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Submissions to the UN Human Rights Council



Institute for Justice & Democracy in Haiti
Bureau des Avocats Internationaux

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Summary Report

I. EXECUTIVE SUMMARY

1. This joint submission filed by the Lawyers' Earthquake Response Network (LERN), the Bureau des Avocats Internationaux (BAI) and the Institute for Justice & Democracy in Haiti (IJDH), summarizes human rights issues raised in 12 stakeholder reports submitted by a coalition of 57 grassroots groups, internally displaced persons (IDP) camps, non-governmental organizations and academic institutions representing a diverse spectrum of Haitian stakeholders. It provides information under Sections B, C, and D as stipulated in the General Guidelines for the Preparation of Information under the Universal Periodic Review (UPR). The coalition recognizes the immense challenges the Government of Haiti has faced following the devastation wrought by the January 12, 2010, earthquake. While the earthquake has created new challenges, the failure of the Government of Haiti to respect, protect and fulfill human rights pre-dates the earthquake. The coalition urges the Government of Haiti to use this opportunity to review its pervasive shortcomings in both its policies and practices, and to commit to not rebuild Haiti as it existed prior to the earthquake, but to build it into a country that respects and promotes human rights in a sustainable and autonomous fashion. It also recognizes the role of the international community in Haiti's development and reconstruction and urges international actors to implement a human rights based approach that supports the Government's efforts toward the realization of rights.

- **Section B** examines the existing frameworks in Haiti for protecting and promoting human rights, and raises concerns about the lack of adequate mechanisms available to ensure the full implementation of the human rights provided for under the UN Charter, the Universal Declaration on Human Rights (UDHR), and the human rights treaties Haiti has ratified. It also addresses the need for Haiti to ratify the International Covenant on Economic, Social and Cultural Rights and the Protocol of San Salvador.
- **Section C** highlights the shortcomings in Haiti's implementation of its human rights obligations, including its obligation to proactively engage with the international community to ensure the people of Haiti have a voice in their own governance and development. Furthermore, it stresses the need for a rights based approach to recovery and relief efforts, and to sustainable development programs that: respect the sovereignty of Haiti; recognize the interdependence of civil, political, economic, social and cultural rights; and build the government and civil society's capacity to collectively advance the full panoply of rights.
- **Section D** highlights a number of recommendations for actions the Government of Haiti can and must take to protect and promote fundamental rights. More detailed and comprehensive recommendations for action are provided in each coalition stakeholder report submitted in conjunction with this overarching report.

2. The LERN coalition recognizes the losses endured by the Government of Haiti in the January 2010 earthquake, the significant role of the international community in all areas of Haitian governance and rebuilding, and the uncertainty surrounding the 2011 Presidential elections. The coalition urges the incoming Government to fully engage all aspects of civil society in consultations throughout its UPR process.

II. SECTION B: NORMATIVE AND INSTITUTIONAL FRAMEWORK OF THE STATE

A. SCOPE OF INTERNATIONAL OBLIGATIONS

3. Haiti has ratified several of the core international human rights instruments, including: the International Covenant on Civil and Political Rights (ICCPR); the Convention on the Rights of the Child (CRC); the Convention Against All Forms of Discrimination Against Women (CEDAW); the Convention on the Elimination of All Forms of Racial Discrimination (ICERD); the Convention on the Rights of Persons with Disabilities (CRPD); the American Convention on Human Rights; and the core ILO Conventions addressing freedom of association and collective bargaining (87 and 98), the elimination of forced and compulsory labor (29 and 105), the elimination of discrimination in respect of employment and occupation (100 and 111), and the abolition of child labor (138 and 182).

4. Haiti has *not* ratified the core international treaty addressing economic, social and cultural rights. It has taken no action towards the ratification of the ICESCR, and while it has signed the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights (“Protocol of San Salvador”), it has not taken steps towards ratification. These omissions are particularly glaring in light of Haiti’s long-standing position as the poorest country in the Western Hemisphere and its marked failure to take affirmative measures aimed at the realization of economic, social and cultural rights for all Haitians, without regard to race, birth, or other social status.

5. Haiti similarly has failed to take action on the ratification of the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, or the Optional Protocol thereto. Furthermore, it has signed, but not ratified, the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography. The refusal of Haiti to participate in these international accountability mechanisms is particularly troubling in light of Haiti’s history of human rights abuses of prisoners, political opponents, human rights advocates, and citizens returned to Haiti following their deportation from the United States and other countries. Its failure to ratify the Optional Protocol to the CRC calls into question its commitment to address the abuses of Restavèk children and other forms of child labor, as well as gender-based violence in Haiti rampant among all ages.

B. CONSTITUTIONAL AND LEGISLATIVE FRAMEWORK

6. Haiti’s Constitution of 1987 provides for the separation of powers among the three branches of government – the Executive, Legislative, and Judicial.

C. INSTITUTIONAL AND HUMAN RIGHTS INFRASTRUCTURE

7. The *Office de la protection du citoyen* was established in 1995, in accordance with Article 207 of the 1987 Constitution, which sets as its mandate “to protect any individual against all forms of abuse of Public Administration,” independent of state and political power. In practice, the Ombudsman system has been of limited effect in protecting and promoting human rights, or in seeking redress and demanding accountability for rights violations. By the Haitian Government’s own admission, the Ombudsman faces obstacles in obtaining information and in getting responses from government officials who refuse to comply in investigative requests, often ignoring the investigative authority of the Ombudsman. The effectiveness of the Ombudsman is further diminished by its limited enforcement authority – it may recommend to

the Ministry subject to complaint certain action and reconsideration of its early decision, and can follow that recommendation with a report to the Executive and Legislative branches. It can similarly propose reforms to legislation and regulations designed to promote the welfare of Haitian citizens, with the goal of decreasing the number of abuses. But it has no significant enforcement authority, is not well known among the Haitian population, has not garnered tremendous credibility, and still falls short of the guidelines set forth in the Paris Principles on national human rights institutions.¹

8. In addition, limited resources, capacity, and political will make the existing mechanisms for addressing human rights in Haiti weak and ineffective. More needs to be done to strengthen and build the credibility of the *Office de la protection du citoyen*. Furthermore, its mandate needs to be expanded to ensure that mechanisms are in place to enforce affirmative obligations of the State to protect Haitians from rights abuses not only at the hands of the government and government officials, but also at the hands of private actors and the international community.

II. SECTION C: PROMOTION AND PROTECTION OF RIGHTS IN HAITI

A. EQUALITY AND NON-DISCRIMINATION

3. While the right to non-discrimination is recognized in the Constitution, provisions outlining prohibited discrimination in Haitian domestic law are limited and fail to establish adequate mechanisms for ensuring the right to non-discrimination, leaving domestic law and practice out of step with Haiti's obligations under the ICCPR, ICERD, and CEDAW.

4. **The pervasiveness of gender-based violence in Haiti brings into sharp focus the Government's failure to ensure that the fundamental human rights of women and girls are protected without discrimination.**² There are inadequate legal protections against sexual violence and harassment. Sexual harassment is not included as prohibited discrimination in Haiti's labor code, and women have long endured sexual harassment and rape as part of their working relationship.³ In society at large, women and girls are at increased risk of rape, given 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.

5. All of these risk factors have increased dramatically in post-earthquake Haiti, resulting in an epidemic of gender-based violence against women and girls.⁴ The UN Security Council, several UN Special Rapporteurs and Representatives, and the Inter-American Commission on Human Rights (IACHR) have called attention to the sexual violence against displaced women and girls as an issue that must be addressed by the international community and the Haitian government. These actors have also called for the inclusion of Haitian grassroots women's groups in meaningful participation in the coordination efforts to address and prevent sexual violence in IDP camps.⁵

B. RIGHT TO LIFE, LIBERTY, AND SECURITY OF THE PERSON

6. **The January 2010 earthquake and the lack of meaningful and sustained rebuilding efforts have had a significant and negative impact on all Haitians' enjoyment of the right to life, liberty, and security of person.** The earthquake was itself an arbitrary deprivation of life, as the exuberant death toll was a direct result of long-term structural inadequacies and a failure to protect the right to safe housing. Insecurity after the earthquake is acute in the tent camps in Port-

au-Prince, but the conditions that led to this denial are long-standing, and it is critical that responses to these rights violations look further back in seeking to address the root causes.

7. As noted above, women and girls are routinely denied the right to security of person as they are regularly subjected to rape and other forms of gender-based violence, and there is little if any redress available to them. Extremely limited notions of accountability persist and acts of violence are largely perpetrated with impunity. IDP communities as a whole also experience violations of the right to security of person as forced evictions are carried out at an alarming rate, without adequate notice and often through the use of threats or acts of violence.⁶

8. **Haiti's justice system routinely denies life, liberty and security of person to those deprived of liberty by the state and held in prisons and in police station holding cells.**⁷ Over 80% of prisoners have not been convicted of a crime and are held in illegal pretrial detention for over a year on average. Haiti's prison conditions rank among the worst in the Western Hemisphere;⁸ prisons and detention centers are overcrowded, poorly maintained and unsanitary, periodically lacking in food and water as well as basic medical services and medical isolation units for contagious patients.⁹ These conditions fall far below minimum standards and amount to torture or cruel, inhumane and degrading (CID) treatment or punishment.¹⁰ In certain cases, especially following the cholera outbreak, the conditions have resulted in an arbitrary deprivation of life.

9. **Persons deported back to Haiti are subject to the same conditions as those detained in Haiti's prisons.** Included among those denied the right to life, liberty and security of person are Haitian citizens deported to Haiti following criminal infractions in the United States or other countries. These deportees are automatically detained by the Government of Haiti upon arrival, and are held in inhumane conditions that amount to torture and CID treatment or punishment.¹¹ The deportees are kept in overcrowded cells with squalid conditions; dirt, feces, blood and vomit cover the walls and floors. One deportee died from cholera-like symptoms in January 2011, despite being visibly ill and despite pleas for help and medical assistance from other deportees. The police guards responded to these pleas with cavalier comments such as "you are here to suffer/die." While the U.S. and other countries are in breach of its obligations under international human rights law and the Convention Against Torture not to deport Haitian citizens knowing the deprivation of life, liberty, and security of person they face when they land, the Government of Haiti has an obligation to ensure these violations do not occur in the first place.

C. ADMINISTRATION OF JUSTICE, INCLUDING IMPUNITY AND THE RULE OF LAW

10. Haiti's system of justice has long been rife with impunity, and while it has a strong set of laws, the just enforcement of those laws is notoriously weak. This is true not only in investigating and prosecuting alleged corruption and other crimes within the Government—impunity and lack of a strong rule of law pervades the Haitian system and extends as well to the international community operating in Haiti.¹²

11. **Haiti's criminal justice system routinely violates basic human rights and fails to comply with protections that exist under Haitian and international law.**¹³ A vast majority of individuals held in detention have not been convicted of a crime, and corruption and inefficiencies in the court systems lead to prolonged pretrial detention that disproportionately affects the poor who are unable to pay for bribes or legal counsel.

12. **Children are also victimized by the failures in the criminal justice system.**¹⁴ Children accused of a crime are incarcerated and often held in pre-trial detention without the benefit of due process and are often incarcerated with adults. While the Haitian Penal Code prohibits the incarceration of children under 16 years old, there are many noted cases of children less than 16 being held in prison.¹⁵

13. **Unequal administration of justice results in impunity for some.** Corruption also enables the unjustified release of guilty criminals, violating the rights of crime victims to see justice prevail over their perpetrators. The Government took a positive step towards ending impunity when it commenced an investigation into human rights abuses perpetrated under the regime of former dictator Jean-Claude Duvalier. The Prosecutor should continue this process of investigating and prosecuting Duvalier's financial and political violence crimes.

14. Haiti also has the responsibility to prosecute human rights violations committed by international actors, including crimes in which MINUSTAH soldiers are complicit.¹⁶ The Government of Haiti is bound by a Status of Forces Agreement (SOFA) with the UN, which waives all liability for civil or criminal human rights violations by MINUSTAH members. This lack of accountability violates the Government's obligations to ensure universal human rights and equal protection under the law, and Haiti's Constitution, which guarantees the right to civil suit against persons who violate individual liberties - regardless of what body they are a member.¹⁷ As a result, credible allegations of sexual exploitation and abuse committed by MINUSTAH members have not been investigated or prosecuted.¹⁸

D. THE RIGHT TO PARTICIPATE IN PUBLIC AND POLITICAL LIFE

15. **Undemocratic elections violate the right to participate in public and political life.** The right of civil society to participate in public and political life has consistently been undermined by the Government of Haiti and the international community. Fair and legitimate elections that reflect the will of the Haitian people and a stable, credible government are fundamental to securing Haitians' human rights and furthering Haiti's reconstruction.¹⁹ Recent elections in Haiti have not met Haiti's commitments to conduct genuine elections that express the will of the Haitian people.²⁰ The extralegal *Conseil Electorale Provisoire's* systematic exclusion of eligible political parties in elections in April 2009, June 2009, November 2010 and March 2011, without legal justification, violated Haiti's national and international obligations.²¹ On November 28, 2010, in the midst of a cholera epidemic and continued mass displacement after the earthquake, Haiti held elections to select a president, a third of the Senate and the entire House of Deputies. In these elections, the Haitian people experienced political discrimination in the form of political party exclusion and massive disenfranchisement due to failures of the voter registry and fraud during vote tabulation.²² Despite widespread requests for new elections by 12 of the 19 Presidential candidates, Haitian human rights groups and civil society, the international community pressured the Haitian Government into an electoral result and proceeding with a second round of elections. These elections, funded and partially organized by the international community, were not conducted in accordance with Haitian law or Haiti's international obligations.

16. **Exclusion of Haitian participation in policy making:** Outside the context of elections, Haitians are routinely excluded from discussions about their futures, such as job creation programs and housing plans. Stakeholders should be allowed to fully participate in the rebuilding process, and to facilitate this, information about aid must be transparent and the population

routinely consulted—both in providing input on project design and in ensuring necessary modifications to the projects to maximize the realization of human rights. Meaningful participation is only possible if information about relief and rebuilding is transparent and easily accessible to the community in a language known to them – something that has been lacking in the international relief and rebuilding efforts. Special efforts should be made to ensure that groups that have been historically excluded from the political process and have not had access to basic services – such as women, disabled persons, IDPs, and poor communities -- are given an opportunity to participate.

E. RIGHT TO WORK AND TO JUST AND FAVORABLE CONDITIONS OF WORK

17. **Lack of adequate enforcement contributes to abuses in all aspects of the employment relationship.** The *Ministère des affaires sociales et du travail* and the labor courts operating under its auspices are weak and ineffectual in their enforcement of the domestic labor code. Child labor and the rights to collective bargaining and freedom of association, to be free from forced or compulsory labor, to non-discrimination, and to a safe and healthy work environment persist without redress.

18. **Anti-discrimination laws do not fully comply with ICERD or CEDAW:** Rape and other forms of gender-based violence are pervasive in all aspects of the working relationship.²³ Furthermore, despite its obligations under international law, Haiti has failed to take affirmative measures to ensure that employment opportunities and workplace rights are enjoyed equally across lines of gender, race, and other social status.

19. **Inadequate protection of right of association and collective bargaining:** The acute shortage of job opportunities contributes to employers' ability to treat all workers as replaceable and combat collective bargaining activities. Without adequate labor law enforcement and anti-retaliation protections in place, employers maintain disproportionate power over their workforce.

20. **Cash for work programs are vulnerable to abuse and exploitation, are not a substitute for meaningful full-time employment, and undermine notions of dignity through work.** Cash for work programs operate exclusively through international NGOs. Haiti has failed to exercise oversight over these programs to ensure respect for and enforcement of basic rights, such as minimum wage guarantees, non-discrimination, and health and safety. Furthermore, the jobs are short-term, low-paying, and often provided solely as a means to keep people occupied, rather than as a means to self-sufficiency through sustainable employment.

21. **Haiti and the Interim Haiti Reconstruction Commission's focus on the development of industrial parks and textile factory jobs does not fulfill Article 23 of the UDHR.** Haiti's chronic unemployment and underemployment requires a more robust job creation program than one limited to building the textile industry, wherein employers are permitted to pay below minimum wage, and piece rate demands contribute to forced and compulsory overtime and health and safety violations. While Better Work Haiti provides important labor compliance monitoring, it does not provide redress when rights are violated. The *Ministère des affaires sociales et du travail* and labor courts need to take a more proactive role in ensuring workers rights are protected, and redress is provided when they are violated.

F. RIGHT TO AN ADEQUATE STANDARD OF LIVING, INCLUDING THE RIGHT TO HOUSING, FOOD, WATER, SANITATION, AND A HEALTHY ENVIRONMENT

22. **Rights that are critical components to an adequate standard of living continue to be out of reach for Haiti's poor majority.**²⁴ The Constitution of Haiti recognizes “the right of every citizen to decent housing, education, food and social security.”²⁵ The current minimum wage falls far short for a person to obtain a decent standard of living,²⁶ and the lack of employment opportunities prohibit poor Haitians’ ability to access basic services, including adequate food, water, housing and education.

23. **Haiti continues to fail in its obligation to provide decent housing.** The Government has failed to exercise its constitutional authority to protect housing rights that every Haitian citizen is entitled to enjoy, or to marshal the resources of existing institutions in a way that promotes progress, transparency, and accountability in the reconstruction process.²⁷

24. Prior to the earthquake, a majority of Haitians lived in overpopulated urban centers, shantytowns or under-developed villages that fail to meet minimum standards of habitability. These settlements lack access to basic necessities such as clean water, sanitation, and electricity, and are plagued by high rates of violence, particularly sexual violence against women and girls. Moreover, there is virtually no security of tenure in Haiti, which leaves a majority of people, especially the urban poor, facing a constant threat of forced eviction and related human rights violations.

25. These conditions gravely exacerbated the effects of the earthquake. The toll of the earthquake did not result from the tremor alone, but from “an excessively dense population, a lack of adequate building standards, the disastrous state of the environment, disorganized land use, and an unbalanced division of economic activity.”²⁸

26. About 1.5 million people were displaced by the earthquake and migrated to displacement camps where they continue to live under tents, tarps, or makeshift shelters. As of March, nearly 700,000 IDPs still live in over 1000 camps, and in light the lack of alternative shelter options, many of those who have left may be living in dangerous conditions such as in unsound structures that have been deemed uninhabitable due to earthquake damage. Those who do remain live in inhumane conditions that lack security, basic services and proper sanitation. IDPs are vulnerable to violent attacks including gender-based violence and threats of forced evictions.

27. Evictions are generally carried out extra-judicially and without regard for the rights of IDPs. In November 2010, the IACHR instructed the Government of Haiti to implement a moratorium on forced evictions, but the Government has not taken any steps to comply with that directive.²⁹ The Government has also failed to provide protection for IDPs, and has not publicly condemned or discouraged forced evictions. In some cases, the Government is itself complicit in carrying out the evictions through the involvement of police officers that use force or intimidate IDPs to leave.

28. IDPs are unable to move out of the camps and into permanent housing because of a shortage in housing options, lack of economic opportunity, and unavailability of land. The Government has yet to adopt a plan that will adequately achieve durable solutions to displacement, poverty or homelessness. Furthermore, it took a full year for the Government to release building guidelines for safe construction. This delay stalled the initial rebuilding process,

and those who did proceed with reconstruction did so without the guidance of best practices relevant to the Haitian context. The guidelines remain voluntary, and the absence of enforceable building codes runs the risk of recreating the same structural deficiencies that caused disproportionate damage and loss of life in the January 2010 earthquake.

29. **Violations of rights to food, water and sanitation further hinder the realization of the right to an adequate standard of living.** Several factors in Haiti threaten the basic human right of food security, including the unrestricted importation of seeds without regard to phytosanitary requirements, the largely unregulated importation and use of dangerous and often unlabeled pesticides, international trade policies and foreign food assistance that destroy local food markets. Widespread deforestation has led to soil erosion, which in turn results in decreased agricultural yields and deadly landslides. As much as 95% of Haiti's forests have been lost and today, forests cover less than 2% of the country.³⁰

30. In the aftermath of the earthquake, the Government has needed increased assistance to ensure the realization of food, water and sanitation. Donors and relief agencies have played a critical role in providing humanitarian assistance over the past year, and they will likely continue to actively participate in the rebuilding of the country and provision of basic services. While the Government of Haiti has the primary obligation to guarantee the rights to food, water and sanitation to its people, human rights obligations should guide the international community's interventions in Haiti. International actors must employ a rights-based approach that prioritizes building the capacity of the Government to realize human rights and empowers the beneficiaries of aid by ensuring that they are informed of the processes that affect their lives and are given the opportunity to share their perspective in a meaningful way. Top-down assistance that bypasses the government, along with a prioritization of distributions over investments in long-term infrastructure, have led to a disempowerment of Haitians and hindered sustainable measures to meet the right to food, water and sanitation.

31. **In part because of a lack of adequate environmental assessment and planning in current and future redevelopment efforts, many relief activities threaten the long-term interests of Haitians, particularly the country's most vulnerable populations.** Crisis response does not require a prolonged disregard for natural resource protection, economic independence, health and safety concerns, or other discrete interests of rural or poor populations.

32. Slow rubble removal has led to violations of the right to health and has hindered the rebuilding effort. The rubble contains toxic substances and carcinogens that leach into ground and surface water, polluting local water and creating downstream problems in coastal fisheries, which poison food and water supplies as well as threatening livelihoods. Despite the toxic nature of rubble, clean up workers are not provided with protective gear adequate to protect their health.

33. Haiti should enact and pursue policies that ensure all substantive decisions are made by, or in meaningful consultation with, Haitian stakeholders of all socioeconomic levels. Unless specific measures are included in the structure and execution of relief and rebuilding efforts to enable broader participation in economic growth and encourage greater self-determinacy in environmental stewardship and natural resource management, human rights will go continue to be under-protected.

G. RIGHT TO EDUCATION AND THE RIGHTS OF THE CHILD

34. **The rights of children are severely under-protected in all areas of civil, political, economic, social and cultural rights.** Haiti has a very young population -- approximately 50 percent is under 18 years old. While the Haitian Government, in cooperation with international partners, has taken some steps to address human rights violations affecting children, those steps are woefully inadequate.

35. Before the earthquake, it was estimated that 2,000 children in Haiti were kidnapped or trafficked every year. After the earthquake, the situation has worsened considerably. Haiti has struggled to provide adequate health care for children and the country's lack of a public health system has left children in a volatile situation.

36. In 2009, the UN estimated that around 200,000 children in Haiti were mentally or physically disabled. Many of these children are abandoned because of the costs associated with caring for them, and because of a history of shunning the disabled because they are considered a burden to their already struggling families. Haiti is mandated to prevent children with disabilities from being discarded or at the very least to ensure that, if abandoned, those children are adopted or put in foster care.³¹ However, the Haitian government does not have a program promoting the adoption of children with disabilities; nor does it have a program educating parents of disabled children to prevent their abandonment.

37. **Many children cannot access education because of high costs and scarcity in quality education.** Access to education is closely linked to future realizations of the right an adequate standard of living, and ranks high in priority among Haiti's poor. Due in part to the lack of affordability of Haitian schools, only 55% of primary-school-age children in Haiti attend school, and less than one third of those enrolled reach the fifth grade. After the earthquake, displaced children have especially lacked access to education, raising concerns that these children will be a "lost generation."

38. Lack of educational opportunities, lack of sustainable employment at a living wage, and Haiti's failure to promote the rights of the child all contribute to the plight of child domestic servants known as *restavèk* children. A 2003 law intended to address the abuses of the *restavèk* simply requires that a child only be "entrusted to a host family within the context of a relationship based on aid or solidarity," and that the child "must enjoy the same privileges and rights as the family's other children and be treated as a member of the family." It fails to adequately address what "aid or solidarity" is and further does not provide any specific punishments. Article 340 of the Haitian Labor Code establishes a fine against any employer who employs a child without a work permit, but there is no evidence of sufficient enforcement. While the *Ministère des affaires sociales et du travail's* implemented a hotline for citizens to call and report violations of children's rights in 2000, the minimally staffed program offered limited assistance in response to the 200 calls for assistance it received each year. At this point in time, it is unclear whether this hotline continues to exist.

III. SECTION D: RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

The coalition calls upon the Government of Haiti to take the following actions:

- ***With regard to the normative and institutional framework for addressing human right:*** take immediate action to ratify and implement the ICESCR and the Protocol of San

Salvador, the CAT and its Optional Protocol, and the First Optional Protocol to the CRC; work to build the capacity of its governmental institutions charged with enforcing domestic rights provisions, and expand the scope and build the capacity of the Office of the Protector of the Citizen for implementation of all of its international human rights obligations, consistent with the Paris Principles.

- ***With regard to its obligations to civil society and to protecting the sovereign rights of the Haitian people:*** ensure all sectors of civil society are given a voice in decisions of governance and decisions related to development and rebuilding; encourage free and full participation of all eligible political parties in order to comply with Haiti's domestic and international legal obligations, and ensure women's equal right to participation; take affirmative measures to build the capacity of civil society and all branches of governance as it asserts its rights to self-governance and creates programs for sustainability and self-sufficiency.
- ***With regard to the right to life, liberty, and security of person:*** Within the prison system, eliminate practices that amount to torture and cruel and unusual treatment, take measures to reduce the prison population and overcrowding, especially prolonged pretrial detention; monitor activities of all law enforcement and MINUSTAH forces to ensure compliance with human rights standards; investigate and prosecute violations of life, liberty and security of person, whether committed by government officials or international actors.
- ***With regard to the administration of justice, including impunity and the rule of law:*** create and strengthen mechanisms of accountability at all levels of government, the judiciary, and among international actors operating in Haiti.
- ***With regard to the right to work and to just and favorable conditions of work, including the right to freedom of association and collective bargaining:*** develop meaningful job creation programs that build the capacity of the Haitian work-force and provide a livable wage and lead to self-sufficiency; capacitate the *Ministère des affaires sociales et du travail* and the labor courts to enforce all labor laws and provide redress when violated; revise the 1961 Labor Code to bring it into compliance with human rights standards, and particularly to prohibit sexual harassment
- ***With regard to the right to social security and adequate standards of living:*** lead the international community to prioritize capacity building of the Government to enable it to realize an adequate standards of living, including sustainable access to adequate levels of food, clean water, and sanitation; encourage the purchase and use of local or regional commodities by donor countries in the rebuilding process; adopt a resettlement plan that fulfills the right to housing; promulgate enforceable building codes; implement a moratorium on forced evictions.
- ***With regard to education and rights of the child:*** provide universal access to quality education through increased investments in school construction in rural areas, training and paying teachers, and implementing instruction in Haitian Creole; pass legislation criminalizing intrastate and interstate child trafficking and better equip relevant institutions to protect and respond to child abuse.

