



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**

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EXECUTIVE SUMMARY

A little over a year since international pressure and an armed rebellion forced the departure of President Jean-Bertrand Aristide and the collapse of his government, Haiti is at risk of becoming a permanent failed state. The presence of the United Nations ("U.N.") peacekeeping force, established three months after Aristide's controversial ouster, has done little to establish stability, protect the populace, or curb human rights violations. This report critiques the performance of that peacekeeping force, the United Nations Stabilization Mission in Haiti ("MINUSTAH"), by documenting its failure to effectuate not only the overriding spirit but even the plain terms of its mandate.

U.N. Security Council Resolution 1542 established MINUSTAH on June 1, 2004 and endowed the mission with a strong mandate in three principal areas: providing a secure and stable environment, particularly through disarmament; supporting the political process and good governance in preparation for upcoming elections; and monitoring and reporting on human rights. As this report details, MINUSTAH has made little, if any, progress on any of these three fronts. Although partially a consequence of the slow deployment of forces and personnel, MINUSTAH's failures are largely the result of the timid interpretation of its mandate by its officials. Even now, staffed in full, the peacekeeping force continues to interpret its mandate complacently and with a narrowness unfit for the situation on the ground.

After eight months under MINUSTAH's watch, Haiti is as insecure as ever. MINUSTAH has failed even to begin to implement a comprehensive program for disarmament, leaving large pockets of the country effectively ruled by illegal groups with guns and other weapons. Civilian casualties remain common in Port-au-Prince's slums, where gangs wage daily, low-level urban warfare. Large swaths of the poor countryside remain under the control of the former military, historically the major domestic force behind *coups d'états* and among the foremost violators of human rights.

In the area of human rights, MINUSTAH has been equally lax. Numerous allegations of severe human rights abuses by the Haitian National Police ("HNP") remain uninvestigated. These violations span a gory spectrum, from arbitrary arrest and detention, to disappearances and summary executions, to killing of scores of hospitalized patients and the subsequent disposal of their bodies at mass graves. As this report details, MINUSTAH has effectively provided cover for the police to wage a campaign of terror in Port-au-Prince's slums. Even more distressing than MINUSTAH's complicity in HNP abuses are credible allegations of human rights abuses perpetrated by MINUSTAH itself, as documented in this report. MINUSTAH, however, has virtually ignored these allegations as well, relegating them to obscurity and thus guaranteeing that abuses go uncorrected. In short, instead of following the specific prescription of its mandate by putting an end to impunity in Haiti, MINUSTAH's failures have ensured its continuation.

The MINUSTAH mandate provides ample ground for a robust approach to security, disarmament and human rights. Indeed, as set forth in this report, its mandate *requires* a serious and active commitment to furthering peace in Haiti. Although the MINUSTAH mission has virtually squandered eight critical months, the time is not yet too late to begin an earnest application of its mandate. We continue to believe MINUSTAH holds tremendous promise to help Haiti achieve peace, stability and respect for human rights. With elections slated for the end of 2005, the time is now for MINUSTAH to commit itself to rigorous enforcement of its mandate.

INTRODUCTION

The following report examines the current crisis in Haiti through a particular, narrowly defined lens: the role of the United Nations Stabilization Mission in Haiti ("MINUSTAH") in providing stability, security and respect for human rights and the rule of law in the country. Other issues, such as health-related humanitarian crises, corruption in the judicial system and political power dynamics—though certainly relevant to MINUSTAH and of considerable significance to understanding the situation in Haiti generally—are not the primary focus of our study. Fairly extensive literature already exists in those areas.¹

Section I offers several conclusions and recommendations to MINUSTAH, based on the findings and analysis presented in Section IV, to strengthen its efforts to restore peace, stability and justice to the Haitian people. Section II presents a brief overview of Haitian history. Section III provides a legal and historical analysis of the MINUSTAH mandate, outlining the scope and meaning of its language in the context of previous U.N. peacekeeping missions and the respective success of their mandated efforts. Finally, Section IV presents findings drawn from various accounts of both specific instances of violence and human rights violations, as well as the more general situation in Haiti, obtained in the course of several on-site fact-finding missions conducted over the past several months.

¹ Interested readers should direct their attention to that literature for more comprehensive information on many of the issues addressed only secondarily in the current report. See, e.g., THOMAS M. GRIFFIN, CENTER FOR THE STUDY OF HUMAN RIGHTS AT UNIVERSITY OF MIAMI LAW SCHOOL, HAITI HUMAN RIGHTS INVESTIGATION: NOVEMBER 11-21, 2004 (Jan. 14, 2005) [hereinafter GRIFFIN REPORT], available at http://www.law.miami.edu/cshr/CSHR_Report_02082005_v2.pdf; INTERNATIONAL CRISIS GROUP, A NEW CHANCE FOR HAITI? (ICG Latin America/Caribbean Report No. 10, Nov. 18, 2004) [hereinafter ICG HAITI REPORT], available at <http://www.icg.org/home/index.cfm?id=3109&l=1>; ROBERT F. KENNEDY MEMORIAL CENTER FOR HUMAN RIGHTS, A FRAMEWORK FOR REEVALUATING MINUSTAH: ILLEGAL NATURE OF MISSION WILL LEAD TO A FAILED INTERVENTION IN HAITI (Nov. 8, 2004) [hereinafter RFK REPORT], available at http://www.rfkmemorial.org/human_rights/2002_Loune/RFK_HAITI_REPORT_11_04.pdf.

I. RECOMMENDATIONS

Based on the findings and analysis presented in the following sections, we offer the following conclusions and recommendations to MINUSTAH to strengthen its efforts to restore peace, stability and justice to the Haitian people.² Despite the often sobering nature of our findings, we maintain our belief that the MINUSTAH mission harbors enormous potential to promote the rule of law, respect for fundamental human rights, and economic and social development in Haiti. The time to realize that potential is simply long overdue.

Each of the specific recommendations listed below reflects a simple, overriding fact: more than eight months since its arrival in Haiti, MINUSTAH has failed to comply with either the letter or spirit of its mandate as prescribed by the Security Council in Resolution 1542.³ Believing that remedying such non-compliance will go a long way towards remedying the situation in Haiti generally, we recommend that MINUSTAH, in particular:

- implement a strategy for disarming any and all armed groups—including gangs of various political affiliations and the former military—at the earliest possible date and, relatedly, ensure that the government provide no compensation to any illegally armed actors unless payment is linked to their disarmament;⁴
- actively and consistently oversee the day-to-day operations of the Haitian National Police by providing a permanent presence in police stations, assisting in investigations and detention procedures, and proposing measures for reform;
- immediately cease the provision of logistical support to the Haitian National Police during operations that are likely to result in violations of human rights, such as arbitrary arrests and detentions and extrajudicial killings;

² We emphasize that our criticisms, those already noted as well as those that follow, are meant entirely to be constructive.

³ S.C. Res. 1542, U.N. SCOR, 4961st mtg., U.N. Doc. S/RES/1542 (Apr. 30, 2004) [hereinafter Resolution 1542].

⁴ Such is *not* to say that we endorse the government's current "back-pay" policy for appeasing the former military (Forces Armées d'Haiti, "FAD'H"). Instead, we note simply that if such a policy is to exist, compensation must be linked directly to disarmament.

- undertake investigations of alleged human rights violations independently of the Haitian National Police;
- investigate, in particular, the area to the north of Port-au-Prince known as Titanyen, a site where the Haitian National Police and others allegedly dump bodies of victims of their abuses;
- publish and disseminate reports detailing the results of investigations into alleged instances of human rights abuse at regular intervals and make these reports available in both French and Creole, particularly with regard to the cases documented in the instant report;
- bridge the linguistic divide between U.N. personnel and the Haitian people by training personnel in Creole and/or French or, if that is not possible, by hiring additional professional translators to accompany personnel in the field;
- install security personnel at all prisons and major hospitals in and around Port-au-Prince;
- work closely with, and heed the advice of, UNDP in reforming the Haitian corrections system;
- cooperate and share information and intelligence with all human rights organizations in Haiti on a regular basis;
- employ whatever means necessary to ensure the safety and security of human rights organizations;
- and provide safety and security, free of interference and suppression from government and/or police forces, for all Haitians in the exercise of their right to freedom of expression and peaceful public assembly.

Absent implementation of these and other related measures by MINUSTAH, instability and insecurity will continue to plague Haiti for years to come. We encourage MINUSTAH to acknowledge its failures, as well as the successes of previous U.N. peacekeeping missions charged with similar responsibilities, in moving forward.

II. A BRIEF HISTORY OF HAITI

Haiti's first inhabitants called their land Ayiti. In 1492, Christopher Columbus arrived, claimed the island for Spain, and renamed it Hispaniola.⁵ By 1510, the indigenous population had largely succumbed to death by disease, slavery and slaughter. Hispaniola remained a Spanish colony for more than two hundred years, until the French gained control of its western half in 1697 and renamed it Saint Domingue.⁶ Slaves, imported from Africa, drove the colony's economy, producing sugar, cotton, coffee and other plantation crops. The island's population consisted of 450,000 black slaves, 40,000 white colonists, and 30,000 mulattoes, whose social status was somewhere in between the two.⁷

The French controlled Saint Domingue until August 1791, when a large rebellion spread suddenly throughout the colony.⁸ Toussaint Louverture emerged as its leader, and slavery was abolished in 1793.⁹

On January 1, 1804, Jean-Jacques Dessalines proclaimed Haiti a new, independent nation, making it the world's first independent black republic and the second independent republic in the Western Hemisphere.¹⁰ However, the large western powers for decades refused to recognize Haiti as an independent republic, perceiving it as a threat to their slave-based economies and motivated, in part, by racial prejudice.¹¹

Power struggles characterized much of the second half of the nineteenth century in Haiti. During the 1870s and 1880s, the predominantly mulatto Liberal Party battled continuously against the predominantly black National Party for government and military control.¹²

In the early twentieth century, the United States began to take a keen interest in Haitian affairs, hoping to diminish European influence in the Americas, in part by reducing dependence on

European capital.¹³ In 1915, a contingent of U.S. Marines landed in Haiti, launching a nineteen-year-long occupation.¹⁴ The United States recognized Haiti's independence in a treaty signed in 1933, but reserved for itself a "special" status.¹⁵

Until the rise of the Duvalier dictatorship in 1957, Haiti was relatively independent and calm, notwithstanding a power struggle between mulatto elites and *noiristes*, or black nationalists.¹⁶ François Duvalier, also known as Papa Doc, was elected president in 1957 by a significant margin over his closest contender.¹⁷ While campaigning, Duvalier propounded economic equality and improvements for the "exploited masses."¹⁸ Duvalier's rhetoric was likely appealing; by 1957, Haiti's economy, infrastructure, and political institutions were in disrepair.¹⁹

Despite his campaign promises, Duvalier repressed the population and quelled dissent from the inception of his presidency. Repression characterized his first

¹³ *Id.* at 145 (discussing American policy of "dollar diplomacy").

¹⁴ ROBERT DEBS HEINL, JR. & NANCY GORDON HEINL, WRITTEN IN BLOOD: THE STORY OF THE HAITIAN PEOPLE, 1492-1995, 405 (1996). Historians differ widely in their assessment of the occupation. Some contend that despite the occupation's failure, the U.S. had good intentions and provided some valuable infrastructure to the country. *Id.* at 512-513 n.13. Others argue that the United States, motivated by paternalism and the desire to make Haiti a "stable and subservient neighbour," imposed what was an effectively new form of slavery on the Haitian people. NICHOLLS, *supra* note 5, at 148.

¹⁵ JAMES FERGUSON, PAPA DOC, BABY DOC: HAITI AND THE DUVALIERS 27 (1987).

¹⁶ Sténio Vincent, a mulatto nationalist, became the first independent president of Haiti after the occupation. He remained in power until 1941, when Elie Lescot, a former Minister of the Interior, seized control. *Id.* at 31. Unlike Vincent, Lescot was generally sympathetic to U.S. interests. In his "anti-superstition campaign" of 1941-1942, for instance, his government tried to rid the country of all vestiges of voodooism, angering many segments of the population, including black nationalists. *Id.* Two black presidents followed Lescot: Dumarsais Estimé from 1946 to 1950, and Paul Magloire from 1950 to 1956. By consistently promoting blacks to positions of prominence and power, Estimé created the foundation of the rise of power of Duvalier, a former ministry official in Estimé government. *Id.* at 26, 31.

¹⁷ NICHOLLS, *supra* note 5, at 191. At least one commentator has suggested that Duvalier's election, while no doubt involving some polling irregularities, likely reflected public will at the time. *Id.* at 209.

¹⁸ *Id.*

¹⁹ HEINL, JR. & HEINL, *supra* note 14 at 586.

⁵ DAVID NICHOLLS, FROM DESSALINES TO DUVALIER: RACE, COLOUR AND NATIONAL INDEPENDENCE IN HAITI 19 (3d ed. 1996).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at 28.

⁹ *Id.* at 29-30. Louverture remained somewhat supportive of the French, who kept control of the colony until 1804.

¹⁰ *Id.* at 33.

¹¹ *Id.*

¹² *Id.* at 108.

in 1987 and Lt. Namphy assumed full control in 1988. Another military official, General Prosper Avril, succeeded Namphy later that same year; Ertha Pascal Trouillot, a civilian, assumed power upon Avril's flight from Haiti in 1990. Throughout the period immediately following the fall of the Duvaliers, the CNG did almost nothing to hold members of Baby Doc's regime or the Tontons Macoutes responsible for their repressive tactics and violence.³⁸

The Trouillot government's attempts at re-establishing the rule of law were further undermined by the return of Roger Lafontant in July 1990. Lafontant, former head of the Tontons Macoutes and former Duvalier minister of defense and the interior, held a series of rallies for right-wing forces in the six months preceding presidential elections.³⁹ On October 18, 1990, Jean-Bertrand Aristide announced his candidacy for president in Haiti under the banner of the National Front for Change and Democracy ("FNCD") and "Lavalas," a party name he coined after the Creole word referring to the "gully-washing torrents that sweep all before them."⁴⁰ In a December 16 election that observers from the U.N., the Organization of American States ("OAS"), and the United States declared to be free and fair, Aristide won sixty-seven percent of the vote. One month before Aristide's February 7, 1991 inauguration, Lafontant seized the palace, took President Trouillot hostage, and took over the broadcast facilities, apparently expecting support from the army. After tens of thousands of Haitians demonstrated against the coup, however, the army arrested Lafontant and aborted the coup attempt.⁴¹

After Trouillot transferred power to Aristide, the new president nominated René Preval as his prime minister. When, in August 1991, the legislature attempted to pass a no-confidence measure on Prime Minister Preval, two thousand Lavalas supporters gathered outside the Assembly building to protest the move by the opposition in Parliament.⁴² Early in his presidency, Aristide moved swiftly to dismantle the army by passing legislation to separate the police from the army and by retiring six of the seven ranking members of the military; make symbolic efforts to address past atrocities; and, investigate past crimes, in part by creating a commission, which

actually never began work, to investigate past human rights violations.⁴³

On September 29, 1991, Aristide was taken hostage in a military coup; after negotiations with the international community, however, the army allowed him to leave the country. At 3:00 a.m., a Venezuelan Air Force plane arrived in Port-au-Prince to fly Aristide to Caracas and subsequently to Washington, D.C., where Aristide would spend the next three years negotiating his return to power. The U.S. State Department estimated that "[s]everal thousand Haitians may have been killed during the *de facto* military rule" that followed Aristide's ouster.⁴⁴ The International Crisis Group estimated that between 3,000 and 5,000 people were killed in the three years of the military-backed rule.⁴⁵ Human Rights Watch noted that "[t]housands more suffered 'disappearance,' torture, beatings, rape, threats, arbitrary detention, and extortion."⁴⁶ In addition, an estimated 100,000 Haitians fled the country and another 300,000 were forced into internal exile. Washington typically returned interdicted Haitian refugees to Haiti under a 1981 agreement between the Reagan and Duvalier administrations.⁴⁷

Shortly after the coup, the OAS called for an embargo against Haiti. The United States froze access to all Haitian government assets in the United States for anyone except Aristide, in an attempt to allow him access to financial support while in exile.⁴⁸ The coup leaders—General Cédras, General Biamby, and Major Michel François—declared the presidency vacant and offered it to Supreme Court Justice Joseph Nerette, who in turn nominated Jean-Jacques Honorat as prime minister. In October 1991, the OAS imposed an oil and trade embargo with which U.S. President Bush ordered compliance. Due to the conservative anti-Aristide atmosphere in the Dominican Republic as well as the disinterest of many U.N. members in acceding, however, the embargo proved ineffective despite its being technically imposed for the entire three years of military rule.

At the end of June 1993, U.N. diplomat Dante Caputo arrived in New York to broker an agreement

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ HEINL, JR. & HEINL, *supra* note 14 at 732.

⁴¹ HUMAN RIGHTS WATCH REPORT, *supra* note 36.

⁴² HEINL, JR. & HEINL, *supra* note 14 at 737.

⁴³ HUMAN RIGHTS WATCH REPORT, *supra* note 36

⁴⁴ Background Note, U.S. Department of State, Bureau of Western Hemisphere Affairs, Haiti (Feb. 2005), available at www.state.gov/t/pa/e/ei/bgn/1982.htm [hereinafter U.S. State Dept. Background Note].

⁴⁵ ICG HAITI REPORT, *supra* note 1, at 4.

⁴⁶ HUMAN RIGHTS WATCH REPORT, *supra* note 36

⁴⁷ *Id.*

⁴⁸ HEINL, JR. & HEINL, *supra* note 14 at 739.

between General Cédras and President Aristide. After days of negotiations during which the two Haitians reportedly never spoke directly to each other, the parties agreed to the Governor's Island Accord. Its terms included commitments to the effect that: Aristide would name a new prime minister; the sanctions would be lifted; reforms would be made in the army; amnesty would be granted for "political offenses" but not for common crimes; and Aristide would be returned to power on October 30, 1993 with the help of a U.N. peacekeeping force. After the signing of the Accord, Aristide appointed Robert Malval as prime minister. Faced with strenuous opposition, however, U.N. peacekeepers never landed and Aristide would not return until 1994.⁴⁹

Violence reigned in the years between the coup and Aristide's return to power. The second and third generation of Macoutes had organized themselves into the paramilitary organization known as the Front for Advancement and Progress of Haiti (Front pour l'Avancement et le Progrès Haitien, "FRAPH"). Led by Emmanuel "Toto" Constant, the FRAPH employed violence throughout Haiti and supported the military government.

In 1992 and 1993, murders and rapes in Haiti increased dramatically. Michel François, one of the coup leaders, was the police chief of Port-au-Prince at the time; Emile Jonaissant was named *de facto* president by the administration. In a poor area of Gonaïves called Raboteau, a charismatic organizer named Amiot Métayer led a community-based group that was repeatedly targeted by the army and military between 1991 and 1994. In a particularly bloody moment on April 22, 1994, soldiers and paramilitaries including FRAPH killed at least fifteen people, at least some of whom were in Métayer's group. The incident came to be known as the Raboteau massacre. The Raboteau massacre was finally prosecuted in 2000; a jury convicted sixteen former soldiers and paramilitaries and thirty-seven defendants in absentia.⁵⁰

By July 29, 1994, the United States had decided that military intervention was necessary to restore Aristide to power. Security Council Resolution 940 granted the United States power to intervene on

behalf of the U.N.⁵¹ The Clinton administration prepared for invasion but simultaneously sent former President Carter, Senator Sam Nunn, and retired Joint Chiefs of Staff chairman Colin Powell to negotiate with General Cédras.⁵² On September 18, Cédras signed an agreement to stay in command until October 15, when Aristide would be restored to power—nearly one year after the terms outlined by the Governor's Island Accord. The price for Aristide's restoration was an agreement by the Clinton administration to grant and honor an amnesty for a wide range of human rights violations, far broader than the agreement reached at Governor's Island, where Aristide had refused to agree to such a general amnesty.⁵³

On September 19, 1994, the day after the agreement was signed, U.S. troops, the "first contingent of what would become a 21,000 member international force," landed in Port-au-Prince.⁵⁴ These troops raided FRAPH headquarters, seized 160,000 pages of documentary evidence,⁵⁵ and arrested several individuals, including paramilitary leader Constant.⁵⁶ The three coup leaders and their families left Haiti as President Aristide was restored to power, along with other elected officials in exile. On March 31, 1995, the United States turned over its command to the United Nations Mission in Haiti ("UNMIH"). One month later, Aristide dissolved the remnants of the Haitian Armed Forces (Forces Armées d'Haiti, "FAd'H"). Security Council Resolution 940 mandated UNMIH to maintain a stable environment in Haiti and to assist in the creation of a new police force.⁵⁷

⁵¹ S.C. Res. 940, U.N. SCOR, 3413th mtg., U.N. Doc. S/RES/940 (1994).

⁵² HEINL, JR. & HEINL, *supra* note 14 at 755.

⁵³ HUMAN RIGHTS WATCH REPORT, *supra* note 36

⁵⁴ U.S. State Dept. Background Note, *supra* note 44

⁵⁵ For more than two years, the U.S. government refused to return this material to the Haitian government unless the latter guaranteed excision of the names of American citizens. American retention of this material obstructed prosecutions and promoted impunity in Haiti. See HUMAN RIGHTS WATCH REPORT, *supra* note 36.

⁵⁶ According to Constant's own admission, he had been on the CIA's payroll for several years; he failed to appear for his magistrate's hearing two months later and was found to have traveled to New York City on a valid tourist visa due to what the U.S. government claims was an "immigration error." He was not returned to Haiti despite protest by Aristide and the Haitian public. HEINL, JR. & HEINL, *supra* note 14.

⁵⁷ Resolution 940 charged UNMIH with sustaining a secure and stable environment, including protecting international personnel and key installations; professionalizing the Haitian armed forces and creating a separate police force;

⁴⁹ HEINL, JR. & HEINL, *supra* note 14 at 749.

⁵⁰ Background Briefing, Human Rights Watch, Haiti: Recycled Soldiers and Paramilitaries on the March (Feb. 27, 2004), available at <http://hrw.org/english/docs/2004/02/27/haiti7677.htm> [hereinafter Human Rights Watch Background Briefing].

Despite the U.N.'s presence, few human rights crimes were prosecuted, and many ex-FAD'H members retained their weapons illegally and joined criminal organizations or private security details.⁵⁸ In December 1994, Aristide's government formed the National Commission for Truth and Justice, charged with recommending reparations and rehabilitation measures for victims as well as with documenting the violations committed during the three years of military rule. Despite its completion of a 1200-page report entitled "Si M Pa Rele" or "If I Don't Cry Out," the report was neither published promptly nor made widely available in Creole and, consequently, had almost no effect on the public.⁵⁹

Although Aristide had been absent for the majority of his presidency, the 1987 Haitian Constitution stated that the president could serve for only one five-year term; thus, in December 1995, national elections were held. Although only twenty-eight percent of the population turned out, eighty-eight percent voted for René Preval, the Lavalas candidate and the man that Aristide had originally appointed prime minister in 1991.⁶⁰

After local elections in June 1995, which some international monitors criticized for electoral fraud, a pro-Aristide coalition led by the Struggling People's Organization ("OPL") won a number of significant seats in many provinces. When division emerged between OPL and Aristide's followers in late 1996, however, Aristide formed the Fanmi Lavalas ("FL") party. Cementing the division, the new FL party ran candidates against OPL in the 1997 elections. The first round of the elections was disputed, stalling the government for a year. The second round never took place as OPL accused Fanmi Lavalas of electoral fraud.⁶¹ At the beginning of 1999, unable to organize local elections, President Preval dismissed those legislators whose terms had expired and established a new cabinet which, according to the U.S. State Department, comprised almost entirely FL partisans.⁶² The delayed elections finally occurred in May 2000, with a sixty percent turnout. FL candidates were proclaimed winners of approximately half the contested seats.⁶³ The OAS

certified the first round of these elections but discovered irregularities later; when the Provisional Electoral Council ("PEC") refused to correct the problematic method of percentage calculation noted by the OAS, the latter refused to observe the second round of elections.⁶⁴ The opposition, renamed the Democratic Convergence and including former opposition parties, ex-Lavalas supporters, and former soldiers, called for the elections to be annulled, but the Parliament met in spite of the protests.

During this period, U.S. troops had gradually withdrawn from Haiti until, in March 2000, the U.N. force had transitioned into a peace-building mission, the International Civilian Support Mission in Haiti ("MICAHA"). According to the U.S. State Department, "MICAHA consisted of some 80 non-uniformed U.N. technical advisers providing advice and material assistance in policing, justice, and human rights to the Haitian Government."⁶⁵

Despite accusations of election irregularities, continued protest by the Democratic Convergence, and relatively low voter turnout, Aristide won the presidential election in November 2000, an election boycotted by the opposition and which the OAS refused to monitor, and was inaugurated on February 7, 2001. Months after his inauguration, however, violence between Lavalas and opposition again erupted in Port-au-Prince and throughout Haiti. Human Rights Watch reported that the opposition "has also been the target of violent attacks, notably in December 2001 during which buildings associated with the opposition were burnt down by government gangs."⁶⁶

The violence provoked OAS Permanent Council Resolution 806, "urg[ing] the Government of Haiti, all political parties, civil society, and other relevant institutions of Haitian society to condemn and work towards ending all forms of political violence."⁶⁷ Continuing violence between the government and the opposition culminated in a public call by the opposition for Aristide's removal from office in late 2002. In January 2004, at the Summit of the Americas, a joint delegation of OAS and the Caribbean Community ("CARICOM") presented a

and, assisting in the establishment of an environment conducive to free and fair legislative elections. Resolution 940, *supra* note 51

⁵⁸ ICG HAITI REPORT, *supra* note 1, at 5.

⁵⁹ AMNESTY INTERNATIONAL, HAITI: STILL CRYING OUT FOR JUSTICE (1998).

⁶⁰ HEINL, JR. & HEINL, *supra* note 14 at 763.

⁶¹ ICG HAITI REPORT, *supra* note 1, at 6.

⁶² U.S. State Dept. Background Note, *supra* note 44

⁶³ ICG HAITI REPORT, *supra* note 1, at 7.

⁶⁴ *Id.*

⁶⁵ U.S. State Dept. Background Note, *supra* note 44

⁶⁶ Human Rights Watch Background Briefing, *supra* note 50.

