

**Republic of Haiti**  
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**Criminal Justice**

**Submitted By:**

Alternative Chance  
Center for Constitutional Rights  
Conférence des universitaires pour la défense des droits et de la liberté  
LAMP for Haiti Foundation

**Endorsed By:**

Bureau des Avocats Internationaux  
Institute for Justice & Democracy in Haiti  
Link Haiti, Inc.  
Mennonite Central Committee (MCC) Haiti  
Paloma Institute  
UC Davis Immigration Law Clinic  
University of Miami School of Law, Human Rights Clinic  
UnityAyiti

## **I. EXECUTIVE SUMMARY**

1. Haiti's criminal justice system routinely violates basic human rights and fails to comply with protections that exist under Haitian and international law. Haiti's prison conditions rank among the worst in the Western Hemisphere;<sup>i</sup> prisons and detention centers are overcrowded, poorly maintained and unsanitary, periodically lacking in food and water as well as basic medical services and medical isolation units for contagious patients.<sup>ii</sup> Over 80% of prisoners have not been convicted of a crime and are held in illegal pretrial detention for more than a year on average, and over three years in some prisons. The conditions fall far below minimum standards and often amount to torture or cruel, inhumane and degrading (CID) treatment or punishment.<sup>iii</sup> In certain cases, especially following the cholera outbreak, the conditions have resulted in an arbitrary deprivation of life.

2. Following the January 12, 2010 earthquake that devastated Haiti, the government has suffered from a diminished capacity to undertake systemic reforms of the criminal justice systems. Certain basic rights such as the right to life and the right to be free from torture and other forms of CID treatment and punishment are non-derogable, however, and must be protected even in a situation of public emergency, such as after a natural disaster. Persons deprived of their liberty are especially vulnerable to contagious illness and other public health concerns, as evidenced by the spread of cholera in the prisons, because of their lack of freedom of movement and dependency on the state to provide food, potable water, sanitation, and healthcare. Because of this vulnerability, the State has a heightened responsibility to ensure that minimum conditions in prisons are met.

3. In order to bring its criminal justice systems in line with its human rights obligations, Haiti must take the following measures to address pervasive issues and practices that violate or undermine applicable human rights norms and standards:

- Eliminate practices that amount to torture and CID treatment and punishment;
- Take measures to reduce the prison population and overcrowding;
- Improve detention center conditions to bring them into conformance with the Minimum Standards for Treatment of Prisoners.

## **II. HAITI'S NORMATIVE & INSTITUTIONAL FRAMEWORK**

4. Haiti's Constitution of 1987 requires the Government of Haiti to protect the rights of individuals deprived of their liberty. Persons may not be arbitrarily arrested, prosecuted or detained.<sup>iv</sup> If arrested, they may only be held 48 hours before seeing a judge, who must rule on the legality of their arrest.<sup>v</sup> If their arrest is deemed illegal, they must be released immediately; if their arrest is deemed legal and they are detained, individuals awaiting trial must be held separately from individuals serving sentence.<sup>vi</sup> The Constitution also provides that prisons should be operated in accordance with standards that respect human dignity,<sup>vii</sup> and establishes that the State has the absolute obligation to guarantee the right to life, health, and respect of the human person for all citizens without distinction, in conformity with the Universal Declaration of Human Rights (UDHR).<sup>viii</sup>

5. International human rights law and norms also establish minimum standards that Haiti must implement throughout the criminal justice system. The UDHR sets forth minimum standards, and these are reiterated in treaties to which Haiti is a party, including the International Covenant on Civil and Political Rights (ICCPR), the Charter of the Organization of the American States (OAS Charter), and the American Convention on Human Rights (ACHR). Haiti's treaty obligations are self-executing and once ratified, become a part of the legislation of the country and abrogate any conflicting laws.<sup>ix</sup>

6. Specifically, international law prohibits arbitrary detention and arrest and sets out minimum procedural safeguards that must follow an arrest, including a prompt hearing before a judge.<sup>x</sup> When an individual is deprived of liberty, the State must ensure that such persons are treated with "humanity and respect for the inherent dignity of the human person."<sup>xi</sup> This imposes on States "a positive obligation towards persons who are particularly vulnerable because of their status as persons deprived of liberty."<sup>xii</sup> The application of this rule, as a minimum, cannot be dependent on the material resources available in the State.<sup>xiii</sup> Furthermore, conditions that amount to CID treatment or punishment are strictly forbidden; the right to be free from such treatment is absolute and non-derogable even in situations of public emergency.<sup>xiv</sup>

7. International law also protects the right to life, health and basic sanitation for all persons,<sup>xv</sup> and recognizes that these rights are retained by persons who are deprived of liberty by the State.<sup>xvi</sup> The U.N. Committee on Human Rights has emphasized that prisoners may not ". . . be subjected to any hardship or constraint other than that resulting from the deprivation of liberty. . . . Persons deprived of their liberty enjoy all the rights set forth in the [ICCPR], subject to the restrictions that are unavoidable in a closed environment."<sup>xvii</sup>

8. Despite the existence of adequate protections in the law books for persons in detention, Haiti critically lacks implementation and enforcement of these laws. In reality, criminal justice procedures and conditions in prisons fall far below minimum standards required by national and international law. This finding has been repeatedly reported by a number of international human rights monitors, including the U.N. Human Rights Council's Independent Expert on the Situation of Human Rights in Haiti, Michel Forst,<sup>xviii</sup> and the Inter-American Court of Human Rights (IACtHR).<sup>xix</sup>

9. The *Ministère de la Justice et de la Sécurité Publique* is responsible for the administration of justice in Haiti, including developing policy and managing the operation of the courts. It is tasked with addressing shortcomings in the system, including reducing prolonged pretrial detention, preventing and responding to corruption and money laundering, constructing new detention centers, and realizing respect for human rights in the prisons.<sup>xx</sup> Responsibility for management of the prisons falls under the *Direction l'Administration Pénitentiaire* (DAP), an agency under the Ministry of Justice. Its mission is to manage detention centers in a manner that is safe, humane, and that seeks to rehabilitate the offender.<sup>xxi</sup>

10. Past investments in judicial sector reform have been insufficient and frequently halted. Despite the parliament passing laws on judicial reform in 2007, the Independent Expert on Haiti concluded during his 2011 visit that reform of the justice system, including the independence of the judiciary, has not been implemented for several years.<sup>xxii</sup> In 2009, the Haitian government sought to undertake reform that saw some success, including the installation of vetting

procedures for police officers; the inauguration of the *École de la Magistrature*, a training facility for judges; and a raise in salaries for judicial officers.<sup>xxiii</sup> These seeds of reform were interrupted by the January 2010 earthquake, however, which destroyed or severely damaged several detention facilities and judicial institutions, including courthouses and the Ministry of Justice itself, and created new urgent demands on the Government. In March 2010, one observer found “police and prisons thrown back into reliance on rough justice, the courts closed, and the new training facility commandeered to house other government functions.”<sup>xxivxxv</sup>

