

# ORGANIZATION OF AMERICAN STATES



INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

IACHR

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## ***PRELIMINARY OBSERVATIONS OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS UPON CONCLUSION OF ITS APRIL 2005 VISIT TO HAITI***

1. The Inter-American Commission on Human Rights (IACHR) concluded a visit to the Republic of Haiti that took place from April 18-22, 2005 at the invitation of the government of that country. The delegation was composed of Commissioner Clare K. Roberts, President of the Commission and Rapporteur for Haiti, Commission attorneys Ismene Zarifis and Brian Tittimore, and OAS Associate Staff Member and Romulo Gallegos fellow Ourania Georgoulas. The Commission was assisted for part of the visit by Bernard Duhaime, OAS Associate Staff Member and Professor of Law at the University of Quebec at Montreal.

2. The IACHR is the principal organ of the Organization of American States (OAS) responsible for promoting the observance and protection of human rights in the Hemisphere. The seven members of the Commission are elected in their personal capacity by the OAS General Assembly for a four-year term. The Commission's terms of reference are derived from the OAS Charter and the American Convention on Human Rights, treaties ratified by the Republic of Haiti.

3. The Commission conducted the visit pursuant to its mandate and functions under the OAS Charter and the American Convention on Human Rights, as well as OAS General Assembly Resolution AG/RES.2058 (XXXIV-O/04) concerning the strengthening of democracy in Haiti, in which the General Assembly urged the IACHR to monitor and report on the human rights situation in Haiti and to work with the OAS Special Mission in the promotion and observance of those rights.

4. The visit was the Commission's first in 2005. The objectives of the visit included receiving information on the present situation of human rights in Haiti, particularly in light of elections that are scheduled to take place at the end of this year, to build upon the Commission's previous work in the country on the issue of administration of justice, and to engage in additional promotional activities on the Inter-American system of human rights. Based upon the information gathered, the Commission considers that there is an urgent need for greater action on the part of the international community, and corresponding cooperative efforts by the government of Haiti, to act on several issues. These include diminishing the environment of insecurity by strengthening the Haitian National Police (HNP) and conducting a comprehensive disarmament program, developing and implementing an immediate strategy to remedy serious deficiencies in the justice system, and taking urgent steps to address fundamental inadequacies in health care, employment, and education. At the same time, a foundation must be established for longer term reform in these areas that can be built upon by a new government when it is elected.

5. During the visit, the Commission met with representatives of the Haitian government and members of civil society as well as representatives of international organizations. The Commission met with the President of the Republic, Mr. Boniface Alexandre, the Prime Minister, Mr. Gérard Latortue, the Minister of Foreign Affairs and Worship, Mr. Hérard Abraham, the Minister of Justice and Public Security, Mr. Bernard Gousse, the Minister of the Interior, Territorial Collectivities and National Security, Mr. Georges Moise, the President and Judges of the Supreme Court of Haiti, the Vice-President and Judges of the Court of Appeal of Haiti, the President and Registrar of the Court of First Instance of Haiti, and the Chief Prosecutor of Port-au-Prince. The Commission also met with the Inspector General of the Haitian National Police, Mr. Franz Jean François, the Chief of Cabinet of the Director General of the Haitian National Police, Mr. Max

Jacques Louis, and the Ombudsman of Haiti, Mr. Necker Dessables, as well as representatives of the Provisional Electoral Council and the Council of Sages. In addition, the Commission held discussions with representatives of different sectors of civil society, including a wide variety of national nongovernmental organizations, women's organizations and the association of magistrates, and representatives of international nongovernmental associations including the International Crisis Group and the International Committee of the Red Cross. In addition, the Commission met with staff of the OAS Special Mission in Haiti, the Head of the United Nations Stabilization Mission in Haiti (MINUSTAH), Ambassador Juan Gabriel Valdes, and other MINUSTAH officials, including its Police Commissioner David Beer and representatives from its human rights section. Further, the Commission delegation visited the National Penitentiary in Port-au-Prince.

6. The Commission expresses its appreciation to the Government and people of Haiti for the cooperation, facilities and hospitality provided in the course of the Commission's visit, to the OAS Special Mission for its crucial assistance in organizing and executing the visit, to MINUSTAH for its security support, and to the nongovernmental organizations, civil society institutions, and international organizations concerned for their valuable participation in the Commission's activities.

7. At the beginning of its visit, the Commission conducted a training seminar on the inter-American human rights system with officials and functionaries from various government ministries and agencies. In addition, with the support of the Prime Minister and the Minister of Foreign Affairs, the Commission set the groundwork for the establishment by the State of an inter-ministerial working group to coordinate the Haitian State's international human rights responsibilities. As a complement to this initiative, the government expressed its commitment to ratify the regional human rights treaties to which Haiti is not yet a party, a measure that will further assist in consolidating the protection of fundamental rights and the rule of law in Haiti. The Commission commends the State for its commitment to these initiatives and looks forward to following up on their implementation.

8. As part of its promotional activities, the Commission also held a meeting organized by the OAS Special Mission human rights section with Haitian human rights organizations involved in conducting human rights training in their respective communities. The Commission discussed a plan to conduct a series of training seminars on the inter-American system of human rights for various non-governmental organizations, with the aim to further enhance engagement of Haitian civil society groups with the Inter-American Commission on Human Rights.