⁶⁷ The Situation in Haiti, OAS/Ser.G CP/RES. 806

(1303/02) (Jan. 16, 2001), available at

http://www.oas.org/xxxvga/english/doc_referencia/cpres806_02.pdf.

set of demands to Aristide regarding the restoration of public order, new leadership for the police, and disarmament of government security forces.⁶⁸

Dissatisfied with the dissolution of the army and with Aristide's policies, former military forces and other opposition groups, many trained in the Dominican Republic, began to take over towns and recruit supporters throughout Haiti. In Artibonite, in the center north of the country, the Front de Resistance de L'Artibonite pour le Renversement de Jean-Bertrand Aristide coalesced around followers of Amiot Métayer. Métayer had been arrested in 2002 and released by his supporters a month later; in September 2003, he was found murdered, and the Métayer group blamed Aristide for his death. With Métayer's brother at the helm, the Artibonite group seized Gonaïves on 5 February 2004 and proceeded toward Port-au-Prince.⁶⁹ As Human Rights Watch documented, "with a small and demoralized police force plagued by desertions, the government largely placed its defense in the hands of armed civilian supporters, many of whom were criminals known for violence and abuses."⁷⁰ Ex-FRAPH leaders Guy Philippe, whose tenure as police chief of Delmas, in Port-au-Prince, was marked by the summary executions of dozens of suspected gang members,⁷¹ and Louis Jodel Chamblain, acquitted in a recent sham trial of the 1993 murder of businessman Antoine Izmerly and implicated in the assassination of Justice Minister Guy Malary in 1993, gained control of the disparate armed uprisings. On February 22, Haiti's second largest city, Cap-Haïtien, fell to the insurgents.⁷²

Four days later, the OAS Permanent Council called on the U.N. Security Council to "take all the necessary and appropriate urgent measures to address the deteriorating situation in Haiti."⁷³ On February 29, 2004, Aristide left the country on a U.S.-chartered airplane destined for the Central African Republic. There has been heated debate over whether Aristide resigned freely or was forced from office with the assistance of the U.S. military. The U.N. Secretary-General, for instance, has stated that

he believes the constitution was followed,⁷⁴ while CARICOM has accused the United States of failing to satisfy its obligations under the Inter-American Democratic Charter by allowing a democratically elected leader to be forced from office.⁷⁵ Members of the U.S. Congress called for an investigation into the circumstances of Aristide's departure and, particularly, U.S. involvement in that departure.⁷⁶

After Aristide's ouster, Boniface Alexandre, President of the Haitian Supreme Court, assumed office as interim president in accordance with the Haitian Constitution. In consultation with the Council of Elders, President Alexandre appointed Gerard Latortue as interim Prime Minister on March 9, 2004. Alexandre at once requested international assistance; the U.N. Security Council authorized immediate deployment of a Multinational Interim Force ("MIF") for three months and mandated MIF, pursuant to Chapter VII powers as provided under the U.N. Charter, specifically:

- (a) To contribute to a secure and stable environment in the Haitian capital and elsewhere in the country, as appropriate and as circumstances permit, in order to support Haitian President Alexandre's request for international assistance to support the constitutional political process under way in Haiti;
- (b) To facilitate the provision of humanitarian assistance and the access of international humanitarian workers to the Haitian people in need;
- (c) To facilitate the provision of international assistance to the Haitian police and the Haitian Coast Guard in order to establish and maintain public safety and law and order and to promote and protect human rights.⁷⁷

Despite the immediate U.N. presence, however, violence increased throughout Haiti and MIF "seemed unable or unwilling to intervene decisively."⁷⁸

⁶⁸ U.S. State Dept. Background Note, *supra* note 44. Aristide agreed to the demands, but they were rejected shortly thereafter by the opposition.

⁶⁹ ICG HAITI REPORT, *supra* note 1, at 10.

⁷⁰ Human Rights Watch Background Briefing, *supra* note 50.

⁷¹ *Id.*

⁷² ICG HAITI REPORT, *supra* note 1, at 10.

⁷³ The Situation in Haiti, OEA/Ser.G CP/RES. 862 (1401/04) (Feb. 26, 2004), available at <http://www.oas.org/consejo/resolutions/res862.asp>.

⁷⁴ ICG HAITI REPORT, *supra* note 1, at 11.

⁷⁵ *Id.* at 12.

⁷⁶ Press Release, Congresswoman Waters Demands an Investigation into the U.S. Government's Role in the *Coup d'Etat* in Haiti (Mar. 10, 2004), available at <http://www.house.gov/waters/pr040310.htm>.

⁷⁷ S.C. Res. 1529, ¶ 2, U.N. SCOR, 4919th mtg., U.N. Doc. S/RES/1529 (Feb. 29, 2004).

⁷⁸ ICG HAITI REPORT, *supra* note 1, at 11.

The deployment of MIF was followed by the Security Council's authorization, also under Chapter VII of the U.N. Charter, of the United Nations Stabilization Mission in Haiti ("MINUSTAH"), mandated to include 6,700 troops and 1,622 civilian police and staff.⁷⁹ Despite a lag in the deployment of its forces, MINUSTAH reached ninety percent of its mandated staffing levels by December 2004.⁸⁰ Set forth in Security Council Resolution 1542, the mandate of the Brazilian-led force charged MINUSTAH with three principal categories of responsibility: maintaining security and stability in Haiti; promoting good governance and the political and constitutional processes; and monitoring, protecting and reporting on human rights.⁸¹ Though established initially for a period of only six months, the MINUSTAH mandate received a six-month extension through June 1, 2005, with the passage of Security Council Resolution 1576 on November 29, 2004.⁸²

Despite the presence of U.N. troops, the security situation in Haiti remains a matter of great concern as the political situation has failed to stabilize in more than a year since Aristide's departure. Armed attacks have increased and ex-FAd'H members have become increasingly visible, occupying several police stations and acting as security forces throughout many of the provinces. An ad hoc commission established by the minister of the interior counted approximately 5,700 ex-FAd'H members stepping into the current security vacuum.⁸³ In mid-December 2004, members of the former military occupied Aristide's former residence in Tabarre and left only after a stand-off with U.N. peacekeepers.

On September 30, 2004, the anniversary of the 1991 coup, at least eighty people were killed, including eleven police.⁸⁴ Most of the deaths occurred in the poorest neighborhoods of Port-au-Prince, where battles erupted between Aristide supporters and the HNP.⁸⁵ The killings of September 30 marked merely the beginning of a period of ongoing violence in Haitian slums. Since then, according to newspaper sources, between 250 and 400 people have been

killed, mostly in slums.⁸⁶ Credible reports indicate that summary executions by the HNP and violence against women continue to be a serious problem.⁸⁷ In February 2005, ex-FAd'H members and the HNP clashed in Port-au-Prince, resulting in the death of a child.

On October 28, 2004, the Inter-American Commission on Human Rights expressed its concern over the unfettered violence in Haiti, particularly between illegal armed gangs and the police; the Commission also urged investigation into reports of arbitrary arrests and detentions in recent months as well as attacks against human rights defenders and journalists in Haiti. Specifically, the Commission stated:

In particular, the Commission has been informed of numerous serious incidents of violence that have occurred since the Commission's visit to Haiti at the beginning of September, many of which have been perpetrated in the context of confrontations between illegal armed gangs and police. These atrocities included a brutal incident on September 30, 2004 in which two police officers are said to have been shot to death and beheaded. The Commission deplors these acts of violence and once again urges the government, in collaboration with the international community, to take the urgent steps necessary to guarantee the security of its population by disarming illegally armed groups and to investigate, prosecute and punish those responsible for killings and other atrocities, regardless of who may be responsible.⁸⁸

In addition to increasing violence, prosecutions have been imbalanced and impunity continues to reign. Although FL members have been arrested, including former Prime Minister Yvon Neptune, the government has failed to prosecute vigorously perpetrators of violence against FL members or

⁷⁹ Resolution 1542, *supra* note 3.

⁸⁰ As of January 31, 2005, the mission had reached near-complete capacity. See MINUSTAH: Facts and Figures, available at <http://www.un.org/Depts/dpko/missions/minustah/facts.htm>.

⁸¹ Resolution 1542, *supra* note 79.

⁸² S.C. Res. 1576, U.N. SCOR, 5990th mtg., U.N. Doc. S/RES/1576 (Nov. 29, 2004).

⁸³ ICG HAITI REPORT, *supra* note 1, at 16.

⁸⁴ *Id.* at 14.

⁸⁵ *Id.* at 14.

⁸⁶ See, e.g., Jane Regan, *Peace Eludes U.N. "Blue Helmets,"* INTER PRESS SERVICE, Feb. 15, 2005 (citing estimates that between 250 and 406 deaths by gunshot have occurred in Port-au-Prince since October "depending on who's counting").

⁸⁷ ICG HAITI REPORT, *supra* note 1, at 15.

⁸⁸ Press Release, Inter-American Commission on Human Rights, IACHR Expresses Concern over the Situation in Haiti during its 121st Regular Period of Sessions (Oct. 28, 2004), available at http://www.oas.org/OASpage/press_releases/press_release.asp?sCodigo=IACHR-22E.

suspected supporters. This was spectacularly manifested in the one-day trial and subsequent acquittal of Louis Jodel Chamblain, former leader of the FRAPH, and Jackson Joanis, former army captain, who had been convicted in absentia, in July 1994, for the 1993 murder of Antoine Izmary, a pro-Aristide activist and businessman.⁸⁹

The National Penitentiary in Port-au-Prince is a potent symbol of the effects of the absence of rule of law in Haiti. Only an estimated two percent of its more than 1,000 incarcerated have been convicted of any crime. On December 1, 2004, at least ten prisoners were killed in a massacre;⁹⁰ less than three months later, on February 19, 2005, approximately 480 prisoners escaped after armed assailants broke through barricades and attacked the facility.⁹¹

Haiti's first elections since the departure of Aristide are slated to begin in less than seven months, with municipal elections scheduled for October 9, 2005 and the first round of presidential elections for November 13, 2005.⁹² Lavalas has thus far refused to participate.⁹³ Charged with assuring conditions conducive to free and fair elections,⁹⁴ MINUSTAH faces a difficult road ahead, given Lavalas' boycott and the continuing reign of insecurity and impunity in Haiti. It is, however, by no means an impossible road to navigate: the U.N. forces hold enormous

potential to secure Haiti, establish democracy and promote human rights. MINUSTAH must now seize that potential and promptly remedy its failure, as documented in this report, to comply with either the letter or the spirit of its mandate.

⁸⁹ ICG HAITI REPORT, *supra* note 1, at 22. The trial took place on August 16, 2004, and was condemned by human rights organizations and international organizations. *See, e.g.*, Press Release, Amnesty International, Chamblain and Joanis Overnight Trials Are an Insult to Justice (Aug. 16, 2004), available at

<http://web.amnesty.org/library/Index/ENGAMR360532004>; Press Release, Statement by OAS Special Mission for Strengthening Democracy in Haiti: Trial for the Murder of Antoine Izmary (Aug. 19, 2004) (noting that "the trial jeopardized the credibility of the judicial process and raised concerns about the integrity of Haitian political life").

⁹⁰ INSTITUTE FOR JUSTICE AND DEMOCRACY IN HAITI, REPORT ON DECEMBER 1 MASSACRE IN THE HAITIAN NATIONAL PENITENTIARY (Dec. 20, 2004) [hereinafter IJDH PRISON REPORT].

⁹¹ Press Release, National Coalition for Haitian Rights, Twenty Percent of Haiti's Incarcerated Population Goes Free: NCHR condemns the armed attack against the National Penitentiary (Feb. 21, 2005) [hereinafter NCHR Prison Press Release], available at http://www.nchrhaiti.org/article.php?id_article=219.

⁹² Philippe Rater, *Haitian Elections Set for Late 2005*, CARIBBEAN NET NEWS, Jan. 31, 2005, at <http://www.caribbeannetnews.com/2005/01/31/set.shtml>.

⁹³ *See* Matthew Hay Brown, *Life in Haiti Remains Bleak After Ouster*, ORLANDO SENTINEL, Mar. 1, 2005.

⁹⁴ Resolution 1542, *supra* note 3, ¶ 7(II).

III. RESOLUTION 1542: THE MINUSTAH MANDATE⁹⁵

III.A. Disarmament, Demobilization and Reintegration

Among MINUSTAH's most critical imperatives is "to assist the Transitional Government, particularly the Haitian National Police, with comprehensive and sustainable Disarmament, Demobilization and Reintegration ("DDR") programmes for all armed groups, including women and children associated with such groups, as well as weapons control and public security measures."⁹⁶ DDR programs are the backbone of post-conflict peacekeeping operations. In U.N. missions following civil wars, peacekeepers play a vital role: they collect fighters' weapons and then guard or destroy them. In many cases, peacekeepers house fighters in cantonment camps and facilitate their adjustment to civilian life.⁹⁷

MINUSTAH's failure to implement a comprehensive DDR program aimed at securing the country, or to press effectively the interim government to begin such a program, is chronicled in Section IV. That section also details how pervasive illegal weapons have harmed the Haitian people and further destabilized the country. As this section demonstrates, MINUSTAH's failure to disarm is decidedly the product of a lack of political will, not a weak mandate. In historical context, MINUSTAH's DDR mandate is robust. Peacekeeping operations in Sierra Leone and Liberia have deployed imperatives couched in strikingly similar language with far more vigor and effect than MINUSTAH has done in Haiti. In these African countries—each torn by years of civil war—mandate phrases similar to those in Resolution 1542, such as "assist," "support," "monitor" and "observe" have given rise to prodigious DDR campaigns that make MINUSTAH's approach to disarmament in Haiti pale in comparison.

In Sierra Leone, for instance, Security Council Resolution 1270 charged UNAMSIL, the peacekeeping force, "[t]o assist the Government of Sierra Leone in the implementation of the disarmament, demobilization and reintegration

plan."⁹⁸ In practice, UNAMSIL's "assistance" was muscular: peacekeeping troops "deterred ex-combatants from rearming, prevented fighting in Liberia from spilling into Sierra Leone, and quelled an attempted coup in January 2003."⁹⁹ Some 47,000 combatants were disarmed and demobilized.¹⁰⁰ Even critics of the overall peace-building process in Sierra Leone concede that UNAMSIL's DDR program was successful,¹⁰¹ mostly because there have been no coordinated armed incidents in Sierra Leone since January 2001.¹⁰²

In Liberia, peacekeepers took a similarly aggressive stance toward disarmament, and their efforts yielded positive results. The mandate of the peacekeeping force, UNMIL, charged it with supporting the ceasefire agreement by developing and carrying out a DDR program for armed parties, as well as by "assist[ing] in the development of cantonment sites" and "observ[ing] and monitor[ing] disengagement" of military forces.¹⁰³ UNMIL's mandate was somewhat broader than that of MINUSTAH: though both mandates share terms such as "assist" and "observe," UNMIL was given some disarmament responsibilities independent of any state authority. However, the situation in Haiti at the time of MINUSTAH's establishment was less turbulent than it was in Liberia. Violence in Haiti, though regular, was akin to low-intensity guerrilla warfare that particularly affected pockets of the country, with more serious flare-ups occurring on occasion. Liberia, in contrast, had full-fledged combatants and a protracted civil war.

In terms of sheer numbers of weapons collected, UNMIL's disarmament campaign, operated pursuant to Security Council Resolution 1509, has been even more successful than that in Sierra Leone. It is estimated that between twenty-one and twenty-four

⁹⁵ For a full text version of the mandate, as set forth in Resolution 1542, see Annex I.

⁹⁶ *Id.* ¶ 7(I)(c).

⁹⁷ See, e.g., Jamie O'Connell, *Here Interest Meets Humanity: How to End the War and Support Reconstruction in Liberia, and the Case for Modest American Leadership*, 17 HARV. HUM. RTS. J. 207, 223 (2004).

⁹⁸ S.C. Res. 1270, ¶ 8(b), U.N. SCOR, 4054th mtg., U.N. Doc. S/RES/1270 (Oct. 22, 1999). The resolution also called for UNAMSIL to be present and to provide security at disarmament/reception and demobilization centres. *Id.* ¶ 8(c).

⁹⁹ O'Connell, *supra* note 97 at 222.

¹⁰⁰ "The Jury is Still Out," A Human Right Watch Briefing Paper on Sierra Leone (July 11, 2002) at 1.

¹⁰¹ See, e.g., INTERNATIONAL CRISIS GROUP, LIBERIA AND SIERRA LEONE: REBUILDING FAILED STATES 11 (ICG Africa Report No. 87, Dec. 8, 2004) [hereinafter ICG AFRICA REPORT], available at http://www.icg.org/library/documents/africa/west_africa/087_liberia_and_sierra_leone_rebuilding_failed_states.pdf.

¹⁰² *Id.* at 11 n.61.

¹⁰³ S.C. Res. 1509, U.N. SCOR, 4830th mtg., U.N. Doc. S/RES/1509 (Sept. 19, 2003).

initiated relatively effective police reforms even when their mandates included no language about reforming the police, as in Cambodia and Nicaragua.¹¹²

III.B.2. *The Constitutional and Political Process*

Interim Prime Minister Gerard Latortue has insisted that elections in Haiti will be held sometime in 2005, and MINUSTAH's mandate calls for it to assist in the process.¹¹³ In and of themselves, however, elections have never been a panacea for the ills of failed or post-conflict states, as an independent panel reviewing peacekeeping operations confirmed to the U.N. in 2000.¹¹⁴ This has been especially true in Haiti.

U.N. peacekeeping missions learned this lesson painfully in Cambodia in the early 1990s. The transitional authority, UNTAC, treated elections as the end-point of U.N. involvement, without adequately demobilizing armed factions or creating a genuinely "neutral political environment."¹¹⁵ Its negligence led to the unwinding of the rule of law shortly after elections.¹¹⁶ As if bearing these lessons in mind, Security Council Resolution 1542

specifically requires MINUSTAH "to support the constitutional and political process under way in Haiti, including through good offices, and foster principles and democratic governance and institutional development" and "to assist the Transitional Government in extending State authority throughout Haiti and support good governance at local levels."¹¹⁷

The mandate of the East Timor transitional authority ("UNTAET") did not specifically charge it with holding elections, but rather in building civil and administrative institutions that were prerequisites to elections. UNTAET's mandate, which gave it sweeping administrative, legislative, executive and judicial authority, was admittedly broader than MINUSTAH's. Significantly, however, even though UNTAET was charged with such far-reaching obligations, the text of its mandate appeared to defer to local processes. Similar to provisions in MINUSTAH's mandate, UNTAET's mandate gave it the responsibility "to assist in the development of civil and social services" and "to support capacity-building for self-government."¹¹⁸

Building the machinery of the state virtually from the ground up was key for UNTAET,¹¹⁹ but it took support for capacity-building for self-government much further than institutional infrastructure to include, as well, a sweeping program of civic and voter education. Through citizen training, mass information and other civil society initiatives, UNTAET rebuilt public information and communication networks and encouraged public participation in the development of the Constitution.¹²⁰ Less than two years after UNTAET's establishment, the populace turned out *en masse* to elect a Constituent Assembly—more than 91% of those eligible voted.¹²¹

¹¹² See Charles T. Call & William D. Stanley, *Protecting the People: Public Security Choices after Civil War*, GLOBAL GOVERNANCE, Apr.-June 2001, available at <http://www.watsoninstitute.org/pub/CallGlobalGovArticle.pdf>.

¹¹³ Specifically, Resolution 1542 calls for MINUSTAH "to assist the Transitional Government in its efforts to organize, monitor and carry out free and fair municipal, parliamentary and presidential elections at the earliest possible date, in particular through the provision of technical, logistical and administrative assistance and continued security, with appropriate support to an electoral process with voter participation that is representative of the national demographics, including women." Resolution 1542, *supra* note 3, ¶ 7(II)(c).

¹¹⁴ See *Report of the Panel on United Nations Peacekeeping Operations*, ¶ 38, U.N. Doc. A/55/305-S/2000/809 (Aug. 21, 2000) (prepared by Lakhdar Brahimi) (calling on future peacekeeping operations to view "free and fair" elections "as part of broader efforts to strengthen governance institutions" that need "the support of a broader process of democratization and civil society building that includes effective civilian governance and a culture of respect for basic human rights"), available at http://www.un.org/peace/reports/peace_operations.

¹¹⁵ See, e.g., Mats Berdal & Michael Leifer, *Cambodia, in THE NEW INTERVENTIONISM 1991-1994: THE UNITED NATIONS EXPERIENCE IN CAMBODIA, FORMER YUGOSLAVIA AND SOMALIA* 36 (James Mayall ed., 1996); Ramesh Thakur, *Cambodia, East Timor and the Brahimi Report*, INTERNATIONAL PEACEKEEPING, Autumn 2001, at 121-22.

¹¹⁶ *Id.*

¹¹⁷ Resolution 1542, *supra* note 3, ¶¶ 7(II)(a), (d).

¹¹⁸ S.C. Res. 1272, ¶¶ 2(c), (e), U.N. SCOR, 4057th mtg., U.N. Doc. S/RES/1272 (Oct. 25, 1999) (emphasis added).

¹¹⁹ UNTAET included in its priorities "the restoration of public services through the reconstruction of essential infrastructure and the recruitment and training of administrators and civil servants and the rebuilding of the judiciary and the law enforcement system." Michael J. Matheson, *United Nations Governance of Post-Conflict Societies*, 95 AM. J. INT'L L. 76, 82 (2001).

¹²⁰ Dianne M. Criswell, Comment, *Durable Consent and a Strong Transitional Peacekeeping Plan: The Success of UNTAET in Light of the Lessons Learned in Cambodia*, 11 PAC. RIM L. & POL'Y J. 577, 601 (2002).

¹²¹ U.N. Department of Peacekeeping website, UNTAET: Background, at

As the experience of UNTAET shows, a role related to democracy building, and described in such auxiliary terms as “to support,” requires work well beyond mere monitoring on election day. To support constitutional and political processes in Haiti, MINUSTAH’s tasks must include, aside from disarmament, helping to engage Lavalas supporters who feel disenfranchised by Aristide’s ouster from office and are threatening not to participate in the elections; to support public assembly and free speech, rather than to quell it, as described in Section IV; and to end the practices of impunity that contribute to a popular perception of anti-Lavalas bias in MINUSTAH and the interim government.

UNTAET was by no means the first peacekeeping mission to interpret an electoral mandate broadly. The peacekeeping mission in Namibia in 1989, UNTAG, interpreted a fairly simple mandate, centered upon elections, in a manner broad enough to usher in capacity-building democratic reforms. UNTAG created or oversaw the reform of such institutions as the police; confined and decommissioned troops; and worked towards the creation of a fair legal apparatus.¹²² Such reforms required a broad interpretation of UNTAG’s basic mandate, which charged UNTAG with “ensur[ing] conditions in Namibia which will allow the Namibian people to participate freely and without intimidation in the electoral process under the supervision and control of the United Nations leading to early independence of the Territory.”¹²³

Like that of MINUSTAH, UNTAG’s mandate also required the peacekeeping force to work in tandem with the existing government.¹²⁴ However, in practice this did not lead to UNTAG’s assumption of a secondary, auxiliary role. Similarly, MINUSTAH’s mandate, interpreted in the context of other peacekeeping missions couched in similar language, requires a more proactive posture than it has assumed to date.

III.C. Human Rights and Civilian Protection

III.C.1. Human Rights

<http://www.un.org/peace/etimor/UntaetB.htm> (last visited Mar. 6, 2005).

¹²² Gwinyayi Albert Dzinesa, *A Comparative Perspective of U.N. Peacekeeping in Angola and Namibia*, INTERNATIONAL PEACEKEEPING, Winter 2004, at 648.

¹²³ S.C. Res. 632, ¶ 2, U.N. SCOR, 2848th mtg., U.N. Doc. S/RES/632 (Feb. 16, 1989).

¹²⁴ Dzinesa, *supra* note 122, at 651.

In light of its predecessor missions, the MINUSTAH mandate represents not merely the continuation, but the heightening of the U.N. commitment to human rights as a vital component of the peacekeeping process.¹²⁵ Indeed, the failures and successes of previous missions have taught that “the United Nations conceptual and operational efforts need to emanate from a human rights core.”¹²⁶ Section III of the MINUSTAH mandate accordingly prescribes substantial responsibilities specifically addressed to the maintenance of, and respect for, human rights in Haiti. MINUSTAH’s first basic category of human rights responsibility is “to support the Transitional Government as well as Haitian human rights institutions and groups in their efforts to promote and protect human rights, particularly of women and children, in order to ensure individual accountability for human rights abuses and redress for victims.”¹²⁷ The second category of responsibility is “to monitor and report on the human rights situation, in cooperation with the Office of the United Nations High Commissioner for Human Rights, including on the situation of returned refugees and displaced persons.”¹²⁸

With the possible exception of the several missions in Angola, where the U.N. established a separate Human Rights Division (“HRD”) that ultimately evolved into the central component of the U.N. presence,¹²⁹ no more direct language addressing human rights exists in the mandates of other U.N. peacekeeping operations. Previous missions armed with human rights responsibilities are thus relevant to MINUSTAH only insofar as they represent a minimum baseline below which MINUSTAH cannot fall in carrying out its responsibilities—that is,

¹²⁵ Despite its having been in existence for more than half a century, the U.N. seriously contemplated and employed human rights field missions only as recently as ten years ago. See Todd Howland, *U.N. Human Rights Field Presence as Proactive Instrument of Peace and Social Change: Lessons from Angola*, HUM. RTS. Q., 2004, at 8-9 (noting that “human rights fieldwork is new within the U.N. ‘toolbox’”) [hereinafter *Angola Report*].

¹²⁶ *Id.* at 28.

¹²⁷ Resolution 1542, *supra* note 3, ¶ 7(III)(a).

¹²⁸ *Id.* ¶ 7(III)(b).

¹²⁹ For an extensive report detailing the U.N. efforts towards the promotion of human rights in Angola, see Todd Howland, *Angola Report*, *supra* note 125. As the resolution authorizing human rights work in Angola made implicit, not explicit, mention of such work, *id.* at 7, it could well be argued that the HRD, at least on paper, does not represent an exception to the general history of U.N. peacekeeping missions nor to the claim that the MINUSTAH mandate provides an unprecedented degree of authorization for human rights activities.

MINUSTAH cannot do less; they cannot, however, be considered determinative with regard to understanding, and evaluating the degree of compliance with, the full breadth of its mandate—that is, MINUSTAH must also do more.

As in the case of MINUSTAH, the mandate underlying the United Nations Observer Mission in El Salvador (“ONUSAL”) charged that mission with monitoring and reporting responsibilities vis-à-vis the human rights situation in El Salvador.¹³⁰ In marked contrast to the case of MINUSTAH in Haiti, however, compliance in the case of ONUSAL assumed the impressive form of a multi-phased procedure designed to verify reported violations of human rights: investigations and fact-finding missions laid the groundwork for subsequent police work and judicial proceedings and, in turn, for the ultimate determination as to whether violations had occurred.¹³¹ In terms of end results, the elaborate verification procedure yielded, among other accomplishments, a “dramatic decrease” in the number of arbitrary detentions.¹³² As detailed in our findings set forth below,¹³³ arbitrary detentions, or arrests made without a judicially authorized warrant pursuant to the rule of law, are among the more

common human rights violations suffered by the Haitian people.

