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Situation of human rights in Haiti

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* This document is submitted late so as to include the most up-to-date information possible.

Summary

For reasons relating to the calendar of the former Commission on Human Rights, the report of the independent expert (E/CN.4/2006/115), which was circulated during the second session of the Human Rights Council, covered the situation in Haiti up to January 2006 and did not take account of the situation under the Transitional Government headed by Prime Minister Gérard Latortue. A brief update, which will be referred to below, was subsequently circulated in the Council in the form of a working paper (French only), taking account of the principal changes that had occurred in the political and institutional life of Haiti.

Moreover, for health reasons which today no longer obtain, the independent expert could not carry out the visit that had initially been planned for the third quarter of 2006. Consequently, this report was largely prepared: on the one hand, in the light of information gathered from civil society organizations and with the cooperation of the specialized departments of the United Nations Stabilization Mission in Haiti (MINUSTAH), particularly the Human Rights Section, the Justice Section, the Gender Unit and the Child Protection Section and, on the other, with the State services most directly concerned. Apart from a recent working meeting with the Chargé d'affaires a.i. of the Permanent Mission of Haiti to the United Nations Office at Geneva, the independent expert met, on separate occasions during their visits to France, in addition to the former Prime Minister of the Transitional Government, Mr. Gérard Latortue, with the President of Haiti, Mr. René Préval, and with Mr. Juan Gabriel Valdés, the former Special Representative of the Secretary-General in Haiti, and with his successor, Mr. Edmond Mulet.

The developments in the situation can be summarized as follows: an undeniable return to constitutional legality but a long way to go to achieve a consolidated State based on the rule of law. The goal to be pursued during this period is to reduce the chronic malfunctions of the State - and their impact on human rights - as a matter of priority in the areas of the police, the judicial system, prisons and, more generally, in efforts to combat the impunity of perpetrators of particularly serious crimes which, at the end of 2006, took the form - in addition to drug trafficking - of waves of murders and kidnappings for ransom. In order to achieve this, it is necessary to strengthen, through vetting, the police and justice services, and to launch an ambitious plan of action to reform the judicial system.

Shortcomings in the operation of the police force, the judiciary and the prison system have already been noted in the independent expert's previous reports and a considerable number of problems remain. For the most part, these concern:

- With regard to the police, there have been, inter alia, and apart from ill-treatment in cases of arrest, frequent non-observance of the time limit for remand in custody for which custody registers are all too often badly kept, the practice among certain police officers of "conciliation between the parties", which can give rise to dubious financial transactions and abuses of authority, for personal ends, on the part of police officers;
- In the area of justice, the independent expert draws attention to endemic corruption, the lack of legalism (district judges who do not respect the legal time limits for the transmission of cases, or who release detainees when they do not have the legal competence to do so), the authorities' non-observance of the procedure for renewing judges' mandates, chronic absenteeism of certain magistrates that can sometimes be

considered equivalent to abandonment of post, and negligence or professional laxity, which gives rise, inter alia, to the slow process of justice that perpetuates a violation that has occurred irrespective of the government in power: extended detention;

- In the prison system, the independent expert continues to deplore the record overpopulation, which is aggravated by the dilapidated state of buildings, the lack of good quality drinking water and appropriate medical care.

Major difficulties in combating the rise in organized crime that has been reflected, particularly in recent times, by the extent of drug trafficking and an unprecedented wave of murders and kidnappings for ransom that affect all classes, including the most underprivileged: various public figures (including a former minister, a judge and members of Parliament), passers-by, children leaving school, collective kidnappings of passengers in public transport ...).

Faced with this situation, the Government first tried to react by negotiating with gang leaders, an initiative that provoked strong reactions on the subject “reward for impunity”. While leaving open the possibility for gang members to take part in the disarmament, demobilization and reintegration programme, the Government decided to react through operations conducted jointly by the Haitian National Police and MINUSTAH (Operation “Major crimes”), following which a decline in this type of crime seems to have begun.

Heedless of the past, certain milieux - not monitored by the Government and with which the independent expert is in total disagreement - are in favour of restoring capital punishment or re-establishing the army instead of giving priority to the sustainable creation of a professional and democratic police force.

This difficult period should not jeopardize the reform movement undertaken to vet and professionalize the police force and give the judiciary credible guarantees of independence. This is why it is important that Parliament adopt the judiciary regulations, establish the Supreme Council of Justice, reform the Judicial Training College and undertake the constantly postponed reform of the Institute of Forensic Medicine.

The independent expert stresses the importance of the reform and activation of the Office of the Ombudsman in order to enable it to take over the functions of the MINUSTAH Human Rights Section when that Mission’s mandate comes to an end.

Major progress remains to be achieved in the following fields:

- On the one hand, in efforts to prevent violence against women: obligatory issuance of medical certificates, criminalization of rape, elimination of extenuating circumstances in cases where a wife is murdered by her husband, partial decriminalization of abortion;
- On the other hand, with regard to civil status: admissibility of paternity proceedings, regulation of the status of concubines (*plaçage*) and domestic work and preparation of a family planning programme.

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Introduction

1. This report has been prepared in accordance with Human Rights Council decision 1/102, in which the Council decided to extend exceptionally for one year the mandates and mandate holders of all the special procedures of the Commission on Human Rights, and requested the special procedures to continue with the implementation of their mandates.
2. The report that was prepared for the sixty-second session of the Commission (E/CN.4/2006/115) and circulated during the second session of the Human Rights Council gives an account of the sixth, seventh and eighth visits to Haiti by the independent expert in 2005 and the situation in Haiti under the Transitional Government headed by Prime Minister Gérard Latortue.
3. A brief update (circulated in French only), which will be referred to below, was subsequently submitted to the Human Rights Council on the principal changes that had occurred in the political and institutional life of Haiti.

