

SPOILING SECURITY IN HAITI

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SPOILING SECURITY IN HAITI

EXECUTIVE SUMMARY AND RECOMMENDATIONS

Haiti is ensnared in a deep political, social and economic crisis, despite 7,400 UN military and police peacekeepers and the resumption of multilateral aid. The security situation is explosive, especially in the capital. By finally deploying country-wide, the United Nations Stabilization Mission (MINUSTAH) has prevented even greater levels of violence, but the transition is fragile, and a perhaps overly ambitious electoral calendar compressed into the last quarter of 2005 faces many challenges. MINUSTAH needs to get and exercise new executive authority over law enforcement and security forces if the situation is to be saved.

Many powerful spoilers in Haiti have much to gain from fomenting violence, insecurity and political instability. Out of a desire to seek, keep or maximise power, income, authority, or position, these individuals and groups do not want the transition to succeed. They want to prolong a status quo that suits their interests. A key objective of both the transitional government and the international community, therefore, should be to neutralise these spoilers, not only in relation to the coming elections but also to advance the long-term process of democratisation.

Among the spoilers are warring gangs who dominate much of the slums of Port-au-Prince and receive varying degrees of political and criminal support. Many are manipulated by factions sympathetic to former President Aristide and his Lavalas movement, others by anti-Aristide groupings, elements of the business elite, drug-traffickers or other criminal organisations -- all of which have a clear interest in delaying the elections and in destabilisation. Although no longer an effective military force, another group of spoilers are armed former rebels and members of the Haitian Armed Forces (ex-FAd'H), who are an intimidating presence in the countryside. Thousands of weapons remain in the hands of all these groups. A systematic program of demobilisation, disarmament and reintegration (DDR) must start at once and be coupled with police, judicial, political and economic reforms.

The human rights situation is still alarming, with concern focusing on growing allegations of summary executions, violence against women, kidnapping and other criminal

acts by elements within the Haitian National Police (HNP), the absence of government investigations into these violations, and a dysfunctional and politicised justice system. How to strengthen and reform the HNP, which is also under tremendous pressure in the poor neighbourhoods from urban gang violence, is one of the most urgent challenges. Both the HNP and MINUSTAH must quickly address the force's paralysing deficiencies in resources and capabilities, including the lack of reliable intelligence, poor training and total absence of gender training, divided loyalties, unqualified personnel and conflicting mandates.

A deeply polarised society and the collapse of state institutions and state authority over the past decade opened the way for the emergence of violent groups with roots both in social conflict and political feuds, and lately with apolitical but deadly drug gangs. Underlying much of the violence is the chronic failure to tackle the poverty, social deprivation and exclusion that endanger most of the population.

Haiti's pressing challenges, therefore, include social and economic revival, environmental threats, jobs, social services and credible elections. Guaranteeing adequate public security is the precondition for addressing all these and requires significant advances on four fronts:

- DDR of the ex-FAd'H and their insurgent partners;
- neutralisation of the urban gangs and their incorporation into appropriate DDR programs;
- curbs on crime, especially in Port-au-Prince; and
- a purge of the criminals from the HNP.

The UN needs to redefine its method of working with its Haitian counterparts, particularly the transitional government, in order to reverse the deterioration in fundamental areas of security and individual rights. If the government cooperation MINUSTAH requires cannot be assured under the existing mandate, the Security Council must pass a resolution providing the necessary authority and resources, and a clear roadmap for moving forward.

and France, on drug traffickers and other armed groups who constitute threats to the transition.

14. Organize a joint HNP-MINUSTAH operation to remove illegal groups and restore the authority of the government in the main ports of the country.
15. Improve internal coordination between CivPol, and MINUSTAH's military and other civilian components.

To other members of the international community:

16. Accelerate disbursement of pledged funds, especially those with immediate potential to create jobs and improve living conditions.
17. Provide MINUSTAH with additional francophone civilian police.
18. Ensure that a single donor takes the lead in an integrated rule of law process and guarantees, in conjunction with MINUSTAH, its overall coordination and implementation as part of longer-term judicial reform.

Port-au-Prince/Brussels, 31 May 2005

C. THE MINUSTAH/HNP RESPONSE

It is difficult to estimate the exact toll of the violence in the capital since September 2004: the Inter-American Commission on Human Rights (IACHR), based on information provided by Haitian NGOs, has estimated that over 600 people have been killed. Other sources believe the real figure could be higher.³⁵

Since the beginning of April 2005 and in the wake of a UN Security Council visit, MINUSTAH has taken a tougher stance against the urban gangs, especially in Cité Soleil. This also followed the killing of Robenson Thomas alias Labannyè, a prominent anti-Aristide gang leader,³⁶ and two associates on 30 March. Operations further intensified after the killing of a Filipino peacekeeper on 14 April. However, the campaign to hunt down gang leaders has shown few concrete results. Frequent gunfights have led to the deaths of not only gang members but also civilians, including women and children.³⁷

If civilian casualties continue, the risks are high for MINUSTAH because they would further radicalise the poor neighbourhoods and fuel hostility toward the UN. Meanwhile, plans by the transitional government and donors to carry out social projects in those neighbourhoods have scarcely gone beyond some garbage collection and sporadic distribution of food and medical supplies by peacekeepers. In the provinces, MINUSTAH military personnel have been involved in local development initiatives, including infrastructure, environment and job training.³⁸

The results of MINUSTAH's military operations, especially in Cité Soleil, have not met the expectations of either Haitian society or the international community, including MINUSTAH itself. Beside the inherent difficulties of military and police operations in such areas, slow deployment meant the Mission's first large operation in Cité Soleil was six months after it was established. Other factors include the lack of reliable intelligence to identify the main gang leaders and their locations promptly, the unreliability of the HNP, and, perhaps most important, the lack of simultaneous humanitarian projects, which

prevented the beginning of a trust-building process with the local population. Such projects are essential for a secure environment, improving the UN image and concrete improvements.

