

# HAITI

## HUMAN SECURITY IN DANGER

Article 1: All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. Article 2: Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty. Article 3: Everyone has the right to life, liberty and security of person. Article 4: No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms. Article 5: No one shall be subjected to torture or to cruel,





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# INTRODUCTION

« Live free from fear and want »: today, this definition of human security<sup>1</sup>, which reflects the basic aspiration of all human beings to live in dignity and enjoy their basic rights, is a remote utopia for the vast majority of Haitians. For them this dream is shattered by the reality of their daily lives characterized by persistent and even growing insecurity, especially in relation to access to food, housing, health, education, work, and the right to security and justice.

In 2005, the United Nations General Assembly emphasised that: « Human beings have the right to live in freedom and dignity, free from poverty and despair. We believe that all people, especially the most vulnerable, have the right to live free from fear and want and should have the opportunity to enjoy all their rights and fully develop their potential in conditions of equality<sup>2</sup> ».

In 2010, the United Nations Secretary General's Report on Human Security<sup>3</sup> listed the threats to human security under seven broad categories: economic security, food security, health security, environmental security, personal security, community security, and political security.

More than two years after the earthquake that shook the Haitian nation<sup>4</sup>, it is clear that alarming threats face the human security of the population, more than 80% of whom live below the poverty threshold<sup>5</sup>. These threats constitute the major problem in Haiti today, an indication that the policies applied by the Haitian authorities and international organizations that intervened massively in Haiti have so far largely failed.

The exceptional inflow of international humanitarian aid averted an even worse disaster and served to protect the lives of thousands of people who survived the catastrophe, but lost everything they possessed. Yet, while this emergency aid is testimony to the solidarity and humanitarian empathy for the suffering and courage of the Haitian people reported by the media worldwide, it has sadly not resulted in strengthening the capacity of the Haitian people themselves to take charge of rebuilding the country. And that is the main failure.

The causes of this failure are multiple and complex: they are attributable to those in power in Haiti for not meeting the needs of the majority of the population, but also to various international actors, both public and private, who have imposed their « solutions » in a confused and incoherent manner without concerting with those mainly concerned by their decisions.

The combined impact of serious governance shortcomings and the policies pursued by external stakeholders can be summarized under three headings, which explain why the country has not emerged from its massive dependence on humanitarian aid, and why human security remains extremely vulnerable in Haiti:

- State marginalisation
- marginalisation of Haitian civil society
- marginalisation of Haitian enterprises

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1. World Human Development Report 1994.

2. Final document of 2005 World Summit (United Nations General Assembly Resolution 60/1, para.143).

3. Report of the UN Secretary-General on Human Security, 8 March 2010. A/64/701.

4. International Federation for Human Rights (FIDH), « Haïti, a broken nation », mission report, March 2010.

5. United Nations Development Programme (UNDP), Report on Human Development 2011, <http://hdr.undp.org/rdh2011>

Following a solidarity mission conducted in March 2010 in response to the devastating earthquake that struck Haiti on 12 January 2010,<sup>6</sup> the International Federation for Human Rights (FIDH) is committed to helping its member organizations in the country recover their means of action to ensure essential tasks in assisting the reconstruction process, based on respect for human rights and the inclusiveness of the Haitian people.

To this end, the FIDH member organizations and FIDH obtained financial support from Fondation de France through a programme that includes activities with a particular focus on monitoring the situation in the camps, and on the functioning of the administration of justice and prisons following the earthquake.

This programme aims to enable these Haitian organizations to recover their capacity to protect and defend human rights at national, regional and international levels in order to : promote the reconstruction of justice based on citizen participation; combat impunity for perpetrators of human rights violations against camp dwellers and prison inmates : and to help vulnerable populations recuperate their identity papers.

With the support of the FIDH, the FIDH member organizations in Haiti intend to contribute to meeting this challenge through activities that focus on:

- Monitoring (visits and documentation) the situation in the camps and the administration of justice and prisons following the earthquake
- Informing displaced persons about their rights and helping them obtain identity documents
- Producing and presenting in national, regional and international fora investigative reports on the inclusion of and respect for human rights in the reconstruction process

As part of this programme, FIDH has set itself the task of investigating the current situation and the causes of persistent human insecurity in the post-earthquake context from a human rights perspective. Four priority areas have been identified: (I) the earthquake victims' persistently unfit living conditions, in particular as regards access to housing, food and healthcare; (II) increased poverty and exclusion; (III) conditions of detention and the issue of prolonged preventive detention, as well as serious gaps in the administration of justice ; and IV) the relationship between the State and the international presence in a context of political and institutional crisis, especially with regard to the United Nations Stabilization Mission in Haiti (MINUSTAH), and serious violations of human rights perpetrated by some MINUSTAH personnel.

Within this framework, FIDH conducted an investigative mission in Haiti from 16 to 25 May 2012, during which it visited five camps and two relocation sites in Port-au-Prince and Jacmel, as well as Jacmel Prison. FIDH also met members of Haitian civil society, government officials, and representatives of UN agencies and the diplomatic corps. The mission, comprising the former Secretary General of CIMADE and two members of the FIDH International Secretariat, wishes to extend its sincere appreciation to FIDH member organizations in Haiti and to the people with whom it held discussions for their warm welcome and cooperation.

After learning about the most serious threats facing human security in these areas from conversations held with various interlocutors, the FIDH delegation and FIDH member organizations in Haiti intend to sound the alarm. They plan to do so by calling on the main national, regional and international decision-makers holding varying degrees of power to reform, transform and press for policies that can improve the living conditions of the population, and help turn Haiti into a State governed by the rule of law applied for the benefit of all.

The recommendations in this report are made in a context that may be conducive to change, on

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6. FIDH, *Op. Cit.*



condition that the political will exists to reconstruct and rebuild the country, based on objectives and criteria that respect, protect and ensure compliance with basic human rights :

- On the domestic front, after the long period of political transition and instability that characterized the context of President Michel Martelly accession to power, a Prime Minister and government finally came into being in May 2012. Furthermore, the Supreme Council of the Judiciary (CSPJ), an essential body for the establishment of the rule of law, was installed in July 2012.
- At the international level, on October 12, 2012, the UN Security Council voted to renew MINUSTAH's mandate for one year, reducing its military and police personnel and asking MINUSTAH to keep on supporting and strengthening the rule of law.

# I- DEEPENING VULNERABILITY AND PRECARITY OF EARTHQUAKE VICTIMS

First of all, one should recall the extent of the tragedy caused by the earthquake of January 12, 2010: between 250,000 and 300,000 dead or missing<sup>7</sup>; 300,000 injured, many of whom remain disabled; and nearly 2 million people displaced, 1.3 million of whom took refuge in emergency relief camps<sup>8</sup> immediately after the earthquake.

## A- Degrading and worsening camp living conditions

In June 2012, two and a half years after the earthquake, there were still 390,276 people living in 575 camps, according to figures issued by the International Organization for Migration (IOM).<sup>9</sup> This represents a 75% reduction compared to early 2010. Around 60% of these people were grouped in 40 major sites in the metropolitan area.

More than half of the camp dwellers were women (52%) and 70% were less than 29 years old. The majority (78%) of those who are still in the camps had been living in rented accommodation until it was destroyed by the earthquake and possessed no land on which to build a temporary shelter. Home owners in the camps claimed they lacked the means to repair their dwellings, most of which have anyway been labelled « red » by architects,<sup>10</sup> meaning they are slated for demolition.

The delegation visited seven camps, including four in the metropolitan zone and three in Jacmel, Southeast Department. The findings, corroborated by information gathered from various partners and interlocutors, are overwhelming.

***Increasingly dilapidated shelters*** : With the onset of the third season of rains and cyclones, the damaged or partially torn tents and tarpaulin shelters left the occupants exposed to the bad weather.

***Abandoned and left to fend for themselves***: In the camps visited, some international humanitarian NGOs that had assumed responsibility for the management and maintenance of sanitation, drinking water supply and the installation of medical or educational facilities had already left, or were about to do so, leaving them with no local or national relay to provide

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7. According to official Haitian civil protection data, 222,517 people died, but many people believe that the real number of deaths is between 250,000 and 300,000, because many families buried their dead themselves or their dead were not declared.

8. United Nations Office for the Coordination of Humanitarian Affairs (OCHA), Inter-Agency Real-Time Evaluation of the Humanitarian Response to the Earthquake in Haiti, 20 months after, January 2012 : [http://ochanet.unocha.org/p/Documents/IA%20RTE%20Haiti\\_phase%202%20final%20report.pdf](http://ochanet.unocha.org/p/Documents/IA%20RTE%20Haiti_phase%202%20final%20report.pdf)

9. International Organisation for Migration (IOM), Report on Eviction Situation in Camps hosting Internally Displaced Persons (IDPs), June 2012 : <http://www.eshelter-cccmhaiti.info/jl/images/pdf/evictionreportfrenchjune2012.pdf>

10. Haiti E-Shelter/CCCM Cluster, Final DTM V2 report, June 2012.

these services. Moreover, since 2011, donors have become less responsive to appeals from humanitarian organizations.<sup>11</sup> This entails negative consequences for camp dwellers such as the reduction or termination of toilet desludging and free water delivery services.

On May 19, 2012, when the FIDH delegation visited the Sainte-Thérèse camp, located on a former sports field in Pétion-Ville, it housed 474 families comprising 2,446 people. The NGO which had taken care of the camp for two years had left it in March. As a result, there were no longer any shower facilities and the funding for a toilet cleaning system installed by the NGO was due to end in June.



*Sainte-Thérèse camp in  
Pétion-Ville, © fidh*

According to members of the camp committee, the Pétion-Ville town hall authorities have pledged 20,000 gourdes (about USD 500) per family to leave the area, as foreseen under the 16x6 programme<sup>12</sup>. However, the committee members said the population had remained without news of this initiative for three months. Fifteen days before the FIDH visit, a case of cholera was detected in the camp early in the morning. Camp dwellers went to seek help, but it was only in the evening that a specialized cholera treatment medical team arrived on the scene. In addition, the camp no longer benefits from the services of the NGO that installed and operated an on-site rehydration centre.

The second camp visited by the mission in Pétion-Ville, located in the Guatemala school courtyard facing the Sainte-Thérèse camp, had not been supplied with water for two months, following the departure of the international NGO that had assured this service.

11. Oxfam report : Haiti – The Slow Road to Reconstruction : Two years after the earthquake, 10 January 2012.

12. See *infra*, section I, C.



In the Delmas 42 camp, located on a former golf course, the cholera treatment centre has recorded an increase in the number of cases of infected (five to six per day since mid-March) due to the poor quality of the water, and deplorable camp sanitary conditions.

***Promiscuity and violence:*** In this degraded and degrading environment, promiscuity and the absence of prospects generate violent behavior. Women and girls are the primary victims. Camp committee members are endeavouring to pacify relations, but are overwhelmed by the worsening behavior and mental attitudes of the camp inhabitants, fuelled by the pain and anguish of having to live in inhumane and degrading conditions, without any clear sign of an end to their plight. In some camps, especially in Delmas 42, security teams report clashes between gangs. Recent reports<sup>13</sup> have also highlighted a series of violent incidents that have affected several camps in Delmas and Port-au-Prince, where fires of undetermined origin have destroyed several tents.

***The extreme vulnerability of women and girls to sexual violence*** in these shelters, consisting of tarpaulins and tents that offer no protection, is recognized by all. Yet most camps do not benefit from any special Haitian National Police (HNP) or MINUSTAH protection<sup>14</sup>.

Despite the precautionary measures requested by the Inter-American Commission on Human Rights (IACHR) on December 22 for the benefit of displaced women and girls in 22 camps in the capital<sup>15</sup>, the preventive and protective measures in place are inadequate or non-existent, and sexual violence against displaced women and girls persists.

Since 2011, the Office of the United Nations High Commissioner for Refugees (UNHCR) has developed a specific programme for the prevention of violence against women in the camps : more than 600 cases of rape have been reported in the camps since 2010. Alongside the Haitian association *Komisyon Fanm Viktim power Viktim/KOFAVIV* set up by local rape victims in 2004 to address the medical and psychological needs of other rape victims, UNHCR is helping women to leave the camps and move to secure locations for up to three months until more permanent and safe accommodation is found for them. The number of women forced into prostitution in order to survive in the camps is also a major problem.

***The increasingly unbearable wait and anguish:*** For those who are still in the camps, the wait for a solution to their plight and the fear of forced eviction are unbearable. Persons met by the delegation had only one wish: to leave and find dignified living conditions again in temporary shelters or to benefit from a small cash grant to start afresh, as provided for in Project 16x6.

Faced with this situation, dozens of metropolitan area camp residents organized a demonstration in Port-au-Prince on May 31, 2012, demanding implementation by the new government of Laurent Lamothe of a housing policy granting rights to decent housing, and an official public stance against forced evictions. In addition, on July 2, 2012, national and international organizations, including cooperative groups advocating for the right to decent housing, launched an international campaign called «Under the tents», calling on the Haitian government to immediately halt forced evictions, and to find permanent housing solutions for people still living in camps<sup>16</sup>.

13. « One week in Haiti », Collectif Haïti de France, N°1055, 4 June 2012.

14. International Crisis Group, Keeping Haiti Safe: Police Reform, Latin America/Caribbean Briefing N°26, 8 September 2011, p.6.

15. Inter-American Commission on Human Rights, MC 340/10, 22 December 2010 : <http://www.oas.org/es/cidh/decisiones/cautelares.asp>

16. <http://www.alterpresse.org/spip.php?article13088>

## B- Forced evictions

Among the displaced population, more than one in five persons are threatened with forced eviction from the camps. 95% of the camps are located on private land<sup>17</sup>. These evictions are perpetrated by the landowners, sometimes backed by municipal authorities claiming that the camps are a breeding ground for delinquency.

As defined by the International Organization for Migration (IOM), forced eviction in the Haitian context entails a permanent and involuntary expulsion of individuals, families and communities from land they occupy, with no means of protection – legal or otherwise – made available to them (alternative accommodation, etc.)<sup>18</sup>.

With displaced persons facing a constantly growing risk of being evicted by private landowners who are becoming increasingly impatient with the makeshift tent camps on their properties, the Haitian government has an obligation not to condone, tolerate or carry out forced evictions, which constitute a serious breach of human rights. According to the UN Basic Principles and Guidelines on Development based Evictions and Displacement, forced evictions constitute *« gross violations of a range of internationally recognized human rights, including the human rights to adequate housing, food, water, health, education, work, security of the person, security of the home, freedom from cruel, inhuman and degrading treatment, and freedom of movement. Evictions must be carried out lawfully, only in exceptional circumstances, and in full accordance with relevant provisions of international human rights and humanitarian law. »*<sup>19</sup>.

According to international legal norms, evictions must be a measure of last resort; those affected should be consulted and have access to the eviction and relocation process; resettlement or relocation must be organized with the participation and consent of the persons concerned; and no one should be homeless, vulnerable or exposed to any other human rights violation as a result of an eviction<sup>20</sup>. Furthermore, under Haitian law evictions can only take place by judicial decision after all other possible avenues have been explored.

