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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 accordance with the mandate established by the Commission on Human Rights in its resolution 1995/70 and with Presidential Statement PRST/15/1, the Independent Expert on the situation of human rights in Haiti submits the present report to the Council at its seventeenth session.

The Independent Expert starts by describing the human rights situation in Haiti and the threats posed to human rights in the context of an ongoing humanitarian crisis. He draws attention in particular to the plight of women, who are often prey to gender-based violence, children who have been separated from their families, orphans, child domestic servants and persons with disabilities, as well as to the question of forced return. He describes the impact of cholera on mob justice and cases of lynching of voodoo priests.

The Independent Expert then reviews the performance of the judicial authorities and the police and, in particular, looks at the need to restart the vetting process for police officers. He describes the prison system and the threats faced by persons deprived of their liberty, together with extended pretrial detention and sanitary conditions in prisons. He underlines the importance of the Office of the Ombudsman and the key role that it will be called upon to play in the future.

He also underlines the importance of adopting a rights-based approach to reconstruction of the country.

The report concludes with the Independent Expert's recommendations, which are divided into three sections. The first deals with violations of the rights of vulnerable persons and contains recommendations regarding women, children, people with illnesses or disabilities and displaced persons. In the second section, the Independent Expert makes a series of recommendations on the work of the institutions of the State, such as the justice system, the police, the prison system and the Office of the Ombudsman. In the third section, he recommends that human rights be taken into consideration in the reconstruction of Haiti.

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## I. Introduction

1. In accordance with the mandate established by the Commission on Human Rights in its resolution 1995/70 and with Presidential Statement PRST/15/1, in which the Human Rights Council invited the new expert to undertake a mission to Haiti soon and report to it each year, the Independent Expert submits the present report to the Council at its seventeenth session.

2. The report covers the period from March 2010 to March 2011 and contains a list of recommendations addressed to the Haitian Government and the international community.

3. The Independent Expert undertook three missions to Haiti during the period under consideration<sup>1</sup> and travelled to places outside the capital, including Jacmel, Léogane, Les Cayes and Cap-Haïtien. He wishes to thank the many Haitians whom he met on his missions as well as in Paris, New York, Brussels, Montreal and Geneva. On every occasion, he has been impressed by the open-mindedness, sense of history and commitment of all those who live and work in Haiti and by the attachment to their country evident among representatives of the Haitian diaspora abroad.

4. The Independent Expert wishes to thank the Haitian authorities, which enabled him to carry out his missions in the best conditions possible. He thanks President René Préval and Prime Minister Jean-Max Bellerive, whom he was able to meet on various occasions, for the frankness and quality of their comments. Similarly, he wishes to thank the members of the Government and the parliament for the openness with which they spoke to him of the country's situation and prospects for improvement.

5. In Haiti, the Independent Expert also had regular meetings with Edmond Mulet, the Special Representative of the Secretary-General and Head of the United Nations Stabilization Mission in Haiti (MINUSTAH), and his deputies, Nigel Fischer and Kevin Kennedy. He also wishes to thank all the members of their team for providing efficient logistical, security and public relations support. Regular telephone conversations that he has had in between missions with the Special Representative of the Secretary-General and several members of MINUSTAH have kept him informed of political economic and security developments in Haiti.

6. The Independent Expert also thanks the officials of the main institutions of the United Nations, the Organization of American States (OAS), the Caribbean Community (CARICOM) and the Union of South American Nations whom he met and the members of the diplomatic corps in Port-au-Prince, with whom he exchanged views on a number of occasions concerning the role and activities of the international community in Haiti.

7. Lastly, the Independent Expert wishes to express his gratitude once again to the United Nations staff members who provided assistance, information and data and shared their experience with him, and pays tribute to their professionalism, determination and courage. 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 progress made on 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.

8. The Independent Expert also travelled to Brussels, where he met with representatives of the European Commission and the European Parliament, the

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<sup>1</sup> From 22 April to 3 May 2010, from 3 to 12 September 2010 and from 20 to 27 February 2011.

Representative of the United Nations High Commissioner for Human Rights and several ambassadors to discuss the place of human rights in the humanitarian crisis and reconstruction of Haiti.

9. One year after the earthquake of 12 January 2010, which destroyed Port-au-Prince, Jacmel and other Haitian towns, the impact on the human rights of Haitians is still keenly felt throughout the country. Although it is inaccurate and counterproductive to claim, as many did on the first anniversary of the disaster, that little has been done or that there has been no progress with reconstruction work, the Independent Expert is nonetheless concerned by the plight of internally displaced persons, the incidents of violence against women and children and the lack of consideration for persons with disabilities.

10. That is one of the reasons why the report submitted to the Human Rights Council this year cannot emphasize strongly enough the consequences of the humanitarian crisis for the exercise of human rights and the pressing need for these rights to be taken into account in reconstruction planning in Haiti.

11. Lastly, during his various missions to Haiti, New York, Brussels and Geneva, the Independent Expert met with representatives of international and national NGOs, rural organizations and women's associations, exchanging information with them and asking them for comments and information on their best practices. Civil society organizations constitute an invaluable resource. Although criticism of certain actions has at times been justified, those organizations showed during the crisis, and continue to show, a remarkable capacity for creativity and inventiveness and an ability to take action on the ground.

12. The Independent Expert was struck by the climate of distrust that characterizes the relations between many Haitian NGOs and the MINUSTAH Human Rights Section in Port-au-Prince, from which these NGOs claim to be cut off. The Independent Expert wonders what could lie behind this state of affairs and recommends that no efforts be spared to restore working relations and cooperation with civil society, which are key to ensuring that the protection work of MINUSTAH has the broadest possible impact.

