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**ADVISORY SERVICES AND TECHNICAL COOPERATION
IN THE FIELD OF HUMAN RIGHTS**

Situation of human rights in Haiti

Report prepared by the independent expert, Louis Joinet

Summary

This report, the drafting of which was completed on 3 January 2006, gives an account of the sixth, seventh and eighth visits to Haiti by the independent expert in 2005.

In terms of civil and political rights, the independent expert gave priority to the following issues: violation of human rights, insecurity and vulnerable groups, failure of justice.

With regard to insecurity, while there has been a gradual improvement in the provinces, the situation in the capital is increasingly disquieting, owing in particular to the daily increase in kidnappings.

The situation concerning the rights of children has deteriorated as a result of poverty (2,500 street children in the capital) and violence (use of children by armed factions), in addition to which 47 per cent of sexual assaults involve minors. According to the latest statistical report by the United Nations Children's Fund (UNICEF), more than half of all children have no birth certificate. The low school enrolment rate (around 60 per cent) may fall to as low as 20 per cent in the most disadvantaged districts. Some 200,000 children (including those who have become orphans) are affected by HIV.

In 85 per cent of cases of interpersonal violence, women are involved, there being a disquieting increase in rape. The bright spots consist in efforts by non-governmental organizations and the Ministry on the Status of Women, with the launching of a national plan to combat violence against women. There have been two essential gains: an obligation for doctors to issue a medical certificate in the case of injuries which may be linked to sexual assault, and the criminalization of rape, previously classified as a sexual offence, with the progressive lifting of the taboo on the voluntary termination of pregnancy.

The independent expert has also observed a significant increase in mass expulsions by the Dominican Republic, of residents of Haitian origin, frequently in conditions that are incompatible with human rights.

The independent expert also wishes to draw attention to the question of "deportations". These are generally mass expulsions from abroad, in particular the United States of America, of convicted persons of Haitian origin at the end of their sentences who transit under arrest, devoid of any legal basis, pending reunification with their family.

The system of justice is increasingly besieged. In addition to the serious damage to judicial facilities in the insurrections of February 2004, the recurrent abuse of extended pretrial detention has worsened: as at 12 December 2005, only 412 of 3,742 prisoners had been convicted. Additional hearings have been organized, but not enough to reduce the extent of the crisis.

There is ongoing interference with the judiciary by the executive, as attested to by the dismissal, covered up as retirement, of five judges from the Court of Cassation, which has become increasingly discredited.

Most reforms are bogged down, with the exception of one proposal which is moving ahead concerning police custody and the granting of autonomous status to the Institute of Forensic Medicine. In contrast, essential reforms remain on hold, whether reform of the Supreme Council of Justice, the Judicial Training College, or statutory guarantees for judges.

With regard to economic and social rights, the independent expert has focussed on four sectors:

Reform of the land register, the shortcomings of which constitute handicaps in three fundamental domains, particularly in rural areas, (a) realization of real estate, (b) the regulations governing inheritance, which is often the source of violent tension owing to the absence of wills as a result of illiteracy, (c) the prevention of speculation/dispossession of small landowners unable to prove title to their holdings;

Development of stand-alone, small-scale water supply projects;

Significant social progress as the result of the signing of a collective agreement in the customs-free zone;

Reform of the civil register on the basis of forgery-proof identity documents issued for elections.

CONTENTS

	<i>Paragraphs</i>	<i>Page</i>
Introduction	1 - 5	6
I. AGGRAVATION OF VIOLATIONS OF CIVIL AND POLITICAL RIGHTS	6 - 33	6
A. Violation of human rights, insecurity and vulnerable groups	6 - 10	6
1. Children's rights	11 - 12	7
2. Women's rights	13 - 22	7
3. Increase in forced repatriation from the Dominican Republic	23 - 30	9
4. So-called deportations from abroad	31 - 33	10
II. DIFFICULTY OF RESTORING ORDER IN THE POLICE	34 - 36	10
III. INCREASING FAILURE OF THE SYSTEM OF JUSTICE AND DELAYS IN REFORM	37 - 71	11
A. Damage to judicial facilities	37	11
B. Scandalous abuse of extended pretrial detention	38 - 48	11
C. An increasingly discredited Court of Cassation	49 - 60	13
D. Urgent need for a thoroughgoing reform movement	61 - 71	15
1. Reform of police custody: a priority	61 - 65	15
2. Permanent statute for the Institute of Forensic Medicine	66 - 67	16
3. Reform of the Supreme Council of Justice	68	16
4. Reform of the judiciary regulations	69	16
5. Reform of the Judicial Training College	70 - 71	17

CONTENTS (*continued*)

	<i>Paragraphs</i>	<i>Page</i>
IV. ECONOMIC AND SOCIAL RIGHTS	72 - 78	17
A. Reform of the land register	72 - 73	17
B. From water carrying to water supply	74 - 76	18
C. Significant social advances in the customs-free zone	77	19
D. Reform of the civil register and development	78	19
V. CONCLUSIONS	79 - 82	19
VI. RECOMMENDATIONS	83	20

