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OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS-HAITI
HUMAN RIGHTS SECTION MINUSTAH

REPORT ON ALLEGED KILLINGS BY HAITIAN NATIONAL POLICE
AND THE RESPONSE OF STATE AUTHORITIES

DECEMBER 2011

EXECUTIVE SUMMARY

The Human Rights Section of MINUSTAH regularly receives reports of killings involving the Haitian National Police (HNP). In some instances, these allegations appear to indicate that a number of HNP officers have committed extrajudicial, summary or arbitrary executions.

Based on these allegations, the HRS has undertaken in-depth investigations in an effort to establish the sequence of events and the exact role of the police officers implicated in the incidents. A summarized version of each of these investigations is compiled in this single report.

The first section of the report explains the context within which the report was conceived, noting that all violations of the right to life are grave and demand urgent investigation and response, and that this is especially the case when the alleged perpetrators are HNP officers. This section recalls that the HNP is fundamental to ensuring the rule of law, one of the Haitian Government's priorities. Without the assurance of law enforcement and public safety that can only be provided by an effective and law-abiding HNP, Haiti's political, social and economic stability cannot be assured. This first section highlights that the primary objective of the report is to support the Government, the HNP leadership and the judicial authorities in responding to human rights violations, all with a view to help strengthen law enforcement institutions.

The second section of the report describes the international and national legal frameworks applicable to the allegations raised by the investigations.

The third section of the report presents the findings of five HRS investigations involving at least 16 HNP officers in the deaths of eight people. This section looks not only at the facts surrounding the deaths but also at the response by State institutions responsible for investigating such allegations. More specifically, the five cases concern:

1. The death of one man during an arrest attempt by an HNP brigade on 18th October 2010;
2. The death of one man allegedly by an apparently off-duty officer on 31st October 2010;
3. The death of two men, working as poster hangers for Mirlande Manigat's presidential campaign, allegedly by an HNP brigade on 5th March 2011;
4. The death of three suspected thieves, allegedly by an HNP brigade on 6th April 2011; and
5. The death of a detainee after ill treatment allegedly inflicted by HNP officers on 3rd May 2011.

The fourth section of the report draws some conclusions regarding patterns common to the cases investigated; patterns that may also reflect wider trends in the behavior of the HNP. Specifically:

- killings are too often justified as a consequence of an exchange of fire between the police and suspected criminals;
- HNP officers directly involved in killings are protected by their colleagues or superiors, for example by the police station chiefs or duty officers in charge of the police station at the time;
- killings are usually followed by an attestation of the deaths by a *juge de paix*, but investigations by the *Inspection Générale de la Police Nationale Haïtienne (IGPNH)* (the HNP's internal affairs body) or the criminal justice system are not systematic, are typically slow, and rarely lead to disciplinary action or a conviction;
- autopsies and ballistic analyses are not systematically conducted or referred to in investigations;
- witnesses are afraid of the consequences of giving testimony and convinced that justice will not be rendered;

- even if the families of the victims or witnesses are heard by the prosecutor or his representatives to obtain more information about the events surrounding incidents, the latter very rarely visit the crime scene. In addition, the *réquisitoires à fin d'informer* provided to the investigating authorities are very brief and do not contain evidence;
- while some judges are willing to conduct independent and thorough investigations to establish the facts about the killings, the lack of progress in some cases suggests that judges choose to delay the investigations;
- to date, not a single police officer has been held criminally or administratively responsible for the deaths that are the subject of this report and HRS' investigations.

The report notes with concern that the aforementioned factors create an enabling environment through which there may now be an illegal practice among some elements of the HNP of killing individuals, especially alleged offenders, in the course of apprehending them or after taking them into custody.

The report recommends actions to ensure that justice is rendered in each of these five cases and also recommends that the authorities as well as the international community take additional steps to support the many officers of the HNP who are trying to fulfill their duties to ensure that the police is a respected institution, having the trust of the Haitian people; an institution that is fully capable of fulfilling its responsibilities that are essential for the country's future.

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IV. CONCLUSIONS

I. INTRODUCTION

1. The Human Rights Section of MINUSTAH (HRS) has a mandate¹ to monitor and investigate human rights violations, such as killings committed by representatives of State authorities, and to issue public reports on its findings. The HRS is also mandated to work closely with the Haitian police and judiciary and, at their request, provide support in responding to violations and preventing their recurrence.

