

MINUSTAH/UNCT report for the Human Rights Council in the context of the its examination of the 2011 Universal Periodic Review of Haiti

I. General information

1. Any analysis on the current human rights situation in Haiti must be prefixed by reference to the earthquake on 12 January 2010. Between 220,000 and 300,00 people are estimated, by State authorities, to have died, while others were seriously injured. By March 2010, 2.3 million people were estimated to have been displaced out of their homes, with up to 1.7 million living in 1,300 camps. Haiti's entire nine million population has been affected in some way by the earthquake.

2. In October 2010 a serious cholera outbreak was detected in the Artibonite region, and quickly spread throughout the country, leaving an estimated 4,000 dead within the first three months of an epidemic that is expected to continue to claim lives. In November 2010 the eye of a hurricane narrowly missed Haiti, nevertheless causing serious damage to crops in some areas of the country. February 2010 presidential and parliamentary elections were postponed to November 2010, when the first round vote was highly criticized amid allegations of fraud and leading to public demonstrations, street violence and political paralysis and several months of additional delay until the second round was finally held in March 2011.

3. The earthquake and subsequent events of 2010 only compounded a crisis of under-development in the poorest country in the region and the only country to be the subject of United Nations Security Council oversight and to have a Peacekeeping mission. In the 2009 United Nations Human Development Index, Haiti was ranked 149th out of 182 countries. With unemployment estimated at 80%, more than half the population was living in extreme poverty on less than 1.25 USD per day. Less than half the population had access to clean water.¹ While, as of the time of writing, the elections appear to have reached a democratic resolution, all other problems, whether related to the earthquake, cholera, vulnerability to natural disasters, or under-development, remain as urgent and challenging as ever.

A. Haiti's ratification of international human rights instruments

4. Haiti has, in particular, ratified the following international and regional human rights instruments: International Covenant on Civil and Political Rights; Convention on the Prevention and Punishment of the Crime of Genocide; International Convention on the Elimination of All Forms of Racial Discrimination; Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); Convention on the Rights of the Child; Convention on the Rights of Persons with Disabilities; Inter-American Convention of Human Rights (with recognition of the jurisdiction of the Inter American Court on Human Rights in 1998); Inter-American Convention on the prevention, punishment and the elimination of violence against women

5. Haiti has not yet ratified, in particular, the following instruments: International Covenant on Economic, Social and Cultural Rights; Convention on the non-applicability of statutory limitations to war crimes and crimes against humanity; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol; Optional Protocol to the CEDAW; Optional Protocols to the Convention on the Rights of the Child on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography; International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families; International Convention for the Protection of All Persons from Enforced Disappearance (signed 2007); Inter American Convention

¹ Office of the Special Envoy for Haiti, Key Statistics (2010)

on the prevention and punishment of torture (signed 1988); Inter American Convention on forced disappearances; and the Treaty of Rome.

B. Constitutional and legislative framework

6. Haiti's 1987 Constitution provides for a number of fundamental human rights (cf. the title III, Chapter II), including the rights to equality, to life, health, to respect for the human person, to adequate housing, to education, food and to social security, and to private property. Article 276 of the Haitian Constitution specifies that international treaty law has primacy over national law.

7. There have been several efforts to strengthen the human rights protections afforded by national legislation, although almost all have remained at the stage of drafts for several years. For instance: a draft constitutional amendment provides for a minimum of 30% of women to be included in decision-making forums; draft legislation on the conditions of domestic work, on responsible paternity, and on the family; and draft bills (pending legislative approval) on the prevention and suppression of trafficking of children, on adoption, and the protection of persons with disabilities. Legislative protections for children are dispersed across civil, criminal and administrative laws and the State is currently working to complete a single law on the protection of children.

8. Welcome efforts to strengthen national legislation do not, for the moment, make up for a body of legislation that is antiquated and ill-adapted to the full protection of human rights for all.

C. Relevant national institutions and infrastructure

9. The State comprises executive, legislative and judicial branches. A severe lack of resources limits the capacity of all three to contribute to the protection and promotion of human rights, including insufficient personnel, inadequate education and training for many officials, and inadequate facilities and equipment. MINUSTAH's Civil Affairs Section estimates that, in all areas, significant progress had been made in the operational effectiveness of the State administration before 12 January. The earthquake, however, halted all progress, reversed previous gains and compounded pre-existing weaknesses. According to the Post Disaster Needs Assessment (PDNA), 60,000 civil servants were killed and principal government buildings were destroyed, including the national palace, parliament and a majority of the public ministries, as well as police stations, court houses, public health facilities and schools.

10. The government has not appointed judges to the *Cour de Cassation*, neither has the *Conseil Supérieur de la Magistrature* been established, seriously weakening essential judicial oversight and accountability. Ineffective border control and customs management facilitates human trafficking and smuggling. Long-standing and widely recognized concerns over the centralization of the State in the capital continue to slow-down efforts at regional levels to design and implement effective policies that could improve respect for human rights.

