 April 2007.

<sup>53</sup> Initiatives proposed to ease prolonged pre-trial detention have emphasised plea bargaining, pre-trial release mechanisms and immediate appearance procedures; see Crisis Group Briefing, *Justice Reform and the Security Crisis*, op. cit.

<sup>54</sup> Crisis Group interview, international legal expert, Port-au-Prince, 9 March 2007.

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<sup>55</sup> Detention commission, draft working document, 28 February 2007. The chairman to be withdrew following a debate on payment of commission members. Crisis Group interview, DAP staff member, Port-au-Prince, 4 April 2007.

<sup>56</sup> Criteria include: judgment given but procedure not finished; detention exceeding sentence and minors and pregnant women. The UNDP database at the National Prison can identify judges in charge of the most urgent files and a detainee's last appearance.

<sup>57</sup> Crisis Group interview, international legal expert, Port-au-Prince, 22 March 2007. Some support payments for exceptional tasks comparable to those received by magistrates on the kidnapping task force established by the ministry in parallel. Others consider it wrong to pay judges extra for what their jobs already require. It was agreed that no extra payment would be made to the members of the commission but other ways of financial compensation, to be defined further, may be envisaged. Crisis Group interviews, international legal experts, Port-au-Prince, 13 April 2007.

<sup>58</sup> Radio Métropole, Télé Ginen, 12 April 2007. However, a new chairman has not yet been appointed. Crisis Group email exchange, international legal expert, Port-au-Prince, 2 May 2007.

<sup>59</sup> Crisis Group interview, DAP senior official, Port-au-Prince, 3 April 2007. The increase in capacity, according to DAP norms; is expected to be to 300 for Carrefour (230 on 12 March); up to 300 for Hinche and Jérémie (114 and 156 respectively on 12 March); and 200 for Grande Rivière du Nord (49 on 12 March).

Donor aid for infrastructure has been limited, piecemeal and conditioned on new DAP dynamics. Even if all goes well in the short-term with repair of existing facilities, capacity will be insufficient for current and estimated long-term needs. By helping only with repair, donors are failing to address the fundamental space shortage, so prison standards will remain below international norms.

In March 2006 a \$2 million UNDP project financed by Canada to support the DAP over three years was signed. Only \$633,000, however, will go to infrastructure. UNDP has financed an additional wing in the National Penitentiary, in theory to hold 200. This facility (Brick 2) has been built on top of the existing Brick 1 to relieve some of the congestion, but it may also increase security risks by putting gang members in close contact without visible guard supervision.<sup>60</sup> The ministry of justice considers the situation in Saint Marc a priority and has asked the DAP, with UNDP support, to rehabilitate it.<sup>61</sup> However, UNDP funds will probably not be enough to do more than bare essentials, such as the surrounding security wall and ground floor, but not additional space for prisoners.

MINUSTAH has launched eight Quick Impact Projects (QIP) in prisons across the country and is considering five more but implementation by Haitian companies is not meeting QIP time criteria, and the impact is questioned.<sup>62</sup> In Gonaïves, MINUSTAH financed three additional holding cells in the police commissariat from its QIP budget but within several months, they were already overcrowded and transfers had to resume.

Since 2005 and despite several visits from the DAP, MINUSTAH and NGOs active in the area, there has been no substantial improvement of the detention facility in Petit Goâve. Local civil society contributed to the rehabilitation of a second holding cell but it was left unfinished. A cost estimate to complete the work remains on the desk of the commissariat office, and the various stakeholders blame each other for the lack of action. The Organisation of American States (OAS) supports DAP

efforts to improve sanitary conditions and open more cells in Jacmel and financed repairs on the National Penitentiary's plumbing in early 2006.<sup>63</sup>

### C. IMPROVING DETENTION CONDITIONS

The ICRC conducts a confidential and constructive dialogue with Haitian authorities. It insists on access to medical treatment for prisoners,<sup>64</sup> and its health delegate, together with a doctor and three other delegates, have been working full time for eight months in the National Penitentiary to assist the DAP in formulating a comprehensive approach to improving detention conditions. Some donors have also asked for creation of a prisons commission with representatives from the public health, social affairs, and justice ministries to design a new policy.<sup>65</sup> A scabies eradication campaign has started in the National Penitentiary but space shortage hampers it. Similarly, successful tuberculosis treatment would require space conditions that are not currently available.

The Réseau National pour la Défense des Droits Humains (RNDDH), a local human rights NGO, supports activities for detainees, including leisure events and meetings with prison stakeholders, runs a mobile clinic and distributes medicines and hygiene kits.<sup>66</sup> Families of detainees bring their relatives food, water and comfort. Such community-linked practices help diffuse tensions. However, each detainee transfer to a facility far from home breaks the chain of family solidarity, often leading to a deterioration of detention conditions.

