

February 2, 2006

Santiago Canton
Executive Secretary
Inter-American Commission on Human Rights
1889 F St., N.W.
Washington, D.C.
USA 20006

REF: Complaint regarding violations of the right to participate in representative government committed against **[Names Withheld]** and others

Dear Executive Secretary Canton:

The Bureau des Avocats Internationaux, the Institute for Justice and Democracy in Haiti, the Allard K. Lowenstein International Human Rights Clinic at Yale Law School, and TransAfrica Forum present this petition to the Inter-American Commission on Human Rights, on behalf of **[Names Withheld]**, all Haitian citizens (the “Petitioners”), against the Interim Government of Haiti (IGH), and the governments of the United States of America and the Dominican Republic, for violations of Haitian citizens’ rights under Articles 1, 23, and 24 of the American Convention and Article XX of the American Declaration; and violations of the integrity, sovereignty, and self-determination of the Haitian people in contravention of the OAS Charter, the American Declaration of the Rights and Duties of Man, the Inter-American Democratic Charter, and all other international laws, treaties and norms as the Inter-American Commission deems appropriate. These violations all arose out of the overthrow of Haiti’s democratically elected government in February 2004, which deprived Petitioners of their right to participate in representative government.

Petitioners’ only hope of relief is before the Inter-American Commission on Human Rights. Petitioners plead for the Commission’s attention and redress and offer their thanks for the Commission’s consideration.

Petitioners request that the identities of the Haitian citizen Petitioners be withheld from the defendant States; the identities of the signatories to this petition and their organizations may be disclosed to the defendant States.

I. INTRODUCTION

This petition demonstrates that the IGH, the United States, and the Dominican Republic violated the rights of the Haitian people through a long-term, systematic plan that included: a) undermining the democratically elected Haitian government through a development-assistance embargo and by supporting both unarmed and armed opposition groups; b) overthrowing the democratically elected Haitian government and kidnapping its President in February 2004; and c) replacing it with a government with no constitutional or electoral legitimacy.

The petition is based on violations of Haitian citizens' rights under Articles 1, 23, and 24 of the American Convention and Article XX of the American Declaration; and violations of the integrity, sovereignty, and self-determination of the Haitian people in contravention of the OAS Charter, the American Declaration of the Rights and Duties of Man, and all other international laws, treaties and norms as the Inter-American Commission deems appropriate. The undermining, overthrow, and replacement of the democratically elected Haitian government has deprived Petitioners of their right to participate in representative government.

Neither the IGH nor the United States nor the Dominican Republic has taken effective steps since February 2004 to remedy the adverse consequences of the overthrow, and there are no adequate remedies available for Petitioners from local and national officials in these governments. Petitioners plead for relief before the Commission.

II. FACTS

A. BACKGROUND: THE SITUATION IN HAITI.

In May 2000, the *Fanmi Lavalas* party won landslide victories in elections for the national legislature and local offices. The OAS and other international observers called the elections, in general, a success. The elections featured the largest number of candidates in Haiti's history running for the largest number of offices (more than 7,500), and the largest number of voters ever. The OAS and others did criticize the method for calculating runoff percentages in seven Senate races.

In November 2000, Jean-Bertrand Aristide of the *Fanmi Lavalas* party was elected President of Haiti. Although some political parties boycotted the November elections, the turnout exceeded 50 percent of registered voters, and President Aristide won more than 90 percent of the votes cast. The November election results were widely recognized by the world community.¹ Further, observers from the International Organization of Independent Observers, a private volunteer organization that observed the November 2000 elections, reported that they found that the elections were free and fair and that the official figures for participation were consistent with their observations. President Aristide was sworn into office on February 7, 2001, for a five-year term that, according to the Constitution, was to end on February 7, 2006. He was recognized as the duly elected President by the international community, without exception.

After he took office in 2001, President Aristide made repeated concessions to Haiti's political opposition and members of the international community to resolve concerns about the May 2000 elections. Six Senators from President Aristide's Lavalas party and one independent Senator resigned and agreed to new elections. President Aristide and his party agreed to early elections and even agreed to negotiate a power-sharing arrangement with the opposition as

¹ See, e.g., Secretary of State Colin Powell, Remarks with Swedish Foreign Minister Laila Freivalds Following Meeting (Feb. 17, 2004), available at <http://www.state.gov/secretary/former/powell/remarks/29503.htm>. A Gallup

proposed by the CARICOM countries. But Haiti's opposition systematically refused to compromise or to set the electoral dispute before the Haitian voters. Instead, the opposition insisted that President Aristide immediately resign his office without completing his constitutional term – and that the opposition be invited to form a “transition” government. These extreme, unconstitutional demands doomed the negotiations.

Nevertheless, powerful members of the international community, including the United States, contributed to support the intransigent opposition and punish Haiti's elected government. The major anti-government organization, the Group of 184, was led by Andre Apaid Jr., a U.S. citizen, and received generous assistance from the European Union.²

Starting in the late 1990's, former members of Haiti's demobilized army and others began military training in the Dominican Republic. From 2001 to 2004, these groups conducted periodic raids across the border against targets in Haiti.³ Haitian authorities protested the use of the Dominican Republic's territory for staging these attacks, but they were not stopped. Following attempted *coup d'états* on July 28 and December 17, 2001, Dominican authorities did make some arrests of Haitian rebels, including their top leader, Guy Philippe. Philippe was also arrested in May 2003, again at the request of Haitian officials. But each time, the Dominican Republic released the rebels without prosecuting them or preventing them from using Dominican territory for training or staging attacks.⁴

public opinion poll commissioned by the U.S. government, attached as Exhibit A, broadly confirmed the official results (Table 37).

² Press Release, Haiti Support Group, European Union funding for members of the Group of 184 (Nov. 11, 2003), available at <http://haitisupport.gn.apc.org/184%20EC.htm>.

³ See Sue Montgomery, *Mastermind Tells How Plot Evolved: Former Montrealer Leads Political Wing of Group That Overthrew Haiti's Aristide*, THE MONTREAL GAZETTE, Mar. 9, 2004.

⁴ See generally *Commission Investigation Finds U.S. and Dominican Republic Backed Haitian "Rebels,"* HAITI PROGRES, Mar. 31, 2004, available at <http://www.haitiprogres.com/2004/sm040331/eng03-31.html>. The Haiti Commission of Inquiry, an organization formed in 1991 on the initiative of former U.S. Attorney General Ramsey Clark, concluded in a set of preliminary findings in March 2004 that the governments of the U.S. and the Dominican

In December 2002, the U.S. government sent 20,000 M-16 rifles to the Dominican Republic. According to several sources, including Noble Espejo, a former general in the Dominican Republic's armed forces, and a senior United States military official cited by the *Boston Globe*, some of these guns arrived in the hands of the Haitian rebels.⁵

In January 2004, political violence erupted between supporters of President Aristide and supporters of the opposition. On February 5, 2004, a rebel group calling itself the Revolutionary Artibonite Resistance Front seized control of Gonaïves, Haiti's fourth-largest city. Another rebel group, led by Louis Jodel Chamblain and Guy Philippe, crossed the border from the Dominican Republic into Haiti on February 6, 2004. Chamblain admitted in a published interview to killing government supporters: "Our target was the *chimères* [Aristide's police attachés]; I do not know how many died. The people took care of the rest. The battle began at one and ended at four in the afternoon. We took all the weapons, there were a lot of them. Now we were well armed and we would take Cap-Haïtien."⁶ The rebels also destroyed government buildings and released all the prisoners from the jails in the towns they captured. On February 22, the rebels captured Cap-Haïtien, Haiti's second-largest city. The ability of the Haitian National Police to respond to this and other violent attacks was severely handicapped by the U.S. embargo on the purchase of standard law enforcement equipment such as sidearms, police shields, and other crowd-control equipment.

On February 17, U.S. Secretary of State Colin Powell defended President Aristide as the "free and fairly elected President of Haiti."⁷ He further stated that the United States "cannot buy

Republic armed and trained at least dozens of Haitians in the Dominican Republic to overthrow the democratically elected government of Haiti.

⁵ *Aristide backers blame US for ouster*, BOSTON GLOBE, Mar. 1, 2004.

⁶ *Haiti: Imprisoned Rebel Leader Describes Guerrillas' Efforts Against Aristide*, BBC MONITORING AMERICAS, July 14, 2004.

⁷ Powell, *supra* note 1.

into a proposition that says the elected President must be forced out of office by thugs and those who do not respect law and are bringing terrible violence to the Haitian people.”⁸ However, on February 26, Secretary Powell implied that Aristide should step down,⁹ and on February 29, the U.S. Administration released a statement condemning Aristide for orchestrating the violence in Port-Au-Prince and directing armed gangs to target civilians, humanitarian programs, and international organizations.¹⁰ This statement appeared to contradict the earlier statements of the Secretary of State, which recognized Aristide as the democratically elected President of Haiti and blamed the rebel groups for the violence gripping the country.¹¹

The same day, Aristide was forced onto a U.S. Government plane and taken against his will to the Central African Republic. The U.S. Government claims that President Aristide signed a letter of resignation before departing, but Aristide maintains that the letter he signed was not a letter of resignation. The Haitian Creole expert hired by the U.S. State Department to translate the letter, Professor Bryant Freeman, reported that the letter was not a resignation.¹² Regardless of the interpretation of the letter’s content, it cannot be a voluntary resignation, because U.S. Government officials forced President Aristide to sign the letter under threat.

The U.S. government also claimed that it took President Aristide to the Central African Republic because South Africa had refused him asylum. The South African government denied this report, saying that it had not even received a request for asylum.¹³

⁸ *Id.*

⁹ *Voice of America: Powell Voices Disappointment with Aristide* (radio broadcast Feb. 27, 2004).

¹⁰ *U.S. Accuses Aristide of Orchestrating Violence*, CNN, Feb. 29, 2004, available at <http://edition.cnn.com/2004/WORLD/americas/02/28/haiti.revolt/>.

¹¹ Powell, *supra* note 1; see also Colin Powell, Secretary of State, Remarks After Meeting With Bulgarian Foreign Minister Solomon Passy (Feb. 26, 2004), available at <http://www.state.gov/secretary/former/powell/remarks/29927.htm>.

¹² Jennifer Byrd, *KU Prof Asked to Translate Aristide’s Statement*, LAWRENCE JOURNAL-WORLD, Mar. 11, 2004, available at <http://www.ljworld.com/section/kunews/story/163946>.

¹³ Interview with Dumisani Kumalo, South Africa’s Ambassador to the United Nations (Mar. 2, 2004), available at www.democracynow.org/article.pl?sid=04/03/02/1616214.