11. As Haiti rebuilds after the earthquake, it has a critical opportunity to rebuild the justice system to respects human rights. In the Action Plan for Recovery and Development, Haiti’s roadmap for reconstruction, the Government identified better administration of justice as a priority, including the observation of human rights in the criminal justice system.<sup>xxvi</sup> The Action Plan contains plans to reconstruct or develop damaged and destroyed correctional facilities by 2015 in order to reduce the density and allow separate detention of men and women, adults and juveniles, accused and convicted.<sup>xxvii</sup> The Government has identified three stages for rebuilding the prison system; currently, the process is scheduled to be in the third ‘normalization’ phase (December 2010-December 2011), which includes restructuring and reorganizing system databases to ensure that prisoners receive a fair trial and sentence and creating a model correctional system that respects human rights.<sup>xxviii</sup> Little has been done to realize these ambitious goals, however, in part because the international community has committed limited funding to rebuilding the corrections system,<sup>xxix</sup> and in part due to a lack of political leadership.

### **III. IMPLEMENTATION: PROMOTION AND PROTECTION OF HUMAN RIGHTS IN HAITI**

#### **A. Torture and other Cruel, Inhuman or Degrading Treatment or Punishment**

12. Haitian and international law prohibit torture and other CID treatment or punishment.<sup>xxx</sup> Human rights treaties emphasize that the right to be free from such treatment or punishment is non-derogable, and cannot be violated even in a situation of public emergency.<sup>xxxi</sup> Accordingly, Haiti has a duty to prevent, prohibit, and punish acts of torture and CID treatment or punishment and to ensure that victims can obtain redress.<sup>xxxii</sup>

13. Government agents routinely subject Haiti’s prisoners to torture or CID treatment or punishment.<sup>xxxiii</sup> When interviewed, 40% of prisoners in a May 2009 census in three prisons claimed that they were subject to torture or other abusive treatment by government agents.<sup>xxxiv</sup> These high numbers of self-reports combined with several established cases of torture by government agents indicate that custodial torture is regular and frequent in Haiti.

14. Despite having laws that prohibits torture and other CID treatment or punishment, government agents continue to employ such practices with impunity.<sup>xxxv</sup> Frequent forms of torture in police holding cells include beatings with hands, feet and common items like sticks or bottles, and weapons including pistols, rifles, and nightsticks.<sup>xxxvi</sup> Reports document that the physical consequences of such behavior include scars, pain, internal injuries, vision loss, dental problems, and difficulty walking, sleeping, and performing other daily activities.<sup>xxxvii</sup>

15. The abuse extends beyond traditional notions of torture. Independent Expert Michael Forst has repeatedly found that the conditions in Haiti’s prisons are tantamount to “cruel, inhuman or degrading treatment because of overcrowding and poor sanitation.”<sup>xxxviii</sup>

## **B. Prison and Detention Center Conditions**

16. The conditions in Haiti's prisons are some of the worst in the world.<sup>xxxix</sup> Prisoners have limited access to adequate food, clean water, regular exercise, and proper medical treatment.<sup>xl</sup> Haitian law provides that prisons must be operated in accordance with standards reflecting human dignity.<sup>xli</sup> UN minimum standards provide that prisons, especially sleeping accommodations, "shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation."<sup>xlii</sup> Haitian prisons fall short of ensuring human dignity or meeting basic international standards.

17. On May 6, 2008, the IACtHR issued its decision in *Yvon Neptune v. Haiti*, the only case the Court has decided on Haiti.<sup>xliii</sup> The Court ordered the government to develop a plan to bring its prisons, which it found to be "inhumane," in line with minimum international standards within two years. Haiti accepted the jurisdiction of the IACtHR in March 1998, and as a result, the Court's decision is legally binding. To date, little has been done to comply with the Court's order. The government did not develop a plan within the two-year period set by the Court, nor did it pay compensation to the victim or even publish the decision as required by the Court.

### **1. Extreme Overcrowding**

18. Extreme overcrowding characterizes prisons across Haiti. According to the U.N. Rule of Law Indicator Project, "the least crowded prison, in Les Coteaux, is at 230% of official capacity and the most crowded facility (Hinche) holds more than ten times the number it was designed to hold."<sup>xliv</sup> Prior to the earthquake, some 8,500 persons were reportedly being held in detention facilities designed to hold just 2,450 inmates by most international standards.<sup>xlv</sup> Damage to prison facilities since the earthquake has limited cell space and worsened prison conditions even further.<sup>xlvi</sup> The International Committee of the Red Cross (ICRC) indicates that in crisis situations, prisoners should be allotted 2 square meters per person *at an absolute minimum*. Yet the average living space per prisoner was 0.44m<sup>2</sup> before the earthquake, reduced to 0.30m<sup>2</sup> after the earthquake.<sup>xlvii</sup> This means that prisoners must take turns sleeping on the floor,<sup>xlviii</sup> and many are left standing while others attempt to fashion hammocks using cloth scraps to suspend themselves closer to the cell's high windows in order to get more light and air.<sup>xlix</sup> These are the prime spots in the prison, and those who have them must fight to keep the space, or pay "rent" to the strongman in the cell.<sup>1</sup>

### **2. Lack of Healthcare & Sanitation**

19. Hygiene and healthcare in the prisons are generally poor, resulting in violations of the right to health and in some cases, the right to life. Prison facilities are rodent-infested, unlit, and poorly ventilated,<sup>li</sup> with temperatures reaching as high as 105 degrees.<sup>lii</sup> Additionally, prisoners lack access to water, food, toilets, bathing facilities, clean clothes, beds, and medical care.<sup>liii</sup> In the National Penitentiary, latrines overflow and prisoners defecate in plastic bags and toss them out of the windows of their cells because they have no place to do so inside.<sup>liv</sup>

20. The crowded conditions overwhelm limited resources, and access to doctors, nurses and other qualified personnel is inadequate and restricted, contributing to elevated rates of diseases

such as beriberi, dysentery, tuberculosis, malaria, and HIV/AIDS.<sup>lv</sup> HIV and tuberculosis are particularly rampant, though exact prevalence rates are unavailable. Infirmaries lack adequate ability to test new detainees for infectious diseases, creating a grave health threat with regards to tuberculosis and other infectious disease as one infected prisoner poses a serious health risk to the prison population.<sup>lvi</sup> The vulnerability to disease is compounded by the fact that prisoners suffer from severe malnutrition.<sup>lvii</sup> In a survey conducted in a Haitian prison in 2008, it was reported that the prison population only consumed one meal a day, ranging from 600-1,200 calories.<sup>lviii</sup>