Return to constitutional legality confirmed by the election of René Préval as President of the Republic

4. A brief summary of the various stages completed highlights the important progress made since the independent expert's last report, namely:
 - (a) Establishment of a transparent electoral process with, for the first time, the creation of an electoral roll - in what were undoubtedly difficult and imperfect, but perfectible, conditions - which enabled forgery-proof voter registration cards to be issued;
 - (b) Election of the chief executive, the President of the Republic, in a vote the results of which were not really challenged;
 - (c) Re-establishment of an elected Parliament;
 - (d) Appointment of a Prime Minister ratified by the Parliament, i.e., as required by the Constitution.
5. The final stage in this process was completed on 3 December 2006, with the holding of local elections that made possible the election of mayors of cities, as well as the administrative boards of the municipal districts and communal section assemblies, which fulfil the same role in the rest of the country. While turnout for local elections was rather low (estimated at about 30 per cent before final results, which are expected at the end of January or in February), and although certain incidents occurred, their legality was not seriously challenged. In fact, according to an initial assessment by the Provisional Electoral Council, only around 240 protests have been registered so far. Even if a few additional protests are expected in January, these procedures are not sufficient in number to bring about a significant change in the final results.
6. Whatever criticisms may have been directed against it, the Transitional Government should be given credit for having brought about this return, if not to the rule of law, at least to constitutional legality. This process received considerable support from the United Nations Development Programme (UNDP) and MINUSTAH, which made this issue a priority, as well as

the Organization of American States (OAS) which was entrusted with establishing a national electoral roll that made it possible to issue forgery-proof identity documents to more than 3 million Haitians aged 18 and over.

7. The independent expert wishes to commend all those, particularly the Haitians, who contributed with public-spiritedness, competence and dedication to the finalization of this process, despite the difficulties encountered almost every day, particularly in rural areas, as the independent expert has observed; and the leaders of political parties who, despite the profound antagonisms between them, demonstrated a spirit of “conciliation” that enabled success to triumph over the predicted failure. It is to be hoped that this is a sign of a future “reconciliation” through democracy, under which a political adversary is not an enemy but simply an opponent whose differences of opinion should foster democratic debate and not fuel hatred.

I. THE RISK OF SEEING THIS LARGELY SUCCESSFUL EMERGENCE FROM THE CRISIS COMPROMISED BY GROWING AND ALMOST UNCONTROLLABLE INSECURITY

A. The regrettable deterioration in relations between the police and the justice system

8. These often-strained relations have seriously deteriorated in recent months, following a spate of incidents. It is to be hoped that reason will triumph and that such incidents will be resolved by a return to dialogue.

9. The first incident took place on 21 February 2006, when the Central Director of the Judicial Police raised serious questions about the honesty of the judiciary.

10. In the second incident, this senior official, who was also the subject of accusations relating to a gang case, refused to comply with a summons issued by the investigating judge and demanded that the judge be taken off the case. The judge, whose professionalism had been recognized when he presided over the Raboteau trial of the perpetrators of massacres committed under the Cédras dictatorship, withdrew of his own volition after a heated exchange in the media, and the case was assigned to another judge.

11. In the third incident, which occurred on 16 December 2006, the Director General of the Haitian National Police violently criticized the judiciary during a speech made in the presence of the Prime Minister during the swearing-in ceremony of the eighteenth class to graduate from the Haitian National Police Training Academy. Some of his words are worth underlining here:

“In spite of the efforts of the current Minister of Justice and those working closely with him to combat corruption in the judiciary, there have not been any perceptible results. Our judicial system is still fragile; its fragility is characterized by a lack of maturity and competence and, what is more, by a dishonest culture of venality sustained by unparalleled corruption [...]. Today nothing, or very little, remains of our judicial system except for the tyranny of a few judges and State prosecutors who, in their own interests, publicize their interpretation of the law and devise all kinds of legal pretexts to

imprison - or keep in prison - any individuals awaiting trial who do not have the means to buy their freedom [...]. In the corridors of our district courts, our prosecutor's offices and our investigation services, arrest warrants or detention orders are sold to the highest bidder and, what is worse, in the name of the Republic."

12. In the fourth incident that the independent expert wishes to mention, a significant number of the judges of the Port-au-Prince judicial district have begun a strike, which will be fully lifted only on 11 January 2007.

13. The fifth incident occurred during the night of 6/7 January 2007, when unidentified individuals ransacked the offices of the Port-au-Prince prosecutor. Important case files and incriminating evidence, including weapons, are said to have disappeared. On 10 January, the Minister of Justice, accompanied by the Secretary of State for Public Security and the Director-General of the Haitian National Police, visited - without warning, it seems - the prosecutor's offices, including the office of the Government Commissioner and, following this visit, questioned the burglary theory put forward by the Public Prosecutor and his deputies and announced that an inquiry would be opened. This announcement elicited a vehement reaction from the Government Commissioner, who maintained that the Minister was not competent to carry out such investigations, as the matter did not come under his jurisdiction, and declared that he could no longer cooperate with the Minister. On the same day, the Government Commissioner called for the Minister of Justice to be relieved of his duties and commenced investigations against the person or persons - yet unknown - responsible for the aforementioned burglary. An investigating judge is due to be appointed in the near future.

14. This regrettable crisis demonstrates the urgent need to take the initiative to restore dialogue between these two institutions. In an effort to ease tensions, there are plans to hold a round table (first bringing together non-senior judges and police officers to cool down the debate), which could be organized under the auspices of the Judicial Training College on, for example, specific and complementary responsibilities of the police force and the judicial system in applying the law. The Minister approved this proposal, which was put forward by the Justice Section of MINUSTAH, and a meeting is scheduled to take place mid-February, when the Judicial Training College reopens.

15. Basically, this crisis demonstrates the urgent need - if further demonstration was necessary - for Parliament to adopt the bill on judiciary regulations and the bill creating the Supreme Council of the Judiciary, which, on "neutral ground", could have helped to defuse the situation or even begin a dialogue with a view to ending the crisis with the National Police High Council (for details of the reform of the Supreme Council of the Judiciary, see paras. 66-71 below).

B. The persistence of numerous shortcomings in the police force, the judiciary and the prison system

1. Shortcomings in the police force and the judiciary

16. A reading of the list given below makes it clear that the training of police officers and members of the judiciary and establishing inspectorates capable of imposing their authority

remain high priorities, as on-site investigations conducted by the MINUSTAH Human Rights Section in the eight departments where it has offices, including Port-au-Prince, have shown. The investigations highlight the following serious shortcomings (see November report):

- The tendency of certain police services to carry out “punitive arrests” rather than call on the courts to initiate proceedings;
- Frequent irregularities in the police custody register, in which grounds for prosecution include “thief”, “alleged thief” or simply “investigation”;
- Failure to comply with the 48-hour time limit on remand in custody, causing delays that can last up to one month or more;
- Detention for offences for which detention is not provided (for example, driving without a licence) or arrest of an individual in order to exert pressure on a third person who is the subject of proceedings;
- The illegal practice among certain police officers of “conciliation between parties” leading to financial transactions that can result in the release of suspects;
- Abuse of authority by police officers who make use of their official status for personal ends when off duty;
- Persistent and unjustified absenteeism of police officers and members of the judiciary, without any disciplinary action being taken, despite the fact that such behaviour is tantamount to abandonment of post;
- The passivity of the police during lynchings which, moreover, are not investigated;
- Failure to comply with the legal time limits within which district judges must transmit cases, with delays of up to several months in certain instances;
- The release of prisoners by district judges who do not have the legal competence to do so;
- Delays by too many judges, through negligence or absenteeism, in following up cases, which increases the number of cases of extended detention;
- Failure by the competent authority to observe the procedure for renewing the mandates of certain investigating judges, which exposes them to contentious challenges to their acts of jurisdiction for reasons beyond their control.

