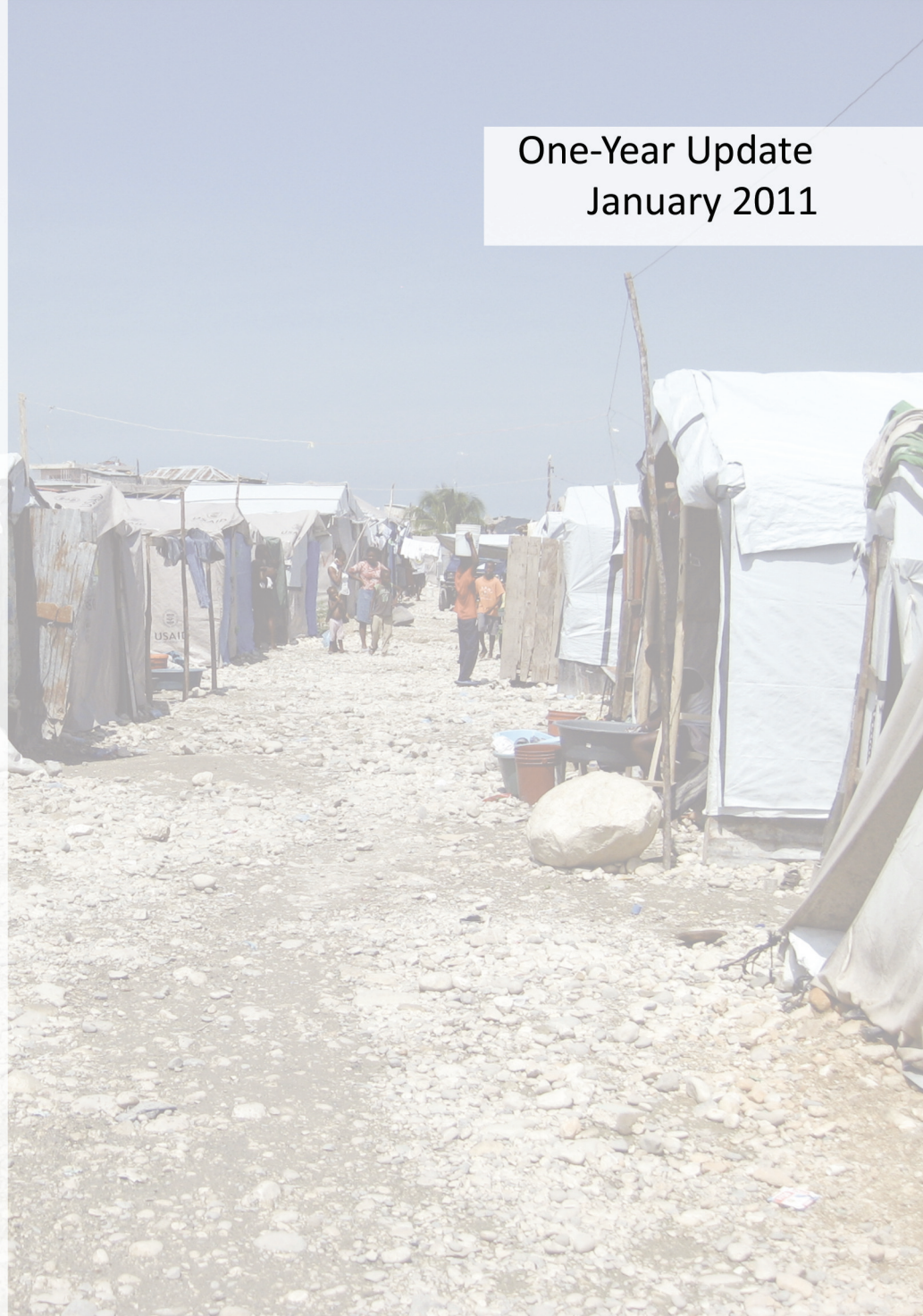


OUR BODIES ARE STILL TREMBLING: Haitian Women Continue to Fight Against Rape

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Law in the Service of Human Needs



Institute for Justice & Democracy in Haiti
Bureau des Avocats Internationaux

One Year Update
Our Bodies Are Still Trembling: Haitian Women Continue to Fight Against Rape
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*The title for this Report was inspired by an article written by long-time Haiti activist and author, Beverly Bell "*Our Bodies are Shaking Now*" – *Rape Follows Earthquake in Haiti*, HUFFINGTON POST, Mar. 24, 2010, quoting a woman with the grassroots women's organization KOFIVIV (Commission of Women Victims for Victims). We dedicate this to the woman and men in Haiti who fight for justice against all odds.

Photographs: Frantz Etienne (BAI), Natalia Caruso (MADRE), Lisa Davis (MADRE, CUNY School of Law), Brad Parker (CUNY School of Law). The photographs contained in this Report do not depict the victims interviewed in conjunction with this Report.

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Table of Contents

Executive Summary.....	4
I. Introduction.....	6
A. Rape Crisis in Haiti’s Internally Displaced Persons Camps.....	6
B. Abysmal Camp Conditions Exacerbate Vulnerability to Rape.....	7
C. Political Instability Generates an Increase in Rape	9
D. Impact of Gender-Based Violence on Women’s Human Rights Defenders	9
II. Inter-American Commission on Human Rights Responds to Demand for Action to End Sexual Violence in Haiti.....	11
A. Request for Precautionary Measures.....	11
B. Commission Grants Precautionary Measures.....	11
C. Enforcement of the Commission’s Decision	12
D. Increasing Capacity of the Haitian Women’s Ministry	13
III. Medical and Psychological Care.....	15
IV. Effective Security Measures	17
A. Security Presence	17
B. Lighting	19
V. Responding to and Investigating Complaints of Sexual Violence.....	20
VI. Full Participation of Grassroots Women’s Groups.....	22
VII. Conclusions and Recommendations	25
Acknowledgments	27
Appendices	28

Executive Summary



Haitian women and girls began last year bereaved, traumatized, injured and displaced by the January 12, 2010 earthquake. Over the past twelve months, as they have sought to begin to rebuild from the disaster and tend to the many vulnerable children, disabled and elderly people in their care, the women of Haiti have faced another catastrophe: an epidemic of sexual violence. One year after the devastating earthquake, the government of Haiti, the United Nations, and the international community have failed to effectively respond to gender-based violence against Haitian women and girls living in the sprawling network of internally displaced persons (IDP) camps blanketing Haiti's capital, Port-au-Prince.

Haitian women and girls have experienced rape and attempted rape, severe beatings and repeated threats to their lives in retaliation for reporting the rapes or helping victims. Many women and girls report that they have been raped on multiple occasions since the earthquake.

With scarce resources and under brutal conditions, women in the camps have organized a breathtaking array of ad-hoc services, including community-based security patrols and psycho-social support, legal advocacy and medical care for rape survivors. But their capacity is limited and the rapes continue unabated. In fact, over the year, deteriorating conditions in the IDP camps, a deadly cholera outbreak, political upheaval, and persistent impunity for rape have increased

insecurity and the risk of sexual violence for women.

Rape and sexual violence are extreme violations of universal human rights and compromise the ability of women to access the full panoply of their civil, political, economic, social and cultural rights. The deprivation of these rights, in turn, causes a downward spiral leading to further deterioration of human rights.¹ For example, a young woman who is injured and traumatized by rape may be unable to exercise her human right to attend school, work, or participate in public life.

In the wake of disaster, women generally have less access to resources and are excluded from decision-making. This discrimination makes women and girls more vulnerable to the impact of disasters, including the specific conditions that give rise to sexual violence. Disproportionate vulnerability in times of disaster also exacerbates the consequences of sexual violence, such as disease, disability and depression.

Women and girls are put at increased risk of rape by the collapse of social infrastructures, the erosion of family and community networks, inequitable access to social services, absence of law and order, lack of secure housing or safe neighborhoods and dependence resulting from economic dislocation.² All of these conditions have been rife since the earthquake in Haiti, creating a perfect storm of sexual violence that has raged across the camps.

¹ See Catherine Albisa, "Economic and Social Rights in the United States: Six Rights, One Promise," *Bringing Human Rights Home, Vol. 1*, ed. Cynthia Soohoo, Catherine Albisa and Martha Davis, (Westport, CT: Greenwood Publishing Group, 2008): 26 (finding that "a deeper accountability to all human rights, including civil and political rights, requires the recognition and implementation of economic and social rights and that the protection of this set of rights is a precondition for addressing structural violence...").

² *Id.*

The government, facing constrained capacity resulting in part from international policies that pre-date the earthquake, only recently issued a strategic plan for housing for the estimated 1-1.3 million residents of some 1,000 IDP camps.³ The plan will not be implemented for months, if not years.⁴ Quite simply, there is no end in sight for the dangerous conditions in which Haitian women and girls live.

³ The number of internally displaced persons in Haiti is estimated to range between 1-1.3 million according to most reports. For example, in December, the International Organization for Migration (IOM) reported a total of 1,058,853 displaced people. Haiti Camp Coordination Camp Management Cluster, Displacement Tracking Matrix V2.0 Update (Dec. 9, 2010). In contrast, ActionAid estimates that between 1.3 and 1.7 million people are displaced in Port-au-Prince alone, <http://www.independent.co.uk/news/world/americas/haiti-one-year-on-from-quake-2179837.html>.

⁴ Plan stratégique, Commission Intérimaire pour la Reconstruction d'Haïti (CIRH) (Dec. 14, 2010).

