



United Nations Stabilization  
Mission in Haiti



UN Office of the High Commissioner  
for Human Rights

# **Bi-Annual Report on Human Rights in Haiti January-June 2012**

**October 2012**



## TABLE OF CONTENTS

<b>I. INTRODUCTION</b>	<b>4</b>
<b>II. LEGISLATIVE, ADMINISTRATIVE AND JUDICIAL MEASURES</b>	<b>6</b>
<b>A. Haiti's Ratification of International Human Rights Instruments and Engagement with International Human Rights Mechanisms</b>	<b>6</b>
<b>B. Constitutional Amendments and Legislative Measures</b>	<b>7</b>
• Law on National Human Rights Institutions	9
• Law on Disability	9
• Law on Paternity	9
<b>C. Administrative and Policy Measures</b>	<b>10</b>
• The Prime Minister's Office and Ministerial Portfolios	10
• Draft Policy of the Minister of Human Rights and the Fight against Extreme Poverty	10
• National Housing and Public Buildings Policy	10
• Judicial Measures	11
<b>III. HUMAN RIGHTS AND THE ADMINISTRATION OF JUSTICE</b>	<b>12</b>
<b>A. Impunity</b>	<b>12</b>
• Investigation of human rights violations during the <i>Duvalier</i> Regime	12
• Investigations of alleged Human Rights Violations by members of the Police Force	12
○ Unlawful and Extra-judicial Killings and Other Violations	12
○ Internal Investigations Unit of the Haitian National Police	13
• Police Vetting	14
• Lynching	14
<b>B. Sexual Crimes</b>	<b>15</b>
<b>C. The Human Rights of Police Officers</b>	<b>16</b>
<b>D. Detention</b>	<b>16</b>
• Police Custody and Pre-trial Detention	16
• Conditions of Detention	17
<b>E. The Judiciary</b>	<b>19</b>
• Other Issues relating to the Judiciary	19

<b>IV. HUMAN RIGHTS AND PROTECTION SITUATION</b>	<b>20</b>
<b>A. Legal Personality</b>	<b>20</b>
<b>B. Rights of the Child</b>	<b>21</b>
<b>C. Human rights in Humanitarian Protection</b>	<b>22</b>
• <b>Transitioning to State Ownership</b>	<b>22</b>
• <b>The Right Adequate Housing</b>	<b>23</b>
<b>V. HUMAN RIGHTS AND PUBLIC POLICY</b>	<b>24</b>
<b>VI. CONCLUSION</b>	<b>25</b>

## I. INTRODUCTION

1. MINUSTAH carries out its mandate to promote and protect human rights in Haiti in accordance with United Nations Security Council resolution 2012 (October 2011)<sup>1</sup>. To that end, MINUSTAH monitors the human rights situation in Haiti and assists the Haitian authorities and civil society, through capacity-building and other activities. The human rights reports published by MINUSTAH and the Office of High Commissioner for Human Rights (OHCHR) are intended to assist the Government of Haiti in ensuring the protection of human rights and respect for the rule of law. This report covers the period from 1 January to 30 June 2012. It contains information collected by MINUSTAH's Human Rights Section (HRS) officers in the course of carrying out on their monitoring and reporting mandate.

2. Haiti is bound by both its international treaty obligations and its domestic legislation to take measures to promote and protect human rights. The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), the latter ratified on 31 January this year, are clear on the basic rights to be protected at all times, and provide the framework for developing laws, designing policy, and implementing those laws and policy in a manner that furthers respect for human rights. MINUSTAH remains committed to assisting the Haitian authorities to achieve these objectives, and to providing capacity building and training programmes for the governmental and non-governmental sectors.

3. In the first part of the year, disagreements between the Executive and the Legislative branches constituted a major obstacle to progress on implementing human rights in Haiti. On 23 February, one day before Prime Minister Gary Conille resigned, the Special Representative of the Secretary General (SRSG) of MINUSTAH issued a public statement regretting “paralysis” in governance and calling for improved efforts by the Presidency, Prime Minister and legislature to work together. Political uncertainty suffocated efforts to launch the long-term and sustainable policies that are essential to the protection of human rights. The confirmation of Laurent Lamothe as Prime Minister on 14 May is therefore a welcomed step forward. Prime Minister Lamothe's Statement of General Policy (“*politique générale*”), based on President Martelly's “Five Es” programme (reflecting the French terms for Rule of Law, Environment, Economy and Employment, Education and Energy) had been unanimously adopted by the Senate on 8 May.

4. With the delay in organizing local, municipal and partial senatorial elections, the mandates of some elected officials expired. The Constitution does not anticipate this situation, resulted in an increasing number of officials holding elected office being in a legal vacuum which extra-constitutional steps taken to replace officials exacerbated this problem. For instance, on 23 February, the Office of the Spokesperson of President Martelly announced that a presidential decree dated 18 January allowed for the appointment of new municipal officials in

---

<sup>1</sup> Security Council Resolution 2012, adopted by the Security Council at its 6631st meeting, on 14 October 2011, para. 18 (*Reaffirms* MINUSTAH human rights mandate and recognizes that respect for human rights is essential to Haiti's stability, in particular attention to individual accountability for grave violations under past governments. The resolution urges the Government to ensure respect for and protection of human rights by the Haitian National Police and the judiciary, and calls on MINUSTAH to provide monitoring and support in this regard).

13 communes across Haiti.<sup>2</sup> While a 15 December 2011 statement by the Ministry of Interior had indicated that current municipal cartels would remain in power until elections were held. Nevertheless, the Minister simultaneously claimed that certain municipalities were dysfunctional, thus rendering the changes necessary.<sup>3</sup> The Presidency argued that, under the Constitution, the President is the guarantor of proper functioning institutions, and has the right to implement changes in any dysfunctional public institution. Others have argued that the proper functioning of the institutions could have been better guaranteed by ensuring that elections were organized. The *Fédération des Maires d’Haïti* (FENMAH) and the President of the Chamber of Deputies’ Internal Commission denounced these moves as illegal under Haiti’s electoral law and condemned these dismissals of elected mayors in favour of Government nominees. Another presidential decree dated 23 February 2012, announced the replacement of the mayor of Port-au-Prince, Jean-Yves Jason who later stated that he was dismissed because of his public disagreement with President Martelly over the organization of the 2012 carnival and a reconstruction project in the capital. He is now being prosecuted for alleged involvement in burning down a market on 18 June. Irrespective of the legality of the practice, this wave of changes shows how vulnerable municipal authorities are to political will. It remains to be seen whether more changes will occur as partial legislative, municipal and local elections approach, with power holders trying to position their supporters in key places.

5. There have been some important gains in the first half of 2012, many of which Haiti committed to in the Universal Periodic Review (UPR) process. As described below, these include the adoption of long-awaited constitutional amendments, the establishment of the Supreme Council of the Judiciary (*Conseil Supérieur du Pouvoir Judiciaire*) the appointment of all the members of the Supreme Court (*Cour de cassation*), and the sentencing of police and prison officers for their involvement in the extra-judicial killing of detainees in 2010. Other positive steps are the appointment of a Prime Minister, and an improvement of the working relations between Parliament and the Executive, the establishment of the post of a Minister for Human Rights and Extreme Poverty (*Ministre délégué*), the nomination of an Inspector General of the Haitian National Police (HNP), and the creation of a Government entity designated to implement the proposed policy on camp closure and relocation, namely the Housing and Public Buildings Unit.

6. Much of the first half of the year was focused on the question of re-establishing the Haitian Armed Forces and the emergence of military and other groups presenting themselves as former members of the military. These groups were generally referred to as *ex-Forces armées d’Haïti*, (*ex-FADH*), albeit comprising many individuals who had never previously served in the Haitian Armed Forces. Despite a public ban ordered by President Martelly on 3 March and a call by the then Minister of Interior and National Defence, Thierry Mayard Paul, for former military members to cease their training activities and leave the camps they had occupied, former military personnel, as well as younger “recruits”, continued to be active. President Martelly set a deadline of 17 March for these groups to disband and desist from their activities. On 7 May, the Secretary

---

<sup>2</sup> Mirebalais, Saut d’Eau, Savanette, Lascahobas, Belladère, Boucan Carré, Saint Marc, Anse Rouge, Estère, Maniche, Arniquet and Camp Perin.

