

Republic of Haiti

**Submission to the United Nations
Universal Periodic Review**

Twelfth Session of the Working Group on the UPR
Human Rights Council
3 October – 13 October 2011

**HAITI'S RENEWAL OF MINUSTAH'S MANDATE
IN VIOLATION OF THE HUMAN RIGHTS OF THE HAITIAN PEOPLE**

Submitted by:

Bri Kouri Nouvèl Gaye
Mennonite Central Committee (MCC) Haiti
Let Haiti Live
UnityAyiti

Endorsed by:

Bureau des Avocats Internationaux
Institute for Justice & Democracy in Haiti
International Action Ties
LAMP for Haiti Foundation
Link Haiti, Inc.
Paloma Institute
TransAfrica Forum
UC Davis Immigration Law Clinic

I. Executive Summary

Background and Legal Framework of the Government of Haiti's Human Rights Violations in Renewing MINUSTAH's Mandate

- A. MINUSTAH's Chapter VII Mandate in Haiti is Inappropriate**
- B. Government of Haiti has Issued a Blanket Waiver of all Criminal and Civil Liability for Human Rights Abuses Committed by MINUSTAH**
- C. GOH's Responsibility to Prevent, Investigate, and Prosecute human rights abuses associated with MINUSTAH**

Promotion & Protection of Human Rights on the Ground

- A. Sexual Exploitation and Abuse: MINUSTAH's Failure to Pursue Allegations**
- B. MINUSTAH's Failure to Investigate its Sanitation Facilities After Clear Evidence that it May Have Contaminated a Local River with Cholera**
- C. Refusal to Investigate the Hanging of a Haitian Boy on the MINUSTAH Base**
- D. MINUSTAH's Failure to Protect/Respond to Gender-Based Violence Post-Earthquake**
- E. MINUSTAH's Failure to Protect/Respond to Cases of Forced Eviction**

II. Background and Legal Framework of the Government of Haiti's Human Rights Violations in Renewing MINUSTAH's Mandate

A. MINUSTAH's Chapter VII Mandate in Haiti is Inappropriate

1. In 2004, the United Nations Security Council declared the political and humanitarian crisis in Haiti a threat to international peace and security and exercised its authority under Chapter VII of the UN Charter to establish the Mission of the United Nations for the Stabilization in Haiti (MINUSTAH).¹ MINUSTAH's role according to Security Council Resolution 1542 was to ensure a secure and stable environment, restore and maintain the rule of law, public safety and public order in Haiti, protect civilians under imminent threat of physical violence, and support the Transitional Government.

2. There have been regular protests throughout the country against MINUSTAH for quelling demonstrations, using excessive force in its operations, especially in poor neighborhoods, and failing to provide adequate security to residents of internal displacement camps, including women and communities faced with violent forced evictions. More recently, protests have included MINUSTAH's failure to investigate the link between their base's negligently maintained sanitation facilities and the outbreak of cholera.

3. The appropriateness of a Chapter VII mandate has been questioned, even before MINUSTAH was deployed. Without host nation consent, the UN is ordinarily without authority to deploy armed forces on otherwise sovereign territory. The UN Charter states that "the organization is based upon the principle of the sovereign equality of all its Members" and that the United Nations shall not "intervene in matters which are essentially within the domestic jurisdiction of any state."² An exception is under Chapter VII of the Charter, which authorizes broad powers and enforcement measures, including the use of force, if the Security Council determines that a threat to the peace, breach of the peace or act of aggression exists.³

4. MINUSTAH's deployment in 2004 blurred the lines between consensual peace keeping under Chapter VI (defensive) and coercive peace enforcement (offensive military action) under Chapter VII. The key aspect of Chapter VI operations that deploy armed forces is that they are present in the territory of a sovereign state only because that state has consented to their presence. Chapter VII does not require the consent of the parties concerned and is deployed to stop an aggressor. All peace-keepers deployed by the United Nations are authorized to use armed force in self-defense, but only Chapter VII forces are authorized to use force for reasons other than in self-defense.⁴

5. Since Haiti has never had an armed conflict or peace agreement to enforce, a Chapter VII peacekeeping mission that violates Haiti's sovereignty has never been warranted. President Luis Inacio Lula da Silva's Chief of Staff Jose Dirceu told U.S. White House Special Envoy Otto Reich on March 21, 2004, that Brazil would only participate in a Chapter VI peace keeping mission, not a Chapter VII mission.⁵ Haiti has had a democratically elected government since 2006 and has experienced no acts of aggression that threaten its peace and stability or that of its neighbors.

6. Despite widespread protest from the Haitian people since 2004, the Security Council has renewed MINUSTAH's Chapter VII mandate every year since without any objections from the Haitian government, most recently for an additional year in October 2010.⁶ MINUSTAH's mandate unambiguously affirms the Haitian Government's primary, legal obligation to protect human rights in Haiti.

B. Government of Haiti has Issued a Blanket Waiver of all Criminal and Civil Liability for Human Rights Abuses Committed by MINUSTAH

7. In accordance with standard practice on peacekeeping missions, the UN and the Government of Haiti ("GOH") signed a Status of Forces Agreement (SOFA) that governs the legal status of UN peacekeeping troops in Haiti.⁷ The SOFA is distinct from the Security Council Resolution establishing MINUSTAH and is between the UN and the GOH. The GOH had discretion in negotiating terms of SOFA with the UN and is responsible for any unlawful terms or any terms that may violate the human rights of Haitians.⁸

