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## HUMAN RIGHTS COUNCIL

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## TECHNICAL ASSISTANCE AND CAPACITY-BUILDING

### REPORT OF THE INDEPENDENT EXPERT ON THE SITUATION OF HUMAN RIGHTS IN HAITI, MICHEL FORST\*

#### Summary

In the area of civil and political rights, notable progress has been made with the passing of the framework laws on the reform of the judicial profession, the Supreme Council of the Judiciary and the independence of the Judicial Training College, but there is still a long way to go before the country's criminal justice system meets the imperatives of the rule of law. The appointment of the President of the Court of Cassation, who is also President of the Supreme Council of the Judiciary, is a crucial factor in the implementation of the reforms in this respect.

The security situation has progressed, the number of kidnappings has fallen and the main gang bosses have been arrested. While these are significant advances and encouraging signs, the situation still remains precarious.

The reform of the Haitian National Police and the vetting process begun by it with the support of the United Nations Stabilization Mission in Haiti (MINUSTAH) are a major test of the determination to effectively overhaul one of the cornerstones of the rule of law. The decisions which will be taken with a view to removing undesirable elements from the Haitian National Police in compliance with statutory provisions will signal to the population the commitment to re-establishing State authority. The MINUSTAH Human Rights Section should be involved in monitoring the entire procedure.

The issue of violence against women and girls, in particular rape, and issues relating to lynchings, human trafficking and deportees are still matters of concern.

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\* Late submission.

Regarding the penitentiary system, the main problem is prison overcrowding, which constitutes cruel, inhuman and degrading treatment. While imprisonment means the deprivation of liberty, respect for all human rights must nonetheless be guaranteed. The primary reason for prison overcrowding is closely linked to prolonged pretrial detention, for which there are remedies, as suggested by the previous independent expert.

There is much evidence that corruption, a scourge of Haitian society, is still rife at all levels. Combating corruption is part of the Ministry of Justice and Public Safety's action plans, whose implementation would be a significant step forward.

In the area of economic and social rights, economic exclusion is a threat to political stability in Haiti and sustainable development, which cannot be contemplated without the strong and sustained support of the international community to achieve effective institution building, the only means of guaranteeing the provision of basic social services.

In the view of the independent expert and in line with the mandate conferred upon him by the Human Rights Council, the rule-of-law issue cannot be resolved solely through reform of judicial institutions and the criminal justice, police and penitentiary systems to allow the enjoyment and exercise of civil and political rights.

Establishing the rule of law also means ensuring the functioning of public services and institutions, which, in addition to the safety of persons and property, must guarantee to every citizen the full exercise of economic, social and cultural rights, as set forth in the International Covenant on Economic, Social and Cultural Rights, which is included in the parliamentary agenda for 2009.

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## Introduction

1. In accordance with the mandate established by the Commission on Human Rights in its resolution 1995/70 and with Presidential Statement PRST/9/1, in which the Human Rights Council invited the new expert to undertake a mission to Haiti in the near future and report to it each year, the independent expert submits the present report to the Council at its eleventh session. The independent expert wishes to thank his predecessor, Louis Joinet, for the standard of his work and the care taken by him to forward to him the information necessary for a good understanding of the development of the mandate. He has noted the recommendations contained in the previous reports, whose implementation he has attempted to evaluate despite the unstable nature of the political situation in Haiti.
2. The independent expert has also noted the recommendations made by the treaty bodies to the State party at the time of presentation of its reports and was able to be present at the consideration of the report of Haiti by the Committee on the Elimination of Discrimination against Women in January 2009 (CEDAW/C/HTI/7).
3. The present report covers the period from January 2008 to February 2009 and contains a list of recommendations made to the Haitian Government and to the international community.
4. The independent expert carried out his mission to Haiti from 17 to 28 November 2008. He travelled to Fort Liberté, Ouanaminthe and Mirebalais, and wishes to express his gratitude to the many Haitians whom he met in the course of his visit, and also to Paris and Geneva. He was greatly impressed by the spirit of openness, historical rootedness and involvement of all those who live and work under sometimes extremely difficult circumstances in Port-au-Prince and in the departments which he visited. The series of cyclones and disasters severely affected the population and exacerbated the living conditions of the most vulnerable, further highlighting the link between insecurity and extreme poverty, the main cause of violence against the poorest.
5. The independent expert wishes to thank the Haitian authorities, who enabled his mission to be carried out in the best conditions. He is grateful to President René Préval, to Michèle Pierre-Louis, the Prime Minister, and to the other members of the Government and Parliament whom he met for the frankness and quality of their observations.
6. The independent expert also had discussions with the Special Representative of the Secretary-General and Head of the United Nations Stabilization Mission in Haiti (MINUSTAH), Hedi Annabi, and his Deputy, Luiz Carlos da Costa, and he wishes to thank all the members of their team, who afforded him effective support in regard to logistics, security and public relations.
7. The independent expert also thanks the officials of the main institutions of the United Nations and Organization of American States whom he was able to meet and the members of the diplomatic corps present in Port-au-Prince with whom he was able on a number of occasions to exchange views concerning the role and action modalities of the international community in Haiti.
8. The independent expert finally wishes to express his gratitude once again to the United Nations staff members with whom he worked, who shared with him the

information in their possession and experiences, and to whose professionalism, determination and courage he pays tribute. The members of the MINUSTAH Human Rights Section and Justice Section gave him unfailing support, both in Port-au-Prince and during his travels, and shared with him their assessment of the situation and of the progress of the ongoing reforms. The independent expert would like to state that those two Sections are invaluable partners in the execution of the mission entrusted to him by the Council.

## **I. THE RULE OF LAW**

### **A. Rule of law and constitutional legality**

9. In the summer of 2008, the appointment of Michèle Duvivier Pierre-Louis as Prime Minister, the installation of the Government and the adoption of the general policy statement by Parliament were perceived by the Haitian population and the international community as signs of the re-establishment of constitutional legality in Haiti following the April 2008 demonstrations. The senatorial elections scheduled for April 2009 should make it possible to fill the vacant third of the Senate seats and thereby complete one cycle in the political life of the country.