Introduction

1. At its sixty-first session, speaking on behalf of the Commission on Human Rights under agenda item 19 (Technical cooperation and the situation of human rights in Haiti), the Chairperson thanked the independent expert for his report (E/CN.4/2005/123) and requested him to continue his work within the framework of his mandate and to report to the Commission at its sixty-second session.
2. In addition to the interim President of the Republic and the Prime Minister, the independent expert met the Minister for Foreign Affairs, the Minister of Justice and Public Security, the Minister for Communication and Culture, the Minister of Agriculture, the Minister on the Status and Rights of Women, the Minister of Public Health and Population, the spokesperson for the Council of Elders, and the Ombudsman.
3. Fruitful discussions were held with senior officials and staff in the system of justice, the police and in particular with non-governmental organizations (NGOs). At the international level, the independent expert held discussions with officials from the international bodies present in Haiti, including the Special Representative of the Secretary-General of the United Nations, the chief of the United Nations Stabilization Mission in Haiti (MINUSTAH), the head of the United Nations Civilian Police (UNCIVPOL), and representatives of the Special Mission to Strengthen Democracy in Haiti of the Organization of American States (OAS). Meetings were also held with the heads of United Nations agencies and the diplomatic corps.
4. In 2005 the independent expert went to Saint Marc and, at the end of November, to Gonaïves, where he met senior local civil, judicial and religious authorities, as well as NGOs.
5. The Commission will note and commend the spirit of cooperation displayed by the Haitian authorities throughout the mission. The independent expert wishes in particular to thank his interlocutors with MINUSTAH in connection with his mandate, in particular Mr. Thierry Fagart and Mr. Cissé Gouro (Human Rights Section) and Ms. Saada (Justice Section) and their teams, and, at Gonaïves, the United Nations Volunteers in the Electoral Section, who, through their availability and dynamism, gave the independent expert an opportunity to witness, in the field, the efforts made at the grass-roots level to ensure the technical implementation of the electoral process, notwithstanding the difficulties encountered.

I. AGGRAVATION OF VIOLATIONS OF CIVIL AND POLITICAL RIGHTS

A. Violation of human rights, insecurity and vulnerable groups

6. Most of the serious violations (murder and kidnapping) are due less to complicity on the part of the State than its failure to prevent them, owing largely to the difficult situation it has inherited.
7. Yet there is another reason. Since his exile, J.B. Aristide has never formally condemned these acts or disavowed those responsible, which, implicitly, indeed explicitly, uses insecurity as a factor for destabilization of the transition with demands for his return.

8. While the independent expert noted a gradual, but not widespread, improvement in the provinces (he was able to travel around Artibonite without too many precautions), he noted the worsening of the situation in the capital. Although progress has been made in some districts, such as Bel Air (freely visited by the independent expert), various high-risk areas remain, such as Martissant, Grande Ravine, Cité Militaire and in particular Cité Soleil, the centre of extreme poverty, where the atmosphere was briefly calmer as voting booths were installed.

9. The recent increase in kidnappings every day is becoming a national scandal. At best, they end in payment of a ransom, at worst with summary execution. This was the fate suffered by a local staff member employed by the International Committee of the Red Cross, an official with the Department of Taxation, and the eminent journalist, Jacques Roche.

10. The independent expert would like to see better coordination of data collection between the Haitian National Police, the MINUSTAH Security Section, and UNCIVPOL, both with regard to the numbers of victims and arrests of perpetrators. The most recent statistics show an increase: 403 victims between May and mid-December according to some sources, 700 according to others.

1. Children's rights

11. UNICEF, in its latest statistical report, notes that, as so often in situations of conflict, children suffer more than the population at large; more than half of children have no birth certificate. The already low school enrolment rate (around 60 per cent) may fall to 20 per cent in the most disadvantaged districts. Around 200,000 children (including those made orphans) are affected by HIV. UNICEF assesses the number of street children in Port-au-Prince at around 2,500, with some 2,000 a year being trafficked to the Dominican Republic, while 47 per cent of sexual assaults involve children, who are often forced into prostitution to survive.

12. An estimated 600 children are members of armed groups, and between September and November 2005 at least 40 children were reported shot dead in clashes in Cité Soleil.

2. Women's rights

13. In the absence of standardized data, the following statistics can only serve to indicate trends. They show a worsening in the situation, which is all the more disquieting in that the number of women raped who go to a medical-social centre does not reflect the true situation, even though their numbers have increased slightly. Young girls and adolescents are involved in 79 per cent of cases, such instances being reported more readily than cases involving adults.

14. A sorry observation is required: taking all forms of violence together, women are the victims in 85 per cent of cases, and men the aggressors in 88.8 per cent.

15. With regard to sexual violence, 47 per cent of victims are girls and 53 per cent adult women. Of women seen at the Gheskio centre, 93 per cent had been raped by unknown individuals, mostly armed bandits (*zenglendos*). While it is difficult to state figures, the increase in gang rapes, often organized, is alarming. Between 2004 and 2005, 33 per cent of rapes documented by women's NGOs were gang rapes.

16. There has been one major advance:

Every doctor, at the request of a victim or on application by a judge, is now obliged to issue a medical certificate attesting to injuries possibly caused by sexual assault;

The launching of a national plan to combat violence against women, including proposals for the establishment of an “observatory”, which would allow data collection to be standardized, improve and better coordinate the care of victims, and launch a national awareness campaign to bring about a change in attitudes.

