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2009 Human Rights Report: Haiti

BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR

2009 Country Reports on Human Rights Practices

March 11, 2010

Haiti is a constitutional republic with a population of approximately nine million. International observers assessed the 2006 presidential and parliamentary elections as generally free and fair, after which President Rene Preval and the new parliament took office in May 2006. Parliament confirmed Jean-Max Bellerive as the new prime minister in November 2009. Haiti has a multiparty political system. Elections for one-third of the Senate's members, originally scheduled for late 2007, occurred in April and June 2008 and were also generally considered free and fair. Civilian authorities generally maintained effective control of the security forces, but in some instances elements of the Haitian National Police (HNP) acted independently. The UN Stabilization Mission in Haiti (MINUSTAH) consisted of approximately 9,100 military, police officers, and civilians who assisted and advised government and security authorities.

The following human rights problems were reported: failure to hold timely parliamentary elections, alleged unlawful killings by HNP officers, HNP participation in kidnappings, overcrowding and poor sanitation in prisons, arbitrary threats and arrests, prolonged pretrial detention, an inefficient judiciary subject to significant influence by the executive and legislative branches, severe corruption in all branches of government, violence and societal discrimination against women, child abuse, human trafficking, and ineffective enforcement of worker rights.

RESPECT FOR HUMAN RIGHTS

Section 1 Respect for the Integrity of the Person, Including Freedom From:

a. Arbitrary or Unlawful Deprivation of Life

The government or its agents did not commit any known politically motivated killings. However, HNP officers killed several persons, who were usually armed and resisting arrest; there were also allegations of HNP involvement in unlawful killings.

On October 24, police arrested seven individuals, including two active police officers and one former police officer, for killing the owner of a money-exchange outlet during an armed robbery on October 5 in Port-au-Prince.

There were no further developments in the July 2008 death of Renece Charon, who died while in police custody.

In July three bodyguards, who were originally believed to be police officers and were detained in December 2008 for murder and attempted murder of residents in Martissant, a Port-au-Prince neighborhood, were released.

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In response to continuing violence perpetrated by suspected criminals, residents in some neighborhoods resorted to vigilante justice. Nongovernmental organizations (NGOs) also reported vigilante incidents including shootings, beatings, and lynchings in rural areas, where effective judicial and law enforcement institutions largely were absent. Police statistics documented 74 lynchings through the end of October. Observers attributed the majority of lynchings to accusations of theft, witchcraft, or kidnapping.

On August 16, crowds lynched three men in Saint Marc. The media reported that the victims were believed to be werewolves. No arrests were made.

On October 4, a Port-au-Prince crowd stoned and hacked to death Thelimene Fils-Aime, who allegedly had just decapitated his wife. Police made no arrests and publicly noted the difficulty of pursuing participants in mob justice.

b. Disappearance

There were no reports of politically motivated disappearances by government agents.

Current and former HNP officers were accused of participation in kidnappings. Since some HNP officers were involved in narcotics trafficking, credible observers assumed HNP officers' complicity in disappearances related to narcotics trafficking.

Kidnappings decreased substantially during the year. There were 66 reported kidnapping victims in the first 10 months of the year, compared with 263 in 2008.

On January 12, unknown assailants abducted Director of the National Commission of Public Markets (CNMP) Robert Francois during an evening stroll. At year's end he remained missing and no arrests had been made.

At year's end there were no further developments in the July 2008 case of three Cap-Haitien police officers arrested for allegedly heading a gang responsible for multiple kidnappings.

In December 2008 Gonaives Police Commissioner Ernst Dorfeuille Bouquet was arrested and charged with the November 2008 kidnapping and murder of Monica Pierre; there were no further known developments in the case by year's end.

The 2007 disappearance of Lovinsky Pierre-Antoine, a supporter of former president Jean-Bertrand Aristide and a potential senatorial candidate, was unresolved. Pierre-Antoine remained missing at year's end.

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The law prohibits such practices, and with the exception of a few HNP officers, as of October there were no reports that government officials employed them.

There were no further developments, and none were anticipated, in the following 2008 cases: the February beating of a local resident in the Canape-Vert precinct of Port-au-Prince by a HNP officer, the September reported beating of three

local residents of Delmas 7 by the HNP's crowd control unit, and the September beating of Natacha Jeune Santil by four HNP officers.

On November 12, MINUSTAH issued a public press statement confirming that peacekeepers who had served in the country were among the 50 individuals sanctioned for sexual abuse of women and minors in 2007. They did not release further details.

Prison and Detention Center Conditions

Prison conditions were harsh. Prisoners reported physical abuse by correctional officers; prisons also suffered from guard abuse, corruption, and indifference. Officers reported limiting their exposure to cellblocks due to insufficient staffing, equipment, and security.

Prisons and detention centers throughout the country remained overcrowded, poorly maintained, and unsanitary. Overcrowding was severe; in some prisons detainees slept and stood in shifts due to lack of space. Some prisons had no beds for detainees; some cells had not access to sunlight. Many prison facilities lacked basic services such as medical services, electricity, and medical isolation units for contagious patients. Many prisons also periodically lacked water. Many prisoners and detainees suffered from a lack of basic hygiene, malnutrition, and poor quality health care and illness caused by the presence of rodents. Some prisons did not allow prisoners out of their cells for exercise.

In some prisons the incidence of preventable diseases such as AIDS, malaria, and drug-resistant tuberculosis remained a serious problem. By October there were 62 inmate deaths, surpassing the 2008 total of 60. Sixty of these deaths occurred in the Civil Prison of Port-au-Prince (CPPP).

At year's end the total prison population, including both pretrial detainees and sentenced prisoners in the country's 17 prisons, was more than three times their capacity.

