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Agenda item 10

### Technical assistance and capacity-building

## Report of the independent expert on the situation of human rights in Haiti, Michel Forst

### *Summary*

In the present report, the independent expert emphasizes that the rule of law, in the broadest sense of the term, is a critical element that cuts across all aspects of development in Haiti.

On civil and political rights, the independent expert describes the progress made and the obstacles encountered in regard to elections, reform of the justice system, the Legal Service Training College, and the fight against corruption. He then analyses the state of the prison system, the use of extended pretrial detention and the police service. He also reviews the situation of children, particularly with regard to adoption, the “restavek” and victims of trafficking, in order to draw attention to the need for more stringent laws and for juvenile courts.

The independent expert then turns to the question of economic, social and cultural rights in Haiti, makes some specific recommendations about the rights to food, education and health care, and discusses the cholera issue and the situation in the camps.

Finally, the independent expert proposes that a mechanism for the progressive transfer of international protection functions to the Haitian authorities should be established based on action in four key areas: the appointment of an interministerial delegate for the rule of law; the granting of stronger powers to the Office of the Ombudsperson (Office de la Protection du Citoyen) and to the Civil Defence Department (Direction de la Protection Civile); and the establishment of a human rights bureau in the centre of Port-au-Prince.

## Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction .....	1–9	1
II. Rule of law .....	10–15	3
III. Civil and political rights .....	16–76	5
A. Elections .....	16–21	5
B. The justice system.....	22–40	6
C. Prison system and extended pretrial detention.....	41–54	8
D. The police .....	55–65	10
E. Situation of children .....	66–73	12
F. Office of the Ombudsperson.....	74–76	14
IV. Economic and social rights and the humanitarian situation .....	77–92	14
A. Right to food and to food security .....	78–82	15
B. Right to education.....	83–84	15
C. Right to health care .....	85–87	16
D. Cholera.....	88–89	16
E. Situation in the camps.....	90–92	17
V. Protection .....	93–98	17
VI. Recommendations .....	99–110	18

## I. Introduction

1. In accordance with the mandate established by the Commission on Human Rights in its resolution 1995/70 and with the statement<sup>1</sup> of the President of the Human Rights Council (“the Council”), the Council invited the independent expert to submit his report at the twentieth session, to pursue his mission in Haiti in the near future, and to report to the Council thereon at its twenty-second session.

2. The present report covers the period from June 2011 to December 2012 and contains a list of recommendations addressed to the Government of Haiti and the international community.

3. The independent expert undertook his latest mission to Haiti from 25 November to 1 December 2012. He stayed in Port-au-Prince and travelled to Cap-Haïtien. He expresses his gratitude to the many Haitians whom he met both on his mission and in Paris and Geneva.

4. The independent expert thanks the Haitian authorities, which enabled him to carry out his mission under the best possible conditions. He thanks President Michel Martelly, Prime Minister Laurent Lamothe and the other members of the Government and the Parliament with whom he was able to meet for the frankness and quality of their comments. He welcomes their decision to appoint a minister for human rights and action to address extreme poverty, which responds to one of his recommendations concerning the need to mainstream human rights in Haiti.

5. The independent expert also met with Mariano Fernández, the Special Representative of the Secretary-General and Head of the United Nations Stabilization Mission in Haiti (MINUSTAH), and with his deputies, Kevin Kennedy and Nigel Fischer. He wishes to thank all the members of their team who provided him with effective support.

6. The independent expert also thanks the officials of the main institutions of the United Nations and the Organization of American States (OAS) whom he was able to meet and the members of the diplomatic corps in Port-au-Prince and New York with whom he exchanged views on the role and activities of the international community in Haiti.

7. The independent expert wishes once again to express his gratitude to the United Nations staff members who worked with him and shared information and their experience with him. He pays tribute to their professionalism, determination and courage. The members of the Human Rights Section and Justice Section of MINUSTAH lent him unfailing support, both in Port-au-Prince and during his travels, and shared with him their assessment of the situation and of progress made with regard to the ongoing reforms. The independent expert would like to state that those two sections are invaluable partners in the execution of the mission entrusted to him by the Council.

8. In 2012, the population was hit hard once again by Cyclone Sandy, whose impact exacerbated the country’s already highly precarious living conditions, making the link between insecurity and extreme poverty, the main cause of violence against the poorest of the poor, even more evident. The population of Haiti is now waiting for a new phase to begin in the life of the country, a phase of reconstruction, economic growth and the establishment of the rule of law. “Eight million Haitians, out of an estimated population of 10 million, live without electricity. Five million cannot read or write and are in the dark both day and night. Eight Haitians out of every 10 are living on less than \$2 a day. Two per cent of Haitians control 69 per cent of the country’s wealth. With a working population that

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<sup>1</sup> A/HRC/PRST/19/2.

is put at 4.2 million, fewer than 200,000 have regular formal work. At least 84 per cent of university graduates live abroad.”<sup>2</sup>

9. Although, in his previous report, the independent expert expressed satisfaction with the steps taken to institute the main reforms envisaged with respect to the rule of law, the picture that he draws in the present report is more mixed. Admittedly, from a formal point of view, progress has been achieved thanks to the major social programmes launched by the President and the Prime Minister to tackle extreme poverty.<sup>3</sup> In practice, however, the situation seems to have stalled for many reasons, including delays in disbursements of funds pledged by the international community.

## II. Rule of law

10. Respect for the rule of law is a key factor in human security, but human security is not confined to the restoration of the rule of law. The establishment of the rule of law is posited, first and foremost, on the establishment of a State in which laws are proposed by the Government, voted on by parliament and implemented by the executive under parliamentary scrutiny.

11. The establishment of the rule of law cannot be reduced to reforming judicial institutions, the criminal justice system, and the police or prison service so as to pave the way for the enjoyment and exercise of civil and political rights.

12. The establishment of the rule of law also means ensuring the proper functioning of public services and of the institutions that are required not only to safeguard persons and property but also to enable all citizens to exercise all the rights set forth in the International Covenant on Economic, Social and Cultural Rights, which the Haitian Parliament has ratified. By making this political gesture, the Government of Michel Martelly has sent a strong signal of the determination and commitment of the Government and the Parliament to improving socioeconomic conditions in the country.