In the wake of Aristide's departure, the Caribbean Community Secretariat (CARICOM) issued a critical statement: "[T]he removal of President Aristide in these circumstances sets a dangerous precedent for democratically elected governments anywhere and everywhere."¹⁴ The Africa Union Commission declared that it "expresses the view that the unconstitutional way by which President Aristide was removed set a dangerous precedent for a duly elected person and wishes that no action be taken to legitimize the rebel forces" in Haiti.¹⁵ The CARICOM Heads of State also called for an investigation into the forced departure of President Aristide, under United Nations auspices.¹⁶

Haitian Supreme Court Chief Justice Boniface Alexandre was sworn in as Haiti's new President, and a three-member commission was formed in order to start the process of forming a new government. This commission selected a Council of Wisemen (*Conseil des Sages*), which in turn appointed a transitional government in March 2004 with Gérard Latortue, a resident of Boca Raton, Florida, as its Prime Minister.¹⁷

The investiture of both the interim President and Prime Minister violated Haiti's Constitution. The Constitution's Article 149 allows the Chief Justice to fulfill a Presidential vacancy.¹⁸ But as President Aristide did not resign and was prevented from fulfilling his presidential duties only by the use of force by the IGH and the intervention by the United States, there was no vacancy. Even if there had been a presidential vacancy, the establishment of the new government violated several other constitutional provisions. First, the Constitution requires

¹⁴ Daniel P. Erikson, *Haiti after Aristide: Still on the Brink*, CURRENT HISTORY 83, Feb. 2005, at 88.

¹⁵ *Aristide's 'Removal' from Haiti 'Unconstitutional': African Union*, AGENCE FRANCE PRESSE, Mar. 9, 2004, available at <http://www.commondreams.org/headlines04/0309-06.htm>.

¹⁶ Statement on Haiti Issued by the Fifteenth Inter-Sessional Meeting of the Conference of the Heads of Government of the Caribbean Community, 25-26 Mar. 2004, available at <http://www.caricom.org/jsp/archives/15inthgc-haitistatement.htm>.

¹⁷ Erikson, *supra* note 14, at 89.

¹⁸ The Constitution of the Republic of Haiti (1987), art. 149.

the Provisional President to be sworn in by the legislature,¹⁹ but not a single elected official was involved in the Boniface investiture. Second, the same article requires the organization of new presidential elections within 90 days of the vacancy; this would have required new elections by June 1, 2004. More than 20 months later, these elections have still not been held.

Interim Prime Minister Gérard Latortue was constitutionally ineligible for the office and was appointed through an illegal process. The Constitution requires a Prime Minister to have lived in Haiti for the five years preceding his nomination,²⁰ but Mr. Latortue resided for those five years in Florida, in the United States. The Constitution requires that the Prime Minister be nominated by the President, and confirmed by Parliament,²¹ but Mr. Latortue was nominated by an invented structure, the Counsel of the Wise, and was not confirmed by any elected officials.

Since the formation of the transitional government, the overall situation in Haiti has been characterized by lawlessness in many areas, widespread violence, and systematic violations of the human rights of government opponents. Despite the presence of a U.N. force, many armed groups remain active throughout Haiti. Paramilitary groups led by former soldiers operate with impunity in many areas.

Constitutional rule has completely broken down under the IGH. The Prime Minister was selected in an unconstitutional manner, the IGH dismissed the remaining members of Parliament, and, on December 9, 2005, the Executive illegally fired five judges of the *Cour de Cassation* or Supreme Court.²²

B. REBEL LEADERS WHO CIRCULATE FREELY AND HAVE EXERCISED DE FACTO CONTROL OVER AREAS OF HAITI ARE CONVICTED HUMAN RIGHTS VIOLATORS.

¹⁹ *Id.*

²⁰ *Id.* art. 157(5).

²¹ *Id.* art. 137.

²² Press Release N° 39/05, Inter-American Commission on Human Rights, IACHR Alarmed by the Retirement of Five Supreme Court Judges in Haiti, Dec. 16, 2005.

According to both Amnesty International and Human Rights Watch, several leaders of the rebellion, who have exercised *de facto* control over much of the country, are convicted human rights violators, many of whom escaped from prison in February 2004.²³ Further, the interim prime minister of the transitional government, Gérard Latortue, has shown little inclination toward prosecuting the rebels for human rights abuses – in March 2004, Latortue referred to the rebels as “freedom fighters” while speaking at a rally in Gonaïves.²⁴

One of the leaders of the insurgency, Guy Philippe, is a former police chief in Cap-Haïtien and Delmas whom the U.S. Embassy has implicated in drug smuggling. Philippe fled Haiti in October 2000 after the elected government discovered that he and other police officers were plotting a *coup d'état*.²⁵ His paramilitary force led a series of several deadly attacks on Haiti's constitutional government, including an attack on the Haitian Police Academy in July 2001 and an attempted coup in December 2001,²⁶ in which Philippe's men briefly controlled the National Palace.

After his forces took over the city of Cap-Haïtien in February 2004, Philippe bragged to the press about going from house to house in order to find government supporters and execute

²³ See Press Release, Amnesty International, Haiti: Convicted Human Rights Violators Must Not be Allowed Power, available at <http://web.amnesty.org/library/Index/ENGAMR360142004?open&of=ENG-HTI>; HUMAN RIGHTS WATCH, HAITI: RECYCLED SOLDIERS AND PARAMILITARIES ON THE MARCH, available at <http://hrw.org/english/docs/2004/02/27/haiti7677.htm>.

²⁴ Erikson, *supra* note 14, at 89.

²⁵ YVES ENGLER & ANTHONY FENTON, CANADA IN HAITI 33-34 (2005).

²⁶ The OAS Special Mission in Haiti investigated the 2001 attacks and concluded that they were not an attempted coup d'état, because the attackers took the Presidential Palace when President Aristide was known to be elsewhere. See OAS, REPORT OF COMMISSION OF INQUIRY INTO THE EVENTS OF DECEMBER 17, 2001 IN HAITI, Conclusion A6, 31 (“the objective of the attack on the National Palace does not correspond with the objective of producing a coup d'état”). The only proffered support for this conclusion is the finding that “it is widely known” that the President is away from the National Palace on Sunday nights, and that the attacks did not target “certain strategic targets” that are “typical” in coup attempts. *Id.* at 27. This conclusion ignores the fact that the successful September 1991 coup d'état against President Aristide started when the President was away from the National Palace at his private residence. In both cases, the putchists took advantage of the fact that the President's best security was away with him to invade the Palace and force the constitutional authorities to dislodge them from a position of strength. The

them. Although the transitional government has not given him official powers, it has allowed Philippe to exercise *de facto* control over parts of the country. Philippe is a candidate for President in Haiti's elections currently scheduled for February 2006.

Another insurgent leader, Louis Jodel Chamblain, a former sergeant in the Haitian army, was the second-in-command of the Revolutionary Front for Haitian Advancement and Progress (FRAPH), a paramilitary group formed during the 1991-1994 military regime that was responsible for numerous attacks against democracy supporters. Although Chamblain went into exile in the Dominican Republic to avoid prosecution in late 1994, he was among seven people convicted *in absentia* in 1995 for the extrajudicial execution of Antoine Izmary, a businessman and Aristide supporter. In November 2000, he was again convicted *in absentia* for the 1994 massacre of pro-democracy activists in the neighborhood of Raboteau.

On April 22, 2004, facing international pressure, Chamblain turned himself in to the police and sought a new trial (as all *in absentia* convicts have the right to do in Haiti). Minister of Justice Bernard Gousse declared that Chamblain "had nothing to hide" and later speculated that he would pardon Chamblain if he were convicted. On August 16, 2004, the transitional government held a new trial for Chamblain on the Izmary assassination case. The prosecutor made almost no effort to prosecute – not a single witness testified, and no new evidence was presented – and Chamblain was acquitted. Amnesty International described this trial as a "mockery."²⁷ In July 2005, Chamblain was released from prison. UN Secretary General Kofi Annan said the release "tarnishe[s] the credibility of the justice system."²⁸

Commission's conclusion was further undermined when the leaders of the 2001 attacks launched an invasion of Haiti in February 2004. *Id.*

²⁷ Press Release, Amnesty International, Haiti: Chamblain and Joanis Overnight Trials Are an Insult to Justice, Aug. 16, 2004, available at <http://web.amnesty.org/library/Index/ENGAMR360532004?open&of=ENG-HTI>.

²⁸ UN Daily News, Tues. Oct. 11, 2004, available at <http://www.un.org/news/dh/pdf/english/2005/11102005.pdf>.

Between them, the insurgency and then the transitional government have released hundreds of other prisoners, many convicted of human rights violations, including every person in prison who had been convicted in the Raboteau Massacre trial or the assassination of Antoine Izmerly.²⁹

C. U.S. GOVERNMENT ACTIONS CONTRIBUTED, DIRECTLY AND INDIRECTLY, TO THE UNLAWFUL REMOVAL OF HAITI'S ELECTED PRESIDENT.

The U.S. government contributed to the unlawful removal of Haiti's elected President by: 1) leading a development-assistance embargo against Haiti's elected government; 2) financially and militarily supporting groups engaged in a systematic effort to undermine the democratic government; 3) failing to come to Haiti's aid despite a request to do so; and 4) kidnapping President Aristide and forcing him out of the country.

In response to allegations of irregularities with Haiti's May 2000 elections, the United States imposed a development-assistance embargo on Haiti that included withholding almost all U.S. bilateral assistance to the Haitian government and blocking assistance from other organizations, including international financial institutions.³⁰ Further, the United States directed the Inter-American Development Bank (IADB) to block four loans to Haiti that had already been approved for health, education, drinking water, and road improvement.³¹ Blocking already-approved loans violated the IADB's internal regulations, and using the bank for leverage in a political dispute contravened the IADB's charter. The United States did not lift these sanctions

²⁹ AMNESTY INTERNATIONAL, HAITI: BREAKING THE CYCLE OF VIOLENCE: A LAST CHANCE FOR HAITI, AMR 36/038/2004 (Jun. 21, 2004).

³⁰ See Tracy Kidder, *The Trials of Haiti*, in LET HAITI LIVE 19-24 (Melinda Miles & Eugenia Charles eds., 2004).

³¹ Paul Farmer, *Who Removed Aristide?*, LONDON REVIEW OF BOOKS, Apr. 15 2004, available at http://lrb.co.uk/v26/n08/farm01_.html. Today, Haiti owes foreign governments and international lending institutions some \$1.134 billion. "In July 2003, Haiti sent more than 90 percent of its foreign reserves to Washington [to finance this debt]." *Id.*

after the government of Haiti remedied the election problems through the resignation of the seven Senators whose election was contested.³²

The United States also imposed a police-supplies embargo on the Haitian government. Restrictions on shipment of guns from the United States to Haiti had been in place since 1995, but after President Aristide assumed office in 2001, the restrictions were increased to include tear gas, riot shields, and other defensive equipment. Because the United States dominates the police-supply market in the Caribbean, the government of Haiti was unable to obtain adequate supplies elsewhere.³³

At the same time, the United States sent a significant quantity of guns to the Dominican Republic, many of which made it into the hands of the Haiti rebels. After installing the illegal IGH, the United States provided it with \$1.9 million in weapons donations.³⁴

At the same time that it was preventing the elected government from accessing resources and security equipment, the U.S. government generously financed a series of non-governmental organizations in Haiti to undermine the elected government. The program, financed by the U.S. Agency for International Development and implemented by the International Foundation for Electoral Systems (IFES), spent millions of dollars creating and supporting a network of political, professional, business, and legal organizations, for the express purpose of generating public opposition to Haiti's elected governments.³⁵ IFES financed activities of the "Group of 184", led by a U.S. citizen, which organized demonstrations against the government, many of them illegal and provocative. Several participants in IFES programs were named to key places

³² Kidder, *supra* note 30, at 22.

³³ Affidavit of Ira Kurzban, attached as Exhibit B, para. 12.