8. The SOFA grants broad immunity to members of MINUSTAH for crimes committed in Haiti. Civilian members of MINUSTAH can only be prosecuted for crimes committed in Haiti by mutual agreement of the GOH and the Special Representative.⁹ Military members of MINUSTAH are subject to their home country's exclusive jurisdiction.¹⁰ The Haitian Constitution specifically provides that ordinary courts of law can hear cases of disputes between military personnel and civilians.¹¹ But MINUSTAH members are only subject to civil liability for acts committed in Haiti if the Special Representative certifies the charges are unrelated to the member's official duties.¹² The SOFA's lack of any real accountability for civil or criminal human rights violations of MINUSTAH members violates the GOH's obligations to ensure universal human rights and equal protection under the law.¹³

9. The SOFA provides for a Standing Claims Commission to hear private law cases against MINUSTAH members when the SOFA denies the Haitian Judiciary jurisdiction.¹⁴ The Claims Commission has never been established. The failure of the GOH to take steps to establish the

Claims Commission during MINUSTAH's eight-year tenure in Haiti as a method of accountability has resulted in a blanket waiver of Haitians' human rights.¹⁵ The waiver is also a violation of Haiti's Constitution, which guarantees the right to civil suit against persons who violate individual liberties - regardless of what body they are a member.¹⁶

C. GOH's Responsibility to Prevent, Investigate, and Prosecute human rights abuses associated with MINUSTAH

10. The GOH is primarily responsible for preventing, investigating and prosecuting human rights violations within Haiti; MINUSTAH's deployment in Haiti does not alter these obligations.¹⁷ The Haitian Constitution incorporates the right to life, health and respect of the person from the Universal Declaration of Human Rights, and stipulates that all ratified international treaties or agreements become part of the legislation of the country and abrogate any laws in conflict with them, thereby enshrining Haiti's international human rights commitments in domestic law.¹⁸

11. As a Chapter VII peacekeeping mission, MINUSTAH's mandate is under the direct control of the Security Council. The GOH must communicate with the both the Security Council and the Special Representative regarding human rights violations committed by MINUSTAH and MINUSTAH's failure to fulfill its mandate to protect human rights and civilians under threat. The failure to do so allows human rights abusers to remain in Haiti under MINUSTAH's broad grant of immunity, potentially committing further human rights violations against the Haitian people, and maintain a status that allows them to join future peacekeeping missions.

12. The government is also required to investigate allegations of human rights violations. This obligation is severable from the responsibility to prosecute. Even if the GOH is unwilling or unable to prosecute human rights violations, the obligation to investigate remains unaltered.¹⁹ The SOFA does not limit the government's role in investigating human rights violations.

13. Only through credible investigations, the results of which must be made public, can the GOH fulfill its legal obligations to provide security for its citizens and treat all people equally under the law.²⁰ These investigations can form the evidentiary basis for trials in offenders' home countries, claims brought before the Standing Claims Commission, internal UN sanctions, or cases in international courts and tribunals. Investigations may also identify human rights abusers who are not protected under the SOFA. Haitian law allows for civil suit against such persons and provides for criminal liability for private or government abusers.²¹ The principles of equality before the law and the universal nature of human rights demand that the GOH investigate human rights abuses committed by MINUSTAH or associated with MINUSTAH's deployment.²²

14. As with the obligations to prevent and investigate, the Haitian Government must seek to prosecute those who violate human rights. The SOFA denies the Haitian Judiciary the right to prosecute without taking effective steps to ensure prosecution in an alternate forum.²³ And even within the limited options available under the SOFA, the GOH fails in its obligations to prosecute. The GOH should investigate claims, and submit the results and evidence gathered to members of MINUSTAH's home countries and request prosecution. There are no reports of this having ever been done. It is also unclear whether they ever presented allegations of human rights violations or the results of investigations to the Special Representative to allow for internal UN

sanctions for human rights violators. The GOH also failed to establish the Standing Claims Commission which is the only available route for Haitians to receive financial compensation for certain categories of human rights violations committed by MINUSTAH or its individual soldiers.²⁴

15. Haiti has the responsibility to prosecute human rights violations committed in complicity with MINUSTAH or in which MINUSTAH aided and abetted the violations.²⁵ A decision not to prosecute human rights violations committed by MINUSTAH has no bearing on the prosecution of other individuals or organizations for human rights violations.²⁶ MINUSTAH's active commission or indirect allowance of human rights violations to occur does not absolve others of their responsibilities; the Haitian government is required to prosecute these individuals.

III. Promotion & Protection of Human Rights on the Ground

A. Sexual Exploitation and Abuse: MINUSTAH's Failure to Pursue Allegations

16. In November 2007, 111 soldiers and 3 officers from MINUSTAH's Sri Lankan battalion were repatriated due to allegations of sexual exploitation and abuse of Haitian minors.²⁷ The recall decision followed an investigation conducted by the UN Office of Internal Oversight Services in August.²⁸ Sri Lanka had contributed 950 troops to the mission.²⁹ UN spokeswoman Michele Montas described the allegations as transactional sex with underage girls, and also stated that once returned to national jurisdiction, Sri Lanka would pursue the case.³⁰

17. Several reports of other incidents of sexual abuse committed by MINUSTAH troops in Haiti have been reported.³¹ A study of human rights abuses from 2004 to 2006, published in *The Lancet*, identified foreign soldiers as issuing threats of death, physical harm, and sexual violence.³² Save the Children conducted an investigation in 2008, finding minors coerced into sex by peacekeepers for as little as 100 gourdes (2.50 USD). Communities expressed strong concern that children were not reporting the abuse for fear of retribution.³³ The Assistant Secretary-General for Peace Building Support acknowledged such exploitation of vulnerable populations as a widespread problem.³⁴

