

Haiti

Response to Information Request Number:	HTI02001.ASM
Date:	February 12, 2002
Subject:	Haiti: Information on Conditions in Haitian Prisons and Treatment of Criminal Deportees (2nd Response)
From:	INS Resource Information Center
Keywords:	Haiti / Deportation / Detained persons / Detention / Prison conditions

Query:

What are conditions like in Haitian prisons and detention centers? What happens to criminal deportees who are returned to Haiti?

Response:**SUMMARY**

Conditions in Haitian prisons and detention centers are extremely poor, and do not meet either national or international standards fixed by law. On November 15, 2001, a riot erupted in the National Penitentiary after a prison guard beat to death a prisoner who complained about the conditions. Though this was the first documented case involving murder of an inmate, it was preceded by an earlier case in which prison authorities allegedly punished prisoners for complaining about poor treatment. Criminal deportees who are returned to Haiti after completing their sentences in other countries are routinely imprisoned. If a close family member in Haiti agrees to take responsibility, a criminal deportee may be released within three months. Otherwise, deportees are detained for indefinite periods of time. As of early February 2002, 15 deportees had been incarcerated for more than three months. Of these, three had been held for more than 10 months.

PRISON CONDITIONS

Following the return of President Jean-Bertrand Aristide in September 1994, prison conditions in Haiti underwent a brief period of improvement. Following the overthrow of the military government, which ran the prison system as an extension of the armed forces, the Aristide administration created the National Penitentiary Administration (Administration Pénitentiaire Nationale, APENA) in June 1995. Two years later, in April 1997, it was incorporated by presidential decree into the Haitian National Police, as the Direction of Penitentiary Administration (Direction de l'Administration Pénitentiaire, DAP). (Amnesty International 2000)

During President René Préval's administration, however, conditions deteriorated following disputes between the government and the opposition that led to severe cutbacks in international aid. In March 2000, Amnesty International reported that "overcrowding coupled with outdated facilities and lack of resources has created conditions that are far below the level required by the Standard Minimum Rules for the Treatment of Prisoners and in some instances constitute cruel, inhuman and degrading treatment." By early 2001, Jean-Paul Lupien, a Canadian who consults for the UN Development Program (UNDP), proclaimed Haitian prisons the worst he has ever seen and in a state of impending crisis (Colon March 2001).

The Miami Herald reported that inmates in Haitian prisons complained that guards beat them, often with impunity. Citing a study by Lupien, the Herald also reported that prisons and jails did not provide enough food to sustain life, so detainees may slowly starve to death. According to the Herald, "in one month this year [2001], 11 inmates died in the Pénitencier National," some from malnutrition and lack of sunlight, the rest from tuberculosis and AIDS (Colon March 2001).

The prison population nearly tripled between 1995 and August 2000, from 1,500 to 4,219. Yet the prison budget remained fixed at 1995 levels, because of the economic crisis. Overcrowding has meant that juveniles are occasionally mixed with adult prisoners (Amnesty International 2000, US DOS 2001).

Most adult male prisoners are held in the National Penitentiary (Pénitencier National) in Port-au-Prince, which held slightly over half the total prison population in November 2000 (UN Commission on Human Rights 2001). Women and children are generally held in Fort National (Colon April 2001). There is also a system of holding cells in police stations nationwide.

According to former Justice Minister Camille Leblanc, "Prison here is not sweet. We can only afford to feed our prisoners 1,300 calories per day, while someone needs 2,000 a day. When you get into jail here...you don't know how you're going to come out" (Colon Jan 2001).

A team from the International Committee of the Red Cross found that 18 percent of prisoners in the National Penitentiary were suffering from malnutrition (US DOS 2000). Many prisons served only one meal a day, instead of the required two meals. Even where two meals were served, the food typically lacked the minimum nutrients set by international standards. In one month alone – November 2000 – at least five prisoners died of malnutrition (US DOS 2001).

TREATMENT OF DETAINEES

According to the US Department of State,

"Police mistreatment of suspects at both the time of arrest and during detention remains pervasive in all parts of the country. Beating with fists, sticks, and belts is by far the most common form of abuse. However, international organizations documented other forms of mistreatment, such as burning with cigarettes, choking, hooding, and kalot marassa (severe boxing of the ears, which can result in eardrum damage). Those who reported such abuse often had visible injuries consistent with the alleged maltreatment. There were also isolated allegations of torture by electric shock. Mistreatment also takes the form of withholding medical treatment from injured jail inmates. Police almost never are prosecuted for the abuse of detainees" (US DOS 2001).