2. Since October 2011, the HRS has received multiple reports of killings allegedly committed by members of the Haitian National Police (HNP), including allegations of summary executions. From January to June 2011 the HRS conducted in depth investigations into five separate incidents that occurred within the Port-au-Prince metropolitan area between October 2010 and May 2011, involving the deaths of eight people, allegedly committed by at least 16 Haitian police officers. The cases detailed in this report and investigated by the HRS represent only a sample of the total cases of reported deaths at the hands of HNP officers in the course of the past year. Between October 2010 and November 2011, the HRS has received information regarding 70 police officers allegedly implicated in over 20 killings in the greater metropolitan area of Port-au-Prince. The HRS is currently undertaking investigations of these cases.

3. This report details the main findings of the HRS investigations into the five incidents, including information on actions taken by the competent State authorities in response to the incidents. The primary objectives of the report are: 1) to support State authorities in preventing and responding to human rights violations; 2) to provide the public with information on allegations of human rights violations and the Haitian authorities' response.

4. Allegations of extra-judicial, summary and arbitrary killings by the police have been raised on numerous occasions in the past. Haitian and international human rights NGOs, as well as the UN, have repeatedly expressed their concerns and presented cases. There is a particular and urgent context today that stems from the following factors:

- Allegations of extrajudicial, summary and arbitrary killings by the police continue to be reported.
- The new President of the Haitian Republic has clearly indicated his commitment to strengthening the rule of law.
- The success of post-earthquake reconstruction, and even the willingness of the international community to contribute financially will be affected by trends in security and law enforcement.
- The HNP is an essential institution for Haiti's security and stability.
- The Security Council has decided to begin reducing MINUSTAH's military and police levels in the course of the next months, suggesting that the burden of security will increasingly lie with the HNP.

Methodology

5. Monitoring and investigations are conducted by all of the HRS's eight regional teams in Haiti and, in some instances by a specialized unit that provides support to the HNP and judiciary, and works closely with UNPOL.

6. The investigations described in this report are the result of (i) visits to the sites where victims were reportedly killed and/or arrested and detained, (ii) interviews with eye witnesses, and (iii) the examination of relevant documentation, such as autopsy reports. Wherever possible, interviews were

¹ Resolution 1542 of 30 April 2004.

conducted with the alleged perpetrators to have their version of the incident; and where this was not possible, the HRS requested State authorities to provide the version of events given by the alleged perpetrators.

7. In all five incidents, HRS personnel consulted with the State authorities responsible for investigating the killings committed by the HNP, sharing information that could help authorities in their own investigations.

8. Witnesses heard by the HRS were always interviewed independently; and the identities of all witnesses who requested confidentiality have been concealed. The HRS notes that several witnesses expressed their fear of reprisals from members of the HNP.

Cooperation by State authorities

9. The HRS notes the good cooperation it received from the police and judicial authorities, generally gaining access to officials and police stations upon request. A draft of this report was shared with the HNP leadership (*Direction Générale de la Police Nationale d'Haïti*) at the beginning of August 2011 so as to obtain their comments.

II. INTERNATIONAL AND NATIONAL LEGAL FRAMEWORKS

A. The International Legal Framework

The right to life

10. As a party to the International Covenant on Civil and Political Rights (ICCPR),² the Government has an obligation to ensure that every individual has the right to life and security, that this right is protected by law, and that no person is arbitrarily deprived of his or her life (article 6).³ It is therefore necessary for the State to take all appropriate measures to deter, prevent, investigate, prosecute and punish perpetrators who have violated the right to life.

Extrajudicial, summary or arbitrary executions

11. According to the United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, an extrajudicial, summary or arbitrary execution may be defined broadly as any killing that violates international human rights or humanitarian law, including “unlawful killings by the police”, “deaths in military or civilian custody” and “patterns of killings by private individuals which are not adequately investigated and prosecuted by the authorities”.⁴

The use of lethal force

12. This report focuses on allegations that the police used unlawful force during their operations resulting in the unlawful deaths of private individuals. According to the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials,⁵ law enforcement officials must, as far as possible,

² International Covenant on Civil and Political Rights (ICCPR), resolution 2200 A (XXI), UNGA, 16 December 1966 (entry into force 23 March 1976). Ratified by Haiti on 23 November 1990 (published by decree on 7 January 1991).

³ ICCPR, *ibid.*, art. 6(1) stating that “[e]very human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”

⁴ Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Mission to the United States of America, (26 May 2009), A/HRC/11/2/Add.5, para. 3.

⁵ Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Adopted by the Eight United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

apply non-violent means before resorting to the use of force. Whenever the lawful use of force is unavoidable to deter a threat to life, law enforcement officials shall exercise restraint and act in proportion to the seriousness of the offence, minimize injury, and respect human life (Principle 5).⁶ Intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life (Principle 9).⁷ The mere attempt to escape arrest by a person alleged to have committed a crime cannot justify the use of lethal force.