The overburdened prison system had insufficient holding facilities. The CPPP contained approximately half of the country's prisoners and held inmates in its intake room. Provincial authorities, in particular, incarcerated many convicted prisoners for long terms in temporary holding cells. Police stations served as prisons in the cities of Gonaives and Petit Goave, whose prisons were destroyed in 2004. They were severely overcrowded. Gonaives, for example, held 214 long-term prisoners in its local police station in October.

Port-au-Prince maintained separate penitentiaries for adult men and women. Both penitentiaries suffered from overcrowding, poor maintenance, and unsanitary conditions, but the problems at the men's penitentiary were more severe. In the 15 other prisons throughout the country, space permitting, male and female prisoners were held in separate cells. Children 16 and older were confined with adults. Minors and adults sometimes occupied the same cells due to lack of available space. Pretrial detainees were held together with convicted prisoners in the women's prison.

Most boys were held in a separate facility in Port-au-Prince. By law that facility may hold only boys ages 13 to 15, although a few children claimed to be as young as age 10. Girls were held separately from women at the Petionville Women's Penitentiary.

As of December 18, 2,262 of the country's 9,066 prisoners in custody had been tried and sentenced, while 6,804 awaited trial. Fifty-seven of the country's 467 incarcerated women and girls were in prolonged pretrial detention, several since

2004.

Prison population statistics did not include the large number of persons held in police stations around the country in prolonged pretrial detention (without a hearing or filed charges) for longer than the constitutionally mandated 48-hour maximum detention period. Inadequate record keeping and data entry at the police stations made it difficult to estimate the number of persons held in prolonged detention (see section 1.d.).

The International Committee of the Red Cross (ICRC), MINUSTAH, the local NGO National Human Rights Network for Haiti, and the government's Office of Citizen Protection (OPC) monitored prison conditions in cooperation with the Department of Prison Administration.

Authorities freely permitted the ICRC, the Haitian Red Cross, and human rights groups to enter prisons and police stations, monitor conditions, and assist prisoners and detainees with medical care, food, and legal aid. Primary concerns for most groups monitoring the conditions in the prisons related to adequate water, food, and sanitation. Although some programs, such as efforts to improve sanitation and health care delivery at the CPPP reported success, the government did not implement many changes recommended by NGOs and donor governments.

Authorities took some measures to improve prison conditions. In October authorities at the CPPP began holding convicted prisoners separately from those in prolonged pretrial detention. On December 8, construction on a higher security wall and interior catwalk was completed, improving the prison's public security. Because of the improved security, authorities began utilizing previously unused yards for exercise and as bathing areas. The CPPP's warden developed a prisoners' art project and began prisoner-taught basic education classes. The CPPP completed renovation of its infirmary and new construction of an isolation ward for seriously ill patients. The government added eight cells to the Civil Prison of Cap-Haitien.

d. Arbitrary Arrest or Detention

The law prohibits arbitrary arrest and detention, and the constitution stipulates that a person may be arrested only if apprehended during the commission of a crime or on the basis of a warrant by a legally competent official such as a justice of the peace or magistrate. The authorities must bring the detainee before a judge within 48 hours of arrest. Officials frequently did not comply with these provisions in practice.

At least some prisoners were detained for offenses not included in the criminal code, including witchcraft.

Role of the Police and Security Apparatus

MINUSTAH, deploying 7,057 soldiers, 2,066 police officers, and 492 civilian UN officials, trained and supported the national police force, provided disaster recovery assistance, and assisted the government in suppressing gang-related violence.

The 8,546 member HNP has sole responsibility for law enforcement and maintenance of order; there are no military forces. The UN estimated that the country needs a force of at least 14,000 police, although it recommended 18,000 to 22,000 officers. The HNP is an officially autonomous civilian institution under the authority of a director general and includes police, corrections, and coast guard functions in separate units. The Ministry of Justice and Public Security, through its minister and the secretary of state for public security, provides oversight.

There were reports of corruption in the HNP, which the HNP has mechanisms to investigate. For instance, affluent prisoners sometimes obtained favorable conditions of detention. The HNP conducted investigations of police malfeasance, leading to the arrest or termination of employment of some officers. The Inspector General's (IG) Office of the HNP accepts and investigates allegations from any complainant of police wrongdoing, including human rights violations, complicity in criminal acts, and other violations. IG investigations revealing criminal activity were referred to the regional prosecutor.

Upon completion of these investigations, the IG forwarded its findings to the director general of the HNP and high-level Ministry of Justice officials for appropriate action. The first group of cases was provided to the government in 2008; a second group of cases was forwarded to the Ministry of Justice in June. As of October, the government had taken no further action on the cases. The IG also conducted vetting with MINUSTAH to certify that members of the HNP had no serious disciplinary violations or accusations of human rights abuses pending against them.

Reform and professionalization of the HNP continued as international programs, with the assistance of the National Network for the Defense of Human Rights, provided human rights and other training and equipment for new recruits and for existing officers; police station upgrades; security and humanitarian improvements to prisons; vehicles, computers, and communications equipment; and other technical assistance. Some units, notably the Anti-Kidnapping Unit, made significant improvements. Nevertheless, reform efforts remained incomplete, and HNP officers occasionally were implicated in corruption, kidnapping, and narcotics trafficking. The Corrections Department of the HNP did not perform the same vetting and background procedures on new employees and guards as its HNP law enforcement counterparts. A MINUSTAH poll reported that 72 percent of the population perceived improvement in the HNP during the year. Another survey found that an increasing number of citizens were critical of the HNP and felt less safe overall.

Although the HNP's efforts resulted in significantly increased levels of physical security and policing effectiveness, the HNP could not always prevent or respond to gang-related and other societal violence, such as vigilante justice, due to an insufficient number of officers and inadequate equipment or training.

