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Technical assistance and capacity-building

Report of the Independent Expert on the situation of human rights in Haiti, Gustavo Gallón

Summary

The Independent Expert on the situation of human rights in Haiti considers the situation to be complex but not insuperable. Following his second mission to the country, in July 2014, he reviews here the efforts made thus far to address the five human rights areas identified in his previous report as warranting urgent action, namely: (a) illiteracy, (b) prolonged pretrial detention, (c) elections, (d) redress for large-scale human rights violations perpetrated in the past and (e) resettlement of the people displaced by the 2010 earthquake.

For each area, the Independent Expert identifies the problems observed and proposes specific solutions. As a prerequisite for addressing these urgent human rights matters, however, there must be strong political will on the part of the Government and the international community, active involvement by civil society, consensus on the priority problems to be addressed, focused coordination of work and perseverance in efforts to attain the stated goals.

In December 2014, a new Prime Minister was appointed as a first step towards clearing the impasse surrounding the holding of elections, which is one of the five areas identified by the Independent Expert for priority action. Success on this front could bring significant momentum to the efforts to improve the human rights situation in Haiti. The early days of 2015 will be decisive in this regard.



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I. Introduction

1. The present report is submitted pursuant to the statement of the President of the Human Rights Council, of 28 March 2014, in which the Council invited the Independent Expert on the situation of human rights in Haiti to undertake a mission to Haiti and to report on that mission to the Council at its twenty-eighth session (A/HRC/PRST/25/1, para. 13).

2. In the President's statement, the Council agreed to extend the Independent Expert's mandate for one year (para. 9). Mr. Gustavo Gallón had been appointed in June 2013 and took up his duties on 1 August 2013. The present report relates to the period from 15 April to 31 December 2014 and contains recommendations for the Government of Haiti and the international community.

3. The Independent Expert undertook a mission to Haiti from 15 to 22 July 2014, followed by a series of meetings in New York from 22 to 25 July. In Haiti, he stayed in Port-au-Prince and visited Aquin and Les Cayes in the Sud Department; he also participated in a workshop on economic and social rights organized in Côte des Arcadins by the Minister for Human Rights and the Fight against Extreme Poverty.

4. The Independent Expert wishes to thank all those he met during his visit, especially the Haitian authorities — who made the mission possible — and in particular the Minister for Human Rights, who invited him to take part in the aforementioned workshop with members of the Interministerial Committee for Human Rights. The workshop enabled the Independent Expert to appreciate first-hand the Committee's efforts to bring together the work done by different ministries with a view to developing a comprehensive human rights policy, which is the starting point for coordinated governmental action in this sphere.

5. The Independent Expert also wishes to thank the President of the Senate, the Ombudsman, the Director General of the National Police, the Deputy Director of the Prisons Administration, the Inspector General of the National Police, the Secretary of State for Literacy, the Dean of the Court of First Instance in Aquin, the Government Commissioner at the Court of First Instance in Aquin, the Police Commissioner and the Clerk at the Aquin police station, the Dean of the Court of First Instance in Les Cayes, the former Government Commissioner in Les Cayes, the Dean of the Court of First Instance in Les Côteaux, the Government Commissioner at the Court of First Instance in Les Côteaux, the alternate Government Commissioner at Île-à-Vache and the alternate Government Commissioner at the Court of First Instance in Les Cayes.

6. The support received from the United Nations Stabilization Mission in Haiti (MINUSTAH) was instrumental in the success of this mission. The Independent Expert wishes to express his appreciation to the Special Representative of the Secretary-General, as well as to her staff and all those working with her, in particular in the Human Rights Section, and all members of their teams for the able support they provided in Port-au-Prince and on field visits and for the views they shared on the country situation. The Independent Expert also wishes to thank the representatives of the United Nations funds and programmes in Haiti and their teams for their support and for the information they provided.

7. The Independent Expert wishes to thank as well the representatives of the Organization of American States, through whose good offices he was able to meet with members of the diplomatic corps to exchange views on the human rights situation in Haiti. He also expresses his thanks to the ambassadors of the Group of Friends of Haiti with whom he met in New York, hosted by the Permanent Mission of Uruguay to the United Nations.

8. Lastly, the Independent Expert extends his sincere thanks to the many representatives of civil society organizations, political parties, journalists and members of human rights NGOs in Port-au-Prince and the Sud Department with whom he met in Haiti and in New York.

II. Five key aspects of the human rights situation in Haiti

9. The Independent Expert presented his first report to the Human Rights Council in March 2014, following his first mission to Haiti from 23 September to 1 October 2013. In that report, he pointed to the profound inequalities in Haitian society as the underlying cause of the critical human rights situation in the country and drew attention to five key aspects that required urgent action: (a) the extremely precarious economic situation of the majority of the population; (b) inhumane conditions in prisons; (c) very weak government institutions; (d) continued impunity for serious human rights violations committed in the past and still awaiting resolution; and (e) other factors, including a succession of natural disasters and other events that are complicating the task of guaranteeing human rights both now and for the future.

10. Far from being new, these five aspects have been present for many years and are the result of an accumulation of developments within the country as well as internationally. They have been identified in the numerous substantive analyses conducted by the Independent Expert's predecessors, which he endorses and which show that these five key aspects require urgent action inasmuch as they are at the root of continued serious violations of human rights. Furthermore, from a structural viewpoint they undermine the enjoyment of human rights by Haitian society as a whole and must be addressed and resolved once and for all.

11. While the human rights situation in Haiti is complex, the Independent Expert does not feel it is insurmountable. This assessment, which he expressed already in his first report, is based on the Haitian population's vast capacity for work, their perseverance and desire for freedom, and the country's rich natural-resource base, despite the many trials and tribulations faced by this brave nation throughout history.

12. To tackle the country's critical human rights situation, the Independent Expert proposes a set of emergency measures, or "shock treatment", to jump-start changes in the most acute areas of these five aspects, namely: (a) eradicating illiteracy; (b) resolving, as a matter of urgency, all cases of persons being held in pretrial detention; (c) ensuring transparency and credibility in the holding of the elections; (d) guaranteeing redress for the large-scale and systematic violations of human rights perpetrated in the past; and (e) resettling in suitable, long-term housing all of the people displaced by the 2010 earthquake and subsequent disasters who are still living in camps.