In reality, however, forced evictions take place during the day, without warning, causing residents who are absent at the time to lose personal belongings, a practice contrary to standard international eviction procedures<sup>21</sup>. *« Instead of following the steps provided for under domestic law and international standards, one observes the application of various forms of threats, often violent, and the use of physical force by the so-called landowners. »*

Given the magnitude of this phenomenon, in November 2010, the Inter-American Commission on Human Rights (IACHR) requested the Haitian State authorities to adopt the following precautionary measures for five IDP camps : (1) to adopt a moratorium on the expulsions from the camps for internally displaced persons until a new government can take office; (2) to ensure that those who have been illegally expelled from the camps are transferred to places with minimum sanitary and security conditions; (3) to guarantee that those who have been internally displaced have access to effective remedies in court and before other competent authorities; (4) to implement effective security measures to safeguard the physical integrity of the camps' inhabitants, guaranteeing in particular the protection of women and children; (5) to train security forces on the rights of displaced persons, in particular their right not to be expelled

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17. International Organisation for Migration (IOM), Report on Eviction Situation in Camps hosting Internally Displaced Persons (IDPs), June 2012, p. 18.

18. *Idem*, p. 2.

19. UN Basic Principles and Guidelines on Development based Evictions and Displacement : [www2.ohchr.org/english/issues/housing/docs/guidelines\\_en.pdf](http://www2.ohchr.org/english/issues/housing/docs/guidelines_en.pdf)

20. ONU Habitat, Groupe de Travail Logement-Foncier-Propriété, Procédures opérationnelles standardisées pour une réponse coordonnée aux expulsions forcées, 7 September 2011 : [http://www.unhabitat.org/index.php?option=com\\_content&view=article&id=430:standard-operational-procedures-for-a-coordinated-response-to-forced-evictions&catid=221:noticias&Itemid=294](http://www.unhabitat.org/index.php?option=com_content&view=article&id=430:standard-operational-procedures-for-a-coordinated-response-to-forced-evictions&catid=221:noticias&Itemid=294)

21. *Idem*.

from the camps by force; (6) and to ensure that international cooperation agencies have access to the camps for internally displaced persons<sup>22</sup>.

The Haitian authorities have not however complied with these measures and forced evictions have continued. According to IOM, since records began in July 2010, 420 sites in 12 communes have faced threats of eviction. As of 30 June 2012, IOM data showed that 65,462 individuals had been evicted from 155 sites, including caamp dwellers. Approximately 80,751 individuals housed in 153 camps – i.e. 21% of all IDPs living in camps in Haiti<sup>23</sup> – currently face the threat of eviction.

A total of 132 of the 420 cases mentioned above have been successfully resolved without eviction. Mediation processes with landowners have been successfully pursued in 27 camps. In 105 camps evictions were avoided through the provision of return assistance to 58,565 people by the Camp Coordination and Camp Management (CCCM) cluster.

As noted by the Office of International Lawyers, up until 2011 no systematic monitoring had been established by the Haitian government or the international community to determine where IDPs went after leaving the camps<sup>24</sup>. In 2011, an IOM study showed that nearly half of a random sampling of 1,033 IDPs who had left the camps continued to live in conditions of displacement, for example in tents near their former homes, with host families, or in other temporary abodes, including unsanitary housing<sup>25</sup>, without any accompanying support or alternative proposal to ease their plight.

## C- Fragile solutions which displace rather than solve problems

While people living in the camps are among the most vulnerable population groups and their situation remains extremely alarming, the fate of earthquake victims who either left voluntarily or were forcibly evicted from the camps, or who were given temporary accommodation, is also very worrying. Among the 1.5 million people who were living in the camps, about 400,000 are still camp dwellers. The situation of the more than one million earthquake victims who have left the camps remains precarious.

According to IOM<sup>26</sup>, 6,500 damaged homes have been repaired, 4,500 new or rebuilt permanent houses constructed, and more than 100,000 transitional shelters provided to people who own a plot of land. By comparison, the most frequently cited estimates report that the earthquake claimed 250,000 dwellings<sup>27</sup>.

Very few long-term solutions appear to be in place to resolve the plight of earthquake victims. Information gathered by the delegation points towards the following assumptions with regard to the thousands of people who have left the camps voluntarily: many returned to their homes, which were either repaired or not depending on how badly they were damaged; others built new homes, contributing to the expansion of slum zones in peri-urban areas; and many families settled in camps in Canaan north of the capital (see below). Regardless of the «solution» chosen, it is no exaggeration to suggest that for the vast majority of these people their current situation is now more precarious than it was before the earthquake.

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22. Inter-American Commission on Human Rights (IACHR), MC 367-10.

23. IOM, *Op. Cit.*, pp. 2 and 4.

24. Bureau des Avocats Internationaux, Information for Inter-American Commission on Human Rights on forced evictions, 16 June 2011 : <http://ijdh.org/archives/19302>

25. IOM, Displacement Tracking Matrix V2.0 Update 10, 16 March 2011 : [http://www.cccmhaiti.info/pdf/DTM\\_V2\\_Report\\_15\\_Mar\\_English%20\\_FINAL3.pdf](http://www.cccmhaiti.info/pdf/DTM_V2_Report_15_Mar_English%20_FINAL3.pdf)

26. Two years after the earthquake, IOM Helps Haiti Cope with a Multitude of Challenges : [www.iomhaiti.net](http://www.iomhaiti.net)

27. Oxfam: Haiti – The Slow Road to Reconstruction : Two years after the earthquake, 10 January 2012.

The failure of the Haitian government to move swiftly and decisively on the IDP resettlement issue in the two years following the earthquake (covering the end of the presidency of Rene Preval and the first months of the presidency of Michel Martelly without a functioning government) has resulted in a significant delay in the reconstruction process. Throughout this period, the absence of a clear government strategic direction and the lack of an effective coordination plan for housing construction or rehabilitation by the Haitian authorities slowed donor contributions; by the end of 2011, donors had disbursed less than half of the USD 97m pledged for 2010–11 housing reconstruction<sup>28</sup>.

It is only since the beginning of 2012 that the Martelly administration has begun to develop a strategy for the relocation of earthquake victims. The strategy is a joint initiative undertaken by the Presidency and the Prime Minister's office and is piloted by the Unit for the Reconstruction of Housing and Public Administration Buildings.

At the launch of a new Global Appeal to help the most vulnerable populations in Haiti, the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) published a 2012 mid-term review<sup>29</sup> in which it stated that return programmes implemented by the Haitian government with the support of humanitarian actors, such as the 16x6 initiative have benefited 500,000 people (IDPs and neighbourhood residents) in the form of transitional shelter, subsidies to rent accommodation, and other types of assistance in the framework of return and relocation programmes.

In the opinion of both the Haitian organizations met by the FIDH mission members and independent experts<sup>30</sup>, the results of measures taken during the past two and a half years to relocate earthquake victims, with the help of international funding, are negative and highly problematic overall. The achievements that have been made not only fall far short of needs, but are temporary and fragile, merely displacing the problems in time and space rather than providing sustainable solutions.

The measures taken so far to relocate earthquake victims focus primarily on three types of projects:

#### ***Provisional shelters***

So far humanitarian actors have delivered 110,000 transitional timber-based shelters with no sanitation infrastructure in earthquake-affected areas. According to the architect, university academician and consultant Ian Davis, who has conducted several analysis and research projects on emergency shelter and housing in some 30 disaster contexts, the results in Haiti are globally negative for the following reasons:

- Very high cost: around USD 500 million were spent on a proportionately low number of beneficiaries compared to the overall caseload and would have been better utilized to construct slightly more expensive but durable permanent housing
- Installations occupying land prevent the construction of permanent housing
- Mediocre quality of constructions that offer better living conditions than tents and tarpaulins, but which are not designed to resist the violent Haitian rainy seasons over the long term, and which cannot be transformed into decent permanent dwellings
- It is feared that this type of construction will nevertheless become a permanent feature of the Haitian landscape, and will thus propagate a multiplication of precarious housing structures that will become uninhabitable over time
- Construction operations have failed to create jobs at the local level<sup>31</sup>.

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28. *Idem*.

29. Global Appeal Haiti: mid-term review 2012, 24 Juillet 2012 : [www.unocha.org](http://www.unocha.org)

30. Ian Davis, « What is the vision for Sheltering and Housing in Haiti? » Summary observations : [www.onuhabitat.org/haiti](http://www.onuhabitat.org/haiti)

31. *Idem*.



### « Relocation » camps

The relocation of families to the Corail camp, the only «official» camp offering humanitarian aid located on land reserved by the government for public use, is considered a bad decision by most independent observers, as well as by the camp occupants themselves. The delegation visited the site and can only confirm this assessment as regards the choice of location and the way the camp is run.

The camp is located on deserted and rocky terrain «in the middle of nowhere», about 20 kilometres north of Port-au-Prince, and comprises rows of small prefabricated houses divided into two zones: Coral Reef 3 and 4. The site is highly exposed to wind and heat at the foot of a « *morne* »<sup>32</sup>. The landscape is treeless and desolate apart from a few corn plants and vegetables starting to grow in front of the houses, following a distribution of seed and compost by FAO.



Corail relocation camp, © fidh

Built a year ago, the camp housed around 10,000 people on the day of the visit. The vast majority had been transferred from the overcrowded Delmas 42 camp. The houses, built to accommodate earthquake-affected families for three years, consist of one room with no toilet (latrines and washrooms are foreseen in 10 sheltered sites in the camp) or running water (water is delivered by NGO-commissioned tankers that fill camp reservoirs, and costs five gourdes per gallon). The camp dwellers have no idea what will become of them after the three-year occupancy period ends.

Located not far from the Corail relocation camp is the huge *Canaan* camp comprising tents and precarious shelters built with ragtag materials where 120,000 earthquake victims have spontaneously come to settle. The majority relocated from other camps to occupy this desolate albeit vacant land parcel. Some have begun to build small houses brick by brick on land they do not own, and the social activities have started in the camp. Water must be purchased and is delivered by tanker at regular intervals, while basic health care is provided by a mobile clinic that comes by once a week.

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32. Small mountain in the French-speaking Caribbean.

There are around **10 other family relocation camps**, located in different sites in the metropolitan area, as well as in Leogane and Jacmel, all consisting of the same pre-fabricated «T-shelters»<sup>33</sup>. The delegation visited the Jacmel resettlement camp, housing 336 families. This camp is located in far more pleasant surroundings but is dependent on international NGOs for water supply and sanitation. Some of the earthquake-affected families have been in the Jacmel camp for two years. Yet again, however, the camp occupants confirmed that they had no papers confirming either rental or ownership of the premises, and had received no information about their future.

### ***The «16x6» flagship initiative of President Martelly***

Approved by the Interim Haiti Recovery Commission (IHRC) on 16 August 2011, the 16x6 programme was officially launched by the Haitian President on 17 August 2011, and is being implemented by the government, IOM, UNDP, the International Labour Organization (ILO) and the United Nations Office for Project Services (UNOPS). The programme aims at resettling some 30,000 residents of six large camps in their 16 original and rehabilitated poor neighbourhoods in Port-au-Prince, all of which were badly damaged by the earthquake. Those with no property receive a rental subsidy of 20,000 gourdes (around USD 500) per family to enable them (theoretically) to rent accommodation for one year, while homeowners receive cash grants ranging between USD 1,500 and 3,500 to repair or rebuild their damaged properties.

The choice of the six camps was based on criteria linked to visibility rather than on levels of precarity and vulnerability, given that they were all located in high-profile public spaces such as the *Champs de Mars* (the location of the presidential palace), the airport neighbourhood, or in public places in Pétiön-Ville. As of August 2012, the programme had led to the closure of 22 camps<sup>34</sup> that had housed some 30.000 people. Programme costs are estimated at USD 78 million, with USD 30 million of that total funded by the Haiti Reconstruction Fund (HRF)<sup>35</sup>.

The delegation heard numerous criticisms of this programme:

- The initial cash payment is in no way enough to secure adequate and safe housing: with the sharp rise in rents in the metropolitan zone due to the diminution of available accommodation due earthquake destruction and increased demand, it is impossible to find even a room to rent at that price. Result: the victims moved to shantytowns on the outskirts of the city or settled on non-constructible land on the slopes of outlying hills.
- Although this may have solved the problem of the bad image given by the occupation of high-profile public places by tent encampments, this measure has only displaced the problem elsewhere, with the risk of expanding the shantytowns and creating new high-risk zones with even more precarious and even less safe housing in already very fragile environments.
- This measure, the adverse effects of which are already being felt today and are likely to worsen in the future, is only a temporary solution. Moreover, it risks engendering more precarity and vulnerability for people already traumatized by the earthquake, as well as increased space segregation.

The interlocutors encountered agree that it is urgent to go beyond this 16x6 programme initiative of individual aid, which does not guarantee the right to «return» to decent housing.

33. The 12 sites are : Radio Commerce (Cit  Soleil), Santo 17 (Croix-des-Bouquets), Corail Secteur 3 (Croix-des-Bouquets), Corail Secteur 4 (Croix-des-Bouquets), Union Centre d' bergement de Lilavois 42 (Croix-des-Bouquets), Mayard (Jacmel), La voix des sans voix (L og ne), Belle Alliance (L og ne), Camp Rico (L og ne), Centre d' bergement de Galette Greffin (P ti n Ville), Tabarre Isa (P ti n Ville), Village Eden (Tabarre). Most of these sites consist of T-shelter encampments. They house a combined total of 4,165 households, or 18,445 individuals.

34. Report of the UN Secretary-General to the Security Council on the UN Stabilization Mission in Haiti, S/2012/678, 31 August 2012, para14.

35. [www.un-haiti.org/wp-content/uploads/2011/12/UNDG-HRF-8-Quarterly-Report-16-6-March-2012.pdf](http://www.un-haiti.org/wp-content/uploads/2011/12/UNDG-HRF-8-Quarterly-Report-16-6-March-2012.pdf)

## Conclusion

Challenges to ensure sustainable rights to housing, work and decent living conditions for people worst affected by the earthquake disaster of January 12, 2010, are considerable.

The first priority must be to develop a *comprehensive strategy for victims to leave the camps* in a planned, coordinated and structured manner. To do this, a multisectoral approach bringing together both Haitian officials from various ministries and UN agencies engaged in the different thematic clusters is essential. The camps needs to be classified based on their degree of vulnerability in relation to the risk of eviction from private land, sanitation, and exposure to natural disasters.

Different solutions should be offered to camp residents as part of a wider national economic recovery programme. A national programme should be launched for reconstruction and construction of social housing. In addition, incentives and guidance for building one's own home, using local materials and labour, and the introduction of micro-credit facilities to kickstart the economy at the neighbourhood level are essential to ensure sustainable livelihoods, and enable earthquake victims to navigate their own recovery.