³⁴ Alfred de Montsequiou, *U.S. Sends Guns to Haiti Ahead of Election*, ASSOCIATED PRESS, Aug. 8, 2005, available at <http://www.mercurynews.com/mld/mercurynews/news/world/12315139.htm>.

³⁵ Thomas M. Griffin, *Haiti: Human Rights Investigation November 11-21, 2004*, in CENTER FOR THE STUDY OF HUMAN RIGHTS 20-22 (2004), available at http://www.law.miami.edu/cshr/CSHR_Report_02082005_v2.pdf.

in the interim government, including Prime Minister Gérard Latortue and Minister of Justice Bernard Gousse.³⁶

The U.S. government also failed to come to Haiti's aid when requested to do so. As the insurgency captured more territory in Haiti, the Haitian government requested "a few dozen peacekeepers" to avoid further bloodshed. On February 26, CARICOM requested that the Security Council authorize the urgent deployment of a multinational force to assist in the restoration of law and order.³⁷ The United States not only failed to provide any assistance to support Haiti's embattled democracy, but U.S. officials applied pressure to force President Aristide to leave.³⁸

Providing a small number of peacekeepers was certainly within the U.S. government's power; a detachment of 50 U.S. Marines arrived in Port-au-Prince before the coup d'état to protect American interests,³⁹ and within hours of President Aristide's departure, the U.S. was able to land a peacekeeping force.⁴⁰

The U.S. Government played an active role in President Aristide's physical removal from Haiti on February 29, 2004. First, on the afternoon of Saturday, February 28, 2004, the Steele Foundation, a U.S. company that had been providing private security services to the Haitian government, informed President Aristide that the U.S. government had asked it to withdraw all of its personnel from Haiti. The Steele Foundation also told President Aristide that the U.S. government was blocking the Steele Foundation's efforts to bring to Haiti additional personnel

³⁶ *Id.* at 24.

³⁷ K.D. Knight, Minister of Foreign Affairs and Foreign Trade, Jamaica, Address to the U.N. Security Council on Haitian Situation, Feb. 26, 2004, *available at* <http://www.un.org/News/Press/docs/2004/sc8011.doc.htm>.

³⁸ *The Departure - State Dept. Denies Leader Was Forced Out of Office*, NEW YORK TIMES, Mar. 2, 2004.

³⁹ *Pressure mounts for Haitian leader to quit - Insurgents to zero in on capital as diplomats consider peacekeepers*, THE BALTIMORE SUN, Feb. 27, 2004.

⁴⁰ Tim Weiner & Lydia Polgreen, *Haitian Rebels Enter Capital; Aristide Bitter*, NEW YORK TIMES, Mar. 2, 2004.

needed to protect the President.⁴¹ The Steele Foundation later informed President Aristide that without the additional personnel, the Foundation would not be able to protect the President or his wife.⁴²

Contrary to the official account of the U.S. government, U.S. Congresswoman Maxine Waters and Randall Robinson, the former Executive Director of TransAfrica, have reported that Aristide, calling from a cell phone, told them that he had been compelled to resign against his will by U.S. diplomats and U.S. armed forces, that he was kidnapped by these personnel, and that he was being held by an armed military guard. One of Aristide's own bodyguards similarly reported seeing Aristide being taken away by an armed U.S. guard.⁴³ President Aristide reported that he had been conferring with U.S. Ambassador James Foley on February 28 about ways of avoiding further violence in Port-au-Prince and had agreed to go with a U.S. escort to a location where he could appear on television to appeal for calm. Aristide reported that when he went with the escort early the next morning, his U.S. escort instead took him "straight to the plane," which he described as an unmarked white aircraft with a U.S. flag. Aristide said that unidentified U.S. civilians and Haitians forced him to sign a letter and board the plane leaving Haiti.⁴⁴ Aristide himself claims that the statement that he signed was not a resignation letter – that it included a conditional statement, "[i]f I am obliged to leave in order to avoid bloodshed . . ."⁴⁵ He boarded and was followed by uniformed U.S. troops who changed into civilian clothes after boarding. Also on board were his wife and nineteen members of the Steele Foundation, a

⁴¹ Affidavit of Ira Kurzban, attached as Exhibit B, para. 2.

⁴² *Id.* para. 5.

⁴³ Andrew Buncombe & Phil Davidson, *Aristide's Moment of Decision: 'Live or Die'*, THE INDEPENDENT, Mar. 3, 2004.

⁴⁴ Peter Eisner, *Aristide Back in Carribean Heat*, WASHINGTON POST, Mar. 16, 2004, at A1.

⁴⁵ Frank Davies et al., *Aristide Says He Was Kidnapped*, MIAMI HERALD, Mar. 2, 2004.

private security company contracted by the U.S.⁴⁶ Two witnesses, an American security guard and Frantz Gabriel, Aristide's aide, supported this account.⁴⁷

D. BOTH THE NATIONAL POLICE AND REBEL GROUPS CONTINUE TO USE VIOLENCE TO INTIMIDATE THEIR POLITICAL OPPONENTS.

Since February 29, 2004, opponents of President Aristide and paramilitary groups have killed hundreds of political adversaries. The U.S. armed forces, which defended the institutions of the coup government from February 28 through June 1, did little to protect civilians.⁴⁸

According to several human rights reports, members of Aristide's Lavalas Party fear for their physical safety, and many remain in hiding.⁴⁹ Since the coup, the Haitian police have arrested hundreds of Lavalas supporters; however, rebel leaders, as well as members of the opposition to Aristide who have been convicted of past human rights abuses, remain free.

Further, the interim government has launched a systematic effort to suppress or destroy grass-roots political organizations.⁵⁰ Anthony Fenton, a Canadian journalist and a member of an observation mission to Haiti, wrote:

Right now there is a political climate in Haiti where anyone can get on the radio stations and accuse anyone else of a crime or with being associated with violent Lavalas gangs. It means that without proof they can say this about you and immediately you have to go into hiding, and immediately you have to be concerned with your own welfare; and immediately the death threats begin. That's the political climate that you have in Haiti today.

. . . Daily around 4:00 P.M, lists of names are read over the elite-controlled radio stations.

⁴⁶ Eisner, *supra* note 44.

⁴⁷ *Id.*

⁴⁸ The U.N. Stabilization Mission in Haiti (MINUSTAH) assumed responsibility from the U.S.-led multinational interim force on June 1, 2004. Eric Green, *New U.N. Stabilization Mission Begins in Haiti*, WASHINGTON FILE, June 2, 2004, available at <http://usinfo.state.gov/xarchives/display.html?p=washfile-english&y=2004&m=June&x=20040602160522AEnerG0.9652674&t=livefeeds/wf-latest.html>.

⁴⁹ See, e.g., Griffin, *supra* note 35; AMNESTY INTERNATIONAL, *supra* note 29; Laura Flynn et al., *Report of the Haiti Accompaniment Project June 29-July 9, 2004*, HAITI ACCOMPANIMENT PROJECT, 2004, available at http://www.haitiaction.net/News/hap6_29_4.html (last visited Mar. 27, 2005).

⁵⁰ See Griffin, *supra* note 35; AMNESTY INTERNATIONAL, *supra* note 29.

By sundown those whose names are read on these lists (and others) are quick to find a suitable place to hide.

According to the report of the National Lawyers Guild delegation, politically motivated killings were widespread in the immediate aftermath of the coup. The delegation reported that the Director of the State Morgue “admitted that ‘many’ bodies have come into the morgue since March 1, 2004, that are young men with their hands tied behind their backs, plastic bags over their heads, that have been shot,” and that “morgue workers . . . confirmed that many bodies continue to come in that have hands tied behind their backs.” The Morgue’s Director also told the NLG delegation “that 800 bodies were ‘dumped and buried’ by the morgue on Sunday, March 7, 2004, and another 200 bodies dumped on Sunday, March 28, 2004. The ‘usual’ amount dumped is less than 100 per month.”⁵¹

According to the International Crisis Group (ICG) which released a report in November 2004 on the political situation in Haiti, most of these individuals were shot in the heavily populated slums of Port-au-Prince, where armed groups battled with the Haitian National Police. Further, the report notes that the Haitian National Police have been accused of summarily executing young men in the capital’s pro-Aristide neighborhoods.⁵²

According to an Amnesty International fact-finding mission, two people with Lavalas connections were murdered in separate incidents on April 3 and 4, 2004 in the Port-au-Prince slum Martissant. Two members of KOMIREP, a grassroots organization that includes victims of the 1991 coup d’état that removed President Aristide from power during his first term, were

⁵¹ Thomas Griffen, *Summary Report of Haiti Human Rights Delegation* (National Lawyers Guild, New York, N.Y.), Mar. 29 - Apr. 5, 2004, available at http://www.nlg.org/programs/international/Haiti_delegation_report1.pdf.

⁵² INTERNATIONAL CRISIS GROUP, *A NEW CHANCE FOR HAITI?* (2004), available at <http://www.icg.org/home/index.cfm?id=3109&l=1>; see also Griffen, *supra* note 35.

kidnapped on April 4, 2004.⁵³ Further, there have been widespread reports of other unlawful killings and kidnappings in Port-au-Prince of persons belonging to pro-Aristide organizations.⁵⁴

According to a report by the Harvard Law Student Advocates for Human Rights and Brazil's Centro de Justiça Global:

civilian casualties remain common in Port-au-Prince's slums, where gangs wage daily, low-level urban warfare. Large swaths of the poor countryside remain under the control of the former military, historically the major domestic force behind *coups d'états* and among the foremost violators of human rights Numerous allegations of severe human rights abuses by the Haitian National Police ("HNP") remain uninvestigated. These violations span a gory spectrum, from arbitrary arrest and detention, to disappearances and summary executions, to killing of scores of hospitalized patients and the subsequent disposal of their bodies in mass graves.⁵⁵

The IGH has also detained an undetermined number of political prisoners in the Haitian National Penitentiary ("*Penitencier National*") in Port-au-Prince.⁵⁶ The Inter-American Commission reported in April 2005 that, "according to a November 2004 report by the Office of the Ombudsman, an average of approximately 90% of individuals held in detention centers in Haiti's 10 geographic departments have not been tried or convicted. For instance, the Commission visited the National Penitentiary and discovered that of the 1,054 inmates in the prison only 9 were convicted of any crime."⁵⁷

⁵³ Press Release, Amnesty International, Haiti: Armed Groups Still Active (Apr. 8, 2004), *available at* <http://news.amnesty.org/index/ENGAMR360302004>.

⁵⁴ See, e.g., Public Statement, Amnesty International, *Haiti: Illegal and arbitrary arrests continue – Human rights hampered amid political violence* (Oct. 19, 2004), *available at* <http://web.amnesty.org/library/Index/ENGAMR360562004?open&of=ENG-HTI>; AMNESTY INTERNATIONAL, *supra* note 29; Public Statement, Amnesty International, *Haiti: Unbridled Violence Must End* (AMR 36/054/2004) (Oct. 8, 2004), *available at* <http://web.amnesty.org/library/Index/ENGAMR360542004?open&of=ENG-HTI>.

⁵⁵ HARVARD LAW STUDENT ADVOCATES FOR HUMAN RIGHTS AND BRAZIL'S CENTRO DE JUSTIÇA GLOBAL, *KEEPING THE PEACE IN HAITI?* 1 (2005), *available at* <http://www.law.harvard.edu/programs/hrp/CAP/current/americas/haiti.html>.