21. The situation is especially acute following the outbreak of cholera in October 2010. Cholera is a water-borne illness that is easily preventable and treatable through basic sanitation, water treatment, and rapid rehydration. While the spread of cholera in the prisons could be prevented through simple measures such as provision of treated water and improved sanitation practices, aid workers have reported that even after the outbreak, prisoners were given untreated water for drinking and bathing, and by the end of November 2010, at least 29 people had died from cholera-like symptoms in detention.<sup>lix</sup> Prisoners continue to have limited access to soap and latrines – in Saint Marc, for example, prisoners defecate in buckets in their cells and the buckets are often shared among prisoners. During a visit on November 20, 2010, seven prisoners were exhibiting acute symptoms and were quarantined in a separate cell where they received medical care from a designated caregiver, a female prisoner. In Hinche, visitors are asked to rinse hands and feet in chlorinated water before exiting the prison to protect them against contraction of cholera, but are not asked to observe the same practices before entering to protect the prisoners from outside contamination.<sup>lx</sup>

### **3. Lack of Security**

22. Due in part to overcrowding, facilities are also so under-protected and under-supervised that in order to reduce the possibility of disorder, DAP limits time out of cells to 15-30 minutes per day.<sup>lxi</sup> Prisoners are vulnerable to massive uprisings, corrupt guards who lack training, invasions from outside the prison, and regular violence among inmates. In the National Penitentiary, the prison was so insecure and crowded that some inmates preferred the punishment cell, roughly four feet tall without the ability to stand, in order to be safe from gangs or to have a place to lie down.<sup>lxii</sup>

23. The earthquake worsened conditions in the prisons and created increased security concerns. On January 19, 2010, Haitian National Police (HNP) responded violently to a prison uprising in Les Cayes,<sup>lxiii</sup> where the 400 detainees began to riot in protest of worsening conditions. U.N. and HNP officers circled the prison, and HNP officers stormed it to prevent a massive escape.<sup>lxiv</sup> At least 12 inmates died and up to 40 were wounded.<sup>lxv</sup> On July 26, 2010, Haiti's government, with U.N. support, established an independent commission of inquiry into the HNP's response, which found that the officers opened fire “deliberately and without justification,” using “inappropriate, abusive and disproportionate force.”<sup>lxvi</sup> The report recommended an official and public condemnation of the “grave violations of human rights,” but the Government has yet to issue any such statements or officially release the report.<sup>lxvii</sup>

### **C. Prolonged Pretrial Detention**

24. Between 80-90% of all prisoners in Haiti have not been tried.<sup>lxviii</sup> Under Haitian law,

defendants are entitled to a trial within four months, or they have the right to contest their detention in court.<sup>lxxix</sup> In reality, defendants spend an average of 408 days in pretrial detention.<sup>lxx</sup> The backlog is worsening and has become increasingly severe after earthquake, which the Government estimates affected 80 percent of the justice sector, including the widespread loss of judicial files and the destruction of 49 judicial buildings.<sup>lxxi</sup> This has further diminished judicial activity and drawn out waiting times.<sup>lxxii</sup> Some prisoners are held longer than the maximum allowable sentence for their offense, whether convicted or in prolonged pretrial detention.<sup>lxxiii</sup> Others remain incarcerated even after they have been acquitted of all charges.<sup>lxxiv</sup> For some, the long wait in crowded, unsanitary conditions converts pretrial detention into a death sentence due to infectious disease, violence, or malnutrition.<sup>lxxv</sup>

25. Corruption in the judiciary is perhaps the most significant cause of prolonged pretrial detention. Haiti's prisons are at the center of a nationwide bribery racket within the justice system in which prosecutors, defense attorneys and judges extort money.<sup>lxxvi</sup> The result of this collusion is that those with the financial means to hire an attorney and bribe officials are relieved of all criminal charges, while those without financial means receive increased pretrial detention with its further exposure to mistreatment and disease.<sup>lxxvii</sup> The corruption stems from the fact that judges and staff are underpaid and salaries are insufficient to cover basic living expenses, so they resort to other forms of money making, which may include unofficial attempts to keep pretrial detainees longer than necessary. Furthermore, lack of training impedes the work of courts, and with little opportunity for professional development, political pressures result in serious problems of corruption for which there are no effective accountability mechanisms.<sup>lxxviii</sup>

26. Prolonged pretrial detention is also partly a result of resource and infrastructural deficiencies, which contribute to case backlogs, prolonged periods of detention, and the systematic denial of a trial within a reasonable period of time.<sup>lxxix</sup> Haiti's legal system can handle an estimated 160 to 320 trials a year; in 2007, there were 4,642 detainees awaiting trial.<sup>lxxx</sup> In 2009, the country had only 109 prosecutors and assistant prosecutors.<sup>lxxxii</sup> Judges at all levels receive minimal logistical support and the courts are notoriously under-resourced.<sup>lxxxii</sup> The Rule of Law Indicators found that only some court administrators kept regular track of their pending and completed cases.<sup>lxxxiii</sup> Poor case management and persistent case backlogs translate into prolonged periods of pretrial detention for the majority of arrestees. Often, the result is the denial of an arrestee's right to be tried without undue delay.<sup>lxxxiv</sup> Each of the 15 first-instance jurisdictions in Haiti are required by law to hold at least two *assises*, or criminal court sessions, per year, yet many are unable to do even this.

27. Pursuant to the recommendation in 2006 of the then Independent Expert on Haiti, Louis Joinet, Haiti established a Commission on Preventive Detention in 2008 to compile and update a list of cases of persons being held in pretrial detention where there is obviously an abnormal delay, so that the most pressing cases, or those involving the most flagrant violations of the law, could be dealt with as a matter of priority.<sup>lxxxv</sup> This program has not developed and there is no evidence to suggest that reductions in prolonged pretrial detentions have been achieved.