11. Despite the limitations, several State or quasi-State institutions advocate for human rights, such as the Ministry on the Status of Women and the Rights of Women (MCFDF) and the Secretary of State for persons with disabilities (SEIPH). The Constitution provides for an ombudsman's office - the Office for the Protection of the Citizen (OPC) – with a mandate to "protect all individuals against all forms of abuse by the public administration" (art. 207). A draft bill has been prepared to extend the OPC's mandate to embrace the Paris principles for independent National Human Rights Institutions.

D. Haiti's cooperation with international human rights mechanisms

12. *Cooperation with Treaty Bodies:* Haiti is significantly behind in its obligations regarding consideration by Treaty Bodies, with the following record: Committee on the Elimination of Discrimination against Women (2009) ; Committee on the Rights of the Child; (2003); Committee on the Elimination of Racial Discrimination (2001); and Human Rights Committee (1995). Haiti's first report under the Convention on the Rights of Persons with Disabilities is due in August 2011.

13. *Cooperation with Special Procedures mandates:* Since the 12 January earthquake, Haiti has hosted three visits from the Human Rights Council's Independent Expert on Haiti (resolution 1995/70) and one visit from the Representative of the Secretary-General on the human rights of internally displaced persons. The State cooperated fully with the mandate holders during the four visits, although there has been very little progress in implementing the recommendations made by the mandate holders.

14. A United Nations Peacekeeping mission, MINUSTAH, has been established in Haiti since 2004, including a Human Rights Section (HRS) that also serves as the representation in Haiti of the Office of the High Commissioner for Human Rights (OHCHR). MINUSTAH's core mandate is to stabilize the security situation, provide capacity building support to the State and help protect human rights. MINUSTAH and its human rights component enjoy good cooperation from the Government, although implementation by the State of recommendations as regards systemic human rights concerns is poor.

II. The protection and promotion of human rights in Haiti

A. Right to life and security of person

15. *Violations of the right to life and physical integrity by authorities:* on a weekly basis, there are multiple allegations of killings and ill-treatment committed by the Haitian National Police (HNP), typically in the context in acts of arrests and detentions, or during patrols or personal activities. In just one example, on 19 January 2010, police officers from the UDMO (Unité Départementale de Maintien de l'Ordre) and prison officers are accused of having killed at least 12 incarcerated persons during a prison escape attempt and riot, including through summary executions. In contrast, HNP officers, most especially in Port-au-Prince are frequently themselves the targets of violence, with over 20 police officers killed during the first three months of 2011 alone. Many HNP seek to prevent violations occurring, seeking reinforcements and training that would help prevent abuses.

16. *Incidents of lynching:* popular justice, in which a mob attacks and kills a person accused of crime or a related act, has occurred in Haiti for many years. Toward the end of 2010, and coinciding with the outbreak of cholera, an increase in the number of lynching incidents were recorded. For instance, according to the HRS, just in the Department of Grande Anse, between 20 November 2010 and 13 January 2011, 21 individuals were killed and 16 escaped or were rescued by the HNP and UNPOL in 22 separate acts of lynching. Victims were beaten to death, burnt, hung from a tree or decapitated. Common to all incidents was the fact that attackers accused victims of being responsible for spreading cholera using "powder", a common euphemism for witchcraft.

B. Prohibition of torture, and cruel, inhuman or degrading treatment or punishment, and other rights in the context of the deprivation of liberty

17. *Deprivation of liberty:* prisons and detention facilities are managed under the *Direction de L'administration Pénitentiaire* (DAP). The separation of categories of prisoners – convicted and pre-trial, and by gender and age - is not fully respected in Haiti: men are separated from women, but the requirement of a separation between children and adults and between defendants and convicted persons is not always followed, because of inadequate infrastructure capacity. Many persons escaped from prison following the 2010 earthquake, reducing the population significantly; however, detention capacity

decreased even more with the collapse or damage of many detention facilities and the available space per person is estimated at an average of 0.60 meters squared per inmate, with many detention facilities providing even less. For example, prisons in Les Cayes and Anse-à-Veau and police holding cells, that essentially serve as prisons, in Aquinas and Miragoane are all facing severe overcrowding. Currently, three prisons are under construction or repair, with a view to mitigating the problem of space. In Miragoane, in the absence of adequate numbers of police, inmates are kept locked up 24 hours a day without any opportunities for exercise.

18. Prisons and holding cells are dilapidated buildings where sanitation facilities are grossly inadequate, and where access to health care is minimal. At a police station in Petit Goave, HNP officers guarding two holding cells themselves complained to the HRS in October 2010 that conditions for inmates were inhuman – approximately 42 inmates were held in each of two small cells, with insufficient space for all to sit on the floor, without any access to toilets or washing facilities and obliged to conduct all person hygiene with the use of plastic bags in the rear of the extremely crowded cells, and without any possibility to leave the cells for any purpose over many weeks at a time because HNP officers were too short-staffed to be able to safely manage inmate mobility. Inmates receive food twice a day, when food stocks are in place. Food shortages in early 2011 have required that the ICRC distribute rations while local detachments of UN military have shared their own food supplies on an emergency humanitarian basis. Access to clean drinking water, particularly given the prevalence of cholera is also sometimes a significant concern.

19. The cholera outbreak aggravated health concerns affecting inmates, with dozens of deaths and infections from cholera among inmates between October 2010 and March 2011. All family visits with inmates have been prohibited since the outbreak.

