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Labor Rights

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The Transnational Legal Clinic is an international human rights and immigration clinic at the University of Pennsylvania Law School. This report was written in coordination with the coalition stakeholder reports collectively submitted by LERN, the Bureau des Avocats Internationaux and the Institute for Justice and Democracy in Haiti. It was written in close consultation with civil society in Haiti and reflects the priorities issues and recommendations shared during in-person consultations and interviews in Haiti at the end of January and again in March 2011. Practice Assoc. Professor Sarah Paoletti, Cora Ang, Elizabeth Eisenberg, John Moore, Rekha Nair, Samantha Stephens, and Erika Tang were all involved in the drafting of this report.

EXECUTIVE SUMMARY

This submission provides information under sections B, C, and D as stipulated in the General Guidelines for the Preparation of Information under the Universal Periodic Review:

- Under Section B, this submission sets forth the domestic and international legal standards that govern labour rights, and raises concerns over the lack of enforcement mechanisms to ensure the realization of the rights contained therein.
- Under Section C, the report highlights issues of concern regarding Haiti's failure to develop a plan of action for addressing its chronic unemployment and underemployment, consistent with its obligations under the UDHR, to the detriment of the full range of human rights, from education, housing, and health, to gender-based violence, human trafficking, and security in person. Furthermore, within the jobs that exist, violations of fundamental rights occur on a daily basis without redress.
- Under Section D, the report makes a number of recommendations for action by the Haitian government, including: 1) set up job creation programs that providing a sustainable living wage and recognize the need for national development; 2) take affirmative measures to combat gender-discrimination, gender-based violence, and child labor; and 3) strengthen administrative infrastructure to monitor and enforce all rights contained in the Haitian Labor Code and Under International Human Rights Standards.

INTRODUCTION

1. The January 2010 earthquake struck a devastating blow to the Port-au-Prince, resulting in the massive loss of life, jobs, and government infrastructure. But the challenges in rebuilding Haiti are endemic to Haiti's pre-existing failure to build a labor market economy that ensures the "right to just and favourable remuneration ensuring for ... an existence worthy of human dignity," as set forth in Article 23 of the Universal Declaration of Human Rights. 80% of Haiti's population lives under the poverty line, and more than half live in abject poverty. While there are no current statistics available on Haiti's unemployment rate, un- and underemployment is widespread, and more than two-thirds of the labor force do not have formal jobs.¹ The high rates of un- and underemployment are acutely felt among Haiti's youth (ages 15-24), the majority of whom are unable to access meaningful education, approximately one-third of whom were unemployed before the earthquake, and almost three-fourths of whom are engaged outside the official labor force.
2. Those able to access the formal, both public and private, and informal labor market experience abuses and exploitation from the initial employment contact through termination of the employment relationship. Despite Haiti's relatively comprehensive Labor Code and ratification of several core international human rights treaties, violations persist with impunity and without redress to their victims, due to lack of monitoring and enforcement.² Employment also does not guarantee access to insurance – health insurance, social security, or other social safety net when workers become sick, injured on the job, are otherwise unable to work or lose their jobs.

3. Haiti has failed to take the lead, in consultation with all sectors of Haitian society, in creating job opportunities that provide a living wage, or the education and training necessary for such jobs, having a direct negative impact on the realization of all other fundamental rights, such as housing, education, security in person. Women and children suffer disproportionately. More needs to be done to formalize informal job sectors to ensure labor and contractual rights are respected and access to insurance is provided.

B. Normative and institutional framework of the State

Haiti's institutional and normative framework fails to provide sustainable employment needed to achieve dignity through work and interdependent human rights.