I. Introduction



A. Persistent Crisis of Rape in Haiti's Internally Displaced Persons Camps

In May, June, July, and October of 2010, delegations of U.S. lawyers, community researchers and a women's health specialist investigated the prevalence and patterns of rape and other gender-based violence against IDPs in Port-au-Prince in the aftermath of the earthquake as well as the governmental, inter-governmental, non-governmental and grassroots responses to the violence. In May and June alone, members of the delegation interviewed over 50 women who had survived rape or attempted rape since the earthquake. These women and girls were referred to the delegations by KOFIVIV⁵ and FAVILEK⁶, grassroots women's organizations working in displacement camps and poor neighborhoods within Port-au-Prince.

The investigation revealed striking patterns among the rapes. In particular, a majority of the reported rapes occurred at night and were perpetrated by strangers wielding weapons. Gang rape was not uncommon. Although most survivors were unable to identify their attackers due to the lack of lighting in the IDP camps, others recognized their attackers as escaped convicts or gang members. Patterns also emerged regarding survivors' post-rape experiences. Many women

⁵ *Komisyon Fanm Viktim Pou Viktim* or Commission of Women Victims for Victims.

⁶ *Fanm Viktim, Leve Kanpe* or Women Victims, Get up Stand up.

were told by their perpetrators to expect retaliation if they reported the rape. Those who did have the courage to report their rapes to the authorities were typically met with indifference. Further, women reported a lack of access to adequate health care services and facilities. A detailed discussion of the findings of that investigation was published in as part of the initial July 2010 report, *Our Bodies Are Still Trembling: Haitian Women's Fight Against Rape*⁷ (hereinafter six-month report).

As of January 6, 2011, KOFIVIV has documented over 640 cases of rape since the earthquake. Similarly, SOFA, a well-known Haitian Women's Health Organization, documented 718 cases of gender-based violence against women and girls in its clinics from January to June 2010.⁸ According to SOFA's assessment report issued in November, sexual violence targeting women is a growing emergency. The Bureau des Avocats Internationaux (BAI), a public interest law firm in Port-au-Prince that launched the Rape Accountability Project (RAPP) in June 2010, represents over 50 women and girls in rape cases. Examples of sexual violence include:

- On October 10, 2010, a Haitian National Police officer and his friend lured a fifteen-year old girl into a house and raped her. The girl's mother called the police when she learned of the rape. Both the HNP officer and his friend were arrested and remain in prison awaiting further legal action.
- On October 2, 2010, two men entered the tent of a young girl armed with a stick with nails protruding from one end. Another woman who heard the commotion attempted to intervene, but was frightened away when the men threatened to shoot her. The men

⁷ Available at: www.madre.org or at <http://ijdh.org>.

⁸ Solidarite Fanm Ayisyen or Haitian Women's Solidarity. The 718 cases of violence against women included 114 rapes and 540 cases of physical abuse. SOFA, Rapport Bilan 10, Cas de Violences Accueillis et Accompagnés Dans Les 21 Centres Douvanjou de la SOFA de Janvier à Juin 2010 (Nov. 2010).

beat the victim with their handmade weapon and raped her. These men still live in the camp.⁹

- On August 29, 2010, a young woman was kidnapped by five armed men in a truck. Before raping her, they choked her, forcing her to open her mouth, and one of the men bit off her tongue. She has been able to leave the camp, but her perpetrators remain at large.¹⁰
- On July 26, 2010, a nineteen-year-old woman was raped by three men when she left her tent to use the outside toilet at night. She still lives in the camp and the perpetrators remain at large.¹¹

Several UN Special Rapporteurs and Representatives have recently called attention to the sexual violence against Haiti's displaced women as an issue that must be addressed by the international community. In an October speech to the General Assembly, Rashida Manjoo, the U.N. Special Rapporteur on Violence Against Women, its Causes and Consequences, highlighted the disproportionate vulnerabilities of women in post-disaster settings and their increased risk of violence. She specifically cited the sexual violence faced by Haitian women and girls in the displacement camps.¹² That same month, Walter Kälin, then Special Representative to the

⁹ See the KOFVIV, FAVILEK, KONAMPAVID, International Women's Human Rights (IWHR) Clinic at the City University of New York (CUNY) School of Law, MADRE, the Institute For Justice & Democracy In Haiti (IJDH), Bureau Des Avocats Internationaux (BAI), Morrison & Foerster LLP, the Center for Constitutional Rights (CCR), and Women's Link Worldwide Request for Precautionary Measures Under Article 25 of The Commission's Rules of Procedure, Appendix A, available at <http://www.law.cuny.edu/news-events/FacultyNews/12705-petition.pdf>.

¹⁰ *Id.*

¹¹ *Id.*

¹² Statement by Rashida Manjoo Special Rapporteur on Violence Against Women, Its Causes and Consequences at the 65th Session of the General Assembly Third Committee (Oct. 11, 2010), available at <http://www.un.org/womenwatch/daw/documents/ga65/vaw.pdf>. The Special Rapporteur also noted that she has "received numerous reports on the rise in violence against women and girls, in particular rape and domestic violence in IDP camps and elsewhere."

Secretary-General on the Human Rights of Internally Displaced Persons, linked pre-existing vulnerabilities of "violence and exploitation" with the post-disaster occurrence of sexual violence in Haiti's camps. He drew attention to "important levels of rape and gang-rape and also domestic violence in the camps, which [women's groups] identified to be problems that are growing in number and brutality."¹³

B. Abysmal Camp Conditions Exacerbate Vulnerability to Rape

Haiti's approximately 1-1.3 million IDPs live under makeshift shelters of bed sheets, tarps, and tents in overcrowded camps that largely lack basic necessities such as sanitation, access to water and food, and adequate lighting. Many displaced residents report that conditions in the camps have worsened in recent months.

Displaced women and girls face chronic and increasing inaccessibility to shelter, potable water, food, adequate sanitation, medical treatment and education. Surveys conducted during the summer and fall found that only approximately ten percent¹⁴ to twenty percent¹⁵ of families had tents. Even these shelters—many of which were battered beyond repair in their first few months of use¹⁶—do not provide meaningful protection against the elements or perpetrators of violence.

¹³ Walter Kälin, Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Human Rights of Internally Displaced Persons in Haiti: Memorandum Based on a Working Visit to Port-au-Prince (12–16 Oct. 2010), ¶ 32, <http://ijdh.org/wordpress/wp-content/uploads/2010/11/Kalin-Statement-2010-Haiti-English.pdf>.

¹⁴ Professor Mark Schuller, *Unstable Foundations: Impact of NGOs on Human Rights for Port-au-Prince's Internally Displaced People*, York College (CUNY) & Faculté d'Ethnologie (UEH) (Oct. 4, 2010) at 3, available at <http://ijdh.org/wordpress/wp-content/uploads/2010/10/Report-unstable-foundations-final-2.pdf>.

¹⁵ Institute for Justice & Democracy in Haiti (IJDH) et al., *"We've Been Forgotten": Conditions in Haiti's Displacement Camps Eight Months After the Earthquake* (2010) at 42, Appendix E, available at <http://ijdh.org/wordpress/wp-content/uploads/2010/09/IDP-Report-09.23.10-compressed.pdf>.

¹⁶ *Supra* note 14, at 3.

In October, a woman reported that, “even when we receive tents, people slash [them] with razors.”¹⁷ Said one woman living in a Champ de Mars camp, “No one from the government has come by to ask how we’re doing and if we’re people or animals. Dogs that live in rich people’s houses don’t go through what we go through.”¹⁸ The lack of private bathing facilities is a further affront to dignity.

Sanitation remains grossly inadequate. A survey conducted by CUNY Professor Mark Schuller found that thirty percent of camps did not have any toilet facilities at all.¹⁹ Another survey conducted found, as of July, twenty-seven percent of families had to defecate in plastic containers or an open area.²⁰ Even where latrines exist, “[a]ccording to even the most conservative estimates ... the average number of people sharing a toilet in the Port-au-Prince metropolitan area is 273 people.”²¹ Moreover, thirty out of seventy-one camps surveyed (or 40.5 percent) did not have a water supply²² and forty-four percent of families living in camps drank untreated water.²³

Since the outbreak of cholera in October, these unsanitary conditions have become deadly. As of January 1, 2011, there have been over 3,651 reported deaths from cholera in Haiti and 171,304 confirmed cases of cholera.²⁴ The World Health Organization predicts that over 650,000 people in Haiti could be affected by cholera within the next six months.²⁵ In mid-November, protesters in Cap

Haitien and Port-au-Prince, frustrated by the slow response to the highly preventable and treatable disease, staged increasingly violent demonstrations. In particular, many protests targeted the United Nations Stabilization Mission in Haiti (MINUSTAH), whose peacekeepers are widely believed to have brought the disease to Haiti.²⁶ Throughout the end of the month, protests continued, political instability grew and the disease continued to spread.²⁷

These conditions have created an environment in which people feel frustrated, desperate and dehumanized—emotions that all too often are channeled into sexual violence against women and girls living in these camps. A resident of Champ de Mars camp stated that “People rape older women, younger women and kids. We need security and lighting.”²⁸ Another resident said, “In the camp, we have to sleep with one eye open.”²⁹

Food insecurity of camp residents has also increased vulnerability for women and girls. In April, the Haitian government and non-governmental organizations (NGOs) stopped general food distribution to IDPs, ostensibly to

¹⁷ IWHR Clinic at CUNY School of Law Interviews with IDP residents of Champ de Mars (Oct. 13, 2010) (on file with authors).

¹⁸ *Id.*

¹⁹ *Supra* note 14, at 2.

²⁰ *Supra* note 15, at 10.

²¹ *Supra* note 14, at 11.

²² *Id.* at 13.

²³ *Id.*

²⁴ Ministère de la Santé Publique et la Population (MSPP), Rapport de Cas (Jan. 1, 2011), *available at* <http://www.mspp.gouv.ht/site/download.php?file=downloads/Rapport%20journalier%20MSPP%20du%2001%20janvier%202011.pdf>.

