

# Human Rights Watch

## Discrimination, Detention, and Deportation: Immigration & Refugees

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### Annual reports

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#### Human Rights Watch World Report 1998

### HAITI

#### Human Rights Developments

Haiti's struggle to establish a solidly democratic government in the past year was marred by political confusion. Elections in April were disputed, with tentative results announced only in August. Controversy surrounded the Provisional Electoral Council. Prime Minister Rosny Smarth resigned in June, and, at this writing, the government cannot agree on his successor. Noting Haiti's still tentative security situation, the United Nations extended the mandate of peacekeeping troops and civilian police advisors in the United Nations Transition Mission in Haiti (UNTMIH) for six months, until November 30, 1997.

Despite these upheavals, the public steadily clamored for justice, with demonstrations marking the anniversaries of political assassinations. But the government failed to dedicate needed resources to confront impunity. Only the Haitian National Police (HNP) revealed a willingness to discipline and fire human rights violators within its ranks. As Haitian courts imposed minimal criminal sanctions on abusive police officers or simply dismissed charges against them, HNP human rights violations persisted. Officers beat detainees, killed criminal suspects or others with an excessive use of force, and, albeit in fewer cases than in 1996, committed extrajudicial executions.

On November 4, 1996, HNP agents killed five men in the Delmas area of Port-au-Prince. HNP officers reportedly executed one of the men after having handcuffed him, while apparently killing two with excessive force and two in unclear circumstances. By July 1997, the HNP's inspector general's office (IG), an internal police disciplinary body, had fired seven officers for the incident, who later were tried and acquitted. The U.N./ Organization of American States International Civilian Mission in Haiti estimated that the police killed twenty criminal suspects with an excessive use of force from January to August 1997, and reportedly extrajudicially executed three individuals during that period, one of whom died after police beat him severely.

Haitian police frequently beat detainees, both in urban areas, where violent crime contributed to officer frustration and violence, and in the provinces. Seven police beat Chena Pierre Martial, a congressman from Trou-du-Nord, in August, after he reportedly evoked one officer's jealousy at a local dance. The IG later fired the seven agents. In September, police in Cayes arrested Yvon Chry, the director of a local news station, beating him and detaining him overnight, reportedly because they were angry that Chry had argued with police about an alleged traffic violation the day before. Police routinely held detainees in lockups beyond the forty-eight-hour maximum period prescribed by law.

Police abused their authority by engaging in violent criminal activity, including murder and drug trafficking. On May 20, HNP agent Antoine Bien Aime killed his cousin, Eddy Bien Aime, and wounded another cousin, Luckner Bien Aime, allegedly over a petty dispute. In late July, several officers from Jemie, in the department of Grande Anse, were arrested for armed robbery in the Delmas area of Port-au-Prince. The HNP Grande Anse departmental commander, Fritz Jean, who had provided the vehicle used in the robbery, violated police procedures by ordering three of the arrested officers, his apparent co-conspirators, released. At this writing, Jean retains his position and neither he nor any HNP agent has faced trial for the incident. On October 2, off-duty HNP agent Jude Merzy fired into a crowd leaving a soccer match in Grand Gove, killing one man and wounding several others.

The IG disciplined dozens of officers for human rights and other abuses and sent over thirty cases to the Haitian courts in 1997. By September, the IG had fired over 160 officers for serious violations of police regulations, such as crimes or human rights abuses. The IG's work earned it the ire of fellow police, and inspectors took extra security precautions in the face of frequent threats of violence, some of which were made directly by police charged with abuses, urging them to cease their investigations or withdraw criminal complaints. However, the Haitian courts did not keep pace with the IG's progress; most police abuse criminal cases referred to the courts by the IG, ranging from simple assault to homicide, did not go to trial or were marred by irregularities.