4. Haiti's minimum wage is 200 Haitian Gds for non-textile manufacturing jobs, and just 125 Haitian Gds (approximately 3USD) for workers employed in textile factories, based on piece-rate incentive pay (presumed to bring wages to 200 gourds), contributing to sweat-shop conditions that exploit already vulnerable workers.³ A recent study of workers employed at SONAPI export processing zone determined an employee must earn approximately nine times the current minimum wage to earn a wage that would allow a one-adult wage earner family with two minor dependents to meet basic needs,⁴ concluding: "Workers' inability to earn sufficient wages perpetuates poverty, ... in turn breeds socioeconomic and political instability, and ultimately hinders the reconstruction process."⁵
5. Despite an explicit provision in its Labor Code establishing the State's obligation to ensure workers and their family members "economic conditions for a dignified existence,"⁶ Haiti has not taken necessary measures to create jobs that provide a living wage, work conditions, and insurance that respect the dignity of the worker. Haiti's failure to ratify either or both the ICESCR and the Protocol of San Salvador, signals its failure to recognize its obligations to progressively realize economic and social rights, in accordance with UDHR Art. 23.
6. While job creation is among the key priorities of the Interim Haiti Reconstruction Commission (IHRC),⁷ the largest and apparently only pending project is the Northern Industrial Park, which is supposed to gradually generate up to 60,000 full-time jobs. Concerns persist about the nature of employment provided and its inability to contribute to the overall growth and sustainability of the Haitian economy for the majority.
7. The only other apparent program in place for employment are those provided by international humanitarian organizations through Cash for Work programs, providing temporary work opportunities for unskilled labor to displaced people living in camps and in the countryside.⁸
8. It is not clear exactly how many Cash for Work (CFW) programs exist, but they currently are likely the largest source of employment in Haiti.⁹ Approximately US\$80 million has been invested in UNDP's cash for work program.¹⁰ A recent Oxfam report states 700,000 people have been engaged in CFW programs.¹¹ Most CFW programs involve manual labor¹² and their duration varies, but all are short term.¹³ A working group from the Inter-Agency Standing Committee for the Haiti Shelter Cluster recommended the following daily salaries for eight hours a day workers in CFW: for a laborer, 200 to 250 Gds (approximately US \$5.00), and for a skilled carpenter, 600 to 650 gds,¹⁴ though workers regularly report earning less than Haiti's minimum wage of 200 Gds a day.

Rights violations in employment persist due to gaps in the labor law and weak enforcement mechanisms, leaving women and children particularly vulnerable.

9. The omission of sexual harassment as prohibited discrimination, and the failure to extend basic human rights to domestic workers and other categories of workers, reflects the domestic labor code's arcane nature¹⁵ and results in violations of Haiti's treaty obligations under the ICCPR, CEDAW, the CRC, the American Convention on Human Rights, and several core ILO conventions.
10. The Ministry of Social Affairs and Work and the labor courts are ineffective in exercising their enforcement mandate, with a history of bias in favor of employers, allowing pervasive workplace abuses to persist, and leaving workers without a remedy.

Monitoring of Labor Rights in Haiti's Textile Industry has been outsourced through HOPE II, and fails to guarantee rights and remedies to the factory workers.

11. HOPE II,¹⁶ which pairs access to duty-free exports into the US with cheap labor to attract private investment and employment in Haiti,¹⁷ established the Technical Assistance Improvement and Compliance Needs Assessment and Remediation (TAICNAR) program and a Labor Ombudsman.¹⁸ To date, however, the mechanisms have failed to live up to their promise. The Ombudsmen's role in protecting and promoting workers' rights remains unclear, and almost no factory workers know of the Labor Ombudsman, or know complaints can be directed to that office.¹⁹ Instead, enforcement is limited to biannual monitoring conducted by Better Work Haiti which supports remediation efforts and publicly reports on progress, but does not adjudicate individual worker complaints.²⁰

C. The need for greater promotion and protection of worker rights at the national level

12. The Government of Haiti's failure to promote jobs that meet decent work standards and provide a living wage to the Haitian people has resulted in ongoing human rights violations, and women and children suffer disproportionately.

Human Rights Abuses are rampant in the Cash for Work programs.