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- ¹ See Interim Cooperation Framework, Summary Report (2004-2006), available at: <http://haiticci.undg.org/uploads/ReportVersion8%20Eng%20FINAL%20Low%20Res.pdf>. See also, Droits et Démocratie, Intervention orale dans le cadre du dialogue interactif avec L'Expert indépendant nommé par le Secrétaire général sur la situation des droits de l'homme en Haïti, Michael Forst, Conseil des droits de l'homme, 11e session (2-19 juin 2009), available at: http://www.dd-rd.ca/site/what_we_do/index.php?id=3002&lang=fr&subsection=where_we_work&subsubsection=country_documents.
- ² See Joint UPR Submission Gender Based Violence Against Haiti Women & Girls in Internal Displacement Camps, submitted by FAVILEK, International Women's Human Rights Clinic at the City University of New York School of Law, KOFAVIV, KONAMAVID, MADRE, Women's Link Worldwide.
- ³ See UPR submission on Labor Rights, submitted by Antèn Ouvrye and the Transnational Legal Clinic, University of Pennsylvania School of Law.
- ⁴ See Joint UPR Submission Gender Based Violence Against Haiti Women & Girls in Internal Displacement Camps, submitted by FAVILEK, et al.
- ⁵ See, e.g., 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); 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; and October 21, 2010, Request for Precautionary Measures to the Inter-American Commission on Human Rights (IACHR) filed by KOFAFIV, KONAMAVID, FAVILEK, MADRES, the International Women's Human Rights Clinic at the City University of New York School of Law, Women's Link Worldwide, the Center for Constitutional Rights, IJDH/BAI, and Morrison and Foerster, LLP.
- ⁶ See Joint UPR Submission on the Right to Housing, submitted by Camp Benediction, et al.
- ⁷ See Joint UPR Submission on Criminal Justice, submitted by Alternative Chance, Center for Constitutional Rights, Conférence des universitaires pour la défense des droits et de la liberté, and LAMP for Haiti Foundation.
- ⁸ See e.g., Seton Hall Law, *Haiti Rule of Law*, <http://law.shu.edu/ProgramsCenters/PublicIntGovServ/CSJ/Haiti-Rule-of-Law.cfm>.
- ⁹ *Yvon Neptune v. Haiti*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 180 (May 6, 2008).
- ¹⁰ See U.N. Independent Expert on the Situation of Human Rights in Haiti, *Report of the Independent Expert on the Situation of Human Rights in Haiti*, U.N. Doc. A/HRC/14/44/Add.1 (May 31, 2010) (by Michel Forst).
- ¹¹ Interviews by Caroline Bettinger-Lopez and Marleine Bastien with Haitian deportees, Haiti Fact-Finding Mission (Feb. 12, 2011); Joint UPR Submission on Criminal Justice, submitted by Alternative Chance, Center for Constitutional Rights, Conférence des universitaires pour la défense des droits et de la liberté, and LAMP for Haiti Foundation.
- ¹² See Joint UPR Submission on MINUSTAH, submitted by Bri Kouri Nouvèl Gaye, Mennonite Central Committee (MCC) Haiti, Let Haiti Live, and UnityAyiti.
- ¹³ See Joint UPR Submission on Criminal Justice, submitted by Alternative Chance, et al.
- ¹⁴ See Joint UPR Submission on Children's Rights, submitted by Fondasyon Kolezèpòl pou Sove Timoun, Moun Viktim (MOVI), and Action des Unités Motivés pour une Haïti de Droit (AUMOHD).
- ¹⁵ Inst. for Justice & Democracy in Haiti, Health & Human Rights Prison Project, Feb. 2008, 1-21, at 7-12, available at <http://www.ijdh.org/pdf/HHRPP.pdf> [hereinafter IJDH Prison Project].
- ¹⁶ ICCPR, Art. 2(1), 14(1).
- ¹⁷ Haitian Constitution, Art. 19, 24-5, 27, 36-2, 40, 276 (1987); ICCPR, Art. 2(1), 14(1).
- ¹⁸ See Joint UPR Submission on MINUSTAH, submitted by Bri Kouri Nouvèl Gaye, Mennonite Central Committee (MCC) Haiti, Let Haiti Live, and UnityAyiti. for more information regarding the Government of Haiti's obligations vis-à-vis MINUSTAH in guaranteeing the administration of justice, including impunity and the rule of law.
- ¹⁹ See Joint UPR Submission on the Right to Vote: Unfair and Un-inclusive Elections that do not Reflect the Will of the People, submitted by Bureau des Avocats Internationaux, Canada Haiti Action Network, TransAfrica Forum, and Louisiana Justice Institute for more information on civic participation in the context of elections.
- ²⁰ See Joint UPR Submission on the Right to Vote, submitted by Bureau des Avocats Internationaux et al.
- ²¹ *Haiti's November 28 Elections*, IJDH, November 22, 2010 available at <http://ijdh.org/archives/15456>, p.2.

²² *Reconstructing Democracy, Joint Report of Independent Electoral Monitors of Haiti's November 28, 2010 Election*, p. 9, available at <http://transafrica.org/wp-content/uploads/2011/Haiti%20Joint%20Observer%20Report%20FINAL.pdf>.

²³ See Joint UPR Submission on Labor Rights, submitted by Anten Ouvrye et al.

²⁴ As discussed in greater detail in the Labor Rights submission, Haiti suffers from chronic unemployment and underemployment. Furthermore, the current minimum wage in Haiti falls far short of a livable wage. Meaningful access to a good education, job training programs, and the creation of sustainable jobs that pay a livable wage (far higher than the current minimum wage) are essential components to ensuring the right to an adequate standard of living.” That is – assuming you need the room. Otherwise, maybe some of this can go into the text – to highlight the inter-dependence of rights.

²⁵ Haiti Constitution, art. 22 (1987).

²⁶ See Joint UPR Submission on Labor Rights, submitted by Anten Ouvrye et al.

²⁷ See Joint UPR Submission on the Right to Housing, submitted by Camp Benediction, et al.

²⁸ Action Plan for National Recovery and Development of Haiti, p. 5 (March 2010).

²⁹ Precautionary Measures, No. MC-367-10, Inter-American Commission on Human Rights, November 16, 2010.

³⁰ Country Profile: Haiti, May 2006. Library of Congress, Federal Research Division. available at: <http://lcweb2.loc.gov/frd/cs/profiles/Haiti.pdf>

³¹ See Article 30 (5).

Children's Rights

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I. EXECUTIVE SUMMARY

1. This report focuses on children's rights in Haiti. Haiti has a very young population where approximately 50 percent is under 18 years old.¹ While the Haitian Government, in cooperation with international partners, has taken some steps to address the issues raised in this report, those steps are woefully inadequate. First, this report addresses children's right to health focusing on malnutrition and the cholera epidemic. Second, it addresses children's right to special protection, focusing on children with disabilities, child victims of trafficking and sexual violence. Third, it addresses children's Right to Housing. And lastly, it addresses protection for children in conflict with the law.

2. Before the devastating January 12, 2010 earthquake, it was estimated that 2,000 children in Haiti were kidnapped or trafficked every year;² however, following the earthquake conditions ensuring protection for the children of Haiti have worsened considerably. Among facilities destroyed by the earthquake were many of the schools in Port-au-Prince and its surrounding cities; many health centers and hospitals. As a consequence, conditions have worsened considerably in the past year. As a result, the Haitian Government's responsibility to provide protection for the children of Haiti has only gotten greater and the government must intensify its efforts to implement international children's rights.

II. NORMATIVE AND INSTITUTIONAL FRAMEWORK

3. The Haitian Constitution provides that: "The State has the absolute obligation to guarantee the right to life, health, and respect of the person for all citizens without distinction, in conformity with the Universal Declaration of Human Rights."³ Those rights also encompass protection for children's rights."⁴ Addressing employment, the Haitian Constitution requires the minimum age for gainful employment to be set by law and requires special laws to govern the work of minors.⁵

4. International human rights law and norms also establish minimum standards that State Parties must implement to effectively protect children's rights. The Universal Declaration of Human Rights (UDHR) sets forth minimum standards, and these are reiterated in treaties to which Haiti is a State Party, including the Convention on the Rights of the Child (CRC), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Rights of Persons with Disabilities (CRPD). Haiti's international human rights treaty obligations are self-executing and once ratified, become a part of the legislation of the country abrogating any laws in conflict with them.⁶

5. In addition to general human rights protection, the UDHR provides specific protection for children's rights. For example, the UDHR provides protection against any form of slavery.⁷ It guarantees children the right to be registered at birth⁸ and be recognized as persons before the law.⁹ Under the UDHR, children are also protected from arbitrary arrest¹⁰; they are guaranteed the right to housing¹¹ and the right to education.¹²

6. Haiti has ratified the CRC in 1995, a legally binding instrument, but has not signed the two protocols¹³ attached to the Convention. When the Haitian government ratified the CRC, it agreed to protect and ensure children's rights and agreed to hold itself accountable for this commitment before the international community. Article 3 of the CRC requires State Parties to "ensure that the institutions, services and facilities responsible for the care or protection of children shall conform [to] the standards established by competent authorities, particularly in the

areas of safety, health”¹⁴ While Haiti has ratified the CRC since 1995, the Haitian parliament has yet to adopt a children’s code that will implement the provisions of the CRC.

7. Furthermore, Article 34 of the CRC commits Haiti to “undertake to protect the child from all forms of sexual exploitation and sexual abuse.” To prevent “[t]he inducement or coercion of a child to engage in any unlawful sexual activity; [t]he exploitative use of children in prostitution or other unlawful sexual practices. . . .” Next, Article 35 mandates that states take all appropriate measures “to prevent the abduction of, the sale of or traffic in children” In addition to the CRC, the CEDAW ratified in 1981, also provides protection from sexual violence to girls.

8. Haiti ratified both the Convention on the Rights of Persons with Disabilities (CRPD) and the attached Protocol on July 23, 2009. Pursuant to Article 3, the principles of the Convention include: (1) “full and effective participation and inclusion in society;” and (2) equality of opportunity and accessibility. State Parties are required under Article 3 to adopt all appropriate legislative, administrative and other measures to implement the rights recognized in the CRPD.

III. PROMOTION AND PROTECTION OF HUMAN RIGHTS IN HAITI

A. THE RIGHT TO LIFE, SURVIVAL AND DEVELOPMENT

1. Right To Health

9. The right to health is addressed in the CRC, the UDHR¹⁵ and in the International Covenant of Economic Social and Cultural Rights (ICESCR). In addition to Article 4 of the CRC, Article 12.2 of the ICESCR also addresses the right to health, and requires states to take affirmative steps to improve children’s health and to reduce child mortality. Because Haiti ratified the CRC, its failure to ratify the ICESCR does not absolve the government of its responsibility to guarantee children’s right to health.

10. Haiti has struggled to provide adequate health care for its children and the country’s lack of a public health system has left children in a dangerous situation.¹⁶ In a March 2006 report, UNICEF found that one of every fourteen infants in Haiti never reaches their first birthday. The infant mortality rate is worse than any other country in the Latin American and Caribbean regions.¹⁷ Chronic malnutrition, indicative of rampant poverty, is compounded by the lack of public health expenditures for children.¹⁸ Prior to the earthquake, it was estimated that “diarrhea accounted for 16% of the deaths in children under 5”¹⁹ To exacerbate the situation, the earthquake damaged the country’s power, water and sanitation systems, and the deterioration in quality of these vital utilities has created a major health risk.²⁰ This risk became a catastrophe when in October 2010 Haiti was hit with a cholera outbreak.²¹ To date, the cholera outbreak has infected 215,936 and caused 4,131 deaths.²²

11. As the cholera outbreak indicates, the Haitian Government’s response to providing preventive services for children is widely inadequate. Malnutrition affects the child’s development which affects the child’s ability to learn and ultimately affects the child well into adulthood. Thus, the government must aggressively tackle those issues despite its lack of resources. To combat cholera, the Ministère de la Santé Public et de la Population (MSPP) has cooperated with international partners such as Medecins Sans Frontières, to establish cholera treatment centers across the country. In addition, radio stations routinely play public education programs to inform the population on prevention methods to avoid contracting cholera.²³

12. However, the number of casualties indicates that the MSPP’s response lacked efficiency; due in part to pre-existing lack of resources. The number of fatalities is likely to worsen in the

coming months if the government does not aggressively undertake meaningful steps to address the lack of water and sanitation infrastructure. In that endeavor, the Haitian government must pay particular attention to the right to life and the right to health of children from poor families. Those children, like all children, must have access to basic services such as preventive medical care, food and water to combat child malnutrition and child mortality.

2. Right To Housing²⁴

13. The right to housing is intricately linked to children's rights and wellbeing. Over a year after the earthquake that rendered 1.5 million people homeless,²⁵ lack of access to adequate housing continues to affect the security, physical and mental health of children. In a January 2011 report on the anniversary of the earthquake, UNICEF estimated that 380,000 children still remained displaced and living in about 1,200 tent camps.²⁶ Forced evictions from Internally Displaced Persons (IDP) camps present a particularly urgent problem that disproportionately affects children and other vulnerable groups. Over a quarter of those living in IDP camps, 233,941 individuals, including small children, orphaned children, and single mothers have either been evicted or face an immediate threat of eviction.²⁷

14. Property owners often employ a combination of coercive strategies and violence to pressure IDPs to leave their camps, resulting in children and their families being subjected to widespread abuse and constant uncertainty regarding their living situations. Forced evictions have led to the separation of families and fragmentation of communities, shattering critical safety nets for children in post-disaster situations.

15. Haitian civil procedure sets out clear sets out a clear eviction process through the *action possessoire*, which has to be brought before a justice of the peace, but most evictions are currently carried out extra-judicially. International agencies involved in the negotiation process rarely pressure or require property owners to use the legal system, and sometimes abet illegal evictions by complying with purported landowner requests to cease providing essential services.²⁸ International human rights standards also protect IDPs faced with eviction. In addition to a range of human rights treaties that protect the right to adequate housing, the UN Guiding Principles on Internal Displacement contain a number of procedural safeguards that must be fulfilled prior to eviction, including consultation with those affected, reasonable notice, and detailed communication regarding the eviction process. Living under tarps and tents is already a violation of the children's right to housing, however when these families are evicted, they are mostly left with no alternative and often become even more vulnerable to abuse.²⁹ The government must prioritize providing adequate housing to families still living under tarps and tents throughout Port-au-Prince and its surroundings cities.

3. Right to Education³⁰

16. The Haitian Constitution provides individuals with the specific right to education. In particular the Haitian Constitution provides that: "the State recognizes the right of every citizen to decent housing, *education*, food and social security The State guarantees the right to *education*. It sees to the physical, intellectual, moral, professional, social and civic training of the population." (Emphasis added).³¹ While the Constitution of Haiti provides a right to free compulsory primary education to all children,³² almost half of all primary school-age children do not attend school. Haiti's education system is among the world's most privatized. Only 8% of Haitian schools are funded by the state, often with additional fees expected to be paid by families. The other 92% of schools are privately owned with students expected to pay tuition that

most Haitian parents are unable to pay.³³ Furthermore, it is estimated that nearly 80% of teachers do not hold teaching degrees.³⁴ According to the CIA World Factbook, Haiti ranked 177th in the world in education spending in 2007.³⁵

17. Due in part to the lack of affordability of Haitian schools, only fifty-five percent (55%) of primary-school-age children in Haiti attend school, while less than 1/3 of those enrolled reach the fifth grade.³⁶ In addition, only around 4 per cent of disabled children actually attend school.³⁷ After primary school, students attend secondary school, and unfortunately do not fare much better. In the Haitian government's 2007 Growth and Poverty Reduction Strategy Paper, of the 123,000 students admitted to Haitian secondary schools in 2004, only 67% were able to receive secondary schooling.³⁸

18. Education for Haitian parents is one of the most valuable things they can provide to their children. Unfortunately, education in Haiti is a luxury that most Haitian parents cannot afford, particularly because most schools in Haiti are private. Unlike the parents, education expenditure does not seem to be a priority for the Haitian government. As a result, the literacy rate in Haiti is only at a dismal 53 percent³⁹—the lowest in the region.

B. THE RIGHT TO PROTECTION FROM HARMFUL INFLUENCES, ABUSE AND EXPLOITATION

1. Trafficking

19. International law specifically mandates that State Parties to the CRC take measures to combat the illicit transfer and non-return of children abroad.⁴⁰ To meet this end, State Parties are expected to enact bilateral and multilateral agreements in order to prevent the trafficking of children.⁴¹ Article 35 of the CRC directs State Parties to protect children against abduction and trafficking.

20. Following last year's earthquake where a large number of children were separated from their families, Haitian authorities caught ten American missionaries attempting to cross the Haitian border into the Dominican Republic with 33 children without any documentation for them. Following that incident, the *Institut du Bien Etre Social et de Recherche* (IBESR) placed the children at the SOS Children's Villages in Santo, Haiti. All thirty-three children have since been reunited with their families.⁴² While all the children have been reunited with their families, that incident illustrates the vulnerability of Haiti's children. Since then, IBESR in collaboration with UNICEF and the Organization of American States, of which Haiti is a member, created a nationwide civil registration campaign "focusing on children living in institutions and spontaneous sites and expanding to all children throughout the country."⁴³

21. The Brigade for the Protection of Minors (BPM) formed in 2003, is a specialized unit of the Haitian National Police.⁴⁴ The BPM mission consists of preventing juvenile delinquency and supporting police investigations into cases involving child victims of sexual assault, abuse, and exploitation.⁴⁵ The brigade also has a mandate to protect children's physical and psychological integrity.⁴⁶ "Since UNICEF started funding the BPM in April 2010, 8,000 children have been identified as extremely vulnerable within the camps.⁴⁷ The BPM has also screened 7,000 children passing through the border and of those, 1,400 were found not to have the right paperwork.⁴⁸ Thirty five people have been arrested on suspicion of offences relating to kidnapping⁴⁹ but under current legislation, there is no law against trafficking in Haiti."⁵⁰

22. While has taken a positive step in establishing the BPM, it is underfunded and understaffed, unable to fully respond to child protection problems when they arise. In addition, the Haiti/Dominican Republic border is not adequately monitored allowing many Haitian children to be trafficked to the Dominican Republic. Because the CRC is a legally binding instrument, Haiti's failure to provide protection for its children from coercion to engage in unlawful sexual activity is a violation of Haiti's international obligations.

2. Sexual Violence Against Girls⁵¹

23. Among many of the other issues facing girls in Haiti, sexual violence against their person is one of the most invasive and traumatizing experiences many of them have experienced. Under the CRC, "States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. . . ." They should take appropriate measures to prevent: "(a) [t]he inducement or coercion of a child to engage in any unlawful sexual activity; (b) [t]he exploitative use of children in prostitution or other unlawful sexual practices."⁵² CEDAW General Recommendation No. 19 affirms that the duty of States not to engage in acts of gender-based violence extends to the liability for failure to act with due diligence to prevent, investigate and punish acts of violence.

24. Sexual violence against women in general was increasing even before the earthquake and girls accounted for more than 50 percent of all rapes.⁵³ Based on non-governmental organizations reporting of sexual violence cases in 2008, those groups found that the number of cases of women and girls victim of sexual violence increased 40 percent, from 1,100 cases in 2007 to 1,600 in 2008.⁵⁴ The January 2010 earthquake served to exacerbate existing gender inequalities. Though official statistics are lacking, there is overwhelming evidence from grassroots groups living and working in displacement camps that the problem of sexual violence, specifically, the rape of women and girls, has dramatically escalated in the highly unstable and insecure environment of post-earthquake Haiti.

25. The Haitian government has taken several steps over the past few years to address issues of gender based violence. For example, the Ministry of Women's Affairs and Women's Rights and the Gender Unit of the UN Stabilization Mission in Haiti (MINUSTAH) have been implementing a National Plan to Combat Violence against Women since 2006.⁵⁵ However, these measures fall far short of the problem, especially with respect to protection for girls. In view of the increase in violence against women and girls, the government is simply failing in its duty to protect girls against sexual violence.

26. One grassroots women's group working in over two dozen IDP camps recorded two times the number of incidents of sexual violence recorded in the year 2010 in January 2011 alone. Certain grassroots women organizations have experienced a lack of cooperation on the part of the Ministry of women's conditions Women's Ministry and international actors to recognize or work with those grassroots organizations from some of the poorest areas of Port-au-Prince. Furthermore, members of KOFIV (Komisyon Fanm Viktim pou Viktim – Commission of Women Victims for Victims) have expressed their frustration with Haitian police in their failure to properly investigate the complaints. Women and girls have reported instances where the victims were told to capture and transport their attackers to the police themselves. Other problems with the HNP include police officers not showing up to participate in scheduled joint patrols, especially night patrols.⁵⁶

27. Because Haiti lacks an effective legal system “[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. Specifically with regard to sexual . . . violence, the gravity of such crimes is often not understood by Haitian law enforcement and justice officials on the ground.”⁵⁷ The Haitian police needs to be better trained to respond to victims of sexual violence and to understand the sensitive nature of each case when presented.

3. Children With Disabilities

28. The earthquake left Haiti coping with a great number of physically disabled people, including children. Handicap International estimated that between 2,000 and 4,000 amputations were performed in the days following the earthquake.⁵⁸ Accordingly, international partners stressed that “persons with disabilities must not become the forgotten ones during the emergency response and the reconstruction of the country.”⁵⁹ As such, Article 23-3 of the CRPD requires States Parties to “prevent . . . abandonment, neglect and segregation of children with disabilities,” [by providing] “early and comprehensive information, services and support to children with disabilities and their families.”⁶⁰

29. In 2009, the UN estimated that around 200,000 children had mental⁶¹ or physical handicap in Haiti.⁶² Many handicapped children are abandoned because it is both more expensive to take care of them and there is a history of shunning the disabled who are considered a burden to their already struggling families.⁶³ A report published in the Miami Herald in 2009, documented how disabled children are often abandoned in a ward of the General Hospital.⁶⁴ The hospital ward is only intended to be a temporary accommodation for the children, however abandoned children with no prospect for adoption, are left lingering at the hospital.⁶⁵ Advocates have urged the Haitian government to facilitate and promote adoption of those children so that they have an opportunity to learn and live a normal life.⁶⁶

30. As a signatory to this convention, Haiti is mandated to prevent children with disabilities from being discarded or at the very least to ensure that, if abandoned, those children are adopted or put in foster care.⁶⁷ However, the Haitian government does not have a program promoting the adoption of children with disabilities; nor does it have a program educating parents of disabled children to prevent their abandonment. Nevertheless Haiti has made some progress towards the integration of the disabled in Haitian society. For example, in 2007, the « Secrétairerie d'Etat à l'Intégration des Personnes Handicapées » (SEIPH) was established by a presidential decree. SEIPH's mission is to work in prevention and integration of the disabled population.⁶⁸

31. In response to the earthquake, advocacy groups have formed camps consisting of at least one disabled person per family. One such camp is camp SOHAMO which stands for Solidarité des Handicapés Moteurs.⁶⁹ From speaking to camp leaders of SOHAMO, there has been some collaboration with SEIPH. The camp has to date received cholera prevention training from SEIPH and education regarding camp members' rights as persons with disabilities. Parents of some of the disabled children at the camp, speak of the difficulties they have taking their children to school. One mother in particular talked about having to carry her 5 year old boy whose left leg was amputated at the knee after the earthquake because his prosthetic leg was too heavy and he was unable to walk with it.

32. Not only is it difficult for disabled children to go to school, most schools in Haiti are not built with access for disabled children in mind. While most schools are in fact private, even the public schools do not provide such access. The onus is upon the Haitian government to require the private schools to allow easier access to students with disabilities. The Chamber of Deputies voted on the draft law on the Integration of Persons with Disabilities in May 5, 2010. The law has been transmitted to the Senate for ratification, but the Senate has yet to take up the measure.⁷⁰ The government is urged to encourage the Haitian parliament to pass this law.

4. Children in Conflict With the Law

33. Article 40 of the CRC establishes “a minimum age below which children shall be presumed not to have the capacity to infringe the penal law.” Haitian law sets this age at 13 years old. Article 50 of the Haitian Penal Code provides that when a child over 13 years and under 16 years violates the law, he shall simply be admonished or given to his parents, his guardian or the person having custody. Or sent to any other institution of remedial education, in order to receive a moral, civic, and professional education for the number of years the offence requires.

34. While the Haitian Penal Code prohibits the incarceration of children under 16 years old, children less than 16 years old are routinely held in prison, as noted in a study conducted by the Institute for Justice & Democracy in Haiti (IJDH).⁷¹ In that study, it was found that at the time of interview, 22 prisoners were younger than 18, the age of majority in Haiti. Further analysis revealed that 27 prisoners were minors at the time they were arrested, suggesting that five turned 18 during custody. In addition, the sample included one 13-year old, one 14-year old, and two 15-year olds. Additionally, minors were not segregated from the adult population, as required by Haiti’s international treaty obligations under the American Convention on Human Rights.⁷² In the IJDH study, it was found that pre-trial detention, used in Haiti to detain juveniles who have not been convicted of a crime, accounted for 22.2% of the arrests.⁷³

35. Pre-trial detention is a gross violation of children’s right under both Haitian and International laws. Haitian law addressing children in conflict with the law is greatly outdated. Thus, the Haitian government should urge the parliament to pass a Family Code which will provide mechanism to deal with children in conflict with the law. The institutions of remedial education as required under the Penal Code are nonexistent. Thus, children accused of a crime, are incarcerated and often held in pre-trial detention without the benefit of due process. Outside of Port-au-Prince there are no separate prisons for children, and in some cases children are incarcerated with adults.⁷⁴ Accordingly, steps must be taken to improve prison conditions and to prevent pre-trial detention.

IV. CONCLUDING RECOMMENDATIONS

In light of the foregoing, we suggest that the Haitian government implement the following recommendations:

A. GENERAL RECOMMENDATIONS

- 1) Promptly sign the two protocols of the CRC.
- 2) Urge the Haitian parliament to pass a children code to implement the CRC.

B. ISSUE SPECIFIC RECOMMENDATIONS

With respect to child trafficking:

- 3) Immediately pass legislation criminalizing child trafficking
- 4) Provide increase monitoring of the Haiti-Dominican Republic border in different parts of the country.
- 5) Ensure that every Haitian child is registered at birth and recognized as a person before the law.

With respect to children in Conflict with the Law:

- 6) Implement the requirement under Haitian law to establish at least 3 children courts in the country.
- 7) Ensure that children arrested for infractions are immediately brought in front of a judge and not held in preventive detentions.
- 8) Develop alternative methods of holding children accountable for their illegal acts by focusing more on rehabilitation, and less on punitive measures.

With respect to Sexual Violence:

- 9) Install police stations in the camps and deploy regular police patrol in the IDP camps to ensure that the IDPs feel safe and that they can trust the police.
- 10) Provide better training for police officers in responding to victims of sexual violence. Provide more women police officers to deal with girl victims of sexual violence.
- 11) Provide police officers with instruction in conducting effective rape investigations.

With respect to children with disabilities:

- 12) Sign and ratify the Inter-American Convention on the Elimination of all Forms of Discrimination Against Persons with Disabilities.
- 13) Empower the SEIPH in its campaign to educate the public in appropriate language to be used in addressing children with disabilities.
- 14) Demand that the new Senate vote into law the legislation regarding the disabled passed last year by the Chamber of Deputies.
- 15) Ensure that all public schools take into account accessibility for children with mental and physical disabilities.