13. It has been suggested that this climate of distrust can probably be explained, in part, by the fact that the MINUSTAH Human Rights Section is an integral part of the mission and therefore its offices are quite naturally located on the base of MINUSTAH, the military component of which has sometimes come in for criticism. Since the head of the MINUSTAH Human Rights Section also represents the United Nations High Commissioner for Human Rights in Haiti, the Independent Expert wonders whether more weight could be lent to the latter function and whether the MINUSTAH Human Rights Section could be replaced by an office of the High Commissioner for Human Rights. Although he understands the logic of the integrated approach to United Nations missions, the Independent Expert suggests that this option should not be dismissed without its advantages having been weighed up first.

## **II. Violations of human rights in the humanitarian crisis**

14. In the course of his missions, the Independent Expert met with representatives of the principal humanitarian NGOs at meetings of the protection cluster held in and outside Port-au-Prince. With some representatives in Haiti and also in Paris, New York and Brussels he discussed the role of human rights in humanitarian work. The profound significance of humanitarian work, which is aimed at ensuring human security<sup>2</sup> and providing a

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<sup>2</sup> Contrary to the traditional concept of security based solely on the protection of State territory, human security focuses on the protection of people. In the strict sense of the term, human security is defined

combination of aid and protection based on respect for humanitarian principles, must be constantly called to mind and defended by humanitarian workers themselves. The Independent Expert saw to what extent the importance of adopting a rights-based approach had still not been fully understood by all stakeholders, and especially by humanitarian workers. The role of human rights in the various phases of humanitarian work should therefore be reasserted and strengthened.

15. In any crisis situation, violations of human rights take place and threats are very real, or are even accentuated, especially for people with special needs, such as internally displaced persons, women, children, older persons and persons with disabilities. Consequently, in the various phases of emergencies and rehabilitation and development processes, a rights-based approach must be promoted and followed. In applying that approach, each victim of a crisis requiring a humanitarian response must be seen as the holder of rights that the State must guarantee, and not merely as the recipient of humanitarian assistance. The Independent Expert recommends that specific rights-based training be provided, in particular to humanitarian aid workers.

### **A. Internally displaced persons**

16. The Independent Expert has visited several official and unofficial camps on his various missions and has in some cases carried out repeat visits in order to assess developments over time and gauge the situation inside the camps. According to figures from the International Organization for Migration (IOM), the number of internally displaced persons fell from 1.3 million to 825,000 between January 2010 and January 2011. However, those figures have been challenged by several specialists, who have cast doubt on the methodology used to count displaced persons and claim that some people are counted several times, while others are not counted at all. Regardless of what the true figure may be, the fact remains that living conditions in many of the unofficial camps are poor.

17. The inhabitants of official camps set up by the international community appear determined to stay there for the long term, judging by the tents and shelters surrounded by gardens, bushes or trees. Almost everyone asked expressed the desire to remain in the camps rather than return to where they had lived before. Every day, more families come to the area around the camps in order to use the camp facilities or even just to get running water, or in the hope of one day receiving a larger tent or temporary shelter. The Independent Expert was struck by the progressive transformation of the official camps into informal settlements and shanty towns, at times overwhelmed by a teeming population for which available services, initially intended for a limited number of inhabitants, are wholly inadequate. Although the camps were an appropriate response to an emergency situation, one can only wonder whether they have now contributed to the emergence of a new kind of social organization that might create more problems than it solves.

18. In several camps there is a frequent rotation of camp managers. Some international organizations are withdrawing progressively from the camps, thus depriving the inhabitants and camp committees of a steady point of contact. As committees subsequently fail to obtain responses to the demands of camp inhabitants, they lose credibility, which in turn fuels rivalries and disputes.

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as living free from fear. Its primary purpose, therefore, is to protect individuals from threats such as armed conflict, arbitrary treatment, forced displacement and political and criminal violence. In broader terms, it includes freedom from need. That approach aims, in particular, at protecting individuals from poverty, famine, illness and environmental disasters.

19. Some mayors, encouraged by local inhabitants, are trying to solve the problem of squatting on municipal land by paying the families concerned to leave. Those who accept are, however, often quickly replaced by other families, creating a vicious cycle that is difficult to break.

20. High expectations have been raised by the prospect of reconstruction, and rumours of the free allocation of land or shelters run wild. Some individuals take advantage of the situation by selling plots of land in the camps that they do not own. The resale of those plots with false title deeds is fuelling a wave of real estate speculation with nothing to support it. As a result, several families find themselves in possession of false title deeds to the same plot of land, which actually belongs to the municipality or private owners.

21. The Independent Expert wishes to draw the attention of the Government of Haiti and the international community to the worrying lack of any visible strategy to deal with displaced persons. The great variety of rumours in circulation illustrates well just how little information is available on the mid- and long-term future awaiting people in the camps.

## **B. Women and gender-based violence**

22. Since the humanitarian crisis began, the issue of violence inflicted on women and girls has been at the heart of the international community's concerns. Numerous reports by the United Nations and national and international human rights organizations detail the phenomenon of domestic and inter-family violence, the role of gangs operating inside and around the camps and the impunity with which the perpetrators of violence against women act.

23. These same organizations have made a growing number of recommendations to the Government of Haiti and the international organizations working in the country. The Independent Expert has, in previous reports, provided many examples and made numerous recommendations. He has been unwavering in his calls for greater attention to be paid to the problems encountered, and these calls have been heeded.

24. Many of his recommendations have been implemented and specific programmes have been developed to prevent or contain the phenomenon. The National Police of Haiti and the United Nations police have increased the number of security patrols in official and unofficial camps for displaced persons. The patrols are at times doubtless too routine or predictable to serve as a genuine deterrent. Measures have nevertheless been taken, although more creativity in efforts to clamp down on gangs would be welcome. It has regularly been pointed out that improved lighting, particularly in sanitary facilities, is one way of boosting camp security. During his visits to the camps, the Independent Expert has seen that such measures, which would be effective, are not applied systematically. In several camps he inspected, in particular unofficial camps, there is either no lighting at night or, if there is any, it does not work or is faulty.

