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

Situation of human rights in Haiti

Report prepared by the independent expert, Louis Joinet

Summary

“Make out of day and night one and the same thing”
(President Aristide, several days before his departure)

This report is an account of the fourth and fifth visits to Haiti by the independent expert, Louis Joinet, which took place from 3 to 11 April and from 6 to 17 November 2004.

The year 2004 was marked by series of important events, including the bicentenary of Independence, the departure of President Aristide, the installing of an interim Transitional Government, the unanimous approval by the Security Council on 30 April of resolution 1542 (2004) establishing the United Nations Stabilization Mission in Haiti (MINUSTAH), whose mandate has just been renewed until June 2005, and, in particular, the terrible floods in May and cyclone Jeanne in September (1,870 dead, 884 missing, 2,620 injured, some 4,630 homes destroyed and 300,000 disaster victims).

In the field of human rights, serious violations have persisted (attacks, especially armed assaults, reprisals, rapes, murders, summary executions, lootings, destruction through fires etc.). The independent expert has observed that, apart from the too numerous cases of prolonged detention and reprehensible police practices, these violations generally no longer emanate from the Government as such, but are most often the work of two groups of armed adversaries: on the one hand, certain supporters of the previous Government who, as part of what some have dubbed “operation Baghdad”, commit group blackmail, threatening that there will be chaos unless Aristide returns, and who seek above all to destabilize the Government, impede its policy of dialogue and national reconciliation and undermine the electoral process; and, on the other hand, armed groups of former soldiers demobilized during the disbandment of the army in 1995 (without their social rights being recognized or measures taken for their re-employment) and former supporters of President Aristide who have taken up arms against him, setting up the *Front de résistance nationale* (National Resistance Front (FRN)), and who have thus become the objective allies of their old adversaries, the former soldiers.

Although these violations affect all social classes, the poor populations in gang-ridden shantytowns, women and children are the most vulnerable victims. Non-governmental organizations are usually their sole recourse, given the persistent failings of the judicial system and the lack of credibility of the Office of the Ombudsman, despite the efforts made within that body by a team of young legal experts who are only too willing to get involved.

In addition to the institutional crisis (a virtual parliament, an “interim Transitional” Government handicapped by the destruction or ransacking of many public institutions), there is a worsening crisis in the administration of justice (16 courts have been damaged, many police stations and prisons are devastated, the vast majority of inmates have been “released”, i.e. have escaped, and threats are constantly made against judges, victims and witnesses), all this in a climate of insecurity, despite MINUSTAH’s efforts to support, in operations to maintain law and order, a police force that all too often is “in competition” with groups of former soldiers who are trying to create a de facto justification for their return. To address the rampant militarization of society, the Government is working to put into place a plan for the turning in of weapons – for the moment with little success – together with incentives such as

compensation or retirement benefits for former soldiers and, in some cases, their re-employment by the police.

The fight against impunity, which remains one of the Government's declared priorities, has resulted to date in (a) the removal of a number of officials on the strength of vague, perfunctory procedures which provide insufficient guarantees; (b) the arrest of a number of pro-Aristide figures, including the former Prime Minister Yvon Neptune, whose prolonged detention is posing a problem, because what is now a "judicial" issue might well become a "political" one. If the judicial investigation is unable to establish within a reasonable length of time that the accusations concern matters of ordinary criminal law (violent or financial offences), the public will think that these persons are political prisoners; and (c) the setting up of a Central Unit of Financial Information (UCREF) to deal with cases of bribery, embezzlement and money laundering.

With regard to the recommendations, the independent expert draws on those relating to good governance proposed in the Interim Cooperation Framework (ICF), many of which are similar to those which he put forward in his previous reports.

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Introduction

1. At its sixtieth session, speaking on behalf of the Commission on Human Rights under agenda item 19 (“Technical cooperation and the situation of human rights in Haiti”), the Chairperson thanked the independent expert for his report (E/CN.4/2004/108) and requested him to continue his work within the framework of his mandate and to report to the Commission at its sixty-first session. This report provides an account of his fourth and fifth visits to Haiti, which took place from 3 to 11 April and from 6 to 17 November 2004.

2. The independent expert met with the provisional President of the Republic, the Prime Minister, the Minister for Foreign Affairs, the Minister of Justice and Public Security, the Minister for Communication and Culture, and the Ombudsman.

3. He met with individuals from the legal profession, including the Government Commissioner (prosecutor) of Port-au-Prince, the senior member of the court of Port-au-Prince and the new chairman of the bar, as well as judges, justices of the peace, investigating judges, other government commissioners and lawyers.

4. He also met with the directors of the Judicial Training College (EMA), the Haitian National Police (PNH) and the National Prison Administration (APENA).

5. The independent expert had fruitful discussions with officials from international bodies present in Haiti, including the Special Representative of the United Nations Secretary General and the Head of the United Nations Stabilization Mission in Haiti (MINUSTAH), his two deputies, including the Resident Representative of the United Nations Development Programme (UNDP), the commander of the MINUSTAH forces and the head of CIVPOL (civilian police of MINUSTAH), as well as the head of the Special Mission to Strengthen Democracy in Haiti of the Organization of American States (OAS). He also met with the special envoy of President Lula, the heads of United Nations agencies and several diplomats, including the Secretary-General’s Group of Friends on Haiti.

6. The independent expert also met, first together and then separately, with the main non-governmental organizations (NGOs) active in the field of human rights, the Coordination nationale de plaidoyer pour les droits des femmes (CONAP, a national women’s rights organization) and the Comité de défense des droits du peuple haïtien (Committee for the defence of the rights of the Haitian people). Discussion groups were also organized with the Forensic Research and Action Unit (URAMEL).

7. Visits were made to Mr. Jocelerme Privert, the former Minister for the Interior (in April 2004), Mr. Yvon Neptune, the former Prime Minister, Mr. Joseph Yvon Feuillé, President of the Senate, and Mr. Amanus Mayet, former Lavalas delegate, all in detention.

8. The independent expert, who also went to Fort-Liberté and Gonaïves, wishes to thank MINUSTAH for facilitating his travel by helicopter. In 2003, he had visited Jacmel, Petit-Goâve, Les Cayes and Léogane, and, in 2002, Cap-Haïtien, Saint-Marc and Gonaïves. In Gonaïves, which he visited for the second time, he met with the judicial and police authorities, went to the ruins of the prison, visited a shelter for victims of tropical storm Jeanne and met with the Association of Peasant Victims, established in the sixth municipal district of Terrenette (municipality of Verrettes).