²⁵ Haiti Libre, *Haiti: Cholera Epidemic – 650,000 Cases in the Next 6 Months*, Dec. 3, 2010, *available at* <http://www.haitilibre.com/en/news-1820-haiti-cholera-epidemic-650-000-cases-in-the-next-6-months.html>.

²⁶ BBC News, *Haiti cholera clashes reach capital Port-au-Prince*, Nov. 19, 2010, *available at* <http://www.bbc.co.uk/news/world-latin-america-11791172>. In January, 2011, UN Secretary-General Ban Ki-moon appointed an independent panel of experts to determine the source of Haiti’s cholera outbreak. Press Release, UN Sec’y General, Deeply Concerned from Outset by Cholera Outbreak in Haiti, Secretary-General Appoints Independent Expert Panel, UN Doc. SG/SM/13338, SG/A/1275 (Jan. 6, 2011), *available at* <http://www.un.org/News/Press/docs/2011/sgsm13338.doc.htm>.

²⁷ In December, UN Secretary-General Ban Ki-Moon warned that, “Without a massive and immediate international response, we will be overwhelmed. The lives of hundreds of thousands of people are at risk. And it is up to us to act, with maximum speed and full resources.” Press Release, UN Sec’y General, Collective Efforts in Haiti Will Be Overwhelmed Without Massive, Immediate Response, Secretary-General Warns in Remarks to General Assembly, UN Doc.SG/SM/13294, GA/11028, IHA/1290 (Dec. 3, 2010), *available at* <http://www.un.org/News/Press/docs/2010/sgsm13294.doc.htm>.

²⁸ *Supra* note 17.

²⁹ *Id.*

replace food distribution with cash-for-work and cash-for-food programs.³⁰ According to a report released in September, ninety-four percent of families surveyed had a family member abstain from eating for an entire day in the past week or reported hunger or malnutrition as a health problem.³¹ The same report found that forty-six percent of families had all members abstain from eating an entire day in the past week.³² Grassroots groups and legal organizations working on the ground in Port-au-Prince have reported numerous cases of women and girls trading sex for food to avoid starvation.³³

Finally, grassroots groups express grave concern that the threat of rape and other sexual violence has negatively impacted displaced children's access to education.³⁴ Many schools in Port-au-Prince have been destroyed and the threat of sexual violence leaves many parents reluctant to send their children to the few schools that have reopened. Even short walks to the camp schools put children at risk of rape and other forms of sexual violence. Children as young as five years old have been raped while walking alone and parents have reported being afraid of letting their children go to school without safe transportation. In order to ensure that education is available to all displaced children, the issue of sexual violence must be addressed.

C. Political Instability Generates an Increase in Rape

³⁰ Jessica Leeder, *Haitians Worry Free Food Distribution Halted Too Soon*, *The Globe and Mail*, Apr. 22, 2010, available at <http://www.theglobeandmail.com/news/world/project-jacmel/the-tent-city/haitians-worry-free-food-distribution-halted-too-soon/article1543856/>.

³¹ *Supra* note 15, at 6.

³² *Id.*

³³ These observations are consistent with testimony heard during LERN Delegation victim interviews and ongoing interviews of victims at the Bureau des Avocats Internationaux (BAI).

³⁴ Said Special Representative Walter Kälin, "Even if it were possible to find suitable durable solutions (return or settlement elsewhere in or outside Port-au-Prince) for the entire population of at least one camp per day it would still take close to four years to close all camps in the affected area." *Supra* note 11, at ¶ 27.

An increasingly unstable political situation in Haiti has only further undermined the safety of women and girls in the camps. With the protests following the November 28 presidential election came a dramatic spike in rapes. According to KOFIVIV, women lined up at its clinic on the two days after the election to report rapes and beatings.³⁵ Some women witnessed armed men entering certain camps and shooting people at random.³⁶ The men were reported wearing the campaign t-shirts of a presidential candidate. On the third day after the elections, KOFIVIV was forced to close its clinic temporarily under threat of violence.

Deteriorating shelters, the spread of a deadly cholera epidemic and heightened political instability have posed an increased risk to the lives of Haitian women and girls in recent months. The constant threat of sexual violence makes it difficult for displaced women and girls to access the few resources that are available in the camps. Moreover, the deteriorating security situation in Haiti has resulted in a diversion of the already scarce government resources and attention devoted to combating gender-based violence.

D. Impact of Gender-Based Violence on Women's Human Rights Defenders

Human rights defenders working with KOFIVIV and other grassroots groups, such as FAVILEK and KONAMAVID,³⁷ have been targeted for violence, including rape, and extortion for their work defending rape victims.

In June, leaders of a grassroots Haitian women's organization working on sexual violence, and their families, were threatened at gunpoint.³⁸ A reported prison escapee came to speak with the two leaders living and working in the Champ de Mars IDP camp. He demanded money and

³⁵ Interview with KOFIVIV leaders (Dec. 3, 2010) (on file with authors).

³⁶ *Id.*

³⁷ *Kodinasyon Nasyonal Viktim Direk* or National Coordination of Direct Victims.

³⁸ *Supra* note 9, at Appendix A.

threatened the leaders' lives and said he had heard that one of the leaders had just returned from testifying before the UN Human Rights Council in Geneva³⁹ (Appendix C) and suspected she had resources. Out of fear for their safety, the two leaders left the camp the following day with their families and have not returned. Camp residents have reported that the man has returned to the camp, looking for the leaders and harassing and threatening other group members who continue to organize women in the camp and provide support for survivors of rape.⁴⁰

The two grassroots leaders filed a complaint with the police positively identifying the man, who remains at large. The police told the women that the camps "caused too much trouble" and the man "should have killed them all."⁴¹ Moreover, a man who used to provide informal security for the women in the camp (he has since stopped because fear of retaliation and has no resources to continue the work) apprehended the perpetrator and called the police emergency number. The police did not answer despite numerous phone calls and he had to let the perpetrator go. On another occasion, the man apprehended the perpetrator again and was able to get through to the police, who did not respond. The two women leaders were forced to flee the camp and, with financial support from organizations abroad, relocate to housing elsewhere in Port-au-Prince. The women remain in hiding and continue to fear for their lives as they have seen this man on public transportation moving freely through the city.

The importance of protecting human rights defenders has been recognized as essential for ensuring human rights enforcement. Special protections must be provided to individuals in Haiti who work to combat gender-based violence

if gender-based violence in Haiti is to be effectively combated.⁴²

³⁹ Attorneys from MADRE, IJDH, and the law firm Morrison & Foerster accompanied Malya Villard-Apollon, human rights defender and co-founder of KOFIVIV to Geneva to testify on this issue in front of the UN Human Rights Council in June. See Appendix C for testimony.

⁴⁰ *Id.*

⁴¹ IWHR Clinic at CUNY School of Law Interviews, (Oct. 7) (on file with authors).

⁴² *Supra* note 9, Appendix A. See Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedom, GA Res A/Res/53/144, Annex, U.N. Doc. A/RES/53/144 (Mar. 8 1999).

II. Inter-American Commission on Human Rights Responds to Demand for Action to End Sexual Violence in Haiti



A. Request for Precautionary Measures

On October 21, 2010, attorneys from MADRE, the International Women's Human Rights (IWHR) Clinic at the City University of New York (CUNY) School of Law, the Institute For Justice & Democracy In Haiti (IIDH), Bureau Des Avocats Internationaux (BAI), Morrison & Foerster LLP, the Center for Constitutional Rights (CCR), and Women's Link Worldwide submitted a Request for Precautionary Measures to the Inter-American Commission on Human Rights (IACHR or the Commission).⁴³ The petition called on both the government of Haiti and the international community to take immediate action in ensuring security, lighting and access to medical care in camps, as well as meaningful participation by grassroots women's groups in planning sessions for addressing gender-based violence in camps (See Appendix B).⁴⁴ Advocates asked the Commission to grant the request as an urgent measure to address the multiple acts of sexual violence women in the displacement camps are facing.

⁴³ *Supra* note 9.

⁴⁴ Appendix B, KOFVIV Camp Security Report (Oct. 17, 2010), submitted to the IACHR in the petition.

B. Commission Grants Precautionary Measures

In response, the Commission issued the government of Haiti a letter requesting that the government investigate sexual abuse in displacement camps, both to document current abuses and as a means of curbing future violence. The Commission also released a public statement:

The Inter-American Commission on Human Rights expresses its concern over the situation in a number of camps for persons displaced by the earthquake that took place in Haiti in January 2010, especially with regard to forced evictions and sexual violence against women and girls.

According to information received by the Inter-American Commission, the extremely precarious conditions and lack of security in the camps for internally displaced persons (IDP camps) is generating a situation of extreme vulnerability for the women and girls who live in them. The number of sexual violations committed in the camps is apparently on the rise, and rapes of girls as young as five years old have been reported. Organizations working on the ground have observed that most of the rapes are committed at night by two or more attackers, who are usually armed. According to the data provided to the Commission, the victims of these attacks do not have adequate medical services available, nor do they have accessible, effective judicial recourse, which creates a situation of impunity, which allows the violence against women and girls to be perpetuated.

[...]

In this regard, the Commission recommended to the State of Haiti that it ensure the presence of security forces around and inside the IDP camps, in

particular female security forces and especially near the bathrooms; improve lighting inside the camps; implement measures to facilitate the filing of legal actions and to improve the efficiency of judicial investigations, including in particular training police officials in their duties related to cases of violence against women; and provide free assistance by specialized doctors who have experience in treating victims of sexual violence.