Disarmament programs and the arrests of important gang-members should be accompanied by measures to improve social justice, so that one gang-leader is not simply replaced by a new one. Gun crime will continue to rise while it remains the most accessible career choice for so many young people. Families in these deprived areas must be given more support, more and better schools, and more access to work, skills and role models.

Nonetheless, none of the above will be fully successful if there is no political solution to the crisis through inclusive dialogue and reconciliation. Repeated acts of police violence (see section IV below) must be addressed, investigated and stopped.

D. THE FORMER MILITARY

A more assertive policy by MINUSTAH towards former military personnel, however, seems to have borne some important, although still limited, results. On 20 March 2005, MINUSTAH military and its civilian Formed Police Unit (FPU) conducted an important operation to drive an armed group -- comprised mostly of former military personnel and insurgents -- from a police station in Petit-Goâve which they had been occupying since August 2004. A Sri Lankan peacekeeper and two members of the armed group were killed; three other peacekeepers and ten illegal occupants were injured, while 27 were disarmed, captured and handed over to the HNP.³⁹ A local journalist was injured and died a month later. In a separate incident the same day in the Plateau-Central, a Nepalese UN soldier was killed in a shoot-out with armed elements (probably former military personnel) using local residents as a shield. The following day MINUSTAH retook a police station in Terre Rouge, believed to be occupied by the same individuals who had attacked its troops the day before.⁴⁰

In response to these two operations, Rémissainthe Ravix declared he controlled the Central Plateau, called on his

³⁵ Crisis Group interviews with Cité Soleil residents, April 2005.

³⁶ Labannyè had at one time been a pro-Aristide gang leader, demonstrating the fluid nature of allegiances among armed groups in the slums of the capital.

³⁷ Crisis Group interviews with members of international organisations working in Cité Soleil, Port-au-Prince, April 2005.

³⁸ For instance in Cap-Haïtien, Crisis Group interview with MINUSTAH staff members, Port-au-Prince, April 2005.

³⁹ United Nations, "Report of the Secretary-General on the United Nations Stabilisation Mission in Haiti", S/2005/313, 13 May 2005, para. 14, p. 4.

⁴⁰ "L'Onu reprend deux commissariats, des ex-militaires lui déclarent la guerre", Agence France-Presse, Port-au-Prince, 21 March 2005. MINUSTAH, "Opérations sécuritaires à Petit-Goâve et à Terre Rouge : la MINUSTAH déplore la perte de deux de ses casques bleus", press release, 21 March 2005, available at www.un.org/Depts/dpko/missions/minustah/press.html.

comrades to take up arms for a guerrilla war, and threatened to attack MINUSTAH personnel. Joseph Jean-Baptiste, self-proclaimed leader of the former military there, exhorted his men to form guerrilla units and infiltrate the civilian population so as to attack MINUSTAH and force it out of Haiti.⁴¹

MINUSTAH's new approach followed a symbolic hand-over of weapons in Cap Haitien on 13 March during a ceremony presided over by the Prime Minister.⁴² In the weeks following, many former military personnel agreed to negotiate with the transitional government and MINUSTAH their participation in a DDR process. Some 200 former military personnel agreed to begin a reinsertion program, and almost 1,000 are believed to be so inclined. However, the majority want to be incorporated into the HNP or other security units.⁴³ Such a solution should be envisaged only after a thorough screening process.

The positive recent operations to remove armed ex-FAd'H from police stations need to be accompanied by a strategy and timetable for their removal, department by department, over the next three months. After vetting for criminal activity, eligible ex-FAd'H must be provided with appropriate benefits, pension and training opportunities.⁴⁴

E. THE ABSENCE OF A COMPREHENSIVE STRATEGY

Without the permanent demilitarisation of armed groups, humanitarian assistance and development will be continuously endangered. Everyone agrees that disarmament is a priority but the transitional government and MINUSTAH have achieved very little of it. The issue is particularly difficult because the members and

hierarchy of the armed groups are not always clearly identifiable.⁴⁵ A strategy to implement an effective DDR program will need to include specific incentives for each group.

The transitional government established the National Commission for Disarmament on 4 February 2005 but with unclear legal status and authority.⁴⁶ The Commission has yet to demonstrate unambiguous political commitment to DDR, and has not prepared a coherent plan, but at least the UN Security Council appears to have recognised the need for MINUSTAH to devote much more energy to DDR.⁴⁷

There must be an overall DDR strategy applicable to both the former military and other armed groups. The transitional government has clearly privileged the former military by negotiating with them and launching a financial compensation program for them prior to their effective disarmament, while almost no attention has been paid to the disarmament and demobilisation of other armed groups. An integrated and coordinated strategy should be put forward that would tackle all armed groups in a somewhat consistent manner, though with account taken of their different origins and needs.⁴⁸

MINUSTAH's DDR section and the UN Development Programme, together with the UN civilian police (CivPol) and the Haitian ministries of justice and the interior, intend to combine involuntary arms seizures and voluntary weapons-collection linked to socio-economic reintegration, community development and reconciliation activities.⁴⁹ However, the UN Mission will need to conduct in parallel forced disarmament of groups that refuse to join a negotiated process; these groups, at least in the capital, are probably still the majority. Without a forced disarmament plan, other groups might rethink their

⁴¹ "U.N. mission in Haiti takes violent turn", Associated Press, 21 March 2005.

⁴² Stevenson Jacobs, "Ex-soldiers turn in handful of weapons", Associated Press, 13 March 2005.

⁴³ It would be premature to assume that all the former military have accepted the DDR plan, although the tougher stance by MINUSTAH is important. On 6 March 2005, the former military commander in the Mirebalais region, Jean-Baptiste Clotaire, was killed in Lascahobas. *Le Nouvelliste*, 8 March 2005. It was widely believed that Ravix Rémissainthe was responsible because Clotaire seemed to be willing to accept the government's offer of financial compensation and job opportunities in exchange for disarming.

⁴⁴ For background, see Crisis Group Briefing, *Haiti's Transition*, op. cit., p. 6. Unfortunately some promises of the transitional government are still unfulfilled; for instance, the first of the three indemnisation payments has not been made to all the former military.

