

## **HAITI 2012 HUMAN RIGHTS REPORT**

### **EXECUTIVE SUMMARY**

Haiti is a constitutional republic with a multiparty political system. In a second round of elections, voters elected President Michel Martelly, who took office in May 2011. International observers considered the presidential and parliamentary elections generally free and fair, despite some allegations of fraud and irregularities. The government did not hold partial Senate and local elections originally scheduled for October 2011, then envisaged for November 2012, because of an impasse between the executive, legislative, and judicial branches over the proper procedure to establish a Permanent Electoral Council. Security forces reported to civilian authorities, and authorities addressed instances in which former armed forces members and army restoration proponents attempted to subvert civilian authority and control.

The most serious impediments to human rights involved weak democratic governance in the country; the near absence of the rule of law, exacerbated by a judicial system vulnerable to political influence; and chronic, severe corruption in all branches of government.

Basic human rights problems included some arbitrary and unlawful killings by government officials; excessive use of force against suspects and protesters; overcrowding and poor sanitation in prisons; prolonged pretrial detention; an inefficient, unreliable, and inconsistent judiciary subject to significant outside and personal influence; rape, other violence, and societal discrimination against women; child abuse; social marginalization of minority communities; and human trafficking. Allegations continued of sexual exploitation and abuse by members of the UN Peacekeeping Force in Haiti (MINUSTAH). Violence and crime within camps for approximately 369,000 internally displaced persons (IDPs) remained a problem.

Although the government took some steps to prosecute or punish some government and law enforcement officials who committed abuses, credible reports persisted of officials engaging in corrupt practices with impunity. The newly created independent judicial body suspended a judge who freed the perpetrator of a high-profile murder.

### **Section 1. Respect for the Integrity of the Person, Including Freedom from:**

### a. Arbitrary or Unlawful Deprivation of Life

There were no reports of politically motivated killings. There were isolated reports of police and other government officials' involvement in arbitrary or unlawful killings. Only one of these resulted in arrests or convictions.

In February Substitute Justice of the Peace for Chantal (Southern Department) Barthelemy Vaval shot and killed Marc Sony Dorestant, who was testifying at a criminal hearing Vaval was overseeing. Vaval claimed he fired when Dorestant attempted to flee the proceedings. Dorestant died in the hospital early the next morning. There was no investigation into the matter.

On April 17, assailants shot and killed Haitian National Police (HNP) Traffic Unit Officer Walky Calixte as he was leaving his home in Martissant. Earlier that day Calixte arrested Mark Charles Jr., a gang member and nephew and bodyguard of then deputy for Bel Aire Rodriguez Sejour, on suspicion of illegal arms possession. Presumably under pressure from Sejour, Minister of Justice Michel Brunache persuaded Port-au-Prince Prosecutor Jean Renal Senatus to drop the charges against Charles. Charles and several accomplices allegedly searched Port-au-Prince for Calixte, taunting and harassing HNP officers they encountered. When they found Calixte, the group reportedly opened fire and killed him. HNP Traffic Unit officers went on strike the next day, demanding that authorities bring Calixte's killers to justice. In response senior HNP officials promised a thorough investigation into the matter and issued an April 20 press statement asking for Sejour's full cooperation. There were no subsequent arrests.

On April 18, Mercurieu Valentin Calixte, national palace representative and **presidential advisor, killed Octanol Derissaint in Fond Parisien**, a town close to the southern Haiti-Dominican Republic border crossing point at Malpasse. Calixte, who oversaw Malpasse border operations, had closed the crossing earlier than usual that day, raising tensions with Haitian merchants. Derissaint arrived from his job in the Dominican Republic just as a confrontation began. Fond Parisien residents questioned Calixte's arbitrary actions, and the argument became progressively more violent, with witnesses claiming that Calixte began cursing at residents. At the argument's climax, Parisien residents threatened to prevent Calixte's return to Port-au-Prince if he continued to disrespect and abuse them, at which point he pulled out a gun and fired shots into the air. Residents quickly dispersed. Later that afternoon Calixte and at least one HNP officer opened fire in a bar where a group had gathered to discuss the day's events, fatally injuring Derissaint. A senior HNP Division Inspector, Jean Garry Roc, present at the bar,

claimed that he had to seek cover to avoid being injured. Derissaint died while Roc and four other HNP officers transported him to the local hospital. The killing triggered a riot, and residents burned tires and barricaded national routes. In response the HNP called on the Departmental Unit for the Maintenance of Order to restore calm. Authorities later arrested Calixte and charged him with the murder of Derissaint. After Calixte served seven months in detention, in early November Judge Fernaud Judes-Paul summarily released him, ruling there was insufficient evidence to connect Calixte to Derissaint's murder. Calixte's release triggered an outcry from both civil society and international community representatives, who saw the event as an example of the culture of impunity. Reacting to the widespread condemnation of the release, the High Judicial Council (CSPJ) suspended Judge Judes-Paul in December.

HNP officers were also implicated in other arbitrary killings of civilians. In early October Fort-Liberte residents protested a government decision to abandon the construction of a port. As demonstrators became more agitated, the HNP used their standard crowd-control measures, which include firing warning shots with live ammunition into the air. Local media reported that one participant was killed and three others injured. Protesters responded by setting fire to the local police station. As of October no charges had been brought against the perpetrators.

The law requires that authorities refer to the Office of the Inspector General (OIG) all cases involving allegations of HNP criminal misconduct. However, because of the shortage of investigators and expertise, authorities rarely investigated or closed cases in a timely manner.

A number of high-profile cases from 2011 remained unsolved. The trial of the five officers charged with the March 2011 beating and killing of presidential candidate Mirlande Manigat's supporters, Frantz Emmanuel Louis and Sterson Jordanaud Jeune, remained stalled. The case of Police Chief Vanel LaCroix and former Port-au-Prince prosecutor Harrycidas Auguste, charged with the torture and murder of Serge Demosthene in the Petionville Commissariat in June 2011, remained open.

### **b. Disappearance**

Unlike in the previous year, there were no reports of politically motivated disappearance by government agents during the year. The 2011 case of the politically motivated kidnapping of one of three poster hangers working for the Mirlande Manigat presidential campaign remained unsolved. The poster hanger was last seen in an alleged altercation with HNP officers in the Champ de Mars

camp near the National Palace. Authorities found the bodies of the two other poster hangers the next day.

Current and former HNP officers were accused of participation in kidnappings. Through December the police recorded 126 kidnappings, compared with 159 in 2011. International and domestic authorities credited the decline to the increasing professionalism of the HNP's antikidnapping unit. In two months 10 joint HNP and MINUSTAH operations yielded 36 arrests, including five gang members involved in suspected kidnapping rings.

In October the HNP arrested Clifford Brandt, one of the country's most prominent businessmen, in connection with the kidnapping of rival businessman Robert Moscoso's two adult children. Brandt's arrest and subsequent interrogation yielded information that allowed authorities to dismantle a Port-au-Prince-based kidnapping ring. HNP authorities noted that they arrested some government officials, including five HNP officers, in connection with the case, in which investigation continued at year's end.

### **c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment**

The law prohibits such practices; however, there were reports from international and nongovernmental organizations (NGO) that government officials--specifically, members of the HNP--at times engaged in violence, beat, or otherwise abused detainees and suspects. Prisoners encountered degrading treatment, in large part due to overcrowded facilities. There were also reports that corrections officers mistreated prisoners.

According to the Protections Unit of the International Organization for Migration (IOM), which collects data on, and supports intervention programs to reduce, gender-based violence (GBV) in IDP camps, multiple survivors reported being raped by HNP officers. However, fear of reprisals deterred survivors from going to authorities for investigation and prosecution.

There were also multiple allegations that MINUSTAH soldiers were involved in incidents of sexual abuse and exploitation. In January MINUSTAH soldiers based in the North Department city of Limonade allegedly beat students of the Capois Limonade School. Also in January two MINUSTAH members from the Pakistani contingent in Gonaives raped a 14-year-old boy. In March authorities court-martialed the perpetrators, sentenced them to one year in prison, and repatriated

them to Pakistan. In September Uruguayan prosecutors concluded there was insufficient evidence to criminally prosecute Uruguayan marines implicated in the videotaped July 2011 sexual assault of 18-year-old Johnny Jean. They opted instead to charge the marines with lesser offenses of “private violence” and “coercion,” which carry lighter sentences ranging from three months’ to three years’ imprisonment. As a mandated UN peacekeeping mission, MINUSTAH has an official “zero tolerance” policy regarding sexual exploitation. By December the New York-based UN Conduct and Discipline Unit had received 10 allegations of MINUSTAH sexual exploitation and abuse. The commission concluded three were unsubstantiated, and seven remained pending at year’s end.

### **Prison and Detention Center Conditions**

Prisons and detention centers throughout the country remained overcrowded, poorly maintained, and unsanitary.

**Physical Conditions:** Overcrowding was severe, especially in the National Penitentiary, the Petite-Goave jail, and the prisons in Jeremie, Les Cayes, Port de Paix, and Hinche. In some prisons detainees slept in shifts due to lack of space. Some prisons had no beds for detainees, and some cells had no access to sunlight. Many prison facilities lacked basic services such as toilets, medical services, potable water, electricity, and isolation units for contagious patients. Prisons generally used well water as a source for drinking and bathing water. Some prison officials used chlorine to sanitize drinking water, but in general prisoners did not have access to treated drinking water. UN observers indicated that approximately 70 percent of prisoners and detainees suffered from a lack of basic hygiene, malnutrition, poor quality health care, and water-borne illness. Because of the poor security and facility conditions, some prisons did not allow prisoners out of their cells for exercise.