17. One positive point that was highlighted during the oral update presented at the second session of the Human Rights Council should also be mentioned: certain judges, including some of those mentioned above, are endeavouring to address the situation of impunity with which they are faced by courageously assuming their responsibilities, as the significant progress made during the last session (July-August) of the Port-au-Prince Court of Assizes also shows. The non-governmental organization (NGO) National Human Rights Defence Network, which

assigned one of its representatives to attend the entire session, reported on the session in an exhaustive communication. Judgements were handed down in more than 80 criminal cases, 12 of which - for the first time - were cases of kidnapping in which 32 people were implicated. Nine of the kidnapping cases led to the conviction of gang members and certain police officers. Several courts, such as those in Grande Rivière du Nord and Les Cayes, have followed this example, which can only be commended.

2. Shortcomings in the prison system

(a) Recurrence of, and increase in, cases of extended detention

18. It should be recalled that, in its June 2006 report, the Human Rights Section noted that only 32 of the 151 prisoners (21 per cent) in the Saint Marc prison had been convicted. An even more sobering finding was made during a visit to the Pétion-Ville Women's Prison: 165 (99.39 per cent) of the 166 prisoners were being held in pretrial detention; 121 of those prisoners had been detained for an extended period of time (longer than the three-month time limit accorded to the investigating judge): 103 had been detained since 2005 and 19 since 2004.

19. An important measure to address the recurrent problem of extended detention is under consideration. The measure would provide for the establishment of a "detention commission" attached to each court; detention commissions would be entrusted with compiling and updating a list of cases of persons being held in pretrial detention where there is obviously an abnormal delay, so that the most pressing cases, or those involving the most flagrant violations of the law, can be dealt with as a matter of priority. According to the Minister of Justice, who approved it, the text of the circular is ready and the funds necessary for launching the operation have been found (there are at least sufficient funds to set up a pilot detention commission in Port-au-Prince).

(b) Treatment of detainees

20. In spite of the efforts to rehabilitate the prisons as soon as the Transitional Government was established, serious shortcomings, including budgetary constraints, remain:

- Overcrowding in prisons: as the chief judge of the courts has said that the situation in Saint Marc is becoming unbearable, with 240 prisoners for some 100 places;
- The dilapidated state of buildings, a large number of which, it should be recalled, were wrecked in the weeks following the departure of Jean-Bertrand Aristide; this compounds the disastrous consequences of overcrowding;
- Improved sanitation, which is essential, since good quality drinking water is increasingly scarce and there is a chronic shortage of custodial supplies in certain institutions;
- A significant number of prisoner deaths owing to the absence or insufficiency of medical care; for example, in the Jacmel prison, after a prisoner died from a serious case of anaemia contracted during detention, the Human Rights Section had to intervene to obtain the release of another prisoner who had gone blind.

C. Increase in organized violent crime

21. After a marked improvement, a new and serious deterioration in the situation began in the autumn of 2006, characterized not only by the worrying increase in ordinary crimes (robbery with assault, burglary, particularly armed robbery and burglary) but, especially, by an unprecedented wave of murders and kidnappings, in particular during the last quarter of 2006.

1. Increase in the number of murders

22. In the absence of reliable statistics (since statistics are often incomplete and sometimes even contradictory), only estimations can be made and trends observed. Between January and November 2006, the NGO National Human Rights Defence Network estimates, on the basis of Haiti State University Hospital records, that some 721 individuals were murdered, including 28 police officers and 4 United Nations peacekeepers.

23. The Justice and Peace Commission estimates that there were 370 deaths in the metropolitan area between January and September 2006. The figures for the period from October to December (not yet published) are expected to be significantly higher because of the upsurge in violence during the last quarter and will therefore come close to the figures cited by the National Human Rights Defence Network.

24. MINUSTAH estimates the number of victims at around 629 “civilians” and 33 officers of the Haitian National Police which, as at mid-December 2006 brought the total number of victims to 662.

25. In the light of the above, and despite the reservations that can be made concerning the accuracy of the aforementioned statistics, the statistics show that there was an almost unprecedented deterioration in the situation in 2006, with an average of between 600 and 700 violent deaths, an estimate not easily challenged.

26. This statistical estimate is particularly regrettable since it leaves the figures open to disturbing manipulations.

27. Bearing in mind the scale and inaccuracy of these data, the reaction of MINUSTAH is particularly striking, since it considers that the number of murders - which it puts at 2,000 - has been “overestimated”. At the same time, MINUSTAH points out that no murder, rape or kidnapping has been attributed by the study to supporters of Jean-Bertrand Aristide. A member of the Haiti Support Group (United Kingdom) has raised doubts about the objectivity of this inquiry by stating in *The Lancet* that one of the researchers and co-authors of the study was a friend of Jean-Bertrand Aristide.

28. It has since been revealed that the person in question had been a friend of President Aristide and became a member of his entourage under a false name, which cast doubt on her objectivity, not to mention her impartiality. As *The Lancet* had decided to conduct an investigation to clear up the matter, the independent expert, in view of the prestige of this

journal, wrote to its editor-in-chief asking to be kept informed, once the investigation had been completed, of the journal's conclusions about the validity and reliability of these particularly serious allegations and statistics, since the figures mentioned above are considerably higher than those generally supplied by the various sources.

29. The journal assured the independent expert of its desire to cooperate and agreed to pass on its conclusions, which should be available in February 2007.

30. Such destabilizing practices can even make use of the Internet, as is shown by the manipulation that the independent expert considered necessary to investigate and on which he reports below.