After receiving no response from the Haitian government, the Commission issued a decision in favor of the petitioners, highlighting the importance of respecting international human rights obligations at all times, specifically non-derogable rights, as well as the rights of the most vulnerable populations including women and girl victims of sexual violence (See Appendix A).⁴⁵ The Commission's decision includes the following legally binding recommendations:

1. Ensure medical and psychological care is provided in locations available to victims of sexual abuse of 22 camps for those internally displaced. This precautionary measures decision, in particular, ensures that there be:
 - a. privacy during examinations;
 - b. availability of female medical staff members, with a cultural sensitivity and experience with victims of sexual violence;
 - c. issuance of medical certificates;
 - d. HIV prophylaxis, and;
 - e. emergency contraception.
2. Implement effective security measures in the 22 camps, in particular, provide street lighting, an adequate patrolling in and around the camps, and a greater number of female security forces in police patrols in the camps and in police stations in proximity to

⁴⁵ Appendix A, Decision by the Inter-American Commission on Human Rights granting precautionary measures.

the camps;

3. Ensure that public officials responsible for responding to incidents of sexual violence receive training enabling them to respond adequately to complaints of sexual violence and to adopt safety measures;

4. Establish special units within the police and the Public Ministry investigating cases of rape and other forms of violence against women and girls, and;

5. Ensure that grassroots women's groups have full participation and leadership in planning and implementing policies and practices to combat and prevent sexual violence and other forms of violence in the camps.

C. Enforcement of the Commission's Decision

The Commission's groundbreaking decision calls for immediate measures to be taken to prevent sexual violence against women and girls in displacement camps. Of the hundreds of requests for precautionary measures the Commission receives each year, few are granted.⁴⁶ Out of these only a handful have been granted to protect beneficiaries from rape and those have been in response to rape committed by State actors— never by private actors. This precautionary measures decision is the first ever to recognize that Haiti, like all states, has a responsibility to prevent third-party violence against women.⁴⁷

⁴⁶ For example, in 2009, the Commission only granted fourteen requests out of 324 received. IACHR Annual Report 2009, OEA/Ser.L/V/II. Doc. 51, corr. 1. (Dec. 30, 2009), Chapter III, ¶. 8.

⁴⁷ See, for example, Article 9 of the Convention of the Belém do Pará, arts. 3-6, (recognizing that States Parties must "take special account of the vulnerability of women to violence by reason of among others ... their status as migrants, refugees, or displaced persons...of minor age...socio-economically disadvantaged, affected by armed conflict or deprived of their freedom"); See also, American Convention on Human Rights Art. 1.1.

Under domestic and international law, Haiti is obligated to take seriously measures called for by the Commission and to respect, protect and fulfill the human rights of its citizens. According to the Haitian Constitution, upon approval and ratification, international or regional treaties become part of domestic law and abrogate any conflicting laws.⁴⁸ This provision makes the Commission's ruling legally binding in Haiti.

Moreover, the Measures apply to an unnamed group of women and girls—another striking precedent as previous protections issued for women under threat of sexual violence have only been applied to specific, individual women (with their privacy protected). In contrast, this “class action” decision calls on the Haitian government to protect the rights of all women and girls living in the 22 named displacement camps, precisely because they face an elevated threat of sexual violence. This precedent strengthens customary international law's recognition of women's human rights, including the right to be free from sexual violence. It also recognizes that sexual violence is one of the gravest forms of human rights violations and calls for immediate action by states.

The Commission also made clear that the international community shares responsibility for the human rights situation as it exists in this catastrophic context. The decision serves as a reminder that the Haitian government's inadequate response to the crisis of sexual violence is due in part to sheer lack of capacity resulting from international policies that pre-date the earthquake. Such policies include a demand to constrain public spending on the very programs and services that prevent and address

⁴⁸ “Les Traités, ou accords internationaux, une fois sanctionnés et ratifiés dans les formes prévues par la Constitution, font partie de la législation du Pays et abrogent toutes les Lois qui leur sont contraires.” *Constitution d’Haiti* (1989), Art. 276-2. Moreover, Article 19 of the Haitian Constitution recognizes the State's “absolute obligation” to guarantee certain human rights. (i.e., “the right to life, health, and respect of the human person for all citizens without distinction”).

sexual violence, such as healthcare, education, job training and disaster-resistant housing.

The IACHR has reminded the international community and non-governmental organizations of the importance of respecting international human rights obligations, “in particular non-derogable rights and the rights of those most vulnerable,” in all circumstances in their relief and assistance efforts in Haiti.⁴⁹ According to the International Law Commission, Article 5, international actors who have taken on a number of critical governmental functions in Haiti essentially operate as agents of the Haitian government.⁵⁰ The United Nations Gender-Based Violence (GBV) Sub-Cluster is one such agent and has prevented grassroots women's groups from participating meaningfully in addressing sexual violence in the displacement camps (discussed *infra*).

Despite the important role they have played in relief operations in Haiti, UN agencies and NGOs cannot be a substitute for Haitian government or civil society. Indeed, the design and execution of a disaster response that at times has lacked the participation of Haitians, in particular Haitians living in the camps, has meant that some relief efforts have reproduced structural inequalities that pre-date the earthquake, leaving the most vulnerable members of Haitian society even more at risk.

D. Increasing Capacity of the Haitian Women's Ministry

In recent decades, the Haitian women's movement has achieved considerable success, including, *inter alia*, the establishment of shelters

⁴⁹ Press Release, Inter-Am. C.H.R., No. 11/10, IACHR Stresses Duty to Respect Human Rights During the Emergency in Haiti (Feb. 2, 2010), *available at* <http://www.cidh.oas.org/Comunicados/English/2010/11-10eng.htm>.

⁵⁰ Article 5 states, “The conduct of a person or entity which is not an organ of the State under article 4 but which is empowered by the law of that State to exercise elements of the governmental authority shall be considered an act of the State under international law, provided the person or entity is acting in that capacity in the particular instance.”

and support structures for survivors of sexual violence, the adoption of a 2005 law on violence against women, improved rights to women's education and bank credit, and the accession of a few women to government positions and parliamentary seats. Among the movement's important achievements has been the creation of the Ministère à la Condition Féminine et aux

Droits des Femmes (Women's Ministry or MCFDF).

In light of Haiti's current crisis, the Women's Ministry should be recognized as a key body in designing strategies to enhance and protect women's rights and in implementing the Commission's recommendations, which provide a clear starting point for such strategies

III. Medical and Psychological Care



In its communication to the Haitian government, the IACHR requested that the government ensure that medical and psychological care is provided in locations available for victims of sexual abuse. Although some improvements have been made, efforts to address the medical and psychological needs of rape victims continue to fall short. Of particular importance are the prevention and treatment of sexually transmitted diseases and infections and access to reproductive health services.

High rates of rape and other sexual assault against displaced women and girls place them at an increased risk of reproductive health problems and sexually transmitted infections, including HIV/AIDS. Access to emergency contraception is especially urgent in cases of forced pregnancy, particularly for those cases that arise as a result of rape. Since many displaced women lack access to reproductive health care, including pre- and post-natal care, emergency contraception can prevent life-threatening or unwanted pregnancies. Without access to emergency contraception, women are forced to carry out their pregnancies under hazardous conditions in which food, water, shelter, sanitation and prenatal care are often inadequate or unavailable. The lack of medical facilities and emergency obstetric care leave some displaced women to give birth in tents or shelters that lack even the most basic necessities for safe childbirth.

Making emergency contraception available and

informing women about it can help them prevent an unintended pregnancy and reduce the need for abortion. Furthermore, the United Nations Guiding Principles on Internal Displacement mandate that special attention be paid to the health needs, including access to reproductive health care, of displaced women and girls.⁵¹ The Guiding Principles also require particular attention to be paid to the prevention of contagious and infectious diseases, including AIDS, among displaced populations.⁵²

In Haiti, access to HIV prophylaxes and emergency contraception for victims of sexual violence is crucial to the health of women and girls living in the camps. Haiti has the highest HIV-infection rate of any country in the Western hemisphere, “with one in 50 people infected.”⁵³ Thus, victims of sexual violence are subject to an increased risk of HIV infection. According to a UN populations expert, sexual violence against women in displacement camps has contributed to a tripling of the birth rate in Haiti from four percent to twelve percent,⁵⁴ while two-thirds of pregnant women reported unwanted pregnancies.⁵⁵ Additional threats to women’s health arise

⁵¹ “Special attention should be paid to the health needs of women, including access to female health care providers and services, such as reproductive health care, as well as appropriate counseling for victims of sexual and other abuses.” OCHA, Guiding Principles on Internal Displacement, OCHA/IDP/2004/01, Principle 19, ¶ 2, available at <http://www.brookings.edu/fp/projects/idp/resources/GPEnglish.pdf> (last visited Jan. 9, 2011).

⁵² *Id.* at ¶ 3.

⁵³ CBS News, *Rape Rampant in Haiti’s Earthquake Camps*, Mar. 17, 2010, available at <http://www.cbsnews.com/stories/2010/03/17/world/main6306562.shtml>.

⁵⁴ Jonel Aleccia and Meredith Birkett, *Children of Rape Are Latest Legacy of Haiti Quake*, MSNBC, Jan. 6, 2011, available at <http://www.msnbc.msn.com/id/40930866/ns/health/>; see UNFPA, *Enquête sur l’Evaluation Des Besoins et Services de Sante de la Reproduction Dans les Zones Affectées par le Séisme* (Oct. 2010). Additionally, in research conducted for a report to be published later in the year, Human Rights Watch documented reports of young teenage pregnancies as a result of rapes in displacement camps.