13. These measures are necessary for three reasons: first, to end the serious human rights violations that would otherwise continue to be committed against thousands of people; secondly, to send a clear message to the Haitian people and the international community of the firm commitment to remedy the country's human rights situation; and lastly, to open the way for full implementation of the recommendations made by international human rights mechanisms over the past 30 years. The Independent Expert stands ready to assist in this undertaking.

14. The Independent Expert's second mission to Haiti focused on observing developments in these five key aspects, and particularly the five elements identified during his first mission.

15. In line with the guidance provided by the Human Rights Council with regard to his mandate (A/HRC/PRST/25/1, paras. 10–12), the Independent Expert has proposed that the Government organize a workshop to identify the causes of inequality that are undermining human rights in Haiti and ways to overcome them. The workshop would be intended for key national and international stakeholders, Government representatives, members of the Interministerial Committee for Human Rights, the Office of the Ombudsman and representatives of civil society. The previous Special Rapporteur on extreme poverty and human rights would also take part, as would two other experts from intergovernmental organizations active in the area of inequality. The Independent Expert hopes that, subject to the Government's agreement, the workshop can be held in early 2015 and that it will lead to a strengthening of programmes already under way as well as new initiatives to tackle the inequality that underlies the human rights crisis in Haiti.

16. Prior to the Independent Expert's second mission, a number of international human rights instruments were incorporated into Haitian legislation, including the two Optional Protocols to the Convention on the Rights of the Child. The Government has also launched the ratification process for a number of other instruments, such as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the 1954 Convention relating to the Status of Stateless Persons; and the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty. In addition, the Ministry of Foreign Affairs has signed the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance and the Inter-American Convention against All Forms of Discrimination and Intolerance.

17. Haiti has submitted its midterm report under the universal periodic review and, after nationwide consultation with civil society and final review by the Interministerial Committee for Human Rights, has finalized its periodic report for submission to the Committee on the Elimination of Discrimination against Women.

18. Haiti has also adopted legislation on paternity, maternity and filiation; an anti-corruption law; a law against human trafficking; and an adoption reform law.

19. The Minister for Human Rights has prepared a draft plan of action to promote and protect human rights in Haiti, and the draft is being discussed at national consultation workshops. This is a unique opportunity to include in the plan of action the urgent priority measures recommended for the five areas identified in the Independent Expert's report.

20. On 8 October 2014, the Human Rights Committee met with a high-level delegation of the Government of Haiti to review the country's report on the implementation of the International Covenant on Civil and Political Rights, which was ratified by Haiti in 1991. This was the initial report from Haiti; it was to have been submitted in 1996.

21. The Committee welcomed a number of positive developments, in such areas as decisions taken (e.g., the appointment of a Minister for Human Rights), national legislation adopted (e.g., on the inclusion of disabled persons) and accession to or ratification of various international human rights instruments (CCPR/C/HTI/CO/1, paras. 3 and 4). At the same time, the Committee noted four areas of special concern and requested the Government to provide additional information within a year. Those areas were: (a) the slow pace of the investigation into the Jean-Claude Duvalier case and the lack of reparation for the victims of serious human rights violations imputed to him; (b) the continued occurrence, which showed an increase in 2014, of firearm-related deaths caused by the forces of law and order; (c) allegations of threats, harassment and intimidation against human rights defenders, journalists and members of the opposition; and (d) the denial of the

right of Haitian citizens to vote and be elected in regular elections since 2011 (paras. 7, 10, 19 and 20).

22. The Committee also expressed concern about the following matters: incorporation of the International Covenant on Civil and Political Rights into national law and its applicability in Haitian courts; the small budget assigned to the Office of the Ombudsman and the shortage of information on the implementation of its recommendations; gender equality; discrimination against lesbian, gay, bisexual and transgender people; the withdrawal from the parliament's agenda of the bill to ratify the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty; the Criminal Code's definition of torture, which does not include psychological torture; violence against women, in particular rape; human trafficking, especially of child domestic workers; the situation of persons deprived of their liberty, especially those in prolonged pretrial detention; the dilatoriness and passive stance of the judicial system; interference by the executive and legislative branches in judicial decisions and the weak operating capacity of the High Council of the Judiciary; and the ongoing forced evictions of persons living in refugee camps (CCPR/C/HTI/CO/1, paras. 5, 6, 8, 9 and 11–18).

23. The Committee's observations and recommendations are highly pertinent. Many of them are considered, by the Independent Expert and others, to warrant urgent priority action, in particular those concerning prolonged pretrial detention, the holding of elections, and the right to know the truth and to reparation and justice for victims of serious human rights violations in the past. The urgency attached to these matters should be taken into special account by the Haitian authorities.

24. The Government has expressed reservations about some of the Committee's observations and recommendations, namely with regard to the Office of the Ombudsman, violence against women (rape), independence of the judiciary, protection of persons displaced by the earthquake, alleged violations of the freedom of opinion, expression, assembly and association, and participation in political affairs.¹ While respecting the right of Haiti to express its opinion on these matters, the Independent Expert invites the Government to use the recommendations of the Committee and other relevant bodies to strengthen safeguards and respect for human rights in its territory and to identify any obstacles it encounters in this regard.

A. Economic, social and cultural rights and social inequality

25. As noted in the previous report, the full enjoyment of economic, social and cultural rights in Haiti is severely limited by the country's acute social inequalities.

(i) Priority action to eradicate illiteracy

26. To tackle this situation of inequality, the Independent Expert had recommended that priority be given to ensuring the right to a quality education for all, without exception. The country should therefore focus all available resources on promptly eradicating illiteracy, which plagues more than half of the adult population. The literacy rate among Haitians aged 15 and older stands at 48.7 per cent according to the United Nations Development Programme (UNDP).²

¹ Response of the Haitian Government to the Committee's concluding observations on the initial report.