13. This holistic approach should inform the choices made by international and bilateral institutions when deciding on cooperation and technical assistance programmes and should thus gradually lead to a state of affairs in which everyone is guaranteed access not only to justice but also to education, a health-care system, drinking water and sanitation services, adequate and decent housing, employment income, and training.

14. It was for this reason too that, in his meetings with them, the independent expert stressed that President Martelly, the Prime Minister and other Government ministers should make specific reference to the rule of law in their programme documents. Each minister holds part of the puzzle of what the rule of law should ultimately look like in Haiti, but ministers do not really see what their role is in establishing the rule of law.

15. For that reason, and also with a view to developing a coherent approach to the establishment of the rule of law among all ministries, the independent expert proposed that steps should be taken to appoint an interministerial delegate or a deputy prime minister with

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<sup>2</sup> Message of President Martelly on the general situation of the country, delivered at the opening of Parliament on 9 January 2012 ([www.parlementhaitien.ht](http://www.parlementhaitien.ht)).

<sup>3</sup> Several social welfare programmes (Ti Manman Cheri, Aba Grangou, Kore Ledikasyon, Kore ekonomi familyal) for Haitians living below the poverty line have been incorporated into the “EDE PÈP” strategic programme. The programme provides for: cash transfers to women heads of household, students, older persons and persons with disabilities; food assistance for the extremely poor and for schoolchildren; free education for children and literacy training for adults; and, lastly, support for economic revitalization in rural and urban areas.

responsibility for the rule of law. Reporting directly to the Prime Minister, such a person would not take the place of the Prime Minister but would assume sole responsibility for promoting and coordinating the activities of ministries in this domain and putting the different pieces of the puzzle together in order to guarantee, over the long term, the establishment of a sustainable rule of law system in Haiti.

### **III. Civil and political rights**

#### **A. Elections**

16. The independent expert welcomes the political commitment shown by the Special Representative of the Secretary-General in Haiti, Mariano Fernández, and by his deputies to helping President Martelly as he took what were sometimes difficult decisions in the months following his election. At a time when voices are again calling for the withdrawal of MINUSTAH, political stability and the proper functioning of the three powers of State must be assured, if the authorities are to assume the functions of the international entities present in Haiti over time.

17. In May 2011, the mandates of 10 senators who had been elected in 2006 expired, depriving the Senate of a third of its members and making it difficult to secure the stable majority required to vote through the vital reforms proposed by President Martelly. Moreover, the Government's decision to replace almost all the 120 mayors elected in 2006, whose mandates had long expired, was met with bafflement and incomprehension on the part of the national and international communities.

18. Since the election, the international community has stepped up its efforts to complete the institution-building process in Haiti and to establish the standing electoral council provided for in the 1987 Constitution. Indeed, until then, elections had been organized by a temporary electoral council that was subject to constant denigration and attacks on its credibility and suspected of political manipulation and manoeuvring.

19. In August 2012, President Michel Martelly officially nominated and appointed six of the nine members of the Standing Electoral Council, three representing the executive and three the High Council of the Judiciary. The process for designating the three members of the judiciary, initially undertaken by four out of nine members of the High Council of the Judiciary, was deemed to have been irregular and this prompted two members of the Council to resign.

20. On 24 December 2012, representatives of the legislature and the executive signed an agreement on the establishment of a new transitional college of the Standing Electoral Council to organize the upcoming by-elections and municipal and local elections. Like the Standing Electoral Council, the Transitional College of the Standing Electoral Council will be comprised of nine counsellors, nominated respectively by the legislature, the executive and the High Council of the Judiciary. On 29 December, the High Council of the Judiciary confirmed that its three members of the Transitional College would be the three persons that it designated during the second round of balloting.

21. It is not for the independent expert to take a position on a political agreement between the Government and the Parliament. Whatever the formula chosen, however, the independent expert recommends that it should reflect the requirements of the Constitution as closely as possible and rapidly lead to the holding of transparent elections, under international scrutiny, to fill all the vacant seats in the lower house and facilitate the holding of local elections and thus the restoration of the constitutional order.

## B. The justice system

22. **Reform of the justice system.** Reform of the justice system has been a central theme of the independent expert's reports for many years. During his most recent mission, the independent expert reviewed the action taken to follow up on the recommendations on this matter contained in his previous reports.

23. Since the adoption of the three-year justice reform plan outlined in the National Growth and Poverty Reduction Strategy Paper and of the three laws on judicial independence that were passed in December 2007, real progress has been achieved, as detailed in successive reports by the independent expert.

24. President Martelly has made the goal of strengthening the rule of law one of his priorities. The independent expert publicly welcomed the President's decision to put an end to an eight-year institutional vacuum by appointing Judge Jean Anel Alexis Joseph as President of the Court of Cassation on 5 October 2011 and at the same time appointing the Judge and the Government Commissioner of the Court. On 3 July 2012, five years after the promulgation of the law providing for its establishment, the High Council of the Judiciary was finally established by the Government, and judicial power was thus separated from executive power for the first time ever.

25. The independent expert recalls that this was a cornerstone of reform of the Haitian justice system and a key to restoring conditions conducive to sustainable development in Haiti. Indeed, the President of the Court of Cassation presides over both the High Council of the Judiciary and the Governing Board of the Legal Service Training College. Two weeks after being appointed, however, two members of the High Council of the Judiciary resigned, thereby jeopardizing the reform's chances of success.

26. During his meetings with the Haitian authorities, the independent expert again drew attention to the high hopes that the Haitian population places in progressive reform of the justice system. He recalls the importance of beginning the process upstream by providing the High Council of the Judiciary with a budget and with human and material resources that will enable it to function properly and to play its crucial role in the recruitment and certification of Haitian judges.

27. The justice system is still broadly dysfunctional and its main weaknesses are amply documented in numerous reports by experts and civil society organizations. While the figures show that genuine progress has been made in the lower courts and the appeal or habeas corpus courts, there is still a long way to go before the justice system is working as it should be.

28. Corruption, excessively long procedures, prevarication, misuse of procedures provided for under the Penal Code and the Criminal Code and ignorance of alternatives to custodial penalties: the ills are well known, as are the remedies. The independent expert can only recall the many recommendations set forth in his previous reports on this subject and ask that they be put into effect.