⁴⁵ According to the NGO Small Arms Survey, there are at least a dozen distinct types of armed groups in possession of varying numbers and calibres of small arms and other light weapons. These groups are fluid, with complex combinations of predatory and protective behaviour. See Robert Muggah, "Securing Haiti's Transition: Reviewing Human Insecurity and the Prospects for Disarmament, Demobilisation and Reintegration", Small Arms Survey, Geneva, April 2005, p. 16.

⁴⁶ UN Security Council, "Report", op. cit., para. 27, p. 6.

⁴⁷ Ibid, para. 28.

⁴⁸ 300 members of the General Security Unit of the National Palace (USGPN) were dismissed in March 2004 but allowed to retain their service weapons. Massive dismissals have significantly contributed to the climate of insecurity and instability.

⁴⁹ United Nations Development Programme (UNDP), "Program Document for Integrated DDR Strategy in Haiti", Port-au-Prince, 2005.

agreement to engage in the process.⁵⁰ In general, MINUSTAH should be more pro-active in arresting everyone in possession of illegal weapons and handing them over to the HNP.

Because there is no comprehensive legal framework for firearms regulation in Haiti, seizures and penalties will be tainted with an appearance of arbitrariness.⁵¹ Consequently, disarmament should be coupled with a campaign to facilitate voluntary registration of the type of firearms allowed by the constitution and national law. Unfortunately, the procedures recently adopted for firearms registration or registration renewal are unnecessarily complicated, to the point of bureaucratic harassment. At the same time, most of the too numerous licenses to carry firearms, especially handguns, should be revoked and requirements for such permits made more stringent.⁵²

The national media, especially radio, should lend its support to the disarmament campaign. It also should avoid offering platforms to individuals (including suspected criminals and escapees) who have misused them. MINUSTAH itself should increase its radio programs to promote civic responsibility, tolerance and disarmament.

IV. THE HNP

A. A WORRYING TREND

The Haitian National Police faces a critical situation. More than one year after establishment of the transitional government, the HNP seems unable to protect Haiti's citizens and a significant number of its agents continue to be deeply involved in human rights violations, crime, including violence against women, and corruption. Its poor performance has had a serious negative impact on the transition, weakening the image of the Latortue government and calling into question its ability to ensure peaceful elections.

Many fear the HNP is increasingly a source of criminal violence, rather than an effective institution to reduce crime and guarantee public security. This trend has accelerated in the last months and threatens to generate the same hostility in citizens that developed against the army and contributed to its dissolution. That would be a real tragedy for Haiti's fledgling democracy and could spill over onto MINUSTAH and especially CivPol.

In most countries undergoing a post-crisis transition, there is a complex, at times conflicting relationship between law enforcement and respect for human rights. This is particularly the case in Haiti, which has a long history of dictatorial regimes. Faced with high insecurity, there is a tendency to ignore human rights, which then fuels more violence.

The transitional government has undermined the HNP by its failure to back it publicly as the sole security force, its lack of a clear commitment to the rule of law, and its accommodation of the ex-FAD'H. It also has been an obstacle to serious HNP reforms.

The pressure exerted by criminal groups on the police is real, and its impact on the morale of the force should not be underestimated. More than 50 officers have been killed since March 2004.⁵³ However, frequent excessive use of force, including alleged cases of summary executions, cannot be tolerated. Officers implicated in human rights violations act with total impunity, mostly because the HNP's Internal Affairs Unit (Inspection Générale) is not functioning, due to lack of resources and political will.⁵⁴ CivPol has acknowledged HNP

⁵⁰ This point has been stressed also in the UN Security Council, "Report", op. cit., para. 28, p. 6.

⁵¹ Crisis Group interview with a Haitian security expert.

⁵² Ibid.

⁵³ According to the HNP spokesperson. In the most recent incident, on 22 May 2005, two officers were killed and five injured by armed gangs in Bel Air.

⁵⁴ Crisis Group interview with CivPol officials, Port-au-Prince, May 2005.

government's response, mostly from the police spokesperson, has consistently been either to deny the incidents or describe the victims as "bandits" killed during an exchange of gunfire.⁶³

There has been no official or other investigation into the killings, one reason being that no case has been filed. Relatives are often too afraid, convinced they would face reprisals. They do not believe that they can denounce police officers given the culture of impunity in the country. To tackle this issue, an alternative procedure is needed: CivPol should directly receive complaints against HNP officers and any others acting under cover of national or international authority.

Police abuses have alienated the HNP from these neighbourhoods and increase frustration, anger and sense of persecution. Residents believe the HNP is trying to eliminate them, in particular young males. The term people in these neighbourhoods use when they see the police is "assaillants". Moreover, they feel they are being discriminated against and unfairly targeted. They are particularly angry that the press and the police spokesperson indiscriminately refer to all those killed by police as "bandits", commenting that if innocent civilians are killed and subsequently accused of being bandits, then, by implication, all residents of the slum are being grouped in the same category.

The HNP has the right to search for criminals but it should operate within the law. Human rights abuses have left many residents of poor neighbourhoods bitter, desperate, and vowing not to vote in the coming elections.

This trend must be reversed. While the HNP is under tremendous pressure in the poor neighbourhoods from gang violence, its response should be within the law. Otherwise, as too often in Haiti's past, official violence will fuel new violence, and the credibility of the state will rot. The transitional government at its highest level should condemn HNP human rights abuses and make a formal distinction between the residents of poor neighbourhoods and violent gang members manipulated by those with a clear interest in escalation. Impunity must be ended by investigating all incidents when HNP officers have used force. It is essential that the joint CivPol-Human Rights Section (MINUSTAH) investigates more actively serious cases of killings and other major human rights violations since October 2004. The lack of an effective HNP inspector general and the Ministry of Justice's

unwillingness to investigate HNP violations means that for now only a MINUSTAH initiative can prevent the transition from being seen as a perpetuation of official impunity. The results of these investigations should be made public, and indictments should rapidly follow, with international judges presiding over the trials.