Arrest Procedures and Treatment While in Detention

Police are permitted to make arrests when a suspect is caught during the commission of a crime, or later with a court-authorized warrant. Police sometimes apprehended persons without warrants or with warrants not issued by a duly authorized official. The authorities occasionally detained individuals on unspecified charges or pending investigation.

The government frequently did not observe the legal requirement to present detainees before a judge within 48 hours, and prolonged pretrial detention remained a serious problem. Many detainees were held in pretrial detention for extended periods--in some cases up to five years--without being informed of charges against them.

Investigative judges granted bail at their discretion. Bail hearings were not routine, and judges usually granted bail only for minor cases and based on compelling humanitarian grounds, such as a need for medical attention. Detainees generally were allowed access to family members and a lawyer of their own choosing. Many detainees could not afford the services of an attorney, and the government routinely did not provide free counsel.

The government detained some repatriated citizens upon their return for approximately two weeks in "administrative quarantine" if the citizen had local criminal charges pending or when local family members could not be located. Authorities used the returnee's time in detention to assess whether the citizen planned to participate in criminal activities

and to locate local family members. The government took measures to improve its past record and increased its efforts to release these citizens in 10 days or less. Returnees, some of whom spent substantial portions or most of their lives abroad, alleged corruption, widespread discrimination, and social abuse after returning home. Reported discriminatory practices included arbitrary arrests, false accusations about their activities to local police, and extortion attempts against them and their families abroad during the initial detention phase, in exchange for quicker release from administrative quarantine.

e. Denial of Fair Public Trial

Although the law provides for an independent judiciary, in practice the executive and legislative branches exerted significant influence on the judicial branch. Judges assigned to politically sensitive cases complained about interference from the executive branch. Credible reports of judicial corruption were commonplace (see section 4).

Pervasive and long-standing problems--including a shortage of funding and adequately trained and qualified justices of the peace, judges, and prosecutors as well as failure to convene court sessions on the schedule provided by law—contributed to the large backlog of criminal cases, and many detainees waited years for a court date. The Ministry of Justice and Public Security underwrote special summer felony hearings in Port-au-Prince to reduce pretrial detention backlogs, and the courts adjudicated an additional 115 cases at these special sessions. Still, since most of the 4,353 detainees awaiting trial in the Civil Prison of Port-au-Prince were held for serious crimes that warranted a jury trial, they were effectively denied the right to a prompt trial. An estimated 15 percent of detainees in the National Penitentiary had been convicted as of October.

The code of criminal procedure does not assign clear responsibility for criminal investigations and divides authority among police, justices of the peace, prosecutors, and investigative magistrates. Authorities often failed to question witnesses or complete investigations and rarely conducted autopsies, and examining magistrates often received incomplete files.

An outdated juridical fee scale created another barrier for crime victims requesting investigation of their cases. After a citizen reported being the victim of a crime, some justices of the peace charged varying "fees" to initiate criminal prosecutions based on their perceptions of what a service should cost.

Long distances and limited transportation between citizens' residences and the courts also limited access to the judicial system. In most regions judges lacked basic resources and professional training.

The School for Magistrates continued in-service training for justices of the peace, and during the year more than 150 justices from all 18 jurisdictions completed the intensive six-week training program. An internationally funded program provided training for judges, prosecutors, and other court personnel; furnished technical assistance in drafting rules and procedures; and assisted in curriculum planning for the school. The Judicial Strengthening Program begun by the National Center for State Courts provided assistance with training and curricula for judges and court personnel.

At the lowest level of the justice system, justices of the peace issue warrants, adjudicate minor infractions, mediate cases, take depositions, and refer cases to prosecutors or higher judicial officials. Investigating magistrates and public prosecutors cooperate in the development of more serious cases, which are tried by the judges of the first instance courts. Thirty appeals court judges hear cases referred from the first instance courts, and the 11-member Court of Cassation, the country's highest court, addresses questions of procedure and constitutionality.

Trial Procedures

The judicial apparatus follows a civil law system based on the Napoleonic Code, largely unchanged since 1880. In practice authorities widely ignored the constitutionally provided right to a fair public trial. The constitution also expressly denies police and judicial authorities the right to interrogate suspects unless legal counsel or a representative of the suspect's choice is present or they waive this right. Most accused persons could not afford legal counsel for interrogation or trial, and the law does not require that the government provide legal representation. Defendants who could not afford representation were more vulnerable to interrogation without counsel. However, some defendants had access to counsel during trials. With the support of the national government and the local legal community, international groups provided funds to indigent defendants for professional legal representation.

While the constitution provides defendants with a presumption of innocence, the right to be present at trial, the right to confront witnesses against them, and the right to present witnesses and evidence on their own behalf, judges frequently denied defendants these rights. The lack of a witness protection program and widespread impunity discouraged some witnesses from testifying at trials. Defendants and their attorneys had access to government-held evidence before trial. Defendants had the right to appeal.

There were no known reports that citizens were denied these rights on the basis of gender, ethnicity, or disability.

Political Prisoners and Detainees

There were no reports of political prisoners or detainees.

Civil Judicial Procedures and Remedies

Victims of alleged human rights abuses are able to bring their cases before a judge for cessation of the violation, but it is unknown whether damages can be awarded. Seeking legal remedies for human rights abuses is difficult, since very few organizations have the resources to start and maintain a case through its duration in the system.

f. Arbitrary Interference with Privacy, Family, Home, or Correspondence

The law prohibits such actions, and the government generally respected these prohibitions in practice.

Section 2 Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

The law provides for freedom of speech and of the press, and the government and elected officials generally respected these rights in practice. However, there were a few incidents of local government officers and elected officials harassing or threatening journalists as well as reports of pressure from criminal groups.