9. The Commission will be pleased to learn of the spirit of cooperation shown by the Haitian authorities throughout the independent expert's mission. For example, the independent expert was able to visit, without warning and without any constraints, three police stations in Port-au-Prince (the Delmas 33, Cafétéria and Pétion-Ville stations) and the Fort-Liberté and Gonaïves police stations and prisons, which were being rehabilitated. During his visits, he was able to freely consult the police stations' incident books and custody registers and to talk in private with persons in custody. He also met with officials of the Rapid Intervention and Law Enforcement Unit (CIMO).

10. The independent expert also visited the national penitentiary, the prison of Port-au-Prince, the Pétion-Ville women's prison and, outside the capital, the prison being rehabilitated in Fort-Liberté.

11. The independent expert would like to thank the Office of the United Nations High Commissioner for Human Rights, and in particular Mr. Cisse-Gouro, its human rights advisor until 15 November 2004, who assisted him most competently and effectively during his two previous missions. He also drew extensively on the work carried out by the Office of the High Commissioner between 15 March and 15 November 2004 to bring about a substantial integration of a human rights component in the work of the United Nations Resident Coordinator and Country Team and to strengthen national capacities for the promotion and protection of human rights.

I. VIOLATIONS OF HUMAN RIGHTS RELATED TO THE CLIMATE OF VIOLENCE

12. Although, from the beginning of the crisis, victims have been of every origin and class, the most vulnerable are the poorest members of the population, women and children; hence the recent establishment by the Government of a Commission to assist victims, with the participation of representatives of civil society.

A. Violence against persons, in particular the poorest members of the population (hostages and victims)

13. The situation is particularly serious in a number of Port-au-Prince shantytowns. These lawless zones have become grey areas, because it is often difficult to know what exactly is happening there. To date, there have been 45 victims in Village-de-Dieu, including five youths summarily executed in reprisals.

14. In an urgent appeal made on 31 December 2004, the main NGOs reported on testimony received from inhabitants in the Fort-Touron and La Saline neighbourhoods, which had been the scene of violent gang warfare since 15 December that had resulted in more than 18 deaths and many injuries, including 7 persons hospitalized on 31 December alone, and forced hundreds of families to seek refuge elsewhere. This settling of scores was said to be due to a turf dispute between two gangs, one led by Franzo Timana, and the other by Charles Alex, alias Adjuga. The first initiative that ought to be taken to make these neighbourhoods safe would be, at the very least, to have the two gang leaders arrested and brought to court.

15. In Cité Soleil, many inhabitants complain (a) of being the "collateral victims" of gang warfare, as in the recent clashes between two Mafia-like groups, one led by a man named

Dread Wilmé and the other by Robinson Taylor, alias Labanyé or (b) of being taken hostage by the *chimères*, who hold them for ransom and demand a toll for entering and leaving the neighbourhood or for moving away. This violence can hardly be attributed to the new authorities (a theory which some have put forward), because it was already present under the previous Government. It has simply increased in scale.

B. Violence against women

16. The most recent assessments show a worsening of the situation. Of the 133 cases of rape counted by the NGO Kay Fanm from September 1998 to April 2004, 46 were committed between January 2003 and April 2004. The same conclusions have been reached by the Gheskio health care centres: the three-month average for such patients rose from 17 in 2003 to 49 in the course of 2004. More detailed studies might make it possible to say what percentage of such increases is linked to more complaints being lodged, since women are better informed, in particular through the activities of their NGOs, the main ones being grouped together in the very active Coordination nationale de plaidoyer pour les droits des femmes (see E/CN.4/2004/108, para. 21). This development is particularly alarming because a number of hitherto relatively marginal practices have been spreading, such as group rape, a “speciality” of certain gangs, and even repeated rape over time, practised as a way of blackmailing the victim or her family.

17. Despite major public awareness campaigns conducted jointly by the Ministry of Women’s Affairs and Rights and specialized NGOs with the support of the media, preventive measures and shelters are far too limited, given the scale of this social tragedy, which has persisted regardless of the Government in place. Current efforts include:

- The ratification on 3 April 1996 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women;
- The elaboration of a bill incorporating the offence of rape into criminal legislation, the adoption of which has unfortunately been delayed by the political crisis;
- The inter-agency project to combat violence against women, in which the main United Nations specialized agencies are participating and which embraces many recommendations of women’s organizations and the relevant ministry;
- The requirement for all doctors in both the public and private sectors to issue a certificate attesting that a sexual assault has taken place; by enabling evidence to be presented, this measure, long called for by NGOs, is of vital importance in reducing impunity, which is all too common in this area.

C. Violence against children

18. Those who are most exposed to the sporadic violence that is corrupting the country are children. According to the United Nations Children’s Fund (UNICEF), which the independent expert wishes to thank for its cooperation, and its 2003 Integrated Emergency Response Programme Targeting Vulnerable Groups and Communities, nearly 52 per cent of Haiti’s children (approximately 3 million) live in extreme poverty; only 50 per cent have been

vaccinated, 25 per cent suffer from chronic malnutrition, and many have only limited access to medicines, social services and basic staples.

19. A more recent study on the impact of the current crisis on children, carried out in March 2004 for the whole country by UNICEF together with Save the Children (Canada and the United States), World Vision International and Plan International, shows that such violence affects in particular streetchildren in Port-au-Prince and girls working in homes.

20. The study also finds that in more than 15 per cent of the areas concerned, children were killed, wounded by gunfire or beaten by armed gangs, which have recruited children in nearly one third of these areas. The number of rapes has increased significantly, especially in Port-au-Prince, Petit-Goâve, Fort-Liberté, Gonaïves and Jérémie.

21. In 8 of the country's 10 biggest cities, children have been the targets of threats aimed at discouraging and even preventing them from attending school.

D. Freedom of the press

22. Although acts of intimidation against the press have not stopped, persecution is no longer of the same intensity. Reference is made, however, to the following victims of recent extra-governmental threats or persecution: Nancy Roc, a journalist, while she was covering a story in Gonaïves; Lynella André, co-anchorwoman of Haiti's National Television, whose car was set on fire in Martissant; Jean-Jacques Augustin, photographer for the newspaper *Le Matin*, victim of an assault in Port-au-Prince; and arson attacks against the media, including those against Radio Pyramide and Radio Trans Africa in Saint-Marc and the burning of two vehicles of Télé Haïti in Delmas 24.