⁶³ For instance, after the 28 February and 27 April 2005 demonstrations; see also, Haiti Information Project, "UN accommodates human rights abuses by police in Haiti", 17 May 2005.

V. REFORMING THE HNP

A. VETTING AND SCREENING

There is no reliable information about HNP numbers. According to its Director General, some 4,500 officers are on duty. MINUSTAH sources believe the actual number is probably lower.⁶⁴ Another key issue is the lack of proper identification of officers and vehicles. It is virtually impossible for most citizens to identify a police officer, since there are no strict rules regarding uniforms and proper identification of vehicles.⁶⁵ It is crucial to establish clear regulations to change this. HNP officers should adopt a standard uniform and wear a badge with their name and photo ID visible. Vehicles, except for those used in specific undercover operations, should be identifiable by colour, number, and clear markings that indicate the police station or unit to which they belong and be properly registered centrally. Copies of all such information should be maintained by CivPol.

The role and tasks of specialized HNP units should be clearly defined. Masked units should not be used in routine operations, including crowd control, and the confusion of roles between riot police (CIMO) and military-type units (SWAT) should be dispelled.

In order to improve the overall functioning of the police, and to build trust among the population, it is essential to vet personnel thoroughly.⁶⁶ There are still competent HNP officers who perform their duties with extreme dedication under difficult conditions. It would be better for the force to rely on a smaller number of unimpeachable officers rather than struggle to keep up overall force-strength by using a significant number of rogue police elements.

CivPol should take the lead in the vetting project by removing accused officers from active duty immediately, pending resolution of their cases. Information needs to be gathered on the professional competence and human rights integrity of HNP officers. More women need to be recruited and gender training given to all police officers. CivPol officers co-located in the stations should evaluate the performance of HNP officers on a daily basis. Information on their human rights record should be given to CivPol by the main NGOs.

⁶⁴ Crisis Group interview with CIVPOL officers, Port-au-Prince, April 2005.

⁶⁵ The issue of the "men dressed in black", accused of participation in serious human rights violations, is a clear example. See section IV C above.

⁶⁶ A five-person OAS team currently assists the HNP and MINUSTAH in screening candidates for the police academy.

Almost 200 former military were integrated into the police in January 2005 without proper screening or training. Bearing in mind the human rights record of the former military, this was a serious mistake that must be reversed. According to a leading NGO representative, "many of the killings and summary executions in pro-Aristide slums are believed to have been carried out by ex-soldiers who became police....The victims are sometimes killed with their hands tied or behind their head".⁶⁷

B. CHAIN OF COMMAND

Almost the entire HNP high-command is composed of former FAd'H officers, although all were vetted in 1994 and received police training.⁶⁸ Former military personnel, who do not necessarily belong to this category, also occupy important positions within the transitional government, for example, the office of secretary of state for public security⁶⁹ and key posts within the interior ministry. Some senior HNP officers, although not Director Léon Charles, have allegedly been implicated in cases of human rights violations and drug-trafficking.⁷⁰

Faced with increasing demands to tackle public security, the HNP seems to have taken over old FAd'H practices, including military-style operations in the capital's poor neighbourhoods with little regard for collateral damage to civilians. The police need a community policing strategy, if they are to improve their image and restore relations with the population.

A key problem is the weak and dysfunctional chain of command, especially during operations. Supervision of specialised units is inadequate, and several senior HNP officials have the authority to mobilise them.⁷¹ A Strategic Deployment Plan (2004-2008) adopted on 15 April 2005 by the HNP's Conseil Supérieur is based on the proposal of the security section of the Interim Cooperation Framework⁷² and sets out some important measures to improve functioning of the force.⁷³

⁶⁷ Renan Hedouville, director of the Lawyers Committee for the Respect of Individual Liberties (CARLI), quoted by Joseph Guyler Delva, "Haiti police absorbs army and stokes rights fears", Reuters, 16 March 2005.

⁶⁸ Almost all twelve police commanders in the Port-au-Prince area have a military background; most regional police chiefs are also ex-FAd'H officials.

⁶⁹ He allegedly resigned on March 2005 but remains in office.

⁷⁰ Crisis Group interview with former HNP senior officers, Port-au-Prince, April 2005.

⁷¹ Crisis Group interview with a senior HNP officer, Port-au-Prince, April 2005.

⁷² The Interim Cooperation Framework is a needs' assessment exercise, conducted jointly by donors and the transitional

The recent U.S. decision to give the HNP 2,600 used firearms, despite a ten-year-old embargo, and consideration of selling 1,000 more has provoked mixed reactions.⁷⁴ Officials claim the police are outgunned by criminals and need to be better armed. Human rights groups express concerns because of the recent allegations against the HNP. Many also question whether the HNP are really under-armed, saying, rather that the HNP is inappropriately armed. It is common to observe routine HNP patrols in Port-au-Prince carrying weapons that seem better adapted to war than police work (M16, Galil, M14, FAL, etc.). The pending request by the transitional government for yet more sophisticated weapons for the HNP is troubling because it could indicate a developing militarization of the police.

To ensure police accountability, the transitional government and MINUSTAH should implement a uniform weapons program, requiring HNP officers to carry weapons whose model and calibre are unique to the force. Possession of this type of firearms should then be forbidden outside the HNP, so that facts could quickly be determined when future shooting cases need to be investigated.

C. AN EXECUTIVE ROLE FOR THE UN CIVPOL?

Given the current state of the HNP, MINUSTAH's mandate to assist and mentor the police is a difficult and politically delicate task at the heart of the Mission's responsibility. A basic problem is how to support a national police force that is seriously discredited, corrupt and allegedly involved in criminal activities and serious human rights violations.

MINUSTAH has a dual role: to help the HNP (which often acts independently of MINUSTAH), while monitoring the HNP's human rights performance and supporting the rule of law. As Crisis Group has previously noted,⁷⁵ this is an almost impossible challenge. UN CivPol needs a more robust, executive mandate so it can assume greater control over HNP operations and actions.⁷⁶

government, the results of which were presented at a donors conference in July 2004 in Washington. See Crisis Group Report, *A New Chance for Haiti?*, op. cit.