25. An issue of particular concern, although admittedly a problem for everyone, is how to measure the extent of violence against women and trends over time, as well as how incidents of violence are documented. One can only combat what one knows and the effectiveness of measures taken can only be assessed over time. At present, no one can say exactly how widespread the phenomenon is. The Independent Expert has the impression that many people talk about it without being in possession of objective information that provides a true picture of the situation.

26. Some national NGOs active in this area try to document the phenomenon properly on the basis of complaints that are registered and confirmed by an inquiry<sup>3</sup> and accompany victims to hospitals and the courts. Other organizations that have backing from the international community are less diligent, a situation that, unfortunately, leads to figures being circulated that are not confirmed by proper inquiry and the spread of alarmist stories based on unverified reports.

27. The Independent Expert recommends that a serious and credible study be carried out with a view to documenting the situation properly, verifying the disparate figures in circulation on the extent of the problem and providing a quantitative assessment of the phenomenon in order to ensure that it is better understood and to develop meaningful and measurable strategies.

28. All the representatives of organizations with whom the Independent Expert met agreed that one of the main problems was how the police and the justice system deal with complaints. Several organizations claim, for instance, that some police stations will not register complaints lodged by women. Similarly, complaints often produce no results, because no inquiries are held or the justice system fails to deal with them properly. Impunity seems to be the rule, which can only dissuade victims from lodging complaints and encourage perpetrators to commit further offences.

29. Lastly, the Independent Expert recalls that the Guidelines<sup>4</sup> for Gender-Based Violence Interventions in Humanitarian Settings, compiled by the United Nations and other international organizations, have been publicized and that staff of the National Police, MINUSTAH and other international agencies have received appropriate training. The guidelines should be still more widely publicized, given that they contain many specific recommendations that apply to the situation in Haiti.

### C. Children

30. The attention of the Independent Expert has been drawn on several occasions to the situation of child victims of human trafficking in Haiti or abroad. In meetings with officials of the United Nations Children's Fund (UNICEF), he noted the excellent work done by or with the backing of UNICEF on documentation, identification, family reunification and on the provision of shelter, care and protection. An unresolved problem is that of the large number of illegal or undeclared children's institutions, where families sometimes leave their children in the laudable hope of ensuring that they receive better care. However, the legal status of such centres is not verified and no assessment is made of the quality of care and accommodation provided or whether the institutions might be misused for commercial ends or trafficking. The Independent Expert recommends that steps be taken to exercise proper control with respect to illegal children's centres and that measures be taken to close facilities that do not comply with the relevant legislation.

31. The Independent Expert recalls that adoptions should be carried out only when all the necessary guarantees are in place and they should not be treated as a humanitarian gesture. He welcomes the firm position expressed on several occasions by the Government of Haiti which has declared its intention to sign the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption, and urges the parliament to include a ratification bill in its work programme.

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<sup>3</sup> They include Rights and Democracy, Kay Fanm, Solidarité Fanm Ayisyen (SOFA) and the National Coordination Committee for Advocating Women's Rights (CONAP).

<sup>4</sup> <http://www.womenwarpeace.org/search/node/gbv%20guidelines>.

32. Credible NGOs in Haiti and the Dominican Republic<sup>5</sup> have also claimed that adults and children are trafficked to the Dominican Republic. The Independent Expert intends to investigate the subject on his next mission. Accounts, eyewitness reports and photos bear witness to the existence of the phenomenon, but its extent deserves to be documented more fully.

33. Children continue to face the threat of abduction, illegal adoption or sexual violence. A number of unaccompanied children remain in the camps, while others have been taken in by other families under circumstances that encourage the practice of pressing them into domestic service, a problem that predates the humanitarian crisis and has been amply documented by experts and specialist organizations. The Independent Expert recommends that action be taken to implement the recommendations that he made in previous reports, in the context of efforts to combat the placement of children in domestic service, together with the recommendations contained in the report<sup>6</sup> by the Special Rapporteur on contemporary forms of slavery.

#### **D. Persons with disabilities**

34. Following the earthquake of 12 January 2010, the Independent Expert turned his attention to the situation of persons with disabilities. In the course of his missions, he has visited camps that are accessible to persons with disabilities and met several representatives of NGOs<sup>7</sup> actively involved in this area in Haiti, as well as the Secretary of State for the Integration of Persons with Disabilities.

35. In the wake of the earthquake, more than 4,000 severely injured people who had to undergo emergency operations and amputations were left with disabilities or were fitted with artificial limbs. More than one year on from the earthquake, specialized NGOs estimate that around 100 people will have to undergo an operation or an additional examination in order to have permanent artificial limbs fitted. Moreover, more than 100 people with spinal cord injuries who are in or are about to return to Haiti will require constant, specialized care. Isolated and often marginalized, they will need rehabilitative care and assistance and, in some cases, will have to be referred to medical centres that are equipped to assess and supply their needs in terms of technical aids and essential items. Although some humanitarian associations have done remarkable work, some of these people with spinal cord injuries could die because of a lack of proper care.

36. In the framework of reconstruction, measures ought to be taken to ensure that buildings, especially those open to the public, are made accessible to persons with disabilities. At meetings with donors, the Independent Expert was sometimes left with the impression that this concern was not necessarily considered a priority; yet, the need to rebuild Port-au-Prince presents a unique opportunity to demonstrate that the discrimination suffered by persons with disabilities is a thing of the past.

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<sup>5</sup> Support Group for Repatriated Persons and Refugees (GARR) and Solidarité Fwontalye in Haiti; Solidaridad Fronteriza and the Jesuit Service for Refugees and Migrants (SJRM) in the Dominican Republic.

<sup>6</sup> A/HRC/12/21/Add.1.

<sup>7</sup> Such as Handicap International in Port-au-Prince and the Harvard Humanitarian Initiative in Fond Parisien.