29. During his recent visits, the independent expert has been struck by reports from judges who deal with serious crimes that they fear being subjected to reprisals by defendants in the cases before them. Several judges reported that they were unable to dispense justice calmly, because of explicit threats made against them or their families. The independent expert recommends that judges, magistrates and witnesses in serious crime cases be afforded special protection.

30. Regrettably, the practice of appointing or removing judges to advance partisan or political ends, which observers and civil society have denounced on a regular basis,

continues unabated. Several cases<sup>4</sup> were drawn to the independent expert's attention during his most recent visit.

31. Civil society organizations and the Office of the Ombudsperson continue to condemn the practice whereby persons are illegally or arbitrarily arrested or detained at the request of Government Commissioners. In a State governed by the rule of law, it is unconscionable that law enforcement officials should feel that they have permission to flout the law and to behave in this manner while the judiciary stands idly. It is yet another sign of the disarray in the judicial system, given the prevailing climate of impunity.

32. The independent expert suggests that the Minister of Justice and Public Security send a circular to the Government Commissioners to remind them of the penal policy that he wishes to see applied and that he also proceeds forthwith to establish a judicial inspectorate to assess whether or not the criminal justice system is working.

33. **The Legal Service Training College.** The Legal Service Training College is still having difficulty operating, notwithstanding the significant support provided by the international community. In May 2012, President Martelly took part in the degree awards ceremony for the fourth group of students to graduate as judges in Haiti. What added to the importance and symbolism of the ceremony was the fact that the group was the first to graduate since the adoption of the 2007 law providing for the establishment of the Legal Service Training College as a legal entity. The 20 judges had studied theory and received practical training at the Legal Service Training College in France before continuing with their training in Port-au-Prince. This important phase should be followed by other graduations, but the independent expert should like to point out that there is a two-track system for recruiting judges in Haiti: the entrance competition for the Legal Service Training College, and probationary periods. The Haitian justice system would gain in strength if these derogations from the law on recruitment through the Legal Service Training College were to be eliminated.

34. **Combating corruption.** On each of his missions, the independent expert has been struck by the corrosive effect that corruption has had on the country's judicial institutions. He continues to receive numerous reports which show that corruption remains rife at all levels. The independent expert recalls that anti-corruption measures have been included in the action plans of the Ministry of Justice and Public Security for years and that an evaluation of how they are implemented would undoubtedly constitute a significant step forward.

35. Successive speeches first by President Préval and then by President Martelly seemed to have sent a clear signal of renewed political will to make the fight against corruption a strategic objective. The recent operations conducted in Port-au-Prince in June 2012 clearly demonstrate that when the political will is there, results will immediately follow. The independent expert welcomes the commitment made to building the institutional capacity of the police and the justice system for investigating transnational crimes, corruption and political crimes. He also welcomes the allocation of appropriate human and financial resources to the Anti-Corruption Unit and the Central Financial Intelligence Unit. This is precisely the kind of signal that the international community wants to see in the fight against corruption.

36. The independent expert furthermore recalls that Members of Parliament and civil servants are required to declare their assets. However, since the promulgation of the law on

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<sup>4</sup> For example, the case of an investigating judge believed to have been appointed solely for the purpose of releasing Calixte Valentin, who was implicated in the murder of Octanol Derissaint, a young merchant from Fonds-Parisien.

the declaration of assets in 2008, the Anti-Corruption Unit has registered only 562 civil servants as having completed the formalities required under that law.<sup>5</sup>

37. As for case handling, the independent expert recalls that the prompt establishment of specialized chambers to deal with certain serious crimes in which political factors come into play and with economic and financial crimes would undoubtedly be one way of tackling corruption more effectively. These specialized chambers, made up of judges supported by qualified and capable investigators, would handle crimes of kidnapping and aggravated abduction, serious offences with political overtones and other grave human rights violations. They would also be responsible for dealing with economic and financial crimes such as concealment of assets and money-laundering.

38. **Popular justice.** Numerous cases of public lynchings are reported on a regular basis. The increase in the number of such cases reflects a lack of confidence in the capacities of the police and justice system: these acts of violence and lynchings are not investigated and the perpetrators go unpunished. The independent expert is aware that prosecuting the perpetrators is often difficult, since they are anonymous crowds and the public are often reluctant to reveal their identities. However, investigations must be conducted and a clear signal must be sent by the authorities at the highest level that no one in a State governed by the rule of law is entitled to take the law into his or her own hands.

39. The independent expert welcomes the prevention-oriented activities undertaken by MINUSTAH on the ground to draw attention to the importance of the right to life and the role of the judiciary. He recommends that donors subsidize training to roll out these activities nationwide.

40. **Legal aid.** The national legal aid system continues to function through legal aid bureaux in several jurisdictions, either with the assistance of the Port-au-Prince Bar or with international funding. In an earlier report,<sup>6</sup> the independent expert drew the attention of the Human Rights Council to the fragility of the system. The system could not have been put in place without funding from the International Legal Assistance Consortium, which has been temporarily replaced by the Union of South American Nations (UNASUR)<sup>7</sup> and the Community Violence Reduction Section. It is imperative that ongoing support for this system, under which assistance is offered to many parties at law, should be provided pending the establishment, in law, of a proper national legal aid system under the supervision of the Haitian State.

### C. Prison system and extended pretrial detention

41. One issue that is constantly being raised is that of the close link between extended pretrial detention and prison overcrowding. On each of his visits, the independent expert spends time in detention facilities, police stations and prisons, but without seeing any real improvement in the situation.

42. In December 2012, there were 8,860 persons in total in the country's 17 prisons, as compared with 1,935 in 2004. With regard to space, the Government has proposed a plan to create 5,700 new places in prisons. These places will be needed, given the marked increase in the size of the prison population.

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<sup>5</sup> Statement by the Director of the Anti-Corruption Unit, Antoine Atouriste, broadcast on Radio Métropole on 26 June 2012.

<sup>6</sup> A/HRC/17/42, para. 47.

<sup>7</sup> Union de Naciones Suramericanas.