9. The following preliminary observations highlight the Commission's greatest issues of concern for Haiti, namely, the rampant and widespread violence claiming the near daily loss of civilian lives and largely due to the lack of control over security in the country, the weaknesses in the administration of justice and the severe social and economic conditions in the country. Most individuals and groups with whom the Commission met agreed that the implementation of both immediate and long-term solutions was necessary in order for Haiti to successfully emerge from the cycle of violence, political instability and poverty. In the short term, the problem of insecurity appears to be most acute in recent months, claiming civilian lives on a near daily basis, and therefore requires urgent measures by the police and international forces to quell the violence and assert control over the security of the population. Also fundamental to Haiti's progress are steps to rectify severe deficiencies in the administration of justice and the gravest social and economic shortfalls in access to adequate shelter and potable water, health care, education and employment, which are also addressed in the present document. The Commission expects to follow these preliminary observations with a country report that will discuss the highlighted issues in more detail and will seek to provide recommendations as to how the government of Haiti, in collaboration with the international community, might address these issues.

## Security and Disarmament

10. The Commission's main concern at the conclusion of its April 2005 visit relates to the rampant and widespread violence in the country due to the lack of control over security and which has deteriorated markedly since the Commission's last on-site visit in September of 2004. Indeed, the heightened violence interfered with the Commission's own functions in executing its visit, by restricting the Commission's ability to travel inside and outside of Port-au-Prince and hindering the ability of NGO representatives and other interested persons to meet with the Commission.

11. Among the principal sources of insecurity is the still-uncontrolled proliferation of arms across the country. Prior to and during this visit, the Commission collected information indicating that thousands of weapons remain in the hands of illegal armed groups, gangs, and other unauthorized persons. This in turn has enhanced the capacity of many of these groups to perpetrate violence and terrorize civilians. According to reports received by the Commission, one example of recent violence occurred in Village de Dieu, Port au Prince, on February 24, 2005 where 15 people were reportedly killed and 30 people were wounded by an armed group operating in the vicinity. Gang battles and confrontations with the police have been reported frequently and often lead to the injury and/or deaths of innocent civilians. In this regard, local officials have indicated that the homicide rate rose dramatically in the country in recent months claiming lives of civilians and HNP alike. Much of the violence, concentrated largely in Port-au-Prince, has occurred in the context of confrontations between illegal armed gangs and police.

12. The impact of the violence has been widespread and has resulted in numerous casualties among civilians, police and peacekeepers. For example, while accurate statistics are difficult to obtain, it is estimated that 50 HNP officers have been reportedly killed on duty since February 2004. Kidnappings, car jackings and other episodes of violence are rampant, particularly in the capital of Port-au-Prince, and incidents of arbitrary killings and abuse of force committed by police officers have also been reported. The Commission was told, for example, that in the first fifteen days of January, 80 car-jackings were reported, while in March there were 130 reported cases. With each violent outbreak, the normal daily life of Haitians, trying to make a living or attending classes, comes to a sudden halt while further degrading fundamental social and economic needs of the population. One example provided to the Commission was the inability or unwillingness of authorities to provide medical assistance to individuals who are injured in violent episodes in some of the more volatile areas of Port-au-Prince. In such cases, the lack of adequate and timely medical attention for minor, treatable injuries often leads to further complications, and in some cases death for lack of timely treatment. According to the President of Haiti, the situation of insecurity has also been exacerbated by a practice on the part of certain countries of deporting Haitian nationals who have committed crimes in those states back to Haiti without providing the Haitian government with information as to the deportees' criminal and other background.

13. This proliferation in violence has been accompanied and exacerbated by a general failure on the part of the government to effectively exercise control over security in many parts of the country. Indeed, it has been reported that in some instances that illegal armed groups have operated in cooperation with, or in the place of, the national police. Reports from international monitors indicate that some former members of Haiti's armed forces are re-installing themselves as local authority figures or "chef de section" particularly in rural areas where there is an absence of State institutions including the police. This trend has led to reported cases of abuse of force by the former military without being held accountable for their actions. As a consequence, the security of the population in many of these areas has not been effectively guaranteed by the State.

14. The government's failure to suppress the rising level of insecurity in the country is attributed in large part to deficiencies in the national police force. As described in more detail below, the Haitian Police Force remains seriously understaffed, lacks sufficient training and resources, and continues to suffer from charges of corruption, collusion with armed gangs, and other illegal activities by some of its members. Also as particularized below, the poor situation of the State's prisons has further exacerbated the situation of insecurity. In some instances, riots have occurred within the prisons and hundreds of prisoners have escaped and remain at large, amplifying the pressure on law enforcement authorities and the anxiety on the part of the population. In respect of these matters, the Commission emphasizes the State's obligation to take urgent measures to secure its prison infrastructure, re-capture escaped criminals, and conduct effective investigations into these incidents.

15. The Commission acknowledges in this respect that despite early shortfalls in resources, MINUSTAH, in cooperation with the HNP, has undertaken efforts to improve security in the country consistent with its mandate under UN Security Council Resolution 1542 (2004) to assist with the restoration and maintenance of the rule of law, public safety and public order in Haiti. This has included initiatives to control armed groups in the most violent neighborhoods of Port-au-Prince, such as Cité Soleil and Bel Air. At the same time, it is apparent that these efforts have not been sufficient and that enhanced UN troops and additional proactive and effectively coordinated operations with the HNP are necessary in order to bring the situation of security under control. The Commission also emphasizes in connection with such operations the responsibility of the Haitian State and OAS Member States that have contributed troops to MINUSTAH to respect the human rights of Haitians, especially the right to life, the right to humane treatment, and the obligation to ensure the protection of civilians and that any use of force is necessary and proportionate.

16. Among the security measures that national and international forces must take is the urgent and effective disarmament of illegal armed groups operating within Haiti's territory. As the Commission noted in Chapter IV of its recently-released 2004 Annual Report, however, a September 15, 2004 deadline for the disarmament of illegal armed groups by the UN forces and Haitian police has already passed without significant progress having been made to seize arms, regain authority over police stations from rebels and ex-soldiers, and other measures necessary to assert effective control over security throughout Haiti. The lack of disarmament has in turn perpetuated and exacerbated the situation of violence in Haiti.