17. The independent expert attaches great importance to this campaign to change prevailing views, including the idea that women’s issues are solely the responsibility of women’s organizations, as though men were somehow not involved, whereas in reality it is a joint responsibility. One study (Policy Project II) found that 40 per cent of men take a relative view or justify physical violence as falling strictly within the family (lack of respect, dishonour arising from adultery or even flirting, disobedience, being a spendthrift), as though these were simply private matters, whereas in fact it is a national issue.

18. Hence the significance of recent criminal measures, which now provide that:

In case of adultery, the killing by the husband of his wife and her partner is no longer an acceptable pretext;

Rape, previously classified as sexual or indecent assault, will henceforth be a specific crime.

19. Lastly, the independent expert’s attention was drawn to the difficulties of women who become pregnant as a result of rape, and, beyond that, the harmful consequences of legislation which prohibits voluntary termination of pregnancy in all circumstances by imprisoning both the woman and the person performing the abortion if another party is involved.

20. For the most part voluntary termination of pregnancy is related to unwanted pregnancies. According to the Emmus III survey (2000), average fertility among women is 4.7 children (as high as 6.4 children for women without education), whereas the number of wanted pregnancies stands at 3. The Cegypef survey (1995) found that 19 per cent of women have had at least one abortion.

21. The result is that clandestine abortions are a public health issue, and have become a “means of retroactive contraception” (Danièle Magloire). A study by Dr. Théodore (1992), the only one available, found that in hospitals alone 12 per cent of maternal mortality cases were due to abortion, and the figure is probably higher if cases of haemorrhaging (15 per cent) and septicaemia (14 per cent), which are not declared because they are the result of illegal abortions, are taken into account.

22. One encouraging development is that a workshop organized in 2005 by the Minister on the Status of Women has brought back into consideration, with a view to their adoption in the next session of the legislature, various proposals submitted to the former Parliament, such as - in a sign that attitudes are changing - the decriminalization of abortion (medical grounds, rape, incest), identification of paternity, the status of concubines, regulation of domestic work. It is to be hoped that the Government that emerges from the elections will make this one of its priorities.

3. Increase in forced repatriation from the Dominican Republic

23. In the absence of official statistics, the Returnee and Refugee Support Group (GARR) estimates the number of Haitians living in the Dominican Republic who are expelled to Haiti at 10,000 to 30,000 annually.

24. According to the support group, repatriation affects not only long-term residents, who have their family and all their assets in the country, and no longer have any ties to Haiti, but also newcomers and descendants of immigrants who were born in the Dominican Republic.

25. At the time of arrest, many of them cannot communicate with their families, collect anything owing to them or recover their assets. It even happens that their identity cards are confiscated or destroyed, and that the little money they have is taken. It seems that there is no effective remedy and very few pre-deportation hearings.

26. They are first taken to immigration detention centres, and then spend several hours or days waiting for a group to be formed, which is then taken on a bus to the Haitian border, where for the most part they are simply abandoned.

27. In a joint note (22 August 2005), several civil society organizations reported human rights violations and ill-treatment in such circumstances. It happens that children are often found abandoned on both sides of the border (cases of children alone in Santo Domingo, without news of their parents, and children abandoned at the border).

28. For the most part these expulsions are carried out in violation of the guarantees provided for under Dominican immigration legislation (Act No. 95 and Regulation No. 275) and the Agreement concluded between the two Governments in December 1999, and without taking into account the recommendations of the Inter-American Commission on Human Rights calling for an end to group expulsions and for measures to ensure that in every case the individual is heard by an independent judicial authority.

29. Rather than negotiating yet another agreement, the Haitian Ministry of Foreign Affairs is focusing on the establishment of a joint mechanism intended to make the guarantees already provided for in the existing Agreement effective. The Agreement includes positive aspects: repatriation by day at specific points on the border, avoiding family separation, an opportunity to take personal effects and retain all legal documents, provision of a copy of the repatriation order, and prior submission to the Haitian consular services in Santo Domingo of a list of those to be expelled.

30. The Dominican President, Mr. Fernández Reyna, made a visit to Haiti on 12 December 2005. The following issues were on the agenda: migration, border security, status of workers, reception of students, trade, status of children born in the Dominican Republic of Haitian parents. In view of the violent protests caused by his visit - which can only be condemned - he was compelled to shorten his stay without these important bilateral issues being discussed in depth.

4. So-called deportations from abroad

31. This concerns people of Haitian origin who are convicted, largely in the United States of America, and who, at the end of their sentences, are expelled to Haiti, generally by air. On arrival at the airport they are imprisoned for identification purposes so that they can be reunited with their families. But since November 2004 many of them, as the independent expert observed at the National Prison, have still been awaiting authorization. As at 25 November 2005, 104 people were in prison for this reason, apparently without a warrant, the prison registers consulted simply containing the notation "deported".

32. While many of them were convicted for serious offences (drug trafficking, hold-ups, rapes, voluntary homicide), others committed only minor violations (cheque forgery, out-of-date driving licence, illegal stay). These individuals, who have already been convicted in a fair trial and have completed their sentences, are in effect serving a second sentence, devoid of any legal basis.

33. In an effort to find a solution to this complex situation (there is great hostility towards "deportees"), the Transitional Government has established an ad hoc tripartite administrative commission (prosecution service, Legal Records Office and Ministry of the Interior) meeting at the Ministry of the Interior each Wednesday to give its views on their release, and in principle, to expedite it.