¹ Office of the Special Envoy for Haiti, Key Statistics, <http://www.haitispecialenvoy.org/relief-and-recovery/key-statistics/> (accessed March 17, 2011).

² Glenn Milner and Caroline Gammell, The Telegraph, Haiti Earthquake: children sold by traffickers for as little as 76 pence each, <http://www.telegraph.co.uk/news/worldnews/centralamericaandthecaribbean/haiti/8328850/Haiti-earthquake-children-sold-by-traffickers-for-as-little-as-76-pence-each.html> (February 21, 2011).

³ 1987 Constitution de la Republique d'Haiti, Art. 19 (available at <http://pdba.georgetown.edu/constitutions/haiti/haiti1987.html>).

⁴ *Id.* art. 261

⁵ *Id.* art. 35-6. *See also* Restavèk report submitted by Restavèk Freedom.

⁶ *Id.* art. 276-2.

⁷ Article 4 of the UDHR. Child labor, known as *restavèk* is a practice that is deeply ingrained in Haitian society.

⁸ See Walter Kaelin, 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 (October 12-16, 2010) (available at ijdh.org/wordpress/wp-content/.../Kalin-Statement-2010-Haiti-English.pdf) (The situation is intensified within the tent camps in the country following the earthquake. Many children born in those tent camps are simply not registered and are thus susceptible to being sold and trafficked).

⁹ See Universal Declaration of Human Rights, art. 6, GA Res. 217(III), UN GAOR, 3d sess., Supp. No. 13, UN Doc. A/810 (1948) (specifying the right to be recognized as a person before the law).

¹⁰ *Id.*, art. 9.

¹¹ *Id.*, art. 25.1.

¹² *Id.*, art. 26.1.

¹³ One optional protocol addresses the sale of children, child prostitution and child pornography. It creates obligations on governments to criminalize and punish the activities related to these offences. The other Optional Protocol addresses the involvement of children in armed conflict.

¹⁴ UN Convention on the Rights of the Child, art. 3, GA Res. 44/25, UN GAOR (1989) (providing that: “[i]n all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”).

¹⁵ UDHR, art. 25 (stating that: “[e]veryone has the right to a standard of living adequate for the health . . . of himself and of his family, including food . . . housing and medical care and necessary social services . . .”).

¹⁶ See Lucy Basset, *Nutrition Security in Haiti: Pre- and Post Earthquake Conditions and the Way Forward*, En Breve Number 157, 2 (newsltr. of The World Bank) (June 2010) (Available at http://www-wds.worldbank.org/external/default/main?pagePK=64193027&piPK=64187937&theSitePK=523679&menuPK=64187510&searchMenuPK=51564153&theSitePK=523679&entityID=000356161_20100928025515&searchMenuPK=51564153&theSitePK=523679) (Before the earthquake, it was estimated that 40% of the population did not have access to potable water and 80% had no access to sanitation facilities.).

¹⁷ See UNICEF, *Child Alert: Haiti*, No. 2 (March 2006) (available at <http://www.unicef.org/childalert/haiti/>) (Low immunization was found to be a major factor in high level of infant mortality rates. “Many Haitian children have no access to basic health services at all. In rural and urban areas alike, cost and distance are barriers to healthcare. Those facilities that exist tend to be poorly situated, understaffed and inadequately supplied. Substandard private health facilities fill the gap between government capacity and public demand.”).

¹⁸ *Id.* (“Rates of chronic malnutrition among Haitian children are also high, especially in rural areas. It is estimated that across the country, almost one quarter of all children under the age of five suffers from moderate to severe malnutrition a developmental inheritance that can leave children with an intellectual and physical deficit for the rest of their lives.”).

¹⁹ UN PAHO/WHO, *Earthquake in Haiti – One Year Later: PAHO/WHO report on the health situation*, http://www.who.int/entity/hac/crises/hti/haiti_one_year_after_january2011.pdf (January 2011).

²⁰ *Id.*

²¹ Centers for Disease Control and Prevention, *Cholera Confirmed in Haiti*, <http://www.cdc.gov/haiticholera/situation> (posted October 21, 2010).

²² UN OCHA, *Cholera Outbreak: update*, <http://ochaonline.un.org/tabid/6412/language/en-US/Default.aspx> (updated February 4, 2011).

²³ USAID, *Haiti-Cholera*, Fact Sheet No. 4, FY 2011 (November 26, 2010) (available at http://www.usaid.gov/our_work/humanitarian_assistance/disaster_assistance/countries/haiti/template/fs_sr/fy2011/haiti_ch_fs04_11-26-2010.pdf).

²⁴ See Right to Housing Report submitted by Groupe d'Action pour la Defense des Droits Humains en Haiti GADH, You.Me.We, and IAT.

²⁵ Teeluck Bhuwanee, UNESCO, UNESCO Haiti 1 (June 2010) (available at unesdoc.unesco.org/images/0018/001883/188343e.pdf).

²⁶ Unicef, Children in Haiti: one year after -- the long road from relief to recovery, http://www.unicef.org/infobycountry/files/Children_in_Haiti_-_One_Year_After_-_The_Long_Road_from_Relief_to_Recovery.pdf (January 2011).

²⁷ Camp Coordination Camp Management Cluster, International Organization for Migration, *Haiti: displacement tracking matrix v2.0 update 2,13* (March 16, 2011) (available as pdf report at <http://www.cccmhaiti.info/page.php?id=89>).

²⁸ Observations from human rights lawyers working with the Internally Displaced.

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- ²⁹ See Right to Housing Report and Gender Based Violence report submitted by MADRE, KOFAVIV, FAVILEK and KONAMAVID, endorsed by IJDH and BAI.
- ³⁰ See Right to Education report submitted by AVS.
- ³¹ 1987 Constitution de la Republique d’Haiti. Preamble, Art. 22, 32.
- ³² *Id.* Art. 22, 32-33.
- ³³ Kitty Luzincourt and Jennifer Gulbrandson, United States Institute of Peace Special Report, *Education and Conflict in Haiti: rebuilding the education sector after the 2010 earthquake 2* (July 2010) (available at <http://www.usip.org/publications/education-and-conflict-in-haiti>).
- ³⁴ *Id.*
- ³⁵ See <https://www.cia.gov/library/publications/the-world-factbook/geos/ha.html>.
- ³⁶ See http://www.unicef.org/infobycountry/haiti_statistics.html#67
- ³⁷ See Secrétairerie d’Etat à l’Intégration des Personnes Handicapées (SEIPH) *Rapport d’Activités 2007-2011*.
- ³⁸ *Supra* note 29
- ³⁹ See www.foodforthepeople.org.
- ⁴⁰ UN Convention on the Rights of the Child, Art. 11.
- ⁴¹ *Id.*
- ⁴² UNICEF works to reunite children with their families in Haiti, http://www.unicef.org/infobycountry/haiti_53157.html
- ⁴³ Unicef, Children in Haiti, 13.
- ⁴⁴ See Amnesty International, *Haiti: no protection for girls against sexual violence*, <http://www.amnesty.org/en/for-media/press-releases/haiti-no-protection-girls-against-sexual-violence-20081127> (November 27, 2008) (In a 2008 report, Amnesty International has reported that the BPM is severely understaffed and provides little protection to girls victims of sexual violence.).
- ⁴⁵ See Le Nouvelliste, *Pour le renforcement de la brigade des mineurs*, <http://www.lenouvelliste.com/article.php?PubID=1&ArticleID=70502> (May 26, 2009).
- ⁴⁶ *Id.*
- ⁴⁷ Benjamin Steinlechner, UNICEF, *UNICEF Executive Director Makes First Official Visit to Post-Earthquake Haiti*, http://www.unicef.org/infobycountry/haiti_56269.html (September 30, 2010).
- ⁴⁸ Milner and Gammell, <http://www.telegraph.co.uk/news/worldnews/centralamericaandthecaribbean/haiti/8328850/Haiti-earthquake-children-sold-by-traffickers-for-as-little-as-76-pence-each.html>.
- ⁴⁹ *Id.*
- ⁵⁰ *Id.*
- ⁵¹ See Gender Based Violence Report submitted by KOFAVIV
- ⁵² Art. 34 of CRC.
- ⁵³ Athena Kolbe and Royce Hutson, *Human Rights Abuse and Other Criminal Violations in Port-au-Prince, Haiti: a random survey of households* (August 31, 2006) (available at www.ijdh.org/pdf/Lancet%20Article%208-06.pdf) (Where 4.6 percent of all female children surveyed were victim of sexual abuse).
- ⁵⁴ UN WOMEN, *More women denounce rape and violence in Haiti*, <http://www.un-instraw.org/global-gender-news/more-women-denounce-rape-and-violence-in-haiti.html> (accessed March 18, 2011).
- ⁵⁵ *Id.*
- ⁵⁶ Kaelin, *Human Rights of Internally Displaced Persons in Haiti: Memorandum based on a Working Visit to Port-au-Prince*, 9.
- ⁵⁷ *Id.*
- ⁵⁸ Handicap International, *A Year of Action in Haiti* (December 22, 2010) (available at http://www.handicap-international.us/fileadmin/files/documents/Dec_22_Haiti_SitRep_FINAL.pdf).
- ⁵⁹ UN News Service, *Needs of Haiti’s Disabled Must Not be Forgotten, Says UN expert Body*, <http://www.un.org/apps/news/story.asp?NewsID=33715&Cr=Haiti&Cr1> (February 9, 2010).
- ⁶⁰ See also CRC Art. 23.
- ⁶¹ See Lucy Basset, *Nutrition Security in Haiti: Pre- and Post Earthquake Conditions and the Way Forward*. (“Harmful deficiencies in key micronutrients cause a range of cognitive and physical problems, including mental retardation, blindness, and reduced physical productivity.” In addition, “59% of school-aged children were iodine deficient. An estimated 29,000 children are born mentally impaired due to iodine deficiency annually.”).
- ⁶² Mike Thomson, *Haiti: after the storm*, http://news.bbc.co.uk/1/hi/today/newsid_8393000/8393135.stm (published December 4, 2009).
- ⁶³ *Id.* See also *Haiti should take care of disabled children*, <http://minustah.org/?p=15942> (September 2, 2009).

⁶⁴ See MINUSTAH, <http://minustah.org/?p=15942> (September 2, 2009).

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ See UN Convention on the Rights of Persons with Disabilities, art. 30(5).

⁶⁸ See Secrétairerie d'Etat à l'Intégration des Personnes Handicapées (SEIPH), *Rapport d'Activités 2007-2011*, http://www.seiph.gouv.ht/SEIPH_Bilan_2007-2011.pdf (accessed March 2, 2011) (In the report, the SEIPH main goals were to: (1) reinforce the structure of the institution; (2) lead a big sensibility campaign; (3) facilitate access to basic services to persons with limited mobility; (4) pursue a legislation that is purely Haitian.

⁶⁹ The camp is dedicated solely to the elderly and people with some sort physical disability. It is located in the Michiko neighborhood of Cité Soleil. At the time of the visit to the camp (on March 8, 2011), they had 80 families consisting of about 320 persons, but approximately 10 children with some form of physical disability.

⁷⁰ See Secrétairerie d'Etat à l'Intégration des Personnes Handicapées (SEIPH), *Rapport d'Activités 2007-2011*.

⁷¹ Institute for Justice & Democracy in Haiti, *Health & Human Rights Prison Project*, at 7-12 (February 2008) (available at <http://www.ijdh.org/pdf/HHRPP.pdf>) [hereinafter IJDH Prison Project].

⁷² *Id.*

⁷³ Kolbe, and Hutson, *Human Rights Abuse and Other Criminal Violations in Port-au-Prince, Haiti*.

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Criminal Justice

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I. EXECUTIVE SUMMARY

1. Haiti's criminal justice system routinely violates basic human rights and fails to comply with protections that exist under Haitian and international law. Haiti's prison conditions rank among the worst in the Western Hemisphere;¹ prisons and detention centers are overcrowded, poorly maintained and unsanitary, periodically lacking in food and water as well as basic medical services and medical isolation units for contagious patients.² Over 80% of prisoners have not been convicted of a crime and are held in illegal pretrial detention for more than a year on average, and over three years in some prisons. The conditions fall far below minimum standards and often amount to torture or cruel, inhumane and degrading (CID) treatment or punishment.³ In certain cases, especially following the cholera outbreak, the conditions have resulted in an arbitrary deprivation of life.

2. Following the January 12, 2010 earthquake that devastated Haiti, the government has suffered from a diminished capacity to undertake systemic reforms of the criminal justice systems. Certain basic rights such as the right to life and the right to be free from torture and other forms of CID treatment and punishment are non-derogable, however, and must be protected even in a situation of public emergency, such as after a natural disaster. Persons deprived of their liberty are especially vulnerable to contagious illness and other public health concerns, as evidenced by the spread of cholera in the prisons, because of their lack of freedom of movement and dependency on the state to provide food, potable water, sanitation, and healthcare. Because of this vulnerability, the State has a heightened responsibility to ensure that minimum conditions in prisons are met.

3. In order to bring its criminal justice systems in line with its human rights obligations, Haiti must take the following measures to address pervasive issues and practices that violate or undermine applicable human rights norms and standards:

- Eliminate practices that amount to torture and CID treatment and punishment;
- Take measures to reduce the prison population and overcrowding;
- Improve detention center conditions to bring them into conformance with the Minimum Standards for Treatment of Prisoners.

II. HAITI'S NORMATIVE & INSTITUTIONAL FRAMEWORK

4. Haiti's Constitution of 1987 requires the Government of Haiti to protect the rights of individuals deprived of their liberty. Persons may not be arbitrarily arrested, prosecuted or detained.⁴ If arrested, they may only be held 48 hours before seeing a judge, who must rule on the legality of their arrest.⁵ If their arrest is deemed illegal, they must be released immediately; if their arrest is deemed legal and they are detained, individuals awaiting trial must be held separately from individuals serving sentence.⁶ The Constitution also provides that prisons should be operated in accordance with standards that respect human dignity,⁷ and establishes that the State has the absolute obligation to guarantee the right to life, health, and respect of the human person for all citizens without distinction, in conformity with the Universal Declaration of Human Rights (UDHR).⁸

5. International human rights law and norms also establish minimum standards that Haiti must implement throughout the criminal justice system. The UDHR sets forth minimum standards, and these are reiterated in treaties to which Haiti is a party, including the International

Covenant on Civil and Political Rights (ICCPR), the Charter of the Organization of the American States (OAS Charter), and the American Convention on Human Rights (ACHR). Haiti's treaty obligations are self-executing and once ratified, become a part of the legislation of the country and abrogate any conflicting laws.⁹

6. Specifically, international law prohibits arbitrary detention and arrest and sets out minimum procedural safeguards that must follow an arrest, including a prompt hearing before a judge.¹⁰ When an individual is deprived of liberty, the State must ensure that such persons are treated with "humanity and respect for the inherent dignity of the human person."¹¹ This imposes on States "a positive obligation towards persons who are particularly vulnerable because of their status as persons deprived of liberty."¹² The application of this rule, as a minimum, cannot be dependent on the material resources available in the State.¹³ Furthermore, conditions that amount to CID treatment or punishment are strictly forbidden; the right to be free from such treatment is absolute and non-derogable even in situations of public emergency.¹⁴

7. International law also protects the right to life, health and basic sanitation for all persons,¹⁵ and recognizes that these rights are retained by persons who are deprived of liberty by the State.¹⁶ The U.N. Committee on Human Rights has emphasized that prisoners may not ". . . be subjected to any hardship or constraint other than that resulting from the deprivation of liberty. . . . Persons deprived of their liberty enjoy all the rights set forth in the [ICCPR], subject to the restrictions that are unavoidable in a closed environment."¹⁷

8. Despite the existence of adequate protections in the law books for persons in detention, Haiti critically lacks implementation and enforcement of these laws. In reality, criminal justice procedures and conditions in prisons fall far below minimum standards required by national and international law. This finding has been repeatedly reported by a number of international human rights monitors, including the U.N. Human Rights Council's Independent Expert on the Situation of Human Rights in Haiti, Michel Forst,¹⁸ and the Inter-American Court of Human Rights (IACtHR).¹⁹

9. The *Ministère de la Justice et de la Sécurité Publique* is responsible for the administration of justice in Haiti, including developing policy and managing the operation of the courts. It is tasked with addressing shortcomings in the system, including reducing prolonged pretrial detention, preventing and responding to corruption and money laundering, constructing new detention centers, and realizing respect for human rights in the prisons.²⁰ Responsibility for management of the prisons falls under the *Direction l'Administration Pénitentiaire* (DAP), an agency under the Ministry of Justice. Its mission is to manage detention centers in a manner that is safe, humane, and that seeks to rehabilitate the offender.²¹

10. Past investments in judicial sector reform have been insufficient and frequently halted. Despite the parliament passing laws on judicial reform in 2007, the Independent Expert on Haiti concluded during his 2011 visit that reform of the justice system, including the independence of the judiciary, has not been implemented for several years.²² In 2009, the Haitian government sought to undertake reform that saw some success, including the installation of vetting procedures for police officers; the inauguration of the *École de la Magistrature*, a training facility for judges; and a raise in salaries for judicial officers.²³ These seeds of reform were interrupted by the January 2010 earthquake, however, which destroyed or severely damaged several detention facilities and judicial institutions, including courthouses and the Ministry of Justice itself, and created new urgent demands on the Government. In March 2010, one observer

found “police and prisons thrown back into reliance on rough justice, the courts closed, and the new training facility commandeered to house other government functions.”²⁴

11. As Haiti rebuilds after the earthquake, it has a critical opportunity to rebuild the justice system to respects human rights. In the Action Plan for Recovery and Development, Haiti’s roadmap for reconstruction, the Government identified better administration of justice as a priority, including the observation of human rights in the criminal justice system.²⁵ The Action Plan contains plans to reconstruct or develop damaged and destroyed correctional facilities by 2015 in order to reduce the density and allow separate detention of men and women, adults and juveniles, accused and convicted.²⁶ The Government has identified three stages for rebuilding the prison system; currently, the process is scheduled to be in the third ‘normalization’ phase (December 2010-December 2011), which includes restructuring and reorganizing system databases to ensure that prisoners receive a fair trial and sentence and creating a model correctional system that respects human rights.²⁷ Little has been done to realize these ambitious goals, however, in part because the international community has committed limited funding to rebuilding the corrections system,²⁸ and in part due to a lack of political leadership.

III. IMPLEMENTATION: PROMOTION AND PROTECTION OF HUMAN RIGHTS IN HAITI

A. Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

12. Haitian and international law prohibit torture and other CID treatment or punishment.²⁹ Human rights treaties emphasize that the right to be free from such treatment or punishment is non-derogable, and cannot be violated even in a situation of public emergency.³⁰ Accordingly, Haiti has a duty to prevent, prohibit, and punish acts of torture and CID treatment or punishment and to ensure that victims can obtain redress.³¹

13. Government agents routinely subject Haiti’s prisoners to torture or CID treatment or punishment.³² When interviewed, 40% of prisoners in a May 2009 census in three prisons claimed that they were subject to torture or other abusive treatment by government agents.³³ These high numbers of self-reports combined with several established cases of torture by government agents indicate that custodial torture is regular and frequent in Haiti.

14. Despite having laws that prohibits torture and other CID treatment or punishment, government agents continue to employ such practices with impunity.³⁴ Frequent forms of torture in police holding cells include beatings with hands, feet and common items like sticks or bottles, and weapons including pistols, rifles, and nightsticks.³⁵ Reports document that the physical consequences of such behavior include scars, pain, internal injuries, vision loss, dental problems, and difficulty walking, sleeping, and performing other daily activities.³⁶

15. The abuse extends beyond traditional notions of torture. Independent Expert Michael Forst has repeatedly found that the conditions in Haiti’s prisons are tantamount to “cruel, inhuman or degrading treatment because of overcrowding and poor sanitation.”³⁷

B. Prison and Detention Center Conditions

16. The conditions in Haiti’s prisons are some of the worst in the world.³⁸ Prisoners have limited access to adequate food, clean water, regular exercise, and proper medical treatment.³⁹ Haitian law provides that prisons must be operated in accordance with standards reflecting human dignity.⁴⁰ UN minimum standards provide that prisons, especially sleeping

accommodations, “shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.”⁴¹ Haitian prisons fall short of ensuring human dignity or meeting basic international standards.

17. On May 6, 2008, the IACtHR issued its decision in *Yvon Neptune v. Haiti*, the only case the Court has decided on Haiti.⁴² The Court ordered the government to develop a plan to bring its prisons, which it found to be “inhumane,” in line with minimum international standards within two years. Haiti accepted the jurisdiction of the IACtHR in March 1998, and as a result, the Court’s decision is legally binding. To date, little has been done to comply with the Court’s order. The government did not develop a plan within the two-year period set by the Court, nor did it pay compensation to the victim or even publish the decision as required by the Court.

1. Extreme Overcrowding

18. Extreme overcrowding characterizes prisons across Haiti. According to the U.N. Rule of Law Indicator Project, “the least crowded prison, in Les Coteaux, is at 230% of official capacity and the most crowded facility (Hinche) holds more than ten times the number it was designed to hold.”⁴³ Prior to the earthquake, some 8,500 persons were reportedly being held in detention facilities designed to hold just 2,450 inmates by most international standards.⁴⁴ Damage to prison facilities since the earthquake has limited cell space and worsened prison conditions even further.⁴⁵ The International Committee of the Red Cross (ICRC) indicates that in crisis situations, prisoners should be allotted 2 square meters per person *at an absolute minimum*. Yet the average living space per prisoner was 0.44m² before the earthquake, reduced to 0.30m² after the earthquake.⁴⁶ This means that prisoners must take turns sleeping on the floor,⁴⁷ and many are left standing while others attempt to fashion hammocks using cloth scraps to suspend themselves closer to the cell’s high windows in order to get more light and air.⁴⁸ These are the prime spots in the prison, and those who have them must fight to keep the space, or pay “rent” to the strongman in the cell.⁴⁹

2. Lack of Healthcare & Sanitation

19. Hygiene and healthcare in the prisons are generally poor, resulting in violations of the right to health and in some cases, the right to life. Prison facilities are rodent-infested, unlit, and poorly ventilated,⁵⁰ with temperatures reaching as high as 105 degrees.⁵¹ Additionally, prisoners lack access to water, food, toilets, bathing facilities, clean clothes, beds, and medical care.⁵² In the National Penitentiary, latrines overflow and prisoners defecate in plastic bags and toss them out of the windows of their cells because they have no place to do so inside.⁵³

20. The crowded conditions overwhelm limited resources, and access to doctors, nurses and other qualified personnel is inadequate and restricted, contributing to elevated rates of diseases such as beriberi, dysentery, tuberculosis, malaria, and HIV/AIDS.⁵⁴ HIV and tuberculosis are particularly rampant, though exact prevalence rates are unavailable. Infirmaries lack adequate ability to test new detainees for infectious diseases, creating a grave health threat with regards to tuberculosis and other infectious disease as one infected prisoner poses a serious health risk to the prison population.⁵⁵ The vulnerability to disease is compounded by the fact that prisoners suffer from severe malnutrition.⁵⁶ In a survey conducted in a Haitian prison in 2008, it was reported that the prison population only consumed one meal a day, ranging from 600-1,200 calories.⁵⁷

21. The situation is especially acute following the outbreak of cholera in October 2010. Cholera is a water-borne illness that is easily preventable and treatable through basic sanitation, water treatment, and rapid rehydration. While the spread of cholera in the prisons could be prevented through simple measures such as provision of treated water and improved sanitation practices, aid workers have reported that even after the outbreak, prisoners were given untreated water for drinking and bathing, and by the end of November 2010, at least 29 people had died from cholera-like symptoms in detention.⁵⁸ Prisoners continue to have limited access to soap and latrines – in Saint Marc, for example, prisoners defecate in buckets in their cells and the buckets are often shared among prisoners. During a visit on November 20, 2010, seven prisoners were exhibiting acute symptoms and were quarantined in a separate cell where they received medical care from a designated caregiver, a female prisoner. In Hinche, visitors are asked to rinse hands and feet in chlorinated water before exiting the prison to protect them against contraction of cholera, but are not asked to observe the same practices before entering to protect the prisoners from outside contamination.⁵⁹

3. Lack of Security

22. Due in part to overcrowding, facilities are also so under-protected and under-supervised that in order to reduce the possibility of disorder, DAP limits time out of cells to 15-30 minutes per day.⁶⁰ Prisoners are vulnerable to massive uprisings, corrupt guards who lack training, invasions from outside the prison, and regular violence among inmates. In the National Penitentiary, the prison was so insecure and crowded that some inmates preferred the punishment cell, roughly four feet tall without the ability to stand, in order to be safe from gangs or to have a place to lie down.⁶¹

23. The earthquake worsened conditions in the prisons and created increased security concerns. On January 19, 2010, Haitian National Police (HNP) responded violently to a prison uprising in Les Cayes,⁶² where the 400 detainees began to riot in protest of worsening conditions. U.N. and HNP officers circled the prison, and HNP officers stormed it to prevent a massive escape.⁶³ At least 12 inmates died and up to 40 were wounded.⁶⁴ On July 26, 2010, Haiti's government, with U.N. support, established an independent commission of inquiry into the HNP's response, which found that the officers opened fire “deliberately and without justification,” using “inappropriate, abusive and disproportionate force.”⁶⁵ The report recommended an official and public condemnation of the “grave violations of human rights,” but the Government has yet to issue any such statements or officially release the report.⁶⁶

C. Prolonged Pretrial Detention

24. Between 80-90% of all prisoners in Haiti have not been tried.⁶⁷ Under Haitian law, defendants are entitled to a trial within four months, or they have the right to contest their detention in court.⁶⁸ In reality, defendants spend an average of 408 days in pretrial detention.⁶⁹ The backlog is worsening and has become increasingly severe after earthquake, which the Government estimates affected 80 percent of the justice sector, including the widespread loss of judicial files and the destruction of 49 judicial buildings.⁷⁰ This has further diminished judicial activity and drawn out waiting times.⁷¹ Some prisoners are held longer than the maximum allowable sentence for their offense, whether convicted or in prolonged pretrial detention.⁷² Others remain incarcerated even after they have been acquitted of all charges.⁷³ For some, the long wait in crowded, unsanitary conditions converts pretrial detention into a death sentence due to infectious disease, violence, or malnutrition.⁷⁴

25. Corruption in the judiciary is perhaps the most significant cause of prolonged pretrial detention. Haiti's prisons are at the center of a nationwide bribery racket within the justice system in which prosecutors, defense attorneys and judges extort money.⁷⁵ The result of this collusion is that those with the financial means to hire an attorney and bribe officials are relieved of all criminal charges, while those without financial means receive increased pretrial detention with its further exposure to mistreatment and disease.⁷⁶ The corruption stems from the fact that judges and staff are underpaid and salaries are insufficient to cover basic living expenses, so they resort to other forms of money making, which may include unofficial attempts to keep pretrial detainees longer than necessary. Furthermore, lack of training impedes the work of courts, and with little opportunity for professional development, political pressures result in serious problems of corruption for which there are no effective accountability mechanisms.⁷⁷

26. Prolonged pretrial detention is also partly a result of resource and infrastructural deficiencies, which contribute to case backlogs, prolonged periods of detention, and the systematic denial of a trial within a reasonable period of time.⁷⁸ Haiti's legal system can handle an estimated 160 to 320 trials a year; in 2007, there were 4,642 detainees awaiting trial.⁷⁹ In 2009, the country had only 109 prosecutors and assistant prosecutors.⁸⁰ Judges at all levels receive minimal logistical support and the courts are notoriously under-resourced.⁸¹ The Rule of Law Indicators found that only some court administrators kept regular track of their pending and completed cases.⁸² Poor case management and persistent case backlogs translate into prolonged periods of pretrial detention for the majority of arrestees. Often, the result is the denial of an arrestee's right to be tried without undue delay.⁸³ Each of the 15 first-instance jurisdictions in Haiti are required by law to hold at least two *assises*, or criminal court sessions, per year, yet many are unable to do even this.