⁵⁵ Univ. of Virginia School of Law Delegation interview with Igor Bosc, Representative, United Nations Population Fund (UNFPA) in Port-au-Prince, Haiti (Jan. 6, 2011).

because roughly sixty percent of maternity wards are now housed in temporary structures and operating with only limited funding.⁵⁶ The UNFPA predicts a sharp increase in the number of births by April 2011.⁵⁷ Prioritizing and providing access to medical care is increasingly important considering that even before the earthquake, Haiti had the highest rate of maternal mortality in the Western hemisphere.⁵⁸

The criminalization of abortion under the Haitian Penal Code further complicates the plight of victims of sexual violence. Under the Code, the practice of abortion is criminalized without exception and a woman is subject to imprisonment if she performs an abortion on herself or gives consent for an abortion to be performed.⁵⁹ Any person performing an abortion, with or without the consent of the woman, is also subject to imprisonment.⁶⁰ Furthermore, medical professionals and other health providers can be condemned to forced labor camps if they instruct or provide the means to perform an abortion.⁶¹ The law provides no exception to protect the life of the woman.

Women and girls living in the IDP camps already face limited access to basic medical care that significantly affects the health consequences of incidences of sexual violence. Ensuring that HIV prophylaxes and emergency contraception are provided to victims of sexual violence, as required in Haiti by the recent decision of the Inter-

American Commission on Human Rights,⁶² will help to mitigate any long-term health consequences and unwanted pregnancies.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ "Haiti, the poorest country in the Western Hemisphere, already has by far the highest rate of maternal mortality in the region – 670 deaths per 100,000 live births. This figure is likely to skyrocket as a direct result of the powerful earthquake." UNFPA, *Earthquake in Haiti: UNFPA Concerned over Critical Situation for Women* (Jan. 13, 2010), available at www.unfpa.org/public/news/pid/4693.

⁵⁹ See UN Population Division Department of Economic and Social Affairs, *Abortion Policies: A Global Review*, www.un.org/esa/population/publications/abortion/doc/haiti.doc; see also Information Exchange Network for Mutual Assistance in Criminal Matters and Extradition, Code Pénal 1985, www.oas.org/juridico/mla/fr/hti/fr_hti_penal.html

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² See Appendix A, the Inter-American Commission on Human Rights, *In re Women and girls victims of sexual violence living in 22 internally displaced persons camps* Precautionary Measures No. MC-340-10 Haiti, issued Dec. 22, 2010.

IV. Effective Security Measures



Finding that displaced women and girls live in a situation of “extreme vulnerability” due to the combination of the “lack of security” and “extremely precarious conditions,” the Inter-American Commission called on the government of Haiti to implement effective security measures in displacement camps, including lighting and patrols in and around the camps and a greater number of women security forces.

Sexual violence is greatly deterred when both security and lighting are present in the camps. Residents in over thirty camps surveyed by KOFIVIV report far lower rates of rape in camps with both a security presence and adequate lighting. Camps with only lighting or only security patrols or neither reported higher incidences of rape. Despite some increases in these services since the six-month report, to date, few camps possess adequate lighting and security necessary to ensure the safety of residents.

A. Security Presence

On September 13, members of the UN Security Council heard a briefing from Edmond Mulet, the Special Representative of the Secretary-General and Head of MINUSTAH,⁶³ who stressed that the

⁶³ MINUSTAH was established in 2004 by Security Council Resolution 1542. Its original mandate was to restore a secure and stable environment, to promote the political process, to strengthen Haiti’s government institutions and rule-of-law-structures, as well as to promote and to protect human

government of Haiti was confronted with numerous challenges including the “maintenance of order in the camps ... which were still plagued by sexual violence.”⁶⁴ Consequently, on October 14, the Security Council recommended that MINUSTAH pay particular attention in providing adequate protection to the needs of Haitians, specifically internally displaced women, including through joint community policing in camps, strengthening mechanisms to address sexual and gender-based violence and promoting and protecting the rights of women as set out in Security Council resolutions 1325, 1888, and 1889.⁶⁵ The Security Council stated, “combating criminality and sexual and gender based violence, and putting an end to impunity are essential to ensuring the rule of law and security in Haiti.”⁶⁶

The UN Security Council has responded to the need for more police units in at least three ways. First, MINUSTAH,⁶⁷ together with United Nations Development Program, has assisted in the selection of 1,016 new Haitian National Police (HNP) recruits and the vetting of new and existing personnel.⁶⁸ Second, the Security Council increased the authorized UN police force assigned

rights. After the earthquake, the Security Council ordered an increase in the overall force levels of MINUSTAH to support the immediate recovery, reconstruction and stability efforts in the country.

⁶⁴ Press Release, Security Council, United Nations Mission in Haiti Should be Maintained at Current Strength at Least Until After November Elections, New Government’s Formation, Security Council Told, UN Doc. SC/10026 (Sept. 13, 2010), available at <http://www.un.org/News/Press/docs/2010/sc10026.doc.htm>.

⁶⁵ Press Release, Security Council, Renewing Haiti Mission Mandate in Resolution 1944 (2010), Looks to Review of Situation After Pending Elections, New Government, UN Doc. SC/10054 (Oct. 14, 2010), available at <http://www.un.org/News/Press/docs/2010/sc10054.doc.htm>.

⁶⁶ *Id.*

⁶⁷ The Haitian National Police (HNP) have worked in collaboration with MINUSTAH since 2004. MINUSTAH’s mandate includes “monitoring, restructuring and reforming the Haitian National Police.” Security Council Resolution, UN Doc. S/RES/1542, (Apr. 30, 2004).

⁶⁸ Report of the Sec’y-Gen. of the UN Stabilization Mission in Haiti (2010), UN Doc. S/2010/446, (Sept. 1, 2010).

to Haiti (UNPOL) to approximately 4,400.⁶⁹ As of October 31, the United Nations reported that there were 3,146 UN police⁷⁰ and 11,797 MINUSTAH military and police personnel in Haiti.⁷¹

In a September report from the UN Secretary General, MINUSTAH detailed its new gender-based violence initiatives, including: an Internally Displaced Person Camp Unit comprised of 195 individual police officers and 270 former police unit personnel, and a Gender Unit comprised of six female United Nations police officers. It was reported that there is a permanent UN police and military security presence in twenty⁷² high-risk camps in Port-au-Prince. Furthermore, MINUSTAH soldiers stated they conduct a “combination of permanent, semi-permanent and random” patrol around 863 camps in and outside Port-au-Prince.⁷³ The UN also launched an operation to combat gender-based violence in the camps, which consists of a public information campaign and training for MINUSTAH and HNP officers.⁷⁴

Despite these initiatives, in October 2010, law students from the International Women’s Human Rights (IWHR) Clinic at the CUNY School of Law and attorneys from MADRE, the Institute for Justice & Democracy in Haiti (IJDH), and the

⁶⁹ United Nations Stabilization Mission in Haiti, United Nations Peace and Security Section of the Department of Public Information in cooperation with the Department of Peacekeeping Operations, “MINUSTAH Facts and Figures,” (Oct. 31, 2010), *available at* <http://www.un.org/en/peacekeeping/missions/minustah/facts.shtml>.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² Two of the 20 camps have static security (Corail Cesselesse and Tabarre Issa); four are covered by 24-hour patrols (Jean-Marie Vincent, Champs de Mars, Pétion-Ville and Sainte Bernadette) and 14 are covered by daily patrols. Report of the Sec’y-Gen. of the UN Stabilization Mission in Haiti, UN Doc. S/2010/446, (Sept. 1, 2010).

⁷³ Report of the Sec’y-Gen. of the UN Stabilization Mission in Haiti, UN Doc. S/2010/200, (Apr. 22, 2010).

⁷⁴ “Haiti: UN Launches New Campaign Against Rape and Gender-Based Violence,” UN News Service, (Sept. 13, 2010), *available at* <http://www.un.org/apps/news/story.asp?NewsID=35900&Cr=haiti&Cr1>.

Center for Constitutional Rights (CCR) conducted a fact-finding investigation on sexual violence in Haiti and heard contrary reports. Camp residents said that although there had been some increases in patrolling of the perimeter of the larger, more visible camps, such as in Champ de Mars, HNP and MINUSTAH Security Forces were rarely, if ever, seen going into the camps or responding when victims reported being raped. According to an August study by the United States Institute for Peace, seventy-five percent of displaced persons interviewed reported rarely or never having ever seen any police or UN security forces inside the camps.⁷⁵ Moreover, women and girls have said they continue to be afraid to report sexual violence to the police because of the lack of police response, threats of retaliation made by the attacker, and shame due to the severe social stigma of rape.

MINUSTAH reported to Special Representative Walter Kälin that there was twenty-four hour coverage for about forty percent of the camp population and that the HNP’s Brigade for the Protection of Minors received special training to investigate cases of violence against women.⁷⁶ MINUSTAH also reported that its forces are patrolling camps and resident areas in some of the more problematic neighborhoods, such as Martissant.

However, residents of Martissant explained that while MINUSTAH had a small presence within the area during the daytime, troops were never present at night. In other camps, such as the Place des Artistes section of Champ de Mars, the National Police have headquarters nearby but are only present within the camp for a short time and in response to specific incidents. Residents of other sections of Champ de Mars, including Place Petion and Place Dessalines, expressed concern that police only patrol the outside of the camp and rarely enter the camp. The absence or limited peripheral presence of law enforcement has

⁷⁵ Louis Alexandre Berg, United States Institute of Peace, Security in Post Quake Haiti, (Aug. 31, 2010), *available at* <http://www.usip.org/files/USIP%20Presentation%20Security%20After%20the%20Quake.pdf>.

