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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 twentieth session.

This year's report to the Human Rights Council is in a more traditional format. The Independent Expert first considers the question of civil and political rights, in particular in respect of the workings of the courts and the police. He describes the situation in the prison service and the threats faced by persons deprived of their liberty, extended pretrial detention and conditions of detention at prisons, and points to the importance that should be given to the Office of the Ombudsman (Office de la Protection du Citoyen) and the role it plays. He also raises the subject of the Human Rights Section of the United Nations Stabilization Mission in Haiti (MINUSTAH) as a topic for consideration.

The Independent Expert then addresses economic, social and cultural rights in Haiti and the importance of incorporating a human-rights-based approach in the rebuilding of the country.

The Independent Expert also points out the factors still threatening human rights as the humanitarian crisis draws to a close, in particular drawing attention to the situation of women who are still victims of gender-based violence, children separated from their families, orphans, child domestic servants, adoption, persons living with disabilities and the issue of forced return. He describes the impact of cholera on the perception of MINUSTAH.

Lastly, the report presents the recommendations made by the Independent Expert, in three sections. In the first, the Independent Expert issues a number of recommendations related to the workings of State institutions, in particular the justice system, the police, the prison system and the Office of the Ombudsman. The second section addresses economic and social rights and how rights are taken into consideration during the country's reconstruction. In the third part, he issues recommendations regarding the rights of vulnerable persons as the humanitarian crisis draws to a close.

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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/19/31, in which the Human Rights Council invited the new expert to undertake a mission to Haiti in the near future and submit a report to it, the Independent Expert submits the present report to the Council at its twentieth session.

2. The present report covers the period from March 2011 to March 2012, during which the Independent Expert undertook three missions to Haiti.<sup>1</sup> The Independent Expert wishes to thank former President René Préval and President Michel Martelly, former Prime Minister Jean-Max Bellerive and Prime Minister Gary Conille,<sup>2</sup> with whom he was able to meet, in some cases on numerous occasions, for the frankness and quality of their comments, and their invitations to participate in implementing a number of their projects. Similarly, he wishes to thank the members of the successive Governments and members of the Senate and the Chamber of Deputies with whom he was able to speak, notably about the ratification of international human rights instruments.

3. The Independent Expert travelled to Belladère, Gonaïves and Saint Marc, and expresses his warm thanks to the many Haitians whom he met on his missions, as well as in Paris, New York, Brussels, Washington and Geneva. The quality of the meetings and discussions is a testament to the attachment of the Haitian diaspora to their homeland, their keen sense of solidarity and their wish to participate in their own way in the reconstruction of the country.

4. The Independent Expert also met with the Special Representative of the Secretary-General and Head of the United Nations Stabilization Mission in Haiti (MINUSTAH), Edmond Mulet, and later Mariano Fernández, and their deputies, Nigel Fischer and Kevin Kennedy. He wishes to thank all the members of their teams, who afforded him effective support in terms of logistics, security and public relations. He also spoke regularly by telephone with the Special Representative of the Secretary-General and several members of MINUSTAH in between missions, which allowed him to keep abreast of political, economic and security developments in Haiti.

5. The Independent Expert thanks the officials of the main institutions of the United Nations, the Organization of American States, the Caribbean Community and Common Market (CARICOM) and the Union of South American Nations (UNASUR). He also thanks the members of the diplomatic corps with whom he exchanged views on a number of occasions concerning the role and activities of the international community.

6. His particular thanks go to the ambassadors of the countries of the Group of Latin American and Caribbean States (GRULAC) and the Group of Friends of Haiti, with whom he was able to discuss and exchange views, notably in Port-au-Prince and New York, thanks to the kind services of the Ambassador of Brazil in Port-au-Prince and the Ambassador of Uruguay in New York.

7. The Independent Expert wishes to express his full gratitude once again to United Nations staff members, particularly national and international staff in the Human Rights

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<sup>1</sup> From 6 to 8 April 2011, from 28 August to 9 September 2011 and from 31 January to 8 February 2012.

<sup>2</sup> At the time of writing, Gary Conille had officially resigned and was handling pending questions until the official appointment of a new Prime Minister.

Section, who are invaluable partners in the execution of the mission entrusted to him by the Council.

8. Lastly, during his various missions to Haiti, New York, Miami and Geneva, the Independent Expert met with representatives of international and national NGOs, women's organizations and farmers' associations. Civil society organizations constitute an incredibly valuable resource with remarkable creative potential and a capacity to take action on the ground that is doubtless underexploited.

## II. Civil and political rights

9. The Independent Expert met with the campaigns of the two candidates in the second round of the Haitian presidential elections to emphasize the need to place the rule of law at the heart of the forthcoming reforms and to remind them that economic and social rights remained a key concern for the majority of Haitians.

10. Since the election of President Michel Martelly, the Independent Expert has been pleased to note that the rule of law has been one of the four priorities of his mandate, alongside education, job creation and the environment. At his first meeting with the President, the topic of implementation of reforms was raised. During the discussions and telephone conversations that followed, very specific issues were addressed, in particular the implementation of certain recommendations that have featured for several years in the reports of the Independent Expert. The Independent Expert welcomes the serious nature and quality of the strategy adopted by the presidential team responsible for the rule of law and the clear vision of the steps required in order to make reform of the justice system a cornerstone for the country's future.

11. The Independent Expert pointed out that governing is also about sending political signals, and that the population needs to see that the rule of law is advancing in Haiti. The country needs real political action to enable it to go beyond the purely technical decisions that have been called for already for some time now.

12. The Independent Expert has suggested that the Government should appoint an Interministerial Delegate for the Rule of Law, reporting directly to the Prime Minister, in order to provide guidance and the necessary coordination between the different ministerial departments. Several ministries are directly affected by this issue, in particular the Ministry of Justice and Public Security and the Ministry of the Interior, but the issue of the rule of law also affects the ministries responsible for governmental action on the rights to education, health and housing.