In addition, as recalled repeatedly by civil society organizations: «Haiti does not only consist of camps!» The situation in many poor urban and peri-urban areas must also be given priority because populations living there are becoming increasingly precarious and vulnerable, creating a potentially explosive outcome. Even though they have not lived in the camps, it is essential to take action to help these populations to improve their miserable and unsafe living conditions.

A human rights-based approach must prioritize populations deprived of these rights. In Haiti, these populations have demonstrated immense courage, resilience and creativity in the face of extreme adversity, and they deserve to be recognized and appreciated at their true value.

## II- WIDENING POVERTY AND SOCIAL EXCLUSION

The observed deterioration of the living conditions of increasingly large segments of the population in more and more parts of the country is not new: the alarm bells have been ringing for decades in relation to lack of access to food, health care and quality education.

**According to statistical data published in the United Nations Development Programme Human Development Report for 2011<sup>36</sup>:**

- Haiti is ranked 158 out of the 187 nations in the UNDP Human Development Index for 2011 (demoted two places since 2006), and is the poorest country in the Americas region.
- Nearly 55% of the population lives on less than USD 1.25 per day and 56.4% of the population suffers from multi-dimensional poverty.
- The population was estimated at 10.1 million in 2010 by the Haitian Institute of Statistics, and has an annual growth rate of nearly 2.2%, a higher percentage than the yearly increase in national wealth. This has resulted in a deterioration of the socio-economic situation for the majority of the population, especially given the scandalous imbalance in wealth distribution between the rich and the poor (4% of the population owns 66% of national wealth) and between urban and rural areas. The Gini index (0,592) classifies Haiti as one of the most unequal countries in the world in terms of income and wealth<sup>37</sup>.
- The production of the agricultural and industrial sectors has continued to decline: nearly half of the population suffers from chronic malnutrition and 60% of the food consumed is imported.

This dismal picture, reflecting what could be described as «durable non-development», was by no means unavoidable. It is attributable to more than 30 years of persistently disastrous economic and social policies imposed by powerful and dominant international actors (World Bank, IMF, United States government) and implemented in Haiti by unstable governments more concerned with holding on to power than improving the living conditions of the Haitian population.

After President Aristide returned to Haiti with the support of the U.S. Army in 1994 – during a period when Haiti was emerging from the international embargo in place since the 1991 coup – the country decided, under pressure from its donors, to implement a liberalized trade policy to facilitate imports subject to ruinous tariff rates for the Haitian state. For example, the import tariff for rice, the staple food, dropped from 30% to 3%, compared to 38% on average in the Caribbean region<sup>38</sup>. Haiti's economy thus became the the most « liberalized » on the entire continent.

36. UNDP Report on Human Development 2011 : <http://hdr.undp.org/rdh> 2011

37. <http://www.statistiques-mondiales.com/gini.htm>

38. Oxfam, «Agricultural challenges and opportunities for Haiti's reconstruction», October 2010: [http://www.oxfamnovib.nl/Redactie/Downloads/Rapporten/bp\\_140\\_planting\\_now\\_300910](http://www.oxfamnovib.nl/Redactie/Downloads/Rapporten/bp_140_planting_now_300910).



Subsequently, heavily subsidized North American rice invaded Haitian towns and villages, destroying domestic production along with the livelihoods of hundreds of thousands of families who were forced to leave rural areas and join the teeming populations of urban slum neighbourhoods and shanty towns. The ensuing uncontrolled urbanization and overcrowding of Port-au-Prince and other cities in the country resulted in the disintegration of public services, further social exclusion, and a widening of the divide between the rich and poor and between rural and urban areas. Increasingly dependent on food imports and international aid, the Haitian government has become less and less capable of meeting the basic economic and social needs of the population. Food insecurity has become chronic. The reaction has been a series of coups d'états and social crises over the past 20 years. When the world price of rice tripled in 2008, the government could not import enough food and the country witnessed hunger riots.

The earthquake of January 12, 2010, was the « final blow ». The destruction of homes and infrastructure resulted in massive decapitalization, especially since the metropolitan area, where most of the wealth and jobs are concentrated, took the worst hit. In the aftermath of the disaster, many voices from Haitian civil society and democratic sectors, as well as several international experts, called for a «refounding» of economic and social policies on new bases, drawing on lessons learned from past mistakes, and a reform of the governance of the country in order to achieve sustainable recovery based on respect for the basic human rights of the population<sup>39</sup>.

More than two years later, it is clear that the opportunity afforded by the considerable funding allocated for reconstruction has not been exploited to implement effective policies to combat poverty and social inequality.

The sectors of society engaged in development and human rights activities are now raising serious questions about the strategic direction taken so far. These basic questions, which require analysis beyond the scope of this report, were raised by different interlocutors engaged in the fields of education, health, food security and industrial strategy met by FIDH mission members.

## A- The right to education

**Education** is one of the four main priorities of President Martelly. However, while they do not question the priority focus on this sector, many observers do however query the implementation of education policy: the promise of a «free and compulsory education for all children of Haiti» made in May 2010 focused on the number of children in schools more than the quality of the education provided in schools, which continue to lack both trained teachers and pedagogical materials.

Some claim that the education system in both public and private schools replicates and even exacerbates social inequalities by promoting what may be viewed as a «ghetto» academic system with the proliferation of sub-standard schools for the poor. Nearly 90% of schools are private and 60% are located in inappropriate buildings (small churches, warehouses) lacking pedagogical materials and accommodating up to 75 students per class. In addition, during the mission, families living in the camps complained that their children had not benefited from the programme of universal free schooling.

The right to access (quality) education, which remains a major problem in Haiti, requires the mobilization of substantial financial and human resources to ensure proper teacher and to rebuild a quality public school system. This cannot be done without a national education policy guided by a vision and long-term goals able to mobilize the best available expertise in the country.

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39. See recommendations of the FIDH mission, « Haiti, a broken nation : For reconstruction based on human rights and including the Haitian people », March 2010.

## B- The right to health

The situation in the **health sector**, more than two years after the earthquake, is very worrying: the massive influx of medical NGOs in the aftermath of the disaster enabled these healthcare providers to save lives and address emergencies that Haitian health structures were not equipped to handle. Yet the health situation in Haiti continues to deteriorate, says Dr. Buteau, professor of medicine at Haiti State University<sup>40</sup>, who regrets that only 2% of the budget is allocated to this sector and that all investment in the health sector derives from external sources. Currently, the public hospital system is deprived of the means to meet the needs of the population. Sanitation coverage in rural areas has not improved and the government's disengagement from responsibility for health care has entailed a *de facto* exclusion of the poorest populations from access to health care (at 60 per 1,000, Haiti's infant mortality is the highest in the Caribbean region).

Management of the cholera epidemic is also an illustration of short-term humanitarian management that does not ensure sustainable sanitation security; financial resources were released to cope with the emergency, but were insufficient to address the causes of the spread of the disease: lack of access to safe drinking water, inadequate sanitation, and unhygienic conditions in the slums and camps. Post-earthquake financial needs to address the « structural catastrophe »<sup>41</sup> in terms of the Haitian population's access to safe drinking water and sanitation are estimated at USD 1.1 billion over three years<sup>42</sup>. However, in November 2011, donors pledged USD 271.4 million for the reconstruction of water supply and sanitation systems, far short of needs<sup>43</sup>.

The restructuring of a public health service, accessible to all and especially to the most vulnerable populations, is a prerequisite for progress towards meeting the need to uphold the basic right to health care. Many Haitian nurses and doctors have chosen to go abroad due to the lack of work opportunities in the country. In order to reverse or at least curtail this trend here again there is a need to mobilize financial and human resources to establish a coherent public health policy with medium- to long-term perspectives.

## C- The right to access food

**Concerning the right to access food**, the situation remains critical. According to the report of the National Commission for Food Security (CNSA) covering the period January to June 2012<sup>44</sup>, « the incidence of food insecurity will remain high » in many rural communities in most provinces of the country and also « in poor neighborhoods in the metropolitan area of Port-au-Prince, particularly in slums and shelter camps. »

In the words of the UN Special Rapporteur on the Right to Food: « *The right to have regular, permanent and unrestricted access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensure a physical and mental, individual and collective, fulfilling and dignified life free of fear.* »<sup>45</sup>

The following four conditions must be met to ensure food security :

- the availability of food products

40. « Health care in Haiti : an alarming situation », 27 April 2012, [www.lematinhaiti.com](http://www.lematinhaiti.com)

41. Oxfam, « Haiti - The Slow Road to Reconstruction: Two years after the earthquake, 10 Janvier 2012 : [www.oxfam.org](http://www.oxfam.org)

42. [http://www.refondation.ht/resources/PDNA\\_Working\\_Document.pdf](http://www.refondation.ht/resources/PDNA_Working_Document.pdf) (see p. 68) (last consultation : December 2011).

43. Office of the UN Special Envoy for Haiti (2011), International Assistance, New York, <http://www.haitispecialenvoy.org/assistance-tracker/> (dernière consultation : décembre 2011). The 43% figure represents assistance provided up to 30 September 2011. Donors have also provided more than USD 1 billion to Haiti in the form of debt relief for the period 2010-11

44. CNSA / MARNDR , « Haiti - Food Security Outlook », January to June 2012, [www.cnsahaiti.org](http://www.cnsahaiti.org)

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

- their accessibility by the population
- adequate nutritional quality of the food

However, the available information on these three requisites is not reassuring :

**Food availability** on the different consumer markets is assured by local and imported products. But agricultural production and productivity in this sector have continued to decline since the opening of the country to imported food. The lack of State support to farmers in terms of production techniques and facilitating the task of bringing food to market, coupled with the ravages of uncontrolled deforestation that increases the vulnerability of populations and crops to extreme weather, has only served to aggravate the situation.

Despite a real potential for agricultural production, the impoverishment of the farming community, the diminution of State-run basic services in rural areas, the lack of infrastructure needed to boost productivity (under-utilization of arable land due to the absence of a fair land tenure policy and faulty irrigation systems), as well as marketing difficulties linked to the shortage of storage and transport resources, pose serious threats to domestic food production and supply. Consequently, Haiti imports nearly 60% of its food and 80% of the rice consumed in the country.

**Access to food** is therefore increasingly influenced by the price levels set by importers. The National Committee for Food Security (CNSA) stated in its report that prices are too high for a growing percentage of the population with very low and irregular incomes. This severely limits access to staple food for the poorest people, especially in precarious slum neighbourhoods and IDP camps. The government estimates that 11% of the population suffer directly from hunger and barely manage to secure one meal a day<sup>46</sup>. The impact of the global crisis on the prices of agricultural produce has made things worse, prompting the President of the Senate, Simon Dieuseul Desras, to fear that this situation could trigger new riots similar to those that shook the country in 2008 (Desras statement in July 2012).

**The nutritional quality** of the food consumed is also very poor and contributes to an increase in malnutrition observed over the past 10 years: «30% of children under 5 suffer from chronic malnutrition, 50% of pregnant women and 70% of children under five suffer from anemia, while 70% of children [aged between] 6 to 12 months suffer from iodine deficiency.»<sup>47</sup>

Faced with this reality, denounced long ago by Haitian organizations engaged in the development sector<sup>48</sup>, President Martelly launched the « Aba Grangou » programme to combat hunger and malnutrition, inspired by the « Zero Hunger » programme of President Lula in Brazil. In addition, under the auspices of the First Lady, a National Commission to Combat Hunger and Malnutrition (COLFAM) was created with representatives of the presidency, the office of the Prime Minister and nine ministers. This ambitious project aims to : 1) improve access to food for the most vulnerable; 2) launch agricultural investment programmes to increase domestic food production; and 3) improve basic services. The goal is for the government to regain control, coordination and allocation of international funding around these priorities.

Given the recent launch of this initiative and the magnitude of the challenges, it is too early to measure its impact. However, it seems unlikely that these measures can ensure **sustainable** food security in the country if they are not accompanied by a revision of Haiti's trade policy, particularly regarding trade agreements that have a direct impact on the agricultural sector. As

46. « Aba grangou » Project, Conceptual Note on the National Programme to Combat Hunger and Malnutrition, 24 January 2012.

47. *Idem*.

48. In particular associations grouped within the « Haitian Coalition for a Moratorium » that published a document in December 2011 entitled « Haïti dans l'impasse des politique de libéralisation commerciale » (Haiti in an impasse over its trade liberalization policy).

long as small Haitian rice farmers remain subject to legal but unfair competition with producers of heavily subsidized «Miami rice», they will never be able to sell their production on the domestic market at competitive prices, and dependence on imports of this staple will continue. While an improvement of the means of production of the Haitian peasantry may be urgent and beneficial, it can never reverse the decline in domestic agricultural production so long as the country remains «open» to shameful competition because of its tariff policy favouring imports over domestic production.

Advocacy for a five-year moratorium on trade liberalization agreements launched by the Haitian Coalition for a Moratorium calls into question the national economic and social policies that have produced such disastrous results over the past 30 years. These results came into sharp focus in the aftermath of the January 2010 earthquake. The moratorium also calls for implementation of strategies to strengthen the country's capacity to respond to the challenges of food sovereignty and to give people access to economic opportunities and social services<sup>49</sup>.

## D- The industrial strategy

Similar questioning is needed in the **field of industrial strategy** that is now emerging under the banner « Haiti open for business ». Previous experiences of industrialization, focused on the creation of free trade zones for assembly industries using unskilled, abundant and cheap labour, failed to generate any sustainable development. Admittedly, this provided low salaries to thousands of workers for a certain period, but it had no real impact on prevailing mass unemployment. Moreover, these forays into industrialization neither allowed for a redistribution of wealth nor generated new revenue streams for the State coffers because the international enterprises established in these industrial zones were exempted from paying taxes. In addition, the creation of these zones prompted an uncontrolled influx of people looking for work, turning them into shanty towns (Cité Soleil).

Today, there are many who fear that this scenario will reoccur with the proposed installation of a 205 acre industrial park in Caracol Bay, in the north of the country. The park, financed in part with funds allocated for post-earthquake reconstruction (USD 224 million, according to the New York Times of 6 July 2012), is backed by three promoters: the Haitian government, the Inter-American Development Bank (IDB)<sup>50</sup> and the United States.

Inaugurated on July 17, 2012, by President Martelly in the presence of IDB representatives and U.S. officials, the industrial park now hosts a Korean textile firm (S&A Company) and a Haitian enterprise (Peintures Caraïbes). The Korean company has pledged to create 6,000 jobs in 2013 and 20,000 within six years<sup>51</sup>. 400 people are currently employed.

- The strategic decision to prioritize this type of industrial development: promoting the establishment of export-oriented industries is only a short-term response to the need for jobs offering no security for the future (foreign investors may find cheaper labour sources elsewhere) and above does not lead to sustainable industrialization that meets the needs of the country;
- The site selection on arable land in a fragile coastal zone from where a thousand peasant families will be evicted;
- The dangers to the environment and the marine ecosystem caused by the manufacture

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49. *Idem*.