Legal responsibility for violations

13. Where lethal use of force by law enforcement officials occurs, international human rights law requires this to be thoroughly investigated and that those responsible for unlawful actions be prosecuted. It also requires that investigations are effective, and independent, prompt and transparent. According to the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions,⁸ the responsibility for extra-judicial, summary and arbitrary killings, like other violations of international law, extends equally to those in positions of command responsibility (Principle 19).⁹

The rights of victims

14. Article 2(3) of the ICCPR requires (a) any person whose rights and freedoms as set forth in the ICCPR are violated shall have an effective remedy; (b) that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the laws of the State; (c) that the competent authorities shall enforce such remedies when granted. Various other provisions in international instruments recognize the right to reparations for victims. The failure of the Haitian authorities to take action to prevent extra-judicial killings, or guarantee victims effective access to justice may also constitute a violation of human rights.

B. Haitian Law

15. The right to life is expressly guaranteed by Haitian law. Under Article 19 of the Haitian Constitution, “the State has the absolute obligation to guarantee the right to life ... to all citizens without discrimination, in accordance with the Universal Declaration of Human Rights.” It also provides in

⁶ *Ibid.* Principle 5. Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall: (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved; (b) Minimize damage and injury, and respect and preserve human life;(c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment; (d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment.

⁷ *Ibid.* Principle 9. Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.

⁸ Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, E.S.C. res. 1989/65, annex, 1989 U.N. ESCOR Supp. (No. 1) at 52, U.N. Doc. E/1989/89 (1989).

⁹ *Ibid.* principle 19. “. . . an order from a superior officer or a public authority may not be invoked as a justification for extralegal, arbitrary or summary executions. Superiors, officers or other public officials may be held responsible for acts committed by officials under their authority if they had a reasonable opportunity to prevent such acts. In no circumstances, including a state of war, siege or other public emergency, shall blanket immunity from prosecution be granted to any person allegedly involved in extra-legal, arbitrary or summary executions.”

Article 27(1) that civil servants and state employees are directly liable under criminal, civil and administrative law for acts violating rights.

16. The Penal Code qualifies murder as an intentionally killing (art. 240) and an assassination as any murder committed with premeditation (art. 241). The penalty for these crimes is forced labor for life. The Code specifically states that those condemned to forced labour are to be employed in public works (art. 15). In practice, this penalty ceased to apply after the end of the Duvalier regime in 1986 and has been replaced by life imprisonment.

17. Administratively, the general order No. 003 of the National Police governs the use of force by police. According to this text, a police officer should use force only within the limits of what is strictly necessary to neutralize the resistance to the legal intervention of a police officer. The abuse of force is strictly prohibited.

18. In addition, this order states that a police officer is authorized to use lethal force only when it is reasonably necessary to:

- Protect themselves or others from an immediate threat or likely to cause serious injury or death;
- Prevent the commission of a crime that would put bystanders in danger of death or serious bodily injuries;
- Apprehend an individual already known to have committed a crime causing death or bodily injury to others and knowing that the flight of the same individual could cause further serious injury or death to others.

III. INVESTIGATION FINDINGS

A. Case: Frantzi Duverseau killed during an arrest by the police, 18 October 2010, Lalue neighbourhood

1. The facts according to HRS investigations

19. In the afternoon of 18 October 2010, three HNP officers, from the Port-au-Prince police station, responded to a family disagreement in the Lalue neighborhood of downtown Port-au-Prince. In the course of the police intervention, Frantzi Duverseau, a student in his thirties, was killed by gunshots.

20. According to information provided by the police unit involved in the operation, two police officers entered the Durverseau family home where they found Frantzi Duverseau in the backyard holding a machete; a third officer and a driver remained in a vehicle outside the house. Frantzi Duverseau's father, brother, two sisters and his cousin were all in the house at the time the incident took place.

21. According to the officers, Frantzi Duverseau released the weapon at his father's request. One of the police officers used this opportunity to seize him by the shoulders to detain him. They then tried to take him out of the house. However, as they were leaving the house, the police officers reported that Frantzi Duverseau's father grabbed hold of the police officer's shoulders and knocked the officer off-balance. Frantzi Duverseau then seized the police officer's weapon and shot him in the left shoulder. He then shot at the second officer, several meters behind and hitting him in his left-hand side of the body. According to the officers' account, while trying to run away, Frantzi Duverseau was confronted by the third HNP officer, who had stepped out of his vehicle and Frantzi Duverseau also shot this police officer, hitting him on the right shoulder. Despite his injuries, the third officer was able to shoot back, hitting Frantzi Duverseau in the eye and the abdomen. According to the sequence of events described by the

officers, Frantzi Duverseau was standing at the top of a flight of stairs and the HNP officer who shot him was about two to three metres below him on the stairs.