<sup>3</sup> President Martelly signed decrees replacing municipal councils in Cap Haitien on 2 September 2011, and in Gonaives on 26 December 2011.

of State for Public Security, Reginald Delva, stated that clear instructions had been given to the HNP and MINUSTAH to arrest individuals carrying illegal weapons, in particular those that claimed to be former members of the ex-FADH. On 18 and 19 May, the HNP, supported by MINUSTAH, proceeded to empty the main sites occupied by these groups, including camp Lamentin 54 (in Carrefour, near Port-au-Prince), camp Bon Repos (Croix des Bouquets, West Department), the former building of the Ministry of Agriculture in Vertières (Cap Haïtien, North Department) and the smaller military camp in Peligre (Centre Department). Delva stated that the HNP's operations to empty the camps unfolded without major incident or casualties and it has been reported that the remaining six ex-FADH camps were also abandoned.

## **II. LEGISLATIVE, ADMINISTRATIVE AND JUDICIAL MEASURES**

### **A. Haiti's Ratification of International Human Rights Instruments and Engagement with International Human Rights Mechanisms**

7. On 31 January, the Haitian Parliament approved a law to ratify the International Covenant on Economic, Social and Cultural Rights with a total of 55 votes in favour, 13 against and five abstentions. The ratification complies with earlier recommendations from the Human Rights Council, through the UPR, the Deputy High Commissioner for Human Rights during her visit to Haiti in July 2011, the Independent Expert on the situation of human rights in Haiti, and the Special Rapporteur on adequate housing (as a component of the right to an adequate standard of living) to ratify the Covenant. The entry into force of the ICESCR is pending the President's promulgation of the bill, after which Haiti has to deposit an instrument of accession with the Secretary-General of the United Nations in accordance with article 26 of the Covenant.

8. On 11 June, the Parliament approved the Decree for the ratification of the Hague Convention of 29 May 1993 on the Protection of Children and Cooperation in Respect of Inter-country Adoption. For the ratification to take effect at the international level, and for Haiti to be considered a State Party to the Convention, Haiti is yet to deposit its instrument of ratification before the Ministry of Foreign Affairs of the Kingdom of the Netherlands (the depository).

9. Prior to the discussion on Haiti at the Human Rights Council in the context of the 12th session of the UPR held on 16 March 2012, the HRS supported the Government's Inter-Institutional Committee (*Comité interinstitutionnel*) to consult with stakeholders on how recommendations made to Haiti by United Nations Member states through the UPR could be taken forward. The Haitian delegation, which included the Minister of Justice, accepted 122 of the 136 recommendations formulated by the UPR Working Group.<sup>4</sup> The Director of Legal Affairs at the Ministry of Foreign Affairs and Head of the Inter-Institutional Committee, submitted to Cabinet for approval his report on the next steps that Haiti should undertake in follow-up to the UPR recommendations. Among other recommendations, the report proposes that the Government host a workshop with civil society and undertake bilateral meetings with the countries that made recommendations within the UPR framework, notably to obtain support from these countries in implementing the recommendations. It proposes to make the Inter-

---

<sup>4</sup> A/HRC/19/19/Add.1.

Institutional Committee permanent, which would provide it the authority to work on mainstreaming the recommendations into the policies and programmes of the relevant ministries.

10. The Inter-Institutional Committee is currently working on Haiti's long overdue report to the United Nations Human Rights Committee, responsible for monitoring the implementation of the ICCPR. Haiti has not yet submitted its initial report, and only submitted a special report in 1995 to address the events following the 30 September 1991 military coup leading up to the restoration of President Aristide on 15 October 1994. The Human Rights Committee agreed to accept a detailed report provided it is not submitted later than September 2012.

11. The Independent Expert on the human rights situation in Haiti, Michel Forst, visited Haiti from 31 January to 8 February with the objective of evaluating the human rights situation since his previous mission, in September 2011, and to follow up on recommendations made in his report presented to the Human Rights Council on 4 April 2011<sup>5</sup>. This was the Independent Expert's 10<sup>th</sup> mission to Haiti since 2008, leading to a total of over 150 recommendations. On arriving in Haiti, the Independent Expert issued a press release expressing his deep concerns about the possible dropping of charges against Jean-Claude Duvalier.<sup>6</sup> In the press conference closing his visit, he made recommendations on the rule of law, a national plan of action on human rights, and the Government's responsibility to ensure justice for violations committed during the Duvalier regime, as well as shared concerns by Haitian authorities about the fragile political situation.<sup>7</sup> The Independent Expert will present a report on Haiti to the Human Rights Council in early July 2012, as well as an addendum to the report on forced returns of Haitians by third countries. During its 19<sup>th</sup> session, the Human Rights Council, extended his mandate was extended until March 2013.

## **B. Constitutional Amendments and Legislative Measures**

12. After a lengthy controversy on the process of issuing amendments to the Constitution, they were made official with their publication on 19 June; modifying 33 articles and 22 sub-articles. They also add 27 new sub-articles, which includes one new chapter on the Constitutional Committee. Eleven sub-articles and 16 articles were revoked.

13. One provision increases the quota of women up to 30 percent "*à tous les niveaux de la vie nationale*", which has been interpreted to mean at all levels of public life, including in the public service.<sup>8</sup> In addition, special consideration must now be given to complaints filed by women in cases of discrimination and violence in the workplace.<sup>9</sup> With regard to education, the State is now responsible for providing free education to all, irrespective of age or type of schooling. In the area of research, the amendment creates a public body to regulate and control

---

<sup>5</sup> A/HRC/20/35

<sup>6</sup> Former Haitian leader must face charges for human rights abuses, says UN, 31 January, 2012.  
<http://www.un.org/apps/news/story.asp?NewsID=41082&Cr=&Cr1=>.

<sup>7</sup> Haiti making progress on rule of law, but faces serious challenges – UN expert, 8 February, 2012  
<http://www.un.org/apps/news/story.asp?NewsID=41182&Cr=haiti&Cr1=>.

<sup>8</sup> Article 17.1. The article reads "*Le principe du quota d'au moins trente pour cent (30%) de femmes est reconnu à tous les niveaux de la vie nationale, notamment dans les services publics.*"

<sup>9</sup> Article 207.2 bis.

the quality of higher education and scientific research. This body will control all public and private institutions that work in these fields and will publish a yearly report evaluating these institutions. With regard to the rule of law, the amendments establish that the body in charge of the administration and control of the judiciary is the *Conseil Supérieure du Pouvoir Judiciaire* (already provided for in Law of 2007). It also establishes the Constitutional Council (*Conseil constitutionnel*) as the entity to review the constitutionality of all laws, regulations and administrative acts. The Constitutional Council will be composed of nine members who will be selected by the Executive, the National Assembly (2/3 lower house and 2/3 upper house) and three members of the CSPJ. The Constitutional Council is to decide cases of conflict between the Executive and the Legislative or between both chambers of the Legislative (Senate and Chamber of Deputies).

14. Another significant development is on nationality. Haitians no longer lose their nationality if they acquire another one.<sup>10</sup> All members at all levels of the Executive and the Legislative have to be of Haitian origin rather than having to be born in Haiti as required before. As in the 1987 Constitution, they must have never renounced their Haitian nationality.<sup>11</sup> However, the amendments have added that they must not have another nationality at the time of their registration as candidates.<sup>12</sup> Additionally, it is provided that no Haitian can make use of a foreign nationality on the Haitian territory. With regard to the electoral process, perhaps the most significant improvement is that the amendment establishes the Permanent Electoral Council (*Conseil Electoral Permanent, CEP*). The CEP will be composed of nine members selected by the Executive, the CSPJ and the National Assembly (2/3 lower house and 2/3 upper house). Until now elections have been organized by ad hoc provisional electoral councils, which have been criticized for not having a proper framework to organize elections and, in some cases, perceived

---

<sup>10</sup> See .e.g. article 15 of the 1987 Constitution which is now repealed.