² United Nations Development Programme (UNDP), Human Development Report 2014, *Sustaining Human Progress: Reducing Vulnerabilities and Building Resilience*, table 9 ("Education"); available at <http://hdr.undp.org/sites/default/files/hdr14-report-en-1.pdf> (consulted on 26 January 2015). This table refers to the year 2013 although this is not indicated in the heading.

27. Reducing inequality takes time and will require structural programmes that go beyond just providing social assistance. In the meantime, steps must be taken urgently to close the literacy gap, as knowing how to read and write is crucial to a life with dignity and to the exercise of most rights, such as the right to education, which in turn gives access to such other rights as the right to work, to food, to housing and to health.

28. According to UNDP figures,³ 5,294,000 Haitians — out of a total population of 10,320,000 — are illiterate. The Office of the Secretary of State for Literacy has indicated to the Independent Expert a figure on the order of 3.5 million illiterate Haitians. A two-year campaign supported by Latin American and Caribbean cooperation assistance is currently under way to teach 450,000 people how to read and write.

29. Without wishing to diminish that campaign's importance, at the rate indicated it would take at least 15 years (or 23 years, according to the UNDP figures) to eradicate illiteracy, and that does not take into account future population growth. Urgent action to address this problem should include a major boost in the human and financial resources allocated to achieving this goal in order to cut significantly the time needed to teach all Haitians how to read and write.

30. The authorities responsible for improving literacy in Haiti have shared with the Independent Expert their concern that the literacy campaign focuses exclusively on Creole and does not include French, the country's other official language. As French is the language used in all administrative, legal and other official matters, an additional effort is needed to make sure that people who learn to read and write in Creole can also understand written French, thus helping to guarantee the realization of Haitian citizens' rights.

31. The Independent Expert encourages the Government of Haiti to step up its effort to eradicate illiteracy as soon as possible in order to lay a solid foundation for the realization of human rights in the country. He further invites the entire international community to support this effort and to coordinate international cooperation with the Government in this area as a matter of the highest importance.

(ii) Other aspects of economic, social and cultural rights that merit particular attention

32. In the Independent Expert's previous report, it was stated that the majority of Haitians lived in conditions of extreme poverty. A full 76 per cent of the population earned less than US\$2 per day, and 60 per cent earned less than US\$1 per day. Unemployment stood at 60 per cent. The Global Hunger Index (GHI) for Haiti was calculated at 23.2, placing it in the category of "alarming". More than 44 per cent of the population suffered from malnutrition. Nearly 75 per cent of households were located in slums,⁴ which meant that the right to housing is not a reality for the majority of Haitians (and that situation has worsened since the earthquake in 2010). The right to health was similarly not guaranteed, with 60 per cent of the population lacking access to basic health care, according to the United Nations Children's Fund (UNICEF); that situation, too, had worsened since the cholera epidemic. Lastly, the right to education was not enjoyed by all: UNICEF figures showed that almost half of the country's boys and girls did not attend school and only 2 per cent of children of school age completed secondary education.⁵

33. The Government has deployed considerable efforts to tackle these situations of extreme vulnerability, including through a national programme to combat hunger and

³ Ibid.

⁴ United Nations Development Programme (UNDP) and Haiti, "2013 MDG report: Haiti, a new look – executive summary" (Port-au-Prince, UNDP, 2014). Available at www.ht.undp.org/content/haiti/fr/home/library/mdg/rapport-omd-2013---haiti-un-nouveau-regard/.

⁵ See A/HRC/25/71, paras. 11–17.

malnutrition and a national social assistance programme aimed at improving living conditions.⁶

34. These programmes are part of the Strategic Development Plan for Haiti, which is built around five priorities: (a) education and human and social development (access to education, health, social services and culture, and better quality of habitat); (b) the environment and land use; (c) the economy and employment; (d) energy; and (e) the rule of law and democracy. The Government is aiming to halve the number of people suffering from hunger by the end of 2016 and to eradicate hunger and malnutrition fully by 2025.

35. According to a report on the status of attainment of the Millennium Development Goals in Haiti, co-authored by the National Observatory on Poverty and Social Exclusion and UNDP, Haiti has made significant progress against most of the indicators and has achieved all (or almost all) of its targets. In particular, underweight in children under 5 has been halved, extreme poverty has been reduced to 24 per cent, infant mortality has fallen by 44 per cent since 1990, maternal mortality has dropped to 157 per 100,000, the HIV/AIDS epidemic has been stabilized and 64.8 per cent of households now have access to an improved drinking-water source. Haiti is still among the countries receiving the most attention from the international community, with a leap in official development assistance following the 2010 earthquake.⁷

36. The same report observes that many challenges remain, and the progress made in some sectors is still too limited to have a major impact on development and poverty reduction.⁸ Among those challenges, the report mentions inequality, low income levels (45 per cent of workers live on less than US\$1.25 per day), unequal gender representation in the parliament (women account for only 4 per cent) and the lack of measures to combat deforestation and the loss of biodiversity.

37. With respect to inequality in particular, the human development index (HDI) for Haiti rose from 0.456 in 2012 to 0.471 in 2013, leaving it in 168th place among the 187 countries and territories surveyed.⁹ When this index is adjusted for the inequalities affecting the poorest of the poor, who are deprived of health, education and dignity, it drops to 0.285 (which is a slight improvement over 2012, when it stood at 0.273).¹⁰ According to UNDP, the HDI can be viewed as an index of “potential” human development and the inequality-adjusted human development index (IHDI) as an index of “actual” human development. The loss in potential human development caused by inequality is the difference between the HDI and the IHDI, and can be expressed as a percentage.¹¹

⁶ Government of the Republic of Haiti, *Les programmes d'inclusion sociale et de lutte contre la pauvreté extrême du Gouvernement Martelly-Lamothe*, 2013 (?), Port-au-Prince. Available at www.faes.gouv.ht/download/GTR_11714_PARP_programmes_2014-04-23.pdf.