43. The space allocated to convicted and remand prisoners is 60 cm<sup>2</sup> on average, and only 34 cm<sup>2</sup> in Anse Prison in Vaux. The International Committee of the Red Cross (ICRC) recommends that, in very grave crisis situations, the floor space available to each detainee should be at least 2 m<sup>2</sup>.<sup>8</sup> Despite the efforts of the international community and of ICRC, to which the independent expert should like to pay special homage, prisons in Haiti are still places where cruel, inhuman and degrading conditions obtain. Prisons should not be places of suffering but rather places of deprivation of liberty in which all rights must be afforded with, of course, the exception of the freedom to come and go.

44. Hygiene and health-care conditions are generally very poor, despite ICRC assistance and the refurbishments carried out at some prisons. Moreover, because of the small number of doctors and nurses, access to care, where it exists, is limited to symptomatic treatment of the most common illnesses. The independent expert recommends that prisons be supplied with sufficient stocks of medicines, drugs and food to guarantee prisoners their right of access to health care and food.

45. At the time of writing, work on the construction of Hinche prison had resumed after being blocked for a long time for absurd administrative and budgetary reasons: the construction budget had been allocated for other purposes.

46. The recent opening of the Croix des Bouquets prison offers a glimmer of hope and an insight into what a prison system established on the basis of respect for the relevant international standards could look like in Haiti. The independent expert thanks the donors, first and foremost Canada, for this initiative, and once more recalls that prison should be the place where rehabilitation of convicted and remand prisoners begins.

47. The construction of the Croix des Bouquets prison is clearly a step forward, but it cannot in and of itself provide a satisfactory response to the country's immense needs. The institution is well built and well designed. However, now that it has just been inaugurated, it must be said that without a special effort to ensure that it is run properly, all the hopes placed in it risk being disappointed, due to inadequate funding. The resources available in terms of staffing, security installations and budgetary allocations are insufficient at present to allow the prison to run according to the standards that were set.

48. The independent expert shared with the many Haitians and international representatives that he met the recommendation that, even if the 2012–2013 budget does not contain a specific allocation for running the prison, fresh resources, perhaps even budgetary support, should be provided to allow it to function as a model institution. The independent expert should like to sound a note of caution to the international community, which is preparing to finance the construction of several prisons, because a failure to complete the Croix des Bouquet programme as it was originally conceived will only disappoint the hope that this institution will help progressively to raise prison standards in Haiti.

49. Prison conditions, then, continue to amount to cruel, inhuman and degrading treatment within the meaning of the Convention against Torture. The independent expert recommends that the State sign the Convention and ratify its optional protocol at the same time. The Office of the Ombudsperson, which is also active in prisons, in Port-au-Prince and the departments of Haiti could then be designated as a national mechanism for the prevention of torture. In that capacity, it could conduct visits to detention facilities. The independent expert suggests that the Haitian authorities reflect upon this matter, in close

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<sup>8</sup> ICRC: "Water, sanitation, hygiene and habitat in prisons" (2004), p. 19.

cooperation with the Association for the Prevention of Torture, which is recognized internationally as having genuine expertise in this area.<sup>9</sup>

50. The independent expert recalls his request that the Government amend the 1987 Constitution with a view to detaching the prison service from the National Police and having it report directly to the Ministry of Justice and Public Security.

51. A framework law on prisons, drawn up according to a rights-based approach, would show what a reformed prison system in Haiti should look like and would establish standards in regard to health care, meals and family visiting rights.

52. All the studies show that if the prisons are overcrowded, it is largely because of high rates of extended pretrial detention. Pretrial detention rates vary greatly from one jurisdiction to another, notwithstanding the work done by the boards that release prisoners who have not been tried or who have served their sentence. The disparity between Port-au-Prince and the departments is particularly striking. Ninety per cent of prisoners in Port-au-Prince are in pretrial detention, as compared with only 57 per cent in the regions. The independent expert recalls that he would like a more in-depth study to be funded with the aim of devising solutions for each individual jurisdiction rather than making generalized recommendations that do not address the variety of situations encountered.

53. The judiciary should consider different ways of dealing with imprisonment by, for example, looking at three different phases: the pre-sentencing (pre-judgement) phase; the sentencing phase (when the judgement is issued); and, lastly, the post-sentencing phase when the person is in prison. Thought needs to be given to each phase and to solutions which either exist already but are not applied or that do not exist in Haiti but work well elsewhere. The independent expert considers it very important that an in-depth study of criminal code reform should be conducted, which could include a series of measures for implementation.

54. In any event, resolving the problem of extended pretrial detention calls, firstly, for: a more robust response to the problem of corruption in the judiciary; better time management for judges and prosecutors; more proactive application of all the provisions of the Code of Criminal Procedure, including habeas corpus provisions; and a revision of the Penal Code so as to introduce new procedures such as summary hearings and alternatives to deprivation of liberty such as cautions and community service orders.

#### **D. The police**

55. Although reforms of the police service have been under way for years, grave concerns about the institution persist. Regrettably, the case of Serge Demosthene, who was tortured to death at Pétionville police station in an attempt to force him to confess to the murder of Guiteau Toussaint, is not an isolated incident. Weekly reports from the MINUSTAH Human Rights Section detail cases of illegal and arbitrary police arrests, extended pretrial detention at certain police headquarters or stations, refusal to issue certificates in cases of rape, police harassment and ill-treatment, and police brutality.

56. This catalogue of reports shows that there is still an unhealthy climate which the new Office of the Inspector-General of the National Police will need to tackle. The security situation has deteriorated; the number of people who are shot or stabbed to death is shocking; and a climate of fear has returned. That those who infringe fundamental rights enjoy impunity can only favour the return or resurgence of violence. There is a need for

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<sup>9</sup> <http://www.apr.ch/en/opcat>.

tough measures, clear signals and uncompromising decisions to show that the Haitian authorities are determined to take decisive action on this issue.

57. During meetings with the Prime Minister, the independent expert again stated that he welcomed the support given to the Office of the Inspector-General and the fact that six inspectors general had been appointed. At the same time, he noted that the Office still reports to the Director-General of the National Police. The adoption of a new police law would rectify this situation and allow for the Office to be placed under the authority of the Ministry of Justice and Public Security, to which it would report directly.

58. Reform of the Haitian police service remains a key concern for the international community, and the independent expert has made this issue a priority both in his work in Port-au-Prince and in his meetings with the Group of Friends of Haiti in New York.