<sup>11</sup> Article 90.1 of the 1987 Constitution read “[t]o be elected a member of the House of Deputies, a person must: 1. Be a native Haitian and never renounced his nationality.” The new article 90.1 now reads “[t]o be elected a member of the House of Deputies, a person must: Be of Haitian origin, never renounced Haitian nationality, and not holding any other nationality at the time of registration.” Article 96.1 of the 1987 Constitution read “To be elected in the Senate, a person must: 1. Be a native born Haitian and never renounced his nationality”. The article now reads “To be elected Senator, you must “Be of Haitian origin, never renounced Haitian nationality and do not hold any other nationality at the time of registration.” Article 135-a of the 1987 Constitution read “[t]o be elected President of the Republic of Haiti, a candidate must: a. Be a native born Haitian and never renounced Haitian nationality.” The amended provision now reads ““To be elected President of the Republic of Haiti, a candidate must: a. Be a native born Haitian, never renounced Haitian nationality and not have any other nationality at the time of registration.”

<sup>12</sup> Note that ICCPR, article 25 provides that “Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; (c) To have access, on general terms of equality, to public service in his country.” The distinctions that article 25 refers to can be found in article 2 and include “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” In interpreting this provision, the United Nations Human Rights Committee stated that “[a]ny restrictions on the right to stand for election, such as minimum age, must be justifiable on objective and reasonable criteria. Persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as education, residence or descent, or by reason of political affiliation.” See General Comment 25, para. 15 on the right to participate in public affairs, voting rights and the right of equal access to public service.

bias. Finally, an amendment provides that in the absence of the President of the Republic, the Prime Minister, not the President of the Supreme Court, will serve as Head of State.

- **Law on National Human Rights Institutions**

15. On 6 March, the Senate adopted the Bill guaranteeing the independence of and defining the Ombudsperson's (*Office de la Protection du Citoyen*, OPC) status and role, following an initiative by a group of senators. On 27 March, the Lower House of Parliament voted unanimously on the bill with certain amendments. The amendments do not affect the substance of law, particularly with regard to its compliance with the Paris Principles, nevertheless the bill was returned to the Senate for its final vote which took place on 3 May 2012. The law provides the framework for an independent national institution for human rights, but the Government must still decide whether the OPC will embody this institution or a new institution will be created.

- **Law on Disability**

16. By ratifying the Convention on the Rights of Persons with Disabilities (CRPD) on 23 July 2009, Haiti agreed to implement the CRPD's obligations through all appropriate measures, including legislation, and to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities. In this regard, on 13 March, Parliament passed a bill on the situation of people with disabilities, which was eventually published in the official gazette on 21 May 2012. While it is an important step, the law is not yet comprehensive in prohibiting discrimination and promoting equality for persons with disabilities, thus not meeting the principles and standards set forth in the CRPD. For example, the law focuses on "deficiencies" in individuals, failing to recognize one of the CRPD's main underpinnings that society is a major factor in disabling people, whether through laws, attitudes, or access. The law provides that the State should ensure respect for the dignity of people with disabilities, falling short of providing that the State has an affirmative duty to guarantee equality and non-discrimination. The law also over-emphasizes the role of the Ministry of Public Health, implying that disability is a medical issue. This approach is also reflected in the provisions on prevention of disability. While an important objective in public health programming, prevention should not be an element of a law on the rights of persons with disabilities.

- **Law on Paternity**

17. On 12 April, the Senate adopted the law on paternity, maternity and lineage putting an end to the legal discrimination between children born to married parents and those born out of wedlock. The law also allows for a procedure to establish paternity in court, always taking into account the best interests of the child. It preserves the principle of equality before the law and aims at ending all forms of discrimination, and enhancing access to rights of all children regardless of their parental relationships. The parent, the child, or guardian of any child whose parent denies paternity or maternity can contest that denial through an emergency procedure before a specialized judge (*juge des référés*), thus enforcing the use of DNA testing to establish paternity or maternity. One concern is that DNA testing is rather costly, and it is unclear how the procedure will be funded. However, the law is an important contribution to the progressive

elimination of discrimination against women and children. The bill is a result of years of work, especially by women rights organizations, to fight such discrimination.

### **C. Administrative and Policy Measures**

- **The Prime Minister's Office and Ministerial Portfolios**

18. Laurent Lamothe was appointed Prime Minister on 14 May 2012. His General Policy Statement placed emphasis on social policies, with the understanding that the Government's objective of attracting investment would allow to fund such policies. The Prime Minister also placed emphasis on institutional reforms, highlighting the importance of building citizens' confidence in the State and of reinforcing the accountability of the State. He committed to investing in the rule of law, including training of the judiciary, and strengthening the police force to fight crime and guarantee security. His new 22-member cabinet includes six women. The Prime Minister also announced the creation of four new delegate ministers: for Human Rights and the Fight against Extreme Poverty; for Haitians Living Abroad; for the Promotion of Peasantry; and for Relations with the Parliament. On 16 May, all ministers were sworn in and later the new Prime Minister and the President subsequently held their first cabinet meeting, where the Prime Minister requested all ministers to develop one-year plans to implement the Government's priorities. Performance against these plans is to be measured quarterly, and the Prime Minister emphasized that ministers who did not comply with their plans would be dismissed.

- **Draft Policy of the Minister of Human Rights and the Fight against Extreme Poverty**

19. At the end of May, the Delegate Minister for Human Rights and Fight against Extreme Poverty, Ms. Marie Carmelle Rose Anne Auguste, circulated a draft concept paper describing poverty in Haiti and outlined five objectives for her mandate, focusing on pro-poor policies and strategies and developing partnerships with civil society and stakeholders in the fight against poverty. She proposed the creation of three mechanisms to support her mandate: a ministerial commission to fight against poverty, a centre for monitoring human rights; and a unit dedicated to research on creative solutions to these issues. However, there has been no budgetary allocation to the Delegate Ministry in the budget of the Ministry of Economy and Finance submitted to Parliament on 29 June for fiscal year 2012-2013.

- **National Housing and Public Buildings Policy**

20. Based on a joint decision of the President and the Prime Minister in June 2011,<sup>13</sup> the Housing and Public Buildings Unit, known as the *Unité de Construction de Logements et Bâtiments publics* (UCLBP) was created at the end of 2011 to supervise an ambitious pilot programme aiming at the closure of six camps on public land and the rehabilitation of 16 neighbourhoods, entitled "16/6" (an initiative that had been launched on 17 August 2011 by

---

<sup>13</sup> The Decree has not yet been formalised.

President Martelly and which attracted USD 78 million in pledges by international donors, although only 30 million have been received to date). At the end of June, the UCLBP shared its proposed National Policy on Housing and Urban Development with partners, and held a consultation with civil society on the policy. The policy was well received, although there remains a need to cast the policy in a human rights framework, specifically the right to housing, and to specify how progress can be measured in ensuring that the right is enjoyed, as well as a budgetary allocation.

- **Judicial Measures**

21. In a welcome development, 11 judges of the Supreme Court were sworn in in late February, thus ensuring the court had full membership for the first time since 2004. Nevertheless, significant logistical and administrative limitations will affect the capacity of the court to respect and protect human rights, including the many archives destroyed in the 12 January 2010 earthquake, and the absence of collected jurisprudence (no court decisions have been published since 1968).

22. The much anticipated nine-member Supreme Council of the Judiciary, known as the *Conseil Supérieur du pouvoir judiciaire* (CSPJ) is to be established on 3 July (the law creating the CSPJ was adopted in 2007).<sup>14</sup> The CSPJ is the state entity mandated to oversee and manage the judiciary and can suspend, dismiss or sanction magistrates. If the Council finds that a judge has committed an offence, he or she will have to be referred to the ordinary justice system. The CSPJ is also in charge of hiring and training judges and other court employees. The Head of the CSPJ is the President of the Supreme Court. The President of the Republic appoints its members, following the Minister of Justice's recommendation. Their mandate is three years, renewable only once. The Minister of Justice, the President of the Court of Appeals, and the most senior members of the courts, as well as victims, can file cases with the CSPJ. The CSPJ is to publish an annual report describing the status of the Haitian judiciary and evaluating its independence.