18. These allegations clearly represented an egregious violation of the mission's code of conduct and MINUSTAH spokesman David Wimhurst's announced "zero-tolerance policy" for any sexual act with under-18 minors or transactional sex with persons of any age. Moreover, the MINUSTAH's Sri Lankan forces responsible for the sexual exploitation and abuse of Haitian minors were in violation of the victims' rights to life and security of person, and of their right to be free from "violence" which includes physical and sexual harm, threatening, coercion and deprivation of liberty.³⁵ Coercion with threats of death, actual physical assault, and sexual violence amount to "torture or . . . other form of inhuman or degrading treatment"³⁶ by willfully causing the Haitian minors great suffering.³⁷

19. In addition to violating human rights law, the MINUSTAH Sri Lankan troops violated the Geneva Conventions and the Additional Protocols and may be subject to charges of war crimes and customary international law. The SOFA establishes that MINUSTAH has the duty to respect "the principles and rules of the international conventions" that include "the four Geneva Conventions of 12 August 1949 and their Additional Protocols of 8 June 1977."³⁸ Though not

labeled as an “internal armed conflict” per se, this explicit inclusion of the Geneva Conventions and the Additional Protocols, in addition to its Chapter VII mandate, establish MINUSTAH’s obligation to respect the laws of war.

20. A war crime has been defined to include humiliating and degrading treatment, rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence.³⁹ It is not necessary that the Sri Lankan forces committed or endorsed the sexual violence as part of a state policy as long as their actions were closely related to the hostilities.⁴⁰ The Sri Lankan forces may be charged for war crimes since the victims were subjected to death threats, physical assaults and sexual violence for the victims to engage in sex with peacekeepers, the violence occurred during a time of political and humanitarian crisis, in a widespread manner with more than 111 soldiers and 3 officers, and with the victims being from a vulnerable population, Haitian minors. These actions also constitute crimes against humanity under customary international criminal law.⁴¹

21. Under the SOFA’s broad immunity, none of the MINUSTAH forces responsible for sexual exploitation could be brought to justice in Haiti. In response to the repatriation, Solidarite Fanm Ayisyen and other Haitian civil society organizations called for a public investigation by the Haitian Government of the Sri Lankan abuses and those suspected among any MINUSTAH contingent.⁴² But if the GOH did conduct any investigation, no investigative findings were ever announced or made public.

22. Despite the promises to investigate and prosecute the crimes in Sri Lanka, no information is readily available on the status of the investigation or prosecution there either. The organizations producing this report were unable to obtain further information upon inquiry to Sri Lankan officials. Nor is there any information on the extent to which the GOH has sought information on these statuses. The results of any investigations that might occur are certainly not made known to Haitian victims, thereby precluding possibility of reparative damages or sense of justice for these crimes.

B. MINUSTAH’s Failure to Investigate its Sanitation Facilities After Clear Evidence that it May Have Contaminated a Local River with Cholera

23. On October 21, 2010, Haiti’s Health Ministry recorded over 1,000 cases of cholera-like illness and 135 associated deaths in the Artibonite region. These were the first cases of cholera reported in Haiti in at least 60 years. By February 9, 2011, the Ministry of Health recorded 4,549 cholera-related deaths and 231,070 people infected. The UN estimates that the actual number is 2 to 4 times higher.

24. Evidence suggests that MINUSTAH troops introduced the cholera bacteria in Haiti. The most likely source of the contamination is the Nepalese MINUSTAH base in the Artibonite region, where reporters found that sewage was being dumped directly into a tributary of the Artibonite River, upstream from where the initial cases occurred.⁴³ Local inhabitants reported that at the time of the outbreak pipes leading from the base emitted a foul smelling liquid.

25. The U.S. Center for Disease Control (CDC) has found that the strain in Haiti is the same as the strain found in South-East Asia. There was a serious outbreak of cholera in Kathmandu, Nepal over the summer of 2010, and a new group of peacekeepers from Nepal arrived in Haiti

two weeks before the outbreak was officially recorded in Haiti. The UN only tests symptomatic individuals prior to deployment, but health officials say 75 percent of people infected with cholera bacteria do not show symptoms and can still pass on the disease for weeks.⁴⁴

26. A leading expert on cholera, Renaud Piarroux, found that based on the direction of the flow from the Artibonite River, the only possible source of infection for patients who fell ill in Saint Marc was the Artibonite River that carried the MINUSTAH sewage.⁴⁵

27. Despite the increasing infection rate and deaths from cholera, and all the evidence pointing to the Nepalese MINUSTAH base as the source for the outbreak, the UN defended its sanitation practices and denied that the base could be a source of the infection. UN spokesman Vincenzo Pugliese said they tested leaking water and an underground waste container at the base a week after the epidemic was first noted and had it processed at a lab in the neighboring Dominican Republic. The test results found no signs of cholera, but medical and public health experts say that false negatives are common and the Dominican lab had apparently no pathology expertise.

28. Despite daily protests in the streets by Haitians, MINUSTAH refused to do any further investigation into the origin of the cholera outbreak. The Mission claimed that it was not possible to pinpoint the source and that investigating further would distract from efforts to fight the disease. Leading experts on cholera and medicine disagreed, stressing that it is both possible and necessary to know exactly where and how the disease emerged because it is a novel, virulent strain previously unknown in the Western Hemisphere that is a threat to the whole region - and public health officials need to know how it spreads.

29. The UN finally succumbed to public pressure in mid-December (after more than 2,500 people had died and 130,000 others infected) and announced that it would appoint a special panel to conduct testing and investigation to determine the source of the outbreak.

