











Crimes against journalists have an intimidating effect on all citizens because it “inspires fear of reporting attacks, abuses and illegal activities of any kind.”<sup>33</sup>

This intimidating effect can only be avoided if Haiti takes concerted government action to punish those responsible for assaulting or murdering journalists. In this way, the Haitian government can send a strong, direct message to society that there will be no tolerance for those who engage in a grave violation of the right to freedom of expression.

- On March 17, 2012, a journalist was shot by a government employee, and the local mayor is obstructing the government investigation and prosecution. Wendy Phele, a 21-year old correspondent from Radio Télé Zénith, was shot by the Mayor of ~~7KRPRGHMERGIDUGZKLOH DWWHGLJDMSHHEKEWKHPDRU~~ He survived the shooting.<sup>34</sup> The prosecutor made arrangements with the Mayor to talk to the accused bodyguard, and after questioning, was prepared to arrest him but the Mayor refused to allow the arrest and his people threatened the prosecutor. SOS journalists, Reporters Without Borders and other groups pressured the Ministry of the Interior to remove the Mayor from office to prevent him from obstructing justice, arguing that failure to do so made the Ministry complicit in the attempted assassination.<sup>35</sup> They also launched a public campaign against a number of Haitian governmental authorities whom they considered enemies and “predators” of the freedom of the press. An arrest warrant was issued and the Mayor promised to bring the accused, but as of July 2012, the accused had not been arrested.<sup>36</sup>
- On March 5, 2012, Jean Liphète Nelson, director of Radio Boukman and director-general of NGO Hands Together was murdered.<sup>37</sup> Radio Boukman was launched in 2006 and was the only news media based in Cité Soleil, a poor shantytown in Port-au-Prince.<sup>38</sup> Four other people were in the car with Nelson when he was shot. One of the other passengers was killed and another one was wounded in both legs. The motive for the killing has not been officially determined. But the Office of the Special Rapporteur for Freedom of Expression issued a press release requesting that Haitian authorities investigate the possibility that the death was tied to the journalist’s professional activities and urging them to conduct a

thorough investigation to clarify the circumstances of the crime, to identify and punish those responsible, and to ensure just compensation for the victims’ next of kin.<sup>39</sup> Four weeks prior to the killing, Mr. Nelson was kidnapped and threatened.<sup>40</sup>

- In December 2010, there were several incidents of journalists being harassed and mistreated during violent street protests after the announcement of the presidential and legislative elections.<sup>41</sup>

### c. Interference with Journalistic Activities

The Haitian government must also prohibit and discourage the direct or indirect interference by law enforcement, the President and his administration in the work of the media and also pressure exerted upon journalists.<sup>42</sup> Full enjoyment of the right to expression requires that the media be able to receive the information necessary to carry out its reporting function. Interference, while not rising to a serious level of violence or threats of violence, violates freedom of expression by attempting to prevent journalists from completing their work. President Martelly himself has expelled journalists from press conferences and threatened journalists who pose questions to him that are critical. All journalists interviewed said that the President has been less aggressive with the press over the last few months, a trend they hope continues.

- On July 28, 2011, President Martelly’s security guards jostled and expelled journalists in Jacmel from the conference room on a visit he was doing in the city.<sup>43</sup>
- On July 27, 2011, President Martelly at the launch of the travel magazine, Magic Haiti, accused the press of being responsible for projecting a negative image of Haiti to the outside and asked the press to shut up. The President threatened to use force against those who spoke ill of the country, including the press.<sup>44</sup>
- On March 9, 2011, candidate President Martelly was verbally aggressive against journalist Gotson Pierre during a debate concerning the second round of presidential and legislative elections. Pierre asked Martelly about allegations of an outstanding debt in the United States. Martelly avoided the issue and Pierre responded that it was inappropriate for Martelly to avoid responsibility for his actions because, as the possible future president of Haiti, he needed to be accountable for his actions. Martelly became angry,

lost his temper and shouted at the crowd, alluding to the possibility of another riot against journalists similar to a riot that took place in 2006 after the elections of President René Préval. Pierre and other journalists in the room interpreted the comments as a threat from Martelly to incite a violent riot against them if they continued to discredit him.