13. In addition to the lack of permanent or sustainable employment provided individuals through Cash for Work, these programs tend to operate exclusively in the informal market and violations persist due to lack of oversight and lack of adherence to fundamental protections. Furthermore, CFW does nothing to contribute to Haiti's development, either through expanding the formal labor market or building the capacity of the workforce.
14. Contrary to assertions that CFW programs are distributed equally between men and women, reports indicate that men have been granted greater access to CFW opportunities.²¹ Those in charge of distributing the CFW jobs are reported to require payment or political votes for the job, and exchange sex in lieu of money from women and girls. In addition, women earn on average less than men for the same work performed,²² and are less likely to be assigned positions as team leaders, leaving them with lesser income opportunities.²³

15. Once CFW jobs are obtained, workers may be charged for gear, food and other items deducted from their pay, bringing their already low wages below the legal minimum. Little if any training is provided to workers participating in rubble removal and other jobs that pose inherent health and safety risks. While they may be provided minimal protective gear, including face masks, masks are rarely, if ever, worn, demonstrating a lack of understanding of the health risks posed. Only a handful of programs assist with health insurance or access to medical care for those injured while working or who become ill.²⁴
16. Despite the realization that CFW programs do not provide job security, there has been little movement away from CFW towards more permanent employment. According to Oxfam, one international NGO stated donor restrictions forced his organization to convert what should have been sustainable livelihood projects that would have more appropriately been served by full-time employees as CFW projects.²⁵ Haitian economist Camille Chalmers has noted workers “know that they are earning money doing something that is not really work.... It creates a kind of deformation in peoples’ heads about what work should be.”²⁶
17. While some international organizations running CFW programs have taken steps to ameliorate disparities and combat the risks of violations associated with these programs, Haiti has played no role in advocating on behalf of its people and has provided no forum for individuals seeking redress where violations persist.

Human Rights Abuses in the Textile Industry

18. The major compliance violations exposed by Better Work include freedom of association and collective bargaining, occupational safety and health, and working time, wherein employers force individuals to work overtime by taking their time-cards and refusing to return them until the quota has been reached.²⁷ Sexual harassment and abuse is also pervasive.

Denial of Right to Freedom of Association and Collective Bargaining

19. Freedom of association and collective bargaining remain elusive, due to the lack of adequate and just enforcement mechanisms, as well as the high rate of unemployment that guarantees employers a ready pool of replacement workers. Workers reported termination in retaliation for trying to organize, and denial of access to organizers seeking to engage with workers around their associational and bargaining rights.²⁸ Other workers report Haitian police facilitate the crack down on associational and collective bargaining rights by pursuing unlawful arrests and arbitrary detention of labor leaders engaged in exercising their associational rights. Furthermore, those unions do exist are often under the control of the employer and not the employees, leaving the workers without true representation.

Discrimination and Violence against Women and Girls

20. Historically, Haitian women have been unable to exercise the full enjoyment of their economic rights due the historical pattern of gender-based discrimination and violence against in both the formal and informal sectors,²⁹ a situation only exacerbated by the 2010 earthquake.³⁰ Deep rooted patriarchal attitudes and stereotypes regarding male and female roles in the work place and society work as a direct obstacle to gender equality.³¹

21. Despite the fact that Haiti has signed human rights treaties for the protection of women, gender-based harassment and violence is rampant in both the formal and informal employment sectors.³² Women are paid less than half of men in similar employment, and suffer a range of abuses in the workplace.³³
22. Women and girls are generally relegated to the informal sector thereby excluding them from the standard labor protections and granting them opportunities only in professions with the lowest salaries and those considered “feminine.”³⁴ In the period from 1990 – 2000, 80% of women were self-employed in the non-agricultural informal sector.³⁵ Where those women are self-employed as vendors, they face a payment scheme where men demand sexual payment in exchange for a monthly reprieve on the sidewalk vendor fee.³⁶
23. Within the formal sector, women fare no better, often relegated to the textile industry where the minimum wage is lower,³⁷ and where abuses are rampant. Representatives of KOFAVIV (Commission of Women Victims for Victims) and Antén Ouvriye note among the many issues women face in factory work is sexual violence and coercion in order to attain work, keep work, or to advance.³⁸