30. MINUSTAH has demonstrated negligent behavior by maintaining lax standards and monitoring of its sanitation facilities that unlawfully discharged human sewage into a tributary of the Artibonite River. MINUSTAH's negligence also constitutes a violation of human rights. As the UN Economic and Social Council articulated, environmental hygiene is essential for the protection of the right to water.⁴⁶ The right to water is inextricably linked to other fundamental human rights, including the right to health and right to life that are binding in Haiti and protected in the Haitian Constitution.⁴⁷ Natural water resources must be "protected from contamination by harmful substances and pathogenic microbes" since the right to water includes the right to be free from threats to health from unsafe and toxic water conditions.⁴⁸

31. MINUSTAH's refusal to investigate the source of the cholera epidemic that caused thousands deaths in Haiti, when they had knowledge that their environmental practices may have been the cause, also raises serious questions of accountability for the GOH and victims of the contamination. States and other entities, such as MINUSTAH are required to investigate credible allegations of human rights violations committed by their nationals, armed forces, or those in their territory and prosecute them accordingly.⁴⁹ The duty requires that the investigations be carried out "effectively" and "promptly,"⁵⁰ thereby requiring at a bare minimum that MINUSTAH release the victim's body immediately for a forensic investigation. Because an

effective investigation is “essential pre-requisite to the right of access to...an effective remedy,”⁵¹ MINUSTAH’s refusal to investigate has violated its duty and impeded the protection of human rights.⁵²

32. As part of the duty to investigate, MINUSTAH was required to “monitor and combat situations” where lax sanitation standards were permitted and which likely led to the Cholera outbreak.⁵³ By waiting for over two months to start an official investigation into the conditions and practices of its base near Mirebalais, MINUSTAH breached its duty to investigate and violated the victims’ right to life⁵⁴, health,⁵⁵ access to water,⁵⁶ and human dignity.⁵⁷ MINUSTAH’s practice of denial and avoidance alienated the Haitian people and led them to believe that the UN was orchestrating a cover-up.

C. Refusal to Investigate the Hanging of a Haitian Boy on the MINUSTAH Base

33. August 17, 2010, the body of 16 year old Jean Gérald Gilles was found hanging inside of MINUSTAH’s base in Cap Haitien. Earlier in the day, employees of the nearby Henri Christophe Hotel heard a cry of “they are suffocating me.”

34. MINUSTAH only released the young man’s body for autopsy more than 72 hours after his death. Suicide was ruled out as the cause of death because none of the victim’s cervical vertebrae was damaged.⁵⁸ Releasing the body earlier could have allowed for more detailed results as to the cause of death.

35. According to friends and family of Gilles, he had been working on the base performing odd jobs for the Nepalese soldiers in exchange for money or food. Gilles had been accused of stealing \$200 from a Nepalese soldier, which many believe is the reason why he was killed.⁵⁹

36. A letter from Haitian Civil Society organizations to MINUSTAH head Edmond Mulet, dated September 26, 2010, accuses the force of obstructing justice by refusing to investigate the death of Jean Gerald Gilles. The members of 17 organizations, including Haitian human rights organizations and Haitian medical examiners, called for an independent inquiry into the death.⁶⁰

37. MINUSTAH has never announced any investigation into the hanging on its property, despite its clear duty to investigate an allegation of the violation of the most fundamental human right, the right to life.⁶¹

D. MINUSTAH’s Failure to Protect/Respond to Gender-Based Violence Post-Earthquake

38. The persistent lack of preventative measures within the internally displaced persons (IDP) camps in Port au Prince, primarily security and lighting, has created a severe crisis of safety and security for displaced women and girls exacerbating gender-based violence (GBV).

39. Although the responsibility for providing protection to IDPs lies with the GOH, MINUSTAH has recognized that its “mandate and the wider responsibilities of the international community also require a reinforced effort to protect IDPs, including women and children, from their exceptionally vulnerable circumstances.”⁶² Unfortunately, both the GOH and MINUSTAH are failing to take meaningful actions to protect Haitian women and children from sexual assaults

occurring in IDP camps.

40. As of January 6, 2011, KOFAVIV, a Haitian grassroots women's organization, documented over 640 cases of rape since the earthquake.⁶³ SOFA, a Haitian Women's Health Organization, documented 718 cases of gender based violence in their clinic from January to June 2010.⁶⁴ Doctors without Borders reported 68 cases of rape in April 2010 at one of their clinics in Port-au-Prince.⁶⁵ The vast majority of women living in camps who were interviewed reported being raped by two or more individuals, almost always armed and at night.⁶⁶

41. Despite the presence of over 8,651 military personnel and 3,146 UNPOL members on the ground,⁶⁷ there is still troubling lack of internal patrols within Haiti's approximately 1,100 IDP camps.⁶⁸ The lack of permanent presence in the camps has led to a situation whereby reported incidents of rape and other forms of gender based violence have tripled since the January 12th earthquake.⁶⁹ The UN Protection Cluster and Gender Based Violence Sub-Cluster have reported incidents of rape every week since the earthquake,⁷⁰ and numerous human rights organizations on the ground in Haiti state that the cases reported by the clusters represent only a fraction of those taking place.⁷¹

42. Despite the acknowledgement of the Protection Cluster (led and coordinated by the UN Office of the High Commissioner for Human Rights) in June that a consistent pattern regarding the "inadequate prevention and response" to the weekly incidents of rape had emerged,⁷² an initiative to combat gender based violence took until October to materialize.⁷³ The outcome has led to the permanent presence of a 200-strong UNPOL force in 6 high risk camps, in combination with daily patrols in 70 other priority areas.⁷⁴ That leaves over 1,000 camps without any permanent presence or daily patrols.

