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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, Mr. Louis Joinet

Summary

This report is an account of the second (9-15 April) and third (23 October-5 November) visits made to Haiti in 2003 by the independent expert, Mr. Louis Joinet.

The institutional crisis in the country (the continuing failure to reach consensus on the establishment of the Provisional Electoral Council), which is now coupled with an increasingly serious social crisis (almost daily demonstrations by a growing number of opponents calling for President Aristide to step down, which are being put down with increasing violence and with the help of pro-Government, sometimes armed, counter-demonstrators called "*chimères*"), has led to such insecurity that a return to peace in the near future on the basis of elections seems unrealistic as long as the "rule of law" continues to be superseded by the "rule of impunity". This view is borne out by the persecution and physical abuse - observed by the independent expert - of journalists, political or trade union activists, human rights defenders and students in particular and of members of civil society involved in peaceful social protest movements in general.

The crisis has been aggravated by the recent emergence of violent opposition following the murder, in circumstances that were disturbing, to say the least, of Mr. Amiot Métayer, the pro-Government leader of one of the main grass-roots organizations known as "popular organizations" (Ops). In response, his supporters, who were members of a group called the "Cannibal Army", changed sides to become the "Front de résistance des Gonaïves pour le renversement de Jean-Bertrand Aristide", which merely added to the confusion created by the crisis.

After drawing attention to the commitments solemnly undertaken by the highest State authorities to "eradicate impunity", commitments that have gone unfulfilled, the report shows how impunity, which is getting worse all the time, is greatly encouraged by the identity crisis in the police force and by the recurrent malfunctioning of a system of justice whose independence is not guaranteed.

The progress noted in the report includes: compensation for the political parties that were the victims of the events of 17 December 2001, which have not yet been clarified; the establishment of a youth crime squad in the police force; the start made on improving the administration of justice in the pilot court in Jacmel; and the mobilization of forces to combat acquired immunodeficiency syndrome (AIDS).

In his recommendations, the independent expert proposes that the Office of the United Nations High Commissioner for Human Rights (OHCHR) open an office whose main tasks would be to assist in the implementation of the Government's solemn commitment to eradicate impunity and to provide assistance and support to the "players of the future" - judges and police officers who, after receiving training within the framework of cooperation, will put their training to good use by displaying professionalism and a commitment to upholding the law - in other words, by acting courageously. The report stresses the urgent need for reforms of the rules governing the judiciary, the Supreme Council of Justice, the Judicial Training College and the Institute of Forensic Medicine, and proposes that special attention be paid to initiatives taken by non-governmental organizations (NGOs) to provide legal aid and assistance to victims.

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Introduction

1. At the fifty-ninth session of the Commission on Human Rights, the Chairperson, speaking on behalf of the Commission under agenda item 19, entitled “Technical cooperation and the situation of human rights in Haiti”, said that “the Commission welcomes the good cooperation between the Haitian authorities and the independent expert ... commends the independent expert on his report (E/CN.4/2003/116) and notes his recommendations with interest ... [and] requests the independent expert to submit a further report to the Commission at its sixtieth session” (E/2003/23-E/CN.4/2003/135, para. 635). This report provides the Commission with an account of the independent expert’s second and third visits to Haiti, which took place from 9 to 15 April and from 23 October to 5 November 2003, respectively.

2. The independent expert met with a number of high-level State officials, including the Prime Minister, Mr. Yvon Neptune, the Minister for Foreign Affairs, Mr. Joseph Antonio, the Minister of Justice and Public Security, Mr. Calixte Delatour (in his capacity as minister responsible for justice, the police and the prison authorities), and the Ombudsman, Mr. Necker Dessables. He also met with individuals from the legal profession: judges, justices of the peace and investigating judges, government commissioners (prosecutors), lawyers, the President of the Court of Cassation and the Public Prosecutor, as well as with the directors of the Judicial Training College, the Police Academy and the prison service. A broad cross-section of civil society was consulted, ranging from the press and the media, numerous NGOs and representatives of the Haitian Chamber of Commerce and Industry to political parties (with the exception of the Lavalas party, whose representative, Mr. Jonas Petit, declined the written invitation that had been sent to him as well as to everyone else the independent expert met).

3. The independent expert also had fruitful discussions with Mr. Adama Guindo, the resident representative of the United Nations Development Programme (UNDP) - whom he would like to thank here - and his colleagues, as well as with the heads of United Nations agencies, Ambassador David Lee, head of the Special Mission to Strengthen Democracy in Haiti of the Organization of American States (OAS), and several diplomats, including the Group of Friends on Haiti of the Secretary-General of OAS.

4. Outside the capital, the independent expert visited Jacmel, Petit-Goâve, Les Cayes and Léogane. His stay in Gonaïves, however, had to be cancelled at the last minute at the request of the United Nations security service. (It should be recalled that he had visited Cap-Haïtien, Saint Marc and Gonaïves in 2002.)

5. The Commission will be pleased to learn that the spirit of cooperation shown by the Haitian authorities was most satisfactory throughout the mission. The independent expert has thus been able to visit without restriction six prisons and five police stations since September 2002, including:

The Police Academy, the central Judicial Police Directorate, the youth crime squad, the Search and Intervention Brigade (BRI) and the Rapid Intervention and Law Enforcement Unit (CIMO). With the exception of the Swat Team, which was not visited for lack of time, and the National Palace General Security Unit, all the central police services were thus visited;

The police stations in Delmas 33, Cité Soleil (in both of which the atmosphere is particularly tense as a result of recent events, as will be seen below) and, in the provinces, Jacmel, Cap-Haïtien and Gonaïves.

The independent expert was also able to freely consult the police stations' incident books and custody registers and to talk in private with persons in custody.

6. Cooperation with the prison authorities was also satisfactory: the independent expert was able to freely visit the prisons in Gonaïves and Cap-Haïtien in the provinces and, in a similarly transparent way in Port-au-Prince, the national penitentiary, the Fort National penitentiary, comprising the women's prison and the two juvenile prisons (one male, one female), and the prison in Pétion-Ville.

I. THE DISASTROUS EFFECTS OF IMPUNITY ON THE SITUATION OF HUMAN RIGHTS IN HAITI

7. The independent expert believes that tackling impunity is a top priority, as it is quite clear that there can be no political solution to the crisis unless significant progress is made in restoring security, and that impunity and security are incompatible.