### D. MANAGEMENT ISSUES

Several Haitian prison professionals admit better management would improve detention conditions,<sup>67</sup> as would a comprehensive DAP strategy officially approved by the justice ministry and more political priority for prison reform. The need for infrastructure is known but the response is often hampered by basic obstacles, including poor human resources. Inertia, even apathy, within the prison system makes it difficult for donor aid to improve

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<sup>60</sup> Crisis Group interview, international prison expert, Port-au-Prince, 27 February 2007.

<sup>61</sup> The work should start in the next few months. Crisis Group interview, international prison expert, Port-au-Prince, 27 March 2007.

<sup>62</sup> The prisons are Anse à Veau, St Marc, Carrefour, Jérémie, Hinche, Mirebalais, Grande Rivière du Nord, and Les Cayes. Some QIPs have not been well conceived, and implementation has been poorly managed. In Jérémie latrines were built in the middle of the courtyard, obscuring guards' vision, and the septic ditch was built without a water supply. Crisis Group interview, international prison expert, Port-au-Prince, 23 March 2007. The five further QIP proposals are for the National Penitentiary, Pétion-Ville, Delmas, Jacmel and Port de Paix.

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<sup>63</sup> UNDP report, 19 March 2007, note 5; "Update work financed by the Special Mission of the OAS on the National Prison", 20 February 2006, <http://oashaiti.org/msoea20Fevrier2006.htm>.

<sup>64</sup> Epidemics of beriberi, tuberculosis and scabies have been reported many times since the 1990s. Crisis Group interview, international prison expert, Port-au-Prince, 20 March 2007.

<sup>65</sup> Elements might include prison wings in hospitals and guaranteed access to prison health centres, Crisis Group interview, international prison expert, Port-au-Prince, 20 March 2007.

<sup>66</sup> "RNDDH fait le point autour de la détention préventive prolongée et des conditions des détenus", Octobre 2006.

<sup>67</sup> Crisis Group interviews, DAP senior officials, Port-au-Prince, March and April 2007.



matters. It has taken the HNP two years to start registering detainees in the Gonaïves' holding cells. Even now, the register is not updated regularly, and there is evidence pages have recently been torn out.<sup>68</sup> Efforts are being made to address the growth of the prisoner population: DAP plans to transfer pre-trial detainees and reserve the Arcahaie prison for convicted prisoners.<sup>69</sup>

UNDP has supported a database for all detainees in the National Penitentiary for several years. This tool is now available to the administration to manage the prison population. Computerisation of files and more mastery of the database would allow the DAP to tailor policies better. Data already analysed has shown that the conviction rate among detainees is steadily increasing.<sup>70</sup> These statistics, though needing further study, point to a likely continued increase in the prison population irrespective of reduction in pre-trial detention.<sup>71</sup>

The DAP is in the process of recruiting 400 additional agents by September 2007. The justice ministry has asked for renewal of UNDP training for criminal law professionals (including DAP).<sup>72</sup> MINUSTAH is deploying sixteen new prison staff, mainly from Canada and the U.S., whose role will be to support and advise the DAP under a one-year renewable mandate. The goal is to improve prison security, professionalise staff, improve administrative methods and launch basic programs to reinsert released prisoners into society.<sup>73</sup> Team members will mentor prison directors, organise training programs, assist the detention commission and strengthen the DAP database.

#### IV. URGENT MEASURES

The DAP has defined four priorities: strengthening prison security by building new facilities and rehabilitating existing ones; improving conditions for detainees; enhancing working conditions for staff; and restructuring administration to increase efficiency.<sup>74</sup> All this, as well as improving security and hygiene, depends on making more space available, primarily with new infrastructure

and reduction of pre-trial detention. The justice ministry and donors need to cooperate in applying strong pressure on the detention commission to accelerate review of the most urgent and longest pending cases. The ministry should dedicate some of its own staff to assist the commission. Law students as well as NGOs could also be mobilised.

A project document, prepared by donors on the basis of initial Canadian pledges and under negotiation with the justice minister and the DAP, is directed toward four main objectives: securing prisons, training guards, modernising administration and minor construction to improve infrastructure. However, it only partly addresses the most immediate needs for new prisons and relieving overcrowding.

#### A. TEMPORARY STEPS TO AVOID EXPLOSION

In the past, mass escapes – prison *dechoukaj*<sup>75</sup> – were accepted as informal means to empty overcrowded prisons. They may well reappear if the authorities remain inactive and fail to gather the resources to relieve overcrowding and build a strong prison system that can contribute to maintenance of public order.