10. In February 2009, President René Préal set up a commission with responsibility for formulating proposals to reform the Constitution, which many feel will make it possible to overcome major institutional obstacles which are hampering desirable and frequently announced reforms.

11. The report of a previous commission of experts had already identified a number of contradictions or imbalances in the Constitution, including the fact that the president appoints but can under no circumstances dismiss a prime minister. The commission, which had also drawn attention to the short intervals between elections in Haiti, implicitly argued in favour of general electoral contests every five years, which would make it possible to increase political stability, to limit the potential for tension and Haiti's dependence on international assistance and security and to spend less money. President René Préal had also been concerned with the issue of dual nationality, which would make it possible to contribute to the country's economic and political stability so that Haitian men and women would not be forced to leave the country for economic reasons and be faced with the choice of adopting a different nationality in order to be become integrated in the receiving country.

### **B. Rule of law and human security**

12. Respect for the rule of law is a key factor in human security but human security is not confined to the restoration of the rule of law.<sup>1</sup> The lack of observance, protection and realization of economic, social and cultural rights is increasingly seen by the people of Haiti as a grave injustice and a denial of the advances made elsewhere in the world. The interconnectedness and indivisibility of

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<sup>1</sup> "Recognizing the interconnected nature of the challenges in Haiti, reaffirming that sustainable progress on security, the rule of law and institutional reform, national reconciliation and development are mutually reinforcing ...", Security Council resolution 1840 (2008).

human rights should not only be proclaimed but also be manifested in positive action. Whether in response to the distress of women and men affected by the series of natural disasters or the difficult situation of victims of violence, the mobilization of the international community must signal that what is at stake in Haiti not only involves restoring the judicial, police and penitentiary systems but also entails guaranteeing the effective exercise of all rights. For human security to prevail, the Haitian people and local communities must be protected not only from violence, injustice and corruption but also from hunger, sickness and natural disasters.

13. Consolidating the rule of law is one of the factors in restoring conditions that will make it possible to contemplate the country's sustainable development. In this connection, the independent expert applauds the decision taken by the Special Representative of the Secretary-General and Head of MINUSTAH to create within his team the new post of Rule-of-Law Coordinator with responsibility for providing a more comprehensive vision of the ongoing reforms and of those to be implemented with the aim of strengthening the rule of law.

### **C. Status of ongoing reforms**

14. With regard to the reform of the two traditional cornerstones of the rule of law, i.e. the police and justice institutions, the independent expert was struck by the apparent disparity in the resources which seem to have been allocated to ongoing police and judicial reform activities. The police reforms are visible, be it only in the appearance of the Haitian National Police officers' new uniforms, the modern vehicles or the refurbished stations equipped with adequate office facilities, even if this image is sometimes tarnished by the behaviour of some officers. However, a different image is conveyed to the public by the judicial system. The buildings are dilapidated, the facilities are more limited and the equipment is basic, with the risk that the Haitian population might compare the two institutions and conclude that the international community's political commitment is to providing more resources to one than to the other.

15. The independent expert cannot overemphasize the fact that it is essential for reforms in these two areas to go hand in hand, if only to show to the people of Haiti that reform efforts are under way and that they are not inconsistent, since their police and judicial systems are treated equitably and neither of these institutions takes precedence over the other.

#### **1. Justice reform**

16. The reform of the judicial system has for many years formed the backbone of the reports of the independent expert on the situation of human rights in Haiti, who, at the time of his last mission, focused on the implementation of the previous reports' recommendations in this area. Following the adoption of the three-year justice reform plan described in Haiti's Growth and Poverty Reduction Strategy Paper and the three laws on judicial independence, which were passed in December 2007, advances have been achieved under the impetus of President René Prével and through the determination seemingly shown by the Minister of Justice and Public Safety, Jean Joseph Exumé, but the generally prevailing feeling is

that the reforms are stagnating and falling behind, partly owing to the absence of a decision on one key element.

17. The independent expert wishes to point out that the keystone of the reform of the judicial system in Haiti is the appointment of the President of the Court of Cassation. This appointment has been outstanding for five years and the independent expert has recommended to President René Prével that it be made without further delay.<sup>2</sup> Apart from the political implications relating to the functions of the President of the Court of Cassation, this appointment would make it possible, as has been pointed out by the independent expert on several occasions, to overcome the deadlock on a number of situations, thereby encouraging the reform process, such as the functioning of the Supreme Council of the Judiciary (CSPJ) and the appointment of the director-general of the Judicial Training College.

18. The Supreme Council of the Judiciary is still not operating despite urgent calls. All its members have been elected, with the notable exception of its President, since he is also President of the Court of Cassation. All members have been vetted but not yet certified pending the report to be produced by the certification committee of the Ministry of Justice and Public Safety. Without prejudging the contents of that report, the establishment of the Supreme Council remains impossible until, inter alia, a definite appointment to the post of President of the Court of Cassation is made. This stumbling block, which could be lawfully circumvented by entrusting temporary responsibility for the presidency of the Supreme Council to the current acting president of the Court of Cassation, considerably hampers the process of installation and operation of the Supreme Council, whose role is paramount. This situation makes any attempts to improve the functioning of the judicial system very uncertain, given that, since the law on the Supreme Council was passed, it has not been possible to undertake the process of vetting judges and no further disciplinary procedures have been properly conducted, whereas many members of the judiciary have been dismissed by the executive, often in a totally non-transparent manner.

19. Also, the Supreme Council should be provided with a budget and human and material resources that will enable the institution to operate and play a specific and key role in the process of recruiting and vetting Haitian judges.

20. *Judicial inspectorate:* The Minister of Justice and Public Safety has announced his firm intention to strengthen the monitoring of the effectiveness of the judiciary's work through the judicial inspectorate. The aim is to oversee the operation of the courts, registries and prosecution services, including the figures, whether communicated or otherwise, in connection with defining quantifiable targets (number of inspections, purpose of inspections, etc.) and analysing performance. One important issue on which there does not appear to have been a conclusion relates to the profile of judicial service inspectors. The independent expert recommends that the inspectorate be headed by judges seconded for a limited period and not by officials of the Ministry of Justice and Public Safety. He also wishes to draw the Minister's attention to the difficulties relating to the fact that, under the law on the Supreme Council of the Judiciary, the latter is entrusted with responsibility for the judicial inspection service in regard to judges, while registrars

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<sup>2</sup> At a meeting in Geneva, Kély C. Bastien, the President of the Senate stated that the invitation for candidatures for the post had been launched.

and prosecutors will remain under the authority of the minister. Also, government commissioners and senior law officers should be firmly reminded of the need for regular, ongoing and effective supervision of the activities of the courts and judiciary in order to ensure proper functioning and thus safeguard the rights of persons before the law. Such supervision should be carried out by the senior law officer on investigating magistrates and by the government commissioner on deputy prosecutors and district judges.