---

<sup>14</sup> The nine members of the *Conseil Supérieur du Pouvoir Judiciaire* (CSPJ) took oath on 3 July 2012. The members are as follows: Me Anel Alexis Joseph : *Président de la Cour de cassation*; Me Antoine Norgaisse, judge, *Cour de Cassation*: vice-president; Me Thiers Malette, *commissaire du gouvernement près la Cour de cassation*; Me Max Elibert, elected by his peers (judge of *cour d'appel des Cayes*); Me Gustave Pharaon, elected by the *tribunaux de première instance de la République* (*doyen du tribunal de première instance des Gonaïves*); Me Jean Alix Civil, selected by the Minister of Justice (*commissaire du gouvernement près du tribunal de première instance de Petit-Goâve*); Me. Jean Etienne Mercier, representing the judges of the *tribunaux de paix de la République* (*juge de paix de Delmas*); Me Dilia Lemaire, civil society representative; Me Néhémie Joseph, representative of the Bar (*bâtonnier de l'ordre des avocats des Gonaïves*). The applicable decree was published in *Le Moniteur* on 3 July 2012 (*Numéro extraordinaire* 106). Regrettably, eight members are male with only one woman appointed.

### III. HUMAN RIGHTS AND THE ADMINISTRATION OF JUSTICE

#### A. Impunity

- **Investigation of human rights violations during the Duvalier regime**

23. In January 2012, the investigating judge (*juge d'instruction*) in the Jean-Claude Duvalier (Duvalier) case submitted his decision (*ordonnance*) indicating that Duvalier should be prosecuted for financial crimes but not for crimes against humanity, stating that the latter did not form part of Haitian law.<sup>15</sup> Under international human rights law, Haitian authorities have the obligation to investigate the serious human rights violations that took place during the rule of Jean Claude Duvalier, and for which no statute of limitations exists under international law. On 21 March, the appeal filed by the victims of Duvalier's regime and their families reached the Attorney General of the Court of Appeal. On 22 May, the Court of Appeal's registrar confirmed that the Attorney General was reviewing the file to ensure that it was procedurally correct (essentially listing and coding the documents that form part of the file). The registrar approved that, once this is completed, he will transfer to the Court for its decision.

- **Investigations of alleged Human Rights Violations by members of the Police Force**

- **Unlawful and Extra-judicial Killings and Other Violations**

24. In December 2011, OHCHR/HRS MINUSTAH published two reports on alleged unlawful and extra-judicial killings by the HNP.<sup>16</sup> The reports noted that, despite some positive efforts, the HNP's internal investigations office, the *Inspection Générale de la Police Nationale Haïtienne* (IGPNH), and the justice system had not responded adequately to the allegations. Both reports were formally communicated to senior State authorities by MINUSTAH in December 2011. In February, MINUSTAH received a response indicating that the reports were being transmitted to the Ministry of Justice.

25. Among the alleged perpetrators identified in the reports is a police officer assigned to the Presidential Palace. Despite the HRS' concern that the officer may have committed an unlawful killing in October 2010, (expressed with State authorities in the Spring and Summer of 2011), he remained on duty throughout most of the year, even when a warrant was issued against him by an investigating judge, in September 2011. In October 2011, according to the HRS' information, the same police officer allegedly committed a second unlawful killing. Within two weeks after the HRS' reports were published, he was arrested by the judicial police but was quickly released, reportedly following pressure from the Presidential Palace, undermining the role of the judiciary and violating the principles of the rule of law and the separation of powers. In February, a new complaint for alleged death threats was lodged against the same police officer by a Ministry of Justice staff member. The HRS continues to pursue this and other cases with the authorities.

---

<sup>15</sup> "La notion de crime contre l'humanité est inconnue de notre droit interne et [...] d'autre part, les instruments internationaux qui la contiennent sont étrangers au droit haïtien."

<sup>16</sup> <http://www.ohchr.org/EN/Countries/LACRegion/Pages/HTReports.aspx>.

26. Over the past two years, MINUSTAH followed closely the State response to the 19 January 2010 uprising and killing of inmates at the Les Cayes prison, from the initial investigation to the issuing of a verdict. The importance of the case lies not only in the high number of persons killed, but also in that it serves as an emblematic illustration of the strengths and weaknesses of the Haitian justice system. MINUSTAH's own investigations concluded that inmates were killed by police and prison officers, and that there could possibly have been extrajudicial executions. The trial, which started in October 2011, was much welcomed. The verdict was issued on 19 January 2012, condemning eight police and prison officers to sentences from two to 13 years of imprisonment and forced labour. Superintendent Oltrich Beaubrun, tried *in absentia*, received the most severe sentence but remains outside of the country. The sentence also condemns 18 detainees (16 in absentia). 16 received a sentence of one year imprisonment and one to six months. The detainee who orchestrated the riot, Luguens Cazeau, alias Ti Mousson was condemned to seven years imprisonment and he is also believed to be outside of Haiti.

27. The fact that the trial took place showed that the judicial system has the capacity to address serious violations of human rights, although trial observers reported that an inexperienced prosecutor was appointed to this important trial, resulting in significant procedural and evidentiary shortcomings in the case against the accused. Defence lawyers have since filed an appeal (*pouvoir de cassation*) contesting the sentence issued against six of the eight police and prison officers in the court of first instance (*Tribunal de première instance*) Les Cayes on 30 January, with the file being transferred to the Court of Appeal (*Cour de cassation*). On 14 June, the file was sent to a chamber of the court, but it is unknown when a decision will be rendered. The Prosecution (*Commissaire du gouvernement*) informed the HRS that no arrest warrants had been issued against the two individuals who are out of the country and convicted *in absentia*, an omission that significantly lessens the significance of the trial.

- **Internal Investigations Unit of the Haitian National Police (IGPNH)**

28. A key issue is the IGPNH's independence from the HNP, specifically the Director General. This is critical as the IGPNH was established to oversee and investigate allegations against the HNP. A 2005 legislative decree on the reorganization of the Ministry of Justice addresses the IGPNH's independence, providing that it is under the Ministry of Justice and reports directly to the Minister of Justice. The Supreme Council of the National Police (*Conseil supérieur de la Police nationale*), presided over by the Minister of Justice, reinforces that independence by being responsible for nominating senior leadership. The 2005 decree expressly amends the 1994 law on the National Police<sup>17</sup> which provided that the IGPNH was under the Ministry of Justice but reported to the HNP Director General. The 2005 Legislative Decree has never been applied, enabling the Director General to interfere with several investigations carried out by the IGPNH in recent years.<sup>18</sup> The Director General also controls the appointment and dismissals from the IGPNH. During 2011, a conflict between the then Chief of the IGPNH, Fritz

---

<sup>17</sup> The 2005 decree was issued during the Provisional Presidency of Boniface Alexandre. It is accepted in Haiti that even if a decree is not later translated into law, it remains valid until the *Cour de cassation* overturns it. The 2005 decree is accordingly valid until such time.

<sup>18</sup> See e.g. December 2011 MINUSTAH HRS public report on the death of Serge Démosthène.

Jean, and the HNP Director General, Mario Andresol, paralyzed the police oversight body, with the IGPNH only submitting one investigation report to the Chief of Police, which did not appear to have been followed up on.<sup>19</sup> As a result, the IGPNH remains weak, with negative repercussions on the police force, as officers who have committed crimes continue to serve, thereby eroding citizens' confidence in the police as an institution that can uphold the rule of law.

29. The HRS has provided information to the new acting Inspector General for his follow-up on cases involving over 100 members of the Haitian police in executions, killings, illegal use of firearms and inhumane treatment reported in the Western region between October 2010 and May 2012. Many of these cases had either not been opened for investigation or have been poorly investigated.