⁵⁶ Amnesty International, *supra* note 56; Human Rights First, *What's At Stake, Your Help Needed for Priest and Activist*, *available at* http://action.humanrightsfirst.org/campaign/Jean_Juste/explanation; Amnesty International, *Release Political Prisoner Annette Auguste, 20 Months of Arbitrary Detention* (Jan. 10, 2006); BRIAN CONCANNON, *HUMAN RIGHTS IN HAITI* (2004), *available at* http://www.ijdh.org/articles/article_ijdh-human-rights_update-july-26-04_outline.html.

⁵⁷ Press Release 16/05, Inter-Am. C.H.R., IACHR Calls for Greater International Action in Haiti (Apr. 22, 2005), *available at* <http://www.cidh.org/comunicados/english/2005/16.05eng.htm>.

Prisoners are routinely held in cement cells without toilets, water or electricity. A United Nations Development Program official warned the Haitian government that the conditions were so inhuman that violence by prisoners is inevitable.⁵⁸ Pre-trial detainees are not separated from convicted prisoners in the *Penitencier*. Further, according to Professor William Quigley, “this lack of due process creates an environment of increased frustration, tension and violence.”⁵⁹

On December 1, 2004, police and prison officials fired automatic weapons at prisoners in response to a non-lethal protest. Journalists, human rights groups, and witnesses claim that several dozen people were killed.⁶⁰ Although both MINUSTAH and the PNH have announced investigations into the case, neither has released a report on the killings.

Among the most notable political prisoners being held by the IGH is the former Prime Minister Yvon Neptune. On March 25, 2004, Judge Clunie Pierre Jules, a magistrate investigating the violent clash between government forces and rebels on February 2004 in St. Marc’s La Scierie neighborhood, issued an arrest warrant against Neptune. Mr. Neptune was not aware of the warrant until it was announced on the radio on June 27, 2004, and, that day, he promptly turned himself in to the Haitian police. The police detained Mr. Neptune, and he spent almost a year in prison before being brought before a judge. Formal judicial charges were not brought against Mr. Neptune until September 2005. Thierry Fagart, the top UN human rights

⁵⁸ Reed Lindsay, *Haiti Inmates Call Prison Riot a Massacre*, SAN FRANCISCO CHRONICLE, Jan. 2, 2005, available at http://www.ijdh.org/articles/article_ijdh-human-rights_alert_january-4.html; HARVARD LAW STUDENT ADVOCATES FOR HUMAN RIGHTS, *supra* note 55, at 41.

⁵⁹ Declaration of Professor William P. Quigley Regarding Threats to Petitioner’s Life, Integrity and Health, Attached to Petition of Yvon Neptune to the Inter-American Commission on Human Rights (Apr. 4, 2005).

⁶⁰ INSTITUTE FOR JUSTICE & DEMOCRACY IN HAITI, REPORT ON DECEMBER 1 MASSACRE IN THE HAITIAN NATIONAL PENITENTIARY (2004), available at http://www.ijdh.org/articles/article_ijdh-human-rights_alert_december-20.html.

official in Haiti called the charging document that was eventually issued “a flagrant violation of the Constitution.”⁶¹

On August 20, 2005, police accompanied by civilians with machetes attacked a crowd at a soccer stadium in broad daylight, killing between 15 and 30 civilians.⁶² This attack was the latest in a series of police/paramilitary attacks throughout the month of August.

On October 14, 2005, Mr. Fagart called the human rights situation “catastrophic.” He cited summary executions, mob violence, torture and arbitrary arrests, and urged the IGH to end human rights abuses immediately.⁶³ On November 29, 2005, Louis Joinet, the UN Human Rights Commission Independent Expert on Haiti, called a press conference to denounce the IGH’s illegal imprisonment of political dissidents.⁶⁴

The press in Haiti has been persecuted as well. On October 5, 2005, the Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission issued a press release deploring the recent attacks against the exercise of the right to freedom of expression in Haiti, as well as the acts of intimidation and aggression against journalists and the media in the country.⁶⁵

Amidst this climate of fear, armed groups remain unchecked by the transitional government, the Haitian police, or the multinational peacekeeping force and continue to engage

⁶¹ *La décision de la juge Cluny Pierre Jules, de renvoyer l'affaire Neptune par devant un tribunal criminel sans assistance de jury, est une violation flagrante de la constitution de 1987*, AGENCE HAÏTIENNE DE PRESSE, Oct. 14, 2005, available at <http://www.ahphaiti.org/ndujour.html>.

⁶² INSTITUTE FOR JUSTICE & DEMOCRACY IN HAITI, PRELIMINARY REPORT ON POLICE/CIVILIAN ATTACKS ON AUGUST 20 AND 21 IN GRANDE RAVINE (2005), available at http://www.ijdh.org/articles/article_recent_news_8-24-05.htm.

⁶³ *UN-Haiti Human Rights Situation “Catastrophic,”* REUTERS, Oct. 14, 2005, available at http://www.ijdh.org/articles/article_recent_news_10-17-05.htm.

⁶⁴ *U.N. Human Rights Official Deplores Number of Prisoners Detained Without Trial in Haiti*, ASSOCIATED PRESS, Nov. 29, 2005, available at http://www.ijdh.org/articles/article_recent_news_12-2-05a.htm.

⁶⁵ Press Release 129/05, Organization of American States, Office of the Special Rapporteur for Freedom of Expression Deplores Attacks Against the Haitian Press (Oct. 5, 2005), available at <http://www.cidh.org/relatoria/showarticle.asp?artID=646&IID=1>.

in a systematic repression of political opponents. This has made meaningful political participation in Haiti impossible.

III. EXHAUSTION OF DOMESTIC REMEDIES

Petitioners beg the Commission to review this petition. Pursuing domestic remedies has been impossible in Haiti, the United States, and the Dominican Republic, and is likely to be impossible in the foreseeable future. Generally, the Commission requires that domestic remedies be exhausted before granting review. Petitioners would attempt to meet this requirement if it were at all possible. Since no domestic remedies are possible, Petitioners plead that the Commission grant review.

A. THE INTER-AMERICAN LEGAL SYSTEM PERMITS EXCEPTIONS TO THE DOMESTIC EXHAUSTION REQUIREMENT.

The inter-American human rights system has recognized that the exhaustion requirement cannot always be met. “It is generally accepted that the procedural system is a means of attaining justice and that the latter cannot be sacrificed for the sake of mere formalities.”⁶⁶ Exceptions to the exhaustion requirement stem from the requirement in Article 46(1)(a) of the American Convention on Human Rights (“Convention”) that remedies be pursued and exhausted “in accordance with generally recognized principles of international law.” The Court has held, “Those principles refer not only to the formal existence of such remedies, but also to their *adequacy and effectiveness.*”⁶⁷

⁶⁶ Inter-Am. Ct. H.R., *Cayara Case Preliminary Objections* (ser. C) No. 14, ¶42 (Feb. 3, 1993); *see also* Inter-Am. Ct. H.R., *Certain Attributes of the Inter-American Commission on Human Rights (Arts. 41, 42, 44, 46, 47, 50, and 51 of the American Convention on Human Rights)*, Advisory Opinion OC-13/93 (ser. A) No.13, ¶43 (July 16, 1993).

⁶⁷ Inter-Am. Ct. H.R., *Velásquez Rodríguez Case* (ser. C) No. 4, ¶63 (July 29, 1988) (emphasis added); *see also* Inter-Am. Ct. H.R., *Godínez Cruz Case* (ser. C) No. 5, ¶66 (Jan. 20, 1989); Inter-Am. Ct. H.R., *Fairén Garbi and Solís Corrales Case* (ser. C) No. 6, ¶87 (Mar. 15, 1989); Inter-Am. Ct. H.R., *Caballero Delgado and Santana Preliminary Objections* (ser. C) No. 17, ¶63 (Jan. 21, 1994); *cf.* Inter-Am. Ct. H.R., *Exceptions to the Exhaustion of*

The Court has declared:

Adequate domestic remedies are those which are suitable to address an infringement of a legal right. A number of remedies exist in the legal system of every country, but not all are applicable in every circumstance. If a remedy is not adequate in a specific case, it obviously need not be exhausted. A norm is meant to have an effect and should not be interpreted in such a way as to negate its effect or lead to a result that is manifestly absurd or unreasonable.

.....
A remedy must also be effective—that is, capable of producing the result for which it was designed. Procedural requirements can make [a particular remedy] ineffective: if it is powerless to compel the authorities; if it presents a danger to those who invoke it; or if it is not impartially applied.⁶⁸

Where domestic remedies are “inadequate” or “ineffective,” resort to them becomes a “senseless formality,” and Petitioners are not required to exhaust them.⁶⁹ Pursuant to Article 37.3, when the Petitioner asserts an inability to prove exhaustion, the Government bears the burden of showing that domestic remedies remain to be exhausted.

B. EXHAUSTING DOMESTIC REMEDIES IS IMPOSSIBLE IN HAITI.

Petitioners are unable to pursue any domestic remedy in Haiti. The current state of the Haitian legal system and the nature of violations for which Petitioners seek a remedy make due process unavailable to Petitioners in Haiti. The transitional government in Haiti ignores the rule of law by denying political prisoners access to the courts,⁷⁰ disregarding prisoner-release orders, and removing judges who obey the rule of law.⁷¹ The climate of violence and the intimidation in

Internal Remedies (Art. 46(1), 46(2)(a) and 46(2)(b) American Convention on Human Rights), Advisory Opinion OC-11/90 (ser. A) No. 11, ¶36 (Aug. 10, 1990).

⁶⁸ Inter-Am. Ct. H.R., *Velásquez Rodríguez Case* ¶¶64, 66; see also Inter-Am. Ct. H.R., *Godínez Cruz Case* ¶¶67, 69; Inter-Am. Ct. H.R., *Fairén Garbi and Solís Corrales Case* ¶¶88, 91; Inter-Am. Ct. H.R., *Caballero Delgado and Santana Preliminary Objections* ¶63; cf. Inter-Am. Ct. H.R., Advisory Opinion OC-11/90 ¶36.

⁶⁹ Inter-Am. Ct. H.R., *Velásquez Rodríguez Case* ¶68; Inter-Am. Ct. H.R., *Godínez Cruz Case* ¶66; Inter-Am. Ct. H.R., *Fairén Garbi and Solís Corrales Case* ¶87; Inter-Am. Ct. H.R., *Caballero Delgado and Santana Preliminary Objections* ¶63; cf. Advisory Opinion OC-11/90 ¶36.

⁷⁰ Mario Joseph Affidavit, para. 3, attached as Exhibit C.

⁷¹ *Id.* para. 5. For example, Jean Senat Fleury resigned as a Judge on January 10, 2005, to protest the Minister of Justice’s illegal decision to remove cases from his docket, a decision implemented a few weeks after Judge Fleury released a political prisoner for lack of evidence. Judge Fleury describes the removal of cases as “a grave insult to my honor and to my integrity as a judge; a flagrant violation of the Constitution and laws of this country,

Haiti has created fear throughout Haitian society and, in particular, in the Haitian legal community, making it impossible for Petitioners to effectively pursue any domestic legal claims. Under these exigent circumstances, Petitioners invoke exceptions to the exhaustion requirement under the American Convention, Article 46(2)(a).