21. *Judicial Training College*: The opening of the Judicial Training College (EMA) has taken place and Lionel Bourgoïn was appointed director but not granted the title of director-general or the related prerogatives,<sup>3</sup> as provided for in the Law of 20 December 2007. Under article 14 of that Law, the director-general is appointed by the President of the Republic by order of the Council of Ministers on the proposal of the Supreme Council of the Judiciary, being also president of the Administrative Board of the College. However, since the President of the Court of Cassation has not been appointed, neither the Supreme Council nor the College's Administrative Board has a president, which means that the director-general of the College cannot be appointed!

22. Also, the 2009 draft budget submitted by the Government (and rejected by Parliament at the time of drafting of the present report) simply discontinued all budgetary allocations to the institution. That situation, if ratified in the new draft budget, would make it impossible to go ahead with the announced recruitment and training of new judges on the basis of a competitive examination.

23. The work of finalizing the renovation of the College premises, which had been interrupted for over four months through lack of resources, has resumed and should be completed thanks to assistance under the justice sector support programme of the Organisation Internationale de la Francophonie (OIF) and allow the commencement of programmes, including in-service training for district judges. The aim of the College director is to resume continuous training for district judges, which was started last year (72 district judges have been trained and assessed to date), with those in the metropolitan zone.

24. The independent expert wishes to point out, however, that the primary objective of the College should be the implementation of the programme of initial training for judges, which is for the time being dependent on the appointment of the Administrative Board and director-general of the College.

25. A justice reform commission composed of 20 human rights specialists, who have no connection with the Government and receive technical assistance from MINUSTAH, has been set up by President René Préal. In the view of the independent expert, this commission is a key element in the success of the judicial reform since it represents an important tool in fostering the ownership of the process by the people. The commission should now focus on being able to support the reform process, in particular by taking steps to ensure that the citizens of Haiti feel fully represented and regularly informed by this follow-up mechanism.

26. *Combating corruption*: In the course of his mission in November 2008, the independent expert obtained much evidence that corruption, a scourge of Haitian

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<sup>3</sup> At the time of drafting of the present report, the director's position had not been regularized by an official appointment established by order published in the *Moniteur haïtien*.



society, is still rife at all levels. The independent expert notes that the fight against corruption is part of the action plans of the Ministry of Justice and Public Safety and that an implementation evaluation would undoubtedly be a major step forward. Successive speeches by President Préval since 2007 appear to have sent out a clear and renewed signal of the political commitment to making the fight against corruption a strategic objective but implementation seems to be slow.

27. Implementation action should involve, inter alia, institution building in order to strengthen police and judicial investigation capacities in the areas of international crime, corruption and political offences, as well as the allocation of adequate human and financial resources to the Anti-Corruption Unit (ULCC) and to the Central Financial Intelligence Unit (UCREF). Also, the establishment of an effective forensic department equipped with biological and ballistic facilities and the strengthening of forensic medical services would greatly facilitate the search for evidence during judicial investigations.

28. With regard to case handling, the independent expert wishes to point out that the early establishment of specialized chambers to deal with certain serious political offences and economic and financial crimes would undoubtedly be one way of effectively tackling corruption. The tasks of such a specialist structure formed of judges supported by qualified and competent investigators would be to handle crimes of kidnapping and aggravated abduction, serious political offences and other serious human rights violations. It would also be responsible for dealing with crimes frequently involving transborder activity, in particular economic and financial crimes such as drug trafficking, concealment of assets and money-laundering. In 2008, an agreement was apparently reached between the Government and the judicial authorities to set up these specialized chambers at the lower court of Port-au-Prince, one to handle serious politically motivated offences and the other to deal with economic and financial crimes.

29. The independent expert wishes again to draw the attention of the Government and the international community to the fact that the complexity of the cases and the importance of quality investment in their study would warrant the provision of assistance, experience and technical skills by experts from abroad to Haitian justice practitioners in the form of short missions, without infringing the independence of Haitian judges.

30. *Office of the Ombudsman:* Article 207 of the 1987 Constitution established the Office of the Ombudsman (OPC) with the aim of protecting all persons against any form of abuse by the public administration. Chosen by consensus by the President of the Republic, the President of the Senate and the President of the Chamber of Deputies, the Ombudsman is appointed for a non-renewable term of seven years. The independent expert commends the Office of the United Nations High Commissioner for Human Rights (OHCHR) for its support in the drafting of the legislative bill revising the functions of the Office of the Ombudsman to bring it into line with the Paris Principles and recommends that the bill be adopted by Parliament and that the Office be allocated an adequate budget to allow, in particular, the setting up of regional bureaux that will put the institution in closer contact with its beneficiaries.

31. In his reports, the previous independent expert had urged, primarily in anticipation of the departure of MINUSTAH, that the mandate of the Office be

extended and its operational capacity strengthened by the creation of the post of Deputy Ombudsman (A/HRC/4/3, para. 76). In the new arrangement, the Ombudsman would be more particularly responsible for supervision of the mandate of the Office, relations with the national authorities and international relations, while the Deputy Ombudsman would have a dual protection and promotion role, on the one hand undertaking the supervision and coordination of investigations conducted by his team and its regional bureaux in the field and, on the other, providing human rights training, in particular in cooperation with the University and non-governmental organizations (NGOs).

32. The independent expert recommends that the provision of support to the Office of the Ombudsman in the development of its mandate and the organization of its work at the national and regional levels form the subject of discussions with the involvement of national stakeholders in Haiti and also the OHCHR National Institutions Unit and the network of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, whose expertise in this area is recognized.