Conditions in police holding cells are even worse than those in the prisons. According to journalist Mara Delt,

"Conditions in the jails are horrifying. A reporter visiting the holding cell at the Anti-Gang headquarters in downtown Port-au-Prince last week saw a scene reminiscent of a slave ship. In a twelve by fifteen foot cement cell, about forty men sat one behind the other in tight rows, knees to chins. There is no toilet, no sink, and no room to lie down. In the Pétiön-Ville jail, conditions are so crowded that prisoners must devise slings with their clothing to suspend themselves from the ceiling. The cells are sometimes pitch black, the air thick with the stench of human sweat and waste, and temperatures inside can reach 105 degrees Fahrenheit" (Delt 2000).

Michelle Karshan, a Haiti-based US citizen who is founder and executive director of Chans Alternativ (Alternative Chance), an advocacy organization for criminal deportees, wrote the

following description of police holding cells in August 2000:

"A cell approximately 10 ft by 11 ft typically holds 20 people... These holding cells have no toilets and no sinks. Usually those wishing to use a toilet must use a bag to defecate in or they urinate in a communal bucket which stays inside the cell... There is typically no fan available as most police stations have little or no electricity. My estimation is that these cells range in temperature from 80-105 degrees during the day. There is no light provided and in one place I visited the CDs [criminal deportees] are packed in an extremely hot cell which is dark at all times. The CDs are not provided any chairs, beds or mats to sleep on or sit on and are therefore sleeping altogether directly on cement floors... In some of the cells when it rains the cell is flooded and the CDs must get up from the cement floor and use their own clothes to mop up the floor. It is then impossible to sleep given the flooding conditions of the cells... While in these holding cells no food is provided to the CDs and they must depend on a family member to bring them food. Unfortunately, many of the CDs have no relatives in Haiti... While in these holding cells, the CDs are only provided access to tap water. The water is contaminated and is extremely high risk to everyone. Unless boiled for a period of 20 minutes, tap water can typically transmit typhoid fever, hepatitis, parasites, amoebas. The CDs have no possibility to boil water... CDs must wash their clothes (often without soap) and hang them in the cell to dry although there may be no ventilation in the cell. Problems of properly washing clothes contribute to fungus infections or parasite infestations which quickly become open and infected sores... There is no medical care for CDs held in police station holding cells. There are no doctors available to diagnose or treat sick CDs. There is no medicine available to treat CDs in holding cells" (Karshan 2000).

Though Karshan reports that the practice of holding criminal deportees in holding cells was discontinued in early 2001, the description of conditions in the cells continues to be valid (Karshan 2001).

Because of the inability of the Haitian justice system to process cases in a timely manner, an estimated 80 percent of all prison inmates were in pretrial detention in 2000. About a third of them had been held for over a year (HRW Dec 2000, AI 2000). MICIVIH uncovered some truly shocking cases. One man had been held in the National Penitentiary since 1996 awaiting trial for the theft of a portable tape recorder; another had been held just as long on suspicion of stealing a pair of pants (US DOS 2000). On April 24, 2001, Prime Minister Jean-Marie Chérestal ordered the release of some 50 men who had spent more than two years in the National Penitentiary awaiting trial for minor crimes (Colon April 2001). Without the possibility of bail, and with a slow and inefficient judicial system, detainees are often held for years in jail, frequently for offenses that would have only brought maximum sentences of 30 days (Colon March 2001).

Many prisoners continue to be held despite valid orders for their release issued by judges (US DOS 2001).

PRISONER COMPLAINTS AND REPRESSION BY PRISON GUARDS

According to the US Department of State, "International human rights observers and officials admit that there are instances of abuse by prison personnel against prisoners; however, no statistics were available at year's end. Prison officials report that prisoners did not file any official complaints against prison personnel during the year. However, they also admitted that they are aware that abuse occurs because they have heard oral reports from prisoners. However, the prisoners are afraid to file an official complaint because they fear that the abuse may worsen as a result" (US DOS 2001).