⁷³ United Nations, "Report of the Secretary-General", op. cit., para. 22, p. 6.; Crisis Group interview with CIVPOL officials, Port-au-Prince, April 2005.

⁷⁴ Michael Wesseinstein, "U.S. Guns in Haiti Despite Embargo", Associated Press, 21 April 2005.

⁷⁵ See Crisis Group Briefing, *Haiti's Transition*, op. cit., p. 7.

⁷⁶ Refugees International has argued for giving CivPol "executive authority", so it can do "more than passively advise

The best course would probably have been to reform the HNP thoroughly immediately after installation of the transitional government, while using an interim police force, as was done in 1995, to allow for the transition from FAd'H to HNP. CivPol would then have had a clear role in setting up the new HNP and justification for exercising executive authority. This option was not chosen for several reasons, including financial implications and the difficulty of deploying the required francophone CivPol officers.

Until there is confidence in the HNP to provide citizen protection, the UN will need the resources to do so. Otherwise a major UN peacekeeping operation will be seen as a failure. Without deep HNP reforms, which CivPol will need to have the final word over, mission success is endangered. The fundamental requirement is for the deployment of several thousand additional francophone civilian police officers. While difficult, the priority is clear and contributing countries will have to come up with the necessary manpower. An executive mandate also implies that stronger actions will be taken against the country's numerous criminal groups.

The only alternative, much less desirable, would be to ensure that UN civilian police carry out their current mandate in a more pro-active fashion, in particular with co-location in police stations throughout the country. There would also need to be agreement for them to take over internal misconduct issues, monitoring adherence to the code of conduct, while they rebuild the capacity of the inspector general from the ground up. Agreement by the transitional government that they could suspend any officer believed to be engaged in criminal activity if the HNP leadership were unwilling to act would be one element of this. The extremely slow pace of the co-location program is preventing CivPol from doing jobs which are at the core of its mandate and might prevent rogue HNP elements from conducting their illegal activities. Co-location should be coupled with direct authority for vetting. The clean-up of the HNP has to be done now, and concrete progress is needed before the Autumn elections.

Furthermore, of the 1,413 deployed CivPol officers, 790 are part of the Formed Police Units (FPUs)⁷⁷ which performs tasks related more to the military than the police mandate of MINUSTAH. This is another reason why more CivPol are required. In general, there is also a clear

and mentor an essentially dysfunctional institution". Refugees International, "Haiti: UN Civilian Police Require Executive Authority", 14 March 2005, at www.refintl.org.

⁷⁷ United Nations, "Report of the Secretary-General", op. cit., Annexe II, 17.

need to improve coordination between MINUSTAH's military, police, and other civilian components.

D. CIVPOL AND HNP OVERSIGHT MECHANISMS

Another important issue involves strengthening the HNP's internal oversight mechanism (Inspection Générale). Given that that mechanism does not currently function at all adequately, CivPol needs to have the authority to play a greater role in investigating alleged cases of HNP misconduct, including human rights violations. The transitional government and the HNP leadership have not shown the political will to clean the force thoroughly. HNP agents seem able to act with complete impunity. The HNP tried to downplay the few cases that were investigated, such as that concerning the 1 December 2004 riot at the National Penitentiary.⁷⁸

There is a pressing need to remove the HNP's unsuitable elements and reinforce CivPol's tutoring role. Particular emphasis should be put on strict observance of the law and human rights during police operations and on serious and timely joint investigations whenever police operations result in injury or death.

Rapid recruitment and training of large numbers of new, qualified HNP officers -- ideally several thousand -- is a priority which is not receiving the necessary attention from the transitional government or the international community. At the current rate, only some 1,200 new officers (400 are trained at the police academy every four months) will be brought in by the end of 2005. This recruitment needs to be accelerated. One possibility would be to train cadets abroad as was done in 1994-1995. It is estimated that Haiti needs a minimum of 10,000 police (one officer for every 800 inhabitants) to enforce basic law and order throughout the country.

VI. THE URGENT NEED TO REFORM THE JUSTICE SYSTEM

A. THE NEPTUNE DETENTION

Despite more than a decade of international cooperation and national initiatives, the justice system is completely dysfunctional. Over the last decade, donors have invested considerable resources in its reform through several, not always well coordinated projects. Nevertheless, according to a recent report:

The respect for rule of law in Haiti has fallen to its lowest point since 1994. The police and judiciary fail to guarantee security and justice, and the incapacity of the courts results in de facto guilty verdicts for many of those arraigned and incarcerated, as pre-trial detention periods may last for years.⁷⁹

More than 95 per cent of those described above are in preventive detention in clear violation of Haitian law and international human rights covenants requiring due process.⁸⁰ The fact that several Lavalas supporters continue to be detained without specified charges is another example of the non-functioning of the justice system, further undermining the image of the transitional government.

The prolonged detention of former Prime Minister Yvon Neptune is all too typical. He has not yet been arraigned before the Saint Marc magistrate who in March 2004 signed the arrest warrant on charges that he masterminded a mass killing in St. Marc the previous month. Soon after his arrest, his lawyers filed a request (*récusation*) before the Supreme Court (Cour de Cassation) questioning the participation of St. Marc's investigating judges in the case on the grounds that the Saint Marc environment was too enflamed for a fair trial. It took more than six months for the court to reject the request, ultimately rejecting it on technical grounds. When Neptune was first transferred to Saint Marc in April 2005, the investigating judge was apparently not aware of this and was absent. The former prime minister's case was finally heard by a judge in Saint Marc on 25 May 2005. The prosecutor and the investigating judge have apparently still failed to disclose their evidence.

⁷⁸ Crisis Group interview with CivPol officers, Port-au-Prince, April 2005.

⁷⁹ International Legal Consortium Assistance (ILAC) report, Haiti, January 2005, p. 5.