43. On September 13, 2010, members of the UN Security Council heard a briefing from Edmond Mulet, the Special Representative of the Secretary-General and Head of MINUSTAH, who stressed that the government of Haiti was confronted with numerous challenges including the "maintenance of order in the camps ... which were still plagued by sexual violence."⁷⁵ Consequently, on October 14, the Security Council recommended that MINUSTAH pay particular attention in providing adequate protection to the needs of Haitians, specifically internally displaced women, including through joint community policing in camps, strengthening mechanisms to address sexual and gender-based violence and promoting and protecting the rights of women as set out in Security Council resolutions 1325, 1888, and 1889. The Security Council stated, "combating criminality and sexual and gender based violence, and putting an end to impunity are essential to ensuring the rule of law and security in Haiti."⁷⁶

44. The UN Security Council has responded to the need for more police units in at least three ways. First, MINUSTAH, together with United Nations Development Program, has assisted in the selection of 1,016 new HNP recruits and the vetting of new and existing personnel. Second, the Security Council increased the authorized UN police force assigned to Haiti (UNPOL) to approximately 4,400. As of October 31, 2010, the United Nations reported that there were 3,146 UN police 70 and 11,797 MINUSTAH military and police personnel in Haiti.

45. MINUSTAH reported to Special Representative Walter Kalin that there was twenty-four

hour coverage for about forty percent of the camp population. MINUSTAH also reported that its forces are patrolling camps and resident areas in some of the more problematic neighborhoods, such as Martissant. However, residents of Martissant explained that while MINUSTAH had a small presence within the area during the daytime, troops were never present at night. The absence or limited peripheral presence of law enforcement has resulted in impunity for perpetrators of sexual violence. Echoing these concerns, Representative Walter Kalin urged MINUSTAH and the HNP to “redouble efforts” to further increase the coverage rates for camps and problematic neighborhoods, emphasizing the need for night and foot patrols.⁷⁷

46. Despite these initiatives, camp residents report that although there had been some increases in patrolling of the perimeter of the larger, more visible camps, such as in Champ de Mars, HNP and MINUSTAH Security Forces were rarely, if ever, seen going into the camps or responding when victims reported being raped.⁷⁸ Due to the absence of official law enforcement presence, residents and camp committees have resorted to organizing their own informal security patrols. While these patrols are encouraging and have seemingly reduced incidents of sexual violence, they are limited in their effectiveness due to lack of capacity.

47. Since January 12, 2010, MINUSTAH has shown a consistent inability and unwillingness to take simple measures to keep women and children safe from violence in IDP camps, despite specific recommendations and orders from UN authorities. MINUSTAH has not worked with communities to develop security plans and include women in the process. Very few changes have been made to protect camp spaces, such as providing adequate lighting, and neither the Haitian police nor MINUSTAH has ensured adequate community policing on a 24 hour basis – to the contrary, women in camps repeatedly report that they do not see patrols, and if they do, they only see vehicles driving by.

E. MINUSTAH’s Failure to Protect/Respond to Cases of Forced Eviction

48. The UN Office for the Coordination of Humanitarian Affairs (OCHA) estimated in February 2011 that over 14% of the over 1000 IDP camps in Haiti were threatened with forced eviction. Forced eviction is defined as the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or lands, which they occupy without the provision of or access to appropriate forms of legal or other protection.⁷⁹ This definition includes informal settlements as well as IDP camps.

49. Article 22 of the Haitian Constitution recognizes housing as a human right, stating that “The State recognizes the right of every citizen to decent housing, education, food and social security.”⁸⁰ Both Haitian and international law spell out legal processes and minimum protections that must be afforded to residents when a private landowner wishes to evict them from his or her property.⁸¹ Despite this, most evictions are carried out extra-judicially, and often under the threat or use of violence.

50. The examples of forced eviction documented in numerous human rights reports highlight the inaction of MINUSTAH to protect the rights of camp residents.⁸² Reports described camps terrorized by armed groups at night, demanding that they vacate the land. When complaints were made to the HNP and MINUSTAH requesting permanent presences in the camps, pledges of

increased patrols were made, but the patrols did not enter the camps – allowing the armed groups to simply hide in the maze of tents.⁸³

51. Human rights reports released on the one-year anniversary of the earthquake reveal that 40% of the families in IDP camps have been threatened with eviction.⁸⁴ A September Report by United Nations General Secretary Ban Ki Moon, estimated that “29% of the 1,268 camps studied had been closed forcibly, meaning the often violent relocation of tens of thousands of people.”⁸⁵

IV. Recommendations

1. Given the existing contractual waivers of civil and criminal immunity by MINUSTAH for any civil or criminal violations, including human rights violations committed by MINUSTAH, the GOH should raise objections before the Security Council to the renewal of MINUSTAH’s mandate.
2. The GOH should renegotiate the SOFA with the UN to allow for accountability of MINUSTAH members to Haitian people for human rights violations.
3. The GOH should object to MINUSTAH’s continued Chapter VII “peace enforcement” mandate that permits military action without the consent of the host country despite the lack of armed conflict or peace agreement to enforce.
4. The GOH should establish a Standing Claims Commission to hear private law cases against MINUSTAH members when the SOFA denies the Haitian Judiciary jurisdiction.
5. The GOH should urge the UN Security Council and MINUSTAH to assure that all MINUSTAH members and soldiers have adequate training on human rights, especially sensibility training on the protection of women and children.
6. The GOH should recommend to the United Nations that the approximately \$2.5 million dollars a day spent on sustaining MINUSTAH’s mission be reallocated to provide immediate potable water distribution, the creation of long-term water and sanitation systems and support for local food development and procurement.

¹ UN Security Council Resolution 1542 (2004), UN Doc. S/1542/2004 (30 April 2004) (hereinafter MINUSTAH Resolution).

² Major Joseph P., *"Dutch" Bialke, United Nations Peace Operations: Applicable Norms and the Application of the Law of Armed Conflict*, 50 A.F. L. REV. 1 (2001).

³ U.N. Charter, Ch. VII, available at <http://www.un.org/en/documents/charter/chapter7.shtml>.

⁴ Walter Gary Sharp, Sr., *Symposium: The United Nations, Regional Organizations, And Military Operations: Article: Protecting The Avatars Of International Peace And Security*, 7 DUKE J. COMP. & INT’L L. 93, 107 (1996).