Child Labor and Restavèk Children

24. As is more fully discussed in *Restavèk: The Persistence of Child Labor and Slavery*, UPR Submission of Restavèk Freedom, child labor and abuses associated with restavèk children persist despite domestic and international labor laws banning the practices. In addition, children are often put to work in the informal sector outside of the household, in areas such as agriculture and as street vendors. The Ministry of Social Affairs and Labor is responsible for enforcing child labor protections, and IBESBR has as its mandate the implementation of those protections, but neither has demonstrated a capacity to investigate, combat and seek redress for violations. Furthermore, abuses and trafficking in children persist due to the lack of a strong educational system accessible to all children, the lack of housing and personal security, and the lack of meaningful job opportunities for parents.³⁹

D. Recommendations for Action by the Haitian Government

1. **Set up job creation programs that providing a sustainable living wage and recognize the need for national development, in fulfillment of its obligations under UDHR Art. 23 and consistent with its obligations as a signatory to the San Salvador Protocol.**
 - a. Promote creation of development industrial zones rather than free trade areas, which disadvantage low-income Haitians, especially women, with poor working conditions and international labor standards.
 - b. Strengthen public sector employment.
 - c. Reduce the reliance on cash for work programs as the primary source of income.
 - d. Develop the educational system to build capacity among the Haitian workforce to allow for more sustainable development in other areas of industry.
 - e. Allow Haiti to determine its own economic framework in consultation with civil society.
2. **Take affirmative measures to combat gender-discrimination, gender-based violence, and child labor.**

- a. Prioritize comprehensive gender assessments in the planning and evaluation of all short-term and long-term economic initiatives by collecting and developing sex-disaggregated data for use throughout the design, implementation, monitoring and evaluation of all economic recovery projects.⁴⁰
 - b. Take measures to pass legislation making illegal sexual harassment in both the formal and informal workplace.
 - c. Recognize domestic labor as labor, and take affirmative steps to end abuses and the most severe forms of child labor experienced by Restavek children.
3. **Strengthen administrative infrastructure to monitor and enforce all rights contained in the Haitian Labor Code and Under International Human Rights Standards.**

Endnotes

¹ See CIA Fact Book, available at: <https://www.cia.gov/library/publications/the-world-factbook/geos/ha.html>. According to the International Labor Organization, in 2010, 35% of the active population was unemployed, with unemployment concentrated in the cities, where 41% of men and 43% of women are unemployed, with high rates of underemployment (more than 80% of the working population is self-employed, or other employed in the informal market.

² See US Department of State 2009 Human Rights Report (Haiti) (March 2010), noting the government's failure to enforce the right to organize and bargain collectively, the ineffectiveness of Haiti's labor courts, lack of adequate funding for IBESRP to enforce child labor laws and regulations, ineffective investigations and lack of judicial recourse, and lack of enforcement of health and safety standards.

³ See, NPR Reporter Corey Flintoff, "In Haiti, a Low-Wage Job is Better than None" <http://www.npr.org/templates/story/story.php?storyId=104403034> (accessed March 9, 2011).

⁴ Solidarity Center Report (March 2011), p. 1.

⁵ *Id.*

⁶ Section 8, Haiti Labour Code.

⁷ cirh.ht

⁸ See Haiti Grassroots Watch, *Cash for...what?*, <http://haitigrassrootswatch.squarespace.com/Dossier2Story1>.

⁹ Research by Haiti Grassroots Watch, provided the following numbers: Concern Worldwide, 400 workers; American Refugee Committee, 105 workers; Catholic Relief Services, 6,000 workers; Mercy Corps, about 600 workers near Hinche; the World Food Program (WFP) a total of 140,000 people by the end of 2010. The United Nations Development Program claims it will have employed almost 400,000 people by the end of 2010 (although the WFP says that some of those jobs are counted as WFP jobs, too). Jane Regan, Huffington Post, *What "work" are the "cash for work" programs really doing?*, November 10, 2010, http://www.huffingtonpost.com/jane-regan/haiti---what-work-are-the_b_781691.html.

¹⁰ Haiti Grassroots Watch, *Cash for...what?*, <http://haitigrassrootswatch.squarespace.com/Dossier2Story1>.