## E. Forced return

37. Although most countries announced after the earthquake that they would suspend their forced return programmes, cases of deportation or forcible return of Haitians from several countries in the region have been documented by international organizations and subsequently reported in the press. The Office of the United Nations High Commissioner for Human Rights (OHCHR) and the Office of the United Nations High Commissioner for Refugees (UNHCR) issued a joint emergency appeal to countries to suspend all forced returns to Haiti because of the ongoing humanitarian crisis. According to UNHCR, the deportation and forced repatriation of Haitian nationals and interception on the high seas remain a source of concern under the present circumstances.<sup>8</sup>

38. The Independent Expert reiterates the recommendations contained in his report of 2010,<sup>9</sup> in which he asks all States to adopt a flexible and generous attitude towards Haitians seeking refuge in other countries. He recommends that all States ensure that returns, when they must take place, are carried out in compliance with their legal obligations and in such a way as to place no additional burden on the country.

## F. Cholera and lynchings

39. According to the Ministry of Communication and Culture, since the outbreak of the cholera epidemic, at least 45 people in Haiti have been lynched by mobs accusing them of practising witchcraft in order to spread the disease. Most of those murders have been perpetrated in the Department of Grande-Anse, in the south-west of Haiti. Several people have also allegedly been killed in similar circumstances elsewhere in the country. The victims, mostly priests who practise voodoo, the popular religion in Haiti, are struck with machetes and stones before being burned in the street. The exact number of victims is unknown but the murders are part of a broader context of mob justice that illustrates a real lack of confidence in the judicial authorities. The Independent Expert is aware of the difficulty of prosecuting the perpetrators, because the murders are carried out by anonymous crowds and, more often than not, people conspire to conceal the identity of the perpetrators. Nevertheless, the highest authorities in the State should launch inquiries, thereby reminding everyone that, under the rule of law, no one is entitled to take justice into their own hands.

## III. Civil and political rights

40. In the course of his missions in Haiti, the Independent Expert has resumed his work on civil and political rights and, in particular, on issues connected with the reform of the justice system, the vetting<sup>10</sup> of the National Police and the prison system. The Independent Expert indicated in his previous reports that progress in those areas was being made before the earthquake of 12 January 2010. Given that presidential elections are currently under

<sup>8</sup> Executive Committee of the Programme of the United Nations High Commissioner for Refugees: Update on UNHCR operations in the Americas, 22 February 2011.

<sup>9</sup> A/HRC/14/44/Add.1, paras. 41 and 42.

<sup>10</sup> The vetting (or certification) of police officers is one aspect of the support furnished by MINUSTAH in the effort to upgrade the professionalism of the National Police. This process is designed to verify the suitability of candidate police officers to join the force. Serving officers are also subject to vetting. Enquiries are made with families and other close relatives and court or criminal records are inspected in order to ensure that the officer or candidate is morally and legally qualified to join the force.

way in the country,<sup>11</sup> it is perhaps useful to restate a number of principles and formulate some recommendations that remain relevant in the context of providing technical assistance to the Haitian authorities.

## **A. The justice system**

41. Prison staff were especially affected by the earthquake of 12 January 2010, which destroyed the Palace of Justice, Ministry of Justice and Public Security and Palace of the Legislature. The international community came promptly to the aid of the justice system in Haiti, allowing its institutions to continue working. The conditions in which they did so were difficult at the outset but have improved considerably since. The court of first instance in Port-au-Prince, for example, is now housed in buildings formerly occupied by the United States Agency for International Development (USAID), which also house the Court of Cassation, Court of Appeal, the court of urgent applications, investigation chambers and the public prosecutor's office.

42. In the framework of its rule of law project, which aims at building capacities in the areas of justice and law and order, the United Nations Development Programme has provided the Ministry of Justice and Public Security with 250 m<sup>2</sup> of temporary office space equipped with 30 work stations, allowing it to work in better conditions.

### **The President of the Court of Cassation**

43. Looking beyond the question of infrastructure, the Independent Expert maintains that the three law reform acts passed in 2007 form the keystone of the reform of Haiti's justice system. However, the reform process is being held up, because a president of the Court of Cassation has yet to be appointed. During his last mission, in February 2011, the Independent Expert called on the two presidential candidates in the general elections to place the issue of that appointment at the top of their respective State reform programmes. Given the high expectations in this regard, the country's judicial institutions are relying more than ever on the country's new President to demonstrate his determination to sever the link between the executive and judiciary branches and so launch a clear signal on the direction that the reforms will take.

44. Indeed, apart from his own *ex officio* powers, the President of the Court of Cassation is the key to reform of the justice system. He presides over the Supreme Council of the Judiciary and can therefore set in train the programme for the certification and recruitment of judges. He also presides over the Governing Board of the Legal Service Training College.

### **The Supreme Council of the Judiciary**

45. The Independent Expert again notes with regret that the Supreme Council of the Judiciary is not yet operational because it still has no president. Some judges were appointed in 2010 and others who were dishonest had their mandates withdrawn by the Ministry of Justice and Public Security. All of that has taken place outside the framework of the acts of 2007. The Independent Expert again recommends that the Supreme Council of the Judiciary should be established and provided, in particular in the context of the financing of reconstruction, with properly trained staff and the funding it needs to operate

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<sup>11</sup> At the time this report was drafted (March 2011), the second round of the elections had still not taken place.

with absolute independence and to proceed with the recruitment of judges according to the regulations in force.

46. In July 2010 the Legal Service Training College, with strong support from the international community, held its first competitive examination to recruit candidates for initial training as judges. The goal is to train 20 new judges over a period of 16 months in the various judicial techniques, the preparation and holding of court hearings or interviews, and the analysis and assessment of situations or cases. The participants will also receive management training, particularly in the areas of court organization and personnel management. The training also aims at building judges' skills in listening, mediation and demonstrating authority and humility – all indispensable tools in the exercise of their functions. Another 20 or so judges will be trained at the Legal Service Training College in Bordeaux, France, thus strengthening the Haitian judiciary's capacity in the long term.