8. Indeed, the Commission has already urged the Haitian Government "to continue and to step up its efforts to combat impunity [and] to strengthen the rule of law" (E/2003/23-E/CN.4/2003/135, para. 635). Far from improving, however, the situation has deteriorated since the independent expert's previous visit, despite the solemn commitments given by the highest State authorities, including, it should be recalled:

The Prime Minister, who, on 24 September 2002, issued a "challenge to impunity" and firmly committed himself to the "elimination of impunity" in a speech delivered - in the presence of the independent expert - at the ceremony to launch the "three pilot courts" programme;

The President of the Republic, who, in an address to the United Nations General Assembly stressed that upholding fundamental freedoms and combating impunity were an important part of the exercise of power;

The President of the Court of Cassation, who, on 6 October 2003, declared "impunity is over" in the presence of the President of the Republic at the opening ceremony of the high court's session.

9. The reality is quite different, as the comment of a disillusioned judge that the "rule of impunity" was increasingly encroaching on the "rule of law" shows.

10. Impunity basically benefits those who inflict violence on others (sect. A), those who use violence to impede the exercise of the right to demonstrate peacefully (sect. B), those who restrict freedom of the press (sect. C) and white-collar criminals and other traffickers (sect. D).

A. Impunity and violence against the person

11. Two of the most significant situations will be considered here.

Violence committed by armed commando units in the Bas-Plateau Central region

12. The often deadly violence gripping this region is the work of commando units with heavy weapons that mainly target officials or people close to the Government but also attack supporters of the opposition. According to some, they are Mafia-like gangs. For others, they are made up of individuals who are nostalgic for the army (which was disbanded by President Aristide in 1995 after he had been restored to power through American intervention) and motivated by a spirit of revenge, which sometimes confers unjustified political significance on their brutal acts. They were behind, inter alia, the deadly acts of violence committed on 6 May (the murder by an armed commando unit of two security officers of the Haitian electric company), 21 June (the murder in their homes of four Lavalas supporters) and 25 July (the murder of four civil servants from the Ministry of the Interior).

Violence committed in Les Cayes (8-19 November 2003)

13. The independent expert, learning of cases of ill-treatment, including torture, brought them to the attention of the Ombudsman, stating: "... given the seriousness of the incidents, I attach great importance to this matter, which I am particularly anxious to bring to your attention. I should be grateful if you would keep me informed of the steps you have taken and of the follow-up to them ...". The Ombudsman, after referring the cases to his local representative, said that he would keep the independent expert informed of any further judicial action taken.

B. Impunity and violation of the right to demonstrate peacefully

14. This right is guaranteed both by article 31 of the Constitution ("Freedom of unarmed association and assembly for political, economic, social, cultural or any other peaceful purposes is guaranteed") and by article 21 of the International Covenant on Civil and Political Rights, which Haiti has ratified.

15. In his report of 17 November 2003 on the situation in Haiti, the Secretary-General of OAS stated that, "despite President Aristide's September 19 public declaration to uphold the right to assembly, pro-government popular organization (OP) leaders launched a nationwide operation to prevent anti-government demonstrations from taking place. The Government of Haiti neither denounced nor put a stop to these activities of the OPs, which have either interrupted or prevented numerous anti-government demonstrations throughout the country" (OEA/Ser.G CP/doc.3798/03, p. 3).

16. An illustration of the perverse effects of this strategy, which has been dubbed "Operation Vice Shield", is an operation of this type carried out in Cap-Haïtien on 26 October and reported as follows in *Haïti Progrès* (29 October-4 November 2003), which is said by some to be close to the Lavalas group: "The demonstration called for by FRON [Front de l'opposition du Nord] could not be held, and for good reason. Lavalas militants had blocked off the assembly points in

order to hold a counter-demonstration. It should be stressed that members of popular organizations had barricaded the streets of Cap-Haïtien with burning tyres during 24, 25 and 26 October to counter FRON's destabilization tactics and support the Head of State."

17. The desired objective was achieved: all demonstrations were eventually banned in Cap-Haïtien until 18 November, as a precautionary measure, according to the authorities, in order to prevent any incidents on that date, which was the day on which the bicentenary of the Battle of Vertières, which had sealed the victory of the slave army over the French army and opened the way to independence, was to be celebrated.

18. Another example was reported in the same newspaper: "However, by 6 a.m. several members of popular organizations had taken over the site where the opposition 'agents provocateurs' were supposed to meet and were erecting barricades in several parts of the capital. And so now it was the supporters of the constitutional Government who had organized a large demonstration at short notice to try to prevent the disorder that the PNDPH [National Progressive Democratic Party of Haïti] was trying to provoke ... and who announced that 'Operation Vice Shield', launched a few days earlier by René Civil's Jeunesse populaire au pouvoir (JPP) to counter anti-Government movements in the country, was now under way."

The "Caravan of Hope" in Cité Soleil (12 July 2003)

19. A large number of civil society organizations grouped together in an umbrella organization called the Group of 184 (G-184) have proposed a "new social contract" to promote a peaceful outcome to the ongoing institutional crisis.

20. To attract support for its project, G-184 organized a "Caravan of Hope" to go from city to city. On 12 July 2003, some serious incidents occurred when it arrived in Cité Soleil, where a meeting was due to be held in a school hall. The Caravan was met with a hail of stones and other objects thrown by some pro-Government counter-demonstrators (i.e. *chimères*) while others broke windscreens, punctured tyres and threatened passengers, including observers from the diplomatic corps. According to several precise and mutually corroborative accounts of the incidents, the police at the scene stood by without ever making any real attempt to stop the attackers. After the police had left, *chimères* set fire to parts of the school and the priest's car. As far as is known, no one has been prosecuted - except for the coordinator of G-184.

The demonstration against violence against women (29 October 2003)

21. After drawing attention in a press release entitled "*Le cri des femmes*" ("Women cry out") to the dramatic increase in the number of cases of violence against women, some of which had been fatal (as in the recent murder of Ms. Danielle Lustin, head of a microfinancing organization for women), the Coordination nationale de plaidoyer pour les droits des femmes (CONAP, a national women's rights organization) organized a silent demonstration - and a peaceful one, as it took the form of a sit-in - in front of the courthouse in Port-au-Prince. The 50 or so women demonstrators were attacked with stones and bottles by about 100 Government supporters and were forced to take refuge inside the courthouse, from where they eventually had to be evacuated by the police.