Interestingly and, in light of MINUSTAH’s complete¹³⁴ lack of reporting productivity in Haiti, disturbingly as well, the section of the MINUSTAH mandate prescribing human rights responsibilities is far more direct and more explicit than in the case of ONUSAL. Indeed, the accomplishments of ONUSAL relating to the amelioration of abusive human rights patterns occurred largely ad hoc, absent specific authorization. Resolution 693 authorized ONUSAL merely “to verify the compliance by the parties with the Agreement on Human Rights signed at San José on 26 July 1990.”¹³⁵ Resolution 1542, by

¹³⁰ S.C. Res. 693, U.N. SCOR, 2988th mtg., U.N. Doc. S/RES/693 (May 20, 1991).

¹³¹ Allison L. Jernow, *Ad Hoc and Extra-Conventional Means for Human Rights Monitoring*, 28 N.Y.U. J. INT’L L. & POL. 785, 827 (1996) (quoting Diego García-Sayán, *The Experience of ONUSAL in El Salvador*, in HONORING HUMAN RIGHTS AND KEEPING THE PEACE: LESSONS FROM EL SALVADOR, CAMBODIA, AND HAITI 31, 38 (Alice H. Henkin ed., 1995)).

¹³² Jernow, *supra* note 131, at 828 (citing Diego García-Sayán, *The Experience of ONUSAL in El Salvador*, in HONORING HUMAN RIGHTS AND KEEPING THE PEACE: LESSONS FROM EL SALVADOR, CAMBODIA, AND HAITI 31, 38 (Alice H. Henkin ed., 1995)). In the case of arbitrary detentions, the multi-phase procedure assumed the following form. First, ONUSAL conducted fact-finding investigation by making “surprise visits” to local jails. Jernow, *supra*, at 827. Second, ONUSAL reported its findings to the National Police and thereafter reached an agreement on instructions for on-the-ground operations. *Id.* at 828. Third, ONUSAL sent personnel to work closely with the National Counsel for the Defense of Human Rights in developing a joint verification mechanism. *Id.* Finally, through the channels established by the presence of the ONUSAL personnel, complaints were sent directly to the National Counsel, which issued resolutions on cases and challenged official abuse. *Id.* (citing *Report of the Secretary-General on the U.N. Observer Mission in El Salvador*, U.N. SCOR, 49th Sess., ¶ 33, U.N. Doc. S/1995/220 (Mar. 24, 1995)).

¹³³ See *infra* Section IV.

¹³⁴ On January 24, 2005, a week to the day after we returned to the United States from Haiti, the Independent Expert of the Secretary-General to Haiti released a report, published on the website of the Office of the High Commissioner for Human Rights (“OHCHR”), on the human rights situation in Haiti. The report is available online, though, as of the writing of this report, exclusively in French. See *Rapport de l’Expert indépendant, M. Louis Joinet, sur la situation des droits de l’homme en Haïti*, U.N. ESCOR, 61st Sess., U.N. Doc. E/CN.4/2005/123 (2005) (submitted to the Commission on Human Rights) [hereinafter *Joinet Report*], available at http://ap.ohchr.org/documents/dpage_e.aspx?c=78&su=86. The Joinet Report, however, is not a MINUSTAH report *per se*. Indeed, Mr. Joinet’s responsibilities as the Independent Expert of the Secretary-General to Haiti derive from a separate U.N. mandate that predates the establishment of the MINUSTAH mission by nearly ten years. See C.H.R. Res. 1995/70, ESCOR Supp. (No. 4) at 202, U.N. Doc. E/CN.4/1995/70 (1995). While Resolution 1542 urges cooperation with the OHCHR, it does not excuse the inaction of MINUSTAH itself in its independent reporting requirement. Similarly, the Secretary-General has authored several general interim reports on MINUSTAH’s progress in Haiti, each containing no more than several paragraphs on human rights, but as with Mr. Joinet’s, those reports are the Secretary-General’s alone, not MINUSTAH’s, published pursuant to his own independent responsibilities. For electronic access to the Secretary-General’s reports, of which there are currently four, the most recent dated February 25, 2005, see MINUSTAH: U.N. Documents, available at <http://www.un.org/Depts/dpko/missions/minustah/reports.html> (last visited Mar. 19, 2005).

¹³⁵ Resolution 693, *supra* note 130. Another example of a U.N. mission that engaged successfully in human rights monitoring and verification procedures was the 1994 U.N. Mission in Guatemala (“MINUGUA”). As in the case of ONUSAL, a previous human rights agreement determined the scope of MINUGUA’s responsibilities, as evidenced by its very title. See *Mission for the Verification of Human Rights and of Compliance with the Commitments of the Comprehensive Agreement on Human Rights in*

contrast, does not condition MINUSTAH's responsibility on a separate agreement, instead authorizing MINUSTAH directly and specifically "to monitor and report on the human rights situation" in Haiti.¹³⁶ In short, the strength of the human rights component of its mandate requires that MINUSTAH endeavor not simply to match, but rather to surpass ONUSAL and similar missions¹³⁷ in fulfilling its responsibilities vis-à-vis the human rights situation in Haiti.

As in the case of disarmament detailed above, moreover, a brief survey of prior U.N. peacekeeping missions makes clear that the supportive capacity prescribed in Section III(a) of the MINUSTAH mandate is neither as secondary nor as weak as its wording might suggest. The United Nations Transitional Authority in Cambodia ("UNTAC"), for example, though similarly charged,¹³⁸ produced significant reforms of primary import with respect to human rights. The achievements of UNTAC included: ending, through regular visits to prisons, the previously cruel and inhuman practice of shackling inmates with leg irons; promoting education in human rights by convening frequent training sessions for both judges and policemen; and by extension, institutionalizing an ethic of human rights to such a degree as to convince the interim government to accede to the principal international human rights instruments to which Cambodia had not

previously been party.¹³⁹ That UNTAC further proved influential in the creation of several Cambodian human rights NGOs, as well as in organizing various symposia on human rights promotion in Cambodia,¹⁴⁰ confirms that MINUSTAH's obligation "to support . . . Haitian human rights institutions and groups in their efforts to promote and protect human rights"¹⁴¹ contemplates proactivity, not mere "support" in the most limited sense of the term.

The recent experience of the U.N. in Angola, noted above, offers an especially valuable context for understanding not simply the intended scope, but the larger significance of MINUSTAH's human rights responsibilities within its function as a modern-day U.N. peacekeeping mission. The Human Rights Division in Angola ("HRD") instituted a series of human rights-related programs in cooperation with the government, including case tracking systems, extensive human rights training for government officials, education of the army on human rights responsibilities, the expanding of the reach and integrity of the justice system, and various other awareness activities.¹⁴² Implementation of the programs reached all levels of government, including prosecutors, police, prisons and courts.¹⁴³ HRD additionally applied its expertise and training capabilities across Angolan civil society at large, targeting legal advocacy specifically as a means to achieve fundamental and necessary changes in policy.¹⁴⁴ To that end, HRD worked to assist the efforts of NGOs and INGOs, local, community-based human rights counselors and even oil companies in promoting human rights.

As Todd Howland notes, however, these and other advances of the later U.N. missions in Angola occurred largely in spite of their mandates. The HRD derived its authority initially from the United Nations Observer Mission for Angola ("MONUA"), established in 1997 pursuant to Security Council Resolution 1118, and subsequently from the United Nations Office in Angola ("UNOA"), established in 1999 as a more comprehensive peacebuilding

Guatemala, G.A. Res. 48/267, U.N. GAOR, 48th Sess., U.N. Doc. A/RES/48/267 (Sept. 19, 1994).

¹³⁶ Resolution 1542, *supra* note 3, ¶ 7(III)(b).

¹³⁷ See, e.g., *supra* note 135 (discussing MINUGUA mission in Guatemala).

¹³⁸ To be sure, as noted above, UNTAC was a mission of a different order and magnitude than MINUSTAH; unlike in Haiti at present, no government, transitional or otherwise, existed in Cambodia in the early 1990s. As regards human rights responsibilities, however, the relevant provisions of the UNTAC mandate, set forth in Section E of Annex I of the Paris Agreements, were fairly comparable to those detailed in Section III of the MINUSTAH mandate. Section E mandated UNTAC, in accordance with a larger responsibility "for fostering an environment in which respect for human rights shall be ensured" set forth in Article 16 of the Paris Agreements, to make provisions specifically for: "(a) The development and implementation of a programme of human rights education to promote respect for and understanding of human rights; (b) General human rights oversight during the transitional period; (c) The investigation of human rights complaints, and, where appropriate, corrective action." Paris Conference on Cambodia: Agreements Elaborating the Framework for a Comprehensive Political Settlement of the Cambodia Conflict, Annex 1(E), Oct. 23, 1991, 31 I.L.M. 174, 192 (1992), U.N. Doc. A/46/608-S/23177 (Oct. 30, 1991).

¹³⁹ See Jernow, *supra* note 131, at 824.

¹⁴⁰ See Jernow, *supra* note 131, at 824; see also Fact and Data Sheet, United Nations Transitional Authority in Cambodia, at <http://www.gmu.edu/departments/t-po/resource-bk/mission/untac.html> (last visited Mar. 5, 2005).

¹⁴¹ Resolution 1542, *supra* note 3, ¶ 7(III)(a).

¹⁴² Todd Howland, *Angola Report*, *supra* note 125, at 16-17.

¹⁴³ *Id.* at 16.

¹⁴⁴ *Id.* at 17-18.

mission pursuant to Security Council Resolution 1268.¹⁴⁵ Under MONUA, however, the inclusion of human rights as a specifically mandated responsibility was “implicit rather than explicit.”¹⁴⁶ Similarly, the UNOA mandate spoke only generically of a responsibility to work “with a view to . . . the promotion of human rights,”¹⁴⁷ and, in fact, “[s]ome observers have criticized the mandate for failing to expressly support human rights monitoring activities.”¹⁴⁸

By contrast, there can be no doubt, for Security Council Resolution 1542 leaves none, that the obligations of MINUSTAH relative to human rights are explicit, clearly defined obligations. The experience of the U.N. missions in Angola, and of HRD specifically, therefore provides valuable guidance as to the appropriate baseline for implementation of MINUSTAH’s human rights mandate.

Indeed, despite their logistical differences, MINUSTAH and MONUA/UNOA share much in common with respect to their respective obligations regarding the promotion and protection of human rights. Specifically, it bears reiterating that many of HRD’s successes in Angola, as enumerated above, occurred not independently of, but rather in cooperation with pre-existing institutions and organizations—from the government and the army to civil society and private partners, including Angolan human rights lawyers and activists. In such terms, the provision of Resolution 1542 mandating MINUSTAH “to support the Transitional Government as well as Haitian human rights institutions and groups in their efforts to promote and protect human rights,”¹⁴⁹ as elsewhere, contemplates a degree of proactivity not readily apparent from its language. Support or assistance, in other words, need not necessarily be equated with supplementarity and an inability or unwillingness to assume initiative. In fact, in light of past experience, support or assistance should instead be equated with a very real power to stimulate and realize significant change.

The U.N. mission whose mandate bore the greatest resemblance to MINUSTAH’s in the area of human rights responsibility was the 1998 UNOMSIL

mission in Sierra Leone, as supplemented and incorporated by the larger 1999 UNAMSIL mission.¹⁵⁰ Security Council Resolution 1181 charged UNOMSIL, and its civilian staff specifically, with a responsibility “[t]o report on violations of international humanitarian law and human rights in Sierra Leone” as well as “to assist the Government of Sierra Leone in its efforts to address the country’s human rights needs.”¹⁵¹ At first glance, such language appears virtually indistinguishable from the language of the human rights component of the MINUSTAH mandate, which speaks similarly of a duty “to monitor and report on the rights human situation” as well as “to support the Transitional Government . . . in [its] efforts to promote and protect human rights . . .”¹⁵² In fact, however, a comparison of the two resolutions governing the respective missions makes clear that MINUSTAH’s obligation to protect human rights in Haiti is, on paper at least, *stronger* than UNOMSIL’s similar obligation was, and UNAMSIL’s is, in Sierra Leone. After all, the human rights responsibilities of the original UNOMSIL mission, while part of the larger resolution containing its mandate, were not, as in the case of MINUSTAH, technically within the mandate itself.¹⁵³ The MINUSTAH mandate, moreover, enumerates specific monitoring and reporting responsibilities for the mission in lieu of a broader, more ambiguous statement of purpose as in the UNOMSIL/UNAMSIL mandates. To achieve compliance with its mandate, accordingly, MINUSTAH must go beyond the results achieved by the UNOMSIL and, subsequently, the UNAMSIL mission. These achievements, again, based on a more limited mandate, included, *inter alia*:

¹⁵⁰ Security Council Resolution 1270 created UNAMSIL principally to help the parties enforce the Lome Peace Agreement of May 18, 1999 and to assist in the implementation of a Disarmament, Demobilization and Reintegration (“DDR”) programme. The initial UNAMSIL mandate set forth in Resolution 1270 was quite short, referencing human rights only indirectly in obligating the mission “[t]o support the operations of United Nations civilian officials, including the Special Representative of the Secretary-General and his staff, human rights officers and civil affairs officers.” Resolution 1270, *supra* note 98 ¶ 8(h). Subsequent resolutions revised and expanded the UNAMSIL mandate though none specifically mentioned human rights by name. See Resolution 1289, *supra* note 108; S.C. Res. 1346, U.N. SCOR, 4306th mtg., U.N. Doc. S/RES/1346 (Mar. 30, 2001).

¹⁵¹ S.C. Res. 1181, ¶ 8(b), U.N. SCOR, 3902nd mtg., U.N. Doc. S/RES/1181 (July 13, 1998).

¹⁵² Resolution 1542, *supra* note 3, ¶¶ 7(III)(a)-(b).

¹⁵³ Paragraphs 6(a)-(d) of Resolution 1181 outlined the UNOMSIL mandate; the references to human rights appear only in paragraph 8. Resolution 1181, *supra* note 151.

¹⁴⁵ S.C. Res. 1268, U.N. SCOR, 4052nd mtg., U.N. Doc. S/Res/1268 (Oct. 15, 1999) [hereinafter Resolution 1268].

¹⁴⁶ Todd Howland, *Angola Report*, *supra* note 125, at 7.

¹⁴⁷ Resolution 1268, *supra* note 145, ¶ 1.

¹⁴⁸ Todd Howland, *Angola Report*, *supra* note 125, at 8 n.37.

¹⁴⁹ Resolution 1542, *supra* note 3, ¶ 7(III)(a).

monitoring and reporting on violations of human rights and international humanitarian law; conducting human rights training for the Sierra Leonean Police, the Army and civil society organizations, as well as for U.N. personnel; and furnishing technical assistance to national institutions, such as the Truth and Reconciliation Commission, in their promotion of respect for the rule of law.¹⁵⁴

In short, the language in the MINUSTAH mandate is more, not less, forceful with regard to the protection of human rights than similar provisions in the mandates of previous U.N. missions—missions that often achieved considerable success towards ensuring such protection. The very fact that human rights occupies a separate section of the MINUSTAH mandate is itself remarkable by comparison. Achieving success on par with that achieved by those missions would thus be an effective starting point, but by no means the ultimate goal for MINUSTAH.

As a general proposition, moreover, current Security Council mandates authorize far greater power and responsibility to their respective U.N. missions than did mandates of the past. The experience of the U.N. in Haiti offers a case in point. When viewed against the mandate of the previous U.N. mission in Haiti, authorized pursuant to Security Council Resolution 975 in 1995 and the resolutions it incorporated, the MINUSTAH mandate “is a Chapter VII mandate and the foundational concerns are far more extensive as is the guidance provided to the mission.”¹⁵⁵ Such is especially true in the area of human rights, where, relative to earlier U.N. missions in Haiti, whose mandates failed even to mention human rights by name, the inclusion of Section III in the MINUSTAH mandate reflects “a growing understanding that respect for human rights can help to create the conditions needed for a sustainable peace.”¹⁵⁶ For both its own success and, ultimately, that of the Haitian people in obtaining peace and stability, accordingly, MINUSTAH officers and troops on the ground alike must understand the centrality of their responsibilities in human rights, for “[i]gnoring pending human rights issues will only result in

continued social turmoil.”¹⁵⁷ As David Beer, Commissioner of the civilian police component of the MINUSTAH mission (“CIVPOL”), recently conceded, “[i]f the human rights situation isn’t changing . . . we can’t have a secure and stable environment.”¹⁵⁸ Absent corresponding action, of course, mere recognition of the value of human rights will not suffice. Commissioner Beer, in other words, would do well to recognize further that the human rights situation in Haiti will not change—and instability and insecurity will not end—unless MINUSTAH actively endeavors to effectuate change.

III.C.2. Civilian Protection

Finally, Section I(f) of the MINUSTAH mandate further obligates the mission “to protect civilians under imminent threat of physical violence, within its capabilities and areas of deployment, without prejudice to the responsibilities of the Transitional Government and of police authorities.”¹⁵⁹ Under a plain reading of the provision, its two qualifying clauses, set off by the terms “within” and “without,” appear to impose distinct limitations on MINUSTAH’s ability to discharge its protective responsibility vis-à-vis the civilian population of Haiti. However, as the findings and analysis set forth in Section IV of this report make clear, applying Section I(f) of the MINUSTAH mandate to any of a number of real-life factual scenarios reveals that neither limitation is as significant or restrictive in practice as it may appear on paper.¹⁶⁰ That is, MINUSTAH’s obligation to protect innocent Haitian civilians is better understood as an unconditional obligation. Certain narrow interpretations, in fact, are plainly forbidden, as “[m]ilitary and police operators . . . must be continually mindful that no language in the mandate can contradict or overcome . . . the need to follow internationally recognized legal norms and human rights principles in all dealings and

¹⁵⁴ MARK MALAN ET AL., *The ‘New’ UNAMSIL: Strength and Composition*, in PEACEKEEPING IN SIERRA LEONE: UNAMSIL HITS THE HOME STRAIGHT (Institute for Strategic Studies ed., 2002), available at <http://www.iss.co.za/Pubs/Monographs/No68/Chap4.html>.

¹⁵⁵ Defense Institute of International Legal Studies, *United Nations Mandates and United Nations Peace Support Operations*, Aug. 2004, at 6, available at [http://www.dsca.mil/diils/Mandates_Module\(Aug_04\).pdf](http://www.dsca.mil/diils/Mandates_Module(Aug_04).pdf) [hereinafter *United Nations Mandates*].

¹⁵⁶ Todd Howland, *Angola Report*, *supra* note 125, at 14.

¹⁵⁷ *Id.*; see also Statement of U.N. Secretary-General Boutros Boutros-Ghali, 45th Anniversary of the Universal Declaration of Human Rights, Dec. 13, 1993 (“The link between human rights and international peace and security is fundamental. The drafters of the [U.N.] Charter understood that gross and systematic violations of human rights lead almost inevitably to strife, conflict and military confrontation . . . We must not only recognize that democracy, development and respect for human rights are interlocking and mutually reinforcing: we must act on that belief.”)

¹⁵⁸ Reed Lindsay, *Police blamed in Haiti killings*, TORONTO STAR, Feb. 15, 2005.

¹⁵⁹ Resolution 1542, *supra* note 3, ¶ 7(I)(f).

¹⁶⁰ See *infra* Section IV.

operations.”¹⁶¹ Indeed, MINUSTAH troops are at all times bound by legal constraints upon the legitimacy of methods of warfare—most notably, article 48 of 1977 Additional Protocol I to the Geneva Conventions¹⁶²—and cannot read the ostensible limitations of the civilian protection of its mandate provision to override those responsibilities.

David Beer, the commissioner of the civilian police (“CIVPOL”) component of the larger MINUSTAH mission, essentially confirmed the fallacy of interpreting the mandate in such strictly literal, narrow terms. When asked whether authority for a witness protection program, which he told us CIVPOL employed in conducting investigations of human rights abuse, derived directly from the text of the MINUSTAH mandate, Commissioner Beer told us, “no, it’s not specifically within the mandate. But it’s incumbent on me now to do something, so I am going to do it.”¹⁶³ Stated more broadly, “[t]he mandates . . . take on a life of their own and their interpretation in the field often reflects the disconnect that may occur between reality on the ground and the considerations of the strategic level in New York.”¹⁶⁴ Going beyond the letter of the mandate, and, in turn, complying with its basic spirit, is thus not merely a possibility for MINUSTAH; rather, the situation on the ground in Haiti, as Commissioner Beer recognized and as others within his organization should recognize, *requires* it.

¹⁶¹ *United Nations Mandates*, *supra* note 155, at 3.

¹⁶² Article 48 provides, in pertinent part: “the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives.” PROTOCOL ADDITIONAL I TO THE GENEVA CONVENTIONS OF 12 AUGUST 1949, AND RELATING TO THE PROTECTION OF VICTIMS OF INTERNATIONAL ARMED CONFLICTS, June 8, 1977, art. 48, 1125 U.N.T.S. 3 [hereinafter ADDITIONAL PROTOCOL I]. While neither Haiti nor Brazil, the country with the greatest representation in the MINUSTAH mission, has recognized Additional Protocol I, the principle it codifies—the so-called “principle of distinction”—is widely considered to have attained the status of customary international law. See, e.g., HUMAN RIGHTS WATCH, OFF TARGET: THE CONDUCT OF THE WAR AND CIVILIAN CASUALTIES IN IRAQ 8 (2003), available at <http://www.hrw.org/reports/2003/usa1203/usa1203.pdf>.

¹⁶³ Telephone Interview with David Beer, CIVPOL Commissioner (Feb. 3, 2005) [hereinafter Beer Interview].

¹⁶⁴ *United Nations Mandates*, *supra* note 155, at 7.

IV. FINDINGS AND ANALYSIS

IV.A. Methodology

The following sections include numerous accounts of the current situation in Haiti and, specifically, of the work of MINUSTAH, gathered through interviews with persons from a range of sectors of Haitian society. We spoke with victims, or their relatives, of violence and human rights violations. We interviewed officials of the interim Haitian government, including Prime Minister Gerard Latortue; former Cabinet Director Raymond Lafontant, Jr.; the Representative of the U.N. High Commissioner for Human Rights in Haiti Mahamane Cisse-Gouro; MINUSTAH officials such as Special Representative for the Secretary-General ("SRSG") Juan Gabriel Valdés, Force Commander Lieutenant General Augusto Heleno Ribeiro Pereira, Lieutenant Carlos Chagas, CIVPOL Commissioner David Beer; and HNP Director Leon Charles. We spoke with leaders of the former military forces ("FAD'H"), such as spokesman Felix Wilso. We also spoke with dozens other staff members of the U.N., soldiers, OAS employees, and Haitian police. Other sources included representatives of Haitian human rights NGOs such as CARLI, NCHR and IJDH, private Haitian lawyers, journalists and scholars.

Two separate delegations gathered the information set forth below. The initial delegation, in Haiti from October 23-30, 2004, consisted of three individuals: James L. Cavallaro, Clinical Director of the Human Rights Program and Lecturer on Law at Harvard Law School; Carlos Eduardo Gaio, attorney and International Relations Coordinator at the Global Justice Center (Centro de Justiça Global), a Brazilian human rights NGO; and Sergio Kalili, a Brazilian journalist and Nieman Fellow at Harvard University. The second delegation, in Haiti from January 11-17, 2005, comprised three individuals: Mr. Cavallaro, Pooja Anita Bhatia, a former reporter for the *Wall Street Journal*, and Benjamin Stephan Litman, a Yale University-trained historian, the latter two both enrolled in the human rights advocacy program at Harvard Law School.

The delegations visited such noteworthy sites as the Bel-Air, Cité Soleil and Martissant districts of Port-au-Prince, as well as the town of Petit Goave, located approximately seventy kilometers (forty-four miles) west of the capital. The delegations also visited police stations, detention centers, U.N. operations centers, public buildings, roadblocks, and areas under the control of the former military. In an effort to provide a comfortable, secure atmosphere as well as

to ensure reliability and absence of bias, delegates conducted interviews whenever possible one interviewee at a time outside the presence of others. Private areas selected for interviewing included quiet sections of individual houses, private offices and classrooms at local schools.

Where interviewees spoke Creole exclusively, as in the majority of instances of severe abuse that we documented, delegates conducted interviews through the aid of a professional Haitian translator. In several cases, where interviewees demonstrated sufficient fluency in speaking English or otherwise preferred to speak in English, Portuguese, Spanish or French, delegates relied on their language skills to conduct interviews directly without the aid of a translator. Though delegates conducted the overwhelming majority of interviews while on the ground in Haiti, unforeseen and unavoidable instances of unavailability necessitated that certain interviews be conducted via telephone conference.

IV.B. Human Rights and Civilian Protection

IV.B.1. *Investigation of, and Reporting on, the Human Rights Situation*

*"to monitor and report on the human rights situation, in cooperation with the Office of the United Nations High Commissioner for Human Rights, including on the situation of returned refugees and displaced persons"*¹⁶⁵

On two occasions, October 27, 2004 and January 16, 2005, our delegation spoke with MINUSTAH Force Commander Lieutenant General Augusto Heleno Ribeiro Pereira as well as his first assistant and fellow Brazilian, Lieutenant Commander Carlos Chagas. In the January interview, when asked to comment specifically on the involvement of MINUSTAH in, and its responsibility for, the investigation of alleged human rights abuses in Haiti, Lt. Chagas bemoaned what he perceived as the relative indifference of the MINUSTAH mandate to human rights. "The weakest branch of our mission is human rights," he insisted. "We only have authority to monitor and advise."¹⁶⁶ Though the desire for increased human rights responsibility implicit in Mr. Chagas' words is certainly laudable and encouraging, it rests on a mistaken belief. The MINUSTAH

¹⁶⁵ Resolution 1542, *supra* note 3, ¶ 7(III)(b).

¹⁶⁶ Interview with Lieutenant Commander Carlos Chagas, Assistant to MINUSTAH Force Commander, MINUSTAH Headquarters, Avenue John Brown, Port-au-Prince (Jan. 17, 2005) [hereinafter Chagas Interview].

mandate authorizes the mission *not*, as Mr. Chagas believes, “to monitor and advise” but rather “to monitor *and report* on the human rights situation”¹⁶⁷ in Haiti. Reporting implies a degree of proactivity that mere advising does not, as evidenced by the language of Paragraph 8 of Resolution 1542 which follows immediately on the heels of the human rights portion of the mandate. Paragraph 8(a) obligates MINUSTAH to participate specifically “*in the investigation* of human rights violations and violations of international humanitarian law, in collaboration with the Office of the High Commissioner for Human Rights [“OHCHR”], to put an end to impunity.”¹⁶⁸ As explained at length earlier,¹⁶⁹ moreover, the commitment of MINUSTAH to human rights, as expressed in the language of its mandate, is actually robust—not “weak”—when viewed against the mandates of previous U.N. peacekeeping missions. In light of Lt. Chagas’ comments, however, the fact that MINUSTAH, as of January 17, 2005, had yet to publish a single report on the human rights situation in Haiti comes as little surprise.¹⁷⁰ Chronic non-compliance is inevitable when such basic misconceptions exist at the highest levels of command.