The authorities and MINUSTAH have taken measures to contain security risks in detention facilities. In late March 2007, after rumours of possible escape attempts at the National Penitentiary, military reinforcements were provided.<sup>76</sup> This was an ad hoc measure, not a lasting solution to the risks of escape and insurrection. It may be useful to consider requisition of additional buildings or land on which barracks could be built as temporary structures for the most dangerous criminals.<sup>77</sup> Despite the risk that such facilities would become permanent, it is essential that minimum international standards of detention be respected.

#### B. BUILDING NEW FACILITIES

A working group co-ordinated by the DAP and including the recently deployed MINUSTAH correction team has

<sup>68</sup> Crisis Group interview, MINUSTAH, Gonaïves, 7 March 2007. The recent presence of a new DAP registrar, though, is encouraging, Crisis Group phone interview, DAP deputy director for operations Frantz Charles De Honnet, 17 April 2007.

<sup>69</sup> Crisis Group interview, DAP, Port-au-Prince, 23 March 2007.

<sup>70</sup> Crisis Group interview, NCSC, Port-au-Prince, 21 March 2007.

<sup>71</sup> See fn. 52 above.

<sup>72</sup> Crisis Group phone interview, UNDP, Port-au-Prince, 22 March 2007.

<sup>73</sup> "Termes de référence pour agents correctionnels", MINUSTAH, internal document, March 2007.

<sup>74</sup> Crisis Group interview, DAP senior official, Port-au-Prince, 23 March 2007.

<sup>75</sup> Literally "pulling a plant out by its root", i.e. completely destroy, Gage Averill, "Dechoukaj en musique, La chute de la dictature haïtienne", *Critique internationale*, n°7, April 2000.

<sup>76</sup> MINUSTAH Correction co-ordinator, weekly report on the justice sector, week 19 to 25 March 2007. Some employees noted, however, that it took a week following the request for the military personnel to be deployed. Crisis Group interview, DAP staff member, National Penitentiary, Port-au-Prince, 4 April 2007.

<sup>77</sup> Crisis Group interview, international legal experts, Port-au-Prince, 23 March 2007.



been set up to build additional prison facilities. It is hoped this group will tackle the need to budget for multiple buildings able to handle the predicted increase in the prison population over the next twenty years.

Instead of replacing the National Penitentiary with an equivalent high-capacity prison that would be hard to manage, the DAP suggests creating four medium-size regional prisons in Port-au-Prince, Cap-Haïtien, Gonaïves and Les Cayes. Ideally, these would hold only convicted prisoners, while pre-trial detainees would go to regional reception centres in Port-au-Prince, Fort Liberté, Saint Marc and Petit-Goâve or Aquin. Some observers worry that this regional scheme might distort the current fragile balance of the community-linked system,<sup>78</sup> which allows relatives and local communities to support prisoners.<sup>79</sup>

DAP construction plans, however, are likely to be inadequate. Even if, improbably, all work were finished by the end of 2007, Haitian prisons would have a capacity of only 6,800 (based on DAP standards which are already below international norms).<sup>80</sup> Since the DAP expects the prison population to exceed 6,000 by year's end, this would be insufficient to keep pace with anticipated growth. As noted, the DAP expects to handle approximately 10,000 detainees by 2010, which would require at a minimum six additional medium-size prisons. An immediate \$12 million investment is necessary to meet 2007 needs.<sup>81</sup> Donors and the private sector might seek to cope with the emergency by working jointly, beginning by contributing to an investment fund for prison infrastructure.<sup>82</sup>

In Fort Liberté, the Canadian local funds management centre (CGF) supports the build-up of DAP capabilities and contributes toward building and equipping a prison for 300 inmates.<sup>83</sup> The DAP has also drawn up estimates – around 75 million gourdes (\$2 million) – for construction

and rehabilitation of buildings in Petit-Goâve and Aquin to hold 300 and 200 respectively.<sup>84</sup>

The crisis requires realism from all stakeholders, including opting for the most economical and efficient dormitory-style buildings and the most ingenious construction methods, while respecting human rights standards.<sup>85</sup> The average cost for a prison varies according to the norms respected and other variables such as size, access and materials. However, compared to costs in other countries, the \$1 million estimate for a 300-inmate facility is very modest – perhaps too modest to meet acceptable criteria.<sup>86</sup> Haiti's program also suffers from an absence of architectural and engineering plans. This gap, though partly filled by a UNDP support program and the CGF, considerably slows any initiatives.

Some DAP officials insist prisons must have individual cells to isolate the most dangerous inmates.<sup>87</sup> At the least there is a need to build one 500-place maximum security prison that meets modern standards for holding the most hardened criminals.<sup>88</sup>

## C. INVESTING IN THE PRISON ADMINISTRATION

MINUSTAH's new correctional personnel should assist the DAP in meeting these priorities while avoiding taking them over. Their first task involves helping to find a multifaceted solution for relieving overcrowding. They are also expected to develop training and accompanying activities but their biggest challenge will be to renew

<sup>78</sup> That system is mentioned in both the criminal code and the general discipline regulations.