The prison system had not recovered from the 2010 earthquake that damaged its principal facilities in Carrefour, Delmas, Arcahaie, and the National Penitentiary in Port-au-Prince. By October authorities had recaptured fewer than 750 of the more than 5,000 detainees who escaped in the earthquake’s aftermath.

The Department of Corrections (DAP), which is part of the HNP, estimated that there were approximately 9,400 prisoners in the country’s jails. By local standards, available prison facilities were operating at 300 percent of their capacity; however, international observers suggested that overcrowding was significantly worse if judged by more stringent international standards. The DAP

also estimated that 2,000 to 3,000 prisoners were held in makeshift and unofficial detention centers in police stations such as Petit-Goave, Miragoane, Gonaives, Port-au-Prince, and other locations. The 400 prisoners transferred from the Gonaives and Petit-Goave prisons that flooded in 2010 remained in their temporary facilities. Prisoners held in these facilities were under the direct control of the HNP and not the DAP. Local authorities held suspects in makeshift facilities, sometimes for extended periods, without registering them with the DAP.

Corrections authorities in Port-au-Prince maintained separate penitentiaries for adult men and women. MINUSTAH's corrections advisory unit reported that as of December, 5 percent of prison detainees were female, while 3.4 percent were children. In Port-au-Prince, all males under 18 years of age were supposed to be held at the juvenile facility at Delmas 33, but authorities could not always verify the ages of some detainees given the poor national identification infrastructure and the DAP's and HNP's limited resources. As such, a small proportion of minors believed to be older and whose identities authorities could not confirm were at times detained with adults. Authorities moved the vast majority of these minors to the juvenile detention center within two months of having their ages verified. Minors and adults outside of Port-au-Prince often occupied the same cells due to lack of available space. Authorities did not hold girls separately from women at the Petionville Women's Penitentiary but did keep convicts in a separate cell from pretrial detainees. In areas outside the capital, due to a lack of space, resources, and oversight, authorities often did not segregate juveniles from adult prisoners or convicted prisoners from pretrial detainees, as the law requires.

In some prisons the incidence of HIV/AIDS, malaria, and drug-resistant tuberculosis remained a serious problem. Other common diseases in prisons included scabies and beriberi.

Corrections officers were severely underresourced and lacked basic riot control and self-defense capacity. Access to adequate nutrition remained a problem. The HNP has contractual and fiscal responsibility for the delivery of food to prisons. Prison authorities generally provided prisoners with one or two meals a day, consisting of broth with flour dumplings and potatoes, rice and beans, or porridge. None of the regular meals served to prisoners provided sufficient calories, according to medical standards. As a result, authorities allowed prisoners regular deliveries of food from relatives, a common practice.

The HNP also managed other service contracts at prisons, such as sewage treatment. Most prisons had insufficient sewage facilities for their populations.

However, with only one HNP central office to handle all contracts for the police, Coast Guard, firefighters, prison workers, and prisoners, attention to sewage problems often was lacking.

**Administration:** The government did not keep adequate prison records. However, in 2009 the UN Development Program and the government created a database that began to track prison inmates. There was no alternative sentencing for nonviolent offenders. The law permits religious observance in prison, and inmates could request to see a Protestant minister, a Catholic priest, or a Vodou houngan (male leader). In practice most inmates gained access to religious services only once or twice a year. Prisons provided few if any organized, regular religious services, but members of religious organizations occasionally visited prisoners. Prison authorities were supportive of NGOs providing services to prisoners, particularly at the National Penitentiary in Port-au-Prince. NGOs provided limited medical services.

There was no specific prison ombudsman to handle complaints. The Office of the Citizen Protector (OPC) advocated strongly for the rights and better conditions of prisoners, especially juveniles in preventive detention. It also sponsored several small clinics around the nation to bring judges to prisons to focus on adjudicating pretrial detention cases. These clinics resulted in the release of a few dozen prisoners.

**Monitoring:** The OPC regularly visited prisons and detention facilities in the country's 18 jurisdictions and worked closely with NGOs and civil society groups. The DAP permitted the International Committee of the Red Cross, MINUSTAH, the prominent local human rights NGO National Human Rights Defense Network (RNDDH), and other organizations to freely monitor prison conditions.

**Improvements:** The government, with international assistance, sponsored the construction of new prison facilities throughout the country. The government completed a new prison with capacity for 750 inmates in Croix-de-Bouquets that began operating in November. Renovations continued at the prisons in Cap-Haitien, Arcahaie, and Delmas 33 in Port-au-Prince, Petit-Goave, and Fort-Liberte.

#### **d. Arbitrary Arrest or Detention**

The law prohibits arbitrary arrest and detention, and the constitution stipulates that authorities may arrest a person only if apprehended during the commission of a crime or based on a warrant issued by a competent official such as a justice of the

peace or magistrate. Authorities must bring the detainee before a judge within 48 hours of arrest. Officials rarely complied with these provisions in practice as authorities held most prisoners in pretrial detention.

The OPC's national and 12 regional offices worked on behalf of citizens to ensure that law enforcement and judicial authorities respected the right to due process. When authorities detained persons beyond the maximum allotted 48 hours, the responsibility of the OPC was to intervene on their behalf to speed up the process. The OPC did not have the resources to intervene in many cases of arbitrary detention.

### **Role of the Police and Security Apparatus**

The HNP is an autonomous civilian institution under the authority of a single director general and includes police, corrections, fire, emergency response, airport security, port security, and coast guard functions.

In December 2011 President Martelly created a special commission to consult with domestic and international communities to develop a blueprint for an armed force, including possible restoration of the country's military. In May the commission issued a preliminary report detailing the extensive human and financial resources needed to reestablish an armed force. This commission did not develop or issue any further findings, and its mandate concluded with the creation of a Ministry of Defense.

In March the government created a special commission to investigate the activities of members of former military group, Forces Armées d'Haiti (FADH), and other army restoration proponents who started occupying derelict government installations throughout the country in February. The commission concluded that such activities were illegal, stressed the HNP's primacy in public security matters, and issued an ultimatum calling for the groups to disband by mid-March. The promilitary faction ignored the deadline, demanded creation of a military high command by early April, and disrupted a session of Parliament in mid-April. On May 18, the HNP and MINUSTAH jointly launched Operation Sunrise, during which authorities arrested several hundred agitators, and the movement effectively ended. The newly created Ministry of Defense took on responsibility for addressing concerns of retired members of the FADH.

Impunity for alleged abuses committed by members of the police force remained a problem during the year. Officially, the Ministry of Justice and Public Security,



through its minister and the secretary of state for public security, provides oversight to the HNP. In practice the minister of justice exerted personal influence on HNP operations. Within the HNP the OIG is responsible for conducting internal investigations into allegations of police misconduct and recommending administrative action, as well as referring cases of criminal police misconduct to the prosecutor. Neither the OIG nor the prosecutors consistently managed cases effectively. The OIG had more than 100 employees and several investigators. In late September HNP Director General Godson Orelus appointed the full contingent of six inspectors general.

Also in late September HNP Director General Orelus informed the Superior Council of the National Police that he was making changes to key HNP leadership positions. Orelus appointed a new chief of staff, director of Judicial Police (the HNP's investigative body), and director of Central Administration (the HNP's procurement arm), and he replaced seven of the 10 departmental HNP directors. MINUSTAH leadership noted that many among this new cadre of HNP leaders had not undergone HNP and MINUSTAH vetting. The HNP's five-year development plan, adopted by the Supreme Council of the National Police on August 31, envisions an integrated police force that includes professional dignitary protection and border control units.

Despite special efforts to attract more female recruits, women made up 8 percent of the police force. The HNP GBV unit remained underresourced. The unit had two satellite offices at Fort National and Delmas 33, and unit officers based in Fort National worked out of tents during the year. MINUSTAH provided GBV training to the members of the GBV unit as well as to more than 500 HNP officers.

The HNP section responsible for conducting background checks on candidates prior to their graduation from the police academy was understaffed and underresourced, and vetting operations stalled between 2011 and mid-year. When operations resumed during the year, 138 officers initially failed HNP-MINUSTAH vetting procedures and were recommended for immediate termination. The joint commission determined that 79 of these officers merited dismissal based on existing evidence. Authorities expelled these officers in early November.

Since 2004 MINUSTAH, made up of approximately 10,000 military and police officers and civilians, has operated with a mandate to assist and advise the government on security-related matters. In October the UN Security Council agreed to a one-year renewal of MINUSTAH's mandate but also decided to reduce MINUSTAH's troop levels and policing presence to 6,270 and 2,601, respectively,

by June 2013. Partly because of language barriers, MINUSTAH-HNP coordination remained poor. MINUSTAH retained responsibility for patrolling IDP camps, but without arrest authority and with limited HNP support, it had difficulty controlling crime and violence that occasionally erupted (see section 2.d.).

Foreign governments and other entities continued to provide a wide variety of training and other types of assistance to increase HNP professionalism.