The demonstration for a “new social contract” (14 November 2003)

22. A rally was planned by G-184 in the Champ-de-Mars in Port-au-Prince to publicize its proposals for a way out of the crisis. As opponents’ blocking tactics made it difficult to reach the spot and the counter-demonstrators were becoming increasingly violent, the organizers had to ask participants to disperse. The police arrested 25 demonstrators, who were held in custody for several days. On 1 December, the two leaders who had been held in the national penitentiary were finally released, after 16 days in detention.

C. Impunity and attacks on freedom of the press

23. The main outlet for analysis and comment is the radio, since illiteracy limits considerably the circulation of newspapers and the absence of electric power or frequent power cuts limit the impact of television.

24. Speaking at the fifty-ninth session of the Commission on Human Rights, the representative of Haiti emphasized that “freedom of opinion and expression [were] not subject to any legal restriction” in that country. This argument is admissible only in a prescriptive sense, for even though these two fundamental freedoms are indeed expressly guaranteed by article 21 of the Constitution, it is becoming increasingly dangerous to actually exercise them now that both peaceful political activism and the profession of journalist have become activities that carry a high risk, including a high physical risk.

25. Pressure is applied by means of harassment, anonymous threats (which are also sent to relatives), the machine-gunning of homes or studios (on 28 October 2003, during the independent expert’s stay, there were bursts of gunfire in the direction of Radio Caraïbes) and physical attacks (in Cap-Haïtien, Radio Maxima and Radio Hispaniola were forced to suspend their news programmes). On 13 December several stations, including the Caraïbes, Kiskeya, Métropole and Vision 2000 radio stations, suspended their broadcasts following threats.

26. Ms. Nancy Roc, a journalist from Radio Métropole who had quoted at length from the independent expert’s press conference on her popular “Metropolis” programme, learned shortly afterwards that in her absence heavily armed unidentified men had been prowling around her home. Around the same time, the general public had been shocked by the discovery at a crossroads in the capital of a decapitated head surrounded by pamphlets containing the names of opponents or supposed opponents, including that of Ms. Roc.

27. In the most serious cases, the right to life itself is directly violated, as evidenced by the still unresolved murders (already reported to the Commission in E/CN.4/2003/116, paragraphs 31-36) of the journalists Brignol Lindor and Jean Dominique and the latter’s assistant, Jean-Claude Louissant. There have also been attempts to murder Jean Dominique’s widow, the journalist Michèle Montas, and in November 2003, the head of Radio Maxima, Jean-Robert Lalanne, who was wounded at his home.

28. The impunity that protects the perpetrators of these brutal acts is particularly serious because it may lead some people to take justice into their own hands and target the so-called “pro-Government” media, with revenge replacing justice if justice is not done. Although they are exceptional, acts such as the ransacking of Radio Pyramide on 11 November or the attack on a team from Radio Solidarité by demonstrators on 17 December must nevertheless be condemned.

29. Other forms of pressure include verbal attacks, which have recently taken the unusual form of diatribes against the press delivered from the pulpit during religious services, as in the following two cases:

In Léogane, Father Fritz Sauvagère, after virulently denouncing certain media from the pulpit for their criticism of the Government, had two journalists thrown out, one of whom was physically abused. The perpetrators of this crime have not been identified. The independent expert had hoped to meet this priest during his visit to Léogane, but he was away;

In Marchand-Dessalines, Father Léobert Dieudonné also delivered a violent diatribe against journalists from the pulpit in similar circumstances.

30. This situation is particularly troubling as in both cases the services were held in the presence of the President of the Republic, who thus in some way sanctioned what happened. On 26 August 2003, the Episcopal Council of the archdiocese of Port-au-Prince expressed its strong disapproval of such practices in a press release.

31. To exercise their profession in such a climate requires courage on a daily basis on the part of journalists, and the independent expert would like to pay a tribute to them here.

D. Impunity and financial crime

32. The culture of impunity also benefits white-collar criminals, as shown in the case of the “victims of the cooperatives”, particularly the scandal involving the popular savings cooperative Coeurs Unis, thousands of whose members have been ruined. While the independent expert was in Port-au-Prince, representatives of the victims who had banded together in the Coordination nationale des sociétaires victimes (CONASOVIC) demonstrated outside the Ministry of Justice to demand that the victims should be reimbursed and those responsible brought to justice.

33. Only a few scapegoats among junior staff members (whom the independent expert visited in prison) were imprisoned, while the real perpetrators and their accomplices are still at large. For example, Mr. David Chéry, former president of the cooperative and one of the main culprits, is now on the run after taking advantage, in dubious circumstances, of a decision to release him on probation to escape from his guards and flee abroad.

II. CRISIS IN THE POLICE AND IN THE SYSTEM OF JUSTICE

34. Despite the political will displayed at the highest level of the State, to which attention has already been drawn, the fight against impunity is mostly muted or deliberately restrained.

35. Of course this is partly due to structural reasons related to underdevelopment (shortage of police officers and resources, inadequate salaries, including for judges, and the extreme fragility of the State machinery), but historical and economic reasons alone cannot explain all the shortcomings; otherwise it would be difficult to explain why some police officers and judges (those referred to here as the “players of the future”) make an effort to act like professionals and abide by the law and thereby combat impunity in difficult circumstances even when genuine political will is absent. Even then, these professionals need to be encouraged rather than held back or sidelined.

36. The determining factors in this impunity are the serious identity crisis that is destabilizing the police force and the recurrent malfunctioning of the system of justice. NGOs are attempting to remedy these deficiencies.

A. The identity crisis in the police force

37. A sure sign of the seriousness of this identity crisis is the recent resignation of several top police officers. One of them is Mr. Jean Daddy Siméon, former chief press officer of the Haitian National Police (PNH); another is the Director-General of the PNH, Mr. Jean-Robert Faveur, who listed in his letter of resignation dated 21 June 2003 the many pressures he was under - including those emanating from the immediate entourage of the highest State authority - to approve, in such a way as to preclude any checks, the handling of large amounts of PNH funds and the arbitrary promotion or irregular appointment of police officers.