<sup>79</sup> Crisis Group interviews, DAP and international organisation staff working on prisons, Port-au-Prince, 23 March and 3 April 2007.

<sup>80</sup> A DAP official explained: "We are always looking for solutions between what is legal and what is possible". Crisis Group interview, Port-au-Prince, 3 April 2007.

<sup>81</sup> This is a minimal estimate developed by Crisis Group on the basis of figures provided by the DAP. Crisis Group interview, DAP senior official, Port-au-Prince, 23 March 2007. It breaks down to \$6 million for six medium-size prisons, \$4 million for a maximum security prison and \$2 million for Aquin and Petit-Goâve. For some prison construction costs in other countries, see fn. 86 below.

<sup>82</sup> Some private sector representatives would be ready to contribute to prison construction, Crisis Group interview, influential businessman, Port-au-Prince, 19 March 2007.

<sup>83</sup> Crisis Group interview, Port-au-Prince, 23 March 2007.

<sup>84</sup> Crisis Group interview, DAP senior official, Port-au-Prince, 3 April 2007.

<sup>85</sup> Rwanda may offer a useful model of prison construction that incorporates good standards of hygiene, waste disposal and fuel economy. A prison project in that country which reduces cooking fuel bills by using methane gas from inmates' toilet waste has won a global environment award, BBC, 30 June 2005, at <http://news.bbc.co.uk/2/hi/africa/4639363.stm>.

<sup>86</sup> In Bosnia and Herzegovina, the justice ministry invested €18 million to build a maximum security prison for 340 prisoners at European standards, <http://www.mpr.gov.ba/zatvor/en/home.html>. The UK announced plans to build two 700- and 600-place prisons for a total cost of £160 million, "UK home secretary confirms prison construction", RICS, 16 February 2007. In Cambodia, Australia invested \$2.5 million to build a new prison in Kandal for 324 inmates, "Australia to Fund Model Prison in Cambodia", AusAID press release, 21 October 2005. The Netherlands financed a 2,500-place prison in Rwanda for \$4.5 million, "Rwanda completes \$4.5 million prison for genocide inmates", Xinhua, 6 August 2005.

<sup>87</sup> Crisis Group interview, DAP staff member, National Penitentiary, Port-au-Prince, 4 April 2007.

<sup>88</sup> Crisis Group interviews, DAP senior staff members, Port-au-Prince, 3 and 4 April 2007.

guards' motivation. Success will depend on how much support they get from the prison directors and heads of the DAP.

As the prison services are part of the HNP, it is essential that the DAP receive a fixed percentage of the recruits graduating biannually from the police academy. Ideally, all police should serve an apprenticeship in the prison system in order to fully understand it. More efforts are needed to reinforce the budget and autonomy of the administration to cope with growth of the prison population and improve staff working conditions. Guards and the DAP generally should be subject to the same vetting process as the rest of the HNP. This is as important as the still pending investigations into the February 2005 prison escapes and the December 2004 insurrection.<sup>89</sup>

Haiti has taken first steps toward police and judicial reform. Both are significant challenges to the fragile capacity of the new government. But both will be infinitely more difficult in the absence of prison reform.

**Port-au-Prince/Brussels, 4 May 2007**

## **V. CONCLUSION**

Extreme prison overcrowding, ironically exacerbated by the increasingly effective measures being taken against urban gangs and organised crime operations since December 2006, threatens Haiti's security and stability. To avert violence and escapes and to meet minimal detention standards, the most urgent need is to relieve the existing prisons by utilising other available space temporarily. In parallel, the work of the new detention commission, aiming at accelerated treatment of pre-trial detention cases, should receive political support.

To satisfy Haiti's prison requirements for a generation, these measures must be accompanied by construction of at least one maximum security prison in the short-term and three additional prisons in the medium-term which can hold detainees in conditions that meet international standards. A minimum \$12 million investment fund managed jointly by principal contributors is required to jump-start prison renovation and construction in 2007. Concurrently DAP and the justice ministry, in concert with donors, should mobilise architectural and engineering expertise. Beyond urgent construction, there is need to hire and train more prison guards, vet existing guards and develop a career pattern so as to create a cadre of competent corrections personnel. Donors must become fully committed and engaged in the design, training and initial financing of this critical aspect of rule-of-law.

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<sup>89</sup> Crisis Group interview, UNDP staff, Port-au-Prince, 27 March 2007. The HNP and the police section of MINUSTAH (UNPOL) use the National Prison database to examine files of police academy recruits. Crisis Group interview, DAP staff member, National Penitentiary, Port-au-Prince, 4 April 2007.

## APPENDIX A

## MAP OF HAITI





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