50. The IDB invested USD 55 million in 2011 for this project and agreed to allocate a USD 50 million grant for the second phase in September 2012 : <http://www.iadb.org/en/news/news-releases/2012-09-17/new-grant-for-caracol-industrial-park-in-haiti,10111.html>

51. [http://www.radiotelevisioncaraibes.com/opinion/le\\_parc\\_de\\_caracol\\_pas\\_encore\\_approprié\\_par\\_les\\_haitiens.html](http://www.radiotelevisioncaraibes.com/opinion/le_parc_de_caracol_pas_encore_approprié_par_les_haitiens.html)



and dyeing of textiles (over consumption of groundwater, and the discharge of potentially toxic wastewater into the bay);

- Lack of consultation with Haitian political, social and economic actors at local and national level, which currently translates into a lack of ownership of the project by Haitian industrial, banking and commercial sectors.

Again, it is too early to assess the results of this initiative. However, the lessons of the past justify the fears expressed and have led to greater vigilance on the part of civil society organizations and international donors regarding its implementation.

More generally, it appears that the path to industrial development that creates jobs and generates national assets must originate by ensuring that personnel working in the informal network of companies that dominate the country have access to credit, technology and training. This implies a change - if not a complete overhaul - of government priorities to ensure the participation of the largest number of workers possible in a dynamic of indigenous economic development in which they themselves are the foremost actors, not just unskilled labour used by foreign investors.

The challenges of poverty and social exclusion are immense and require answers that go beyond the humanitarian emergency.

History shows that durable responses to ensuring that a country such as Haiti is able to end its dependence on foreign aid and emerge from the dramatic state of human insecurity that affects the vast majority of its people, are to be found primarily in the recovery and development capabilities of its population, and in the exercise of citizenship by all, given that development and citizenship are incontestably inseparable.

The basic answer therefore lies in the construction of a State governed by the democratic rule of law, placing at the heart of its development strategies that take into consideration respect for and the promotion of the economic and social rights of its people. This will not be possible without the guarantee of access to justice and an improvement of the deeply flawed justice system.

# III- PERSISTENT JUDICIAL INSECURITY AND IMPUNITY

The phenomenon of prolonged preventive detention, coupled with inhumane detention conditions and a critical security situation, as well as serious shortcomings in the administration of justice, are all obstacles to ensuring the respect, protection and fulfillment of human rights in Haiti.

## A- Prison situation

The provisions of the International Covenant on Civil and Political Rights (ICCPR), ratified by Haiti in 1991, state :

Article 9, para 3 – « *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 .* »

Article 10, para 1 – « *All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.* »<sup>52</sup>

However, nearly 70% of the prison population in Haiti are being held in preventive custody, in some cases since several years, without access to legal assistance, and face inhuman conditions of detention.

RNDDH identifies cases of violence by guards against inmates, such as the practice of «beating» them, notably in Jeremiah civilian prison, where a room is expressly reserved for beating individuals accused of rape or murder<sup>53</sup>. Haiti has not ratified the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

In addition, apart from those held in the Delmas juvenile prison, minors are detained in the same facilities as adults, contrary to the provisions of the ICCPR<sup>54</sup> and the Convention on the Rights of the Child<sup>55</sup>.

Of the six prisons studied by RNDDH in April 2012, only the Cap Haitien detention facility proposed a training programme in the form of a literacy course for women and juvenile prisoners. In all six prisons, inmates lack access to vocational rehabilitation programmes.

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52. International Covenant on Civil and Political Rights, Art. 9, para 3, and Art.10, para 1.

53. National Network for the Defence of Human Rights (RNDDH), Impact of prolonged preventive detention on Haitian society, 28 October 2011, p. 5.

54. International Covenant on Civil and Political Rights, Art.10, para 2.

55. « every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so (...) ». Art. 37(c).

### ***Prison overcrowding***

As of 26 January 2012, according to MINUSTAH, 7,190 people were deprived of their liberty in Haiti<sup>56</sup>. The RNDDH estimated that the prison population was 7,920 at 30 March 2012. Detainees are held in 16 civilian prisons: Port-au-Prince, Carrefour, Pétion-Ville, Delmas, Arcahaie, Cap-Haitien, Grande Rivière du Nord, Fort-Liberté, Port de Paix, Saint-Marc, Mirebalais, Hinche, Jérémie, Les Cayes, Jacmel and Anse à la Pêche, and in four police stations – Gonaïves, Aquinas, Miragoane and Breckinridge – converted into prisons. In recent years, the prison population in Haiti has increased by 250%, rising from around 2,000<sup>57</sup> to more than 7,000 between 1995 and 2012, excluding the more than 5,000 prisoners who escaped following the earthquake.

The International Committee of the Red Cross (ICRC) recommends that at the very minimum each detainee should benefit from no less than two square metres of cell space<sup>58</sup>. In 2011, however, the total surface of cell space was 3,455 square metres, which has not been added to since. Based on the number of inmates identified by the MINUSTAH early in 2012, this is equivalent to an average of 0.48 square metres of cell space per inmate. Consequently, prison overcrowding in Haiti is more than 400%, over the minimum rate set by the ICRC.



*Inmates, Leogâne, 2004*

© fidh

### ***Unsanitary conditions and serious health system failures***

The phenomenon of overcrowding is compounded by a critical health situation, seriously affecting detainees' access to health care. Since it broke out in October 2010, a cholera epidemic has caused at least 275 deaths<sup>59</sup> due to unsanitary conditions and overcrowding in prisons. Detainees do not have routine access to drinking water, and some prisons provide inmates

56. Report of the Independent Expert on the Human Rights Situation in Haiti, 23 April 2012, A/HRC/2035, para 27.

57. Report of the Independent Expert on the Human Rights Situation in Haiti, 26 March 2009, A/HCR/11/5, para 64.

58. *Idem*, para 59.

59. National Network for the Defence of Human Rights, Impact of prolonged preventive detention on Haitian society, 28 October 2011, p. 5.

untreated water from tankers<sup>60</sup>. The report of the independent expert on the human rights situation in Haiti also highlights the « serious health challenges and problems of food supply » throughout the country<sup>61</sup>. Meal distributions are random, food is in short supply, and of poor quality, promoting the development of pathologies linked to this poor diet.

Due primarily to the cholera epidemic and tuberculosis, the mortality rate of prisoners has increased significantly, jumping from 43 to 69 deaths between the first half of 2011 and the equivalent period in 2012<sup>62</sup>. According to a RNDDH study in six prisons conducted in April 2012<sup>63</sup>, (Cap-Haïtien, Les Cayes, Grande Rivière du Nord, Jacmel, Jérémie and Port-de-Paix), none of these structures have a doctor on-site. Two of them (Grande Rivière du Nord and Port-de-Paix) do not even have a nurse on the premises, despite the serious diseases such as tuberculosis and HIV diagnosed among some of their inmates. Moreover, no specialized care for prisoners showing symptoms of mental disorders or behavioral problems is foreseen in any of the six prisons surveyed.

### *Nearly 70% of prisoners languish in prolonged preventive detention*

Of the 7,190 persons deprived of liberty in Haiti as of 26 January 2012, 4,966 (69.06%) were being held in preventive custody – the vast majority for prolonged periods<sup>64</sup>. While the prison population has increased by 25% since 2011, the proportion of inmates held in prolonged preventive detention has remained stable year on year, with the exception of 2008 when it shot up to 80%, or 7,869 detainees<sup>65</sup>.

These figures vary considerably across jurisdictions and penitentiary institutions. The situation is particularly critical in penitentiary establishments in the metropolitan area: as of 26 January 2012, 92% of inmates in the National Prison (Pénitencier National) in Port-au-Prince were in preventive custody, despite the implementation of the «Not one more day» programme established by a senior judge of the Court of First Instance in Port-au-Prince together with the public prosecutor to fight against this phenomenon<sup>66</sup>. On the same date, 90% of inmates in the women's prison in Pétion-Ville were also being held in preventive detention<sup>67</sup>. In contrast, the rates of preventive detention in Fort Liberté, 45%, au Cap-Haïtien, de 48% and Cayes were 45, 48 and 45 percent respectively<sup>68</sup>.

In general, contrary to international norms, people held in preventive detention are not segregated from convicted inmates. Indeed, the ICCPR states : « *Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons.* »<sup>69</sup>

The problem of prolonged preventive detention also affects children whose rights are not guaranteed. The Convention on the Rights of the Child provides that States Parties shall ensure that : « *No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest,*

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60. *Idem*, p. 4.

61. Report of the Independent Expert on the Human Rights Situation in Haiti, 23 April 2012, *Op. Cit.*, para 34.

62. Report of the UN Secretary-General to the Security Council on the UN Stabilization Mission in Haiti, S/2012/678, 31 August 2012, para 32.

63. National Network for the Defence of Human Rights, study of general conditions of detention in six prisons in the country, April 2012.

64. Report of the Independent Expert on the Human Rights Situation in Haiti, 23 April 2012, *Op. Cit.*, para 27. Data MINUSTAH data, 26 January 2012.

65. Report of the Independent Expert on the Human Rights Situation in Haiti, 26 March 2009, *Op. Cit.*, para 64.

66. Human Rights Council, Report of the Working Group on the Universal Periodic Review, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, A/HRC/19/19/Add.1, 29 February 2012, para 13 : « *A total of 116 persons were released under the programme between July 2011 and January 2012. They included individuals who had completed their sentences and were still being held, as well as detainees who had committed minor offences and had already been held for longer than the statutory penalty.* ».

67. Report of the Independent Expert on the Human Rights Situation in Haiti, 23 April 2012, *Op. Cit.*, para 30.

68. *Idem*, para 28.

69. International Covenant on Civil and Political Rights, Article 10, para 2.



*detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time »<sup>70</sup>.*

As of 24 October 2011, however, 224 of the 265 juveniles deprived of their liberty in Haiti were being held in preventive detention, i.e. close to 85% of the total. The situation is particularly critical at the juvenile prison in Delmas, where only 22 of the 139 inmates have been tried, and at the women's prison in Petion-Ville, where all 18 minors in preventive detention have yet to face trial<sup>71</sup>.

The defendants, most of whom come from very poor slum and rural areas, do not have the means to hire a lawyer, and rarely benefit from legal assistance, even though the right to legal assistance is guaranteed by the Constitution<sup>72</sup>. In certain cases, trainee lawyers are made available to defend them. While the nationwide legal aid programme (SYNAL)<sup>73</sup> set up by the NGO International Legal Assistance Consortium (ILAC)<sup>74</sup> and the support of the UNDP in the three pilot jurisdictions of Jacmel, Port-de-Paix and Fort-Liberté have improved legal services and reduced the duration of preventive detention<sup>75</sup>, the RNDDH reports in its study of six prisons that there are numerous « forgotten » cases, mostly concerning people arrested between 2005 and 2009, who have never been tried. (*The RNDDH table annexed to this report lists these cases identified during its study on six prisons conducted in April 2012*).

Furthermore, following convictions, the Tribunal of First Instance sometimes fails to notify court decisions to the prisoners or to the prison administration, resulting in the latter not having the latest information on the court-ordered prisoner release dates, and thus prolonging detention unnecessarily. In pursuing the practice of prolonged preventive detention, the Haitian government is acting in violation of the rights of the defense, in particular the right to benefit from the principle of the presumption of innocence and the right to be tried within a reasonable time, as well as the right to legal representation.

According to the United Nations Working Group on Arbitrary Detention, deprivation of liberty is arbitrary in cases « (...) where the inobservation, total or partial, of international standards on the right to a fair trial set forth in the Universal Declaration of Human Rights, and in the relevant international instruments accepted by the States concerned, is of such gravity that it renders deprivation of liberty arbitrary ». The Working Group, in its report of 26 December 2011 and in accordance with Article 3 of the ICCPR, considered that unjustified and prolonged detention is tantamount to arbitrary deprivation of liberty<sup>76</sup>.

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70. Convention on the Rights of the Child, Art. 37.

71. National Network for the Defence of Human Rights, Impact of prolonged preventive detention on Haitian society, 28 October 2011, pp. 5-6.

72. 1987 Constitution, Art. 24.3.

73. See <http://www.ilac.se/ilac-work/haiti/>

74. *Idem*.

75. Report of the UN Secretary-General to the Security Council on the UN Stabilization Mission in Haiti, S/2012/678, 31 August 2012, para 31.

76. Human Rights Council, Report of the Working Group on Arbitrary Detention, A/HRC/19/57, 26 December 2011, paras 53 et 57. « Paragraph 3 of Article 9 of the International Covenant on Civil and Political Rights enunciates two cumulative obligations, namely that the person concerned must be brought promptly before a judge (in the days following deprivation of liberty) and must be tried within a reasonable time, failing which the person must be released. »

## VISIT TO JACMEL PRISON, SOUTHEAST DEPARTEMENT

During the visit to Jacmel Prison on 20 May 2012, FIDH mission members observed that inmates were not guaranteed their basic rights.

### *Infrastructure*

On 20 May 2012, Jacmel Prison was holding 446 inmates in 16 cells. Among them were 16 women and nine children placed apart in two separate cells. Male inmates were held in groups of 30 per cell. The number of prisoners increased from 388 in January 2012, to 400 in February and 440 in March.

The two cells visited by the FIDH mission held 34 and 39 detainees, respectively, and each one measured no more than 20 square metres. Each cell had only one triple bunk bed, forcing inmates to sit on the floor or on the bed, and to take turns in sleeping.

Interviewed inmates complained about the poor quality of the food – distributed only twice daily – and claimed they received insufficient quantities of hygiene products such as soap, toothpaste, toilet paper and sanitary items. They also highlighted the lack of social services within the prison. First and foremost, the FIDH mission noted the deplorable living conditions of sick people who were placed in two cells, each one holding eight to ten inmates in a space measuring no more than ten square metres, and located in the prison courtyard, fully exposed to the sun and all types of weather.

According to the prison administration, 12 cases of cholera were detected in April 2012 among the detainees, 11 of whom were hospitalized. Following this resurgence of the epidemic, which did not cause any deaths, a cholera treatment centre (CTC) was established inside the prison. At the time of the visit, three prisoners were living with HIV and five had syphilis. The imprisoned HIV patients receive monthly tritherapy treatment in hospital, as confirmed by one of the detainees interviewed.

Based on the information collected, the inmates do not have access to recreation, education or vocational training to facilitate their reinsertion into society. Since March 2012, the inmates themselves have been giving literacy lessons to their fellow prisoners.

### *Prolonged preventive detention*

On 20 May 2012, 272 of the 446 inmates (61%) were being held in preventive detention. The figures provided by the prison administration indicated that there were 254 and 9 women among these 272 people. Although the status of the nine minors was not specified, it may be assumed that they were also being held in preventive detention.

Interviewees criticized the absence of legal assistance, and those in preventive detention indicated they did not know the date of their trial. One of them said he was imprisoned for not paying his debts, a form of punishment banned by the ICCPR<sup>77</sup> and the American Convention on Human Rights, ratified by Haiti in 1977, for debt cases, and yet sanctioned by the Haitian Penal Code as « abuse of confidence »<sup>78</sup>.