During the April 19 round of senatorial elections, radio journalist Sainlus Augustin was publicly harassed, struck, and threatened by the brother and other supporters of senatorial candidate Wilot Joseph, allegedly because they objected to Augustin's attempt to interview supporters of the political opposition. Repeated anonymous death threats forced Augustin into hiding. The government initiated an investigation, which remained open at year's end; international and local human

rights groups monitored the case throughout the year.

In September the government commissioner of Port-de-Paix briefly arrested radio station director Kerly Debreus on accusations of libel; he was released following public outcries from press associations and NGOs.

On December 9, HNP officers in Port-au-Prince beat journalist Edwige Joseph Watson and destroyed his equipment when he attempted to take photographs of a peaceful student demonstration. Although several officers tried to prevent the beating, others joined in. At year's end one officer was under investigation by the Office of the Inspector General.

There were no further developments in the July 2008 attack on news correspondent Joachim Marcel by the deputy mayor of Cap-Haitien and his bodyguards, allegedly in retaliation for Marcel's investigation of voting corruption.

Internet Freedom

The government did not restrict access to the Internet or monitor e-mail or Internet chat rooms. Individuals and groups freely engaged in communication via the Internet, including by e-mail. Approximately 10 percent of the population had routine access to the Internet.

Academic Freedom and Cultural Events

There were no government restrictions on academic freedom or cultural events.

b. Freedom of Peaceful Assembly and Association

The law provides for freedom of assembly and association, and the government generally respected these rights in practice. Citizens must apply for a permit in order to hold legal demonstrations; the HNP regularly issued permits.

Student demonstrations occurred throughout most of the year in downtown Port-au-Prince. Demonstrators threw rocks, occupied university offices, and burned and vandalized official and international vehicles. HNP authorities generally restricted their interventions to the use of tear gas and removing demonstrators from the scene. Unknown assailants killed two student demonstrators; there were no prosecutions.

On June 18, bystander Kerel Pascal was killed during a public funeral, allegedly by peacekeeping forces. Television cameras recorded a force member discharging a weapon in the general direction of Pascal. MINUSTAH began an investigation and conducted an autopsy, but no formal results were released by MINUSTAH or the government as of October.

On August 5, Ricardo Morette died during a demonstration in Lascahobas characterized by sporadic gunfire when Nepali MINUSTAH forces attempted to clear the road of blockades. An autopsy recovered no bullets, and MINUSTAH maintained that it was not responsible for Morette's death.

c. Freedom of Religion

The constitution provides for freedom of religion, and the government generally respected this right in practice.

Societal Abuses and Discrimination

There were no reports of societal abuse or discrimination against members of religious groups, including anti-Semitic acts. The Jewish community was very small.

For a more detailed discussion, see the *2009 International Religious Freedom Report* at www.state.gov/g/drl/rls/irf/.

d. Freedom of Movement, Internally Displaced Persons, Protection of Refugees, and Stateless Persons

The law provides for freedom of movement within the country, foreign travel, emigration, and repatriation, and the government generally respected these rights in practice. Persons deported from other countries were sometimes subjected to amendments in their Haitian passports, which singled out their status and impeded their transnational movements.

Since there were no known refugees in the country, there was no opportunity for the government to coordinate with the Office of the UN High Commissioner for Refugees and other humanitarian organizations in providing protection and assistance to internally displaced persons, refugees, returning refugees, asylum seekers, stateless persons, and other persons of concern.

The law prohibits forced exile, and there were no reports of its use. However, according to anecdotal reports, many former government officials abandoned the country with their families for fear of retaliation or prosecution.

Internally Displaced Persons

No further studies were conducted regarding the whereabouts of persons who temporarily abandoned their homes after the devastating 2008 storm season.

Protection of Refugees

The country is a party to the 1951 Convention relating to the Status of Refugees and its 1967 protocol. The law provides for the granting of refugee status or asylum, and the government has established a system for providing protection to refugees. In practice the government provided protection against the expulsion or return of refugees to a country where their lives or freedom would be threatened on account of their race, religion, nationality, membership in a particular social group, or political opinion, but it did not routinely grant refugee status or asylum.

Section 3 Respect for Political Rights: The Right of Citizens to Change Their Government

The law provides citizens with the right to change their government peacefully through free and fair elections based on universal suffrage.

Elections and Political Participation

Multiparty presidential and parliamentary elections in 2006 were relatively stable and peaceful. Rene Preval won the presidency with 51 percent of the vote. Citizens and international observers considered the election process acceptable

and the results credible, and they noted few incidents of violence or fraud. Additional rounds of parliamentary and municipal elections were held in 2006 and April 2008. Electoral authorities scheduled elections for February through April 2010 to replace the entire Chamber of Deputies and a third of the Senate.

The Senate elections held in April–June were generally well run, although marked by low voter turnout and isolated incidents of ballot box stuffing, voter intimidation, and violence. In June the Provisional Electoral Council (CEP) sponsored a postelection investigation, which found that rival political parties in the Center Department acted inappropriately, and subsequently recommended sanctions against four individual candidates. Electoral authorities observed these recommendations and in December barred the four from running in the 2010 parliamentary elections.

Political parties were able to operate without restriction or outside interference. In November the CEP considered 69 political parties for the upcoming parliamentary elections and approved 53 parties. The CEP rejected 16 parties, including, for the second time during the year, former president Jean-Bertrand Aristide's party, Fanmi Lavalas (Waterfall Family). Other rejected major parties included Union, Popular Solidarity Alliance, Struggling People's Organization, and Fusion. The latter two groups allied under a new party banner, Alternative.

The constitution requires that following local and municipal elections, local officials must hold a series of indirect elections to staff departmental organs of self-government and an interdepartmental council to advise the national government and nominate candidates for the Permanent Electoral Council. The law requires that the three branches of the national government select from among these nominees the council's nine members. Since these indirect elections have not taken place since the constitution was written, the country continued to operate with the presidentially appointed the CEP.