II. DIFFICULTY OF RESTORING ORDER IN THE POLICE

34. In addition to recurrent corruption, the ill-treatment meted out when making arrests or in police custody and failure to observe procedural time limits persist in many police stations visited by the MINUSTAH Human Rights Section.

35. A serious effort to rectify the situation has begun with the appointment of the new Director-General, Mr. Andrésol. His determination to improve professionalism and counter certain lapses by the police has been clearly stated, and supported by his actions. For example, following serious incidents (several people shot to death) at Martissant during a football match, a 60-day administrative suspension was ordered against the 12 police officers involved, some of whom are the subject of a judicial inquiry. Two senior officers held in the annex to the National Prison were visited by the independent expert. The Director also announced that some 50 corrupt or dishonest police officers had been dismissed. "I will not be intimidated", he stated, in response to a smear campaign orchestrated by certain police officers who knew that they had been targeted.

36. Hence the efforts by the Police Academy to train (for four months, a period considered too short by the trainers) new recruits, the so-called “old” candidates being accepted only after neighbourhood enquiries (former members of the Front révolutionnaire pour l’avancement et le progrès en Haïti or Lavalas armed factions are automatically excluded) followed by a psychological and physical examination. Sessions are organized on human rights, protection of children, sexual violence and respect for women’s rights.

III. INCREASING FAILURE OF THE SYSTEM OF JUSTICE AND DELAYS IN REFORM

A. Damage to judicial facilities

37. Notwithstanding the work of restoration and reconstruction undertaken with inadequate means, many judicial facilities remain unusable. To cite only one example, at Gonaïves, the burned out Appeal Court building remains gutted and the judges are housed in a small room in an adjoining property (not kept up by the owner, who refuses to renew the lease), with a small room for hearings shared with the Land Court.

B. Scandalous abuse of extended pretrial detention

38. The extent of arbitrary detention, euphemistically termed “extended pretrial detention” has become dramatic, notwithstanding the spectacular fall, but without this announcing any trend, following the mass escapes of February 2004. As at 12 December 2005 the overall number of prisoners stood at 3,742, of whom only 412, or 9 per cent, had been convicted. At the National Prison only 73 out of 1,810 prisoners had been convicted, and only 7 out of 173 at the Pétion-Ville Women’s Prison.

39. Another factor causing overcrowding relates to the fact that, following the damage to prisons, only 17 detention centres out of 21 are in relatively good condition. Overcrowded, badly ventilated or ill-lit, even unsanitary, cells, mean that health conditions for prisoners are deplorable (130 cases of beriberi recorded in the National Prison).

40. In an effort to stem the tide as a result of the delays in the penal process, two measures have been taken:

Establishment at the Port-au-Prince court of five additional chambers. The independent expert notes that this excellent initial idea (to facilitate immediate appearance) has been sidetracked somewhat. Too many complex cases are delayed, preventing immediate hearings, as a result, according to some judges, of a lack of cooperation on the part of many police officers, who take the view that the procedure undoes their work by favouring the release of offenders brought before the court;

Holding of two weekly hearings at the National Prison to avoid transferring prisoners. The hearings are conducted with the same set-up and following the same procedure as in the law courts. A public hearing, with press access, is assured, subject only to the fact that unlike hearings in the law courts, access to the chamber for the hearings is subject to strict control. Further, in a symbolic and somewhat ambiguous measure, those prisoners who wish may attend the deliberations as members of the public.

41. However positive these measures - in view of the extent of the problem - they cannot by themselves significantly reduce the number of cases of extended pretrial detention. In exceptional circumstances, exceptional measures are required: in order to rectify this situation, a temporary, extrajudicial solution is required. This could take the form of an administrative commission entrusted with determining, case by case, the cause of the situation and rendering an opinion in a report. Where there is a favourable opinion, the decision authorizing release should be implemented only on approval of the chief judge, ruling on the legality of the detention, whereupon proceedings would resume their normal course with a voluntary appearance.

42. To avoid stagnation in the work of the commission - perfection ruling out the acceptable - a plan for tackling the workload would provide for consideration of cases on the basis of the following priorities: (a) prisoners held in detention even though there is a decision to release them; (b) prisoners who have served longer in pretrial detention than the maximum penalty applicable; (c) prisoners who are not parties in a regularly constituted case.

43. To avoid allegations of corruption that such a solution may give rise to, the commission should ideally be mixed, and thus include specialized representatives of the international community appointed on the proposal of or by the Office of the High Commissioner for Human Rights in consultation with the Government.