17. While the Commission commends the recent creation of the National Commission for Disarmament, Demobilization and Reintegration and takes note of the plans for conducting a disarmament program in the country, the Commission found that no systematic or comprehensive disarmament initiative has yet been undertaken. In this respect, the Commission encourages the rapid implementation of the disarmament, demobilization and reintegration program in respect of all armed groups in order to diminish the number of illegal arms circulating in the country. Among other important effects, this effort should provide a secure environment for elections that are scheduled to take place later this year and thereby inspire the population's confidence in campaigning and voting without fear of intimidation or reprisals.

18. The Commission cannot overemphasize the importance of urgent and effective measures by the government, with the assistance of the international community, to bring the security situation under control swiftly by enhancing the number and training of the national police, disarming illegal groups and gangs, and guaranteeing the fundamental rights of persons throughout the State's territory. Without exercising effective authority over security, the government is not in a position to fulfill its obligation to guarantee the protection of the human rights of the Haitian people, including those relating to the administration of justice and fundamental economic and social rights. The failure to implement disarmament initiatives quickly and decisively has only emboldened

illegal armed groups, while related violence has proliferated in the absence of effective public security, criminal investigations and the prosecution of such criminals. The Commission also reiterates its insistence that the human rights of all persons be respected in the process of restoring order and security to the country and that any human rights violations that occur are effectively investigated, prosecuted and punished, whoever may be responsible.

### **Elections and the National Dialogue**

19. Beyond jeopardizing the day to day safety of the population, the deficiencies in control over security also have implications for the longer-term progress and stability of the country. If immediate improvements in security are not made, it may jeopardize the elections scheduled for later this year by depriving the population of an environment in which they can fully and freely exercise their right to vote and to be elected as reflected in Article 23 of the American Convention.

20. The Commission notes the progress made by the Provisional Electoral Council in preparation for legislative and presidential elections in the fall of this year. During its visit, the Commission was informed that voter registration was launched in early April and provisions have been made to supply Haitians with voter registration cards that will also serve as identity cards in the future. Several options to apply for a registration card have been made available to Haitians, especially where individuals do not possess birth certificates, a common phenomenon that has presented challenges for the registration of voters and other related processes. Turnout of individuals during the first days of voter registration was significantly lower than expected however. The Commission encourages the Provisional Electoral Council, with the assistance of the international community, to undertake a comprehensive national education program for voters in order to encourage constituents to exercise their right to vote and the importance of exercising such right. The Commission also encourages all Haitians who have not yet registered with the civil registry to do so, in order for all Haitians to be able to exercise their right to vote in the fall elections.

21. This said, the Commission remains concerned by the limited amount of time remaining before elections in October, November and December of this year and the significant amount of work that remains to be done in order to create the conditions necessary for free and fair elections, including arrangements for registration, training and security, together with the fact that there does not appear to be a clear time line for accomplishing each major step in the process. The Commission will continue to closely monitor progress in this area, and in the interim encourages the government, in cooperation with other states and international organizations involved, to develop a clear and realistic plan for convoking proper elections in Haiti.

22. To the extent that the violence is manifested through confrontations between UN forces, police and supporters of the former President, a resolution to these situations must be found in order to ensure that the elections are to be open, inclusive and encompass all political parties. The Commission is encouraged by the National Dialogue initiative, launched on April 7, 2005, and hopes that the National Dialogue will be implemented swiftly and will succeed in moving all Haitians, including its various political groups, toward reconciliation, which is essential to the future stability and peace in the country. In particular, the Commission hopes that through the National Dialogue process that the participating political groups will pursue the objectives behind the Dialogue by agreeing on ethical standards for the electoral period and on identifying priority areas to be addressed by a new government when it is elected.

### **Administration of Justice**

23. One of the principal objectives of the Commission's visit in April 2005 was to build upon its previous work in Haiti on the issue of administration of justice. Therefore, during its time in Haiti, the Commission delegation collected information on the present status of the infrastructure

and institutions relating to administration of justice and the rule of law as well as the longstanding issues of impunity and the lack of confidence among the Haitian population in the judicial system. The following section summarizes the Commission's observations in these areas. In general, the view is broadly-held in Haiti, and shared by the Commission, that weaknesses in the administration of justice are among the most urgent problems and must be addressed if the country is to move forward.

24. It is also worth reiterating, however, that problems in the administration of justice in Haiti cannot be viewed in isolation. Rather, they must be considered in light of other human rights concerns in the country, including the lack of adequate security and deficiencies in the guarantee of social, economic and cultural rights. In particular, as the Commission noted in its press release following the visit, the security situation in Haiti has exacerbated problems with the administration of justice. The proliferating violence has added to the onerous work load of the police and judges lack the protection necessary to perform their duties without fear of threats to their physical integrity. The Commission has therefore emphasized that more immediate and vigorous measures are necessary to confront this crisis, as are additional resources and other assistance from the international community.

25. The information gathered by the Commission indicates that most of the infrastructure and institutions involved in the administration of justice lack the basic facilities, equipment, and resources to perform their work, and persons working within these institutions lack appropriate training as well as motivation. The inadequacies of resources in the justice system vary, ranging from the inability to assure adequate security and protection for detainees and witnesses to inadequate pay for judges and other officials.