Many persons, including the president, declared the constitutionally mandated calendar of frequent elections either too impractical or too expensive.

The electoral legislation mandated that political parties presenting at least 30 percent female candidates and succeeding in electing 20 percent of them receive twice as much public financing for those same positions in the next election. The monetary deposit required of female candidates for political office (if sponsored by a recognized party) was one-half that required of male candidates. Five women served in the 129-seat National Assembly; four women served in the prime minister's 18-member cabinet; no woman served on the Supreme Court.

Section 4 Official Corruption and Government Transparency

The law provides criminal penalties for official corruption; however, the government did not implement the law effectively, and officials often engaged in corrupt practices with impunity. According to the World Bank's worldwide governance indicators, government corruption was a severe problem. Corruption remained widespread in all branches and at all levels of government. The constitution mandates that high-level officials and parliament members accused of official corruption be prosecuted before the Senate, not within the judicial system. However, the Senate brought no such cases of corruption. Poverty, lack of economic opportunity, and weak governmental institutions (especially relating to law enforcement and the judiciary) contributed to widespread corruption.

In March former minister of justice and public security Jean-Joseph Exume dismissed five Saint-Marc judges, two of them specifically for "serious acts of corruption." No charges were filed.

The HNP, with the assistance of UN civilian police, continued efforts to eliminate corruption within its ranks, and the

government continued to investigate individuals in the business sector and in government entities for corruption but brought no charges. The Center for Pleas and Legal Assistance offered judicial assistance to victims and witnesses of government corruption and widely disseminated telephone and e-mail contact information.

Authorities arrested or detained a few low-level public servants, mainly customs officials, on corruption or corruption-related charges.

The director of the Social Security Agency, Sandro Joseph, was arrested in May on charges of misuse of funds within the social security system, including improper loans and disbursements to national officials. He was awaiting trial at year's end.

There were no known developments in the investigation begun in 2007 concerning alleged mismanagement of funds at the Ministry of Foreign Affairs in 2004-06.

Several persons and groups, including the then prime minister Pierre-Louis and the Heritage Foundation for Haiti, called for an audit of the 197 million dollars of humanitarian assistance provided to the country by Petrocaribe in the aftermath of the 2008 storm season. The government's Anti-Corruption Unit (ULCC) opened an investigation.

By law the president, the prime minister, cabinet ministers, and other high-level public officials must declare assets. The Financial Control and Information Office has responsibility for combating financial crimes. The ULCC reported in September that 412 officials, including just one senator and 19 deputies, had observed the law and filed disclosure statements. HNP officers are also required to file disclosure statements. Public officials who do not fulfill this obligation are subject first to a 50 percent reduction in salary, followed by suspension, until they file their statements. The government sanctioned no officials as of the end of October for failure to file the disclosures.

The CNMP is charged with certifying that public contracts in excess of 700,000 Haitian gourdes (HTG, or approximately \$16,700) conform to the law.

No law requires public access to government information, but there were no reports that the government prevented public access to government information.

Section 5 Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights

A number of domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases. The government cooperated with the various human rights observation missions and generally acknowledged their views but lacked the capacity to implement their recommendations. The government permitted special missions and the continued presence of UN bodies and other international organizations such as the ICRC.

The UN sent several envoys and investigators to the country during the year. UN Special Envoy Bill Clinton made several visits and highlighted the progress the country's improvements in security. UN Independent Expert on the Situation of Human Rights in Haiti Michel Forst visited the country four times to draw attention to various human rights matters. He made numerous recommendations, including that the government make a final resolution of outstanding human rights vetting dossiers for members of the HNP, that President Preval appoint a Supreme Court chief justice, and that the

government increase efforts to end prolonged pretrial detention. In June UN Special Rapporteur on Contemporary Forms of Slavery Gulnara Shahinian investigated human trafficking (see section 6) and recommended that the government form a National Commission on Children, educate officials working with vulnerable children, and begin universal birth registration. With the exception of the Ministry of Social Affairs and Work's efforts to educate officials working with vulnerable children, by year's end the government had not implemented the recommendations.

At national and international levels, human rights organizations actively and effectively monitored human rights matters, meeting frequently with government officials. Human rights organizations made media appearances, hosted training sessions and conferences, and published reports.

The OPC is mandated to protect individuals against any form of abuse by the government. The OPC offered free legal assistance to any citizen who appeared before a court regarding a filed complaint. In the first half of the year, the OPC had a reputation for ineffectiveness and primarily operated within Port-au-Prince, but it began operating under new leadership in August. The government rarely acted on OPC recommendations.

The Chamber of Deputies and the Senate each had a human rights committee; however, neither committee published any reports or introduced any legislation during the year.

Section 6 Discrimination, Societal Abuses, and Trafficking in Persons

The law does not specifically prohibit discrimination on the grounds of race, gender, disability, language, or social status. It does provide for equal working conditions regardless of gender, beliefs, or marital status. However, no effective governmental mechanism administered or enforced these provisions.

Women

The law prohibits and provides penalties for rape but does not recognize spousal rape as a crime. The penalty for rape is a minimum of 10 years of forced labor, increasing to a mandatory 15 years if the victim was less than 16 years old. In the case of gang rape, the maximum penalty is forced labor for life. Sentences were often less rigorous. The criminal code excuses a husband who kills his wife or her partner found engaging in an act of adultery in his home, but a wife who kills her husband under similar circumstances is subject to prosecution. Anecdotal evidence suggested that some younger women were detained after violently resisting sexual attackers, sometimes family members. Kidnappers often raped their female abductees.

Reported sexual assault cases increased. HNP statistics showed that 218 rapes were reported as of October, compared with 282 for all of 2008; 76 victims were adult women, 139 were female minors, one was an adult man, and two were male minors. NGOs estimated that the numbers reflected an increase in incidents, rather than a greater degree of confidence in the legal system, and noted alarming increases in sexual violence against women in Petit Goave, the Artibonite, and the Port-au-Prince neighborhood of Cite Soleil.