The upcoming elections in Haiti do not offer Petitioners a domestic remedy. The Haitian people voted in 1990, but the military organized a coup d'état that ousted the elected government. The Haitian people voted in 2000, but their elected government was overthrown, this time with the help of the governments of the United States and the Dominican Republic. Although elections are expected to be held sometime in early 2006, the date has been postponed four times. Haiti's Constitution required the elections to have been held on November 27, 2005 and for the inauguration of a new President on February 7, 2006.⁷²

The elections are being organized under an unconstitutional government by an unconstitutional electoral council. Preparations to date have been deeply flawed and discriminatory,⁷³ and the persecution of political dissidents makes it impossible for Haitian voters and potential candidates to participate freely in the elections.

Haiti's voter registration process was extended for two months because the IGH refused to install sufficient voter registration offices in poor urban and rural neighborhoods. The current plans for election day include a similarly inadequate distribution of voting centers. Many poor rural voters will need to travel by foot for several hours to vote, which will likely depress participation by the poor. There have been chronic problems with the preparation and

particularly the principle of separation of powers." See Judge Fleury's Letter of Resignation, Jan. 10, 2005, translated by Brian Concannon. The Minister of Justice's interference in Judge Fleury's docket is one example of many interferences by the transitional government in the rule of law.

⁷² 1987 Constitution, arts. 134-1 and 134-2.

⁷³ Brian Concannon Jr., Haiti: The Time for Action is Now, presentation to the U.S. Congressional Black Caucus Forum, Sept. 22, 2005, available at http://www.ijdh.org/articles/article_recent_news_9-23-05.htm.

distribution of the identification cards needed to vote.⁷⁴ As with registration, the poor are likely to bear the principal burden of these problems.

Not only these procedural defects, but also the IGH's systematic persecution of political dissidents, prevent effective participation by government opponents. Many top dissidents, including Prime Minister Yvon Neptune and several former members of Parliament and local officials, remain in jail illegally. Imprisonment prevents these activists from running as candidates or organizing for the elections. The IGH's repeated deadly attacks against demonstrations and other public events deter voters and citizens from meeting and organizing to discuss political matters. Finally, the attacks against the press prevent the media coverage that is necessary for voters to make informed decisions.

Petitioners plead that elections in Haiti, even if superficially fair, cannot be a remedy, unless there is a guarantee that the IGH, the U.S. government, and the government of the Dominican Republic will respect the election outcomes. Petitioners turn to the Commission to seek relief and the rule of law.

(1) Due process of law is not available for Petitioners in Haiti.

Petitioners are exempt from the exhaustion requirement where evidence demonstrates that the domestic legal system does not afford due process of law. This due process exception to the exhaustion requirement is embedded in Article 46(2)(a) of the Convention: “[The domestic exhaustion requirement] shall not be applicable when the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated.”⁷⁵ In an advisory opinion, the Court has declared, “Article 46(2)(a)

⁷⁴ *Crise électorale en Haïti: les élections reportées pour la 4e fois*, ASSOCIATION FRANCE-PRESSE, Dec. 30, 2005.

⁷⁵ American Convention on Human Rights, “Pact of San Jose, Costa Rica,” Nov. 22, 1969, art. 46(2)(a), available at www.oas.org/juridico/english/Treaties/b-32.htm.

applies to situations in which the domestic law of a State Party does not provide appropriate remedies to protect rights that have been violated.”⁷⁶ The Court has held that, “as a norm of international law and the logical correlative of the obligation to exhaust internal remedies, the rule is not applicable when there are no remedies.”⁷⁷

The Court has applied the due process exception in cases where government practice or policy impedes petitioners from invoking domestic remedies. In *Velásquez Rodríguez*, for example, the Court admitted a petition, filed on behalf of an individual presumed to have been “disappeared” by the Honduran government.⁷⁸ The Court found the petition admissible, although Honduran authorities had not issued a final decision and although the petitioners had failed to pursue all formally available domestic remedies. Given the Honduran government’s policy and practice of intimidation and obstruction in cases involving the military, the Court found that domestic remedies were neither adequate nor effective. The Court reasoned:

[I]f there is proof of the existence of a practice or policy ordered or tolerated by the government, the effect of which is to impede certain persons from invoking internal remedies . . . resort to those remedies becomes a senseless formality. The exceptions of Article 46(2) would be fully applicable in those situations and would discharge the obligation to exhaust internal remedies since they cannot fulfill their objective in that case.⁷⁹

Petitioners ask the Commission to apply the *Velásquez Rodríguez* rule for due process exceptions to their case.

Haitian Petitioners’ situation in this case presents a more blatant denial of due process than that of the petitioners in *Velásquez Rodríguez*. While the *Velásquez Rodríguez* petitioners could approach a court with a habeas petition, Haitian Petitioners have no effective means for challenging the deprivation of their rights to participate in representative government and no

⁷⁶ Inter-Am. Ct. H.R., Advisory Opinion OC-11/90 ¶17.

⁷⁷ Inter-Am. Ct. H.R., *Fairén Garbi and Solís Corrales Case* ¶110.

⁷⁸ Inter-Am. Ct. H.R., *Velásquez Rodríguez Case*.

effective means of holding the IGH accountable for other violations. The climate of violence and impunity in Haiti has paralyzed the justice system. The judiciary—largely lacking independence from the IGH⁸⁰—is unable to offer any meaningful remedy to Petitioners.⁸¹ The national judges’ association in Haiti, named ANAMAH, issued a statement on July 1, 2004, in which it

deplor[ed] the increase in the politicization of justice and illegal arrests over the last four months. The refusal to obey the judge’s release order for Jacques Mathelier illustrates this trend. According to Mathelier’s lawyers, Pierre Reynold Charles, the judge in his case, was about to prepare a liberation order when the prosecutor called him up and told him not to. Lawyers representing political prisoners complain that this interference has become standard operating procedure.⁸²

The IGH’s political interference in the pursuit of justice renders the pursuit of any domestic remedies meaningless.

Most recently, on December 9, 2005, the Interim Prime Minister fired five justices of the *Cour de Cassation*, or Supreme Court. Although the dismissal decree did not cite a reason, it came a day after the *Cour de Cassation* issued a decision mandating that Haiti’s Provisional Electoral Council reinstate the candidacy of a Haitian-born U.S. citizen and resident for the

⁷⁹ *Id.* ¶ 68.

⁸⁰ See Mario Joseph Affidavit, at para. 5-6, attached as Exhibit C.

⁸¹ See, e.g., Press Release, Amnesty International, Haiti: Amnesty International calls on the transitional government to set up an independent commission of enquiry into summary executions attributed to members of the Haitian National Police (Nov. 11, 2004); Democracy Now!, Kangaroo Courts in the New Haiti?: Death Squad Leader Jodel Chamblain Acquitted of Murder Charge (Aug. 19, 2004); Brian Concannon Jr., *Boston Haitian Reporter: Justice Dodged*, INSTITUTE FOR JUSTICE & DEMOCRACY IN HAITI, Sept. 2004, available at http://www.ijdh.org/articles/article_boston-haitian-reporter-justice-dodged_september-04.htm; Brian Concannon Jr., *Haiti Assassination Trial An Affront to All Those Who Have Worked and Died for Justice*, INSTITUTE FOR JUSTICE & DEMOCRACY IN HAITI, Aug. 2004, available at http://www.ijdh.org/articles/article_ijdh-human-rights_alert_august-17.html (“In the early hours of August 17, a sham trial in Port-au-Prince acquitted notorious Haitian rights abusers Jackson Joanis and Jodel Chamblain of the 1993 murder of businessman Antoine Izmyery. Neither the judiciary nor the prosecution made even the minimum effort required by law to pursue this important case. The absence of effort combined with top Haitian officials’ public support for Chamblain and his colleagues compels the conclusion that Haiti’s interim government staged the trial to deflect criticism of its human rights record without alienating its military and paramilitary allies.”).

⁸² Brian Concannon Jr., *Human Rights Update*, INSTITUTE FOR JUSTICE & DEMOCRACY IN HAITI, July 26, 2004, available at http://www.ijdh.org/articles/article_ijdh-human-rights_update-july-26-04_outline.html (summarizing the statement issued by ANAMAH on July 1, 2004).

upcoming Presidential elections.⁸³ This dispute reflects the decline of the rule of law in Haiti, as both sides' conduct flagrantly violates the Constitution.

The Constitution clearly prohibits foreign citizens from running for President and imposes a five-year residency requirement. Article 135 decrees that in order to be elected President of the Republic of Haiti, it is necessary to “be a native-born Haitian and never have renounced Haitian nationality” and to “have resided in the country for five (5) consecutive years before the date of the elections.” The candidate in question, Dumarsais Simeus, a resident of Southlake, Texas, has admitted in press interviews that he is a U.S. citizen and does not claim to have resided in Haiti for the last five years. The *Cour de Cassation* did not deny the plain meaning of the Constitutional prohibition. Instead, it claimed that the Electoral Council had not proven that Mr. Simeus was a U.S. citizen, despite Mr. Simeus' public acknowledgement.⁸⁴

Haiti's Constitution just as clearly prohibits the removal of justices by the Prime Minister.⁸⁵ Justices can be suspended if they are formally charged with a crime, or removed pursuant to a trial in Parliament.⁸⁶ Neither of those avenues was pursued.

The IGH has deprived the Haitian populace of the right to counsel in some cases.⁸⁷ Moreover, it would be absurd to require Petitioners to pursue domestic legal redress against the IGH for its own illegitimacy. Clearly, domestic remedies in Haiti are neither adequate nor effective, and any exhaustion attempts would be a “senseless formality.” This set of

⁸³ Brian Concannon, Jr., *The Chickens Are Coming Home to Roost*, COUNTERPUNCH, Dec. 30, 2005, available at <http://www.counterpunch.org/concannon12302005.html>.

⁸⁴ Jacqueline Charles, *North Texas CEO Wants to Be President – of Haiti*, MIAMI HERALD, Aug. 28, 2005.

⁸⁵ HAITI CONST. art. 177 (1987).

⁸⁶ HAITI CONST. art. 185-190.

⁸⁷ See Press Release, National Lawyers Guild, The National Lawyers Guild Protests Interim Government of Haiti's Exclusion of Human Rights Lawyer Ira J. Kurzban (Mar. 18, 2004); Joe Mozingo, *Citing Aristide Ties, Haiti Bars U.S. attorney from entering country*, KNIGHT RIDDER NEWSPAPERS, Mar. 7, 2005. Indeed, the transitional government in Haiti has been unable or unwilling to provide adequate protections to human rights lawyers within its territory. See Press Release, Amnesty International, Urgent Action for IJDH Lawyer Mario Joseph (Oct. 20, 2004)

circumstances makes it impossible for Petitioners to be “afford[ed] due process of law for the protection of the . . . rights that have . . . been violated.”⁸⁸ Petitioners respectfully plead a due process exception to the requirement of exhausting domestic remedies under Convention Article 46(2)(a).

(2) The political violence and fear that pervade Haiti and its legal system hinder Petitioners’ ability to bring domestic claims.