13. The authorities, in cooperation with the Office of the Ombudsman and civil society organizations, could also make the Interministerial Delegate for the Rule of Law responsible for drawing up a national human rights plan, specifically taking into account the commitments made by the Government during the universal periodic review before the Human Rights Council. Such a plan, in which the Office of the Ombudsman and all actors in civil society could be involved, would set out the policy that the Government wishes to pursue to make human rights a reality.

## A. Justice system

14. Just after the earthquake of 12 January 2010 which destroyed the main public buildings and claimed thousands of civil servants among its victims,<sup>3</sup> the international community assessed the scale of aid the country required to quickly return the judiciary to operation and to make buildings and human and financial resources available to the judicial authorities.

15. On 4 January 2012, a presidential commission was established to study and propose appropriate measures for the reform of the justice system and to continue the work of the commission established by former President René Prével. The Independent Expert had the opportunity to meet the president of the commission to discuss its calendar of work and the speed with which the commission would issue proposals. He was impressed by the quality and strategy of the approach adopted to implement the reform measures in the three laws on justice system reform that were passed in 2007. The work of the commission should be supported by the international community and the implementation of its proposals facilitated by the authorities of the country.

16. In that regard, the Independent Expert notes the importance of monitoring the effectiveness of the judiciary's work through the judicial inspectorate. Indeed, the operation of the courts, registries and prosecution services, including the figures communicated on the number of inspections and performance analyses, must be checked in practice. The inspectorate must be headed by judges seconded for this purpose for a limited period, and not by officials of the Ministry of Justice and Public Security.

17. The Independent Expert drew the attention of the Minister of Justice to problems stemming from the fact that under the High Council of the Judiciary Act, the Council is responsible for the inspection of judges, while registries and prosecution services remain under the authority of the Minister. He also suggested that government commissioners and senior law officers should be firmly reminded of the need for regular, ongoing and effective supervision of the activities of the courts and judiciary, which will ensure their proper functioning while safeguarding the rights of persons before the law. Such supervision should be carried out by the senior law officer for investigating magistrates and by the government commissioner for deputy prosecutors and district judges.

18. The Independent Expert's attention had been drawn to the fact that the financing for the National Legal Aid System would not be extended. Thanks to funding provided by UNASUR,<sup>4</sup> however, the programme was fortunately able to continue.<sup>5</sup> The Independent Expert notes the value of being able to provide predictable funding for the legal assistance system, and thanks donors for the support already provided in that field, while emphasizing that, in time, the system must be assigned to the Ministry of Justice.

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

19. During his meetings with the former President, and later, in his first meeting with President Michel Martelly, the Independent Expert mentioned how important this appointment was, as it provided for a separation of the executive and the judicial branches.

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<sup>3</sup> At a press conference held on 12 January 2011, the Prime Minister recalled that the disaster had caused 7.8 billion dollars of damage and that close to 17 per cent of the country's civil servants had lost their lives.

<sup>4</sup> Union of South American Nations.

<sup>5</sup> In November 2011, SYNAL employed some 250 Haitian lawyers working in 14 offices throughout the country. Since the creation of SYNAL, over 9,000 cases have been dealt with.

20. Indeed, apart from his own *ex officio* powers, the President of the Court of Cassation is the keystone of justice system reform. He presides over the High Council of the Judiciary and can therefore initiate the programme for the certification and recruitment of judges. He also presides over the Governing Board of the Legal Service Training College.

21. The Independent Expert welcomes the decision made by President Martelly to appoint the President of the Court of Cassation in October 2011, which he supplemented with the appointment of four judges in February 2012. The 11 judges have held their first general assembly, formed the two section chambers and joint chambers, decided on their working days and elected a representative to the High Council of the Judiciary. During his first meeting with the President of the Court, the Independent Expert was able to see the seriousness and determination with which the judges were playing their part in restoring credibility to the Haitian Judiciary.

### **High Council of the Judiciary**

22. At the time of writing, the Minister of Justice and Public Security had announced the end of the certification process for the members of the High Council of the Judiciary, opening the way for this new entity to be established and begin operation as an administrative body for oversight, discipline and decision-making in the judicial branch. As part of the process to establish the members of the High Council of the Judiciary in their posts and to ensure its operation, the Ministry of Justice and the Court of Cassation have also established three technical committees to work on ways of transferring knowledge, the budget and the headquarters to the High Council of the Judiciary.

23. The Independent Expert has welcomed this news, and remains hopeful that the High Council of the Judiciary will be operational by the time this report is presented, and that, regarding funding for reconstruction work in particular, it will have competent staff and the funding required for it to operate with absolute independence, and to recruit judges without interference from the executive branch.

24. The Legal Service Training College held its first competitive examination to recruit candidates for initial training as judges, with strong support from the international community. Some 20 judges were recruited by competitive examination to the Legal Service Training College and were trained in France, where they received theoretical training and completed placements at various courts before receiving their diplomas and returning to Haiti. At the time of writing, these 20 young judges had not yet been appointed to courts.

25. The Legal Service Training College also aims to have a body of permanent teaching staff trained in pedagogy. For the first time, six judges were recruited to receive training in France on developing teaching sequences and directing study programmes, which will make it possible for a new training for trainers programme to be introduced in Haiti.

26. As part of a renovation project financed by MINUSTAH, the library of the Legal Service Training College has been transformed into a modern documentation centre. The building now not only houses the library, but also a lecture hall, a computer room, three administrative offices, an archive room and a functions room that can receive around 100 persons and service as a conference facility.

## B. Prison system and extended pretrial detention

27. The prison administration<sup>6</sup> reports that there are 7,190 persons in prison: 2,224 have been sentenced and 4,966 are awaiting trial. Almost 70 per cent of the total number of prisoners is thus being held in pretrial detention, most of them for an extended period.

28. The situation, however, differs considerably from one jurisdiction to another, both in terms of the amount of space allocated to persons deprived of their liberty and the number of persons held in pretrial detention. A comparison of the rates of pretrial detention in the 16 establishments in the country reveals that rates vary between establishments, sometimes quite considerably.<sup>7</sup>

29. Under the “Not One More Day in Prison” programme, a committee of judicial inspectors, national prison administration officials and other civil servants have been carrying out enquiries in the courts, at police stations and every prison in the country since February 2012. The aim is to identify cases of extended detention and to free those concerned on a case-by-case basis, without any real strategy being developed to tackle the problem.