In Saint-Marc the Federation for Women of the Lower Artibonite reported that it received more than 260 victim requests for legal assistance from July to October.

Rape was especially common in areas with minimal police presence. Many credible NGOs and government sources believed that urban gangs used rape as a systematic instrument of intimidation. Women's shelters and organizations

reported that armed gangs frequently raped and harassed girls and women.

Rape was often treated in practice as a relatively minor infraction or a family or community matter instead of a prosecutable offense. Substantial disincentives discouraging victims from reporting rapes included: victims' desire to protect themselves from the social or physical consequences of bringing accusations against the perpetrators, who often lived in the community; tacit cultural acceptance of sexual assault; the lack of sufficient facilities or services at police stations to aid rape victims; the long distances between homes and qualified tribunals; and finally, the corrupt judicial system that fosters a perception of impunity. Cases were often relegated to a justice of the peace, who acted as a mediator, with an emphasis on finding family or community solutions as opposed to punishing the perpetrator. No statistics were available on the number of abusers who were prosecuted, convicted, or punished.

Two officially sponsored centers for victims of sexual violence opened during the year. A shelter offering comprehensive services from legal to medical assistance opened in April with the help of international donors but was barely operational by year's end. In September a center for victims of sexual violence was inaugurated in Port-au-Prince to assist victims with registering assaults and obtaining legal and medical care. The center is colocated with a local police station, which is charged with actively assisting victims. In Saint-Marc the local government commissioner worked closely with the only local NGO offering comprehensive services to sexual assault victims in the region to protect victims' safety and access to the justice system. The same official, Yvon Pradel, publicly called upon the families of these victims to offer them support and accompany victims as their cases proceeded through the judicial system.

The law prohibits and provides penalties for domestic violence, but women's rights groups and human rights organizations reported that domestic violence against women remained commonplace and underreported. Government figures reported 38 incidents of domestic violence in the first 10 months of the year (compared with 31 incidents in all of 2008); there were 27 adult female victims, five adult male victims, and three cases each of minor male and minor female victims. Police rarely arrested the perpetrators or investigated the incidents, and the victims sometimes suffered further harassment and reprisals from perpetrators. Corrupt judges often released suspects arrested for domestic violence and rape.

In February the Tribunal of Petit-Goave sentenced Berthony Sageesse to 15 years in prison and a fine of HTG 100,000 (approximately \$2,500) for the 2008 attack upon his former wife Martine Lindor. The judgment reversed an earlier summary dismissal.

The government, with the support of international donors, sponsored a program for victims of violence that provided medical and legal assistance for victims, as well as a campaign denouncing violence against women.

Although prostitution is illegal, it remained a widespread practice, particularly among women and girls. Police generally ignored prostitution.

The law does not specifically prohibit sexual harassment, although the labor code states that men and women have the same rights and obligations. Data concerning sexual harassment in the workplace were not available, although observers suggested that sexual harassment was common. Such incidents went unreported because of high unemployment and because citizens had little confidence in the ability of the judicial system to protect them.

Couples and individuals have the legal right to decide the number, spacing, and timing of children. The 2005 Demographic and Health Survey showed that only 25 percent of couples used modern contraceptive methods, and the rate of unmet need for family planning was 38 percent. Despite high levels of general knowledge of contraceptive methods, women had

few opportunities to acquire additional information on family planning methods and to learn about the possible negative effects of certain contraceptive methods. The maternal mortality ratio was 630 per 100,000 live births. Although 85 percent of pregnant women received prenatal care at least once during their pregnancy, only 25 percent delivered in a health facility, and a vast majority delivered their babies at home without the benefits of a skilled birth attendant or the ability to find adequate care in the event of complications. Women and men had equal access to diagnostic services and treatment for sexually transmitted infections, including HIV/AIDS.

Women did not enjoy the same social and economic status as men. In some social strata, tradition limited women's roles. The majority of women in rural areas remained in the traditional occupations of farming, marketing, and domestic labor. Very poor female heads of household in urban areas also often faced limited employment opportunities, such as domestic labor and sales. Government and private sectors seldom promoted women to supervisory positions. Excepting the HNP, which continued efforts to recruit and increase the percentage of women in its ranks, there were no government efforts to combat economic discrimination.

Many domestic women's rights groups worked through a national network, the Coordination for Advocacy on Women's Rights.

Children

Citizenship is derived through an individual's parents; only one parent of either sex is necessary to transmit citizenship. Citizenship can also be acquired through a formal request to the Ministry of the Interior.

The government did not register all births immediately and did not keep statistics concerning the number of births unregistered each year. One government estimate of the total number of Haitians whose births were not registered was more than one million (out of a total population of nine million). Birth documents are legally necessary to register for school, open a bank account, apply for credit, gain admission to a hospital, and vote. Although required, individuals without birth documents were not denied emergency medical services or educational opportunities on that basis. Anecdotal evidence suggested that birth documents were not required to obtain such basic documents as a voting identification card.

Credible sources reported that large numbers of domestically trafficked children were forced to work as indentured household servants. Governmental agencies and programs promoted children's rights and welfare, but the government lacked sufficient resources to support or enforce existing mechanisms adequately. In June the Social Welfare Office (IBERS) conducted a two-week campaign aimed at heightening awareness of children's rights. On October 21, the government inaugurated the Youth Center for Vulnerable Children in Port-au-Prince, which offered social support services to at-risk youth.

Children also worked on the street in prostitution. Recruitment of children for sexual exploitation, pornography, and illicit activities is illegal. The law prohibits the corruption of youth under the age of 21 years, including by prostitution, with penalties ranging from six months' to three years' imprisonment.