47. A national system of legal aid has been established with the twin objectives of helping to curb the use of pretrial detention and thus reduce prison overcrowding, and of guaranteeing the right to a fair trial. Nine legal aid offices, which offer the services of a lawyer free of charge to persons otherwise unable to afford them, are now operational. The Port-au-Prince office was established by the Bar and the remaining eight are working with the help of the international community. The Independent Expert has noted that there are no plans to renew funding for these programmes, despite the people's need for them. He recommends that donors continue to provide funding until the rebuilding of the judicial system is complete and a more permanent solution is found to the question of how to keep these services running.

## **B. The prison system and extended pretrial detention**

48. As on all of his missions, the Independent Expert visited prisons and other places of deprivation of liberty. According to the prisons administration,<sup>12</sup> 5,752 persons are deprived of their liberty, of whom 1,860 are convicted prisoners and 3,892, or 70 per cent, are in pretrial detention. The total surface area of places of detention is 3,455 m<sup>2</sup>, which means a theoretical area of 0.6 m<sup>2</sup> per person.

49. The situation, however, varies considerably from one jurisdiction to another, both in terms of the amount of space allocated to persons deprived of their liberty and of the numbers of people held in pretrial detention. During his previous mission, the Independent Expert visited the prison in Cap-Haïtien, where the proportion of convicts and detainees held in pretrial detention are 55 per cent and 45 per cent respectively. In Jacmel prison, the figures are 58 per cent and 42 per cent, while in the women's prison of Pétienville, nearly 90 per cent of the women are held in pretrial detention and only 10 per cent are serving prison sentences. The Independent Expert wonders what might lead to such variations in pretrial detention figures from one establishment to another. Several explanations have been offered, suggesting that it has to do with the types of offences committed, the number of cases tried in criminal courts and how different jurisdictions work. The Independent Expert recommends that a study be carried out in the country's various jurisdictions in order to develop a better understanding of the phenomenon and refine support strategies for prisons.

50. The amount of space allocated to each prisoner or detainee in the three establishments visited is far greater than that allocated in the national prison. Moreover, the quality of detention facilities varies greatly from one establishment to another, accentuating

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<sup>12</sup> Figures from 3 March 2011.

the differences in the way detainees are treated depending on where they are held. The national prison is being renovated and the improvements in its facilities are clear to see. Much the same can be said for the women's prison at Pétienville and the prison at Cap-Haïtien, where facilities appear to be relatively well maintained. On the other hand, the quality of the facilities at Jacmel prison leaves much to be desired, particularly with regard to sanitary conditions: detainees use hoses to shower and the toilets are blocked.

51. In all the prisons visited, the Independent Expert found that there were health problems linked to the cholera epidemic and problems with food supply, which is currently managed centrally by the prisons administration. Problems with the supply and transportation of foodstuffs mean that the distribution of meals is erratic, causing great discomfort to prison staff and detainees. Rations are sometimes cut heavily and detainees go hungry. At times, inmates contract illnesses directly linked to the quality or quantity of food distributed. The Independent Expert points out that prisons are places of deprivation of liberty in which, however, the preservation of all other rights is essential. It is unacceptable that, in addition to excessive periods of pretrial detention, persons deprived of their liberty should also be victims of prison overcrowding and poor nutrition.

52. The Independent Expert also visited the new Croix des Bouquets prison, the design of which more closely reflects how the prison system in Haiti ought to be. Work has been delayed, partly because of measures taken to reinforce the building against earthquakes, but the facility should eventually relieve the pressure on the national prison. The Independent Expert is, however, disappointed that, in this prison, convicted prisoners and detainees in pretrial detention will be held in the same quarters, in spite of his recommendation to separate the two categories. At a time when the country is embarked on reconstruction, it would have been desirable to rethink the prison system based on a strategy for the building or renovation of penal establishments and short-stay prisons.

53. At meetings with the chief justices of the courts of Port-au-Prince and Jacmel, the Independent Expert commented on the daily workings of the courts and repeated the recommendations that he had made in his report of 2009. The Constitution of Haiti and the Code of Criminal Procedure provide for straightforward and quick trial procedures for petty and major offences. It would appear that, in these two courts, some positive experiments have been carried out that deserve to be publicized more widely, especially with a view to combating the arbitrary placement of people in pretrial detention when non-custodial alternatives, are available even if rarely used.

54. Unfortunately, the only remedy is that of habeas corpus, which is used all too infrequently in Haiti. Under this procedure, which is provided for in the Constitution, and which aims at protecting individual freedom, application may be made before the chief justice of the relevant court of first instance to rule on the lawfulness of a person's arrest and detention and, if appropriate, order the immediate release of that person if article 26 of the Constitution has been infringed.

55. 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, the duration of pretrial detention based on the type of offence and the delegation of judicial powers to the criminal investigation police.

56. In order to deal with certain pending cases, the Ministry of Justice and Public Safety could issue circulars instructing the public prosecutor's office to have persons suspected of committing major or minor offences brought before an investigating judge within 48 hours, if referral to a court is necessary. The Ministry of Justice and Public Safety could also take steps with a view to applying the summary trial system with the consent of the chief justice of the court of first instance. It would also be possible to deal with all pending cases before the public prosecutor's office within a time limit of one month by referral to an

investigating judge, by direct order to appear in court with no preliminary investigation or by discontinuation of the proceedings, or to have all cases pending before the public prosecutor's office and involving detention dealt with by direct order to appear in court, if referral to an investigating judge is neither compulsory nor necessary.

### C. The police

57. Developments in the vetting process of the Haitian National Police have been addressed in previous reports by the Independent Expert. The Independent Expert has stated on several occasions 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 relevant criteria and standards.