#### d. Retaliatory Defamation Lawsuits

One trend that worries journalists is the increase in defamation lawsuits threatened or filed by the Haitian government against the press for statements made about public officials or private figures in the public arena. Defamation in Haiti carries both criminal and civil penalties, so journalists face deprivation of their freedom, civil damages and litigation costs in a legal system where the elite can often buy justice.

The Inter-American Commission has stated that the criminalization of speech directed toward public officials or private individuals voluntarily engaged in matters of public interest is a disproportionate punishment compared to the important role that freedom of expression and information plays in a democratic system. “Such sanctions clearly cannot be justified, particularly in light of the adequacy of non-criminal sanctions in redressing any harm to individuals’ reputations.”<sup>45</sup> In a representative democracy, public officials, or anyone involved in matters of public interest, must be held accountable to the men and women they represent.<sup>46</sup>

Journalists that have received summons or “cease and desist” letters for defamation claim that the suits are frivolous and intended as retaliation for their political views or critique of President Martelly or other government officials. Of the four defamation proceedings against journalists researched by the authors of this report, three were brought by the Haitian government, two of which were filed in Haitian court and one in U.S. court. All three of the cases were abandoned when the journalists responded to the summons or “cease and desist” letter. (The fourth case was filed as this report was coming out, so no result is known.)

- In September 2012, Haiti’s prime minister sued a Haitian-American weekly newspaper, Haiti-Observateur, in U.S. court for defamation over its reporting on the sale of a telecommunications company acquired by the Haitian government.<sup>47</sup> The

newspaper has been publishing since 1971 and serves Haiti’s diaspora communities in New York, Florida, Montreal and the Caribbean. The lawsuit said that the newspaper falsely and maliciously reported that the Prime Minister, a former telecommunications executive, orchestrated the sale of the company, and that the Prime Minister fixed the \$25 million sale price and stands to receive the “lion’s share” of the proceeds.<sup>48</sup>

- In April 2012, two of the five journalists who were fired at state-owned Télévision Nationale d’Haïti (TNH) for unprofessionalism and making false public statements on the radio that were critical of then Presidential candidate Michel Martelly were sued for defamation by the director of the TNH. (see section (a) Threats / Intimidation above) They are facing a jail sentence of three years and 50 million goudes (1.25 million dollars) in damages. As of July 2012, the lawsuit was pending in the Court of Appeals.
- In January 2012, the online news website Defend Haiti based in Orlando, Florida, which caters to the English-speaking Haitian Diaspora, received a “cease and desist” letter from a lawyer representing the Government of Haiti. The letter accused the publication of waging a “smear campaign against the Haitian government” and demanded that their website retract the article or face a government claim for redress for injury. Defend Haiti responded to the accusations in writing and has not received any further communications on the matter.<sup>49</sup> The news agency’s founder said that, after receiving the letter, he stopped reporting on the issue that was the subject of the government’s complaint. The founder said that journalists in Haiti have reported being harassed, and he was worried that his family in Haiti might be threatened.<sup>50</sup>
- In February, 2012, Newspaper Haiti Liberté was sued for defamation by First Lady Sofia Martelly. Haiti Liberté had documented a clash between President Martelly’s security detail and students of the University of Haiti (UEH). President Martelly attempted to attend a UEH symposium on ethnology and nation-building policy, to which he had not been invited. When UEH students refused to allow Martelly into the event, a clash between the students and Martelly’s supporters broke out, ultimately ending in Haiti’s National Police setting off tear gas and firing gunshots into the air.<sup>51</sup> At least four students were injured and there was damage and

vandalism done to the university. The First Lady, Sofia Martelly, filed a defamation lawsuit in Haitian court against the newspaper Haiti Liberté, asking it to recant and take down its article on the UEH clash. Haiti Liberté responded to the summons, and Mrs. Martelly has not taken further action.

The Haitian government is failing to meet its obligation under the Haitian Constitution, Art. 28-1, to protect the freedom of opinion and the freedom of expression of journalists from violence, threats, intimidation and retaliation by the Haitian government, law enforcement, local officials, and the President himself.