⁷ United Nations Development Programme (UNDP) and Haiti, “2013 MDG report: Haiti, a new look – executive summary” (Port-au-Prince, UNDP, 2014). Available at www.ht.undp.org/content/haiti/fr/home/library/mdg/rapport-omd-2013---haiti-un-nouveau-regard/.

⁸ *Ibid.*

⁹ United Nations Development Programme (UNDP), Human Development Report 2014, *Sustaining Human Progress: Reducing Vulnerabilities and Building Resilience*, table 1 (“Human Development Index and its components”). Available at <http://hdr.undp.org/sites/default/files/hdr14-report-en-1.pdf> (consulted on 26 January 2015). This table refers to the year 2013 although this is not indicated in the heading.

¹⁰ *Ibid.*, table 3 (“Inequality-adjusted Human Development Index”). Available at: <http://hdr.undp.org/sites/default/files/hdr14-report-en-1.pdf> (consulted on 26 January 2015). This table refers to the year 2013 although this is not indicated in the heading.

¹¹ United Nations Development Programme (UNDP), *International human development indicators. Haiti. Country profile: Human development indicators. 2013 report* (Subtitle: Inequality. Based on the “Inequality-adjusted Human Development Index” indicator in this document: Human

38. A further disparity appears in the gender inequality index, which reflects gender-based inequalities in three areas: reproductive health, empowerment and economic activity. In 2013, Haiti had a gender inequality index rating of 0.599, which was a modest improvement over the 0.592 recorded in 2012. Even so, it still leaves the country in 132nd place in 2013, as compared with 127th in 2012.¹²

39. The Independent Expert wishes to reiterate the hope he expressed in his first report that the social assistance programmes and the 2014–2016 Poverty Reduction Action Plan will be able to meet the basic needs of the majority of the population. It is also his hope that they will help to identify the factors perpetuating the deep social inequalities besetting Haitian society so that they can be neutralized as soon as possible through policies that ensure decent living conditions for all.

B. Deprivation of liberty and detention conditions

(i) Priority action to address prolonged pretrial detention

40. A second area that requires urgent action is the practice of prolonged pretrial detention. More than 70 per cent of prisoners in Haiti are deprived of their liberty for years without appearing before a judge.¹³ For some of these individuals, the time spent in pretrial detention is longer than the sentence that might be handed down if they were convicted. This practice is clearly contrary to the International Covenant on Civil and Political Rights, which stipulates in its article 9, paragraph 3, that anyone arrested or detained on a criminal charge is to be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It is therefore crucial that steps be taken to ensure that persons held in prolonged pretrial detention are either tried or released within a reasonable period of time. This perverse judicial practice must be halted.

41. Urgent action must be taken at the national level so that cases can be brought to trial or other solutions found for most of the 7,500 people who are being held in pretrial detention in the country's seriously overcrowded detention facilities, which currently house over 10,500 prisoners.¹⁴

42. As indicated in the Independent Expert's previous report, the authorities are aware that this situation is not new and it is due in part to the shortage of investigating judges available to hear the cases of detainees. Aside from their insufficient numbers, these judges do not devote enough time to dealing with cases. According to the same sources, some

Development Report 2013. The Rise of the South: Human Progress in a Diverse World. Explanatory note on 2013 HDR composite indices. Haiti. HDI values and rank changes in the 2013 Human Development Report). See <http://hdrstats.undp.org/fr/pays/profils/HTI.html>. Owing to changes to the UNDP web page, the document is no longer available. The Independent Expert guarantees the accuracy of this citation.

¹² United Nations Development Programme (UNDP), Human Development Report 2014, *Sustaining Human Progress: Reducing Vulnerabilities and Building Resilience*, table 4 ("Gender Inequality Index"). Available at <http://hdr.undp.org/sites/default/files/hdr14-report-en-1.pdf> (consulted on 26 January 2015). This table refers to the year 2013 although this is not indicated in the heading.

¹³ According to conversations with the Chief Commissioner of the Prisons Administration, this figure can reach or even exceed 80 per cent. At 31 October 2014, 72 per cent of the people in custody were awaiting trial (79 per cent of them were minors and 81 per cent were women), according to the MINUSTAH correctional unit. The International Centre for Prison Studies estimates that some 70.6 per cent of prisoners were in pretrial detention in August 2013 (www.prisonstudies.org/country/Haiti, consulted on 26 January 2015).

¹⁴ As at 31 October 2014, according to the MINUSTAH correctional unit, out of 10,508 prisoners, 7,578 were in pretrial detention.

judges spend a disproportionate amount of time giving classes or looking after personal affairs.

43. Various steps could be taken to keep this problem from getting worse. The Independent Expert has been informed that, on the instruction of the prosecutor's office, a committee has been set up to monitor the situation of detentions in Les Cayes (Sud Department). The committee sits once a week to review the cases of persons being held in pretrial detention and orders releases as applicable.

44. Other measures relating to the administration of justice should be implemented at the national level. Currently, investigating judges cannot be reappointed immediately upon expiry of their mandate because they have to wait months to be issued a certificate of good conduct so that the Ministry of Justice can reappoint them. This practice paralyzes the administration of justice as over 100 investigating judges are presently unable to investigate or preside in cases of persons being held in prolonged pretrial detention.

45. This procedure could be organized differently such that certification would be ready before expiry of their mandate. That way, judges could be reappointed without any interruption in their work.

46. The Independent Expert wishes to repeat the recommendation made to the authorities in his previous report that a small group of judges, assisted by law students in their final year of studies, should be appointed for a set period of time to examine the cases of prolonged pretrial detention and take a decision on them. Some high-ranking officials are aware of the situation and are working on possible solutions. The Minister for Human Rights informed the Independent Expert that she had asked the Minister of Justice to reopen before the end of October 2013 the office responsible for monitoring prolonged pretrial detention. That request should be made again.