Abysmal prison conditions sparked a riot that left five prisoners dead and thirteen wounded on November 15, 2001. According to a report by the National Coalition for Haitian Rights, the riot originated after a prison guard beat to death a prisoner (Max Ambroise) who complained he was hungry. Parts of the prison were set ablaze. Prisoners reported that the CIMO police who restored order made them lie on the ground and stepped on them

with their boots. The investigative team, composed of members of National Coalition for Haitian Rights (NCHR), the Platform of Haitian Human Rights Organizations (POHDH), and the Lawyers' Committee for Respect for Individual Liberties (CARLI), concluded that the riot had been caused by inhumane treatment that violated the internal regulations of the National Penitentiary, which call for a minimum of two balanced meals a day. They also noted a violation of the Constitutional requirement that persons who have merely been accused of crimes not be held with convicted criminals (Coalition Nationale pour les Droits des Haïtiens 2001).

Though the murder of Max Ambroise was the first documented case involving the killing of a prisoner, it was by no means the first case of retaliation by the authorities for complaints about prison conditions. The NCHR investigated conditions following an incident that occurred on 10 September 2000, at the National Penitentiary:

"CIMO (crowd control unit) officers reportedly ruthlessly manhandled protestors in reprisal for acts of violence they allegedly committed against Penitentiary staff. Since those incidents, the deportees have been victims of discriminatory measures such as the cancellation of visits and recreation. Some have reportedly been placed in isolation" (AHP-FBIS 2000).

TREATMENT OF CRIMINAL DEPORTEES

Since March 24, 2000, criminal deportees from other countries who have already served their sentences abroad have been kept in indefinite detention. According to the US Department of State, "criminal deportees who already have served sentences outside the country are kept in jail, with no timetable for their eventual release." Prosecutor August Brutus characterized these detentions as "preventive measures" to keep returning "bandits" from further contributing to the country's high levels of crime (US DOS 2001).

Under the Immigration Reform and Control Act of 1986, the Immigration and Naturalization Service (INS) is required to deport criminal aliens as soon as possible after conviction (Sec. 701). The range of crimes subject to deportation was expanded by Congress in 1996, with passage of the Antiterrorism and Effective Death Penalty Act, to include drug offenses and violation of moral turpitude laws, for crimes "for which a sentence of one year or longer may be imposed" (Sec. 435). That provision applies even when the actual sentence imposed is of a lesser duration, including probation. With the exception of persons convicted of nonviolent crimes who may be released earlier at the discretion of the Attorney General or relevant state authority, alien convicts serve their sentences in US prisons prior to being deported (Sec. 438).

During the Préval administration, deportees were frequently held at police stations around Port-au-Prince, but that practice was discontinued following the return of Jean-Bertrand Aristide to the presidency in early 2001. Deportees are now sent directly to the National Penitentiary, known in French as Pénitencier National (Karshan Nov 2001).

US Deportees are held indefinitely, with the exception of those for whom family or friends are willing to claim responsibility. In those cases, it typically takes about three months to secure their release (Karshan Nov 2001). According to Michelle Karshan, Director of Alternative Chance (Chans Alternativ), an advocacy group for the rights of criminal deportees,

"Criminal deportees are released from the National Penitentiary after a close family member presents proof of identification as well as proof of relationship to the deportee and must swear in writing that they will take responsibility for the deportee upon release and further, that they agree that in the event that the deportee is alleged to commit a crime, and is not apprehended, the responsible person will be subject to arrest until such a time that the deportee is apprehended. In 2001, 4-5 families have been subjected to arrest, with one family member imprisoned for three months until the police were able to arrest the deportee. This deters some families from coming forward or following through with the

process for releasing their loved one from detention when first deported to Haiti."

"I was told that an aunt or uncle is not a 'close' family member and that they would have to produce an affidavit from closer relatives, for example, a mother who may be in the US. There is an expectation that if there is no close family member in Haiti the family abroad should come to Haiti to undergo the process for release. However, given the US immigration laws and the questionable status of many immigrants in the US, more often than not immigrants are unable to travel abroad for fear they will not be able to reenter the US. This coupled with financial restraints and work and parenting obligations makes it impossible for most families to travel to Haiti."

"In the event that the deportee has no family member in Haiti or cannot contact them, they stay indefinitely in detention. They currently have at least 3 criminal deportees who have been in the National Penitentiary for 10 months and at least 1 who has been in the Penitentiary for 9 months because they could not contact family members or do not have family in Haiti...."