27. Pursuant to the recommendation in 2006 of the then Independent Expert on Haiti, Louis Joinet, Haiti established a Commission on Preventive Detention in 2008 to compile and update a list of cases of persons being held in pretrial detention where there is obviously an abnormal delay, so that the most pressing cases, or those involving the most flagrant violations of the law, could be dealt with as a matter of priority.⁸⁴ This program has not developed and there is no evidence to suggest that reductions in prolonged pretrial detentions have been achieved.

28. While an overwhelming majority of Haitians held in prisons have thus never been convicted of a crime, some of Haiti's most notorious human rights violators have enjoyed full impunity. The return of former dictator Jean-Claude Duvalier to Haiti presents a rare opportunity for the Government to seek justice and fulfill its duty to investigate and prosecute the grave human rights violations perpetrated under Duvalier's regime.⁸⁵ In January 2011, the Prosecutor's office brought charges against Duvalier for financial and political violence crimes and the *Juge d'instruction* is currently investigating these charges. The U.N. High Commissioner for Human Rights Navi Pillay has offered technical assistance to the prosecution and reminded the Government that "Haiti has an obligation to investigate the well-documented serious human rights violations that occurred during the rule of Mr. Duvalier, and to prosecute those responsible for them."⁸⁶ During his February 2011 visit to Haiti, Independent Expert Michel Forst also emphasized that the fight against impunity must be prioritized.⁸⁷

D. Treatment of Women and Children

29. Haiti has only one prison designated exclusively for women offenders, apart from this, women are detained in separate cells in mixed-gender facilities. The women's prison was

designed to house approximately 30 inmates, however, up to 300 are typically confined in the space. As of February 22, 2011, there were 255 prisoners in the facility, of them only 28 had been convicted. Despite Haiti's ratification of international treaties requiring attention to and consideration of women's unique health statuses, women are incarcerated indiscriminately, and pregnant and menstruating women are confined in the same clustered unsanitary conditions as described elsewhere in this report. This causes pregnant women to run a high risk of miscarriage. When babies are carried full-term, women give birth in a small makeshift clinic inside the prison, without access to emergency medical care in a room ill equipped to handle difficult births. On average, one baby is born every month in the prison. Mothers can keep their newborn babies in the prison for up to three months, after which the baby is turned over to the mothers' family. If the woman does not have a family, the baby is transferred to institutional care until the mother is released. Despite their status as new mothers, these women's cases are not expedited, and they may spend years behind bars before they are able to see children.

30. Juveniles, including young children, are held in detention in the same conditions described above. Although Haitian law prohibits the detention of children younger than 16, human rights investigations have found children below this age held in prisons.⁸⁸ Minors are generally not segregated from the adult population, as required by the ACHR.⁸⁹ Haiti's only juvenile detention facility, located in Port-au-Prince, was destroyed in the earthquake. Minors also experience extreme delays in pretrial detention, as the country only has one operational juvenile court that specializes in juvenile justice matters.⁹⁰

E. Treatment of Deportees

31. The majority of criminal deportees forcibly returned to Haiti, including those deported from the United States, are immediately detained in police holding cells in Port-au-Prince.⁹¹ Haitian nationals may be deported from the U.S. after criminal convictions, including for even minor offenses such as driving on an expired license, and after serving their sentences in the U.S.⁹²

32. Criminal deportees are detained in inhumane conditions⁹³— in January 2011, deportees reported being held in mosquito-infested cells covered with vomit and feces, without ventilation, working toilets, or toilet paper.⁹⁴ The police station did not provide food, potable water, beds, hygienic products, or medical care, and deportees had to rely on relatives, if any, to provide basic necessities.⁹⁵ A U.S. immigration judge has found that conditions for criminal deportees in Haiti have progressively worsened since 2002,⁹⁶ and that authorities intended to cause deportees pain and suffering because they had made no improvements to these conditions.⁹⁷ Several unpublished U.S. Board of Immigration Appeals and Immigration Judge decisions have also held that deportees with severe medical issues demonstrated that Haitian authorities intended to inflict severe pain and suffering because they intentionally detained those individuals knowing that they would not get the medical attention needed to survive.⁹⁸

33. Deportations to Haiti from the U.S. were temporarily suspended following the earthquake, but they resumed in January 2011.⁹⁹ At the time of submission, 27 Haitians have been deported, and it is estimated that 700-2,000 more await deportation, defying the IACHR's public statement calling on the U.S. not to deport Haitians who suffer from illness or have family ties in the U.S. until conditions in Haiti improve.¹⁰⁰ The resumption of deportations at this time places deportees in grave danger, exposes them to conditions that amount to torture and CID treatment and punishment, and further diminishes the capacity of the Haitian government to

attend to needs in the already severely overcrowded prisons and holding cells. One deportee among the group deported on January 20, 2011 has already died; he became ill while in police detention with cholera-like symptoms and died on January 29, 2011.¹⁰¹ Despite being visibly ill and unable to stand due to vomiting and diarrhea, he was never provided any medical care despite requests made by him and other deportees held with him. His lawyer and fiancé were not given any information that he was sick despite repeated efforts to inquire about his wellbeing. In spite of this, the U.S. government has made no move to suspend deportations again.

34. Mentally ill deportees should receive heightened care and protection, but instead they are often mistreated. The U.S. is supposed to transfer two weeks worth of medication for deportees who are mentally ill and were on medications while detained in the U.S., however, in many instances, an insufficient supply of medications is transferred, if any at all, or Haitian police seize the transferred medications and withhold them from the deportees.¹⁰² When the deportees do not receive the medication that regularizes their behavior, they may act out and display erratic behavior, which makes them more susceptible to severe police brutality.¹⁰³

F. Denial of a Fair Public Trial

1. Unfair Trial Procedures

35. Although a fair trial is a fundamental component of due process recognized under Haitian law, as well as in the ICCPR¹⁰⁴ and the ACHR,¹⁰⁵ numerous factors inhibit the widespread exercise of the right to a fair trial. Among the procedural guarantees established under international law is the defendant's right to have the free assistance of an interpreter if she cannot understand or speak the language used in court. Both Creole and French are Haiti's official languages.¹⁰⁶ French is only spoken by 20-40% of Haitians, however, yet legal proceedings at the trial and appellate courts are conducted only in French. Despite this, translation services are almost never provided in the courts, except when a non-French-speaker is being questioned.¹⁰⁷ Consequently, many criminal defendants cannot understand or meaningfully engage with the legal proceedings being conducted against them.

36. The ICCPR and ACHR also guarantee the right of defendants to bring in witnesses that may shed light on the facts of the case, and to examine witnesses that are present in court. Many defendants in the Haitian justice system cannot challenge the state's witnesses, call their own witnesses, or otherwise present exculpatory evidence as a result of the language barrier. This effectively inhibits many defendants' ability to mount a meaningful defense.

2. Lack of Defense Counsel

37. Most criminal defendants cannot afford a lawyer and therefore receive inadequate representation.¹⁰⁸ The IACHR and the IACtHR have observed that in criminal proceedings and those relating to rights and obligations of a civil, labor, fiscal or any other nature, an indigent has the right to legal counsel free of charge where such assistance is necessary for a fair hearing.¹⁰⁹ The availability and quality of legal pro bono services in Haiti is substantially inadequate. The Bar Association organizes free legal representation for all defendants at the *assises*, but the lawyers are often inexperienced, and are frequently students who have yet to complete their law degree.¹¹⁰ Despite the minimum guarantee of having adequate time and means to prepare a defense,¹¹¹ reports show that defense attorneys are often given mere days to prepare a case, including complex felony cases such as murder trials.¹¹²

3. Improper Supreme Court Appointments

38. Unlawful appointments and removals of judges and Supreme Court justices further undermines the legitimacy of Haiti's judicial system and the right to a fair trial. In December 2005, then Prime Minister Gerard Latortue illegally removed five members of the *Cour de cassation*. This act directly contradicted the Constitution, which states that these Justices are appointed for life and can only be removed due to mental incapacity or abuse of authority.¹¹³ The Constitution also establishes procedures for the nomination and appointment of Justices, but these procedures were ignored when the Prime Minister installed five justices of his own choosing.¹¹⁴ As a result, over half of the justices sitting on the *Cour de cassation*—the country's ultimate appellate body and final arbiter on legal issues, are illegitimate. Additionally, the Constitution provides that judges of the *Cour d'appel* and *Cour de premiere instance* are appointed from a list submitted by the *Assemblée départementale* concerned, but this is not followed in practice.¹¹⁵

IV. CONCLUDING RECOMMENDATIONS

A. GENERAL RECOMMENDATIONS

1. Comply fully with international treaty obligations contained in the ICCPR, ACHR, CEDAW, and CRC;
2. Comply with the IACtHR's decision in *Yvon Neptune v. Haiti*;
3. Ratify the Convention Against Torture and Other Forms of Cruel, Inhuman, or Degrading Treatment or Punishment, the First and Second Optional Protocols to the ICCPR, and the International Covenant on Economic and Social Rights.

B. ISSUE-SPECIFIC RECOMMENDATIONS

4. Take all necessary steps to eliminate torture and other CID treatment and punishment in prisons and detention facilities;
5. Take all necessary measures to reduce the duration of pretrial detention to conform to international standards and address problem of overcrowding;
 - a. Fight corruption in the judiciary through increased oversight and training of judges and other officials;
 - b. Reopen the Commission on Preventive Detention to address particularly severe cases of prolonged pretrial detention;
 - c. Introduce simplified procedures with respect to offences of persons currently being held in pretrial detention in order to free the judicial system to deal with the most serious cases, in accordance with the recommendation by the Independent Expert on Haiti (A/HRC/14/44/Add.1);
6. Improve conditions of detention to ensure compliance with the Minimum Standard of Treatment of Prisoners;
 - a. Provide prisoners with clean, potable water, adequate food, access to latrines and ensure availability of soap;
 - b. Provide access to medical care in accordance with DAP guidelines of one professional caregiver per detention facility;
 - c. Invest in construction of new prisons that meet minimum standards with regard to space allocation and access to basic services;
7. Separate detention of men and women, adults and juveniles, accused and convicted;
8. Investigate and prosecute human rights crimes committed under Jean-Claude Duvalier's regime;

9. As increased resources are made available to train police officers and improve their capacity to make arrests, plans for prosecution, defense, magistrates, and prisons need to anticipate the increased demands on these systems that will follow as a result.

¹ See e.g., Seton Hall Law, *Haiti Rule of Law*, <http://law.shu.edu/ProgramsCenters/PublicIntGovServ/CSJ/Haiti-Rule-of-Law.cfm>.

² *Yvon Neptune v. Haiti, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 180 (May 6, 2008)*.

³ U.N. Independent Expert on the Situation of Human Rights in Haiti, *Report of the Independent Expert on the Situation of Human Rights in Haiti*, U.N. Doc. A/HRC/14/44/Add.1 (May 31, 2010) (by Michel Forst) [hereinafter Forst 2010 Report].

⁴ 1987 CONST. art. 24-1.

⁵ *Id.* art. 26.

⁶ *Id.* arts. 26-2, 44.

⁷ *Id.* art. 44-1.

⁸ *Id.* art. 19.

⁹ *Id.* art. 276-2.

¹⁰ Universal Declaration of Human Rights art 9, G.A. Res. 217A, at 71, U.N. GAOR, 3d Sess., U.N. Doc. A/810 (Dec. 10, 1948) [hereinafter UDHR]; International Covenant on Civil and Political Rights art. 9, 999 U.N.T.S. 171 (Dec. 16, 1966) [hereinafter ICCPR].

¹¹ ICCPR, *supra* note 10, art. 10.

¹² U.N. Human Rights Committee (“HRC”), General Comment No. 21: Replaces General Comment 9 Concerning Humane Treatment of Persons Deprived of Liberty, ¶ 3, U.N. Doc. HRI/GEN/1/Rev.9, 44th Sess. (Apr. 10, 1992).

¹³ *Id.* ¶ 4.

¹⁴ ICCPR, *supra* note 10, arts. 4(2), 7; Organization of American States, American Convention on Human Rights art. 5(2), Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123 [hereinafter American Convention]; U.N. HRC, General Comment No. 20: Replaces General Comment No. 7 concerning the prohibition of torture and cruel treatment or punishment (Art. 7), ¶ 3, U.N. Doc. HRI/GEN/1/Rev.1, 44th Sess. (Mar. 10, 1992) [hereinafter HRC, General Comment No. 20].

¹⁵ The rights to water and sanitation derive from the right to an adequate standard of living and are inextricably related to the right to the highest attainable standard of physical and mental health, as well as the right to life and human dignity.¹⁵ These rights are protected in treaties to which Haiti is a State Party. See e.g., ICCPR, *supra* note 10, art. 6 (right to life and protection from arbitrary deprivation of life); UDHR, *supra* note 10, art. 3; American Convention, *supra* note 10, art. 5 (“Every person has the right to have his physical, mental, and moral integrity respected.”); Charter of the Organization of American States art. 11, Apr. 30, 1948, 2 U.S.T. 2394, 119 U.N.T.S. 3 [hereinafter OAS Charter] (“Every person has the right to the preservation of his health through sanitary and social measures relating to food, clothing, housing and medical care, to the extent permitted by public and community resources.”). In July 2010, the U.N. General Assembly also recognized the right to safe and clean drinking water and sanitation as a separate human right that is essential for the full enjoyment of life and all human rights, G.A. Res. 64/292, U.N. Doc. A/RES/64/292 (July 28, 2010), and the UN Human Rights Council affirmed the legally binding nature of this right. U.N. Human Rights Council, Human rights and access to safe drinking water and sanitation, U.N. Doc. [A/HRC/15/L.14](http://www.unhcr.org/refugees/refugees/4a5d4d4a.html) (Sept. 30, 2010).

¹⁶ The ‘principle of equivalence’ enjoys broad consensus among international health and human rights instruments and organizations. See e.g., Rick Lines, *From Equivalence of Standards to Equivalence of Objectives: The Entitlement of Prisoners to Health Care Standards Higher Than Those Outside Prisons*, 2:4 INT’L J. PRISONER HEALTH 269 (2006) (citing to the Basic Principles for the Treatment of Prisoners, 1990; World Health Organization, 1993; UNODC/WHO/UNAIDS, 2006; and the Council Of Europe Committee Of Ministers, 2006).

¹⁷ See U.N. HRC, General Comment No. 21, *supra* note 12, ¶ 3.

¹⁸ Forst 2010 Report, *supra* note 10.

¹⁹ *Yvon Neptune v. Haiti, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 180 (May 6, 2008)*.

²⁰ REPUBLIQUE D’HAÏTI, LE MINISTÈRE DE LA JUSTICE ET DE LA SÉCURITÉ PUBLIQUE, <http://www.mjsp.gouv.ht/presentation.htm>.

²¹ REPUBLIQUE D’HAÏTI, DIRECTION DE L’ADMINISTRATION PÉNITENTIAIRE, MISSION DE L’ADMINISTRATION PÉNITENTIAIRE, http://dap.gouv.ht/index.php?option=com_content&view=article&id=37&Itemid=97.

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- ²² UN Human Rights Expert Urges Presidential Candidates to Fight Impunity, U.N. News Centre, Feb. 24, 2011, <http://www.un.org/apps/news/story.asp?NewsID=37621&Cr=Haiti&Cr1=>
- ²³ Christopher Stone, *A New Era for Justice Sector Reform in Haiti* 1 (Harvard Kennedy School, Faculty Research Working Paper Series RWP10-033, 2010).
- ²⁴ *Id.*
- ²⁵ GOV'T OF THE REPUBLIC OF HAITI, ACTION PLAN FOR NATIONAL RECOVERY & DEVELOPMENT 45 (2010).
- ²⁶ *Id.* at 46.
- ²⁷ Jean Celestin Roland, Dir. Gen., Directive l'Administration Pénitentiare, Speech at the American Correctional Association Annual Meeting (Aug. 10, 2010); *see also* Luke White, *The Chaos of Haiti's Post-Quake Prison System*, CORRECTIONSONE, Aug. 10, 2010, *available at* <http://www.correctionsone.com/jail-management/articles/2189004-The-chaos-of-Haitis-post-quake-prison-system/>.
- ²⁸ Over \$10 billion was pledged to Haiti following the earthquake, but at the time of submission, the only project on justice sector reform approved through the Haiti Reconstruction Fund and Interim Haiti Reconstruction Commission concerns increasing prosecution capacity for financial crimes. *See* Interim Haiti Reconstruction Commission, Projects, <http://www.cirh.ht/sites/ihrc/en/projects/Pages/default.aspx#institutional>. *See also* White, *supra* note 27.
- ²⁹ UDHR, *supra* note 10, art. 5; ICCPR, *supra* note 10, art. 7; ACHR, *supra* note 10.
- ³⁰ ICCPR, *supra* note 10, art. 4(1).
- ³¹ HRC, General Comment No. 20, *supra* note 20.
- ³² CODE PÉNAL, pt. II, ch. I, § I, art. 248 (Fr.), *available at* http://www.oas.org/juridico/mla/fr/hti/fr_hti_penal.html. Article 248 of the Haitian Penal Code prohibits torture and holds that those who practice torture “will be punished as guilty of murder.” *Id.* Haitian legislative officials also included the description that those who “commit acts of barbarism” would also be “punished as guilty of murder.” *Id.*
- ³³ INST. FOR JUSTICE & DEMOCRACY IN HAITI & BUREAU DES AVOCATS INTERNATIONAUX, HEALTH IN HUMAN RIGHTS IN PRISON PROJECT (2009), *available at* <http://ijdh.org/wordpress/wp-content/uploads/2010/02/HHRPP-Description-Website.pdf> [hereinafter IJDH].
- ³⁴ *See* HUMAN RIGHTS WATCH, WORLD REPORT 2008-HAITI (2008), *available at* <http://www.unhcr.org/refworld/country....HTI.4562d94e2.47a87c0446.0.html> (2008).
- ³⁵ Interview with Mario Joseph, Attorney, Bureau des Avocats Internationaux, in Port-au-Prince, Haiti (July 24, 2009).
- ³⁶ *Id.*
- ³⁷ *See e.g.*, Forst 2010 Report, *supra* note 10; U.N. Independent Expert on the Situation of Human Rights in Haiti, *Report of the Independent Expert on the Situation of Human Rights in Haiti*, ¶ 58, U.N. Doc. A/HRC/11/5 (Mar. 26, 2009) (by Michel Forst) [hereinafter Forst 2009 Report].
- ³⁸ Kate Heartfield, *Hell is a Haitian Prison*, THE OTTAWA CITIZEN, June 5, 2009, *available at* http://www.ijdh.org/articles/article_recent_news_6-10-09.html.
- ³⁹ Forst 2010 Report, *supra* note 10, ¶ 61; Stone, *supra* note 23.
- ⁴⁰ 1987 CONST. art. 44-1.
- ⁴¹ First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Geneva, *Standard Minimum Rules for the Treatment of Prisoners*, ¶ 10, (Aug. 30, 1955), *available at* <http://www.unhcr.org/refworld/docid/3ae6b36e8.html>.
- ⁴² INST. FOR JUSTICE & DEMOCRACY IN HAITI, YVON NEPTUNE CASE UPDATE (2009).
- ⁴³ Stone, *supra* note 23, at 11.
- ⁴⁴ U.S. DEP'T STATE, 2008 COUNTRY REPORT ON HUMAN RIGHTS PRACTICES: HAITI (2009), *available at* <http://www.state.gov/g/drl/rls/hrrpt/2008/wha/119163.htm>.
- ⁴⁵ HUMAN RIGHTS WATCH, *supra* note 34.
- ⁴⁶ Forst 2010 Report, *supra* note 10, at n.8.
- ⁴⁷ AMNESTY INT'L, REPORT 2009: HAITI (2009), *available at* <http://thereport.amnesty.org/en/regions/americas/haiti>; *see also* Heartfield, *supra* note 31.
- ⁴⁸ Forst 2010 Report, *supra* note 10.
- ⁴⁹ Michael Petrou, *Haiti: Are we helping?*, MACLEANS.CA (Apr. 7, 2008, 5:08 PM), http://www.macleans.ca/canada/national/article.jsp?content=20080402_96252_96252.
- ⁵⁰ ANNE FULLER ET AL., VERA INST. OF JUSTICE, PROLONGED PRETRIAL DETENTION IN HAITI 18 (2002), *available at* http://haiticci.undg.org/uploads/Vera%20Institute_2002.pdf [HEREINAFTER VERA REPORT].
- ⁵¹ *August v. Ridge*, 395 F.3d 123, 129 (3d Cir. 2005) (noting that Haitian prisoners are subjected to conditions of extreme deprivation).

⁵². See generally Org. of Am. States Inter-Am. Comm'n H.R., Observations of the Inter-American Commission on Human Rights Upon Conclusion of its April 2007 Visit to Haiti, OEA/Ser.L/V/II.131, doc. 36, at 9 (Mar. 2, 2008), available at <http://www.cidh.org/pdf%20files/April%202007%20Haiti%20Observations%20ENG.pdf> [hereinafter IACHR Observations]; see also INT'L CRISIS GROUP, HAITI: JUSTICE REFORM AND THE SECURITY CRISIS I (2007), available at <http://www.crisisgroup.org/home/index.cfm?id=4639&CFID=8998549&CFTOKEN=71774861> [hereinafter ICG Report].

⁵³ Petrou, *supra* note 41.

⁵⁴ ICG Report, *supra* note 44, at 5.

⁵⁵ PANOS CARAÏBES, TUBERCULOSE ET SIDA DANS LES PRISONS HAÏTIENNES [HIV and Tuberculosis in Haitian Prisons] (2008), available at <http://ijdh.org/wordpress/wp-content/uploads/2010/02/Panos-TB-SIDA.pdf>.

⁵⁶ Many prisoners receive just one meal a day. See Réseau National de Défense des Droits Humains, International Prisoners' Day, Oct. 30, 2005, http://www.rnddh.org/article.php?id_article=246 Additionally, even where two meals are served as required by prison regulations, food "typically lack[s] the minimum nutrients set by international standards." BUREAU OF CITIZENSHIP & IMMIGRATION SERVS., U.S. DEP'T OF HOMELAND SEC., HAITI: INFORMATION ON CONDITIONS IN HAITIAN PRISONS AND TREATMENT OF CRIMINAL DEPORTEES (2ND RESPONSE), (2002), available at <http://www.unhcr.org/refworld/docid/3dec98224.html>

⁵⁷ PANOS AND CARAIBE, HIV AND TUBERCULOSIS IN HAITIAN PRISONS 38 (2008), available at <http://ijdh.org/wordpress/wp-content/uploads/2010/02/Panos-TB-SIDA.pdf>.

⁵⁸ Int'l Comm. of the Red Cross, *Haiti: ICRC Steps Up Work to Fight Cholera* (Nov. 26, 2010), <http://www.icrc.org/eng/resources/documents/update/2010/haiti-update-2010-11-26.htm> (reporting that 22 had died in the National Penitentiary as of November 26, 2010). Human rights lawyers investigating cholera in Hinche, Mirebalais, and Saint Marc reported that two prisoners had died in each prison as of January 2011. One American deportee held in a police holding cell died of cholera on January 29, 2011. Eric N. Marcus, M.D., *Haiti: A Deportation Death Sentence?*, HUFFINGTON POST, March 16, 2011.

⁵⁹ A delegation of lawyers from Bureau des Avocats Internationaux observed these practices on a visit to the Hinche Civil Prison on January 15, 2011.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² Deborah Sontag & Walt Bogdanich, *Escape Attempt Led to Killings of Unarmed Inmates*, N.Y. TIMES, May 22, 2010.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ Deborah Sontag & Walt Bogdanich, *Report Assails Haiti Officers in Prison Killing*, N.Y. TIMES, Oct. 21, 2010.

⁶⁶ *Id.*

⁶⁷ The United Nations Development Programme ("UNDP") states that the pretrial detention rate in Haiti is 83%. However, it is unclear what methods were used to obtain these data and estimates from different sources vary widely. See Executive Board of the United Nations Development Programme and of the United Nations Population Fund, Draft country programme document for Haiti (2009–2011), at 7, U.N. Doc. DP/DCP/HTI/1 (July 14, 2008) [hereinafter UNDP Country Programme].

⁶⁸ Haiti's Code of Criminal Instruction states: "Le juge instructeur saisi d'une affaire a un délai de deux mois pour en mener l'instruction et communiquer les pièces de l'information au Ministère public et un délai d'un mois pour l'émission de l'ordonnance de clôture, ce, sous peine de prise à partie." CODE D'INSTRUCTION CRIMINEL, tit. II, art. 7; see also VERA REPORT, *supra* note 42, at 8.

⁶⁹ U.S. AGENCY FOR INT'L DEV., AUDIT OF USAID/HAITI'S JUSTICE PROGRAM 8 (2007), available at <http://www.usaid.gov/oig/public/fy07rpts/1-521-07-008-p.pdf> [hereinafter USAID Audit]. (Apr. 24, 2007), 1-32, at 8, available at

⁷⁰ Government of Haiti, *supra* note 25.

⁷¹ *Id.* at 45; see also HUMAN RIGHTS WATCH, *supra* note 27.

⁷² ORG. OF AM. STATES, INTER-AMERICAN COMM'N ON HUMAN RIGHTS, HAITI: FAILED JUSTICE OR THE RULE OF LAW? CHALLENGES AHEAD FOR HAITI AND THE INTERNATIONAL COMMUNITY 68 (2005), available at <http://www.cidh.oas.org/countryrep/HAITI%20ENGLISH7X10%20FINAL.pdf> [hereinafter IACHR Rapporteur Report].

⁷³ U.S. DEP'T OF STATE, 2007 COUNTRY REPORT ON HUMAN RIGHTS PRACTICES: HAITI (2008) available at <http://www.state.gov/g/drl/rls/hrrpt/2007/100643.htm>.

⁷⁴ IJDH, *supra* note 26, at 6.

