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Technical assistance and capacity-building

Report of the independent expert on the situation of human rights in Haiti, Michel Forst*

Summary

In accordance with the mandate established by the Commission on Human Rights in its resolution 1995/70 and with Statement PRST/9/1 of the President of the Human Rights Council, the independent expert on the situation of human rights in Haiti submitted his report (A/HRC/14/44) for consideration by the Council at its fourteenth session.

In the present addendum the independent expert reports on the visit which he made to Haiti between 21 April and 1 May 2010. The chief purpose of this visit was to update the information and recommendations contained in his main report.

The independent expert recalls and describes in greater detail the threats hanging over the people, more particularly those most vulnerable in natural disasters: displaced persons, women, children and persons with disabilities. He underlines the need to make protection a priority of the international community and suggests improvements to the sectoral coordination of the protection work, in particular an effort to involve the Haitian authorities and organizations and the Office of the Ombudsman.

* Document submitted late.

** The summary of the present report is circulated in all the official languages. The report itself, which is annexed to the summary, is circulated only in the original language, English and Spanish.

The independent expert goes on to analyse the issue of forced eviction from land and buildings occupied by internally displaced persons and offers some guidance on meeting the urgent needs; he then clarifies and fleshes out his vision of the place of human rights in the reconstruction and proposes in particular that Haiti's civil society should be involved in the debate and the decision-making process. He reiterates the readiness of the special procedures of the Human Rights Council to work with him to formulate thematic recommendations to enrich the deliberations of the future Haitian reconstruction and development agency.

In the last part of the report he offers some recommendations additional to the ones contained in his main report.

Annex

Report of the independent expert on the situation of human rights in Haiti, Michel Forst, on his visit to Haiti (21 April to 1 May 2010)

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I. Introduction

1. In accordance with the mandate established by the Commission on Human Rights in its resolution 1995/70 and with Presidential Statement PRST/9/1, in which the Council invited the new independent expert to undertake a mission to Haiti and report to it each year, the independent expert submitted his annual report to the Council (A/HRC/14/44) for consideration at its fourteenth session.
2. The independent expert made an additional visit to Haiti from 21 April to 1 May 2010 in order to update the information published in his main report. The need for the humanitarian emergency to be tackled as the first priority prevented the independent expert from going to Haiti immediately after the earthquake on 12 January 2010.
3. Furthermore, since the main report was drafted in March 2010, the independent expert thought it useful to update some of the information in order to enhance the awareness of the members of the Council of the current situation in Haiti and to clarify some of his initial recommendations.
4. The independent expert wishes once again to thank President Préval for the warmth of his welcome and for his concern to share with the expert information relevant to the discharge of his mandate, especially with regard to the continuation of the reform of the justice system and to the functioning of institutions. He also thanks the members of President Préval's Government who shared with him their thinking about the country's future, in particular with respect to the rule of law.
5. The independent expert also met with the Special Representative of the Secretary-General and Head of the United Nations Stabilization Mission in Haiti (MINUSTAH), who informed him about his analysis of the country's situation and the organizational arrangements made for the visit. He also met with the Special Representative's recently appointed principal deputies in order to communicate his human rights recommendations to them. He wishes to salute the work done so far in providing the best possible response to an unprecedented humanitarian crisis in such a unique context: the personnel of MINUSTAH and the agencies of the United Nations system having been working without respite and in sometimes difficult physical conditions to respond to the emergencies, which are proliferating and can on occasions concertina into one another.
6. The human rights section ought to be one of the cornerstones of MINUSTAH because of the human rights crisis which the country is enduring, the prominence which should be accorded to human rights in its reconstruction, and the need to rebuild a national system for protecting human rights. The independent expert recommends in this connection that the human rights section should report directly to the Special Representative of the Secretary-General. It should also have its human resources increased in order to improve its capacity to implement a strategy and contribute to the establishment of the national system for protecting human rights.

II. The coordination of the humanitarian aid

7. The independent expert travelled to Léogane, Ganthier, Fond Parisien and Les Cayes, where he met with judicial authorities and representatives of the municipalities, as well as with officials of the various United Nations agencies present in the field and international and national non-governmental agencies (NGOs), and attended a number of meetings on the protection issue. In every location he visited the displaced persons camps and met with persons living in the camps or with host families.