30. Using the 1994 law as the basis, the Director General officially dismissed Fritz Jean in October 2011, leaving the position vacant until 23 April 2012, when Abner Vilmé was appointed as the acting Chief of the IGPNH. The interim nature of the appointment makes the Chief Inspector's position delicate as he can potentially be dismissed any time, for any or no reason. Of additional concern is the pending appointment of the required six General Police Inspectors (*Inspecteurs Généraux de Police*) who are to support the Chief. The HNP 2012-2016 development plan addresses the IGPNH, but only emphasises the lack of capacity and not its lack of independence from the Director General's office.

- **Police Vetting**

31. In Haiti, vetting consists of assessing an individual's integrity as a means of determining his or her suitability for police employment, including his or her adherence to relevant standards of human rights and professional conduct. The HNP's vetting process started in 2006 and was officially resumed in November 2011, after being interrupted by the earthquake. Between 2006 and 2010, more than 3,500 police officers (out of 10,000) were investigated by joint HNP-United Nations Police (UNPOL) teams and their files submitted to the Ministry of Justice. Among these files, 138 have not been recommended. Over half of those 138 were not recommended due to allegations of human rights violations based on information collected by the HRS. The last phase of the vetting process is currently blocked and none of the 138 police officers have been removed. The Independent Expert has recommended in several reports to the Human Rights Council "the need to resume the process and to send a strong message to the police corps that impunity will not be tolerated and that those officers not up to the standards of a democratic force will be dismissed".<sup>20</sup>

---

<sup>19</sup> The head of the Haitian National Police, Mario Andresol, had relieved Fritz Jean of his duties on 31 October 2011. Under the 2005 Decree, this decision was illegal as only the Supreme Council of the National Police (CSPN) has such authority.

<sup>20</sup> See Report of the Independent Expert on the situation of human rights in Haiti, 23 April 2012, A/HRC/20/35

- **Lynching**

32. Although a recurrent practice in Haiti, it only attracted much attention from governmental authorities and the media after a series of lynchings and attempted lynchings took place in connection with the cholera epidemic at the end of 2010 and the beginning of 2011, especially in the Grande Anse and Centre Departments. While such attention has waned since the cases linked to the cholera epidemic have died down, lynchings continue to occur for the same reasons that have long existed, mostly as a result of the impunity of the alleged perpetrators and the lack of confidence in the police and justice system. The phenomenon regularly occurs both in Port-au-Prince and in remote rural areas. From January to June 2012, the HRS recorded a consistently high number of lynchings mainly conducted out of revenge for suspected crimes. The figures are slightly higher than those reported at the same time last year, with a particular increase in the South East Department. As in the past, lynchings are apparently linked with the sense of insecurity in local communities and public perceptions of insufficient and inadequate police and judicial responses. In the second half of 2012, MINUSTAH will be launching a campaign aimed at engaging national and local authorities to fight against lynching and at raising awareness within communities, particularly focusing on the criminal nature of lynching.

## **B. Sexual Crimes**

33. On 26 June, the HRS issued a report based on a study on how reported rape cases are addressed in the criminal justice system in Port-au-Prince.<sup>21</sup> The report's findings indicate that the low rate of prosecution of perpetrators of rape in the Port-au-Prince area is a result of the shortcomings of the police and judicial system in general. From its monitoring of 62 cases, the HRS found that once complaints are registered, the HNP is generally diligent in referring cases to the judicial system. But it also found that the actual referral practice is inconsistent. Out of the 62 complaints registered by police, 45 cases were referred to the Prosecutor's office (*Parquet*) in Port-au-Prince. But only 25 were actually recorded in its registry. Of the 25 cases it received, the *Parquet* referred 11 to an investigating judge. Of these 11 cases; four were dismissed for failing to meet the perceived minimum admissibility requirements (primarily the positive identification of the alleged rapist by the victim and the existence of a medical certificate, despite not being legally required); six are still being investigated; one case has been referred to trial. Thus, approximately 18 months after the first case was registered by the police none of the 62 cases had actually gone to trial.

34. Other barriers to accessing justice include "out-of-court settlements" brokered by recent graduates and law students with the involvement of justices of the peace. Recommendations issued in the report aim at preventing further victimization of rape victims and call on the State to adopt a precise definition of the crime of rape, repeal any law discriminatory to women; reinforce the capacities of police and judicial authorities on women's rights and on violence against women; implement a victim-centric approach whereby victims are aware of their rights and are always informed about the different procedures at all stages of the process, through the police and the judiciary, and put a definite halt to the practice in which justices of the peace overreach their mandates by ruling in criminal cases, including rape. Separately, through its

---

<sup>21</sup> <http://www.ohchr.org/EN/Countries/LACRegion/Pages/HTReports.aspx>

regular monitoring activities, the HRS has registered an increased reporting of cases of sexual violence, which it attributes to increased awareness-raising in local communities.

### **C. The Human Rights of Police Officers**

35. The HRS notes with concern the killing of police officers in April and May in Port-au-Prince. Since 2011, over 40 officers have been killed, most while not on duty and in a manner that suggests execution-style killings. On 18 April, in response to the killing of a colleague, approximately 20 HNP officers staged a protest, firing bullets into the air to draw attention to conditions under which they are serving. Officers have increasingly complained that they do not have the right to form a union or association or express their opinions about their employment conditions. Small protests continued to occur and on 9 May, around 60 people demonstrated with vehicles and motorcycles demanding justice for the murder of an HNP officer that occurred on 17 April in Martissant (West Department). The group grew to approximately several hundred people who burned tyres, threw stones and used two local buses to block a main route in an attempt to express solidarity with the police force.

### **D. Detention**

#### **• Police Custody and Pre-trial Detention**

36. In the reporting period, the HRS continued to witness cases of illegal police custody, prolonged pre-trial detention, and illegal detention. At the level of police custody or *garde-à-vue*, consistent problems include poorly maintained registries and individuals being held in custody beyond the 48-hour deadline required by law. Based on HRS monitoring, most reported cases of individuals being held in custody beyond the 48 hour deadline come from Ouanaminthe, Gonaives, Saint Marc and Cap Haitian where a significant number of individuals are detained without appearing before a judge. Generally, the reasons that are mostly given in these cases of extended custody are “investigation” or “pending a court decision”, both of which are not valid grounds for detention according to the law. Similarly, these measures violate Haiti’s obligation under international law, in particular Art 9(3) of ICCPR.<sup>22</sup> Other reasons for these delays are the lack of witnesses and plaintiffs or the absence of means to transfer and to communicate files to the court. However, for the most part, the primary cause is the inaction of the judicial authorities.

37. A key factor in exacerbating the backlog is not holding regular criminal hearings for both serious and minor offences (*assises criminelles et correctionnelles*). However, the main reason for the malfunctioning of the Haitian judicial system is an overall lack of appropriate resources and personnel. Courts at all different instances across the country often have leaking roofs, broken furniture, and no electricity, computers, faxes or telephones. Employees deal with thick

---

<sup>22</sup> Art 9(3) of ICCPR: “Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.”

case files in ill-equipped offices; files are kept in over-stuffed drawers to which many different people have access, contributing to the all too frequent disappearance of case files. This environment, combined with lack of support from the Ministry of Justice, adds to the overall feeling of indifference that prevails among the judicial staff. This situation is compounded by the volume of work, the low salaries, the lack of professional advantages and the lack of resources such as secure cars to move detainees between the police stations, peace courts, and the Prosecutions' offices, resulting in little motivation for employees to tackle assigned tasks.

38. The number of persons in pre-trial detention, although high, is uneven between the different departments. The Independent Expert has called for a study on the reasons for this disparity to address them. The Human Rights and Justice Sections, in collaboration with local authorities and the OPC, are using a range of mechanisms to attempt to tackle prolonged pre-trial detention. In Fort Liberté, the HRS advocated with judges to hold expedited hearings on minor criminal cases where the accused remained in detention. These hearings have helped release detainees who had already been detained for periods of time that matched or sometimes exceeded the maximum time they would have served if convicted for the crimes they allegedly committed. In other parts of the country, a committee on follow-up to cases of detention (known as *Comité de suivi de la detention*) has been created. Functioning as an *ad hoc* group, different criminal justice actors, as well as the OPC and Justice, Corrections and Human Rights Sections, review the files of persons held in pre-trial detention (especially prolonged pre-trial detention). If the detention committee finds that the detention is illegal or arbitrary, it can recommend that the detainee be released. An eventual release recommended by the detention committee does not preclude a trial at a later stage. For other cases, the reasons for prolonged detention are identified and efforts are made to move the cases through the system.