### **Arrest Procedures and Treatment While in Detention**

The law permits police officers to make arrests when they catch a suspect during the commission of a crime, or later with a court-authorized warrant. MINUSTAH reporting confirmed there were instances in which police apprehended persons without warrants or with improperly prepared warrants. Authorities frequently detained individuals on unspecified charges. Persons arrested reported credible instances of extortion, false charges, illegal detention, physical violence by HNP personnel, and judiciary officials' refusal to comply with basic due process requirements. The judicial system rarely observed the constitutional mandate to bring detainees before a judge within 48 hours, and prolonged pretrial detention remained a serious problem. In some cases detainees spent years in detention without appearing before a judge.

Authorities generally allowed detainees access to family members after arrest. While the right to counsel was generally acknowledged, in practice most detainees could not afford a private attorney. Some departmental bar associations formed legal assistance groups to provide pro-bono counsel to indigents. Some NGO attorneys also provided pro-bono services to those too poor to afford counsel, but the government had no nationwide program to address these problems. The government does not administer a functional bail system.

In previous years authorities detained some citizens--convicted criminals returned by foreign countries--upon arrival, accused them of criminal activity, and subjected them to police extortion. During the year, however, such abuse and extortion declined significantly: by year's end deportees reported no detention at all on arrival in country.

**Pretrial Detention:** Prolonged pretrial detention remained a serious problem. Prison population statistics did not include the large number of persons held in police stations around the country for longer than the 48-hour maximum initial

detention period. HNP estimates placed the number of pretrial detainees at approximately 6,200 of a prison population of 9,400. Of the 6,200, approximately one-third had been incarcerated for a year or more. Most pretrial detainees had never consulted with an attorney, appeared before a judge, or been given a docket timeline. In October the Ministry of Justice launched a program to expedite the processing of approximately 600 pretrial detainees in Port-au-Prince. In Ouanaminthe the OPC pushed local authorities to respect due process and speedy trial rights, which helped shorten pretrial detention periods in that area.

#### **e. Denial of Fair Public Trial**

Although the law provides for an independent judiciary, in practice senior officials in the executive and legislative branches exerted significant influence on the judicial branch. Judges assigned to politically sensitive cases complained about interference from the executive branch. Credible reports of judicial corruption were commonplace, such as that of the case of Calixte Valentin (see section 1.a.).

Pervasive and long-standing problems, primarily stemming from a lack of judicial oversight and professionalism, contributed to a large backlog of criminal cases. In addition the justice system sustained significant losses in the 2010 earthquake, hampering prosecutions and effectively denying those in the system the right to a speedy trial.

The code of criminal procedure does not clearly assign criminal investigation responsibility, which it divides among police, justices of the peace, prosecutors, and investigating magistrates. As a result, authorities often failed to question witnesses, complete investigations, compile complete case files, or conduct autopsies. The law provides magistrates two months to request additional information from investigators. However, authorities are not supposed to invoke this delay more than twice for a given case. Magistrates often did not follow this requirement in practice, and investigators often dropped cases or did not return them within the two-month limit. Practically, this resulted in extended pretrial detention for numerous detainees.

Corruption and a lack of judicial oversight also severely hampered the judiciary. Many officials charged “fees” to initiate criminal prosecutions based on their perceptions of what a service should cost, and judges and prosecutors often ignored those who could not afford to pay. There were widespread, credible allegations of unqualified and unprofessional judges who received appointments as political favors. Many judicial officials also held full-time civilian jobs, and there was no

conflict-of-interest law to prevent the practice, even though the 1987 constitution bars judges from holding any other type of employment except teaching. In an attempt to address some of these issues, President Martelly appointed six justices to the Supreme Court (Cour de Cassation) in February, including a chief justice, bringing the institution to full strength for the first time in its history. In July after promulgating constitutional amendments, President Martelly established the CSPJ, designed to independently oversee judicial appointments, the discipline of judges, ethics issues, and management of the judiciary's financial resources. The CSPJ, called for under a 2007 law, experienced organizational problems as well as funding and logistical problems as it prepared to assume the full measure of its duties.

In September Minister of Justice Jean Renel Sanon dismissed Port-au-Prince prosecutor Jean Renel Senatus. Senatus claimed that Sanon and others close to President Martelly pressured him to pursue politically motivated prosecutions, which he refused to do. Senatus elaborated on these accusations before a Senate commission. Sanon denied these allegations and asserted that he fired Senatus for insubordination and improper financial management. The commission was reviewing the matter at year's end.

### **Trial Procedures**

The judicial apparatus follows a civil law system based on the Napoleonic Code and has remained largely unchanged since 1880. In practice authorities widely ignored certain constitutionally guaranteed trial and due process rights. The constitution also expressly denies police and judicial authorities the right to interrogate suspects unless legal counsel or a representative of the suspect's choice is present or the suspect waives this right.

The constitution provides defendants a presumption of innocence, as well as the right to attend trial, confront hostile witnesses, and call witnesses and evidence on their own behalf. In practice judges often denied these rights. The perception of widespread impunity also discouraged some witnesses from testifying at trials. Defendants and their attorneys had access to government-held evidence before trial, and defendants had the right of appeal. The OPC also advocated for survivors of gender-based violence and offered free legal assistance to citizens.

The functioning of civil courts (Tribunaux de Paix), the lowest courts in the judicial system, was poor. Owing to the lack of suitable facilities, several tribunals were located in private homes. Judges presided in chamber based on their personal

availability and often maintained separate, full-time jobs. Law enforcement personnel rarely maintained order during court proceedings, and frequently there was no court reporter. Bribes were often the principal factor in a judge's decision to hear a case.

In multiple locales, especially in rural areas, elected communal administrators (CASECs) took the place of state judges and asserted powers of arrest, detention, and issuance of legal judgments. Some CASECs turned their offices into courtrooms. The government attempted to address this problem by augmenting the number of judges assigned to these rural communes. At year's end it remained unclear how many CASECs continued to operate.

### **Political Prisoners and Detainees**

There were no reports of political prisoners or detainees.

### **Civil Judicial Procedures and Remedies**

Victims of alleged human rights abuses were legally able to bring their cases before a judge for cessation of the violation. Courts could award damages for human rights abuse claims brought in civil fora. In practice, however, seeking these types of remedies was difficult and rarely successful.

### **f. Arbitrary Interference with Privacy, Family, Home, or Correspondence**

The law prohibits such actions, but the government did not always respect these prohibitions in practice. There were several reports of forced relocations by the government of squatter communities. In particular human rights groups and journalists reported law enforcement authorities using excessive force to remove residents living in areas the Martelly government planned to use for environmental restoration purposes.

The clearest example of forced relocation involved persons living at La Visite National Park (Parc La Visite) in Marigot, a community in the Southeast Department. Dozens of families had migrated to the park by the time then president Jean Claude Duvalier parceled out the land to some of the squatters in an effort to limit further expansion. Both the Preval and Martelly governments tried to bolster environmental protections for Parc La Visite by negotiating the departure of these families. Preval's efforts were unsuccessful. In May the Martelly administration initiated a reforestation campaign for the region. Prior to the

program's launch, the Marigot mayor and the departmental civil protection technical director met with the 142 families living in the park and informed them that they had 18 days to vacate. Over the next few months, government officials attempted to negotiate with resident families by offering them 50,000 HTG (approximately \$1,250) to vacate Park La Visite by mid-June. Most families refused, arguing that the funds were insufficient to cover all their relocation needs. On July 23, local officials--accompanied by approximately 40 police officers--arrived and ordered the Parc La Visite residents to leave their homes immediately. Simultaneously, law enforcement agents began demolishing residents' homes. Park residents vigorously protested the forced eviction and threw rocks at officers. In response the HNP opened fire on the protesters and their property, killing four residents and burning four houses. Afterwards local officials provided families 150,000 HTG (\$3,750) for burial costs associated with the forced relocation. Human rights groups criticized the Martelly government for violating the rights to life and dignity of Parc La Visite residents, for not thoroughly investigating the affair, and for not holding governmental officials responsible for their involvement.

## **Section 2. Respect for Civil Liberties, Including:**

### **a. Freedom of Speech and Press**

The law provides for freedom of speech and press, and the government and elected officials generally respected these rights in practice. The independent media were active and expressed a wide variety of views without restriction. However, there were some incidents of local officials harassing or threatening journalists and others who criticized the government.

**Freedom of Press:** Journalists and NGOs persisted in their criticism of the Martelly administration's treatment of the press and accused officials of using derogatory and threatening language; the president was quoted several times using vulgar language in response to questions from reporters. The president accused journalists of lacking professional objectivity. During the year there were several reports that uniformed police officers and other government officials harassed or assaulted journalists.

**Violence and Harassment:** In September authorities arrested three journalists, Natacha Bazelais, Jean Marc Abelard, and Jeanty Augustin, from the newspaper *Le Nouvelliste* while they were filming and photographing a deadly traffic accident scene in Port-au-Prince. The three refused to surrender photography and video

equipment to HNP officers, who allegedly wished to erase the footage. A judge present at the scene, Arnel Dimanche, intervened and had the journalists arrested and then transported to jail. Shortly after, human rights and journalism organizations publicly accused the government of intimidating journalists and trying to limit the freedom of the press, and the journalists were subsequently released.