28. While an overwhelming majority of Haitians held in prisons have thus never been convicted of a crime, some of Haiti's most notorious human rights violators have enjoyed full impunity. The return of former dictator Jean-Claude Duvalier to Haiti presents a rare opportunity for the Government to seek justice and fulfill its duty to investigate and prosecute the grave

human rights violations perpetrated under Duvalier's regime.<sup>lxxxvi</sup> In January 2011, the Prosecutor's office brought charges against Duvalier for financial and political violence crimes and the *Juge d'instruction* is currently investigating these charges. The U.N. High Commissioner for Human Rights Navi Pillay has offered technical assistance to the prosecution and reminded the Government that "Haiti has an obligation to investigate the well-documented serious human rights violations that occurred during the rule of Mr. Duvalier, and to prosecute those responsible for them."<sup>lxxxvii</sup> During his February 2011 visit to Haiti, Independent Expert Michel Forst also emphasized that the fight against impunity must be prioritized.<sup>lxxxviii</sup>

#### **D. Treatment of Women and Children**

29. Haiti has only one prison designated exclusively for women offenders, apart from this, women are detained in separate cells in mixed-gender facilities. The women's prison was designed to house approximately 30 inmates, however, up to 300 are typically confined in the space. As of February 22, 2011, there were 255 prisoners in the facility, of them only 28 had been convicted. Despite Haiti's ratification of international treaties requiring attention to and consideration of women's unique health statuses, women are incarcerated indiscriminately, and pregnant and menstruating women are confined in the same clustered unsanitary conditions as described elsewhere in this report. This causes pregnant women to run a high risk of miscarriage. When babies are carried full-term, women give birth in a small makeshift clinic inside the prison, without access to emergency medical care in a room ill equipped to handle difficult births. On average, one baby is born every month in the prison. Mothers can keep their newborn babies in the prison for up to three months, after which the baby is turned over to the mothers' family. If the woman does not have a family, the baby is transferred to institutional care until the mother is released. Despite their status as new mothers, these women's cases are not expedited, and they may spend years behind bars before they are able to see children.

30. Juveniles, including young children, are held in detention in the same conditions described above. Although Haitian law prohibits the detention of children younger than 16, human rights investigations have found children below this age held in prisons.<sup>lxxxix</sup> Minors are generally not segregated from the adult population, as required by the ACHR.<sup>xc</sup> Haiti's only juvenile detention facility, located in Port-au-Prince, was destroyed in the earthquake. Minors also experience extreme delays in pretrial detention, as the country only has one operational juvenile court that specializes in juvenile justice matters.<sup>xc</sup>

#### **E. Treatment of Deportees**

31. The majority of criminal deportees forcibly returned to Haiti, including those deported from the United States, are immediately detained in police holding cells in Port-au-Prince.<sup>xcii</sup> Haitian nationals may be deported from the U.S. after criminal convictions, including for even minor offenses such driving on an expired license, and after serving their sentences in the U.S.<sup>xciii</sup>

32. Criminal deportees are detained in inhumane conditions<sup>xciv</sup>— in January 2011, deportees reported being held in mosquito-infested cells covered with vomit and feces, without ventilation, working toilets, or toilet paper.<sup>xcv</sup> The police station did not provide food, potable water, beds, hygienic products, or medical care, and deportees had to rely on relatives, if any, to provide basic

necessities.<sup>xcvi</sup> A U.S. immigration judge has found that conditions for criminal deportees in Haiti have progressively worsened since 2002,<sup>xcvii</sup> and that authorities intended to cause deportees pain and suffering because they had made no improvements to these conditions.<sup>xcviii</sup> Several unpublished U.S. Board of Immigration Appeals and Immigration Judge decisions have also held that deportees with severe medical issues demonstrated that Haitian authorities intended to inflict severe pain and suffering because they intentionally detained those individuals knowing that they would not get the medical attention needed to survive.<sup>xcix</sup>

33. Deportations to Haiti from the U.S. were temporarily suspended following the earthquake, but they resumed in January 2011.<sup>c</sup> At the time of submission, 27 Haitians have been deported, and it is estimated that 700-2,000 more await deportation, defying the IACHR's public statement calling on the U.S. not to deport Haitians who suffer from illness or have family ties in the U.S. until conditions in Haiti improve.<sup>ci</sup> The resumption of deportations at this time places deportees in grave danger, exposes them to conditions that amount to torture and CID treatment and punishment, and further diminishes the capacity of the Haitian government to attend to needs in the already severely overcrowded prisons and holding cells. One deportee among the group deported on January 20, 2011 has already died; he became ill while in police detention with cholera-like symptoms and died on January 29, 2011.<sup>cii</sup> Despite being visibly ill and unable to stand due to vomiting and diarrhea, he was never provided any medical care despite requests made by him and other deportees held with him. His lawyer and fiancé were not given any information that he was sick despite repeated efforts to inquire about his wellbeing. In spite of this, the U.S. government has made no move to suspend deportations again.

34. Mentally ill deportees should receive heightened care and protection, but instead they are often mistreated. The U.S. is supposed to transfer two weeks worth of medication for deportees who are mentally ill and were on medications while detained in the U.S., however, in many instances, an insufficient supply of medications is transferred, if any at all, or Haitian police seize the transferred medications and withhold them from the deportees.<sup>ciii</sup> When the deportees do not receive the medication that regularizes their behavior, they may act out and display erratic behavior, which makes them more susceptible to severe police brutality.<sup>civ</sup>

## **F. Denial of a Fair Public Trial**

### **1. Unfair Trial Procedures**

35. Although a fair trial is a fundamental component of due process recognized under Haitian law, as well as in the ICCPR<sup>cv</sup> and the ACHR,<sup>cvi</sup> numerous factors inhibit the widespread exercise of the right to a fair trial. Among the procedural guarantees established under international law is the defendant's right to have the free assistance of an interpreter if she cannot understand or speak the language used in court. Both Creole and French are Haiti's official languages.<sup>cvi</sup> French is only spoken by 20-40% of Haitians, however, yet legal proceedings at the trial and appellate courts are conducted only in French. Despite this, translation services are almost never provided in the courts, except when a non-French-speaker is being questioned.<sup>cvi</sup> Consequently, many criminal defendants cannot understand or meaningfully engage with the legal proceedings being conducted against them.

36. The ICCPR and ACHR also guarantee the right of defendants to bring in witnesses that may shed light on the facts of the case, and to examine witnesses that are present in court. Many defendants in the Haitian justice system cannot challenge the state's witnesses, call their own witnesses, or otherwise

present exculpatory evidence as a result of the language barrier. This effectively inhibits many defendants' ability to mount a meaningful defense.