47. As indicated above, the urgent need to address the matter of pretrial detention had also been identified by the Human Rights Committee. In its concluding observations on the initial report of Haiti, the Committee recommended that the State party should ensure that all persons who are arrested and detained enjoy the effective right to habeas corpus. It should also encourage courts to promote alternatives to deprivation of liberty for indicted persons, taking into account the United Nations Standard Minimum Rules for Non-custodial Measures. It should take urgent steps to address the situation of persons who have been in pretrial detention for many years in a way which will directly help reduce prison overcrowding. The State party should also take appropriate action to ensure the separation of remand and convicted prisoners and of adults and minors (CCPR/C/HTI/CO/1, para. 15).

(ii) Other aspects concerning detention conditions

48. The country's places of detention have a combined capacity to hold only 4,000 prisoners.¹⁵ They are extremely overcrowded¹⁶ and do not offer decent living conditions.¹⁷ This constitutes inhumane, cruel and degrading treatment.

¹⁵ Based on information provided by the Prisons Administration. According to the International Centre for Prison Studies, the capacity stood at 5,958 as at 1 August 2014. Available from www.prisonstudies.org/country/Haiti (consulted on 26 January 2015).

¹⁶ According to the MINUSTAH correctional unit, there were 10,508 prisoners as at 31 October 2014. According to the Prisons Administration, 10,161 were registered as at 29 June 2014.

¹⁷ The Prisons Administration in Haiti has set itself a target of providing each detainee with 2.5 square metres, which would mean that the official capacity of the country's prisons is 2,383 persons. According to the United Nations, the target should be 4.5 square metres, which would give an official capacity of 1,324 persons.

49. The occupancy rate is 794 per cent of maximum capacity in the five most overcrowded prisons; that works out to 0.57 square metres per person (the standard is 4.5 square metres per prisoner). Fort-Liberté and Port-au-Prince have even higher rates, with almost three persons per square metre.¹⁸

50. The prison in Les Cayes, in the Sud Department, has capacity for 100 persons. It currently holds 610 prisoners (474 “on remand” and 136 convicted, of whom 132 were men, 3 were women and 1 was a minor), according to information provided to the Independent Expert by the former government commissioner on 19 July 2014.¹⁹

51. In the municipality of Aquin, also in the Sud Department, the Independent Expert visited the police station, which is used as a place of detention. The prisoners were divided among five cells: in one, there were three women; in another, there were two minors (who should not have been in custody); and in the remaining three, there were more adults than the space was designed to hold.

52. The judicial authorities in Aquin asked the Independent Expert to report that a detention facility is needed in that municipality and also in Les Côteaux, because convicted prisoners from these two places are confined in the prison in Les Cayes.

53. Sanitation conditions in places of detention are inadequate. The Independent Expert observed a lack of privacy and appropriate sanitation at the Aquin police station, including the absence of sewage drains. Similar situations had been found in the Port-au-Prince and Jacmel prisons during the previous mission.

54. As stated in the previous report, the national prison in Port-au-Prince, which is located in the town centre, will be demolished to make way for urban redevelopment. It is not yet known where the prisoners will be transferred, and this has generated concern.

55. Detention centres do not offer conditions that allow prisoners to work or study. The Prisons Administration is responsible for providing medical services and food but often does not have the funds or service agreements in place to ensure the supply of these services.

56. The Independent Expert is compelled to repeat the call made to the Haitian authorities in his previous report concerning the need to improve significantly the conditions in detention centres and, in particular, to improve health services, ensure availability of food and health care, provide settings that allow prisoners to work or study and add a more humane dimension to living quarters and recreational areas.

C. Weak rule of law

57. Because of the weak rule of law, the people of Haiti face uncertainty in many spheres of their basic rights, including property registration, access to justice and government services, and the holding of elections.

(i) Priority action to ensure the right to participation in public life

58. The right of citizens to vote and to be elected to office has been flouted all too often in Haiti. As unclear electoral rules have repercussions that go to the very core of the country’s institutional structure, a solution is needed urgently. In his previous report, the Independent Expert noted that parliamentary and municipal elections should have been held

¹⁸ According to data provided by the MINUSTAH Human Rights Section on 31 October 2014.

¹⁹ As at 31 October 2014, there were 683 prisoners (548 “on remand” and 135 convicted), according to the MINUSTAH Human Rights Section.

in 2012 but, as of December 2013, no date had yet been set. Similar observations had been made by previous Independent Experts. In 2006, for instance, Louis Joinet stated that, at the time of completion of his report, he was unaware, owing to repeated deferrals, of the date and under what political circumstances the elections would be held (E/CN.4/2006/115, para. 79).

59. During his July 2014 mission, the Independent Expert saw progress in the fact that the Government had set a date of 26 October 2014 for the first round of parliamentary and local elections and 28 December for the second round. These elections had been postponed several times since 2011. A number of concerns, however, led him to wonder if the elections could in fact take place on those dates. For instance, the parliament would need to enact electoral legislation before the end of the legislature on the second Monday of September 2014; the make-up of the provisional Electoral Board was being contested by six opposition parties; and the logistical preparations for the elections would take 120 days as from the promulgation of the electoral act.

60. Those doubts were confirmed when 26 October came and went and no elections were held. The Government announced that the Senate had not taken a decision on the draft electoral legislation approved by the Chamber of Deputies and that the elections would be held in 2015 pursuant to regulations that would be issued in a presidential decree.

61. Many observers had forecast that the Senate would not be able to adopt an electoral law given the body's calendar and, in particular, because only two thirds of the Senate seats were occupied; the terms of the remaining third had expired and not been renewed in the absence of legislative elections. With the terms of another third of the senators and a number of members of the Chamber of Deputies coming to an end in January 2015, that means there will no longer be a parliament at that point and the Government would take the place of the legislature by way of presidential decrees until such time as elections are held. Such a scenario presents a grave danger for democratic rule.

62. Political confrontation has always been a highly sensitive issue in Haiti and it continues to be so. It is thus all the more urgent that the competing political forces reach agreement on a set of ground rules so that elections can be called.

63. The urgency of addressing this situation, as expressed by the Independent Expert, is echoed by the Human Rights Committee, which has recommended to the State party that it take, as a matter of highest priority, the necessary measures to organize the legislative and municipal elections that were to have been held in 2011 so as to guarantee effective access to citizens' rights under article 25 of the Covenant (CCPR/C/HTI/CO/1, para. 20).