The minimum age of consensual sex is 18. Inefficiencies in reporting and investigating allegations of rape contributed to uncertainties regarding penalties, if any, for statutory rape.

Port-au-Prince's population of at least 2,500 street children (as of October) included many who were dismissed from or fled employers' homes, but also some children who fled abusive homes or families who could no longer provide for them. NGOs reported that street children were likely to be sexually or otherwise abused, received little or no education, and were easily exploitable by trafficking recruiters. Criminal gangs also reportedly enlisted minors to commit illegal acts.

The Ministry of Social Affairs provided some assistance, such as food and temporary shelter, to street children. A shelter reopened by the government in April 2008 assisted children but did not provide adequate food, education, medical care, or adult supervision. Some children in the facility reported that they had families whom they were not allowed to visit. Minor males and minor females were housed separately.

Credible and numerous NGOs reported widespread and endemic abuse at many of the country's more than 600 orphanages, the majority of which were unregistered or not licensed by the government. IBERS and the HNP's Brigade for the Protection of Minors (BPM) increased efforts and cooperation toward increased regulation and oversight. Lack of sanitation, overcrowding, insufficient food, an absence of education, and poor adult supervision characterized many facilities.

On September 16, Douglas Perlitz was arrested in the United States on suspicion of sexually abusing minors at a boys' home, which he founded and managed in Cap-Haitien. The facility closed in January.

Trafficking in Persons

The law does not specifically prohibit trafficking in persons, although labor legislation and other laws, including those prohibiting and penalizing slavery, kidnapping, violence against women, as well as those prohibiting recruitment of children for sexual exploitation, pornography, and illicit activities could be used to combat human trafficking, including trafficking of children. There were reports that persons were trafficked from, to, through, and within the country.

The country was a source for persons trafficked to the Dominican Republic, the Bahamas, Jamaica, the United States, Europe, and Canada. Trafficked citizens reported conditions of bonded servitude, slavery, and forced labor. Extreme poverty and lack of employment were among key risk factors supporting human trafficking. Women from the Dominican Republic were trafficked into the country for sexual exploitation. Traffickers also used the country as a transit point for foreigners.

Several NGOs reported the problem of child trafficking for sexual and labor purposes, especially to the Dominican Republic and the Bahamas.

The government acknowledged the problem of internal trafficking, including that of children, and on October 26, announced that it was ready to take measures to prohibit the practice. The BPM investigated cases of child trafficking and monitored movement of children across the border with the Dominican Republic, but it faced many barriers to its operational effectiveness. The BPM, with 75 officers, stationed personnel in each of the country's 10 departments and established a hotline to receive tips regarding child trafficking and abuse. With international partners, in August BPM also began conducting nighttime operations to locate children at risk and return them to their families. The first operation successfully located and returned 14 children to their families. International organizations, including the International Organization for Migration (IOM), were primary providers of services to victims of trafficking.

Authorities picked up some restaveks who escaped and referred them to the government's Institute for Social Welfare and

Research (IBESR) for temporary care in dedicated shelters. The IOM provided financial and technical support to two such centers in Port au Prince, which provided shelter, food, medical and psychosocial services for the children until their parents were found and they were able to return to their families. Shelter capacity was limited and rescued children could not always return to their families. Since 2005 the IOM has assisted approximately 300 children.

No information was available on the principal traffickers, their networks, or methods. There were no antitrafficking laws and thus no prosecutions or convictions during the year.

In general the government could not provide sufficient protection, shelter, or assistance to victims and witnesses, and it referred victims to NGOs for services. Child victims of domestic trafficking living as street children in Port-au-Prince or subjected to domestic servitude as *restaveks* (live with) were so numerous throughout the country that the BPM did not as a matter of routine try to help them (see section 7.d).

The Ministry of Social Affairs and Work and the Social Welfare Officer actively sponsored and participated in numerous conferences organized around antitrafficking and children's rights.

The Department of State's annual *Trafficking in Persons Report* can be found at www.state.gov/g/tip.

Persons with Disabilities

The constitution and laws do not explicitly prohibit discrimination against persons with physical and mental disabilities, and there were no reports of discrimination by the government against persons with disabilities in employment, education, access to health care, or the provision of other state services. However, because of widespread and chronic poverty, a shortage of public services, and limited educational opportunities, persons with disabilities were severely disadvantaged. The government and NGOs distributed wheelchairs and implemented awareness campaigns. Access for persons with disabilities was limited, but the government implemented a program for increased numbers of disabled students to take part in national exams.

There were no reports of abuse in mental health facilities.

Societal Abuses, Discrimination, and Acts of Violence Based on Sexual Orientation and Gender Identity

There was a minimal presence of gay, lesbian, bisexual or transgender (LGBT) advocacy NGOs operating within the country.

There were no officially confirmed reports of discrimination against the LGBT community, but local NGOs reported that LGBT persons faced widespread societal discrimination including social stigma, targeted physical violence, sexual assault, and employment insecurity. NGOs also reported that such persons did not report human rights violations due to fear of reprisal.

Other Societal Violence or Discrimination

Societal discrimination occurred against persons with HIV/AIDS, particularly women, but educational programs sponsored by foreign donors and efforts by HIV/AIDS activists attempted to change that stigma.

Section 7 Worker Rights

a. The Right of Association

The law allows workers, except public-sector employees, to form and join unions of their choice. The law also requires that a union must have a minimum of 10 members and register with the Ministry of Labor and Social Affairs within 60 days of its formation. The law prohibits employers, management, and anyone who represents the interests of employers from joining a union. In theory unions were independent of the government and political parties, but in practice most unions were extensions of political parties. There were nine principal labor federations representing approximately 5 percent of the labor force.