Remarkably, even the U.N. official directly responsible for human rights operations in Haiti has himself opted for an inexplicably strained and restrictive reading of the mandate. Mahamane Cisse-

Gouro, the Representative of the U.N. High Commissioner for Human Rights (“UNHCHR”) in Haiti, has interpreted his broad mandate as a virtual gag order. Mr. Cisse-Gouro told our October 2004 delegation that his understanding of the mandate’s reference to the OHCHR precluded his releasing information to us, to the human rights community or to the media.¹⁷¹ Instead, in justifying his failure to produce so much as a single report on the rights situation in Haiti, he told us that he felt it best to forward all information to the OHCHR.¹⁷² Mr. Cisse-Gouro was unable to tell us definitively when the OHCHR would release a report on human rights in Haiti.¹⁷³

In a very real sense, a failure to investigate amounts to little more than complicity in the actions of those alleged human rights abusers who otherwise would be the subjects of investigation. If, for example, the HNP knows that it will not be subject to investigation by MINUSTAH, its officers will be less likely to hesitate or question their own job security when making an arrest without a judicially authorized warrant or when summarily executing individuals in broad daylight.¹⁷⁴ As the Security Council specifically noted in Resolution 1542, the primary purpose of MINUSTAH’s investigative responsibility is “to put an end to impunity.”¹⁷⁵ A necessary corollary to that language, of course, is the proposition that when, as at present, MINUSTAH fails to investigate, impunity will likely reign. MINUSTAH’s non-compliance with its mandate, in other words, does not simply fail to improve the current situation in Haiti; it exacerbates it.

In certain instances, the severity of the apparent abuses and notice thereof combine to make MINUSTAH’s failure to investigate particularly reprehensible. On October 27, 2004, for example, our delegation traveled to Titanyen on the outskirts of

¹⁶⁷ Resolution 1542, *supra* note 3, ¶ 7(III)(b) (emphasis added).

¹⁶⁸ *Id.* ¶ 8(a) (emphasis added).

¹⁶⁹ For a full discussion of the several sections of the MINUSTAH mandate and of their meaning within the context of mandates for previous U.N. peacekeeping missions, see *supra* Section III.

¹⁷⁰ On January 14, 2005, we spoke with one member of the foreign diplomatic corps (“Ms. N.”) who tracks closely the human rights situation in Haiti and communicates with the relevant authorities within MINUSTAH. When we asked Ms. N. whether Mahamane Cisse-Gouro, head of the human rights section of the larger MINUSTAH mission, had issued any reports of any kind, Ms. N. replied with a simple “no.” Interview with member of the U.S. diplomatic corps, U.S. Embassy, Port-au-Prince (Jan. 14, 2005) [hereinafter Ms. N. Interview]; see also Beer Interview, *supra* note 163 (admitting that neither MINUSTAH nor CIVPOL had published any reports of investigations into alleged instances of human rights abuse). Since we spoke with Ms. N., as noted earlier, the OHCHR has published one human rights report for Haiti, prepared by the Independent Expert to the Secretary-General, on January 24, 2005, a week after our return to the United States. Again, however, that report, as with those authored by the Secretary-General himself, is not a MINUSTAH report. See *supra* note 134.

¹⁷¹ Interview with Mahamane Cisse-Gouro, Representative of the U.N. High Commissioner for Human Rights in Haiti, Port-au-Prince (Oct. 26, 2004) [hereinafter Cisse-Gouro Interview].

¹⁷² *Id.*

¹⁷³ As noted, the OHCHR published a human rights report for Haiti, prepared by Louis Joinet, the Secretary-General-appointed Independent Expert, on January 24, 2005, the first publication by the OHCHR regarding Haiti since MINUSTAH’s arrival. See *Joinet Report* *supra* note 134; see also *id.* (noting several general interim reports on MINUSTAH authored by U.N. Secretary-General Annan).

¹⁷⁴ See GRIFFIN REPORT, *supra* note 1; see also *infra* Section IV.C.1.

¹⁷⁵ Resolution 1542, *supra* note 3, ¶ 8(a).

Port-au-Prince to investigate allegations¹⁷⁶ of a mass burial site used by various parties—the HNP, gangs, and hospitals alike—to deposit human corpses. Although we did not locate any bodies above ground, we did discover what appeared to be a mass grave. The site had several large mounds of dirt, suggesting intervention in the terrain consistent with a mass burial. Used hospital gloves, masks, and spent cartridge shells littered the premises. In less than an hour and using only a bucket and a stick, we exhumed bones, clothes, a skull, and a small T-shirt that would fit a three- or four-year-old child. Inside the skull was gray-black brain material. The T-shirt was moist, and the remains exuded a stench. Immediately after uncovering the body of the small child, our delegation, which included a local Haitian, decided to return to Port-au-Prince. Our local contact had expressed concern for our safety were we to remain at the location. Thus, we did not continue digging despite our conviction that a significant number of bodies were buried at the site.

The next day, October 28, our delegation hand-delivered the excavated remains, as well as the spent shells, hospital gloves and masks—all found at the site in Titanyen—to CIVPOL Officer René Leclerc at Hôtel Ville St. Louis, the CIVPOL headquarters. During our meeting, we further explained to Officer Leclerc the nature of our discovery and requested a thorough investigation into the matter by CIVPOL. He suggested we contact him in January during our next on-site mission to Haiti. We subsequently forwarded a letter on November 24, 2004 addressed to both Juan Gabriel Valdés, the Special Representative of the Secretary-General in Haiti, and, as a follow-up, to Officer Leclerc. The letter extensively detailed our findings—including a thorough forensic analysis concluding that the time of death of the child whose remains we uncovered likely coincided with the presence of MINUSTAH forces in Haiti—and reiterated our request for immediate

¹⁷⁶ See, e.g., Interview with Mario Joseph, Port-au-Prince (Oct. 28, 2004) [hereinafter Joseph Interview I]; INSTITUTE FOR JUSTICE AND DEMOCRACY IN HAITI, HUMAN RIGHTS VIOLATIONS IN HAITI: FEBRUARY TO MAY 2004 (July 19, 2004) (reporting that “morgue employees from the General Hospital in Port au Prince have revealed that 800 bodies on Sunday, March 7, [2004] and another 200 bodies on Sunday, March 28, [2004] were dumped and buried in a mass grave at Titanyen”); Joe Mozingo, *Crisis in Haiti: Hundreds of bodies pile up in morgue*, MIAMI HERALD, Mar. 20, 2004 (noting that “Titanyen has also long been a place for clandestine burials and extra-judicial executions”), available at http://www.haiti-info.com/article.php?id_article=1796.

investigation into Titanyen.¹⁷⁷ Not having heard anything in response, either directly or through the press, our delegation re-sent the letter to CIVPOL Commissioner Beer and his spokesperson Daniel Moskaluk on January 20, 2005, nearly three full months after our initial findings and presentation thereof to Officer Leclerc. Two additional weeks passed before we spoke directly with Commissioner Beer to inquire into the status of the CIVPOL investigation.

Despite this repeated notice, as well as CIVPOL’s prior knowledge that the existence of mass graves “has been a point of contention for a number of years,” as of February 3, 2005, Titanyen was still “not an active case being investigated” according to Commissioner Beer.¹⁷⁸ Measured by any standard of professionalism, such prolonged non-responsiveness is plainly unacceptable. This is especially true where, as here, the document providing for the agency’s existence in the first place—in force, at the latest, as of July 1, 2004¹⁷⁹—specifically prescribes responsiveness in the form of investigative and reporting responsibilities.¹⁸⁰ Given the conjunction of these factors—affirmative, mandated obligations coupled with detailed, long-standing notice—lack of capacity and understaffing¹⁸¹ cannot suffice as an excuse for CIVPOL’s total failure to investigate and report on mass burial of victims of summary execution at Titanyen. We reiterate our request that in compliance with their mandate, they do so immediately.

Even in the rare case in which MINUSTAH has commenced investigation, its efforts have fallen well below what may legitimately be called reasonable. On December 1, 2004, an uprising at the National Penitentiary in Port-au-Prince resulted in the deaths of at least ten prisoners, all allegedly at the hands of prison guards who responded with unjustified lethal force.¹⁸² The full details of the massacre, as it has come to be known, have received extensive attention in the press and in numerous published reports

¹⁷⁷ For a reproduction of the text of the original letter, see Annex II.

¹⁷⁸ Beer Interview, *supra* note 163.

¹⁷⁹ See Resolution 1542, *supra* note 3, ¶¶ 2, 3 (while calling for a transition of power from MIF to MINUSTAH on June 1, 2004, allowing for “a transition period not exceeding 30 days” from that date).

¹⁸⁰ Resolution 1542, *supra* note 3, ¶¶ 7(III)(b), 8(a).

¹⁸¹ See generally Beer Interview, *supra* note 163 (repeatedly noting that CIVPOL remains well short of optimal operating capacity).

¹⁸² See IJDH PRISON REPORT, *supra* note 90

detailing the human rights situation in Haiti;¹⁸³ accordingly, they will not be repeated here. As it is, for the purposes of evaluating the MINUSTAH mission, the significance of the massacre lies elsewhere, principally in the degree to which MINUSTAH has engaged in any form of response.

According to Rénan Hedouville, head of the Lawyers' Committee for the Respect of Individual Liberties (Comité des Avocats pour le Respect des Libertés Individuelles, "CARLI"), immediately after word of the massacre had spread, interim Prime Minister Gerard Latortue called for the swift creation of an investigation commission.¹⁸⁴ Mr. Hedouville placed the blame for the non-creation of the commission squarely on MINUSTAH. "[I]f MINUSTAH would like to be effective, it could take responsibility for the commission through CIVPOL, but it is clear that they are trying to forget the event," he told us in mid-January 2005.¹⁸⁵ Regis Charron, a representative of the United Nations Development Program ("UNDP") working in conjunction with the administrative branch of the National Penitentiary, furnished additional details that corroborated Mr. Hedouville's allegations of investigative apathy on the part of MINUSTAH. Mr. Charron possesses intimate knowledge of the National Penitentiary, having virtually predicted the December 1 uprising and massacre in a now infamous report on the conditions inside the detention center,¹⁸⁶ as well as having visited the National Penitentiary in the days immediately following the incident. Mr. Charron indicated that the first time MINUSTAH had contacted him to discuss the incident was on January 11, 2005, "more than a month afterward."¹⁸⁷ On that day, Mr. Charron told us, two CIVPOL officers met with him at his office for ninety minutes, during which Mr. Charron shared photographs and other documentation he regularly keeps on the National Penitentiary. Despite these indicators of thoroughness, Mr. Charron was quick to criticize the professionalism and methodology of the CIVPOL officers. In particular, he found that "their questions

were not really informed."¹⁸⁸ When asked to rate their overall performance in conducting the investigation, Mr. Charron stated simply "not very high."¹⁸⁹

In this light, it is not surprising that Commissioner Beer himself balked when asked whether CIVPOL would release reports of its investigation into the National Penitentiary incident, among only a "half-dozen others underway."¹⁹⁰ "We would, but we do not have any conclusions," he maintained, noting further that although "[w]e are anxious to release information, it's a long, arduous process, I'm afraid."¹⁹¹ When we spoke with him on February 3, 2005, he promised a "significant media release in the days ahead," but again quickly qualified his promise by insisting that "[w]e want the government to make the release and to take the lead, of course with MINUSTAH side-by-side with them."¹⁹²

Commissioner Beer's ambivalence and apparent willingness to shirk responsibility by shifting it to others¹⁹³ runs directly afoul of his obligations as a representative of the larger MINUSTAH mission. Indeed, in November 2004 at the Fourteenth Annual Ibero-American Summit in Costa Rica, Juan Gabriel Valdés, head of the mission, reiterated the value of rapid, visible progress so that the Haitian people "can observe changes, improvements, and give trust" to MINUSTAH.¹⁹⁴ It bears noting further that the specific obligation to investigate and issue reports on the human rights situation in Haiti is hardly a new obligation, having been included in the original mandate of April 30, 2004.¹⁹⁵ That is, now nearly ten months later, MINUSTAH officers can no longer hide behind the excuse of unpreparedness in casually explaining away their failure to issue significant reporting of any kind. As between the promise for change and progress offered by Mr. Valdés and the inaction personified by Commissioner Beer and his

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ Beer Interview, *supra* note 163.

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ Numerous residents with whom we spoke expressed frustration over having been told by MINUSTAH to contact other authorities—including distant human rights organization and the HNP itself—for help in caring for and locating injured or missing friends and family members. See *infra* Section IV.B.2.

¹⁹⁴ Eric Green, *U.N. Seeks to Extend Stabilization Mission in Haiti to May 2006*, U.S. DEPARTMENT OF STATE, available at <http://japan.usembassy.gov/e/p/tp-2004112451.html> (last visited Mar. 6, 2005).

¹⁹⁵ Resolution 1542, *supra* note 3.

¹⁸³ See, e.g., *id.*; NCHR Prison Press Release, *supra* note 91.

¹⁸⁴ Interview with Rénan Hedouville, Lawyers' Committee for the Respect of Individual Liberties, Port-au-Prince (Jan. 13, 2005).

¹⁸⁵ *Id.*

¹⁸⁶ IJDH PRISON REPORT, *supra* note 90 at 3 (discussing UNDP report authored by Mr. Charron two weeks before the 1 December massacre); Reed Lindsay, *Massacre in the 'Titanic'*, TORONTO STAR, Dec. 20, 2005.

¹⁸⁷ Interview with Regis Charron, UNDP offices, Port-au-Prince (Jan. 14, 2005).

CIVPOL staff, no clearer proof of the broad thesis of this report—namely, that the gap between the words of the MINUSTAH mandate and the actions of the MINUSTAH troops and officers is significant—is imaginable.

To be sure, MINUSTAH has on occasion deployed its investigative capacity with alacrity. In late February 2005, for example, after citizens in the city of Gonaïves accused three Pakistani soldiers of raping a local 23-year-old woman, MINUSTAH officials promptly investigated¹⁹⁶ and, within mere days, resolved¹⁹⁷ the matter, clearing its soldiers of the charges. The swift resolution of the rape case stands in direct contrast to MINUSTAH's serious delay and inaction—and attendant justifications of incapacity—in other cases, as described above. The rapid response, while laudable, raises serious questions about the prioritization of various allegations of human rights abuse within MINUSTAH's larger investigative scheme. The example of the rape investigation, in other words, suggests that MINUSTAH in fact possesses both the personnel and the resources necessary to carry out its investigative duties, but engages that capacity in only limited circumstances, thus effectively ignoring the overwhelming majority of human rights abuses committed under its watch. Such selective investigating and reporting, moreover, hardly satisfies the governing provisions of MINUSTAH's mandate, which apply those obligations to the "human rights situation" and "human rights violations" in Haiti more broadly.¹⁹⁸

Even where its mandate does direct MINUSTAH to report on a particular human rights issue or category of violation, the results have been no less disheartening. Resolution 1542, for instance, specifically enumerates "the situation of returned refugees and displaced persons" as a particular subject to be addressed under MINUSTAH's monitoring and reporting responsibilities.¹⁹⁹ Here, in

¹⁹⁶ See, e.g., *Haiti: U.N. Peacekeepers Accused of Rape*, N.Y. TIMES, Feb. 24, 2005 (reporting onset of preliminary U.N. investigation of rape allegations by a 23-year-old woman against three Pakistani peacekeepers).

¹⁹⁷ Warren Hoge, *Prostitution Suspected*, N.Y. TIMES, Feb. 25, 2005 (reporting results of U.N. investigation, namely, that the case involved prostitution, not rape, and two Pakistani peacekeepers, not three, but that nonetheless "the code of conduct for peacekeepers barred participation in prostitution and that the two [Pakistan police officers] would be suspended and repatriated to Pakistan for punishment if the allegations were substantiated").

¹⁹⁸ See Resolution 1542, *supra* note 3, ¶¶ 7(III)(b), 8(a).

¹⁹⁹ Resolution 1542, *supra* note 3, ¶ 7(III)(b).

fact, MINUSTAH's efforts are better described as non-existent than merely non-compliant.

Petit Goave

In the FAd'H stronghold of Petit Goave, numerous reports allege that members of the "Convergence" or opposition party have systematically chased all supporters of the pro-Aristide political party Fanmi Lavalas from the town. In October 2004, our first delegation met with several refugees who had fled Petit Goave for Port-au-Prince. Flïcien Jean-Claudel, a 25-year-old member of the Lavalas-affiliated group Resistance Democratique Ti Goave, told us that days after the ouster of President Aristide on February 29, 2004, a man named Dady Ostiné, known more commonly as Ti Kenley, raided Mr. Jean-Claudel's house with the help of a few heavily armed friends.²⁰⁰ Once inside, Mr. Jean-Claudel recalled, Ti Kenley threatened to kill him, repeating over and over again "you have to die, because I will not allow any Lavalas to stay in Petit Goave."²⁰¹ Ti Kenley ultimately forced Mr. Jean-Claudel to leave his home, he told us, but not before shooting Mr. Jean-Claudel twice, once in each leg, and aiming the barrel of the gun at his head, false-triggering three times.²⁰² Ti Kenley left Mr. Jean-Claudel to writhe in a pool of his own blood.²⁰³ After escaping to a hospital in the nearby town of Miragoane, Mr. Jean-Claudel met with his father, he told us, who informed him that his house had been looted and burned to the ground in the period of a mere two days since his forced departure.²⁰⁴ When we asked whether his story was unique, Mr. Jean-Claudel quickly noted that of his organization Resistance Democratique Ti Goave, all but one member had fled Petit Goave and gone into hiding. The lone member who remained behind, a man known as Ro-Ro, Mr. Jean-Claudel said, had been shot to death and set on fire.²⁰⁵

In light of Mr. Jean-Claudel's and similar allegations, we decided to investigate the situation in Petit Goave first-hand during our second delegation to Haiti in January 2005. In advance of our visit to the town on January 15, we spoke with Mr. B., a Port-au-Prince-based human rights worker who has longstanding ties to Petit Goave. Mr. B. wished to remain anonymous. Mr. B., who grew up in Petit Goave and whose mother continues to reside there, noted that the

²⁰⁰ Interview with Flïcien Jean-Claudel, Bureau des Avocats Internationaux, Port-au-Prince (Oct. 24, 2004).

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ *Id.*

departure of Aristide on February 29, 2004 marked the intensification of violence—most commonly in the form of looting and burning houses and physical and verbal harassment—against the “Lavalasiens.”²⁰⁶ The persecution, he told us, extended not merely to those high-profile Lavalas leaders, but to “all supporters, as well as their families—aunts, uncles, brothers, sisters, cousins.”²⁰⁷ As corroboration for his claim, Mr. B. provided us with a list of victims dating to April 2004; though “partial,” the list contained the names of eighty-four Lavalas supporters who had recently fled Petit Goave and who remained in hiding.²⁰⁸ In keeping with what we had learned from interviews with refugees conducted in October 2004, as described above, Mr. B. attributed much of the anti-Lavalas violence to the group of Ti Kenley. On several occasions, Mr. B. recalled, victims, typically accompanied by their families who had fled alongside them, had arrived at his office in Port-au-Prince to report their plight.

Most disturbingly, perhaps, Mr. B. told us that at least two such victims, Cange Lauture and Nanie Sylne, reported that the violence against them had been reprisals for their having spoken with a human rights delegation led by Mr. Thomas Griffin and accompanied by Mr. B. himself in April 2004.²⁰⁹ According to Mr. B., Mr. Lauture told him that after Mr. Griffin and his delegation left Petit Goave, Ti Kenley’s group harassed his wife, beat his children and looted his house.²¹⁰ Mr. B. told us further that the group, according to Mr. Lauture, accused Mr. Lauture and his family of being spies, as Ti Kenley had seen the family speaking with Mr. Griffin’s delegation. “They were told that they had stayed in Petit Goave only to give information to journalists and the human rights group,” Mr. B. recalled.²¹¹

After speaking with Mr. B., we visited Petit Goave later on the same day, January 15, 2005, to investigate and, specifically, to learn whether the situation for Lavalas supporters continued to be as dire as Mr. B.’s account and his documentation and as our earlier on-site research in October suggested. Upon arrival, we met with P., a 17-year-old public

high school student and a member of the Student Coalition Against Dictatorship and Impunity who also wished to remain anonymous. His fear, and the general precariousness of the situation, was evident from the moment we arrived, and colored both the planning of our interview and its substance. P., for instance, took pains to ensure that he would not be seen together with us in public. He met our car alongside the main road, but instead of climbing in, provided an address at which to meet him and quickly walked off alone in the other direction. Once we arrived at the address, P. motioned us in with a wave of the hand and remained inside the front gate of the house. Finally, when we concluded the interview and prepared to leave the house, P. begged us to act and speak in the street as though we were missionaries of the Christian faith.²¹² If we did not, P. assured us, members of the Convergence would target and threaten him as a Lavalas supporter, under the assumption that whites are either human rights activists or missionaries and, if they are the former, that they speak only to Lavalasiens in Petit Goave.

During the interview itself, P. told us that all six of his family members remain in the mountains surrounding Petit Goave, having fled the town after members of the opposition party burned down their house on March 2, 2004.²¹³ P. said he was able to return only because the principal of his school was able to negotiate with the Convergence gangs.²¹⁴ The persecution is so widespread and constant, P. told us, that “[s]ome people say they’re Convergence supporters just to protect themselves.”²¹⁵ P. estimated that since the departure of Aristide, “about 1,000 people have left” Petit Goave and that “[m]ost of them have not come back.”²¹⁶

P. pleaded with us to emphasize in our report the need for security as a means for innocent people to feel safe in their homes. “Security is very important, psychologically,” he told us. “My family feels this, all families feel this—for them to return, they need security.”²¹⁷ As to whether and how MINUSTAH could improve the situation, P. suggested: “First, MINUSTAH should sit down with the former military and gangster families and negotiate the safe return of those who fled Petit Goave. Second, they should provide compensation to the people whose

²⁰⁶ Interview with Mr. B., Port-au-Prince (Jan. 15, 2005) [hereinafter Mr. B. Interview].

²⁰⁷ *Id.*

²⁰⁸ The full document—containing a list of victims of “destruction of property” as well as those Lavalas supporters “in hiding”—is on file with the authors and may be made available upon request.

²⁰⁹ Mr. B. Interview, *supra* note 206. See also GRIFFIN REPORT, *supra* note 1.

²¹⁰ *Id.*

²¹¹ *Id.*

²¹² Interview with P., private home, Petit Goave (Jan. 15, 2005).

²¹³ *Id.*

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ *Id.*

houses were burnt down.”²¹⁸ P.’s proposal is not only wise and well-conceived, but even from the standpoint of MINUSTAH to whom the proposal is addressed, realistic. At the very least, MINUSTAH must comply with the precise wording of its mandate and both “monitor and report” on the situation involving “returned refugees and displaced persons.”²¹⁹

As of late January 2005, however, nearly two-and-a-half months after MINUSTAH’s arrival in Petit Goave,²²⁰ neither monitoring nor reporting of the persecution of large numbers of Lavalas supporters had occurred at all in the area. In fact, when we asked about the situation at U.N. base camp in Petit Goave on January 15, 2005, Captain H.W.R. Sanjeeva of Sri Lanka stated, “I have no knowledge of any refugees and [displaced persons].”²²¹ The blame for such ignorance must fall, if not on Captain Sanjeeva himself, then on MINUSTAH leadership in Port-au-Prince to whom Capt. Sanjeeva and other affiliate divisions of MINUSTAH turn for guidance and operational assistance. As Captain Sanjeeva explained to us, “we have requested the support of CIVPOL and MINUSTAH [in Port-au-Prince], but they still have not come.”²²² Complaints of “weakness” in the mandate by MINUSTAH officials²²³ ring especially hollow where, as here, its very words spell out the obligation in clear detail and where no interpretation of any kind, much less a broad interpretation, is necessary to achieve compliance.

IV.B.2. Protection of the Civilian Population

*“to protect civilians under imminent threat of physical violence, within its capabilities and areas of deployment, without prejudice to the responsibilities of the Transitional Government and of police authorities.”*²²⁴

Speaking explicitly on behalf of his superior General Pereira, Lt. Chagas insisted that MINUSTAH was well aware of its obligation to protect innocent civilians. “We have to keep this clear: we cannot

afford to kill innocent people,” Lt. Chagas explained, assuring us that “[t]hese soldiers have these things very clear in their minds.”²²⁵ Our first-hand experience in Haiti painted a somewhat different picture, as allegations surfaced that MINUSTAH’s neighborhood sweeps and operations, both those conducted independently as well as those conducted in cooperation with HNP, had themselves resulted in civilian casualties.

Martissant

On October 30, 2004, we interviewed several witnesses to the killing of 26-year-old Carlo Pierre at the hands of MINUSTAH forces during an operation conducted in the Martissant slum of Port-au-Prince on October 22, 2004. Mr. D., an eyewitness to the killing who wished to remain anonymous, told us that early in the morning of October 22, at approximately 6:00 a.m., Lavalas supporters formed a barricade in the street. Some of the supporters carried weapons and shots were fired.²²⁶ After several failed attempts to control the violence, Mr. D. said, the HNP called in MINUSTAH troops for support.²²⁷ According to Mr. D., two MINUSTAH tanks arrived shortly thereafter. At this point, the armed Lavalas supporters fled. In response to rocks, however, one U.N. tank “went everywhere to show that it could go anywhere and . . . started shooting all over the place, especially in the school.”²²⁸ Martide Bertrand, Mr. Pierre’s 76-year-old grandmother, told us similarly that the MINUSTAH troops, hidden inside their tanks, “were shooting everywhere.”²²⁹

Mr. D. estimated that no more than ten minutes after MINUSTAH’s arrival, he saw the machine gun affixed to the top of one of the U.N. tanks “take aim” in the direction of Mr. Pierre, who was about to throw a rock.²³⁰ Seconds later, Mr. D. recalled, Mr. Pierre, standing less than twenty feet away at the time, fell to the ground.²³¹ Mr. D. rushed over, he said, and realized that Mr. Pierre had been shot in the stomach, the chest and near the mouth.²³² Sadly, the death of Carlo Pierre is not an isolated case, but only one of several involving killings and human rights violations attributable to MINUSTAH.

²¹⁸ *Id.*

²¹⁹ Resolution 1542, *supra* note 3, ¶ 7(III)(b).

²²⁰ According to Captain H.W.R. Sanjeeva of Sri Lanka, the MINUSTAH contingent in Petit-Goave arrived on November 6, 2004, more than a week after its October 28 arrival in Port-au-Prince. Interview with Captain H.W.R. Sanjeeva, U.N. Base Camp, Petit Goave (Jan. 15, 2005).

²²¹ *Id.*

²²² *Id.*

²²³ See Chagas Interview, *supra* note 166.

²²⁴ Resolution 1542, *supra* note 3, ¶ 7(I)(f).

²²⁵ Chagas Interview, *supra* note 166.

²²⁶ Interview with Mr. D, Martissant, Port-au-Prince (Oct. 30, 2004) [hereinafter Mr. D. Interview].