An independent and critical press is fundamental to ensuring respect for other liberties that form part of a democratic system of government and the rule of law. As the IACHR has explained, in democracies such as Haiti where the institutions responsible for oversight of the conduct and functions of the authorities are weak, “the press has become the primary instrument for oversight and dissemination of information about government activities.”<sup>52</sup>

Despite the threats and violence, journalists continue to fight for free press. One renowned Haitian journalist said, “People know that if they intimidate me, I am still going to do [my job]. People could kill me but I have not recently been exposed to that. Because of what I am doing, I know I will always face that.” Another journalist noted, “[If] we start becoming afraid, we will accomplish nothing.”

## II. Access to Public Information

Access to information held by the State is a fundamental right of every individual, as well as a pillar of democracy.<sup>53</sup> As the Inter-American Court of Human Rights has pointed out, “a society that is not well informed is not a society that is truly free.”<sup>54</sup> Access to information is also fundamental to the principle of transparency in public governance.<sup>55</sup> Based on these principles, access to information held by the Haitian government is a fundamental right of individuals and the government has the obligation to guarantee it. Haitians therefore have individual rights to request documentation and information held in public archives or processed by the government.<sup>56</sup>

These obligations require that the Haitian government make every effort to ensure easy, prompt, effective and practical access to public information. As stated

***The State has the obligation to publicize in the oral, written and televised press in the Creole and French languages all laws, orders, decrees, international agreements, treaties, and conventions on everything affecting the national life, except for information concerning national security. Journalists may not be compelled to reveal their sources. However, it is their duty to verify the authenticity and accuracy of information. It is also their obligation to respect the ethics of their profession.*** Haitian Constitution, Arts. 28 and 40.

***The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.*** American Convention on Human Rights, Art. 13(3).

earlier in this report, Haitians have difficulty accessing information in general. Only 20 percent of the population understands French, yet all the print newspapers in Haiti are in French. Less than 10 percent of the population can afford to access the internet or television. These difficulties make it even more critical for the Haitian government to allow access to public information and to stop patterns of stonewalling.

### a. Government Stonewalling of public information

- For certain progressive journalists, the government has made it close to impossible to investigate or locate public contracts and audits by refusing to respond to requests for information, requests for meetings or phone calls. For example, journalists from an investigative online paper followed up a request from an international financial institution regarding a contract signed between the Haitian government and another government for an earthquake reconstruction project. While Article 40 of the Constitution requires that the Haitian government publicize international agreements, public officials repeatedly hung up on calls made by



the journalists researching the project or refused to speak about it. The journalist went to a local ministry and was told, “The Constitution is just a bunch of words that no one pays attention to.”<sup>57</sup>

- According to one journalist, the government is more likely to grant meetings to foreign journalists than to Haitian journalists. For example, one ministry immediately granted an interview with a French press agency, whereas a team of Haitian journalists received no response from the ministry after making 12 phone calls, sending one letter and appearing in person.<sup>58</sup>
- A Haitian journalist with a mainstream international news agency reported that the ability to access information is highly dependent on the existence of strong personal contacts within the government. While he did not indicate a decline in his own access to information under Martelly’s administration, he qualified his statement by saying that he has good contacts in the current administration and that “It’s never a real democracy and [the Haitian government] has never believed that there should be total access to information. [I] [c]an’t say that we have less access than before. We are at 10%.” Left-wing journalists often lack contacts in the current government and are unable to access information needed to do their investigations.
- In order to be granted access to enter the National Palace in Port-au-Prince for press conferences, journalists are required to fill out a form. The form asks general identification questions, but it also requires the names and addresses of journalists’ spouses, children and neighbors. This practice was documented in two of the seven interviews, suggesting the policy is discriminatory; allowing the government to determine which journalists may or may not have access to information.<sup>59</sup> The two journalists of whom family information was requested did not submit the form, stating that the request of personal and irrelevant information reminded them of the invasive questions by the Tonton Macoutes under the Duvalier dictatorship, who collected information to persecute those critical of the government. The form requesting family information is new under the Martelly administration.
- At a February 2012 press conference, journalist Jackson Alexis of Radio Kiskeya questioned President

Martelly about allegations that he denounced his nationality (which would disqualify him as president under the Haitian Constitution). President Martelly responded by asking Alexis which media outlet he worked for. When Alexis told him that he was with Radio Kiskeya, Mr. Martelly said that he would not respond.