## **2. Police reform**

33. *Haitian National Police reform plan*: Assistance in the reform of the Haitian National Police (PNH) has been at the centre of the missions entrusted to MINUSTAH and regularly referred to in the resolutions in which the Security Council has extended its mandate each year. That process is in the hands of the Haitian National Police, which receives advice from MINUSTAH and from the United Nations Police (UNPOL) in successfully carrying out the work. Also, the Secretary-General of the United Nations has conferred on the High Commissioner for Human Rights the lead role<sup>4</sup> in the vetting process in general, with the assistance of the Department of Peacekeeping Operations and the United Nations Office on Drugs and Crime.

34. The reform plan adopted by the Haitian Government and negotiated with MINUSTAH is very ambitious but geared to meeting the challenges to enable Haiti to ensure its security in all areas. The strategy is aimed primarily at doubling police strength by 2011 to provide 14,000 well trained and instructed officers. The independent expert nevertheless had the feeling that the constraints of recruitment and training over a very short period might mean that, in the attainment of a quantity target, the quality targets are only partly met, at the risk of jeopardizing the objective of restoring the public's confidence in its national police force.

35. It has to be acknowledged that the relationship between the population and the Haitian National Police is still characterized by suspicion, accusations of brutality, human rights violations and complicity with criminal and corrupt elements. The weekly reports by the MINUSTAH Human Rights Section refer to allegations of brutality, violence and rape by uniformed officers.

36. The reform plan is at the same time aimed at bringing about the necessary and urgent strengthening of the General Inspectorate of the National Police and the Central Directorate of the Criminal Police. In this connection, the independent expert recommends that greater attention be paid to certification of the members of

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<sup>4</sup> Policy Committee Meeting Decision No. 2006/47 (7 November 2006) on the rule of law.

the General Inspectorate, whose operational methods and practices should serve to restore public trust since it would be in a position to receive complaints, examine cases and ensure that investigations are initiated and that exemplary and effective sanctions are imposed where justified.

37. The Haitian National Police vetting process is a major challenge in restoring the population's confidence in its police force. While maintaining that it is for the Government to make the final decision and to take steps, in compliance with Haitian domestic law, to rid the police ranks of any officers who fail to meet the required standards, the independent expert is concerned about the non-transparency of the methods used and the delay in carrying out the vetting exercise. He wishes to point out that, under the terms of the Secretary-General's decision on the distribution of tasks among United Nations institutions and bodies, OHCHR is the lead agency in the transitional justice and vetting process. The role of OHCHR in that capacity should be to coordinate and support the process, producing the necessary material and publishing tools to allow the adoption of a human rights approach to the vetting procedure and monitoring the execution of the process. OHCHR is not conducting the vetting process itself but is performing a support role for those conducting it. The purpose of such support by OHCHR is to set out the guarantees in order to ensure that police officers are treated fairly in the process and that those guilty of human rights violations are removed from the police force.

38. The independent expert is of the view that the vetting procedure currently followed in Haiti is not in line with human rights standards or the Secretary-General's decision and he therefore has the feeling that OHCHR wishes to maintain a certain distance until those standards are applied by all partners participating in the process. This does not mean requesting that the Human Rights Section be involved in every individual decision, for which it has neither the time nor the resources, but the independent expert recommends that the Human Rights Section be regularly and closely involved in all monitoring stages of the procedure to ensure that the process conforms to relevant international standards.

39. As regards the process itself, the independent expert is concerned about the delay in the vetting programme and recommends that priority now be given to vetting senior police officers in order to send out a clear signal as to the objective being pursued.

40. Finally, it is important for the population to understand that the Haitian National Police reform process is the wish of the Government and is not being imposed from outside. In this connection, the Government should reaffirm that the vetting process is a priority for the country and regularly inform the public of the outcomes of the process and the qualitative and quantitative targets achieved.

## **D. Functioning of the justice system**

### **1. Situation of the courts and proceedings**

41. The operation of the judicial system has been the subject of several reports and publications and the independent expert has observed that, while the statistics provided show effective progress in regard to the lower and appeal or habeas corpus

courts, there is still a long way to go before the work of the judicial system is conducted at an appropriate speed.

## **2. Prolonged pretrial detention**

42. While the situation relating to prolonged pretrial detention in Haiti has been the subject of much literature and many recommendations, the independent expert nevertheless notes with regret the delays in the implementation of most of the recommendations. It should be pointed out that, according to the figures supplied by MINUSTAH, in November 2008 the rate of pretrial detention was still 80 per cent, being higher in the jurisdiction of the West Department (86 per cent) than in the other jurisdictions of the country (70 per cent on average). The average length of pretrial detention is about two years for felonies and between 12 and 18 months for misdemeanours. Over 4 per cent of detainees awaiting trial are juveniles. More than 3 per cent of remand prisoners are awaiting trial for petty offences, their confinement being unlawful or arbitrary, 80 per cent of remand prisoners' cases are held up at the prosecution or investigation stage and only 7 per cent of cases are currently being tried.

43. The reasons for these irregularities partly stem from the fact that, rather than order a remand prisoner's appearance in court directly or under the summary trial procedure, the prosecution department passes the case to the investigation department, where it stagnates and, if a prisoner's appearance is ordered under the summary trial procedure, no judges are in attendance. There is no permanent service at the main premises in Port-au-Prince or in the provinces and the idea put forward regarding the opening of an additional courtroom for summary trials is a useful one, provided that the judges are present, especially in the light of the findings of the commission on prolonged pretrial detention, in which it will be recommended that some detainees be tried very promptly.

44. The Constitution of Haiti and the Code of Criminal Procedure (CIC) provide for simple and swift court proceedings for minor offences or misdemeanours. However, pretrial detention has become systematized and widespread in practice to the point where it is now the rule whereas it should be the exception. On the excuse that the criminal law is strictly applied and in order to protect themselves against pressure from the police, civil society organizations and the press, which accuse the judiciary of corruption or laxness in releasing alleged criminals, judges are making excessive and abusive use of pretrial detention.