59. In each of its resolutions on the renewal of the MINUSTAH mandate, the Security Council stresses the importance of reform of the National Police (HNP), which will be one of the factors in the decision to withdraw MINUSTAH from the country. The last time that the Council considered the report of the Secretary-General on the situation in Haiti,<sup>10</sup> the decision was taken to support the “objectives and commitments reflected in the joint drafting of 2012–2016 HNP Development Plan”.<sup>11</sup> The Security Council also underlined “the need to ensure adequate budgetary support from the Government of Haiti and donors in order to achieve a minimum of 15,000 fully operational serving police officers by 2016, adequate logistic and administrative capacity, accountability and respect for human rights and rule of law, a robust vetting process, enhanced recruitment procedures and training, with an emphasis on specialized units”.<sup>12</sup>

60. The reform plan adopted by the Haitian Government and negotiated with MINUSTAH is very ambitious but can meet the challenges of enabling Haiti to address all its security needs and of meeting a target of at least 15,000 fully operational police officers by 2016. The independent expert welcomes the decision taken in the framework of the strategy to deploy newly trained police officers across the country and to ensure that all 570 communal sections are covered by the police deployment plan.

61. **Police vetting.** In his previous reports, the independent expert frequently stressed the importance of completing the vetting process, which is a certification procedure undertaken jointly by the National Police and the United Nations police. The independent expert expressed concern that the Haitian Government might shrink from taking the difficult and sometimes politically dangerous decision to dismiss police officers who do not meet democratic policing standards. He therefore welcomes the decision of the Haitian authorities to dismiss 79 police officers found guilty of corruption,<sup>13</sup> including several senior officers and police chief inspectors.<sup>14</sup> The vetting process must be brought to a successful conclusion, however. This would send a strong and clear signal to Haitian police officers of all ranks that their conduct must be exemplary. The certification process should

<sup>10</sup> S/2012/678.

<sup>11</sup> S/2012/743.

<sup>12</sup> Ibid.

<sup>13</sup> The independent expert obtained a copy of the documents explaining the grounds for the dismissal of these 79 officers: “False testimony and use of false testimony; abandonment of post; armed robbery; assault; rape; participation in drug trafficking; and presentation of falsified secondary school certificates (baccalauréat), among others.”

<sup>14</sup> Although the independent expert welcomes the decision taken by the country’s highest authorities, he regrets that the list of names of the police officers who were dismissed was published in the press before the decision was communicated to some of the police officers concerned.

be made a permanent arrangement to allow the Haitian population to regain trust in the national police.

62. The independent expert recommends that an independent study be carried out to assess the vetting process in Haiti with a view to providing the information to the United Nations and sharing the lessons learned with other peacekeeping missions that could be entrusted with the same task.

63. **Dysfunctions in the police service.** Aside from the steps being taken to remove unwanted elements from the service, the attention of the independent expert was drawn to ongoing dysfunctions and rights violations in some units and departments of the National Police. For example, some police stations are reportedly run by police inspectors, while dozens of police chiefs have reportedly not been assigned to any station.<sup>15</sup> The Inspectorate General of the National Police, which was set up in 2004 to police the police, is reportedly not functioning in conformity with the requirements of article 39 of the law concerning the establishment, organization and functioning of the National Police.<sup>16</sup>

64. **Community Violence Reduction Programme.** This programme, which was set up to deal with endemic violence in locations including Cité Soleil and Martissant, was successfully carried out by MINUSTAH and should continue to play a vital role in bringing stability and security to the country. Its purpose is to create pockets of economic growth in order to allow members of gangs, particularly young men and women, to escape from the cycle of gang violence. In 2011, the first Youth Placement and Advice Offices were established in Port-au-Prince and Cap-Haïtien. The independent expert regrets that it was not possible to build a sustainable partnership with the former National Disarmament, Demobilization and Reintegration Commission. According to officials, 70 per cent of staff members are young Haitians who are well-trained and can be deployed to serve as a kind of early warning mechanism for problems concerning violence and security.

65. The independent expert recommends that work be pursued and developed by the National Observatory on Violence and Crime set up and supported by the State University of Haiti, with assistance from the International Centre for the Prevention of Crime.<sup>17</sup>

## E. Situation of children

66. In June 2012, as part of the activities to mark Children's Rights Day in Haiti, the Haitian National Assembly ratified the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in respect of Inter-country Adoption. The law on accession to the Convention, which was voted through by the lower chamber and submitted to the Senate, has since been revised under the leadership of the Institut du Bien-Etre Social et de Recherches (Social Welfare and Research Institute) (IBESR), with support from the United Nations Children's Fund (UNICEF) and MINUSTAH, so that it can be brought into line with the Hague Convention. IBESR submitted the final version to the Senate on 20 November 2012, but the text was still before the Senate at the time of writing.

67. The independent expert welcomes the fact that all adoption procedures have now been centralized under the authority of IBESR. This should put an end to the practice whereby children are selected directly from orphanages and crèches by adoptive parents. It

<sup>15</sup> Letter dated 7 September 2012 from the National Human Rights Defence Network addressed to the Director-General of the National Police.

<sup>16</sup> Ibid.

<sup>17</sup> The International Centre for the Prevention of Crime is a non-governmental organization based in Montreal. It works exclusively on crime prevention and community security issues.

should also end the bidding wars that take place in adoption in Haiti. Moreover, the fact that a list of children for adoption has been prepared by a central authority should mean an end to the practice whereby parents who have been misled by children's homes or who simply consider themselves too poor to raise their own children give up their children for intercountry adoption. The new law should result in adoption being used only as a last resort and in order to protect a child.

68. Since March 2012, several children's organizations<sup>18</sup> have noted a fresh surge in the number of "restavek" (child domestic workers) who leave the place where they are living to go and live on the street, or who risk being subjected to violence, exploitation or other forms of abuse. In recent years, there appears to have been a marked shift in terms of the kinds of families that receive "restavek". In the past, host families were relatively well off; now they tend to be poorer families in which the children are at greater risk.

69. The pattern of geographical distribution also appears to have changed: traditionally, children from rural areas were sent to major cities (Port-au-Prince or Cap-Haïtien). Now, however, an increasing number are being sent to small provincial towns. The independent expert would like to see a proper study of these changes carried out in order to identify better ways of combating the phenomenon. He encourages the Minister of Social Affairs and Labour to address this issue in the labour code that is being revised.