- In April 2012, a Dominican Republic journalist, Nuria Piera, implicated President Martelly in receiving 2.5 million dollars in kickbacks for reconstruction contracts with the Dominican Republic.<sup>60</sup> One interviewee reported that international and Haitian journalists were not able to obtain information on the allegations from government officials in Haiti, and no audit of the reconstruction contracts has been made available to the Haitian public. The only information available to investigative journalists was from the Dominican government.<sup>61</sup>

#### **b. Government strategy and tactics to control the media**

- Several journalists spoke about an internal meeting initiated by the First Lady, Sophia Martelly, in February 2012 at the National Palace to explore creating a law to regulate the press.<sup>62</sup> Some interviewees feared that the government’s intention was to control the rights of the media. Journalists protested the meeting, and it appears that no further action has been taken on the proposed law. Last year, President Martelly also proposed reinstating the National Army with a National Intelligence Service (SIN), which, among other things, would be tasked with surveillance of journalists.<sup>63</sup>
- There is concern among journalists that the Martelly administration is trying to control the media by replacing investigative journalism with its own messaging. Interviewees generally agreed that President Martelly has improved access to public information versus his predecessor President Préval by granting more press conferences. Both President Martelly and the Prime Minister release frequent and official messaging via Facebook and Twitter, which is a positive step towards access and transparency. However, journalists wonder if the administration is using social media and press conferences to control the messaging and reduce the public’s reliance on the independent media.<sup>64</sup>

## Conclusion

Freedom of expression is a necessary condition for the realization of the principles of transparency and accountability that are, in turn, essential for the promotion and protection of democracy and human rights. The Haitian government has a duty to protect and promote a free press, but observations and personal experiences of Haitian journalists reveal a troubling trend of stonewalling the press, and intimidation and attacks on journalists, particularly leftist journalists who are critical of the current government.

As one journalist interviewed said:

*“There have been journalists who have fallen, some who have been killed, some who have disappeared, so for [those journalists], they are always fighting for their country and the Haitian people. They have endured a long battle. The President and Haitian people need to understand that. The Government needs the press in order for them to express their issues and ideas, but the State needs journalists to investigate and report these issues. Both have a right to seek and speak the truth.”*

The new Haitian Minister of Communication, Jean Gardy, who took office in May 2012, has committed to fighting against extreme poverty among journalists and offer media workers health and life insurance, and education.<sup>63</sup> In September 2012, his office initiated a meeting with the President and Prime Minister, several media owners, and Haitian media watchdog SOS Watch to discuss freedom of expression.<sup>64</sup> This is an encouraging gesture that will hopefully result in more protections for Haitians and journalists.

## Recommendations for the protection of free press in Haiti

1. Under the leadership of the Ministry of Justice, law enforcement and prosecutors should prevent and investigate instances of threats and violence against journalists, punish the perpetrators and ensure that victims receive due compensation.
2. Law enforcement, government actors and the President’s office should refrain from intimidating and threatening journalists, as well as the destroying their press equipment.
3. Haitian law should be amended to eliminate jail sentences in cases of defamation.
4. All public agencies should make every effort to ensure easy, prompt, effective and practical access to public information.
5. The National Palace is encouraged to stop requiring journalists to answer questionnaires requesting information irrelevant to a journalist’s credentials to cover press conferences.
6. The Ministries of Communication and Education should provide funding for education and training for journalists.
7. Journalistic values and professional standards should be strengthened in order for journalists to be respected.
8. Living and working conditions for journalists should be improved.
9. The international community and donor countries should provide the Haitian government and civil society with financial and technical support to ensure that all of the above goals are met.