31. In November 2006, a set of seven photographs allegedly taken in Haiti was sent to the independent expert with the caption "This is so sad!! Haiti". The photographs depicted, inter alia, a mass open grave, very young armed children, snipers and a corpse stretched out in front of a building bearing a plaque with the words "United States Embassy".

32. Alerted by a journalist who had doubts about the authenticity of these photographs, which appeared to have been taken in Monrovia, the independent expert launched an on-site investigation with the help of correspondents who are familiar with both Haiti and Liberia. The caption given to the photographs, which does not implicate the person who took them, seems to be another example of manipulation, since the investigation established that:

(a) The building is indeed the United States Embassy in Monrovia, and the way in which the bodies are lying in one of the photographs seems to correspond to those bodies that were placed in front of the building after the bombing of one of the embassy's outbuildings;

(b) Other photographs correspond to the violent scenes that took place in June and July 2003 chiefly on the bridge in Monrovia called the "New Bridge", which can be clearly identified in the photographs (these can be consulted in the Office of the High Commissioner).

2. The wave of kidnappings for ransom

33. According to yet unconfirmed assessments by MINUSTAH, the number of kidnappings in the last nine months of 2005 is estimated to be 467, involving 634 victims. The number of kidnappings between January to mid-December 2006 has been placed at 445, involving 660 victims. This situation took a turn for the worse at the end of December 2006 with the appearance of such new practices as:

- Targeted kidnappings of schoolchildren: in December, more than 30 schoolchildren were kidnapped. While most of them were released, two were executed: Farah Dessources, 17 years old, who was shot several times by her kidnappers even though her family had paid \$4,000 of the \$30,000 demanded, and Carl Rubens Francillon, 6 years old, kidnapped on 8 November in front of his school and found strangled despite the fact that a ransom of around \$3,400 had been paid;

- Abduction of public figures (members of Parliament, judges, etc.): several public figures, including a former minister, have been targeted by threats of kidnapping, attempt kidnappings and kidnappings;
- Taking hostage of public transport users: for example, in December 2006, some 60 passengers of two buses were released (under undisclosed conditions) after the vehicles had been hijacked and driven to Cité Soleil.

34. Investigations indicate that a large number of the persons kidnapped in and around the capital in 2006 said that they were held in Cité Soleil.

II. WHICH STRATEGY - NEGOTIATION OR CRACKDOWN - SHOULD BE USED TO COMBAT THE IMPUNITY OF THESE SO-CALLED “NEO-CRIMINALS”?

35. “Neo-criminals” because, contrary to appearances, the gang phenomenon arose as part of the instability that had become evident during the last months prior to the departure of President Aristide and the holding of the 2006 elections. This period was characterized by a threefold wave of violence: (a) that which followed the “release” (i.e., escape) of almost all prisoners; (b) that of the leaders of the popular organizations who, having lost their points of reference, became “free electrons”; and (c) that linked to the emergence of armed groups that have been called the “eleventh-hour workers” (*les ouvriers de la onzième heure*), who legitimize their criminal activities by practically claiming to be “freedom fighters”.

36. In the light of the above, the elected Government first considered that the situation could be addressed through negotiations; this provoked strong reactions. The Government’s approach soon showed its limits when, in December, the wave of kidnappings took a tragic turn. While still leaving open the possibility for gang members to take part in the disarmament, demobilization and reintegration programme, the Government modified its strategy to include the use of targeted repression.

37. Since 22 December 2006, MINUSTAH and the Haitian National Police have conducted several joint operations - unquestionably much better coordinated than in the past - which will be remembered as Operation “Major crimes”. During these operations, several gang leaders including the leader of the gang allegedly responsible for the murder of two Jordanian peacekeepers, were killed or arrested. It seems that these operations are beginning to show their effect, particularly owing to the increasing participation of a segment of the population that is less and less reluctant to cooperate by indicating the hideouts of gang leaders. Operation “Major crimes” would be even more effective if it was supported by a special intelligence unit.

38. However, the controversy surrounding these operations cannot be ignored. While some consider that the “major crimes” operations are conducted with disproportionate means and cause civilian casualties, others believe that, since these operations target “micro-guerrillas”, who are frequently armed with heavy weapons and who blend into the population, the risks for the civilian population cannot be entirely avoided, even when the proportionality principle is observed as far as possible.

39. In order to make this offensive even more effective, MINUSTAH and the Government decided to form two specialized intervention groups (currently in training) to make high-risk arrests or conduct special security operations. The two groups should begin operation in the near future.

A. The temptation - heedless of the past - to re-establish an army (at great expense) instead of investing in the considerable efforts being made to create a professional police force

1. Re-establishment of the army

40. The independent expert can only recall his position on this point: what is really at stake is not so much the potential role of an army (so that a war may be waged one day against the people, as has so often occurred in Haiti's history) as the creation - and this will take time - of a democratic and effective police force. Not only must the vetting procedure be carried out to completion with the utmost rigour but also, and above all, all efforts must be concentrated on both the initial and continued training of police officers, which will give the Haitian National Police the logistical means necessary to deal with the crisis (the role of donors is important in this regard) and eradicate in the police force - in addition to certain widely acknowledged areas of incompetence - corruption, mafia-like collusion with gangs and other arms and drug traffickers, even with certain political figures. This vetting process is a long-term task, since the gangrene of corruption has become widespread.

2. The priority of vetting the police force

41. In addition to the decisive role that the Haitian National Police Training Academy in Frères should play in training, two essential measures must be taken to raise the moral standards of the police force: (a) the police force must be vetted so that the most compromised elements can be removed and (b) the reform of the General Police Inspectorate must be commensurate with the scale of the crisis. It is also necessary to ensure that the measures taken are properly implemented.

42. There is real political will regarding the first measure, and the measure appears to be well under way. According to the Directorate General of the Haitian National Police, at the beginning of December 2006, 53 police officers underwent the isolation procedure, 186 were dismissed, and 464 others were subjected to a similar procedure. Following the adoption in August 2006 of a plan to reform the Haitian National Police, a major vetting operation was launched in November 2006 in accordance with the following procedure:

(a) Creation of a database from two sources of information: the register of all currently active police officers, and a programme to appraise police officers in the field under the responsibility of the Haitian National Police;

(b) This database will then be used to create individual files for initial screening accompanied by provisional certification;

(c) The next stage involves the following measures, conducted simultaneously or in succession:

- Assessment of the documents that the Haitian National Police holds on each individual being vetted;
- Background check for criminal records;
- Verification of any history of human rights violations;
- Consideration, where necessary, of any public sources of information;
- An interview with each police officer concerned;

(d) An appeal procedure in cases of dismissal;

(e) If, however, these various criteria have not led to dismissal, the police officer is given a report of the evaluation;

(f) In the light of this report, he should undertake practical exercises, particularly in the field, at the end of which he takes a final examination held by the Directorate General of the Haitian National Police and the United Nations Civilian Police (UNCIVPOL) before the final certificate is issued.