22. The HRS was able to verify that the three officers present at the incident had injuries, particularly the officer who was shot in the left shoulder. However, the HRS was not given access to the medical certificates so was not in the position to confirm whether the injuries were caused by bullets.

23. According to the Durverseau family, at least three police officers and one individual dressed as a civilian entered the house. The latter allegedly led the policemen into Frantzi Duverseau's bedroom. When Frantzi Duverseau saw them coming in, he reached for a machete but put it down immediately at his father's request. According to the family, the police officers then held him and proceeded to beat him with the butt of their weapons. They continued to beat him as they led him out of the house. The family confirmed that Frantzi Duverseau was killed on the front steps to their house. However, due to the rapid sequence of events, the family was not able to explain what triggered the opening of fire by the police.

24. The HRS notes that the autopsy report confirms that Frantzi Duverseau was hit by two bullets, one in the left eye and one on the rear of his right shoulder. The pathologist who performed the autopsy stated unequivocally that the bullets were fired from someone who was standing above the body. This finding challenges the statements of the officers, since it places the police officer who fired not below, but above Frantzi Duverseau. If the police officer was firing from below at least one of the two bullets could not have followed the trajectory from top to bottom.

25. The HRS assisted Frantzi Duverseau's family in presenting a complaint to the prosecution and ensured that the case was quickly transmitted to a *cabinet d'instruction*.

2. Actions taken by the authorities

26. No investigation was opened by the *Commissariat* of Port-au-Prince. The Durverseau family requested the HNP's internal investigation body, the *IGPNH*, to open an investigation in early November 2010. However, as of the date of this report, the internal investigation had not resulted in any conclusions regarding the killing. In January 2011, a criminal justice investigation was initiated and the HRS provided its report of the investigation to the *juge d'instruction*.

27. After repeated requests by the HRS, the police officers implicated in the incident were finally questioned by the judge during the month of June, 2011. Nevertheless, the judge did not think it was necessary to detain the officers nor to request a ballistics analysis of the bullets found in Frantzi Durverseau's body. As of 1 December 2011, the officers are on active duty.

3. Conclusions and recommendations

28. A study of the scene where the events took place and meeting with the pathologist who performed the autopsy suggest that the account provided by the police officers implicated in the killing is inaccurate. The HRS considers that the case merits further investigation, including by the *IGPNH* and the criminal justice system.

29. The HRS recommends that:

- The *IGPNH* transmits the report of its findings to the *Direction Générale de la police*.

- HNP forensic specialists be provided with the bullets that were found in the body of Frantzi Duverseau, as well as at all three HNP officers and that ballistic analysis be performed on the bullets to determine which police officer fired what at the victim.
- All witnesses to Frantzi Duverseau's death be heard by the *juge d'instruction*.

B. Case: Fritz Fernicien killed by gunshots, 31 October 2010, Bel Air neighbourhood

1. The facts according to HRS investigations

30. On the morning of 31 October 2010, Fritz Fernicien, aged 28 years old, and residing in the Bel Air neighborhood of Port-au-Prince went to the Champs de Mars to collect his salary due from his participation in a "Cash for Work" program. According to information provided to the HRS, Fritz Fernicien was dissatisfied with the amount given to him because it did not match the numbers of days he had worked. An argument began between Fritz and the on-site Cash for Work program manager during which one of the rear-view mirrors of an adjacent car was damaged.

31. According to consistent reports, the car belonged to a police officer, who is attached to a police team assigned to the Presidential Palace, and who, according to several witnesses interviewed independently, has a local reputation for brutality. At approximately 15h the same day, a civilian 4x4 vehicle, driven by a person whose name was provided to the HRS, carrying the police officer in the passenger seat entered the Bel Air neighborhood. The vehicle stopped next to a group of neighborhood residents and the police officer got out of the car and asked the group if they knew where he could find Fritz Fernicien. Knowing the police officer, the people in the group indicated they did not know where Fritz Fernicien was. Before driving on, the police officer reportedly said to the group that he would eventually find Fritz Fernicien and would kill him.

32. According to several witnesses, at approximately 15.30 the police officer apparently met Fritz Fernicien on rue Tiremasse, opposite the Saint Mathieu school, where he was talking with a group of friends. The police officer and Fritz Fernicien immediately got into an argument. Apparently, the police officer drew and fired a hand gun, injuring Fritz Fernicien. Despite his injury, Fritz Fernicien tried to escape by fleeing into the narrow lanes of the neighbourhood. The police officer trapped him in a dead-end, and shot him several times more at point blank range. According to the *juge de paix* report attesting to his death, there were five gunshot wounds in Fritz Fernicien's body, including two in the neck.