8. The independent expert concentrated mainly on the aspects of the humanitarian aid relevant to his mandate, and his attention was focused almost exclusively on the protection issue, the sectoral responsibility¹ for which had been entrusted jointly to the Office of the United Nations High Commissioner for Refugees (OHCR) and the Office of the United Nations High Commissioner for Human Rights (OHCHR), represented locally by the human rights section of MINUSTAH. The national coordination meetings are held in Port-au-Prince and in various other towns and are attended, in principle, by all the actors involved to one degree or another in the protection work; their chief purpose is to share information and secure more effective coordination of the activities.

9. The independent expert attended three coordination meetings of the protection sector (“sectoral meetings”), in Port-au-Prince, Fond Parisien and Léogane, and he also interviewed a number of the regular participants in these meetings to give them his impressions of how the meetings were working. He also met with Haitian civil society organizations and NGOs.

10. While the sectoral meetings offer a very useful means of exchanging information essential to coordination, they are not considered by some of the participants to be an effective forum for taking decisions on certain situations calling for urgent responses.

11. One of the main points to be made about the sectoral meetings in Port-au-Prince is that they are held exclusively in “Logbase”, the MINUSTAH base close to the airport, and are almost always conducted in English. Owing to the travel distance and transport difficulties, as well as the language problem, the Haitian authorities and NGOs are reluctant to attend the meetings, or they may even exclude themselves from them. This situation is regrettable, for the Haitian NGOs very well informed about what is actually going on in some situations and they could also convey information to the public, scotch some of the rumours, and prepare people for some of the decisions taken on protection and displacement.

12. The absence of the Office of the Ombudsman and representatives of the Government from the sectoral meetings is also regrettable, and it is essential to boost the representation of the national institution for the protection of human rights in all aspects of this mechanism in the light of the role which it will called on to play in the national protection system.²

13. The independent expert recommends that the national players (Government, NGOs and Ombudsman’s Office) should be systematically involved in the coordination meetings of the protection sector and that the meetings should be conducted in a language which facilitates the effective participation of the Haitians in the discussions and in the taking of decisions on matters which primarily concern them.

III. Vulnerable groups

A. Internally displaced persons

14. It is difficult to produce an accurate estimate of the number of internally displaced persons. The International Organization for Migration (IOM) has undertaken a vast census, which is difficult to organize, in the form of ongoing operations to gather reliable information about some 2.1 million persons displaced throughout the country, in order to target the

¹ The sectoral responsibility approach is designed to obtain more strategic responses and the establishment of a better order of priorities among the available resources by clarifying the distribution of tasks among the various organizations, by defining more precisely the roles and responsibilities of the humanitarian organizations in sectoral terms, and by providing the Humanitarian Coordinator with a lead contact and an institution of last resort in all the main sectors and areas of activity.

² The national human rights institutions are now recognized, without any doubt whatsoever, as key partners in the promotion and protection of human rights at the national and regional levels.

priority aid more accurately. Most of these displaced persons are living in makeshift camps or with friends or family in Port-au-Prince and other towns. With OHCR and MINUSTAH assistance the independent expert was able to visit makeshift camps and talk to the persons living there in extremely harsh conditions.

15. According to the Camp Coordination and Camp Management cluster,³ at the beginning of April there were 1,300 displaced persons sites, including 921 in Port-au-Prince, and IOM speaks of more than 2 million displaced persons. However, several of these sites are located on flood plains, a worrying factor as the rainy season approaches.

16. IOM and its partners are continuing to provide assistance with the voluntary relocation of millions of Haitians displaced by the earthquake of 12 January, as part of an initiative of the Haitian Government aimed at finding safer shelters during the rainy season. The situation is very complicated owing to the difficulty of finding available land, problems connected with ownership and the negotiation of compensation for occupying land or with decisions to requisition land for setting up camps.