In October the trial of former Thomonde (Lower Central Plateau) mayor Jean Soverne Delva began. Delva was accused of hiding and protecting a member of his security team, Jean-Robert Vobe, who shot and seriously injured journalist Wendy Phele in Thomonde in April 2011.

Unknown assailants killed several journalists in past years. In particular, the April 2000 killing of Jean Dominique remained unsolved, as did the July 2005 kidnapping and killing of Jacque Roche.

**Censorship or Content Restrictions:** Some journalists practiced self-censorship on stories related to drug trafficking or allegations of business and political corruption, likely due to past patterns of retribution against activists and journalists engaged in investigative reporting.

**Libel Laws/National Security:** Journalists complained about an increase in defamation lawsuits that the government threatened or filed against the press for statements made about public officials or private figures in the public arena. Defamation carries both criminal and civil penalties. In February First Lady Sofia Martelly sued newspaper *Haiti Liberte* for defamation after it reported on a clash between President Martelly's security detail and students of the University of Haiti. In April the director of state-owned Television Nationale d'Haiti sued for defamation two of the five journalists discharged for unprofessionalism and making false public statements on the radio that were critical of then presidential candidate Michel Martelly.

### **Internet Freedom**

There were no government restrictions on access to the Internet or credible reports that the government monitored e-mail or Internet chat rooms without judicial oversight. According to the International Telecommunication Union, approximately 8.5 percent of citizens used the Internet in 2011.

### **Academic Freedom and Cultural Events**

There were no government restrictions on academic freedom or cultural events.

## **b. Freedom of Peaceful Assembly and Association**

### **Freedom of Assembly**

The law provides for freedom of assembly and association, and the government generally respected these rights in practice; however, there were several instances when the police used force to impose order during demonstrations. Citizens must apply for a permit to hold legal demonstrations. Impromptu political demonstrations in some instances provoked aggressive law enforcement responses.

Civil action groups continued to hold impromptu demonstrations in front of key government facilities or major public thoroughfares. These groups often erected barricades, sometimes with burning tires and debris, and occasionally threw rocks and bottles at passing motorists and at government, HNP, and UN vehicles.

In July police killed four persons protesting evictions from Parc La Visite. In September and October several groups staged demonstrations throughout the country to protest the Martelly administration's security policies and its response to rising food prices. Thousands of persons participated in gatherings in Les Cayes and Miragoane in the south, Cap-Haitien in the north, and in Port-au-Prince. Security forces, including MINUSTAH units, used force to maintain order but did not attempt to prevent or disrupt the protests. During the Cap-Haitien protests, one police officer was injured, one participant was shot and killed, and three others were injured. Demonstrations held days later in Port-au-Prince were generally peaceful. The government initially attempted to equate the demonstrators with mercenaries intent on fomenting unrest. As the protests wore on, government officials backed away from that assessment, called for calm and order, and reasserted the right of citizens to assemble peaceably.

## **c. Freedom of Religion**

See the Department of State's *International Religious Freedom Report* at [www.state.gov/j/drl/irf/rpt](http://www.state.gov/j/drl/irf/rpt).

## **d. Freedom of Movement, Internally Displaced Persons, Protection of Refugees, and Stateless Persons**



The law provides for freedom of internal movement, foreign travel, emigration, and repatriation, and the government generally respected these rights in practice. Former criminals deported from other countries served an 18-month probation after arrival and were required to sign in weekly at their local police station. However, government authorities did not always monitor deportees' sign-in process. After this period the deportees were able to apply for a passport by presenting both a letter to the Ministry of Interior delineating their deportation circumstances and a certificate verifying the successful completion of their probation. New passports issued to deportees contain a stamp invalidating them for travel to the country from which the person was deported.

In September the government imposed travel bans on business owners who appeared on a public blacklist of 66 companies and individuals whose tax accounts, totaling almost 360 million HTG (\$9 million), remained delinquent, some allegedly since 2006. In one case authorities seized the passport of prominent businessman Andre Apaid while he was trying to board a flight in Port-au-Prince. Apaid charged the measures were arbitrary, left numerous transgressors untroubled, and suggested the action might have targeted only political opponents, but in the weeks that followed he paid his delinquent taxes.

The government cooperated with the Office of the UN High Commissioner for Refugees and other humanitarian organizations, including the IOM, to provide protection and assistance to internally displaced persons, refugees, asylum seekers, stateless persons, and other vulnerable populations.

### **Internally Displaced Persons (IDPs)**

The government engaged in efforts to promote the safe, voluntary return, or resettlement of post-earthquake IDPs but required substantial operational and financial support from international partners. These actions contributed to the significant decline of the IDP population during the year. However, the presence of IDP camps in the country remained widespread, with a large concentration of the estimated 541 remaining camps located in the greater Port-au-Prince metropolitan area (specifically, within the Croix-de-Bouquets, Delmas, and Port-au-Prince communes). The most recent estimates placed the number of IDPs living in camps at approximately 369,000, effectively amounting to an IDP resettlement rate of approximately 28 percent during the year. Statistics from the IOM's Displacement Tracking Matrix suggested that by August the overall post-earthquake IDP population had decreased 76 percent from the estimated peak of internal displacement in July 2010.

The Martelly administration, with the aid of international partners, continued a major IDP resettlement program called the 16/6 Project, which initially sought to close six large IDP camps on public lands and reconstruct 16 neighborhoods within Port-au-Prince, including the Champs de Mars, close to the destroyed National Palace. The government and the international community provided \$30 million for the program, administered by the newly created Housing and Public Buildings Unit. Through the program eligible families residing in IDP camps received a grant of 20,000 HTG (\$500) to facilitate their relocation. By year's end 11,000 families residing in IDP camps benefitted from this project, which completely emptied 50 highly visible camps on public land in Port-au-Prince, including 26 camps located on the Champs de Mars. Several NGOs and international partners implemented similar resettlement programs.

According to the IOM's August report, a substantial portion of the remaining camp population had no viable means of paying for rented housing or alternatives in the event of emergency. The vast majority of these IDPs (81 percent) did not own property prior to the earthquake. While some of the larger IDP camps had support from NGOs, the UN, and domestic law enforcement, many others were unregulated, with severely strained resources and extremely limited access to clean water and sanitation.

Through the UN police force (UNPOL), MINUSTAH increased its presence in IDP camps and provided 24-hour security in seven camps with high incidences of GBV. However, even in camps with a law enforcement presence, residents and international observers reported little in the way of effective protection from urban crime. Some residents of neighborhoods near IDP camps blamed IDPs for increases in criminal activity. MINUSTAH and UNPOL members did not have arrest authority and typically functioned as a deterrent force, rather than one actively engaged in law enforcement. International arrangements governing MINUSTAH's operations require an HNP officer to be present for any law enforcement operation, which effectively prevented MINUSTAH officers from engaging in crime prevention in the IDP camps without an HNP presence. Understaffing by the HNP sometimes prevented this partnership from functioning effectively. International workers in the camps noted that neither the HNP nor MINUSTAH had a positive reputation among the IDP population. Camp residents and NGO workers reported that most police patrols, both UNPOL and HNP, monitored only the perimeter of camps and typically did not patrol after dark.

Some IDPs who received money, services, or a combination of both as incentives to move out of camps did so successfully, while others simply moved to different unregulated camps. Reports of forced evictions of IDP camp residents increased during the year. According to August IOM estimates, approximately 147 camps housing more than 81,000 individuals faced the threat of eviction. This threat was more severe for IDP camp residents dwelling on private--as opposed to public--land, where owners who view IDPs as illegal squatters violently forced residents to leave (see section 6, Other Societal Violence and Discrimination).

### **Protection of Refugees**

**Access to Asylum:** The law provides for the granting of refugee status or asylum through Haitian missions or consulates abroad. In practice, however, there were no reports of requests for such status.

### **Stateless Persons**

The country's dysfunctional civil registry system yielded no reliable estimates on the number of stateless persons. The two groups at greatest risk of statelessness were undocumented Haitian migrants who were unable to access documentation abroad and descendants of Haitian migrants abroad who may not have acquired another nationality at birth but were at risk of having their Haitian citizenship revoked on the assumption that they had. Constitutional amendments published in June included the repeal of the long-standing ban on dual citizenship, which reduced the danger of statelessness dual national Haitians previously faced.

The Dominican Republic government deported thousands of persons of Haitian descent back to Haiti. Many deportees were from families who had lived in the Dominican Republic for generations and had never been to Haiti. The National Office of Migration (ONM) under the Ministry of Social Affairs and Labor (MAST) oversaw deportee issues but lacked the resources to provide anything more than basic services. The ONM registered deportees, occasionally provided food upon their arrival, and assisted with transport home. International donors and local NGOs worked to supplement ONM's capacity and provided most deportee assistance, including emergency services, additional transportation funds, legal services to register human rights abuses or human trafficking complaints, and occasionally a small stipend.

## **Section 3. Respect for Political Rights: The Right of Citizens to Change Their Government**

The law provides citizens the right to change their government peacefully, and citizens exercised this right in practice through periodic, free, and fair elections based on universal suffrage.

### **Elections and Political Participation**

**Recent Elections:** The country held two rounds of presidential and legislative elections on November 28, 2010, and March 20, 2011. Michel Martelly won the presidential run-off, during which there were isolated incidents of fraud, flawed voter registration lists, ballot stuffing, intimidation, and some violence. International observers and civil society generally considered the second round to be free and fair.