43. The first 10 members of the General Inspectorate charged with implementing the vetting procedure are themselves currently undergoing this procedure.

44. In addition to these 10 officers, 14 other high-ranking central administration and management officials, including the Director-General and the Inspector General of the Haitian National Police are undergoing this procedure as a precautionary measure.

45. Furthermore, 10 other vetting agents will be trained during a second session planned for January/February 2007.

46. The aim is to begin vetting the first group of 250 officers of the Haitian National Police in January. While the procedure can be put in place without particular difficulties, other difficulties, which will not fail to arise, should not be underestimated; these include the need to provide sufficient logistical support, cooperation in good faith with the main partners involved and, above all, the protection of investigators.

47. With regard to the second measure, greater importance should be accorded to the General Police Inspectorate, by strengthening guarantees of its independence in order to establish its credibility and by providing it with the means to conduct more on-site investigations, particularly investigations into cases reported by local partners, such as the MINUSTAH Human Rights Section and NGOs, with the principal aim of combating the impunity that too many police officers still enjoy.

48. The establishment of an efficient - democratic and competent - police force, rather than the re-establishment of the army, seems to be the real challenge that will be worthy of the dignity of the Haitian people.

49. It is difficult to imagine how - barring a memory lapse - these “neo-militarists” could feel nostalgia for the Duvalier and Cédras years, during which there was a State within State, the consequences of which are well known.

B. The temptation - just as heedless of the past - to restore the death penalty

50. With regard to the restoration of the death penalty, the independent expert is of the view that, bearing in mind the recurrent shortcomings of the police force and the judiciary - shortcomings that have been brought to light in numerous reports - the risk of miscarriages of justice would make the re-establishment of the death penalty a source of irremediable injustice through the execution of innocent citizens, as was, lamentably, the case - let us not forget - during the Duvalier era, as the NGO Lawyers’ Committee for the Respect of Individual Liberties (CARLI) has pointed out. Moreover, citing the weakness of the judiciary, the Vice-President of the Haitian Chamber of Commerce and Industry expressed her reservations regarding the restoration of the death penalty.

51. It is, however, essentially a question of principle: the scourge of insecurity, no matter how intolerable, can in no way justify such a breach of the Constitution, for two reasons:

- On the one hand, it must be pointed out that article 20 of the Constitution explicitly states that “the death penalty is abolished in all cases”;
- On the other, article 276-2 of the Constitution states that any treaty that has been ratified takes precedence over domestic legislation, while article 4, paragraph 3, of the American Convention on Human Rights, which has been ratified by Haiti, stipulates that “the death penalty shall not be re-established in States that have abolished it”. Duly noted!

C. Insufficient attention to forensic medicine in efforts to combat impunity

52. In his previous reports, the independent expert constantly stressed the need to make up for the lag in the development of forensic medicine and forensic science, which are both priority areas for combating impunity in periods of tension and violence (E/CN.4/2006/115, paras. 66 and 67). He placed particular emphasis on:

- On the one hand, the adoption of the draft statute giving the Institute of Forensic Medicine sufficient autonomy and establishing a board of administration composed of one representative from each of the oversight ministries (health and justice), a representative of the Faculty of Medicine and Pharmacy of the State University of Haiti appointed by the Dean, and an administrator to assist the team of two forensic doctors trained in thanatology and medical care of the living;
- On the other, the decision setting the scale for the remuneration of forensic scientists.

53. At the request of the general directors of the Ministry of Public Health and the Ministry of Justice of the Transitional Government, in January 2006 the NGO Unité de Recherche et d'Action Médico-Légale (URAMEL) submitted to the authorities a draft agreement between these two ministries that would give the Institute of Forensic Medicine a genuine statute. Regrettably, although an administrator has been appointed, the agreement has not yet been signed.

54. The independent expert regrets that the promises that he received from successive governments on this subject were not kept, and he hopes that the new Government will adopt the agreement as a matter of urgency so that the Institute can finally make an effective and indispensable contribution to the efforts of the authorities, who have expressed their intention to wage a resolute war against impunity. Indeed, the Institute plays a crucial role in gathering evidence in most violence-related cases. In this regard, a judge without forensic science is a powerless judge.

55. On the initiative of the Ministry for the Status of Women and Women's Rights and specialized civil society organizations, such as URAMEL and KONAP, a "draft agreement on the provision of a free medical certificate" was signed on 24 November 2006 by the Ministry for the Status of Women and Women's Rights, the Ministry of Public Health and Population and the Ministry of Justice and Public Safety.

56. The draft agreement specifies that "a medical certificate may be issued to any person, including women victims of any kind of assault, be it physical, sexual or otherwise, by a licensed, officially recognized physician" and that it may also be issued by hospitals, health centres and specialized clinics. In other words, any medical certificate issued by a physician who is authorized to practise in Haitian territory is sufficient to permit the initiation of criminal proceedings.

57. It is to be hoped that the draft agreement will put an end to the interminable discussions on the competence or lack of competence of particular categories of physicians to issue such certificates. If the spirit of the text is adhered to, once a physician is authorized to practise in Haiti, he or she may issue a certificate, which implies that such certificates may also be issued by foreign physicians.

58. While he commends such progress, which he had called for in his previous reports, the independent expert emphasizes the need to address two remaining shortcomings. He wishes to point out that there had always been an agreement with successive governments, whatever their political leanings, that the aforementioned text would have at least the force of a circular rather than a mere inter-ministerial agreement. Moreover, it had been promised that the circular would not only establish the aforementioned procedure for the provision of medical certificates but would also validate the use - including by magistrates - of models for submissions and court orders (including interlocutory orders) prepared nearly five years ago by a multidisciplinary working group (magistrates, lawyers, physicians and social workers) meeting on the initiative of the NGO URAMEL.