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- <sup>2</sup> Human Rights Comm., 102nd Sess., General Comment 34, Freedoms of Opinion and Expression, U.N. Doc. CCPR/C/GC/34 (July 11-29, 2011) [hereinafter Human Rights Comm.].
- <sup>3</sup> See Nicole Phillips, *Michel Martelly's Short Honeymoon*, THE FRESH OUTLOOK, May 3, 2011, available at <http://ijdh.org/archives/18518>; Nicole Phillips & Nicolas Pascal, *Hold New, Open, Fair Elections*, MIAMI HERALD, Jan. 3, 2011, available at <http://ijdh.org/archives/16240>; *Haiti's November 28 Elections: Trying to Legitimize the Illegitimate* (Inst. for Justice & Democracy in Haiti, Boston, Mass.), Nov. 22, 2010, available at <http://ijdh.org/wordpress/wp-content/uploads/2010/11/Election-Report-11-23-2010.pdf>.
- <sup>4</sup> See U.S. Dep't of State, *2011 Country Reports on Human Rights Practices - Haiti*, May 24, 2012, available at <http://www.unhcr.org/refworld/docid/4fc75a966a.html> [hereinafter *Human Rights Practices - Haiti*]; See also The Platform of Haitian Human Rights Organizations (POHDH), *Déclaration de la POHDH à l'occasion de la Journée Mondiale de la liberté de la presse*, May 3, 2012, [http://www.pohdh.org/article.php3?id\\_article=179](http://www.pohdh.org/article.php3?id_article=179).
- <sup>5</sup> *Freedom of Press is Progressing in Haiti*, HAITI LIBRE, Jan. 3, 2012, <http://www.haitilibre.com/en/news-4837-haiti-politic-freedom-of-the-press-is-progressing-in-haiti.html>.
- <sup>6</sup> See ALICIA PIERINI, VALENTÍN LORENCES & MARÍA INÉS TORNABENE, *HABEAS DATA: DERECHO A LA INTIMIDAD* 31 (Editorial Universidad, 1999).
- <sup>7</sup> The delegation was led by USF law faculty member Nicole Phillips, and included USF students Kate Finch, Aditi Fruitwala, Brit Mark, Kate O'Laughlin, Lynn Nguyen, Samantha Silva, and Laura Tran. Ms. Phillips is also a staff attorney with the Institute for Justice & Democracy in Haiti (IJDH)
- <sup>8</sup> Nicole Skibola, *Sovereignty, Stability and Sweet Mickey: What is Going on in Haiti?*, HUFFINGTON POST, Mar. 11, 2011, [http://www.huffingtonpost.com/nicole-skibola/post\\_1816\\_b\\_833953.html](http://www.huffingtonpost.com/nicole-skibola/post_1816_b_833953.html); Jeb Sprague, *Michel Martelly, Stealth Duvalierist*, HAITI LIBERTÉ, Vol. 4, No. 22, Dec. 15-22, 2010, available at [http://www.haiti-liberte.com/archives/volume4-22/MichelMartelly\\_Stealth\\_Duvalierist.asp](http://www.haiti-liberte.com/archives/volume4-22/MichelMartelly_Stealth_Duvalierist.asp).
- <sup>9</sup> Freedom House, *Freedom in the World 2012 - Haiti*, Aug. 22, 2012, available at <http://www.unhcr.org/refworld/docid/503c722d28.html>.
- <sup>10</sup> *Id.*
- <sup>11</sup> June 22, 2012 interview with USF delegation.
- <sup>12</sup> Freedom House, *Freedom of the Press 2010 - Haiti*, Sept. 30, 2010, available at <http://www.unhcr.org/refworld/docid/4ca44d921e.html>.
- <sup>13</sup> Reporters Without Borders, *World Report - Haiti*, Aug. 2011, available at <http://www.unhcr.org/refworld/docid/4d59463d28.html>
- <sup>14</sup> Comm. to Protect Journalists, CPJ.ORG, <http://cpj.org/killed/americas/haiti/> (last visited Sept. 23, 2012). The names of the journalists murdered include: Jean-Remy Badio, Robenson Laraque, Ricardo Ortega, Brignol Lindor, Jean Leopold Dominique, Alix Joseph, Jacques Roches, Gerad Denoze, and Robinson Joseph.
- <sup>15</sup> *Human Rights Practices - Haiti*, *supra* note 4.
- <sup>16</sup> Freedom House, *Freedom in the World 2012 - Haiti*, Aug. 22, 2012, available at <http://www.unhcr.org/refworld/docid/503c722d28.html>.
- <sup>17</sup> IACHR, *Declaration of Principles on Freedom of Expression*, at ¶9 (2000).
- <sup>18</sup> Human Rights Comm., *supra* note 2 at ¶7.
- <sup>19</sup> IACHR, *Background and Interpretation of the Declaration of Principles of Freedom of Expression*, at ¶39, available at <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=132&IID=1>.
- <sup>20</sup> *Two Petit-Goâve radio journalists arbitrarily detained*, REPORTERS WITHOUT BORDERS, June 29, 2011, <http://en.rsf.org/haiti-two-petit-goave-radio-journalists-29-06-2011,40551.html>.
- <sup>21</sup> *Id.*
- <sup>22</sup> *Liberation of Wolf « Duralph » François*, HAITI LIBRE, July 19, 2011, <http://www.haitilibre.com/en/news-3406-haiti-justice-liberation-of-wolf-duralph-francois.html>.
- <sup>23</sup> *Id.*
- <sup>24</sup> *RWB requests the intervention of Martelly*, REPORTERS WITHOUT BORDERS, Apr. 29, 2011, available at <http://www.haitilibre.com/en/news-2834-haiti-justice-rwb-requests-the-intervention-of-martelly.html> [hereinafter Reporters Without Borders]. The five terminated journalists were Jacques Innocent, Guemslly Saint-Preux, Stéphane Cadet, Josias Pierre and former editor in chief Eddy Jackson Alexis.
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- <sup>26</sup> Reporters Without Borders, *supra* note 24.
- <sup>27</sup> *Id.*
- <sup>28</sup> Jacques Desrosiers, *Haiti-Presse-Pouvoir : L'AJH scandalisée par l'attitude « grossière » de Martelly à l'égard des journalistes*, ALTERPRESS, Oct. 11, 2011, <http://www.alterpresse.org/spip.php?article11702>.