70. According to several organizations that work at the border with the Dominican Republic,<sup>19</sup> crossborder trafficking of children for the purposes of sexual exploitation and forced labour is still being carried out, particularly in the Malpasse region. The independent expert recommends that steps be taken to tighten up the laws and procedures, and that IBESR and the National Council for Children and Adolescents (CONANI, Dominican Republic) formalize the relationships that they have already established with a view to the adoption of a bilateral framework for combating this phenomenon.

71. The Government submitted a bill to Parliament on combating human trafficking, particularly trafficking of women and children, in response to the requirements of the Palermo Protocol, which Haiti has ratified. If the bill were to become law, it would make child trafficking a criminal offence; the police often have to release suspected traffickers because there is no such offence in the Penal Code. Hitherto, the police have had to treat trafficking as abduction, which is often difficult to prove when the biological parents have voluntarily handed the child over to the accused. The independent expert recommends that these laws be published expeditiously in the *Moniteur* (the official gazette of the Republic of Haiti) and widely disseminated throughout the country.

72. The absence of a governmental strategy on juvenile justice weakens the impact of the round table set up to discuss the matter. The independent expert recommends that a proper children's code be established that is broader than a simple law and that focuses on vulnerable children.

73. Although the juvenile courts in Port-au-Prince and Cap-Haïtien do work, hearings are still held on an irregular basis. Some 82 per cent of children in prison are being held in pretrial detention, but the lack of rapid processing is not justified by the total number of children in conflict with the law (fewer than 250). While it is recommended that all juvenile cases be dealt with expeditiously, the way that the chief justice of the court of first instance distributes cases does not appear to give priority to children. Moreover, some juvenile judges have a large workload and only carry out this function as a secondary activity. The

<sup>18</sup> Interviews with UNICEF and World Vision Canada.

<sup>19</sup> World Vision Canada, Groupe d'Appui aux Rapatriés et Réfugiés (Returnee and Refugee Support Group) (GARR).

independent expert recommends that juvenile judges be appointed where there are no juvenile courts so as to avert a situation where justices of the peace, who do not always understand juvenile justice procedures, continue to place children in detention for lesser, non-repeat offences.

## **F. Office of the Ombudsperson**

74. The Office of the Ombudsperson is now a well established institution in Haiti and the value of its work is recognized across the entire country. The independent expert thanks the international community and the international organizations that have allocated what are often large budgets to support and enhance the effectiveness of the Office's work. He also welcomes the support provided by the International Organization of la Francophonie (OIF) jointly with the Office of the United Nations High Commissioner for Human Rights (OHCHR) in the preparation of an organic law to revise the terms of reference of the Office of the Ombudsperson in conformity with the Paris Principles. Florence Elie, the Ombudsperson, has the necessary skills, authority and experience to make this national human rights institution a haven for protection against abuses and infringements of human rights.

75. The financial and human resources provided and the establishment of regional bureaux to make the institution more accessible to the population, even if the Cap-Haïtien branch does not yet have any office premises, suggest that, over time, particularly in anticipation of the departure of MINUSTAH, Haitian women and men, wherever they may be in the country, will be able to turn to the Ombudsperson should they encounter cases of maladministration or flagrant violations of their fundamental human rights.

76. The independent expert recommends that the Office of the Ombudsperson approach the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights to obtain formal recognition of its status as being in conformity with the Paris Principles.<sup>20</sup> In time, the Office of the Ombudsperson must become the national human rights mechanism in Haiti, a mechanism for seeking redress against maladministration, the national mechanism for the prevention of torture mentioned above, and, perhaps, the national protection mechanism envisaged in article 33 of the Convention on the Rights of Persons with Disabilities. This would be all the more important if the Office were to be designated as a national protection mechanism under the Optional Protocol to the Convention against Torture when Haiti ratifies it.

## **IV. Economic and social rights and the humanitarian situation**

77. In accordance with the statement of the President of the Human Rights Council,<sup>21</sup> and to meet the growing demand in Haiti for the inclusion of economic and social rights in the rule of law machinery, the independent expert undertook a study which highlighted the importance of economic and social rights for ending the crisis in Haiti. This point is reaffirmed unambiguously in the Security Council resolution under which the MINUSTAH mandate was renewed.<sup>22</sup>

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<sup>20</sup> [http://www.unhchr.ch/huridocda/huridocda.nsf/\(Symbol\)/A.RES.48.134.Fr?OpenDocument](http://www.unhchr.ch/huridocda/huridocda.nsf/(Symbol)/A.RES.48.134.Fr?OpenDocument).

<sup>21</sup> A/HRC/PRST/19/2.

<sup>22</sup> S/2012/743.

## A. Right to food and food security

78. President Martelly launched a programme against hunger and malnutrition (“Aba Grangou”), inspired by the “Zero Hunger” programme of President Lula of Brazil. The goal for the Government is to regain control of anti-hunger initiatives and to coordinate and target international funding efforts towards that end. Under the auspices of Ms. Martelly, the National Committee against Hunger and Malnutrition (COLFAM) was established with representatives from the Office of the President, the Office of the Prime Minister and nine ministries. The aim of this ambitious project is to facilitate access to food by the most vulnerable, to launch agricultural investment programmes in order to increase national food production and to improve basic services. The independent expert congratulates the President on this initiative, which should be put on a permanent footing.

79. The combination of hurricanes Isaac and Sandy and of the heatwave of August 2012 raises the issue of food security in Haiti. After Isaac, experts who were questioned said that agricultural output would cover not more than half of the country’s food needs. Moreover, various problems linked to the availability of local food products on the local market, the sharp rise in the prices of imported foods and the growing strength of the dollar had a severe impact on the poorest and most vulnerable groups living in particularly difficult conditions in departments in the south and west of Haiti.

80. Experts put the damage caused by the Isaac and Sandy tropical storms at US\$ 104 million. According to the Office for the Coordination of Humanitarian Affairs (OCHA),<sup>23</sup> some 2 million people were directly affected by Sandy, including 1.6 million people facing critical needs in food security, agriculture, shelter, health and potable water. The storm killed 60 people and did major damage to infrastructure, roads, schools and hospitals. Seventy per cent of crops in the south of the country were destroyed, including in areas generally recognized as providing food reserves for Haiti, and more than 18,000 dwellings were destroyed or badly damaged.