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- ⁷⁵ *Id.*
- ⁷⁶ *Id.*
- ⁷⁷ *Id.*
- ⁷⁸ Interview with Mario Joseph, *supra* note 28.
- ⁷⁹ USAID Audit, *supra* note 61, at 8.
- ⁸⁰ Stone, *supra* note 23, at 11.
- ⁸¹ See ICG Report, *supra* note 44, at 4.
- ⁸² Stone, *supra* note 23, at 9.
- ⁸³ Article 14 of the ICCPR establishes as a minimum guarantee the right to be tried without undue delay. ICCPR, *supra* note 10, art. 14.
- ⁸⁴ United Nations, Econ. & Soc. Council, Comm. on Human Rights, Advisory Services and Technical Cooperation in the Field of Human Rights: Situation of human rights in Haiti, U.N. Doc. E/CN.4/2006/15 (Jan. 24, 2006) (by Louis Joinet); see also Samuel Baucicaut, *Haiti: Pour combattre la detention preventive prolongée*, LENOUELLISTE, Dec. 10, 2008, available at <http://www.lenouvelliste.com/articles.print/1/65163>.
- ⁸⁵ Office of the High Commissioner for Human Rights, UN Human Rights Chief Offers Haitian Authorities Assistance in Duvalier Case, February 1, 2011, <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10696&LangID=E>
- ⁸⁶ *Id.*
- ⁸⁷ *Haiti: UN Human Rights Expert Urges Presidential Candidates to Fight Impunity*, UN NEWS CENTRE, Feb. 24, 2011, available at <http://www.un.org/apps/news/story.asp?NewsID=37621&Cr=Haiti&Cr1>
- ⁸⁸ Inst. for Justice & Democracy in Haiti, Health & Human Rights Prison Project, Feb. 2008, 1-21, at 7-12, available at <http://www.ijdh.org/pdf/HHRPP.pdf> [hereinafter IJDH Prison Project].
- ⁸⁹ *Id.*, ACHR *supra* note 10, art. 5(5).
- ⁹⁰ Forst 2010 Report, *supra* note 10, at ¶ 14.
- ⁹¹ Michelle Karshan, Alternative Chance, Illegal Detention and Inhumane Treatment Await Criminal Deportees in Haiti – April 7, 2009, available at <http://alternativechance.org/Alternative-Chance-documents-conditions-and-human-rights-concerns-on-behalf-of-criminal-deportees-in-2009-in-letter-to-UNHCR>.
- ⁹² Forst 2010 Report, *supra* note 10.
- ⁹³ *Id.*
- ⁹⁴ UNIV. OF MIAMI SCHOOL OF LAW, ET AL., SUBMISSION IN PREPARATION FOR A WORKING MEETING BEFORE THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, ORGANIZATION OF AMERICAN STATES 5 (Mar 26, 2011) (on file with author).
- ⁹⁵ *Id.*
- ⁹⁶ *In Matter of J-E-*, 23 I. & N. Dec. 291 (BIA 2002). The Board of Immigration Appeals found that overcrowding, along with inadequate food, water, medical care, and sanitation did not constitute torture under U.S. regulations at 8 C.F.R. § 208.18. *Id.*
- ⁹⁷ Mary Holper, *Case of Respondents Who Fear Imprisonment as Criminal Deportees to Haiti: Updates in the Law since Matter of J-E-* (Oct. 2, 2008), <http://www.ijdh.org/pdf/headline10-18-08.pdf>.
- ⁹⁸ *Id.*
- ⁹⁹ UNIV. OF MIAMI, *supra* note 94, at 2.
- ¹⁰⁰ Press Release, IACHR Urges United States to Suspend Deportations to Haiti, Feb. 4 2011, <http://www.cidh.oas.org/Comunicados/English/2011/6-11eng.htm>.
- ¹⁰¹ University of Miami School of Law, et al., Submission in Preparation for a Working Meeting Before the Inter-American Commission on Human Rights, Organization of American States 2 (Mar 26, 2011) (on file with author).
- ¹⁰² *Id.*
- ¹⁰³ Karshan, *supra* note 80.
- ¹⁰⁴ Article 14 of the ICCPR states that, “everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.” ICCPR, *supra* note 10, art. 14.
- ¹⁰⁵ Inter-American Convention on Human Rights, Article 8, “[e]very person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.” American Convention, *supra* note 12, art 8.
- ¹⁰⁶ 1987 CONST. art. 5.
- ¹⁰⁷ Stone, *supra* note 23, at 8-9.

¹⁰⁸ ICG Report, *supra* note 44, at 5.

¹⁰⁹ IACHR Rapporteur Report, *supra* note 64, ¶ 140.

¹¹⁰ *Id.*

¹¹¹ Article 14(3)(b) of the ICCPR, *supra* note 10, and Article 8(3) of the American Convention, *supra* note 12, establish “adequate time and means for the preparation of his defense.”

¹¹² Interview with Mario Joseph, *supra* note 28

¹¹³ 1987 CONST. art. 177.

¹¹⁴ Supreme Court Justices are appointed for life. They may only be removed due to permanent mental or physical incapacity. *Id.* art 77.

¹¹⁵ 1987 Const., art. 175.

Right to Education

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UnityAyiti

I. INTRODUCTION

1. Children from low-income families in Haiti lack access to adequate education. Even before the devastating earthquake of January 12, 2010, nearly 80 percent of Haitians lived in extreme poverty.¹ The earthquake exacerbated an already perilous situation and has resulted in the denial of the right to adequate education for the vast majority of Haitian children.

II. LEGAL FRAMEWORK FOR THE PROMOTION AND PROTECTION OF THE RIGHT TO EDUCATION

2. Universal free primary education is a right protected by Article 26 of the Universal Declaration of Human Rights. Moreover, Haiti has ratified or acceded to the following human rights treaties and conventions that contain protections for the right to education: the Convention on the Elimination of all Forms of Racial Discrimination (Article 5); the Convention on the Rights of the Child (Articles 23, 24, 28, and 32); and the Convention on the Elimination of all Forms of Discrimination against Women (Article 10).

3. The Haitian Constitution also provides individuals with the specific right to education.² According to Article 32-1, “Education is the responsibility of the State and its territorial divisions. They must make schooling available to all, free of charge, and ensure that public and private sector teachers are properly trained.” Art. 32-3 further declares, “Primary schooling is compulsory under penalties to be prescribed by law. Classroom facilities and teaching materials shall be provided by the State to elementary school students free of charge.”

4. While the Haitian government has begun to enforce the right to education, its efforts have proved insufficient to realize the right to education for all of its citizens. Education in Haiti is regulated by the Haitian Ministry of National Educational and Professional Training, which is responsible for both providing educational services to its citizens and playing a normative regulatory role over schools.³ While the Haitian Government sponsored the National Plan of Education and Training in 1997, which identified education as an important national goal, the government has never had a long-term plan for fully realizing the right to education. Interviews with various stakeholders repeatedly identified the government’s lack of a comprehensive strategy as the largest problem with the primary education system. While the Interim Haiti Recovery Commission (IHRC) led by former U.S. President Bill Clinton and Haiti’s Prime Minister Jean-Max Bellerive released the Action Plan for National Recovery and Development of Haiti after the earthquake, which includes education as a priority,⁴ it also failed to provide a comprehensive strategy for fixing Haiti’s education system.

5. In 2008, public spending on education comprised only 1.97% of the gross domestic product.⁵ A comparison between Haiti and peer countries in the Caribbean and Latin America reveals that the low rate of expenditure is not so much a matter of resources but of priorities.

III. REALIZATION OF THE RIGHT TO EDUCATION IN HAITI

6. The actual state of education in Haiti bears little resemblance to the norms espoused in the Haitian Constitution or international treaties. According to a 2007 World Bank project appraisal document, in which it approved a grant of US \$25 million to the Haitian government as part of the Education for All initiative, at least 500,000 Haitian children between the ages of 6-11 are not in school. Only half of all six-year-olds enroll in the first grade.⁶ More than 21 percent of children ages 6 to 9 do not go to school because their parents feel they are too young to walk the

distances of several kilometers to and from school by themselves.⁷ For this reason, among others, more children ages 10 to 14 attend school than those 6 to 9 years of age. Classrooms are full of *surâgés*, or students older than the expected age for their grade level.⁸

A. High Cost of Education

7. One of the primary goals of the 1997 National Plan of Education and Training was to ensure primary education would be made compulsory and free. However, weak state institutions and shrinking budgets dedicated towards education have led to increased school privatization. As a result, 92% of Haitian schools are privately owned, many of which charge high rates of tuition.⁹

8. The amount of money required to pay for children's schooling varies widely depending on the school, education level and whether the school is in an urban or rural area. To take one example, a 2006 article in the Haitian newspaper *Le Nouvelliste* quoted two Port-au-Prince parents who were paying between US \$200 to 300 for entry fees alone (fees paid to enroll children; many schools also charge a monthly fee).¹⁰ The impact of such fees on access to education in a country in which an estimated 75 percent of the population lives on less than \$2 a day and 55 percent live on less than \$1 a day needs little explanation.¹¹ While public schools have lower costs, numerous "hidden" fees—for school maintenance, uniforms, books, and teacher-salary augmentation—put even public education out of the reach of many parents. Haitian families may spend up to half of their total income on their children's schooling. As a result, education is cost-prohibitive for many families. In a Living Conditions Measurement Survey cited by the World Bank, 43 percent of all parents said the reason their children were not in school was their inability to pay.¹² For families with multiple children, it is not uncommon for children to take turns attending class, resulting in further setbacks, high repetition rates and dropout rates among students.¹³

9. Due in part to the lack of affordability of Haitian schools, only 55% of primary-school-age children in Haiti attend school, and less than one third of those enrolled reach the fifth grade.¹⁴ Secondary school education is even more limited. The Haitian government's 2007 Growth and Poverty Reduction Strategy Paper shows that only 123,000 students were admitted to Haitian secondary schools in 2004, and of those only 67% were able to receive secondary schooling.¹⁵

B. Lack of Schools

10. Rural areas support some of the poorest populations and contain few schools. The schools that do exist are inadequately funded. This is one push factor behind unsustainable population migration to more urban areas such as Port-au-Prince, which have limited employment opportunities and weak infrastructure. In many cases, the lack of education opportunities in rural areas has led to the separation of families because families send their children to urban areas to be educated. In some instances, children who have to relocate are entrusted to more affluent families, where they will trade domestic labor for the promise of education in a form of modern slavery. The UN Special Rapporteur on Modern Slavery has estimated that between 150,000 and 500,000 children serve as *restaveks* in Haiti. The Special Rapporteur raised the concerns that *restavek* children are economically exploited since they are not being compensated for the work that they are doing, and are often not receiving the education that they were meant to receive. In

instances where *restavek* children are provided education, the Special Rapporteur found that the education was inferior to the education provided to non-*restavek* children.¹⁶

11. Following its most recent review of Haiti, the Committee on the Elimination of Discrimination Against Women (“CEDAW”) was concerned about the high level of illiteracy among women, in particular the wide disparity in access to education between urban and rural areas.¹⁷ Due to economic burdens, young women are often called to contribute to a Haitian household in ways that are detrimental to their education. Additionally, due to the lack of access to potable water, particularly in rural areas, school-age girls must miss school to fetch water for their families and care for family members who are sick due to water-borne illnesses.¹⁸

C. Impact of the Earthquake

12. The impact of the January 12, 2010 earthquake on the Haitian education system has been devastating. The earthquake destroyed or badly damaged at least half of the nation’s 15,000 primary and 1,500 secondary schools. The three universities in Port-au-Prince were almost completely destroyed, and the Ministry of Education building is in ruins.¹⁹ The entire school system shut down for three months following the earthquake.

13. Nearly six months after the earthquake, more than half of the students impacted by the earthquake remained out of school, with children in displacement camps facing particular challenges in accessing education. In early 2011, more than 1 million people —approximately 380,000 of whom are children—still lived in crowded, inhumane camps.²⁰ Efforts to build temporary schools within camps are often blocked by landowners who fear that the camps will turn into permanent settlements.

D. Poor Quality of Education

14. Due to economic constraints, public schools are over grossly overcrowded, lack essential educational facilities, such as libraries and laboratories, and rely on outdated textbooks. Often, the teacher has the only textbook in the classroom.²¹ Many teachers lack the necessary teaching credentials. Only 60% of private school teachers are appropriately trained.²² Nearly 80% of primary school teachers hold no official teaching certificate.²³ Additionally, adequately trained teachers are burdened with more than 50 students per class, lack of materials or curricula and chronically late wage payments, which has resulted in high teacher absenteeism.²⁴ Private schools in general are largely unregulated —three-fourths operate with no certification or license²⁵—resulting in varying degrees in the quality of education provided.

15. Schools also lack adequate sanitation facilities, further limiting girls’ access to education, since “girls, particularly after puberty, are more likely to skip school or drop out when the school does not have adequate sanitation facilities as they are unable to properly care for and clean themselves during their menstrual period.”²⁶

16. Students who are economically disadvantaged are often disadvantaged at school as well. Classes are often taught in French, rather than Haitian Creole. While French and Haitian Creole are both official languages of Haiti, French is only spoken by 20-40% of the population, and generally by those in the affluent socioeconomic class. As a result, poor children frequently lack the French proficiency necessary to complete their education.²⁷

17. While public higher education is provided by the National University of Haiti, it graduates only 600 students a year. Of Haiti’s private higher education institutions, only three are officially recognized by the government and “of any quality.”²⁸ The total higher education enrollment ratio in Haiti is among the lowest in the world.

IV. RECOMMENDATIONS TO THE HAITIAN GOVERNMENT AND PARTNERS

1. Create a long-term plan for education with concrete milestones to achieve universal access to quality primary and secondary education and increase access to quality higher education based on consultations with key stakeholders, including students, teachers, parents, private and public school directors and relevant government Ministries;
2. Increase the national budgetary allocation for education to at least 25% and increase public funding for public schools;
3. Create and implement a nationwide education grant scheme that pays families a monthly stipend to send their children to school and assists with any fees for school supplies and transportation costs for students to travel to and from school;
4. Provide students with free school lunches that support local food production;
5. Implement special efforts, particularly in rural areas, to ensure that young girls are provided the same access to education as their male counterparts and that girls have access to adequate sanitation facilities;
6. Provide instruction in Haitian Creole at all educational levels. The Ministry of Education should establish and adequately fund a National Haitian Creole Institute to standardize Creole's written and verbal forms, and to encourage its acceptance and use at all levels of society;
7. Provide schools with updated textbooks reflecting recent Haitian history and sufficient pedagogical tools;
8. The Ministry of Education must provide, regulate and monitor training to all teachers in both the public and private schools. In an effort to ensure that there will be a sufficient number of teachers to meet the increased number of schools, special recruiting and training efforts for new teachers must be created. The Ministry of Education should be provided sufficient personnel and funds to ensure that the accreditation process for all schools can be implemented;
9. Produce global and local statistics on education, disaggregated by rural and urban areas in a systematic manner;
10. Adequately fund and build the capacity of quality control agencies such as the National Pedagogical Institute or the National Institute for Professional Training; and
11. Ensure teachers are paid on time and create more attractive employment packages for teachers by including health benefits and create incentive programs to attract teachers to rural schools.

¹ Women Struggle for Rights as Haiti Recovers, United Nations Development Programme, March 2010. *See* <http://content.undp.org/go/newsroom/2010/march/women-struggle-for-rights-as-haiti-recovers.en>

² Haitian Constitution, Preamble, Art 22 and 32.

³ United States Institute of Peace, Education and Conflict in Haiti, "Rebuilding the Education Sector after the 2010 Earthquake," Special Report 245, Aug. 2010, p. 3 (the "Special Report").

⁴ *The Action Plan for National Recovery and Development of Haiti* (the "Action Plan") p. 8.

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- ⁵ Laurence Wolff, "Education in Haiti: The Way Forward," Partnership for Educational Revitalization in the Americas (Sept. 2008) available at <http://www.thedialogue.org/PublicationFiles/Education%20in%20Haiti%20-%20The%20Way%20Forward%20-%20FINAL%20-%209-15-08.pdf>.
- ⁶ World Bank, *Project Appraisal Document*, Mar. 21, 2007.
- ⁷ UNDP, Press Release: *Millennium Development Goals Look Out of Reach for Increasingly Impoverished Haiti, Concludes Detailed Report by the UN and Interim Government*, Nov. 17, 2004, available at <http://www.undp.org/dpa/pressrelease/releases/2004/november/haitirelease.pdf>.
- ⁸ *Id.*
- ⁹ Special Report p. 2.
- ¹⁰ "Les frais scolaires: véritable casse-tête pour les parents", *Le Nouvelliste*, Haïti.
- ¹¹ Statistics are cited in the Bank's project appraisal document. The original source is a 2001 living conditions survey, and the same figure is repeated in UNDP/Government of Haiti, National Report on the Millennium Goals for Development: A Common Vision of Sustainable Development (2004), <http://www.ht.undp.org/OMD/> (in French). Comparative 2001 numbers are from WORLD BANK, WORLD DEVELOPMENT INDICATORS 2005 tbl. 2.5a (2005), available at <http://devdata.worldbank.org/wdi2005/Cover.htm>.
- ¹² World Bank, *supra* note 4, p. 9.
- ¹³ Special Report, pp. 2-3.
- ¹⁴ See http://www.unicef.org/infobycountry/haiti_statistics.html#67.
- ¹⁵ Special Report p. 2.
- ¹⁶ *Report of the Special Rapporteur on Modern Slavery*, by Gulnara Shahninian, Sept. 4, 2009 (the "Special Rapporteur Report").
- ¹⁷ Convention on the Elimination of All Forms of Discrimination against Women ("CEDAW"), Committee on the Elimination of all Forms of Discrimination Against Women 43rd Session, *Concluding Observations of the Committee on the Elimination of Discrimination Against Women*, February 10, 2009 (the "CEDAW Report").
- ¹⁸ UNICEF, State of the World's Children, 23 (2004), available at www.unicef.org/sowc04/files/SOWC_04_eng.pdf
- ¹⁹ See http://portal.unesco.org/geography/en/ev.php-URL_ID=12145&URL_DO=DO_TOPIC&URL_SECTION=201.html
- ²⁰ *Children in Haiti - One Year After the Long Road from Relief to Recovery*, January 2011, UNICEF, p. 5.
- ²¹ Laurence Wolff, "Education in Haiti: The Way Forward," Partnership for Educational Revitalization in the Americas (Sept. 2008) available at <http://www.thedialogue.org/PublicationFiles/Education%20in%20Haiti%20-%20The%20Way%20Forward%20-%20FINAL%20-%209-15-08.pdf>.
- ²² Special Report, p. 3.
- ²³ Laurence Wolff, "Education in Haiti: The Way Forward," Partnership for Educational Revitalization in the Americas (Sept. 2008) available at <http://www.thedialogue.org/PublicationFiles/Education%20in%20Haiti%20-%20The%20Way%20Forward%20-%20FINAL%20-%209-15-08.pdf>.
- ²⁴ Laurence Wolff, "Education in Haiti: The Way Forward," Partnership for Educational Revitalization in the Americas (Sept. 2008) available at <http://www.thedialogue.org/PublicationFiles/Education%20in%20Haiti%20-%20The%20Way%20Forward%20-%20FINAL%20-%209-15-08.pdf>.
- ²⁵ Laurence Wolff, "Education in Haiti: The Way Forward," Partnership for Educational Revitalization in the Americas (Sept. 2008) available at <http://www.thedialogue.org/PublicationFiles/Education%20in%20Haiti%20-%20The%20Way%20Forward%20-%20FINAL%20-%209-15-08.pdf>.
- ²⁶ Center for Human & Rights & Global Justice et al., "Woch Nan Soley: The Denial of the Right to Water in Haiti," 2008, p. 44; UNICEF, State of the World's Children, 23 (2004), available at www.unicef.org/sowc04/files/SOWC_04_eng.pdf at 55, 88; see also Jackie Kirk & Marni Sommer, "Menstruation and Body Awareness: Linking Girls' Health with Girls' Education," available at www.schools.watsan.net/content/download/323/2726/file/Kirk-2006-Menstruation-KIT%20paper.pdf.
- ²⁷ Special Report p. 3.
- ²⁸ Laurence Wolff, "Education in Haiti: The Way Forward," Partnership for Educational Revitalization in the Americas (Sept. 2008) available at <http://www.thedialogue.org/PublicationFiles/Education%20in%20Haiti%20-%20The%20Way%20Forward%20-%20FINAL%20-%209-15-08.pdf>.

Elections & The Right to Vote (French)

Submitted by :

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Le Bureau des Avocats Internationaux BAI est un cabinet d'avocats haïtiens d'intérêt public à but non lucratif, qui assiste et représente les victimes de graves violations des Droits Humains. Dans sa mission de formation, le BAI encadre les jeunes avocats et se prononce (plaidoyer) sur les questions de la justice en général et les Droits Humains en particulier en Haïti depuis 1995.

Les échéances électorales constitutionnelles qui ne sont jamais respectées par le Gouvernement haïtien étaient une de nos préoccupations dans la construction d'un Etat de droit en Haïti. L'exclusion des partis politiques dans les élections législatives de 2009 et les présidentielles et législatifs de 2010 et 2011 a préoccupé le BAI depuis le début du processus électoral. Les violations du droit de vote des Déplacés Internes ont été également les préoccupations du BAI depuis le séisme du 12 Janvier 2010. Suite à de graves violations des Droits Humains du peuple, le BAI, TransAfrica Forum, et Louisiana Justice Institute prennent la liberté de soumettre ce rapport concernant les droits politiques au Conseil des Droits des Humains des Nations Unies pour l'Examen périodique universel d'Haïti.

Sommaire

Comme stipulé dans les *Directives Générales pour la préparation de l'information fournie dans le cadre de l'Examen périodique universel*, ce rapport fournit les informations suivantes:¹

Partie I - Les engagements internationaux de la part d'Haïti aux élections honnêtes qui expriment la volonté du peuple haïtien.

Partie II - L'exclusion systématique des parties politiques par le Conseil Electoral Provisoire viole les engagements internationaux d'Haïti aux élections honnêtes qui reflètent la volonté des électeurs, le droit à la candidature et la liberté d'association.

Partie III - Le processus d'inscription des électeurs ainsi que l'élaboration du registre des électeurs pour les élections du 28 Novembre 2010 n'a pas suivi la loi haïtienne et a conduit à la privation du vote électeurs inscrits de plus de 1.000.000 Déplacées Internes. Le processus d'inscription et d'enregistrement des électeurs a violé les obligations d'Haïti à tenir des élections honnêtes fondées dans le suffrage universel et égal.

Partie IV - Le Gouvernement haïtien et la MINUSTAH ont échoué, ils n'arrivent pas à empêcher les irrégularités dans le vote et la violence le jour du scrutin, ainsi violant les engagements internationaux d'Haïti à l'égalité du suffrage et les droits des Haïtiens à la sécurité personnelle dans l'exercice des droits politiques.

Partie V - Gouvernement d'Haïti a permis la fraude au cours du dépouillement et a accepté les résultats d'un processus de dépouillement frauduleux résultant en violation des droits des Haïtiens au suffrage universel et égal. En outre, le rendement des obligations d'Haïti à un fondement international imposant un changement de résultat électoral viole les engagements internationaux d'Haïti à d'honnêtes élections.

Introduction

1. Dans toutes les élections depuis Avril 2009 – celles en Avril et Juin 2009, celle qui était proposée en Février 2010, et celles de Novembre 2010 et Mars 2011, Haïti n'a pas respecté ces engagements internationaux sur la conduite des élections honnêtes qui expriment la volonté du peuple haïtien. Le Conseil Electoral Provisoire (CEP) illégalement constitué a systématiquement exclu des partis politiques en 2009 et 2010, ce faisant le CEP a violé les obligations internationales d'Haïti. Le 28 Novembre 2010, au milieu d'une épidémie de choléra et onze mois après un séisme qui a déplacé 1,5 millions haïtiens, Haïti a organisé des élections pour élire un président, un tiers du Sénat et l'ensemble de la Chambre des députés. Au cours de ces élections, le peuple haïtien était victime de discrimination politique sous la forme de l'exclusion des partis politiques, la privation du droit de vote massive à cause de la défaillance du registre électoral et la fraude au cours du dépouillement des votes. En fin de compte, le gouvernement haïtien a fait pression pour changer un résultat électoral déjà annoncé à cause des exigences de la communauté internationale, et organise un deuxième tour des élections le 20 Mars 2011 basé sur des résultats qui ne sont encore publiés. Ces sélections de 2009, 2010 et 2011 financées et partiellement organisées par la communauté internationale n'ont pas été réalisées en conformité aux lois haïtiennes et/ou les obligations internationales relatives aux droits de l'homme. Des élections justes et légitimes qui reflètent la volonté du peuple haïtien et un gouvernement stable et crédible sont fondamentales pour assurer le respect des droits du peuple haïtien et la reconstruction d'Haïti.

Partie I - Les engagements du Gouvernement haïtien par rapport à l'international d'organiser des élections honnêtes qui expriment la volonté du peuple haïtien.

2. En vertu de la DUDH, les haïtiens ont le droit à des élections honnêtes, au suffrage universel et égalitaire, qui résulte en un gouvernement qui reflète la volonté du peuple.² Haïti s'est engagé aussi à faire respecter le droit à la participation égale dans le gouvernement.³ Haïti a garanti ces droits quand elle a ratifié le PIDCP.⁴

Partie II - L'exclusion systématique des partis politiques par le Conseil Electoral Provisoire illégalement constitué viole les engagements internationaux d'Haïti dans l'organisation d'élections honnêtes qui reflètent la volonté des électeurs, et le droit à la candidature et la liberté d'association.

Exigences constitutionnelles à un Conseil Electoral Permanent

3. La Constitution de 1987 exige que les élections en Haïti soient administrées par un Conseil Electoral Permanent après les élections de Novembre 1987. Le Conseil devrait fonctionner comme une institution indépendante du gouvernement et il est chargé « d'organiser et de contrôler en toute indépendance toutes les opérations électorales. »⁵ Le Conseil Electoral Permanent devrait avoir neuf membres qui siègent irrévocablement pendant un mandat de neuf ans.⁶ Le Pouvoir Exécutif, la Cour de Cassation, et l'Assemblée nationale ont chacun le droit de choisir trois membres du Conseil sur la proposition des Assemblées Départementales et Communales.⁷ Les organes sus-cités veillent, autant que possible, à ce que chaque département soit représenté à part égale.

Un Conseil électoral permanent n'a jamais été établi et les élections en Haïti sont administrées par un Conseil Electoral Provisoire («CEP») qui n'est pas légalement constitué.

4. Le CEP n'était pas légalement constitué, il n'a jamais été établi le Conseil électoral permanent et irrévocable, ni aucun des membres des Conseil électoral provisoires n'a été choisi suivant le système des Collectivités Territoriales comme le prescrit la Constitution de 1987 en vigueur. Par ce système, les Constituants ouvrent la voie de la décentralisation de la gouvernance en Haïti afin d'assurer l'égalité des suffrages et la participation égale dans l'administration électorale.⁸ Depuis 1987, les Conseils Electoraux Provisoires ont été nommés pour une durée indéfinie.⁹ Le système des Collectivités Territoriales n'était jamais établi, donc les membres de l'actuel CEP, comme tous les membres du CEP postérieur n'ont pas été sélectionnés par le système dicté par la Constitution de 1987. L'omission de choisir des membres suivant la Constitution de 1987 à travers le système des Collectivités Territoriales viole le droit des Haïtiens à la participation égale dans les affaires publiques.¹⁰ En Octobre de 2009, le Président Préval a dissous le CEP qui a organisé les élections de Février 2006 et a personnellement sélectionné un nouveau CEP, niant le droit des autres acteurs de choisir les deux tiers des membres du Conseil Electoral Provisoire.¹¹ Le CEP n'est ni constitutionnellement constitué ni un organisme gouvernemental indépendant qui peut garantir les droits humains des Haïtiens.