⁵ *Special Envoy Reich’s Meeting With Jose Dirceu Ref: Brasilia 676*, THE PRESS PROJECT, March 23, 2004, available at <http://www.thepressproject.gr/cablegate/details.php?id=235913>.

⁶ UN Security Council Resolution 1944 (2010), UN Doc. S/1944/2010 (14 Oct. 2010) (hereinafter MINUSTAH Renewal Resolution)

⁷ MINUSTAH Resolution, *supra* note 1, at 7(I)f; MINUSTAH Renewal Resolution, *supra* note 6.

⁸ MINUSTAH Resolution, *supra* note 11 (requesting the Haitian Government to conclude a Status of Forces Agreement within 30 days).

⁹ Accord entre l’organisation des nations unies et le gouvernement haitien concernant le statut de l’operation des nations unies en Haiti, para. 51(a) (2004) available at http://untreaty.un.org/unts/144078_158780/6/9/13920.pdf (hereinafter SOFA).

¹⁰ SOFA, *supra* note 9, para. 51(b)

¹¹ 1987 CONST. OF THE REPUBLIC OF HAITI art. 42-3.

¹² SOFA, *supra* note 9, para. 52(b).

-
- ¹³ 1987 CONST. OF THE REPUBLIC OF HAITI arts. 19, 24-5, 27, 36-2, 40, 276; International Covenant on Civil and Political Rights, G.A. Res. 2200 A (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316, art. 2(1), 14(1) (Dec. 16, 1966) (hereinafter ICCPR).
- ¹⁴ SOFA, *supra* note 9, para. 55.
- ¹⁵ ICCPR, *supra* note 13, art. 14(1).
- ¹⁶ 1987 CONST. OF THE REPUBLIC OF HAITI art. 27.
- ¹⁷ MINUSTAH Resolution, *supra* note 1, 7(I)f; MINUSTAH Renewal Resolution, *supra* note 6.
- ¹⁸ 1987 CONST. OF THE REPUBLIC OF HAITI arts. 19, 272.
- ¹⁹ ICCPR, *supra* note 13, arts. 2(1), 14(1).
- ²⁰ *Id.*
- ²¹ 1987 CONST. OF THE REPUBLIC OF HAITI art. 27.
- ²² ICCPR, *supra* note 13, art. 2(1), 14(1).
- ²³ SOFA, *supra* note 9, para. 51-52.
- ²⁴ *Id.* at para. 55.
- ²⁵ ICCPR, *supra* note 13, arts. 2(1), 14(1).
- ²⁶ 1987 CONST. OF THE REPUBLIC OF HAITI art. 42-3 (authorizing civil suits and criminal prosecutions against human rights abusers).
- ²⁷ AFP, *Sri Lanka to probe sex charges*, Nov. 2, 2007, available at <http://afp.google.com/article/ALeqM5jv1Dg19IGQjacW3GTAozDzgm43iQ>.
- ²⁸ Carol Williams, *UN confronts another sex scandal*, LOS ANGELES TIMES, Dec. 15, 2007, available at <http://articles.latimes.com/2007/dec/15/world/fg-haitisex15>.
- ²⁹ AFP, *supra* note 27.
- ³⁰ Reuters, *Peacekeeper accused of abuse in Haiti*, Nov. 2, 2007, available at <http://uk.reuters.com/article/2007/11/02/uk-un-abuse-srilanka-idUKN0259118620071102>.
- ³¹ *UN troops face child abuse claims*, BBC NEWS, Nov. 30, 2006, available at <http://news.bbc.co.uk/2/hi/americas/6195830.stm>; Stephanie Busari, *Charity: Aid workers raping, abusing children*, CNN, May 27, 2008, available at <http://edition.cnn.com/2008/WORLD/europe/05/27/charity.aidworkers/>; U.N. *Faces More Accusations of Sexual Misconduct*, WASHINGTON POST, March 13, 2005, available at <http://www.washingtonpost.com/wp-dyn/articles/A30286-2005Mar12.html>; Ansel Herz, *Haiti: Looking More Like a War Zone*, IPS NEWS, March 30, 2010, available at <http://www.ipsnews.net/news.asp?idnews=50855>.
- ³² Athena Kolbe and Royce Hutson, *Human rights abuses and other criminal violations in Port-au-Prince, Haiti: a random survey of households*, THE LANCET 368 (2006): 864-73.
- ³³ Save the Children, *No One to Turn to: The Underreporting of Child Sexual Exploitation and Abuse by Aid Workers and Peacekeepers*, (2008), available at http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/27_05_08_savethechildren.pdf.
- ³⁴ *Id.*
- ³⁵ Declaration on the Elimination of Violence Against Women, U.N. Doc. A/RES/48/104, arts. 1-2 (Dec. 20, 1993); Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. GAOR, 3d Sess., U.N. Doc. A/810, arts. 1, 3 (Dec. 10, 1948) (hereinafter UDHR); American Convention on Human Rights, arts. 5, 11 (San Jose, Costa Rica, Nov. 22, 1969), 1144 U.N.T.S. 143 (hereinafter American Convention); a discussion of rape under Article 5 of the American Convention can be found in *Loayza Tamayo v. Perú*, Interpretation of the Judgment of Reparations (art. 67 American Convention on Human Rights), Judgment of June 3, 1999, Inter-Am. Ct. H.R. (Ser. C) No. 53 (1999) and *Martí de Mejía v. Perú*, Case 10.970, Report No. 5/96, Inter-Am.C.H.R., OEA/Ser.L/V/II.91 Doc. 7 at 157 (1996). The European Court of Human Rights has also recognized rape as a violation under its right to privacy. See *X & Y v. Netherland*, (1986) 8 EHRR 235 (Application no. 8978/80).
- ³⁶ See Amnesty International, *Bosnia and Herzegovina, Rape and Sexual Abuses by Armed Forces* (January 1993); The Inter-American Court of Human Rights recognized rape as torture in *Raquel Martí de Mejía v. Perú*, Case 10.970, Report No. 5/96, Inter-Am.C.H.R., OEA/Ser.L/V/II.91 Doc. 7 at 157 (1996); the European Court of Human Rights also recognized rape as torture in *Aydın v. Turkey*, (2004) 25660/94; *Prosecutor v. Delalic [et al]*, Case No. IT-96-21-T (Celebici); *Prosecutor v. Furundzija*.
- ³⁷ As cited in Theodor Meron, *Rape as a Crime under International Humanitarian Law*, 3 AMERICAN JOURNAL OF INTERNATIONAL LAW 424, 426 (1993); Fourth Geneva Convention, art. 147; Additional Protocol II, art. 4(e).
- ³⁸ SOFA, *supra* note 9, para. 6.
- ³⁹ Rome Statute of the International Criminal Court, A/CONF.183/9, July 17, 1998, entered into force July 1, 2002, art.8.