Weaknesses in the judicial system and an apparent lack of governmental will precluded prosecutions for human rights violations that occurred under Haiti's military dictatorships as well. The justice ministry's November 1996 creation of the National Penal Unit (Unit Nale Nationale, UPENA), to assist with human rights prosecutions, ended in failure by February 1997, when the unfunded unit collapsed. The government set aside no funds for victim reparations for the deaths of family members or serious injuries resulting from military violence. The Special Investigations Unit, a team formed in late 1995 with international support and charged with investigating politically motivated crimes, made few advances. The Haitian government did little to challenge the United States government's refusal to return thousands of incriminating documents it had seized from the Haitian military and the paramilitary group, the Front for the Advancement and Progress of Haiti (Front pour l'Avancement et Progres d'Hati, FRAPH) in FRAPH was responsible for human rights atrocities under the military government that ruled Haiti from 1991 to 1994 and reportedly was founded with Central Intelligence Agency assistance. The International Lawyers' Bureau, a special prosecution team supported by the justice ministry and focusing on two cases, stood out for having made progress toward successful human rights trials.

The lawyers' bureau continued preparation for trials of those accused of the December 1993 massacre of at least thirty residents of Cit Soleil and the 1994 massacre of at least fifteen individuals in Raboteau, near Gonaves, both of which were committed by Haitian soldiers and FRAPH members. Over twenty defendants, including military officials, were in detention for the Raboteau case, although one escaped in March. The U.S. government impeded progress on the Raboteau and Cit Soleil cases by failing to produce documents detailing its own investigations of each case. U.S. authorities, including Amb. William Swing, conducted these inquiries shortly after each incident had occurred. In June, the U.S. State Department denied Haiti's request for expedited delivery of the Cit Soleil materials and in October, the U.S. rejected Haiti's March request for expedited delivery of the Raboteau materials.

Several of the human rights cases that did go to trial were marred by apparent corruption or prosecutorial incompetence. In late July, Adrien Saint Julien, the former

military commander in Marchand Dessalines, a community near St. Marc, was tried for the murders of Loukens Pierre and Antoine Pauleus in 1992. At trial, the prosecutor failed to present critical evidence and the judge permitted jury members to speak to the defense attorney. One juror abandoned the trial before its completion, potentially skewing the outcome of the trial. Nevertheless, the judge permitted jury deliberation and Saint Julien was acquitted. Despite the existence of other criminal complaints against Saint Julien, authorities released him shortly after the trial. On September 15, former soldier Thlism Jean-Gilles was acquitted in Jacmel for the October 1993 murder of Marie Dine Nicolas, a local supporter of then-oustured President Jean-Bertrand Aristide, after the prosecution neglected to present essential elements of the case. On September 19, in Jacmel, a former section chief (*chef de section*, a military auxiliary in a small town), Baguidy Calixd, who was accused of the 1994 killing of a reputed Aristide supporter, Pachino Dord, in Leogane, was brought to trial despite the observance of a national day of mourning for victims of a ferry disaster. Court officials failed to notify the witnesses and the victim's family that the trial was going forward. Amid allegations that the defendant's family had bribed the judge, the judge allowed the trial to proceed. Since no witnesses were available to testify, the prosecutor asked that charges be dropped. The court complied and released Calixd.

As public confidence in the police and the judicial system crumbled, vigilante violence continued in Haiti, with a handful of deaths each month of suspected criminals at the hands of angry mobs. In mid-September, residents of the rural community of Sevrin in the south-west killed Louinor Jean-Louis and his wife, Vesta Jeune, with machete blows, after accusing them of engaging in sorcery that contributed to an infant's death.

Judicial failures to respect due process and to try old cases resulted in over 80 percent of Haiti's prison population being held in preventive detention, often for excessive periods. As of August 1997, several women at the Fort National prison and men at the National Penitentiary had been held without trial for over two years, while over two dozen boys had spent over sixteen months at Fort National without trial. In mid-August, Haitian courts ordered several supporters of the Mobilization for National Development (Mobilisatin pour le Dvelop-pement National, MDN) released for insufficient evidence. They had been detained in 1996 for allegedly threatening state security. A handful of prisoners remained in detention on charges of failing to pay debts, in violation of the International Covenant on Civil and Political Rights, a treaty ratified by Haiti.