## **2. Lack of Defense Counsel**

37. Most criminal defendants cannot afford a lawyer and therefore receive inadequate representation.<sup>cxix</sup> The IACHR and the IACtHR have observed that in criminal proceedings and those relating to rights and obligations of a civil, labor, fiscal or any other nature, an indigent has the right to legal counsel free of charge where such assistance is necessary for a fair hearing.<sup>cx</sup> The availability and quality of legal pro bono services in Haiti is substantially inadequate. The Bar Association organizes free legal representation for all defendants at the *assises*, but the lawyers are often inexperienced, and are frequently students who have yet to complete their law degree.<sup>cxii</sup> Despite the minimum guarantee of having adequate time and means to prepare a defense,<sup>cxiii</sup> reports show that defense attorneys are often given mere days to prepare a case, including complex felony cases such as murder trials.<sup>cxiii</sup>

## **3. Improper Supreme Court Appointments**

38. Unlawful appointments and removals of judges and Supreme Court justices further undermines the legitimacy of Haiti's judicial system and the right to a fair trial. In December 2005, then Prime Minister Gerard Latortue illegally removed five members of the *Cour de cassation*. This act directly contradicted the Constitution, which states that these Justices are appointed for life and can only be removed due to mental incapacity or abuse of authority.<sup>cxiv</sup> The Constitution also establishes procedures for the nomination and appointment of Justices, but these procedures were ignored when the Prime Minister installed five justices of his own choosing.<sup>cxv</sup> As a result, over half of the justices sitting on the *Cour de cassation*—the country's ultimate appellate body and final arbiter on legal issues, are illegitimate. Additionally, the Constitution provides that judges of the *Cour d'appel* and *Cour de premiere instance* are appointed from a list submitted by the *Assemblée departementale* concerned, but this is not followed in practice.<sup>cxvi</sup>

# **IV. CONCLUDING RECOMMENDATIONS**

## **A. GENERAL RECOMMENDATIONS**

1. Comply fully with international treaty obligations contained in the ICCPR, ACHR, CEDAW, and CRC;
2. Comply with the IACtHR's decision in *Yvon Neptune v. Haiti*;
3. Ratify the Convention Against Torture and Other Forms of Cruel, Inhuman, or Degrading Treatment or Punishment, the First and Second Optional Protocols to the ICCPR, and the International Covenant on Economic and Social Rights.

## **B. ISSUE-SPECIFIC RECOMMENDATIONS**

4. Take all necessary steps to eliminate torture and other CID treatment and punishment in prisons and detention facilities;
5. Take all necessary measures to reduce the duration of pretrial detention to conform to international standards and address problem of overcrowding;
  - a. Fight corruption in the judiciary through increased oversight and training of judges and other officials;
  - b. Reopen the Commission on Preventive Detention to address particularly severe cases of prolonged pretrial detention;
  - c. Introduce simplified procedures with respect to offences of persons currently

being held in pretrial detention in order to free the judicial system to deal with the most serious cases, in accordance with the recommendation by the Independent Expert on Haiti (A/HRC/14/44/Add.1);

6. Improve conditions of detention to ensure compliance with the Minimum Standard of Treatment of Prisoners;
  - a. Provide prisoners with clean, potable water, adequate food, access to latrines and ensure availability of soap;
  - b. Provide access to medical care in accordance with DAP guidelines of one professional caregiver per detention facility;
  - c. Invest in construction of new prisons that meet minimum standards with regard to space allocation and access to basic services;
7. Separate detention of men and women, adults and juveniles, accused and convicted;
8. Investigate and prosecute human rights crimes committed under Jean-Claude Duvalier's regime;
9. As increased resources are made available to train police officers and improve their capacity to make arrests, plans for prosecution, defense, magistrates, and prisons need to anticipate the increased demands on these systems that will follow as a result.

## ANNEX I: ENDNOTES

<sup>i</sup> See e.g., Seton Hall Law, *Haiti Rule of Law*, <http://law.shu.edu/ProgramsCenters/PublicIntGovServ/CSJ/Haiti-Rule-of-Law.cfm>.

<sup>ii</sup> Yvon Neptune v. Haiti, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 180 (May 6, 2008).

<sup>iii</sup> U.N. Independent Expert on the Situation of Human Rights in Haiti, *Report of the Independent Expert on the Situation of Human Rights in Haiti*, U.N. Doc. A/HRC/14/44/Add.1 (May 31, 2010) (by Michel Forst) [hereinafter Forst 2010 Report].

<sup>iv</sup> 1987 CONST. art. 24-1.

<sup>v</sup> *Id.* art. 26.

<sup>vi</sup> *Id.* arts. 26-2, 44.

<sup>vii</sup> *Id.* art. 44-1.

<sup>viii</sup> *Id.* art. 19.

<sup>ix</sup> *Id.* art. 276-2.

<sup>x</sup> Universal Declaration of Human Rights art 9, G.A. Res. 217A, at 71, U.N. GAOR, 3d Sess., U.N. Doc. A/810 (Dec. 10, 1948) [hereinafter UDHR]; International Covenant on Civil and Political Rights art. 9, 999 U.N.T.S. 171 (Dec. 16, 1966) [hereinafter ICCPR].

<sup>xi</sup> ICCPR, *supra* note x, art. 10.

<sup>xii</sup> U.N. Human Rights Committee (“HRC”), General Comment No. 21: Replaces General Comment 9 Concerning Humane Treatment of Persons Deprived of Liberty, ¶ 3, U.N. Doc. HRI/GEN/1/Rev.9, 44th Sess. (Apr. 10, 1992).

<sup>xiii</sup> *Id.* ¶ 4.

<sup>xiv</sup> ICCPR, *supra* note x, arts. 4(2), 7; Organization of American States, American Convention on Human Rights art. 5(2), Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123 [hereinafter American Convention]; U.N. HRC, General Comment No. 20: Replaces General Comment No. 7 concerning the prohibition of torture and cruel treatment or punishment (Art. 7), ¶ 3, U.N. Doc. HRI/GEN/1/Rev.1, 44th Sess. (Mar. 10, 1992) [hereinafter HRC, General Comment No. 20].

<sup>xv</sup> The rights to water and sanitation derive from the right to an adequate standard of living and are inextricably related to the right to the highest attainable standard of physical and mental health, as well as the right to life and human dignity.<sup>xv</sup> These rights are protected in treaties to which Haiti is a State Party. See e.g., ICCPR, *supra* note x, art. 6 (right to life and protection from arbitrary deprivation of life); UDHR, *supra* note x, art. 3; American Convention, *supra* note x, art. 5 (“Every person has the right to have his physical, mental, and moral integrity respected.”); Charter of the Organization of American States art. 11, Apr. 30, 1948, 2 U.S.T. 2394, 119 U.N.T.S. 3 [hereinafter OAS Charter] (“Every person has the right to the preservation of his health through sanitary and social measures relating to food, clothing, housing and medical care, to the extent permitted by public and community resources.”). In July 2010, the U.N. General Assembly also recognized the right to safe and clean drinking water and sanitation as a separate human right that is essential for the full enjoyment of life and all human rights, G.A. Res. 64/292, U.N. Doc. A/RES/64/292 (July 28, 2010), and the UN Human Rights Council affirmed the legally binding nature of this right. U.N. Human Rights Council, Human rights and access to safe drinking water and sanitation, U.N. Doc A/HRC/15/L.14 (Sept. 30, 2010).