77. International Covenant on Civil and Political Rights, Art. 11: « No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation. »

78. American Convention on Human Rights, Art. 7: « No one shall be detained for debt. »

## B- Reform of the Police

### *Security context*

Only 8% of the more than 5,000 prisoners who escaped from prisons after the earthquake have been recaptured and returned to their cells. Among the 5,000 escapees, approximately 500 high-profile criminals have reconstituted their gangs<sup>79</sup>. Early in 2012, RNDDH reported a situation of generalized insecurity, a resurgence of violence, and increased arms trafficking linked to the proliferation of gangs<sup>80</sup>. Thus, the period from 1 January to 14 March 2012 alone, at least 147 people were killed, 130 of whom were shot dead, mostly in the metropolitan area<sup>81</sup>. According to the report of the UN Secretary-General on MINUSTAH, the murder rate rose sharply during the period from March to July 2012, averaging 99 murders per month, peaking at 134 killings in July, the most violent month since the earthquake. This compared to 75 murders in the equivalent period in 2011. Sixty-five percent of the killings occurred in Port-au-Prince, 85 to 90% of them in fragile neighbourhoods of the capital (Bel Air, Fort National and Martissant), and in Cité Soleil, Carrefour and Croix-des-Bouquets<sup>82</sup>. From 1 January to 7 May 2012, the Haiti National Police (HNP) faced a series of unresolved crimes, including the murder of eight police officers. During a meeting with the FIDH mission, the HNP Deputy Director reported that in the first half of 2012 the police had recorded some 100 kidnapping cases, primarily in the metropolitan area, and had dismantled several gangs operating in the camps. Moreover, since 2011, cases of murder of persons in custody and police violence have multiplied, seriously compromising the credibility of the HNP, especially since the perpetrators remain unpunished<sup>83</sup>.

Faced with this situation, the institutional and operational capacity of the HNP must be enhanced to ensure a coherent security policy, but also to implement an effective HNP vetting process to exclude staff members who have engaged in human rights violations and bring them to justice.

### *Vetting*

A reform plan for the HNP was initiated in 2006 under the administration of Rene Preval, in coordination with MINUSTAH and major donors. The plan included a clean-up process within the HNP, which began in December 2006 under the direction of Mario Andresol, concerning police agents involved in human rights abuses. Between 2006 and 2007, more than 200 officers were suspended or transferred to the judiciary. The majority were low-ranking officers, except in 2007, when a general inspector and four divisional commissioners were also suspended<sup>84</sup>.

At the time of the earthquake, 7,177 files had been opened as part of the vetting process<sup>85</sup>. The process was suspended following the earthquake but has since resumed with the opening of 1,034 new files by July 2012. Following examination of 138 files, the PNH administration

79. International Crisis Group, *Keeping Haiti Safe : Police Reform*, Latin America/Caribbean Briefing N°26, 8 September 2011.

80. National Network for the Defence of Human Rights condemns attacks against HNP officers, May 2012, p. 3.

81. National Network for the Defence of Human Rights : « RNDDH sounds the alarm about the worsening security situation in the country », press release 15 March 2012.

82. Report of the UN Secretary-General to the Security Council on the UN Stabilization Mission in Haiti, S/2012/678, 31 August 2012, para 11.

83. International Crisis Group, *Op. Cit.*, p. 8. « *The Office of the UN High Commissioner for Human Rights (OHCHR) in Haiti has called the attention of Police Chief Andrésol to an apparent trend of persons killed during police action or while in police custody, expressing concern at reports of multiple cases of such killings between January and July [2011]. OHCHR prepared a report on its investigations into five cases involving nine deaths in which sixteen police officers were implicated. Since June [2011], five more deaths, by HNP accounts during operations, were discovered. (...) While action has been taken by the IGC [General Inspectorate], and in some instances by the criminal justice system, based on the information available, none of the cases has led to a criminal prosecution.* »

84. « Vetting » is essentially an evaluation of the character and integrity of each agent through a series of enquiries conducted in accordance with Haitian law and the HNP code of discipline focused primarily on a person's criminal or disciplinary record and behavior in social life. Investigations are conducted by a joint HNP / UNPol team.

85. *Idem*, p. 9.

recommended the dismissal of 92 police officers, and the HNP Director-General presented a list including the names of 79 of the 92 officers to the Minister of Justice and Public Security requesting authorization to dismiss them<sup>86</sup>.

Despite these measures, the RNDDH has denounced several cases of human rights violations committed by HNP personnel. The case of Serge Demosthenes is emblematic. He was arrested on 15 June 2011 by HNP officers, transferred to Petion-Ville where he died following mistreatment under interrogation. The alleged perpetrators remained unpunished since the judge who took charge of investigation of the case – the same judge who invoked the statute of limitations to prescribe the charges of torture, disappearance and extrajudicial execution against the former dictator Jean Claude Duvalier – ordered the release of the seven suspects<sup>87</sup>. Another case of police violence occurred on 31 July 2012, when officers of the HNP departmental law enforcement unit (UDMO) mounted a repressive operation against the population of Martissant in retaliation for an attack against a patrol. During the HNP operation, two people were injured by gunfire, one critically, 15 houses were burned down after being searched, and seven motorcycles and the shelves of several shops were overturned and destroyed. According to the victims, the HNP also stole money during the house searches. This violent intervention allegedly took place in the presence of MINUSTAH officers, who purportedly just stood by passively watching the events unfold<sup>88</sup>. A second emblematic case involved the suppression of a mutiny following a jailbreak from Cayes civilian prison on 19 January 2010, in which at least ten prisoners were killed by HNP officers. On 18 October 2011 – after a delay of three months – the Assize Court finally convicted eight Cayes police officers for these crimes.

The HNP reform plan ended in December 2011 and a new draft five-year (2012-2016) plan for development of the HNP, with a budget of over USD 1.3 billion<sup>89</sup>, was adopted by the Supreme Council of the National Police (CSPN) on 31 August 2012<sup>90</sup>.

### ***Training***

During implementation of the 2006-2011 police reform plan, 3,500 officers were trained. However, following the 2010 earthquake, no class graduated until May 2011, when 877 new recruits joined the ranks of the HNP<sup>91</sup>. The 2012-2016 development plan focuses on the professionalization and modernization of the HNP, and foreseen an increase in the number of HNP officers from 10,000 to 15,000 by 2016 through the training of 1,200 to 1,250 new officers a year over five years. Disappointingly, only 244 candidates enrolled in the initial 2012 police academy training course<sup>92</sup>.

According to MINUSTAH, recruitment, examination and police training activities are hampered by several factors, notably the need to restructure the recruitment system, to accelerate the renovation or construction of facilities, and to increase budgetary resources<sup>93</sup>.

During a meeting with the FIDH mission members, police chief Mario Andresol also pointed out that at present the 10,000 HNP officers covered only 25% of the national territory, and posited that 18,000 to 20,000 additional officers would be required to extend coverage to all

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86. Security Council, *Op. Cit.*, para 24.

87. National Network for the Defence of Human Rights, Observations on the functioning of the Haitian judiciary in 2011-2012, October 2012, p. 30.

88. National Network for the Defence of Human Rights, report on the enquiry into the punitive HNP raid against Martissant on 31 July 2012, August 2012.

89. More than a billion dollars foreseen for implementation of the HNP development plan : <http://www.haitienmarche.com/index.php?>

90. <http://www.haitilibre.com/article-6530-haiti-securite-adoption-par-le-cspn-du-plan-de-developpement-de-la-pnh-2012-2016.html>

91. International Crisis Group, *Op. Cit.*, p. 6.

92. Discussion with the HNP Deputy Director-General, 23 May 2012.

93. Security Council, *Op. Cit.*, para 25.

parts of the country<sup>94</sup>. Even with the increase to 15,000 officers planned for 2016, the country is far from achieving the ratio recommended by the United Nations of 300 police officers per 100,000 inhabitants<sup>95</sup>. The police chief also mentioned the need to strengthen the special forces and local police, and to enforce a zero tolerance policy for police brutality.

On 15 August 2012, the government appointed Godson Orelus, former Director of the Judicial Police, to succeed Mario Andresol whose mandate expired on 18 August 2012. The new police chief faces the challenge of resisting pressure to politicize and corrupt the police force, notably through unjustified appointments and promotions based on personal relationships rather than on merit<sup>96</sup>.

To fight against prolonged preventive detention, persistent insecurity, and impunity for police violence, structural reforms of the judiciary must be implemented to ensure its impartiality and independence, as well as its effectiveness.

## C- Reform of the Justice System

The 1987 Constitution provides for a Supreme Court, four Regional Courts of Appeal, 18 Courts of First Instance as well as Peace Courts, of which there are now 140. Article 175 of the Constitution determines the procedures for the appointment of judges. According to the United Nations Basic Principles on the Independence of the Judiciary, the latter « (...) *shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary*»<sup>97</sup>. Although this principle is enshrined in the Constitution<sup>98</sup> and that the question of the rule of law was among the four priorities set by President Martelly after his inauguration<sup>99</sup>, it was not until 3 July 2012 that the body responsible for ensuring independence of the judiciary – the Supreme Council of the Judiciary (Supreme Council) created by a law enacted on 13 November 2007 – was installed.

Faced with the widespread lack of judicial guarantees in Haiti, the establishment of the Supreme Council has created many expectations. However, only two months after it was put in place, it is already facing a serious institutional crisis.

### *The serious failures of Haiti's judicial system*

The shortcomings of the judicial system, seriously exacerbated by the earthquake, appear to be the main cause for the perpetuation of impunity and for prolonged preventive detention and prison overcrowding. Indeed, the lack of personnel and material and financial resources as well as inadequate training of lawyers and judges result in major delays in case management. Lack of access to the justice system is also a serious problem, especially for the disadvantaged majority of the population : only 69% of the territory is covered by the justice system<sup>100</sup>. Justices of the Peace, charged with resolving minor offenses and disputes rapidly, are largely absent from slums and rural areas, apart from the provision of mobile legal services in some places, such as Martissant, or branches of Peace Courts in some remote areas of the Central, North-West and

94. Discussion with HNP Director-General, 23 May 2012.

95. *Idem*.

96. RNDDH open letter to Mr Godson Aurelus, HNP Director-General, September 2012.

97. Office of the United Nations Commissioner for Human Rights, Basic Principles on the Independence of the judiciary : <http://www2.ohchr.org/english/law/indjudiciary.htm>

98. Articles 59 and 60 of the Constitution of 29 March 1987 enshrine the principle of the separation of powers.

99. The question of turning Haiti into a State governed by the rule of law is one of the « four E » projects announced by President Martelly, alongside education, employment and the environment.

100. Discussion with the Minister of Justice, Jean-Renel Sanon, on 25 August 2012. The minister insisted on the « *urgent need to make the courts available to justiciables* ».



Grande Anse departments<sup>101</sup>. Moreover, low staff salaries make the judicial system prone to corruption. The incompatibility of procedures and the Penal Code with international norms is another source of concern.

This inefficiency and obsolescence are compounded by numerous challenges to the judiciary's impartiality and independence. Before the recent installation of the Supreme Council, essential for the construction of a system based on the rule of law, judges were appointed by the President on the recommendation of the Minister of Justice, or his deputies or senators, constituting direct political interference in the affairs of the judiciary. In fact, in the institutional vacuum that existed before the Supreme Council became operational, the Minister of Justice even managed the budget and direction of judicial review.

Noneless, the independence of the judiciary continues to face serious pressure. On 26 September 2012, the Port-au-Prince government commissioner<sup>102</sup> was dismissed for publicly stating on the radio that the Minister of Justice and Public Security and the Chairman of the Permanent Electoral Council had allegedly ordered the arrest of 36 individuals identified as political opponents. The arrest orders reportedly concerned three human rights defense lawyers – Mario Joseph, Newton Saint-Juste and Andre Michel – who stated moreover that they had been targeted by anonymous threats since February 2012<sup>103</sup>. These illegal and arbitrary arrest orders, coupled with the dismissal of the government commissioner – evidently prompted by his refusal to carry out the arrests – constitute serious political interference in the affairs of the judiciary and reflect the tendency to use the latter for political purposes, in order to intimidate and neutralize critics of government management.

### ***Reform of the dysfunctional judicial system***

Confronted by this situation, and as outlined in the Citizens' Forum for Justice Reform : « *Reform of the judiciary must be structural. It aims to reform the State and its practices, to develop new public policies for the judiciary, and to implement and control them in a democratic context.* »<sup>104</sup> Even though judicial reform started in 2007 and certain recent measures appear so show a modicum of progress, they nonetheless appear insufficient to ensure a truly effective and independent judiciary.

Three important related laws were enacted in 2007 pertaining to : 1) the status of judges, establishing criteria for the appointment of judges and the terms of their mandate ; 2) the establishment of the Supreme Council of the Judiciary (Supreme Council), which was finally installed on 3 July 2012 to oversee the performance of judges and to propose appointments based on merit; and 3) the functioning of the National School of Magistrates (EMA), defining the requirements for basic training and continued training for judges, court officials and government commissioners. In May 2012, 20 Haitian judges, who had completed their initial training in France before completing their graduate studies in Haiti, were deployed in different jurisdictions as judges or prosecutors.

In addition, the process of amending the Penal Code and the Code of Criminal Procedure initiated in 2009 is still in progress. One key element is the proposed change of criminal investigation from the portfolio of an investigating magistrate to that of a prosecutor. This would, among other things, render preventive detention exceptional and provide more guarantees to defendants, who

101. International Crisis Group, Keeping Haiti Safe: Justice Reform, Latin America/Caribbean Briefing N°27, 27 October 2011, p. 9.

102. The role of Chief Prosecutor for the jurisdiction of Port-au-Prince is essential to ensure prosecution of cases in the Haitian capital, including those involving national and local authorities.

103. Mr. Mario Joseph, Director of the Office of International Lawyers, is working on several sensitive cases, notably including the Duvalier file. In addition, Messrs. Newton Saint Juste and André Michel recently initiated legal action against President Michel Martelly and his family as well as against government members to denounce their alleged embezzlement of public funds, corruption and money laundering.

104. Citizens' Forum for Justice Reform, Advocacy document 2011-2014, p. 5.

would have access to their files. Under current procedures, judges are given up to three months to carry out their investigations. However, they rarely observe this deadline, causing increased rates of prolonged preventive detention. A draft law on legal assistance, to be annexed to the Revised Code of Criminal Procedure, is also being prepared but has not yet been submitted to parliament. This law reaffirms the constitutional requirement that all defendants have the right to legal assistance and proposes a framework for a nationwide system of legal assistance based on a model of the National Legal Assistance (SYNAL)<sup>105</sup>, implemented by the NGO International Legal Assistance Consortium (ILAC), which facilitated the liberation of at least 4,000 prisoners between 2008 and 2011<sup>106</sup>.

The President of the Court of Cassation was appointed in October 2011, followed by that of four judges in January 2012. The Supreme Court is composed of 12 members and is the supreme authority on all matters pertaining to the Constitution. Judges are selected by the President from a list of three persons proposed by the Senate.