⁸⁰ Haiti is a party to the American Convention on Human Rights and the International Covenant on Civil and Political Rights. See IACHR, "IACHR calls for greater international actions in Haiti", press communiqué N. 16.05, Port-au-Prince 22 April 2005, at www.cidh.org.

Neptune is protesting lack of due process and the conditions of his incarceration with a hunger strike. After hospitalisation in UN facilities, he resumed that action on 17 April 2005. On 2 May he refused to be evacuated on the Dominican Republic unless all charges were dropped.⁸¹

To find a way out of the impasse, acting Secretary General Luigi Einaudi suggested to the OAS Permanent Council that a commission made up of a Haitian jurist, an international jurist and an international forensic expert examine the evidence and make a recommendation. He warned that the case had "serious moral and political implications for the Haitian government and for the international community".⁸² A similar proposal was made by the National Coalition for Human Rights (NCHR-New York) in March 2005.⁸³

Neptune's prolonged pre-trial detention is also representative of the political and partisan use of justice by the current government. The minister of justice's decisions in this case seem driven more by politics than respect for the rule of law. The frustration and impotence of the international community -- despite strong criticisms⁸⁴ -- are yet another clear example of its problematic relationship with governmental authorities which have pursued narrow and partisan interests. While the Latortue government insists the Haitian state can no longer be held responsible for human rights violations, these claims conflict with the facts. The HNP's serious abuses, continuing impunity and total lack of due process are only examples of a human rights situation described as "appalling" by Amnesty International and "alarming" by the UN Secretary General.⁸⁵

Another controversial decision was the Supreme Court's reversal on 21 April 2005 of the convictions of fourteen military and paramilitary leaders for their roles in the

Raboteau massacre.⁸⁶ The Court quashed the convictions of the fourteen on technical grounds. The trial, despite minor irregularities, had been considered fair and was praised as a landmark in the fight against impunity. A former Lavalas senator commented that the Court's judgement shows that "the current government is partisan, revengeful, hateful and not serious about justice".⁸⁷ Prime Minister Latortue denied responsibility but it is unlikely such an important decision would have been taken independently by the Court given the judiciary's submissiveness to the executive.⁸⁸

B. THE RULE OF LAW CHALLENGE

A sustainable judicial reform cannot be achieved independently. There must be simultaneous reform in related areas, including disarmament, security, and law enforcement. An important lesson of the past decade is that, although the HNP benefited from training and technical assistance, its effectiveness was limited because the justice and penal system did not advance at the same pace.

The justice system's inability to provide oversight and ensure that police conduct adheres to the law was identified by one former director general of police as the single biggest threat to the HNP's effectiveness and political neutrality.⁸⁹

The components of the security system (police, judiciary and penitentiary system) are so interconnected that an effective program of assistance must include each.

Donors need to agree on their roles in fostering a uniform and consistent effort. Not only must their aims be coordinated, but all should work within the agreed implementation framework. Ideally, as with Brazil in the military field, a single donor (preferably a francophone government) could lead the process and ensure overall coordination and implementation.

⁸¹ Ariana Cubillos, "Aristide's Ex-PM Refuses to Leave Haiti", Associated Press, 2 May 2005.

⁸² Quoted by Jim Lobe, "Ex-Premier's hunger strike spotlights a nation's chaos", Inter Press Service/Global Information Network, 10 May 2005.

⁸³ National Coalition for Haitian Rights, "NCHR-Haiti Does Not Speak for the National Coalition for Haitian Rights", press release, 11 March 2005.

⁸⁴ "Since the beginning of the procedure until today, fundamental rights, according to national and international standards, have not been respected in the case of Mr Neptune and Privert", said Thierry Fagart, Head of MINUSTAH's Human Rights Section. See, Joseph Guyler Delva, "UN Says former PM jailed illegally", Reuters, 4 May 2005.

⁸⁵ Amnesty International, "Urgent Action, Health concern/Legal concern, Yvon Neptune", 6 May 2005, and United Nations, "Report of the Secretary-General", op. cit., para. 29, p. 8.

⁸⁶ More than a dozen supporters of former President Aristide were killed in April 2004 in the neighbourhood of Raboteau, in Gonaïves, by a squad composed of ex-FAd'H and members of paramilitary groups. The reversal does not apply to 37 individuals convicted in absentia on a later date (including Louis Jodel Chamblain, one of main insurgent leaders in February 2004).

⁸⁷ Peter Prengman and Michael Norton, "Haiti Court Overturns Slaying Convictions", Associated Press, 9 May 2005.

⁸⁸ The Prime Minister said: "If the results have been annulled, the judges have decided to annul them independently". Quoted in *ibid.*

⁸⁹ Janice M. Stromsem and Joseph Trincellito, "Building the Haitian National Police: A Retrospective and a Prospective View", Haiti Papers, Trinity College, Washington, April 2003, p. 3

There is no other solution in the short term than direct donor involvement to help "a dysfunctional Haitian judicial system which delivers little other than injustice".⁹⁰ As Haiti's national justice system is not yet up to the job, cases with political implications, including those involving HNP or other present or former officials, should be referred to an interim court supervised by the UN and made up of international and selected Haitian judges.

VII. THE ARMY QUESTION

A. A REPRESSIVE FORCE

When the Forces Armées d'Haïti (FA d'H) were disbanded by Jean-Bertrand Aristide in 1995, a deep institutional crisis was already apparent, and many thought the army was in collapse. For most of its history, it had been an instrument of political oppression, with no role in defending the nation from foreign threats. When the U.S. military occupation ended in 1934, it left behind two Haitian institutions tasked with security: the Gendarmerie and the Garde Nationale, the latter of which became the army.⁹¹

The political role of the Haitian Army gradually increased in importance from 1934 to 1957. In 1946, National Guard officials orchestrated and executed a coup against President Lescot; in 1950 they contributed to the departure of President Estimé, and General Paul Magloire became the new President. In 1957, presidential candidate Francois Duvalier became a close ally of General Kebreau, who facilitated his rise to power through violence, including massacres in impoverished districts of Port-au-Prince, particularly Bel Air.⁹²

Once elected President of Haiti, Duvalier -- or Papa Doc -- played an astute game, dividing the high command and manipulating the divisions and personal ambitions of senior officers to weaken the institution. The next step was creation of his personal militia, the "Volontaires de la Sécurité Nationale-VSN" -- infamously referred to as the "Tonton Macoutes" -- which diminished the importance of the army, renamed the Forces Armées d'Haïti, or FA d'H, in 1958.