<sup>xvi</sup> The ‘principle of equivalence’ enjoys broad consensus among international health and human rights instruments and organizations. See e.g., Rick Lines, *From Equivalence of Standards to Equivalence of Objectives: The Entitlement of Prisoners to Health Care Standards Higher Than Those Outside Prisons*, 2:4 INT’L J. PRISONER HEALTH 269 (2006) (citing to the Basic Principles for the Treatment of Prisoners, 1990; World Health Organization, 1993; UNODC/WHO/UNAIDS, 2006; and the Council Of Europe Committee Of Ministers, 2006).

<sup>xvii</sup> See U.N. HRC, General Comment No. 21, *supra* note xii, ¶ 3.

<sup>xviii</sup> Forst 2010 Report, *supra* note iii.

<sup>xix</sup> Yvon Neptune v. Haiti, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 180 (May 6, 2008).

<sup>xx</sup> REPUBLIQUE D’HAITI, LE MINISTÈRE DE LA JUSTICE ET DE LA SÉCURITÉ PUBLIQUE, <http://www.mjsp.gouv.ht/presentation.htm>.

<sup>xxi</sup> REPUBLIQUE D’HAITI, DIRECTION DE L’ADMINISTRATION PÉNITENTIAIRE, MISSION DE L’ADMINISTRATION PÉNITENTIAIRE, [http://dap.gouv.ht/index.php?option=com\\_content&view=article&id=37&Itemid=97](http://dap.gouv.ht/index.php?option=com_content&view=article&id=37&Itemid=97).

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- <sup>xxii</sup> UN Human Rights Expert Urges Presidential Candidates to Fight Impunity, U.N. News Centre, Feb. 24, 2011, <http://www.un.org/apps/news/story.asp?NewsID=37621&Cr=Haiti&Cr1=>
- <sup>xxiii</sup> Christopher Stone, *A New Era for Justice Sector Reform in Haiti* 1 (Harvard Kennedy School, Faculty Research Working Paper Series RWP10-033, 2010).
- <sup>xxiv</sup> *Id.*
- <sup>xxv</sup> Direction de l'Administration Pénitentiaire, <http://dap.gouv.ht/>.
- <sup>xxvi</sup> GOV'T OF THE REPUBLIC OF HAITI, ACTION PLAN FOR NATIONAL RECOVERY & DEVELOPMENT 45 (2010).
- <sup>xxvii</sup> *Id.* at 46.
- <sup>xxviii</sup> Jean Celestin Roland, Dir. Gen., Directive l'Administration Pénitentiaire, Speech at the American Correctional Association Annual Meeting (Aug. 10, 2010); *see also* Luke White, *The Chaos of Haiti's Post-Quake Prison System*, CORRECTIONSONE, Aug. 10, 2010, *available at* <http://www.correctionsone.com/jail-management/articles/2189004-The-chaos-of-Haitis-post-quake-prison-system/>.
- <sup>xxix</sup> Over \$10 billion was pledged to Haiti following the earthquake, but at the time of submission, the only project on justice sector reform approved through the Haiti Reconstruction Fund and Interim Haiti Reconstruction Commission concerns increasing prosecution capacity for financial crimes. *See* Interim Haiti Reconstruction Commission, Projects, <http://www.cirh.ht/sites/ihrc/en/projects/Pages/default.aspx#institutional>. *See also* White, *supra* note xxviii.
- <sup>xxx</sup> UDHR, *supra* note x, art. 5; ICCPR, *supra* note x, art. 7; ACHR, *supra* note x.
- <sup>xxxi</sup> ICCPR, *supra* note x, art. 4(1).
- <sup>xxxii</sup> HRC, General Comment No. 20, *supra* note xx.
- <sup>xxxiii</sup> CODE PÉNAL, pt. II, ch. I, § I, art. 248 (Fr.), *available at* [http://www.oas.org/juridico/mla/fr/hti/fr\\_hti\\_penal.html](http://www.oas.org/juridico/mla/fr/hti/fr_hti_penal.html). Article 248 of the Haitian Penal Code prohibits torture and holds that those who practice torture “will be punished as guilty of murder.” *Id.* Haitian legislative officials also included the description that those who “commit acts of barbarism” would also be “punished as guilty of murder.” *Id.*
- <sup>xxxiv</sup> INST. FOR JUSTICE & DEMOCRACY IN HAITI & BUREAU DES AVOCATS INTERNATIONAUX, HEALTH IN HUMAN RIGHTS IN PRISON PROJECT (2009), *available at* <http://ijdh.org/wordpress/wp-content/uploads/2010/02/HHRPP-Description-Website.pdf> [hereinafter IJDH].
- <sup>xxxv</sup> *See* HUMAN RIGHTS WATCH, WORLD REPORT 2008-HAITI (2008), *available at* <http://www.unhcr.org/refworld/country,,,HTI,4562d94e2,47a87c0446,0.html> (2008).
- <sup>xxxvi</sup> Interview with Mario Joseph, Attorney, Bureau des Avocats Internationaux, in Port-au-Prince, Haiti (July 24, 2009).
- <sup>xxxvii</sup> *Id.*
- <sup>xxxviii</sup> *See e.g.*, Forst 2010 Report, *supra* note iii; U.N. Independent Expert on the Situation of Human Rights in Haiti, *Report of the Independent Expert on the Situation of Human Rights in Haiti*, ¶ 58, U.N. Doc. A/HRC/11/5 (Mar. 26, 2009) (by Michel Forst) [hereinafter Forst 2009 Report].
- <sup>xxxix</sup> Kate Heartfield, *Hell is a Haitian Prison*, THE OTTAWA CITIZEN, June 5, 2009, *available at* [http://www.ijdh.org/articles/article\\_recent\\_news\\_6-10-09.html](http://www.ijdh.org/articles/article_recent_news_6-10-09.html).
- <sup>xl</sup> Forst 2010 Report, *supra* note iii, ¶ 61; Stone, *supra* note xxiii.
- <sup>xli</sup> 1987 CONST. art. 44-1.
- <sup>xlii</sup> First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Geneva, *Standard Minimum Rules for the Treatment of Prisoners*, ¶ 10, (Aug. 30, 1955), *available at* <http://www.unhcr.org/refworld/docid/3ae6b36e8.html>.
- <sup>xliii</sup> INST. FOR JUSTICE & DEMOCRACY IN HAITI, YVON NEPTUNE CASE UPDATE (2009).
- <sup>xliv</sup> Stone, *supra* note xxiii, at 11.
- <sup>xlv</sup> U.S. DEP'T STATE, 2008 COUNTRY REPORT ON HUMAN RIGHTS PRACTICES: HAITI (2009), *available at* <http://www.state.gov/g/drl/rls/hrrpt/2008/wha/119163.htm>.
- <sup>xlvi</sup> HUMAN RIGHTS WATCH, *supra* note xxxv.
- <sup>xlvii</sup> Forst 2010 Report, *supra* note iii, at n.8.
- <sup>xlviii</sup> AMNESTY INT'L, REPORT 2009: HAITI (2009), *available at* <http://thereport.amnesty.org/en/regions/americas/haiti>; *see also* Heartfield, *supra* note 31.
- <sup>xlix</sup> Forst 2010 Report, *supra* note iii.
- <sup>1</sup> Michael Petrou, *Haiti: Are we helping?*, MACLEANS.CA (Apr. 7, 2008, 5:08 PM), [http://www.macleans.ca/canada/national/article.jsp?content=20080402\\_96252\\_96252](http://www.macleans.ca/canada/national/article.jsp?content=20080402_96252_96252).