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- 31 See facts immediately below regarding death of Wendy Phele and Jean Liphète Nelson.
- 32 IACHR, *supra* note 19, at ¶40.
- 33 *Miranda v. Mexico*, Case 11.739, Inter-Am. Comm'n H.R., Report No. 50/90, OAS/Ser/L/V/II, doc. 57 (1999).
- 34 *Wendy Phele continue de réclamer justice*, RADIO VISION 2000, June 26, 2012, <http://radiovision2000haiti.net/public/haitijustice-wendy-phele-continue-de-reclamer-justice/>.
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- 38 *Radio Boukman Resumes Broadcasting Two Weeks After Director's Murder*, REPORTERS WITHOUT BORDERS, Mar. 23, 2012, available at <http://www.unhcr.org/refworld/docid/4f744bf52.html>.
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- 40 *Two Hands Together Staff Shot and Killed*, HANDSTOGETHER.ORG, <http://www.handstogether.org/news/2012/two-hands-together-staff-shot-and-killed> [last visited September 19, 2012].
- 41 Freedom House, *Freedom of the Press 2011 - Haiti*, Sept. 23, 2011, available at <http://www.unhcr.org/refworld/docid/4e7c84fb28.html>; See also *Media get off relatively lightly in post-election rioting, but for how much longer?*, REPORTERS WITHOUT BORDERS, Dec. 10, 2010, available at <http://www.unhcr.org/refworld/docid/4d071e6617.html>.
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- 43 Desrosiers, *supra* note 28.
- 44 *Id.*
- 45 Article XIX, *Defining Defamation, Principles of Freedom of Expression and Protection of Reputation*, Principle 4.
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- 52 IACHR, *supra* note 19, at ¶40.
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- 55 See PIERINI, LORENCES & TORNABENE, *supra* note 6.
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- 58 *Id.*
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- 63 *Haiti's army: Back to the future*, ECONOMIST (AMERICAS VIEW BLOG) (Sept. 30, 2011), <http://www.economist.com/blogs/americasview/2011/09/haiti-s-army>; June 26, 2012 interview with USF delegation.
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