The constitution requires that, following local and municipal elections, local officials must hold a series of indirect elections to staff departmental organs of self-government and an interdepartmental council to advise the national government and nominate candidates for the Permanent Electoral Council (CEP). The law requires that the three branches of the national government select from among these nominees the council's nine members. These indirect elections have not taken place since the constitution was written; however, after promulgating a set of amendments to the constitution in May, President Martelly initiated a new process to create a CEP, in which each branch of the national government-- executive, parliament, and judiciary--would directly choose its own three representatives to sit on the council. Widespread allegations of executive meddling in the judicial branch nominations to the CEP erupted in July and immediately gridlocked Parliament's selection process. In October the CSPJ selected three new CEP nominees, but their status remained uncertain as the previously selected trio refused to cede their positions. After numerous failed attempts to find a political compromise, the executive branch and the Parliament agreed to form a negotiating committee in November to deal with lingering issues. Discussions within this negotiating framework led to an agreement between the executive and parliament in late December, in which both parties agreed to select their CEP representatives in early January, and committed to assist the CSPJ resolve its internal nomination problems. As a result, partial Senate and local elections, which should have taken place in 2011 and then were tentatively planned for November 2012, were delayed.

**Participation of Women and Minorities:** In May President Martelly promulgated a set of constitutional amendments, including one that recognized the principle of "at

least 30 percent women's participation in national life and in public service." Existing election law already provided significant financial incentives to political parties running substantial numbers of women candidates. However, while this legislation has been on the books since 2008, no party met the incentive criteria. Although the country has had a female president--and two women ran for the office in 2010--there were only five female members of the Chamber of Deputies and no women in the Senate at year's end. Seven of 16 ministers were women, and four of 19 secretaries of state were female.

#### **Section 4. Corruption and Lack of Transparency in Government**

The law provides criminal penalties for official corruption; however, in practice corruption was widespread and endemic. Authorities brought charges against a few high-ranking officials and released a list of delinquent individual taxpayers. Although the government implemented legal and administrative reforms designed to increase accountability, corruption remained widespread in all branches and at all levels of government. The constitution mandates that the Senate prosecute high-level officials and parliament members accused of official corruption, instead of handling such cases within the judicial system. However, the Senate brought no such prosecutions.

There were frequent reports of corruption in the HNP. For instance, affluent prisoners at times obtained favorable conditions of detention. The HNP investigated some allegations of police malfeasance, leading to the arrest or termination of employment of very few officers. As the Brandt kidnapping matter evolved (see section 1.b.), civil society groups and government officials alike began calling for the prosecution of those involved on charges of corruption.

The Central Financial Enquiry Unit has responsibility for combating financial crimes. By September the Ministry of Economy and Finance's anticorruption unit (ULCC) had conducted more than 1,000 seizure operations throughout the country that recovered more than 17.9 million HTG (\$447,500). Similarly, the ULCC referred 16 corruption cases to the office of the Port-au-Prince prosecutor. Among those cases was that of Edrick Leandre, a former director general of the Office of Third Party Vehicle Insurance, whom authorities arrested in August 2011 on charges of corruption and embezzlement of public funds. His case was pending at year's end. The ULCC was widely perceived as having sufficient funding, and it enjoyed a positive reputation. After the ULCC's pursuit of delinquent taxpayers within the business community, civil society's confidence in the institution grew

and bolstered its willingness to cooperate with and support the ULCC's anticorruption efforts.

The law requires all senior officials of the government to file financial disclosure forms within 90 days of taking office and within 90 days of leaving office. The official's assets, and those of his or her immediate family, must be reported. There is no requirement for periodic reporting such as on an annual basis. The ULCC is the governmental unit responsible for collecting and verifying these reports; however, as of December, they had not engaged in such verification. The sanction for failure to file the report is a withholding of 30 percent of the official's salary. In practice compliance with the reporting requirement was poor, and the ULCC did not use this sanction authority. Only a small percentage of judges have ever filed disclosure reports, and no customs officials filed reports. When filed, these disclosure reports are confidential and not available to the public.

In June President Martelly promulgated a decree authorizing the government to procure goods and services below a specified value through sole-source and closed bidding processes, as well as no-bid contracts. Government officials claimed that these new procurement measures would allow the country to expedite reconstruction projects and basic government operations. Some observers, however, including the World Bank and Inter-American Development Bank, expressed concern that the new law would decrease governmental accountability and transparency and could worsen corruption.

Shortly before his February resignation, Prime Minister Gary Conille released the results of an internal government audit detailing irregularities in post-earthquake emergency reconstruction contracts that then prime minister Jean Max Bellerive awarded between 2010 and 2011. Prime Minister Conille's review revealed a connection between Bellerive and Dominican Senator Felix Bautista, who owned or had a controlling interest in the Dominican companies involved in the 41 contracts. In April media outlets began carrying reports alleging that President Martelly received \$2.5 million in campaign contributions, real estate deals, and cash payments from Senator Bautista as a quid pro quo for the lucrative contracts. The president denied these allegations. In early July the Martelly government announced it would implement the Conille commission's recommendations and cancelled 39 of the 41 Bautista reconstruction contracts. None of the Haitians allegedly involved faced legal action.

After former president Jean-Claude Duvalier returned to Haiti in January 2011, the government brought charges against him, including corruption, torture, and

murder. In January Carves Jean, the investigating magistrate presiding over the case, ruled the former president would stand trial only on corruption charges stemming from his 15-year rule. In his decision Jean noted there was insufficient legal justification for pressing charges stemming from human rights violations and crimes against humanity. Civil society organizations, Duvalier-era torture victims, and international stakeholders immediately condemned the ruling, and activists noted they would seek justice for Duvalier's human rights crimes at the Inter-American Court of Human Rights. President Martelly retracted initial statements saying he favored pardoning Duvalier. The plaintiffs in this case initiated an appeals procedure that continued at year's end.

No law requires the government to provide citizens access to government information.

### **Section 5. Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights**

A number of domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases. The government cooperated with the various human rights observation missions and generally acknowledged their views, although they disagreed at times on the most appropriate means of addressing human rights issues.

There were reports of governmental efforts to restrict or otherwise suppress criticism by human rights activists. Some human rights groups, such as Amnesty International, criticized the Martelly government for intimidating and harassing human rights activists. In September human rights lawyers alleged they had received numerous death threats and that their homes, offices, and movements were being monitored. They said the threats and harassment came in response both to their efforts to have former president Jean Claude Duvalier prosecuted for human rights violations and to their calls for an investigation into possible misappropriation of public funds by the Martelly family. After being dismissed in September, Port-au-Prince Prosecutor Jean Renal Senatus claimed CEP president and presidential advisor Josue Pierre-Louis instructed him to arrest three human rights lawyers, noting that doing so would please the Martelly family (see section 1.e.).

**UN and Other International Bodies:** The government permitted special missions and the continued presence of UN bodies and other international organizations such as the International Committee of the Red Cross.

**Government Human Rights Bodies:** In May Prime Minister Lamothe appointed long-time human rights advocate Marie Rose Anne Auguste to a newly created cabinet-level human rights portfolio--minister delegate to the prime minister for human rights and the fight against extreme poverty. The minister delegate provides the prime minister with human rights policy guidance and facilitates implementation of poverty alleviation programs. Creation of the new ministry and Auguste's appointment drew wide approval from the NGO community.

The constitution provides a seven-year mandate to the OPC, the government's human rights ombudsman. During the year the OPC, led by Director Florence Elie, took a more active role in investigating allegations of human rights abuse and worked collaboratively with international organizations. The OPC's regional representatives implemented its assistance programs throughout the country. Ouanaminthe-based human rights NGOs and others that worked with the OPC, however, noted that its limited human and financial resources hindered collaborative efforts.

Neither the OPC nor the minister delegate conducted investigations into the many allegations of governmental corruption.

In late September the government organized a human rights workshop for all human rights actors, the media, civil society, and foreign missions to establish a plan for implementing UN Human Rights Council Universal Periodic Review recommendations.

The Chamber of Deputies and the Senate each had a human rights committee. In May the Senate adopted a bill, which the government promulgated in July, defining the OPC's role and responsibilities and providing for its independence.

## **Section 6. Discrimination, Societal Abuses, and Trafficking in Persons**

The law does not specifically prohibit discrimination on the grounds of race, gender, language, sexual orientation or gender identity, or social status, but the preamble to the constitution specifically reiterates the importance of adhering to the Universal Declaration of Human Rights, which prohibits all forms of



discrimination. However, no effective governmental mechanism administered or enforced such provisions.

## Women

**Rape and Domestic Violence:** The law prohibits rape but does not recognize spousal rape as a crime. The penalty for rape is a minimum of 10 years of forced labor, increasing to a mandatory 15 years if the survivor was less than 16 years old or if the rapist was a person of authority. In the case of gang rape, the maximum penalty is lifelong forced labor. Actual sentences were often less rigorous, and prosecution frequently was not pursued due to lack of reporting and follow-up on survivors' claims. At year's end the HNP reported 546 allegations of rape, of which female minors brought 360 cases. In the cases of the 54 men convicted for rape in 2010-11, judges handed down sentences ranging from eight months to 15 years; one man--a priest--received life in prison. The criminal code excuses a husband who kills his wife or her partner found engaging in an act of adultery in his home, but a wife who kills her husband under similar circumstances is subject to prosecution.