33. The HRS was unable to speak directly to the police officer concerned, but obtained details of the information he provided to police and judicial authorities. The HRS found that there were several inconsistencies between the accounts recorded by these different authorities. According to the most detailed account, the police officer stated that he was driving his vehicle on rue Tiremasse when he heard gun shots. According to him, bullets hit his front-right tyre and one of his rear-view mirrors. He stated that he saw several individuals trying to encircle him and that he then got out of the vehicle and returned fire, injuring one of them. The officer further reported that immediately after the incident he went to the *Commissariat de Port-au-Prince* and the *Tribunal de Paix de la section Est* to file a complaint and report on the bullets that hit his vehicle.

34. On 1 February 2011, with HRS' support, family members of the victim lodged a complaint with the *parquet de Port-au-Prince*. It should be noted that, immediately after Fritz Fernicien's death, a law firm advised his family members against lodging a complaint with the prosecutor's office, stating that one of the firm's lawyers would do it on their behalf. This was not done, and no one from the law firm has

been back in contact with the victim's family. On 27 April 2011, the HRS submitted a report of its investigation to the *juge d'instruction* to support him in his own inquiries.

2. Actions taken by the authorities

35. An autopsy was conducted on Fritz Fernicien's body in November 2010 upon the request of the above mentioned law firm. The HRS did not receive a copy of the report.

36. At the end of January 2011, an investigation into the killing of Fritz Fernicien was opened by the IGPNH. On 31 January, the police officer implicated in the death was removed from active duty and placed under *mesure conservatoire*. However, on 18 April, 2011, the officer's suspension was lifted and he resumed his duties. As of 1 December 2011, the IGPNH investigation has not been concluded.

37. The *parquet* did not conduct an investigation into the killing, and simply provided the *cabinet d'instruction* the *réquisitoire à fin d'informer*, which only contained the *juge de paix*'s attestation of the death. As of 1 December, 2011, despite three notices to appear before the *cabinet d'instruction*, the police officer had not met with a *juge d'instruction*. The officer is still on active duty.

3. Conclusions and recommendations

38. Multiple independent statements from witnesses indicate that the police officer pursued Fritz Fernicien and shot him several times, killing him. These statements also indicate that Fritz Fernicien was not armed.

39. The HRS welcomes the fact that the IGPNH took measures, and that the police officer was initially removed from his functions. However, it took three months for full IGPNH and criminal justice investigations to be initiated and for the officer to be suspended. As of 1 December 2011, neither investigation has been concluded. The reinstatement of the police officer to active duty prior to the completion of investigations is cause for serious concern.

40. The HRS recommends that:

- Urgent consideration be given to suspending the alleged perpetrator from active duty pending the completion of the IGPNH's investigation.
- Police and judicial authorities adopt measures to guarantee the security of potential witnesses, including a public statement that any harm to witnesses amounting to a criminal offence will be followed by a criminal investigation.
- The reports of the autopsy and ballistic analysis be provided to the *juge d'instruction* so that he can conduct a full investigation to determine the circumstances surrounding the death of Fritz Fernicien.

C. Case: Jeune Sterson and Louis Frantz, hanging posters for the candidate Mirlande Manigat, shot and killed on 5-6 March 2011, Savane Pistache neighbourhood

1. The facts according to HRS investigations

41. At approximately 22h on 5 March 2011, three men, Jeune Sterson, Louis Frantz and an individual known as Marcot - working as poster hangers for Mirlande Manigat's Presidential campaign - were stopped near the hotel, *Le Palace*, near Champ de Mars by at least five police officers from the *brigade d'intervention* of the Port-au-Prince police station. According to witnesses, it appeared that the police officers initially only intended to arrest Jeune Sterson who, a few days earlier, had had a disagreement

with a woman known to one of the HNP officers in the group. However, as the police were arresting Jeune Sterson, witnesses stated that Louis Frantz protested and tried to stop the officers from taking Jeune Sterson. In response, the officers then apparently violently forced both Jeune Sterson and Louis Frantz into the vehicle and asked Marcot to leave the scene.

42. According to witnesses, the brigade then took both men to the *Commissariat de Port-au-Prince*. The vehicle entered the police station courtyard, and one of the officers got out. This officer reportedly said to the Police *Chef de Poste* “Zero” (to zero), making a sign of the cross; an expression understood as police slang indicating that the arrested men were to be killed. According to information received by HRS, the police officer got back into the vehicle, quickly left the *Commissariat*, taking both Jeune Sterson and Louis Frantz. During the night, Louis Frantz’s girlfriend tried to reach him on his mobile phone. On several occasions an unknown man answered the phone and said that her husband was with another woman.