Fear in the domestic legal community also constitutes a basis for an exception to the exhaustion requirement. “[I]f . . . a general fear in the legal community to represent [a petitioner] prevents a complainant before the Commission from invoking the domestic remedies necessary to protect a right guaranteed by the Convention, he is not required to exhaust such remedies.”⁸⁹ If petitioners “require[] legal representation and a generalized fear in the legal community prevents [them] from obtaining such representation, the exception set out in Article 46(2)(b) is fully applicable and [they are] exempted from the requirement to exhaust domestic remedies.”⁹⁰

In Haiti, fear in the domestic legal community hinders Petitioners’ ability to bring a claim. Members of the Lavalas Party fear for their safety, and many remain in hiding. Police conduct summary executions, and “even well-meaning officers treat poor neighborhoods seeking a democratic voice as enemy territory where they must kill or be killed.”⁹¹ The “voices for non-violent change are silenced by arrest, assassination, or fear.”⁹² In this atmosphere, it is not reasonable to expect Petitioners to pursue domestic remedies.

(describing the death threats received by lawyers Rénan Hédoouville and Mario Joseph, both of whom work on behalf of Haitians suffering human rights abuses at the hands of the army while Haiti was under military rule).

⁸⁸ American Convention, art. 46(2)(a).

⁸⁹ Inter-Am. Ct. H.R., Advisory Opinion OC-11/90 ¶42.

⁹⁰ *Id.* ¶35.

⁹¹ Griffin, *supra* note 35, at Executive Summary.

⁹² *Id.*

Non-governmental organizations working on justice in Haiti have advised Petitioners that there is no likelihood of an effective domestic remedy and that pursuing it could lead to retaliation against Petitioners. Mario Joseph, an attorney at the BAI, explains the difficulties of defending and assisting political prisoners and other victims of human rights abuses in Haiti:

5. The IGH has systematically intimidated judges, especially in high profile political cases. In July 2004, the Haitian Judges' Association, ANAMAH, issued a press release deploring the increase in the politicization of justice and illegal arrests over the previous four months. Later that month, the IGH transferred Jacques Mathelier away from the judge who began the process to free him. On November 24, 2004, Judge Jean Sénat Fleury, one of Haiti's most respected judges, ordered the liberation of Rev. Gérard Jean-Juste, a Catholic Priest and political dissident, who had spent a month in jail without seeing a judge. The IGH eventually gave in to international pressure and released Fr. Jean-Juste. Just before Christmas 2004, Judge Brédy Fabien ordered the release of six more dissidents, including Harold Sévère and Anthony Nazaire, for lack of evidence. On December 30, Minister of Justice Bernard Gousse instructed the chief judge of the Port-au-Prince Trial Court to immediately take all cases from Judges Fleury and Fabien. This was a clear violation of the principle of judicial independence, enshrined in Haiti's Constitution. Judge Fleury, unwilling to serve in such a corrupt system, resigned.

On December 9, 2005, the IGH illegally forced five Justices of the *Cour de Cassation* or Supreme Court, off the court, because they issued a decision that the Executive Branch disagreed with. Since then, the entire justice system has been closed down for a strike.

6. Although lawyers are permitted to represent people in political cases, they are subject to intimidation by both the IGH and armed groups. On October 2, 2004, attorney Axène Joseph went to Radio Caraïbes to represent three current and former members of Parliament that the police were trying to arrest without a warrant, following a radio debate. The police arrested attorney Joseph and held him until the next day, even though there were never any accusations made against him in the police file. Human rights defenders, including me, have been subject to intimidation through telephone calls and other means. Amnesty International issued an urgent action alert on October 11, 2004 for my safety and that of lawyer Renan Hédouville. When American human rights lawyer Ira Kurzban traveled to Haiti on March 7 to visit Petitioner and document his health and the conditions of his detention, he was not allowed to enter the country. All these attacks do not make finding a lawyer impossible, but they do greatly decrease lawyers' ability and willingness to zealously represent parties in political cases.⁹³

⁹³ Affidavit of Mario Joseph, attached as Exhibit C.

The general fear throughout Haiti and its legal community makes it unreasonable for Petitioners to pursue any remedy within the domestic legal system. Thus, Petitioners respectfully submit that the fear in the Haitian legal community fulfills the criteria for exception to the requirement to exhaust domestic remedies, as provided under Article 46(2)(a).

C. EXHAUSTING DOMESTIC REMEDIES IS IMPOSSIBLE IN THE UNITED STATES.

(1) Due process of law is not available for Petitioners in the United States.

The Inter-American Commission has admitted claims against the United States in cases comparable to that of the Petitioners in the present case, where it has been impossible for petitioners located outside the United States to exhaust claims in the United States.⁹⁴ No U.S. law would provide Haitian Petitioners with standing to sue the U.S. government for helping to overthrow the elected government in Haiti. Neither the Federal Tort Claims Act, nor the U.S. Foreign Claims Act, nor the Military Claims Act, nor the Alien Tort Claims Act could assist Petitioners in pursuing remedies in the United States.

The Federal Tort Claims Act is inapplicable to Petitioners, because it does not waive sovereign immunity for “[a]ny claim arising in a foreign country.”⁹⁵ The U.S. Foreign Claims Act only provides compensation to inhabitants of foreign countries for personal injury, death, or property damage caused by, or incident to, *noncombat* activities of military personnel overseas.⁹⁶ The Military Claims Act compensates for injury, death, or property damage caused by either

⁹⁴ See Inter-Am. C.H.R., *Coard et al. v. United States*, Admissibility Report 14/94, Case 10.951 (Feb. 7, 1994) (granting admissibility for claims of arbitrary arrest and detention by the U.S. armed forces in Grenada); Inter-Am. C.H.R., *Disabled Peoples’ International against the United States*, Application 9213 (Sept. 22, 1987) (granting admissibility for claims against U.S. military for aircraft bombing of an asylum in Grenada); Inter-Am. C.H.R., Admissibility Report 31/93, Case 10.573 (Oct. 14, 1983) (granting admissibility for claims against the United States for the overthrow of General Noriega).

⁹⁵ 28 U.S.C. §2680(k); see also *Sosa v. Alvarez-Machain*, 124 S.Ct. 2739, 2748-54 (2004) (interpreting this provision to bar suit from actions arising in Mexico).

⁹⁶ 10 U.S.C. §§2734-2736 (2004) (emphasis added).

military personnel or civilian employees *within the scope of their employment* or caused by *noncombatant activities* of a peculiarly military nature.⁹⁷ Both the U.S. Foreign Claims Act and the Military Claims Act preclude claims arising out of military action. Neither of these Acts nor the Federal Tort Claims Act gives Petitioners standing to pursue remedies within the United States.

Pursuing a remedy under the Alien Tort Claims Act (ATCA) also would be futile for Petitioners. It would be impossible for a U.S. district court to assert jurisdiction over the IGH for ATCA claims. Moreover, none of the ATCA cases alleging violations by the U.S. government has survived a preliminary motion for dismissal. Further, the ATCA fails to provide adequate and effective remedies. It has provided only monetary damages, which the Petitioners in this case do not seek. Petitioners seek the restoration of their right to participate in government and redress for violations committed by the IGH and the United States, neither of which can be pursued in the United States.

(2) In similar circumstances, the Commission has waived the domestic exhaustion requirement.

In at least three comparable cases, the Inter-American Commission has declared petitions admissible, finding that pursuing domestic claims in the United States was impossible. In *Coard v. United States*,⁹⁸ the Commission declared admissible a petition that challenged arbitrary arrests and incommunicado detention by the U.S. armed forces in Grenada. The Commission declared that:

the American Declaration is a source of international obligation for member states not party to the American Convention, and [the Commission's] Statute authorizes it to examine complaints under the Declaration and requires it to pay special attention to certain core rights. As the Petitioners had submitted claims alleging the violation of

⁹⁷ 10 U.S.C. § 2733 (2004) (emphasis added).

⁹⁸ Inter-Am. C.H.R., *Coard v. United States*, Case 10.951, Report N° 109/99 (Sept. 29, 1999).

rights protected under the Declaration, the Commission declared that those that met the applicable requirements would be examined.⁹⁹

Haitian Petitioners likewise seek redress for violations of rights protected under the Declaration for which no domestic remedies are available, and request the Commission to review this case.

In Report 31/93, Case 10.573 (Oct. 14, 1993), the Commission declared admissible a petition that challenged the U.S. military overthrow of General Manuel Noriega. The Commission determined that “[g]iven the lack of adequate and effective remedies capable of repairing the violations alleged, the requirement that domestic remedies [in the United States] be exhausted is inapplicable.”¹⁰⁰ The Commission held that the Foreign Claims Act “does not provide the Petitioners with the possibility of redress appropriate to the remedies they request.”¹⁰¹ Petitioners submit that a similar exception to the domestic exhaustion requirement applies in this case.

Petitioners also draw the Commission’s attention to its admissibility decision in *Disabled Peoples’ International et al. against the United States*.¹⁰² In that case, petitioners, on behalf of Grenadian residents, sought remedies for the U.S. military aircraft bombing of the Richmond Hill Insane Asylum in Grenada. The Commission declared the petition admissible, finding:

Domestic remedies were not provided by the legislation of Grenada or the United States; . . . the *ad hoc* nature of the U.S. compensation program, the evident failure of the U.S. Government to contact these incapacitated victims, and the unwillingness of the U.S. Government to compensate these victims subsequent to the expiration of the *ad hoc* compensation program, lead the Commission to conclude that the domestic remedies could not be invoked and exhausted so as to render the provision of Article 37(2)(a) applicable.¹⁰³

⁹⁹ *Id.* ¶ 9.

¹⁰⁰ Case 10.573, Inter-Am. C.H.R., Report No. 31/93, ¶ 17 (1993).

¹⁰¹ *Id.* ¶ 16.

¹⁰² Application No. 9213, Inter-Am. C.H.R., (Sept. 22, 1987).

¹⁰³ *Id.*

A similar lack of appropriate domestic legal remedies characterizes Petitioners' situation in this case. Domestic remedies are not provided by legislation in the United States or in Haiti.

Accordingly, Petitioners respectfully request that the Commission waive the requirement for exhausting remedies in this case, because meeting such a requirement would be impossible.

D. EXHAUSTING DOMESTIC REMEDIES IS IMPOSSIBLE IN THE DOMINICAN REPUBLIC.

Petitioners submit that it is impossible for them to exhaust domestic remedies in the Dominican Republic. Petitioners seek a declaration that the IGH, the U.S. government, and the Dominican Republic have violated their obligations to respect and ensure democracy under international law and that the conduct of these governments has violated the rights of Petitioners to participate in the government of Haiti. This remedy cannot be achieved by petitioning the government or the justice system in the Dominican Republic. Even if it were possible, Petitioners do not have counsel in the Dominican Republic to bring a claim there.

Petitioners claim an exception to the domestic exhaustion requirement under Article 46(2)(a) of the American Convention, which allows for an exception when "the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated." Petitioners allege that the domestic legislation in the Dominican Republic does not provide the due process of law for protecting the rights at issue. Petitioners respectfully request the Commission to waive the exhaustion requirement, because meeting it would be impossible in this case.

E. THIS PETITION IS BEING SUBMITTED TO THE COMMISSION WITHIN A REASONABLE TIME.

This petition is being submitted to the Commission within a reasonable time, in accordance with the Commission's rules of procedure.¹⁰⁴ The petition is filed in February 2006, less than two years after the overthrow of Haiti's elected government. From February 2004 through March 2005, Petitioners relied in good faith on three hopes: first, that the IGH would take steps to redress the violations of their rights; second, that the United States and the Dominican Republic would take appropriate diplomatic and other measures to encourage and support such redress; and, third, that there would be democratic elections held in Haiti. The passage of time has proven these hopes to be hollow. No attempt at redress has been made, although adequate time has been afforded to the named governments. Petitioners now appeal to the Commission.