81. The independent expert encourages donor countries to support agricultural revitalization activities through technical assistance programmes designed to facilitate the marketing of food products on local and international markets. Given that Haiti is particularly vulnerable to natural hazards, the programmes to reduce the impact of natural disasters and to protect the most vulnerable should be further strengthened.

82. The independent expert suggests that the Government draw on the expertise of the United Nations Special Rapporteur on the right to food. This right is defined by the Special Rapporteur as “the right to have regular, permanent and unrestricted access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensure a physical and mental, individual and collective, fulfilling and dignified life free of fear”.<sup>24</sup>

## B. Right to education

83. President Martelly has made the right to education one of the four priorities of his mandate, and several tens of thousands of children have received a free education financed partly by a tax on revenue from mobile communications. The independent expert welcomes the commitment made to fulfilling a major pledge to realize the right to education by

<sup>23</sup> Humanitarian Bulletin, OCHA No. 23: October 2012.

<sup>24</sup> <http://www.srfood.org?index.php/fr/right-to-food>.

offering free schooling to all. However, many problems have yet to be resolved. Too often, school buildings are inadequate — 60 per cent of schools are housed in unsuitable premises (small churches or hangars) with up to 75 students per class — and have no teaching equipment, and some 90 per cent of schools are private schools.

84. The independent expert recalls that the right to education implies a quality education. He is aware of the scale of the task that the Government will face for several years in seeking to reshape an entire education system that can provide quality teacher training, an effective system of educational inspections and harmonized teaching curricula. Through its “Education for All” programme, the United Nations Educational, Scientific and Cultural Organization (UNESCO) is already providing the Government with support for this major initiative.

### **C. Right to health care**

85. The massive influx of international medical organizations, the extraordinary mobilization of Governments after the 2010 earthquake and the ensuing cholera epidemic made it painfully clear that the health system needs to be completely overhauled to make it accessible to all persons without discrimination; otherwise, the right to health care will remain a dead letter. Moreover, owing to a lack of professional prospects, many doctors and other Haitian health professionals have chosen to go abroad to work, thus depriving the population of their services.

86. Since the departure of several relief organizations, the situation has become more difficult; free treatment, which was made available in 2010, has been suspended, with the result that tens of thousands of people are denied access to quality care. Health conditions are deteriorating steadily, and the health budget is still very small and cannot meet the needs. The worsening state of the public finances, due to the economic situation, cannot but cause concern among the Haitian and international experts who deal with this issue.

87. Without resources, public hospitals cannot function. The absence of health structures in the areas furthest away from the capital means that a large section of the population has no prospect of receiving treatment, and this at a time when the infant mortality rate in Haiti remains one of the highest in the Caribbean region.<sup>25</sup>

### **D. Cholera**

88. At the time of writing, cholera had claimed some 8,000 victims and around 670,000 persons had been affected by the disease. Given the scale of the problem, the Secretary-General decided to launch a major international fund-raising initiative. In a generalized context of global economic crisis where requests for assistance are multiplying for many different reasons, the independent expert appeals to States to show generosity in order to combat the spread of the disease.

89. The question of what caused the outbreak of the epidemic in Haiti remains a burning issue that has attracted significant public controversy. While the independent expert deplores the way that certain organizations have exploited the issue for political ends, he is aware of the need that victims or their families have expressed to know the truth and perhaps even to be given compensation. He recalls that silence is the worst response.

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<sup>25</sup> Around 60 per 1,000.

## E. Situation in the camps

90. The situation in the camps, forced evictions and the absence of durable solutions remain issues of significant concern, notwithstanding the initiatives taken by the Government, with the support of the international community. Providing access to basic services to people living in the camps remains a major challenge. The independent expert recommends that MINUSTAH again appeal to the Special Rapporteur on adequate housing and the Special Rapporteur on the human rights of internally displaced persons to share their expertise and experience with the Government of Haiti. The independent expert also recommends that a study be conducted to analyse the situation of those persons who have left the camps.

91. The number of single-parent families living in the camps has risen, partly because the strategies developed in transit camps seem to have had an impact on the separation or break-up of families: men leave the camps and abandon their families to go in search of work elsewhere. Thus, an increasing number of women are becoming heads of household and have to meet their families' needs on their own.

92. Several organizations working in the camps reported an increase in the number of cases of gender-based violence and sexual exploitation in the camps at the beginning of the transition process. The main problems remain follow-up of reported cases, access to services, and impunity for perpetrators. In many cases, camp inhabitants seem to be afraid to file complaints against the perpetrators of violence, because they have little faith in the police or the justice system. With the reduction in the number of camps following the rollout of transition programmes and the increased presence of police and MINUSTAH in and around the camps, the number of cases has reportedly declined since June 2012.

## V. Protection

93. The population of Haiti has been living under United Nations protection since February 1993, i.e. for more than 20 years. This international protection arrangement has gradually been extended to include many domains, because of the series of disasters that have beset the country. Everyone understands that this situation cannot continue, even though a number of conditions must be met to allow for the gradual transfer of international protection functions to the Haitian authorities, as provided for under the "Transition plan" set forth in Security Council document S/2012/743.

94. To provide such protection, the independent expert suggested to the Prime Minister that a mechanism be established consisting of four main elements.

95. An interministerial committee on the rule of law should be established under the authority of an interministerial delegate reporting directly to the Prime Minister or of a deputy prime minister, to ensure that all ministries, including those that deal with social affairs, engage in the establishment of the rule of law.

96. The Office of the Ombudsperson should be given a stronger mandate for providing protection nationwide against maladministration and abuse of rights.

97. Protection must be provided against natural hazards and a stronger role given to the Civil Defence Department, which is responsible for improving coordination of emergency plans.

98. Lastly, in anticipation of the departure of MINUSTAH, the Human Rights Section should now open a bureau of the Office of the United Nations High Commissioner for Human Rights in Port-au-Prince, since Haiti will still need to receive international protection.