17. At the time of drafting this report more than 7,300 persons had been installed on a new site at Corail Cesselesse on the outskirts of Port-au-Prince, as well as on a site at Tabarre Issa, not far from the United States embassy on the road from Tabarre to Port-au-Prince, managed by the humanitarian organization Concern. Most of the new occupants are from the camp at the Pétionville golf club, where 7,500 persons were living in areas regarded as dangerous and requiring emergency works, and from Vallée de Bourdon, another dangerous site located along a river bed between Pétionville and Port-au-Prince.

18. Another camp was set up and opened at Croix de Bouquets with support from the Dominican Republic and the international community. This Santo camp has almost 22,000 square metres of space and will eventually have to house about 2,000 persons. Other sites are being set up or identified.

19. Relocation to these sites is one of several solutions available for the Haitians who are to return to accommodation judged to be safe or to be rehoused with a family but have to live temporarily on new sites before finding other more durable solutions. The independent expert also visited camps set up and managed by international organizations, ranging from simple tents to more solid wooden houses. The disparity of the conditions in these camps and the nature of their equipment cause inevitable worry as the season of rains and cyclones approaches, for some of them are visibly better prepared than others to withstand the impact of the natural elements on camp life.

20. During his visits to these sites the independent expert also expressed his concern about the measures introduced to give persons with disabilities access to the camps and enable them to live there. He raised the matter with Michel Péan, Secretary of State for the Integration of Persons with Disabilities, who assured him that he was keeping a close eye on the measures announced to ensure respect for the rights of such persons.⁴

21. Security in the relocation camps is maintained by joint patrols of the National Police and the United Nations Police (UNPOL), and steps have been taken to secure the boundaries and zones which are risky or dangerous for women, such as washing and toilet facilities. “Organization committees” have been created in most of the camps to discuss with the authorities and the humanitarian institutions and organizations how to deliver responses to the residents’ needs.

³ <http://www.reliefweb.int/rw/rwb.nsf/db900SID/MDCS-85KDDP?OpenDocument>.

⁴ The expert “discovered” on the road from Fond Parisien a camp with more than 50 tents occupied by persons who had been injured or had lost limbs and had been left without care; he reported the situation to Handicap International.

22. However, a number of national and international experts are worried about the tempo and modalities of these operations to relocate internally displaced persons owing to the very large numbers concerned and the confusion and lack of information about the status of the families eligible for aid.

23. In fact, these camps have not been set up without arousing envy, especially among the poorest people, who find it hard to understand why some persons are eligible for rehousing while others are not. This has led to the practice of setting up “ghost” camps,⁵ examples of which the independent expert saw in several places.

24. The independent expert went with members of OHCR to the area of the border with the Dominican Republic to meet displaced persons living there with host families and to study the earthquake’s impact on that category of displaced persons, who are “invisible” in the sense that they are not living under canvas in a camp but with friends or a family. The persons interviewed spoke of the difficulty of living in a setting in which there was no work, a difficulty prompting many of them to want to return to Port-au-Prince or to a place where they could enrol in the “cash-for-work” programme.

25. For their part the municipal representatives interviewed pointed out the difficulties caused by the influx of thousands of persons and the impact on their local infrastructure, which had been unprepared to cope with overcrowding on that scale. It would be useful for specific assistance to be furnished to them as quickly as possible to enable them to stabilize, for an initial phase at least, the situation of persons living with host families, which had already been in very difficult material circumstances even before the earthquake.

B. The situation of women

26. The critical situation of women victims of sexual violence was described by the independent expert in his main report (A/HRC/14/44, paras. 26 to 30); since then other reports by international NGOs have further documented these violations of rights.⁶ The independent expert visited several camps and met with women and women’s groups working on the violence issue. Many of them described to him the dangers to which women are exposed in the camps and host families, the sexual promiscuity in the toilets, and the poor lighting, which renders women even more vulnerable.

27. The independent expert thanks the Haitian authorities, MINUSTAH and the international organizations which set up the camps to take in displaced persons for having taken the measure of the problem and for the decisions taken on prevention of violence against women. The night lighting in the proximity of the washing and toilet facilities, the night patrols by the police, the effort to make the inmates of the camps aware of the problem, and the access granted to specialized agencies are all concrete measures which will support the fight against violence against women.