⁴⁰ *Celebici*, *supra* note 36, ¶ 193.

⁴¹ Article 3 common to all four Geneva Conventions has attained the status of customary international law, applicable to international, or internal armed conflicts. *See Prosecutor v. Kunarac Kovac, and Vukovic*, Judgment, Case No. IT9623/1T (Feb. 22, 2001), ¶ 406 *citing Prosecutor v. Tadić*, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, Case No. IT941AR72, ¶¶ 98, 134 (Oct. 2, 1995).

⁴² Carol Williams, *supra* note 28.

⁴³ Associated Press, *UN Probes Base as Source of Cholera Outbreak*, Oct. 27, 2010; *Cholera in Haiti Matches Strains Seen in South Asia, U.S. Says*, NEW YORK TIMES, Nov. 1, 2010, available at <http://www.nytimes.com/2010/11/02/world/americas/02haiti.html>.

⁴⁴ Associated Press, *Experts: Did UN Troops Infect Haiti?*, WASHINGTON POST, Nov. 3, 2010, available at <http://www.washingtonpost.com/wp-dyn/content/article/2010/11/03/AR2010110306660.html>.

⁴⁵ Mission Report on the Cholera Epidemic, Nov. 7-27, 2010, UCLA SCHOOL OF PUBLIC HEALTH, available at http://www.ph.ucla.edu/epi/snow/cholera_haiti_piarrouxreport.html.

⁴⁶ Committee on Economic, Social and Cultural Rights, General Comment 15, The Right to Water, ¶ 8, U.N. Doc. E/C.12/2002/11 (Nov. 26, 2002) (hereinafter General Comment 15).

⁴⁷ For more information on the right to water, see the Shadow Report on the Right to Water.

⁴⁸ General Comment 15, *supra* note 46, at ¶ 8; see also Committee on Economic, Social and Cultural Rights, General Comment 14, The right to the highest attainable standard of health, ¶ 15, U.N. Doc. E/C.12/2000/4 (Aug. 11, 2000) (hereinafter General Comment 14).

⁴⁹ Human Rights Watch, *Turning a Blind Eye*, April 10, 2010, available at http://www.hrw.org/en/node/89574/section/5#_ftnref145 *citing* Fourth Geneva Convention, art. 146 (States Parties “shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts”). *See* International Committee of the Red Cross, *Customary International Humanitarian Law*, Cambridge University (2005), rule 158; *see also* Rome Statute of the International Criminal Court, A/CONF.183/9, July 17, 1998, *entered into force* July 1, 2002, art. 21., Preamble (noting “the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes”); *see also Velásquez Rodríguez v. Honduras*, Case, INTER-AM. CT. H.R. (ser. C) No. 4, ¶ 166 (July 29, 1988).

⁵⁰ Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations, G.A. Res. 60/147, art. II(b) (Dec. 16, 2005).

⁵¹ Christine Chinkin, Ad Hoc Committee on Preventing and Combating Violence Against Women and Domestic Violence, Council of Europe, May 4, 2009, available at http://www.coe.int/t/dghl/standardsetting/violence/CAHVIO_2009_10%20Case%20law%20of%20the%20European%20Court%20of%20Human%20Rights.pdf. *See also* ICCPR, *supra* note 13, art. 2; American Convention, *supra* note 35, art. 25; *MC v. Bulgaria*, (39272/98) [2003] ECHR 646 (Dec. 4, 2003); *Aydin v. Turkey*, In *Silih v. Slovenia* (2009) 49 E.H.R.R. 37; *Case of Barrio Altos v. Perú*, INTER-AM. CT. H.R., Judgment of March 14, 2001; *Duty of States to Investigate Extra-Judicial Killings*, LAWYERS’ RIGHTS WATCH CANADA, available at <http://www.lrwc.org/documents/Duty%20of%20States%20to%20Investigate.Extra-Judicial%20Killings.Nov.09.pdf>.

⁵² *Case of Velásquez-Rodríguez v. Honduras*, INTER-AM. CT. H.R., Judgment of July 29, 1988. Series C No. 4, para. 176.

⁵³ General Comment 15, *supra* note 46, at ¶ 8.

⁵⁴ UDHR, *supra* note 35, art. 3; ICCPR, *supra* note 13, art. 6.

⁵⁵ UDHR, *supra* note 35, art. 25; International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200 A (XXI), U.N. Doc A/RES/2200, art. 12 (Dec. 16, 1966) (hereinafter ICESCR); Art.11, OAS Charter.

⁵⁶ General Comment 15, *supra* note 46, at ¶ 1.