38. Another noteworthy resignation was that of Mr. Ernst Paul, a national police instructor, who, in his letter of resignation to the PNH Director-General, expressed his indignation and sense of powerlessness at the way 98 “civilians” had been foisted on the Police Academy in November 2003 to undertake a shortened one-month training course rather than the normal course. He also complained that almost all the posts of departmental director were held by officers from the National Palace General Security Unit, who had not undergone standard police training.

39. Another visible sign of this identity crisis is the increasing significance of a core group of police officers who, while trying to do a professional job, are dismayed to see the image and reputation of the police tarnished by pseudo-police officers whose uncertain status confuses the public and even police officers themselves. Three examples of this problem are given below.

1. “Special brigades”

40. Members of these brigades wear black T-shirts with the acronym “BS” (for “brigades speciales”) printed on them. As the brigades do not appear in any official PNH organizational chart, the independent expert called for this “shadow” police force to be disbanded. In response

to his call, Mr. Pierre Evans Sainturné, Inspector-General of the National Police, announced on Radio Métropole on 7 November 2003, that “instructions were given on 13 August to remove the special brigades from the police’s organizational structure and their black T-shirts have been banned”.

41. The independent expert took note of this reply, but observed that individuals who had been arrested continued to be brought to the Delmas 33 police station by members of the special brigades after 13 August. He therefore asked the competent authorities, in a letter dated 16 December, to inform him of: (a) the reference number of the official document containing the decision to disband the special brigades; (b) the measures to ensure that the decision was properly implemented, in the light of the above-mentioned evidence from the custody registers; and (c) the steps taken to rehabilitate those individuals to ensure that they did not turn to crime.

2. “*Attachés*”

42. According to many accounts, “*attachés*” are individuals who, with the implicit agreement of certain police departments, perform the “dirty work”.

43. According to one minister who spoke to the independent expert, opponents of the Government had “fabricated” the *attachés* existence in an attempt to link them in the public mind with the regime of General Cédras, who owed his notoriety precisely to such individuals. Others, while not denying their existence, claim that they are simply informers like those recruited by police forces all over the world.

44. However, the NGO National Coalition for Haitian Rights (NCHR) has published a report, backed up by photographs and documents, on an investigation that placed unofficial police officers of this kind in or around nine police stations. The chief of the Delmas 33 police station, which is mentioned in the NCHR document, dismisses the allegations as lies and gross untruths that are completely groundless.

45. This is not a view shared by the independent expert. How can such allegations be dismissed as lies when during a programme broadcast on Radio Caraïbes on 20 September 2003 - of which the independent expert has a recording - both the justice of the peace in Delmas, Mr. Stevenson Timoléon, and OP leader Sonnen calmly admit during the discussion, that *attachés* are working in the Delmas 33 police station? Surely this must constitute clear, public and indisputable proof.

46. Moreover, the Prime Minister told the independent expert during their meeting that an inquiry would be held into the question of “*attachés*”. The speed with which the results of the inquiry are published will test how serious he is. Meanwhile, Parliament has also looked into this question. It would therefore seem difficult to deny the existence of this phenomenon.

3. “*Chimères*”

47. “*Chimères*” are “mercenary activists”, in the words of one police officer, who are involved in most of the actions undertaken to sabotage demonstrations, especially those organized by the peaceful opposition, either by taking part in the “Vice Shield” operations mentioned above or by organizing violent counter-demonstrations in order to provoke serious

incidents requiring the forceful intervention of the police. Because they tend to target the demonstrators rather than the counter-demonstrators, the police give the impression that they are always on the side of the *chimères*, either implicitly or explicitly.

48. This was illustrated on 5 December 2003, when the police stormed the university in Port-au-Prince. Just as the students were about to leave the premises to attend a demonstration, police officers and *chimères* swept through the university in a display of violence, deliberately causing serious damage to property (ransacking rooms) and attacking individuals (sometimes with firearms). *Chimères* even set fire to a neighbouring house. About 25 people were injured, including the vice-rector and the rector, the latter seriously. Only students were arrested; not a single one of the *chimères* was arrested.

49. It was in protest at these dramatic events that the Minister of Education, Ms. Marie Carmelle Austin, resigned, saying that she was “horrificed” by the methods used to suppress the students and especially by the violence of the Government’s supporters (the *chimères*). Her resignation was followed, for the same reasons, by those of the Minister of Environment, Mr. Webster Pierre, and the Minister of Tourism, Ms. Martine Deverson.

50. Did these protest resignations have any effect on the Government? Whether or not they did, a few days later, on 22 December, a demonstration that brought together virtually all the opposition movements was held in Port-au-Prince with effective police protection. What was new was that on several occasions counter-demonstrators were held back by the police, which shows that when there is political will, the exercise of the right to demonstrate peacefully can be guaranteed.

51. This encouraging development was, unfortunately, short-lived. A clash towards the end of the demonstration between a motorized unit of *chimères* that opened fire and the police, who returned fire, resulted in two deaths. One might have thought that everything possible would be done to clarify the circumstances of those deaths, chiefly by performing credible autopsies, which were particularly crucial as precise and mutually corroborative evidence indicates that one of the bodies was apparently replaced to make it easier for a complaint to be lodged. However, the judicial consequences were quite different.

52. The situation was used as a pretext for the attempted imprisonment of two political leaders through the manifestly unconstitutional interpretation of a law - one that dates, moreover, from the military regime of General Namphy (1986-1988) - by claiming it stipulated that the organizers of demonstrations were criminally responsible for the consequences of all incidents. Deputy public prosecutor Daméus Clamé Ocnam later revealed on the radio that the new Government commissioner in Port-au-Prince, Mr. Ricquet Brutus, had insisted that he should go with him to a meeting in the National Palace. According to the deputy public prosecutor, the people he spoke to, who included three presidential advisers, produced a warrant for him to sign ordering the imprisonment of two members of the opposition who were organizers of the demonstration, Mr. Hervé Saintilus, president of the Federation of Haitian University Students, and Mr. André Apaid, coordinator of G-184, as well as their lawyer, Mr. Gervais Charles, which caused an outcry in the bar association.

53. When the deputy public prosecutor hesitated, pointing out that the practice was illegal, it was proposed that he should sign a simple summons, the idea being that it would be converted into an arrest warrant once the three individuals came forward. Following this direct pressure involving members of the Head of State's inner circle, the deputy public prosecutor decided to lie low abroad for a while in order to thwart this scheme.