44. Regarding allegations of extended detention of former Lavalas political officials and supporters, the controversy relates to whether or not these are "political" prisoners. Without entering into questions of ideology, a solution will be found only if the issue is viewed from the standpoint of the fundamental principles applicable, as stated to the Government by the independent expert in his previous reports (see E/CN.4/2005/123, para. 56): pretrial detention supposes that the procedural time limits will be respected. If, at the end of the maximum period, the charges are substantiated, pretrial detention can be justified. If, on the other hand, the allegations are not well-founded and the prisoner remains in detention, doubt is permissible. When such a situation persists, in addition to the fact that it constitutes a serious illegality in the case of any prisoner, whether under ordinary law or not, it tends to confer a political dimension on such extended pretrial detentions where they involve individuals who exercised responsibilities or discharged functions of any kind under a previous government. By way of example, reference may be made, from among the prisoners visited in the annex to the National Prison, to the case of Father Gérard Jean Juste (under arrest since 21 July 2005), whose last application for release from prison (5 August 2005) was refused on 19 October, even though there seemed not to be any valid charges against him, which can only be interpreted as a manoeuvre to exclude him from the electoral process, whereas in reality, as observed by the independent expert during a visit, he displays extremely disquieting systems of illness. In another case, that of Annette Auguste, known as So Ann, held without specific charges since 10 May 2004, an application for release of 10 August 2005 had not been responded to at the time of the most recent visit by the independent expert. Once again questions arise, and provide arguments for those who consider that, rather than legal, these detentions have become political, through failure to have followed the previous warnings and recommendations made by the independent expert.

45. Another controversy concerns individuals also held in the prison annex, in particular Y. Neptune, the former Prime Minister, and J. Privert, the former Minister of the Interior, in connection with the so-called Saint Marc massacre. The point at issue was whether or not, given the local context, the case should be tried in Saint Marc or elsewhere.

46. After having made a special visit to Saint Marc in March 2005 and met the families of the complainants, the independent expert, having observed that tension had eased, stated his view (at variance with the opinion of the Government and various diplomatic circles) that the proceedings should be held in the locality. He considered that the question of transferring the case, which gave rise to lively debate, should not be considered until after the closure of the investigation by the committal for trial, which was finally handed down on 14 September 2005 and referred the parties to a court without a jury.

47. There was an appeal against the committal order. It would thus be premature to take a definitive position on the issue until the court has handed down a decision. It is only at that time that it will be possible to determine whether the situation is such as to allow a trial to be held without any spirit of vengeance and without the pressure of public opinion.

48. One important point remains in that, according to the warrant, "it was impossible to demonstrate that there had been victims in the two camps" (p. 43). The independent expert, as he did with the families of the victims in the Ramicosm group, contacted families in the Balé Wouzé group, who claimed that there were victims among their family members, to determine whether they intended to submit a complaint. Should that be the case, the independent expert will follow up the action taken by the prosecution service, unless the Appeal Court is requested to clarify the point.

C. An increasingly discredited Court of Cassation

49. The Court of Cassation should play a preponderant role in this period of transition without legislators. This makes its shortcomings, already referred to by the independent expert in his previous report, all the more regrettable; that report noted, regarding the court's dilatoriness, that it was "uninterested in setting an example for the proper administration of justice" (E/CN.4/2004/123, para. 63).

50. A further indication is provided by the contested arrest recently carried out in the Raboteau trial of persons convicted for crimes committed in 1994 under the Cédras dictatorship. All were set free under an annulment decision, the legal construction of which constitutes a licence for impunity.

51. Under article 50 of the Constitution, "a jury is established in criminal cases for violent crimes". At the time, the chamber considering the case issued an order for committal to trial before a criminal court sitting "with a jury", later upheld by the Appeal Court and then, an important point, by a final decision of the Court of Cassation, issued at the time on the consenting opinion of the Government Commissioner, Boniface Alexandre, later President of the Court of Cassation and now interim President of the Republic.

52. But the Supreme Court, considering a new appeal in 2005, in an unhesitating contradiction, delivered a contrary opinion. The ground was that since the Constitution did not explain “what was to be understood by violent crime”, the judges in the earlier case should have applied a 1928 Act (pre-dating the Constitution!) which provided that, other than in case of murder, parricide or poisoning, where there were related offences the case should be tried “without a jury”. (It should be noted that related offences were referred to in the earlier decision!) This is the reasoning which led the court to consider that these criminals, having been convicted at the time by a court that was not competent, should be immediately released.

53. It will be appreciated that the earlier decision, validating proceedings “with a jury”, in addition to being in consonance with the Constitution, had acquired the standing of *res judicata*, since it related to the same case, involving the same people, for similar facts, also accompanied by related offences, at the same time and place, and that, all means of appeal having been exhausted at the time, the decision had become final.

54. The releases caused a scandal, as did the recent dismissal, disguised as routine retirement, of five judges from the Court of Cassation who had displeased the executive.

55. In the event the Provisional Electoral Council, sitting in contentious proceedings, refused the registration of Dumarsais Siméus as a candidate in the presidential elections on the ground that he was ineligible as he possessed dual nationality, a decision appealed against before the Court of Cassation. The latter annulled the decision on the ground, *inter alia*, that there was no proof that the candidate had made a false statement in that regard, and thus ordered his registration.

56. The Council, refusing to accept the decision, filed an application for revocation with the court, which was rejected, since it was hardly possible for a judge, being a party in the trial at which he had delivered judgement, to file an appeal against the decision of the review court which had censured him.

57. Relying on a 1995 decree of President Aristide, pursuant to which judges on the Court of Cassation could be retired at 60 years of age, the interim President of the Republic took a decision terminating five of the nine judges at the Court, claiming that they were too old. However, with the exception of one of the judges, who had long been ill, it should be noted that:

The 10-year term of three of the judges had been renewed in December 2004, and that of a fourth judge in 2002, in full awareness of their age;

They were immediately replaced by other judges who were themselves over 60;

A common element linking four of them was that they were fully or partially associated with the deliberations leading to the contested decisions.