L'exclusion systématique CEP des partis politiques par le CEP a violé les droits des partis politiques, des candidats et des électeurs à la liberté d'association, de participer comme candidats et aux élections honnêtes.

5. Le CEP a exclu sans justification et autorité légale des partis politiques haïtiens, y compris le plus grand parti politique en Haïti, Fanmi Lavalas (FL).¹² Cette exclusion systématique est une violation des engagements internationaux qu'Haïti a pris pour organiser des élections honnêtes tout en respectant le droit à la candidature et la liberté d'association. Pendant les élections sénatoriales partielles d'avril 2009, le CEP a exclu le parti politique Fanmi Lavalas dans le processus électoral et a refusé son enregistrement.¹³ Truffé d'hypocrisie, l'ONU, l'OEA et les États-Unis ont dénoncé l'exclusion FL comme antidémocratique.¹⁴ Inébranlable, le CEP n'a respecté les dénonciations de l'exclusion par l'international et la FL fut exclu de ces élections et les autres.¹⁵ L'exclusion est présumée d'avoir eu des motivations politiques, parce que FL est le parti de l'ancien président haïtien, Jean Bertrand Aristide. A cause de son exclusion par le CEP, FL et ses candidats restent sans remède juridique pour ces graves violations de leurs droits civils et politiques.¹⁶

6. Le CEP a continué à exclure la FL de toutes les élections suivantes. Le 26 Novembre 2009, le CEP a interdit FL, ainsi que 13 autres partis politiques de participer aux élections législatives prévues pour Février 2010 sans explication ni justification (les élections étaient prorogées à cause du séisme du 12 Janvier).¹⁷ Des rapports indiquent que les documents de FL étaient conformes à toutes les exigences légales, cependant FL s'est vu refuser illégalement le droit de participer dans les élections.¹⁸ Toutes les démarches menées auprès de l'Organisation des États Américains (OEA) et la CARICOM (Communauté des Caraïbes) pour une explication de l'exclusion du CEP demeurent sans réponse.¹⁹ Cette deuxième exclusion est une fois de plus en

dehors de la loi électorale 2008, des lois haïtiennes, des attributions et compétence juridique du CEP.²⁰

7. L'exclusion illégale des partis politiques par le CEP a violé le droit des partis à la liberté d'association en vertu de la Constitution haïtienne ainsi que les articles 22, 25 et 26 du PIDCP. Le PIDCP accorde au peuple haïtien le droit de libre association, sans discrimination politique, ainsi que le droit de vote aux élections honnêtes.²¹ Le droit à la liberté d'association est soumis à une limitation rigoureuse en vertu du PIDCP. Dans ce cas, le gouvernement haïtien a bafoué le droit de ces partis politiques résultant en une violation affirmative du droit à la libre association comme le stipule le PIDCP. Bien que les partis politiques aient pu recourir au tribunal de droit commun, les décisions de Justice en leur faveur n'ont pas été prises en compte rendant leur exclusion politique un obstacle insurmontable pour de élections honnêtes.²²

8. L'exclusion des partis politiques a violé les droits du peuple haïtien à l'administration équitable et impartiale des élections honnêtes qui reflètent la volonté du peuple. Dans toutes les élections qui ont eu lieu au cours de l'exercice 2009, 2010, et 2011 en Haïti, le CEP a exclu de manière injustifiée et illégale le parti qui a gagné chaque élection dont il a participé en dépit de protestations nationales et internationales. Cette exclusion a entraîné un taux de participation minimale au cours de ces élections. Les élections tenues en dépit d'une exclusion injustifiable du parti de la majorité avec une faible participation ne sont pas des élections honnêtes qui reflètent la volonté du peuple haïtien. Ces élections doivent être considérées comme illégitimes et ne devraient pas être reconnues par le gouvernement haïtien et la communauté internationale.

Partie III - Le processus d'inscription des électeurs ainsi que l'élaboration du registre des électeurs pour les élections du 28 Novembre 2010 n'a pas suivi la loi haïtienne et a conduit à la privation du vote d'un grand nombre des électeurs inscrits parmi les plus de 1.000.000 Déplacés Internes. Le processus d'inscription et d'enregistrement final a violé les obligations d'Haïti à tenir des élections honnêtes fondées dans le suffrage universel et égalitaire.

Inscription des électeurs en fonction de la loi électorale de 2008

9. Afin de pouvoir voter en Haïti, les citoyens haïtiens doivent s'inscrire auprès de l'Office National d'Identification (ONI), qui gère le registre électoral.²³ L'ONI fournit les cartes d'identités nationales qui sont nécessaire pour voter.²⁴ L'ONI doit également mettre à jour les listes électorales en expulsant toutes les personnes décédées et des personnes qui ont perdu le droit de vote.²⁵ Du registre électoral l'ONI, le CEP a déduit les listes électorales pour chaque bureau de vote.²⁶

Défaillances d'inscription des électeurs dans les élections du 28 Novembre 2010

10. Après le séisme du 12 Janvier, 2010, le Gouvernement haïtien a établi des Centres d'Opération et de Vérification (COV) pour enregistrer les électeurs des camps de Déplacés Internes.²⁷ Les COV travaillaient en dehors de la loi électorale et inscrivait les électeurs des camps des Déplacés Internes sur des listes électorales étrangères. En l'absence de mécanisme juridique ou formel permettant la conciliation entre les listes étrangères et le registre électoral

proprement dit, les COV ont créé une immense confusion dans l'inscription des électeurs.²⁸ En conséquence, l'ONI n'avait pas reconnu de nombreux électeurs inscrits par les COV. En plus de ce système de duplication voulue d'enregistrement, il y avait également des divergences significatives entre le registre électoral de l'ONI et les listes électorales produits par le CEP pour les centres de votes.²⁹ En plus de ces difficultés avec le registre des électeurs, l'ONI a été incapable de distribuer plus de 100.000 cartes d'identités nationales des électeurs dument inscrits comme constaté le jour du scrutin.

11. Le jour du scrutin, les problèmes entourant le registre électoral sont devenus évidents et sautent aux yeux. Les électeurs inscrits ont déclaré que leurs noms ont été exclus de la liste électorale au bureau de vote dont ils avaient l'habitude de voter.³⁰ D'autres électeurs inscrits au COV ont déclaré également que leurs noms ont été déportés du bureau de vote désigné à un autre.³¹ Enfin, l'ONI n'a jamais enlevé les noms des électeurs décédés dans le séisme dans le registre électoral. Ainsi, de nombreux électeurs ont déclaré qu'ils avaient trouvé les noms de leurs voisins morts sur la liste électoral, mais pas leurs siens. Le problème est que les listes électorales n'étaient pas fiables et des milliers d'électeurs ont été empêchés de voter, parce qu'ils ne pouvaient pas trouver leur nom sur la liste.³² En omettant d'établir un processus d'inscription des électeurs accessibles qui permettent la participation universelle des électeurs et de ne pas tenir un registre des électeurs à jour et exact, le Gouvernement haïtien a violé les droits des citoyens haïtiens au suffrage universel et égalitaire.

12. Les privations du droit de vote en général et l'exclusion du plus grand parti politique en particulier ont contribué au très faible taux de participation dans les élections de Novembre 2010 soit 22,9%. Ce faible taux de participation -- le taux le plus faible dans une élection dans la zone des Amériques depuis plus que soixante années³³ -- est du en raison des violations systématiques généralisées et de l'exclusion des partis politiques). Le 01 Février 2011, l'ONI a annoncé qu'il allait commencer le processus de conciliation entre les différents registres électoraux, mais n'a pas expliqué comment il va procéder.³⁴ L'ONI a déclaré que les électeurs dont les noms n'étaient pas sur la liste électorale au cours du premier tour de scrutin seraient automatiquement exclus de la deuxième ronde.³⁵ En vertu de la loi électorale, seuls les électeurs inscrits au premier tour peuvent participer au second tour.³⁶ Toutefois, les électeurs qui ont été injustement privés de leurs droits lors du premier tour du scrutin continueront d'être privés de leurs droits lors du second tour le 20 Mars 2011. Le désenchantement des électeurs en cours ainsi que l'exclusion des partis politiques dans les premier et deuxième tours viole les droits des haïtiens à de véritables élections.

Partie IV - Le Gouvernement haïtien en collaboration avec la communauté internationale n'a pas réussi à empêcher les irrégularités et la violence le jour du scrutin, violant ainsi les engagements internationaux d'Haïti à l'égalité de suffrage et les droits des Haïtiens à la sécurité de la personne dans l'exercice des droits politiques.

Jour des élections, les procédures en vertu de la loi électorale de 2008

13. La loi électorale de 2008 énonce les conditions pour des élections libres et équitables et garantit aux citoyens « le droit du suffrage universel » ... en mettant en place conditions favorisant leur participation au processus électoral."³⁷ Au sein du gouvernement haïtien, le CEP

est responsable de l'administration des élections en conformité avec la loi haïtienne et les engagements internationaux d'Haïti en matière des droits de l'homme.³⁸ La loi haïtienne interdit l'intimidation des électeurs, le bourrage des urnes, le vote multiple, la violence dans et autour des bureaux de vote, et la destruction des bulletins et des matériels de vote.³⁹

Le non respect des procédures des élections le 28 Novembre 2010

14. La planification et l'administration des élections du 28 Novembre 2010 ont été un effort conjoint du gouvernement haïtien et de la communauté internationale. Malgré un investissement de 29 millions de dollars américains pour organiser et administrer les élections, le gouvernement haïtien et la communauté internationale n'ont pas réussi à prévenir les irrégularités et la violence dans les bureaux de vote le jour du scrutin.⁴⁰ Les observateurs internationaux ont signalé des bourrages d'urnes, l'intimidation des électeurs, la violence et le vandalisme dans les bureaux de vote.⁴¹ Plus précisément, les observateurs ont signalé que la police nationale haïtienne (PNH) et la MINUSTAH⁴² ont été insensibles et passifs aux questions de sécurité dans les bureaux de vote et n'ont pas protégé les électeurs qui exerçaient leurs droits politiques.⁴³ Dans le département du Centre, un homme armé est entré dans un centre de vote et a tiré dans l'air dispersant les électeurs et les membres du bureau de vote. Les soldats de la MINUSTAH ont pris la poudre d'escampette, ainsi que les agents de sécurité des bureaux de vote et les observateurs, ce qui a entraîné la destruction de tous les matériels et documents électoraux.⁴⁴ En raison des irrégularités bien documentées et approfondies, douze des dix-neuf candidats à la présidence ont appelé à l'annulation des élections du 28 Novembre et à la réalisation de nouvelles élections honnêtes et crédibles.

15. L'échec du Gouvernement haïtien et de la Communauté internationale de prévenir les irrégularités le jour du scrutin et la violence caractérisé constituent une violation grave des droits des citoyens haïtiens au suffrage égal et universel. En outre, le fait que la PNH et la MINUSTAH n'ont pu maintenir la sécurité aux bureaux de vote constitue une violation grave des droits des Haïtiens à la sécurité de la personne. Ces violations ainsi que l'exclusion des partis politiques et les privations du droit de vote des électeurs haïtiens violent les droits à de véritables élections.

Partie V-Le gouvernement d'Haïti a permis la fraude au cours du dépouillement et a accepté les résultats d'un processus de dépouillement frauduleux en violation des droits des haïtiens au suffrage universel et égalitaire. En acceptant le diktat de l'International pour falsifier le résultat des élections du 28 Novembre 2010 les Conseillers électoraux violent les engagements internationaux d'Haïti à conduire de véritables élections.

Dépouillement du scrutin en vertu de la loi électorale de 2008

16. La loi électorale de 2008 énonce les procédures à suivre pendant le dépouillement des votes. La tabulation de votes doit commencer dès la clôture des bureaux de vote.⁴⁵ En ce moment, il revient aux administrateurs des bureaux de vote de rédiger les rapports de vote sur une seule feuille de pointage (procès-verbal) qui comprend le nombre de bulletins de vote reçus au bureau de vote, le nombre de bulletins utilisés, le nombre de bulletins noms utilisés, le nombre de votes exprimés, le nombre de bulletins indiquant aucun candidat, le nombre de votes déclarés nuls, les contestations tout incident jugé utile d'y figurer, l'heure d'ouverture et de

fermeture et la liste des électeurs ayant participé.⁴⁶ Les procès-verbaux sont transmis au centre de tabulation central où ils sont totalisés et les résultats sont proclamés.⁴⁷ Le vainqueur d'une élection présidentielle est déterminé soit par une majorité absolue des voix à l'élection au premier tour ou le plus grand nombre de suffrages exprimés durant le second tour.⁴⁸

Dépouillement des votes frauduleux et un résultat des élections dicté par l'International

17. Les procédures du dépouillement des votes n'ont pas été respectées et sont conduites par la communauté internationale qui impose un résultat du scrutin, sans tenir compte de nombreuses irrégularités et fraudes. En dépit des preuves tangibles d'irrégularités et de fraudes, le 29 Novembre 2010, le CEP a annoncé que l'élection a été un succès, exigeant seulement l'exclusion de 56 bureaux en raison d'irrégularités de vote sur 1500.⁴⁹ La Mission d'observation électorale OEA/CARICOM qui a fait l'écho des irrégularités, a validé les résultats des élections.⁵⁰ Dans la semaine suivante, les allégations de fraudes et d'irrégularités sont légions dans chaque département.⁵¹ Le 3 Décembre 2010, le Secrétaire général de l'ONU, Monsieur Ban Ki-Moon a reconnu que les irrégularités électorales étaient pires que ce qui étaient initialement prévues.⁵²

18. Le 7 Décembre 2010, le CEP a annoncé les résultats préliminaires. Mirlande Manigat avait obtenu à 31,4% des suffrages, suivi par le candidat soutenu par le gouvernement PREVAL/BELLERIVE, Jude Célestin avec 22,5%.⁵³

19. Après cinq jours de manifestations, parfois violents de la part des partisans du candidat Joseph Michel Martelly, les d'experts de vérification de l'OEA ont été convoqués pour réévaluer la tabulation des votes.⁵⁴ La Mission de vérification (les experts) a utilisé seulement 919 procès verbaux comme échantillon, ce qui représente 16,9% des voix exprimés.⁵⁵ Sur la base de ce échantillon, la Mission de Vérification a conclu que Joseph Michel Martelly est le deuxième en lieu et place de Jude Célestin qualifié pour le deuxième tour des élections.⁵⁶ Le Center for Economic Policy Research (CEPR) a travaillé sur tous les 11.181 procès verbaux, représentant 100% des voix et a constaté des irrégularités dans 25% des voix exprimés.⁵⁷ CEPR n'a pas atteint les résultats de l'OEA contenu dans le rapport des experts et de conclure qu'à cause de la grande marge d'erreur et le petit nombre de voix qui sépare Martelly et Célestin sont trop faible pour être fiable. La décision de modifier les résultats proclamés sur la base d'un rapport qui a examiné seulement 16,9% des suffrages exprimés est sans précédent et violent les engagements d'Haïti au suffrage universel et égalitaire.⁵⁸

20. Modification des résultats électoraux sans un dépouillement effectif des votes est internationalement sans précédent et contraire à la loi haïtienne. La communauté internationale, y compris l'Organisation des Nations Unies, a exercé une pression importante sur Haïti afin de modifier les résultats déclarés à la ligne avec le rapport de l'OEA. La communauté internationale a menacé de retirer les aides sur lesquelles des centaines de milliers d'Haïtiens qui vivent dans les camps de Déplacés Internes dépendent pour subvenir aux nécessités de base.⁵⁹ Le 2 Février 2011, le Bureau du Contentieux Electoral National (BCEN), l'autorité électorale en dernier ressort, a demandé au CEP d'inverser les résultats des élections sur la base du rapport de l'OEA sans justifier la décision dans la législation haïtienne.⁶⁰ Le 3 Février 2011, le CEP, conformément à cette ordonnance, a proclamé les soi-disant résultats définitifs du premier tour sans le nombre de signatures requises, en violation de l'article 8 des règlements Généraux du

CEP.⁶¹ Le Gouvernement haïtien a violé les droits du peuple haïtien à cause de la pression internationale demandant la modification du résultat des votes du 28 Novembre 2010. Ainsi, la communauté internationale partage la responsabilité de violations des Droits Humains et le Droit à l'autodétermination du peuple haïtien.

Partie VI-Recommandations.

1. Le gouvernement haïtien devrait encourager la participation libre, pleine et entière de tous les partis politiques admissibles en vue de se conformer à ses obligations domestiques et internationales.
2. Le gouvernement haïtien devrait tenir un processus électoral qui respecte la loi et le droit des électeurs et une participation inscrite inclusive des partis politiques et la pouvant garantir le suffrage universel.
3. Le gouvernement haïtien devrait renvoyer ce Conseil électoral illégalement constitué et entamer le processus devant aboutir Conseil Electoral Permanent conformément à la Constitution de 1987 afin de protéger le droit haïtien à de véritables élections pour l'avenir.
4. Le gouvernement haïtien et la communauté internationale ne devraient pas reconnaître des élections qui ne respectent pas les recommandations formulées ci-dessus, la Communauté internationale devrait s'abstenir de dicter les résultats des élections.

¹Contained in Human Rights Council Decision 6/102, Follow-up to Human Rights Council resolution 5/1, Section I adopted 27 September 2007.

²Universal Declaration of Human Rights, G.A Res. 217 (III) A, U.N. GAOR, 3d Sess., U.N. Doc. A/810, art. 21 (Dec. 10, 1948).

³*Id.*

⁴International Covenant on Civil and Political Rights, G.A. Res. 2200 A (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316, art. 25 (Dec. 16, 1966).

⁵1987 CONST. OF THE REPUBLIC OF HAITI arts. 91-199.

⁶*Id.* at art 194.

⁷*Id.* at art. 192.

⁸Brian Concannon, Jr., *What's at Stake in Haiti's December 3, 2006 Elections: the ASEC system*, INSTITUTE FOR JUSTICE & DEMOCRACY IN HAITI, Nov. 1, 2006 available at <http://ijdh.org/archives/12980>.

⁹CEP, *Historique*, available at http://cephaiti2010.org/index.php?option=com_content&view=article&id=110&Itemid=90 (last visited Feb.17, 2011).

¹⁰*The Right to Vote: A Report Detailing the Haitian Elections for November 28, 2010 and March, 2011*, LAMP FOR HAITI, available at http://ijdh.org/wordpress/wp-content/uploads/2010/11/LAMP_HR_Program_Right_to_Vote_Rep_2010_2011.pdf, at 9.

¹¹1987 CONST. OF THE REPUBLIC OF HAITI art. 31-1 states in part that: "Political parties and groups shall compete with each in the exercise of suffrage. They may be established and may carry out their activities freely." See *The International Community Should Pressure the Haitian Government for Prompt and Fair Elections*, INSTITUTE FOR JUSTICE & DEMOCRACY IN HAITI, June 30, 2010, available at <http://ijdh.org/archives/13318>, at 2 [hereinafter IJDH June 2010 Report].

¹²*Id.*

¹³During the April 2009 elections, the CEP claimed that they excluded FL because two factions of FL submitted candidate lists. But when a join submission for the FL party was made, the CEP rejected the list due to a "new"

requirement by the CEP requiring the original signature of the party leader. Though FL provided the signature of former President Jean Bertrand Aristide in form of facsimile, the CEP rejected this signature as not an original. See IJDH June 2010 Report, *supra* note 11, at 2.

¹⁴*Id.* at 3.

¹⁵*Id.* See also , Kim Ives, *Haiti Liberte: Clinton and Ban visit: Court orders CEP to allow Lavalas*, March 15, 2009, available at <http://www.haitianalysis.com/2009/3/15/haiti-liberte-clinton-and-ban-visit-court-orders-cep-to-allow-lavalas>.

¹⁶ IJDH June 2010 Report, *supra* note 11, at 3.

¹⁷*Id.*, See Nicole Phillips, *Members of Congress are Right to Urge Changes of Haiti's Flawed Electoral Process*, THE HILL, Oct. 11, 2010 available at <http://thehill.com/blogs/congress-blog/foreign-policy/123601-members-of-congress-are-right-to-urge-changes-to-haitis-flawed-electoral-process>.

¹⁸ *The Right to Vote*, Lamp for Haiti, *supra* note 10, at 11; see also IJDH, June 2010 Report, *supra* note 11, at 3.

¹⁹ *Reconstructing Democracy, Joint Report of Independent Electoral Monitors of Haiti's November 28, 2010 Election*, TRANSAFRICA FORUM ET AL., available at <http://transafrica.org/wp-content/uploads/2011/Haiti%20Joint%20Observer%20Report%20FINAL.pdf>, at 9.

²⁰ IJDH June 2010 Report, *supra* note 11, at 3.

²¹ 1987 CONST. OF THE REPUBLIC OF HAITI ART. 33-1 (providing political parties the right to “compete with each other in the exercise of suffrage” subject to conditions set forth by law).

²² Ives, *supra* note 15.

²³ Electoral Law of 2008, *Le Moniteur*, July 25, 2008, art. 27.

²⁴*Id.*

²⁵*Id.* at art. 29.

²⁶*Id.* at art. 31.

²⁷ Interview with CEP, October 14, 2010.

²⁸ IJDH June 2010 Report, *supra* note 11, at 6-7.

²⁹ The CEP recorded 35,000 more registered voters than the ONI. *Rapport du RNDDH sur les elections presidentielles et legislatives du 28 Novembre 2010*, RESEAU NATIONAL DE DÉFENSE DES DROITS HUMAINS, Dec. 3, 2010, at 4 (hereinafter RNDDH Report).

³⁰*Id.* at 4.

³¹*Id.* at 6.

³²*Id.* at 6., see also Brian Concannon and Jeena Shah, *U.S. Will Pay for Haitian Vote Fraud*, BOSTON GLOBE, Dec. 15, 2010 available at http://www.boston.com/bostonglobe/editorial_opinion/oped/articles/2010/12/15/us_will_pay_for_haitian_vote_fraud/.

³³ Mark Weisbrot and Jake Johnson, *Analysis of the OAS Mission's Draft Final Report on Haiti's Elections*, CENTER FOR ECONOMIC AND POLICY RESEARCH, Jan. 2011, available at <http://www.cepr.net/documents/publications/haiti-oas-analysis-2011-01.pdf>, at 4.

³⁴ RNDDH Report, *supra* note 29, at 3.

³⁵ *Corrections des Listes Electorales*, HAITI LIBRE, Feb. 2, 2011, available at <http://www.haitilibre.com/article-2289-haiti-elections-corrections-des-listes-electorales.html>.

³⁶ Electoral Law of 2008, *Le Moniteur*, July 25, 2008, Art. 176.1.

³⁷*Id.* at Preamble.

³⁸*Id.* at Preamble, art. 1, 5.1.

³⁹*Id.* at art. 155, 202, 205.

⁴⁰ MINUSTAH has a Chapter VII mandate to “to assist the government in its efforts to facilitate free and fair elections...through the provision of technical, logistical, and administrative assistance as well as providing continued security” and “coordinate international electoral assistance to Haiti in cooperation with other international stakeholders including the OAS and CARICOM.” Presidential Elections, MINUSTAH, available at <http://www.un.org/en/peacekeeping/missions/minustah/elections.shtml>.

⁴¹ *Organization of the American States Expert Verification Presidential Elections-First Round 2010-Final Report*, OAS-CARICOM, available at <http://www.cepr.net/documents/publications/OAS-Haiti-2011-1.pdf>, at 1; RNDDH Report, *supra* note 29, at 21.

⁴² The PNH and MINUSTAH work together under a cooperative agreement. However, if MINUSTAH is unwilling to protect security at polling stations, the Government of Haiti must do so.

⁴³ RNDDH Report, *supra* note 29, at 7.

⁴⁴*Id.* at 14.

⁴⁵Electoral Law of 2008, *Le Moniteur*, July 25, 2008, arts. 1, 165, 170, 172.

⁴⁶*Id.* at arts. 165, 170.

⁴⁷*Id.* at arts. 170, 172, 173.2.

⁴⁸*Id.* at arts. 40, 41.

⁴⁹*Le CEP Se Félicite du Succès des Elections*, HAITI LIBRE, Nov. 29, 2010, available at <http://www.haitilibre.com/article-1786-haiti-elections-le-cep-se-felicite-du-succes-des-elections.html>.

⁵⁰OAS-CARICOM stated that it did not believe that “irregularities, serious as they are, necessarily invalidated the election.” *Elections: L’OEA/CARICOM Jugent Les Election Valides*, HAITI LIBRE, Nov. 29, 2010 available at <http://www.haitilibre.com/article-1788-haiti-elections-l-oea-caricom-jugent-les-elections-valides.html>; see also Deborah Sontag, *Election Violence Flares in Haiti*, NEW YORK TIMES, Dec. 08, 2010 available at http://www.nytimes.com/2010/12/09/world/americas/09haiti.html?_r=1.

⁵¹RNDHH Report, *supra* note 29, at 8-18.

⁵²*Election: Ban Ki-moon declare que les frauds sont pires que prévu*, HAITI LIBRE, Dec. 3, 2010 available at <http://www.haitilibre.com/article-1821-haiti-elections-ban-ki-moon-declare-que-les-fraudes-sont-pires-que-prevu.html>.

⁵³Sontag, *supra* note 50.

⁵⁴*Id.*

⁵⁵*Final Report Expert Verification Mission of the Vote Tabulation of the November 28, 2010 Presidential Election in the Republic of Haiti*, OAS, Jan. 13, 2011 available at <http://scm.oas.org/pdfs/2011/CP25512E.pdf>.

⁵⁶Ronal C. Archibold, *Haiti Weighs More After Observers Reject Vote Result*, NEW YORK TIMES, Jan. 14, 2011, available at <http://www.nytimes.com/2011/01/15/world/americas/15haiti.html>.

⁵⁷Weisbrot and Johnson, *supra* note 33, at 6.

⁵⁸*Id.* at 7.

⁵⁹Randal C. Archibold, *With Subtraction and Addition, Haiti Set its Presidential Runoff*, NEW YORK TIMES, Feb. 3, 2011, available at <http://www.nytimes.com/2011/02/04/world/americas/04haiti.html?partner=rss&emc=rss>; Dan Beeton, “*Sad Day for Haitian Democracy*” as U.S. Threatens to Cut Off Aid to Haiti in Order to Reverse its Election Results, *CEPR Co-Director Says*, CENTER FOR ECONOMIC AND POLICY RESEARCH, Jan. 25, 2011, available at <http://www.cepr.net/index.php/press-releases/press-releases/sad-day-for-haitian-democracy>.

⁶⁰Electoral Law of 2008, *Le Moniteur*, art. 191.