B. Persistent problems in the administration of justice

54. In order to restore the independence of the judiciary, the independent expert had stressed in his last report (E/CN.4/2003/116, para. 74), the need to accord priority to the adoption of two bills, which technically had been ready for a very long time, concerning the rules governing the judiciary and the Supreme Council of Justice. These two bills are still sitting on the shelf, even though the former in particular is of crucial importance in making the judiciary's independence credible by providing transparent guarantees.

1. The absence of guarantees seriously undermines the independence of the judiciary

55. In April 2003, the independent expert had told the Commission how, partly as a result of the establishment of the Judicial Training College, the growing spirit of independence among the judiciary was becoming a major concern for some sectors of society, who feared that prosecutions would become effective and would be followed up by arrests, to which they were unaccustomed. That fear recently became reality in Cap-Haïtien when, through a legal loophole, three judges hearing what would normally be regarded as "sensitive" cases were removed. These were the investigating judges Emmanina B. Fatal, Jean Ralph Prévost and Harold Chéry. Five other cases of judges who were subjected to unacceptable pressures have also been brought to the attention of the independent expert. These cases involved judges Prince Chérimond Osias, Claudy Gassant, Henry Kesner Noel and Rouzier Joseph and the government commissioner Alix Civil.

56. Just recently the government commissioner for Gonaïves was removed from office and replaced by a justice of the peace from Delmas, judge Aslès Saint-Louis, who does not meet any of the minimum requirements for such important duties. Such bending of the rules is all the more open to criticism given that the town in question is particularly vulnerable to tensions. The independent expert expressed his surprise to the Minister of Justice, who agreed with him and has personally undertaken to recall the judge without further delay.

2. Abuses committed by the CASECs in the discharge of their duties

57. Established by the Local Government Act (Municipal Sections), the members of local government councils, or CASECs, are basically rural development officers elected by the local population. According to information received, particularly from justices of the peace, lawyers and human rights defenders, some of them are exceeding their mandate, sometimes seriously, by encroaching on the territory of some police officers and judges.

58. Some police officers feel that however illegal such practices may be, they are sometimes a lesser evil in the remote regions. However, there is much evidence to show that these parallel activities are becoming common in areas that are not isolated and are often the cause of such

frequent abuses as the serving of warrants or other papers in the place of a justice of the peace, arrests (sometimes armed or involving the use of handcuffs), de facto remand in custody (sometimes in homes), ill-treatment and intimidation. The International Development Law Organization (IDLO), whose representatives the independent expert has met, will shortly be running a specially designed training programme. The independent expert has stressed that specific instruction in a code of professional ethics should be provided and followed up, and that the programme should be used to clarify the relationship between CASECs and justices of the peace during joint seminars.

3. Extending the already excessive length of pre-trial detention

59. Apart from the sound reasons that are usually given (shortage of funds and judges), three factors of varying importance have been noted by the independent expert.

Application of exequatur

60. This procedure - of doubtful legality, since it is not provided for by law - is invoked by some State prosecutors' offices to obstruct judges' orders for the release of prisoners on the grounds that an exequatur has not been obtained. A ruling by the Court of Cassation should be sought on this important question of principle.

A certain laxness with regard to working hours

61. It has been noticed, for example, that while one investigating judge was dealing with five cases, another one was considering just one, a situation that results in an unnecessary overcrowding of prisons, about which one prison director complained bitterly.

62. Such practices are explained in part by the low salaries, which prompt judges to find extra work to supplement their income, particularly teaching. Such an activity, which can be rewarding, is not in itself cause for criticism, provided that the exception does not become the rule. By way of example one might cite the case of an investigating judge who, while working as the director of a law school, still manages to run his chambers efficiently.

63. These are some of the reasons why periods of pre-trial detention are all too often unreasonably long. For instance, the records of the Pétion-Ville prison show that there are only three convicted prisoners, while approximately 95 prisoners are being held in pre-trial detention! In one case, the detainee has been awaiting trial on a charge of theft since 1995, and in consulting prison registers the independent expert has noticed that there are too many similar cases.

The incredible severity of some sentences

64. The independent expert has already drawn attention to this regrettable cause of prison overcrowding (for example, sentencing an individual to life imprisonment for car theft, according to the file of an inmate visited at Pétion-Ville). Such excesses should be taken into account when training judges.

C. The essential role of NGOs in combating impunity

65. In view of the shortcomings of the police and judiciary in combating impunity, it is basically NGOs that take on some of the work that should be done by these two institutions. Failing to see justice done, the NGOs have no other means - although these means are irreplaceable - than alerting the public to the violations committed, bringing such violations to the attention of the authorities (who too often remain passive, or even assert that they are exaggerations or false allegations) or providing support to the victims. Here mention should be made of the initiative of Comité des avocats pour le respect des libertés individuelles (Committee of lawyers for the respect of individual freedoms (CARLI)), an NGO which has just set up a victim hotline, whose usefulness the independent expert was able to assess in situ.

66. During his visit the independent expert saw the exceptional courage and dynamism displayed throughout the country by human rights defenders, to whom the Commission should pay a tribute.

III. RISK OF THE COLLAPSE OF POPULAR ORGANIZATIONS (“OPs”)

67. Apart from the identity crisis in the police force and the malfunctioning of the judicial system, a determining factor in impunity is the steady deterioration of the system of popular organizations known as “OPs”. In April 2003, the independent expert had considered that after decades of dictatorship “this phenomenon could have helped consolidate the democratization process that was under way by allowing the exercise of local democracy to change people’s mentality” (E/CN.4/2003/116, para. 58). To his great regret, he notes that in the end this has not happened. The OPs have progressively been used for partisan purposes, especially in order to prevent the opposition from exercising its constitutional right to demonstrate peacefully.

68. The independent expert expressed these concerns to the Commission: “having been diverted from their goal, [the OPs] became parastatal groups. They were often armed and were more often a source of violence than democracy, gradually eluding central authority” (ibid., para. 59). Might it not be possible that their members run the risk of becoming free electrons, tempted to use revelations for blackmail, or that, having been armed by or with the tacit consent of the Government, they will then turn their arms on the Government?