IV. HUMAN RIGHTS VIOLATIONS

A. LEGAL STANDARDS

The IGH has deprived Petitioners of their rights to participate in government, to vote, to access public service, and to equal protection under the law, in violation of the American Convention, which Haiti ratified in 1977. The United States and the Dominican Republic have violated the principles of the OAS and Inter-American Democratic Charters and Petitioners' rights under the American Declaration of the Rights and Duties of Man ("American Declaration") by supporting and participating in the overthrow of the democratically elected Haitian government.¹⁰⁵

¹⁰⁴ Commission Rules of Procedure, art. 32(2).

¹⁰⁵ The Inter-American Court and Commission have held that the American Declaration is a source of international obligations for all the member states of the Organization of American States, including the U.S. government. See Inter-Am. Ct. H.R., *Interpretation of the American Declaration of the Rights and Duties of Man Within the Framework of Article 64 of the American Convention on Human Rights*, Advisory Opinion OC-10/89 (ser. A.) No.

The Commission recognizes that violations of the right to participate in representative government contravene the American Convention, the American Declaration, and the Inter-American Democratic Charter. The Commission has declared that “only through the effective exercise of representative democracy can human rights be fully guaranteed.”¹⁰⁶ The Commission seeks to protect this right: “There is a conception in the inter-American system of the fundamental importance of representative democracy as a legitimate mechanism for achieving the realization of and respect for human rights; and as a human right itself, whose observance and defense was entrusted to the Commission.”¹⁰⁷ Because Petitioners have been deprived of the ability to meaningfully participate in representative democracy, they plead that the Commission recognize the violations they suffer.

The Commission has addressed deprivations of rights to political participation in past cases. To determine that a violation of the right has occurred, “the Commission has held that its role in evaluating the right to participate in government is to ensure that any differential treatment in providing for this right lacks any objective and reasonable justification.”¹⁰⁸ In at least one case, the Commission has shifted “the burden of proving the legitimate aim” to the defendant state.¹⁰⁹ Petitioners contend that the IGH, the United States, and the Dominican Republic bear the burden of proving a legitimate aim in this case, since Petitioners plead that the

10 ¶¶ 35-45 (1989); Inter-Am. C.H.R., *James Terry Roach and Jay Pinkerton v. United States*, Case 9647, Res. 3/87 (1987); Inter-Am. C.H.R., Annual Report 1986-1987, ¶¶ 46-49; Inter-Am. C.H.R., *Rafael Ferrer-Mazorra et al. v. United States*, Report N° 51/01, Case 9903 (2001); *see also* Statute of the Inter-American Commission on Human Rights, art. 20.

¹⁰⁶ Inter-Am. C.H.R., *Andrés Aylwin Azócar Case*, Report No. 137.99, Case 11.863, ¶39 (1999).

¹⁰⁷ *Id.* ¶46.

¹⁰⁸ *Statehood Solidarity Comm. v. United States*, Case 11.204, Inter-Am. C.H.R., Report No. 98/03 ¶ 90 (2003); *see also* Inter-Am. C.H.R., *Azócar Case*, ¶¶99, 101; UNHRC, General Comment 25(57), General Comments under Article 40, paragraph 4 of the International Covenant on Civil and Political Rights, adopted by the Committee at its 1510th mtg., U.N. Doc. CCPR/C/Rev.1/Add.7 (1996), ¶4.

¹⁰⁹ Inter-Am. C.H.R., *Azócar Case*, ¶105.

Commission find that there is no objective or reasonable justification for depriving them of their right to participate in representative government.

B. THE IGH HAS DEPRIVED PETITIONERS OF THEIR RIGHTS IN VIOLATION OF THE AMERICAN CONVENTION ON HUMAN RIGHTS.

(1) Article 23 Violations: The IGH has violated Petitioners' rights to participate in government, to vote, and to have access to public service.

Article 23 of the Convention protects Petitioners' rights to participate in government, to vote, and to have access to public service. The Article provides:

Every citizen shall enjoy the following rights and opportunities:

- a. to take part in the conduct of public affairs, directly or through freely chosen representatives;
- b. to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters; and
- c. to have access, under general conditions of equality, to the public service of his country.¹¹⁰

The IGH has violated Petitioners' rights under Article 23 by ousting a democratically elected government and sustaining conditions that repress legitimate political activity. The IGH rendered meaningless Petitioners' rights to take part in public affairs, to vote, and to have access to public service. The climate of violence and impunity in Haiti paralyzes Petitioners' ability to protest the regime, to organize for elections, and to have access to public services. The IGH has undermined completely the protections that Article 23 guarantees to Petitioners.

In situations with less glaring Article 23 violations, the Commission has ruled against defendant states. For example, in *Susana Higuchi Miyagawa* (against Peru),¹¹¹ the Peruvian National Elections Board denied the applicant's standing as a political candidate. In response, the Commission held that Peru violated the applicant's right to political participation as

¹¹⁰ American Convention on Human Rights, art. 23(1).

¹¹¹ Inter-Am. C.H.R., *Susana Higuchi Miyagawa v. Peru*, Case 11.428, Report No. 119/99 (1999).

guaranteed in Article 23. In that case, a single political candidate was denied the right of political participation. In Haiti, by comparison, a coup ousted an entire democratically elected government, and prevented its members and ordinary citizens from participating in public affairs and from having access to public service. The votes of millions of Haitian citizens were nullified. The IGH continues to tolerate a climate that represses political participation, by illegally imprisoning opposition politicians and firing on pro-democracy demonstrations. The situation in Haiti involves more severe and far-reaching Article 23 violations than those in *Susana Higuchi Miyagawa*. Petitioners urge the Commission to recognize these violations.

Petitioners also draw the Commission's attention to its decision in *Azócar*.¹¹² There, the Commission held that a Chilean constitutional provision, which allowed a life term for designated senators, violated citizens' right to political participation as guaranteed by Article 23 of the American Convention. The Commission reasoned that:

representative democracy—one of whose key elements is the popular election of those who hold political power—is the form of organization of the state explicitly adopted by the member states of the Organization of American States. In contrast to the United Nations, the inter-American system has incorporated an express provision in its Charter, Article 3(d), according to which the solidarity of the American states and the high aims of the Charter require a form of political organization based on the *effective exercise of representative democracy*.¹¹³

In *Azócar*, the Commission found Article 23 violations when citizens were prevented from electing a handful of seats in the national legislature. In Haiti, the democratically elected government itself has been ousted and replaced by a transitional government with no legislative body. In the ongoing climate of violence and impunity, which the transitional government tolerates and encourages, Petitioners would risk their physical safety if they were to express their political viewpoints. The situation in Haiti deprives Petitioners of their right to political

¹¹² Inter-Am. C.H.R., *Azócar Case*.

¹¹³ *Id.* ¶ 31 (emphasis in original).

participation in a more severe manner than that involved in *Azócar*. Petitioners plead that the Commission acknowledge these deprivations.

(2) Article 24 Violation: The IGH has deprived Petitioners of equal protection of the law.

Article 24 of the Convention protects the right to equal protection of the law: “All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.” The IGH denies Petitioners equal protection of the law by depriving them of the right to participate in government. Specifically, the IGH has deprived President Aristide and Haiti’s other democratically elected and appointed officials of their right to participate without discrimination in the public affairs of Haiti. Moreover, the IGH continues to single out and target Lavalas supporters for violence and other forms of repression.

The IGH’s denial of equal protection to Petitioners is comparable with at least two cases in which the Commission has recognized Article 24 violations. In *Susana Higuchi Miyagawa*, the Commission found that Peru deprived the applicant of her equal protection right when she was denied standing as a political candidate. In *Azócar*, the Commission found that a Chilean constitutional provision, which allowed a life term for designated senators, violated citizens’ right to political participation without discrimination. Petitioners plead that their equal protection violations are at least as severe as those in *Miyagawa* and *Azócar*.

(3) Article 1 Violation: The IGH has failed to respect and ensure human rights.

The IGH has failed to comply with Article 1 of the Convention, which obligates States Parties to “respect” and “ensure” the full and free exercise of all of the rights and freedoms recognized in the Convention. The Court has recognized that Article 1 “specifies the obligation assumed by the States Parties in relation to each of the rights protected [in the Convention].

Each claim alleging that one of those rights has been infringed necessarily implies that Article 1(1) of the Convention has also been violated.”¹¹⁴

The IGH has violated its Article 1(1) obligation with respect to the rights articulated in Articles 23 and 24 of the Convention by failing to “ensure” the full and free exercise of those rights by Petitioners. The IGH has utterly failed “to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights.”¹¹⁵ Nationwide violence and oppression continue to stifle Petitioners’ human rights. The IGH has neither taken adequate steps to stop the violence and intimidation nor sought to end the climate of impunity or punish those responsible for the coup. The state’s failure to act against violations of the Convention is “decisive” for finding liability.¹¹⁶

C. THE UNITED STATES AND THE DOMINICAN REPUBLIC HAVE VIOLATED THE PRINCIPLES OF NON-INTERVENTION AND SOVEREIGNTY EMBODIED IN THE OAS AND DEMOCRATIC CHARTERS.

(1) The United States and the Dominican Republic have violated the principles of sovereignty in the OAS Charter.

Petitioners allege that the United States and the Dominican Republic have violated their duties under the OAS Charter to respect Haitian sovereignty. Specifically, Petitioners allege violations of Articles 2, 3, 19, 20, and 28 of the OAS Charter.

Article 2 of the OAS Charter articulates that one of the eight essential purposes of the OAS is “to promote and consolidate representative democracy, with due respect for the principle of nonintervention.” Article 3 of the OAS Charter affirms the principle:

¹¹⁴ Inter-Am. Ct. H.R., *Velásquez Rodríguez Case* (ser. C) No. 4, ¶¶162, 164 (July 29, 1988); *see also* Inter-Am. Ct. H.R., *Godínez Cruz Case* (ser. C) No. 5, ¶¶171, 173 (Jan. 20, 1989); Inter-Am. Ct. H.R., *Neira Alegria Case* (ser. C) No. 20, ¶85 (Jan. 19, 1995).

¹¹⁵ Inter-Am. Ct. H.R., *Velásquez Rodríguez Case*, ¶166.

¹¹⁶ *Id.* ¶176.

Every State has the right to choose, without external interference, its political, economic, and social system and to organize itself in the way best suited to it, and has the duty to abstain from intervening in the affairs of another State. Subject to the foregoing, the American States shall cooperate fully among themselves, independently of the nature of their political, economic, and social systems.

Articles 19 and 20 support the principles of non-intervention and sovereignty by categorically prohibiting interference, particularly in the form of coercive measures, by one nation to force the sovereign will of another nation:

Article 19

No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. The foregoing principle prohibits not only armed force but also any other form of interference or attempted threat against the personality of the State or against its political, economic, and cultural elements.

Article 20

No State may use or encourage the use of coercive measures of an economic or political character in order to force the sovereign will of another State and obtain from it advantages of any kind.