58. Between the start of the process in 2006 and 12 January 2010, 7,177 case files were opened, of which 3,584 were sent, together with a set of accompanying recommendations, to the Haitian National Police General Inspectorate for transmittal to the Supreme Council of the National Police. It should be noted that, unfortunately, by 12 January, not a single member of the police force had been certified or had received a new identity card. The process has been delayed by the earthquake, and 3,593 files on cases under investigation went missing when it struck. Fortunately, copies had been made and the files were found in the ruins of the General Inspectorate.

59. The Independent Expert continues to receive information and allegations, according to which certain police officers, some of them high-ranking officers, lead a lifestyle that is not in keeping with their income or are involved in activities that are incompatible with their role. Doubts therefore arise as to how serious the vetting process is and how much faith the populace can place in the efforts of MINUSTAH to support the Government of Haiti in fighting corruption.

60. The Independent Expert is aware of the difficulty of the task, especially in the current context, and of the impact that the necessary measures could have on the security situation. He nonetheless urges the Government of Haiti to implement, with the necessary discretion and rigour, the recommendations on vetting police officers and removing undesirable elements from the police force. He also recommends that the Supreme Council of the National Police meet in order to decide what must be done.

61. The time has indeed come for the process to begin again, especially as the Security Council, in resolution 1944 (2010),<sup>13</sup> has reiterated the need to carry out the steps set forth in the national police reform plan. According to various Haitian and international sources, the vetting process is being hampered by unacceptable political, operational and financial obstacles that are jeopardizing the chances for success of a process that is fundamental for re-establishing the rule of law in Haiti. The Independent Expert recommends that the Special Representative of the Secretary-General in Haiti and the Haitian authorities make an unequivocal joint statement on continuation of the process and that the necessary human resources and funding be mobilized to overcome the administrative and financial obstacles that stand in the way of a successful conclusion of the programme.

62. In his 2009 and 2010 reports, the Independent Expert drew the attention of the Human Rights Council to doubts about the extent to which OHCHR can fully play its role of ensuring that the vetting process is rigorous and that the Supreme Council of the

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<sup>13</sup> “[R]equests MINUSTAH to continue to support vetting, mentoring, training of the police and corrections personnel and strengthening the institutional and operational capacities of the correctional services.”

National Police takes the necessary decisions to remove those officers who do not belong in a democratic police force.

63. 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. Its role is to coordinate and support the process and monitor its execution, producing the necessary material and publishing tools to allow for the adoption of a rights-based approach to the process. OHCHR is not conducting the vetting process itself but performing a support role for those who are. The purpose of providing such support is 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 without infringing their rights. The Independent Expert recommends that the role of OHCHR in the process be reasserted and that steps be taken to ensure that it is respected.

#### **D. The Office of the Ombudsman**

64. Article 207 of the 1987 Constitution established the Office of the Ombudsman 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. Since her appointment as Ombudsman, Ms. Florence Elie has shown that she has great energy and a first-rate strategic vision, thus confirming the wisdom of President Préval's choice. The Ombudsman was also an able co-president of the international commission of inquiry into the events that took place in the civilian prison at Les Cayes on 19 January 2010. The Independent Expert had recommended that the matter should be referred to the courts as a demonstration of the determination of the Haitian authorities to combat impunity.

65. Although she, too, was affected by the earthquake of 12 January 2010, which rendered her offices unusable, she has managed to maintain close relations with the Haitian authorities and the international community and thus been able to pursue her work, not only in Port-au-Prince, but also in other cities around the country. She herself, with the backing of OHCHR, drafted and revised a bill defining the scope and working methods of her institution and seeking to bring it into line with the Paris Principles, which concern the status of national human rights institutions. The Independent Expert has discussed with the Haitian authorities the need to enact the bill on the Office of the Ombudsman as soon as possible and to provide the Office with adequate funding.

66. The Independent Expert recalls that this institution is currently funded by several financial and institutional partners<sup>14</sup> and that the Ombudsman, with the substantial involvement of the Independent Expert, has drafted a development plan for the Office for the coming years. He recommends that the Office organize a round table bringing together its institutional and financial partners, both national and international, with a view to sharing information with all stakeholders, planning activities and related funding arrangements with due transparency, and ensuring that the Office always remains in charge. He also recommends that the support programme, including the section on rebuilding the premises of the Office, be presented to the Interim Haiti Recovery Commission. That would demonstrate the importance that was attached to the Office of the Ombudsman under reconstruction plans in the context of re-establishing the rule of law.

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<sup>14</sup> OHCHR, the United Nations Development Programme and the International Organization of La Francophonie (OIF).

## IV. The reconstruction of Haiti

67. In the past several months and on each of his missions, the Independent Expert has drawn the attention of the Government, the international community and members of the Interim Haiti Recovery Commission to the widely expressed concern in civil society, in Haiti and among Haitians of the diaspora about the reconstruction of Haiti and the workings of the institution responsible for carrying it out. The Independent Expert recommends that donors and the members of the Commission keep in mind the vision, presented by the Prime Minister at the donors' conference in February 2010, of "a society of fairness, justice and solidarity ... in which the rule of law, [and] the freedoms of association and expression are firmly in place, [a country] in which all of the people's basic needs are satisfied and managed by a strong unitary State, the guardian of the general interest, a State which has undergone extensive devolution and decentralization". Many Haitians feel that the Commission is not up to the task. Many feel alienated by it and have trouble making sense of its long list of vague projects of questionable coherence.

68. The Independent Expert welcomes the support lent by the Prime Minister and several members of the Commission to the idea of rethinking the Commission's task and adopting a new, rights-based approach to reconstruction, which would reorient the strategy and action plan in such a way as to send the message that reconstruction is aimed at guaranteeing people the rights of which they have for so long been deprived. It is not a matter of concepts, but rather of a change of philosophy, whereby account is taken first and foremost of the needs and aspirations of Haitians in efforts to re-establish a sustainable environment, within a more decentralized development framework that is designed to protect people from natural hazards, ensure that reconstruction is equitable and establish equality between the richest and less prosperous regions with a view to creating a fairer society.