Lawyers' and judges' lack of training and skills is also a major challenge. After the graduation of three police academy classes, EMA closed in 2004, reopened in 2009, before closing again following the earthquake<sup>107</sup>. Its operation depends on the implementation of the Supreme Council mandate, whose president is also on the board of directors of the police academy. The *Ecole de la Magistrature* - (EMA) has launched a first recruitment competition to train an initial caseload of 20 judges. Another 20 judges have passed EMA recruitment tests and have undergone training in France. The EMA also intends to develop a permanent pool of instructors<sup>108</sup>.

Finally, a presidential commission was established on 4 January 2012 to « study and propose appropriate measures for the implementation of the reform of the judiciary » and to ensure the continuity of the work undertaken by the commission created by former President René Préal. The commission is expected to make proposals for reform of the Haitian justice system, and has a period of two years to submit its report to the executive branch<sup>109</sup>.

### ***Difficulties encountered by the Supreme Council (CSPJ)***

The Supreme Council, established on 3 July 2012, has nine members under the aegis of the President of the Court of Cassation. It is responsible for the control, disciplinary action and deliberations of the judiciary, as well as for the recruitment of judges, without interference from the executive branch. Several functions formerly vested in the Ministry of Justice and Public Security have been transferred to the Supreme Council: administration of the judiciary, the appointment and dismissal of judges, disciplinary action, and the management of courts countrywide.

Yet, given that the role of the Supreme Council is to ensure and guarantee the independence of the judiciary, it is worrying that even though legislation governing this institution entrusts it with responsibility for the judicial review of headquarter judges, staff of the public prosecutor's office and court clerks remain under the hierarchical authority of the Minister of Justice<sup>110</sup>. The Supreme Council is therefore not responsible for oversight of the appointment of all officers of the judiciary, since this authority remains partially concentrated in the hands of the executive branch. According to civil society organizations grouped within the Citizen's Forum for Justice

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105. *Idem*, p.8.

106. See <http://www.ilac.se/ilac-work/haiti/>

107. *Idem*, p. 13.

108. Report of the Independent Expert on the human rights situation in Haiti, 23 April 2012, *Op. Cit.*, paras 24 - 25.

109. Human Rights Council, Working Group Report on the Universal Periodic Review, Observations on the conclusions and/or recommendations, voluntary commitments and replies presented by the State under review A/HRC/19/19/Add.1, 29 February 2012, para 8.

110. Report of the Independent Expert on the human rights situation in Haiti, 23 April 2012, *Op. Cit.*, para 17.

Reform, «the 2007 law on the Supreme Council only gives the illusion of independence of the judiciary, given that the power of appointment is (almost) entirely in the hands of the Executive »<sup>111</sup>.

In addition to this shortcoming, less than two months after its establishment, the Supreme Council has faced great difficulties, following the resignation of two of its members, including a member of the Haitian Federation of Bar Associations and a representative of the human rights sector. Both expressed serious doubts about the independence of the Supreme Council. The resignations came after the Supreme Council had chosen three of its nine members to represent the judicial branch on the nine-member Permanent Electoral Council under irregular conditions. The fact that only four of the nine Supreme Council members were present during the selection process, and thus did not represent the will of the majority, was a violation of the 2007 law stating that the Supreme Council « can only deliberate in the presence of at least five of its [9] members. It can only take decisions based on a majority vote (...) »<sup>112</sup>. This measure merely reflects the persistence of old practices where clientelism prevails over transparency and impartiality in the appointment of judges and magistrates.

In the wake of recommendations made during the Universal Periodic Review of Haiti on 13 October 2011, the State expressed its will to fight against impunity<sup>113</sup>, as well as its rejection of the establishment of an international commission against impunity<sup>114</sup>. In this uncertain context, the judge's order prescribing the charges of genocide and crimes against humanity against former dictator Jean-Claude Duvalier raised serious doubts about the commitment of the Haitian judiciary to condemn the abuses committed during the dictatorship.

## **D- Impunity persists : charges withdrawn against former Jean Claude Duvalier for crimes against humanity**

On 27 January 2012, one year after the unexpected return of former dictator Jean Claude Duvalier to Haiti after 25 years of exile in France, the investigating judge declared that the charges of torture, disappearance and extrajudicial execution against him were prescribed, but that he would face trial for corruption and embezzlement.

Jean Claude Duvalier, known as «Baby Doc», assumed power in 1971 at the age of 19, and presided over Haiti until 1986 when he was overthrown by a popular uprising and forced into exile. His 15 years of dictatorship were marked by massive violations of human rights, thus perpetuating the authoritarian regime established by his father, François Duvalier. Relying on security forces, including «Tonton Macoutes» militias, his regime sought to spread terror among political opponents, which resulted in the arrest and imprisonment of hundreds of political prisoners, some of whom disappeared, while others were summarily executed or forced into exile. The practice of torture was commonplace. Freedom of association, assembly and expression was systematically repressed and the media was muzzled. His unexpected return to Haiti on 16 January 2011 resulted in his indictment, two days after his arrival on Haitian soil, for corruption and embezzlement of public funds. Shortly after, 22 complaints were filed against him with the government commissioner for crimes against humanity.

The victims of abuse committed by the Duvalier regime grouped within Haiti's *Collective Against Impunity* organization, have appealed the decision not to prosecute Duvalier for grave

111. Citizen's Forum for Judicial Reform, *Op. Cit.*, pp. 16 - 17.

112. Human rights organizations protest against the process that led to the presidential decree appointing six members of the Permanent Electoral Council : [http://gallery.mailchimp.com/9522ccb17971e097d3ff160b5/files/Les\\_organisations\\_de\\_droits\\_humains\\_contre\\_le\\_processus\\_ayant\\_.pdf](http://gallery.mailchimp.com/9522ccb17971e097d3ff160b5/files/Les_organisations_de_droits_humains_contre_le_processus_ayant_.pdf)

113. Human Rights Council, Report of the Working Group on the Universal Periodic Review, *Op. Cit.*, 29 February 2012, para 9.

114. *Idem*, para 31.

violations of human rights during his reign and are awaiting the trial date, which had not been set at the time this report was written. The trial order has not been served to all the parties, indicating that the investigating judge has not made a proper judicial investigation, but has merely taken the minutes of interviews with certain plaintiffs. According to Rodolfo Matarollo, Ambassador of the Union of South American Nations (UNASUR) in Haiti<sup>115</sup>, the judge has not heard the testimonies of all the victims and has not visited the alleged crime scenes. Moreover, no excavations have been carried out and records have not been examined.

In addition to highlighting the serious shortcomings of the judicial system and its lack of impartiality and independence, these decisions are contrary to the international obligations of Haiti to investigate serious violations of human rights and prosecute the perpetrators. Many of the crimes that characterized the Duvalier regime, such as torture and cruel, inhuman and degrading treatment, arbitrary detention and subsequent disappearances, assassinations, and extrajudicial executions carried out massively or systematically, constitute crimes against humanity and can therefore not be prescribed. FIDH calls on the Haitian judicial authorities to send a strong signal in favour of the restoration of the rule of law by ending more than 25 years of impunity and ensuring the right of victims to access the truth and justice by judging and condemning Jean Claude Duvalier on appeal. Indeed, Haiti not only has an obligation under international law to prosecute Duvalier for crimes committed between 1971 and 1986, but also has the necessary legal tools to do so<sup>116</sup>. FIDH also stresses the need to honour the memory of victims of the dictatorship so as to finally give symbolic reparation to the victims' families, and to ensure there is no recurrence of the crimes committed.

FIDH furthermore wishes to express its concern about the threats and acts of harassment against Mr. Mario Joseph, Director of the Office of International Lawyers, which represents eight victims in the Duvalier case. Following a press conference held in January 2012 in which he denounced the judge's decision as legally groundless and politically motivated, Mr. Joseph would have received death threats by telephone three to four times a day for several weeks. More recently, Mr. Joseph would have been subjected to acts of surveillance by suspected HNP agents, and his name has reportedly been placed on a list of political opponents sent by the Minister of Justice to the government commissioner of Port-au-Prince with a view to making arrests<sup>117</sup>.

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115. Discussion with Ambassador Rodolfo Matarollo, 22 May 2012.

116. International Federation of Human Rights (FIDH), Jean Claude Duvalier must be tried in Haiti : note on the application of international law, particularly concerning crimes against humanity, and the events that occurred between 1971 et 1986, July 2011.

117. See III, C, serious flaws in the administration of justice.

# IV- MINUSTAH AT THE CROSSROADS

The intervention of MINUSTAH in Haiti is today at a crossroads in a context that requires it to reorient its direction. On the one hand, the limited impact of MINUSTAH peacekeeping activities appears to be taxing patience of donors and contributors. On the other hand, the Haitian population's apparent rejection of this foreign force has been amplified by the cholera scandal and the abusive conduct by MINUSTAH military personnel – notably sexual abuse – against the local population.

Against this backdrop, on 12 October 2012, the United Nations Security Council extended the MINUSTAH mandate until 15 October 2013. While the planned drawdown of MINUSTAH military and police contingents is a step towards a better balance between the MINUSTAH mandate and Haitian reality (A), FIDH regrets that no mention is made by the Security Council of the responsibility of MINUSTAH in the outbreak of the cholera epidemic in Haiti. That said, the Security Council request to the countries providing MINUSTAH troops to ensure that their nationals responsible for human rights violations in Haiti are brought to justice and convicted is a notable mention (B)

## A- MINUSTAH – What for ?

Since MINUSTAH was established in 2004, its primary mandate has been to reduce insecurity, restore stability (a stable and secure environment) and strengthen democracy<sup>118</sup>.

But by the end of 2009, shortly before the earthquake, the results of MINUSTAH operations were mixed. Indeed, while MINUSTAH made some progress in the fight against organized crime and in facilitating the 2006 and 2009 elections, its efforts over the past five years to strengthen the Haiti National Police (HNP) in terms of training, efficiency and the staff vetting process<sup>119</sup> have made little headway<sup>120</sup>. In addition, the foreseen installation of various democratic and judicial institutions remains unsatisfactory, as these entities either do not exist or are just emerging.

During the January 2010 earthquake, MINUSTAH, like all UN organizations present on the ground, lost a significant number of its personnel<sup>121</sup>, and tribute should be paid to the survivors who did their utmost to contribute to the rescue and research operations in the weeks following the disaster.

Subsequently, however, MINUSTAH failed to recognize the seriousness of human rights violations being committed in the camps and initially refused to contribute to securing the

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118. Security Council Resolutions 1542, S/RES /1542 (2004), 30 April 2004, then 1576 (2004), 1601, 1608 (2005), 1658, 1702 (2006), 1743, 1780 (2007), 1840 (2008), 1892 (2009), 1908, 1927, 1944 (2010), 2012 (2011).

119. "Vetting" is essentially an evaluation of the character and integrity of each agent through a series of enquiries conducted in accordance with Haitian law and the HNP code of discipline focused primarily on a person's criminal or disciplinary record and behavior in social life. Investigations are conducted by a joint HNP / UNPol team.

120. "Keeping the Peace in Haiti?: An Assessment of the United Nations Stabilization Mission in Haiti Using Compliance with its Prescribed Mandate as a Barometer for Success." Clinical Advocacy Project (now called the International Human Rights Clinic) and Global Justice Center (Centro de Justicia Global) joint report, March 2005; « Haïti : la voix des acteurs, working paper 52 », Fundación para las Relaciones Internacionales y el Diálogo Exterior, 15 February 2008; « Haiti 2009: Stability at Risk », International Crisis Group, March 2009 [http://www.crisisgroup.org/~media/Files/latinamerica/haiti/b19\\_haiti\\_2009\\_stability\\_at\\_risk.pdf](http://www.crisisgroup.org/~media/Files/latinamerica/haiti/b19_haiti_2009_stability_at_risk.pdf)

121. MINUSTAH lost 102 staff members, including most of its leadership.



camps, considering that it was not within its mandate to do so. It was only after a UN vote in June 2010 amending the MINUSTAH mandate that this situation changed<sup>122</sup>.



*MINUSTAH personnel,  
May 2012.*

Between 1 July 2011 and 7 June 2012, the budget for the MINUSTAH operation, comprising contingents of 7,272 military and 2,807 police personnel, was the third highest among the 13 active peacekeeping missions worldwide<sup>123</sup>. From the outset, the MINUSTAH military contingent has comprised around 6,000 troops, representing the main bulk of the peacekeeping force. The cost of maintaining this presence is huge<sup>124</sup>.

Even as far back as 2004, the maintenance of a mainly military presence in Haiti was hard to justify. It is even less justified today. In 2004, some quarters claimed that Haiti was in the grip of an internal armed conflict, but today's violence in the country is rarely political and the insecurity is mainly due to the presence of criminal gangs, as confirmed by the United Nations Secretary General<sup>125</sup>. In this context, Haiti needs an effective criminal justice system (including sufficient and competent police personnel) to combat organized crime – not a military presence.

Furthermore, the effectiveness of the MINUSTAH military contingent is impaired because the vast majority of the troops speak neither French nor Creole, and receive insufficient interpretation and intercultural relations training support. Indeed, as of 15 October 2012, of the 7,272 troops from 19 countries in the MINUSTAH military contingent, only two were Francophone<sup>126</sup> and only eight spoke French. As a result, the vast majority of foreign troops in Haiti<sup>127</sup> only have

122. Para 4 of UN Resolution 1927.

123. The authorized strength under the mandate of October 2011 is 7,340 and 3,241, respectively ; See Annex 1 and 2 of the report of the Secretary-General on UN Stabilization Mission in Haiti, 31 August 2012, S/2012/678 and <http://www.un.org/news/press/docs/sc10411.doc.htm>

124. The MINUSTAH annual budget is USD 793,517,100 for the period from 1 July 2011 to 30 June 2012, or USD 66,126,425 per month.

125. Report of the Secretary-General on the UN Stabilization Mission in Haiti, S/2012/678, August 2012, in particular paras 10-12.

126. France and Canada.

127. There are 7,154 soldiers and 118 military officers.

a patrol function, and at the very most can only play a symbolic police reinforcement role. Moreover, the presence of tanks and armed soldiers reinforces the impression that the country is under military occupation, fuelling local hostility towards MINUSTAH personnel.

Starting in 2011, the Security Council ordered a progressive reduction in overall MINUSTAH force levels. In October 2011, it decided to withdraw 1,600 troops and 1,150 police officers from the force, corresponding to MINUSTAH reinforcements deployed after the earthquake. In his last report on Haiti in August 2012, the United Nations Secretary-General recommended a further withdrawal. Subsequently, on 12 October 2012, the Security Council voted to downsize the military force from 7,340 to 6,270 troops and to reduce police strength from 3,241 to 2,601 personnel by June 2013.