"In summary the period of time criminal deportees are detained upon arrival can range from a short period of time to an indefinite period of time depending on the above-mentioned conditions. Currently there are at least 15 criminal deportees who have been detained for more than three months" (Karshan 2002).

Imprisonment of criminal deportees is a violation of international human rights law, according to a UN-appointed independent expert:

"As the independent expert reported to the General Assembly, this situation constitutes a violation of the International Covenant on Civil and Political Rights, article 14, paragraph 7 of which states : 'No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country'" (UN Commission on Human Rights 2001).

Michael Lucius, the police official in charge of reviewing criminal deportees, admits that "it may be illegal detention but what can we do? With all the instability and crime here we can't just turn these guys out on the streets with no visible means of support. It's not as if they are choirboys. We've got to protect our own population" (Ash 2000). Haiti is not alone in fearing the impact of criminal deportees on its precarious social structure. As Trinidad and Tobago Foreign Affairs Minister Ralph Maraj said to Caribbean Week, "If these people are uncontrollable in the large US system, with its level of resources and sophistication, are they likely to be controlled by small Caribbean States?" (Ali 1997). Similarly, former MICIVIH director Colin Granderson pointed out to *onzeWereld* [oneWorld, an international network which promotes human rights and sustainable development] that "On the one hand, the United States is worried about the stability of Haiti, but at the same time they burden the country with derailed people who have no place in Haitian society" (Muskens 1998).

Though some of the returnees are no doubt hardened criminals, others are not. Often unable to speak Creole, with no friends or relatives to provide support, little hope of due process, little or no immunity from Haiti's tropical diseases and parasitic ailments, and forced to endure appalling conditions in jail, they are extraordinarily vulnerable.

--Thomas Christopher O'Toole Sylvain was born in Brooklyn in 1978 to a Haitian father and Irish-American mother. After serving a prison sentence in Florida, he was deported to Haiti, even though he had shown his passport and birth certificate to immigration officials as proof of citizenship. After just a month in Haiti, he became seriously ill. Following a lot of negative publicity in the Miami Herald and the intervention of two members of Congress, Sylvain was allowed to return to the US, where he died shortly after his arrival in July 1999 (Colon May and July 1999).

--Ernest Rampanal, Jr., a 26-year-old from Brooklyn, was sent back to Haiti after completing an eight-year sentence for drug dealing. Upon arrival in July 2000, he was placed in a 10'x10' cell in the anti-gang unit of police headquarters in downtown Port-au-Prince. The cell holds between one and three dozen inmates, and reeks of urine and excrement (Ash 2000).

--Claudette Etienne, 44, fled Haiti more than two decades ago, to escape the terror of the Ton-tons Macoutes under dictator Jean-Claude Duvalier. As a legal resident in Florida, she picked fruit and sold cheap jewelry. She had two young sons, both US citizens, by her common-law husband. Then she was found guilty of a nonviolent drug offense, and sentenced to a year's probation, so that she could continue to care for her children and husband. But on a visit to her probation officer, she was seized and placed in the INS Krome Detention Center, from where she wrote a pleading letter to a deportation officer: "The drug crime was because I needed the money for my children. I made some bad mistakes and I won't do them again. I'm sorry. Please reconsider my custody. I miss my children terribly." Etienne was deported on September 6, 2000. Upon arrival in Port-au-Prince, she was assigned to a police holding cell in the Delmas 62 police substation. Forced to sleep on a cold cement floor and having to drink tap water containing parasites to which she had lost immunity, she became ill with agonizing stomach pains. She died shortly after transfer to a hospital on September 10. Three months after her death, Etienne's corpse remained unclaimed in the morgue, bearing a telltale classification: "family abroad" (Ash 7 Dec 2000, Balmaseda 19 Dec 2000).

--Joseph Mondestin, moved to the United States when he was one year old. He spent the next 41 years in the US, growing up in a Maryland suburb of Washington, DC. Following a drug conviction, he spent six months in jail before being turned over to the INS and deported to Haiti, where he was assigned to an anti-gang holding cell. For Mondestin, who has no memory of Haiti and does not speak the language, Haiti is in effect an alien country (Wardenburg-Ferdinand 2000).

This response was prepared after researching publicly accessible information currently available to the RIC within time constraints. This response is not, and does not purport to be, conclusive as to the merit of any particular claim to refugee status or asylum.

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