30. During his most recent mission, the Independent Expert visited the women’s prison in Pétionville, where nearly 90 per cent of the women are in pretrial detention, while only 10 per cent have been sentenced.

31. Several explanations for this have been offered, suggesting that it is related to the types of offences committed, the number of cases tried in criminal courts and how the different jurisdictions work. The Independent Expert reiterates his recommendation that a detailed study should be carried out on extended pretrial detention in the country’s various jurisdictions in order to develop strategies and suggest responses adapted to each case, rather than national solutions that do not really take the situation in the different jurisdictions into account.

32. The renovation of the National Penitentiary is now complete and improvements are visible, as the premises have been restored, but the situation remains tense due to overcrowding in the cells. Prisoners and those awaiting trial live in a space scarcely larger than 0.5 m<sup>2</sup>, which means that they have to take turns sleeping.<sup>8</sup> The situation is a worrying one, and one qualified by the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as cruel, inhuman and degrading.

33. The Independent Expert also visited Gonaïves, where political disturbances in 2004 led to the destruction of the civil prison. Since then, the holding cells of the Cité de l’Indépendance police station have been used as a prison. The cells are overcrowded and inadequate, with awful conditions of detention; heat and a nauseating smell emanate from the cells. Like the rest of the inmates, minors face a lack of access to health care and sanitation and a shortage of food; their economic and social rights are jeopardized. This situation should be addressed as a matter of urgency; it is not acceptable that persons who have been deprived of their liberty should be dealt with in such a manner in an establishment that was not designed for that purpose.

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<sup>6</sup> Figures given on 26 January 2012 by MINUSTAH.

<sup>7</sup> As an example, 92 per cent of inmates are in preventive detention at the National Penitentiary, compared to 45 per cent at Fort Liberté, 48 per cent at Cap Haïtien, 54 per cent at Jacmel and 67 per cent at Cayes.

<sup>8</sup> UNDP recommends a minimum space of 4.5 m<sup>2</sup>. The ICRC states that in the most serious crises, each detainee should have at least 2 m<sup>2</sup>.



34. Regarding economic and social rights, during meetings with the prison administration, MINUSTAH and the International Committee of the Red Cross (ICRC), the serious health issues and the food supply problems in all penal establishments throughout the country were raised once more. The food supply is currently managed centrally by the prison administration, which, when combined with the difficulties of supplying and transporting foodstuffs and preparing meals, means that the distribution of meals is sometimes erratic. Rations are sometimes heavily cut, leaving the inmates hungry. At times, they contract diseases linked directly to the quality or quantity of the food. The Independent Expert should like to point out that while prisons are places of deprivation of liberty, all other rights must be guaranteed. It is unacceptable that, in addition to excessive periods of pretrial detention, persons deprived of their liberty should also be subjected to prison overcrowding and undernourishment.

35. On the other hand, the Independent Expert also visited the new Croix des Bouquets prison, where the architectural design, circulation, cells, common rooms and security have all been considered as for any construction project that conforms to the relevant international standards. The Independent Expert reviewed the future internal regulations for the establishment, which should become a model for other prisons by systematically addressing practical issues such as food, access to health care, and the separation of prisoners who have been sentenced and those awaiting trial, without neglecting in the slightest the essential matter of security. The only remaining concern is whether the capacity of the prison will be exceeded by the Haitian authorities.

36. Lastly, the Independent Expert notes the value of training for prison administration staff. In total, there are some 1,000 prison staff in Haiti for slightly more than 7,000 prisoners, which, despite the efforts made, remains inadequate.

37. The Independent Expert has reminded the Haitian authorities that addressing the problem of prisons calls for a response that is political in nature — one transcending technical decisions — and that allows the Government to set out its intended policy on prisons. The Independent Expert suggests that a framework law on prisons should be adopted, the basic principle being that prison terms mean deprivation of liberty, but also a guarantee that all other rights set out in the Constitution of 1987, as well as in international instruments, are maintained. Such a law on prisons would then allow the issues of food supply, access to health care, maintaining family links and security to be addressed in another way, with the rights of detainees being guaranteed. The Independent Expert offers his time and further suggests that the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment should be included in the discussion.

## **C. Police**

38. As reflected in Security Council resolutions, helping to reform the Haitian National Police is at the heart of the tasks assigned to MINUSTAH. This process is in the hands of the National Police, which receives advice from MINUSTAH and the United Nations police (UNPOL).

39. The work was carried out conscientiously, but the Independent Expert drew the attention of the country's authorities to the need to implement the main recommendations issued regarding the vetting of the police force. Here too, purely technical handling of cases will not suffice. A strong signal must be sent to the police to demonstrate that combating impunity also means fighting it within their ranks, and that those officers not up to the standards of a democratic force will be dismissed. It is not a question of weakening the institution, but simply of making it clear that some previously tolerated behaviour is now unacceptable. The Haitian National Police is one of the pillars of a State based on the rule of law, and as such must set an example. It must be beyond reproach.

40. The Independent Expert calls upon the Government of Haiti to implement, with the necessary discretion and rigour, the recommendations on vetting police officers, and recommends that the High Council of the National Police meet to take decisions in this regard.

41. The Independent Expert further recommends that the Special Representative of the Secretary-General in Haiti and the Haitian authorities should make an unequivocal joint statement on continuation of the process so that it is understood by all that the reform of the National Police is desired by the Government, and has not been imposed from outside.

42. Security Council resolution 2012 (2011) also notes that the national plan for the reform of the Haitian National Police was drawing to a close in December 2011 and that a new five-year plan should be drawn up for 2012. Such a plan should include clear instructions for implementing the vetting process.