69. Alas, events have confirmed these fears. Foreseeing an uncertain future, the leaders of the OPs are starting to record their confessions on cassettes that are placed in safe keeping ... and they are letting this be known. Other signs of collapse: in reaction to the murder on 22 September 2003 of the OP leader Amiot Métayer, his supporters, who made up the notorious “Cannibal Army”, have transformed it into the Front de résistance des Gonaïves pour le renversement de Jean Bertrand Aristide. There have also been recent assassination attempts on the OP leaders Sonnen and Colibri. Other names are already being bandied about in this country of rumours. What will happen next?

70. The relatives of these murder victims have the right, like any victim, to see that justice is done. However, one must not cause confusion by comparing victims with a criminal history, who may have blood on their hands, to their innocent victims who were merely exercising their right to freedom of opinion and expression as journalists, human rights defenders or political activists. Unless one is prepared to abandon all sense of proportion one cannot put on the same footing even at the level of words, the oppressor and the oppressed.

71. A further sign of this collapse: on 2 November, in Gonaïves, demonstrations organized in reaction to Amiot Métayer's murder were violently quashed, causing the death of at least 17 persons (the independent expert has the addresses of 12 of them) and the wounding of some 15 persons, and provoking an apparent attempt by more than 10 unidentified persons to escape by sea, although this last fact could not be confirmed.

72. No doubt these figures will be challenged. Should this happen, the independent expert would be willing to take part in any semi-international inquiry in order to help establish the truth. For one cannot challenge allegations without conducting judicial inquiries that are sufficiently thorough and impartial to be credible.

IV. TECHNICAL COOPERATION AND HUMAN RIGHTS: THE NEED FOR RENEWED COOPERATION

73. In his previous report the independent expert had underlined the importance of "a cooperation strategy that relies more on quality than quantity, and in which priority is given to redressing the balance in favour of ... professionals who, through their professionalism, respect for the law and independence of mind, give good cause for thinking that they will be players in the future" (ibid., para. 63 (a)). It is they who are paving the way for this long-awaited change which is emerging so slowly. Who are they? They are simply men and women who have been given training under these cooperation programmes and endeavour to put it into practice on the job by making their professionalism a point of honour, by showing courage - in short, by making the most of the training they have received through this cooperation.

74. It is essential that these players of the future be given specific encouragement, support and even protection through follow-up procedures established at the time cooperation agreements are signed; these must specifically provide for the possibility of support visits in situ by representatives of the international organizations whose training programmes are largely responsible for their commitment. Without effective - and thus ongoing - support, there are indications that they might grow disenchanted with or gradually become marginalized in their careers, or simply in their day-to-day working lives; they may even be condemned to exile.

75. The establishment of an OHCHR office should be an essential part of this renewed cooperation.

A. Cooperation and the establishment of a branch office of the Office of the United Nations High Commissioner for Human Rights (OHCHR)

76. In his report to the Commission on Human Rights at its fifty-ninth session, the independent expert had recommended the opening of an OHCHR office in Port-au-Prince (ibid., paras. 72 and 73). In his statement the representative of Haiti had signified his delegation's

agreement in principle, saying: “the technical assistance of the High Commissioner’s Office, in particular for the establishment of a branch office whose mandate and operations would be defined in consultation with the national authorities” (E/CN.4/2003/SR.53, para. 7).

77. The Commission, taking note of this assent through its President, requested “the Office of the United Nations High Commissioner for Human Rights to expand its activities in Haiti by setting up an office in that country, working together with the Haitian authorities, in line with the recommendations of the independent expert and within existing resources”. Accordingly, during his stay in Haiti, apart from the meetings with government authorities, particularly the Minister for Foreign Affairs, the independent expert held discussions on that subject with representatives of international organizations, potential donors in diplomatic circles and NGOs.

78. Now that agreement has been reached on the principle, it is up to OHCHR to take charge of project implementation, bearing in mind the Commission’s recommendations. The independent expert hopes that the office will not add any new training programmes to the large number already in existence, whether old ones (International Civilian Mission to Haiti (MICIVIH), International Civilian Support Mission in Haiti (MICAH)) or current programmes (post-MICAH with UNDP, OAS mission), but will provide additional and priority assistance to the Government as it seeks to fulfil its commitment to combat impunity, which is a necessary stage of any credible process of democratization. This might involve:

As part of this renewed cooperation, a very active role for the office in providing the specific support that should be given to the players of the future;

An active partnership with the Office of the Ombudsman to ensure that the results of his essential activities aimed at combating impunity are more effective and easier to understand;

The establishment of a database on summary executions and enforced disappearances to help in defining a strategy for dealing with this grim phenomenon and to provide assistance to the relatives of victims.

79. Naturally, the office must be set up in close cooperation with UNDP, the United Nations bodies concerned as well as the OAS mission. Based on the recent assessment conducted by the High Commissioner’s Office, it would seem advisable to open immediately a temporary office, or at the very least a unit that would be gradually expanded in the light of changing requirements and the volume of resources mobilized.

B. Cooperation with the Judicial Training College

80. The establishment of the Judicial Training College represents the first stage in the essential contribution of justice to the process of democratization. When it was set up in 1995, the College, provided for in principle by article 176 of the Constitution, was intended to provide ongoing training for working judges. It was not until 1997 that its mandate was broadened to include training for those wishing to enter the profession.

81. A second stage is now under way, which aims to extend the training to cover all professions in the sphere of justice, be they judges, prosecutors, justices of the peace (a programme is in progress), court registrars (a registry section has been in place for a year), court ushers (training session under way) or even lawyers (who tend to be left out of cooperation activities). It is therefore important that this cooperation, whoever the partners may be, sustain and focus its efforts so that the Judicial Training College can gradually develop into a school for judges and others working in the judiciary or a training centre for careers in the judiciary, which is what it is starting to be.

82. This effort seems to be especially necessary given the visible signs of the weakening of the institution, taking into account, of course, the lack of funds needed to undertake the new stage, but above all because of the uncertainty about its future: the Minister of Justice, who has misgivings about the College, has told the independent expert that he would give preference to recruitment outside the College as authorized by a 1995 decree (trainee lawyer for two years followed by three years of practice), a possibility that should concern those donors who have been instrumental in setting up the College.

83. In this regard it is worrying to note that only 7 of the 25 students in the most recent class (September 2002) were given appointments upon their graduation from the College, and to date (more than one year later) it seems that only a dozen of them have received appointments, while many posts in the courts remain vacant. According to the Minister of Justice, the apparent explanation for these vacancies is the refusal of most candidates to accept appointments outside Port-au-Prince. Yet various sources have indicated that:

Only five students did not accept the posts in the provinces they were offered;

No specific post was offered to some 10 students whose appointment is still pending;

The post rejected by one student was not offered to the others;

Most assignments that do take place are made on the basis of any transparent criteria.