## **VI. Recommendations**

### **Rule of law**

99. (a) **Make specific reference to the rule of law in the Government's programme documents;**

(b) **Appoint an interministerial delegate for the rule of law or a deputy prime minister who, under the direct supervision of the Prime Minister, would have sole responsibility for promoting and coordinating the activities undertaken by ministries to establish the rule of law;**

### **Civil and political rights:**

#### **100. Elections:**

**Adopt a solution which reflects as closely as possible the requirements of the Constitution and which will rapidly lead to the holding of transparent elections, under the supervision of the international community, in order to fill vacant seats in the lower house, and to the holding of local elections, thus ensuring a return to constitutional order;**

#### **101. Justice system:**

(a) **Pursue efforts to reform the justice system based inter alia on the implementation of the many recommendations set forth in the independent expert's previous reports;**

(b) **Give the High Council of the Judiciary a budget and the human and material resources required for it to be able to function;**

(c) **Afford special protection to judges and magistrates who deal with very serious crimes and the witnesses in such cases;**

(d) **Make a strong statement, in a circular of the Ministry of Justice and Public Security addressed to the Government Commissioners, about the penal policy that is to be adopted;**

(e) **Establish without delay a judicial inspectorate to assess how the criminal justice system is or is not working;**

(f) **Put an end to the derogations from the rules on recruitment of judges;**

(g) **Step up efforts to combat corruption;**

(h) **Assess the implementation of the anti-corruption policy;**

(i) **Systematize the declaration of assets by civil servants;**

(j) **Promptly establish specialized chambers to deal with certain serious offences in which political factors come into play and with economic and financial crimes;**

(k) **Issue a reminder that it is prohibited to take justice into one's own hands, and systematically investigate cases of public lynchings;**

(l) **Secure donor funding to support the rollout of MINUSTAH training nationwide;**

(m) **Maintain MINUSTAH support for the legal aid system;**

#### **102. Prison system and extended detention:**

- (a) Ensure that prisons are the places where rehabilitation of convicted prisoners and detainees begins and that the fundamental rights of inmates are respected;
- (b) Provide prisons with sufficient stocks of medical supplies, drugs and food;
- (c) Provide the Croix des Bouquets prison with a budget and with sufficient human and material resources to allow it to function according to the standards that were originally set;
- (d) Sign and ratify the Convention against Torture and the Optional Protocol thereto;
- (e) Conduct a review, in close cooperation with the Association for the Prevention of Torture, among others, of the steps taken to establish and strengthen national mechanisms to prevent torture;
- (f) Amend legislation in order to detach the prison service from the National Police and place it under the authority of the Ministry of Justice and Public Security;
- (g) Develop a framework law on prisons using a rights-based approach;
- (h) Conduct a comparative study on the use of extended pretrial detention in each jurisdiction;
- (i) Ensure that in reform of the Criminal Code full account is taken of the reforms that need to be made to the prison system and the use of extended detention (introduction of new arrangements such as summary hearings and alternatives to detention);

103. **The police:**

- (a) Amend legislation to place the Office of the Inspectorate General of the National Police under the authority of the Ministry of Justice and Public Security so that it no longer reports to the Director-General of the National Police;
- (b) Complete the vetting process;
- (c) Conduct an independent study on the implementation of the vetting process;
- (d) Tackle ongoing dysfunctions and rights abuses in certain police units and departments;
- (e) Continue to support the Community Violence Reduction Programme;
- (f) Sustain and develop the work of the National Observatory on Violence and Crime;

104. **Children:**

- (a) Conduct a study on the situation of the “restavek” with a view to the adaptation of procedures for addressing this issue;
- (b) Take advantage of the revision of the Labour Code to have the Minister of Social Affairs and Labour address this issue;
- (c) Strengthen the legislation and procedures for combating crossborder trafficking of children between Haiti and the Dominican Republic for the purposes of sexual exploitation or employment;

(d) Swiftly adopt the bill on trafficking of people, particularly women and children, and publicize it widely throughout Haiti;

(e) Develop a proper children's code;

(f) Appoint juvenile judges in locations where there are no juvenile courts;

105. Office of the Ombudsperson:

(a) Ask the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights to formalize the Office's status as being in conformity with the Paris Principles;

(b) Designate the Office to serve as a national protection mechanism under the Optional Protocol to the United Nations Convention against Torture, once the Optional Protocol has been ratified by Haiti;

**Economic and social rights and the humanitarian situation**

106. Right to food and food security:

(a) Put the "Aba Grangou" programme against hunger and malnutrition on a permanent footing;

(b) Support agricultural revitalization activities through technical assistance programmes designed to build capacity for marketing food products on local and international markets;

(c) Reinforce programmes to reduce natural hazards and protect the most vulnerable;

(d) Draw on the expertise of the United Nations Special Rapporteur on the right to food;

107. Right to education:

Continue to improve the education system by, for example, building suitable school premises, reducing the number of students in each class, providing suitable teaching materials, improving teacher training, and increasing the number of public schools;

108. Right to health care, and the cholera issue

(a) Improve the Haitian health-care system by, for example, increasing the budget and reinstating free health services;

(b) Secure international assistance to combat the spread of the cholera epidemic;

(c) Throw light on the causes of the outbreak of the cholera epidemic and respond to any compensation requests from victims or their families;

109. Situation in the camps:

(a) Appeal once more to the Special Rapporteur on adequate housing and the Special Rapporteur on the human rights of internally displaced persons to share their expertise and experience with the Government of Haiti;

(b) Conduct an analysis of the situation of persons who have left the camps;

(c) Combat gender-based violence and sexual exploitation in the camps by following up on reported cases, granting access to the relevant services, improving procedures for receiving complaints, and punishing wrongdoers;

**International protection**

110. (a) **Establish an interministerial committee on the rule of law, under the authority of an interministerial delegate who reports directly to the Prime Minister, or of a deputy prime minister, to ensure that all ministries, including those that deal with social affairs, engage in efforts to establish the rule of law;**

(b) **Strengthen the role of the Office of the Ombudsperson to provide protection nationwide against maladministration and rights abuses;**

(c) **Strengthen the role of the Civil Defence Department to improve coordination of emergency plans;**

(d) **Open up a bureau of the Office of the United Nations High Commissioner for Human Rights in Port-au-Prince to gradually replace the MINUSTAH Human Rights Section.**

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