The National Penitentiary Administration (Administration Pnitentiaire Nationale, APENA) improved prison conditions somewhat, providing cleaner facilities and better nutrition for prisoners. However, general conditions in Haiti's overcrowded prisons remained dismal. A few complaints surfaced of beatings by APENA guards, but these were not addressed due to the absence of clear procedures for disciplining APENA staff. Overcrowding prevented the necessary segregation of prisoners according to age and legal status. Of greatest concern, the concentration of over seventy male minors, both convicts and preventive detainees, in two cells at Fort National contributed to multiple rapes of younger, weaker prisoners by older or stronger fellow inmates. Prison authorities admitted that they lacked other holding facilities that would allow them to isolate victims from their attackers. In provincial prisons, few minors were held with adults.

On October 6, three off-duty APENA guards reportedly gunned down Louis Emilio Passe, a congressional deputy from Dame Marie. He died several days later. At this writing, one APENA guard is under arrest, while two remain at large.

### **The Right to Monitor**

Haiti did not impede independent human rights monitoring in 1997. The Office of Citizen Protection (Office de la Protection du Citoyen, a human rights ombudsman) received start-up funds early in the year, but at this writing, the government has not allocated it operating funds. The Inter-American Commission on Human Rights briefly visited Haiti in August to investigate the shooting of one of its members, former Haitian Justice Minister Jean-Joseph Exum. The commissioner apparently was the victim of a carjacking.

### **The Role of the International Community**

#### **United Nations and the Organization of American States**

The U.N. maintained a peacekeeping presence in Haiti in the past year, with UNTMIH's fifty military and 250 civilian police personnel. In light of planned withdrawals of U.N. forces, Canada pledged to maintain 700 troops in Haiti until the end of the year and the U.S. Support Group Mission of approximately 500 troops remains in Haiti at this writing. The reduced staff of the U.N./OAS International Civilian Mission, who briefly served as electoral monitors in April, planned to continue their low-profile human rights observation and training for local groups until year's end.

#### **United States**

The U.S. government refused again to return to the Haitian government the approximately 160,000 pages of documents and other materials seized from FRAPH and Haitian military headquarters in 1994. The U.S. continued to insist that the documents only would be returned after U.S. citizens' names had been excised, apparently for the illegitimate purpose of covering up U.S. complicity in political murder and other abuses, particularly the role of U.S. intelligence assets with the military government and FRAPH. Ambassador Swing stated that his government already had removed information identifying U.S. citizens from 113 pages of the materials. The refusal to return Haitian property to Haitian prosecutors, in conjunction with the U.S. government's failure to provide details of its own investigations of the Cit Soleil and Raboteau massacres, obstructed justice for Haitian human rights victims.

In August, the State Department acted to prevent the deportation of FRAPH leader Emmanuel Constant, who had received regular CIA payments while directing the paramilitary organization. Arguing that Constant's return to Haiti might cause instability and burden the judicial system, the State Department allowed him to remain in New York with a work permit. This kept Constant beyond the reach of Haitian prosecutors, despite high-ranking Haitian officials' assurances that he could receive a fair trial.

Its refusal to cooperate with Haiti's struggle against impunity seriously damaged U.S. credibility. More positively, the U.S.-backed Legal Assistance Program provided representation to Haitian prisoners, reportedly resulting in 3,000 releases.

In June, the Senate passed the DeWine amendment, which would deny U.S. visas to those who had been "credibly alleged" to have committed or ordered political killings in Haiti. If passed into law, the bill, which remains in conference at this writing, would require the State Department to report each year to Congress on compliance with the provision.

#### **Relevant Human Rights Watch report:**

*Human Rights Record of The Haitian National Police, 1/97*

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