45. On the excuse that a remand prisoner would have to pay fees for a higher amount and more quickly, some attorneys are not taking the trouble to have the bail release provisions of the Code of Criminal Procedure applied or still less to prosecute judicial officers for breach of official duty or unlawful and/or arbitrary arrest. Also, there is no effective inspection of judges' professional activities and no efficient supervisory service. Owing to the absence of such judiciary oversight and disciplinary mechanisms, the Ministry has often not concerned itself over the fate of persons held in pretrial detention beyond the time limits laid down in the Code of Criminal Procedure.

46. The only recourse, which is still too little used in Haiti, is the remedy of habeas corpus,<sup>5</sup> whose purpose is to protect individual freedom. Under this procedure, which is provided for by the Constitution, an application can be made to the chief justice of the lower court to rule on the lawfulness of a person's arrest and confinement and, if appropriate, to order that person's immediate release if article 26 of the Constitution has been infringed.

47. The independent expert recommends that certain criminal procedures be clarified and simplified, particularly with regard to non-custodial and suspended sentences, police custody and habeas corpus, as well as the duration of pretrial detention based on the offence and the delegation of judicial powers to the criminal police.

48. In order to deal with certain cases pending with the prosecution department at the investigation stage, the Ministry of Justice and Public Safety could, by means of circulars, impose directions on the prosecution department to make it possible for any persons suspected of committing major or minor offences to be brought before an investigating magistrate within 48 hours if referral is necessary. The Ministry of Justice and Public Safety could also take steps with a view to implementation of the summary trial system with the consent of the chief justice of the lower court. It would also be possible to deal with all proceedings pending with the prosecution department within a time limit of one month by referral to an investigating magistrate, by direct order to appear in court with no preliminary investigation or by discontinuation of prosecution, or to have all cases involving detention and pending with the prosecution department disposed of by direct orders to appear if referral to the investigating magistrate is neither compulsory nor necessary.

### 3. Juvenile justice

49. In the opinion of the independent expert, juvenile justice is a further cause for concern. During his mission, he witnessed several instances where juveniles, in some cases young children, were remanded in custody but not brought before a judge owing to the lack of a children's magistrate in the jurisdiction concerned. He also witnessed instances where juveniles shared accommodation with convicted or remand adults or cases involving juveniles still confined in the two youth prisons in Port-au-Prince even though care orders had been issued by the juvenile court and solutions should have been found in conjunction with the Institute for Social Welfare and Research.

50. The juvenile court in Port-au-Prince is experiencing operational difficulties but the excuses put forward to account for this irregular situation do not appear convincing. The previous Minister of Justice and Public Safety, René Magloire, had appointed youth judges in each jurisdiction. Although not yet trained, these judges can be assigned juvenile matters and, if they are not competent to pursue them, the cases are transferred to the children's magistrate in Port-au-Prince or Cap-Haïtien.

51. The independent expert recommends that due attention be paid to the issue of youth imprisonment and that the provisions of the Convention on the Rights of the

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<sup>5</sup> By way of illustration, only 46 habeas corpus petitions have been recorded, since the beginning of 2008, in the appeal court's jurisdiction (2 in the South Department, 37 in the North Department and 7 in the Centre Department).

Child, which has been ratified by Haiti, form the subject of a debate and policy shift given that incarceration is still the only solution contemplated to address the problems of children in conflict with the law, whereas it should only be used as a last resort. In this regard, he advocates the adoption, in the Juvenile Code, of provisions promoting youth crime prevention strategies, alternative non-custodial measures and the implementation of effective rehabilitation and reintegration programmes, while encouraging foster care in the case of some non-serious crimes.

52. The independent expert welcomes the official commencement of work on building the juvenile court in Cap-Haïtien and recalls that, under the Law of 9 September 1961, specialized youth courts had been set up in five towns in Haiti but they have never been operational; only the juvenile court in Port-au-Prince provides specialized responses in juvenile justice matters. The establishment of the juvenile court in Cap-Haïtien will make it possible to try youth offenders in shorter periods within the Cap-Haïtien appeal court's jurisdiction, avoid prolonged pretrial detention of minors within the jurisdiction and handle cases involving children in conflict with the law in conformity with the United Nations minimum rules.

#### **4. Institute of Forensic Medicine**

53. The successive reports of the previous independent expert on Haiti referred to the importance of granting the Institute of Forensic Medicine (IML) permanent status (A/HRC/4/3, para. 52). The forensic aspect of the procedural formalities is not taken into consideration by district judges who, contrary to the Code of Criminal Procedure, order at-the-scene examinations of corpses and act as criminal investigation officers in drawing up reports on findings. The statutory requirement that there be an accompanying medical officer to determine the apparent cause of death is thus never observed.

54. The number of autopsies carried out by the Institute of Forensic Medicine is not sufficiently high if one refers to the records of the State University of Haiti's hospital for 2006.<sup>6</sup> By way of example, out of 5,330 admissions to its mortuaries, including 880 victims of violent deaths, the Institute carried out only 160 autopsies, i.e. 18 per cent of the total. It should be stated that these figures include neither victims of violence who are treated or die in operating theatres of public or private hospitals, which almost never inform the police or judicial authorities, nor victims of violent or suspicious deaths which are treated as ordinary deaths and are thus buried by the mortuaries without notification of the authorities. Most corpses, on arrival at the hospitals' mortuary on district judges' orders, do not undergo any medical examination leading to the issue of a death certificate stating the apparent cause of death. Bodies arriving at the Institute following an application by the government commissioner for an autopsy to be carried out are thus not accompanied by a death certificate or an at-the-scene examination report signed by a medical officer. Case files concerning violent or suspicious deaths which reach the prosecution department are in all instances accompanied by brief and poorly drafted reports on the findings.

55. Under the current circumstances, the independent expert recommends that the following recommendations be considered: institution of a legal framework to govern the functioning of the Institute of Forensic Medicine; creation of a

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<sup>6</sup> The independent expert did not have knowledge of more recent statistics.

demarcation line between the State University of Haiti's hospital mortuary and the Institute's mortuary; consideration of the possible extension of the services to the provincial jurisdictions through the setting up of at least two Institute annexes in the towns of Le Cap and Les Cayes to carry out autopsies and scientific inspections; and systematization of at-the-scene forensic examinations by making available to medical officers a standardized document containing the information to be forwarded to the prosecution department.