## **D. Protection**

### **Office of the Ombudsman**

43. Article 207 of the 1987 Constitution established an Office of the Ombudsman to protect all persons against any form of abuse by the authorities. Since being designated, Florence Elie has shown her determination to make this national institution into the haven it was intended to be in the Constitution. She has established regional offices to bring it closer to the people and has drawn up a strategy together with donors, MINUSTAH and the International Organization of La Francophonie.

44. In his first report to the Council (A/HRC/11/5, para. 31), the Independent Expert argued that the mandate of the Office of the Ombudsman should be extended and its capacity be strengthened with the establishment of a post of “Deputy Ombudsman”. Obviously, it is for the Office of the Ombudsman itself to determine how it is organized and what strategies to draw up. Nonetheless, the Independent Expert calls upon it to consider whether it is now appropriate to recruit a Deputy Ombudsman.

45. The Independent Expert welcomes the adoption of the organic law on the Office of the Ombudsman by the Senate in March 2012, which establishes the scope and means of action of the Office, thus bringing it into line with the Paris Principles.<sup>9</sup>

46. It is now for the authorities to provide the Office of the Ombudsman with the budget it requires to do its work. The Independent Expert should like to point out that the Office is currently supported to a great extent by a number of international partners.<sup>10</sup> According to the Paris Principles, though, adequate funding must be provided by the national authorities, with supplementary external funding possible for specific programmes.

47. When the Office submits its application for accreditation to the United Nations, the application must contain not only the formally required information, but also proof that the Office’s funding is included in the budget approved by the national parliament, with an indication of the portion covered and of items financed by donors.

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<sup>9</sup> At the time of writing, the bill had been amended by the Chamber of Deputies and had been sent back to the Senate for another reading.

<sup>10</sup> A coordination committee, chaired by the Office of the Ombudsman, has been set up with donors to coordinate the development strategy and ensure an exchange of information.

### **MINUSTAH Human Rights Section**

48. The Independent Expert has argued in favour of the MINUSTAH Human Rights Section gradually leaving the MINUSTAH logistic base and setting up a country office of the Office of the United Nations High Commissioner for Human Rights (OHCHR) in the city centre. The people and civil society organizations must have free access to the human rights unit, which must no longer be seen as part of the military presence.

49. Insofar as MINUSTAH is a comprehensive United Nations mission, this change must take place gradually, step-by-step, taking into account future decisions concerning the renewal of the Mission's mandate. Ultimately, this will make it possible to establish a tangible, dual system of protection in Haiti like the one that exists in other countries, whereby the Office of the Ombudsman, acting as the national human rights body, provides protection at the national level, while at the international level OHCHR provides genuine oversight in a location close to the population, in the centre of Port-au-Prince.

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

50. When the Council renewed the mandate of the Independent Expert, it invited him to bring his experience and expertise to bear and contribute "to the cause of human rights in Haiti, with a particular emphasis on economic, social and cultural rights".<sup>11</sup>

### **A. Concept of a State based on the rule of law and economic and social rights**

51. In the field of economic, social and cultural rights, the Independent Expert has on numerous occasions pointed out that economic exclusion poses a threat to political stability in Haiti and that sustainable development is unthinkable without the strong and continuous support of the international community, allowing for a genuine strengthening of institutions – the sole guarantee that basic social services will be provided.

52. Establishing the rule of law cannot be done simply by defending civil and political rights through a reform of the courts and the criminal justice system, the police and the prison system. Establishing the rule of law<sup>12</sup> also means ensuring that public institutions and services are functioning. Over and above the safety of persons and goods, such services must also provide for the enjoyment by all citizens of the economic, social and cultural rights listed in the International Covenant on Economic, Social and Cultural Rights, ratified by the Haitian parliament. The ratification reflects the will of the Haitian authorities to work for the realization of the economic, social and cultural rights of all Haitians, and to work in the long term against poverty and social exclusion.

53. Ratification of the International Covenant on Economic, Social and Cultural Rights is an important step in broadening the scope of human rights protection, as it consolidates the foundation for a State based on the rule of law. It also paves the way for development cooperation beneficial to Haiti. Under this instrument, the international community is

<sup>11</sup> Statement PRST/9/1.

<sup>12</sup> Also addressed by United Nations Security Council resolution 2012 (2011), which states that: "... progress in the recovery and reconstruction of Haiti, as well as in Haiti's social and economic development, including through effective international development assistance and increased Haitian institutional capacity to benefit from this assistance, is crucial to achieving lasting and sustainable stability", and reiterates "the need for security to be accompanied by social and economic development".

committed to invest more to support the Government's efforts to ensure equal access to education, health and a decent living standard, including water, food and adequate housing, which help to reduce poverty.

54. Furthermore, this important ratification supplements other international instruments to which the country is a party, including the Rio Conventions, the United Nations Millennium Declaration, the Convention against Discrimination in Education, agreements on the right to education, conventions of the International Labour Organization (ILO) and the outcome of the United Nations Conference on Human Settlements (HABITAT).

55. The Independent Expert points out that the rights to food,<sup>13</sup> health,<sup>14</sup> education,<sup>15</sup> work<sup>16</sup> and adequate housing<sup>17</sup> are also included in the Haitian Constitution of 1987.

56. The Independent Expert will continue to address all these subjects, with the involvement of the authorities at the highest level, United Nations agencies and Haitian civil society. To this end the Independent Expert has also proposed a series of thematic workshops on economic, social and cultural rights for the Haitian Government, with the participation of mandate holders of the special procedures of the Human Rights Council. These seminars, organized in cooperation with UN-Women, will make it possible to work jointly with the Haitian authorities, United Nations specialized agencies and representatives of Haitian civil society on various economic and social rights.

57. The proposal has been well received. At the time of writing, the first seminar was scheduled to take place in the spring of 2012, with the Special Rapporteur on the right to food. Others will follow, with other mandate holders, including those working on the rights to water, education, health and housing; this series may draw to a close with an event held with the Special Rapporteur on extreme poverty and human rights.