39. In the West Department, there are three detention committees covering the municipalities of Croix des Bouquets, Port-au-Prince and Petit-Goâve. Between November 2011 and June 2012, the different participants submitted 72 cases to the Croix des Bouquets detention committee. The committee took action on 46 of the 72 cases, leading to 16 trials, 11 releases due to insufficient evidence to warrant a trial and investigations were reinitiated in nine cases. During the same period, the Petit-Goâve detention committee took action on 95 of 125 cases submitted to it, leading to 30 trials, 10 cases awaiting trial, 16 cases reinitiated, eight releases without need for a trial, 17 releases for sentence served, and 14 provisional releases. In the South Department, the detention committee received 169 cases, and in 29 the detainees were released without the need for a trial. Investigation are on-going in the remaining cases.

- **Conditions of Detention**

40. Without exception, conditions of detention are poor country-wide, despite some improvements. A major structural problem is that the Department of Corrections (*Direction de l'administration pénitentiaire, DAP*) does not have decision-making authority regarding its budget; rather the authority lies with the HNP, even though the Department of Corrections has the main responsibility for running prisons. To compound the problem, some police stations (*commissariats*) are transformed into prisons mainly due to the lack of prison facilities in some Departments. It has been reported that police officers benefit from this practice because they can

bribe the relatives of the detainees. As a direct result of this transformation, the responsibility for managing detention shifted to the HNP – as the latter is responsible for the operations of police stations – but they are not adequately trained, if at all, to deal with the day-to-day running of a detention facility. The Department of Corrections is not mandated to operate in police stations, thus creating a gap in expertise and leaving the HNP to perform tasks they are not supposed to do. Conditions of detention in police stations and prisons in Haiti fall well short of the UN Standard Minimum Rules for the Treatment of Prisoners.<sup>23</sup>

41. The HRS is particularly concerned that detainees are deprived of their basic rights such as access to health care, potable water and food. The situation is particularly poor at police stations as the latter are not prisons and, as such, are only officially meant to house pre-trial detainees for short periods of time. Therefore, police stations do not receive the necessary funding to provide for basic necessities such as buying enough food and providing basic medical care to detainees. When people are held for long periods of time (prolonged pre-trial detention or convicted detainees), they rely on their relatives to provide them with water and food. As a consequence, those who are far from their families or whose families are unwilling or unable to bring them food, invariably suffer from malnutrition in police stations.

42. Three Departments in particular have been reporting an increase in deaths and illnesses related to such conditions. In Artibonite Department, the early part of the year witnessed serious problems with the police facility of Gonaïves. The Gonaïves prison was burned down in 2004 and, since then, the police station has served as the prison. Water supply has been a major problem and on 6 May, the death of an inmate resulted in protests, with the inmates trying to call the attention of the authorities to the appalling conditions.

43. Similarly in Cap Haitien (North Department), the HRS has been repeatedly raising its concerns about the conditions of the prison. Since 20 February, 10 detainees (nine convicted prisoners and one awaiting trial) died. In two cases, the causes of death remain unknown. By the end of June, 26 inmates had been diagnosed with cholera. Out of these, 10 were transferred to hospital where one died. The prison population comprised 684 inmates (328 sentenced prisoners), with only one permanent nurse in charge of the infirmary and another hired on a temporary contract. The Red Cross is providing some support to the prison. The HRS has been advocating with the local DAP director to allocate the necessary funds to guarantee prisoners' access to health and better conditions of detention, with no success to date.

44. In the South East Department, in early June, three cholera cases were identified at Jacmel's prison. The prison authorities agreed to separate the sick inmates and arrange that they receive medical care. Nevertheless, later in June, the number of cholera cases had increased in the prison (four confirmed and three suspected cases) with two detainees dying from the illness.

---

<sup>23</sup> Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

## **E. The Judiciary**

45. The HRS recalls the fundamental role of the Haitian judiciary in preventing impunity for human rights violations committed by State officials and in protecting human rights intrinsic to the justice system, such as the right for all persons deprived of their liberty to have a court decide on the lawfulness of their detention; and (where applicable) to have their conviction and sentence reviewed by a higher tribunal. Within this context, the HRS notes two broad areas of concern: the long-standing problem of the capacity (personnel, resources) of the judiciary to meet its responsibilities; and concerns regarding appointments and operations of judges and their courts, which the HRS is closely monitoring.

46. With regard to the latter, the HRS has received allegations, from several different departments, that some recently appointed judges lack the requisite qualifications for the posts and have been appointed based on political affiliations. In two departments, the HRS has noted open criticism, by senior officials involved in the law enforcement and judicial sphere, of specific judicial appointees. In addition, over the past 12 months, the HRS has received repeated allegations of judges being removed from their functions at the request of members of Parliament and without justification, or of judges being unduly pressured and influenced in their rulings on specific criminal justice cases. If confirmed, these reports suggest a serious pattern of infringement on judicial independence and integrity. Indeed, a perception of such an infringement already exists and has a harmful effect on the credibility that is essential to an effective judicial system.

47. In the early part of the year, the HRS observed a significant turnover of judicial staff, particularly of justices of the peace (*juges de paix*) throughout Haiti, mostly in the South, North East and Artibonite Departments. While turnover is not uncommon, this cycle was particularly accelerated. Reports received from certain justices of the peace regarding political interference suggest that the Minister of Justice was being pressured by some members of Parliament to appoint their supporters to key judicial posts. According to the 2008 Electoral Law, justices of the peace have substantial power in validating the local elections because they are responsible for registering the events that take place at the polling centres as well as validating candidates. Justices of the peace also have two additional functions during election time: to issue reports (*procès verbal*) on violations of the electoral law and to handle other minor offences that take place at the polling centres.

### **• Other Issues relating to the Judiciary**

48. A significant problem in Haiti is that justices of the peace decide on cases which they are not competent to decide on. According to Haitian law, justices of the peace are mandated to serve in a police capacity to conduct *prima facie* investigations of crimes and minor offences and are competent to hear cases of infringements (*contraventions*). They are not authorised to conduct full investigations in criminal cases, a responsibility reserved for the investigating judge. Despite this, justices of the peace regularly rule in criminal cases; prevent the police from referring criminal cases directly to the Prosecutor's office; release suspects from pre-trial detention; and facilitate friendly settlements in criminal matters.

49. A series of strikes took place within the judicial system during the reporting period. Judicial clerks went on strike on 16 January, protesting against their low salaries, which have not been increased unlike those of other judicial staff. During the three weeks' strike courts hardly functioned. Representatives of the legal clerks met with the Minister of Justice, but did not reach any agreement regarding an increase in their salaries. The clerks resumed work, but the strikes added to the existing judicial backlog, and as the claims were unresolved a strike could resume at any time. On 18 June, legal clerks and bailiffs declared a strike that was observed and started bringing to a halt all courts in Haiti for an entire week, except for Les Cayes (South Department) where judicial clerks continued working. The Head of the *Association Nationale des Greffiers Haitiens* declared that the strike would continue until the Ministry of Justice resolves their demand of a salary increase as foreseen in the 2012-2013 budget. According to the budget, salaries should have increased up to 30,000 Haitian Gourdes (750 USD).

50. In April, the *Association nationale des magistrats haïtiens* called for strikes to advocate for the establishment of the CSPJ, and the judges of the *tribunal de première instance* in Cap Haitien held a one day strike on 16 April in support of this institution. The strikes are proving very harmful to the already weak judiciary and it has been particularly damaging in Fort Liberté (North East Department) and in Saint Marc (Artibonite Department) where criminal hearings could not take place. No solution had been reportedly found at the end of June.