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<sup>li</sup> ANNE FULLER ET AL., VERA INST. OF JUSTICE, PROLONGED PRETRIAL DETENTION IN HAITI 18 (2002), *available at* [http://haiticci.undg.org/uploads/Vera%20Institute\\_2002.pdf](http://haiticci.undg.org/uploads/Vera%20Institute_2002.pdf) [HEREINAFTER VERA REPORT].

<sup>lii</sup> *August v. Ridge*, 395 F.3d 123, 129 (3d Cir. 2005) (noting that Haitian prisoners are subjected to conditions of extreme deprivation).

<sup>liii</sup> *See generally* Org. of Am. States Inter-Am. Comm’n H.R., Observations of the Inter-American Commission on Human Rights Upon Conclusion of its April 2007 Visit to Haiti, OEA/Ser.L/V/II.131, doc. 36, at 9 (Mar. 2, 2008), *available at* <http://www.cidh.org/pdf%20files/April%202007%20Haiti%20Observations%20ENG.pdf> [hereinafter IACHR Observations]; *see also* INT’L CRISIS GROUP, HAITI: JUSTICE REFORM AND THE SECURITY CRISIS 1 (2007), *available at* <http://www.crisisgroup.org/home/index.cfm?id=4639&CFID=8998549&CFTOKEN=71774861> [hereinafter ICG Report].

<sup>liv</sup> Petrou, *supra* note 41.

<sup>lv</sup> ICG Report, *supra* note 44, at 5.

<sup>lvi</sup> PANOS CARAÏBES, TUBERCULOSE ET SIDA DANS LES PRISONS HAÏTIENNES [HIV and Tuberculosis in Haitian Prisons] (2008), *available at* <http://ijdh.org/wordpress/wp-content/uploads/2010/02/Panos-TB-SIDA.pdf>.

<sup>lvii</sup> Many prisoners receive just one meal a day. *See* Réseau National de Défense des Droits Humains, International Prisoners' Day, Oct. 30, 2005, [http://www.rnddh.org/article.php?id\\_article=246](http://www.rnddh.org/article.php?id_article=246) Additionally, even where two meals are served as required by prison regulations, food “typically lack[s] the minimum nutrients set by international standards.” BUREAU OF CITIZENSHIP & IMMIGRATION SERVS., U.S. DEP’T OF HOMELAND SEC., HAITI: INFORMATION ON CONDITIONS IN HAITIAN PRISONS AND TREATMENT OF CRIMINAL DEPORTEES (2ND RESPONSE), (2002), *available at* <http://www.unhcr.org/refworld/docid/3dec98224.html>

<sup>lviii</sup> PANOS AND CARAIBE, HIV AND TUBERCULOSIS IN HAITIAN PRISONS 38 (2008), *available at* <http://ijdh.org/wordpress/wp-content/uploads/2010/02/Panos-TB-SIDA.pdf>.

<sup>lix</sup> Int’l Comm. of the Red Cross, *Haiti: ICRC Steps Up Work to Fight Cholera* (Nov. 26, 2010), <http://www.icrc.org/eng/resources/documents/update/2010/haiti-update-2010-11-26.htm> (reporting that 22 had died in the National Penitentiary as of November 26, 2010). Human rights lawyers investigating cholera in Hinche, Mirebalais, and Saint Marc reported that two prisoners had died in each prison as of January 2011. One American deportee held in a police holding cell died of cholera on January 29, 2011. Eric N. Marcus, M.D., *Haiti: A Deportation Death Sentence?*, HUFFINGTON POST, March 16, 2011.

<sup>lx</sup> A delegation of lawyers from Bureau des Avocats Internationaux observed these practices on a visit to the Hinche Civil Prison on January 15, 2011.

<sup>lxi</sup> *Id.*

<sup>lxii</sup> *Id.*

<sup>lxiii</sup> Deborah Sontag & Walt Bogdanich, *Escape Attempt Led to Killings of Unarmed Inmates*, N.Y. TIMES, May 22, 2010.

<sup>lxiv</sup> *Id.*

<sup>lxv</sup> *Id.*

<sup>lxvi</sup> Deborah Sontag & Walt Bogdanich, *Report Assails Haiti Officers in Prison Killing*, N.Y. TIMES, Oct. 21, 2010.

<sup>lxvii</sup> *Id.*

<sup>lxviii</sup> The United Nations Development Programme (“UNDP”) states that the pretrial detention rate in Haiti is 83%. However, it is unclear what methods were used to obtain these data and estimates from different sources vary widely. *See* Executive Board of the United Nations Development Programme and of the United Nations Population Fund, Draft country programme document for Haiti (2009–2011), at 7, U.N. Doc. DP/DCP/HTI/1 (July 14, 2008) [hereinafter UNDP Country Programme].

<sup>lxix</sup> Haiti’s Code of Criminal Instruction states: “Le juge instructeur saisi d’une affaire a un délai de deux mois pour en mener l’instruction et communiquer les pièces de l’information au Ministère public et un délai d’un mois pour l’émission de l’ordonnance de clôture, ce, sous peine de prise à partie.” CODE D’INSTRUCTION CRIMINEL, tit. II, art. 7; *see also* VERA REPORT, *supra* note 42, at 8.

<sup>lxx</sup> U.S. AGENCY FOR INT’L DEV., AUDIT OF USAID/HAITI’S JUSTICE PROGRAM 8 (2007), *available at* <http://www.usaid.gov/oig/public/fy07rpts/1-521-07-008-p.pdf> [hereinafter USAID Audit]. (Apr. 24, 2007), 1-32, at 8, *available at*

<sup>lxxi</sup> Government of Haiti, *supra* note xxvi.