58. The Independent Expert welcomes the efforts made by the Haitian Government to revive the economy in urban and rural areas. He also invites humanitarian organizations and donors, together with the Government, to assess their impact on the local economy so as to ensure that the development is sustainable. Donors and humanitarian organizations must ensure the provision of basic necessities while at the same time working to reduce the country's dependence on such external support.

59. To do so, programmes aimed at strengthening the economic autonomy of Haitians, in particular of women, must be set up. Such job creation must take place with wages that allow for a decent standard of living. The programmes must meet non-discrimination standards and ensure equal access for men and women.

60. The Independent Expert supports the efforts of the Government and donors to concentrate on the informal and semi-formal economies, even if it is crucial to develop more formal sectors. Supporting and training women who earn their living from informal activities must be a priority so as to develop their economic outlook and increase their economic independence.

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<sup>13</sup> Articles 19, 22 and 248 of the Constitution.

<sup>14</sup> Articles 19 and 23 of the Constitution.

<sup>15</sup> Article 32-1 of the Constitution.

<sup>16</sup> Article 35 of the Constitution.

<sup>17</sup> Article 22 of the Constitution.

## B. Place of rights in reconstruction

61. At the special session of the Human Rights Council held in Geneva at the request of the Government of Brazil on 27 January 2010, the Council adopted resolution A/HRC/S-13/1, a robust resolution entitled “Support of the Human Rights Council for the recovery process in Haiti after the earthquake of 12 January 2010: a human rights approach”. Since then, the Independent Expert has made great efforts to ensure that human rights are at the heart of the reconstruction process in Haiti.<sup>18</sup> With the support of several members of the Council, and at the request of the Independent Expert, a seminar was held in Port-au-Prince for the Interim Haiti Recovery Commission.

62. In 2011, the Independent Expert was invited to several capital cities<sup>19</sup> and addressed a number of meetings to inform the international community about the implications of the resolution adopted by the Council and to draw the attention of donors and international development agencies to the need to develop strategies using a rights-based approach.

63. The Independent Expert also intervened a number of times with cooperation and development agencies to ensure that appropriations and programmes would be channelled to Haiti. He would like to express his gratitude to the Governments and the agencies in question for their attention and their generous response.

64. The Independent Expert should like to recall that the rights-based approach is not a conceptual approach, but rather one that requires a change of paradigm, as it calls first and foremost for special attention to be paid to those who are the most vulnerable, women, children and disabled persons. It also systematically involves civil society organizations, in particular those representing women, farmers and vulnerable groups, in the reconstruction effort, and includes gender-specific analyses and concrete gender-equality targets in reconstruction plans and budgets. It also ensures that labour-intensive reconstruction programmes are not concentrated solely in economic sectors traditionally occupied by men.

65. The rights-based approach is aimed firstly at taking into consideration the needs and aspirations of Haitians themselves so as to restore a more decentralized and sustainable development capable of protecting the population against natural hazards. It is also an approach that makes it possible to ensure that reconstruction is equitable, specifically seeking equality between the wealthiest and the less prosperous regions, with the objective of creating a more fair society.

66. The Independent Expert followed with interest the discussions about the renewal of the mandate of the Interim Haiti Recovery Commission or its replacement with a purely Haitian body. Whatever the final decision, which is for the Haitian authorities to make, the Independent Expert should like to recommend that the place of rights in the country’s reconstruction should figure explicitly in the founding text of any such body, and that measures should be taken to achieve this objective. The MINUSTAH Human Rights Section can assist in the training and the development of methodological tools for this project.

## IV. Violations of rights in the humanitarian crisis

67. Both in Port-au-Prince and outside the capital, the Independent Expert took part in several cluster meetings with humanitarian NGOs with the aim of making them aware of the rights-based approach to humanitarian work. During his talks in the different capitals he

<sup>18</sup> See A/HRC/17/42, paras. 67–70.

<sup>19</sup> Specifically Paris, Brussels, Berlin, Oslo, Washington, Bern and Ottawa.

also raised this question. He regrets that a rights-based approach has still not been adopted by all those involved, in particular by humanitarian organizations.

## A. Persons living in camps

68. During his various missions the Independent Expert regularly visited several camps to check on developments there. According to figures from the International Organization for Migration (IOM), in March 2012 some 491,000 people, or 130,791 families, were still living in 660 camps in the regions most affected by the earthquake. According to the latest statistical study by IOM,<sup>20</sup> 36 per cent of the original populations of the camps have been living at locations for displaced persons since the height of the displacement crisis.

69. At the beginning of 2012 the pace of departure from the camps slowed considerably owing to the complexity of the urban displacement crisis, the housing shortage and poverty. The living conditions of homeless Haitians are still extremely difficult. Many are still living in shelters consisting of plastic sheeting which in the hurricane season are shaken by strong winds and flooded by the rains. Most (60 per cent) of the displaced population remains grouped in 61 “major” locations housing more than 500 families. Such sites account for no more than 8 per cent of all locations, thus confirming that there is a trend towards further concentration in the major camps, as already noted in previous reports.

70. The Housing and Public Buildings Unit, set up as a joint initiative of the Office of the President and the Office of the Prime Minister, is operating, and the pace of relocation has picked up. A pilot relocation project known as the 16/6 project (named for 16 districts in three towns: Port-au-Prince, Delmas and Pétienville) is making it possible for displaced people in six public areas to return to 16 communities currently being refurbished.

71. The Government’s resettlement strategy is now concentrating on clearing public areas, while efforts are being made to rebuild neighbourhoods damaged by the earthquake. The announced aim is to make such communities attractive by setting up a small-scale local economy, thus encouraging people to leave the camps.

72. During his previous mission, the Independent Expert welcomed the intention of the Haitian Government to meet the challenges of urbanization by declaring the Corail camp and the unofficial Canaan and Jerusalem sites to be of public interest, thus securing land rights and facilitating community planning in the areas in question. Nonetheless — notwithstanding the fact that the position is not an easy one and is unpopular — the Independent Expert supports the strategy put forward by the United Nations Human Settlements Programme (UN-Habitat), under which basic services are to be provided on a permanent basis through local taxation. This means the residents of unplanned neighbourhoods become “taxpayers”, with the commune acting as a genuine service provider. A local “social contract” of this type, which must be based on the rights and responsibilities of both parties (citizens and municipal authorities), will in the end allow for the harmonious redevelopment of the locations in question.