In recent months, MINUSTAH has contributed to police reform – notably through the joint drafting of the 2012-2016 HNP Development Plan – and to reform of the justice system. Its contribution to the latter task includes the development, with the Ministry of Justice and UNDP, of a roadmap for the rule of law, implementation of quick-impact projects to construct and renovate courts, as well as the provision of training for judges, police officials and prison personnel<sup>128</sup>. In addition, MINUSTAH provides half-year progress reports to the High Commissioner for Human Rights.

Work to support and consolidate the HNP is an essential pillar of MINUSTAH action, which needs to be pursued and intensified. As of 15 October 2012, the MINUSTAH police contingent present in Haiti comprised 2,807 personnel (1,127 UN police officers and 1,680 from police units constituted within MINUSTAH)<sup>129</sup>.

Yet, MINUSTAH work to strengthen the HNP is encountering various difficulties. A number of FIDH interlocutors met during the FIDH mission noted the poor coordination between the MINUSTAH police force and the HNP to counter increasing insecurity and the rising murder rate, particularly in the metropolitan area. In addition, the adoption of the HNP development plan has been held up by political blockages, caused mainly by delays in the appointments of the Prime Minister and the Inspector General of the HNP.

After its adoption, the five-year plan drafted with the HNP and UNPOL should prioritize recruitment, including through capacity building of middle and senior ranking officers, aimed at ensuring that new recruits can be properly trained and supervised. Pursuit of the vetting process, which has shown only scant progress since it was initiated in 2006, should be another priority<sup>130</sup>.

To meet these priorities and to make the HNP an effective and sufficiently large force the best solution would be to reorient over the short term MINUSTAH/UNPOL focus by creating a mixed police force composed of both Haitian and MINUSTAH police personnel based on the CICIG (International Commission Against Impunity in Guatemala) model. Unlike the CICIG force, which restricts its activities to investigations, the mixed Haiti force would also be responsible for law enforcement. This would quickly make available more medium- and senior-ranking officers to help out with police training. Moreover, coordination between Haitian and MINUSTAH police would necessarily improve in the framework of their joint policing duties.

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128. Report of the Secretary-General to the Security Council on the UN Stabilization Mission in Haiti, S/2012/678, 31 August 2012, paras 20, 30, 31.

129. See description of UNPOL mandate : [http://MINUSTAH.org/?page\\_id=21344](http://MINUSTAH.org/?page_id=21344)

130. See part III / police reform.

## **B- Impunity for negligence and human rights violations committed by members of MINUSTAH**

### ***1- The grave question of cholera: compensating victims***

Nine months after the earthquake, a cholera epidemic broke out, initially in the Artibonite region before spreading rapidly to other parts of the country. According to the latest figures, by April 2012 7,050 persons had died from cholera and 530,000 others had contracted the disease<sup>131</sup>.

It has now been clearly shown that the cholera epidemic was caused by the lack of sanitary facilities at the MINUSTAH base near Mirebalais; this led to the discharge of the excrement of Nepalese soldiers infected with the disease in the Artibonite river<sup>132</sup>, one of the water sources serving the local population.

In November 2010, several demonstrations were held against MINUSTAH, which continued to deny it had any role in the outbreak of the epidemic. Three people were killed and 16 others were injured during one such demonstration in Cap Haïtien<sup>133</sup>. On 15 December 2010, the UN Secretary General, Ban Ki-Moon, announced the creation of a panel of experts to investigate the causes of the epidemic<sup>134</sup>. On 4 May 2011, this UN panel of experts concluded that “the cholera strain introduced by human factor into the Artibonite River was Asian in origin”.

MINUSTAH should formally acknowledge its responsibility for negligence in the cholera epidemic scandal. Several NGOs have lodged complaints with the MINUSTAH complaints bureau. Besides, MINUSTAH, as well as the UN, enjoys immunity and under its status, the claims unit receives the complaints. In principle, in such a case, a permanent UN claims commission would have to be set up to review MINUSTAH liability. This commission would have the authority to decide on possible UN compensation for cholera victims.

### ***2- Impunity for human rights violations committed by members of MINUSTAH***

The UN Secretary General’s report on the situation of MINUSTAH in 2012 recalls that MINUSTAH has faced several serious allegations of misconduct against its personnel. The allegations include alleged rape of a minor in Port-Salut ; alleged rape of a minor in Gonaïves; and alleged sexual relations with three minors in Port-au-Prince. Among the scandals – including cases of alleged sexual abuse – that have tarnished the reputation of MINUSTAH in recent years (see list of 27 cases in annex), only three cases have come before the courts. These involve cases of alleged rape against two men (Jonny Jean and Rody Jean) and a pimping network.

It should be emphasized that the initiation of legal action following these allegations did not occur spontaneously.

Following the public disclosure by human rights organizations in Uruguay of the alleged rape of Jonny Jean (Port-Salut, South) by Uruguayan military personnel, the Uruguayan judicial authorities were seized of the matter. The case relating to the alleged kidnapping and rape of a minor, Rody Jean (Gonaïves, Artibonite), was opened after a resolution calling for the

131. [www.ijdh.org/projects/cholera-litigation](http://www.ijdh.org/projects/cholera-litigation)

132. As of November 2010, Renaud Piarroux, a French epidemiologist, advanced this hypothesis, later confirmed by a scientific study published in August 2011 : Rene S. Hendriksen et al., «Population Genetics of *Vibrio cholerae* from Nepal in 2010 : Evidence on the origin of the Haitian Outbreak. » *mBio* 2(4) 2011.

133. See « In response to protests, MINUSTAH disregards legitimate grievances” CEPR, 16 November 2010 : <http://www.cepr.net/index.php/blogs/relief-and-reconstruction-watch/in-response-to-protests-MINUSTAH-disregards-legitimate-grievances>, et <http://www.haitilibre.com/article-1674-haiti-social-emeute-a-cap-haitien-16-blesses-2-morts.html>. According to these two articles, MINUSTAH soldiers were at the origin of these deaths.

134. « UN calls for probe into Origin of Haiti Cholera”, *Washington Times*, 15 December 2010. See « Cholera in Haiti : an imported epidemic».

lifting of the immunity of the two Pakistani soldiers who allegedly committed this crime was unanimously approved in the Haitian Parliament.

In the same report, the UN Secretary-General reiterated the UN policy of zero tolerance with respect to misconduct by UN staff. While in most cases MINUSTAH soldiers allegedly guilty of these crimes are repatriated, the apparent impunity benefiting them in their home country is a source of major concern. The Security Council resolution approved on 12 October 2012 urging troop- and police-contributing countries to ensure that human rights violations committed by their personnel are properly investigated and punished sends a strong message to States not to tolerate such immunity. It does not, however, demand MINUSTAH to acknowledge its responsibility for the abuses perpetrated.

The trial of the alleged rapists of Jonny Jean before a civilian court constitutes an exception since in most such cases legal proceedings that do take place play out before military courts. In reality, these cases often lead at most to disciplinary action. MINUSTAH generally does not communicate about such cases and the soldiers are sent home, making it difficult for victims to know the outcome of the legal proceedings. MINUSTAH refuses any contact with the victims on the pretext that their cases are the responsibility of the individuals and MINUSTAH-contributing countries concerned. Hence, the victims of violence allegedly committed by MINUSTAH members are often worse off than other victims of sexual violence, such as those in IDP camps, who benefit from a support structure often provided by UN entities. Indeed, not only do victims of violations allegedly committed by MINUSTAH personnel have no information on the fate of the alleged rapists, but they also receive no recognition of their suffering, or any (notably psychological) support.

FIDH has closely followed the situation of Jonny Jean who, following his alleged rape and its disclosure on Internet, had to flee his village and was in a serious state of psychological and financial fragility. MINUSTAH refused to provide him with any assistance, including psychological support.

# V- RECOMMENDATIONS

## TO THE HAITIAN AUTHORITIES:

### Faced with the situation in the camps:

- Extend, jointly with the Haitian authorities, the 16x16 programme to camps located on public and to camps located on private land, thus ensuring decent conditions of resettlement and durable support for the beneficiaries;

- In order to respect and implement the precautionary measures of the Inter-American Commission on Human Rights decreed on 16 November 2010 to curtail forced eviction, and as a priority:

- *adopt a moratorium on evictions of camps of internally displaced persons;*
- *ensure that those who have been illegally expelled from the camps are transferred to places with minimum sanitary and security conditions;*
- *guarantee that those who have been internally displaced have access to effective remedies in court and before other competent authorities;*
- *implement effective security measures to safeguard the physical integrity of the camps' inhabitants, guaranteeing in particular the protection of women and children;*
- *train security forces on the rights of displaced persons, in particular their right not to be expelled from the camps by force;*
- *ensure that international cooperation agencies have access to the camps for internally displaced persons.*

- Respect and implement the precautionary measures of the Inter-American Commission on Human Rights decreed on 22 November 2010 for the protection of internally displaced women and girls:

- *ensure the availability of adequate medical and mental health care for the victims of sexual violence located in accessible areas;*
- *provide adequate security at the camps for internally displaced persons, including the lighting of public spaces, regular patrols within the camps as well as outlying areas, and to increase the presence of female police officers assigned to patrol details and local police precincts;*
- *ensure that the law enforcement agencies tasked with responding to incidents of sexual violence receive the necessary training to respond appropriately to reported cases of sexual violence and provide the necessary security to the camps;*
- *promote the establishment of special investigative police units within the Office of the Attorney General with a view to investigating rape cases and other crimes of sexual violence;*
- *to ensure that grassroots women's groups fully participate in and have a steering role in the planning and implementation of policies and practices aimed at combating and preventing rape and other forms of sexual violence in the camps.*

- Fight against impunity for sexual violence and prosecute and convict the perpetrators;
- Adopt legislation specifically aimed at preventing and punishing discrimination and violence against women that encompasses a precise and unambiguous definition of rape;
- Launch a prevention campaign against gender-based violence, including rape.



**With regard to the situation in prisons and prolonged preventive detention :**

- Take all necessary measures to end prison overcrowding;
- Make legal assistance available to all detainees;
- Try people in prolonged preventive detention, giving priority to those who have been locked up for several years, and apply the Lespinasse Law, which provides for sentences to be reduced by the amount of time spent in preventive custody;
- Try detained minors as soon as possible and ensure that they are only placed in detention as under exceptional circumstances and as a last resort<sup>135</sup>;
- Notify the parties concerned of court decisions in order to ensure that prisoners are released after completing their sentences;
- Separate persons in pre-trial detention from convicted detainees;
- Ensure that no one is detained for non-payment of debts and order the release of all persons imprisoned for that reason;
- Ensure the distribution of drinking water and food, as well as basic hygiene products, in sufficient quantity and quality;
- Assign at least one doctor per prison;
- Provide appropriate treatment to sick prisoners and ensure their access to health care;
- Conduct a comparative study of prolonged preventive detention in each jurisdiction, as requested by the Independent Expert of the United Nations on the situation of human rights in Haiti;
- Build new prisons, in compliance with applicable international norms for penitentiary structures;
- Respect international obligations and ratify the UN Convention against Torture (recommended during the Universal Periodic Review).

**With regard to Police reform:**

- Successfully complete the vetting process through final examination of all outstanding files and exclude HNP elements who are not compatible with the requirements of a democratic police force;
- Train 5,000 police officers, as foreseen under the HNP 2012-2016 Five Year Development Plan;
- Allocate sufficient funds to the HNP to ensure adequate police infrastructure, and human and material resources;
- Develop police proximity;
- Take all necessary measures to combat insecurity, particularly in the metropolitan area, the worse affected area;
- Carry out a thorough investigation of police violence and ensure that the perpetrators are brought to trial and convicted.

**With regard to reform of the justice system:**

- Complete the drafting and submit to a vote the revised Penal Code and the Code of Criminal Procedure, ensuring they are in line with international standards, and make significant human, material and financial investments for their effective implementation;
- Provide the Supreme Council with competent human resources and the financial means to operate independently;
- Revise the law on the Supreme Council with a view to making this body responsible for the judicial inspection of headquarter judges, while keeping court clerks and prosecutor's office personnel under the hierarchical authority of the Minister of Justice;

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135. Human Rights Commission Resolution 2002/92 commits States to « (...) take appropriate steps to ensure compliance with the principle that depriving children of their liberty should be used only as a measure of last resort and for the shortest appropriate period of time, in particular before trial (...) ».

- Improve access to justice for all, by putting in place a system of legal assistance at the national level as well as mobile legal services in order to ensure legal and civic education of the population;
- Ensure better training of judiciary personnel, including both judges and justices of the peace.

**To combat impunity:**

- Study the possibility of establishing a joint institution responsible for the fight against impunity and the promotion of the rule of law, following the example of the International Commission against Impunity in Guatemala (CICIG);
- Try and convict Jean Claude Duvalier on appeal for crimes against humanity committed during his regime;
- Honour the memory of the victims of the dictatorship.

**TO THE UNITED NATIONS SECURITY COUNCIL:**

**Reinforce the fight against insecurity and impunity through a strong MINUSTAH police force better coordinated with the Haiti National Police**

- Pursue the reduction of MINUSTAH military forces;
- Prioritize strengthening the capacities of the HNP, in particular regarding staff recruitment and training, as well as the skills of HNP middle and senior ranking officers;
- Introduce specific instruments and mechanisms to implement the vetting process initiated in 2006;
- Establish a joint institution responsible for promoting the rule of law, based on the example of the CICIG (Guatemala).

**Fight against impunity for human rights violations committed by MINUSTAH personnel, by either violation or omission.**

**With regard to cholera:**

- Call on MINUSTAH to acknowledge its responsibility with respect to the outbreak of the cholera epidemic and establish a permanent claims commission;
- Request the office of the UN Secretary-General to take measures to award individual or communal reparations, such as financial investment in water and sanitation infrastructure in Haiti.<sup>136</sup>

**With regard to impunity for human rights violations allegedly committed by MINUSTAH personnel:**

- Call on MINUSTAH to publicly communicate on the legal proceedings brought against soldiers after they are repatriated pursuant to the zero-tolerance policy;
- Recommend amendment of the *Status of Forces Agreement* between the United Nations and the government of Haiti to ensure that its provisions oblige MINUSTAH soldiers who commit human rights violations to face prosecution before a court of law in their home country, with a view to extending the same criminal liability provision to all United Nations peacekeeping operations.

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136. The UN has announced a “One Team against Cholera” initiative to eradicate cholera through investments in water and sanitation projects.

**Improve the relationship between MINUSTAH and the Haitian population at large, in particular through reinforced cooperation and information channels with Haitian civil society.**

#### **TO THE INTERNATIONAL COMMUNITY**

- Fight against corruption while ensuring the strengthening of democratic institutions;
- Ensure greater coordination of reconstruction and development projects based on a medium and long-term outlook;
- Implement these projects in consultation and partnership with Haitian civil society;
- Extend, jointly with the Haitian authorities, the 16x6 programme to camps located on public land and to camps located on private land, thus ensuring decent conditions of resettlement and durable support for the beneficiaries;
- Ensure access of occupants of relocation sites to basic services, in particular water, sanitation, health, food and quality education.