64. The consultative commission appointed by the President to find a solution to the election impasse recommended on 8 December 2014 that a new government be formed with participation of the opposition parties. Évangéline Paul was subsequently named Prime Minister on 25 December 2014. The commission also recommended that the President of the High Council of the Judiciary and the members of the provisional Electoral Council all step down; that was expected to happen in early January 2015.

(ii) Other elements of the rule of law that need to be guaranteed

65. In his previous report, the Independent Expert identified a number of other areas where the weak rule of law was evident and where a concerted effort was required to strengthen it. These areas include the need for a reliable property registration system; the need for judges to be allowed adequate time to handle matters in their remit; deteriorating respect for the right to life, which casts doubts on the executive branch's ability to protect this right and draws attention to the judiciary's passive stance vis-à-vis these violent crimes (including those imputed to State actors, sexual violence and attacks against human rights

defenders); and the continued exploitation of children sent to live with and work for host families.

66. During the July 2014 mission, the Independent Expert noticed a lack of public confidence in the administration of justice. It was especially striking among people whose land had been expropriated to expand the airport at Les Cayes; some 200 families cited various problems linked mainly to indemnification for their land. The specific complaints included: (a) the indemnification process was slow, not transparent and discriminatory; (b) for the small number of families having received compensation, the value was limited to the land expropriated and did not cover other property, and the amounts were significantly below the market value; (c) no compensation had yet been paid for expropriated dwellings; and (d) families receiving compensation for their land were notified by the authorities to move immediately without yet having received any indemnity for their homes. The right to own property is enshrined in the Universal Declaration of Human Rights (art. 17) and the 1987 Constitution of Haiti (chapter II, section H); in cases of public interest or eminent domain, laws and procedures are in place that govern when and how a person's right to own property may be denied. The right to housing is also a basic right and it must be respected if the home of some of these families is expropriated without indemnity. The right to housing is set forth in the Universal Declaration of Human Rights (arts. 22 and 25), the International Covenant on Economic, Social and Cultural Rights (art. 11) and the 1987 Constitution of Haiti (art. 22). Subsequent to the Independent Expert's mission, a high-level delegation consisting of the Secretary of State for Public Works, two advisers to the Prime Minister, the Sud Departmental Finance Director and the Director of the Antoine Simon airport in Les Cayes met with those landowners and pledged to follow up so that the indemnification process could move forward to everyone's benefit and construction work could begin without further delay.

67. The Independent Expert continued to receive reports of acts of intimidation and threats against the two co-directors of the non-governmental organization KOFAVIV, which works to prevent sexual violence. The children of Malya Villard-Appolon and of Eramithe Delva were the target of an attempted kidnapping in 2013. In February 2014, a woman was arrested on suspicion of having taken part in that attempt; and in May 2014, a man was arrested on charges of having threatened Mrs. Villard-Appolon with a firearm in October 2013. A member of KOFAVIV who had identified the female suspect to the police reportedly received death threats and was forced to move away from her neighbourhood. Since March 2014, Mrs. Villard-Appolon and Mrs. Delva have been receiving threatening telephone calls and, on 28 April 2014, several shots were fired at the organization's offices. The two co-directors of KOFAVIV have had to leave the country out of fear for their lives. The organization's lawyer, Julio Hyacinthe, and its gender and communications officer, Georjhy Desire, have also reportedly received telephone threats, according to complaints lodged with the Judiciary Police on 22 May and 11 June 2014.

68. Building a strong rule of law is a challenge but it is also an urgent need in Haiti. The Independent Expert wishes to reiterate the suggestion made at the time of his first mission that a workshop should be organized, led by an expert in the rule of law, to strengthen the work of civil society and the Government, in particular the Interministerial Committee for Human Rights, under the guidance of the Minister for Human Rights.

D. Past human rights violations and impunity

69. A fourth critical area is the matter of impunity, which is of special concern in Haiti and relates to all types of crime.

(i) **Priority action to provide redress for human rights violations committed in the past**

70. Impunity is especially blatant in connection with the large-scale, systematic and serious violations of human rights committed in the past. Urgent action must be taken to give effect to the victims' right to know the truth, right to justice and right to reparation.

71. On 20 February 2014, a three-judge appellate court sitting in Port-au-Prince overturned a lower-court ruling that had not allowed complaints brought by individuals whose human rights had been violated by the former dictator, Jean-Claude Duvalier. In January 2012, an investigating judge had ordered Mr. Duvalier to appear before a magistrate's court on charges only of misappropriation of public funds; all the other charges were rejected, including those for crimes against humanity, murder and torture. The appellate court reproached the investigating judge for not having interviewed all the complainants and it affirmed that crimes against humanity form an integral part of the country's legal system and are imprescriptible. The appellate court accordingly ordered a new investigation that was to identify all the parties involved, including all those complicit in the crimes imputed to Mr. Duvalier.

72. Although this was a landmark decision in that it ordered a follow-up investigation to remedy a denial of justice that had occurred at a lower-court level, the actual impact has been very limited. The new investigation was launched in mid-May 2014, but Jean-Claude Duvalier died six months later, on 4 October, without any formal charges being filed against him. The investigating judge had not been able to interview more than one complainant a week inasmuch as he had not been relieved of any of his other caseload and he had not been assigned an investigative team and clerk in order to be able to devote himself entirely to the Duvalier case.

73. As these crimes against humanity were perpetrated over a period of 15 years, the justice system should have been aware of them since the end of the regime some 28 years ago. With over two dozen complainants and various other parties and witnesses to be interviewed, the Duvalier case deserved the investigating judge's undivided attention, and he should have been afforded a guarantee of independence, heightened security and additional human, physical and financial resources in order to properly conduct such a high-profile case.

74. The Independent Expert had proposed, in his first report, that a national commission be set up to oversee reparation for the victims of the serious human rights violations committed under the regime of the Duvaliers (father and son) and the military governments and the violations perpetrated by the groups supporting or opposing President Jean-Bertrand Aristide. The commission should have been established in 1995, pursuant to the recommendation of the National Truth and Justice Commission that had been appointed for the victims of the 1991 coup.