73. As for the future of the unofficial camps and sites, the Independent Expert points out that in order to close camps that house families displaced by the earthquake, the future of existing camps must first be determined, quite apart from those covered by the 16/6 project mentioned above. It is important to avoid neglecting the camps that are not included in the presidential programme, and to set out a strategy for each camp. The Government should establish and communicate to the public the criteria it will use to determine which camps

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<sup>20</sup> See [http://www.eshelter-cccmhaiti.info/pdf/DTM\\_V2\\_Report\\_September\\_French.pdf](http://www.eshelter-cccmhaiti.info/pdf/DTM_V2_Report_September_French.pdf).

should be closed, the complete list of camps to close, and those that may be redeveloped as new neighbourhoods, in line with the way the question is being handled in Corail.

74. Lastly, the Independent Expert recommends that relocation strategies for displaced persons should take into account the recommendations contained in the report submitted to the General Assembly in 2011 by the Special Rapporteur on adequate housing (A/66/270).

## **B. Gender-based violence**

75. Since the beginning of the humanitarian crisis, gender violence has been the subject of a great deal of attention for the international community. The previous reports of the Independent Expert have dealt extensively with this question and have included recommendations. Several United Nations reports and national and international human rights organizations have documented the phenomenon of domestic abuse or family violence, the role of gangs in and around camps and the de facto impunity of those who abuse women.

76. During a series of discussions on gender violence, women's organizations reported that, compared with previous years, in 2011 violence against women and girls in the camps had clearly declined. The Unit for Combating Violence against Women of the National Police too reports a significant drop in complaints.

77. The Independent Expert welcomes the fact that many of his recommendations have been implemented and that specific programmes have been developed making it possible to prevent or contain this phenomenon. During his discussions with United Nations agencies, the question of how to collect statistics to document gender-based violence was raised once again. Decisions were taken in respect of the methodology to use to keep track of the problem and how it evolves over time and the way in which such violence is documented.

78. While the phenomenon is apparently becoming less widespread, there are still too many victims. The Independent Expert therefore is maintaining a number of recommendations, while reiterating that such measures complement one another, and that it is specifically by combining them that they will be most effective.

79. Women's organizations have emphasized the difficulty encountered by victims when they wish to bring charges. In respect of the administration of justice, the Independent Expert is thus issuing a series of recommendations. In particular, all prosecutors' offices and all courts of first instance should have special units to rule on violence committed against women. During his meetings with the Minister of Justice the Independent Expert recommended ensuring that the judicial authorities have sufficient training, in particular in respect of the provisions and means of applying international and regional human rights treaties. He recommends ending once and for all the practice whereby justices of the peace can exceed their mandates by issuing decisions in criminal cases, including rape, as such practices are conducive to impunity, weaken the criminal justice system and do not protect the right of women to receive compensation for damages. Lastly, he recommends ensuring that the police and justices of the peace quickly refer sex crimes to the public prosecutor, and that the principle should be reaffirmed that transactions conducted out of court are illegal.

80. The Independent Expert also recommends strengthening the Unit for the Promotion and Protection of Women's Rights in the Office of the Ombudsman.

81. Lastly, the Independent Expert should like once again to state that the Guidelines for

Gender-based Violence Interventions in Humanitarian Settings,<sup>21</sup> drawn up by the United Nations and other international organizations, is a tool that should be more extensively disseminated, as it contains a large number of specific recommendations that remain applicable to the situation in Haiti.

### C. Children

82. The situation of children has been largely documented by Haitian civil society organizations and international organizations. The United Nations Children's Fund (UNICEF) continues to provide excellent technical assistance, documentation, identification, family reunification and shelter, care and protection.

83. The Independent Expert should like to commend the work carried out by the new management team of the Social Welfare and Research Institute, which has a clear vision of the strategies to draw up and implement to fulfil the mission entrusted to the Institute in its founding text.<sup>22</sup> Its financial and human resources are, however, inadequate and it would be worth allocating additional resources under the budget appropriations bills.

84. The measures recommended in the previous report have been implemented, guaranteeing effective supervision of illegal children's institutions and the closure of those that do not conform to legal requirements. The number of undeclared centres has fallen, a survey of centres has been completed and a database set up, allowing the quality of care and accommodation to be monitored, as well as the risk of abuse for commercial purposes or trafficking. The Independent Expert calls on international organizations and donor countries to no longer fund centres that function outside the law.

85. The Independent Expert recalls once more that adoption must take place in a carefully structured context, and only when all the necessary guarantees are in place, and that it must not be considered a humanitarian gesture. He regrets, however, that Haiti has still not ratified the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption. An organization responsible for international adoption must be established within the legal framework envisaged to replace the laws of 1974, which are no longer appropriate. It would also be helpful if the countries of adopting families would cease putting pressure on the Haitian Government to resume adoptions until the envisaged legal framework has been adopted.

86. The Independent Expert recalls that, according to the Committee on the Rights of the Child, 2,400 Haitian children were internationally adopted following the earthquake, which is double the number adopted from Haiti in 2006 and 6 per cent of total global intercountry adoptions, from a population of only 10 million.<sup>23</sup> A significant number of these adoptions took place outside any legal framework. Despite measures taken by the Government to tackle the problem, credible accounts continue to report trafficking in children through institutions that take on children at a very young age and place them in crèches before presenting them to candidate adoptive parents.

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<sup>21</sup> [http://www.womenwarpeace.org/docs/GBV\\_Guidelines\\_pdf](http://www.womenwarpeace.org/docs/GBV_Guidelines_pdf).

<sup>22</sup> Decree of 24 November 1983.

<sup>23</sup> Press conference held by the Chairperson of the Committee on the Rights of the Child on 28 February 2012 in Port-au-Prince.