Some NGOs reported a marked increase in the incidence of rape. UN reporting showed near daily incidents of domestic violence and rape. The HNP GBV unit had few resources to address allegations of rape.

Rape and other forms of violence were a particular problem in the IDP camps, as was the case in urban slums throughout the country. A host of factors in IDP camps contributed to the increased vulnerability of women and minors: flimsy tent doors, poor lighting, separated families, unfamiliar neighbors, the relative anonymity that hundreds of tents provide, the lack of effective law enforcement, and limited knowledge of and access to health and economic services. NGOs and international partners implemented programs to help women and children in IDP camps report GBV incidents, including rape, sexual abuse, domestic violence, and transactional sex, without reprisal. Whereas survivors reported 119 GBV incidents to the IOM in 2011, they had reported 146 cases by June. It was unclear whether this increase was due to a rise in GBV-related crime in the camps or to the increased availability of reporting mechanisms for survivors of violence. However, the IOM and other international partners agreed that GBV in the IDP camps remained underreported. IDPs who lived in Jean Marie Vincent and Champs de Mars camps claimed that the threat of GBV grew because of the growing number of vacant tents, which were often scenes for GBV crimes. International observers reported some instances of law enforcement involvement in

GBV crime in IDP camps; however, fear of HNP reprisals often prevented survivors from pursuing remedies.

Attorneys who represented rape survivors said that authorities were reasonably responsive to cases involving the rape of minors, as the law is clear and judicial measures exist to deal with such cases, which were often accompanied by outrage from local communities. However, authorities often dropped or did not pursue cases when the offender was also a minor or the survivor was an adult due to the lack of clear legal or administrative structures to deal with such cases. The attorneys claimed authorities often “provisionally released” juvenile offenders in rape cases back to their parents’ recognizance.

Human rights lawyers said barriers to reporting rape remained high and included stigmatization, fear of reprisal, and distrust of the judiciary and legal system. They also said there were wide disparities in access to and the quality of medical services from hospitals treating rape survivors. Multiple credible groups said that legal authorities often asked rape survivors inappropriate questions, such as whether the survivor was a virgin before the incident and what clothing the survivor was wearing at the time of the alleged rape, a practice corroborated by the RNDDH. In some cases authorities advised survivors against pressing charges in order to avoid the public humiliation of a trial. Survivors of rape and other forms of sexual violence faced major obstacles in seeking legal justice, as well as access to protective services such as women’s shelters.

The law does not classify domestic violence against adults as a distinct crime. Women’s rights groups and human rights organizations reported that domestic violence against women remained commonplace and underreported. Police rarely arrested the perpetrators or investigated the incidents, and the survivor sometimes suffered further harassment and reprisals from perpetrators, at times prompting secondary displacement of survivors within IDP camps. Judges often released suspects arrested for domestic violence and rape.

Sexual Harassment: The law does not specifically prohibit sexual harassment, although the labor code states that men and women have the same rights and obligations. Data concerning sexual harassment in the workplace were not available, although observers suggested that sexual harassment was common, particularly in factories. Such incidents were unreported because of high unemployment and because survivors had little confidence in the ability of the judicial system to provide protection.

**Reproductive Rights:** Couples and individuals have the legal right to decide the number, spacing, and timing of children and have the information and means to do so free from discrimination. Despite high levels of general knowledge of contraceptive methods, social, cultural, and legal barriers often impeded women from acquiring additional information on family planning methods and reproductive health care. In the largely conservative society, modern contraception was discouraged, and most men did not desire its use. A lack of adequate family planning resources continued to hamper protection of women's reproductive rights. Young, sexually active women found it especially difficult to gain access to family planning services. Governmental family planning services, often located in public health facilities such as hospitals, generally did not have private or confidential screening areas for patients.

The UN Population Fund reported that only 25 percent of all deliveries in 2011 occurred in health institutions. Most women used "matrons," often experienced but untrained local women, to help them give birth at home or in nonmedical facilities. Health-care professionals attributed this practice to the poor and inconsistent quality of maternity services at hospitals and clinics. Pregnant women often went for an initial visit and discovered overcrowded facilities with untrained staff and insufficient medical supplies. While most women in rural provinces chose to deliver at home, many women in urban areas with access to professional delivery services also chose to deliver at home. A rough estimate based on UN, World Bank, and local health professional estimates of health trends placed the maternal mortality rate between 300 and 670 per 100,000 live births, although this number could not be confirmed, since authorities have conducted no nationwide survey since 2005. A combination of strict laws, unmet family planning needs, a high fertility rate, lack of medical services, lack of emergency obstetrics, and a high level of unwanted pregnancies contributed to the high maternal mortality rate.

**Discrimination:** Women did not enjoy the same social and economic status as men, despite the constitutional amendments recognizing the principle of "at least 30 percent women's participation in national life and notably in public service." However, increased civil society and Martelly administration advocacy heightened awareness of the link between women's empowerment and national development. In some social strata, tradition limited women's roles. The majority of women in rural areas remained in the traditional occupations of farming, marketing, and domestic labor. Very poor female heads of household in urban areas also often faced limited employment opportunities, working in domestic labor, sales, and as merchants.

International partner institutions and NGOs provided social support mechanisms to various groups, including women. The newly named minister delegate for human rights and the fight against extreme poverty, Marie Carmelle Rose Anne Auguste, helped bolster social programs designed to empower economically small business owners and single mothers, in addition to providing opportunities for cultural expression to disadvantaged youth and detainees. While women continued to be underrepresented in supervisory or managerial positions in government and in the private sector, more women held such positions than in previous years.

## Children

**Birth Registration:** Citizenship is derived through an individual's parents; only one parent of either sex is necessary to transmit citizenship. Citizenship can also be acquired through a formal request to the Ministry of the Interior. The government did not register all births immediately and did not keep statistics concerning the number of unregistered births each year. Birth registry is free until the age of two, after which it can be difficult and expensive to get a birth certificate, particularly in the provinces. Birth certificates that differentiate between "legitimate" births (where the child is born in wedlock) and "natural" births (where the child is born out of wedlock) also deterred parents who were attempting to avoid stigmatizing their children from registering births. However, in April the Senate adopted a law on paternity, maternity, and lineage that ended legal discrimination between children born to married parents and those born out of wedlock. The Organization of American States (OAS) also began collaborating with the Ministry of Justice during the year to address child registry issues.

Birth documents are legally necessary to open bank accounts, apply for credit, gain admission to hospitals, and vote. However, individuals who did not possess required birth documents were not denied emergency medical services or educational opportunities on that basis. The 2010 earthquake destroyed many official documents. As a result, the National Archives saw its requests for certified copies of documents more than triple upon reopening after the earthquake, and the Office of National Identification remained underresourced and overwhelmed by demand.

**Education:** Constitutional provisions require the government to provide free and compulsory primary education for all children; however, neither primary nor secondary education was compulsory, free, and universal. In October President Martelly unveiled a second free education program that provides primary education for the children of poor families without taking children's previous

student status into consideration. This meant that an estimated 1.2 million children, approximately 200,000 students more than the previous academic year, would be able to attend school. A 2012 survey reported that 84 percent of children attended primary school, compared with 52 percent in 2000. UNICEF and other international bodies contributed millions of dollars to subsidize the cost of schooling. Many families who were not able to get their children into a public school paid for their children to attend private schools, which were generally unaccredited and unregulated.

**Child Abuse:** The law prohibits domestic violence against minors. As of October the Brigade for the Protection of Minors (BPM) unit registered 62 incidents of domestic violence against minors. The government continued to lack sufficient resources to adequately support or enforce existing mechanisms to promote children's rights and welfare. However, the government made progress in decentralizing the BPM and the Institute of Social Welfare and Research (IBESR), its two most important child welfare and protection agencies. By October both offices had representatives in each of the 10 departments, as well as a presence at official border crossing points. The IBESR began collaborating with local community-based organizations to promote children's rights throughout the country. The government also established a national hotline for at-risk youth in June.

While it was recognized nationally that accurate statistics for children working in indentured servitude (referred to as "restaveks") did not exist, authorities estimated that there were between 250,000 and 500,000 such children, the majority of whom were girls, in the country during the year. Adoptive families often abused restaveks (see section 7.c.). In November the IBESR, working with UNICEF and a wide range of NGO partners, launched a formal awareness campaign designed to strengthen community dialogue on the problems and abuses associated with the restavek system. IBESR Director Arielle Villedrouin noted that through such a sustainable campaign, the government hoped to change the cultural acceptance of the restavek system and mitigate child abuse.

For more information see the Department of State's *Trafficking in Persons Report* at [www.state.gov/j/tip](http://www.state.gov/j/tip) and the Department of Labor's *Findings on the Worst Forms of Child Labor* at [www.dol.gov/ilab/programs/ocft/tda.htm](http://www.dol.gov/ilab/programs/ocft/tda.htm).

Port-au-Prince's population of several thousand street children--the majority of whom were boys--included not only many who were dismissed from or fled employers' homes or abusive families but also some children who lost parents or

caretakers in the 2010 earthquake. NGOs reported that street children were likely to be sexually or otherwise abused, received little or no education, and were easily exploited by trafficking recruiters. Criminal gangs also reportedly enlisted minors to commit illegal acts. MAST provided some assistance, such as food and temporary shelter, to street children.