58. The lack of credibility of the argument by the authorities that the decision was based only on objective criteria of physical or mental incapacity is quite apparent.

59. It is not the independent expert's intent to contest a provision allowing for retirement at 60 years of age, but the authorities must act in accordance with the minimal guarantees that exist, namely:

Article 9.3 of the Decree of 22 August 1995, pursuant to which: "Their functions may be terminated only in accordance with the Constitution and the provisions of the relevant act";

And in particular, articles 174 (10-year renewable term) and 177 (guarantee of tenure, with the result that "their service may be terminated during their term of office only in the event of duly verified permanent physical or mental incapacity") of the Constitution.

How could it not have been understood that failure to observe this substantive requirement means that the decision was quite simply covert dismissal?

60. On top of this disrepute, the appointment of the successor judges not having taken place at the law courts owing to the protests caused by the decision, the oath of service was improvised in a room in the Presidential Palace, without any regard for the constitutional principle of the separation of powers.

D. Urgent need for thoroughgoing reform movement

1. Reform of police custody: a priority

61. It will be recalled that, while police custody is provided for in principle in article 26.1 of the Constitution, the regulations relating to it have never been fully developed. In this connection the proposal on police custody provides, in particular, for:

(a) Making the chief judge, thus a judge other than the investigating judge, responsible for ensuring the legality of the arrest, police custody and pretrial detention, when this is decided by the Government Commissioner, or district judge. The hearing should be held in the presence of the prisoner, the Government Commissioner, counsel and the registrar;

(b) Improving proceedings in respect of applications for habeas corpus, which also fall under the authority of the chief judge;

(c) Extending police custody, subject to a written order from the Government Commissioner, from 48 hours to a maximum of five days in case of rebellion, abduction, kidnapping, money laundering or drug trafficking.

62. This reform has given rise to opposition on the part of some members of the bar, who legitimately fear that the right of defence will suffer (police custody extended to five days in certain cases and contact time with counsel limited to 15 minutes). Less legitimately, an influential minority has expressed concern at the institution of strict regulations and oversight that may compromise certain questionable practices. The independent expert will refer to one case known to him - hopefully infrequent - of a kind of connivance between the district judge and counsel, which induced the latter to implicitly seek the imprisonment of his client followed by immediate release for a "fee", then shared with the judge!

63. The proposal meets an evident need. Reliable figures from UNDP/DAP (indicate that 82 per cent of committal orders are issued by district judges, whereas in principle, under article 39 of the Code of Criminal Investigation, they are authorized only to conduct on-the-spot investigations and not to issue committal orders. Under the proposed compromise, such orders would become enforceable only with the approval of the Government Commissioner.

64. It is essential - unless the only purpose is to make a statement - for a circular to be issued stating how this significant reform will be organized and implemented (availability of prosecution staff, case judges, registrars and counsel) and the date of its entry into force.

65. If the proposal is intended to include the establishment of a judicial services inspectorate, this should be placed not under the Ministry of Justice but the future Supreme Council of the Judiciary (CSPJ) and its function should be strictly limited to monitoring extended detention, and thus respect for procedural time limits, and working hours, failing which the remedy will simply make matters worse. But is this possible without an initial self-appraisal by the judiciary, lawyers and their professional organizations? They could usefully, with the support of international cooperation, organize a seminar to raise awareness of this difficult issue.

2. Permanent statute for the Institute of Forensic Medicine

66. In his previous reports, the independent expert has frequently recalled how, in periods of violence, forensic medicine occupies an essential place in the administration of justice, in particular in efforts to combat impunity (E/CN.4/2005/123, paras. 84-86).

67. He again emphasizes the need for the Institute of Forensic Medicine to be given a statute offering autonomy, stability and efficiency, in particular through an agreement establishing a board of administration comprising - proposals already exist - a representative of each of the oversight ministries (health and justice), chaired by the Dean of the Faculty of Medicine of the University of the State of Haiti or his or her representative. An administrator, responsible for day-to-day management, has recently been appointed.

3. Reform of the Supreme Council of Justice

68. The Supreme Council of Justice would be transformed into the Supreme Council of the Judiciary. The draft decree seems to have some shortcomings: a degree of ambiguity is still present between the functions of the Ministry of Justice and those of the Supreme Council, and the draft decree concerns only trial judges, while the recent resignation (in an open letter) of the Government Commissioner in Port-au-Prince shows to what extent public prosecutors are subject to pressure, and the urgent need for specific guarantees.

4. Reform of the judiciary regulations

69. Reform of the judiciary regulations seems to be a dead letter, although it would appear to be a high priority, since there is little point in creating a Supreme Council of the Judiciary if there are no regulations to be enforced that will put an end to the arbitrary acts, favouritism and self-promotion which are all too apparent, whether with regard to appointments, promotions, transfers, renewal of terms, the recent terminations of jurisdiction, or now, automatic retirement.