#### *Law Enforcement and the Haitian National Police*

26. Among the most urgent problems afflicting law enforcement in Haiti is the seriously inadequate numbers of police in the country. Estimates of the total number of police in the country remain between 3,000 and 5,000 for a total population of over 8 million. Moreover, the undersized police force lacks sufficient essential equipments such as vehicles and firearms, which greatly inhibits officers from patrolling streets, preventing criminal activity, and transporting detainees to court. Partly as a consequence, in some areas of the country, the police are practically or entirely absent. This in turn has allowed illegal armed groups to fill the void in security. The Commission was told that in some communities, the local population is grateful for the presence of at least some form of control over security, while in others the armed groups take advantage of the absence of police by terrorizing citizens. In all of these instances, the government is failing to comply with its obligation to provide for the protection and security of all of the people of Haiti.

27. Where the police are operational, they suffer from serious deficiencies in resources and training. In particular, the police lack sufficient basic tools necessary to fulfill their duties, such as firearms, vehicles for conducting patrols and for transporting detainees, radios, bullet proof vests, and working and living facilities. Indeed, gang members frequently have access to weapons superior to those of the national police. In many instances the police facilities lack windows, sanitation or other necessary accommodations. Many police stations were vandalized and ransacked during the armed violence in February 2004 and have not since been repaired. The police, like other functionaries in the justice system, are underpaid for their hours of service and lack insurance or other means to cover their health needs and those of their families. At the same time, members of the police force are facing sharply increasing case loads and work hours without corresponding compensation in salary or other benefits. These substandard conditions not only impede the work of the police but also undermine their morale and feed a climate conducive to corruption and other illegal activities on the part of officers, as discussed below.

28. The police also suffer from a lack of adequate initial and ongoing training at all levels, including at the level of police inspectors. While the leadership of the Haitian National Police is attempting to improve the degree and nature of training provided to the forces, in part through the assistance of CIVPOL and other international bodies and governments, it is apparent that more must be done. With respect to timing, the Commission understands that in general recruits receive six months of training prior to graduating as officers, where other countries frequently require one to two years of pre-graduation training. The Commission acknowledges the need to enhance the number of police officers in Haiti as expeditiously as possible, but emphasizes that this must also be balanced against the obligation to ensure that each new officer is provided with sufficient instruction and testing as to the substance and methodology of law enforcement, including respect for basic human rights. Substantively, the information available to the Commission suggests that many police officers in Haiti continue to lack fundamental law enforcement knowledge and techniques and/or the implementation of such techniques. The Commission was told, for example, that many officers are unaware that individuals may not be detained for more than 48 hours before being brought before a judge and are unfamiliar with basic techniques for gathering evidence at crime scenes, and that there is a general absence of reporting through the chain of command to verify work that is being conducted on the ground.

29. The leadership in the Haitian National Police appears committed to ending these patterns and developing a professional police force where members are promoted on the basis of merit and are disciplined and prosecuted for wrongful conduct. Much remains to be done to reach this objective, however. Upon observing the deficiencies in the Haitian National Police, it is apparent that the efforts should be made to reinforce and extend efforts develop a professional police force, through enhanced and ongoing training prior to and following the graduation of officers. In light of the perceived challenges of providing security in Haiti, officers should receive focused training in areas such as the use of force, crowd control, the respect for human rights. The fulfillment of its mandate would be further assisted by recruiting more officers who can be deployed to the provinces. These efforts must also be accompanied by appropriate procedures to vet new recruits or existing officers who may be implicated in past human rights violations or other criminal activities.

30. More particularly, according to information gathered by the Commission during its April 2005 visit as well as past visits, the Haitian National Police has long suffered from corruption and criminal activities on the part of many of its members, including human rights violations. Police officers have, for example, been implicated in disappearances, summary arrests and executions, torture, rape, and drug trafficking, among other crimes and atrocities. Reports of corruption and other unlawful conduct by the police are a cause for concern by the Commission, as it seriously undermines the HNP's ability to carry out its mandate effectively and exacerbates, rather than alleviates, human rights violations. Illegal activities on the part of the police also further weakens the public's confidence in the force, thereby reinforcing the unwillingness of the Haitian population to cooperate with the HNP and further undermining the ability of the police to investigate human rights abuses and other crimes. The number of reports on corruption and criminalization within the national police indicate that this issue must be tackled with urgency and by strengthening the system of accountability and the issuance of disciplinary sanctions where appropriate.

31. Consequently, the office of the Inspector General, whose responsibilities encompass the investigation and discipline of members of the Haitian National Police, should receive the State's full support. In this regard, the Inspector General informed the Commission that his office presently has only six inspectors and that only three of those positions are currently staffed. In light of the significant challenges in ensuring that the Haitian police themselves operate within the boundaries of the law, the Commission considers that the capacity of the Inspector General's office must be significantly expanded and must be provided with the resources necessary to fulfill its mandate effectively.

32. Concerning the vetting process, the Commission was told that between April 2004 and April 2005, more than 400 police officers had been removed from the police force ranks for various reasons including human rights violations and involvement in corruption and criminal activity. This was accomplished in part through screening questionnaires and other technical assistance provided by the OAS. While these results are encouraging, the Commission emphasizes that these efforts must be continued and enhanced, particularly in relation to former members of the Haitian armed forces who have been or may be incorporated into the police force. In this respect, the Commission encountered difficulties in obtaining clear or consistent information concerning all of the processes employed by the State in vetting present and prospective members of the Haitian national police, and several nongovernmental organizations suggested that the vetting process has not been comprehensive and, in some instances, has not been conducted in a sufficiently serious manner. The Commission therefore encourages the State, in cooperation with the international community, to reinforce its efforts to vet present and future members of the police, including those potentially implicated in past human rights violations, and to enhance its cooperation with international organizations and other experts in this endeavor.