69. A rights-based approach would also allow for: a greater focus on the most vulnerable groups, such as women, children and persons with disabilities; the systematic involvement of civil society organizations, in particular those representing women, peasants and vulnerable groups, in the reconstruction effort; the inclusion of gender-specific analyses of and concrete gender-equality targets in reconstruction plans and budgets; and the introduction of measures to ensure that labour-intensive reconstruction programmes are not concentrated solely in the economic sectors traditionally occupied by men.

70. The Independent Expert recommends that personnel trained in rights-based techniques be employed to help the Commission's permanent staff with processing applications and presenting them to the Commission, and with the various phases of project implementation. He draws attention in particular to the proposal that the United Nations High Commissioner for Human Rights made to the Human Rights Council at its June 2010 session on applying the conceptual framework developed by the Special Representative<sup>15</sup> of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises to the Commission's calls for tender.

71. Civil society must also become more involved in monitoring reconstruction. The Independent Expert recognizes that efforts have been made to involve various civil society stakeholders, especially NGOs, women and trade unions, in the work of the Commission. Equally important, however, is the need to ensure that the implementation of reconstruction projects and, in particular, the rights-based approach, is subject of public oversight. The techniques involved are not necessarily known by all. Therefore, just as training workshops on policy monitoring have been run by the MINUSTAH Human Rights Section, training

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<sup>15</sup> A/HRC/14/27.

workshops on monitoring the application of a rights-based approach to reconstruction could be organized by MINUSTAH with the involvement of Haitian or international experts.

## V. The case of Jean-Claude Duvalier

72. The return of former president Jean-Claude Duvalier surprised many observers and reopened painful wounds for many Haitians in and outside the country. Under the dictatorship, tens of thousands of opposition members were exiled and thousands of Haitians were arrested, tortured, executed or simply disappeared. Witnesses and international observers alike rated it as one of the region's worst dictatorships. The Independent Expert has received a great many eyewitness reports and documents on the subject. During his most recent mission, he met victims and their families, several of whom have filed complaints against Mr. Duvalier.

73. President Préval accepted the offer by the United Nations High Commissioner for Human Rights to share OHCHR expertise with the Haitian judicial authorities and to assist them with their investigations and fact-finding efforts. The Independent Expert met with President Préval and the Minister of Justice and Public Security to offer them his assistance. He requested and received the support of several special procedures mandate holders,<sup>16</sup> who will, if needed, contribute their legal expertise and share their experiences of addressing similar situations in other countries.

74. At the time of writing, international experts were working closely with the authorities to assess all the available options. In his meetings with President Préval, the Independent Expert recommended that careful consideration should be given to initiating legal action, that all the possibilities offered by the Haitian Criminal Code should be explored and that the temptation to dismiss the existing options out of hand, especially in connection with cases of enforced disappearance, should be avoided. He also considers that use should be made of the relevant provisions of international law, especially the jurisprudence of the Inter-American Court of Human Rights, of which Haiti is a member.

75. The Independent Expert wishes to underline that holding a fair trial would send an important signal to the people that the justice system in Haiti works and that, from now on, there will be no impunity for the most serious crimes.

76. In addition, the Independent Expert recommends that, in addition to exploring the available legal avenues, the authorities should undertake a project to preserve the historical memory, taking their cue from the truth and fact-finding commissions established in various African and Latin American countries. The Independent Expert also recommends that consideration be given to the possibility of teaching young people about the crimes of the past and reflecting on the impact all this work could have on the country's future.

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<sup>16</sup> The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Working Group on Enforced or Involuntary Disappearances and the Working Group on Arbitrary Detention.



## VI. Recommendations to the Government of Haiti and the international community

### Violations of the rights of vulnerable persons

77. With regard to violence against women, the Independent Expert recommends that the following measures be taken:

(a) A study on the lack of reliable data on violence against women should be undertaken. Such a study would allow for the proper documentation and assessment of the magnitude of the problem and help to identify trends and verify the disparate figures on the problem that are in the public domain;

(b) The United Nations *Guidelines for Gender-Based Violence Interventions in Humanitarian Settings* should be disseminated still more widely and training on the Guidelines be made available.

78. With regard to the situation of children, the Independent Expert recommends that the following measures be taken:

(a) Illegal children's homes should be properly monitored and steps taken to close down facilities that fail to meet legal requirements;

(b) Adoption procedures should be regulated in order to ensure that full guarantees are provided and that adoption is not treated as a humanitarian gesture;

(c) The Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption should be ratified and a bill should be brought before parliament transposing its provisions into domestic legislation;

(d) Action should be taken to combat child abduction, illegal adoption and sexual violence against children;

(e) Action should be taken to combat the use of children as household servants, taking into account the Independent Expert's recommendations and those contained in the report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences.

79. With regard to persons with illnesses or disabilities, the Independent Expert recommends that the following measures be taken:

(a) Specialized care should be provided for people with spinal cord injuries who are in or are about to return to Haiti;

(b) Buildings, especially those open to the public, should be made accessible to persons with disabilities;

(c) Action should be taken to put a stop to lynchings of cholera victims and people accused of witchcraft, by launching investigations and bringing the perpetrators to justice.