II. MAIN OBSTACLES TO THE REFORM OF THE ADMINISTRATION OF JUSTICE AND THE POLICE

23. The following observations focus on a number of difficult issues identified by the independent expert *in situ* which are all directly or indirectly related to the administration of justice and the police.

A. Worsening of the identity crisis in the police force

24. In his previous report, the independent expert had stressed the seriousness of the identity crisis in the police force, a crisis which the new Government has thus inherited (see E/CN.4/2004/108, para. 37 et seq.). The most important question facing the authorities and the population is: who today is really a police officer, and who is not?

25. First category: obviously, the units of the official police force (Haitian National Police, PNH), although their strength has been reduced by nearly half. Some police officers are very dedicated, for which they should be commended. In Fort-Liberté, for example, the prison visited by the independent expert did not have any penitentiary personnel; in addition to discharging their regular duties, members of the already understaffed police force worked as prison guards, and the police chief as acting prison warden.

26. Second category: "false" police, who are either (a) black sheep in the PNH who become vigilantes or racketeers when off duty (a group difficult to assess); (b) police officers who have

deserted and who have kept and continue to use their weapons and uniforms; and (c) *chimères*, “released” prisoners (i.e. escapees) or other criminals who disguise themselves as police officers, usually dressing in black and putting on a hood when committing their brutal acts.

27. In an effort to prevent such excesses, in March 2004 the Director-General of the PNH took the initiative of publishing a circular letter containing some of the independent expert’s recommendations, namely: police officers must wear a uniform and carry police identification when on duty, and they are forbidden to use hoods, or vehicles without licence plates. The circular is difficult to apply, given the atmosphere of illegality that has reigned in the police force for decades.

28. The third category, and by no means the least important one, concerns the activities of former soldiers who have become “paramilitaries” and rebel militants who have become “parapolice”, de facto replacing the State in what has become a rampant militarization of society, a subject which we will return to later.

29. This situation has been aggravated by the staff crisis in the police. According to the data of the Interim Cooperation Framework (ICF), the PNH force (6,300 persons in 2003) has declined by half (about 3,000) because of the many police officers who have deserted or have been dismissed because of their past record; unofficial police officers, i.e. who wore a uniform under the former Government but do not appear in the official figures on staff strength, must be added to the total. As of 14 April 2004, some 117 police officers, including 13 inspectors and 11 division heads, had been dismissed after a case-by-case review of their records, pursuant to a decision by the National Police High Council, which made the list public. Proceedings are said to have been instituted in thirty cases.

30. Uncertainty persists. As he has already noted, the independent expert is unable to say whether all these dismissals were always decided with sufficient formal guarantees, which presupposes notification in writing at the very least - as pointed out by one CIVPOL representative, oral practices prevail, and not written ones, hence the lack of guarantees in many cases. To cite one example, the independent expert has learned that the former PNH director was suspended without ever receiving any notification in writing, a practice which the independent expert had repeatedly criticized under the old Government (see E/CN.4/2004/108, para. 55 et seq.). It has become urgently necessary to put an end to such situations. Likewise, the independent expert regrets that apparently no one has been notified that the prohibition on leaving the country imposed on a number of public figures to ensure that they were available to investigators has been lifted.

31. In order to overcome the staff crisis in the police, a national programme is under way to train and recruit 400 young people and gradually employ former soldiers (200 to date) after an assessment of their physical condition and past human rights record and an accelerated training programme at the Police Academy. The ICF plans to increase staff strength by 6,000 in 2005 (including 10 per cent women) and by as many as 20,000 by 2015.

32. The PNH spokeswoman’s efforts in keeping the public fully informed about incidents involving the police should also be commended.

B. The problem of demobilized soldiers

33. When he returned to power after the coup in which he had been ousted in 1991, President Aristide decreed the disbandment of the army, although the Constitution had not been amended accordingly, nor had sufficient provisions been made for the collection of weapons or measures taken for the payment of retirement benefits or even for a reintegration programme.

34. In an attempt to begin to address this difficult problem, the Transitional Government has set up an administrative Office for demobilized soldiers to consider questions of compensation, retirement and re-employment, notably in exchange for the handing over of their weapons.

35. To cope with this crisis, some members of the Government seem to be more in favour of rebuilding an army, but only after a transition and on a strictly professional basis (for example, restricting its tasks to guarding the borders and combating drug trafficking and terrorism), so that the population has the feeling that the army is there to serve it. Others are more hesitant and even opposed to the idea; history shows that Haiti's armed forces are more likely to be used to oppress the population rather than to fight a hypothetical adversary. Indeed, it is hard to imagine an armed conflict breaking out today between Haiti and the Dominican Republic. There is an urgent need for the Government to clarify these positions and to speak with one voice on the matter before dissatisfaction grows in the police force, which is unhappy about finding itself in competition with a kind of parallel police and whose leadership only recognizes, and rightly so, demobilized soldiers who have joined its ranks.

36. It should also be underscored that, with a view to justifying their actions, the groups of former soldiers and civilian militants seek to spread the idea that they are the ones responsible for President Aristide's departure. These advocates of democracy by force, last-minute helpers, have a short memory. Rewriting history, they are trying to efface the courageous, peaceful role played by democratic activists in civil society, who at the time were labelled "terrorists" by the authorities, and whom some would now like to reduce to supernumeraries because they fear the irreversible role which civil society has acquired in the country's recent history.

C. The rampant militarization of society and its consequences for the administration of justice and the police

37. For security reasons, the independent expert had to confine his visits outside the capital to Fort-Liberté and Gonaïves, where he observed the following.

38. In the department of Nord-Est, and especially in Fort-Liberté, the population is still traumatized. The crisis peaked when detainees rebelled against their guards, seized their weapons, escaped and spread terror in the city. The list of public buildings set on fire or ransacked in the region is considerable (at least 16, including 9 in Fort-Liberté). In addition, between 19 February and 28 March, 21 private residences were burned, including those of four judges, a lawyer and the prison warden, who was wounded by two bullets in the head.