### *Courts*

33. As with the police, the court system in Haiti is afflicted with serious shortfalls in resources and training, and many of international and domestic organizations with whom the Commission met emphasized the need for immediate and effective reform to the courts and other aspects of the legal system. According to information received by the Commission, judges lack basic facilities within which to perform their functions. Court buildings and court records across the country, like police stations, were vandalized and destroyed during the February 2004 uprising and have not been repaired or replaced. Where courts are functioning, they lack basic resources such as computers, paper, and books, and judges remain severely underpaid. Compounding these problems are limitations on access to competent representation before the courts. In most instances, criminal defendants cannot afford legal representation and public defenders or legal aid are effectively unavailable.

34. In its meeting with members of the Supreme Court, the Court of Appeal and the Court of First Instance, as well as with the Association of Magistrates, judges and magistrates complained that they, like other members of the population, fear for their safety in the current environment of insecurity. The judges also expressed their concern that they are not afforded any respect among the population, thereby reaffirming the general lack of confidence among Haitians in the justice system. Further, the Commission was told that the level of training for the judiciary is seriously deficient, particularly among the examining magistrates, some of whom apparently are not even trained in the law. Complaints of these problems were accompanied by criticisms of the status of the legal system more broadly and the need for longer-term legislative reform. In this connection, the President of the Republic, among others, emphasized the need to modernize the Criminal Code and the Code of Criminal Procedure, which are said to be antiquated and incapable of responding effectively to the reality of present-day Haitian society.

35. The Commission's inquiries during its visit also suggest that security of tenure remains a problem, particularly among magistrates. According to Article 174 of Haiti's Constitution, Judges of the Supreme Court and the Courts of Appeal are appointed for ten years and Judges of the Courts of First Instance are appointed for seven years. No term is provided for the appointment of magistrates, however, and President Alexandre informed the Commission that as a consequence, magistrates may generally be removed at any time. In the Commission's view, this presents a serious threat to the independence of the magistrates and should be the subject of review. On a related issue, the Commission received varied information on the possible existence of interference with the independence of the judiciary. Members of the Supreme Court, for example, indicated that



they are entirely independent and that there has been no political interference with their work under the present government. At the same time, the association of magistrates complained that the Ministry of Justice has interfered in the work of the judiciary by requesting the Court of First Instance in some jurisdictions to re-assign certain cases among the investigating magistrates. While government officials, including the Prime Minister, acknowledged that such initiatives had been taken, they explained that the measures were necessary in order to address the problem of corruption, which they claim remains prevalent among some magistrates. The Commission is concerned by these circumstances and will continue to monitor the situation, but wishes to emphasize at this stage the importance of ensuring that the judicial branch is free to exercise its functions without any form of political interference, direct or indirect.

36. According to information provided to the Commission, several measures have been taken to begin addressing some of these problems. For example, the Chief Judge of the Court of First Instance in Port-au-Prince indicated that three new examining magistrates had been appointed within his jurisdiction and that judges had received a small increase in salary under the new government. The Commission was also told that the government of Chile had agreed to bring five magistrates to Chile to receive legal training. While these initiatives are encouraging, it is nevertheless apparent that a more comprehensive judicial reform program must be implemented in order to address weaknesses in the court system. In addition to broader and more extensive judicial education programs, funding is required to strengthen the infrastructure of the court system through improved facilities and resources and increases in the pay of judges. The terms of appointment of judges at all levels should be reviewed in order to ensure that they are consistent with minimum standards governing the independence of the judiciary. As with the police, a system should be developed, consistent with fundamental due process protections, to identify and address corruption and other illegal activities attributable to judges and magistrates.

#### *Detention and Prisons*

37. Prolonged preventative detention, prolonged pre-trial delay, and substandard prison conditions are long standing problems in Haiti, and information obtained during the Commission's visit confirm that these problems persist and have not been adequately addressed.

38. With respect to prolonged preventative detention and pre-trial delay, Article 26 of the Haitian Constitution provides that no person may be kept under arrest for more than 48 hours unless he or she has been brought before a judge asked to rule on the legality of the arrest and the judge confirmed the arrest by a well-founded decision. Article 7 of the American Convention similarly provides that any person detained shall be brought promptly before a judge and shall be entitled to be tried within a reasonable time. It was clear from the Commission's investigations, however, that these requirements are rarely, if ever complied with, and that non-compliance with the 48 hour rule and prolonged pre-trial delay are entrenched deficiencies in the system. According to a November 2004 report prepared by the Office of the Ombudsman, for example, an average of approximately 85% of individuals held in detention centers in Haiti's 10 geographic departments have not been tried or convicted. This situation was also confirmed during the Commission's visit to the National Penitentiary, where it discovered that of the 1,052 inmates in the prison only 9 were convicted of any crime. Many of the persons in detention are subjected to periods of pre-trial detention that are longer than if they had been convicted. Information available indicates that this serious situation has been perpetrated as a consequence of numerous factors, including the lack of proper police training, the absence of measures to sanction instances in which the 48-hour rule are not complied with, and the lack of sufficient resources and infrastructure to promptly and effectively process detention cases.

39. It appears that some measures have been taken to attempt to address this problem. For example, the Chief Judge of the Court of First Instance of Port-au-Prince provided the Commission with documentation and information indicating that afternoon hearings had been added to the Court's schedule to address the backlog of cases. As with other problems identified by the Commission, however, much more must be done in order to effectively address the scale of the problem. One possible solution suggested to the Commission was the reinstatement of the former Office of Control of Provisional Detention ("Bureau de Contrôle de la Détention Provisoire"), which was established in an attempt to process preventative detention cases more rapidly and efficiently. While the Commission will continue to study this issue with a view to offering possible strategies in its future report, it is apparent that some exceptional mechanism is necessary, even on a temporary basis, to focus upon and review the existing cases of preventative detention in Haiti's justice system.