C. Administration of justice, including impunity for violations of human rights

20. The administration of justice in Haiti is marked by long delays in the implementation of procedures and problems of access to justice. In many instances, individuals are required to pay for the typing, printing or copying of documents, with the required sums beyond the means of the supplicants. While a proportion of the problems inherent in the administration of justice are related to problems of capacity, it is also clear that existing capacity is not used effectively or in accordance with international human rights standards: much more could be done with the capacity in hand.

21. The reporting of violent crime, and probably crime itself, was low in the initial months following the earthquake, with statistics significantly below 2009 levels, but then gradually increased throughout 2010 and at times reached levels above those of 2009. For instance, homicides recorded by UNPOL from January to December were 16, 31, 54, 51, 49, 54, 52, 66, 75, 82 and 73 for a total of 668 over 2010. The reported violent crime rate in Haiti, on a per capita basis, is significantly lower than several other countries in the region.

22. *Investigations and arrests:* While some investigations are conducted quickly, others are slow or do not happen at all. In the context of the aforementioned cases of lynching many cases reported to the HRS are not investigated unless the family members of victims lodge a complaint. Where investigations were conducted, arrest warrants were sometimes issued only a month after the investigation, by which time it was impossible for the HNP to serve the warrants because the suspects had fled. Arrests are often much quicker for cases involving *flagrant delit* and which frequently shown effective responsiveness by police and judicial authorities. In the Central Plateau Department six cases of lynching are under instruction by the presiding judge.

23. Many arrests are conducted without warrants and justification for arrests is frequently recorded incorrectly by the arresting officer, and reasons for an arrest are often not clearly linked to provisions in Haitian criminal law. People continue to be arrested under suspicion of being an earthquake-related prison escapee, merely on the basis of an accusation and without any prior investigation leading to false arrests.

24. **Prolonged pretrial detention:** Prolonged pretrial detention remains a major problem in the Haitian judicial system, particularly in the metropolitan area. For example, in the Western Department, as of end February 2011: at the National Penitentiary, 85% of inmates are awaiting trial; at the women's prison just 28 of 255 inmates have been convicted; and at detention facilities in Archaie, at the Carrefour prison and at the Children's Prison in Delmas conditions are similar. Indeed, while there are some exceptions, similar conditions can be found across the country: also as of end February 2011, at the two aforementioned police holding cells that now serve as defacto prisons in Petit Goave, there are 110 inmates of whom only 12 have been convicted of offences.

25. There have been a multitude of escape attempts from detention facilities in Haiti since 12 January 2010 and, in many such instances, inmates have destroyed all detention records held locally within the detention facilities, significantly complicating the task of reducing pre-trial detention. The Act of May 6, 1927 established a special and faster procedure for cases of *flagrant delit* in criminal courts but its implementation is difficult given a lack of available judges and courtrooms, as well as the logistical challenges of transporting detainees to and from relevant officials.

26. Notwithstanding the general negative trend across the country, in the Central Department, cases of prolonged pre-trial detention have decreased in recent months. As of March 2011, in the Mirebalais prison there were 223 sentenced inmates compared with 115 in pre-trial detention, a significantly better proportion than in other location. Improvements are credited to greater cooperation between prosecutors and magistrates, the organization of regular criminal hearings and trials and implementation of the Legal Assistance Program (LAP) funded by OHCHR. A similar improvement was noted in Port de Paix, where, the rate of detention decreased by 32.16% between 31 December 2009 and the end of 2010.

27. **Judicial guarantees and fair trial rights:** Tremendous delays in the consideration of individual cases are a hall mark of the judicial system. The proportion of persons in pre-trial detention is an indicator of systemic problems in the delivery of justice, and a violation of the right to be tried within a reasonable time. MINUSTAH's Justice Section and HRS have tracked dozens of individual cases which have remained at the level of *instruction* far beyond maximum limits, and sometimes for more than four years. Defendants accused of misdemeanors are often held in pre-trial detention well beyond the maximum prison sentence they would receive if found guilty. In Jeremie, for example, prisoners have remained incarcerated after completing their sentences because their dossiers are not transmitted from the court registrar to prison authorities. For instance, one man, incarcerated for assault on 26 January 2009 and subsequently sentenced to one year imprisonment, should have been released on 26 January 2010, but prison authorities did not receive the records of the court decision until January 2011, upon which he was immediately set free. Similarly, a second man was incarcerated for robbery on 13 January 2009 and sentenced to six months, but was not released until August 2010, the court documents on his case having disappeared altogether. To date, in Jeremie, the court decisions of 17 of 53 convicted persons have not yet been received by the prison authorities.

28. **Impunity:** There is a high degree of impunity for human rights violations in Haiti. In some instances, this can be attributed to problems of law enforcement and judicial capacity or victims' fear of presenting complaints. In others it is the result of a failure of officials to take adequate action whether in cases involving State officials or organized crime.

29. While many abuses go unpunished, the HNP internal affairs office (Inspecteur Generale) is active in pursuing as many cases as capacity will allow. And, although there is sometimes an indication of localized efforts by individual HNP officers to conceal violations, other elements of the HNP and Haitian justice system have shown a willingness to pursue justice. For instance, the killings and injuries of inmates at the Les Cayes prison in January 2010 have been the subject of an extensive investigation and charges have been brought against a number of officials. Similarly, the State has launched legal proceedings against former President Duvalier for violations allegedly committed during his regime.