43. According to police reports the following evening, 6 March, at around 19h, the bodies of Jeune Sterson and Louis Frantz were found in the vicinity of Savane Pistache by the *Unité des enquêtes* of the Port-au-Prince police station. The HRS did not receive clear information about how the *Unité des enquêtes* was informed that there were two bodies at Savane Pistache, in a rather isolated location. According to the police reports, the bodies were removed from the scene and taken to the morgue without waiting for the *juge de paix*. The practice in Haiti is always to ensure the presence of a *juge de paix* when the removal of a corpse is taking place. It was only on 7 March, at the Port-au-Prince general hospital, that a *juge de paix* officially recorded the deaths of both men and confirmed several gunshot wounds in the chest and neck.

44. According to a version of the facts provided to the HRS by police officers from the *Commissariat* of Port-au-Prince, at approximately midnight on 5 March, a young woman went to the police station to lodge a complaint after being attacked by armed men. Officers from the *brigade d’intervention* left the police station on foot and, after some minutes, apparently stopped about ten men, including Jeune Sterson and Louis Frantz. According to these officers, the men were taken to the police station where the young woman was unable to identify her attackers from among the group, after which the police *Chef de Poste* decided to release all of them. This version of the facts was presented as implying that Jeune Sterson and Louis Frantz may have subsequently been killed by members of an armed gang. However, the HRS noted that there was no written record at the police station of the complaint allegedly lodged around midnight on 5 March by the young woman. Similarly, there was no record of the detention of 10 or more men or any record of their names, even though the *Chef de Poste* is required to record the identities of every person stopped by police and taken to the police station.

2. Actions taken by the authorities

45. Several days after the discovery of the bodies of Jeune Sterson and Louis Frantz, six police officers (five from the *brigade d’intervention* as well as the *chef de poste*) from the Port-au-Prince police station were placed in isolation in the Pétionville police station. On 9 March 2011, the IGPNH opened an administrative investigation and, in May, submitted a report to the *Direction Centrale de la Police Judiciaire* (DCPJ) recommending that the six officers be presented before the judicial authorities.

46. At the same time, in March 2011, the *Commissaire du gouvernement* opened a criminal justice investigation and questioned the family members of both victims. The *Commissaire* then submitted the case to the *cabinet d’instruction*, but without autopsy or ballistic reports. On 2 June, after questioning the officers suspected of the crime, the *juge d’instruction* ordered at least one of the officers to be released

from detention. However, this officer was detained again a few days after his release. As 1 December 2011, all the officers remain in pre-trial detention pending the *juge d'instruction's* decision either by way of *ordonnance de renvoi* to proceed with criminal prosecution, or by an *ordonnance de non lieu* to drop the case.

47. The HRS has been informed that, on various occasions, the victims' family members and witnesses were physically intimidated by people close to those police officers implicated in an effort to dissuade them from giving any evidence to judicial authorities against the police officers. In light of this situation, the HRS contacted the Port-au-Prince bar association to facilitate legal assistance for the families of the victims.

3. Conclusions and recommendations

48. The significant inconsistencies in the version of events provided by the police officers involved, including the lack of any evidence in the *Commissariat* registry that would support this version, suggest that both men were not allowed to go free as claimed. The HRS believes there are reasonable grounds to suspect that HNP officers killed Jeune Sterson and Louis Frantz in what could amount to summary executions. The expression "Zero" was apparently used to indicate that the two victims were going to be killed. The HRS is deeply concerned that the expression was also used to indicate to the *chef de poste du Commissariat* that they should not record the arrests and detention in the *Commissariat* registry. If confirmed, these facts suggest a practice of killings by representatives of the police, going beyond the immediate perpetrators, and including the complicity of other police officers who normally exercise checks and balances, such as through the registration of arrests and detentions.

49. The HRS welcomes the investigations by both the IGPNH and the *Commissaire du Gouvernement*, and the initial removal of the officers under suspicion from their functions.

50. The HRS recommends that:

- Autopsy and ballistic reports be conducted and submitted to the *juge d'instruction*.
- Legal assistance be provided to family members of the victims.
- Witnesses are both heard and protected.
- The perpetrators be prosecuted.

D. Case: André Markerson, deceased after severe beating while held in police custody, 6 April 2011, Cité Soleil commune

1. The facts according to HRS investigations

51. On 4 April 2011, André Markerson was arrested by an HNP patrol, shortly after shots were reportedly fired by individuals at a vehicle driven by two HNP officers on the *Boulevard des Américains* that day. André Markerson was detained at the Cité Soleil police station. On 6 April, he was found dead in his cell.