40. With respect to the condition of Haiti's prisons more generally, the Commission remains concerned about deficiencies in minimum standards applicable to the conditions of the facilities and the treatment of prisoners, and is also preoccupied by the apparent lapses in control over security in Haiti's prisons. According to information gathered by the Commission, only 9 of Haiti's 22 prisons are actually functional, as many of the prisons were emptied or destroyed during the violence of February 2004, and reports indicate that the conditions in functional facilities are overcrowded and substandard. In addition, while authorities informed the Commission that women and children were detained in facilities separate from men, the former in Pétionville and the latter at Delmas, nongovernmental organizations and other sources indicated that there was, in fact, no functional detention center for minors and that minors are being held in prison cells with adults. With respect to prison security, a number of preoccupying incidents have taken place at the National Penitentiary in recent months, including a demonstration in December 2004 in the prison that led to the deaths of 10 detainees. This was followed by a jail break in February 2005 where members of an unidentified armed group stormed the prison and 481 detainees reportedly escaped from the National Penitentiary, most of whom remain at large. Investigations into these incidents have been slow and findings yet to be released to the public regarding the identity and prosecution of the perpetrators. It is unclear as to what security measures have been adopted to prevent such incidents from occurring in the future. The Commission strongly encourages the government of Haiti, with the support of the international community, to take steps to restore dysfunctional prison facilities in the country in order to guarantee minimum standards of treatment and ensure proper measures of security.

### **Impunity and Lack of Public Confidence in the Judicial System**

41. Among the serious effects of longstanding deficiencies in the Haitian justice system has been the perpetuation of impunity for present and past human rights violations, as well as deterioration of public confidence in the system. This problem has stemmed from deficiencies in mechanisms to monitor, investigate, prosecute and punish human rights violations, as well as shortfalls in government policies and commitments in the area.

42. As suggested by the observations above, the justice system in Haiti presently lacks the capacity to undertake accurate and effective measures to monitor compliance with human rights protections and to investigate, prosecute, and punish violations of those protections. Neither the police nor the courts have sufficient resources or training to fulfill these obligations, and the situation of insecurity has exacerbated the effective use of existing resources in efforts to prevent and punish crime as well as efforts by international bodies to fulfill human rights monitoring functions. For example, in some of the more volatile areas of Port-au-Prince, such as Cite Soleil, neither the police nor international monitoring bodies have a sustained or effective presence, allowing gangs to control the neighborhoods and terrorize the population.

43. Consistent with these observations, the Commission continued to receive during its April 2005 visit reports of failures on the part of authorities in Haiti to effectively investigate, prosecute and punish serious violations of human rights, as well as claims that criminal proceedings have been undertaken for inappropriate and political purposes. Indeed, high profile cases of atrocities that, to date, lack any effective investigation or prosecution are numerous and stretch back into much of Haiti's recent history. The lack of effective measures to address impunity has also had the effect of further deteriorating public confidence in Haiti's justice system and deterred people from coming forward as victims or witnesses to complain about present or past human rights violations.

44. In this respect, the Commission reiterates and emphasizes the State's obligation to end impunity for all human rights abuses through demonstrably fair and effective procedures that conform with international standards, as well as the corresponding right of all persons to due process of law and to be heard by a competent, independent, and impartial tribunal, without discrimination of any kind. As the Prime Minister noted during his meeting with the Commission, it is crucial that all cases of human rights abuses be investigated and prosecuted on an equal basis in order to ensure that justice is done.

45. Notwithstanding the Prime Minister's statements, however, there does not appear to be any clear or comprehensive government policy or plan to address accountability for past human rights violations, and nongovernmental groups in Haiti have claimed that the governmental lacks the political will to effectively address this issue. The conduct of recent high-profile cases within the justice system tend to confirm assertions that serious deficiencies presently exist in efforts to address the problem of impunity. The Commission has already noted publicly its preoccupations in several of these cases. In press release 17/04, the Commission expressed concern over indications that the August 2004 trial of Louis-Jodel Chamblain and Jackson Joanis for the murder of Antoine Izméry was not properly investigated or prosecuted. In its press release 19/05, the Commission noted its grave concern over the health and legal status of former Prime Minister Yvon Neptune, who had been detained since June 2004, apparently without having been charged or brought before a judge to determine the legality of his arrest and detention. Most recently, it was reported that the Supreme Court of Haiti overturned the convictions of members of the military in connection with an attack against supporters of the former President in the shanty town of Raboteau in 1994.

46. The Commission does not at this stage propose to reach any conclusions as to the compatibility of these various proceedings with the American Convention on Human Rights. That said, the Commission wishes to express its provisional concern regarding the pattern that appears to be established by these cases, which suggests that no progress has been made to quell the impunity, and indeed that the State may be regressing in this area. The Commission therefore emphasizes the need for an urgent strategy to effectively address the problem of impunity in Haiti, through procedures that conform to the fair trial and due process standards under the American Convention. Efforts to address allegations of past atrocities might necessarily involve a role for the international community, as suggested by the recent proposal by the Acting Secretary General of the OAS to establish a mixed Haitian-international commission to break the impasse over the situation of former Prime Minister Yvon Neptune. In this regard, the Prime Minister expressed to the Commission his willingness to consider well-reasoned proposals that might involve some form of cooperation or other involvement on the part of the international community in addressing all prominent cases of human rights violations. The Commission anticipates providing informed suggestions in this respect in the country report to be issued later this year.

## **Social, Economic and Cultural Rights and Related Issues**

47. The parameters for the Commission's April 2005 visit did not permit a detailed investigation of the situation of economic, social and cultural rights in Haiti, although the Commission hopes to make this area the subject of a specific visit in the future.

48. At the same time, governmental and nongovernmental representatives alike shared the view that the severe social and economic problems in the country are intrinsically linked to deficiencies in the realization of fundamental civil and political rights, including judicial and related guarantees in the administration of justice. Accordingly, the Commission considers it important to provide some limited observations on the social and economic dimensions of the present situation of human rights in Haiti, which form a broader backdrop and context for the analysis of other issues and problems discussed in these observations.