III. AN AMBITIOUS COMPREHENSIVE PROJECT FOR JUSTICE REFORM TO CONSOLIDATE THE RETURN TO CONSTITUTIONAL LEGALITY

A. Plan of Action of the Ministry of Justice

59. The Ministry of Justice recently finalized an ambitious plan of action comprising three phases: the first phase (October 2006-June 2007) is devoted to priority reforms (laws on firearms control, security agencies, reorganization of the Ministry of Justice, and ratification of the United Nations Convention against Transnational Organized Crime and the three protocols thereto, and of the United Nations Convention against Corruption).

60. Six working groups have also been set up to deal with civil status reform, juvenile delinquency, measures to combat corruption, preparation of a bill on legal assistance, organization of the legal profession, and reform of the Code of Criminal Procedure.

61. In addition, three planned reforms - which will be personally overseen by the Minister of Justice - are the subject of the bills set out below; the bills are currently being finalized. The independent expert also attaches great importance to these bills, which he recommended in vain in all his previous reports. He hopes that the regrettable tension in the judiciary does not delay Parliament's adoption of these bills.

62. While reservations can be made concerning the conception of a given reform, the Plan of Action has the advantage of introducing a coherent vision of the future of the justice system.

B. Bill on the reform of the judiciary regulations

63. In his previous report, the independent expert underscored the urgency and importance of this reform in the following terms: "Reform of the judiciary regulations seems to be a dead letter, although it would appear to be a high priority, since there is little point in creating a Supreme Council of the Judiciary if there are no regulations to be enforced that will put an end to the arbitrary acts, favouritism and self-promotion which are all too apparent, whether with regard to appointments, promotions, transfers, renewal of terms, the recent terminations of jurisdiction, or now, automatic retirement" (E/CN.4/2006/115, para. 69).

64. This bill, which has been finalized, should now be adopted - in addition to the bill on the Judicial Training College - concomitantly with the bill on the Supreme Council of Justice.

C. Reform of the Supreme Council of Justice

65. The Transitional Government's text elicited criticism from most NGOs, which complained of a lack of genuine consultation in its preparation. On this occasion, the texts were submitted for consultation, including at a meeting held in September 2006. Some NGOs maintained their reservations or criticisms, on the ground that the consultation was too prefunctory (for example, the Ecumenical Centre for Human Rights undertook a substantial analysis in the context of the Civic Forum for Justice Reform, which brings together most civil society human rights organizations. The independent expert wishes to highlight the improvements in the following areas:

- The Supreme Council of Justice will be the keystone of the judiciary's independence in that it will become the sole guarantor of respect for the laws that will henceforth govern magistrates' performance and the renewal of their mandates, and disciplinary action against them. It should be noted that its competence extends to prosecutors, who are excluded from the text put forward by the Transitional Government;
- The Council's composition will be limited to representatives of the legal profession and civil society, to the exclusion of persons involved in politics.

66. Among the issues that gave rise to debates, the independent expert wishes to draw attention to a number of points.

67. The designation "Supreme Council of the Judiciary" used by the Transitional Government had the advantage of being a neutral term with international connotations; it also made it possible to include, in the long term, guarantees for all the State's judicial personnel, including registrars. At the same time, lawyers, who are understandably eager to retain their autonomy, will continue to enjoy their current guarantees, which are based on the institution of the Bar Association. It is therefore questionable whether there was any need to return to the idea of the Supreme Council of Justice. We think not, for both these reasons, but that is not the main point.

68. More important is the apparently technical question of the status of the financial and administrative management of the judiciary. Some consider that, in order to be effective, the independence of the judiciary calls for a guarantee of its entire financial and administrative independence. The Minister of Justice has finally taken this demand partly into account but has limited the budgetary autonomy of the courts and Council to operational funds, which the independent expert considers to be legitimate insofar as major investments (especially in property) require national planning.

69. For his part, the independent expert has reservations concerning the implementation of such autonomy until a credible "judicial services inspectorate" has been established to avoid or limit the risks posed by autonomous management.

70. To sum up on this point, the independent expert is generally in favour of the most recent draft reform of the Council, especially insofar as it conforms to what he had advocated in his previous reports. The text, which has not yet been submitted to Parliament, will most likely be considered by the Council of Ministers for adoption in January or February 2007. The independent expert insists that the text be adopted without delay in order to avoid renewed lobbying by circles that do not want the judiciary to have substantial guarantees of independence. The debates in Parliament will be interesting, since they will reveal whether the political class - which is quick to criticize judges - is truly willing to give Haiti a judiciary worthy of a constitutional State.

D. Draft reform of the Judicial Training College

71. In his previous report, the independent expert criticized the draft reform of the Transitional Government in the following terms: “Unless there is some response within the near future, in particular from the donors that supported its establishment, the Judicial Training College [which, it should be noted, is provided for in article 176 of the Constitution] seems certain to disappear ...” (E/CN.4/2006/115, para. 70). The independent expert was therefore pleased to learn of the “preliminary bill on the Judicial Training College”, which takes into account most of the criticisms that he, along with many others, had expressed. The main areas of progress are as follows: (a) status of a public institution with financial autonomy; (b) a board of administrators composed of representatives of the courts, the Bar and the universities, charged with setting the general policy of the institution and, in particular, deciding on the curriculum; (c) confirmation of recruitment by competitive examination, in which only written tests will be valid for the purpose of admission, in order to avoid favouritism; (d) organization of a final examination graded according to merit; and (e) recruitment open not only to graduates of the College but also to outside candidates who have received a favourable opinion from the Supreme Council of Justice.

72. As pointed out in the report on the reasons for the draft reform, in 2004 the premises of the College had been more or less taken over by former soldiers “with total indifference on the part of the authorities in power at the time and the international community”. This is why the draft stipulates that “once the bill is adopted, the College will resume its activities on these new foundations. A new intake of student magistrates will be admitted in 2007”.

73. At the same time, specific training for registrars and all Haitian judicial personnel will be instituted.

74. Although the management has not been appointed, it should be noted that, at present, since the bill has not yet been adopted, the College has not resumed its activities and does not yet have a board of administrators. It appears, however, that the first competitive examination will be held in 2007, as indicated in the Plan of Action of the Minister of Justice (see paras. 59-62 above).