# Annex 1

Individuals in prolonged preventive detention recorded by the RNDDH in April 2012 in the civilian prisons of Cayes, Cap-Haïtien, Grande Rivière du Nord, Jacmel, Jérémie and Port-de-Paix<sup>1</sup>.

Name First Name	Date of imprisonment	Judicial entity	Age (by year)
<b>Cayes civilian prison</b>			
Jean Marthineau EGALITE	19/01/2007	Peace Court	35
Emilio EXISTE	05/11/2007	Peace Court	27
Louinel BAZELAIS	06/11/2007	Peace Court	29
Eglonat NOLET	10/04/2007	Peace Court	32
Elevoir OLIVOIR	01/12/2008	Public prosecutor	70
Joseph FORTUNE	28/05/2008	Peace Court	34
Herold MICHELET	09/08/2008	Judges chambers	30
Omano DESROSIERS	29/10/2008	Public prosecutor	25
Williams DELPONCE	11/11/2008	Peace Court	26
Ronel BELACE	02/10/2009	Peace Court	19
Lenord CHARLES	25/03/2009	Peace Court	30
Medina JOSEPH	05/05/2009	Peace Court	23
Michel VICTOR	05/09/2009	Public prosecutor	27
Gelma JAMS	06/07/2009	Judges chambers	30
Wilson BRUCE	14/07/2009	Peace Court	30
Etrice ALEXANDRE	14/08/2009	Peace Court	27
Jonel GOSSIN	15/10/2009	Peace Court	24
<b>Cap Haïtien civilian prison</b>			
Gesner FRANÇOIS	02/03/2009	Public prosecutor	54
Stephen LOUIS	23/05/2009	Cabinet	48
Gilles Ronald JEAN	17/03/2009	Judges chambers	22
Gerôme JEAN	24/06/2009	Cabinet	37
Rosner JOSEPH	28/02/2009	Public prosecutor	32
Marie Thérèse COLAS	13/12/2009	Public prosecutor	59
Frantzy MYRTIL	19/11/2009	Public prosecutor	23
Docteur CONSONNE	03/02/2009	Public prosecutor	37
Wilson « ti boko » JOSEPH	04/11/2009	Public prosecutor	27
Stephen Rebonson JACQUES	19/10/2009	Public prosecutor	25
James DONASTOR	11/2009	Public prosecutor	25
Thony COLAS	26/11/2009	Public prosecutor	32
<b>Grande Rivière du Nord civilian prison</b>			
Blaise FRITZ	20/01/2009	Public prosecutor	37
<b>Jacmel civilian prison</b>			
Elcine DELCYSSE	26/07/2005	Judges chambers	-
Carius SAINTOBIN	02/11/2008	Judges chambers	-

1. National Network for the Defence of Human Rights study of general conditions in six prisons in the country, April 2012.

Name First Name	Date of imprisonment	Judicial entity	Age (by year)
Eloi FANFAN	01/02/2009	Judges chambers	-
Lifene JOSEPH	10/03/2009	Judges chambers	32
Sylvestre SANDLER	03/06/2009	Judges chambers	30
Ninio JEAN	04/08/2009	Judges chambers	26
Frantz Junior CHARLES	17/08/2009	Judges chambers	-
Mama REYNOLD	16/04/2009	Judges chambers	-
Martine SANTO	27/08/2008	Judges chambers	38
Jonas HILAIRE	10/01/2009	Public prosecutor	-
<b>Jérémie civilian prison</b>			
Freyel ELYSTERNE	31/09/2005	Peace Court	32
John HYPOLITE	15/04/2005	Public prosecutor	27
Riquet ESPERANCE	23/05/2005	Public prosecutor	43
Erode NAZAISE	06/07/2005	Public prosecutor	33
Rony VOLMA	02/02/2006	Public prosecutor	34
Mirkerlange MEDINA	13/03/2006	Peace Court	27
Jean Pierre CONEL	05/05/2006	Peace Court	36
Dieune VINCENT	23/04/2007	Public prosecutor	41
Seleny FANEL	17/09/2007	Public prosecutor	35
Lesnel DERALIN	23/05/2008	Public prosecutor	27
Osnel DERALIN	23/05/2008	Public prosecutor	26
Franson FILOTHEQUE	06/02/2008	Peace Court	28
Adelson JOSEPH	18/07/2008	Peace Court	24
Atipha PIERRE	27/10/2008	Public prosecutor	40
<b>Port-de-Paix civilian prison</b>			
Inel JOSEPH	20/01/2006	Judges chambers	42
Edrick MAURICE	01/08/2008	Public prosecutor	54
Veniel DUVERNE	05/12/2008	Peace Court	-
Pierre Louis CELONDRIEU	06/01/2008	Public prosecutor	26
Edinel BELIZAIRE	25/06/2008	Judges chambers	27
Italien ELESSE	11/12/2008	Public prosecutor	32
Dieuseul MORTIMER	29/08/2009	Judges chambers	30
Abraham SADNER	28/09/2009	Peace Court	30
Payonte Lonis SENORD	16/10/2009	Peace Court	17



# Annex 2

## Exemples of human rights violations presumed to have been committed by MINUSTAH personnel.

### Year 2004

22 September 2004 : In Bizoton, Ruth Joseph, a girl aged 14, is raped by a Brazilian MINUSTAH staff member with the complicity of Jean Baptiste Lazar.

### Year 2005

18 February 2005 : Three Pakistani MINUSTAH personnel based in Gonaïves rape Nadeige Nicolas.

20 March 2005 : Robenson Laraque, a Radio Télé Contact journalist, is shot dead by MINUSTAH forces while covering a clash between the latter and members of the disbanded Haitian military in the city of Petit-Goâve.

31 October 2005 : On national highway 1, in Cité Soleil, MINUSTAH troops force the barriers of the local *Brasserie Larco* and the *Haiti Home* orphanage. They act brutally, injuring a 10-year-old child by bullet and manhandling workers who they threaten to kill.

24 November 2005 : A senior customs official is brutalized by Congolese and Brazilian MINUSTAH personnel for refusing to spreadeagle against his car in order to be searched. He is savagely beaten before being handcuffed to a pole for 45 minutes and forced to endure the jeers of the MINUSTAH troops. He is released but only after a demonstration by customs employees.

November 2005 : During the same month, an Artibonite department delegate, Mr. Elie Cantave, suffers the humiliation of being forced by MINUSTAH personnel to lie face down on the ground even after duly confirming his identity at their request.

5 December 2005 : Five Haitian police officers are injured when shot by Jordanian MINUSTAH troops in Cazeau just as they were about to arrest alleged kidnappers in the region.

19 December 2005 : Maitre Delcy Mario is attacked on national highway 1 near Cité Militaire by 20 bandits. His security guard is seriously injured. This incident takes place under the passive eye of MINUSTAH officers on duty in the area. When Mario

Delcy asks them for help they say they can only intervene if the victim is a U.S. citizen. Since this was not the case, they simply ignore the request for assistance.

### **Year 2006**

- 31 May 2006 : MINUSTAH officers seize the tape of a journalist from TV H a i t i cable network in Port-au-Prince as he is about to cover a press conference by several former Haitian military officials.
- 13 July 2006 : Guerda Moïse suffers multiple bullet wounds in her left leg as she passes through the Simon I neighborhood in Port-au-Prince where MINUSTAH is conducting a mission. The victim is taken by MINUSTAH personnel to OFATMA (Cite Militaire) Hospital and then transferred to Doctors Without Borders. On 26 December 2006, the victim files a complaint and MINUSTAH officers ask her to fill out a claim form. The victim is subsequently informed that MINUSTAH does not consider itself responsible for her injuries and she therefore receives no compensation.
- 20 December 2006 : To quell a security incident near the local police sub-station in Delmas 62, Haitian police fire tear gas canisters. Senegalese MINUSTAH forces intervene and start shooting. Durogène Stephan is hit by rifle shots in the region of his eyes, damaging his optic nerves. A complaint was filed with MINUSTAH on 9 January 2007. There has been no follow-up.

### **Year 2007**

- 26 May 2007 : During a MINUSTAH operation in Gonaïves to arrest Wilford alias Ti Ferdinand Will, Marie Thérèse Métayer is hit by a bullet in the pelvis and succumbs to her injury.
- 3 November 2007 : *One hundred and eleven* Sri Lankan MINUSTAH troops involved in the sexual exploitation of minors are repatriated as a disciplinary measure. It was hoped they would face trial for this crime in their home country. To date, however, it is not known what, if any, follow-up action has been taken on this file.

### **Year 2008**

- 12 April 2008 : A Nigerian UNPOL officer in civilian clothes is killed on the streets of Fronts Forts by unidentified gunmen. In retaliation, MINUSTAH forces intervene in the area. They fire in the air, set fire to stalls and threaten to strangle a person with a used tire, forcing him to place the tyre around his neck.
- 29 May 2008 : Lucknis Jacques, a Haitian police officer assigned to Cité Soleil central police station, is molested by MINUSTAH personnel.

6 August 2008 : Two policemen, Donson Bien-aimé (A 2) and Onald Denis (A3), both assigned to the Cité Soleil central police station, are beaten up close to the station by MINUSTAH personnel. They have to be treated for serious injuries in Canapé Vert Hospital.

### **Year 2010**

Towards mid-October 2010, Nepalese soldiers assigned to the MINUSTAH base near Mirebalais are involved in the emergence and spread of cholera in Haiti by dumping human waste into the Boukan Kanni and Jenba rivers..

### **Year 2011**

On the night of 13 to 14 April 2011, a Pakistani MINUSTAH officer, Nasseem Muhamed, attempts to rape a policewoman named Online Mérilan assigned at the time to the Croix des Bouquets central police station.

12 May 2011 : Fourteen-year-old Géna Widerson, a student in her seventh year of study at the *Collège Centre de Formation Classique de Verrettes* in the département of Artibonite, is struck by two projectiles fired by MINUSTAH forces. This incident occurs at the very moment that students of the Lycée Jacques Stephen Alexis are staging a protest demonstration against the removal of a teacher.

28 July 2011 : Four Uruguayan MINUSTAH officers based in Port-Salut physically harm a young boy named Johnny Jean. On 10 May 2012, Johnny Jean is invited by the Uruguayan judicial authorities to make a statement in a Montevideo court before Judge Guido Alejandro, who is mandated to investigate this case by the Uruguayan Ministry of Defense.

5 June 2011 : Five Brazilian MINUSTAH soldiers are involved in an altercation with customs officials at Toussaint Louverture International Airport. They point their guns at the customs officers, and threaten to use them. On 21 August 2011, the five soldiers are repatriated.

13 December 2011 : Three Haitian citizens, Gilbert Joseph, Abel and Joseph Armos Bazile, are tortured by Brazilian MINUSTAH forces based in Cité Soleil.

### **Année 2012**

20 January 2012 : Fourteen-year-old Roody Jean is raped by two Pakistani soldiers based in Gonaives, Artibonite Department, who then abduct and detain the boy in Cap-Haitien in an attempt to conceal their crime.

31 January 2012 : MINUSTAH forces based in Lemonade, in the Northern Department, brutally beat up students at the *Lycée Capois de Limonade*.

**Adoption of three resolutions by the Haitian Parlement :**

- 20 September 2011 :      The Senate of the Republic votes two resolutions respectively on the progressive departure of MINUSTAH forces and MINUSTAH compensation for cholera victims.
- 8 February 2012 :        A third resolution is passed unanimously by the Senate of the Republic to waive the immunity of the Pakistani MINUSTAH personnel involved in the rape of Roody Jean in Gonaives, and to oblige them to stand trial, in accordance with Haitian law.





### Establishing the facts

#### Investigative and trial observation missions

Through activities ranging from sending trial observers to organising international investigative missions, FIDH has developed, rigorous and impartial procedures to establish facts and responsibility. Experts sent to the field give their time to FIDH on a voluntary basis.

FIDH has conducted more than 1 500 missions in over 100 countries in the past 25 years. These activities reinforce FIDH's alert and advocacy campaigns.

### Supporting civil society

#### Training and exchange

FIDH organises numerous activities in partnership with its member organisations, in the countries in which they are based. The core aim is to strengthen the influence and capacity of human rights activists to boost changes at the local level.

### Mobilising the international community

#### Permanent lobbying before intergovernmental bodies

FIDH supports its member organisations and local partners in their efforts before intergovernmental organisations. FIDH alerts international bodies to violations of human rights and refers individual cases to them. FIDH also takes part in the development of international legal instruments.

### Informing and reporting

#### Mobilising public opinion

FIDH informs and mobilises public opinion. Press releases, press conferences, open letters to authorities, mission reports, urgent appeals, petitions, campaigns, website... FIDH makes full use of all means of communication to raise awareness of human rights violations.

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## National Network for the Defence of Human Rights

The general aim of the National Network for the Defence of Human Rights is to contribute to the establishment of a State of Law where all Haitians are aware of their rights and duties and where everyone respects those rights and duties.

The National Network for the Defence of Human Rights is committed to two principal activities: human rights education in order to build the capacity of the civil society in defending its rights, and the monitoring of human rights' violation at key state institutions level concerning their obligations to protect the human rights and maintain the rule of Law. The realisation of those activities throughout the country is linked to the creation of a regionalised human rights network created by the organisation.

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**Centre Œcuménique  
des Droits Humains**

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**HONNEUR - RESPECT**

## Ecumenical Human Rights Center

The Ecumenical Human Rights Center, founded in 1979 in Santo Domingo and established since march 1986 in Port-au-Prince by its founder, Doctor Jean-Claude Bajeux, focuses on three principal goals : democracy and civil rights defence, testimony and promotion of a collective memory.

This foundation is recognized as of public use, the Ecumenical Human Rights Center is a founding member of the Coordinating Committee of the Forum Citoyen which created a space of interaction and consultation over the justice reform in Haiti over the last 10 years. Since 2011, it works as a focal point of the Collective against impunity created when Jean-Claude Duvalier came back to Haïti.

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## FIDH - International Federation for Human Rights

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**FIDH**  
**represents 164**  
**human rights organisations**  
**on 5 continents**



inhuman or degrading treatment or punishment. Article 6: Everyone has the right to recognition everywhere as a person before the law. Article 7: All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination. Article 8: Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law. Article 9: No one shall be subjected to arbitrary arrest, detention or exile. Article 10: Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him. Article 11: (1) Everyone charged with a penal offence has the right to be

presumed innocent until proved guilty

## ABOUT FIDH

FIDH takes action for the protection of victims of human rights violations, for the prevention of violations and to bring perpetrators to justice.

### **A broad mandate**

FIDH works for the respect of all the rights set out in the Universal Declaration of Human Rights: civil and political rights, as well as economic, social and cultural rights.

### **A universal movement**

FIDH was established in 1922, and today unites 164 member organisations in more than 100 countries around the world. FIDH coordinates and supports their activities and provides them with a voice at the international level.

### **An independent organisation**

Like its member organisations, FIDH is not linked to any party or religion and is independent of all governments.

**fidh**

Find information concerning FIDH's 164 member organisations on **[www.fidh.org](http://www.fidh.org)**