²²⁷ *Id.*

²²⁸ *Id.*

²²⁹ Interview with Martide Bertrand, Martissant, Port-au-Prince (Oct. 29, 2004).

²³⁰ *Id.*

²³¹ Mr. D. Interview, *supra* note 226.

²³² *Id.*

Cité Soleil

On December 14, 2004, in the pre-dawn hours of the morning, a large convoy of MINUSTAH tanks entered the Cité Soleil slum of Port-au-Prince and conducted its most aggressive operation to date. Our delegation met with Esterlin Marie Carmelle and her husband Henry Morenaud on January 12, 2005 to discuss their recollection of the events that transpired on that December morning. Ms. Carmelle and Mr. Morenaud told us that they, along with their two-year-old son, Herlens Henri, were sleeping in the single bed they all shared, when between 3:00 a.m. and 4:00 a.m., gunfire awoke them.²³³ According to Ms. Carmelle, her son Herlens asked to get out of bed so that he could bring his father shoes for work.²³⁴ Ms. Carmelle let Herlens get up, she told us, and a few seconds later Herlens returned with the shoes and jumped back into bed with his parents.²³⁵

Soon thereafter, Ms. Carmelle told us, Mr. Morenaud himself got out of bed to get some water for a shower and to get ready for work.²³⁶ Ms. Carmelle and her child remained in bed, she said, and the shooting soon intensified.²³⁷ Several minutes later, Ms. Carmelle recalled, she “felt something warm” on her arm and said to her husband, “I feel like I got hit with a bullet.”²³⁸ She told us that she quickly realized that “it wasn’t me who had been shot,” as her boy lay limp and lifeless beside her; his “blood and brain matter were sliding down my arm.”²³⁹ Though Ms. Carmelle said that she then passed out, Mr. Morenaud told us that a stray bullet had entered their shack with such force that it had removed part of their child’s head, leaving Herlens to die in his mother’s arms.²⁴⁰

When the shooting subsided at around 11:00 a.m., Mr. Morenaud told us, a U.N. interpreter summoned those who suffered casualties from the operation to come to the MINUSTAH base by the wharf in lower Cité Soleil.²⁴¹ Accompanied by neighbors, Mr. Morenaud explained to us, he and his wife brought their child’s corpse to the wharf as directed, after

²³³ Interview with Esterlin Marie Carmelle, Cité Soleil, Port-au-Prince (Jan. 12, 2005) [hereinafter Carmelle Interview]; Interview with Henry Morenaud, Cité Soleil, Port-au-Prince (Jan. 12, 2005) [hereinafter Morenaud Interview].

²³⁴ Carmelle Interview, *supra* note 233.

²³⁵ *Id.*

²³⁶ *Id.*

²³⁷ *Id.*

²³⁸ *Id.*

²³⁹ *Id.*

²⁴⁰ Morenaud Interview, *supra* note 233.

²⁴¹ *Id.*

which they were all taken, first by U.N. tank and then by ambulance, to a hospital.²⁴² Once they arrived, Ms. Carmelle said, MINUSTAH officials removed their son from the ambulance and indicated that his body would be taken to and kept in the national morgue.²⁴³ According to Mr. Morenaud, however, when he and his wife returned to the morgue two days later on December 16, 2004, guards told them that MINUSTAH had moved their son to another morgue.²⁴⁴ When asked why he thought the U.N. would have moved his son’s body, Mr. Morenaud mentioned to us that on the day of his son’s death, he had given an interview to a Radio Ginen journalist outside the hospital, during which Mr. Morenaud blamed MINUSTAH for the death.²⁴⁵ MINUSTAH had immediately received “negative publicity,” Mr. Morenaud told us.²⁴⁶

After several fruitless trips in search of his son at the local branch of the HNP, Direction Départementale de l’Ouest (“DDO”), Mr. Morenaud went to the general MINUSTAH headquarters in Bourdon, Port-au-Prince, he told us, and explained to officials what had happened to his son and asked them for their help.²⁴⁷ Specifically, he sought assistance locating his son’s body and “money for the funeral, as well as compensation and justice.”²⁴⁸ However, according to Mr. Morenaud, although MINUSTAH officials said they were “interested” in his case, they simply referred him to the National Coalition for Haitian Rights (“NCHR”), a local human rights institution.²⁴⁹ Mr. Morenaud and Mr. Carmelle both told us that as of our meeting with them on January 12, 2005, nearly a full month after the incident, neither had heard back from MINUSTAH nor had been able to locate their son’s body.²⁵⁰

The story of Herlens Henri offers compelling, though admittedly contestable, evidence for the proposition that MINUSTAH, in conducting its operations, has engaged in precisely the type of indiscriminate warfare against which its presence was designed to safeguard, thus violating not only its mandate but, more broadly, general international principles of warfare by which it is bound, as noted above.²⁵¹ To

²⁴² *Id.*

²⁴³ Carmelle Interview, *supra* note 233.

²⁴⁴ Morenaud Interview, *supra* note 233.

²⁴⁵ *Id.*

²⁴⁶ *Id.*

²⁴⁷ *Id.*

²⁴⁸ *Id.*

²⁴⁹ *Id.*

²⁵⁰ *Id.*; Carmelle Interview, *supra* note 233.

²⁵¹ See *supra* note 162 and accompanying text (noting, in particular, the obligations under the “principle of

be sure, Force Commander Pereira, when we spoke him about the incident, denied responsibility for the death altogether, noting that in light of an autopsy on the body conducted by MINUSTAH medical personnel, he believed the child had been killed by local gangs in the nighttime hours preceding MINUSTAH's entry into Cité Soleil.²⁵² Neighbors of Ms. Carmelle and Mr. Morenaud, however, confirmed the couple's account. One neighbor, Rosianne Wilfred, told us that after the shooting had subsided on December 14, MINUSTAH troops had come to her house, as well as several others in the neighborhood, to recover bullets, including specifically the one that allegedly had killed the child.²⁵³ According to Ms. Wilfred, she had possession of two "very big bullets" at the time, one from her house and the "bloody" one she had retrieved from Ms. Carmelle's house.²⁵⁴ When the MINUSTAH troops arrived at her house, she said, she gave the troops the bloody bullet, telling them it was theirs.²⁵⁵ Ms. Wilfred told us that despite their initial "insiste[nce] that it was the *chimères*' [gangs'] bullet," the MINUSTAH troops "eventually said it was their own, and took it back."²⁵⁶

Lt. Chagas lent credence to Ms. Wilfred's account, explaining to us that each contingent within MINUSTAH "keep[s] track of its own munitions since they have to submit reports to MINUSTAH on munitions consumption."²⁵⁷ Lt. Chagas also undercut the excuse of temporal inconsistency offered by Commander Pereira, explaining further that "[i]n a major military move [such as the one in Cité Soleil], people will be on the move after midnight,"²⁵⁸ or, in other words, at around the time the autopsy suggested the child had died. Even Commander Pereira himself, when pressed, seemed to acknowledge, albeit implicitly, the inherently suspect nature of his denial, conceding to us that although "I would not forgive myself if there were any incidents that caused the

distinction" as set forth in Article 48 of 1977 Additional Protocol I to the Geneva Conventions of 1949).

²⁵² Interview with Lieutenant General Augusto Heleno Ribeiro Pereira, MINUSTAH Force Commander, MINUSTAH Headquarters, Avenue John Brown, Port-au-Prince (Jan. 17, 2005) [hereinafter Pereira Interview]. In late February 2005, we requested a copy of the autopsy report from Commander Pereira directly, but have received no response as of the date of this writing.

²⁵³ Interview with Rosianne Wilfred, Cité Soleil, Port-au-Prince (Jan. 12, 2005).

²⁵⁴ *Id.*

²⁵⁵ *Id.*

²⁵⁶ *Id.*

²⁵⁷ Chagas Interview, *supra* note 166.

²⁵⁸ *Id.*

deaths of innocents. *We are not free from that because of encounters with gangs where stray bullets can result in victims.*"²⁵⁹

In the final analysis, however, no matter who actually shot the fatal bullet, MINUSTAH bears some degree of blame and culpability for the death of Herlens Henri. Simply put, his was a death that resulted from MINUSTAH's failure to comply with the express obligations of its mandate. Either a bullet fired by MINUSTAH troops killed the boy, in which case MINUSTAH is responsible for failing "to protect civilians under imminent threat of physical violence,"²⁶⁰ or a bullet fired by local armed gangs killed the boy, in which case MINUSTAH, as explained in greater detail below, is responsible, albeit less directly, for failing to disarm "all armed groups."²⁶¹

Even assuming that the failure to protect civilians in cases similar to that of Herlens Henri could be understood, if not excused, as an unavoidable consequence of urban warfare, the failure to do so when civilians beg for U.N. assistance is simply incomprehensible. Also on January 12, 2005, our delegation spoke with Lidwaine Pierre-Louis, a 23-year-old mother originally from Ile de la Gonave, who recounted an equally harrowing story. Ms. Pierre-Louis told us that on December 17, 2004, three days after MINUSTAH began its occupation of Cité Soleil, she awoke between 4:00 a.m. and 5:00 a.m. to the sound of heavy shooting and the firing of gas canisters.²⁶² She said that the local gangs were firing bullets at the MINUSTAH soldiers and that the MINUSTAH soldiers, in response, were both shooting and firing gas.²⁶³ Fearing for the life of her four children, she decided to move them to a safer area in the neighborhood, she told us.²⁶⁴ After she had successfully shepherded three of her children, at approximately 8:00 a.m., to a more secure location, Ms. Pierre-Louis returned home, she recalled, to collect her three-month-old daughter, whom she had left behind with her husband.²⁶⁵ At 10:00 a.m., as Ms. Pierre-Louis was preparing her infant's change of clothing, she momentarily placed her baby on the porch, she told us.²⁶⁶ When she retrieved her

²⁵⁹ Pereira Interview, *supra* note 252 (emphasis added).

²⁶⁰ Resolution 1542, *supra* note 3, ¶ 7(I)(f).

²⁶¹ *Id.* ¶ 7(I)(c).

²⁶² Interview with Lidwaine Pierre-Louis, Cité Soleil, Port-au-Prince (Jan. 12, 2005) [hereinafter Lidwaine Interview].

²⁶³ *Id.*

²⁶⁴ *Id.*

²⁶⁵ *Id.*

²⁶⁶ *Id.*

daughter, she recalled, she noticed that the baby was “having difficulty breathing.”²⁶⁷

Sensing a lull in the shooting, she said, she hurried the child to the MINUSTAH base at the port in Lower Cité Soleil to seek medical assistance.²⁶⁸ What ensued in the exchange between Ms. Pierre-Louis and the MINUSTAH troops can be described only as a tragedy of errors that in many ways typifies the failures of the MINUSTAH mission in Haiti. First, when Ms. Pierre-Louis arrived at the base and told the first MINUSTAH soldier she encountered that her baby had been gassed, the soldier responded by shrugging his shoulders to indicate that he did not speak Creole, she recalled.²⁶⁹ Noticing that her baby had closed its eyes and gone limp, Ms. Pierre-Louis began to scream, she told us, loudly enough that a nearby translator came to her aid, again explaining to the MINUSTAH troops that Ms. Pierre-Louis’ child had been gassed.²⁷⁰ Through the translator, Ms. Pierre-Louis told us, the MINUSTAH troops “told me to go home and that they would stop firing gas.”²⁷¹ According to Ms. Pierre-Louis, however, the MINUSTAH troops “did not say anything about my child, even though they saw her dying in my arms.”²⁷² Before Ms. Pierre-Louis reached home, her child had died, she said.²⁷³ Later that afternoon, at approximately 1:00 p.m., Ms. Pierre-Louis, following the advice of a neighbor, returned to the MINUSTAH base, she told us, where she explained again that her child had died because of U.N. gas and asked for “compensation to take care of the funeral expenses.”²⁷⁴ According to Ms. Pierre-Louis, however, “the U.N. soldiers said only ‘we don’t know’” and told her “to contact the higher ups, since they were soldiers only and couldn’t do anything.”²⁷⁵ As with Mr. Morenaud and Ms. Carmelle, at the time of our interview on January 12, 2005, Ms. Pierre-Louis told us that she had heard nothing from MINUSTAH regarding her baby or her pleas for assistance.²⁷⁶

Beyond the obvious fault of MINUSTAH in releasing gas canisters into areas of high civilian density, not only in the case of Cité Soleil but elsewhere as

well,²⁷⁷ the complete failure of its troops to respond to a situation over which they should have had complete control—that is, a situation readily “within its capabilities and areas of deployment”²⁷⁸—betrays flaws so fundamental to the mission that even a request for heightened compliance with its mandate would seem incapable of curing. If nothing else, MINUSTAH officials must work to instill a basic ethic of professionalism and responsibility in all its troops. With regard to fundamental principles of decency and right—most notably, the unconditional protection of innocent civilians—the MINUSTAH soldiers must, in fact, “have these things very clear in their minds.”²⁷⁹ Linguistic deficiencies, though real, offer no excuse in this regard.

Hospitals: The New Battlefield

As the case of Ms. Pierre-Louis’ child illustrates, what constitutes or who qualifies as a civilian “under imminent threat of physical violence”²⁸⁰ is a question that resists rigid categorization and instead depends on the nature of particular situations as they arise in real-time. In recent months, several reports, of which CIVPOL Commissioner Beer told us he was aware,²⁸¹ have surfaced regarding an alleged practice by the HNP whereby officers raid hospitals, forcibly remove civilian patients and, in certain cases, murder them, often dumping their bodies into mass graves.²⁸² Samba Boukman noted several instances in which members of his neighborhood, the populist slum of Bel-Air, were allegedly killed by way of such behavior. Mr. Boukman recalled that during one HNP operation in Bel-Air on October 24, 2004, Gorda Guerrier and Guy Wilson, two men in their late teens, suffered M-1 bullet wounds in the ribs and stomach, respectively.²⁸³ Hours after the operation, the families of the two men took their sons to the General Hospital of Port-au-Prince for treatment. Mr.

²⁷⁷ See, e.g., *U.N. Peacekeepers Fire Tear Gas into Rock-Throwing Crowd at Food Distribution Site in Haiti*, ASSOCIATED PRESS, Jan. 13, 2005, available at http://www.haiti-news.com/article.php?id_article=3218 (reporting tear gas incident in Gonaïves and admission of responsibility for the incident by U.N. police spokesman Dan Moskaluk).

²⁷⁸ Resolution 1542, *supra* note 3, ¶ 7(I)(f).

²⁷⁹ Chagas Interview, *supra* note 166.

²⁸⁰ Resolution 1542, *supra* note 3, ¶ 7(I)(f).

²⁸¹ Beer Interview, *supra* note 163.

²⁸² See, e.g., *Le CARLI condamne les pratiques d’exécutions sommaires et d’enlèvement de blessés des centres hospitaliers par des policiers*, AGENCE HAITIENNE DE PRESSE, Jan. 24, 2005, available at <http://www.ahphaiti.org/ndujour.html>.

²⁸³ Interview with Samba Boukman, Bel-Air, Port-au-Prince (Jan. 16, 2005) [hereinafter Boukman Interview].

²⁶⁷ *Id.*

²⁶⁸ *Id.*

²⁶⁹ *Id.*

²⁷⁰ *Id.*

²⁷¹ *Id.*

²⁷² *Id.*

²⁷³ *Id.*

²⁷⁴ *Id.*

²⁷⁵ *Id.*

²⁷⁶ *Id.*

Boukman told us that days later, the HNP entered the hospital and killed both Mr. Guerrier and Mr. Wilson.²⁸⁴

The practice appears sufficiently widespread and routine to make its effects felt beyond the hospital walls on society at large. Gunshot victims routinely forego hospital treatment, fearing that their wounds will mark them as gang members, and that they will subsequently be killed by the police.²⁸⁵ Several victims of recent violence in the Bel-Air and Cité Soleil neighborhoods with whom we spoke, and whose bullet wounds we observed, cited precisely such a fear of HNP intrusion at local hospitals as their reason for declining professional aid after receiving bullet wounds, thus exacerbating their respective conditions.²⁸⁶

If true, such allegations shock the conscience on many levels. From the perspective of the U.N. mission, as long as such practices continue, all patients housed in hospitals within Haiti remain "civilians under imminent threat of physical of violence."²⁸⁷ Indeed, even Commissioner Beer recognized the urgency of the situation, telling us "it's obviously something that can't go on."²⁸⁸ Pursuant to its mandate, MINUSTAH must protect these patients, preferably by installing its own security personnel to guard the entrances to the hospitals themselves.

To be sure, Lt. Chagas noted that on occasion, most notably in the aftermath of major operations, MINUSTAH transports a few severely wounded civilians to its own military hospital located near Toussaint Louverture airport in Port-au-Prince. "[The military hospitals] are normally supposed to treat military casualties only, but due to the situation of the health system in Haiti, we try as much as possible to take care of civilians as well."²⁸⁹ Though commendable, such a policy fails entirely to account

for, and to protect, all those wounded civilians already *within* the Haitian health system. Taking care of a few, in other words, is no excuse for MINUSTAH's utter failure to guard and care for the majority. While providing technical medical assistance at Haitian hospitals might well be beyond the capacity of the MINUSTAH mission at present,²⁹⁰ the same simply cannot be said of securing those hospitals against the danger of violent and, ultimately, often fatal intrusion.

MINUSTAH officials, however, in blatant violation of their mandate, continue to express a disturbing unwillingness to intervene. MINUSTAH Force Commander Pereira, for example, when asked by our January delegation whether he would order his personnel to guard hospitals, declined by resorting to the basic excuse of incapacity. "We don't have enough troops to guard the hospitals," he explained to us.²⁹¹ Not having enough troops for a particular job is one thing; not having the desire to send them to perform the job in the first place is quite another. General Pereira, apparently, has neither.

When we asked further whether he *would* send his troops to guard the hospitals if he were able to do so, General Pereira told us simply that "they do not need [a] military contingent at hospitals."²⁹² General Pereira tried to explain to us that because he needs to "maximize the mobility of [his] troops," he cannot "put [his] troops in static positions."²⁹³ He suggested that CIVPOL was better suited to the task. Yet when we spoke with CIVPOL Commissioner Beer about the matter, he could do no better than again to shirk responsibility altogether by transferring it directly to the HNP. "[O]ur quickest solution is to press the right buttons in HNP to get it done," he told us, concluding diplomatically that "[t]o put CIVPOL officers in hospitals would be to treat the symptom and not the cause."²⁹⁴ Despite the intellectual appeal of Mr. Beer's argument, it admits of a considerable denial of reality. First, given his own admission of the substantial administrative and logistical difficulties facing CIVPOL in its efforts to train the HNP,²⁹⁵

²⁸⁴ *Id.*

²⁸⁵ See, e.g., Joe Mozingo, *Anarchy Reigns in Streets of Haiti*, MIAMI HERALD, Nov. 29, 2004 (reporting the fear-based refusal of Virio, a 20-year-old man, to go to the hospital despite having "a body riddled with so many white bullet wounds it looks like he has small pox"); GRIFFIN REPORT, *supra* note 1, at 11.

²⁸⁶ See, e.g., Interview with Robin Emmanuel, Bel-Air, Port-au-Prince (Jan. 16, 2005) [hereinafter Emmanuel Interview]; Interview with Jean Joseph Senat, Bel-Air, Port-au-Prince (Jan. 16, 2005) [hereinafter Senat Interview].

²⁸⁷ Resolution 1542, *supra* note 3, ¶ 7(l)(f).

²⁸⁸ Beer Interview, *supra* note 163.

²⁸⁹ Chagas Interview, *supra* note 166.

²⁹⁰ CIVPOL Commissioner Beer noted that as his unit does not retain its own medical personnel, "we are reliant on the international community for [medical] assistance." Beer Interview, *supra* note 163.

²⁹¹ Pereira Interview, *supra* note 252.

²⁹² *Id.*

²⁹³ *Id.*

²⁹⁴ *Id.*

²⁹⁵ See Beer Interview, *supra* note 163 (noting that because of the urgency of the circumstances on the ground, "[f]rom the CIVPOL standpoint, the particular attention to

treating the cause does not seem feasible in the short-term. In other words, since focusing CIVPOL's attention solely on training the HNP would effectively allow human rights abuses to continue unfettered for quite some time, MINUSTAH *must* treat the symptom by installing guards immediately at the hospitals. Second, to reiterate, of all MINUSTAH's mandated responsibilities, protection of civilians is the responsibility phrased in the most direct terms, omitting the qualifying words "to assist" or "to support" and obligating the mission instead directly "to protect."²⁹⁶ In short, MINUSTAH must assume responsibility where, as here, it is required both by mandate and, presumably, by conscience as well, to do so.

Phrased differently, MINUSTAH's affirmative obligation to safeguard innocent civilians cannot yield to its other, comparatively less affirmative obligations. Here, too, however, as seen through the experience of recent joint MINUSTAH-HNP operations, a troubling disconnect separates the natural language and meaning of the mandate from the practices of MINUSTAH soldiers on the streets.

According to a letter presented to us by Samba Boukman, on November 10, 2004, for example, throngs of civilians took to the streets of Bel-Air in a peaceful demonstration calling for the return of exiled President Jean-Bertrand Aristide. In a letter dated November 8, 2004, Mr. Boukman, the spokesperson for Mouvement Rezistans Baz Popile ("Mo.Re.Ba.P"), the organization responsible for the demonstration, formally solicited the specific assistance of MINUSTAH in providing security for the event.²⁹⁷ The letter placed MINUSTAH on notice not only of the date and time of the march, but of the route—specified according to the names of individual streets in the Bel-Air neighborhood—that the march would follow.²⁹⁸ Beyond logistics, the letter praised at once the peace-making and peace-keeping efforts of MINUSTAH and, as an appeal to those efforts, emphasized the peaceful nature of the planned demonstration.²⁹⁹ Mr. Boukman told us that MINUSTAH subsequently assured him by phone that

troops would be on-hand and that his request for security would thus be granted.

Ultimately on November 10, 2004, however, as Mr. Boukman recounted, MINUSTAH provided its presence but not the concomitant security it had promised and for which he had hoped.³⁰⁰ Mr. Boukman, his numbers corroborated by both typed and handwritten lists of victims, contended that during the demonstration, while MINUSTAH troops stood their ground, members of the HNP, dressed in black uniforms, arrived on the scene and killed seven people.³⁰¹ An additional 180 people were seized from Bel-Air on the same day, Boukman said, allegedly by way of arrests made by the HNP with the apparent cooperation of MINUSTAH troops.³⁰² Mr. Boukman and his group, moreover, affirmed having discovered five to eight of the disappeared at the mass burial site in Titanyen and an additional three at the general morgue of Port-au-Prince.³⁰³ Yet another, Jean-Francois Boniface, for whom Mr. Boukman offered a photograph as proof, reappeared several days later, Mr. Boukman told us, sprawled dead on the pavement in front of the local cathedral with bullet wounds obscuring the likeness of his exiled leader, Jean-Bertrand Aristide, once depicted on his t-shirt.³⁰⁴ Mr. Boukman contended that the HNP unit responsible for the killings and arbitrary arrests—all of which occurred in the presence of MINUSTAH, he alleged further—included officers normally assigned to the National Palace, the Ministry of the Interior and DDO.³⁰⁵

Delage Mesnel, a 26-year-old father of three children and husband of a pregnant wife, recounted a similar story in which the HNP shot him twice, once in the arm and once in the upper torso, during another pro-Aristide demonstration in Bel-Air on November 18, 2004. "MINUSTAH was all around, but they did nothing, they stood their ground," Mr. Mesnel recalled. "They helped the HNP by being there, but they did nothing [for us]."³⁰⁶ Mr. Mesnel stressed that as in his case, "[e]very time the HNP wants to kill or arrest people, they send in MINUSTAH first."³⁰⁷

professionalizing and developing the HNP has occurred much slower than expected").

²⁹⁶ Resolution 1542, *supra* note 3, ¶ 7(I)(f).

²⁹⁷ Copy of letter obtained during interview with Samba Boukman, *supra* note 283 [hereinafter Mo.Re.Ba.P letter]. The full text of the letter is on record with the authors of this report and may be made available upon request.

²⁹⁸ *Id.*

²⁹⁹ *Id.* (employing descriptive phrases such as "very peaceful" and "peaceful," the latter enclosed in, and highlighted by, asterisks).

³⁰⁰ Boukman Interview, *supra* note 283.

³⁰¹ *Id.*

³⁰² *Id.*

³⁰³ *Id.*

³⁰⁴ *Id.*

³⁰⁵ *Id.*

³⁰⁶ Interview with Delage Mesnel, Bel-Air, Port-au-Prince (Jan. 16, 2005) [hereinafter Mesnel Interview].

³⁰⁷ *Id.*

Even where MINUSTAH troops come second—that is, after the HNP has begun its operation—the result has been the same. On January 16, 2005, we witnessed first-hand an entirely peaceful pro-Aristide demonstration in Bel-Air. After the demonstration passed from view, we returned to an indoor community gathering area to continue our interviews of local residents and record their general impressions of MINUSTAH. Minutes later, we heard shots ring out around us. Partly because we feared exposing ourselves to the bullets and partly because our interviewees reassured us of the safety of their gathering area, we remained at our location and continued to conduct interviews. But when the shooting intensified, both in frequency and proximity, we decided to await the next lull and, when it came, flee the area. At approximately 5:20 p.m., we left the enclosed area where we had been conducting our interviews and began to make our way down a narrow alleyway and back towards the main street.

Despite arriving at the intersection with our hands held high in the air to indicate our peaceful intentions, we were greeted by the drawn rifles of MINUSTAH troops stationed safely in their tank. Only after lengthy pleadings in Portuguese by one delegation member did the MINUSTAH troops stop pointing their rifles at us, acknowledge the precariousness of our situation and subsequently grant us access to their tanks. Once inside, we asked the troops what had prompted their patrol of the neighborhood, and they responded by noting that members of the HNP had opened fire on the demonstration. The MINUSTAH troops then warned us to cover our ears; seconds later, the lieutenant in charge aimlessly released two grenades, followed by more “warning shots,” into the neighborhood. In other words, far from protecting the vulnerable, peacefully demonstrating civilians of Bel-Air—by, for example, targeting the HNP responsible for the violence in the first place—MINUSTAH enhanced their vulnerability by contributing directly to it. General Pereira did little to dismiss our and our interviewees’ allegations and, in fact, essentially confirmed them, when we spoke with him on January 17, 2005 about HNP-MINUSTAH interactions more generally. “We offer the police the protection they didn’t have,” he told us.³⁰⁸ When asked further whether such protection took the form of securing an area during HNP operations, he admitted to us that “we give space for the HNP to operate, yes, we do that.”³⁰⁹

³⁰⁸ Pereira Interview, *supra* note 252.

³⁰⁹ Pereira Interview, *supra* note 252.