## D. Persons with disabilities

87. Since the earthquake of 12 January 2010, the Independent Expert has constantly paid attention to the issue of persons with disabilities, and has commended the work of several NGOs.<sup>24</sup> He was also able to meet with the Secretary of State for the Integration of Persons with Disabilities on several occasions to discuss the measures that should be implemented to ensure that public policy takes into account the discrimination faced by persons with disabilities.

88. In his meetings in the various capital cities with the agencies responsible for reconstruction, the Independent Expert regretted that the applicable standards for buildings were not always taken into account, despite the fact that the reconstruction of Port-au-Prince presents a unique opportunity to demonstrate that the discrimination suffered by persons with disabilities is a thing of the past.

## E. Forced return

89. Having received information from several countries on the situation of Haitians forced to return, and at the request of the Haitian authorities, the Independent Expert decided to publish a specific report on this issue (A/HRC/20/35/Add.1). The aim is not to call into question the legitimate concerns of States regarding the control of migration flows, but rather to inform the Human Rights Council of the reality of this situation and the measures taken by States expelling Haitians, by documenting the legal issues, and specifically means of appeal against expulsion. The report also aims to demonstrate the impact of forced returns of Haitians on Haitian society, particularly on families living in extremely precarious situations. It also studies the impact, in terms of security, of returning Haitians who may be dangerous once they have served prison sentences in countries of emigration.

90. The Independent Expert reiterates the recommendations contained in his report of 2010 (A/HRC/14/44/Add.1, paras. 41–42), 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 should ensure that returns, when they must take place, are carried out in compliance with the relevant legal obligations and in such a way as to place no additional burden on the country.

## F. Cholera

91. At the end of 2011, almost 514,000 cases of cholera had been registered and just over 6,900 persons had died since the beginning of the epidemic.<sup>25</sup> Fortunately, though, the mortality rate had fallen from 2.4 per cent at the end of 2010 to 1.3 per cent at the end of 2011. Despite the stabilization in the number of cases registered in recent months, epidemiologists note that new peaks cannot be ruled out, if only due to the number of families living in camps, where health and hygiene conditions are deteriorating as humanitarian agencies withdraw. The lack of latrine maintenance, repair and drainage services is conducive to the spread of cholera. While the majority of humanitarian agencies

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<sup>24</sup> Notably Handicap International in Port-au-Prince, which has now transferred its activities to a well-trained and well-supervised Haitian organization that is carrying out some remarkable work (Healing Hands).

<sup>25</sup> Figures published by the Office for the Coordination of Humanitarian Affairs (OCHA) on 6 December 2011.

are withdrawing, the Haitian State is still having difficulty taking control with a supply of drinking water to vulnerable areas, including the camps, where the services of the cholera treatment centre are literally disappearing.

92. The Independent Expert recalls that long-term funding is not yet available and that short-term funds have been exhausted. A humanitarian appeal for 231 million dollars for 2012 under the Consolidated Appeals Process (CAP) has generated only low levels of funding.

93. The public controversy over who was responsible for introducing the strain of cholera to Haiti is growing. Complaints registered by the families of victims are increasing, and the number of persons who request certificates of cholera infection at health-care establishments is constantly rising. The Independent Expert has neither the authority nor the mandate to offer an opinion on the origin of the disease. However, he wishes to point out that silence or denial will do nothing to promote a good understanding of the activities of MINUSTAH in a context marked by several distressing episodes of sexual assault in which MINUSTAH military personnel have allegedly been implicated.

## **V. Combating impunity**

### **A. Case of Jean-Claude Duvalier**

94. At the beginning of 2012, the investigating judge announced the decision to return Jean-Claude Duvalier to a criminal court to be tried for the crimes of corruption and misappropriation of public funds, dismissing 22 complaints of crimes against humanity filed by victims who had joined together in an action group against impunity.

95. The United Nations High Commissioner for Human Rights, MINUSTAH and the Independent Expert have all voiced their criticism of this decision, demonstrating a common understanding of the situation. Nonetheless, all possible legal assistance has been provided to the judicial authorities by the United Nations, following the offer made by the High Commissioner to share OHCHR expertise with the Haitian judicial authorities and to assist them in investigating and establishing the facts. Several special procedures mandate holders<sup>26</sup> have also responded to the Independent Expert's appeal to contribute their legal expertise and share their experiences of addressing similar situations in other countries, in particular with regard to enforced disappearances and crimes against humanity.

96. The victims and their families have decided to appeal against the decision of the investigating judge, and will doubtless exhaust the domestic remedies available in Haiti before turning to the Inter-American Court of Human Rights.

97. The case has evoked powerful emotions, in the country as abroad, and everyone's thoughts must turn first and foremost to the victims and their families, who are still waiting for the Haitian judicial system to bring those responsible to justice. They are waiting for true recognition that these were crimes against humanity. They are waiting for justice to be done, and for some effort to be made to keep what happened from being forgotten, in the same way as in other countries that have experienced similarly dark periods, for example in Latin America, Africa and the rest of the world, and that have managed to develop a

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<sup>26</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.

mechanism for transitional justice. It would be worthwhile reviewing the way in which such countries have addressed such problems.

98. The Independent Expert wishes in that regard to draw the attention of the members of the Human Rights Council to an interesting initiative proposed by UNASUR aimed at establishing a human rights training and research institute in Haiti. The institute could be twinned with the MERCOSUR International Centre for the Promotion of Human Rights, located within the Navy School of Engineering (Argentina) known as ESMA. This institute could, with the support of the international community, engage in memorial activities and work on public education, serve as a host centre for photographic archives, organize conferences, and training seminars and serve as a meeting place on international human rights law and the concept of crimes against humanity.