#### **IV. HUMAN RIGHTS AND PROTECTION SITUATION**

##### **A. Legal Personality**

51. Lack of documentation (birth registration; identity cards) inhibits the ability to exercise certain other rights; and makes people more vulnerable to exploitation. Despite efforts to strengthen the civil registry in Haiti, it is difficult to obtain accurate and consistent information on the number of people registered. According to certain reports, between 20-40 percent of Haitian children are not registered; the 2003 census indicated that approximately six per cent of the population was not registered.<sup>24</sup> In addition, some people hold documentation that is not recorded in the National Archives, and is thus not considered valid. Furthermore, many people lost their documentation during the earthquake. On 25 April 2012, an agreement between Haiti, Argentina and Venezuela was announced whereby Haiti will receive support to strengthen the *Office nationale d'identification* in an effort to improve the system.

---

<sup>24</sup> Universal Periodic Review of Haiti, Integrated Report by MINUSTAH and UNCT for the Human Rights Council in the context of the examination of the 2011 Universal Periodic Review of Haiti, para. 35; <http://unfpahaiti.org>.

## B. The Rights of the Child

52. Haiti ratified the Convention on the Rights of the Child (CRC) in 1995. Legislation on children's rights is scattered in criminal, civil and administrative texts (see for example, 7 September 1961 law establishing a special children's court for Port-au-Prince<sup>25</sup>, the criminal code and the Haitian National Police internal regulations) and does not comprehensively cover Haiti's obligations under the CRC. During its UPR session, Haiti rejected the recommendation to adopt and implement a children's code, stating that issues related to children should be addressed within the framework of the family code that is being developed. It will be important to ensure that the best interests of the child remain a guiding principle in this broader code.

53. In terms of reoccurring children's rights issues, the juvenile justice system is not well developed. To date, only one children's court has been established, in Port-au-Prince, although the Decree of 1961 provided for five courts across the country. In addition, there is only one separate prison for children, in Port-au-Prince. The result is that child offenders are being frequently sentenced outside the juvenile court system and detained in police stations or prisons, in cells shared with adults. For example, in Fort Liberté (North East Department), children who have been involved in criminal activities linked with the Haitian-Dominican border crossing, end up in prison in Ouanaminthe and in Fort Liberté, sharing the space with adults, as there is no assigned judge to manage cases involving children. The procedure to deal with children is not institutionalized and judges and prosecutors who are responsible for juvenile justice do not have the requisite skills to manage cases dealing with children. As a result, children in conflict with the law often face a range of barriers in accessing justice.

54. Haiti has ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the United Nations Convention against Transnational Organized Crime. Nevertheless, significant cross-border trafficking occurs, particularly in the area of Ouanaminthe, which borders the Dominican Republic, and has apparently increased since the earthquake. If children are located, it is rare that an investigation, let alone a prosecution into the crime takes place. According to figures collected for the first quarter of 2012 by the Haitian non-governmental organization, *Jano Sikse Border Network (RFJS)*, 4,434 individuals, comprising 2,915 men, 1,485 women and 34 children, crossed the Dominican/Haitian border illegally. Two border monitoring programmes were closed in August 2011 and February 2012 and, as a result, there has been very little ability to monitor child trafficking effectively. Thus the adoption of the framework of the *Synergie de protection de l'enfant d'Ouanaminthe* (the Platform for Child Protection comprising different Government, United Nations and civil society stakeholders working on child protection in the North East Department) in May was welcomed, as it provided for the international non-governmental organization, Catholic Relief Services, to finance at least nine months of child protection activities along the border with the Dominican Republic. Through one of the platform's partners, two officers will be placed in eight border crossings to monitor and report on child trafficking. Another partner will be responsible to follow up on protection needs, for example, temporary shelter, medical care and psycho-social support.

---

<sup>25</sup> the loi du 7 septembre 1961 instituant les tribunaux spéciaux pour enfants, le Décret du 20 Novembre 1961 portant création du tribunal pour enfant de Port-au-Prince

55. The phenomenon of *restavek* (children in domestic servitude) entrenched within the country illustrates the vulnerability of children to trafficking; a total of 173,000 Haitian children, 60 percent of them girls, are *restavek*.<sup>26</sup> In the North East, the HRS works with partners through the Platform for Child Protection to find long-term solutions (law reform, strengthening coordinated responses) as well as to deal with individual cases. Illegal adoptions are still occurring (for instance in April, in Camp Accra (Port-au-Prince), a 16 year-old girl tried to sell her two month-old child to a Haitian American for 2,000 USD.)

### **C. Human rights in Humanitarian Protection**

- **Transitioning to State Ownership**

56. Although the humanitarian response is gradually reaching an end, serious protection challenges in the context of the emergency response remain. The HRS is already receiving reports of deteriorating conditions in the remaining camps due to rains that started ahead of the formal start of the rainy season. In addition to flooding and landslides, it is feared that the rains will result in a sharp increase in cholera infections and mortality. While cholera largely spared the post-earthquake camps last year, it may hit them more seriously this year because the delivery of sanitation and other services is much reduced. In the absence of the State providing basic services, camp populations have little access to water and sanitation and health care.

57. Furthermore, the process of handing over responsibility for the remaining humanitarian caseload and for addressing future humanitarian protection situations continues to raise challenges for OHCHR, as the lead agency for coordinating protection, because of the limited capacities of the two main governmental counterparts, the Ministry of Social Affairs and Labour, known by its acronym, MAST, and the *Direction de la Protection Civile*. Individuals within both State entities are nevertheless increasingly engaged with OHCHR and have indicated their strong commitment to protection.

58. As part of the transition, the MAST established a Strategic Advisory Group for Protection (*Groupe Consultatif Stratégique Protection*) which in June reviewed the six month progress of the adopted work plan. Positive steps identified included the establishment of the working group on social security (*table sectorielle sécurité sociale*) in Jacmel as well as a similar working group in the North East Department. It was emphasized that these models should be replicated to strengthen efforts to ensure that protection principles are being integrated into humanitarian response. Perhaps the most emblematic example of the challenges that exist for protection actors is that of the 47 families in Versailles, in Grande Anse Department. Since January 2011, the HRS has consistently reported about 47 families which were forcibly displaced without notice by local authorities due to security risks (mudslides). Despite ongoing advocacy, no solution has been found to address their lack of secure housing. MAST's director in Grande Anse promised to allocate to the families the sum of 25,000 HTG (600 USD) which should be sufficient to rent housing for a period of time, nevertheless a longer term solution is required.

---

<sup>26</sup> National Report submitted in accordance with paragraph 15(a) of the annex to Human Rights Council resolution 5/1, Haiti, para. 29, A/HRC/WG.6/12/HTI/1(2011).

- **The Right to Adequate Housing**

59. Since the 12 January 2010 earthquake, the number of individuals living in camps, whether on public or private property, has dropped from 1.5 million to 390,000 (98,000 households) in 575 sites.<sup>27</sup> In November 2011, President Martelly officially launched the 16/6 Programme, aimed at helping persons living in camps find alternative housing solutions. The programme is being implemented under the auspices of the UCLBP, with the support of IOM, UNDP, UNOPS and ILO. The Programme's objective is to provide housing options for the inhabitants of six camps, by supporting the construction of new houses. While progress has been made by the State and international actors engaged in the 16/6 programme, more than 70 per cent of camps are on private land and these are not presently targeted by relocation programmes. At present, people in 153 camps are under threat of eviction.<sup>28</sup>

60. The Haitian Government is developing a policy on housing and urban development, which would also address the issue of camps and informal settlements. Such a policy would be a major step in favour of the progressive realization of the right to adequate housing, as an element of the right to an adequate standard of living. In addition, the identification of the UCLBP as the lead attests to the Government's willingness to coordinate and ensure the coherence of all actors in (re)construction under its own leadership. The policy and implementing plans should include a) the implementation of a series of suggested protective measures for persons remaining in the camps on both public and private lands against forced evictions; b) the progressive closure of camps based on the identification of most vulnerable camps and a calendar for the gradual closure in consultation with private landowners for those camps that will not be closed immediately; and c) the identification of concrete steps to provide access to housing of the most marginalized such as the homeless and those that presently cannot afford a decent home in a progressive manner.