## 5. Law centres

56. The independent expert has learnt with interest of the establishment, in 2008, of law centres designed to facilitate public access to justice, which comprise several sections, including one supplying information on the judicial system, and at which training for NGO members and civil society in general is offered, legal advice is given by lawyers, legal consultations are undertaken by district court judges and victim support training is provided. He recommends that resources be released to enable the network to be expanded and a mechanism to be implemented for regular training and exchanges between persons in charge of the law centres.

## II. THE HUMAN RIGHTS SITUATION

### A. Penitentiary situation and prison overcrowding

57. At Port-au-Prince and during his travels, the independent expert visited places of detention, prisons and police stations and held discussions with prison and police station management and staff and also with remand and other prisoners, with assistance from the Human Rights Section.

58. Although the independent expert does not regard prison conditions in the capital as comparable with what is happening in the departments, he wishes to point out that they are very poor, having been rightly criticized by international organizations, commissions of enquiry and specialist NGOs as constituting cruel, inhuman or degrading treatment, owing primarily to overcrowding but also to health standards.

59. For example, despite the recommendation of the International Committee of the Red Cross (ICRC) that, in very grave crisis situations, the floor space available to each detainee should be at least two square metres,<sup>7</sup> remand and convicted prisoners at the civilian prison in Port-au-Prince have cell space of only 0.42 m<sup>2</sup> each, which requires them to sleep by turns or in makeshift hammocks formed of sheets and causes sometimes serious illnesses.

60. Elsewhere in the country, the prison situation has been exacerbated by the repeated destruction of places of detention as a result of the events which led to the departure of President Aristide in March 2004 or owing to the cyclones which devastated the country in 2008, thus increasing the number of detainees at police stations.

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<sup>7</sup> "This figure of 2m<sup>2</sup> per person must in no way be considered as a norm but as a pragmatic indication which reflects the experience gained by the ICRC in very grave crises", *Water, sanitation, hygiene and habitat in prisons*, ICRC, 2004, p. 21.

61. Hygiene and health-care conditions are generally very precarious, despite ICRC assistance and refurbishment work carried out at some prisons, while the number of doctors and nurses means that access to care, where it exists, is limited to basic symptomatic treatment of the most common illnesses. The independent expert recommends that prisons be supplied with sufficient stocks of medicines, drugs and provisions to guarantee detainees' right of access to medical care and food.

62. Renovation work has, however, begun with a view to increasing available space at the Hinche, Carrefour and Cap-Haïtien prisons. In Port-au-Prince, plans have been drawn up to convert a former psychiatric hospital into a prison. The construction of a major new penitentiary establishment close to the capital is being contemplated provided that land-related problems can be resolved.

63. The independent expert recommends that a programme be initiated for the building of new prisons, in particular in Les Gonaïves, to relieve the strain on the penitentiary system and to address the issues of prison overcrowding and the use of police stations as places of detention.

64. One of the causes of prison overcrowding is linked to, inter alia, pretrial detention and, while there were almost four times more individuals incarcerated in Haitian prisons in 2008 than in 1995,<sup>8</sup> the proportion of those held in pretrial detention remained at about 80 per cent of the prison population over the same period.

65. The mandate of the Consultative Commission on Prolonged Pretrial Detention (CCDPP) has been extended to April 2008 and its area of responsibility increased to include Gonaïves. The Consultative Commission was instrumental in the release of 892 detainees but its functioning and proposals have been widely criticized for having contributed, according to the United Nations Police and specialist NGOs, to the release of several tens of dangerous criminals.

66. The independent expert recommends that the Consultative Commission be given a new, nationwide mandate and entrusted with the task of examining, in accordance with clear and verifiable criteria, cases involving non-serious crimes or arbitrary detention, and that a prisoner's discharge may only be authorized by a working group composed of judges, in order to prevent the release of dangerous criminals.

## **B. Violence against women**

67. Since the ratification by Haiti of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, the country has seen considerable advances in women's rights and in awareness of the actual issues involved, although instances of violence against women and girls have continued to be reported by the major intergovernmental and non-governmental organizations. The independent expert has had the opportunity to meet the two succeeding Ministers on the Status of Women and Women's Rights and learnt with great interest of the action taken by the National Forum on Violence against

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<sup>8</sup> According to the statistics supplied, the prison population was approximately 2,000 in 1995, 4,100 in 2001 and 7,869 in 2008.



Women.<sup>9</sup> He also attended, in January 2009, the very good presentation of the State party's report to the Committee on the Elimination of Discrimination against Women and welcomed the announcement on that occasion, by the President of the Senate, of Haiti's forthcoming accession to the Optional Protocol to the Convention, a mechanism which makes it possible for organizations and individuals to lodge complaints concerning violations of rights in States parties that have ratified the Protocol and for the Committee to initiate investigations.

68. While these are positive announcements, the independent expert wishes again to draw attention to this national scourge of violence suffered by women and girls, in particular rape in all its forms and especially violence in the domestic sphere, although the true extent of the problem is not fully known owing to a lack of comprehensive figures. According to the Minister on the Status of Women, rape, attempted rape and sexual harassment can form the subject of complaints under the provisions of the Criminal Code which deal with rape, indecent assault and aggravating circumstances relating to the status of the perpetrator, but sexual harassment could in fact be said to be tolerated by society and the State.

69. In practice, notwithstanding the assault on their physical integrity, it is the adverse prejudice against women and pressure by the perpetrator of the violence or his family or even by the victim's own family which deter them from bringing cases to court through fear of reprisals or scruples about speaking in public on a matter that is both intimate and humiliating. However, the independent expert wishes to point out that the number of incidents of sexual violence against women and girls recorded in recent years has apparently increased but it is not possible to establish with certainty whether this increase is due to trivialization of such violence or to consciousness-raising activities which have persuaded an increasing number of victims to report such acts.

70. The independent expert pays tribute to the intensive work carried out by MINUSTAH and the specialized agencies of the United Nations and Organization of American States and also by NGOs, which, through their awareness and training programmes, contribute to combating violence against women.