39. It is against this background that the rampant militarization of society has taken place. Reacting to these acts of vandalism which the local police were no longer able to deal with effectively, armed uniformed paramilitary groups intervened, taking over the customs headquarters, which they transformed into their "barracks". They arrested persons and turned

them over to the police, who in turn brought them before the public prosecutor for referral to an investigating judge, so that their action as a de facto police unit was indirectly legitimized. Fortunately, these former soldiers left the city to MINUSTAN, which moved into their “barracks”; the police station, following a cursory rehabilitation, is more or less operational again.

40. In Gonaïves, the administration of justice has virtually collapsed. In September 2002, the independent expert had already observed that the prison had been partially knocked down by a bulldozer (allowing the escape of 153 prisoners, including Amiot Métayer) and the courthouse wrecked (see E/CN.4/2003/116, paras. 27 and 28). After the departure of Jean-Bertrand Aristide, the courthouse was again vandalized, and the prison and police station (all of whose equipment, including weapons, was pillaged) were razed to the ground, as the independent expert observed.

41. Seven months later, the police station, having been transferred to summarily equipped emergency premises, was again vandalized by a group belonging to the Front de résistance nationale (FRN), its spokesman alleging that there was a plot targeting one of its members. The building was ransacked and the equipment stolen.

42. Later, members of this commando appeared at the police to turn over individuals who had been “surprised” in possession of objects stolen from the police station, as the independent expert was able to see, the procedure having been explained to him while he was visiting the prosecutor’s office. In a sense, this action is tantamount to provoking unrest so that later the parallel police force can present itself as the guardian of law and order, thus legitimizing its role.

43. The situation is similar in Cap-Haïtien. According to testimony received by the independent expert, before the MINUSTAH’s presence made itself felt, the paramilitaries had attempted, there again, to justify their presence by forming a parallel police force, taking charge of maintaining law and order, despite the fact that the authorities had called for weapons to be handed in by 15 September 2004.

D. Questions about the so-called “operation Baghdad”

44. With all the rumours and disinformation, it is difficult to say what “operation Baghdad” actually means. An initial observation: regardless of the seriousness of the situation, it is misleading to compare it to what is happening in Iraq, where a full-scale war is being waged, causing many thousands of casualties.

45. In actual fact, given the stated aim of obtaining the return of Jean-Bertrand Aristide, “operation Baghdad” should be seen in connection with the occasional and often serious acts carried out as a deterrent or to create an atmosphere of fear in order to foil any attempt to achieve a political solution through national dialogue and elections. Hence the provocative use of the words “operation Baghdad”, brandished as a threat since 30 September by the perpetrators of this violence.

46. Is the violence the result of a covert and coordinated plan or simply a reflex acquired in dealing with the opposition under President Aristide’s second term of office, as could be seen in the serious incidents at the university in Port-au-Prince on 5 December 2003 (see

E/CN.4/2004/108, para. 48) or earlier in Cité Soleil on 12 July 2003 (ibid, para. 20)? The independent expert has in mind, for example, certain popular organizations or *chimères* armed by the authorities at the time, not to mention Jean-Bertrand Aristide's chilling words to his followers a few days before his departure, urging them to "make out of day and night one and the same thing".

47. In other words, is there a "mastermind" or coordinating cell in Haiti or abroad? It is difficult to say, since all these armed groups have changing structures and a hierarchy burdened by constant rivalries, in particular of a territorial nature. It should be noted that the Lavalas movement calls "operation Baghdad" a deliberate provocation by the Government and that the recent Communication Commission of the Lavalas movement (made up of public figures close to Jean-Bertrand Aristide, such as Jonas Petit, Mario Dupuy, Angelot Bell and doctor Maryse Narcisse), which in a communiqué of 6 December 2004 proclaimed itself to be the sole body authorized to represent Famni Lavalas and to speak on its behalf, has announced that peaceful unarmed opposition would continue, in accordance with the Constitution and international conventions. Nothing on the ground or in operations to maintain law and order supports this assertion. On the contrary: the number of police officers murdered (and even beheaded), wounded or attacked has never been so high in such a short period. Indeed, this assertion will not be credible until the Communication Commission or any other authorized spokesman of the Lavalas movement issues a solemn appeal to its followers for them to participate actively in the campaign for turning in their weapons, the only way of showing that the commitment to continuing peaceful opposition in accordance with the Constitution is real.

48. On the ground, the tactic consists of selectively creating an atmosphere of fear ("micro-climates of terror", as one MINUSTAH soldier put it).

49. Whether through the burning or looting of public or private buildings, especially shops, or the random seizure of vehicles, the aim is to spread chaos and thus prevent the regular functioning of public services, schools, markets etc.

50. Occasionally, spectacular actions are undertaken to frighten the public. For example, on 30 August 2004 a hundred rioters surrounded the Cité Soleil hospital during the visit by the French State Secretary for Foreign Affairs, Renaud Muselier; on 9 December, gunfire broke out near the National Palace during the visit of the American Secretary of State, Colin Powell; or, at another, more horrifying level, on 5 October the final, dramatic words spoken by the Haitian Dieulanne Laguerre were broadcast, having been taped several seconds before he was beheaded.

51. The list of shooting victims is long. From 1 to 30 September 2004, the Haiti university hospital counted 114 persons wounded and 3 killed and, from 1 to 26 October, 127 wounded and 63 killed; most of those wounded were from Martissant, Grand-Rue, La Saline, and Delmas 18 and 30, and the dead were mainly from Bel-Air, Cité Soleil, Martissant and Carrefour. Since March 2004, some 50 police officers have been wounded and 26 killed, including 3 beheaded. This climate of domestic unrest is also present in a number of other regions, although to a lesser degree.

52. The uncertainties surrounding "operation Baghdad" can be summarized by one question: who benefits from the crime? Is it the most radical followers of Lavalas, in destabilizing any plan for a national dialogue and credible elections, or is it the former soldiers and other rebels,

who instrumentalize the unrest, justifying their self-assigned role through “law and order” activism? From this point of view, the two sides have become objective allies.

E. Guarantees to be provided during mass arrests in connection with operations to maintain law and order

53. Faced with frequent violent incidents in a number of neighbourhoods, such as in Bel-Air during the independent expert’s visit, the police must make mass arrests of persons on the scene who, for lack of room, are then transferred to other police stations, where the criminal investigation begins.