D. The protection of displaced persons

30. Following the earthquake, an estimated 600,000 people initially left Port-au-Prince to move to the provinces and, in the case of places like Goinaives, joined past case loads of persons displaced by natural disasters. By the Spring of 2010 between 1.5 and 1.7m people were estimated to be living in 1,300 camps across the country, more than 900 of which were in Port-au-Prince. While some camps benefited from water, sanitation and occasionally health services, other camps have existed in extremely unsanitary conditions. Over the latter half of 2010 and the first few months of 2011, the numbers of international organizations working with camp populations in Haiti fell steadily, leading to a corresponding reduction in the capacity of the humanitarian community to manage camps and provide a minimum of water and sanitation services. Notwithstanding the poor conditions, MINUSTAH's Community Violence Reduction teams and the WASH Cluster emphasized that many people in camps were experiencing their first access to clean water and sanitation facilities that were not available in the slums in which they previously lived.

31. The very large majority of camps were established spontaneously on private land in the days and weeks following the earthquake: IOM, the lead agency for Camp Coordination and Camp Management, stated that there were 852 camps on private land (426,966 people), 219 camps on public land (268,592 people) and 79 camps on land of unknown ownership (54,592 people). Dozens of camps on private land were established within the premises of private schools and the April 2010 decision by the Ministry of Education (MENFP) to reopen schools increased pressure on camp inhabitants to leave. Over the course of 2010 and 2011 the trend continued with land owners increasingly trying to expel camps and their inhabitants and regain possession of their land. As of March 2011, more than 100 camps were facing threats of forced closure. Despite numerous requests from the Protection and CCCM Clusters, as well as the Humanitarian Coordinator, in the year following the earthquake, the Government has failed to take any systemic decisions toward meeting its responsibility for the rights to shelter and other support on behalf of persons living in camps. In the absence of State action, the burden of that responsibility is placed primarily on private land-owners, on international humanitarian actors, and on camp inhabitants themselves, while in fact none of these actors has the authority necessary to provide appropriate solutions.

32. From March 2010, MINUSTAH and the UNCT were extremely concerned about the stability in camps and especially the risk of SGBV, warning in a code cable to NYHQ of a human rights and political crisis if the camps were not stabilized. The warning led to two Joint Security Assessments and a major initiative by the peacekeeping and humanitarian community to assure security in camps. However, the scale and complexity of the situation, and the weakness of the State as a counterpart meant that efforts were never more than palliative. With resources stretched thin, the CCCM protection unit has 10 full time staff to cover 1050 camps and joint HNP and UNPOL patrols are able to provide for a permanent presence in seven camps and mobile patrols in 70 sites on an irregular basis. The practical impossibility of having camp management in every single camp or of precise registration of inhabitants has knock on effects on all forms of assistance and protection regarding camp populations, for example, making it very difficult to collect accurate data on SGBV or any other human rights or humanitarian concern.

33. Whether in camps or in host families, through-out the post earthquake period, displaced persons have faced problems of access to employment, health care, food and water, shelter and education.

Women, girls and occasionally boys have experienced a heightened vulnerability to SGBV. The elderly and persons with disabilities have been identified, by organizations such as Help the Aged and Handicap International and by national authorities, as having even more restricted access to services. The human rights concerns affecting people living in camps or host families are often no different from those affecting the wider population, notably the hundreds of thousands of people living in slums.

34. On 22 March 2010, the State held in a Presidential Decree that it would resettle the families affected by the earthquake. Implementation of the Decree and the details on how and to which locations these individuals will be resettled remains unclear one year later. As of March 2011 an estimated 630,000 people remain in sites used for temporary shelter.

E. Right to legal personality

35. Despite efforts to strengthen the civil registry in Haiti, it continues to suffer from serious deficiencies. Access to birth, marriage and death certificates is extremely limited. Between 20% and 40% of children in Haiti are not registered. The lack of legal documentation undermines the right to identity and the exercise of all other human rights. People whose homes were destroyed in the earthquake often also lost essential legal identification and property ownership documentation, while the destruction of government buildings and pre-existing problems severely limit the State's capacity to replace them. The falsification of documents is prevalent in the country and combines with capacity and corruption problems to deny respect for related rights for hundreds of thousands of Haitians.

F. Freedom of thought, conscience and religion; freedom of expression, association and peaceful assembly; and the right to participate in public life and politics

36. There is a lack of citizen participation in public life and politics. This is due to a low level of literacy across the country and a weak government, which does not encourage public dialogue. The exercise of the right to join unions is complicated by restrictive legislation, the economic crisis and weaknesses in conflict resolution mechanisms.

37. Following the postponement of February 2010 legislative and presidential elections, the first round was held in November 2010 when just 26% of the population voted. Multiple errors, violations and fraud - including interference with the right to free association and expression, disruption of the operation of polling booths, apparently falsified ballot papers and vandalism - were reported during the campaign period and on election-day, and the results of the first round were disputed, prompting violent demonstrations across the country. There was little judicial response to reports of abuses. At the request of President Préval, an OAS expert mission reviewed the election process and results and made recommendations that were eventually adopted by the Provisional Electoral Council, opening the path to the holding of the second round of elections in an atmosphere that was freer, as reflected in the estimated 60% of participation.