28. However, impunity is without doubt one of the most worrying of the factors mentioned by victims of violence and persons working with them. The independent expert stressed in his main report the paramount role of the prosecution of acts of rape in accordance with the provisions of Haiti’s Criminal Code. He can only repeat his recommendations on the topic

⁵ Some inhabitants have taken the opportunity to set up false tent camps or erect several extra tents in their camp in order to obtain the aid distributed by NGOs to each tent; this practice is complicating the relocation and humanitarian aid operations. These ghost camps literally become deserted as night comes on, when their “inhabitants” go back to their real tents, their houses or their land.

⁶ See inter alia the reports published by Amnesty International, Human Rights Watch, International Federation for Human Rights, International Crisis Group, etc.

(A/HRC/14/44, para. 92), even allowing for the fact that the justice system was disrupted by the earthquake of 12 January 2010.

C. Children

29. In his main report the independent expert drew attention to the threats to which vulnerable groups, children in particular, are exposed. Once again, he salutes the work done by the United Nations Children's Fund (UNICEF) and other institutions in documenting isolated and orphaned children and providing them with support and protection against these threats. However, during his travels, in particular to the border with the Dominican Republic, and during his interviews with a number of specialized organizations, the independent expert learned of probable cases of trafficking in children and several cases of isolated children trying to cross the border, with all the attendant threats to their safety. The independent expert can only repeat the fears and the recommendations stated in his report (A/HRC/14/44, para. 93). He also repeats his fears about the education of children, which has been thoroughly disrupted even though the right to education is a fundamental right.

D. Persons with disabilities

30. The independent expert singled out persons with disabilities from among the most vulnerable groups; a large number of people have in fact undergone operations and had a limb or the extremity of a limb amputated, while others have been rendered paraplegic or tetraplegic by the earthquake. The figures are difficult to establish with accuracy, but the organizations working in the field estimate that they have taken more than 4,000 persons into their care. The fitting of prosthetic and orthotic devices by the humanitarian organizations is of a very high standard and is enabling many amputees to cope better with their disability.

31. Nevertheless, there is a very big demand for treatment and follow-up care; the independent expert recommends that resources should be allocated to ensure the continuation for as long as necessary of the treatment and care needed by persons with disabilities. He further recommends that, as part of the reconstruction, authentic policy measures should be put in place to facilitate the integration and participation of persons with disabilities and to counter the exclusion which they suffer. The Secretary of State for the Integration of Persons with Disabilities should receive broad support for his initiatives to realize the rights of these persons and he should be invited to attend the sectoral meetings organized by MINUSTAH.

E. Forced eviction

32. Out of necessity, people finding themselves in danger or in precarious circumstances moved into makeshift camps on private land, in stadiums and on municipal sites, as well as on land belonging to schools and other educational establishments. After several weeks of relative tolerance some owners sought to regain the use of their property and began to take action to evict people against their will, sometimes by persuasion or threats but sometimes by sending in gangs or requesting intervention by the police, which intervened in some cases notwithstanding the absence of any judicial decision authorizing action by the forces of law and order.⁷ The MINUSTAH human rights section has also been requested on several occasions to assist in forced eviction operations.

33. In addition, the start of the new school year, scheduled for 5 April 2010, naturally prompted school managers to want to recover their buildings or land so that children could attend school. On several occasions members of the MINUSTAH human rights section were

⁷ The members of UNPOL who were questioned confirmed that they had not witnessed any evictions by the National Police.

thus called on by families and head teachers to engage in mediation to get occupied property evacuated, without infringing the rights of the displaced persons.

34. The independent expert went out on a night patrol with members of the National Police and UNPOL and saw for himself how difficult it is to handle the situation when there is a conflict between such legal priorities as the right of ownership, the right to education, the rights of displaced persons or, in the case of the occupation of farmland, the right to food.

35. It would be useful in this connection for the Government to formulate, with MINUSTAH support, a clear strategy for making the various parties understand the chosen priority and the criteria for handling requests for eviction and requests for the restoration of occupied school property or farmland.