⁷⁶ *Supra* note 13, at ¶ 36.

resulted in impunity for perpetrators of sexual violence. Echoing these concerns, Representative Walter Kälin noted that HNP not showing up to participate in scheduled patrols was a “serious problem.”⁷⁷ He urged MINUSTAH and the HNP to “redouble efforts” to further increase the coverage rates for camps and problematic neighborhoods, emphasizing the need for night and foot patrols.⁷⁸

Due to the absence of official law enforcement presence, residents and camp committees have organized informal security patrols. Generally, these camps have reported fewer incidents of sexual violence. In Place des Artistes, the president of the camp committee reported that security patrols were organized at night but they are not compensated for their work, do not have uniforms and are not easily identifiable. While these patrols are encouraging, they are limited in their effectiveness due to lack of capacity. The president of one camp committee explained that overnight patrols grow smaller throughout the night because patrol members do not receive any compensation. Beyond providing members with whistles and flashlights, some NGOs began paying camp security members a small stipend. The Special Representative echoed concern about the payment approach, warning that committees are unlikely to be democratically elected.⁷⁹ It has been reported that about two-thirds of committee members are men and that less than a third of camp residents are acquainted with the committees.⁸⁰

The presence of perpetrators with firearms and other weapons has also contributed to the lack of security in the camps. In Place Dessalines,

⁷⁷ *Id.* at ¶ 37.

⁷⁸ *Id.* at ¶ 36. The authors are mindful that many Haitian grassroots groups are calling for MINUSTAH to leave Haiti, given their own track record of human rights violations, while at the same time recognizing the need for more security for women and girls in the camps. This highlights the importance of funding and supporting community-based security initiatives that have proven successful and capacity building for the Haitian government to run its own security force that is accountable and rights-respecting.

⁷⁹ *Supra* note 13, at ¶ 41.

⁸⁰ *Supra* note 14, at 27.

residents were unable to organize informal security patrols because of the increasing number of armed men present in the camp. Residents explained that unarmed and uncompensated community patrols were not willing to place themselves in danger in areas where weapons were prevalent. The total lack of both law enforcement presence and community patrols within the camps creates conditions in which there is virtually no security at all.

B. Lighting

Many camps still report having no or inadequate lighting (See Appendix B). For example, in Martissant and Champ de Mars, specifically the camps of Place Dessalines and Place de Petion, some lighting exists but it is dim and not enough to illuminate the entire camp. In areas that do not have lighting, many residents said that they felt particularly vulnerable to sexual violence and theft. The camps in Champ de Mars had well-lit toilets and showers and residents in at least two sections reported having electricity in the tents. One resident said that the electricity is usually on at night while another woman reported that the electricity works on Saturdays and Sundays. However, when CUNY Law students visited, the electricity had not been on for several days.

Even where adequate lighting exists, other obstacles limit its impact on security. In Place Sainte-Anne, women reported that there is enough lighting to illuminate the entire camp but there is not enough fuel to keep the lights operating through the night. Regardless of how long the lighting lasts, it does not reach the bathrooms across the street, leaving women and girls particularly vulnerable to attacks when they go to the toilets. In camp Place Dessalines, lighting exists but has reportedly been disabled by individuals who take advantage of residents made vulnerable by darkness

V. Responding to and Investigating Complaints of Sexual Violence



In its response to the recent request for precautionary measures, the IACHR also requested that the Haitian government ensure that public officials charged with responding to incidents of sexual violence receive training enabling an adequate response to complaints of sexual violence and that special units be established within the police to investigate cases of rape and other forms of gender-based violence.

Along with the stigma of rape in Haitian society, weak governance and uncertain rule of law contribute to impunity for sexual violence. Special Representative Kälin recently drew attention to the fact that impunity for sexual and domestic violence remains a key problem as “[a]pprehended perpetrators often escape punishment, because shoddy investigations do not hold up in court or perpetrators benefit from corruption in law enforcement, the judiciary and the penitentiary system.”⁸¹ Specifically, Mr. Kälin

⁸¹ *Supra* note 13, at ¶ 38. Impunity for perpetrators of violence against women was also highlighted as one of the primary concerns of the UN Independent Expert on Human Rights in Haiti. See the Report of the Independent Expert on the situation of human rights in Haiti, Michel Forst ¶ 27 (May 3, 2010) UN Doc. A/HRC/14/44, (Rapport de l’expert indépendant sur la situation des droits de l’homme en Haïti), available at http://www2.ohchr.org/english/bodies/hrcouncil/docs/14sesion/A.HRC.14.44_fr.pdf. See also Interview with Juge d’Instruccion Durin Duret (May 10, 2010) (on file with

noted that the gravity of sexual violence crimes “is often not understood by Haitian law enforcement and justice officials on the ground.”⁸²

Indeed, rape in Haiti is easy to commit and hard to deter in large part because the Haitian justice system is inaccessible to women. Women are underrepresented among Haiti’s judges, prosecutors and lawyers. Effective navigation of the system requires the help of a paid lawyer, which women are unlikely to be able to afford. Even when a victim can identify the perpetrator(s), the police often refuse to pursue suspects for crimes that were committed more than a few days earlier. Legal proceedings, if initiated, are usually conducted in French, which most women do not understand, rather than the universal language, Haitian Creole. When women appear in Haitian courts, their testimony is often discounted, through rules such as the medical certificate requirement⁸³ or societal bias by judges, prosecutors and jurors, most of whom are men.

Despite numerous challenges, there have been some arrests and the initiation of prosecutions against suspected perpetrators. In December 2010, the Joint Operations and Tasking Center (JOTC), which compiles information from MINUSTAH for security briefings, reported that UN or HNP forces had arrested at least eight people suspected of assaulting or raping Haitian women and girls.⁸⁴ However, the current status of these cases is unknown. It has been reported that after arrest, some suspects are able to bribe their way out of detention, make a deal with the victim’s family to avoid prosecution, or have

authors) (noting that he had not presided over any rape cases since the earthquake).

⁸² *Supra* note 13, at ¶ 38.

⁸³ For many women and girls, medical certificates are difficult to obtain because many hospitals are poorly run and understaffed. In addition, finding free medical care and transportation to get to hospitals and clinics can be an insurmountable challenge for poor women and girls. If a victim is able to get to a hospital, it takes at least three days for a clinic or hospital to issue a medical certificate to a rape victim.

⁸⁴ JOTC Sitrep Reports (Dec. 2010).

friends and family intimidate the victim or her family into not cooperating with the prosecution. It is therefore essential that victims pursuing prosecution have legal representation to force the justice system to adhere to the rule-of-law and provide support to victims.

The BAI, through its Rape Accountability and Prevention Project (RAPP), is currently representing over 50 women and girls who have been victims of rape. Of these cases, six have resulted in arrest and detention suspects by the Central Directorate of the Judicial Police (DCPJ) and four cases have been referred by the prosecutor to the Cabinet d'Instruction, where a judge will perform and investigation. In one of these cases, involving a fifteen-year old girl, the suspect is a Haitian National Police officer. BAI attorneys continue to apply pressure to the Haitian legal system to pursue these and all cases with diligence. The progress of these cases is proof that justice is possible for victims of gender-based violence in Haiti, but many barriers stand in the way.

Among the barriers to successful prosecution of rapists in Haiti is the intense discrimination and intimidation faced by women and girls in the justice system even if they have competent legal counsel. For example, in one case at the BAI that has proceeded to the indictment stage, the victim was denied adequate protection, confidentiality or sensitivity by the judge and other lawyers. Such treatment creates an environment where victims are hesitant to pursue legal cases because of the humiliation they will face. Much more must be done by the Haitian government and those who support it to ensure that Haitian law enforcement diligently pursues and prosecutes rape suspects.

The BAI's capacity is limited, particularly given the large numbers of victims. Kay Fanm, a Haitian women's NGO, also provides legal services for victims, but their capacity is also limited. In addition, general legal aid offices supported by MINUSTAH and other organizations have opened

in Port-au-Prince.⁸⁵ The number of gender-based violence victims represented by these offices is unknown as is the effectiveness of the offices' work. However, the increased number of legal aid offices is a positive step forward in the fight to strengthen the rule of law in Haiti and provide legal representation to victims of gender-based violence.

The UN is also working to train new judges and prosecutors and expand the capacity of the Haitian justice system. In August, the UN selected twenty new potential judges and prosecutors to undergo a sixteen-month training program beginning in September. Training of justices of the peace resumed in July and in-service training courses for all prosecutors also began. The Ministry of Justice and Public Security in collaboration with MINUSTAH and the United Nations Development Programme (UNDP) "jointly developed a concept to rapidly increase the capacity of the justice sector in Haiti [which] would establish additional branches—or court annexes—to expand existing court capacity."⁸⁶ These initiatives are commendable. However, the implementation and practical effect for victims of gender-based violence have yet to be seen or measured.

⁸⁵ As of September, MINUSTAH together with the International Legal Aid Consortium and others, had established three legal aid offices in the Port-au-Prince area and one office in Cap-Haïtien. In addition, the Community Violence Reduction Section, in partnership with Viva Rio, a Brazilian non-governmental organization, was planning to open a legal aid office in Bel Air. MINUSTAH reports that this brings the number of legal aid offices in Haiti to fourteen. Report of the Sec'y-Gen. of the UN Stabilization Mission in Haiti (2010), UN Doc. S/2010/446, ¶ 33 (Sept. 1, 2010).

⁸⁶ *Id.*

VI. Full Participation of Grassroots Women's Groups



The IACHR requested that the government of Haiti ensure that Haitian grassroots women's groups have full participation and leadership in planning and implementing responses to GBV. In the six-month report, authors confirmed that grassroots women groups operating within displacement camps were not being included in post-disaster needs assessments or in the planning of activities designed to mitigate gender-based violence.

This exclusion has had a direct and profound impact on at-risk populations and has also led to significant waste and misdirection of aid by donor countries. For example, because of a failure to consult and coordinate with grassroots organizations, battery-operated flashlights were purchased and distributed to increase lighting in the IDP camps. These flashlights are now useless because camp residents cannot afford replacement batteries. Wind-up or solar flashlights, available at a comparable price, would still be working and could significantly increase lighting and security in the camps. As a positive step, International Rescue Committee (IRC) workers passed out 426 solar-powered flashlights in camps that they operate in. Another 12,000 flashlights are currently being held up in customs. According to an IRC staff person in Haiti, displaced women and girls say that receiving flashlights is a priority for them that trumps even food aid distribution, exemplifying the need for security measures.