G. Women's rights

38. Gender inequality and discrimination is prevalent in Haitian society. Structural discrimination against women permeates Haiti's public institutions and laws, constituting a barrier to women's equal treatment under the law and full enjoyment of their rights. This causes women to be less likely to access formal education and professional job opportunities. Similarly, women are under-represented in public and political processes. Overall, women experience a differentiated impact of the socio-economic conditions in the country, which contributes to a greater number of women living in poverty and vulnerable to exploitation.

39. Violence against women has been long-standing in Haiti. Domestic violence continues to be prevalent, despite outreach efforts to change social attitudes. Post-earthquake conditions of mass displacement, inadequate shelter, female single-heads of households, and the loss of livelihoods and economic opportunities further expose women to abuse. There are no comprehensive statistics on SGBV incidents, however the HNP recorded 253 cases, between January and October 2010 and the UNPOL recorded 307 rapes during 2010. For its part, UNICEF recorded 284 cases of sexual violence during 2010, 60% of which involved children. A network of clinics specializing in sexual violence and reproductive health in Port-au-Prince, reportedly treated 239 women between January and September 2010, 58% of whom were children.

40. Sexual violence is both under-reported and under-recorded in Haiti. Specialized services for victims are largely unavailable, especially outside the capital, and there is an absence of specially trained personnel. Victims are often reluctant to seek medical and psychosocial assistance or legal remedies because they lack confidence in government institutions to provide these services, and because of associated social stigma with type of crime, and for fear of threats and reprisals by perpetrators. In cases of marital rape, victims are often dependent on their partners to provide basic needs and therefore refrain from filing a complaint. Reports of discrimination against female complainants have been registered. Only a very small number of perpetrators are prosecuted and convicted, partly due to systemic weaknesses in the administration of justice. The result is a high level of impunity for SGBV crimes.

41. There is a vibrant women's civil society in Haiti; women's organizations and the Ministry on Women's Condition and Women's Rights (MCFDF) work collaboratively. Joint-efforts led to the creation of a special mechanism in 2003, the "Table de Concertation sur la Violence faites aux Femmes" to coordinate efforts to document, monitor and provide basic services to women victims of violence. A number of leading women's rights activists lost their lives in the earthquake however, causing a significant reduction in civil society action since 2010.

H. Children's rights

42. From a systemic perspective on children protection priorities, UNICEF highlights the inadequate funding of social services, failures of coordination between government actors, and the over-centralisation of state services such as the *Institute de Bien-être Social et de Recherche (IBESR)* and the *Ministere des Affaires Sociales et du Travail (MAST)*.

43. ***Children in conflict with the law:*** In practice, children in conflict with the law are regularly detained with adults in Haiti's police and prison facilities and often tried by ordinary courts, in violation of the Children's Act of 7 September 1961. According to the Act: the age of criminal responsibility is 13; children aged 13 to 16 should be held in rehabilitation centers, rather than prisons, if found liable; children between the ages of 16 and 18 may be held in detention, but are subject to special protection; and children's courts should be established in each district. In practice, children as young as age 10 are held in prolonged pre-trial detention for months before seeing a judge. In most cases, children are held in a special detention facility in Port-au-Prince contrary to the 1961 law. There is just one state-run rehabilitation center for children, located in Port-au-Prince, which holds children in conflict with the law, and abandoned and homeless children. The center is severely under-resourced and ill-equipped to respond to the large number of children falling within its mandate. There are just two children's courts, in Port au Prince and Cap Haitian, and children from other regions are expected to be transferred to these courts for legal proceedings, but distance and resource constraints make this difficult, in addition to jurisdictional issues. The provinces lack special holding cells for children. Children suffer as much as adults from the prolonged pretrial detention endemic in the country. For example, L. L. a minor was arrested at age 13 for murder and remained in custody for 39 months before being granted a discharge by the judge in Jeremie.

44. ***Trafficking, exploitation and violence against children:*** Cross-border child trafficking appears to have increased post-earthquake. Weak border controls have made it difficult not only to end the practice but also to have accurate data. The practice of child domestic labor - “restavek” - has been long-standing in Haiti, whereby children from poor families are sent to live with host families ostensibly with the expectation that children will receive care and education in exchange for domestic services, but often leading to effective servitude and without the promised education. Post-earthquake, a greater number of children are thought to be vulnerable to such practices, as well as often-related physical and sexual abuse. While access to services and socio-economic conditions remain so limited in rural areas, children remain highly vulnerable to this form of abuse.