49. Substandard social and economic conditions have been a longstanding dilemma in Haiti, as the Commission has consistently emphasized in its numerous reports and other statements on Haiti issued in past years. In its 1995 Report on the Situation of Human Rights in Haiti, for example, the Commission observed that economic and social situation in Haiti was characterized by economic stagnation and widespread unemployment. The Commission also stated that lack of basic public services such as water and electricity, plus unsanitary conditions and malnutrition suffered by most Haitians, underscored the urgent need to provide financial assistance and technical cooperation from the international community to assist in the development of the country.

50. Unfortunately, the Commission's recent investigations indicate that little has changed over the past 10 years. As the Commission indicated in its press release 16/05 issued after its April 2005 visit, the Haitian people continue to face severe social and economic problems, including poverty, lack of access to adequate health care, unemployment and illiteracy. Information available to the Commission indicates that more than 80% of the population in Haiti live below the poverty line and more than two-thirds of the labor force do not have formal jobs. The conditions of health care are substandard and access to proper health services is extremely poor, owing in part to the inadequate state of Haiti's hospitals, which lack the capacity to treat incoming patients. Further, only 53% of the total population is considered literate.

51. These deficiencies in turn have contributed to the problems relating to security, the administration of justice, and other failures in the guarantee of basic political and civil rights. While the situation of insecurity in Haiti has resulted from a variety of factors, it is also the case, as noted by the Prime Minister, that lasting security cannot be achieved without addressing underlying social and economic deficiencies such as poverty and unemployment. In this connection, the Commission heard from several sources that the absence of employment and education is a key problem that has contributed to the proliferation of armed groups and gangs, in that it is primarily young men with no hope or opportunities for jobs or a stable future who are being recruited into these illegal activities. The involvement of men with gangs and armed groups has also contributed to the disproportionately high number of female-headed households. According to the women's nongovernmental organization ENFOFAM, approximately 42% of household are headed by women, who at the same time are among the lowest paid workers in the market. These circumstances have placed a particularly onerous burden on women to sustain family units in already difficult circumstances.

52. Inadequacies in health care, water, sanitation and other essential requirements have similarly exacerbated the situation of insecurity among the population of Haiti, including women and children who are especially disadvantaged by and vulnerable to deficiencies in state infrastructure and the provision of basic services. This situation is particularly serious in urban slum areas, as well as rural regions where the absence of passable roads and other transportation infrastructure makes access extremely difficult. For individuals facing these egregious conditions, achieving justice for

fundamental human rights violations such as extrajudicial executions and rape is all the more elusive in the face of their daily struggle to survive. Without addressing the most immediate social and economic deficiencies, there is little hope of solid and sustained improvements in the state of security, justice and the rule of law.

53. During its visit, the Commission received information specifically concerning the situation of women in Haiti and hopes to conduct another visit that will focus on this issue as well as the status of children. For the purposes of the present observations, the Commission wishes to express its concern regarding several issues relating to women in Haiti, in addition to those articulated above. In particular, the Commission was provided with information indicating that the perpetration of rape by members of armed groups and gangs continues to be a widespread abuse and is frequently used as a political weapon. At the same time, it appears that little has been done by authorities to condemn or investigate these violations, and victims and witnesses lack effective protection or remedies and are afraid of coming forward. In this connection, the Commission welcomed information indicating that the governmental had issued a decree that renders rape a distinct crime in Haiti. At the same time, it is imperative that this reform be given real force through the effective investigation, prosecution and punishment of allegations of rape and that the police are provided with appropriate resources and training to fulfill this obligation. Other issues of concern that the Commission intends to follow in the future include violence against women, patterns of discrimination against women in a variety of areas of Haitian society, including participation in public institutions and political processes, and the need for enhanced education of judges, police and other public authorities on the particular situation and challenges of women in Haiti.

54. More generally, as noted in the previous sections of these observations, the absence of sufficient economic resources has contributed directly to the problems in security and the administration of justice. The police and courts are severely under-staffed and under-resourced and, in some areas of the country, there is an almost complete absence of functioning state institutions. Observations made during the Commission's visit also reinforced the view that the legitimacy of the pending elections in Haiti and the success of a new government will depend to a significant degree upon the extent to which the people of the country will experience improvements in their daily living conditions. It is therefore apparent that the social and economic problems in Haiti must be definitively addressed through the urgent provision of financial, technical and related assistance from the international community, in the short as well as the longer term. The international community has acknowledged this need, most markedly through more than US \$1 billion pledged to Haiti by donors in July 2004.

55. However, during its visit in April 2005 the Prime Minister informed the Commission that only 10% of these pledged funds had been disbursed. The Commission understands that this situation has resulted from numerous factors, including the need for in-country expertise and infrastructure to support viable project proposals and issues of transparency and accountability in the use of funds. However, these matters must be addressed and resolved on an urgent basis through enhanced cooperation between donor governments, international organizations, and national actors – government, private sector and civil society – all with a view to strengthening the local capacity and move toward sustainable economic and social development. In this regard, the Commission is encouraged by the progress made through the Cayenne conference of donors held in March 2005, during which it understands that 380 projects were identified for performance in 2005 in such areas as repairing public buildings and infrastructures, public education, and police training. The Commission calls for the urgent execution of these projects and the pursuit of similar constructive initiatives in the future.