54. Persons against whom no accusations have been made are released, whereas the others are held in custody and then brought before the public prosecutor. Although, as the independent expert observed, there is a written trace of the procedure for the second category, there is none whatsoever for the category of released persons. Experience shows that this legal vacuum will eventually encourage disappearances in cases in which police abuse occurs at the time of the arrest. It has therefore been suggested that the name and address of arrested persons should be immediately recorded in the police notebook as soon as they are brought to the police station. The independent expert is aware of the questionable effectiveness of such a measure in a country in which the population register is not very reliable, but that only highlights the need to give priority to such a reform.

F. The recurring question of prolonged detention in general, and that of former Lavalas officials in particular

55. This is a recurring problem, as stressed with urgency by the independent expert in his previous reports (see E/CN.4/2003/116, para. 37 et seq. and E/CN.4/2004/108, para. 59 et seq.). Whereas the national incarceration rate is again low due to the very large number of “escapes”, nearly 80 per cent of those incarcerated are in pre-trial detention. That being the case, the independent expert particularly appreciated the initiative taken by the Fort-Liberté police chief who, in discharging his additional duties as acting prison warden, periodically sends the government commissioner (prosecutor) the list of persons who appear to be in a situation of prolonged detention.

56. As to detentions directly linked to political change, this question requires urgent action, given the independent expert’s frequent observation, here again, of the large number of persons detained without due process (detention often without notification of accusations and/or prolonged detention, since the detainee is not brought before a judge within the legal time period for custody of 48 hours). If no measure is taken soon, this question, which is currently of a “judicial” nature, will become eminently “political”, especially with regard to a number of detained persons who held office in the previous Government. The political discourse on this subject is unclear: for the supporters of the former Government, these are political prisoners who are being held because of their commitment to Jean-Bertrand Aristide. For others, activities related to the exercise of freedom of opinion and expression are not (or will not be) at issue, but only ordinary offences committed in the exercise of their duties or while in public office, it be violence against persons or property (assault, murder or attempted murder, illegally bearing, possessing or distributing arms or even illegally wearing a police uniform, arson etc.) or financial offences (embezzlement of public funds, abuse of confidence, money laundering, bribery etc.).

57. The only way of resolving this unhealthy uncertainty is through strict application of the law. But as of 20 December, of the 60 cases submitted to the independent expert by the pro-Aristide Office of International Attorneys (BAI), the majority - subject to more comprehensive verification - had not been brought before a judge within the legal time period, and others had been the subject of a late detention order or had not been heard by the judge within a reasonable period of time although the technical conditions for the application of the law (see para. 75 below) had usually been met. Thus, doubts may well arise as to whether the accusations are well-founded and may persist as long as no action is taken to start an investigation, which would be the only way of establishing what falls within the province of crimes of opinion (thus justifying the term of "prisoner of opinion") and what comes under ordinary offences.

58. The situation has already begun to be instrumentalized, as shown by statements reported in the press alleging that there are large numbers of political prisoners in Haiti. Some of President Aristide's followers, who have a short memory, will no doubt make every effort to exploit these comments by the independent expert in order to denounce the provisional Government and hinder the start of a national dialogue and the electoral process. They are free to take responsibility for that, but they will not be very credible, because in the past they were indifferent to the non-compliance with legal rules on detention, although they could have - and should have - opposed such abuses; the independent expert repeatedly criticized this situation in his previous reports, for which he was called a liar.

The case of the arrest of the former Prime Minister, Yvon Neptune

59. On 7 February 2004, with tensions growing in the city of Saint-Marc (presence of armed rebels, ransacking and burning of the police station), the Prime Minister went to the scene. On 10 February, the situation worsened, and there were armed clashes, apparently with many victims on both sides. According to some NGOs, the pro-Aristide group Bale Wouze, supported by the PNH and under the protection of the Prime Minister, was responsible for this violence. A warrant was later issued for his arrest for instigating the bloody crackdown, and he was arrested on 27 June.

60. According to Yvon Neptune, whom the independent expert visited in the national penitentiary, an independent inquiry would show that in reality, the clashes had involved two rival groups (the Bale Wouze and the Ramicosm) who were fighting for control of the Saint-Marc harbour and that although the Ramicosm had also committed serious abuses, only the members of the Bale Wouze - said to be pro-Aristide - are in detention and are being prosecuted.

61. With the inquiry deadlocked, how can the facts be ascertained? Seven of the persons currently in detention in the case (also including the former Minister of the Interior Jocelerme Privert) have entered an appeal in the Court of Cassation to challenge the judges of the Saint-Marc court for bias; referral to the investigating judge has thus been suspended, and the case is held up pending the decision of the Court of Cassation.

62. But although the case had been brought before it on 12 July, the Court of Cassation did not consider it until 8 November 2004 and to date (27 December 2004) has still not rendered a decision. This delay is said to be due to understaffing at the Court, which currently has only 7 judges in office, its normal strength being 12: the President of the Court is temporarily

discharging the duties of the President of the Republic, the Vice-President of the Court has died, and three judges completed their term of office on 8 December 2004. Thus, four seats need to be filled. But the Senate, which has the sole power to propose judges to the President of the Republic, is not in session due to the crisis. None the less, the independent expert believes that there are two possibilities for breaking the deadlock and that there is an urgent need to do so:

- The Constitution provides that, since the country is in a state of exception, it is incumbent upon the President of the Republic to ensure “the stability of the institutions” and “the regular operations of the public authorities and the continuity of the State” (art. 136), and this empowers him to fill vacant seats during a period of crisis. Indeed, pursuant to the presidential order of 31 March 2004, a Court judge was recently appointed and took the oath of office on 29 April 2004;
- If vacancies prevent one of the two chambers (five members) of the Court to meet, judges from one chamber may sit in the other chamber, which meets in this special composition to ensure the continuity of service.

63. If the Court of Cassation does not immediately make use of these possibilities, it may appear to be uninterested in setting an example for the proper administration of justice.

Case of the former Minister for the Interior, Jocelerme Privert

64. The independent expert had visited Jocelerme Privert during his previous mission; his situation, which is similar to Yvon Neptune’s (appeal to challenge the Saint-Marc court for bias), remains unchanged due to the above-mentioned delays at the Court of Cassation, although he has been detained since April 2004.