I. Right to work, including the right to fair working conditions and fair wages

45. With an estimated 80% unemployment, access to gainful work is extremely limited, particularly in the formal sector. The majority of Haitians are engaged in the informal sector, either in subsistence farming, herding and fishing in rural areas, or informal commerce and trading. Such a high reliance on the informal economic sector creates tremendous vulnerability because of the lack of stable wages and access to social security and other benefits. Those whose livelihoods are linked to agriculture and farming are particularly susceptible to losses by flooding from the annual hurricane season. Due to structural inequalities and gender-based discrimination, women have less access to the formal job market and rely heavily on informal income generation activities, with consequent income instability. The concept of equal wages is not yet a regular practice in Haiti,

J. Right to development, the right to health and a healthy environment, access to potable water and adequate sanitation

46. Only about 25% of the Haitian population has access to adequate sanitation and less than 50% have access to potable water. Waste management and drainage systems are non functional. Public hospitals and clinics exist in all administrative departments and in many municipalities, but generally lack the medical equipment and medicines to provide necessary treatment. Haiti has a policy of free primary health care, but in practice patients are expected to pay for treatment. Private health facilities exist, but their cost is prohibitive for the majority of the population. Since the outbreak of cholera in October 2010, the right to health, access to safe and clean drinking water and proper sanitation are all exceptionally urgent concerns.

K. Right to an adequate standard of living, including adequate food, clothing, housing, and the right to social security

47. ***Lack of urban planning, problems of land tenure and housing rights:*** 125 out of a total 140 municipalities, lack a local urban, development plan, and there is no common national strategy or policy on urban planning and development for the country. The absence of such plans, in combination with factors such as urban population growth, centralization and land dispossession, has led to the significant development of slum dwellings in the metropolitan area. The absence of standard building regulations has resulted in the irregular issuance of building permits and the construction of buildings which do not meet minimum safety criteria, as was tragically evident following the earthquake.

48. Land administration in Haiti is characterized by irregular practices and a high degree of informality in terms of land tenure, ownership and land registration. There are several different forms of rental arrangements in urban areas, not all of them legally recognized. There is no functional and reliable land registration system, resulting in the absence of formal land title. These factors pose significant challenges in the context of post-earthquake reconstruction. In cases where individuals did hold land title, the failure to record titles presents challenges to verifying land ownership. A majority of displaced

persons who lost their homes on 12 January were renting their homes and many now live in camps where they face expulsion. (see paras 30-34).

49. ***The right to social security and right to an adequate standard of living:*** Weak state institutions and the inability to provide adequate services to the population have resulted in the widespread privatization of social services. This has prevented the free and equal access to basic services of the majority of the population living in conditions of extreme poverty. In the absence of free access to such services, the secondary consequences of the earthquake – impact on employment, income and housing, for example - highlighted the pre-existing lack of social security mechanisms for children, families and communities in Haiti. Progress towards the achievement of MDG1 (eradicating poverty and hunger) have been visibly reduced because of a loss of income and economic opportunities and the corresponding absence of social security protections that could have provided post-earthquake support. Before the earthquake, 75% of the population lived on less than 2 USD per day and two thirds on just 1 USD.

50. Only a small fraction of employers and workers and their families in the formal economic sector benefit from health, accident, maternity and related insurance, while civil servants benefit from *l'assurance vieillesse*. However, payments are paid irregularly and their amount is inadequate. The ***Conseil d'Administration des Organes de Securite Sociale***, responsible for management of social security institutions is not operational, even though its establishment was provided for in national legislation from 14 November 1983. Efforts to strengthen social security must include efforts to increase employment in the formal sector.

L. Right to education and right to participate in the cultural life of the community

51. The majority of children in Haiti did not attend school before the earthquake due to the lack of resources and availability of public school facilities. Indeed, 80% of educational services were delivered by the private sector and Government capacity and role as regulator of the public and private education system was very limited. This situation worsened with the earthquake in which, according to available figures, 3,978 schools were damaged and approximately 1,500 teachers were killed. The earthquake also interrupted the education for nearly 2.5 million children. According to a rapid assessment conducted in displaced persons camps in November 2010, 25% of children in the camps who had attended school before the earthquake were unable to return to school afterwards, mostly for financial reasons. In many cases, children had lost parents who had been responsible for paying school fees. The widespread loss of livelihoods caused by the earthquake left families unable to cover the financial costs of education. Although the Constitution stipulates that primary education is free, in reality, parents must often pay tuition and other indirect costs such as textbooks and uniforms. Despite considerable efforts in 2010, education services remain inadequate, inefficient and suffer from low standards of quality. The lack of legal documentation for a majority of children prevents them from registering for national exams and accessing secondary and tertiary education.

M. Migrants, refugees and asylum seekers

52. ***Deportation of Haitians from the Dominican Republic and Haiti, and border management:*** In the context of long-standing cross-border population movements between the Dominican Republic and Haiti, in 1999 both countries a Protocol to regulate the repatriation of Haitian nationals back to Haiti. With the outbreak of the cholera, forced repatriations of Haitians increased and were sometimes carried out violently and in breach of the procedure provided for in the bilateral agreement. In January 2011, the Ministry of Haitians Living Abroad issued a public statement highlighting irregularities in the deportations and Dominican Republic authorities have since strengthened efforts to comply with the rules set out in the 1999 Protocol.

53. Currently, offices in the four official cross-border points: *Malpasse, Anse-à-Pitre, Belladère and Ouanaminthe* lack the human and material capacity to manage the caseload of undocumented Haitians crossing the border.