52. According to the *juge de paix* who attested to the death, there were signs of bruising and welts all over André Markerson's body, including his testicles. According to police officers at the police station interviewed by the HRS, André Markerson was supposedly beaten by another detainee who then escaped from the police station. However, according to other sources of information, several officers from the police station violently beat André Markerson with stones and an iron bar after his arrest and then later when in detention. He died as a result of his injuries in the police holding cell. With respect to the

detainee who supposedly escaped after the death of André Markerson, according to information gathered by the HRS, he was allowed to leave the police station in exchange for a substantial sum of money.

2. Actions taken by the authorities

53. No investigation has been conducted by the authorities of the Cité Soleil police station. As of 1 December, 2011, the *chef de poste* and the police officer responsible for detentions on 6 April remain on active duty. The HRS informed the IGPNH of its preliminary conclusions, and the IGPNH has opened its own investigation. However, the conclusions of the IGPNH investigation are not available so far. The *parquet* has not opened an investigation.

3. Conclusions and recommendations

54. Having examined the layout of the Cité Soleil police station, the HRS considers that it is hard to conceive that André Markerson was beaten to death so violently (as evidenced by so many welts on his body), without the police officers on duty seeing and hearing the attack and being able to intervene. The HRS is concerned that investigations by the authorities have been inadequate, and is particularly concerned to note that, pending completion of an investigation, the police officers who were on duty at the time of the incident remain on active duty and continue to have responsibility for detainees. The HRS notes that the Cité Soleil police station is in a part of Port-au-Prince where police work is particularly difficult and dangerous.

55. The HRS recommends that:

- Pending the results of the investigation, measures be taken by the authorities to assure the safety of detainees in the Cité Soleil police station.
- The IGPNH complete its investigation and recommend appropriate disciplinary steps.
- The criminal justice authorities conduct all appropriate investigations to ascertain the facts and criminal responsibility for the killing of André Markerson.
- Allegations of corruption related to the detainee who was released be addressed and investigated.
- The perpetrators be prosecuted.

E. Case: Three men shot and killed, 3 May 2011, Mais Gâté neighbourhood

1. The facts according to HRS investigations

56. On 3 May 2011, three men, Didier, Franck (whose family names could not be confirmed by the HRS) and a third man who has not yet been identified, were killed by the HNP on the *Route de l'aéroport*, in the Mais Gâté neighborhood.

57. According to a police officer from the *Delmas 33* police station, who participated in the operation, his patrol of four officers, was alerted by the HNP information center that a group of several people were about to commit a theft at Mais Gâté. According to this officer, when the police arrived, the group of three men attempted to escape by moto-taxis. One of them shot at the police who returned fire in self-defense, killing all three men. The *juge de paix* who recorded the deaths stated that two fire-arms were found near the men's bodies. According to witnesses in the neighborhood, the previous week, the men had attacked people from the community and had stolen from the money-changers who work on the street.

58. However, in contrast with the version of the facts provided by the police, several independent witnesses informed the HRS that there was no exchange of fire between the police and the three men, and that only the police were shooting. Two independent witnesses stated to the HRS that they saw the police officers execute the men after they had been arrested.

2. Actions by the authorities

59. On the same day of the incident, a *juge de paix* attested to the deaths of the three men. A few days later, the bodies of two of the victims were returned to their respective families for burial before an autopsy could be performed. At the suggestion of the HRS, the *juge de paix* requested that an autopsy be performed on the third body. However, the HRS was informed by the head of the Haitian medical and legal institute (*institut medico-legal*), officially in charge of autopsies, that their only forensic pathologist has stopped performing autopsies for institutional and financial reasons.

60. The *juge de paix* submitted his *procès verbal* to the *parquet*, without any evidence, including without the weapons that were found near the three men's bodies. No thorough investigation has been conducted by the prosecutors or by the IGPNH. The HRS has not received any information regarding whether the victims' families have lodged complaints regarding the killings. As of 1 December 2011, the four police officers implicated in the deaths of the three men remain in active service.

3. Conclusions and recommendations

61. The two witnesses who told the HRS that they saw that the HNP kill the three men after they had been arrested provided credible testimony which, if confirmed, would indicate that the deaths were extrajudicial, summary and arbitrary executions committed by HNP officers. The HRS notes that for the majority of the witnesses who were contacted, the killing of the three men, widely identified as criminals, was not perceived as an act for which the police officers should be punished.

62. The HRS recommends that:

- The IGPNH open an investigation into this incident and interview witnesses.
- The institutional, material and financial obstacles that hamper the medical and legal institute's activities be quickly addressed and resolved.
- The prosecutors conduct a thorough investigation of this case before submitting his *réquisitoire à fin d'informer* to the *cabinet d'instruction*.
- The results of the autopsy and the physical bullets be submitted to the police's forensic service, and ultimately to the prosecution.