84. A new director has just been appointed. His priorities should include:

The drafting and issuing of an official text guaranteeing a transparent procedure for appointments upon graduation from the College;

Better programming of recruitment flows, taking into account management constraints (training time, age structure, rate of promotion, number of retirements, average length of sick leave, etc.);

In the context of continuing education, the organization of training sessions for the prosecution service/police on how to conduct criminal proceedings in order to end certain restrictive practices that tend to limit prosecutions to a simple inquiry by the Office of the Inspector-General of Police when the police officers are involved.

C. Cooperation under the pilot courts programme

85. Following his visit to the Jacmel pilot court in March 2003, the independent expert had planned to make separate visits to the two other pilot courts (Fort Liberté and Port-de-Paix). However, he preferred to visit the Jacmel court a second time in order to assess the progress made since the previous mission. Largely as a result of the efforts of the judges and staff, some progress in line with the independent expert's recommendations has been observed, such as the reorganization of civil records, a significant improvement in the way the court registry is run, the building (still in progress) of an additional office and the scheduling of hearings so that cases can be dealt with more quickly.

86. The court staff also deserve praise since: (a) an investigating judge who is absent has still not been replaced; (b) there is only one serving deputy prosecutor, whereas in theory there should be three on the staff; (c) the archivist promised has never appeared; and (d) the independent expert had to intervene to ensure that the deputy prosecutor, who had not been paid for nine months, received his salary.

87. Apart from these few regrettable shortcomings, the independent expert was pleased to learn in situ of the justice of the peace/police training programme that is to be held in each arrondissement with cooperation from the OAS technical advisers and the United Nations Volunteer assigned to the court. This programme is particularly relevant since the misuse of expedited investigations has been brought to the attention of the independent expert on several occasions. Very sensibly, follow-up is planned.

D. Cooperation with the United Nations Children's Fund (UNICEF) in setting up a youth crime squad in the police force

88. Another positive aspect is the recent establishment, with the active cooperation of the United Nations Children's Fund (UNICEF), of a youth squad organized into four sections: (a) domestic violence; (b) minors as victims; (c) minors in conflict with the law; and (d) social inquiries. Of the 29 cases dealt with since the independent expert's visit, 75 per cent related to sexual abuse, which shows - as if there was any need - the usefulness of this initiative. With UNICEF assistance, the squad should soon be provided with the vehicles it currently lacks.

E. Cooperation with the Institute of Forensic Medicine

89. The more a country is faced with violence, the more essential the role of forensic medicine is in the administration of justice, particularly in combating impunity. For example, in cases of violent crime, once all the evidence has been collected, the investigating judge and then the assize court always find it difficult to hand down a final verdict of innocent or guilty when there is no reliable autopsy. The same is true of forensic medicine involving living victims, especially in programmes dealing with violence against women and the treatment of victims.

90. Since the university hospital morgue is the only place that performs autopsies for the whole Port-au-Prince region with little in the way of specialized equipment or suitable technology, a bilateral cooperation programme with Haiti has made it possible to build a forensic medicine unit, which has since become the Institute of Forensic Medicine and opened in December 2002, and to train two senior forensic medical examiners.

91. Worthy of note is the useful work being done by the Forensic Medicine Research and Action Unit (URAMEL) to raise awareness of forensic medicine, as the independent expert observed when attending one of the seminars on the topic "Forensic medicine and human rights". This NGO, which is composed chiefly of doctors, judges and lawyers, has drawn up model documents to be used for the many legal formalities that both lawyers and doctors must comply with. These models were to be approved by a joint circular letter from the Ministry of Health and the Ministry of Justice that the Minister of Justice had twice promised the independent expert would be signed - in vain. The independent expert has therefore pressed the matter once again, and the Minister of Justice has again promised that he himself will take the necessary steps. The independent expert has also insisted that the Institute should have definitive regulations establishing its mandate in the area of training, enhancing its credibility by clarifying the policy issue of its autonomy and providing methods for referring cases to it to ensure that forensic experts enjoy the independence their work requires.

92. The independent expert hopes that these final problems will be rapidly overcome so that the Institute of Forensic Medicine can make its indispensable contribution to the proper administration of justice, thereby supporting the authorities in their expressed willingness to combat impunity.

F. Cooperation and efforts to combat HIV/AIDS

93. At the end of a seminar for special rapporteurs conducted jointly by OHCHR and the Joint United Nations Programme on HIV/AIDS (UNAIDS), the rapporteurs were requested to take greater account, in carrying out their mandates, of the relationship between human rights and efforts to combat AIDS. In cooperation with Raúl Boyle, the UNAIDS country coordinator, who should be thanked here, the independent expert participated in a first round of meetings with speakers, who included:

Mrs. Mildred Aristide, in her capacity as Chairperson of the Country Coordination Mechanism (CCM) of the Haitian project launched under the auspices of the Global Fund to Fight AIDS, Tuberculosis and Malaria, established in 2002 on the initiative of the Secretary-General of the United Nations, Kofi Annan. This cooperation programme with Haiti, which is subject to strict accounting procedures, has given fresh impetus to the fight against AIDS. However, the criteria for the allocation of funds should be more transparent;

The PMTCT (prevention of mother-to-child transmission of HIV/AIDS) unit at the Sainte Catherine Labouré Hospital in Cité Soleil, run by Médecins du Monde Canada, which carries out prevention and treatment activities in the area of mother-to-child transmission of HIV;

The Unit for Research and Action to Combat AIDS and Sexual Discrimination (GRASADIS), which focuses its efforts on a prevention and training programme aimed at helping the homosexual community cope with AIDS;

The Centre for Training on AIDS, Drugs and Civic Education (CEFOSIDEC) in Cité Soleil, which, with encouragement from the municipality, one of whose representatives the independent expert met, conducts awareness-raising activities among young people.

94. Also participating in this national effort are many NGOs, in particular Catholic Relief Services (CRS), the Albert Schweitzer Hospital, Management and Resources for Community Health (MARCH), Partners in Health/Zanmi Lasante (PIH), the GHESKIO (Haitian Study Group on Kaposi's Sarcoma and Opportunistic Infections) centres and three solidarity associations for people living with AIDS: Greater Involvement of People Living with AIDS (GIPA), the Esther Boucicault Foundation and the Association de solidarité nationale (ASON), which has just organized a discussion seminar on the theme of "Human rights and AIDS".