III. Major UN initiatives and contributions

54. The following paragraphs provide brief and non-exhaustive reference to some of the main areas of work of the UN in Haiti and that have an impact on the human rights situation. In some areas there have been notable successes, while in others a heavy investment of resources has yielded only minimal results and left little noticeable improvements in respect for human rights.

55. *Coordinated strategy:* The UN Integrated Strategic Framework (ISF) for Haiti, launched in July 2010, is the joint strategy of MINUSTAH and the UN Country Team aims to support the Government's stability and post-reconstruction process. The ISF identifies strategic objectives and the expected results by December 2011. The ISF will be the main reference document for the United Nations system in Haiti, represented by MINUSTAH and 16 resident agencies, funds and programs.

56. *Rights in the humanitarian situation:* The UNCT and international humanitarian organizations manage, under the coordination and facilitation of OCHA, the humanitarian cluster system – WASH, Shelter, Food, Health, Agriculture, Nutrition, Education, Protection, Child Protection, and SGBV - and is working to transfer the remaining responsibilities of the clusters to national mechanisms such as the Tables Sectorielles. The UN integrated team engaged heavily in providing assistance and security to hundreds of thousands of persons in camps throughout 2010 and into 2011, led by IOM's Camp Coordination and Camp Management Cluster.

57. *Rights in the Administration of Justice:* MINUSTAH, with significant contributions from UNDP, UNICEF (with regard to children in conflict with the law) and OHCHR, is maintaining its focus on strengthening the capacity of the police, justice and prison systems, as well as monitoring and investigating human rights violations.

58. *Rights through security and logistical support:* MINUSTAH's UNPOL and military components have organized patrols and static presences across Haiti with a view to preventing crime and violence and supporting the national authorities. A UN integrated team, led by OHCHR, conducted two Joint Security Assessments on the situation of camp inhabitants especially women, and subsequently developed a strategic policing plan. MINUSTAH provides a wide variety of logistical support to the State, ranging from the establishment of a temporary building for the Parliament, to road repair and the transport of State officials in UN aircraft, all with a view to helping the State function better. The Civil Affairs Section works to support regional authorities in their functions. MINUSTAH's support has been requested by the State on decentralization, strengthening waste management capacity, and adoption of building regulations and permits.

59. *Rights in reconstruction and development:* The UN integrated team, with particular assistance from the Special Envoy, the Humanitarian Coordinator, and UNDP, has supported preparation of the Post Disaster Needs Assessment (PDNA) in March 2010 as well as the Action Plan for the rehabilitation and development of Haiti (PARDH) and supported the establishment and operation of the Haiti Interim Reconstruction Commission (HIRC). Support will be provided to the Government's National Strategy for Growth and Reduction Poverty). The integrated team is providing support for the State's sectoral approach such as: an interim plan in the health sector (April 2010 to September 2011); a National Pact on Education for the next 5 years whose main objectives are to provide increased access to basic education for vulnerable groups, improved quality of educational services, and strengthened institutional capacity of MENFP at the national and local levels; and support for an Inter-ministerial Commission on Housing in

October 2010 and for a work plan on the coordination and implementation of activities relating to housing and reconstruction.

60. *Rights to adequate housing and standard of living:* major and repeated efforts have been undertaken to prevent the forced expulsion of people from camps and to secure durable solutions, including by IOM, UNHABITAT, OHCHR, and UNHCR. For example, UN-Habitat has been working with the Interministerial Committee for Territorial Planning (CIAT) on the design of an assessment tool to establish the status of land occupancy in *quartiers d'origine*. At the same time, agencies are providing technical expertise to support the CIAT in improving the legal and institutional framework regulating land tenure. Multiple projects have been aimed at providing temporary housing for families who do not have alternative solutions. Meanwhile MINUSTAH's Community Violence Reduction works within slum communities that experience many of the same human rights problems that exist in camps.

61. *The rule of law:* Conceived in late 2010, a Rule of Law agreement by the UN and Government of Haiti seeks to establish a new partnership in 2011, with the identification of roles and responsibilities of Haitian authorities, relevant segments of society and the international community in upholding the rule of law. In some ways, the redoubled focus on a broadly defined rule of law is a means for the UN to address core rights and institutional processes for which there was inadequate progress in previous years and which remain an essential path to a better future for Haiti.

62. *Women and gender:* Major efforts have been launched – through the State, through civil society and directly with affected populations - to support women and to address SGBV, with contributions from MINUSTAH's gender unit, MINUSTAH's UNPOL, UNFPA, UNHCR, IOM, and OHCHR, among others.

63. *Children:* The integrated team, with leadership from UNICEF and a main role for MINUSTAH's child protection has sustained focus on children's rights. For instance, IOM reunited more than 100 child trafficking victims with families.

IV. Conclusions and recommendations

64. The 12 January 2010 earthquake compounded pre-existing serious human rights concerns, and reversed institutional progress of the previous few years. Respect for economic, social and cultural rights for a large proportion of the population is very poor. The protection of civil and political rights is severely limited by inadequacy in the functioning of State institutions and in the administration of justice. Nevertheless, Haiti functions. Some human rights violations are investigated and prosecuted; some schools and medical facilities provide services. The Government, with the support of the international community, recovered from the near-chaos of the days following the earthquake, and later tackled severe cholera epidemic. This evidence of positive and successful action testifies to the remarkable resilience of Haitians and to the fact that the reconstruction process, and accompanying support from the international community, can make a difference if all actors – the Haitian State, Haitian civil society, the Haitian public, and the international community – commit to making it so.