80. With regard to the situation of internally displaced persons and Haitians who have been the subject of forced return, the Independent Expert recommends that the following measures be taken:

(a) An appropriate strategy should be adopted to curb the spread of unofficial camps;

(b) Action should be taken to stop official camps from being turned into informal settlements and overcrowded shanty towns that the authorities can no longer service;

- (c) Steps should be taken to stop people from selling land that they do not own in the camps;
- (d) A rights-based strategy on evictions should be publicized and put into effect;
- (e) Effective strategies to alleviate the situation of displaced persons should be prepared;
- (f) Lighting should be provided throughout the camps, especially in sanitary facilities;
- (g) Steps should be taken to ensure that forced returns of Haitians, where unavoidable, are carried out in observance of the relevant legal norms and that they do not place an additional burden on the country.

### **The workings of State institutions**

81. With regard to reform of the judicial system and efforts to combat impunity, the Independent Expert recommends that the following measures be taken:

- (a) The three law reform acts passed in 2007 should be implemented in order to ensure the clear and effective separation of the executive and judicial branches;
- (b) The appointment of the President of the Court of Cassation should be made a priority in the State reform process;
- (c) The Supreme Council of the Judiciary should be established and supplied with trained staff and funding to enable it to operate with absolute independence and to proceed with recruitment of judges;
- (d) The programme for the certification and recruitment of judges should be launched;
- (e) Funding for the national system of legal aid should continue to be provided until a more durable solution is found.

82. With regard to the prison system, the state of prisons and conditions of detention, the Independent Expert recommends that the following measures be taken:

- (a) A study should be carried out to analyse why the conditions of detention vary so much from one jurisdiction to another and hone support strategies for the prisons sector;
- (b) Initiatives aimed at dealing with prison overcrowding and the problem of ageing infrastructure should be continued and stepped up;
- (c) The provision of prison meals of sufficient quality and quantity should be guaranteed;
- (d) Convicts serving prison sentences and persons in pretrial detention should be kept physically apart by making a distinction between facilities for convicts and short-stay prisons;
- (e) Certain criminal procedures, especially those concerning non-custodial sentences, should be clarified and simplified;
- (f) A procedure should be established requiring the public prosecutor's office to have persons suspected of committing major or minor offences brought before an investigating judge within 48 hours, if referral to a court is necessary;
- (g) Steps should be taken to make use of summary trials, with the consent of the chief justice of the court of first instance;

(h) A procedure should be established for processing all cases pending before the public prosecutor's office within a time limit of one month by referral to an investigating judge, by direct order to appear in court with no preliminary investigation or by discontinuation of the proceedings;

(i) All cases of detention pending before the public prosecutor's office, and for which referral to an investigating judge is neither compulsory nor necessary, should be dealt with by direct order to appear in court;

(j) Action should be taken to combat impunity by referring the events that took place in the civilian prison of Les Cayes on 19 January 2010 to the courts.

83. With regard to the police, the Independent Expert recommends that the following measures be taken:

(a) An unequivocal declaration on the vetting process should be issued by the Special Representative of the Secretary-General and the Haitian authorities;

(b) The vetting process, which was under way before the natural disaster, should be revived in accordance with the procedures set forth in the national police reform plan;

(c) Previous recommendations made by the Independent Expert should be taken into account as a way of showing that the vetting process is being taken seriously;

(d) The Supreme Council of the National Police should meet to lay the groundwork for the certification of police officers;

(e) Adequate human resources and funding should be made available to overcome the administrative and financial obstacles that stand in the way of a successful conclusion of the vetting programme;

(f) The importance of the role of OHCHR in the vetting process should be reasserted and steps should be taken to ensure that it is respected.

84. With regard to the Office of the Ombudsman, the Independent Expert recommends that the following measures be taken:

(a) The bill on the Office of the Ombudsman should be enacted as soon as possible and the Office should be provided with adequate funding;

(b) A round table, run by the Office and bringing together its institutional and financial partners, both national and international, should be organized;

(c) The support programme for the Office, including the section on rebuilding of its premises, should be presented to the Interim Haiti Recovery Commission in order to demonstrate the importance that is attached to the Office of the Ombudsman in reconstruction aimed at re-establishing the rule of law.

## **Reconstruction**

85. With regard to the Interim Haiti Recovery Commission, the Independent Expert recommends that the following measures be taken:

(a) Donors and members of the Commission should be reminded of the vision presented by the Prime Minister at the donors' conference in February 2010;

(b) The Commission should rethink its task, adopting a rights-based approach to reconstruction in order to send the message that the aim of reconstruction is to guarantee people the rights of which they have for so long been deprived;

(c) Personnel trained in rights-based techniques to assist should be made available to the Commission's headquarters permanent staff with processing applications and presenting them to the Commission, and with the various phases of project implementation.

86. With regard to the involvement of civil society in reconstruction, the Independent Expert recommends that the following measures be taken:

(a) Specific rights-based training, in particular for humanitarian aid workers, should be provided;

(b) Training workshops on monitoring the application of a rights-based approach to reconstruction should be organized with the help of MINUSTAH and the involvement of Haitian or international experts;

(c) Reconstruction projects and, in particular, the application of the rights-based approach, should be subject to public oversight;

(d) Civil society, especially organizations dealing with vulnerable persons such as women, children and persons with disabilities, should be involved systematically in the rebuilding of the country;

(e) Labour-intensive reconstruction programmes should not be concentrated solely in the economic sectors traditionally occupied by men.

87. With regard to the case of Jean-Claude Duvalier, the Independent Expert recommends that the following measures be taken:

(a) All available legal options for holding a fair trial should be explored;

(b) A project to preserve the historical memory should be undertaken, modelled on the truth and fact-finding commissions established in various African and Latin American countries;

(c) Education programmes should be established to teach young people about the crimes of the past;

(d) A process of reflection on the impact of those crimes on the country's future should be undertaken.

88. With regard to relations with civil society, the Independent Expert recommends that the following measures be taken:

(a) Working relations and cooperation between Haitian human rights organizations and the MINUSTAH Human Rights Section in Port-au-Prince should be restored;

(b) The possibility and relative advantages of replacing the MINUSTAH Human Rights Section with an office of the High Commissioner for Human Rights should be considered.

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