75. The death of Jean-Claude Duvalier makes setting up this commission all the more necessary so that reparation can be decided and granted for the victims of those large-scale, systematic human rights violations, bearing in mind that it is no longer possible for the courts to declare criminal responsibility for the Duvaliers for the violations that occurred between 1957 and 1986. The commission's remit could include as well violations that were perpetrated after Duvalier's fall and thus provide input for educational activities aimed at re-establishing the right to memory. The creation of this commission would in no way impede the launching of a judicial investigation into events involving any living person responsible for serious crimes committed during the presidency of Jean-Claude Duvalier (or, as applicable, of his predecessor and father, François Duvalier).

76. During its review of the initial report submitted by Haiti in 2014, the Human Rights Committee was of the same view as the Independent Expert as to the urgency of taking action on human rights violations committed in the past. In support of the effort to combat

the impunity undermining the rule of law in Haiti, the Committee recommended that the State party continue the investigation into the Duvalier case with a view to bringing to justice all those responsible for serious violations committed during that regime and granting victims fair and just redress. The Committee also recommended that the State party implement the recommendations of the National Truth and Justice Commission pertaining to the serious violations committed between 1991 and 1994, and it reminded the State party of its obligation to launch criminal proceedings in all cases of serious human rights violations (CCPR/C/HTI/CO/1, para. 7).

(ii) The need for a stronger and more credible judicial system to combat impunity

77. The Committee further drew attention to the need to strengthen the overall capacity and credibility of the judicial system in order to combat impunity. This means guaranteeing the independence and effective operation of the High Council of the Judiciary (CCPR/C/HTI/CO/1, paras. 16 and 17). The Independent Expert wishes to reiterate the appeal made to the Haitian authorities in this regard.

E. Other factors having an impact on human rights, including catastrophes and other humanitarian crises

78. The fifth area identified in the Independent Expert's first report relates to serious violations of human rights stemming from other factors, such as forced displacement in the wake of natural catastrophe, statelessness and the cholera epidemic.

(i) Priority action for displaced persons

79. In December 2013, some 140,000 persons were still living in refugee camps. By July 2014, at the time of the Independent Expert's second mission, that number had dropped to 104,000 and, by October 2014, it had dropped further to 85,400, according to data provided by the Government to the Committee.²⁰ Progress in this direction should not be allowed to falter. The pace should in fact be stepped up in order to promptly find decent, long-term housing solutions for the many families who, five years after the earthquake, continue to live in harsh conditions in these camps.

80. The people in these camps live in constant threat of being forcibly evicted by the property owners, which represents a further menace to their already flouted rights. The Independent Expert echoes the Committee's call to the State party to ensure that no one is evicted from a camp unless some other solution has been found for the person and his or her family and ensure that all those displaced by the earthquake receive a long-term solution for their housing situation (CCPR/C/HTI/CO/1, para. 18).

(ii) Other factors

81. During his visit to Haiti in July 2014, the Secretary-General visited the central plain region, which is where the first cases of cholera had been recorded. With the Prime Minister, he launched a campaign to improve access to water and sanitation in rural areas as part of the effort to halt the cholera epidemic. The Independent Expert hopes that that visit will spur implementation of the recommendation made in his previous report, specifically, that a reparations commission be set up for the victims of the epidemic in order to catalogue

²⁰ Based, in turn, on the International Organization of Migration/Camp Coordination and Camp Management (CCCM) Cluster report available at www.eshelter-cccmhaiti.info/2013/pages/172-dtm-report-october-2014.php.

the damage suffered and corresponding compensation, identify those responsible and halt the epidemic, among other actions.

82. With regard to the issue of statelessness, the Independent Expert is following closely the progress of talks between the Haitian and Dominican authorities. He had hoped to meet with the Minister for Haitians Living Abroad, but that was not possible during the mission in July 2014.

83. In October 2014, the Inter-American Court of Human Rights made public its judgement of 28 August 2014 in which it found Judgement TC/0168/13 of the Constitutional Court of the Dominican Republic to be in violation of the American Convention on Human Rights. According to Judgement TC/0168/13, which had been issued one year earlier, all persons born in the Dominican Republic after 1929 of parents who were foreign nationals were deemed illegal aliens and did not have the right to Dominican nationality. The Inter-American Court of Human Rights rejected the Dominican court's decision, thus confirming the position taken by several other international bodies, including the Office of the United Nations High Commissioner for Refugees, UNICEF, the Inter-American Commission on Human Rights and the Office of the United Nations High Commissioner for Human Rights, who had declared that this decision was not in conformity with international obligations (A/HRC/25/71, para. 79).

84. The Inter-American Court of Human Rights concluded that Judgement TC/0168/13, given its general scope, did not comply with the obligation assumed under article 2 of the American Convention on Human Rights to adopt national legislation with regard to the rights — recognized in the Convention — to juridical personality (art. 3), to a name (art. 18) and to nationality (art. 20) and, in connection with those rights, the right to identity and the right to equal protection under the law (art. 24); it also failed to respect the obligations set forth in article 1, paragraph 1, of the Convention.²¹ The Dominican Republic was thus obligated to take action within a reasonable time frame to ensure that the aforementioned acts cease to have any legal force or effect.²²

85. The Inter-American Court accordingly ordered the Dominican Government to take all necessary steps, within a reasonable time frame, so that Judgement TC/0168/13 and the provisions of articles 6, 8 and 11 of Act No. 169-14 would cease to have legal force and effect, pursuant to paragraph 468 of the judgement.²³

86. This finding of the Inter-American Court of Human Rights should have provided the necessary basis for action by the Haitian Government vis-à-vis the Dominican authorities to ensure the protection of the rights of persons of Haitian origin living in the Dominican Republic. Regrettably, the Constitutional Tribunal of the Dominican Republic issued an opinion stating its disagreement with the decision of the Inter-American Court and declaring, on 4 November 2014, the unconstitutionality of the instrument acknowledging the competence of the Inter-American Court that had been signed by the President of the Dominican Republic on 19 February 1999.²⁴ This could mean an eventual repudiation by that country of the jurisdiction of the Inter-American Court of Human Rights and the human rights protection system built around the American Convention on Human Rights.