65. In identifying recommendations regarding the human rights situation in Haiti, the UN's integrated team UNCT/MINUSTAH has taken into consideration a series of factors: the need for the Haitian State to ensure that its existing capacity to respect and protect rights is used more effectively; existing initiatives led by the Haitian State, such as the Haiti Interim Reconstruction Commission; existing initiatives of the UN, such as the Rule of Law agreement and the Integrated Strategic Framework; the evolution of the post-earthquake situation, including from the perspective of donor countries, into a reconstruction and development framework; priority issues such as the administration of justice, the right to adequate

housing, the right to education, and the right to health in the context of a cholera epidemic that will remain a threat for years to come.

66. Recognizing limitations of capacity, the integrated UN team submits the following recommendations for consideration by the Human Rights Council and the Government of Haiti as areas for urgent action to strengthen respect for human rights.

State commitment and accountability

- Use of existing resources and professional accountability: make much more efficient and effective use of existing State resources, ensuring that all State officials meet their professional responsibilities where these impact upon respect for human rights.
- Public accountability: Adopt a “compact” between the Government and the Haitian people, whereby the most senior State officials speak to the public on a regular basis about specific plans and actions to realize human rights, and the progress and challenges encountered.

Administration of justice

- Response to human rights violations: Strengthen the prevention, investigation, prosecution and punish human rights violations, including SGBV crimes, and violations stemming from a failure of officials to fulfill their duties; adopt measures, including more effective border controls, to end trafficking and smuggling of children, and support the child victims of abuse.
- Prisons: strengthen the effectiveness of the DAP, including training and retention of staff; construction, completion or repair of prisons in Miragoane, Aquin and Petit Goave, Hinche and Damassin; increase personnel for the prison in Les Cayes; systemic improvement of prison conditions and access to health care of prisoners, including inmates with mental health problems or disabilities;
- Courts: implement actions to urgently reduce the duration of pre-trial detention and the proportion persons held pre-trial, potentially through creation of a special commission of judges; urgently open juvenile courts and rehabilitation centers and improve respect for the rights of children in conflict with the law; ensure police and judges fulfill their professional responsibilities and, given their very difficult jobs, reward those who do; sanction abuses of judicial and police office; ensure every detainee sees a judge within maximum time limits; increase the effectiveness and capacity of registrars and ensure every detained person has an accurate file; increase the resources available to the juge d’instruction; increase the numbers of judges in the *tribunaux de premiere instance*; appoint the President of the Supreme Court; continue training of judges and police and increasing their number.

Human rights protection in the humanitarian situation, reconstruction and development

- Reconstruction and development processes: ensure that major reconstruction decisions, policies and projects are taken or designed with full consideration to the ways in which they can contribute to realizing human rights and with regard to their impact on human rights.
- The right to health: significantly strengthen the dissemination of information related to the prevention of cholera; take steps to strengthen access to primary health care including services related to sexual health across all communities; strengthen training of medical personnel.
- The right to adequate housing and minimum standard of living: urgently develop a realistic plan to progressively and quickly provide for the right to adequate housing of persons living in camps and slums and ensure this plan is a core part of the reconstruction process; introduce means for poor people to purchase land and to establish undisputed tenure, preferably in or near their districts of origin and ensure housing rental arrangements that are accessible to the poor; determine which camps can acceptably become permanent communities and ensure living standards and safety within these camps are appropriately raised; determine which camps will close and progressively ensure that all remaining camp inhabitants have access to adequate alternative shelter and that no camps are closed without such an option being available and without due advance warning and assistance to camps inhabitants making the

transition; establish mechanisms for communication between the State, landowners and camp inhabitants to respond to disputes and offer compensation to landowners.

- Education: urgently take measureable steps to increase access to education, including through progressively free primary education, and increase literacy for all Haitians, including vocational training.
- Employment: ensure that the reconstruction process significantly increases employment and State income tax receipts, and provide for safer work conditions, especially for urban manual laborers, and for minimum health and accident insurance programs; consider micro-credit programs.
- Social security: implement existing legislative provisions regarding the management and provision of social security, and devote greater financial resources to the most fundamental social services and promote decentralisation.
- Women: strengthen national data collection and public information campaigns against SGBV;
- Children: ensure inclusion of a child rights perspective in reconstruction and development decisions.

Strengthening national human rights capacity

- Ratification of international instruments: ratify outstanding international instruments listed in this report (para 5).
- National legislation: continue ongoing reforms for the institution of CPB and draft laws to better protect women and children and persons with disabilities.
- State institutions: strengthen the capacity of the SEIPH and MCFDF with a view to greater protection of the rights of women and children.
- Independent institutions: continue to provide support for the OPC and consider how best to build a National Human Rights Institution in accordance with the Paris Principles.
- Civil society and public participation: involved civil society whenever possible in the reconstruction process and in other recommendations listed in this report; consider ways of increasing the institutional knowledge and capacity of civil society organizations.