The IBESR has official responsibility both for child protection and for monitoring and accrediting more than 700 residential care centers. During the year, in partnership with other governmental agencies and international actors operating through the Vulnerable Children's Working Group (created after the 2010 earthquake), the IBESR made significant effort to expand protections for youth. The IBESR deployed numerous frontline workers and inspectors to bring residential child care centers under its control. The IBESR categorized these centers as red, yellow, or green, according to their degree of adherence to child welfare laws. As of October the institution had identified 724 centers, registered the 16,955 children residing in them, and assessed 468 of the centers.

**Child Marriage:** The legal age of marriage is 18. A 1982 law rescinded a civil code provision that girls may marry at 15. No data were available regarding marriage of persons under 18, but it was not a widespread custom.

**Sexual Exploitation of Children:** The minimum age for consensual sex is 18. The law prohibits the corruption of youth under the age of 21 years, including by prostitution, with penalties ranging from six months' to three years' imprisonment for offenders. Inefficiencies in reporting and investigating allegations of rape contributed to uncertainties regarding penalties, if any, for statutory rape. Child prostitution was reported in IDP camps as well as on the streets. Recruitment of children for sexual exploitation, pornography, and illicit activities was illegal, but the UN reported that armed gangs in Port-au-Prince recruited children as young as 10 years old for such purposes.

**International Child Abductions:** The country is not a party to the 1980 Hague Convention on the Civil Aspects of Child Abduction. For information see the country-specific information at [http://travel.state.gov/abduction/country/country\\_3781.html](http://travel.state.gov/abduction/country/country_3781.html).

### **Anti-Semitism**

The Jewish community numbered fewer than 50, and there were no reports of anti-Semitic acts.

## Trafficking in Persons

See the Department of State's *Trafficking in Persons Report* at [www.state.gov/j/tip](http://www.state.gov/j/tip).

## Persons with Disabilities

The 2010 earthquake substantially increased the size of the community of persons with disabilities and focused international attention on the need to bolster support mechanisms for this group. However, in May Prime Minister Lamothe underlined the inclusion of persons with disabilities one of his government's three priorities for the social sector. The Office of the Secretary of State for the Integration of Handicapped Persons (BSEIPH) is the lead government agency responsible for providing assistance to persons with disabilities and ensuring their civil, political, and social inclusion. The government took significant steps to strengthen the legal framework for its disabled citizens. In May the government enacted the Law on the Integration of Persons with Disabilities, designed to provide a legal mandate for the BSEIPH to foster effective integration policies for persons with disabilities. The law prohibits any discrimination in employment practices against persons with disabilities and requires the government to integrate such persons into the state's public services. Additionally, the law imposes a 2 percent quota for persons with disabilities in the workforces of private sector companies.

Because of widespread and chronic poverty, a shortage of public services, and limited educational opportunities, persons with disabilities remained disadvantaged. Additionally, individuals with disabilities faced significant social stigma because of their condition. As a group, people with mental illness or developmental disabilities were consistently marginalized, neglected, and abused in society. While information about the number of persons with disabilities was scarce at the national level, an estimated 10 percent of citizens had disabilities.

The BSEIPH hosted numerous training sessions and workshops for public officials seeking to engage disabled communities, and it launched public awareness campaigns to change the societal norms of weakness associated with being physically handicapped or mentally disabled. According to government statistics, 64 organizations working to better conditions for persons with disabilities received between 25,000 HTG (\$625) and 500,000 HTG (\$12,500) after the office was founded in late 2011. The BSEIPH also provided educational subsidies for 140

disabled students during the academic year, but no data were available regarding school attendance by children with disabilities.

In April the BSEIPH, in partnership with the National Institute of Research and Training for the Education of Handicapped Youth, launched an initiative to create a national educational model for children with special needs, to be integrated within the country's primary education system.

The government convened a business forum in September with 40 major companies to synchronize private sector approaches to hiring disabled persons. In October the OAS facilitated an interministerial roundtable to draft and sign a public declaration requiring ministerial heads to promote the inclusion of disabled persons in hiring and in policy discussions. At the October forum, Minister of Social Affairs and Labor Josepha Gauthier announced the planned construction of a center for handicapped professionals in Ganthier. The OAS also helped the government create new building codes that would provide for universal accessibility.

While the BSEIPH began to take more of a coordinating role during the year, NGOs continued to provide most direct services for disabled populations. Access to quality medical care (physical and mental) posed a significant challenge for persons with disabilities. Hospitals and clinics in Port-au-Prince did not have sufficient space, human resources, or public funds to treat such individuals. Where facilities existed to treat and rehabilitate them, the conditions were below international standards.

### **Societal Abuses, Discrimination, and Acts of Violence Based on Sexual Orientation and Gender Identity**

While there were no confirmed reports of official discrimination against the lesbian, gay, bisexual and transgender (LGBT) community, domestic NGOs reported that LGBT persons faced widespread societal discrimination, including social stigma, targeted physical violence, sexual assault, and employment insecurity. NGOs also reported that such persons did not report human rights violations due to fear of reprisal. LGBT community members faced overt discrimination from law enforcement and judicial authorities, particularly in Port-au-Prince.

Serovie and Kouraj, LGBT advocacy groups, provided outreach, counseling, support, and at times legal intervention on behalf of LGBT community members.



There were no laws criminalizing consensual same-sex conduct, but Serovie's leadership reported that its constituents faced daily harassment and frequent targeting by law enforcement authorities for violations of "public scandal" laws. According to Serovie, gay men faced an atmosphere of discrimination and, at times, violent rejection from the rest of society. Groups such as Serovie and Kouraj took concrete steps to build a support network and continue their efforts to reach a larger cross section of the LGBT community. The IBESR provided some limited support to the LGBT community and particularly to lesbians.

LGBT community members in rural provinces reported a far more tolerant and accepting attitude from their communities than was the case in urban centers such as Port-au-Prince. For example, there was reportedly tolerance of cohabitation by same-sex couples. Similarly, a long-standing tradition of acceptance of alternative lifestyles allowed some men to dress and live openly as women.

### **Other Societal Violence or Discrimination**

There were several allegations of forced relocations by both private citizens and the government of squatter communities. In particular human rights groups and journalists reported law enforcement authorities using excessive force to clear away residents living in areas the Martelly government planned to use for environmental restoration purposes (see section 1.f.).

Vigilante reprisals remained a common practice, especially in rural areas with severely limited or nonexistent presence of law enforcement and judicial authorities. According to MINUSTAH reports, lynching remained a frequent practice with few or no legal repercussions, especially in rural areas outside the capital. The HNP recorded 106 cases of lynching, compared with 113 cases reported in 2011. Citizens often retaliated against police officers, particularly after incidents in which police officers used firearms to shoot suspects.

Although to a lesser extent than in previous years, societal discrimination occurred against persons with HIV/AIDS, who were often associated with the LGBT community. There is an annual HIV awareness parade every December that many mistakenly associate with the LGBT community.

## **Section 7. Worker Rights**

### **a. Freedom of Association and the Right to Collective Bargaining**

The law protects the right of some workers, excluding public sector employees, to form and join unions of their choice and strike (with restrictions). Although the law allows for collective bargaining, it does not require employers to meet or negotiate with unions.

The law places several restrictions on worker rights. For instance, it requires that any union obtain prior authorization from the government in order to be recognized. The law limits legal strikes to four types: striking while remaining at post, striking without abandoning the institution, walking out and abandoning the institution, and striking in solidarity with another strike. Public utility service workers and public sector enterprise workers may not strike. The law defines public utility service employees as essential workers who “cannot suspend their activities without causing serious harm to public health and security.” A 48-hour notice period is compulsory for all strikes, and strikes may not exceed one day.

The law prohibits firing workers on the basis of union activities, and employers are subject to a monetary fine for each individual violation. However, the law does not require employers to reinstate workers illegally fired for union activity, although illegally fired workers have the right to recoup any compensation to which they are entitled. The law, which does not cover freelance workers or workers in the informal economy, in practice does not protect the vast majority of workers nationwide, including agricultural workers, civil servants, miners, and domestic workers.

The government made modest efforts to enforce labor laws. Government officials, unions, and factory-level affiliates also expanded their dialogue. Labor courts, which function under the supervision of MAST, are responsible for adjudicating private sector workplace conflicts. There was only one labor court in Port-au-Prince. In the provinces plaintiffs had the legal option to use municipal courts for labor disputes. The courts were weak and ineffective, and the government did not enforce their judgments. Additionally, MAST provided mediation services to workers and employers in Port-au-Prince and Ouanaminthe. The law requires such mediation before filing cases with labor court. Due to the judiciary’s limited capacity, MAST’s mediation services were often the only official recourse for workers’ grievances. However, in Port-au-Prince, where the labor court does exist, MAST mediation could be an extra step that would unnecessarily prolong the conflict resolution process to the employee’s disadvantage.

The penalty under the law for interference with union activities is HTG 1,000 to 3,000 (\$25-\$75). The fines listed in the 1984 labor code were not high enough to deter infractions, and authorities often did not impose or collect them.

In practice workers faced a number of challenges in the exercise of freedom of association. Many trade unions were not independent organizations, but rather extensions of political parties. During the year MAST recognized three new unions, and Port-au-Prince-based textile factories established five new affiliates. Nevertheless, high unemployment rates and antiunion sentiment among some factory workers and most employers limited the success of union organizing efforts.