Such passivity on the part of the MINUSTAH troops—effective complicity in the illegal, abusive tactics of the HNP—could not have been what the Security Council envisioned when it drafted Resolution 1542 and mandated that MINUSTAH provide “operational support to the Haitian National Police.”³¹⁰ Beyond the fact that such an interpretation would erroneously understand the word “support” without reference to the ultimate object of the supported activity—here, “the restoration and maintenance of the rule of law, public safety and public order in Haiti”³¹¹—it would also contravene MINUSTAH’s affirmative obligation, phrased directly and without mention of assisting or supporting other entities, to protect Haitian civilians.³¹²

To be sure, even the clause of the mandate obliging civilian protection, Section I(f), explicitly limits the responsibilities of MINUSTAH in providing such protection. First, such protection must be “within [MINUSTAH’s] capabilities and areas of deployment.”³¹³ Certainly, however, in the case of the demonstrations under consideration here, as well as in other scenarios similarly involving joint HNP-MINUSTAH operations,³¹⁴ the heavily armed MINUSTAH troops were capable of restraining the movement and activity of the HNP that took place, moreover, squarely within MINUSTAH’s “area of deployment.” Second, and seemingly more limiting, the protection of civilians by MINUSTAH must be provided, if at all, “without prejudice to the responsibilities of the Transitional Government and of police authorities.”³¹⁵ A close reading of such language, however, makes clear that the “without prejudice” qualification is also not as restrictive as it initially appears, as it applies not to every activity of the interim government and of the HNP, but only to their “responsibilities.” Unless such responsibilities include the perpetration of various forms of human rights abuse (*e.g.*, summary executions and mass, unwarranted arrests and detentions)—an absurd supposition, to be sure—MINUSTAH troops necessarily violate their mandate when they simply

³¹⁰ Resolution 1542, *supra* note 3, ¶ 7(I)(d).

³¹¹ *Id.* ¶ 7(I)(d).

³¹² Resolution 1542, *supra* note 3, ¶ 7(I)(f). It bears reiterating, moreover, that in previous U.N. missions charged with similarly “supportive” responsibilities, the peacekeepers assumed a far more proactive approach, producing dramatically dissimilar, more successful results. For a more extensive contextual analysis of the language of the MINUSTAH mandate, see *supra*, Section III.

³¹³ Resolution 1542, *supra* note 3, ¶ 7(I)(f).

³¹⁴ See *infra* Section IV.C.1.

³¹⁵ Resolution 1542, *supra* note 3, ¶ 7(I)(f).

secure the area or stand guard while members of the HNP commit abuses. Under such circumstances, the obligation to protect civilians, as articulated in Section I(f), is absolute and overrides MINUSTAH's responsibility to support the actions of the HNP. MINUSTAH cannot, in other words, "give space for the HNP to operate," as General Pereira admitted to commanding his troops.³¹⁶ General Pereira and MINUSTAH generally would do well to understand that its obligation to protect civilians, framed in direct terms, is its default responsibility, and that unconditional, blind support to, or assistance of, the HNP is the rare exception to that responsibility—not vice versa.

Beyond a failure to protect the physical safety of the civilian population of Bel-Air, the passivity of the MINUSTAH troops during these demonstrations additionally constituted a violation of that population's fundamental rights to freedom of expression and peaceful assembly. This is especially true when, as noted, protection of those rights had been requested and subsequently promised in advance. The principal U.N. instrument on civil and political rights, the International Covenant on Civil and Political Rights³¹⁷ ("ICCPR"), to which Haiti and Brazil, as well as all fifteen current members of the U.N. Security Council, are party,³¹⁸ guarantees the right to peaceful assembly and association³¹⁹ and the right to freedom of expression.³²⁰ The parallel regional instrument in the Inter-American system, the

³¹⁶ Pereira Interview, *supra* note 252.

³¹⁷ INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, Dec. 19, 1966, 99 UNT.S. 171 [hereinafter ICCPR].

³¹⁸ Haiti acceded to the ICCPR on May 6, 1991. Current U.N. Security Council members ratified, acceded to, or signed the ICCPR on the following dates: Algeria (ratified, Sept. 12, 1989); Argentina (ratified, Aug. 8, 1986); Benin (acceded, Mar. 12, 1992); Brazil (acceded, Jan. 24, 1992); China (signed, Oct. 5, 1998); Denmark (ratified, Jan. 6, 1972); France (acceded, Nov. 4, 1980); Greece (acceded, May 5, 1997); Japan (ratified, June 21, 1979); Philippines (ratified, Oct. 23, 1986); Romania (ratified, Dec. 4, 1974); Russian Federation (ratified, Oct. 16, 1973); United Kingdom (ratified, May 20, 1976); United Republic of Tanzania (acceded, June 11, 1976); United States of America (ratified, June 8, 1992).

³¹⁹ ICCPR, art. 21 ("The right of peaceful assembly shall be recognized."), art. 22(1) ("Everyone shall have the right to freedom of association with others...").

³²⁰ ICCPR, art. 19(2) ("Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice").

American Convention on Human Rights³²¹ ("ACHR"), to which Haiti³²² and Brazil are also parties, as well as the 1987 Haitian Constitution,³²³ affords similar protections to the Haitian people. In short, though not specifically enumerated in the MINUSTAH mandate, the rights to expression and peaceful assembly—manifested most commonly in the form of public demonstrations and protests—are among the human rights that MINUSTAH must assist in protecting and for whose abuse MINUSTAH must help "to ensure individual accountability."³²⁴ Effectively providing for such abuse in the first place by providing cover for its commission is a blatant violation of that responsibility.

IV.B.3. Interaction with Human Rights Organizations

*"to support the Transitional Government as well as Haitian human rights institutions and groups in their efforts to promote and protect human rights, particularly of women and children, in order to ensure individual accountability for human rights abuses and redress for victims"*³²⁵

At the time of the writing of this report, MINUSTAH has done remarkably little to support the efforts of Haitian human rights institutions, especially when one considers that its obligation to do so, as noted, is ultimately an obligation "to ensure individual accountability for human rights abuses and redress for victims."³²⁶ Rénan Hedouville of CARLI, himself a victim of persecution at the hands of both the media and the government,³²⁷ noted that while his organization occasionally meets with MINUSTAH to notify them of reported human rights violations, "they [MINUSTAH] do not help us at all."³²⁸ A similarly disconcerting situation exists at the National

³²¹ AMERICAN CONVENTION ON HUMAN RIGHTS, Nov. 22, 1969, OAS Treaty Ser. No. 36, 1144 UNT.S. 123 (1978).

³²² Haiti acceded to the ACHR on September 27, 1977.

³²³ CONSTITUTION OF THE REPUBLIC OF HAITI (1987), art. 28 ("Every Haitian has the right to express his opinions freely on any matter by any means he chooses"), art. 31 ("Freedom of unarmed assembly and association for political, economic, social, cultural or any other peaceful purposes is guaranteed").

³²⁴ Resolution 1542, *supra* note 3, ¶ 7(III)(a).

³²⁵ *Id.*

³²⁶ *Id.*

³²⁷ According to Mr. Hedouville, the government is currently prosecuting him for defamation, a criminal offense, seeking to send him to prison for one year as well as to close his organization's offices for five years and to obtain compensation in the amount of 15 million Haitian gourdes. Hedouville Interview, *supra* note 184.

³²⁸ Hedouville Interview, *supra* note 184.

Coalition for Haitian Rights (“NCHR”), where assistant program coordinator Marie Yolène Gilles characterized the help MINUSTAH provides to her organization as purely administrative, primarily in the form of sharing contact information, and not “substantive” in nature.³²⁹

The failure of MINUSTAH to support such organizations has assumed more indirect forms as well, often resulting from its comparable failure to comply with other provisions of its mandate—notably, subpart I(c), calling for the implementation of disarmament strategies, as well as others described below.³³⁰ The climate of violence that persists in the absence of disarmament has endangered the lives of many human rights lawyers and activists, frequently targeted for their perceived political agendas and affiliations.

Several interviewees with whom our delegation spoke expressed their fear and dismay with the pervasive insecurity that hampers their capacity to do their job effectively. Visibly moved by mention of the subject, Ms. Gilles of NCHR, for one, reported that she is “always under threat.”³³¹ “They watch where I live and come to my house with guns and wait outside,” Ms. Gilles stated. “Sometimes they call me just to tell me they’ll kill me.”³³² For Mario Joseph, a prominent and well-regarded Haitian human rights attorney, the threats assume an even greater number of forms. “Sometimes it’s threats over the telephone, sometimes it’s in the newspaper, sometimes there are vehicles on spy missions following me all day long,” Mr. Joseph recalled. “No matter what form, it’s pressure.”³³³

On occasion, the HNP has been responsible for similar forms of harassment and threat. One human rights investigator (“Ms. F.”), a national of the United States working for a prominent human rights organization in Haiti, though wishing to remain anonymous, reported an instance in which HNP officers literally prevented her from doing her job. Ms. F. told us that on January 8, 2005, at approximately 11:30 a.m., she was riding in a tap-tap,

a Haitian form of mass transportation, in the Martissant area of Port-au-Prince when she noticed three HNP officers, dressed in black, pointing their guns at a middle-aged man sprawled on the ground across the street.³³⁴ Ms. F. quickly stepped out of the tap-tap intending to document the incident and prevent a possible abuse by the mere fact of her presence, she told us. Before she could do either, she recalled, the police officers immediately took issue with her, calling her over to their side of the street and shouting that “as a human rights person, you cannot stay.”³³⁵ Ms. F. turned and noticed a line of women and children standing together on the opposite sidewalk with their hands on their heads. She went to join them, she said, thinking the officers would leave her alone if she were far enough away.³³⁶

Roughly two minutes later, Ms. F. estimated, she decided to take a picture of the man still sprawled on the ground, now across the street from her.³³⁷ Several officers immediately turned around and confronted Ms. F., she told us, pointing their guns at her from close range and demanding that she turn over her digital camera.³³⁸ In an effort to protect valuable investigative findings, Ms. F. refused, insisting that none of the pictures on her camera were of the HNP officers themselves. As the officers became increasingly aggressive, Ms. F. told them that she would erase all the pictures as soon as possible.³³⁹ The HNP officers ignored her pleas, and when she tried to remove the storage diskette from her camera, they seized the diskette, she told us.³⁴⁰ Ultimately, the police forced Ms. F. from the scene, she said, escorting her to the nearest tap-tap and demanding that she get in, which she did.³⁴¹

Ms. F.’s experience reflects the utter ineffectiveness of MINUSTAH and, specifically, CIVPOL forces in fulfilling their specifically mandated obligation to train the HNP, as discussed at length below.³⁴² In all such cases, no matter the source of the threats, MINUSTAH must work towards eliminating them. After all, common sense should tell MINUSTAH that

³²⁹ Interview with Marie Yolène Gilles, Assistant Program Coordinator, National Coalition for Haitian Rights, Port-au-Prince (Jan. 13, 2005) [hereinafter Gilles Interview]. To be fair, Representative of the U.N. High Commissioner for Human Rights in Haiti Mahamane Cisse-Gouro did tell our October delegation that he met with human rights NGOs on occasion. Cisse-Gouro Interview, *supra* note 171.

³³⁰ See *infra* Section IV.C.

³³¹ Gilles Interview, *supra* note 329.

³³² *Id.*

³³³ Joseph Interview, *supra* note 176.

³³⁴ Interview with Ms. F., Port-au-Prince (Jan. 11, 2005).

For a more complete account of the particular episode being recounted here, a copy of Ms. F.’s written statement, on file with the authors of this report, may be made available upon request.

³³⁵ *Id.*

³³⁶ *Id.*

³³⁷ *Id.*

³³⁸ *Id.*

³³⁹ *Id.*

³⁴⁰ *Id.*

³⁴¹ *Id.*

³⁴² See *infra* Section IV.C.1.

implied in its responsibility to support the efforts of Haitian human rights groups and institutions is an attendant responsibility to provide them with a sense of security and safety under which to operate. Where common sense fails, the law does not: such protection is precisely the responsibility prescribed by the 1998 U.N. Declaration on Human Rights Defenders.³⁴³ U.N. Secretary-General Kofi Annan, speaking at the NGO/DPI Conference later that year, was quick to emphasize of the true scope of its significance. "The Declaration rests on a basic premise: that when the rights of human rights defenders are violated, all our rights are put in jeopardy and all of us are made less safe."³⁴⁴ In other words, here, perhaps more than elsewhere, the interdependency of the several provisions of the MINUSTAH mandate is apparent: when MINUSTAH fails to comply with its responsibility to disarm armed groups and/or train members of Haitian police authorities, it necessarily fails, either directly or indirectly through the incapacitation of human rights defenders, in its greater responsibility to protect the civilian population of Haiti at large.

IV.C. Secure and Stable Environment

IV.C.1. Interaction with the Haitian National Police

*"To assist the Transitional Government in monitoring, restructuring and reforming the Haitian National Police, consistent with democratic policing standards, including through the vetting and certification of its personnel, advising on its reorganization and training, including gender training, as well as monitoring/mentoring members of the Haitian National Police"*³⁴⁵

The Haitian National Police ("HNP") works under the mantle of a well-deserved credibility gap.³⁴⁶

³⁴³ DECLARATION ON THE RIGHT AND RESPONSIBILITY OF INDIVIDUALS, GROUPS AND ORGANS OF SOCIETY TO PROMOTE AND PROTECT UNIVERSALLY RECOGNIZED HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, G.A. Res. 53/144, U.N. GAOR, 53d Sess., U.N. Doc. A/RES/53/144 (Mar. 8, 1999).

³⁴⁴ Statement of Kofi Annan, U.N. Secretary-General, NGO/DPI Conference (Sept. 14, 1998), available at http://www.humanrightsfirst.org/defenders/hrd_un_declare/hrd_declare_1.htm.

³⁴⁵ Resolution 1542, *supra* note 3, ¶ 1(b).

³⁴⁶ See, e.g., Interview with Leon Charles, Director, Haitian National Police, HNP Headquarters, Port-au-Prince (Jan. 13, 2005) [hereinafter Charles Interview] (telling our delegation that "we [in Haiti] have a very corrupt police" and describing refusing to send them alone into Cité Soleil or Bel-Air because they are likely to "overreact—

Normally riven by divisions of socio-economic status, language, political affiliation and geography, Haitians find ironic accord in their near-universal distrust and disapproval of the HNP. Its members are perceived, variously, as crooked, politicized, ineffective, and violators of human rights.³⁴⁷ Even after the purge of 500 officers following President Aristide's removal in February 2004, the police remain "very corrupted," according to HNP Director Leon Charles.³⁴⁸ Indeed, many contend that these officers were removed for their political affiliation, not their petty corruption or ineffectiveness. Provision of basic equipment, such as bullet-proof vests and vehicles, remains spotty.³⁴⁹ Finally, in keeping with their history, the police continue to violate human rights through intimidation and harassment of the civilian population, arbitrary arrest and detention, and frequent, unjustified use of deadly force. Raymond Lafontant, Jr., chief advisor to interim Prime Minister Gerard Latortue, told us that the HNP was "unreliable"—so much so that popular support in some areas for the former military was, in his view, justified.³⁵⁰

Concededly, reforming the HNP is a monumental task; unfortunately, MINUSTAH has proven ineffective in this regard. The civilian police component of the mission ("CIVPOL") has neglected to implement any systematic training program, and its attempts at monitoring and mentoring have been woefully inadequate. Indeed, it is by no means clear that MINUSTAH's presence has curtailed HNP abuses. To the contrary, widespread reports, some of which are chronicled in this document, suggest that human rights abuses by the HNP have continued and even escalated under MINUSTAH's watch. Far from preventing human rights abuses, MINUSTAH has at

sometimes they will strike chimères, sometimes they will strike civilian people"); Interview with Raymond Lafontant, Jr., Director of the Cabinet, Office of the Prime Minister, Port-au-Prince (Jan. 14, 2005) [hereinafter Lafontant Interview] (telling us that HNP forces "are not the best population of our men that we could have" and have been "unreliable"); Chagas Interview, *supra* note 166.

³⁴⁷ See, e.g., ICG HAITI REPORT, *supra* note 1, at 20 (noting that "since 1999-2000, in addition to its logistical shortcomings, the HNP has been weakened by politicization, corruption (notably drug-trafficking) and poor management" and that such activities and police abuse had by 2001 "contributed to the demoralisation and erosion of professional standards and complete loss of standing among with the people")

³⁴⁸ Charles Interview, *supra* note 346.

³⁴⁹ *Id.*

³⁵⁰ Lafontant Interview, *supra* note 346.

best turned a blind eye to them; at worst, it has facilitated them.

In interviews with our delegation, MINUSTAH officials described their mandate to support the HNP as "one of the most important" aspects of their mission.³⁵¹ The force included approximately 1,400 CIVPOL officers as of February 3, 2005.³⁵² According to CIVPOL Commissioner David Beer, his force's operations, especially with regard to training, were hampered by the slow roll-out of officers; not until mid-November 2004 did "substantial forces of CIVPOL arrive."³⁵³ Moreover, Commissioner Beer recalled, Port-au-Prince's dire security situation took CIVPOL by surprise, and the force had to postpone police training until it felt the country was more stable.³⁵⁴ Only now—eight months after CIVPOL's establishment—are there "a litany of things being addressed regarding training now that we have a better handle on the security situation," Commissioner Beer told our delegation.³⁵⁵

However, even by mid-January, when it had nearly reached mandated capacity,³⁵⁶ CIVPOL was not delivering the support the police needed, according to HNP Director Leon Charles. "We are not satisfied with the CIVPOL approach," he complained to our delegation, explaining that to reduce the rampant corruption among his officers, CIVPOL needed to have a "permanent presence" in police stations.³⁵⁷ As it was, Director Charles told us, CIVPOL appeared only during working hours, from 8:00 a.m. to 4:00 p.m.; its support in police operations in Port-au-Prince slums was infrequent and superficial; and it delivered little assistance in post-operation investigations, including registering and screening detainees.³⁵⁸

But the U.N. force's omissions are the tip of the iceberg. Rather than merely failing to improve police practices, MINUSTAH has exacerbated human rights abuses committed by the Haitian police, according to numerous witnesses and human rights leaders with whom we spoke. These HNP abuses—including arbitrary arrest and detention; indiscriminate firing; disappearances; and extrajudicial killings—continued

throughout the period of our research, and have perhaps escalated, under MINUSTAH's watch, according to widespread reports by human rights groups and journalists. In November 2004, Amnesty International documented reports of "incidents in which individuals dressed in black, wearing balaclavas and traveling in cars with Haitian National Police markings have cost the lives of at least 11 people."³⁵⁹ In a report issued by the Center for Human Rights at the University of Miami Law School on January 14, 2005, investigators related an eyewitness account of a mid-November joint operation that resulted in the deaths of two civilians and the wounding of two more.³⁶⁰ The report's author noted that "MINUSTAH forces, ostensibly there to help the HNP, sometimes complicate and intensify the imprecision and the violence" of joint operations.³⁶¹ Journalists representing dozens of international papers have reported "ever more accounts of people in police uniforms executing political opponents, kidnapping for ransom and terrorizing neighborhoods loyal to Aristide's Lavalas Family Party,"³⁶² and that "gunfights between pro-Aristide gangs and outgunned Haitian police backed by U.N. peacekeepers engulf entire neighborhoods, sending residents fleeing down alleyways."³⁶³

³⁵⁹ The same press release documents reports of HNP beatings of two civilians, including a 13-year-old boy, alleged to have occurred within the same 10-day period of the killings. Press Release, Amnesty International, Haiti: Amnesty International Calls on the Transitional Government to Set Up an Independent Commission of Enquiry into Summary Executions Attributed to Members of the Haitian National Police (Nov. 11, 2004) [hereinafter AI: Summary Executions], available at <http://web.amnesty.org/library/Index/ENGAMR360602004?open&of=ENG-HTI>; see also Public Statement, Amnesty International, Haiti: Illegal and Arbitrary Arrests Continue—Human Rights Hampered amid Political Violence, (Oct. 19, 2004) (describing the warrantless arrest of Lavalas leader Rev. Gerard Jean-Juste, during which he was dragged out of a church and beaten).

³⁶⁰ GRIFFIN REPORT, *supra* note 1, at 32-35.

³⁶¹ *Id.* at 31.

³⁶² See, e.g., *Anarchy Reigns in Streets of Haiti*, *supra* note 285.

³⁶³ Gary Marx, *U.N. Force Unable to Stem Violence in Chaotic Haiti*, CHI. TRIB., Dec. 14, 2004. The foreign press documented HNP abuses throughout the period of our research and continued to do so as the present report was being written. See also, e.g., Jane Regan, *Peacekeepers Have Yet to Disarm Haiti Gangs*, MIAMI HERALD, Feb. 11, 2005 (citing unnamed MINUSTAH official who said that in response to one "ambush" of a U.N. police patrol, "peacekeepers fired 500 rounds but suffered no casualties"); *Police Blamed in Haiti Killings*, *supra* note 158 (reporting the HNP's alleged summary execution of Abdias Jean in January as "one of the latest in a spate of

³⁵¹ Chagas Interview, *supra* note 166.

³⁵² *Id.*

³⁵³ Beer Interview, *supra* note 163; see also *Police Blamed in Haiti Killings*, *supra* note 158

³⁵⁴ Beer Interview, *supra* note 163 (noting the "previously unforeseen security situation").

³⁵⁵ *Id.*

³⁵⁶ See MINUSTAH: Facts and Figures, *supra* note 80

³⁵⁷ Charles Interview, *supra* note 346.

³⁵⁸ *Id.*

Our delegation discovered that, with the direct support of the U.N.'s superior firepower and protection, including armored vehicles, bullet-proof vests and helmets, the HNP has been more aggressive in its neighborhood sweeps than before MINUSTAH's arrival. Notably, before MINUSTAH's arrival, the HNP refused to enter certain neighborhoods. Now, in contrast, the HNP either conducts operations with U.N. troops at its back or begins neighborhood sweeps confident that, should their officers need back-up, they need only summon MINUSTAH.³⁶⁴ In effect, MINUSTAH has provided cover for abuses committed by the HNP during operations in poor, historically tense Port-au-Prince neighborhoods such as Bel-Air, La Saline, and lower Delmas. Rather than advising and instructing the police in best practices, and monitoring their missteps, MINUSTAH has been the midwife of their abuses. In essence, MINUSTAH has provided to the HNP the very implements of repression.

Not surprisingly, in the area of the "joint operation," MINUSTAH's police support has won the plaudits of Director Charles, the Haitian interim government, and U.S. embassy officials.³⁶⁵ Between October 2004 and January 2005, MINUSTAH and the HNP undertook numerous integrated endeavors within the slums of Port-au-Prince. The stated, official objective of such operations has been to establish security and stability in areas formerly controlled by gangs and plagued by situational violence. The mere presence of U.N. forces has done much to quell

summary executions poor neighborhoods that witnesses say were committed by the police"); Amy Bracken, *Aristide Loyalists Targeted in Raid*, MIAMI HERALD, Feb. 4, 2005 (reporting that, during a joint operation in Cité Soleil, "[o]ne resident . . . was shot and killed when he opened the door of his shack upon hearing heavy gunfire. Residents said police apparently mistook the 55-year old unemployed father for a gunman").

³⁶⁴ Indeed, MINUSTAH automatically provides back-up even to police operations with the potential for large numbers of civilian casualties. On February 10, 2005, the Haitian National Police stormed the base of former military Sergeant Remissainthe Ravix, in a residential section of Port-au-Prince, and called in MINUSTAH reinforcements. U.N. troops arrived immediately on the scene, along with their tanks and ammunition. Eventually, after assessing the situation, MINUSTAH pulled its troops out. "It is not in our mandate to destroy houses," MINUSTAH force commander Heleno Augusto Ribeiro Pereira explained to a reporter at the time. Jane Regan, *Violence Still Racks Haiti Despite U.N. Peacekeepers*, INTER PRESS SERVICE, Feb. 15, 2005.

³⁶⁵ See, e.g., Charles Interview, *supra* note 346; Lafontant Interview, *supra* note 346; Ms. N. Interview, *supra* note 170.

violence, police and government authorities told us; but, they added, operations often have included house searches and mass arrests.³⁶⁶ The frequency of these joint operations varies according to the neighborhood; in some places, operations occur several times per week.

Working together allows MINUSTAH and the HNP to leverage each other's strengths. MINUSTAH, as noted above, has superior firepower and defensive equipment,³⁶⁷ as well as forces more adequately trained to confront urban guerillas.³⁶⁸ Sometimes, officials from MINUSTAH and the police told us, U.N. Armored Personnel Carriers ("APC") ferry HNP officers into neighborhoods.³⁶⁹ Indeed, the police refuse to enter some neighborhoods alone, fearing reprisal by citizens who fear and distrust them.³⁷⁰ Additionally, the presence of mounds of garbage make many roads in poor neighborhoods impassable except by a military-type vehicle. MINUSTAH benefits from the HNP as well. The vast majority of U.N. forces do not speak Creole, making interaction with the Haitian population all but impossible.³⁷¹ Moreover, only the HNP has the authority to make arrests. Finally, the HNP are better able to identify targets for arrest—all too often, Aristide supporters, whether involved in illegal activity or not.

MINUSTAH officials confirmed what HNP Director Charles told us—namely, that during an operation, MINUSTAH APCs precede the arrival of the HNP or arrive carrying HNP officers within them.³⁷² MINUSTAH troops remain in the area, either in their vehicles or on foot-patrol, while the police survey the neighborhood,³⁷³ often entering homes and making

³⁶⁶ See Charles Interview, *supra* note 346; Lafontant Interview, *supra* note 346.

³⁶⁷ Charles Interview, *supra* note 346.

³⁶⁸ Lafontant Interview, *supra* note 346.

³⁶⁹ Chagas Interview, *supra* note 166; Charles Interview, *supra* note 346.

³⁷⁰ Charles Interview, *supra* note 346; Pereira Interview, *supra* note 252; Interview with Benjamin Max Grégois, Bel-Air, Port-au-Prince (Jan. 16, 2005) [hereinafter Grégois Interview]. Accordingly, as detailed in Section IV.B.2, *supra*, MINUSTAH has acted independently of the HNP in its occupation of Cité Soleil, where HNP officials consider the risk of entry too great.

³⁷¹ However, MINUSTAH authorities, and several civilians, notified us that detachments often included one or more translator. See Chagas Interview, *supra* note 166; Morenaud Interview, *supra* note 233; Lidwuine Interview, *supra* note 262.

³⁷² Chagas Interview, *supra* note 166; Charles Interview, *supra* note 346.

³⁷³ Pereira Interview, *supra* note 252.

warrantless arrests of alleged gang members or people who are illegally armed.³⁷⁴

The operations have won support from the Haitian authorities, who view them as demonstrations of force that restore much-needed order to poor neighborhoods. Additionally, a broad section of Haitian society—primarily those in the upper class of Port-au-Prince—also supports MINUSTAH's aggressive actions in the shantytowns. Their sentiments are found in much of Haiti's media.³⁷⁵ However, residents in the affected areas and human rights leaders take a dramatically different view.³⁷⁶ Several cases from one Port-au-Prince neighborhood, Bel-Air, illustrate how MINUSTAH's presence functions as a cover for HNP abuses.