¹¹ *From Relief to Recovery: Supporting good governance in post-earthquake Haiti*, p. 7, Oxfam Briefing Paper (6 January 2011).

¹² Haiti Grassroots Watch, *Cash for ... what?*, supra n. 8.

¹² *Id.*

¹³ Cash for work jobs are generally supposed to last 8 hours a day for five to six days a week, for a period of two to four weeks. *Id.*

¹⁴ Haiti Shelter Cluster 2010 <https://sites.google.com/site/shelterhaiti2010/technical-info/twig-1/cfw>.

¹⁵ The domestic, written in 1961 and updated by Decree in 1984, sets forth rights related to: non-discrimination in hiring, terms and conditions of employment, and termination; compensation for work, including provisions related to overtime; forced labor, freedom of association and collective bargaining; health and safety; and child labor.

¹⁶ HOPE (The Haitian Hemispheric Opportunity through Partnership Encouragement Act) II extended to 2018 and expanded the prerequisites for participation as originally established in the HOPE Act of 2006 (HOPE 1) which had an original 3 year term. HOPE II was passed as part of the U.S. Food, Conservation, and Energy Act of 2008, 7 USC 8701, Title XV, subtitle D, Part I. HELP was passed in reaction to the 2010 earthquake crisis, extending HOPE II until 2020 and providing an initial outlay of \$100,000 to improve Haiti's customs capabilities. J.F. Hornbeck, *The Haitian Economy and the HOPE Act*, CRS, Jun 24, 2010.

¹⁷ See, A. Equilez et al., *Development of the Industrial Park Model to Improve Trade Opportunities for Haiti*, Plan of Operations, IDB. Currently there are 28 factories registered under the HOPE legislation, of which 27 are located in Port-Au-Prince. See also, Corey Flintoff, "In Haiti, a Low-Wage Job is Better than None" <http://www.npr.org/templates/story/story.php?storyId=104403034> (accessed March 9, 2011).

¹⁸ Food, Conservation, and Energy Act of 2008, 7 USC 8701, Title XV, subtitle D, Part I, Sec. 15403.

¹⁹ Interview with Richard Lavallée, Programme Manager of Better Work Haiti. March 11, 2011.

²⁰ Better Work Haiti is a joint collaboration between the ILO (International Labor Organization) and IFC (International Finance Corporation) established in 2009, whose mandate is to monitor and ameliorate working conditions in the textile factories, by: providing technical assistance to strengthen the legal and administrative structures for improving compliance; assessing compliance with core labor standards and national labor law. Better Work Haiti monitors both international labor standards (freedom of association and collective bargaining; elimination of forced or compulsory labour; abolition of child labour; and the elimination of discrimination in employment and occupation) and the National Labour Code (including compensation; contracts and human resources; health and safety at work; working time).

²¹ Catholic Relief Services Cash for Work Petionville Golf IDP Camp, April 2010 presentation, on file with submitters, indicating females comprised 13% of beneficiaries and males comprised 87% of beneficiaries. This may be attributed to a distribution mechanism wherein one person per household is granted employment (100% of women selected were single mother heads of household). Interviews conducted with individuals living in several of the Tent Camps insist that discrimination in access to cash for work opportunities persist.

²² Oxfam, Cash for Work – Phase 1 (Feb. – March 2010), on file with submitters.

²³ In a March 9, 2011 interview, residents of Camp Canaan reported men are given the opportunity to work over women, noting World Vision provides work that involves building latrines and doing other manual labor, jobs not open to women. Instead, women are forced to leave the camps to go sell things where they can. While interviewees acknowledged that World Vision gave 30 women a grant of \$144 each to start businesses, insufficient supports were provided and the women had no choice but to use the money to feed and care for their children and families. It was reported that not a single woman began a business with the money given. The Camp Manager at Camp Corail noted that micro-financing attempts within the humanitarian community have largely failed because people's situations are so dire and because accountability structures were not well planned and/or implemented. Those who received small grants often had to buy food to save their own or others' lives. Meeting with Bryant Castro, Camp Corail

Camp Manager, March 9, 2011. Catholic Relief Services Cash for Work Petionville Golf IDP Camp, April 2010 presentation, on file with submitters, indicating ratio of male to female team leaders was 9:1, and team leaders received 300 gourdes a day, while laborers received just 200 gourdes a day.