Unfortunately, the exclusion of grassroots organizations from key decisions, programs and policies impacting women's human rights is ongoing to date. In December, the UN GBV Sub-Cluster⁸⁷ released its list of strategies for 2011 for combating gender-based violence in Haiti, a simple one and a half page bullet summary of objectives and goals. Unfortunately there is still no specific mention of including grassroots women's organizations in meaningful participation in the coordination of efforts to address and prevent sexual violence in Port-au-Prince IDP camps, as mandated by international law. This continued exclusion by Sub-Cluster members not only violates their obligations under international human rights law but also undermines strategies to combat gender-based violence. This exclusion must be remedied in order to ensure the effectiveness of any precautionary measures mandated by the IAHR.

In a positive step, the Sub-Cluster did relocate its meetings to the Women's Ministry, a more central location in Port-au-Prince, which helps provide better access to meetings. Under pressure from advocates, the Sub-Cluster leadership met with one out of the several grassroots organizations operating within the IDP camps to address sexual violence.

However, the GBV Sub-Cluster has continued to refuse to provide Creole translation, the primary spoken language of the vast majority of Haitians, at its meetings, making meaningful participation by grassroots groups impossible. The GBV Sub-Cluster Coordinator recently stated that providing translation would be "tedious" and that holding the meetings in French is important because the

⁸⁷ The UN Gender-Based Violence Sub-Cluster in Haiti (the "GBV Sub-Cluster") is coordinated by UNFPA and UNICEF, and includes UN and NGO membership as well as Ministries of the government of Haiti. The Sub-Cluster takes the lead on addressing gender-based violence in complex emergencies, natural disasters and other such situations. GBV AoR Working Group, *GBV Coordination at the Local Level, One Response* (July 4, 2010), available at <http://onerresponse.info/GlobalClusters/Protection/%20GBV/Pages/Gender-Based%20Violence%20Working%20Group.asp>.

international groups would otherwise be incapable of communicating with one another.⁸⁸

A clear and cost-effective solution is “simultaneous interpretation,” through which an interpreter listens to a speaker in one language and interprets the message into another language in real time. Commonly used at international conferences and among NGOs, simultaneous translation is time efficient with minimal interruptions. Both listeners and speakers often feel as if they’re talking directly to one another. Additionally such translation is flexible enough that it can be provided in most conditions and situations. “Its relatively easy and cost effective,” said MADRE’s Program Director, Natalia Caruso. “You can purchase headsets for a low cost that wirelessly connect to a small microphone. Then a translator can sit virtually anywhere in the room and whisper into the mic.”⁸⁹

In the six-month report, advocates wrote that soon after the earthquake, the GBV Sub-Cluster began printing and distributing “referral cards” providing critical information to survivors of sexual violence.⁹⁰ In May, an informal survey of clinics listed on the cards revealed that they contained inaccurate information, (e.g., out-of-service phone numbers). It was also discovered that the clinics listed had neither female doctors on staff nor separate reception areas for women, and that the cards did not list clinics and organizations most geographically accessible to camp residents, who constitute the majority of rape survivors. The cards also did not contain information about projects being run by grassroots groups, such as KOFVIV and BAI’s legal-medical accompaniment and assistance program despite requests that these be included.

Advocates continued to inquire as to why grassroots groups were not included on referral

⁸⁸ Univ. of Virginia School of Law Delegation interview with Sian Evans, Coordinator of GBV Sub-Cluster, UNFPA, in Port-au-Prince, Haiti (Jan. 6, 2011).

⁸⁹ Interview (Dec. 1, 2010) (on file with authors).

⁹⁰ After the earthquake, about 50,000 cards and leaflets were printed in French and Haitian Creole and distributed within the displacement camps. U.N. One Response, <http://oneresponse.info/>.

cards published and distributed by the GBV Sub-Cluster. In October 2010, advocates were told that neither KOFVIV nor the BAI could be listed on the referral cards because they were not registered in the 2008-2009 National Dialogue Resource Directory⁹¹ for approved organizations to distribute emergency services.⁹²

Contrary to this, a UN representative told the authors of this report that the exclusion of grassroots groups from the planning table and, consequently, from the referral cards, was an internal decision taken by the GBV Sub-Cluster to curry favor with more established and affluent Haitian women’s organizations.⁹³ Whatever the reason, exclusion of community-based resources only hurts the women who are the intended beneficiaries, potentially discouraging rape survivors from attempting to access support services.

Failure to adequately include poor women in project planning prevents those designing and implementing projects from obtaining the information they need to create successful programs. In January 2010, the Cluster Working Group on Early Recovery released the Guide to Gender-Aware Post Disaster Needs Assessment (the Guidelines).⁹⁴ Among its recommendations, the Guidelines call for (1) substantive consultation with women, girls, boys and men in the identification of their needs, priorities and interests; (2) design of gender aware recovery initiatives that are informed by, and respond to, the articulated and demonstrated needs of the affected communities and the entities serving them, and; (3) identification of spontaneous recovery activities of women, men and

⁹¹ (La Concertation Nationale en 2008-2009) *Id.*

⁹² Prior to this, the GBV Sub-Cluster Coordinator gave repeated assurances that the project would be listed on the referral cards. IWHR Clinic at CUNY School of Law interview with Sian Evans, Coordinator of GBV Sub-Cluster, UNFPA, in Port-au-Prince, Haiti (Oct. 11, 2010).

⁹³ Meeting with UN GBV Sub-Cluster representatives and authors (Oct. 11, 2010).

⁹⁴ UN Development Programme, Cluster Working Group on Early Recovery, *Guide to Gender-Aware Post-Disaster Needs Assessment* (2010).

marginalized communities that can be supported and strengthened. One year after the earthquake, the Sub-Cluster still has not effectively

implemented these fundamentally important steps.

VII. Conclusions and Recommendations



Although women in Haiti have long been confronted with unique economic, social and structural obstacles that prevent effective participation and access to leadership roles,⁹⁵ the earthquake aggravated these conditions. Natural disasters like Haiti's earthquake disproportionately affect women and girls. Displaced women face gender discrimination that exposes them to higher rates of poverty and violence. Often women who live in crowded, poorly lit areas in insecure shelters where they experience a heightened likelihood of exposure to sexual violence or crime simply because they are women.⁹⁶ Women and girls also experience higher vulnerability due to the lack of adequate food and clean water in the camps. In many instances they must walk long distances through dangerous areas in order to secure food and clean water for their children and families.

Women's participation and the inclusion of a gender perspective are essential to developing a sustainable and effective reconstruction and are

⁹⁵ See generally, *Haiti Earthquake PDNA: Assessment of Damage, Losses, General and Sectoral Needs* (2010), <http://www.cirh.ht/sites/ihrh/en/Haiti%20Recovery%20Plan/Documents/PDNA.pdf>; UNICEF, *Children of Haiti: Milestones and Looking Forward at Six Months* (2010) http://www.unicef.org/haiti/french/ENG_UNICEF_Haiti_-_Six_Months_Report_Final_Draft.pdf [hereinafter *Children of Haiti*]; Paul Farmer, *Pathologies of Power: Health, Human Rights, and the New War on the Poor* (Univ. Ca. Press, 1 ed. 2010).

⁹⁶ See *Our Bodies are Still Trembling*; see also *Children of Haiti*.

required under international law.⁹⁷ Special Representative Kälin has reiterated that grassroots women's groups are integral to securing human rights for internally displaced persons and recommended that "grassroots Haitian women's organizations" be fully included in referral mechanisms in place throughout the camps.⁹⁸

To meet its obligations to combat sexual violence and fully implement the Inter-American Commission's binding recommendations, the Government of Haiti needs adequate resources. Yet, much of the funding pledged for Haiti by Donor States in March 2010 has still not been released. Of the money released, a large portion has not yet been spent.⁹⁹ Moreover, much of the money delivered has gone to NGOs with little accountability to Donors or—more importantly—to the people of Haiti;¹⁰⁰ while lack of coordination between NGOs and the Haitian

⁹⁷ UN Security Council Resolution 1325, S/Res/1325 (Oct. 31, 2000) (emphasizing the need for women's "equal participation and full involvement in all efforts for the maintenance and promotion of peace and security"); *Guiding Principles on Internal Displacement*, Principle 18, U.N. Doc. E/CN.4/1998/53/Add.2 (Feb. 11 1998) (urging governments to consult with displaced women and ensure their full participation in the planning and distribution of certain essential items); Inter Agency Standing Committee (IASC), *IASC Gender Handbook in Humanitarian Action* (2005), ¶ 31 (emphasizing that "the active participation of people affected by crisis in identifying needs and designing and implementing relief programmes to address those needs substantially improves program effectiveness and sustainability.")

⁹⁸ *Supra* note 13 at ¶ 35.

⁹⁹ For example, the American Red Cross has only spent 39% of the \$464,000,000 raised; Catholic Relief Services has only spent 32% of the \$140,820,000 raised; and World Vision has spent just 50% of the \$192,000,000 that it raised. Marisol Bello, *Much of Aid for Haiti is Still Unspent*, USATODAY.com, available at http://www.usatoday.com/yourlife/mind-soul/doing-good/2010-11-29-sharing-haiti_N.htm. See also Sharyl Attkisson, *Aid Groups in Haiti Criticized for Not Spending Fast Enough*, May 12, 2010, available at <http://foundationcenter.org/pnd/news/story.jhtml?id=294700016>; BBC News, *Haiti PM Criticises Post-Earthquake Rebuilding Efforts*, Dec. 27, 2010, available at <http://www.bbc.co.uk/news/world-latin-america-12082047>.