IV. The prison situation

36. As on each of his previous visits the independent expert went to places of imprisonment. He went for example to the prison at Les Cayes and the national prison. Both these establishments are overcrowded, and the prisoners and untried detainees live in cruel, inhuman and degrading conditions within the meaning of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

37. The buildings of the national prison were damaged during the earthquake, and part of the prison was burned during the mass escape on 12 January. Because of the risk that some parts of the building may collapse, the prisoners and untried detainees were installed together in a single building, in which the conditions of detention are even harsher than before the earthquake.⁸ The works planned to improve the safety of the buildings should eventually reduce the overcrowded conditions in which the untried detainees and prisoners are crammed together.

38. One of the justice system's current problems is the disappearance of the case files of prison inmates. During the post-earthquake escape part of the prison was torched and the files were looted and burned.

39. Some of the inmates who had quit the prison during the escape returned of their own accord and were locked away again; several of them had completed their sentences at the time of the earthquake and should be released immediately. The independent expert met with several detainees and transmitted a number of requests to the Haitian authorities. He reiterates his recommendations concerning the judicial processing of the persons currently held in the national prison, with a view to reducing the overcrowding (A/HRC/14/44, para. 96) and he welcomes the positive steps taken by the Minister of Justice in coordination with the justice section of MINUSTAH to tackle seriously the issue of pretrial detention.

40. A mutiny erupted at the Les Cayes prison on 19 January and was put down harshly by the National Police, with a dozen inmates killed and a score wounded, in a manner which calls for a serious and impartial inquiry; the independent expert has had meetings on this issue with the Haitian authorities at the highest level. The question of impunity must in fact be handled in an exemplary manner in order to demonstrate the authorities' determination not to tolerate the reappearance of conduct at variance with the standards applicable to the forces of law and order.

⁸ While the living space per prisoner was 0.44 m² before the earthquake, the International Committee of the Red Cross (ICRC) now estimates it to be 0.30 m².

V. Forced return

41. Despite the joint appeals issued on 12 February 2010 by OHCHR and OHCR calling for the suspension of forced return to Haiti to be maintained,⁹ some countries have terminated their generous reception programmes and have begun to send irregular migrants back to Haiti. The interception on the high seas of large numbers of migrants, followed by their return to Haiti, has also been resumed, and the promises made by some countries to offer these Haitians temporary refuge have not been kept.

42. Having met with the authorities of several States, the independent expert can do no more than reiterate his appeals to the countries of destination of Haitian migrants to continue to demonstrate sympathy and flexibility in their decisions, for this is not the right time to inflict on Haiti the burden of the return of all the migrants who have tried to escape the harsh conditions prevailing in the country since the earthquake.

VI. The place of rights in the reconstruction

43. In keeping with the recommendations contained in his main report (A/HRC/14/44, paras. 98 to 105) the independent expert held meetings with the Haitian authorities and senior officials of MINUSTAH and United Nations institutions concerning the question of the place of rights in the reconstruction, sharing with them in particular his concerns about the lack of any explicit reference to that question in spite of the repeated recommendations on the point addressed to them by several States at the donors' conference.¹⁰

44. The independent expert also met with Haitian human rights NGOs to discuss the reconstruction issue and he shares the regret expressed by a number of them about the insignificant place accorded to Haitian civil society at the preparatory conferences for the reconstruction. He recommends that Haitian human rights NGOs, and more generally Haiti's very active civil society, should be involved at all stages of the discussions on the plans for reconstructing the country.

45. The action plan for national reconstruction and development, designed to have the country rebuilt on sounder foundations than it enjoyed before the earthquake, should incorporate explicit components on the place of rights in the reconstruction and on the rights-based approach in certain emblematic areas of the work, thus showing that the very purpose of the reconstruction is to guarantee the citizens of Haiti, at the outset, genuine access to their rights.

46. Since the Haitian people has been deprived of some of its human rights and since the rule of law should be understood also to embrace access to economic and social rights, the independent expert recommends that the special procedures of the Human Rights Council should be involved, when necessary, in the discussions being conducted in the various spheres of the reconstruction effort in Haiti, in accordance with the request stated by the Council in its resolution S/13/1 entitled "The support of the Human Rights Council to the recovery process in Haiti after the earthquake of 12 January 2010: a human rights approach", which was adopted at the thirteenth special session of the Council, on the situation of human rights in Haiti.