⁶¹Joseph Guyler Delva, *Haiti, Pressured, Sets Revised Presidency Runoff*, REUTERS, Feb. 3, 2011 available at <http://www.reuters.com/article/2011/02/03/us-haiti-elections-idUSTRE7117JZ20110203>.

Environmental Justice

Submitted by:

Association Haitienne de Droit de l'Environnement (AHDEN)
Environmental Justice Initiative for Haiti
National Lawyers Guild-Environmental Justice Committee

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Bureau des Avocats Internationaux
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I. SUMMARY

1. The statements and recommendations of this document build upon the following assertions:
 - 1) Crisis response does not require a prolonged disregard for natural resource protection, economic independence, health and safety concerns, or other discrete interests of rural or poor populations.
 - 2) In part because they lack adequate environmental assessment and planning in current and future redevelopment efforts, many relief activities threaten the long-term interests of Haitians, and particularly the country's most vulnerable populations.
 - 3) Economic growth is interdependent with environmental stewardship and sustainable use of natural resources.
 - 4) Unless specific measures are included in the structure and execution of relief and rebuilding efforts to enable broader participation in economic growth and encourage greater self-determinacy in environmental stewardship and natural resource management, these goals will not be realized.
2. Human rights concerns in Haiti are closely tied to chronic and severe problems in water quality and sanitation, health and safety of workers, environmental protection, agriculture, and land use. The major areas of concern include:
 - **2010 Earthquake Aftermath and Waste Disposal:** health and human rights crises are greatly exacerbated by the after-effects of the earthquake, particularly the physical obstacles presented by the remaining debris and rubble, of which less than 20% has been removed in Port-au-Prince.¹
 - **Water and Sanitation:** inadequate clean water and lack of sanitation facilities resulting in an inadequate standard of living for most of Haiti's population, and contributing to the ongoing cholera outbreak.
 - **Agriculture and Food Security:** several factors in Haiti threaten the basic human right of food security, including the unrestricted importation of seeds without regard to phytosanitary requirements, as well as largely unregulated importation and use of dangerous and often unlabeled pesticides.
 - **Deforestation:** deforestation of 92% of the land in Haiti is more than a prima facie case that land use planning has failed in the country – and places more and more vulnerable people onto vulnerable places.
 - **Land Use:** the present and planned movement of hundreds of thousands of Haitians from Port-au-Prince to the countryside leads to a variety of land tenure and use controversies hinging upon legal questions of accessibility and ownership.
3. In summary, these impacts threaten many international human rights, including the rights to: life and security of person; health; freedom from hunger; access to water; a healthy environment; an adequate standard of living; a means of subsistence; property; adequate housing; freedom of movement and residence; and culture and traditional knowledge;

safe work place as well as the rights of indigenous peoples, including the right to self-determination.

4. Policies of the GOH should ensure that all substantive decisions are made by, or in meaningful consultation with, Haitian stakeholders of all socioeconomic levels.
5. Restoration of ecosystems and implementation of disaster risk reduction measures must be at the core of the reconstruction. UN agencies can achieve this only by recognizing the need for bidirectional flows of information using established, legitimate, and transparent Haitian institutions.²

II. ENVIRONMENTAL AND HUMAN RIGHTS CONCERNS IN HAITI - OVERVIEW

6. *The United Nations Universal Declaration of Human Rights (UDHR) of 1948* recognizes that “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family.”³
7. *Article 5 of the American Convention on Human Rights* (Pact of San José), which came into force in 1978, states that “Every person has the right to have his physical, mental, and moral integrity respected.”⁴ As of last year, 24 (of 35) OAS member states had ratified the Convention, including Haiti, which ratified it in 1977.⁵
8. The present-day Constitution of Haiti (*Constitution d’Haïti*) was ratified in March 1987, suspended from June 1988 to March 1989, and fully reinstated in 1994. *Article 253 of the Haitian Constitution* states that “Since the environment is the natural framework of the life of the people, any practices that might disturb the ecological balance are strictly forbidden.”⁶
9. *Management of the Environment, Decret du 26 janvier 2006.*⁷ In 2006, the Haitian government produced a revised decree defining national policy on environmental management and sustainable development. The Decree recognizes, *inter alia*, that the quality of the environment directly affects the well-being of each individual and his fundamental right to quality of life.⁸ Further, the Decree recognizes that the degradation of the Haitian environment has reached alarming proportions, compromising the country's sustainable development, and that it is imperative that the State take appropriate measures to safeguard and protect the environment.⁹

III. Environmental Conditions in Haiti

A. Earthquake Aftermath

10. As of this writing, less than 20% of the rubble from the earthquake has been removed. This creates physical barriers to rebuilding and resettlement of Port-au-Prince, and detrimental psychological effects for the citizens on the city. The rubble also includes toxic substances and carcinogens that leach into ground and surface water. In addition to local water pollution, these leachates create downstream problems in coastal fisheries, which poison food and water supplies as well as threatening livelihoods.¹⁰
11. Rubble removal has consistently been undertaken without adequate safety equipment. The consequences of this include serious life-threatening respiratory disorders similar to those suffered by thousands of members of cleanup crews and first-responders in the aftermath of the 9/11 attacks in New York City. Substances that threaten cleanup workers are likely to include silica dust, asbestos, VOCs, and a host of other toxins.^{11 12} For example, respiratory masks are the easiest and cheapest method of preventing respiratory

illness for cleanup crews, costing only US\$1.60 per mask. However, these are not currently required and are very rarely used.

12. What rubble has been removed has frequently been placed in ecologically sensitive areas, or areas where it remains a risk to local water and soil quality.
13. While rapid response is important in a crisis situation, prolonged lack of stakeholder engagement and planning exacerbates poor environmental, health, and safety conditions while perpetuating the Haitian people's condition of powerlessness.

Recommendations:

14. Public agencies and NGOs must increase the number of employees and volunteers removing the rubble and debris, and provide adequate safety equipment and training to both formal and informal cleaning crews, i.e. through contracts with cleanup and construction companies.
15. Ensure that training, cautionary and technical materials are translated into Kreyol or into pictographs to ensure accessibility to all citizens.
16. Ensure that rubble can be disposed of or reused without endangering human or ecological health and safety. This can be achieved through improved environmental management systems, including infrastructure for citizen reporting of environmental problems as well as adequately paid and trained enforcement staff.

B. Water, Sanitation, and the Cholera Outbreak

17. According to the *United Nations Universal Declaration of Human Rights (UDHR) of 1948, sufficient clean water is a basic human right*.¹³ Of all the human needs for an adequate standard of living, sufficient water that is free from pathogens and other harmful agents is one of the most important. In Haiti, this lack is acute; 5-16% of deaths in young children are due to diarrhea resulting from unclean drinking water.^{14 15}
18. If people cannot access clean water, Haiti will continue to see widespread increase in deaths from water-borne diseases, exemplified the ongoing cholera epidemic. Fecal contamination of water is a primary means by which pathogenic bacteria, viruses, nematodes and protozoa are spread. Outbreaks of cholera indicate significant breaches in the water, sanitation, and hygiene infrastructure which permit large-scale exposure to food or water contaminated with *Vibrio cholera* organisms.¹⁶
19. Even prior to the 2010 earthquake, the sanitation and hygiene infrastructure had long been non-functional throughout much of Haiti, especially in rural areas. Since the earthquake, many rural towns have become *de facto* urban areas, due to influx of refugees from Port-au-Prince. Sanitation facilities in Haiti consist primarily pit toilets, and have been implemented without adequate consideration of waste treatment. A lot of the camps barely have any sanitation facilities or the facilities are portable toilets that are so dirty and infrequently cleaned, no one wants to use them – people are forced to go in plastic bags, etc.¹⁷ As a result, human waste frequently washes into local water supplies.

Recommendations:

20. Standards for adequate sanitation, water, and medical care for prevention or mitigation of epidemic cholera must be clearly established and documented in the medical and public health literature. This information must also be translated into Kreyol and disseminated to medical and sanitation personnel and the public.

21. Effective implementation of well-defined sanitary practices by governmental authorities is a necessary step for controlling the cholera epidemic and saving the lives of Haitians. This must include education of and collaboration with private citizens and community groups.
22. Large-scale investment to develop effective sanitation and water purification infrastructure by both public agencies and NGOs throughout Haiti is essential. The goal of this effort must be provision of adequate quality and quantity of water to all citizens, regardless of ability to pay.
23. Sanitation project planning should be coordinated with energy production efforts to increase use of organic waste for small scale energy production, i.e. biogas from human and animal waste.

C. Agricultural and Food Security

24. The *United Nations Universal Declaration of Human Rights (UDHR) of 1948* recognizes that all individuals have the right to a standard of living adequate for the health and well-being of themselves and their families.¹⁸ Availability of sufficient and healthful food, and an agricultural system that is capable of providing those, i.e. food security, are fundamental components of an adequate standard of living.
25. The *Haiti Constitution of 1987* recognizes that agriculture is the principle source of national wealth, well-being, and socioeconomic progress in Haiti.¹⁹ (see “The Wealth of the Poor,” UNDP 2005 at http://pdf.wri.org/wri2005_guide.pdf)
26. The *Loi du 27 Novembre 1986, Article 1*, which promulgates the regulatory basis for entry of animals and plants into Haiti, specifically states that it is forbidden to import into Haiti any animals, plants, or seeds, of any sort, without first obtaining written authorization from the National Quarantine Service of the Minister of Agriculture, Natural Resources, and Natural Development.²⁰ Yet, at present, the Haitian government only sporadically enforces this law at best, so that seeds and other material flow freely into the country.
27. The *International Plant Protection Convention (IPPC)*, a multilateral treaty for international cooperation in plant protection of which Haiti is a party,²¹ makes provision for the application of measures by governments to protect their plant resources from harmful pests (phytosanitary measures), which may be introduced through international trade.
28. *The Cartagena Protocol on Biosafety to the Convention on Biological Diversity* . aims to ensure the safe handling, transport and use of living modified organisms (LMOs) resulting from modern biotechnology that may have adverse effects on biological diversity, taking also into account risks to human health.²²
29. The *Constitution of Haiti, Article 258*, states: “No one may introduce into the country wastes or residues of any kind from foreign sources.”²³
30. The World Trade Organization's *Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement)* identifies the IPPC as the reference organization developing international standards for plant health (phytosanitary) measures. However, several factors in Haiti threaten the basic human right of food security, including the unrestricted importation of seeds without regard to phytosanitary requirements, as well as largely unregulated importation and use of dangerous and often unlabeled pesticides.

31. The *Loi du 27 novembre 1986, Article 1*, which promulgates the regulatory basis for entry of animals and plants into Haiti, specifically states that it is forbidden to import into Haiti any animals, plants, or seeds, of any sort, without first obtaining written authorization from the National Quarantine Service of the Minister of Agriculture, Natural Resources, and Natural Development.²⁴ Yet, at present, this law is only sporadically enforced at best by the Haitian government the Haitian government only sporadically enforces this law at best, so that seeds and other material flow freely into the country.
32. When seeds appropriate to a country's agricultural system are unavailable, or when introduced pathogens result in plant disease epidemics, or if particular introduced crops present health or environmental concerns, then a nation's food security is threatened. In Haiti, the unrestricted flow of seeds from outside the country presents a high risk that plant-pathogenic organisms or their vectors will be introduced. A number of NGOs as well as foreign companies have imported large numbers of seeds to Haiti without inspection or certification. Unregulated importation of plants, plant parts, or microorganisms directly contravenes Haitian law.
33. In Haiti, the unrestricted flow of seeds from outside the country presents a high risk that plant-pathogenic organisms or their vectors will be introduced. A number of NGOs as well as Monsanto and other foreign companies have “donated” large amounts of seeds to Haiti without inspection or certification, directly contravening Haitian law. Introduced exotic plant pathogens could be devastating to Haitian food crops, as has apparently already occurred with late blight disease of tomato. If diseases such as African cassava mosaic (caused by a plant pathogenic virus) or Fusarium wilt of banana (caused by a fungus) were to arrive in Haiti, they would seriously threaten two of the most important food crops and could result in widespread crop failure, hunger, and even starvation. When seeds or rootstocks that have not been certified as pathogen-free are allowed to enter the country, this risk cannot be controlled. Existing regulatory frameworks, such as phytosanitary requirements, are in place in most of the world to prevent this occurrence, but are either poorly implemented or ignored by the Haitian government.
34. Often, seeds which are brought to Haiti are unsuitable for the soil and climatic conditions of the country. In some cases, seeds from open-pollinated crops are planted and the resulting plants may hybridize with indigenous varieties, diluting the gene pool of crop varieties that are suitably adapted to local conditions.
35. Foreign corporations, particularly Monsanto, have introduced, without adequate environmental assessment, large quantities of commercial hybrid seeds. The plants which result from commercial hybrids are generally unsuitable for saving seed for subsequent crops, which is a critical aspect of food security and sustainability for peasant communities. This necessitates purchase of new seeds the following year, depleting already scant wealth.
36. Hybrid and GMO crop seeds often require large inputs of water, chemical fertilizers and pesticides, leaving peasant growers highly dependent on foreign suppliers.
37. There is also concern that extra-national corporations will introduce genetically engineered ‘living modified organisms’ (LMOs) into Haiti, whether for agricultural or other purposes, without appropriate oversight, presenting potential risks to human health, agriculture, and biodiversity. This has already occurred regionally, for example in the Cayman Islands where LMO mosquitoes were released in possible violation of the

Cartagena Biosafety Protocol.²⁵ Unfortunately, although Haiti has ratified the Convention on Biological Diversity, it has not yet ratified the Cartagena Biosafety Protocol, leaving the country more vulnerable to this possibility.

38. Haphazard spraying with unlicensed and often unlabeled chemicals, some of which are banned elsewhere in the world, presents risks for contamination of Haiti's scarce water and food supplies, as well as for direct effects on individuals.²⁶ This presents severe health risks to farm workers and consumers, including direct toxic effects as well as long-term effects from carcinogens, as well as degradation of soil quality, build-up of resistance in plant pathogen and insect pest populations.
39. Because of severe food shortages, imported seeds are often eaten directly, and in some cases these seeds have been treated with toxic pesticides and thus have dangerous chemical residues on them, resulting in poisoning of individuals who eat the seeds.²⁷ The Constitution of Haiti, Article 258, states: "No one may introduce into the country wastes or residues of any kind from foreign sources."²⁸ However, the current regulatory framework and implementation of laws are inadequate to prevent this from occurring.

Recommendations:

40. The Haitian government, international organizations, and other NGOS must significantly and rapidly strengthen phytosanitary capabilities, with particular emphasis on pest exclusion, and ensure that the country's legal framework is consistent with international agreements to which it is a party, including the IPPC and the SPS Agreement.²⁹
41. Reconstruction efforts should support local cooperatives that are working to establish seed banks and silos to store non-hybrid, non-GMO seeds.
42. NGOs and Haitian government agencies should promote the use of Integrated Vector Pest Control efforts, which do not rely on chemical pesticides for effectiveness in lieu of chemical intensive strategies (see "Short-term Mosquito Vector Action Plan for Haiti and Long-term Sustainable Mosquito Vector Management Plan for Haiti." EPA, 2010 at www.ejih.org/).
43. The Haitian government should ratify the Cartagena Protocol to the Convention on Biological Diversity, as a first step towards appropriate safeguards for potential introduction of genetically modified organisms.
44. The Haitian government must rapidly enact, strengthen, and enforce laws to protect agricultural workers as well as consumers from the adverse effects of pesticides and other chemicals. Appropriate pesticide labeling schemes must be developed and enforced, including full disclosure to the public of active and inert ingredients in pesticides.

D. Deforestation

45. Although the Haitian government authorized a **15-year Environment Action Plan** in 1999, which had the goal of stopping deforestation through the development of alternative fuel sources, little progress has been made. Political instability and a lack of governmental funding commitment have limited the impact of this reform.
46. Deforestation leads to soil erosion, resulting in decreased agricultural yields and deadly landslides. Haiti faces a severe deforestation problem which puts the country on the verge of a serious ecological disaster. As much as 95% of Haiti's forests have been lost. Today, forests cover less than 2% of the country, and many mountain hillsides have been

denuded and reduced to bedrock, making Haiti one of the most deforested countries in the world.³⁰

47. Most Haitians still depend on wood and charcoal as their primary fuel source, and many Haitian farmers have had to turn to tree cutting as an alternative source of income. According to the U.S. Agency for International Development, as much as 75% of the fuel consumed in Haiti was wood or charcoal in 2000³¹. In a country of just over 9 million people, Haitians burn as much as 31 million trees worth of charcoal annually.³²
48. Alternative energy sources are needed to facilitate preservation and regrowth of forests. Development of these projects would bring much-needed economic development to the region, and could potentially make it a hub of research and development in the area of solar and appropriate bioenergy.
49. Deforestation has detrimental effects on water quality, including sedimentation of surface water and loss of filtration properties of soil, which exacerbates poor sanitation.
50. Reforestation should not be confused with neo-colonialist efforts by some extranational corporations to establish large biofuel plantations in Haiti, since these raise serious concerns about environmental sustainability, loss of biodiversity, appropriation of agricultural lands, and social justice.³³

Recommendations:

51. Reconstruction and environmental protection efforts must promote community woodlands that are operated and/or owned co-operatively. This will provide protection from “poaching” through use of community patrols, and ensure that food security goals are met in conjunction with reforestation activities.
52. NGO and governmental forest protection and reforestation efforts must include training and education of citizens to ensure democratic access to these resources and minimize illegal logging.
53. Promotion of sustainably operated tree farms using local genotypes is essential to ecological and economic stability. Forestry of tree species that provide food, such as mangoes, should be encouraged, but with the primary purpose of providing food security for local populations.

E. Land Use and Planning

54. The International Haitian Reconstruction Commission has released its “*Neighborhood and Housing Reconstruction Framework*”³⁴ which is intended to improve zoning and safety of residential communities in Port-au-Prince. However, this plan only applies to building owners, and omits any consideration for the city’s 200,000 renters, some the country’s most vulnerable citizens.³⁵
55. *Organization of American States (OAS)’s cadastre modernization plan*, as outlined in its March 2010 proposal, consists of 28 main activities to be carried out during a seven-year implementation period.³⁶ Some of the statements in OAS’ current proposal are problematic; in particular, it indicates an overemphasis on establishing a land rights infrastructure that will attract foreign investment in Haiti would come at the cost of the land use and property rights of its most disadvantaged citizens, many of whom inhabit rural communities where such rights derive from customary law. Without participatory enumeration and other procedures that provide fair opportunities for the assertion of land rights, expedience in establishing a land registry system may sacrifice the economic and

housing rights of Haiti's most vulnerable populations in an effort to attract foreign investment.³⁷

56. The dramatically unequal apportioning of real property has played a powerful role in the perpetuation of both poverty and ecological degradation in Haiti. Farmers who do not own their land and are in constant fear of displacement have a weak incentive to manage it sustainably, and smallholders are unable to grow sufficient crops to accumulate wealth.³⁸ Currently, only a few families control the majority of the land, and subsequently monopolize the political discourse concerning land use and property rights.
57. The OAS's cadastre's objective related to formalizing land titling may be difficult to reach without undermining its other objectives related to equity and stakeholder engagement. A recent UN- HABITAT publication indicates that titles have benefited many informal property owners and deserve a place in any tenure policy, but titling has not necessarily improved access to credit nor prevented the growth of new informal settlements.
58. Many low-income households prefer the social cohesion which customary tenure arrangements can provide, or the mobility offered by renting, as long as they enjoy adequate security and legal protection. Ensuring this protection is easier where land markets and planning encourage a variety of tenure options beyond titling.

Recommendations:

59. Reconstruction efforts must facilitate citizens' access to legal practitioners, including lawyers, paralegals, and notaries, in order to ensure that they are informed of the rights and interests they can protect, and legal practitioners can communicate how their expertise can serve individuals seeking to protect their rights and interests.
60. The Haitian government must implement land titling procedures that provide a variety of options based on the needs and customs of the local populations. UN-HABITAT has provided alternative tenure options that capitalize on "the value of an incremental approach and the importance of building on existing tenure arrangements with which people are familiar."³⁹ These alternative, "intermediate," and incremental tenure approaches include: low-cost registration and formalization of customary rights; temporary occupation licenses that allocate idle public land for a productive use, thus legitimizing semi-permanent commercial and residential structures, while retaining long-term control over land use; securing long-term tenure for communities where effective local land management practices are already in place through Community Land Trusts, community-based titles, or co-operatives; establishing decentralized customary agencies to handle dispute resolution and/or serve as intermediaries between communities with customary land rights and central regulatory authorities.⁴⁰
61. Legal empowerment in Haiti will require working with communities through processes such as participatory remuneration to develop a better picture of land tenure both before and after the earthquake. It is impossible to determine what kinds of legal reforms and regulatory approaches would be most consistent with strengthening the rights and interests of Haiti's disadvantaged unless such individuals are able to communicate what their rights and interests are to legal practitioners in Haiti and internationally.
62. The institutionalization of an American-type land tenure system must be approached with extreme caution, given the dramatic failure of that system during the Foreclosure Crisis of 2008-2009.

F. Mineral Extraction

63. *Principle 10 of the Rio Declaration* of 1992 states that all citizens must have access to information regarding the environment and a participatory role in decisions affecting the environment, including access to justice to protect community interests.⁴¹
64. Many principles of corporate social responsibility have been outlined in the United Nations draft “*Protect, Respect and Remedy*” framework.⁴² Of particular importance to foreign corporations operating in Haiti is the principle that “[b]usiness enterprises should respect human rights, which means to avoid infringing on the human rights of others and to address adverse human rights impacts they may cause or contribute to.”⁴³
65. The Haitian extractive sector represents a relatively low portion of Haiti’s GDP; however, increased mining activities present grave implications for land use and planning objectives, including large obstacles for relocation of displaced persons.
66. Mining operations entail a number of environmental concerns, which have become more acute following the earthquake of January 2010. These concerns include: deforestation; displacement of local populations; water use and contamination; air and soil pollution; and hazardous waste disposal.
67. Without the political infrastructure and resources necessary for effective environmental regulatory enforcement, Haiti’s extractive industry operates virtually unabated by domestic environmental laws. Already plagued by potable water shortages, deforestation, and access to information issues, current extractive activities within Haiti effectively continue the cycle of foreign exploitation of Haitian natural resources.
68. The disproportionate allocation of land to the extractive industry is exemplary of foreign exploitation of Haitian mineral resources. The country of Haiti encompasses 27, 750 square kilometers.⁴⁴ Of this total land mass, mining corporation Eurasian Minerals, Inc. maintains exploratory land holdings of approximately 2,800 square kilometers in Northern Haiti,⁴⁵ roughly ten percent of the Haitian state. In February 2010, one month after Haiti’s devastating earthquake, the International Finance Corporation invested 5.3 million Canadian dollars in Eurasian Minerals to bolster the company’s gold and copper exploration, particularly those within the Haiti.⁴⁶
69. Despite the promise of creating greater employment for local communities, it is unclear what percentage of the foreign extractive sector’s financial profits has reached the domestic population.
70. In Haiti’s current economic and political climate, previously-created environmental impact assessment legislation and guidelines are rarely enforced.⁴⁷ Without a viable environmental impact assessment procedure in place, the citizens of Haiti will not be allowed, nor able, to participate in environmental decision-making processes surrounding the extractive sector that have significant impacts upon the land and resources of local communities.

Recommendations:

71. The Haitian government should establish a fund to pay for medical care and takings that result from mineral extraction activities. This fund should be paid for through revenues from the existing mineral extraction companies.
72. Legal agents, particularly notaries, must be educated by NGOs and about environmental rights of citizens, so that they may in turn pass that information to their communities.

73. Citizen participation in environmental decision-making through a formal assessment process will ensure that corporations may be held accountable for environmental and human rights abuses.⁴⁸
74. Until an assessment and regulatory process is enacted, mineral extractions should only be permitted in cases where it can be proven to pose no threat to the public or ecological health.

G. Final Recommendations

75. The analysis and recommendations of previous sections are based upon several repeating themes and concerns. The following recommendations address these generally, and present a set of principles that are both consistent with the UN's Declaration of Human Rights and with the pursuit of The wellbeing of all Haitians:

Recommendations:

76. Environmental analysis must be injected into all aspects of decision-making, by the Haitian governments at all levels, foreign donors, and NGOs.
77. Stakeholder engagement must be a central activity of all such assessments, and as such the needs of the most vulnerable populations must be the overriding factor for determining political and economic actions. The principles of legal empowerment as outlined by the IDLO,⁴⁹ which asserts that law must be used to empower the socially and economically disadvantaged, must underlie all governance structures and political decisions.
78. Consistent with the principles of environmental democracy as stated in the 1992 Rio Convention,⁵⁰ the skills, traditions, and desires of the Haitian people must be reflected, highlighted, and respected throughout decision-making processes. Stated another way, environmental stewardship efforts must be undertaken in tandem with establishment of democratic governance and improvements in quality of life.
79. Management systems must be developed with the flexibility to respond to changing technologies, climate, needs, and cultures, and the open acknowledgement that no single strategy will always work over changes in time, space, and human group.
80. As a result of its extreme wealth and ownership inequality, Haiti must now go through a process of economic decolonization in order to become economically independent, self-sufficient, and sustainable. This will mean an emphasis on democratization of access to natural and manufacturing resources in conjunction with education and empowerment concerning sustainable use and practices.

¹ Lucy Rodgers, *Haiti earthquake: One year on*, BBC NEWS, Jan. 12, 2011, at <http://www.bbc.co.uk/news/world-latin-america-12135850>.

² Remarks by Helen Clark, Chair of the United Nations Development Group, on the occasion of the International Donors' Conference Towards a New Future for Haiti.

³ Universal Declaration of Human Rights, G.A Res. 217 (III) A, U.N. GAOR, 3d Sess., U.N. Doc. A/810 (Dec. 10, 1948) (hereinafter UDHR).

⁴ American Convention on Human Rights (San Jose, Costa Rica, Nov. 22, 1969), 1144 U.N.T.S. 143.

⁵ American Convention on Human Rights, *Status of Ratifications* at <http://www.oas.org/juridico/english/sigs/b-32.html>.

⁶ 1987 CONST. OF THE REPUBLIC OF HAITI.

⁷ Management of the Environment, Decree, Jan. 26, 2006, *Le Moniteur, Journal Officiel de la Republique d'Haiti*.

⁸ *Id.*

⁹ *Id.*

¹⁰ UNEP: The Caribbean Environment Programme, at <http://www.cep.unep.org/publications-and-resources/marine-and-coastal-issues-links/solid-waste-and-marine-litter>.

¹¹ *Occupational Exposures to Air Contaminants at the World Trade Center Disaster Site*, U.S. CENTERS FOR DISEASE CONTROL AND PREVENTION, Sept.-Oct. 2001, at www.cdc.gov/mmwr/preview/mmwrhtml/mm5121a1.htm.

¹² -, M. Thummarukudy, Haiti Mission Report, UNITED NATIONS ENVIRONMENT PROGRAMME, March 2010, available at

<http://onerresponse.info/Disasters/Haiti/Environment/publicdocuments/Key%20Environmental%20Issues%20-%20Full%20Text.pdf>, at 13-14, 21.