⁵⁷ UDHR, *supra* note 35, Preamble, Art. 1; ICCPR, *supra* note 13, art. 10.

⁵⁸ *What Happened to Gerard Jean Gilles?*, CENTER FOR ECONOMIC AND POLICY RESEARCH, Sept. 24, 2010, available at <http://www.cepr.net/index.php/blogs/relief-and-reconstruction-watch/what-happened-to-gerald-jean-gilles/>.

⁵⁹ *Id.*

⁶⁰ *Open Letter from Haiti Civil Society Organizations, MINUSTAH and the Execution of Young Gerard Gilles*, JSF POST, Sept. 26, 2010, available at <http://www.jsf-post.com/2010/09/26/minustah-the-execution-of-young-gerard-gilles/>.

-
- ⁶¹ *Case of Velásquez-Rodríguez v. Honduras*, INTER-AM. CT. H.R., Judgment of July 29, 1988. Series C No. 4, para. 176.
- ⁶² *IDP Camp Joint Security Assessment Report*, MINUSTAH HUMAN RIGHTS SECTION, Mar. 30, 2010.
- ⁶³ *Our Bodies are Still Trembling, Haitian Women Continue to Fight Against Rape: One Year Update*, INSTITUTE FOR JUSTICE & DEMOCRACY IN HAITI, Jan. 2011, at <http://ijdh.org/archives/16451>.
- ⁶⁴ *Id.*
- ⁶⁵ *Our Bodies are Still Trembling, Haitian Women Continue to Fight Against Rape*, INSTITUTE FOR JUSTICE & DEMOCRACY IN HAITI, July 27, 2010, at <http://ijdh.org/archives/13361>.
- ⁶⁶ *Id.*
- ⁶⁷ *MINUSTAH Facts and Figures*, UNITED NATIONS, available at <http://www.un.org/en/peacekeeping/missions/minustah/facts.shtml>.
- ⁶⁸ Institute for Justice and Democracy & The LAMP for Haiti Foundation, *One Year After the Earthquake – Haitians Still Living in Crisis*, Jan. 10, 2011, at <http://ijdh.org/archives/16403>.
- ⁶⁹ *Haitian Human Rights Lawyer Slams Elections, Aid*, CBC NEWS, Nov. 25, 2010, available at <http://www.cbc.ca/world/story/2010/11/18/f-clibbon-mario-joseph-qanda-haiti-human-rights.html>.
- ⁷⁰ *Aftershocks: Women Speak Out Against Sexual Violence in Haiti's Camps*, AMNESTY INTERNATIONAL, Jan. 6, 2011, available at <http://www.amnesty.org/en/library/info/AMR36/001/2011/en>.
- ⁷¹ *Id.*
- ⁷² Haiti Protection Cluster, *Situation Report*, June 2010, available at <http://tinyurl.com/2g4rnm5>.
- ⁷³ *UN Projects for Haiti on Gender Based Violence and Education Win Approval*, UN NEWS CENTRE, Oct. 6, 2010, available at <http://www.un.org/apps/news/story.asp?NewsID=36362&Cr=haiti&Cr1>.
- ⁷⁴ Haiti / Sexual Violence, UNITED NATIONS NEWS AND MEDIA, Jan. 21, 2011, available at <http://www.unmultimedia.org/tv/unifeed/d/16830.html>.
- ⁷⁵ Press Release, *Security Council, United Nations Mission in Haiti Should be Maintained at Current Strength at Least Until After November Elections, New Government's Formation, Security Council Told*, UN Doc. SC/10026 (Sept. 13, 2010), available at <http://www.un.org/News/Press/docs/2010/sc10026.doc.htm>.
- ⁷⁶ Press Release, *Security Council, Renewing Haiti Mission Mandate in Resolution 1944 (2010), Looks to Review of Situation After Pending Elections, New Government*, UN Doc. SC/10054 (Oct. 14, 2010), available at <http://www.un.org/News/Press/docs/2010/sc10054.doc.htm>.
- ⁷⁷ Walter Kalin, Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, *Human Rights of Internally Displaced Persons in Haiti: Memorandum Based on a Working Visit to Port-au-Prince (12–16 Oct. 2010)*, available at <http://ijdh.org/wordpress/wpcontent/uploads/2010/11/Kalin-Statement-2010-Haiti-English.pdf>.
- ⁷⁸ According to an August study by the United States Institute for Peace, seventy-five percent of displaced persons interviewed reported rarely or never having ever seen any police or UN security forces inside the camps.
- ⁷⁹ Committee on Economic, Social and Cultural Rights, General Comment 7, Forced Evictions, and the right to adequate housing, U.N. Doc. HRI/Gen/1/Rev.6 at 45 (2003).
- ⁸⁰ 1987 CONST. OF THE REPUBLIC OF HAITI .
- ⁸¹ For more information on the right to housing, see the Shadow Report on the Right to Housing.
- ⁸² International Action Ties, *"We Became Garbage to Them" Inaction and Complicity in IDP Expulsions*, Aug. 14, 2010, at <http://ijdh.org/archives/14448>.
- ⁸³ International Action Ties, *Vanishing Camps at Gunpoint: Failing to Protect Haiti's Internally Displaced*, July 14, 2010, at http://ijdh.org/wordpress/wp-content/uploads/2010/07/IAT_vanishing_camps_report_haiti.pdf.
- ⁸⁴ *One Year After the Earthquake – Haitians Still Living in Crisis*, *supra* note 68.
- ⁸⁵ Humanitarian Bulletin 01- 17 February 2011, U.N. OFFICE FOR THE COORDINATION OF HUMANITARIAN AFFAIRS, Feb. 17, 2001, available at <http://www.reliefweb.int/rw/rwb.nsf/db900sid/ADGO-8E7LJK?OpenDocument>.