Article 28 provides that acts of aggression against the sovereignty of one American State will be considered an act of aggression against the other American States.

The OAS Charter strongly affirms the fundamental principles of non-intervention and sovereignty, and their importance to the OAS member states. The United States, a founding party to the OAS Charter, violated these principles by forcibly removing the elected leader of the Haitian people's democratically elected government. The Dominican Republic, also a party to the OAS Charter, violated these principles by harboring armed groups that repeatedly attacked Haiti's democratic government and eventually overthrew the elected government of Haiti.

The United States further violated Article 20 of the OAS Charter by placing a development-assistance embargo against Haiti. This embargo constituted "coercive measures of

an economic . . . character” that undermined the sovereign will of the democratically elected government of Haiti. Petitioners urge the Commission to recognize these violations.

(2) The United States and the Dominican Republic have violated the principles of sovereignty in the Democratic Charter.

Democracy is at the heart of the inter-American system, and Petitioners have a right to seek redress for violations of their sovereignty. “The concept of representative democracy and its protection is so important and such an essential part of the hemispheric system . . . [that] an entire mechanism of hemispheric protection has been put in place to address a breakdown of democracy in any of the member states.”¹¹⁷

The Inter-American Democratic Charter, adopted on September 11, 2001, reaffirms the OAS member states’ obligations to respect and uphold democracy. Article 1 states: “The peoples of the Americas have a right to democracy and their governments have an obligation to promote and defend it.” Article 3 declares that the “essential elements of representative democracy” include “the holding of periodic, free, and fair elections . . . as an expression of the sovereignty of the people.” The U.S. government has violated Article 1 by forcing the elected President of Haiti and his democratically elected government to depart and facilitating the completion of a coup that replaced that government with an unconstitutional transitional government that represses the fundamental rights and freedoms necessary to democracy. The Dominican Republic has violated Article 1 by harboring armed groups in its territory as they trained to overthrow the democratically elected Haitian government and repeatedly attacked that government from the territory of the Dominican Republic.

¹¹⁷ Inter-Am. C.H.R., *Azócar Case*, ¶45; *see also* General Assembly of the OAS Res. 1080 (XXI-0/91), adopted in Santiago, Chile, *available at* www.oas.org/Assembly2001/assembly/GAAssembly2000/resolucion1080.htm; Protocol of Amendments to the Charter of the Organization of American States “Protocol of Washington,” *available at* www.oas.org/juridico/english/Treaties/a-56.htm.

Article 8 of the Inter-American Democratic Charter reaffirms Petitioners' right to seek redress in the Commission against the United States and the Dominican Republic. Article 8 reads, in part: "Any person or group of persons who consider that their human rights have been violated may present claims or petitions to the inter-American system for the promotion and protection of human rights in accordance with its established procedures." Petitioners offer this petition, alleging violations of their rights to participate in democratic government, in accordance with all established procedures of the Inter-American Commission.

Moreover, Petitioners draw the Commission's attention to Articles 17 through 22 of the Inter-American Democratic Charter, which mandate how the inter-American system must respond when "an unconstitutional interruption of the democratic order . . . seriously impairs the democratic order in a member state."¹¹⁸ An unconstitutional interruption of Haiti's democratic order has taken place, leaving no democratic order in its wake. Petitioners plead that the Commission recognize that none of the steps mandated by Articles 17 through 22 have taken place in response to the overthrow of Haiti's democratically elected government. Petitioners request that the Commission urge the OAS member states to take the appropriate measures to restore democracy in Haiti.

D. THE UNITED STATES AND THE DOMINICAN REPUBLIC HAVE DEPRIVED PETITIONERS OF THEIR RIGHTS TO PARTICIPATE IN GOVERNMENT, TO VOTE, AND TO HAVE ACCESS TO PUBLIC SERVICES IN VIOLATION OF ARTICLE XX OF THE AMERICAN DECLARATION.

Article XX of the American Declaration guarantees Petitioners' rights to vote and to participate in government. The Article states:

Every person having legal capacity is entitled to participate in the government of his country, directly or through his representatives, and to take part in popular elections, which shall be by secret ballot, and shall be honest, periodic and free.

¹¹⁸ American Convention, art. 19.

The U.S. government has violated Petitioners' rights under Article XX by supporting the ouster of the democratically elected Haitian government. The U.S. government's actions have rendered meaningless Petitioners' rights to vote and to participate in government, thereby destroying Article XX's protections for Petitioners. The Dominican Republic has violated Petitioners' rights under Article XX by allowing those responsible for the Haitian coup to train in and launch attacks from its territory, thereby undermining the guarantees of Article XX .

In a case that involved a less blatant denial of Article XX rights, the Commission has ruled against the United States. In *Statehood Solidarity Committee v. United States*,¹¹⁹ the Commission held that denying District of Columbia residents an effective opportunity to participate in the federal legislature violates Article XX. To interpret Article XX, the Commission relied on Article 23 of the American Convention.¹²⁰ The Commission then tested "whether the restrictions imposed by the State may be considered to curtail the very essence and effectiveness of the Petitioners' right to participate in their government and whether the State has offered a reasonable, objective and proportionate justification for the restrictions."¹²¹ The Commission declared that the "provisions of the [inter-American] system's human rights instruments that guarantee political rights, including Article XX of the American Declaration, must be interpreted and applied so as to give meaningful effect to exercise of representative democracy in this Hemisphere."¹²² It cautioned that the "Commission should only interfere in cases where the State has curtailed the very essence and effectiveness of an individual's right to

¹¹⁹ Inter-Am. C.H.R., *Statehood Solidarity Comm. v. United States*

¹²⁰ *Id.* ¶ 87.

¹²¹ *Id.* ¶ 99.

¹²² *Id.* ¶87.

participate in his or her government.”¹²³ The Commission proceeded to find the U.S. government in violation of Article XX.

The U.S. government’s Article XX violations in *Statehood Solidarity Committee* pale in comparison to the violations of Article XX in Haiti by the governments of the United States and the Dominican Republic. In the present case, Petitioners had democratically elected their own Haitian government. The U.S. government forcibly removed the elected president of this government and facilitated a violent coup, which the Dominican Republic training ground made possible. The United States and the Dominican Republic curtailed “the very essence and effectiveness of the Petitioners’ right to participate in their government.”¹²⁴ The United States and the Dominican Republic have taken steps that directly resulted in the climate of violence, oppression, and impunity that dominates Haiti today. Petitioners urge the Commission to acknowledge the deprivations that they suffer as a result of actions by the U.S. government and the Dominican Republic.

V. PETITION

Haiti ratified the American Convention on Human Rights on September 14, 1977. The Commission has jurisdiction over the United States and the Dominican Republic based on Article 23 of the Rules of Procedure of the Commission, the American Declaration, the OAS Charter, Article 20 of the Commission’s Statute, and Article 49 of the Commission’s Rules of Procedure. The IGH, the U.S. government, and the Dominican Republic are obligated to respect and ensure the human rights of Petitioners.

¹²³ *Id.* ¶101.

¹²⁴ Inter-Am. C.H.R., *Statehood Solidarity Committee*, ¶99 (articulating the standard for determining an Article XX violation).

Considering the seriousness of the alleged facts, Petitioners and their representatives respectfully request that the Commission:

- (1) Conduct hearings in this case;
- (2) Order such remedies or actions as it finds just and proper;
- (3) Process this case in accordance with Articles 48 to 51 of the Convention and Articles 29 to 43 of the Commission's Rules of Procedure, and, consequently, transmit the petition to the States in question in accordance with Article 48 of the Convention, while providing aliases for Petitioners; and
- (4) Pursuant to Article 29 of the Commission's Regulations, investigate the involvement of the IGH, the United States, and the Dominican Republic in the overthrow of the democratically elected Haitian government. Petitioners invoke Article 29 based on the "irreparable damage" that is occurring to the Haitian people under the transitional government and hope that the Commission will take precautionary measures.

Petitioners and their representatives respectfully request that the Commission take the following steps concerning the IGH:

- (1) Declare that the IGH is illegal and in violation of the American Convention;
- (2) Declare that the human rights of Haitian civilian victims have been violated under Articles 1, 23, and 24 of the American Convention;
- (3) Conduct a full and independent investigation into the IGH to determine the complete damage, injuries, and losses to the Haitian people;
- (4) Report to the OAS all violations of international law and human rights by the IGH and seek to have the OAS take appropriate action to secure the integrity, sovereignty, and self-determination of the Haitian people; and

- (5) Demand that the IGH adhere to all the principles of international law, including the OAS Charter, the American Declaration of the Rights and Duties of Man, the Inter-American Democratic Charter, and all other international laws, treaties, and norms as the Inter-American Commission deems appropriate.

Petitioners and their representatives respectfully request that the Commission take the following steps concerning the U.S. government:

- (1) Declare that the U.S. government's forcible removal of Haiti's democratically elected President was illegal and violated principles of non-intervention, according to its obligations under the OAS and Democratic Charters;
- (2) Declare that the U.S. government violated Haitian citizens' human rights under Article XX of the American Declaration;
- (3) Conduct a full and independent investigation into the U.S. intervention in Haiti to determine the complete damage, injuries, and losses to the Haitian people;
- (4) Report to the OAS all violations of international law and human rights by the U.S. government and seek to have the OAS take appropriate action to secure the integrity, sovereignty, and self-determination of the Haitian people; and
- (5) Demand that the U.S. government adhere to all the principles of international law, with respect to its relations with Haiti, including the OAS Charter, the American Declaration of the Rights and Duties of Man, the Inter-American Democratic Charter, and all other international laws, treaties and norms as the Inter-American Commission deems appropriate.

Petitioners and their representatives respectfully request that the Commission take the following steps concerning the Dominican Republic:

- (1) Declare that the Dominican Republic's harboring of demobilized soldiers and paramilitaries as they trained to overthrow the elected government of Haiti and launched repeated attacks against it was illegal and violated principles of non-intervention, according to its obligations under the OAS and Democratic Charters;
- (2) Declare that the Dominican Republic violated Haitian citizens' human rights under Article XX of the American Declaration;
- (3) Conduct a full and independent investigation into the Dominican Republic's intervention in Haiti to determine the complete damage, injuries, and losses to the Haitian people;
- (4) Report to the OAS all violations of international law and human rights by the Dominican Republic and seek to have the OAS take appropriate action to secure the integrity, sovereignty, and self-determination of the Haitian people; and
- (5) Demand that the Dominican Republic adhere to all the principles of international law with respect to its relations with Haiti, including the OAS Charter, the American Declaration of the Rights and Duties of Man, the Inter-American Democratic Charter, and all other international laws, treaties and norms as the Inter-American Commission deems appropriate.

Petitioners and their representatives respectfully request that the Commission take the following steps concerning OAS member states:

- (1) Urge the OAS member states to recognize the violations in Haiti; and
- (2) Encourage the OAS member states to take the appropriate measures in accordance with Articles 17 through 22 of the Inter-American Democratic Charter.

We take this opportunity to express our highest esteem for the Commission as it undertakes consideration of the present petition. Petitioners respectfully request that all future communications be sent to the following address: Institute for Justice & Democracy in Haiti, P.O. Box 745, Joseph, OR 97846, and/or to Brian@IJDH.ORG.

Respectfully,

Bureau des Avocats Internationaux,

Institute for Justice and Democracy in Haiti,

By: _____

By: _____

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