Case of the arrest of Senator Yvon Feuillé, who has since been released

65. On Saturday 2 October 2004, the police occupied Radio Caraïbe FM during the broadcast “Ramasse” and arrested three Fammi Lavalas leaders: Joseph Yvon Feuillé (the contested President of the Senate), Louis Gérard Gilles (a former Senator), Rudy Hériveaux (a former delegate) and one of their lawyers, Arsène Joseph, who was quickly released. They were placed in custody for allegedly masterminding the recent violence that broke out in Port-au-Prince on 30 September 2004.

66. Apparently in order to forestall any protest based on the question of President Feuillé’s parliamentary immunity, the reason advanced for his arrest was that he had been caught in flagrante delicto, military weapons having been found in his car. It should be recalled that, in accordance with article 31 of the Code of Criminal Procedure, in flagrante delicto refers to “an offence that is currently being committed or that has just been committed” as well as “the case in which the accused is found with property, weapons (...) which give reason to assume that he is a perpetrator or an accomplice”. But the text makes a point of posing the following condition: “provided that it is soon after the offence”.

67. Without even addressing the complex question of the validity of Yvon Feuillé’s parliamentary immunity or the appropriateness of a police intervention within - and not outside - a radio station, the broad interpretation of flagrante delicto is not compatible with the proper

administration of justice. It should be noted that Senator Feuillé and former delegate Hériveaux were eventually released.

G. Status of persons arrested by groups of former soldiers or rebels

68. Although this practice is on the decline, there are still too many cases in which such groups make arrests, incarcerating persons in premises under their control; such actions are highly illegal. More complex is the question of the legality of detention decided by the courts following an arrest made by former soldiers (see above, paras. 34 et seq.). To justify this practice, some have cited the Code of Criminal Procedure, according to which, in cases of a crime or flagrante delicto, anyone may apprehend the perpetrator and bring him to the nearest police station.

69. Faced with such situations, some of the investigating judges with whom the independent expert spoke begin or even complete the relevant procedural steps leading up to an investigation. Some start the investigation, doing so, as they stressed, very reluctantly. In their opinion, the victims would find it intolerable if the courts, making procedural excuses, were in a sense to become accomplices of impunity. Others refuse to condone a parallel police and confine the investigative measures to the initial appearance so as to protect the rights of the victims and to the issuance of a detention order if justified by the nature or seriousness of the offence. In the longer run, that will inevitably cause problems with regard to the legality of this form of pre-trial detention, which might eventually become prolonged detention, and the judge, as one disillusioned member of the bench put it, only has the choice between two illegal situations.

H. Towards a reform of training for judges, lawyers and court officials

70. Haiti currently has 600 judges (including 375 justices of the peace), 650 registrars, 750 lawyers and 1,200 bailiffs. In accordance with the main thrust of the reform being prepared by the Ministry of Justice, new judges will be recruited as justices of the peace (114 as from January) through a national competitive examination held by the Ministry. That is genuine democratic progress. Training for the office of judge or deputy judge will then be offered in the curriculum of the Legal Service Training College (EMA). Generally speaking, the aim is not to recruit university students as soon as they graduate, but to find candidates with professional experience. This was already the policy of President Aristide's Ministry of Justice, the major difference being the cycle of courses at the EMA. A special four-month training course in economics and finance has also been introduced with a view to establishing a separate criminal branch, including an appellate court.

III. DIFFICULTIES ENCOUNTERED IN COMBATING IMPUNITY

71. Although the Government has stressed its determination to combat impunity, some have accused it of not being sufficiently committed, whereas others find fault with certain improvisations. The criticism is justified in part, but difficulties caused by the crisis situation, which the independent expert would like first to discuss, must also be borne in mind.

A. The adverse consequences of widespread rumour-mongering

72. The “rumour syndrome”, to which the independent expert has already referred, has grown. It has been prejudicial to the presumption of innocence and, above all, has caused confusion about the reliability of accusations. The independent expert has seen for himself what this means. He has been told pseudo-secrets and has heard stories about “listings of questionable cheques”, the origin of which is not made clear and whose beneficiaries are described as having been compromised. Politicians or even gang leaders make allegations in cassettes clandestinely recorded and circulated, while taking care to conceal their own corrupt acts and abuses. These practices spread confusion in the public, because it is thought that the alleged acts have gone unpunished, although they may turn out to be mere rumours.

B. The complex question of who should be answerable for violations

73. Although some of the above-mentioned violations are clearly of police origin, human rights organizations questioned on this point agree - even when they give the authorities their conditional support - that the threats and persecution of which they continue to be the targets as well as the many violations committed every day against the population are no longer the work of the Government itself, which, as one of those interviewed put it, no longer uses gangs against its opponents, unlike in the past. Who, then, should be made answerable for these violations?

74. From a strictly legal point of view, the Government is directly or indirectly answerable for the violations, because under international law, it is the responsibility of every Government to ensure the security of persons under its jurisdiction. But can the strict application of this principle be required without taking any account of the situation which a Government - and in this case a transitional one - inherits? After all, it has very provisional legitimacy and a limited mandate.

75. On this difficult question, the independent expert undertakes - solely for the purposes of the present report - to make a distinction, when speaking of the State, between human rights infringements committed through violations of the law and those due to objective temporary conditions which result in the law not being enforced, despite the fact that the principle of State responsibility must remain the cornerstone of the fight against impunity:

(a) The first category concerns cases in which the State has not taken action although it should have been able to enforce the law despite a crisis situation, in short, to show a willingness to combat impunity despite the limited means at its disposal. For example, when the necessary premises are available, even if they are provisionally equipped, there is no reason why the limit of 48 hours for custody should not be respected; but this is still too often the case, as the independent expert observed.

(b) The second category relates to exceptional cases in which the shortcomings of the State result from it having for the moment virtually no real possibility to act because of a situation which it has inherited (for example, local lack of police officers due to desertions or dismissals, or unavailability of premises for custody and detention following widespread destruction of equipment).

C. Combating impunity requires impartial, fair trials of an exemplary nature

76. In order to be sufficiently exemplary, the administration of justice must above all take care not to be a one-way street. If it is possible to arrest a Prime Minister, it should be possible to arrest the “escapee” Jean Tatoun, who is said to be “lolling about in freedom”, although he was sentenced to life imprisonment in the Raboteau trial, or someone like Ravix Rémissainthe, who, after proclaiming himself the commander of the former soldiers, launched a call for guerrilla warfare. Taking into account the lessons of the Jodel Chamblain case, it must also be ensured that the first cases brought to justice for their exemplary nature are sound; after all, the Chamblain case recently ended, as expected, with an acquittal. This former number 2 in FRAPH (paramilitary organization during the dictatorship of General Cédras), sentenced in absentia to life imprisonment for the murder in 1993 of a pro-Lavalas shopkeeper, was brought before the Assize Court after giving himself up on 22 April 2004. Acquitted by the Court, he was kept in detention in connection with another life sentence in absentia imposed for his involvement under the Cédras regime in the Raboteau massacre in 1994 and in a dramatic punitive operation carried out in 1993 in Cité Soleil, in which many inhabitants were killed or critically injured, a hundred houses set on fire and hundreds left homeless.