Workers exercised the right to strike in practice. Notably, a strike took place the day after the October minimum wage law took effect, when workers protested over the price they were being paid per unit. Despite the prohibition on public sector strikes, there were several demonstrations during the year, including teachers' demonstrations.

Employers generally set wages unilaterally and did not bargain collectively. Antiunion discrimination was common. In the apparel industry, for instance, workers reported acts of suspension, termination, and other retaliation by employers on the grounds of legitimate trade union activities, membership, collective action, and other associational activity. For example, at year's end one apparel factory had not offered reinstatement to most of the 54 workers dismissed in November 2011 after they had begun organizing a group to discuss and address their terms and conditions of employment and had collectively expressed concerns about terms and conditions to management.

There were also reports of blacklisting and targeting for dismissal those workers most actively engaged as leaders and organizers of protected association activity. For instance, as of December another apparel factory had reinstated none of the 146 workers it fired for engaging in a May 2011 strike. Management placed the fired workers on a "blacklist" and circulated it to multiple factories in order to impede or prevent the workers' future hiring at other factories. Management claimed that it dismissed some of the workers for committing violent or destructive acts during the lockout but did not provide any evidence of such behavior.

The October report of the International Labor Organization's (ILO's) Better Work program noted reports of employer interference in union activity in the apparel

industry, citing management staff attending a union meeting and discriminating against union members.

### **b. Prohibition of Forced or Compulsory Labor**

The law prohibits all forms of forced or compulsory labor; however, the government did not effectively enforce the law. MAST directed law enforcement resources to rescue some trafficked children. MAST and the tripartite HOPE Commission made efforts to address intimidation and employer abuse in the textile industry and worked with factory owners to ensure that working hours complied with national labor law.

There were reports that forced or compulsory labor occurred in practice, specifically, instances of forced labor among child domestics, or restaveks. In the apparel sector, there were reports of several practices that, when taken together, were inconsistent with international standards on forced labor, including the following: requiring workers to work overtime in excess of the legal limit; threatening them with dismissal or suspension if they refused to do so; and physically preventing workers from freely leaving the facility, including by posting armed guards at the exit, locking gates so that workers could not leave without the assistance of guards, and frequently denying exit passes required for leaving the facility. In several instances management reportedly began taking remedial action by year's end.

Also see the Department of State's *Trafficking in Persons Report* at [www.state.gov/j/tip](http://www.state.gov/j/tip).

### **c. Prohibition of Child Labor and Minimum Age for Employment**

The minimum age for employment in industrial, agricultural, or commercial companies is 15. The minimum age for apprenticeships is 14. The law prohibits young persons and children from performing any work that is likely to be hazardous, interferes with their education, or is harmful to their physical, mental, spiritual, moral, or social health and development, including the use of children in criminal activities. The law also prohibits minors from working under dangerous or hazardous conditions, such as mining, construction, or sanitation services, and prohibits night work in industrial enterprises for minors under 18.

There is no minimum age restriction for work in domestic service, and there are no legal penalties for employing children in domestic labor unless the nature or

condition of domestic service harms their health, safety, or moral development. The law requires employers to pay domestic workers over the age of 15, thereby allowing employers of domestic workers to use “food and shelter” as a means of unregulated compensation for those under 15. Although the law stipulates free and compulsory primary education for all children, children are required to attend school only for six years, making children ages 12 to 14 (who are not required to attend school but are also not legally allowed to work) particularly vulnerable to child labor, including the worst forms of child labor.

Young people ages 15 to 18 seeking employment must obtain a work authorization from the Ministry of Social Affairs and Labor, unless they are employed in domestic service. Companies that employ minors without work authorization risk punishment with fines of between HTG 3,000 and 5,000 (\$75 and \$125).

MAST, through the IBESR, is responsible for enforcing child labor laws. The government indicated that understaffing and a shortage of basic equipment hindered the IBESR’s ability to conduct effective child labor investigations. The government does not report statistics on investigations into child labor law violations or the penalties imposed. The government, and the IBESR in particular, lacked sufficient social protection programs and effective legislation to monitor compliance and eliminate the worst forms of child labor.

The government established an interministerial committee that included civil society actors, unions, and employers to address the issue of child labor. The committee organized events to raise awareness about child labor, including for the national day against domestic child labor and thematic round tables about child labor issues in five geographic areas.

The HNP’s BPM is responsible for investigating crimes against children. The BPM referred exploited and abused children to the IBESR and partner NGOs for social services. Although the BPM has the authority to respond to allegations of abuse and apprehend persons who had been reported as exploiters of child domestic workers, the BPM did not pursue restavek cases for investigation because there were no legal penalties it could impose on those who exploited children in this manner.

Children under the age of 15 commonly worked in the informal sector to supplement family income. Activities and sectors in which children worked included domestic work, subsistence agriculture, and street trades, such as selling goods, washing cars, serving as porters in public markets and bus stations, and

begging. Children also worked with parents on small family farms, although the high unemployment rate among adults kept significant numbers of children from employment on commercial farms.

The worst forms of child labor, particularly in domestic service, continued to be problematic and endemic. A May IOM survey estimated that 250,000 to 500,000 children were employed in domestic work as restaveks. An estimated 225,000 children worked as restaveks in urban areas of the country. Most restaveks were girls between the ages of five and 17. Exploitation of restaveks typically included families forcing them to work excessive hours on physically demanding tasks without commensurate pay or adequate food, refusing to provide an education, and subjecting them to physical or sexual abuse. Girls were often placed by their own parents--who were unable to provide for them--in domestic servitude in private urban homes, while boys more frequently were exploited for labor on farms. Restaveks who did not run away from families usually remained with them until age 14. Many families forced restaveks to leave before age 15 to avoid paying them wages as required by law. Others ignored the law, often with impunity.

Working on the streets exposed children to a variety of hazards, including severe weather, vehicle accidents, and crime. The thousands of individuals displaced or orphaned by the 2010 earthquake increased the number of both restaveks and street children. Abandoned and runaway restaveks constituted a significant proportion of the large population of children living on the street, many of whom criminal gangs forced into prostitution or street crime, while others became street vendors or beggars.

Also see the Department of Labor's *Findings on the Worst Forms of Child Labor* at [www.dol.gov/ilab/programs/ocft/tda.htm](http://www.dol.gov/ilab/programs/ocft/tda.htm).

#### **d. Acceptable Conditions of Work**

In October the minimum daily wage for reexporting industrial companies increased from HTG 150 to 200 (\$3.75 to \$5). The rate for workers paid at a piecework rate was HTG 300 (\$7.50) for an eight-hour workday. For all other industrial and commercial work, the daily minimum wage was fixed at HTG 200 (\$5) for eight hours of work.

The law sets the standard workday for industrial, commercial, and agricultural establishments at eight hours and the workweek at 48 hours, with 24 hours of rest and paid annual holidays. It also requires payment of overtime and prohibits

excessive compulsory overtime. However, the law grants exemptions to health-care, lodging, food and beverage, and entertainment establishments; managerial positions; and family establishments that employ only family members. The Labor Directorate may grant exemptions for other employers not specifically exempted by the law. The law is silent with respect to prohibiting overtime for public sector employees, and it is similarly vague about domestic workers' rights regarding working hours, salary, vacation, and severance. The law establishes minimum health and safety regulations.

Although the law charges MAST with enforcement of a range of labor-related issues, laws on the minimum wage, standard workweek, premium pay for overtime, prohibition of excessive compulsory overtime, and occupational safety and health were not effectively enforced. Penalties were not sufficient to deter violations, and authorities often did not impose them. The penalty for not applying the occupational safety and health provisions of the labor code is HTG 200 to 2,000 (\$5.00-\$50) or up to three months in prison. The penalty for violating the minimum wage or hours of work provisions of the labor code is from HTG 1,000 to 3,000 (\$25-\$75.)

The ministry's capacity to enforce the labor provisions in national and international law was limited by human resource and other constraints. During the year MAST inspected 26 assembly factories in Port-au-Prince. Labor inspections in the capital and elsewhere faced challenges including a lack of funding, questionable professionalism, and support from law enforcement.

In April a presidential decree named a new textile sector labor ombudsperson and defined her office's role and responsibilities. The ombudsperson mediated two disputes between workers and management in textile factories this year.

The ILO Better Work report noted significant problems regarding overtime. In 10 factories employers did not comply with limits on overtime hours worked. In these cases workers performed overtime work of more than 80 hours during a three-month period, which is the limit stated in the labor code. The report also noted that 10 factories did not request authorization for overtime work from MAST, and six did not request authorization for Sunday work as the law requires.

Most citizens worked in the informal sector and subsistence agriculture, for which minimum wage legislation does not apply, and where daily wages of HTG 20-30 (\$0.50-0.75) were common. Many women worked in domestic service, which was also exempted from minimum wage legislation.

There continued to be reports of noncompliance regarding minimum wage, daily breaks, health services and first aid, and worker protection in the industrial and assembly sectors. There was improvement in several of these areas, but overall compliance remained low. There were industry-wide problems in the areas of minimum wage, employment contracts, working hours, and sexual harassment.

No group collected formal data, but unions alleged job-related injuries occurred frequently in the construction and public works sectors.