71. The independent expert hopes that steps will be taken to adopt the framework law on all forms of violence against women, including domestic violence, which was announced for 2009, and also the special temporary measures required in cases relating to elective posts as well as in cases relating to recruitment and appointive posts and with regard to recruitment in the national police force, which should be a priority. The independent expert also welcomes the Senate's passing of the law on working conditions of paid domestic staff. He hopes that the National Assembly will include these two instruments in its agenda at an early date and that the legislative bill on filiation and responsible parenthood will also be included in the parliamentary agenda despite the reluctance of those who feel that these bills might jeopardize an order from which they benefit.

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<sup>9</sup> This coordinating entity, which is concerned with violence against women, brings together the Ministry on the Status of Women, the Ministry of Security and Justice, the Ministry for Public Health and Population, specialized civil society organizations, relevant United Nations institutions and bodies and the MINUSTAH Human Rights Section and Gender Unit.

72. The independent expert has noted that stereotypes, i.e. society's portrayal of women's and men's roles, are still deeply rooted in attitudes in Haiti, which is at variance with the predominant role played by women in the economy and within the family. He recommends that the Minister on the Status of Women continue and extend the large-scale campaign to eradicate sexist stereotypes in schools, the media and advertising.

### **C. Lynchings**

73. The independent expert is concerned about the many cases of direct lynching and extrajudicial arrest followed by serious acts of violence by the population in Hinche, Cap-Haïtien, Ouanaminthe, Fort Liberté and Pandiassou. There have been reports of instances of popular justice, sometimes even involving the killing of individuals suspected of theft, murder, burglary, kidnapping, witchcraft or other criminal acts. Several cases have also been brought to his attention concerning persons burned alive by the people and he has heard many allegations of violence reportedly committed by members of the CASECs,<sup>10</sup> which in some instances actually have their own places of detention and assume former policing functions of district chiefs. Although the increase in cases is not unrelated to the lack of trust in the capacities of the police and justice authorities, these acts of violence and lynchings are not investigated and their perpetrators go unpunished. The independent expert is aware that prosecuting those who commit such acts always proves difficult since they are part of anonymous crowds and the people very often collude in not revealing the perpetrators' names. However, it is necessary for investigations to be conducted and for a clear signal to be sent out from the highest government authorities that in a State governed by the rule of law no one is entitled to take the law into his own hands.

### **D. Human trafficking**

74. The independent expert travelled to the north-east of the country and the border with the Dominican Republic, in particular to Ouanaminthe, where he witnessed the major problem of wealth inequality and migratory flows between Haiti and the Dominican Republic in connection with mass expulsions, labour exploitation and under-registration of births, which affect a large part of the population who inhabit or cross this border region.

75. Also, the situation of insecurity caused by organized crime networks and the limited presence of the State in this region make the border population very vulnerable to breaches of human rights. The border setting, impunity, lawlessness, poverty and disorder which characterize this region are gradually contributing to the creation of new territories defined by exploitation, abuse and human rights violations, where the value of life and human dignity are challenged daily. Many reports by international and non-governmental organizations document breaches of human rights in this area.

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<sup>10</sup> Municipal District Administration Councils, i.e. the smallest territorial authority.

76. The independent expert intends to continue exploring this matter during his next missions and to report to the Human Rights Council on, inter alia, the issues of kidnapping, adoption and forced labour of children under the *restavek* (“stay with”) system.

### E. Deportee issue

77. The independent expert’s attention has been drawn to the fate of persons referred to as “deportees”, Haitian nationals expelled from Canada or the United States of America after committing a crime. They are either illegal migrants who are expelled for violating immigration laws or legal migrants who are expelled after completing their sentences in the receiving country for major or minor offences. Over the last twenty years, at least 5,000 Haitians have been deported, most often for non-serious crimes,<sup>11</sup> such as unlawful residence, use or possession of small quantities of drugs and domestic violence. A marked increase in the number of deportees has been observed in recent months. Since 1996, deportees arriving from the United States or Canada are immediately incarcerated in Haitian territory, those with the worst records being taken directly to the National Penitentiary for at least three months.

78. From a human rights perspective, deportation raises at least two issues:

(a) Managing deportees’ potential impact on public safety and crime in the country: Deportees may possibly reoffend in Haiti and bring crime into the country. However, without reliable statistics and data it is impossible to establish any links between deportees’ entry into Haitian society and their individual records or to know the actual number of deportees who relapse into crime;

(b) Respecting citizens’ rights: Most Haitian deportees are lawful residents, having left their country of origin at a very young age.<sup>12</sup> They have adapted to the receiving country and been socialized there. For the most part they speak neither Creole nor French.

79. The independent expert commends the pilot project on the resettlement, rehabilitation and reintegration of Haitian deportees, which is being executed by the International Organization for Migration (IOM) in partnership with the Haitian Government, the support work being carried out by deportees’ associations and the help provided by families who actively assist the resettlement of deportees. He recommends that, as part of a balanced debate on migration and deportation, the image of “deportee crime” portrayed in Haitian society be made the subject of an appropriate communication, that deportees’ return be handled by a reception procedure and facility, and that consulates fully play their part in the administration of the deportation process.

80. The independent expert has also expressed his concern regarding information to the effect that the United States had planned to expel tens of thousands of migrants unlawfully residing in its territory and has requested the American

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<sup>11</sup> Out of a sample of 603 deportees who arrived in Haiti between October 2006 and April 2007, only 3 per cent had committed serious crimes involving the use of criminal violence.

<sup>12</sup> The average age of deportees leaving Haiti is between 4 and 7 years and of those returning to Haiti is between 28 and 48 years.

Government to reconsider that decision in the light of the physical and financial loss inflicted on Haiti by the series of hurricanes in August 2008.

## **F. Economic, social and cultural rights**

81. The Human Rights Council, recognizing in Presidential Statement PRST/9/1 that “full enjoyment of human rights – civil and political, economic, social and cultural – is a factor of peace, stability and progress in Haiti”, extended the independent expert’s mission, inviting him “to continue the work undertaken and to carry out his mission by bringing his experience and expertise to bear and contributing to the cause of human rights in Haiti, with a particular emphasis on economic, social and cultural rights” (para. 14).