77. Chamblain’s acquittal triggered an enormous controversy. Some cited the independence of the judiciary, while others referred to defects in the trial. For example, only one of the eight witnesses having appeared, the prosecution asked for the adjournment of the case, as expressly provided for in such instances under article 286 of the Code of Criminal Procedure. Oddly enough, the Court rejected the request on the ground that it did not have guarantees that the witnesses would appear. That seems to ignore an essential point: the accused having been one of the leaders of the rebels who had recently taken up arms, the reluctance of the witnesses was understandable. At the very least, an adjournment would have enabled the prosecution to look into the reasons for their absence and/or would have allowed the Court, if the failure to appear was unjustified, to use the powers conferred upon it under article 287 of the Code of Criminal Procedure to ensure the presence of all or some of the witnesses.

78. Given the defects in the case, these efforts might not have changed the verdict, but they would have dispelled any doubts, because, as the saying goes, “justice must not only be done, it must also be seen to be done”.

79. Before venturing onto the uncertain ground of trials in absentia, such as the above-mentioned Chamblain case, it might be wiser to do everything possible to ensure that justice is finally done in a number of cases of symbolic importance for showing a willingness to combat impunity and thereby prevent it from perpetuating itself under the new Government. The independent expert has in mind in particular the murder of the journalists Jean Dominique and Brignol Lindor, cases which again are starting to get bogged down in court and which the Commission on Human Rights will probably wish to regard as a test in this area.

80. Unless Jodel Chamblain is tried, it would probably be preferable for him to be subpoenaed in connection with the case of the above-mentioned punitive expedition, of which many inhabitants of Cité Soleil were victims, especially since the investigation appears to be completed. For the exemplarity sought, this would be the sign that the courts are concerned about the rights of the poor.

81. With that in mind, the independent expert received in Gonaïves a delegation of the Association of Peasant Victims from the sixth municipal district of Terrenette (municipality of Verrettes) at the request of the Ecumenical Centre for Human Rights. This NGO had given the independent expert a very detailed report of an investigation into the persecution that more than a hundred families have endured for many years without obtaining justice. The gang responsible for these abuses is composed mainly of members of the Poleus family. One of them, the ringleader, is no other than Victor Exilhomme Poleus, the Lavalas candidate elected to the office of district coordinator of Caséc (administrative board of the municipal district). The report's findings are particularly harsh: murders, including one followed by beheading, machete attacks, homes set on fire and cattle slaughtered. More than 300 persons have had to flee to escape persecution and reprisals. Any legal campaign to combat impunity should give priority to such cases, which all too often have become bogged down in the courts.

D. The role that the Ombudsman should play in combating impunity

82. Faced with this situation, the Ombudsman, who is not well known, should have played a vital role, but he suffers from a lack of credibility, firstly because he has not intervened actively in most cases of serious human rights violations, and secondly because of the questionable conditions surrounding his appointment. The decision to appoint him did not obtain the express approval of the presidents of each of the two chambers, although pursuant to article 207.1 of the Constitution, he must be chosen by consensus of the two and the President of the Republic. Notwithstanding what some have asserted, the fact that the Ombudsman merely appears in public in the company of the highest authorities of State cannot compensate for this defect. In a state based on the rule of law, control of legality cannot be assumed, but must be based on compliance with written rules.

83. In order to enhance the effectiveness of the Office of the Ombudsman, it is urgently necessary to fill the post of deputy Ombudsman, the establishment of which is based solely on article 207.3 of the Constitution, the post having initially been set up to assist the Ombudsman. As the post is currently vacant, it should be filled as soon as possible by someone with recognized moral authority in the field of human rights, who would be responsible for training and inquiries, while the Ombudsman would be in charge of relations with the authorities and the representation of the Office at international events.

E. Developing forensic medicine to help combat impunity

84. As the independent expert has stressed in both previous reports, the more a country is faced with violence, the more essential the role of forensic medicine is in the administration of justice, because a lack of scientific evidence in a sense encourages impunity (see E/CN.4/2004/108, paras. 89 to 92). He concludes that, despite the commitments reiterated by successive ministers of justice and health, the situation remains virtually unchanged. The Institute of Forensic Medicine (IML), opened in December 2002, is as little used as ever, notwithstanding the useful awareness-raising work being done by the Forensic Medicine Research and Action Unit (URAMEL). This NGO, which is composed of doctors, judges and lawyers, organizes awareness-raising sessions and has drawn up model forms to be used for the many procedural formalities (requisitions etc.) that both lawyers and doctors must comply with. The circular letter validating these documents, which has been ready for more than two years, is still waiting to be signed.

85. The same is true for the decision granting the IML autonomous status by providing it with an administrative board composed of one representative from each of the relevant ministries (justice and health) and chaired by the senior member of the faculty of medicine of the university of Haiti, as well as a managing director for the daily administration of the two services (thanatology and medicine for the living), who is responsible for assisting a team of trained forensic doctors.

86. The independent expert can only reiterate his previous recommendations and insist that the final obstacles should be removed so that the IML can make an effective, indispensable contribution to the authorities, who have expressed their willingness to combat impunity with determination.

F. Combating corruption and money laundering

87. To show that it is ready to deal effectively with the corruption that is undermining the country, the Government has set up two specialized bodies:

(a) An ad hoc committee to shed light on the accusations of misappropriation levelled against the Lavalas administration (from 2001 to 2004). Some of Jean-Bertrand Aristide's supporters have criticized this committee for not being impartial, since it is chaired by Paul Denis, a former Senator in the opposition under Aristide, and for substituting itself for the High Court of Auditors and Administrative Disputes. Whereas there is something to be said for the first point, the second is hardly credible, coming as it does from those who should have voiced criticism earlier of the inaction of the Court, whose members may not be removed (article 201 of the Constitution) and which at the time had not taken the slightest initiative to combat this form of impunity.