With the departure of Papa Doc's son Jean-Claude Duvalier in 1986, the army tried to reoccupy some of the political space it had lost under the Duvaliers, but neither the national nor the international contexts were favourable. Internal divisions resurfaced in 1988 with the so-called revolt of the so-called "petits soldats" ("little soldiers") under the leadership of General Prospere Avril. The FA d'H was increasingly affected by the lack of a unified command structure or strategic plan, and by drug-trafficking activities within the ranks.

⁹⁰ National Coalition for Haitian Rights, op. cit.

⁹¹ Kern Delince, *Quelle Armée pour Haïti* (Port-au-Prince, 1994), pp. 46-53.

⁹² *Ibid*, pp. 49-50.

B. THE DISMANTLEMENT OF THE FAD'H

The 1991 coup d'état led by General Raoul Cedras against elected President Aristide was the beginning of the end. Misinterpreting the army's role in society, and not taking into account international changes, the coup leaders exacerbated the army's institutional crisis and accelerated its decline. When Aristide returned to power with the support of the OAS, UN, U.S., France and other governments, he moved quickly against the army. Some coup leaders were, in effect, given amnesty in exchange for leaving the country and not opposing Aristide's return. They had no option with the full military force of the U.S. standing off-shore.

In 1994, the FAD'H officially had almost 1,000 officers for some 6,000 troops. The troop figure was highly inflated for reasons including corruption (checks and other expenditures were approved for non-existent staff).⁹³ The FAD'H included a military and a police force, although the division was purely formal since both acted as an internal security force. It opposed all attempts to separate the two, as stipulated in the 1987 Constitution.⁹⁴

President Aristide's decision to disband the army in 1995 without amending the constitution's provisions mandating its existence was widely supported by most Haitians⁹⁵ as well as internationally, though some parts of the U.S. Department of Defense would have preferred a downsizing and in-depth reform of the institution.

C. WHAT ARMY?

Ten years later, a significant part of the political class and the business community seem to favour a reestablishment of the army. Their links, including financial, to the ex-FAD'H who led rebel forces challenging the Aristide government in late 2004 and early 2005 remain somewhat obscure. Many in the transitional government and the economic elite would also prefer to see the army reinstated despite the expense, lack of strategic purpose, and history of deep involvement in widespread and systematic human rights violations.

While these groups base their claim on the fact that the 1987 constitution provides for such a force, the main reasons behind the movement are the precarious internal security situation and the HNP's poor image. Fearing

unpopularity or even reprisals, no political group has publicly spoken against the re-establishment of the army since the issue became an open topic in 2004. Those actively promoting the step argue that it is essential for public security.

However, there has never been a real debate. The transitional government formally has no official position, even though, under the provisions of the 4 April 2004 Political Consensus Accord (*Accord de Consensus Politique*), it established an ad hoc commission to present recommendations on how to move forward. The commission has not produced a report. However, it has become clear that the prime minister and key members of the cabinet are tacitly in favour of reestablishment. Several former military officers in the interior ministry are convinced the army will be re-established by the next elected government.⁹⁶

It is vital that the Haitian people be listened to on this question. The constitutional provision on the armed forces does not end the argument.⁹⁷ The real questions are linked to the needs of Haiti in terms of national security, financial resources, democratisation and strengthening of civilian power. Haiti is not threatened by a foreign power. Externally-driven security challenges are to be found in other areas, especially crime, terrorism, and drug-trafficking. The key question is how to improve the coast guard, customs and other administrative units. Arguably, internal security challenges would be better addressed by an efficient civilian police force.

The majority of militaries in the region have undergone serious reforms in the last decade, including substantial force reduction and loss of internal security responsibilities. That is not the model chosen by those who advocate reestablishment in Haiti. They want the army directly involved in internal security as a guarantor of the political outcomes they seek -- a throwback to a different era, which contradicts most modern defence strategies.

The Dominican Republic's military faces a downsizing that might be limited or even halted if a Haitian army is re-established.⁹⁸ The wider international community should take a position on the desirability of such a Haitian force. Ultimately it is a national decision but donors and the

⁹³ Crisis Group interviews with governmental official, Port-au-Prince, March 2005.

⁹⁴ Kern Delince, *op. cit.*, pp. 119-126.

⁹⁵ Background information on army atrocities during the coup period can be found in Crisis Group Report, *A New Chance for Haiti?*, *op. cit.*

⁹⁶ Crisis Group interview with former military personnel currently employed at the Minister of Interior, Port-au-Prince, March 2005.

⁹⁷ The constitution also stipulates, for example, that primary education is obligatory (art. 32-3) and the state should provide it (Art. 32-1). However, nobody refers to these provisions and few children attend schools.

⁹⁸ Crisis Group interview with diplomats, Port-au-Prince, April 2005.

UN should contribute publicly to the debate, particularly if reestablishment was to mean that even less money would be available for economic and social development.

VIII. CONCLUSION

Haiti needs a comprehensive strategy for addressing the security situation in order to guarantee a successful political transition and a sustainable process of development and democratisation. Extreme poverty, unemployment, and poor living conditions are the root causes of its insecurity. Its urgent needs are interrelated and so should be addressed simultaneously.

The economy has to grow and undergo transformation, but there is no possibility of this without political stability. That requires a new government that is accepted by the population as fairly elected and legitimate. In order for this to be achieved transparent and peaceful elections are needed which can only be held with the help of a strong, effective, professional police and a judiciary free from political control. But to enjoy those on a long-term, sustainable basis, Haiti needs investment, which it will only obtain if it has stability.