61. Closure of camps and relocation are taking place while funds are being drastically reduced and will continue to be reduced in the months to come. As many individuals in vulnerable situations remain in camps, it is important that the authorities, particularly the UCLBP and partners, agree on vulnerability criteria and that such criteria informs how camps will be prioritized for closure and individuals relocated. While categories of individuals in vulnerable situations are largely agreed upon (disability, older person, female-headed households), criteria for the camps themselves are under discussion. Under consideration are issues such as environmental risks (landslides, floods, squalid conditions, absence of water and sanitation facilities) and the public use of the land (whether the camp is located on land that would be used for schools, sport, health centres or a court, the impossibility to maintain minimal infrastructures over an extended period of time, and the desire of the landowner to regain access to his/her property).

62. Much of the focus is on the West Department, specifically Port-au-Prince and its environs. However, other departments also face challenges. In the South East Department, the

---

<sup>27</sup> IOM Displacement Tracking Matrix v2.0 Update – June 2012.

<sup>28</sup> Ibid <http://www.eshelter-cccmhaiti.info/jl/images/pdf/evictionreportfrenchjune2012.pdf>.

camps in Pinchinat and Wolf are in very poor conditions with diminished services to encourage inhabitants to leave, thereby increasing illnesses. Camp coordinators in those two camps estimate that approximately 155 children between the ages of 6 and 17 are not attending school. In camp Pinchinat, 91 of the 231 families who are part of the camp relocation programme have left the camp they had been living in since January 2010. A total of 40 families are still waiting for the 20,000 HTG committed under the programme. A relocation programme is also in place for camp Wolf, but the families have not yet received any financial support due to challenges with registration.

## V. HUMAN RIGHTS AND PUBLIC POLICY

63. As the Security Council has recognized, economic and social development is essential to Haiti's long-term stability.<sup>29</sup> Any sustainable poverty alleviation and development strategies will also depend on efforts that address abusive power structures and establish transparent and accountable decision-making processes. As vested interests frequently shape the public agenda, particularly the allocation of resources, the Government's ability to deliver basic services, such as health care, education, water, food, or shelter, has been limited. In addition, widespread corruption further limits access to services for a large proportion of the population. For these reasons, efforts have been undertaken to increase community participation in public policy and budget monitoring, by empowering civil society to monitor the development, adoption and implementation of local public policies and to enable them to effectively oversee budgeting and public expenditure. In the first half of 2012, a significant number of platforms were created at municipal/departmental level. In submitting the 2012-2013 fiscal year budget, the Minister of Economy and Finance stated that the economic and social sectors were priorities. It was proposed that the social sector, including education and health, would receive 25 per cent of the total budget and the economic sector, comprising water, energy and transportation, 53 per cent.

64. President Martelly has prioritized education for his first term, and in 2011 launched a *Fond National pour l'Éducation alimenté par des taxes prélevées sur les transferts financiers et les appels téléphoniques* to help finance the various programmes initiated to improve access to a quality education system. Since the beginning of 2012, civil society actors have been particularly engaged in monitoring how the right to education is enjoyed in the North East Department. Many of the overall challenges are linked to inadequate resources, including poor infrastructure and buildings not maintained; there are not enough teaching materials or facilities within the classrooms, (for example, chairs and desks); there are an insufficient number of schools, (13 communal sections do not have any schools), which increases the lack of physical access to schools for thousands of students given the distance they have to walk to reach a school in a

---

<sup>29</sup> Security Council Resolution 2012, adopted by the Security Council at its 6631st meeting, on 14 October 2011 (*Emphasizing* that progress in the recovery and reconstruction of Haiti, as well as in Haiti's social and economic development, including through effective international development assistance and increased Haitian institutional capacity to benefit from this assistance, are crucial to achieving lasting and sustainable stability, and reiterating the need for security to be accompanied by social and economic development; *Recognizing* the interconnected nature of the challenges in Haiti, reaffirming that sustainable progress on security, the rule of law and institutional reform, national reconciliation and development are mutually reinforcing, and welcoming the continuing efforts of the Government of Haiti and the international community to address these challenges).

neighboring communal section. There is an insufficient number of teachers; teachers are not always paid and do not always attend classes; and in some cases they have sub-contracted an unqualified individual to teach their classes. On a positive note, the Martelly Presidency's initiative of granting free primary education has had an impact, with almost 40,000 students in the North East Department benefiting from this. Since the adoption of the Constitutional amendments, free and universal primary education is now constitutionally guaranteed.

65. Another issue that has been high on the agenda of civil society is that of electricity, a component of the right to adequate standard of living. In January and February, demonstrations, calling for either access to electricity or replanning of ongoing power projects, increased from the previous year. The Departments particularly affected were the South, Centre and North East Departments. The demonstrations usually started peacefully but some turned violent. For example, in February in Terrier-Rouge (North East Department), after informing the local police and the Mayor, 400 people demonstrated peacefully due to the lack of electricity in the area. The group was trying to raise awareness that an ongoing project was not going to provide electricity service to the city, with the exception of the main street and some surrounding streets. The project is being implemented by a private entity and is not meeting the needs of the local population. Key problems include unqualified technicians and ineffective equipment, such as generators frequently breaking down. Similarly in Dosmond, a communal section of Ouanaminthe (North East Department), protestors were trying to highlight that despite two large electricity projects in the area, Dosmond was excluded. Some passers-by have been injured during these protests, and it is considered that there is a risk that the situation deteriorates. In some communities there is no electricity at all and in certain cases, individuals are not paying for the electricity service, but rather illegally establish a connection. This causes the system to breakdown or results in others not receiving what they are paying for. The HRS recalls that access to electricity is critical to help meet the right to an adequate standard of living as well as other rights such as security, health and education. In addition, the demonstrator's claims for access to electricity have highlighted the issue of the HNP's response which, at times, risks violating the rights to freedoms of assembly and expression and security of the person.

## VI. CONCLUSION

66. The first half of 2012 witnessed some important efforts to put in place or strengthen key structures for the promotion and protection of human rights. These include the establishment of the Supreme Council of the Judiciary, the appointment of all the members of the Supreme Court, the establishment of the post of a Minister for Human Rights and Extreme Poverty, the nomination of an Inspector General of the HNP, albeit *ad interim*, and the creation of the Housing and Public Buildings Unit designated to implement the proposed policy on camp closure and relocation. It remains to be seen how these different entities will be resourced and supported to undertake their work and how they will function.

67. Two and a half years after the 12 January 2010 earthquake, the number of people remaining in the camps is high, particularly those on private land. Landowners are increasingly anxious to have their property returned, but the Government has to date been reluctant to tackle this difficult

challenge. It is therefore hoped that a comprehensive rights-based housing and urban development policy will be adopted quickly, identifying a lead governmental agency that can enforce the policy.

68. The Government's adoption in March, of a range of commitments under the UPR, was much welcomed. The UPR provides an agreed framework for identifying what human rights priorities need to be translated into a plan of action on human rights; which in turn will serve as a useful tool to engage all parts of the Government institutions and civil society in working to meet the UPR commitments. The Parliament's ratification of two important treaties, the International Covenant on Economic, Social and Cultural Rights and the Hague Convention on the Protection of Children and Cooperation in Respect of Inter-country Adoption, are also welcomed, and it is urged that these are promulgated at the soonest.

69. The judiciary signalled its ability to uphold the rule of law in the Les Cayes trial which led to the sentencing of police and prison officers for their involvement in the extra-judicial killing of detainees in 2010. Nevertheless, the decision not to pursue the prosecution of Jean-Claude Duvalier for crimes against humanity is a deeply disappointing violation of Haiti's obligation to, at a minimum, investigate human rights crimes.

70. The first half of 2012 saw improvements on the political front, but the situation remains volatile, creating an environment in which the Government and the Legislature are easily distracted from developing and implementing policies and strategies essential to the protection and promotion of human rights. Action is needed in particular regarding the allegations of human rights violations committed by the HNP, particularly killings, the response of the police and judiciary to sexual and gender-based violence, in addressing impunity in lynching cases, decreasing prolonged pre-trial detention, improving conditions of detention, and on the deep structural issues which relate to the lack of enjoyment of social and economic rights by the majority of Haitians.