The labor code provides for the right to strike with restrictions, except for managers, administrators, other heads of establishments, public utility service workers, and all public sector enterprises, and workers exercised this right in practice. The labor code defines public utility service employees as essential workers who "cannot suspend their activities without causing serious harm to public health and security." A 48-hour notice period is compulsory for all strikes, and strikes may not exceed one day.

Despite the prohibition there were a few public sector strikes, usually related to the government's failure to pay staff on time. Doctors and staff struck for weeks in several public hospitals, including the central public hospital in Port-au-Prince, demanding back pay and better working conditions. In December nurses in Gonaives went on strike to protest nonpayment of their salaries for the preceding 30 weeks.

b. The Right to Organize and Bargain Collectively

While the law protects trade union organizing activities and stipulates fines for those who interfere with this right, in practice the government made little effort to enforce the law.

High unemployment rates and antiunion sentiment among some factory workers and most employers limited the success of union organizing efforts.

Collective bargaining was nonexistent, and employers set wages unilaterally.

Although workers had access to labor courts established to resolve common labor-management disputes, the courts' judgments were not enforced. The courts function under the supervision of the Ministry of Labor and Social Affairs and adjudicate minor conflicts, but unions stated that the process was ineffective. Seven labor courts operated in Port-au-Prince, and in the provinces plaintiffs utilized municipal courts.

The law prohibits antiunion discrimination by employers, who are liable to a monetary fine for each individual violation. The law does not specify that employers must reinstate workers illegally fired for union activity. Illegally fired workers have the right to recoup any compensation to which they are entitled. The labor court adjudicates all labor disputes, but it was considered weak and ineffectual.

There are no special laws or exemptions from regular labor laws in the single export processing zone in Ouanaminthe, a town on the Dominican border.

c. Prohibition of Forced or Compulsory Labor

The law prohibits forced or compulsory labor, including of children; however, there were reports that such practices occurred, namely instances of forced labor of child restaveks (see section 6, Trafficking in Persons).

d. Prohibition of Child Labor and Minimum Age for Employment

The minimum employment age for employment in all sectors, including domestic service, is 15. The minimum age for apprenticeships is 14. The law prohibits minors from working under dangerous conditions and prohibits night work in industrial enterprises for minors under 18. Fierce adult competition for jobs ensured that child labor was not a factor in the industrial sector. However, children under the age of 15 commonly worked at informal-sector jobs to supplement family income. Children also commonly worked with parents on small family farms, although the high unemployment rate among adults kept children from employment on commercial farms in significant numbers. There was no legal penalty for families that employed children in domestic labor as restaveks, the primary form of child employment.

Parents unable to care for their children have traditionally sent them to relatives or strangers who were expected to provide the children with food, shelter, and an education in exchange for housework. The practice was so entrenched that even poor families routinely kept one or more restaveks who came from even poorer families. Parents often offered their children as restaveks when they were six years old, or even younger. While some restaveks were cared for by their host families and sent to school, most of them were subjected to abuse and involuntary domestic servitude.

Government and NGO estimates of the number of restaveks ranged between 90,000 and 300,000, the majority of whom were girls between the ages of six and 14. Exploited restaveks typically worked excessive hours on physically demanding tasks without pay or adequate food, did not attend school, and were often physically and sexually abused by their host family. Girls were generally placed in domestic servitude in private urban homes, while boys more frequently were exploited for labor on farms. Restaveks who did not run away usually remained with the host family until age 14. Labor laws require employers to pay domestic workers over 15 years old, so many host families forced restaveks out of the household before that age. Abandoned and runaway restaveks constituted a significant proportion of the large population of children living on the street, where most were forced into prostitution or street crime by criminal gangs, while others became street vendors or beggars.

Although the government charged with implementation and enforcement of child labor laws and regulations, the IBESRP lacked adequate funding to investigate exploitive child labor cases effectively. Other factors contributing to ineffective investigation and lack of judicial recourse were border permeability and lack of a well-trained and well-equipped police force.

e. Acceptable Conditions of Work

During the year parliament implemented a new stratified minimum wage system. On October 1, the daily minimum wage was set at HTG 125 (approximately \$3.00) in the textile sector and HTG 200 (approximately \$5.00) in the commercial and industrial sectors. Workers paid at a piecework rate received a minimum of HTG 200 per day. For all other industrial and commercial establishments, the minimum wage was fixed at HTG 200 per day for eight hours of work.

Most citizens worked in the informal sector and subsistence agriculture, where minimum wage legislation does not apply, and daily wages of HTG 15 (\$0.37) were common. Many women worked as domestic employees, an area of work also exempted from minimum wage legislation.

The law sets the standard workday for industrial, commercial, and agricultural establishments at eight hours and the workweek at 48 hours, with 24 hours of rest. It also provides for the payment of overtime and prohibits excessive compulsory overtime. However, the law grants exemptions to health care, lodging, food and beverage, and entertainment establishments; managerial positions; and family establishments that employ only family members. The Labor Directorate also may grant exemptions for other employers not specifically exempted by the law. These laws were not effectively enforced. In addition the law is silent concerning public sector employees. Due to staff shortages and special events, salaried HNP officers sometimes worked 12-hour shifts six days per week and received no overtime, although they received standardized bonuses at year's end. HNP officers had also not been incorporated into the standardized government schedule of benefits after their initial three-year probationary contracts. In severely understaffed regions, officers sometimes worked longer hours to serve the needs of their communities.

The law also establishes minimum health and safety regulations. The industrial and assembly sectors largely observed these guidelines, but the Ministry of Labor and Social Affairs did not enforce them effectively. No group collected formal data, but unions alleged that job-related injuries occurred frequently in the construction industry and public works sectors. Although they have the legal right to do so, in practice workers could not exercise the right to remove themselves from dangerous work situations without jeopardizing their continued employment.