95. According to those consulted, while considerable progress still needs to be made there is nevertheless growing awareness that enhances the effectiveness of prevention. A visible sign of this awareness is the bill on AIDS proposed by Senators Lans Clones and Gérard Gilles, chapter VI of which, entitled "Rights and duties", deals with the human rights guarantees that must go hand in hand with efforts to combat AIDS.

V. CONCLUSIONS

96. **The institutional crisis in Haiti (persistent absence of any consensus that would permit the establishment of the Provisional Electoral Council, expiry of the term of office of members of parliament in mid-January 2004 and thus temporary suspension of the legislature at a time when the executive is itself weakened by the recent resignation of three ministers in 10 days in protest at the brutal repression of the student movement, preceded by the resignation of the Director-General of the Haitian National Police) is compounded by a deepening social crisis (almost daily demonstrations by a growing number of opponents demanding the resignation of President Aristide that are being put down with increasing violence, often with the help of armed pro-Government counter-demonstrators, or *chimères*).**

97. **The result is a climate of such insecurity that the restoration of peace through elections seems unrealistic so long as, apart from solemn yet empty declarations, there is no real political will to combat impunity. This is especially true of the impunity that protects the *chimères*, whose role is particularly worrisome for the country's future, since these groups are easily manipulated and frequently armed, and their coordinator(s) cannot at present be identified with certainty, although some names are beginning to emerge.**

98. **Acting with total impunity, the coordinators bear a heavy responsibility for which they must one day be held accountable before a court of law. In its deliberations, the Commission should take into account this clear lack of political will to combat the impunity from which "those who give the orders" benefit.**

99. The crisis in Haiti has worsened with the recent emergence of a violent opposition in reaction to the murder of the OP leader Amiot Métayer, whose supporters changed camp by establishing a resistance movement to overthrow Aristide, thereby compounding the crisis by sowing confusion between a peaceful opposition and a violent one. Lumping the two together, the authorities now qualify all demonstrators as terrorists, which only serves to exacerbate the repression.

100. It is difficult to know whether the following recommendations, which were drafted before 1 January 2004, the date on which Haiti celebrated the bicentenary of its independence, will still be relevant when the Commission meets in March/April 2004. It is quite likely that they will need to be updated during the oral presentation of the report on account of developments in the situation that are difficult to foresee today.

VI. RECOMMENDATIONS

1. The opening of an OHCHR office

101. In view of the situation, this initiative should be taken as soon as possible, taking into account - as the Commission has requested - the suggestions made by the independent expert in this report, in particular concerning the support to be given to the players of the future (see paragraphs 73-75 above). Moreover, it is important that the purpose of the office be clearly established and be the subject of an information campaign among the representatives of civil society. Otherwise, their expectations surrounding this initiative are so high that the office risks being quickly inundated with requests. In other words, if the office is not sufficiently adapted to the situation, it would be better to forgo the whole project, lest the United Nations credibility be jeopardized in the long term.

2. Reforms in the sphere of justice

102. *Statutory reforms.* In his previous report the independent expert recommended that priority should be given to the adoption of three bills, which have been ready for several years, concerning the rules governing the judiciary, the Supreme Council of Justice and the Judicial Training College. Since the institutional crisis has resulted in the imminent recess of the legislature, the adoption of these essential reforms is likely to be held up yet again. In the meantime, the independent expert wishes to stress the need for minimum guarantees of independence to be provided by means of the following two proposals:

The establishment in regulatory or other form, if necessary with the help of cooperation services, provisional measures to ensure effective transparency in appointments and promotions so as to end the current arbitrariness that characterizes a great many appointments at all levels, including the appointments of graduates of the Judicial Training College;

Termination of the practice - regrettable in a State governed by the rule of law - whereby aides of the President of the Republic "summon" judges to the National Palace in order to exert pressure on them, which includes trying to get them to sign warrants.

103. *Pilot courts programme.* An assessment of this programme should be conducted with a view to making it more dynamic and facilitating exchanges of experience among the three jurisdictions, specifically through joint meetings of their United Nations Volunteers, or even through twinning with foreign courts.

104. *Use of the exequatur.* An educational campaign should be launched and written directives should subsequently be issued to 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.

3. Reforms concerning the police

105. The independent expert recommends the following measures:

(a) Similar transparency measures should be taken in the light of the recent increase in irregular appointments and unjustified promotions, which undermine morale and thus the efficiency of the police services;

(b) The disbandment of the special brigades should be confirmed by a legal decision which is made public, and a report on the follow-up to this measure should be submitted;

(c) The issue of "*attachés*" should be clarified: the report of the National Coalition for Haitian Rights (NCHR) contains sufficiently accurate evidence that is consistent with criminal legislation to enable the competent government commissioner to initiate proceedings without further delay and to refer the matter to an investigating judge;

(d) A written order prohibiting the use of unregistered vehicles by the police services, usage which the independent expert observed when visiting the headquarters of one of the main police units, should also be made public;

(e) The practice of de facto custody on the premises of the Search and Intervention Brigade (BRI) should be terminated.

4. Statute of the Institute of Forensic Medicine

106. The statute and regulations of the Institute of Forensic Medicine should be finalized, taking care to ensure that they contain sufficient guarantees of independence, particularly as regards access to the Institute and the independence of its doctors, and all necessary steps should be taken to ensure that the circular concerning the model procedure forms is finally signed.

5. Cooperation with NGOs

107. In view of the important role played by NGOs in compensating for the shortcomings in the administration of justice and the police, cooperation must be strengthened by according priority to victim assistance programmes such as the one operated by the Committee of Lawyers for the Respect of Individual Freedoms (CARLI) as well as legal aid initiatives such as the legal aid office (BAJ) in Cap-Haïtien, as the independent expert had already recommended in his previous report (E/CN.4/2003/116, paras. 49 and 74 (d)).

Note: Since recommendations 2 and 4 do not have financial implications, they could be implemented at short notice as a sign of active cooperation with the Commission, which might take note with satisfaction of such cooperation at its session in April 2004, after the Haitian delegation delivers its statement.