(b) A Central Unit of Financial Information (UCREF) to combat the laundering of illegal assets. It has a dual task: that of an investigator responsible for receiving, analyzing and processing statements by which the relevant bodies and persons are bound, and that of a court official, in that it can ask the senior judge of a court for a measure to freeze assets, accounts or securities for a given period, and it can also forward its report to the competent judicial authority together with an opinion for action once credible evidence indicating an offence committed under its jurisdiction has been gathered.

88. In this connection, the interim Prime Minister has expressed his intention of having President Jean-Bertrand Aristide put on trial, if necessary in absentia, this being in his view justified because of the importance that the Government attaches to combating corruption. The initiative is controversial. Some cite article 186(a) of the Constitution, according to which the indictment of the President of the Republic for any "crime or offence committed in the discharge of his duties" comes under the jurisdiction of the High Court of Justice, which is none other than the Senate meeting as a court. But the Senate will not be constituted until after elections. Article 189.2, on the other hand, takes the opposite view: "However, the convicted person may be brought before ordinary courts if there is reason to impose other penalties" [apart from dismissal, disqualification or deprivation of the right to exercise any public office, the sole sanctions provided for under article 189.1] "or to rule on the institution of civil action". But as this provision expressly concerns "the convicted person", should it be deduced that a "conviction" by the High Court is a prerequisite for any ordinary prosecution or, which seems more likely, that the High Court may not impose penalties under ordinary law? In any

event, nothing prevents the UCREF from commencing investigations under its own authority, or the judicial authorities from investigating, as part of criminal proceedings, all of Jean-Bertrand Aristide's collaborators, friends and family and, if the evidence is sufficiently incriminating, having them put on trial, which would automatically bring to light embezzlement at the highest level, and everyone knows how fragile the sense of "solidarity" is in such instances.

IV. CONCLUSIONS

89. At its sixtieth session, the Commission had called for the opening in Haiti of an office of the High Commissioner for Human Rights. As MINUSTAH's organization chart provides for a human rights unit, the Commission's proposal was eventually discarded, since it would have been redundant. This understandable decision should not cause the lessons of a recent past to be forgotten, when international aid in support of human rights suddenly became scarce, before being virtually stopped without any real transition. MINUSTAH's presence is based on the assumption that it is limited in time, because its mandate has just been renewed until June 2005. Accordingly, to permit the transition to the Haitians to take place under good conditions, the independent expert had suggested developing a close partnership with the Office of the Ombudsman, which would gradually replace the High Commissioner's office. He therefore proposes that the human rights unit of MINUSTAH should be designed in such a perspective, working for example in liaison with the Office of the Ombudsman when the study is conducted on the establishment of a databank on the most serious human rights violations, an initiative that is essential to an effective policy for combating impunity and assisting victims.

90. Similarly, experience will show whether the independent expert's proposal to set up a watchdog unit for combating impunity should be taken up again (cf. the text of the independent expert's oral introduction of his report to the fifty-eighth session of the Commission).

V. RECOMMENDATIONS

91. In the light of the above, the independent expert observes that most of the recommendations in his previous reports are still relevant and that, insofar as those made by the Interim Cooperation Framework concerning good governance have the same thrust, their implementation continues to be pertinent, subject to their possibly being updated when the report is presented to the sixty-first session of the Commission. For pragmatic reasons (budgetary constraints, absorption capacity of reforms by a fragile State apparatus etc.) and thus to avoid disappointing, these recommendations are deliberately modest in their ambition, in view of the needs, which are enormous.

92. Give high priority to the reconstruction or rehabilitation of the equipment of the judicial system (courts and infrastructure), the police (police stations, premises for custody, vehicles, weapons and protective equipment etc.) and the prison administration so that the most urgent reforms of the administration of justice can be effectively implemented.

93. Adopt the following reforms as soon as possible:

(a) rules governing the Judicial Training College and a training curriculum for judges, lawyers, court registrars and court ushers;

(b) rules governing the Supreme Council of Justice, the cornerstone of a judiciary that is independent vis-à-vis the executive power;

(c) rules governing the judiciary which ensure the transparency of appointments and promotions and clarify the hybrid status of justices of the peace, who combine the powers of judge and prosecutor.

94. Ensure that the Ministries of Justice and Health take the following joint action on texts (which have been bogged down for three years) concerning the Institute of Forensic Medicine:

(a) signing of the circular letter validating model requisition forms;

(b) adoption of regulations defining the Institute's legal framework;

(c) adoption of the text on fees.

95. In consultation with the representative of the International Committee of the Red Cross, with whom the independent expert discussed this subject, and in cooperation with the Office of the Ombudsman and, where necessary, with NGOs, begin a study on the establishment of a databank on disappearances and summary executions, which might later be enlarged to include other types of serious violations, priority then being given to cases of sexual assault.

96. Update and expand the database of the prison administration, in particular by including escaped prisoners who have been recaptured and those still at large.

97. In cooperation with NGOs, universities and the judiciary, possibly in the context of decentralized mini-cooperation programmes, help ensure access to due process of law through the development of legal aid offices (BAJ), beginning with the three pilot courts.

98. Give the Inspector General of the Police responsibility for following up the circular letter requiring police officers to wear a uniform and bear police identification when on duty and prohibiting the use of vehicles without licence plates or the wearing of hoods. Although the wearing of hoods should be allowed in certain cases for security reasons (as a number of police officers have argued in discussions with the independent expert), such derogations should be strictly regulated and controlled.

99. Put an end to the improper use of the exequatur by some State prosecutors' offices, which vitiates the enforcement of decisions concerning the release of detainees ordered by judges.

100. With regard to the Court of Cassation, adopt the following reforms:

(a) Organize a technical seminar on how to make operational in the courts articles 276.2 of the Constitution, which provides for the primacy of treaties over domestic law;

(b) Publish the authoritative decisions of the Court of Cassation.

101. Assess the three pilot courts and take measures to revive this initiative and make it more dynamic. Examine possibilities for decentralized cooperation with other French-speaking courts in the Caribbean region.

102. In the longer term, establish the basis for:

(a) a reform of the population register, a prerequisite for the full exercise of civil and political rights, in particular the right to vote;

(b) a land registry, which is a prerequisite for economic development, particularly in rural areas.