82. The independent expert’s mission is accordingly being developed within that framework and, while, in the present report, the bulk of the observations and recommendations are concerned with civil and political rights and with the implementation of the recommendations adopted by the Council, the independent expert began to address the issue of economic and social rights during his first mission and intends to continue his work in that area.

83. In the independent expert’s view and in line with the mandate conferred upon him, the rule-of-law issue cannot be resolved solely through necessary reform of judicial institutions and the criminal justice, police and penitentiary systems to allow the enjoyment and exercise of civil and political rights..

84. Establishing the rule of law also means ensuring the functioning of public services and institutions which, in addition to the safety of persons and property, must guarantee to every citizen the full exercise of economic, social and cultural rights, as set forth in the International Covenant on Economic, Social and Cultural Rights, which has been included by the Haitian Parliament in its agenda for 2009. In this connection, the independent expert recommends that the adoption of the ratification law take place at the earliest opportunity in order to send out a strong signal of the determination of the Government and Parliament and their commitment to improving the socio-economic situation of the country.

85. This holistic approach should also guide the choices of international and bilateral institutions in the identification of their technical assistance and cooperation programmes so that gradually access to education for all and to a health-care system, drinking water and sanitation services, adequate and decent housing, employment income and training are also guaranteed for everyone.

86. In anticipation of his next missions, the independent expert met the ministers responsible for welfare, health and education, whom he thanks for their attentiveness and the information and documentation supplied. He also visited a number of representative projects, which appear to be operating well, and plans to devote one of his next missions to exploring such topics as the right to food and water and access to schooling and health care and to report to the Council thereon.

### III. RECOMMENDATIONS

87. In the light of the foregoing observations, the independent expert makes the recommendations set out below.

88. On the judicial system, he recommends the following:

(a) Appointment of the President of the Court of Cassation and the President of the Supreme Council of the Judiciary and initiation of the programme for the vetting of judges;

(b) Appointment of the director-general of the Judicial Training College and implementation of initial training for judges;

(c) Establishment of a judicial inspectorate composed of judges with a view to the regular, ongoing and effective supervision of the activities of the courts and the appointment of judges in order to ensure the proper functioning of the judicial system and thus safeguard the rights of persons before the law;

(d) Establishment of the two specialized chambers to deal with certain serious political offences and with economic and financial crimes;

(e) Clarification and simplification of certain criminal procedures, particularly with regard to non-custodial and suspended sentences, police custody and habeas corpus, as well as the duration of pretrial detention and the delegation of judicial powers to the criminal police;

(f) Due attention to the issue of youth imprisonment and to the provisions of the Convention on the Rights of the Child;

(g) Adoption, in the Juvenile Code, of provisions promoting youth crime prevention strategies, alternative non-custodial measures and the implementation of effective rehabilitation and reintegration programmes, while encouraging foster care in the case of some non-serious crimes;

(h) Institution of a legal framework to govern the functioning of the Institute of Forensic Medicine, creation of a demarcation line between the State University of Haiti's hospital mortuary and the Institute's mortuary, and consideration of the possible extension of the services to the provincial jurisdictions through the setting up of at least two Institute annexes in the towns of Le Cap and Les Cayes;

(i) Continuation of the expansion of the network of law centres and the implementation of a mechanism for regular training and exchanges between persons in charge of the law centres.

89. On the police system, he recommends the following:

(a) Greater attention to certification of the members of the General Inspectorate of the National Police and increase in human and financial resources;

(b) Allocation of priority to vetting senior police officers in order to send out a clear signal as to the objective being pursued;

(c) Regular and close involvement of the MINUSTAH Human Rights Section in all monitoring stages of the procedure to ensure that the process conforms to relevant international standards;

- (d) Increase in the recruitment of women into the police;
- (e) Increase in the number of French-speaking or Creole-speaking United Nations Police officers;
- (f) Routine learning of Creole by United Nations Police officers.

90. On the penitentiary system, he recommends the following:

- (a) Initiation of a national programme for the building of new prisons to relieve the strain on the penitentiary system and to address the issues of prison overcrowding and the use of police stations as places of detention;
- (b) Continuation of the recruitment, vetting and supervision of prison administration personnel;
- (c) Implementation, with ICRC assistance, of a programme of health control and monitoring at penitentiary establishments;
- (d) Adoption of measures to ensure that prisons are supplied with sufficient stocks of medicines, drugs and provisions to guarantee detainees' right of access to medical care and food;
- (e) Conferment of a new, nationwide mandate on the Consultative Commission on Prolonged Pretrial Detention that will enable it to examine, in accordance with clear and verifiable criteria, cases involving non-serious crimes or arbitrary detention, and adoption of measures to ensure that a prisoner's discharge may only be authorized by a working group composed of judges, in order to prevent the release of dangerous criminals.

91. On the Office of the Ombudsman, he recommends the following:

- (a) Adoption of the legislative bill revising the functions of the Office of the Ombudsman and the allocation to it of a budget to allow, in particular, the setting up of regional bureaux that will put the institution in closer contact with its beneficiaries;
- (b) Creation of the post of Deputy Ombudsman;
- (c) Setting up of a programme to support the development of the mandate of the Office of the Ombudsman and the organization of its work at the national and regional levels, with the involvement of national stakeholders in Haiti, the OHCHR National Institutions Unit and the network of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights.

92. On combating violence against women, he advocates the following:

- (a) Continuation and extension of the large-scale campaign to eradicate sexist stereotypes in schools, the media and advertising;
- (b) Adoption of the law on all forms of violence against women including domestic violence, the law on filiation and responsible parenthood and the law on working conditions of paid domestic staff.

93. On the deportee issue, he recommends the following:

(a) Adoption of measures to ensure that consulates fully play their part in the administration of the deportation process;

(b) Support for the pilot project on the resettlement, rehabilitation and reintegration of Haitian deportees, which is being executed by the International Organization for Migration;

(c) Suspension of mass expulsions of migrants unlawfully residing in the territory of other countries.

94. On economic and social rights, he recommends the following:

(a) Ratification of the International Covenant on Economic, Social and Cultural Rights;

(b) Intensification of efforts to meet the international commitments entered into in the area of economic and social rights.

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