Gerard Benjamin

On October 6, 2004, MINUNSTAH and the HNP conducted one of their first joint operations in Bel-Air. According to residents, the foray amounted to a total sweep of the area, including mass, warrantless arrests and house searches.³⁷⁷ Among those detained was Gerald Benjamin, a 28-year-old resident who, according to his mother, Betty Charles, was sitting on his porch eating breakfast at the time.³⁷⁸ Mr. Benjamin's mother also told us that he remained incarcerated in the National Penitentiary, as of mid-January, more than three months after his seizure.³⁷⁹

Benjamin Max Grégois, an eyewitness to the arrest, told us that U.N. tanks had entered the neighborhood around 8:30 in the morning or shortly thereafter, stationing tanks, more than ten in all, at nearly every major intersection.³⁸⁰ Then, Mr. Grégois told us, HNP forces exited the vehicles and entered houses, often with the assistance of MINUSTAH troops

³⁷⁴ See GRIFFIN REPORT, *supra* note 1, at 32-35 (providing the author's eyewitness account of such an operation, and reporting essentially the same chronology of events); Grégois Interview, *supra* note 370; Senat Interview, *supra* note 286; Emmanuel Interview, *supra* note 286.

³⁷⁵ One reason for this may be politically based incursions on freedom of the press. See, e.g., Carlos Lauria and Jean-Roland Chery, *Taking Sides*, Committee to Protect Journalists, July 26, 2004 (noting that journalists associated with Lavalas, or perceived to support the party, are harassed, intimidated or otherwise persecuted), available at http://www.cpj.org/Briefings/2004/haiti_7_04/haiti_7_04.h tml.

³⁷⁶ See e.g., Hedouville Interview, *supra* note 184; Joseph Interview, *supra* note 176.

³⁷⁷ Grégois Interview, *supra* note 370.

³⁷⁸ Interview with Betty Charles, Bel-Air, Port-au-Prince (Jan. 16, 2005) [hereinafter Betty Interview].

³⁷⁹ *Id.*

³⁸⁰ Grégois Interview, *supra* note 370.

wielding battering rams, and rounded up civilians.³⁸¹ According to Mr. Grégois, police seized Mr. Benjamin on his doorstep and stuffed him into an HNP vehicle marked "CIMO" along with an estimated eighty other residents.³⁸² In the days following her son's arrest, Ms. Charles visited him in the anti-gang unit and, later, in the National Penitentiary, she told our delegation.³⁸³ In both instances, Ms. Charles told us, Mr. Benjamin complained to her that he had been beaten, especially in the area of his genitals, while in detention. Ms. Charles told our delegation that her son's penis was swollen and bruised when he showed it to her.³⁸⁴

Ms. Charles also told our research team that her son's detention had been particularly difficult for her because she depended on him for financial support.³⁸⁵ Given the fact that 98% of the National Penitentiary's incarcerated have *not* been convicted of a crime,³⁸⁶ Mr. Benjamin probably has languished in prison without the benefit of judicial review at any stage, beginning with his warrantless arrest.

Jean Joseph Senat

MINUSTAH offers the HNP cover not only for detention practices that violate human rights norms, but, according to residents, also for actions that instill terror among the population of Bel-Air through the indiscriminate and wanton use of firepower.³⁸⁷ Intentional and stray bullets alike have allegedly caused numerous civilian casualties, according to newspaper and other reports.³⁸⁸ One alleged victim of the joint operation is Jean Joseph Senat, a 26-year-old former telecom technician. Mr. Senat told our delegation that at approximately 7:00 a.m. on

³⁸¹ *Id.*

³⁸² *Id.*

³⁸³ Betty Interview, *supra* note 378.

³⁸⁴ *Id.*

³⁸⁵ *Id.*

³⁸⁶ Charron Interview, *supra* note 187. On October 29, 2004, during our first delegation's visit to Haiti, the registry at the National Penitentiary indicated that, of the 1015 prisoners there, 994 (97.9%) were being held in pre-trial detention, while only twenty-one (2.1%) had been convicted.

³⁸⁷ See, e.g., Boukman Interview, *supra* note 283; Mesnel Interview, *supra* note 306; Emmanuel Interview, *supra* note 286.

³⁸⁸ See, e.g., GRIFFIN REPORT, *supra* note 1, at 32-35; AI: Summary Executions, *supra* note 359; *Summary Executions by Haitian Police and MINUSTAH Complicity*, AGENCE HAITIENNE PRESS, Jan. 26, 2005 (recounting alleged summary executions of Jimmy Charles, Ederson Joseph and journalist Abdias Jean, which reportedly "took place in broad daylight and in a systematic manner that was visible and audible to MINUSTAH").

Sunday, October 24, 2004, he was walking from his home in Bel-Air to his mother's residence.³⁸⁹ He noticed MINUSTAH tanks and police cars, he said, but thought little of it.³⁹⁰ Suddenly, he was hit by gunfire that narrowly missed his vital organs and instead knocked out four of his teeth, he told us.³⁹¹ The man who shot him, Mr. Senat recounted to us, was wearing a new camouflage uniform of the type normally worn by CIMO HNP forces.³⁹² At the time of our interview, we were able to observe the damage caused to Mr. Senat's face. Three months after the incident, Mr. Senat told us that he still had trouble eating due to his missing teeth.³⁹³

Robin Emmanuel

Robin Emmanuel, a 32-year-old Bel-Air resident and former dockworker, is another alleged victim of HNP abuses perpetrated under MINUSTAH's watch. Mr. Emmanuel told us that in the mid-morning of November 28, 2004,³⁹⁴ he visited his child's godmother, who lives on Rue Tiermas in Bel-Air. While returning home, Mr. Emmanuel recalled, he observed police officers and MINUSTAH troops perched atop the surrounding hills and patrolling the neighborhood's streets. Shortly afterward, before arriving at his destination, Mr. Emmanuel was shot in the torso, he told us.³⁹⁵ Although Mr. Emmanuel said he did not see who shot him, he told our delegation that his child's godmother saw members of the HNP pointing their guns at him.³⁹⁶ Mr. Emmanuel's wound was not fatal; however, it was serious.

Aside from allegedly facilitating HNP's arbitrary arrests and infliction of civilian casualties, MINUSTAH, according to political leaders in Bel-Air, has stood by, failed to prevent, and therefore implicitly condoned the HNP's killings and mass arrests at peaceful protests. Section IV.B.2, *supra*, contains several first-hand accounts of such allegations, as documented by our January delegation to Haiti. Since then, the situation has likely deteriorated further. On February 28, 2005, about 2,000 Aristide supporters, unarmed and peaceful, marched through Bel-Air to mark the anniversary of Aristide's ouster. MINUSTAH troops were monitoring the demonstration, according to

newspaper reports.³⁹⁷ Three trucks, each filled with fifteen to twenty masked HNP officers, pulled in front of the demonstrators, some of whom began cursing at the police. The police responded by firing three tear gas grenades and shooting indiscriminately into the crowd, killing two.³⁹⁸ According to reports, MINUSTAH did not stop them.³⁹⁹

MINUSTAH officials disclaim all responsibility for abuses committed by the HNP during joint operations. When our delegation asked who is responsible for investigating inappropriate official behavior during joint operations, Lt. Chagas, assistant to MINUSTAH Force Commander Pereira, demurred, "it's a complicated business."⁴⁰⁰ Lt. Chagas went on to explain to our research team that alleged misbehavior by MINUSTAH troops would be investigated by the U.N. However, he told us, "if it is on the HNP side, there is not much that we can do" because the HNP operates under Haitian authority.⁴⁰¹ MINUSTAH's "hands-off" posture regarding investigations of abuses during HNP and joint operations is reflected in its similar stance toward arrestees: according to newspaper reports, MINUSTAH claims no responsibility for the HNP's treatment of civilians detained during joint operations.⁴⁰²

This abdication of responsibility for HNP abuses—and the profound accountability gap it creates—is troubling for at least two reasons. First, it directly contradicts MINUSTAH's mandate, which expressly requires the mission to assist with "monitoring, restructuring and reforming" the HNP.⁴⁰³ The language of this obligation, as argued above,⁴⁰⁴ is far more robust and detailed than similar provisions in previous U.N. peacekeeping mandates. But even if MINUSTAH's responsibilities and authority with regard to police reform were as limited as its officials contend, the refusal to investigate abuses committed "by the other side" is severely misleading in the

³⁸⁹ Senat Interview, *supra* note 286

³⁹⁰ *Id.*

³⁹¹ *Id.*

³⁹² *Id.*

³⁹³ *Id.*

³⁹⁴ Emmanuel Interview, *supra* note 286.

³⁹⁵ *Id.*

³⁹⁶ *Id.*

³⁹⁷ Joe Mozingo, *Two Killed in Port-au-Prince Protest*, MIAMI HERALD, Mar. 1, 2005.

³⁹⁸ Joe Mozingo, *U.N. Ambassador Denounces Police Brutality*, MIAMI HERALD, Mar. 3, 2005.

³⁹⁹ *Two Killed in Port-au-Prince Protest*, *supra* note 397 (noting that "[p]eacekeepers . . . stood by as the attack occurred" and that "peacekeepers didn't move as the chaos unfolded within their sight.")

⁴⁰⁰ Chagas Interview, *supra* note 166.

⁴⁰¹ *Id.*

⁴⁰² See, e.g., *U.N. Peacekeepers Reject All Responsibility for the Safety of Their Prisoners*, AGENCE HAITIENNE PRESS, Jan. 26, 2005.

⁴⁰³ Resolution 1542, *supra* note 3, ¶ 7(I)(b).

⁴⁰⁴ See *supra* Section III.

context of joint operations, in which MINUSTAH is necessarily complicit. Were it not for MINUSTAH's presence, protection, and equipment, the HNP likely could not conduct its neighborhood sweeps in the first place. MINUSTAH thus bears significant responsibility for any and all abuses in joint operations.

The most charitable assessment of MINUSTAH with regard to the police reform portion of its mandate is one of utter ineffectiveness. Far more disconcerting is the widespread evidence that MINUSTAH may have actually facilitated and exacerbated police abuses, especially during joint operations. By providing protection and equipment to the HNP, and by refusing to take responsibility or to hold the HNP to account for the abuses its officers commit during these operations, MINUSTAH has engaged in a dangerous form of complicity. Such complicity violates the letter and spirit of MINUSTAH's mandate, and, indeed, perverts the entire enterprise of U.N. peacekeeping.

IV.C.2. *The National Penitentiary and the Corrections System*

*"To assist with the restoration and maintenance of the rule of law, public safety and public order in Haiti through the provision inter alia of operational support to the Haitian National Police and the Haitian Coast Guard, as well as with their institutional strengthening, including the re-establishment of the corrections system"*⁴⁰⁵

The National Penitentiary, in Port-au-Prince, is yet another stain on Haiti's interim government and a symbol of the failures of MINUSTAH, whose mandate requires it to assist with the "re-establishment of the corrections system."⁴⁰⁶ Despite repeated warnings about inhumane prison conditions and serious security risks, neither CIVPOL nor MINUSTAH has made substantial efforts to remedy the situation.⁴⁰⁷ Their neglect came to fruition on February 19, 2005, when armed assailants attacked the National Penitentiary, and nearly half of the facility's more than 1,000 prisoners escaped.⁴⁰⁸

⁴⁰⁵ Resolution 1542, *supra* note 3, ¶ 7(I)(d).

⁴⁰⁶ *Id.*

⁴⁰⁷ CIVPOL announced that it had opened an investigation into the prison deaths in mid-January 2005, more than six weeks after the incident. *CIVPOL Announces Inquiries into Fort National and National Penitentiary Incidents*, AGENCE HAITIENNE PRESS, Jan. 17, 2005; see also Beer Interview, *supra* note 163.

⁴⁰⁸ NCHR Prison Press Release, *supra* note 91

The attack happened in broad daylight, at 3:15 p.m. on a Saturday afternoon. Newspaper reports have suggested that the prison break was the work of only a handful of assailants who, armed with automatic weapons, simply entered through the prison's front doors.⁴⁰⁹ As no one inside the prison was shot, Haitian officials assume that prison guards were complicit.⁴¹⁰

MINUSTAH's acts of omission should not be overlooked. In the months preceding the outbreak, ample warnings about the crisis in the penitentiary came to MINUSTAH. As noted in Section IV.B.1, in November 2004, UNDP representative Regis Charron issued a report, he told our delegation, that warned that the prison was on the verge of catastrophe.⁴¹¹ His fears were realized on December 1, 2004, when, as noted earlier, ten prisoners were killed, and dozens more injured, in a massacre.⁴¹² On December 16, 2004, Mr. Charron delivered a presentation to CIVPOL on the massacre and its causes.⁴¹³ Nearly one month later, CIVPOL contacted him to investigate the incident; their response was inadequate, Mr. Charron told us.⁴¹⁴

In the roughly three months between the massacre and the outbreak, others sounded alarm bells. Sonny Marcellus, the former prison warden, told one reporter he had requested extra MINUSTAH troops to guard the penitentiary two days before the escape; in addition, weeks earlier, the warden allegedly requested more personnel, ammunition and guns.⁴¹⁵ The mere fact of the massacre itself should have sounded the alarm for U.N. authorities. U.S. Ambassador James Foley put it well in a statement to the *Miami Herald*, noting that "[g]iven that there was an attempted breakout of the prison on December 1, it's unclear why it wasn't better guarded by national or international authorities," he told a reporter.⁴¹⁶

Prison conditions themselves should have put MINUSTAH authorities on notice. As Mr. Charron told us, and as human rights groups in Haiti have

⁴⁰⁹ Reed Lindsay, *A Murky Prison Mystery*, TORONTO STAR, Feb. 27, 2005.

⁴¹⁰ *Id.*

⁴¹¹ Mr. Charron informed other outlets about his warning. See IJDH PRISON REPORT, *supra* note 90; *Massacre in the 'Titanic'*, *supra* note 186.

⁴¹² IJDH PRISON REPORT, *supra* note 90.

⁴¹³ Charron Interview, *supra* note 187.

⁴¹⁴ *Id.*

⁴¹⁵ *Murky Prison Mystery*, *supra* note 409. Mr. Marcellus was fired after the escape.

⁴¹⁶ Joe Mozingo, *Year After the Fall of Aristide, Haiti Still Precarious*, MIAMI HERALD, Feb. 28, 2005.

documented, conditions at the National Penitentiary have been inhumane, and had deteriorated further over the past few months.⁴¹⁷ As noted earlier, less than two percent of its more than 1,000 incarcerated have been convicted of any crime.⁴¹⁸ Cells are overcrowded; some contain three times as many prisoners as they were designed to support.⁴¹⁹ Mattresses are scarce,⁴²⁰ even for tuberculosis patients at the infirmary.⁴²¹ Sanitation and plumbing facilities are grossly insufficient.⁴²² There is not enough food, and what food exists is of low quality.⁴²³ The environment offered the perfect breeding ground for chaos and resistance, according to Mr. Charron. "The kind of . . . sub-human conditions put inmates in the mindset of revolt," Mr. Charron told our January delegation.⁴²⁴

The prison escape of February 19 has been described as "astonishing."⁴²⁵ Even more astonishing was the failure of MINUSTAH to prevent the outbreak. Although repeatedly warned of impending catastrophe—by a UNDP officer, by prison officials, by a massacre, and by horrific prison conditions—MINUSTAH failed to take even minimal steps to avert disaster.

IV.C.3. Disarmament

*"To assist the Transitional Government, particularly the Haitian National Police, with comprehensive and sustainable Disarmament, Demobilization and Reintegration (DDR) programmes for all armed groups, including women and children associated with such groups, as well as weapons control and public security measures"*⁴²⁶

MINUSTAH's prolonged failure to implement a comprehensive Disarmament, Demobilization and Reintegration ("DDR") program has been amply documented and roundly criticized.⁴²⁷ As of this

writing, MINUSTAH still had not instituted a comprehensive disarmament campaign, nor had it effectively pressed the Haitian interim government to do so.⁴²⁸ MINUSTAH's failure in DDR violates the letter and spirit of its mandate in at least three ways. First, not collecting arms has allowed terror to flourish in many areas, especially in poor neighborhoods. Second, the actions of MINUSTAH and the interim government that could generously be characterized as disarmament—namely, compensation payments to former military and neighborhood sweeps—contravene the spirit of MINUSTAH's mandate. The payments threaten to entrench the FAd'H further, while neighborhood sweeps tend to target poor Lavalas supporters only, thus fostering a climate of one-sidedness and impunity. Third, MINUSTAH's failure to institute disarmament in a timely manner has jeopardized the restoration of the rule of law in Haiti, and is a special threat to the freedom and fairness of the elections slated for late 2005. Unless MINUSTAH quickly implements a comprehensive and evenly applied disarmament plan, the future of human rights development in Haiti will be further undermined.

MINUSTAH is divided into three sections: one is military; two others are devoted to civilian matters, such as human rights, civilian policing, humanitarian affairs, and DDR.⁴²⁹ Most of MINUSTAH's progress has been in the area of military matters; DDR, like other civilian aspects of MINUSTAH's mission, has languished. "Up to now, there has been no disarmament," a senior government official admitted candidly to us in January.⁴³⁰

MINUSTAH estimates that there are 13,000 to 18,000 illegal weapons in Haiti, and about 25,000 potential participants in a disarmament program.⁴³¹

Aristide gunmen, MINUSTAH still has been unable to effectively disarm gangs of Aristide supporters and foes").⁴²⁸ On March 13, 2005, as this report went to press, the interim government held a ceremony at which dozens of ex-FAd'H surrendered seven dilapidated guns marking the official beginning of disarmament. *Paltry Disarmament in Haiti*, N.Y. TIMES, Mar. 14, 2005, at A8. Meanwhile, CIVPOL Commissioner Beer was quoted as demanding that the government "confront and contribute to the issue of disarmament, reintegration and remobilization [sic]" of the former military. *Latin American Weekly Report*, Mar. 15, 2005. We are heartened by this first, albeit small, step toward disarmament, as well as by Commissioner Beer's advocacy, but we reiterate the need, and our hope, for continued progress.

⁴²⁹ Chagas Interview, *supra* note 166.

⁴³⁰ Lafontant Interview, *supra* note 346.

⁴³¹ Desmond Molloy, *Disarmament, Demobilization and Reintegration Section, Strategic Plan*, at 9 (Jan. 16, 2005)

⁴¹⁷ Charron Interview, *supra* note 187.

⁴¹⁸ *Id.*

⁴¹⁹ IJDH PRISON REPORT, *supra* note 90.

⁴²⁰ Charron Interview, *supra* note 187.

⁴²¹ *Id.*

⁴²² *Id.*

⁴²³ *Id.*

⁴²⁴ Charron Interview, *supra* note 187.

⁴²⁵ *Murky Prison Mystery*, *supra* note 409.

⁴²⁶ Resolution 1542, *supra* note 3, ¶ 7(I)(c).

⁴²⁷ See e.g., ICG HAITI REPORT, *supra* note 1; RFK REPORT, *supra* note 1; *Peacekeepers Have Yet to Disarm Haiti Gangs*, *supra* note 363 (reporting that "despite all of its recent progress in pacifying parts of Haiti and setting up new bases in Port-au-Prince slums often controlled by pro-

However, at the time of the writing of this report, more than eight months after MINUSTAH's arrival, its Disarmament, Demobilization and Reintegration campaign remained in its planning stages. Only in February 2005, more than seven months after MINUSTAH's deployment, had the transitional government formed a planning organization for disarmament,⁴³² the National Commission for DDR.⁴³³

Although it helped launch the National Commission, MINUSTAH has done little outside the boardroom. A planning presentation prepared by MINUSTAH gravely predicts that DDR will require "a multidimensional, innovative and holistic approach" and lays out a process that would mix voluntary and involuntary disarmament,⁴³⁴ create disarmament centers where ex-combatants would receive job training in return for laying down their arms,⁴³⁵ and destroy illegally held weapons.⁴³⁶ We laud these tentative plans towards the establishment of a disarmament program. But the fact that MINUSTAH has failed to take steps necessary to implement their plans is profoundly disturbing.

Officials from the government and MINUSTAH offer several reasons for the shocking delay in disarmament. Raymond Lafontant, Jr., then a senior advisor to Interim Prime Minister Gerard Latortue,⁴³⁷ told our January delegation that disarmament requires the government to "make some decree, or pass a law, to do these things. What will be the protocol?"⁴³⁸ No such law, decree or protocol has been announced, he told us: "We think about [disarmament], but we don't have a document for it. In a country like ours, [disarmament] will be a long process—it won't be done in three months. That's why we're making plans, proposing ideas, negotiating, dialoguing, on how to deal with this subject 'disarmament.'"⁴³⁹ Mr.

Lafontant further provided that Haitians are culturally attached to weapons, making disarmament a particularly hard sell. "All our history we have had weapons in our hands. Those who would take away our weapons," he said, "would force us to become slaves."⁴⁴⁰

MINUSTAH officials in the DDR department offered our delegation similar, comparably specious, justifications for the difficulties and delays in disarming the population. "Constraints" listed in the DDR department's planning documents include a cultural "affinity to the weapon"⁴⁴¹ and "violence blessed by Voodoo."⁴⁴² A comparable sense of futility pervades MINUSTAH's military force. Lt. Carlos Chagas told us that disarmament efforts thus far have been largely ineffective, collecting only a minor quantity of weapons, because the vast majority of arms are small, and easily hidden. "Forced disarmament is most effective for big weapons,"⁴⁴³ he told us. Lt. Chagas was recently quoted in the *Miami Herald* arguing against quick action. "In peacekeeping missions, patience and restraint is the most important thing," he said. "We don't want to create worse wounds than we already have."⁴⁴⁴

Another of MINUSTAH's explanations for its delay in implementing a DDR program is the familiar refrain that the peacekeepers were simply not prepared for the dire security situation that awaited them upon arrival, and that the slow roll-out of troops to Haiti further impeded MINUSTAH's progress on civilian matters, including DDR.⁴⁴⁵ In this context, MINUSTAH and CIVPOL officials told us, the troops were required to do a sort of triage: first stabilizing the environment, and then proceeding to civilian matters, such as DDR.⁴⁴⁶

But the troops have been up to nearly full capacity since December. Not making disarmament a priority has had a disastrous effect on the well-being of the Haitian people, especially the poor. Disarmament, after all, is not merely a civilian matter, but one inextricably tied to security and stability. Indeed, the only activities that the government and MINUSTAH cast as disarmament—confiscation of illegal weapons

[hereinafter *DDR Strategic Plan*]. Mr. Molloy provided our delegation with an electronic copy of the plan on January 23, 2005.

⁴³² *Id.* at 11-12.

⁴³³ *Haitian Government Sets Up Disarmament Commission*, (Haitian Metropole radio broadcast, Feb. 7, 2005).

⁴³⁴ *DDR Strategic Plan*, *supra* note 431, at 35.

⁴³⁵ *Id.* at 33.

⁴³⁶ *Id.* at 32.

⁴³⁷ According to newspaper reports, Mr. Lafontant has since taken a leave of absence pending investigation of his alleged role in a rice scandal. *See, e.g., Haiti PM Fires Two Aides*, AGENCE FRANCE PRESSE, Jan. 24, 2005. Lafontant was accused of involvement in the sale of rice meant for free distribution to the poor.

⁴³⁸ Lafontant Interview, *supra* note 346.

⁴³⁹ *Id.*

⁴⁴⁰ *Id.*

⁴⁴¹ *DDR Strategic Plan*, *supra* note 431, at 5.

⁴⁴² *Id.*

⁴⁴³ Chagas Interview, *supra* note 166.

⁴⁴⁴ *Peacekeepers Have Yet to Disarm Haiti Gangs*, *supra* note 363.

⁴⁴⁵ *See, e.g., id.*; Pereira Interview, *supra* note 252; Beer Interview, *supra* note 163.

⁴⁴⁶ Pereira Interview, *supra* note 252; Beer Interview, *supra* note 163.

during neighborhood sweeps by MINUSTAH and the HNP, and the interim government's payments to the former military—actually *erode* the country's stability and security. Further, they are scarcely part of the comprehensive, evenly applied program envisioned by Security Council Resolution 1542.

In December 2004, the interim government paid to the former military the first of three installments of an indemnity,⁴⁴⁷ allegedly compensation for the military's "illegal" disbanding by former President Aristide in 1994. Commentators have suggested that the interim government is, in essence, attempting to curry favor with the former soldiers,⁴⁴⁸ whom Interim Prime Minister Gerard Latortue called "freedom fighters" shortly after last year's coup,⁴⁴⁹ and to dissuade the soldiers from overthrowing its regime. It is estimated that the payments, intended to reach between 5,000 and 8,000 former soldiers, will cost U.S. \$29 million.⁴⁵⁰ Haitian authorities did not link the first installment to the former military's turnover of weapons. However, the interim government has pledged that further payouts will be conditioned first, on the former military's exit from local police stations, and second, on the turnover of their weapons.⁴⁵¹

Despite the interim government's insistence that the payment is part of its disarmament plan, the strategy sets a dangerous precedent. A U.S. embassy official told us that the government's payments to former military—without requiring, in return, that the ex-soldiers to give up their weapons—"is, at the very least, troublesome in our view."⁴⁵² Indeed, paying the military an indemnity functions as an acknowledgment that their disbanding was illegal, and that the military is actually entitled to exist. Far from laying the groundwork for the ex-military's eventual disarmament, the indemnity payments actually undermine disarmament by signaling that the military is entitled to an institutional role and to its weapons. Further, paying the former military implicitly recognizes, and thus affirms, the threat to national stability that the former military, given its history of toppling governments, represents. As it is,

⁴⁴⁷ *Haitian Premier Pays Compensation to Demobilized Soldiers on 28 December* (Radio Galaxie radio broadcast, Dec. 29, 2004).

⁴⁴⁸ See, e.g., DeWayne Wickham, *Payoffs to Haiti's Renegade Soldiers Won't Buy Peace*, USA TODAY, Jan. 4, 2005.

⁴⁴⁹ See Kirk Semple, *Haiti's New Cabinet and Rebels Hit the Road*, N.Y. TIMES, Mar. 21, 2004.

⁴⁵⁰ *Life in Haiti Remains Bleak After Ouster* *supra* note 93.

⁴⁵¹ Lafontant Interview, *supra* note 346.

⁴⁵² Ms. N. Interview, *supra* note 170.

the former military considers itself exempt from any disarmament campaign MINUSTAH would start. "We're not covered by MINUSTAH's disarmament mandate," Felix Wilso, national spokesman for FAd'H, told our January delegation.⁴⁵³ Demanding nothing in return for "back pay" legitimizes the former military's stance, while publicly underscoring the interim government's cowardice.