IV. ESSENTIAL AND URGENT REFORM OF THE OFFICE OF THE OMBUDSMAN

75. In his previous reports, the independent expert was of the opinion that consideration of the reform of the Office of the Ombudsman should be given high priority insofar as the Office should gradually take over the tasks of promoting and protecting human rights currently entrusted to the MINUSTAH Human Rights Section. Such a transition, which presupposes a major reform of the Office and its tasks by giving it real status, should be prepared sufficiently in advance, bearing in mind past experience, such as when the mandate of the International Civilian Support Mission in Haiti (MICAH) was abruptly terminated without its functions being handed over to the Haitians.

76. The transfer of the tasks of MINUSTAH to the Office of the Ombudsman could be carried out in three stages, namely by:

(a) Giving the Office a truly legislative status by adopting, as soon as possible, the existing bill once it has been amended in the light of the observations and suggestions made in December 2005 by the specialized services of the Office of the United Nations High Commissioner for Human Rights in order to bring it into line with United Nations norms in this area (Paris Principles);

(b) Strengthening the Office's operational capacity by creating the post of Deputy Ombudsman, which is not provided for in the Constitution, article 207-3 of which states that a law sets the conditions and regulations for the operation of the Office. It should be recalled that such a post had already been created *de facto* several years ago to assist the Ombudsman and that, during her visit to Haiti, Louise Arbour, the High Commissioner for Human Rights, supported this proposal. In this new arrangement, the Ombudsman would be more particularly responsible for relations with the national authorities and for the Office's representation in international relations, while the Deputy Ombudsman would be responsible for the supervision and coordination of the investigations conducted by his team and its regional offices (protection function), and for providing human rights training, particularly in cooperation with the University and NGOs (promotion function). The description of the post suggest that it should be assigned to a prominent Haitian with recognized authority in the field of human rights and who is recognized as being independent-minded, and above political divisions;

(c) At the end of the MINUSTAH mandate, the Human Rights Section would be maintained on a temporary basis, if necessary, in the form of an office of the High Commissioner, as initially planned. This situation would last until the effective and permanent handover of functions to the Office of the Ombudsman. This should not be difficult, since virtually half (24 out of 49) of the personnel of the Human Rights Section is of Haitian origin and could be transferred to the Office.

V. IMPORTANT PROGRESS TO BE CONSOLIDATED WITH REGARD TO VIOLENCE AGAINST WOMEN AND THE STATUS OF WOMEN

77. The progress achieved since the ratification of the Convention of Belém do Pará owes a great deal to the dynamism of the two successive ministers for the status of women and women's rights, and to the action taken by the National Round Table on the Prevention of Violence against Women (*Table de concertation nationale contre les violences faites aux femmes*). This is a coordinating body that gathers information about violence against women, and comprises, in addition to representatives of the Ministry for the Status of Women and Women's Rights, the Ministry of Justice and Public Safety, the Ministry of Public Health and Population, and specialized civil society organizations, including KONAP, URAMEL, GHESKIO, Doctors of the World and Caritas, as well as the relevant agencies and bodies of the United Nations system, including the United Nations Population Fund (UNFPA), UNDP, World Health Organization (WHO), and the Gender Unit of the MINUSTAH Human Rights Section.

A. Violence against women

78. Data collected by the data collection committee of the National Round Table show that:

- (a) Most sexual attacks are committed by men, and the vast majority of the victims are single women;
- (b) Nearly 50 per cent of cases involve minors under 18 years of age, a percentage that calls for the creation of specific care services for these victims;
- (c) Most of the perpetrators are unknown to their victims and often use a firearm to intimidate them;
- (d) Gang rapes have been increasing at an alarming rate (according to NGOs, there has been a 41- or 49-per cent increase);
- (e) There is an urgent need for a campaign to raise victims' awareness of the importance of receiving medical treatment immediately after an attack; currently, such treatment is mostly sought, if at all, 72 hours - or three days - after the incident;
- (f) The high rate of marital violence (between 59 per cent and 68 per cent, according to NGOs) would necessitate an awareness campaign for men in order to make them assume responsibility and participate in efforts to prevent violence against women;
- (g) In order to overcome the constant reluctance of victims to report attacks, it is important to institute a "reassuring" procedure and to undertake prolonged awareness-raising activities for the police and justice services, including prosecutors.

79. With regard to awareness-raising activities, the independent expert notes with satisfaction:

- The initiative taken by the National Police Training Centre, which organized two training sessions, in December 2005 and July 2006, for instructors and candidate instructors. In addition, a working group of four instructors from the Training Centre is finalizing - with the National Round Table on the Prevention of Violence against Women - a model for such training, which will be provided by instructors to candidate police officers;
- The UNFPA initiative, which has launched training activities for the instructors of the Haitian National Police and UNCIVPOL on the subject "Human rights and population", one of the aims of which is to prevent and combat violence against women and its consequences; the activities covered such topics as gender equality, reproductive health and HIV/AIDS awareness-raising, in cooperation with the Joint United Nations Programme on HIV/AIDS (UNAIDS). A recent session brought together 45 instructors.

80. The independent expert is of the view that, in order to ensure a more reliable statistical approach, the effort to standardize data collection (standard registration forms) should be continued (improved definitions) and extended to the relevant institutions, including the police and justice services.

81. It should be emphasized that the above statistical estimates are only a partial reflection of reality. The three main reasons for this are: (a) victims' reluctance to speak out for fear of reprisals, particularly in cases of gang rape; (b) a sense of shame that is hard to overcome; (c) fear (particularly among teenage girls and young women) of the adverse consequences of any publicity, and the fear of rejection by young people, especially in the cases of gang rape. To this can be added the all too frequent passivity of the police, who are not sufficiently sensitive to the seriousness of such incidents, while the victims' safety is endangered by the aggressors' vindictiveness. The independent expert recalls the example of Gonaïves: despite reported rapes, none of the perpetrators was ever arrested in that town.

82. It should be remembered that, faced with this situation, the Transitional Government had adopted a national plan of action on violence against women, on which there appears to be sufficient consensus in order to mobilize the energy needed to put it into effect.

B. Reforms concerning the status of women

83. Important measures adopted on a provisional basis by decree of the Transitional Government should be "legalized" forthwith. In any event, that is what the independent expert strongly urges in order to prevent the constitutionality of these decrees - which represent a major advance for which the Transitional Government deserves credit - from being contested in the Court of Cassation. The decrees must therefore be submitted to Parliament in order to acquire the force of law. They are as follows:

- The decree-law amending the Criminal Code, changing the classification of rape from indecent assault to that of a serious crime carrying severe penalties ranging from 10 years' to life imprisonment;
- The decree providing that a wife's adultery is no longer an extenuating circumstance when she and/or her partner is murdered by her jealous husband;
- More generally, the decree repealing the articles of the Criminal Code concerning adultery.