²⁴ Interview with Niek de Goeij, Catholic Relief Services, Haiti, March 15, 2011.

²⁵ From Oxfam, *Relief to Recovery*, pp. 17-18.

²⁶ Haiti Grassroots Watch, *supra* no.8.

²⁷ *Better Work Haiti: Garment Industry 1st Biannual Report under the HOPE II Legislation*, International Labour Office, International Finance Corporation, Geneva, October 19, 2010. Also see *2007 Annual Survey of violations of trade union rights*, available at <http://survey07.ituc-csi.org/getcountry.php?IDCountry=HTI&IDLing=EN>.

²⁸ See Solidarity Center, *UNEQUAL EQUATION: THE LABOR CODE AND WORKER RIGHTS IN HAITI*, for a detailed account of workplace abuses in Haiti, specifically around the rights to collective bargaining and freedom of association.

²⁹ Article 33, *Socio-Political Context in Haiti and Its Impacts on Women, The Right of Women in Haiti to Be Free From Violence and Discrimination*, Inter-American Commission on Human Rights, available at <http://www.cidh.oas.org/countryrep/Haitimujer2009eng/HaitiWomen09.Intro.Chap.IandII.htm#I>.

³⁰ *Women Struggle for Rights as Haiti Recovers*, Newsroom, United Nations Development Programme, available at <http://content.undp.org/go/newsroom/2010/march/women-struggle-for-rights-as-haiti-recovers.en>.

³¹ Article 20, *Concluding Observations of the Committee on the Elimination of Discrimination Against Women, Convention on the Elimination of All Forms of Discrimination Against Women*, February 10, 2009.

³² *Information on Sexual Violence in Haiti Prior to the Earthquake*, Inter-Agency Standing Committee.

³³ *Women struggle for rights as Haiti recovers*, October 22, 2010, available at [www.undp.org: http://content.undp.org/go/newsroom/2010/march/women-struggle-for-rights-as-haiti-recovers.en](http://content.undp.org/go/newsroom/2010/march/women-struggle-for-rights-as-haiti-recovers.en).

³⁴ Article 39, *Socio-Political Context in Haiti and Its Impacts on Women, The Right of Women in Haiti to Be Free From Violence and Discrimination*, Inter-American Commission on Human Rights, available at <http://www.cidh.oas.org/countryrep/Haitimujer2009eng/HaitiWomen09.Intro.Chap.IandII.htm#I>.

³⁵ *Women and Men in the Informal Economy: A Statistical Picture*, p. 63, available at www.ilo.org/public/libdoc/ilo/2002/102B09_139_eng1.pdf.

³⁶ Consultation with KOFIV, March 10, 2011; Article 32, *Concluding Observations of the Committee on the Elimination of Discrimination Against Women, Convention on the Elimination of All Forms of Discrimination Against Women*, February 10, 2009.

³⁷ HOPE II.

³⁸ Consultation with KOFIV, March 10, 2011; Consultations with Antén Ouvriye; Article 32, *Concluding Observations of the Committee on the Elimination of Discrimination Against Women, Convention on the Elimination of All Forms of Discrimination Against Women*, February 10, 2009.

³⁹ See UPR Submission on Children's Rights, submitted as part of LERN coordinated submission. 80% of the schools in Haiti are private, and one million school age children are not in school, unable to access an education.

⁴⁰ *The Haiti Gender Shadow Report: Ensuring Haitian Women's Participation and Leadership in All Stages of National Relief and Reconstruction*, A Coalition Gender Shadow Report of the 2010 Haiti Post-

Disaster Needs Assessment, available at:

http://org2.democracyinaction.org/o/5095/images/HaitiGenderShadowReport_preliminary_version.pdf.