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

### **Civil and political rights**

99. **With regard to the rule of law:**

(a) **The rule of law should be placed at the heart of the forthcoming reforms, including the issue of economic and social rights;**

(b) **An Interministerial Delegate for the Rule of Law should be appointed, to provide guidance and coordination between the different ministerial departments and draft a national human rights plan.**

100. **With regard to justice system reform:**

(a) **The work of the presidential commission should be supported;**

(b) **Monitoring of the effectiveness of the judiciary's work should be carried out by the judicial inspectorate;**

(c) **The law on the High Council of the Judiciary, which entrusts the latter with responsibility for the judicial inspection service in regard to judges, while leaving registrars and prosecutors under the authority of the Minister, should be reviewed;**

(d) **Action should be taken to ensure the regular, ongoing and effective supervision of the work of the courts and of judges;**

(e) **Visibility and predictability of funding should be guaranteed for the National Legal Aid System.**

101. **With regard to the prison system and extended pretrial detention:**

(a) **A comparative study should be conducted of extended pretrial detention in each jurisdiction;**

(b) **Consideration should be given to the extension to all jurisdictions of programmes aimed at freeing persons who have served their sentences;**

(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;**

(e) **A framework law for prisons should be prepared.**

102. **With regard to police officers:**

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

(b) A meeting of the High Council of the National Police should be convened to decide on the removal from the ranks of the National Police of Haiti of those officers who are not fit for service in a democratic police force;

(c) Vetting should be reaffirmed as a priority for Haiti and the public should be regularly informed of the outcomes of the process and the quantitative and qualitative targets achieved.

103. With regard to the Office of the Ombudsman:

(a) The post of Deputy Ombudsman should be established;

(b) The Office of the Ombudsman should be allocated a sufficient budget to bring it into conformity with the Paris Principles.

104. With regard to the Human Rights Section of MINUSTAH:

(a) A country office of the Office of the United Nations High Commissioner for Human Rights should be established in Haiti to gradually replace the Human Rights Section of MINUSTAH.

#### **Economic and social rights**

105. With regard to the rule of law:

(a) A series of thematic seminars should be held with representatives of the special procedures;

(b) Economic recovery should be a constant priority in urban and rural areas;

(c) Humanitarian organizations and donors should assess their impact on the local economy in order to ensure sustainable development;

(d) Programmes should be introduced to strengthen the economic independence of Haitians;

(e) Priority should be given to providing training and support for women in order to develop their economic prospects and increase their economic independence;

106. With regard to the place of rights in reconstruction:

(a) Donors and international development agencies should be called upon to create strategies built on a rights-based approach;

(b) Vulnerable persons should benefit from special attention;

(c) Civil society organizations, in particular those representing women and farmers and those defending vulnerable groups, should be systematically involved in the reconstruction effort;

(d) Gender-specific analyses should be included in reconstruction plans and budgets;

(e) The reconstruction should facilitate the restoration of a sustainable environment within the framework of more decentralized development, and one which protects people against natural hazards;

(f) The reconstruction must be equitable, establishing in particular equality between the richest and the less prosperous regions;

(g) The place of rights in reconstruction should be established in the documents underpinning the structure that will replace the Interim Haiti Recovery Commission;

(h) Haitian civil society organizations should be involved in evaluating the implementation of a rights-based approach to reconstruction.

#### Violations of human rights in the humanitarian crisis

107. With regard to the involvement of civil society in reconstruction:

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

(b) Recommendations by United Nations agencies to their personnel on the application of a rights-based approach should be strengthened.

108. With regard to persons living in camps:

(a) The strategy proposed by the United Nations Human Settlements Programme (UN-Habitat) which aims to ensure the provision of basic services and their permanent support through local taxation, basing this strategy on the rights and responsibilities of both parties, should be strengthened;

(b) Strategies should be developed for the planned, gradual closing of each official and unofficial camp;

(c) The recommendations made in the report by the Special Rapporteur on adequate housing should be taken into account with regard to resettlement strategies for displaced persons.

109. With regard to women and gender-based violence:

(a) A methodology should be developed to measure the scale of the problem;

(b) Efforts should be made to draft a framework law for all forms of violence against women;

(c) Women and girls reporting incidents of sexual assault should receive support from the Unit for Combating Violence against Women of the National Police;

(d) A special unit should be established in the courts to try cases of violence against women;

(e) Sufficient training should be guaranteed for the judiciary;

(f) The practice of district judges issuing rulings in criminal cases, including rape cases, should be brought to an end once and for all;

(g) Police officers and district judges should rapidly refer sex crimes to the public prosecutor, and the principle should be reaffirmed that transactions conducted out of court are illegal;

(h) The Unit for the Promotion and Protection of Women's Rights in the Office of the Ombudsman should be strengthened;

(i) Dissemination of the Guidelines for Gender-based Violence Interventions in Humanitarian Settings should continue;

(j) Training on these guidelines should be organized for staff of the Haitian National Police, MINUSTAH and international agencies.

110. With regard to the situation of children:

- (a) Additional funds should be allocated to the Social Welfare and Research Institute;
- (b) Facilities functioning without legal authorization should no longer receive funding;
- (c) Adoption procedures should be regulated in order to ensure that full guarantees are provided and that adoption is not treated as a humanitarian gesture;
- (d) The Hague Convention on Intercountry Adoption should be ratified;
- (e) An organization responsible for intercountry adoptions should be established;
- (f) Pressure on the Haitian Government from the countries of adopting families to resume adoptions should be halted until a legal framework is adopted.

111. With regard to persons with disabilities:

- (a) Activities to support persons with disabilities should continue;
- (b) Standards for disabled access to buildings should be taken into account during reconstruction.

112. With regard to forced return:

- (a) Flexibility and generosity should be shown to Haitians who have sought refuge in other countries;
- (b) Returns of Haitians, if they must take place, should be carried out in compliance with the relevant legal obligations and in such a way as to place no additional burden on the country.

113. With regard to cholera:

- (a) States should respond to the humanitarian appeal launched for 2012;
- (b) A more appropriate response should be provided to those who complain about those who introduced the cholera strain to Haiti.

**The fight against impunity**

114. With regard to the case of Jean-Claude Duvalier:

- (a) Victims and their families should be supported in taking legal action;
  - (b) Consideration should be given to the initiative aimed at establishing a human rights training and research institute in Haiti.
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