

Minors in Haiti's Prisons

by Ismene Zarifis*

Of Haiti's growing prison population, estimated at 4,219 by the U.S. State Department in February 2001, approximately 80 percent are being held in prolonged, pre-trial detention. Approximately 10 percent of prisoners are minors, held in several of Haiti's 19 prisons. Minors as young as eight years old have been charged with crimes ranging from theft to murder. Imprisonment of minors violates domestic law, which authorizes courts to sentence minors between the ages of 13 and 16 to educational and rehabilitative centers only. The detention of minors also violates international human rights instruments such as the Convention on the Rights of the Child (Child Rights Convention) and the International Covenant on Civil and Political Rights (ICCPR). Haiti's practice of imprisoning minors, for example, contravenes numerous provisions of the Child Rights Convention, including Article 37(d), which provides the right of prompt access to legal counsel during detention and at trial. Haiti's noncompliance with domestic and international laws that protect the rights and welfare of children in detention violates the fundamental rights of children.

Background

Children are being held in prison because the government of Haiti has not yet allocated sufficient resources to build an appropriate center for juvenile delinquents charged with criminal offenses. According to the February 2001 U.S. State Department Country Report on Human Rights Practices in Haiti (U.S. Country Report), approximately 98 percent of minors in prison are awaiting trial. In 1961, the *Centre d'Accueil Duval Duvalier (Centre d'Accueil)*, an educational and rehabilitative center, was established by Haitian law to accommodate minors charged with offenses or crimes. The *Centre d'Accueil* ceased to operate in 1987 with the fall of the Duvalier regime; thus far no other state-run institution has been created to rehabilitate juveniles charged with criminal offenses. According to August 2000 interviews with Haitian prison authorities and members of human rights groups, there is no indication of plans for a new center.

In lieu of the *Centre d'Accueil*, or any equivalent, the courts rely on the Haitian Institute for Social Welfare and Research (Institute), which also was created in 1961, to refer minors awaiting trial and minors who already have been sentenced (juvenile delinquents) to educational centers. The Institute fails to fulfill its mandate, however, because it is largely unsuccessful in finding placements for these children. Most institutions that function as education centers, such as orphanages or centers for street children, do not accept children who are or have been incarcerated due to concern over the alleged bad influences they bring with them. Those who manage these centers discriminate between children who simply have been neglected or abandoned, and those who are or have been in prison. As a result, courts consistently have authorized the detention of juvenile offenders in Haitian prisons. Haitian law also proscribes 13 as the minimum age of criminal responsibility. Articles 11 and 12 of a November 1961 presidential decree implementing the *Tribunal pour Enfants* (Court for Minors) maintain that children below the age of 13 shall be protected in one of several ways: the judge may order a term of monitoring, assistance, or schooling after considering the legal record

and social background of the child. In clear violation of all applicable laws, however, courts have ordered that children as young as eight years old be detained.

The U.S. Country Report noted that prison conditions in Haiti remain "very poor" and that prisoners suffer from lack of basic hygiene, poor quality of health care, 24-hour confinement to cells, and malnutrition that led to the deaths of five prisoners in November 2000 alone. According to the Report, the Haitian prison system is still operating on the same budget as in 1995. Haitian prison authorities say the resulting budgetary crisis has created dire shortages of basic resources, including adequate food and clean water. A February 2000 Amnesty International (AI) report entitled "Haiti. Unfinished Business: Justice and Liberties at Risk" warned that "[o]vercrowding coupled with outdated facilities and lack of resources has created conditions that are far below the level required by international law, and in some cases constitute cruel, inhuman and degrading treatment." Prisons around the country do not provide legal, medical, or educational services to prisoners in general, including children. The lack of sufficient resources subjects minors to increasingly deplorable conditions that further violate Haiti's domestic and international legal obligations.

Haitian Domestic Law

The *Loi Sur L'Enfance Delinquante, En Danger Physique Ou Moral* (Law of Juvenile Delinquents and Youths at Physical and Moral Risk, or Law of 1961), pertains to minors between the ages of 13 and 16 who are arrested for and accused of committing crimes or non-criminal offenses. Even though the Law of 1961 was founded on a policy of social justice, the Haitian government has failed to implement many of the provisions protecting juvenile delinquents.

The 1961 Decree Law, which implements, in part, the Law of 1961 by creating the Court for Minors, provided the Court with jurisdiction over civil and criminal matters. In actuality, a separate courthouse was constructed only in June 1998, in Port-au-Prince. Moreover, the Court for Minors did not take cases until May 1999 due to violence in the area. To date, there exists only one judge for minors in the entire country, Judge Nora Amil-Car. Consequently, juvenile cases that arise in other parts of the country are ultimately transferred to Port-au-Prince for trial. The failure to provide more judges for minors across the country creates an especially heavy burden on the Court for Minors and contributes to the prolonged delay of juvenile proceedings.