¹⁰⁰ BBC News, *Haiti PM Criticises Post-Earthquake Rebuilding Efforts*, Dec. 27, 2010, available at <http://www.bbc.co.uk/news/world-latin-america-12082047>.

government has hampered aid.¹⁰¹ This dynamic has effectively undermined and increasingly weakened the Haitian government's capacity to provide for its own citizens.

On the first anniversary of Haiti's catastrophic earthquake, the international community should recommit to a reconstruction process that is Haitian-led and that promotes international standards of human rights, including women's human right to a life free of violence.

To meet its obligations to combat gender-based violence and fully implement the Commission's requests, the government of Haiti needs adequate resources to provide for its own citizens.¹⁰² Pledged funds must be spent effectively and transparently.¹⁰³

Moving forward, policies and practices of the United Nations, Donor States and NGOs in Haiti should uphold the sovereignty of the government of Haiti and the recommendations of the IACHR.

1. Ensure adequate and accessible medical and psychological care;

2. Implement effective security measures;
3. Ensure appropriate and adequate response to complaints of GBV;
4. Investigate and prosecute instances of violence against women;
5. Ensure meaningful participation of grassroots women's groups in leadership and planning of policies to combat and prevent violence.

¹⁰¹ U.S. aid to Haiti, for example, has followed this pattern. Since the 1995 Dole Amendment, all of USAID funds go through NGOs instead of through the Haitian government. *Supra* note 14, at 6.

¹⁰² U.S. aid to Haiti, for example, has followed a pattern of undermining the Haitian government. Since the 1995 Dole Amendment, all of USAID funds go through NGOs instead of through the government. *Supra* note 14, at 6. *See also* BBC News, *Haiti PM Criticises Post-Earthquake Rebuilding Efforts*, Dec. 27, 2010, <http://www.bbc.co.uk/news/world-latin-america-12082047>.

¹⁰³ Countries and organizations from all over the world pledged over \$10 billion for Haiti relief at the UN-backed donor conference in March, 2010 including over \$5.6 billion pledged for fiscal years 2010 and 2011. Center for Economic and Policy Research (CEPR), "Have Rich Countries Forgotten Haiti? Key Facts on International Assistance," Aug. 27, 2010, *available at* <http://www.cepr.net/index.php/blogs/relief-and-reconstruction-watch/have-rich-countries-forgotten-haiti-key-facts-on-international-assistance>; Jonathan M. Katz and Martha Mendoza, "Haiti Still Waiting for Pledged U.S. Aid," Associated Press, Sept. 29, 2010; Marisol Bello, *Much of Aid for Haiti is Still Unspent*, USATODAY.com, http://www.usatoday.com/yourlife/mind-soul/doing-good/2010-11-29-sharing-haiti_N.htm.

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Appendix A



INTER - AMERICAN COMMISSION ON HUMAN RIGHTS
COMISION INTERAMERICANA DE DERECHOS HUMANOS
COMISSÃO INTERAMERICANA DE DIREITOS HUMANOS
COMMISSION INTERAMÉRICAINÉ DES DROITS DE L'HOMME



ORGANIZATION OF AMERICAN STATES

WASHINGTON, D.C. 20006 U.S.A.

December 22, 2010

**RE: Women and girls victims of sexual violence living
in 22 internally displaced persons camps
Precautionary Measures no. MC-340-10
Haiti**

Dear Sirs and Madams:

On behalf of the Inter-American Commission on Human Rights (IACHR), I am pleased to address you with respect to your request for precautionary measures regarding sexual violence against women and girls living in 22 Port-au-Prince internally displaced persons camps.

I also wish to inform you that in a note of today's date, the Commission addressed the State of Haiti pursuant to Article 25 of the Commission's Rules of Procedure in order to request the adoption of urgent measures in favor of the above-mentioned persons. Specifically, the Commission requested that the Government of Haiti take the following measures (reproduced in the official language of the State):

1. Assurer que des soins médicaux et psychologiques soient fournis dans des endroits accessibles aux victimes de violence sexuelle des 22 camps de déplacés internes objet de cette mesure conservatoires. En particulier, assurer :
 - a. la privacité pendant les examens ;
 - b. la disponibilité de membres de personnel médical féminin, possédant une sensibilité culturelle ainsi que de l'expérience avec des victimes de violence sexuelle ;
 - c. l'expédition de certificats médicaux ;
 - d. la prophylaxie HIV ; et
 - e. la contraception d'urgence.

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KOFAVIV, FAVILEK, KONAMAVID

2. Implémenter des mesures de sécurité effectives dans les 22 camps, en particulier, assurer l'éclairage public, un patrouillage adéquat autour et à l'intérieur des camps, et un plus grand nombre de forces de sécurité féminines dans les patrouilles et dans les commissariats de police à proximité des camps ;
3. Assurer que les agents publics chargés de répondre aux incidents de violence sexuelle reçoivent des formations leur permettant de répondre adéquatement aux plaintes de violence sexuelle ainsi que d'adopter des mesures de sécurité ;
4. Promouvoir la création d'unités spéciales au sein de la police judiciaire et du Ministère Public chargées de l'enquête des cas de viol et d'autres formes de violence à l'égard des femmes et des jeunes filles ; et
5. Assurer que les groupes de femmes de base aient pleine participation et leadership dans la planification et l'exécution des politiques et pratiques destinées au combat et à la prévention de la violence sexuelle et d'autres formes de violence dans les camps.

In its communication to Haiti, the Commission also requested that the State provide the Commission with information concerning compliance with these measures within 20 days of receipt of the communication, and thereafter on a periodic basis. In view of the observations of the parties on compliance, the Commission will decide whether to extend or lift the measures.

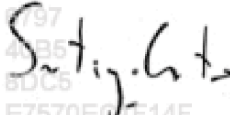
The Commission wishes to note that in accordance with Article 25(9) of the Commission's Rules of Procedure that the granting of these measures and their adoption by the State shall not constitute a prejudgment on the merits of a case.

The IACHR posts on its Web site (www.cidh.org) a summary of the precautionary measures that have been granted. The summary identifies the beneficiaries of the precautionary measures by name, with the exception of children and victims of sexual violence. In cases in which the beneficiaries of these precautionary measures prefer that their complete name not be made public on the Web site, they are required to immediately inform the IACHR in writing.

Sincerely,

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Santiago A. Canton
Secrétaire exécutif

Appendix B

KOFAVIV Camp Security Report

Port au Prince, Haiti

Updated: October 17, 2010

KOFAVIV (Committee of Women Victims for Victims) is a grassroots women's group that has members living and operating in camps throughout Port au Prince and has been working with victims of sexual violence since 2004. The following list describes the current security situation in the camps, as measured by lighting and informal security, as documented by KOFAVIV:

Camp Security List

Camp Name	Electricity	Informal Security	Rape Cases	Comments
Kafoufey	Yes	Yes	Yes	Agent reports no lighting at all and no presence of police or MINUSTAH. Rapes occur but are not reported.
Stad	Yes	No	Yes	Improved lighting, even though only on the perimeter, has appeared to decrease the number of cases.
Kasim Matisam	No	Yes	Yes	Camp managers have issued an identification cards for people who live in the camp to control entry, but it has not been entirely effective without other resources. There is some lighting but it is dim and in very limited areas. Informal security is unreliable and sporadic.
Kanaren 2	No	No	Yes	
Fomckredi Merenata	Yes	No	Yes	
Mon Jn Pije	No	No	Yes	There were two rapes between July 11-17 reported to KOFAVIV.
Fils Pye Lwi	No	Yes	Yes	There is security during the day, but there is no security during evening.
Sant Pilot 1	No	No	Yes	
Sant Pilot 2	Yes	No	Yes	Agent reports no lighting.
Reji Site Soley	No	No	Yes	
Plas Pction (CDM)	Yes	No	Yes	
Matisan 2B	No	No	Yes	
Mozele 7	No	No	Yes	
Tiplas Kanzo	No	No	Yes	

Appendix C



MADRE
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Results for Women Worldwide

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Marjorie Tuite, 1922-1986
Alice Walker
Joanne Woodward
Billie Jean Young

June 7, 2010

Oral Intervention of Malya Villard-Apollon

1. Council Members, thank you for the opportunity to speak with you today.
2. My name is Malya Villard-Apollon. I am a leader of KOFATIV, a grassroots women's organization that works with victims of sexual violence. I, myself, have been a victim of rape. We work with several partners including MADRE, the Institute for Justice & Democracy in Haiti and the law firm Morrison & Foerster.
3. Conditions in the displacement camps, following the January 12 earthquake, have greatly exacerbated women's vulnerability to rape.
4. I live in a tent in a camp. I have witnessed violence against women and girls. And, I have also witnessed the completely inadequate government response. KOFATIV has recorded at least 242 cases of rape since the earthquake. But, we have yet to see a case prosecuted.
5. The violence is occurring in the camps because:
 - a. There is no education around sexuality and women's rights,
 - b. Security is inadequate;
 - c. There is a lack of secure housing;
 - d. And, aid distribution is ineffective and aid agencies fail to consult grassroots groups, which deepens poverty and fosters violence.
6. I respectfully urge the Council recommend that the International Community work with the Government of Haiti to do the following:
 - a. Provide human rights education, including gender sensitivity training for men and police, and know your rights trainings for women;
 - b. Immediately provide security and lighting in the camps;
 - c. Remind donors that the 'UN Guiding Principles on Internal Displacement' implore governments to consult with Haitian women and ensure their participation in decisions that impact their lives;
 - d. And, finally, all member States should condition funding on meeting these basic requirements to uphold women's rights.
7. Voices like mine are often not heard in forums like these, thank you again for your attention.