<sup>lxxii</sup> *Id.* at 45; *see also* HUMAN RIGHTS WATCH, *supra* note 27.

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- <sup>lxxiii</sup> ORG. OF AM. STATES, INTER-AMERICAN COMM'N ON HUMAN RIGHTS, HAITI: FAILED JUSTICE OR THE RULE OF LAW? CHALLENGES AHEAD FOR HAITI AND THE INTERNATIONAL COMMUNITY 68 (2005), *available at* <http://www.cidh.oas.org/countryrep/HAITI%20ENGLISH7X10%20FINAL.pdf> [hereinafter IACHR Rapporteur Report].
- <sup>lxxiv</sup> U.S. DEP'T OF STATE, 2007 COUNTRY REPORT ON HUMAN RIGHTS PRACTICES: HAITI (2008) *available at* <http://www.state.gov/g/drl/rls/hrrpt/2007/100643.htm>.
- <sup>lxxv</sup> IJDH, *supra* note 26, at 6.
- <sup>lxxvi</sup> *Id.*
- <sup>lxxvii</sup> *Id.*
- <sup>lxxviii</sup> *Id.*
- <sup>lxxix</sup> Interview with Mario Joseph, *supra* note 28.
- <sup>lxxx</sup> USAID Audit, *supra* note 61, at 8.
- <sup>lxxxi</sup> Stone, *supra* note xxiii, at 11.
- <sup>lxxxii</sup> See ICG Report, *supra* note 44, at 4.
- <sup>lxxxiii</sup> Stone, *supra* note xxiii, at 9.
- <sup>lxxxiv</sup> Article 14 of the ICCPR establishes as a minimum guarantee the right to be tried without undue delay. ICCPR, *supra* note x, art. 14.
- <sup>lxxxv</sup> United Nations, Econ. & Soc. Council, Comm. on Human Rights, Advisory Services and Technical Cooperation in the Field of Human Rights: Situation of human rights in Haiti, U.N. Doc. E/CN.4/2006/15 (Jan. 24, 2006) (by Louis Joinet); see also Samuel Baucicaut, *Haiti: Pour combattre la detention preventive prolongée*, LENOUEVLISTE, Dec. 10, 2008, *available at* <http://www.lenouvelliste.com/articles.print/1/65163>.
- <sup>lxxxvi</sup> Office of the High Commissioner for Human Rights, UN Human Rights Chief Offers Haitian Authorities Assistance in Duvalier Case, February 1, 2011, <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10696&LangID=E>
- <sup>lxxxvii</sup> *Id.*
- <sup>lxxxviii</sup> *Haiti: UN Human Rights Expert Urges Presidential Candidates to Fight Impunity*, UN NEWS CENTRE, Feb. 24, 2011, *available at* <http://www.un.org/apps/news/story.asp?NewsID=37621&Cr=Haiti&Cr1>
- <sup>lxxxix</sup> Inst. for Justice & Democracy in Haiti, Health & Human Rights Prison Project, Feb. 2008, 1-21, at 7-12, *available at* <http://www.ijdh.org/pdf/HHRPP.pdf> [hereinafter IJDH Prison Project].
- <sup>xc</sup> *Id.*, ACHR *supra* note x, art. 5(5).
- <sup>xci</sup> Forst 2010 Report, *supra* note iii, at ¶ 14.
- <sup>xcii</sup> Michelle Karshan, Alternative Chance, Illegal Detention and Inhumane Treatment Await Criminal Deportees in Haiti – April 7, 2009, *available at* <http://alternativchance.org/Alternative-Chance-documents-conditions-and-human-rights-concerns-on-behalf-of-criminal-deportees-in-2009-in-letter-to-UNHCR>.
- <sup>xciii</sup> Forst 2010 Report, *supra* note iii.
- <sup>xciv</sup> *Id.*
- <sup>xcv</sup> UNIV. OF MIAMI SCHOOL OF LAW, ET AL., SUBMISSION IN PREPARATION FOR A WORKING MEETING BEFORE THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, ORGANIZATION OF AMERICAN STATES 5 (Mar 26, 2011) (on file with author).
- <sup>xcvi</sup> *Id.*
- <sup>xcvii</sup> *In Matter of J-E-*, 23 I. & N. Dec. 291 (BIA 2002). The Board of Immigration Appeals found that overcrowding, along with inadequate food, water, medical care, and sanitation did not constitute torture under U.S. regulations at 8 C.F.R. § 208.18. *Id.*
- <sup>xcviii</sup> Mary Holper, *Case of Respondents Who Fear Imprisonment as Criminal Deportees to Haiti: Updates in the Law since Matter of J-E-* (Oct. 2, 2008), <http://www.ijdh.org/pdf/headline10-18-08.pdf>.
- <sup>xcix</sup> *Id.*
- <sup>c</sup> UNIV. OF MIAMI, *supra* note xcv, at 2.
- <sup>ci</sup> Press Release, IACHR Urges United States to Suspend Deportations to Haiti, Feb. 4 2011, <http://www.cidh.oas.org/Comunicados/English/2011/6-11eng.htm>.
- <sup>cii</sup> University of Miami School of Law, et al., Submission in Preparation for a Working Meeting Before the Inter-American Commission on Human Rights, Organization of American States 2 (Mar 26, 2011) (on file with author).
- <sup>ciii</sup> *Id.*
- <sup>civ</sup> Karshan, *supra* note 80.

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<sup>cv</sup> Article 14 of the ICCPR states that, “everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.” ICCPR, *supra* note x, art. 14.

<sup>cvi</sup> Inter-American Convention on Human Rights, Article 8, “[e]very person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.” American Convention, *supra* note 12, art 8.

<sup>cvi</sup> 1987 CONST. art. 5.

<sup>cvi</sup> Stone, *supra* note xxiii, at 8-9.

<sup>cix</sup> ICG Report, *supra* note 44, at 5.

<sup>cx</sup> IACHR Rapporteur Report, *supra* note 64, ¶ 140.

<sup>cx</sup> *Id.*

<sup>cxii</sup> Article 14(3)(b) of the ICCPR, *supra* note x, and Article 8(3) of the American Convention, *supra* note 12, establish “adequate time and means for the preparation of his defense.”

<sup>cxiii</sup> Interview with Mario Joseph, *supra* note 28

<sup>cxiv</sup> 1987 CONST. art. 177.

<sup>cxv</sup> Supreme Court Justices are appointed for life. They may only be removed due to permanent mental or physical incapacity. *Id.* art 77.

<sup>cxvi</sup> 1987 Const., art. 175.