Under no circumstances does the Law of 1961 authorize courts to sentence minors to prison. Articles 50 and 51, which address criminal sentencing, were modified from the Haitian Criminal Code and subsequently adopted by the Law of 1961 to promote the moral development of at-risk youth. Article 50 provides that minor children found guilty for lesser offenses may be restored to their homes, to their legal guardians, placed under surveillance, or temporarily placed in a rehabilitative institution. Article 51 provides that those minor children found guilty of criminal offenses may serve a sentence in an educational-rehabilitative center rather than in an adult prison.

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Rather than requiring the incarceration of juvenile offenders, these articles provide alternatives that aim to rehabilitate minors. For example, minors whose offenses would require a death penalty sentence or a life term of forced labor would instead serve eight years in a correctional, educational center, as maintained in Article 51(a). Regardless of the charge against them, however, children systematically are detained in prison facilities in violation of Articles 50 and 51.

Article 15 of the Law of 1961 provides that criminal proceedings are to be carried out with particularity as to the individual circumstances and personality of the child. This provision requires the judge to take the child's social, economic, and educational background, personal experiences, family life, and psychological health into account before making a judgment. To do this, the judge must initiate extensive investigations into the facts of each case, determine the psychological and physi-

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cal health of the child, and evaluate the child's social and personal circumstances. Haitian courts, however, lack the resources necessary to fulfill the requirements of Article 15. Such requisite resources include social workers and doctors to carry out evaluations. For example, the Court for Minors in Port-au-Prince lacks a physician and psychologist to conduct the necessary physical and mental health examinations of children.

Articles 23 and 33 of the Law of 1961 set forth measures designed to protect juvenile offenders. Article 23 states that the Court for Minors has the authority to decide whether the child would best be served by being returned to his or her family or legal guardian, or alternatively, by being placed in an educational or psychiatric center. In many cases children are estranged from their parents, as expressed in interviews with prison authorities. However, the government fails to execute Article 23 obligations when they deny the child the right to return to their family or to be placed in a rehabilitative center. In practice, children are arrested, detained with adults for more than 48 hours in a police station cell, seen by a judge who decides the legality of the arrest, and placed in prison to await trial for their charge. This criminal procedure often violates the requirement of Article 9, which mandates a speedy trial. Children are made silent victims because they lack an understanding of their rights and the penal system. Consequently, they cannot challenge their arrest and detention. Article 33 allows the placement of children in the *Centre d'Accueil* until a proper correctional center is created. Haiti fails to comply with this provision because the center simply no longer exists. According to a presidential decree in the Law of 1961, the *Centre d'Accueil* is the only designated institution to house children awaiting trial for criminal offenses. Haiti's failure to replace the center since its dissolution in 1987 contravenes this presidential decree. The detention of minors in prison denies children their right to liberty and the right to benefit from educational and social reintegration programs.



AP Photo/Tomas van Houbyve

A Haitian girl and her sister outside the walls of Fort Dimanche.

Haiti's International Obligations

Haiti has ratified, and thus is legally bound by, the Child Rights Convention, the ICCPR, and the American Convention on Human Rights (American Convention). Although the Law of 1961 technically complies with provisions in these instruments pertaining to the treatment of minors, the reality surrounding the pretrial detention and post-conviction treatment of minors places Haiti in violation of its duties under international human rights law.

The Child Rights Convention

The underlying premise of the Child Rights Convention, which Haiti ratified in 1995, is that "[t]he child by reason of his physical and mental immaturity, needs special safeguards and care, including legal protection" The Child Rights Convention was drafted in consideration of children living in exceptionally difficult conditions and requiring special treatment, including children accused of breaking criminal law and children deprived of their liberty.

Article 37(a) of the Child Rights Convention seeks to protect children who are subject to "cruel, inhuman or degrading treatment or punishment." The August 2000 "Human Rights Review," a report published by the Organization of American States/UN International Civilian Mission in Haiti, documented the conditions in *Fort Nationale* prison in Port-au-Prince. It noted that 23 boys are housed in a single prison dormitory, lacking adequate ventilation, lighting, and access to sanitary installations. Approximately 130 girls and women are housed together in an adjacent dormitory under the same conditions. The detainees suffer from severe food and water shortages. Inadequate facilities and the lack of resources to care for prisoners cause illnesses such as skin diseases, typhoid, and malnutrition. Furthermore, the lack of medication and preventative health care often causes easily curable illnesses to worsen and require hospitalization. These substandard prison conditions constitute cruel, inhuman, and degrading treatment of minors. As a result, Haiti is in violation of Article 37(a).

Article 37(b) states "[n]o child shall be deprived of his or her liberty unlawfully or arbitrarily," and Article 37(d) states "[e]very child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty." According to prison records, however, children have been detained while awaiting trial for periods longer than that

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which a guilty sentence for the crime allegedly committed would have permitted. Such detentions constitute an unlawful and arbitrary deprivation of liberty under Article 37(b). Article 37(b) also declares that detention or imprisonment of a child be used only as a measure of last resort and for the shortest appropriate period of time. Haitian authorities, however, customarily subject Haitian children to prolonged pre-trial detention. According to AI, one Haitian child had waited three years for his trial on murder charges. Moreover, minors often are deprived of the right to legal assistance, thereby effectively depriving them of their Article 37(d) rights.