5. Reform of the Judicial Training College

70. Unless there is some response within the near future, in particular from the donors that supported its establishment, the Judicial Training College seems certain to disappear, without there having been any assessment of its role or consideration of the reforms needed. After having been “neutralized” under the Aristide Government by Minister Delatour, his successor, B. Gousse, took a decision (in April 2004) to suspend its pedagogical activities pending adoption of a hypothetical statute, frequently promised but never finalized. Taking advantage of the fact that the premises were vacant, the Prime Minister decided (in December 2004) to house some 300 former soldiers and former combatants awaiting reintegration, some of whom later “decreed” that, since it was the former Military Academy, they would not leave the premises until after the army had been reconstituted. The independent expert noted, on his visit to the premises, that 80 of them, including, it would appear, former attachés, were squatting in the buildings, so that the temporary state of affairs seemed to be becoming permanent. There were two probable reasons: a desire not to annoy pro-military circles, but also to allow people to become accustomed to the idea that the college would disappear. The last three Ministers of Justice, under both the Lavalas Government and the current interim Government, as well as a majority of influential lawyers have all implicitly, or in some cases, explicitly, made known their hostility to the Judicial Training College and their preference for a return to the old style of recruitment, that is from the bar, a path which, it should be recalled, favours recruitment on a personal basis and a certain connivance between lawyers and judges.

71. In this context, the make-good solution of decentralized training pending the constantly deferred reopening of a reformed training college with the creation of a board of administration and its transformation into a training centre for all judicial careers (judges, including district judges, prosecutors, registrars and court ushers) seems likely to provide a pretext for its being sidelined in the long term, even though its establishment is provided for by the Constitution (art. 176).

IV. ECONOMIC AND SOCIAL RIGHTS

A. Reform of the land register

72. In his earlier report, the independent expert continually emphasized that the moribund nature of the land register was a handicap in terms of three prerequisites for development:

Investment: especially in rural areas, owing to the difficulty that agricultural workers, in the absence of reliable title deeds, have in mobilizing their real estate assets;

Inheritance: as a result of illiteracy, many agricultural labourers leave no will and their land is left jointly owned, which gives rise to serious tension and interminable disputes, and even violent and sometimes fatal conflicts;

The speculation in which certain Haitian business people, especially expatriate Haitians, engage, in towns and above all in the country, by taking control of land which has recently appreciated, with the consequence that agricultural workers, powerless to prove their title, are dispossessed.

73. Those principally involved in this land register crisis are:

Surveyors. In principle, these operate on the basis of a regulated scale of charges, but it is rarely respected. There are as a result frequent abuses, again to the detriment of the poorest;

Notaries. The slide in ethics on the part of certain notaries has had a serious impact in the form of speculative transactions resulting in dispossession. The National Registry Office advises heirs to obtain a land registration certificate, if one exists, before approaching a notary. It has been suggested that this formality should be discharged as a matter of course by the notary once an inheritance file is opened, failing which his or her professional responsibility should be engaged;

Land judges. In addition to the fact that they are exposed to the temptations of corruption, as is any other underpaid judge, these judges, specializing in land disputes, are ineffective owing to a lack of resources. In Gonaïves, for example, they rarely venture into the field, not having had any official vehicles for 10 years or so, and must share their hearing chamber with the Appeal Court, whose premises, destroyed by insurgents, have still not been rebuilt;

Registry service. While by law it should be present throughout the national territory, there is an adequate presence in only two departments. Officials complain of the general lack of cooperation on the part of surveyors and notaries, who seem to fear that a reliable register would put an end to some of their lucrative practices.

One positive point is that at Limonade, following the occupation of land belonging to the State, plots have (finally) been registered and titles given to the labourers who took part in the sustainable "Milk galore" programme. Promoted by the Haitian Veterimed NGO (met by the independent expert), the programme - to produce and market Haitian goods - out of 1,600 Latin American projects, won the first prize for social innovation awarded by the Economic Commission for Latin America and the Caribbean.

B. From water carrying to water supply

74. This is an interesting experiment, but it remains to be seen how firmly established it will become in rural areas in the country. The aim is to do something about the difficulty of fetching water, the constant toing and froing of women and girls who daily cover very long distances heavily burdened. The independent expert is particularly interested by the originality of the water supply programme launched in 2003 by the Haitian Fokal Foundation, in collaboration with Gataphy, a specialist in small scale water supply projects.

75. On the premise that access to water is a factor that structures communities, the two partners have been implementing an original microwater supply programme since 2003. The first step is to gain acceptance of the principle that water is not free. After a survey of drinking water resources, the water is piped to standpipes installed near to the houses of agricultural workers, then fitted with meters, which allow measurement of the amount of water, which is sold at a low price.

76. The social structuring phase involves election of a water committee. Once locally elected officials and local residents responsible for maintaining the network have been trained, the key designation is made of “standpipe operators”, who receive a small amount of pay, followed by determination of the price of a gallon of water by the committee, not to mention initiation in conflict management, all of which continues until the community can function by itself. This initiative, which has a profoundly liberating effect, should be firmly supported by the authorities and donors.

C. Significant social advances in the customs-free zone

77. The agreement signed on 13 December 2005 between Codevi, the customs-free zone belonging to the Dominican Grupo M, and the SOCOWA trade union, provides for significant advances: an increase in base weekly salary from 432 to 900 gourdes, with a 45 per cent increase over three years, recognition of the right of trade union membership, better working conditions (hygiene and safety, work by pregnant women, sexual harassment).