MINUSTAH's neighborhood sweeps represent only another of its half-hearted efforts at disarmament. Often in conjunction with the HNP, MINUSTAH has been conducting operations to establish security in downtrodden neighborhoods such as Bel-Air, Cité Soleil, lower Delmas and La Saline. The operations have resulted in the involuntary disarmament of suspected gang members and others who are illegally armed. They have also resulted in scores of alleged human rights violations, including arbitrary arrests and detentions, unwarranted searches, and extrajudicial killings.⁴⁵⁴ Because MINUSTAH's operations fail to address other armed groups, such as the ex-military and anti-Lavalas gangs, they justify the perception that MINUSTAH acts solely against Lavalas supporters, and thus contribute to a climate of impunity and uneven justice in Haiti. As Haitian human rights advocate Rénan Hedouville told us, "[c]urrently, the government does not intend to start a disarmament program with these groups, with the exception of Lavalas."⁴⁵⁵

Moreover, there are few signs that these ad hoc attempts at disarmament, such as they may be intended, actually improve security in the targeted neighborhoods.⁴⁵⁶ During our January visit, we

⁴⁵³ Interview with Felix Wilso, FAd'H National Spokesman, FAd'H headquarters, Petit Goave (Jan. 15, 2005) [hereinafter Wilso Interview].

⁴⁵⁴ For a more detailed description and analysis of MINUSTAH's operations, see Sections IV.B.2 and IV.C.1., *supra*.

⁴⁵⁵ Hedouville Interview, *supra* note 184.

⁴⁵⁶ According to various Haitian human rights advocates, violence has increased in certain neighborhoods despite the MINUSTAH sweeps, Haitian human rights advocates report. See, e.g., Gilles Interview, *supra* note 329 (noting that, because of the peacekeepers' failure to disarm, "The violence is still there and even increasing in some neighborhoods. There are still some no-man's lands in the city... All we've seen is that they have a lot of troops going all around the country, discovering it"); see also *Anarchy Reigns in Streets of Haiti*, *supra* note 285 (reporting that "In the last two months, warring gangs—and what many slum residents claim are government death squads—have trapped tens of thousands of Haiti's poorest citizens in a deadly state of anarchy where rule is determined by which groups of young men have guns).

observed that in Cité Soleil, for instance, where MINUSTAH peacekeepers seized control on December 14, 2004 and continued to patrol, residents were still threatened by gang violence. Because gangs still controlled significant portions of the neighborhood, notably the entrance, residents of lower Cité Soleil told us that their movement within and out of the neighborhood was impeded. Shops remained shuttered, buses did not travel on the main road, and fearful teachers refused to come to work. Marie Helene Tatille, a 54-year-old resident of Cité Soleil, told us that “[o]ur children have not been able to go to school for four months.” She explained, “The school in our community is run by sisters who live in Port-au-Prince, and they have been unable to come here because there has been no regular transportation.” She continued, “We do not know when the transportation will run regularly again.”⁴⁵⁷

The lack of transportation is not the only impediment to schools’ operation—gang violence plays a significant role as well. Twenty-four-year-old Wolker Paul Roc, a resident of Cité Soleil, told us that “[a]s soon as there is a feeling of calm, a feeling that things are getting better, the gangs [from upper Cité Soleil] start shooting again and people become afraid to enter the community.”⁴⁵⁸

Civilian casualties in Cité Soleil, as in other poor neighborhoods, can also be traced to the failure of MINUSTAH to implement a comprehensive disarmament program, as argued in several case descriptions set forth above.⁴⁵⁹ Those accounts, however, by no means stand alone. As of the writing of this report, newspapers accounts told of mounting deaths and injuries from gang warfare. One especially headline-grabbing story involved the deaths of four and injuries of nine during a shoot-out outside the National Palace, while former U.S. Secretary of State Colin Powell was there visiting.⁴⁶⁰ On January 14, 2005, during our delegation’s January visit to Haiti, two reporters from *La Nouveliste* were severely beaten by gangs in Bel-Air and had to be hospitalized for their injuries.⁴⁶¹

⁴⁵⁷ Interview with Marie Hélène Tatille, Cité Soleil, Port-au-Prince (Jan. 12, 2005).

⁴⁵⁸ Interview with Wolker Paul Roc, Cité Soleil, Port-au-Prince (Jan. 12, 2005).

⁴⁵⁹ See *supra* Section IV.B.2.

⁴⁶⁰ See Jacqueline Charles, *Gunfight Erupts Close to Powell in Haiti*, MIAMI HERALD, Dec. 2, 2004.

⁴⁶¹ See Press Release, Reporters Without Borders, *Aristide Supporters Attack Newspaper Reporters in Port-au-Prince* (Jan. 18, 2004).

These well-publicized cases, as noted, are merely the tip of an iceberg that all too often slams into poor neighborhoods. Newspaper reports offer estimates ranging from 100 to 406 civilians killed as a result of gun violence in Haitian slums since September 30, 2004.⁴⁶² Our delegation interviewed political leaders in poor neighborhoods who cited a far higher number of casualties. John Joseph Joel, a community leader in Cité Soleil, told our delegation that fifty-one individuals had been killed in the area between September 30, 2004 and January 12, 2005, the date of our interview.⁴⁶³ Samba Boukman, an activist leader in Bel-Air, gave our delegation the names of eighty-four people from Bel-Air allegedly missing in the period between the coup and December 14, 2004. Both Mr. Joel and Mr. Boukman corroborated their claims with carefully hand-written or typed lists.

Even more troubling are allegations that MINUSTAH’s neighborhood sweeps and operations have themselves resulted in civilian casualties. Our delegation interviewed several alleged victims, and/or their grieving family members, of MINUSTAH’s neighborhood sweeps, as detailed above.⁴⁶⁴

If allegations of MINUSTAH complicity in civilian deaths are true, then MINUSTAH’s neighborhood sweeps and their stray bullets have directly caused civilian casualties. But even if MINUSTAH’s standard account is to be believed—that is, if civilians were killed by bullets discharged from gang members’ guns, not MINUSTAH’s—these deaths, as noted above in the case of two-year-old Herlens Henri, can still be traced to MINUSTAH’s failure to fulfill its mandated responsibility of disarming gang members. Finally, ongoing violence by armed members of society gives MINUSTAH an easy out: had MINUSTAH implemented an effective disarmament program early on, it would have been harder for the force to attribute civilian casualties to gangs.

⁴⁶² *U.N. Force Unable to Stem Violence in Chaotic Haiti*, *supra* note 363 (estimating more than 100 people killed in “political clashes” between September 30, 2004 and December 14, 2004); Peter Prengaman, *Haiti’s Interim Government Announces ‘Dialogue Commission’*, ASSOCIATED PRESS, Feb. 14, 2005 (estimating that “more than 250 people have died since September”); *Peace Eludes U.N. ‘Blue Helmets’*, *supra* note 8 (citing estimates that between 250 and 406 deaths by gunshot have occurred in Port-au-Prince since October “depending on who’s counting”).

⁴⁶³ Interview with John Joseph Joel, Cité Soleil, Port-au-Prince (Jan. 12, 2005).

⁴⁶⁴ See *supra* Section IV.C.

MINUSTAH's prolonged failure to disarm has resulted in ongoing violence in poor neighborhoods, an result that is alarming in and of itself. The violence, however, is further compounded by the fact that most Haitians—especially the urban poor—lack access to safe medical treatment. A random bullet in Port-au-Prince's slums thus does more damage than it would in a developed country. In some areas, showing up at a hospital with a bullet wound leaves patients vulnerable to police abuse.⁴⁶⁵ On a larger level, Haiti does not have the legal infrastructure to prosecute crimes committed by illegal guns: the National Penitentiary is notoriously overcrowded, and an enormous judicial backlog means that many prisoners never come to trial.

Moreover, MINUSTAH's failure to disarm the population effectively leaves civilians living under constant threat and, accordingly, more inclined to support the former military. Though illegally armed, counter-democratic, and historically prone to commit human rights abuses, the former military has gained support from some segments of the Haitian population, who reason that the military at least provides security to civilians in some Haitian cities.⁴⁶⁶ Sympathies toward the former military exist among the rural population, urban elites, and even in the highest corridors of political power. "As we are right now, we need an army," Raymond Lafontant, Jr., advisor to interim Prime Minister Latortue, told our delegation.⁴⁶⁷ Among the reasons he cited was the need to contain insurgents and bandits.⁴⁶⁸ That the interim government relies on an illegitimately armed force to maintain law and order says much about MINUSTAH's failure to secure the country in a legal manner.

Finally, the prolonged failure of MINUSTAH to disarm all armed factions comprehensively—and the security vacuum that failure creates—augurs poorly for the upcoming elections. The first round of presidential elections is scheduled for November 13, 2005, less than eight months from the publication of this report. The greater the number of former military, anti-Lavalas gangs and Lavalas supporters that remain armed, the less likely elections will be free, fair and representative of the Haitian people's

⁴⁶⁵ For more on the HNP's alleged practice of removing patients from hospitals and disposing of them, see Section IV.B.2, *supra*.

⁴⁶⁶ See, e.g., P. Interview, *supra* note 212 (noting that most residents of Petit Goave support the former military's entrenchment there, because the FAd'H provide them the feeling of security).

⁴⁶⁷ Lafontant Interview, *supra* note 346.

⁴⁶⁸ *Id.*

voices. As CARICOM noted in a recent statement on Haiti, "[t]he proliferation of illegally armed groups and their activities constitute a major obstacle to stability. Disarmament and reintegration must be given priority attention to create a security environment conducive to open campaigning and credible elections."⁴⁶⁹ In particular, as the former military still controls large swaths of the countryside—as well as access to the ballot-boxes in those areas—until ex-FAd'H members are disarmed, their presence will continue to pose a serious threat to the freedom and fairness of the election process.

Pervasive, illegal arms, however, constitute only one of several threats to elections. The climate of impunity poses an equally real danger. The lack of redress for crimes committed against Lavalas supporters justifiably contribute to their increasing sense of alienation. As the present report was being written, it was estimated that close to 100 parties would contest the presidential elections; some ninety-one parties had already registered with the government.⁴⁷⁰ In an indication of Lavalas' disenchantment with the political process, the list of candidates did not include a single candidate from Aristide's former party, Fanmi Lavalas.⁴⁷¹

The interim government has made a few statements about its desire to include Lavalas in rebuilding Haiti's democracy,⁴⁷² but the ongoing targeting of Lavalas supporters belies its publicly reconciliatory stance. The contradiction is glaring. "There is a great campaign of persecution against Lavalas. If this government wants a dialogue, they have to free these political prisoners," former Lavalas lawmaker Gerard Giles, detained briefly by government authorities in October, told the *Chicago Tribune* in December 2004.⁴⁷³

⁴⁶⁹ Press Release 46/2005, Communiqué Issued at the Conclusion of the 16th Inter-Sessional Meeting of the Conference of Heads of Government of the Caribbean Community, 16-17 February 2005, Paramaribo, Suriname (Feb. 18, 2005).

⁴⁷⁰ INTELLIGENCE RESEARCH, SECURITY AND RECONCILIATION: THE KEYS TO FREE AND FAIR ELECTIONS (CARIBBEAN AND CENTRAL AMERICA REPORT, Feb. 22 2005).

⁴⁷¹ *Id.*

⁴⁷² See, e.g., *Highlights of Radio Metropole News*, (Radio Metropole radio broadcast, Oct. 27, 2004) (citing Latortue as stating, "[a]s prime minister, my desire is to see all political parties participate in the electoral contests. But if a party refuses to do so then there is nothing I can do about it.")

⁴⁷³ *U.N. Force Unable to Stem Violence in Chaotic Haiti*, *supra* note 363.

While the interim government's stance toward reconciliation is, at best, perfunctory, foreign diplomats expressed sentiments that more overtly and deliberately excluded Lavalas supporters. Professor Ricardo Steinfus, sent to Haiti by Brazil's foreign minister to assess prospects for a national dialogue,⁴⁷⁴ boasted to our delegation about the inclusivity of a preliminary meeting he had arranged. "The National Dialogue includes all political forces, including ex-military and former rebels, all the political parties, church leaders, businessmen," he told us.⁴⁷⁵ The meeting, he said, included "representatives of all relevant parties."⁴⁷⁶ When one of our investigators asked him who represented Lavalas, Mr. Steinfus replied, "No, Lavalas was not present."⁴⁷⁷ He added, however, that the group had been invited. Another diplomat from a nation historically influential in Haiti's affairs flatly told our January delegation, "Aristide is not part of the equation; he's not on the agenda."⁴⁷⁸

Interim Prime Minister Latortue's posture of *laissez-faire* inclusiveness is inadequate to mitigate the alienation and de facto disenfranchisement that many Lavalasiens experience daily. To them, Aristide's departure was the second ouster of the president they elected twice. More proactive outreach is required. As this report was being written, U.N. authorities in Haiti were beginning a potentially more vigorous dialogue process. In late February 2005, Special Envoy Juan Gabriel Valdés announced plans to begin a national "dialogue" in March, organized by the U.N., that would "include all stake holders," including Fanmi Lavalas members.⁴⁷⁹ However, it remained unclear exactly how extensive outreach to Lavalas supporters would be.⁴⁸⁰

⁴⁷⁴ Interview with Ricardo Steinfus, Representative of the Brazilian Ministry of Foreign Relations, Hôtel Ville Créole, Port-au-Prince (Oct. 25, 2004).

⁴⁷⁵ *Id.*

⁴⁷⁶ *Id.*

⁴⁷⁷ *Id.*

⁴⁷⁸ Ms. N. Interview, *supra* note 170.

⁴⁷⁹ Caribbean Media Corporation, *U.N. Envoy Says Haiti is More Stable But Threat of Insecurity Still Present* (Caribbean Media Corporation radio broadcast, Feb. 17, 2005).

⁴⁸⁰ Recent developments augur poorly for Lavalas. On March 7, 2005, Haitian authorities barred Ira Kurzban, Aristide's private lawyer, from entry into the country and forced him to return to the United States. Mr. Kurzban, a Miami-based attorney, had traveled to Haiti on a mission to visit with former Prime Minister Yvon Neptune and former Minister of the Interior Jocelerme Privert, both imprisoned for almost a year despite not having been charged with criminal activity of any kind, according to Mr. Kurzban.

CONCLUSION

Armed with a robust mandate, MINUSTAH has the potential to end Haiti's cycles of violence, develop fair and democratic institutions, and nurture a culture that honors and promotes human rights. In the eight months since the U.N. peacekeeping troops disembarked in Haiti, however, they have failed to uphold either the letter or the spirit of their mandate, as prescribed in Security Council Resolution 1542. Despite one of the strongest human rights mandates in the history of U.N. peacekeeping operations, MINUSTAH has not effectively investigated or reported human rights abuses; nor has it protected human rights advocates. Charged to train and reform the Haitian National Police, MINUSTAH instead has provided unquestioning support to police operations that have resulted in warrantless arrests and detentions, unintended civilian casualties and deliberate extrajudicial killings. Rather than heeding its directive to protect civilians from imminent violence, MINUSTAH has instead inflicted stray bullets on them. Disarmament is at the core of MINUSTAH's security and stabilization duties, but MINUSTAH's disarmament work thus far has transpired only in conference rooms. In consequence, Haiti is ruled by guns and terror, not law.

These failings result not from a weak mandate, but from a weak political will. Although initially hampered by the slow deployment of forces, MINUSTAH had nearly reached mandated staffing levels by January 2005.

The time for excuses is over. Haiti teeters on the brink of permanent failed statehood, and the first round of presidential elections, scheduled for eight months from now, looms darkly. To ensure that elections are safe, free and fair, MINUSTAH must adopt a more muscular stance toward its mandated obligations. First, MINUSTAH must push the Transitional Government to implement its DDR plan immediately; otherwise, it is all too easy to predict that illegally armed groups, especially the former military and urban gangs, will subvert the democratic process. MINUSTAH must also address the ongoing persecution of Lavalas supporters and leaders and demand that the Transitional Government end impunity for the perpetrators of political violence. Additionally, MINUSTAH must take more seriously its obligation to reform the Haitian National Police

and stop providing blind support to the HNP's abusive practices. Finally, MINUSTAH must honor the human rights obligations that inform and color the entirety of its mandate and its very existence as U.N. peacekeeping force.

MINUSTAH offers enormous potential to stave off disaster in Haiti and to implement long-term reforms. Unfortunately, it has squandered much of the past eight months. We deeply hope that the next eight, and beyond, will be different.

ACKNOWLEDGMENTS

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We would like to thank the victims who kindly agreed to speak with us about their experiences. We would also like to thank those Haitian and U.N. authorities, as well as those representatives of local and international non-governmental organizations and other institutions, who assisted us in the course of our research and shared with us their views.

ANNEX I

7. *Acting* under Chapter VII of the Charter of the United Nations with regard to Section I below, *decides* that MINUSTAH shall have the following mandate:

I. Secure and Stable Environment:

- (a) in support of the Transitional Government, to ensure a secure and stable environment within which the constitutional and political process in Haiti can take place;
- (b) to assist the Transitional Government in monitoring, restructuring and reforming the Haitian National Police, consistent with democratic policing standards, including through the vetting and certification of its personnel, advising on its reorganization and training, including gender training, as well as monitoring/mentoring members of the Haitian National Police;
- (c) to assist the Transitional Government, particularly the Haitian National Police, with comprehensive and sustainable Disarmament, Demobilization and Reintegration (DDR) programmes for all armed groups, including women and children associated with such groups, as well as weapons control and public security measures;
- (d) to assist with the restoration and maintenance of the rule of law, public safety and public order in Haiti through the provision *inter alia* of operational support to the Haitian National Police and the Haitian Coast Guard, as well as with their institutional strengthening, including the re-establishment of the corrections system;
- (e) to protect United Nations personnel, facilities, installations and equipment and to ensure the security and freedom of movement of its personnel, taking into account the primary responsibility of the Transitional Government in that regard;
- (f) to protect civilians under imminent threat of physical violence, within its capabilities and areas of deployment, without prejudice to the responsibilities of the Transitional Government and of police authorities;

II. Political Process:

- (a) to support the constitutional and political process under way in Haiti, including through good offices, and foster principles and democratic governance and institutional development;
- (b) to assist the Transitional Government in its efforts to bring about a process of national dialogue and reconciliation;
- (c) to assist the Transitional Government in its efforts to organize, monitor, and carry out free and fair municipal, parliamentary and presidential elections at the earliest possible date, in particular through the provision of technical, logistical, and administrative assistance and continued security, with appropriate support to an electoral process with voter participation that is representative of the national demographics, including women;
- (d) to assist the Transitional Government in extending State authority throughout Haiti and support good governance at local levels;

III. Human Rights:

- (a) to support the Transitional Government as well as Haitian human rights institutions and groups in their efforts to promote and protect human rights, particularly of women and children, in order to ensure individual accountability for human rights abuses and redress for victims;
- (b) to monitor and report on the human rights situation, in cooperation with the Office of the United Nations High Commissioner for Human Rights, including on the situation of returned refugees and displaced persons.⁴⁸¹

⁴⁸¹ Resolution 1542, *supra* note 3, ¶ 7.

ANNEX II

November 24, 2004

Juan Gabriel Valdés
Special Representative of The Secretary-General
United Nations Stabilization Mission in Haiti
Hotel Montana, Pétion Ville
Port-au-Prince, HAITI

Re: Discovery of Remains and Possible Mass Grave in Titanyen

Dear Special Representative Valdés,

I write to express concern about the discovery of what appeared to be a clandestine cemetery on the outskirts of Port-au-Prince, and to request that the appropriate police authorities investigate the matter thoroughly.

During a recent fact-finding visit to Haiti, a delegation from Harvard University uncovered information concerning the recent deposit of bodies in the Titanyen region of the greater Port-au-Prince area.

On October 27, 2004, our delegation traveled to Titanyen to look for recently disposed corpses. Although we did not locate any bodies above ground, we did discover what appeared to be a mass grave. The site had several large mounds of dirt, suggesting intervention in the terrain consistent with a mass burial. Used hospital gloves, masks, and spent cartridge shells littered the premises. In less than an hour and using only a bucket and stick, we exhumed bones, clothes, a skull, and a small T-shirt that would fit a three-to-four year-old child. Inside the skull was some grayish/blackish brain material. The shirt was moist, and the remains exuded a stench. Immediately after uncovering the body of the small child, our delegation, which included a local Haitian, decided to return to Port-au-Prince. Our local contact expressed concern for our safety, were we to remain at the location. Thus, we did not continue digging despite our conviction that a significant number of bodies were buried at the site.

Based on further research and consultation with medical doctors, forensics experts, and specialists on medical jurisprudence,⁴⁸² we have been able to estimate the time of the death of the child whose remains we located. As we detail below, experts estimate that the child died between eight and twelve weeks prior to our discovery of the corpse – a period during which MINUSTAH was deployed in Haiti.

Background

Estimates about the time of death can often be determined by examining how much the body has decomposed. Factors such as the location of the body,⁴⁸³ the temperature,⁴⁸⁴ whether the body had significant injuries, and the amount of moisture in the environment all influence these calculations.⁴⁸⁵

⁴⁸² Information gathered by Dr. Jagdish Saran on Wednesday October 27, 2004, after consultation with his colleagues, some of whom are forensic experts, or specialists on medical jurisprudence. Also based on phone interview with Dr. Anne-Marie Myers (Chief Forensic Anthropologist at the State of Massachusetts Medical Examiner's Office) on Thursday, October 28, 2004.

⁴⁸³ According to Dr. Trisha Macnair (interviewed by BBC), "decomposition in the air is twice as fast when the body is under water and 4 times as fast as underground. Corpses are preserved longer when buried deeper, as long as the ground is not waterlogged." (see http://www.bbc.co.uk/health/ask_doctor/death_body.shtml)

⁴⁸⁴ According to Arpad A. Vaas, "Beyond the Grave – Understanding Human Decomposition," *Microbiology Today*. Vol.28, Nov. 2001, the formula " $y = 1285/x$ (where y is the number of days it takes to become skeletonized and x is the average temperature in Centigrade during the decomposition process)" can be used for bodies lying *above ground*.

⁴⁸⁵ Immediately following death, the body's muscles stiffen in a process called *rigor mortis*. This stage begins approximately three hours after death, and lasts until approximately 36 hours after the time of death. The body also cools in a process called *algor mortis*, and investigators who happen upon a fresh corpse can use known rates of cooling to determine precise times of death. Finally, the body also discolors to assume a reddish-purplish coloration in a process called *lividity*. The first stages of a body's decomposition are characterized by the unpleasant sights and smells popularly associated with a cadaver (*putrefaction*). This includes a greenish discoloration of the skin, release of fluids from the mouth and nostrils, and the smell of rotten eggs or sulfur associated with the release of hydrogen sulfide and methane. These symptoms are the visible manifestations of a natural

The final stage of decomposition takes place after eight weeks. At that point, the body's cavities burst open and hair, nails and teeth become detached from the body, and the body's tissues become liquefied (*decay*). Bone decay happens through another process called *diagenesis*,⁴⁸⁶ which begins to occur only after several months, and takes much longer to recognize. Within the first year, the bones may begin to bleach, and moss may grow on them.⁴⁸⁷

Conclusions

SKULL: The grayish/blackish substance inside the cranium suggests that there was "decomposed" brain material. The human brain shows evidence of decomposition within three-to-five days after death if left in an open atmosphere, but this time is doubled (seven-to-ten days) in water and further increases (four-to-six weeks) when underground. If the body is in a coffin, decomposition may be further delayed by 15-20 days. Since we found no coffin, we believe that the child whose remains we found had been killed *at least 4-6 weeks* earlier.

MOIST SHIRT: The shirt was moist likely because of smudging by the decomposed material. Disintegration of flesh would again happen after about six-to-eight weeks in buried bodies. That the shirt was relatively intact suggests that the time of death was not more than three months in the past, since otherwise the shirt would have shown signs of disintegration and shredding.

BONES: The atypical stench from bones confirms that the process of decomposition was well underway, something that would happen between approximately eight-to-ten weeks after the time of death.

Judging from the evidence uncovered, the condition of the brain material, the moist but intact shirt, and the unusual stench emanating from the bones, **the death of the child can be estimated to have occurred approximately 8-12 weeks ago** (with a margin of error of plus or minus four weeks).

Follow-up With Local Authorities

Within minutes of leaving the site, I telephoned Michel Guertin, a Canadian police officer with the CIVPOL detachment whom I had met earlier that week. I expressed my interest in speaking with the appropriate authority as soon as possible. Officer Guertin contacted his superior, Rene Leclerc and scheduled a meeting for the next day.

I met with Officer Leclerc on October 28 and submitted the remains, spent shells, hospital gloves and masks located at the site, and explained the nature of the discovery. Officer Leclerc appeared somewhat confused and asked what steps I would like CIVPOL to take. I explained that I hoped CIVPOL would investigate thoroughly the existence of these remains and the clandestine cemetery(ies) in Titanyen. The following day, Officer Leclerc said he had received information that Titanyen was used as a dumpsite by hospitals. Officer Leclerc indicated that this should explain the remains found at the site. I reminded him of the spent shells that we had found at the site, a finding inconsistent with a hospital burial ground yet consistent with a clandestine gravesite. Officer Leclerc suggested that I contact him in January, on our next investigation mission to Haiti.

process which begins almost immediately following death called *autolysis*, which is the result of the body's own bacteria and enzymes breaking down body's tissue from the inside. Indoors, this process becomes noticeable after 4-6 days, in the tropics it would begin much faster. *See id.* at 191.

⁴⁸⁶ According to Mr. Vaas, "[d]iagenesis is a natural process that serves to alter the proportions of organic (collagen) and inorganic components (hydroxyapatite, calcium, magnesium) of bone exposed to environmental conditions, especially moisture. This is accomplished by the exchange of natural bone constituents, deposition in voids or defects, adsorption onto the bone surface and leaching from the bone." *Id.*

⁴⁸⁷ *Id.*

Request

Having brought these facts to your notice, we request that MINUSTAH conduct further inquiry into the existence of clandestine burial sites in Titanyen, as well as the circumstances leading to the death of persons whose remains are there.

As you know, the UN Security Council Resolution 1542 of 30 April 2004 authorizes MINUSTAH:

- to assist with the restoration and maintenance of the rule of law, public safety and public order in Haiti;
- to protect civilians under imminent threat of physical violence;
- to support the Transitional Government as well as Haitian human rights institutions and groups in their efforts to promote and protect human rights, particularly of women and children, in order to ensure individual accountability for human rights abuses and redress for victims; and
- to monitor and report on the human rights situation.

Given the preliminary results of our forensic investigation – that is, that the child whose remains we submitted to CIVPOL probably died in August 2004 – we suspect that extrajudicial killings and efforts to hide remains have taken place during the tenure of MINUSTAH. In light of this and in keeping with the mandate of the United Nations forces in Haiti, we reiterate our request for action on this matter.

Sincerely,

James Cavallaro
Associate Director, Human Rights Program
Harvard Law School

CC: Police Officer Rene Leclerc
 CIVPOL Headquarters
 Hotel Villa St. Louis
 Port-au-Prince
 Haiti