The fact that girls and women are housed together in a single dormitory at *Fort Nationale* also violates Article 37(c), which requires detained minors to be separated from adults. The National Coalition for Haitian Rights (NCHR), a human rights organization in Port-au-Prince, states that minors continue to be housed with adult offenders at other prison facilities as well, especially prisons in rural provinces.

Article 40(2)(b) guarantees the right to a fair hearing without delay and that the matter be decided subject to the best interests of the child. Due to the Court for Minors' full docket and prolonged investigations, a child's right to proceedings without delay largely is denied in Haiti. Article 40(1) of the Child Rights Convention calls on State Parties to "recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others..." State Parties to the Child Rights Convention are obligated to act in consideration of the child's age and the desirability of promoting the child's re-integration and ability to assume a constructive role in society. Prison conditions in *Fort Nationale* deny children their right to be treated with dignity. Children are detained in a dormitory-style cell for nearly 24-hours with limited access to leisure and no access to an education. Furthermore, children lack proper beds, nutrition, and access to sanitary facilities. The fact that Haiti sends minors to prison prior to being charged denies them the fundamental right enshrined in Article 40(2)(b)(i), which enshrines the right to a presumption of innocence until proven guilty by the law. Treatment of children in prison is indistinguishable from that of convicted criminals.

Finally, Article 1 of the Child Rights Convention states that a "child" means any person under the age of 18 years, unless majority is attained earlier under the specific law applicable to the child. The fact that the Law of 1961 defines the maximum age of a minor as 16 is a serious concern in light of internationally respected human rights standards. This provision is particularly worrisome when male youths between the ages of 16 and 18 systematically are tried as adults and are held in Haiti's National Penitentiary for men. The National Penitentiary is overcrowded, housing approximately one-third of the national prison population within its walls. The detention of minors with adults is in gross violation of Article 37(c) and should be remedied. Although Haiti has established 16 as the age of majority, this provision is outdated and should be reconsidered and modified to bring domestic law into accordance with the more recent Child Rights Convention.

The ICCPR and American Convention

The ICCPR and the American Convention set forth provisions protecting the humane treatment of persons deprived of their liberty. Article 5 of the American Convention (which Haiti ratified in 1979) and Article 10 of the ICCPR (which Haiti rat-

ified in 1991) mirror each other by requiring that accused persons, save in exceptional circumstances, be segregated from convicted prisoners; similarly, minors shall be separated from adults. Accused persons must also be provided with separate treatment appropriate to their status as persons who have not yet been convicted. These provisions consistently are violated where pre-trial detainees (constituting 80 percent of the total prison population) and convicted criminals are housed in the same cells and facilities. Overcrowding has led to the Haiti's failure to implement Articles 5 and 10, respectively.

Both treaties protect prisoners from cruel, inhuman, or degrading treatment (Article 7 of the ICCPR and Article 5 of the American Convention) and stipulate that no one shall be subject to arbitrary detention (Article 9 of the ICCPR and Article 7 of the American Convention). Articles 9 and 7, respectively, provide the accused with the right to a speedy trial, while Article 14 of the ICCPR protects the right to be presumed innocent until proven guilty according to law.

These provisions consistently are violated in Haiti, where children are confined with adults. Furthermore, a dysfunctional judicial system has led to prolonged detentions of the accused, as cited in the U.S. Country Report. According to the Report, the judicial system moves even more slowly for women and children, and sometimes the charges in these lengthy detentions are minor. This finding shows that children are denied their right to a speedy trial protected by international law and arbitrarily are deprived of their liberty. Haiti has failed, therefore, to implement the provisions of the ICCPR and the American Convention that provide special protections for minors accused of wrongdoing and for those deprived of their liberty.

Conclusion

Haiti is failing to comply with domestic and international laws that provide protection to minors in detention, resulting in systematic violations of these minors' human rights. The continuing detention of children in prison facilities rather than placement in educational and rehabilitative centers presents perhaps the most significant challenge. In order to bring current practices into compliance with its domestic and international obligations, the Government of Haiti needs to revise, enforce, and implement the Law of 1961. Haiti immediately should allocate sufficient resources to provide appropriate alternatives to incarceration of minors and to ensure a proper educational and social foundation for at-risk youths. The age of adult criminal responsibility should be changed from 16 to 18, in accordance with the Child Rights Convention. Consequently, children below the age of 18 should be housed with their peers in appropriate juvenile centers, not in adult prisons. Finally, alternate dispositions to judicial proceedings should be explored on a consistent basis in order to avoid delayed trials, lack of access to legal counsel, and inadequate prison conditions. 🌍

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