



ICCPR REVIEW OF HAITI: CRIMINAL JUSTICE

Haiti's criminal justice system routinely fails to comply with protections under both Haitian and international law. Haiti's prison conditions rank among the worst in the world as prisons and detention centers are overcrowded, poorly maintained, unsanitary, and underserved in terms of basic medical services. Over 70 percent of prisoners have not been convicted of or tried for their alleged crimes and are held in illegal pretrial detention for over a year on average, and over six years in some prisons, which has led to prison overcrowding and violations of other due process rights. Conditions fall far below minimum standards and amount to torture or cruel, inhumane and degrading (CID) treatment or punishment, as detailed in our report previously filed on September 12, 2014 entitled *Prison Conditions and Pre-Trial Detention in Haiti*.¹

The criminal justice system of Haiti is largely dysfunctional. Class discrimination and elitist legal training condition lawyers, judges and prosecutors to give preferential treatment to the powerful, either based on class prejudice or in search of bribes, while they discount the testimonies and legal needs of the poor. Lack of access to education prevents major segments of Haitian society from understanding the workings of the justice system. As a result, most criminal defendants do not understand their legal rights, do not have access to legal counsel, and do not understand legal proceedings, which are conducted in French, even though the majority of the population speaks Creole.

Haiti's Legal Obligations

Under Article 7 of the ICCPR, no individual "shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." Article 9 protects the liberty and security of person, which forbids arbitrary arrest or detention. It also mandates that no one shall be deprived of his or her liberty without due process of the law. Article 10 states "all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person." Accused persons will be segregated from convicted persons, and are subject to separate treatment, appropriate to their status as unconvicted persons. Article 14 outlines the requirements of fair public trials, and equal protection under the law. Among the guarantees of Article 14 is that defendants' procedural rights are met through fair, public trials overseen by a competent and impartial tribunal. This entails the right to government appointed counsel, and access to an interpreter if necessary.

Haiti's Failure to Meet its Legal Obligations

Haiti's prison conditions violate the ICCPR by not preventing CID treatment, and by disregarding prisoners' humanity and inherent dignity. Detention conditions fall below Haitian standards and even farther below international standards.

Malnourishment (Articles 7, 10): Prisoners have limited access to food, clean water, medical treatment, and space and are subject to moderate to severe malnourishment. Most prisons provide only one or two meals per day, and few prisons have facilities or employees to prepare and distribute food. Some prisons run on severe food shortages, lacking in sufficient funds to provide food for all of the detainees. According to medical standards, none of the prisons provide regular meals with sufficient calories or nutrients. As a result, families of the detained often resort to paying prison staff to deliver food to prisoners, which is only a limited remedy as prisoners must have family nearby and the resources to pay for their meals and pay off guards.

Extreme overcrowding (Articles 7, 10): Haitian prisons suffer from extreme overcrowding. While the level of overcrowding varies by report, Haitian prisons currently operate at anywhere from 250 percent to over 400 percent of their official capacity. As a result, prisoners were reported to have roughly 40 cm² of space per prisoner, the equivalent of one-quarter of a twin bed, and are forced to take turns sleeping on the floor in shifts. These conditions foster and promote the spread of contagious pathogens, which exacerbate the healthcare and sanitation problems prisons already face.

Prolonged pretrial obligations (Article 9): Many of those detained have not been convicted of any crime. Under ICCPR Article 9, the Haitian government has an obligation to prevent arbitrary arrest and detention and ensure that all individuals are tried within a reasonable time. Haitian law provides that those detained are entitled to an initial hearing before a judge within 48 hours of their arrest and that all defendants shall be tried within four months of this initial hearing or given the right to contest their detention. In practice, however, most inmates are held in prolonged pretrial detention and wait over a year before ever seeing a judge. The national average for persons held in pretrial detention is 80 percent, varying from roughly 50 percent in provincial prisons like Mirebalais to over 90 percent in Port-au-Prince. Given the extent of pretrial detention, many of these detainees will have spent more time in pretrial detention than they would spend serving a sentence if they were to be convicted.

Denial of fair public trial (Article 14): Finally, the proceedings themselves are marked with violations that undermine ICCPR Article 14. Haiti's criminal procedure does not assign responsibility in criminal investigations in any meaningful manner. Responsibilities are divided among the police, justices of the peace, prosecutors, and investigating magistrates in a pseudo-Napoleonic code largely unchanged since its inception in 1880. This often leads to a failure to question witnesses, compile complete case files, and even to complete investigations. The Government rarely provides detainees with free legal counsel in contravention of the Constitution which provides the right to defense counsel. This contributes to the criminal justice system's socio-economic discrimination, as very few criminal defendants are able to afford an attorney.

RECOMMENDATIONS

- 1) Take appropriate measures to reduce the duration of pretrial detention and to conform with international standards and reduce overcrowding;
 - a. Fight corruption in the judiciary through increased oversight of judges and other officials;
 - b. Introduce simplified procedures to determine the legal status of persons in prolonged pretrial detention in order to process them and free the judicial system to deal with the most serious cases;
- 2) Improve conditions of detention to ensure compliance with the Minimum Standards of Treatment of Prisoners;
 - a. Set up hygienic sanitation services in prisons, including portable water, adequate food, access to latrines and ensure availability of soap;
 - b. Provide access to medical care and supplies in accordance with guidelines of one professional caregiver per detention facility;
- 3) Separate detention of men and women, adults and juveniles, accused and convicted;
- 4) Update prison system records and databases so that the existing database may provide effective documentation of the prison system;
- 5) Conduct proceedings in Haitian Creole;
- 6) Establish a public legal aid institution within the Ministry of Justice to provide detainees with free defense counsel;
- 7) Develop a framework law on prisons using a rights-based approach; and
- 8) Allocate sufficient funds for the timely and adequate payment of judges to ensure sufficient judges to hear cases.

QUESTIONS

- 1) What is the government doing to ensure that minimum prison conditions are met, and that the criminal justice system is fair, provides all citizens with due process of law, and does not undermine the basic human rights of all citizens?
- 2) What is the government doing to assure that prisons are operated in accordance with standards that respect human dignity, and guarantees the right to life, health, and respect of the human person for all citizens without distinction as required under the Haitian Constitution?
- 3) What is the government doing to prevent government agents from perpetrating crimes on prisoners such as torture and other CID treatment or punishment with impunity?
- 4) What is the government doing to uphold its obligation to investigate the well-documented, serious human rights violations that occurred

¹ *Prison Conditions and Pre-Trial Detention in Haiti*, Institute for Justice and Democracy in Haiti *et al.*, Submission for the 112th Session of the United Nations Human Rights Committee, October 8 & 9, 2014 (Sept. 12, 2014) available at http://www.ijdh.org/wp-content/uploads/2014/09/HRC_Criminal-Justice-Sept-12.pdf.