84. On 4 September 2006, the Ministry for the Status of Women and Women's Rights submitted to the Government three preliminary bills designed to improve the status of women in the following areas: partial decriminalization of abortion (see para. 86 below) on medical grounds, and in cases of rape and incest; admissibility of paternity proceedings; and regulation of the status of concubines (*plaçage*) and domestic work.

85. In addition to these reforms, the independent expert once again draws the authorities' attention to the plight of women who become pregnant as a result of rape and, beyond that, to the harmful consequences, in terms of public health, of the tragedy that underlies clandestine abortions (E/CN.4/2006/115, paras. 17-22).

86. The vast majority of such abortions are linked to unwanted pregnancies. However important the moral considerations raised by the issue, they must not obscure the damage caused by such situations in terms of public health. The legislation currently in force prohibits voluntary interruption of pregnancy in all circumstances and imprisons not only the person who performed the abortion but also the woman, even if she did not have recourse to a third party. Reform is therefore imperative. The aforementioned legislation (restriction of voluntary interruption of pregnancy only to cases of rape, incest or for medical reasons) not only fails to address the full scope of the problem, but should be accompanied by a “contraception” section that would provide for the prescription of the “morning-after pill”.

87. This could be one of the features of the Family Planning Programme launched in the wake of the 18 December 2006 meeting of a national symposium held in Montlouis.

VI. CONCLUSIONS

88. “Learning to be a democracy is an extremely difficult exercise”, declared René Préval on 17 January 2007. Why, indeed, after so many reports and studies, expert assistance provided in programmes, seminars and symposiums, optimistic declarations of intent containing promises all too often forgotten, does the will for change in Haiti still seem doomed to failure?

89. Why is this people which, on its own, was able to rid itself of oppression, a nation steeped in the talent of its writers, poets, storytellers, musicians and singers, incapable of ridding itself of some of its own demons?

90. Why indeed is it that, from rumour to manipulation, doubt becomes truth? And why does “condemnation” always prevail over “tolerance”, and why do “political adversary” and “enemy” so often become synonyms: “If you are not with me, you are against me”?

91. The poorest of the poor, Haiti has returned to the path to constitutional legality. Will its people find the path to sustainable development and, hence, the stability of a State based on the rule of law that cannot enjoy constitutional legality unless it recognizes the indivisibility of civil, political, economic, social and cultural rights?

92. Haiti must not succumb to the pressure of the serious events of the recent past. The reforms must be relentlessly pursued. There is no question that the fight against drug traffickers and mafia-type political violence is an absolute priority. A priority not only in order to ensure people’s safety but also - and I am tempted to say “above all” - to eliminate, neutralize or disarm the gangs that have become the supporters - at times objective, at other times subjective - of an undeclared destabilization campaign, whose watchword is “chaos rather than change through the ballot box”. Any slowdown in the reform process would, without a doubt, play into their hands.

93. More than ever, through their capacity for mobilization - which must be free of all sectarianism - and through the diversity of their fields of action, civil society organizations are, indisputably, called upon to play a decisive role in mobilizing forces. Which is why vigilance must be the order of the day when it comes to new threats, particularly to NGOs involved in upholding human rights. The independent expert hopes that, at this time of risk, the Human Rights Council will demonstrate its solidarity with them.

94. It is in the light of this conclusion that the recommendations that follow must be considered, despite their technical nature. While most of them are not new, it seems that, this time, they may benefit from genuine political will.

VII. RECOMMENDATIONS

95. For reasons of pragmatism, the independent expert has limited the number of recommendations to the nine following proposals:

(a) Inspection bodies: the reduction of the malfunctions cited above, which often stem more from individual actions than from any shortcoming in the law, will not be effective unless the capacity of the inspection bodies of both the police and of the judiciary is reinforced, particularly their capacity to conduct in situ inspections;

(b) Reform of the judiciary: high priority (and this priority should be taken into account in the preparation of the parliamentary calendar) must be assigned to the adoption of the almost finalized three bills, without which there can be no real reform of the judiciary, namely the bills on the reform of the judiciary regulations, the reform of the Supreme Council of Justice, and the reform of the Judicial Training College;

(c) Combating extended detention: it is important to provide for the possibility of imposing suspended sentences and restore, but with tangible effectiveness, recourse to “immediate appearance” by organizing for the police - given their hesitation - short but regular decentralized training sessions that involve prosecutors, whose role of providing impetus and follow-up is decisive for the success of this essential change in police practices;

(d) Legal assistance: the working group charged with preparing a bill also envisaged in the Plan of Action of the Ministry of Justice. In this regard, the independent expert hopes that experiments in the provision of legal assistance, particularly those conducted by the Legal Assistance Office in Cap Haïtien, will be taken into account;

(e) Forensic medicine: adoption of texts, prepared several years ago, concerning the independent status of the Institute of Forensic Medicine and its operation;

(f) Status of women: adoption by Parliament - if possible in a single law, entitled “Status of Women Act” - of the following texts:

- The decrees issued by the Transitional Government (with a view to their passage into law) concerning: (a) categorization of rape as a major crime and no longer only as indecent assault; (b) termination of adultery as an extenuating circumstance in the murder of a wife (or her partner) by a jealous husband; and (c) decriminalization of adultery;
- Texts on the status of women concerning the decriminalization of abortion, admissibility of paternity proceedings, the status of concubines (*plaçage*), and regulation of domestic work;

(g) Family Planning Programme: priority implementation of the “contraception” section (including popularization of the “morning-after pill”) and a real policy of controlled procreation;

(h) National Identification Office: requested by the independent expert from the very inception of his mandate, the reform of civil status appears to be on the right track with the anticipated establishment, by the Plan of Action of the Ministry of Justice, of a special working group. The working group should receive substantial support from international cooperation mechanisms - given the cost and complexity of the operation - as was the case with the creation of the electoral roll;

(i) Reform of the land register: prepare an inventory of relevant studies and experience, and undertake the reform, also with international cooperation mechanisms. Given its economic importance and the time it would take to prepare and implement, the reform should be started without delay if it is to have any chance of being completed during the current presidential term.