IV. HRS CONCLUSIONS

63. The HRS notes positively that in most cases of deaths in which representatives of the HNP have been implicated are promptly recorded by a *juge de paix*. However, the essential information surrounding the incidents such as the role of the police officers, material evidence collected, the body/bodies examined, and testimony from potential witnesses are often absent from the reports. The HRS also notes that in most cases both the IGPNH and the criminal justice authorities open investigations.

64. However, beyond these minimum preliminary measures the HRS has numerous concerns:

- a. Autopsies are not systematically performed in cases of killings involving representatives of the HNP and, even where they are conducted due to deep systemic problems, the results are not always submitted to the investigating authorities. Throughout the writing of this report and as of 1 December 2011, the forensic pathologist responsible for conducting autopsies indicated to the HRS that he refuses to conduct any further such examinations without adequate financing and equipment. Forensic analysis of bullets fired during incidents is rarely requested by the judges, even where such information can be essential to determining responsibility for the deaths.
- b. The police officers implicated in killings frequently remain in active service in their regular positions, even in instances where they are key suspects in the crimes. Where officers are removed from active duty, they are commonly reinstated before any investigations are concluded. They continue to carry weapons and/or retain responsibilities in the same types of situation that led to the deaths in which they are implicated. One of the police officers directly involved in a death examined in this report has since been implicated in the death of another person in a similar subsequent incident.
- c. Some witnesses expressed fear that, if they told what they knew, they would be at serious risk of retaliation from the members of the HNP allegedly responsible for illegal killings. In addition, several witnesses indicated that they were convinced that providing their statements to the authorities would not lead to any criminal justice or disciplinary action against perpetrators.
- d. IGPNH and criminal justice investigations are sometimes initiated very late, and they are not completed within acceptable time frames.
- e. The prosecution rarely conducts thorough investigations into the killings. If, in some cases, the families of the victims are interviewed by the prosecutor, it is not often that the *commissaire du gouvernement* or his representatives visit the crime scene. In addition, the *réquisitoires à fin d'informer* submitted to the *cabinet d'instruction* are often very brief and do not really contain any evidence.
- f. While some judges are willing to conduct independent and thorough investigations to establish the truth about the killings; others, whether due to fear, personal interest or lack of motivation, choose to delay their investigations. As a result crucial evidence is jeopardized or compromised and the chances of prosecuting the perpetrators significantly decrease.
- g. To date, no police officer has been held criminally or administratively responsible for the deaths that have not been investigated in this report.
- h. To date, no Haitian police officer has been certified or uncertified through the vetting process of the HNP. Prior to the January 2010 earthquake, over 3,500 files were handed over to the national authorities. Out of these 3,500 files, about 130 police officers were not recommended for certification. The vetting process resumed officially in December 2011.

65. The HRS notes that many police officers operate in what are sometimes very dangerous conditions. Since the beginning of 2011, at least 29 police officers have been killed. However, the security of Haitian citizens and effective law enforcement depend substantially on the HNP. It is precisely for these reasons that the HRS considers it urgent that the Government take action to prevent killings, including extrajudicial, summary and arbitrary executions, by representatives of the HNP and to ensure rapid and effective investigations where deaths do occur, with a view to punishing those police officers responsible or clearing their responsibility where the circumstances and legal justifications for lethal force exist. Such action is essential not only to ensure protection of the rights to life and physical integrity of Haitian citizens, but also to reinforce public confidence and trust in an essential institution, such as the HNP.

66. While this report focuses on the criminal and administrative responsibility of HNP representatives for serious crimes, the HRS emphasizes that police officers under criminal investigations, like all Haitian citizens, have the right to fair trial protections and protection from arbitrary deprivation of their liberty. Much-delayed investigations, of the type described in this report, may lead to unfair situations for police officers who have been suspended from active duty or placed in pre-trial detention, pending the results of investigations. The HRS is conscience of the fact that HNP officers who are suspected of criminal acts and are held in pre-trial detention for prolonged periods following their arrest, may be victims of violations of their rights.

67. All of these observations, comments and concerns are regularly shared with the HNP leadership. In a recent meeting, the Director of the HNP has declared that he is willing to address the issues raised in this report in a quick and effective way, including through strengthening the operational capacity of the IGPNH.

68. The HRS continues to investigate allegations of illegal killings by representatives of the HNP and will provide future updates on the cases addressed in this report.

69. In light of the progressive withdrawal of MINUSTAH, it is crucial for the stability of the country that the HNP respects and protects the fundamental values of a democratic society. However, with respect to the information contained in this report, the obstacles and challenges to meet this objective are numerous. As a result, with the support of the international community, the Haitian authorities must undertake a range of vigorous measures, in particular effective and rapid vetting of the police, reinforcing the independence of the IGPNH, and also the possible establishment of a specialized task force for crimes committed by those responsible for enforcing the law.