D. Reform of the civil register and development

78. In addition to the exercise of civic rights, this question is closely linked - as is the land register - to economic and social development. One problem is that as a result of illiteracy on the one hand, and the negligence or incompetence of civil registrars on the other hand, the spelling of names often varies over time, sometimes several times in respect of the same individual. Forgery-proof voter registration cards updated for the next ballot should allow the spelling of family names to be fixed and the establishment of the National Identification Office, whose statute has just been published in a decree, to be accelerated. Hence the importance of successfully concluding the distribution of voter registration cards, which will become mandatory and serve as an identity card. It remains to be seen whether they will make use of biometric identification and whether any guarantees in that regard are envisaged, a point not verified by the independent expert.

V. CONCLUSIONS

79. At the time of completion of his report, the independent expert was unaware, owing to repeated deferrals, of the date of the elections and under what political circumstances they would ultimately be held. While their historic importance as free and honest elections is obvious, it is important not to underestimate - either success or failure - the importance of the sound technical conduct of the vote since, in that case, the real winner will also be, and for the first time, the electoral process itself.

80. In the absence of Parliament, the current Government has been able to act only by decree. Even though it has not been able to meet all the expectations of those to whom it owes its assumption of power, some of its decrees, especially technical decrees, should be “constitutionalized” to avoid the country sliding into endless wrangles and thus insecurity, or even a legal vacuum, that would be prejudicial to everyone.

81. It is suggested, so as to overcome enmities and the risk of factionalism involved at this conclusive phase of the transition, that constitutional legality should be closely adhered to through recourse, if the desired consensus does not emerge, to the Conciliation Commission established under article 206 of the Constitution to “resolve disputes between the executive and legislature or the two branches of the legislature”. It would be asked - on the proposal of the new Government - to draw up:

(a) A list of legislative texts which could be the subject, as a bloc, of a validation act by Parliament, in the hope that a spirit of tolerance will allow a page to be turned by adopting the maximum number of them, especially those of a technical nature;

(b) A list of legislation that would immediately be retired, the end of the transition having ended their *raison d'être*;

(c) A list, as short as possible, of the remaining pieces of legislation, which, so as to avoid a legal vacuum, should remain applicable on a temporary basis, pending their endorsement (or abrogation) by Parliament on a case-by-case basis.

82. Lastly, the independent expert regrets that the rumour syndrome, already denounced in his previous report (E/CN.4/2005/123, para. 72), subsists and often has more credibility than verified truth. A recent example: whatever the final responsibilities of the various parties may be, the independent expert regrets that such behaviour led certain political and other leaders to accuse MINUSTAH - on the basis of no evidence other than allusions - of direct complicity with kidnappers, and indeed of being the major factor for insecurity in the country, whereas the debate should actually focus on whether the MINUSTAH mandate is still adequate in view of the situation.

VI. RECOMMENDATIONS

83. **In the light of the above developments, the independent expert makes the following recommendations:**

(a) **Priority must be given to efforts to combat insecurity and thus poverty, the major cause of the violence most often experienced by the poorest. In parallel with long-term development programmes (but do they exist?), it is important to carry out more microprogrammes with sufficient impact, so that the most disadvantaged can, in the not-too-distant future and on a day-to-day basis perceive tangible signs of change (Cité Soleil comes to mind), since it is not possible to restore a sufficient level of security without the support and participation of a population currently without hope;**

(b) **With regard to the system of justice, the following measures must be taken in the short term:**

Extended pretrial detention:

Establishment of a commission on the prevention of extended pretrial detention on the basis set out above;

Refocus the additional hearings organized in Port-au-Prince on their initial objective: to facilitate immediate appearance; organize for police officers, in view of their misgivings, short, decentralized training sessions, with participation by prosecutors, whose initiating role is critical in this domain;

Allow for the possibility of suspended sentences;

Raise the awareness of judges, through appropriate training, of more frequent use of release on bail (Code of Criminal Investigation, art. 96), subject to ensuring that it is proportionate to the means available to the party concerned;

Complete the proposed reform of police custody, taking into account the above suggestions;

End the practice of some prosecutors of subverting applications for enforcement by holding up decisions for release ordered by judges;

Reform of the Judicial Training College: restitution of its premises and resumption of its various in situ pedagogical activities, including ongoing training, on a decentralized basis;

Development of regulations governing the judiciary based on transparency, with specific career guarantees (recruitment, appointment, promotions, renewal of terms of office, determination of jurisdiction and retirement) and clarification of the hybrid status of district judges, whose functions fall under both the judicial and prosecution services;

Establishment of the National Council of the Judiciary, the key to a judiciary with autonomy vis-à-vis the political authorities;

Completion of the autonomy statute of the Institute of Forensic Medicine and determination of its method of functioning;

(c) In partnership with the Organization of American States, organization of a seminar on legal machinery aimed at reflecting, in internal legislation and in jurisprudence, the American Convention on Human Rights, pursuant to article 276.2 of the Constitution, which provides for the primacy of treaties over internal legislation;

(d) Advancement of women's rights:

Inclusion once again in the business of Parliament of projects under way for the decriminalization of abortion, establishment of paternity, status of concubines and regulation of domestic work;

Further consideration through discussion, in partnership with NGOs, jurists and relevant medical circles, of the question of the link between abortion and its consequences, including fatal consequences, and its reflection in public health policies;

(e) Effective establishment of the National Identification Office, on the basis of forgery-proof voter registration cards;

(f) Reform of the land register: preparation of an inventory of relevant studies and experience, followed by establishment of a reform commission supported by international cooperation.