The last months have witnessed a phenomenon deeply rooted in Haitian history, as spoilers of the political transition have appeared, ranging from drug traffickers, armed partisan gangs, and some elements of the business elite, to the hard-line followers of former President Aristide. Dealing with those spoilers is the essential security task of a reformed HNP under CivPol tutelage and a reformed judicial sector with an independent and partly international court as an interim measure.

Stabilisation is possible within the current MINUSTAH mandate only if there is positive collaboration between the UN Mission and the transitional government based on the transitional government accepting the goals and conditions established in the UN mandate. However, the absence of such cooperation is reflected in the repeated ambiguity of the transitional government towards the international community over the last year.⁹⁹ As in the 1990s, a viable working partnership has largely failed to

⁹⁹ After the 28 February 2005 incidents, Minister of Justice Bernard Gousse claimed that "the limits placed on the police by the UN are illegal and usurp the rights of the Haitian state", Stevenson Jacobs, "Haitian Official Criticises U.N. Actions", Associated Press, 5 March 2005. Other clear examples of transitional government refusal to accept MINUSTAH recommendations are: the non-inclusion of key articles in the new electoral law (backed particularly by MINUSTAH); the reluctance to adopt an effective plan for demobilisation and disarmament of the former military, exemplified by the delay in even naming a national disarmament commission until 3 February 2005; the continued illegal detention of key Lavalas leaders; the acceptance of uncertified personnel in the HNP before and after Aristide's departure; and the absence of effective internal police control mechanisms.

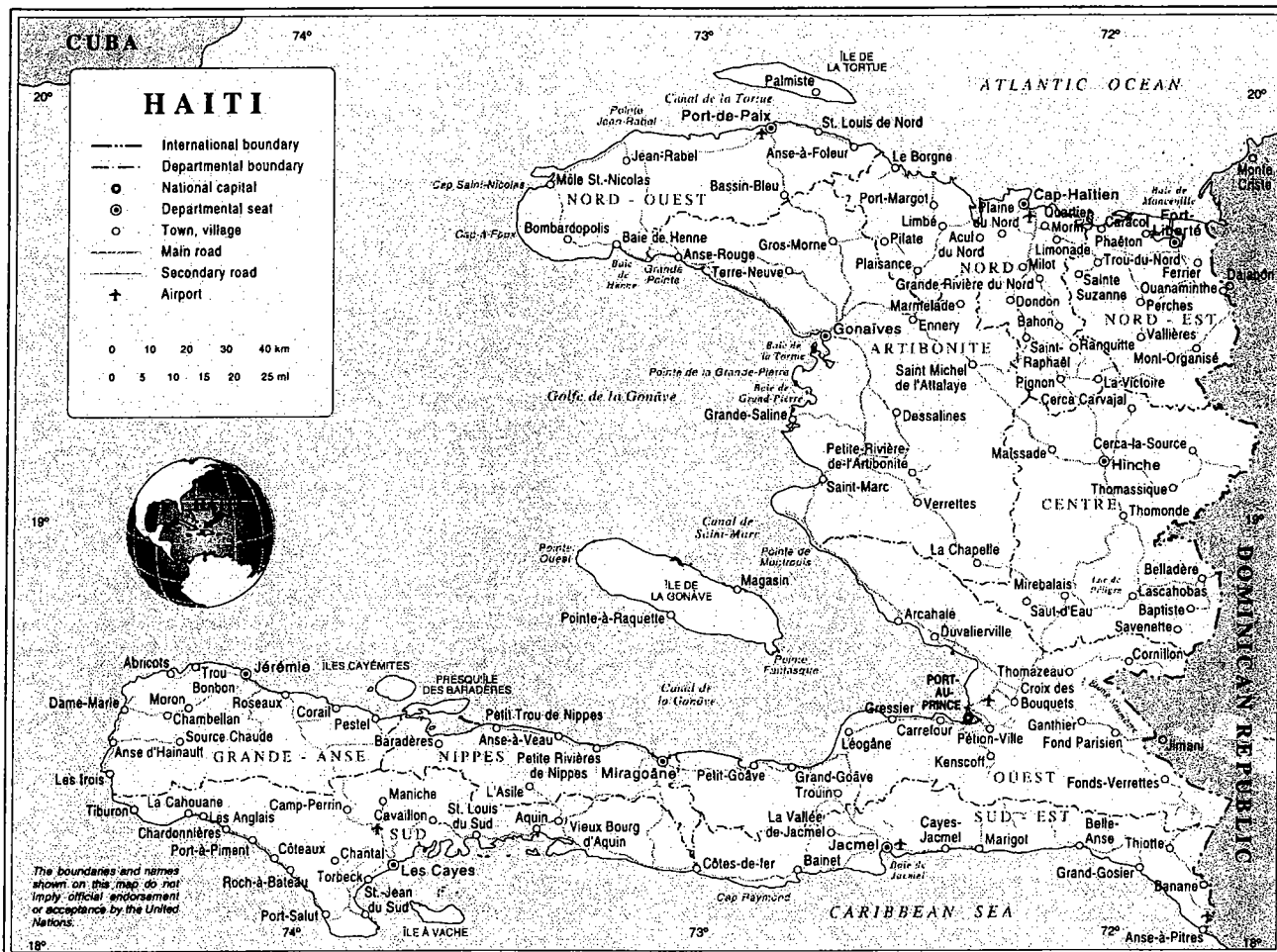
materialise. That failure raises serious questions as to the adequacy of the current mandate under UNSC Resolution 1542, particularly in achieving citizen safety, public security, and respect for human rights and the rule of law.

The UN needs to redefine its way of operating with its Haitian counterparts, particularly the transitional government, in order to reverse a deteriorating situation. If the necessary additional authority required by MINUSTAH cannot be assured under the existing mandate, the Security Council should provide that authority as well as the resources and roadmap necessary to make use of it in a new resolution.

Port-au-Prince/Brussels, 31 May 2005

APPENDIX A

MAP OF HAITI



APPENDIX B

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