²¹ Inter-American Court of Human Rights. Case of Expelled Dominicans and Haitians v. Dominican Republic, judgement of 28 August 2014 (Preliminary objections, merits, reparations and costs), Series C 282, para. 325. Available (in Spanish only) at http://corteidh.or.cr/docs/casos/articulos/seriec_282_esp.pdf (consulted 26 January 2015).

²² Ibid., para. 468.

²³ Ibid., para. 512, point 18 of the judgement.

²⁴ Dominican Republic, Constitutional Tribunal, Judgement TC/0256/14, 4 November 2014. Available (in Spanish only) at www.tribunalconstitucional.gob.do/sites/default/files/documentos/Sentencia%20TC%200256-14%20C.pdf (consulted 26 January 2015).

The Independent Expert appeals to the international community to deploy all necessary efforts to ensure that the Dominican Republic continues to honour its obligations under the American Convention on Human Rights.²⁵

III. Conclusions and recommendations

87. The Independent Expert reaffirms the conclusions contained in his first report, in particular his perception and belief that the human rights situation in Haiti is extremely grave but can be surmounted if five basic conditions are met: strong political will on the part of the Government and the international community, active involvement by civil society, consensus on the priority problems to be addressed, focused coordination of work and perseverance in efforts to attain the stated goals.

88. The Independent Expert reiterates the numerous recommendations made concerning Haiti over the past three decades by human rights experts and bodies of the United Nations and the inter-American system. He has selected from among their analyses and recommendations five key areas that should be given priority and be the focus of future efforts.

89. The five areas are closely interlinked among themselves and with the deep inequalities present in Haitian society. They relate to the fragile situation of the economic, social and cultural rights of the vast majority of the population; inhumane conditions in prisons, especially for persons being held in prolonged pretrial detention; the absence of legal guarantees in many spheres of life owing to the very weak rule of law; the blatant impunity of those who committed human rights violations in the past; and the harsh conditions endured by the many victims of natural catastrophes and other humanitarian crises, such as the earthquake of January 2010, the cholera epidemic that broke out in October 2010 and the prospect of statelessness.

90. The critical situation of human rights in Haiti can obviously not be solved overnight, but the five areas mentioned above must be addressed promptly inasmuch as they are a source of ongoing and serious violations. This can be achieved through the follow actions:

(a) The State should set a reasonably short time frame for eradicating illiteracy, which afflicts roughly one half of the adult population. Although reducing inequality takes time, in particular when structural programmes that go beyond mere social assistance are involved, literacy is a crucial necessity for living with dignity and for exercising most rights, in particular the right to education, which in turn gives access to such other rights as the right to work, to food, to housing and to health;

(b) Reducing prison overcrowding, ensuring proper sanitation in prisons, providing food to inmates and, especially, processing the cases of and defining the legal status of persons being held in prolonged pretrial detention should all be seen to promptly, on the basis of studies already conducted by the Prisons Administration;

(c) Strengthening the rule of law by consolidating institutions is a complex undertaking and requires time, but it is of the utmost urgency to clearly establish and guarantee the right of Haitians to vote and to be elected. In this regard, it is encouraging to see that in December 2014 the President welcomed the

²⁵ In this regard, see the Inter-American Commission on Human Rights press release, "IACHR Condemns Judgment of the Constitutional Court of the Dominican Republic", 6 November 2014. Available at www.oas.org/en/iachr/media_center/PReleases/2014/130.asp.

recommendations made by a consultative commission that he had set up to resolve the elections impasse. That led to the appointment of a new Prime Minister on 25 December, as a first step towards forming a government that would include opposition parties. As of this writing, other urgent measures recommended by the commission were in the process of being implemented;

(d) With the death of the former dictator Jean-Claude Duvalier, it is all the more important to set up the national commission for reparation that was to have been established in 1995, as recommended by the National Truth and Justice Commission created for victims of the 1991 coup. This is important as well for the victims of other large-scale, systematic and serious human rights violations committed in the past, whether under the regime of the Duvaliers and the military governments or in connection with acts of violence perpetrated by groups supporting or opposing President Aristide. Aside from overseeing material reparations and judicial declarations of responsibility, the commission could contribute in the medium and long term to defining educational activities aimed at re-establishing the right to memory, which would help to improve the human rights situation in the country immeasurably;

(e) Resources must be increased considerably to guarantee the right to housing and decent living conditions for the displaced persons still living in camps set up after the January 2010 earthquake;

(f) A reparations commission should be established for the victims of the cholera epidemic in order to catalogue the damage suffered and the corresponding indemnification, identify those responsible and halt the epidemic, among other actions;

(g) The issue of statelessness covers a vast area and is dealt with by the Office of the United Nations High Commissioner for Refugees as the competent specialized body of the United Nations. The Human Rights Council should call upon the authorities of the Dominican Republic to ensure the rights of residents of Haitian origin as ordered by the Inter-American Court of Human Rights in its judgement of 28 August 2014;

(h) Special attention needs to be accorded to the rights of women in all the above-mentioned areas. The Independent Expert supports the recruiting of an expert to assist with preparing the report of Haiti to the Committee for the Elimination of Discrimination against Women.

91. The Independent Expert encourages the Government to give due consideration to these recommendations, and to those transmitted by the Human Rights Committee, in preparing the action plan to promote and protect human rights in Haiti that is currently being prepared by the Interministerial Committee on Human Rights.

92. The urgent actions recommended in the preceding paragraphs are necessary for three reasons: first, to put an end to serious human rights violations that will otherwise continue to be perpetrated against thousands of individuals; second, to convey to the people of Haiti and the international community the commitment to providing redress for human rights violations; and third, to open the way for implementation of other human rights recommendations made over the past three decades. The Independent Expert reaffirms his readiness to assist in this effort.