47. The independent expert recommends that a debate should also be initiated to ensure that the future Haitian reconstruction and development agency is able to incorporate human rights criteria in the invitations to bid which will be issued for the rebuilding of Haiti's

⁹ See "Haiti: One month on, the humanitarian needs are still enormous", United Nations News Service, 12 February 2010.

¹⁰ See the pledges made by States: <http://www.haiticonference.org/pledges-statements.html>.

infrastructure. This debate should involve Haitian civil society and international NGOs and incorporate some of the recommendations of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises.¹¹

VII. Recommendations

A. United Nations Stabilization Mission in Haiti

48. In view of the importance of the place to be accorded to human rights in the reconstruction, the independent expert recommends that the MINUSTAH human rights section should become one of the Mission's cornerstones. To this end MINUSTAH should report directly to the Special Representative of the Secretary-General and be allocated additional human resources.

49. The independent expert further recommends that:

(a) The national stakeholders should be guaranteed effective participation in the management of the humanitarian aid. It will thus be necessary to ensure the systematic involvement of the national stakeholders in the coordination meetings of the protection sector and to make sure that these meetings are conducted in a language understood by all the participants, in particular by the Haitians primarily affected by the decisions taken;

(b) Specific assistance should be furnished to the municipalities affected by an influx of people moving in with host families;

(c) Resources should be allocated to ensure that medical care is provided for persons with disabilities for as long as necessary;

(d) Haiti's Secretary of State for the Integration of Persons with Disabilities should attend the meetings on the protection of such persons and he should be given effective support in his initiatives to secure realization of their rights;

(e) The Government should receive support with the formulation of a strategy to ensure the untroubled management of the return of school facilities and farmland currently occupied by internally displaced persons, without infringing such persons' recognized rights;

(f) The effective participation of Haiti's NGOs and civil society should be guaranteed at all stages of the plan for reconstructing the country;

(g) When appropriate, the special procedures of the Human Rights Council should be involved in the various spheres of the reconstruction of Haiti.

B. The Haitian authorities

50. As already stated in his report, the independent expert recommends that:

(a) Particular attention should be given to the prevention and the prosecution of acts of rape in accordance with the provisions of Haiti's Criminal Code;

¹¹ See in this connection the conceptual framework formulated by the Special Representative of the Secretary-General in his report "Protect, respect and remedy: a framework for business and human rights" (A/HRC/8/5) submitted to the Human Rights Council at its eighth session.

(b) Genuine policy measures should be introduced to facilitate the integration and participation of persons with disabilities and to counter their exclusion.

51. With regard to forced eviction and the many different human rights at stake (right to own property, right to education), the independent expert recommends that, with MINUSTAH assistance, a clear strategy should be put in place which states specific criteria for establishing an order of priority understood by all the parties.

52. The independent expert repeats his recommendations on the judicial processing of the persons currently detained in the national prison, in particular that simplified procedures should be introduced with respect to the offences of persons currently being held in pretrial detention or who will be recaptured after escaping, in order to free the judicial system to deal with the most serious cases.

53. He further recommends that an implacable battle should be waged, by means of serious and impartial investigations, against the impunity of members of the forces of law and order.

54. He recommends that the national reconstruction and development plan should contain explicit references to the place of rights in the reconstruction, in order to underline that the very purpose of the reconstruction is to guarantee people genuine access to their rights.

C. The future Haitian reconstruction and development agency

55. Looking ahead, the independent expert recommends that:

(a) Human rights criteria should be incorporated in the invitations to bid to be issued for rebuilding Haiti's infrastructure;

(b) Representatives of Haiti's civil society and international and non-governmental organizations should be involved in this debate;

(c) Some of the recommendations of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises should be incorporated in the invitations to bid.

D. The international community

56. The independent expert recommends that the countries of destination of Haitian migrants should pursue a flexible reception policy in order not to impose prematurely on Haiti the return of these migrants who fled the earthquake.