56. In summary, the Commission emphasizes once again the need for the international community, including Member States of the OAS, with the collaboration of the Haitian government, to make every effort to ensure the funds and other resources pledged to Haiti are delivered and

distributed on an urgent basis. By releasing pledged funds, the most immediate needs of the Haitian people could be addressed, for example by opening and staffing schools, making basic medical care available in all regions of the country, delivering clean water, food, electricity and sanitation, and developing immediate and realistic job opportunities through public work and other projects. Equally fundamental in the short term are efforts to provide infrastructure, personnel, resources, technical assistance and training to the police force and the courts. The delivery of pledged funds could also begin serving longer term objectives, including broader capital investment and capacity-building among public and private actors and institutions.

57. As the Commission observed previously, it is only through the design and implementation of a comprehensive plan for development that Haiti will achieve the capacity to ensure stability and growth in the longer term and the people of Haiti will begin to fully realize their fundamental rights in the political and civil as well as the economic, social and cultural spheres.

### **Concluding Remarks**

58. The Commission is pleased to report on a number of achievements made during the on-site visit to Haiti in April 2005. These included the Haitian government's expressed commitment to establish an inter-ministerial committee to coordinate communications between the government of Haiti and human rights treaty bodies such as the Inter-American Commission on Human Rights, and its expressed undertaking to ratify the regional human rights treaties to which Haiti is not yet a party. Other positive developments included a successful training conducted with government representatives on the Inter-American system of Human Rights and its procedures for processing petitions, and prospects for further initiatives with the OAS Special Mission to conduct training for nongovernmental organizations with the aim to further enhance civil society's engagement with the inter-American human rights system.

59. Notwithstanding these advances, the situation in Haiti remains extremely disconcerting in numerous areas, including mounting insecurity, the weak state of the justice system, and the continued denial of fundamental social and economic rights to the Haitian population. As the Commission observed above, these problems are largely interconnected. The extreme situation of insecurity has been exacerbated by the state of abject poverty and the polarized political environment within which the majority of the population is living, and the absence of an effective system of justice to prevent, investigate and prosecute crimes and human rights violations has led to widespread impunity and further perpetuates the cycle of violence in the country. Accordingly, any effective resolution to the difficulties in Haiti must acknowledge and address the multifaceted and interrelated nature of shortfalls in political and civil rights as well as economic, social and cultural rights through, for example, the provision of immediate social and economic assistance and institutional reforms necessary to improve the living conditions of Haitians, as well as urgent measures to address immediate deficiencies in the administration of justice. This in turn requires a concerted effort on the part of the government and the international community to identify and prioritize these problems and develop and implement the strategies necessary to take responsibility for and address those problems.

60. In light of the mounting violence and the prevalence of armed groups in the country, the Commission commends the creation of the National Commission for Disarmament, Demobilization and Reintegration and encourages the implementation of a comprehensive disarmament program as soon as possible, in order to secure the lives and physical integrity of Haitians, and create a safe environment for the electoral period in Haiti, which has already begun with the launching of voter registration in April 2005. It is also apparent that additional proactive and effectively coordinated efforts on the part of the Haitian National Police and MINUSTAH forces are necessary to exercise control over many parts of the country and guarantee the security of the

population. This is particularly crucial in gang-controlled areas of Port-au-Prince such as Cite Soleil where women and children have been especially victimized by the uncontrolled crime and violence.

61. Furthermore, the Commission encourages the pursuit and implementation of the National Dialogue process that was recently launched by the President of the Republic of Haiti. The Commission strongly believes that national reconciliation is necessary to address the deep-seated political divisions in Haiti and that the National Dialogue is one mechanism with the potential to bring various sectors to the table and to discuss national priorities and agendas openly with the aim to reaching a consensus on how to begin to address these concerns now as well as to identify a national strategy for addressing Haiti's structural problems in the future. In this connection, the Commission encourages all actors to participate in the National Dialogue process in order for it to successfully achieve its mandate.

62. In relation to the administration of justice, urgent and extensive reforms are necessary in order to provide the police and the courts in Haiti with the capacity to deliver effective and impartial justice to the population. These efforts are unlikely to succeed without additional and targeted resources from international donors as well as enhanced cooperation between the Haitian government and the international community. In particular, urgent measures must be taken to increase the number of trained police on the ground in all regions of the country, and to address the situation of prolonged pretrial detention in Haiti's prisons and detention centers, by expediting investigation processes and bringing detainees before a judge as required under Haiti's Constitution and the American Convention on Human Rights.

63. In the area of economic, social and cultural rights, the Commission encourages Member States of the OAS and others in the international community, in cooperation with the Haitian government, to make every effort to ensure the funds and other resources pledged to Haiti are delivered and distributed on an urgent basis through projects that address the most immediate needs of the Haitian people in the areas of health care, education and job training and creation. It is also important for Haitian authorities and international organizations and agencies to begin designing and implementing a comprehensive plan for development that will build national capacity and lead to self-sufficiency for Haiti in the longer term.

64. In conclusion, the Commission notes with concern its perception that the current government in Haiti is taking an increasingly narrow view of its mandate. In particular, the government appears to be increasingly preoccupied with ensuring that elections take place in the fall of 2005 as scheduled. While the Commission shares the view that full, free and fair elections are essential in order for the people of Haiti themselves to decide the future course of their country, it is also important to ensure that other essential responsibilities of the government are not disregarded or sacrificed in the process. The Commission appreciates the difficulties in time and resources faced by the present government. At the same time, this should not lead the government to construe its mandate in an unduly restrictive manner. Rather, in light of the fact that the present government does not face the prospect of re-election, it is in a unique position to embark upon significant and meaningful changes in several crucial areas, including fundamental reforms to the justice system and ensuring the means to deliver basic social and economic services to the population. The Commission therefore encourages the government of Haiti to take a broader and more proactive approach to the execution of its responsibilities in the following months, to address several of the most immediate problems faced by the Haitian people and to develop a constructive program for reform that can be built upon by a new government when it is elected.