¹³ UDHR, *supra* note 3.

¹⁴ *Id.* at 22.

¹⁵ *Haiti: Mortality Country Fact Sheet 2006*, WORLD HEALTH ORGANIZATION (2006).

¹⁶ *2010 Haiti Cholera Outbreak*, U.S. CENTERS FOR DISEASE CONTROL AND PREVENTION, available at <http://www.cdc.gov/haiticholera/>.

¹⁷ *See One year after the earthquake– Haitians still living in crisis*, INSTITUTE FOR JUSTICE & DEMOCRACY IN HAITI, at http://ijdh.org/wordpress/wp-content/uploads/2011/01/Camp-Conditions_Final.pdf, at 7.

¹⁸ UDHR, *supra* note 3.

¹⁹ 1987 CONST. OF THE REPUBLIC OF HAITI art. 247.

²⁰ Management of the Environment, *supra* note 7.

²¹ International Plant Protection Convention, available at <https://www.ippc.int/>.

²² Cartagena Protocol on Biosafety to the Convention on Biological Diversity, available at <http://bch.cbd.int/protocol/> (hereinafter Cartagena Protocol).

²³ 1987 CONST. OF THE REPUBLIC OF HAITI art. 258.

²⁴ Management of the Environment, *supra* note 7.

²⁵ Cartagena Protocol, *supra* note 22.

²⁶ J. Thundiyil, J. Stober, *Acute pesticide poisoning: a proposed classification tool*, BULLETIN OF THE WORLD HEALTH ORGANIZATION, March 2008.

²⁷ One substance to which individuals may be exposed by this vector is ethylene glycol (antifreeze), a severe toxin that affects kidney function if either swallowed or inhaled as dust. Another such substance is known as Maxim XL, for which there is no known antidote. *See ETI factsheet on Monsanto seeds*, available at www.ejih.org/eti-factsheet.pdf.

²⁸ 1987 CONST. OF THE REPUBLIC OF HAITI art. 258.

²⁹ J. Vapnek and D. Manzella, *Guidelines for the Revision of National Phytosanitary Legislation*, FAO LEGAL PAPERS ONLINE #63, Jan. 2007.

³⁰ Country Profile: Haiti, Library of Congress, Federal Research Division, May 2006, available at <http://lcweb2.loc.gov/frd/cs/profiles/Haiti.pdf>.

³¹ D. Ben Swartley and Joseph Ronald Toussaint, USAID, Haiti Country Analysis of Tropical Forestry and Biodiversity 23, May 2006, available at http://www.usaid.gov/locations/latin_america_caribbean/environment/docs/Haiti_118-119_Report.pdf.

³² *Id.* at 22.

³³ F. Danielsen et al., *Biofuel plantations on forested lands: Double jeopardy for biodiversity and climate*, CONSERVATION BIOLOGY 23:348-358 (2009).

³⁴ *Safer Homes, Stronger Communities*, World Reconstruction Conference, at <http://www.housingreconstruction.org/housing/sites/housingreconstruction.org/files/SaferHomesStrongerCommunitites.pdf>.

³⁵ Jane Regan, *Haiti Resettlement Plan Excludes Almost 200,000 Families*, INTERNATIONAL PRESS SERVICE, Feb. 14, 2011, available at <http://ijdh.org/archives/17422>.

³⁶ *Modernization of Cadastre and Land Rights Infrastructure in Haiti: A Rapid and Inclusive Approach*, ORGANISATION OF AMERICAN STATES, March 2010, at 5.

³⁷ Jane Regan, *supra* note 35.

³⁸ *The Wealth of the Poor*, UNDP, UNEP, World Bank, WRI, 2005.

³⁹ *Id.* at 20.

⁴⁰ *See id.* at 20–24.

⁴¹ *Id.* at 71.

⁴² *Guiding Principles for the Implementation of United Nations “Protect, Respect and Remedy” framework*, 2011, available at <http://www.reports-and-materials.org/Ruggie-UN-draft-Guiding-Principles-22-Nov-2010.pdf>, at 13.

⁴³ *Id.*

⁴⁴ CIA, *The World Factbook*, Central America and the Caribbean, Haiti, at <https://www.cia.gov/library/publications/the-world-factbook/geos/ha.html>.

⁴⁵ Eurasian Minerals, Inc., *Exploration, Haiti*, at <http://www.eurasianminerals.com/s/Haiti.asp>.

⁴⁶ Eurasian Minerals, Inc., *News Releases*, at

<http://www.eurasianminerals.com/s/NewsandInfo.asp?ReportID=386235>.

⁴⁷ Annie Donnelly, et al., *A Directory of Impact Assessment Guidelines*, *International Institute for Environment and Development*, 1998, at 73.

⁴⁸ This concern is especially relevant in light of *Kiobel v. Royal Dutch Petroleum*, a decision by the U.S. Court of Appeals for the Second Circuit, which concluded that corporations could not be sued for human rights abuses under the Alien Tort Statute, available at http://www.ca2.uscourts.gov/decisions/isysquery/6af680f7-684f-4470-8c6a-15870801f72f/5/doc/06-4800-cv_opn.pdf.

⁴⁹ *See id.* at 9-14.

⁵⁰ *Voice and Choice*, WORLD RESOURCES INSTITUTE, 2008.

Right to Food, Water and Sanitation

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I. EXECUTIVE SUMMARY

1. The rights to food, water and sanitation are crucial to the enjoyment of all human rights, and rank high among the most severe of Haiti's many human rights challenges. The Government of Haiti has the primary obligation to guarantee these rights to its people, but the role of the international community—as a central actor in this post-disaster country—is also of crucial importance.

2. In the aftermath of the January 2010 earthquake, the Government of Haiti has needed increased assistance to meet its obligations. In March 2010, donors came together and pledged \$5.3 billion to aid in Haiti's reconstruction. Donors have played a critical role in providing humanitarian assistance over the past year, and they will likely continue to actively participate in the rebuilding of the country and provision of basic services.

3. When the international community intervenes in Haiti through international assistance, human rights obligations should guide those interventions, and the Government of Haiti should work to coordinate that assistance. Many inter-governmental organizations, including the United Nations, have affirmed that their work must be done in a rights-enhancing way and have adopted a rights-based approach to their development and humanitarian assistance work. Numerous international NGOs have also adopted a rights-based approach. A rights-based approach seeks to empower the beneficiaries of aid by ensuring they are informed of the processes that affect their lives and are given the opportunity to share their perspective in a meaningful way.

4. This report summarizes key concerns regarding the inadequate implementation of a rights-based approach to assistance and development by the Government of Haiti and international community. These shortcomings have at times contributed to violations of the rights to food, water and sanitation. To comply with its human rights obligations and support the realization of human rights in Haiti, the Government of Haiti should work with international actors to enable assistance efforts to:

- Build the capacity of the Haitian government, to respect, protect, and fulfill human rights;
- Enable the full participation of Haitian stakeholders in project design and policy development;
- Ensure transparency in every facet of the humanitarian response and rebuilding process;
- Reinforce or establish effective accountability mechanisms allowing Haitians to file complaints, have their complaints investigated and receive redress when their rights are violated as a result of international assistance.

II. HAITI'S NORMATIVE & INSTITUTIONAL FRAMEWORK

A. International and Domestic Principles to Protect the Right to Food, Water and Sanitation

5. All human rights are interconnected. Access to adequate food, clean water and sanitation are necessary for survival and the achievement of human dignity. They are human rights in and of themselves, but are also fundamental components of other rights.¹ Haiti codified the right to food in the Constitution of 1987, which states that “[t]he State recognizes the right of every citizen to decent housing, education, food and social security.”² The Constitution also assigns the

State the absolute obligation to guarantee the right to life, health and respect of the human person in accordance with the Universal Declaration of Human Rights (UDHR).³ The rights to clean water and adequate sanitation are implicitly protected by the constitutional right to health, decent housing, education, food, social security and work, as well as the international obligation to protect the rights to health and life.⁴ Furthermore, Haiti's Constitution provides that international treaties or agreements that have been approved and ratified are self-executing and automatically become part of the law of the country.⁵ Accordingly, Haiti's constitutional protections should be interpreted consistently with its international obligations to respect, protect and fulfill the rights to food, water and sanitation. Despite constitutional guarantees and efforts by the government to increase food security and accessibility, however, the right to food has been broadly violated, especially among the impoverished of Haiti and following the earthquake, as discussed in Section III.A, below.⁶

6. The right to food has been universally acknowledged as a fundamental human right. The realization of the right to food requires more than temporary alleviation of hunger. Under international law, food must be economically and physically accessible; adequate in quantity, quality and nutrition; culturally acceptable; available; and sustainable.⁷ Article 25 of the UDHR guarantees a human being's right to food and freedom from hunger.⁸ The right is also articulated in the Convention on the Elimination of Discrimination Against Women (CEDAW),⁹ and the Convention on the Rights of the Child (CRC),¹⁰ to which Haiti is a party. Furthermore, Article 12 of the Protocol of San Salvador and Article 11 of the American Declaration both recognize the right to food.¹¹ The right was subsequently codified in Article 11 of the International Covenant of Economic and Social Rights (ICESCR).¹² Haiti has signed, but not ratified this treaty, and has therefore agreed not to take actions that defeat the "object and purpose" of the ICESCR.¹³ Nevertheless, the Committee on Economic, Social, and Cultural rights has established that a minimum core of economic, social and cultural rights are customary international law and are thus binding on all States, regardless of whether they have signed or ratified treaties protecting those rights.¹⁴

7. In addition, Haiti has international human rights obligations to respect, protect and fulfill the rights to water and sanitation. The minimum core obligations in relation to the right to water are binding on Haiti under customary international law. The right to water entitles individuals to water that is sufficient in quantity, safe in quality, acceptable in taste and odor, physically accessible, available and affordable.¹⁵ In July 2010, the UN General Assembly recognized the right to safe and clean drinking water and sanitation as a separate human right that is essential for the full enjoyment of life and all human rights,¹⁶ and the UN Human Rights Council affirmed the legally binding nature of this right.¹⁷ The Independent Expert on the right to water has emphasized that "[s]anitation and water must be prioritized by according greater political priority to these sectors, which should be reflected in allocations in State budgets and donor commitments."¹⁸ The right to water is also protected in relation to specific populations in CEDAW¹⁹ and the CRC.²⁰

8. The Government of Haiti established the *Direction Nationale de l'Eau Potable et de l'Assainissement* (DINEPA) on March 25, 2009,²¹ to implement government policies related to water and sanitation, and to improve the efficiency, efficacy and equity of provision of these services.²² Prior to DINEPA, no agency was responsible for sanitation, and the strength of the water sector suffered from lack of political will and financial means.²³ These shortcomings contributed to the weak condition of water and sanitation infrastructure. Private companies and

internationally funded non-governmental organizations (NGOs) are active in water provision, and often operate without clear government oversight and quality control.²⁴ In an attempt to address this, DINEPA has established a framework agreement with NGOs to facilitate collaboration and ensure that the work of NGOs supports the state's long-term plans and sustainable development in the country,²⁵ but a DINEPA officer has noted that NGO compliance with this is inadequate.²⁶

B. International Cooperation and the Human Rights Based Approach to Assistance

9. The primary duty to realize the rights to food, water and sanitation rests with the Haitian state.²⁷ However, a lack of resources and personnel severely limits the government's ability to ensure access to these and other basic needs. The natural disasters Haiti has experienced over the last four years, including severe floods, hurricanes and the January 12, 2010 earthquake, have further diminished the government's capacity. In this context, the international community has played a role and with that role comes an obligation to work with and support the state towards the realization of these rights.²⁸

10. The earthquake severely damaged existing infrastructure and displaced 1.5 million people, drastically impacting access to food, water and sanitation. As components of the right to life,²⁹ the rights to food, water, and sanitation require special protection after natural disasters, and must be protected even in a situation of public emergency.³⁰ Moreover, special international obligations attach to the treatment of internally displaced persons (IDPs). The Guiding Principles on Internal Displacement published by the UN Office for the Coordination of Humanitarian Affairs (OCHA) state that "[a]t the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide IDPs with and ensure safe access to: (a) Essential food and potable water..."³¹ Similarly, the Sphere Project's Minimum Standards in Disaster Response demand that "[p]eople have access to adequate and appropriate food and non-food items in a manner that ensures their survival, prevents erosion of assets and upholds their dignity."³² The Guiding Principles on IDPs have the force of law in Haiti,³³ and along with the Sphere Standards, discuss human rights principles as applied to humanitarian contexts, and should therefore guide the Haitian government, international organizations and other relevant actors as they provide assistance and protection to IDPs.

11. The international community has a long and complex history of providing assistance in Haiti. Following the earthquake, international actors have played a particularly active role. On March 30, 2010, donors pledged a total of \$5.3 billion toward long-term reconstruction, and directed the funds toward specific priority sectors identified by the Government of Haiti in the Action Plan for Reconstruction and Development to achieve the reconstruction goals.³⁴ As such, the actions of the international community are central to any assessment of the human rights situation in Haiti and the government's actions.

12. The UN Charter commits states to take "joint and separate action" to protect economic and social rights.³⁵ The obligation of international cooperation with respect to the implementation of the right to food is embodied in Article 2(1) and Article 11 of the ICESCR,³⁶ and reiterated by the Committee on Economic, Social and Cultural Rights (CESCR), which has instructed States parties to take steps to respect the enjoyment of the right to food in other countries, to protect that right, to fulfill access to food and to provide the necessary aid when required.³⁷ Olivier de Schutter, the UN Special Rapporteur on the Right to Food, has also stressed that governments have "extranational obligations" to respect, protect, and facilitate the

right to food.³⁸ States and other actors must also cooperate towards the realization of the right to water and sanitation. The Independent Expert on the Right to Water, Catarina de Albuquerque, has reminded the international community that “[d]evelopment cooperation and assistance must be designed and implemented in line with human rights standards and principles, including the rights to water and sanitation and human rights obligations regarding non-discrimination, ensuring that there are adequate and effective measures in place to identify and address any negative impacts on human rights.”³⁹

13. In addition to these commitments to cooperate, Haiti’s regional neighbors who are members of the Organization of American States (OAS) have agreed to “join together in seeking a solution. . . whenever the economic development or stability of any Member State is seriously affected by conditions that cannot be remedied through the efforts of that State.”⁴⁰ Following the earthquake, the Inter-American Commission on Human Rights reminded the international community and implementing organizations on the ground of “the importance of respecting international human rights obligations in all circumstances, in particular non-derogable rights and the rights of those most vulnerable.”⁴¹

14. In order to fulfill these obligations, the Haitian state must work to strengthen its ability to lead and coordinate the activities of donor countries, inter-governmental organizations and NGOs to ensure that they take an approach that brings human rights to the forefront of all assistance efforts. A rights-based approach to assistance reinforces principles of international law, such as the indivisibility and interdependence of rights and the obligation of non-discrimination.

15. A rights-based approach prioritizes building the capacity of the Haitian state, to guarantee the rights of all Haitians. It seeks full participation by requiring, among other things, that information about aid is transparent and that the population is routinely consulted—both in providing input on project design and in ensuring necessary modifications to the projects to maximize the realization of human rights. Transparency necessitates that information about relief and rebuilding projects is easily accessible to the community in a language known to them. It also requires paying particular attention to groups that have been historically excluded from the political process and have not had access to basic services. Finally, in order to ensure respect for the rights of Haitians, those providing assistance, including foreign donors, must be accountable to the Haitian people. Accountability means that there are effective mechanisms for all Haitians to make complaints, have their complaints investigated and receive redress when their rights are violated. This could be accomplished by working to build up existing structures like the *Office de la Protection du Citoyen* or to develop a separate mechanism to oversee reconstruction activities.

III. PROMOTION AND PROTECTION OF HUMAN RIGHTS IN HAITI

A. The State of Food, Water and Sanitation in Haiti

1. Access to Adequate Food

16. Violations of the right to food have been an ongoing problem in Haiti. Prior to the earthquake, nearly half the population suffered from malnutrition and one third from chronic food insecurity.⁴² The purchase of food constitutes a major financial burden for Haitians, 76 percent of whom live on less than \$2 per day.⁴³ In 2008, the percentage of income spent on food

was 32.8 percent in urban areas and as much as 55.6 percent in rural areas.⁴⁴

17. By some accounts, as much as seventy percent of the Haitian population earns a living either directly or indirectly through the agricultural sector.⁴⁵ Therefore agricultural production has the potential to not only increase the availability of food but also to provide a significant source of income that enables people to purchase adequate food. The Haitian state had developed plans before the earthquake for international investment in the infrastructure of the agricultural sector to help promote sustainability and also included these initiatives in the reconstruction plans. In addition, technical assistance to build the capacity of Haitian farmers, distributors, packagers and other important components of the agricultural sector are essential to enabling the Haitian state to better fulfill its citizens' human rights. Stronger infrastructure would allow the country to respond better to its domestic needs, even in crisis situations.

18. In the 1980's, Haiti's agricultural sector fully met the food needs of its population and produced national income from exporting agricultural produce.⁴⁶ The agricultural sector collapsed, however, after the International Monetary Fund required Haiti to remove tariffs on imported rice and other staples.⁴⁷ In 1995, the United States pressured Haiti to drastically reduce tariffs on agricultural imports and slashed tariffs that had previously been between 45 to 50 percent to between zero to 15 percent.⁴⁸ Former President Bill Clinton later stated that this was a mistake that only benefited farmers in the U.S.⁴⁹ Without protection for Haitian products, subsidized U.S. agricultural imports flooded Haitian markets, and Haitian farmers could not compete.⁵⁰ Impoverished peasants fled to cities, particularly Port-au-Prince, in pursuit of work in the industrial or informal sectors. Within a matter of years, many who had once subsisted on their own food production found themselves in need of food aid to survive.

19. Today, Haiti suffers from a food deficit and is highly dependent on foreign sources to meet its food needs.⁵¹ Local food production amounts to only 42 percent of food consumption, and more than half of the food comes from commercial importation.⁵² Haiti's dependence on imported food and decreased capacity to produce food for local consumption in turn make it particularly vulnerable to price shocks, like the 2008 food crisis and the current increase in global prices of staples.⁵³ About 80 percent of Haiti's export earnings go to paying for these food imports.

20. Foreign food aid makes up a significant source of food in Haiti—currently about six percent—but it can negatively impact long-term food security. In 2009, the Center for Human Rights & Global Justice at NYU Law School, Partners In Health/Zanmi Lasante and the Robert F. Kennedy Center for Justice & Human Rights undertook a study of a direct food distribution program supported by food aid from the United States to evaluate the impact of food aid on the right to food in Hinche, the capital of the Central Plateau department of Haiti with a population of approximately 50,000 people. The results demonstrated that participation in direct food support programs does not protect families from hunger, because the assistance does not adequately address the family's food security in absolute terms or in nutritional diversity. Nearly 90 percent of people responding to the survey—and over 80 percent of their young children—had gone to sleep hungry at some point during the month before administration of the survey because there was not enough food. Study participants also reported that programs often failed to provide food that is of acceptable quality, fulfills basic dietary needs and is culturally appropriate to Haitians.

21. Not only is the food provided through direct assistance often inadequate, but research also suggests that it can be harmful to the sustainability and availability of local food for purchase, interfering with the realization of Haitians' human rights and long-term economic stability. In particular, when foreign-grown food is either distributed for free or sold at a subsidized price, such aid may make it difficult for local food producers to compete with the imported food. At times it has also led farmers to abandon agricultural production. Former UN chief humanitarian officer John Holmes stressed that "[a] combination of food aid [and] cheap imports have ... resulted in a lack of investment in Haitian farming, and that has to be reversed."⁵⁴

2. Access to Clean Water & Sanitation

22. Widespread lack of access to clean water ranks as one of Haiti's most significant obstacles to fulfilling its human rights obligations. Studies conducted in 2006 demonstrate that only 55.2 percent of the population has access to an improved water source,⁵⁵ while close to 70 percent does not have direct access to potable water.⁵⁶ These figures, however, almost definitely overstate Haitians' access to improved water sources because public systems are highly dysfunctional and in some communities rarely available year round. As the World Bank has reported, "[i]n almost all urban areas water supply is intermittent."⁵⁷ In rural areas, water is often very difficult to access during the dry season.⁵⁸

23. The weak water infrastructure is neither a new problem nor a problem that arose through Haiti's fault alone. Continued and substantial debt service has disabled the government's ability to invest in social services like agricultural and water infrastructure; through 2009, Haiti was spending \$50 million a year to service its debt.⁵⁹ Nearly ten years ago, Haiti expressed an interest in improving and extending its public water system through a set of loans from the Inter-American Development Bank (IDB) that were in part earmarked for the water sector. However, the United States prioritized political interests and interfered to block the disbursement of these already-approved and much-needed development loans, significantly undermining the opportunity for the Haitian government to develop the water infrastructure.⁶⁰

24. Inadequate access to water impacts not only the ability to drink or bathe, but all aspects of life, including health, food, and educational opportunities.⁶¹ Combined with unsanitary conditions, the lack of water is a major factor in exacerbating Haiti's health crises – tens of thousands of people die each year from preventable illnesses related to a lack of clean water.⁶² Only 27 percent of the country benefits from basic sewerage, and 70 percent of households in Haiti have either rudimentary toilets (34.9 percent) or none at all (34.7 percent).⁶³ Just 52 percent of waste in the Port-au-Prince metropolitan area is collected.⁶⁴ Fecal contamination of the water supply is thus a leading cause of disease, and water-related diseases are a major factor in Haiti's health crisis. Intestinal parasitosis and amoebic dysentery are common illnesses.⁶⁵ Typhoid fever is endemic. Passed from person-to-person, it only persists in settings of poor hygiene and poor access to clean water. The cholera epidemic that broke out in Haiti in October 2010 is the latest manifestation of an ongoing violation of the right to water, and similar to typhoid, it is easily preventable and can be treated with clean water and sanitation. In spite of this, over 4,500 people have died and over 250,000 have been infected between October 2010 and the time of this submission.⁶⁶

B. The Earthquake and Reliance on International Assistance

1. Post-Earthquake Violations of the Right to Food, Water and Sanitation

25. The earthquake that struck Haiti in 2010 further exacerbated inadequate access to basic rights, including food.⁶⁷ Damage to existing infrastructure has disrupted the availability of food markets and economic and physical access to food. According to the Emergency Food Security Assessment (EFSA) conducted in the months following the earthquake, 52 percent of households in the earthquake-affected regions were experiencing food insecurity, equivalent to almost 1.3 million people.⁶⁸

26. In the immediate aftermath of the earthquake, humanitarian food and water relief was provided to meet immediate needs. In March 2010, however, President René Prével asked the international community to stop sending food and potable water aid to Haiti for fear that it would “undermine Haitian national production and Haitian trade.”⁶⁹ Consistent with this request, a human rights investigation conducted by the Institute for Justice & Democracy in Haiti (IJDH) confirmed that as of July 2010,⁷⁰ food aid largely stopped for the families it surveyed in IDP camps, despite findings in the EFSA that blanket distributions must continue to prevent further malnutrition.⁷¹

27. While motivated by a concern for the long-term sustainability of food production in Haiti given the history of foreign aid undermining domestic production, President Prével’s action interfered with the government’s duty to respect, protect and fulfill the right to food. Even where resource constraints exist, the government has a duty to meet its core obligation to ensure that everyone in its jurisdiction has the minimum essential food to be free from hunger, whether through making local food available or through international assistance. After the decision to stop food assistance, IJDH found that families consistently did not have enough food; three out of four respondents stated that someone in their family had gone a full day without eating in the week prior to being surveyed, and over half of the families indicated that their children did not eat for an entire day.⁷² Many were forced to eat food with next to no nutritional content.⁷³

28. Violations of the right to water have also been widespread after the earthquake. Humanitarian relief agencies manage the IDP camps under the broad supervision of the International Organization of Migration (IOM),⁷⁴ and are the primary distributors of water and sanitation in the camps. International law mandates that every person must have a supply of water that is sufficient and continuous for personal and domestic uses. While one study found that IDPs living in camps had increased access to potable water after the earthquake because of humanitarian aid,⁷⁵ needs are still not fully met: over 40 percent of camps surveyed in October 2010 still did not have any water supply at all.⁷⁶ Water must also be safe and free from hazards that constitute a threat to a person’s health, yet the majority of water distributed in camps studied by IJDH was not treated to potable levels.⁷⁷ The right to water is not fulfilled unless water is physically and economically accessible, yet 61 percent of IDPs surveyed in December 2010 had to purchase potable water outside their camps every day.⁷⁸ Only 8 percent of families received *all or most* of their drinking water from aid agencies; 20 percent received *some* of their drinking water from aid agencies; 50 percent received *no* potable water at all.⁷⁹ Due to the financial burden, the study found that 21 percent of the families surveyed never had access to potable water.⁸⁰

29. Squalid living conditions in camps and limited access to latrines have created a sanitation crisis in the IDP camps and are a major public health threat. Of 108 camps surveyed in October 2010, one third of the camps lacked latrines.⁸¹ Two months after the cholera outbreak, this

number had only improved slightly, with a quarter of the camps surveyed still lacking latrines. The Sphere Project's Minimum Standards in Disaster Response state that the maximum number of people sharing a toilet should not exceed 20 – in the camps surveyed, each toilet is shared by an average of 273 people.⁸² The latrines need to be emptied regularly but this does not happen, rendering them unusable because they are filled to capacity. Twenty-five percent of respondents surveyed by IJDH reported that they defecate in plastic bags or other containers because of a lack of latrines or because of their inhumane state.⁸³

2. Implementation of the Rights Based Approach to International Assistance

30. Both the pre- and post-earthquake situations in Haiti underscore the importance of delivering aid in a rights-based framework that builds the capacity of the state to realize rights in the long-term. The Haitian Government has an obligation to cooperate with the international community to fulfill the right to food, water and sanitation for its people, and should be the leader in designing and implementing programs to improve access to basic services. The international community has a duty to use a rights-based framework for aid delivery that enables sustainability, incorporates community participation, and is accountable and transparent, while not causing harm to the local economy.

31. Non-state actors in Haiti have historically worked outside the government framework, and international financing has been directed to NGOs rather than government entities, weakening the capacity of the state. While the Haitian state has a limited capacity to oversee service provision in the camps, it retains the responsibility to ensure that non-state actors engage proactively with the state and stakeholders to detect potential human rights abuses and find solutions to address them. The international community has a heightened responsibility to build the capacity of the state and ensure participation of communities. Prior to the earthquake, a cluster system was established by the UN to organize the humanitarian response.⁸⁴ The government has not been sufficiently empowered in the management and leadership of these clusters since the earthquake. This has been in part due to practical obstacles⁸⁵ or language barriers that hinder meaningful participation.⁸⁶ At the same time, it is important for the state to maintain standards and mechanisms to oversee the activities of the various actors working in Haiti to ensure that their actions are effective and do not undermine human rights. Reports show that the interface between the government and cluster system could be improved.⁸⁷ There are, however, many exceptions where the government and NGOs work closely together,⁸⁸ though the results are often varied.⁸⁹

32. The Interim Haiti Reconstruction Commission (IHRC) was established after the 2010 donors conference to improve coordination, build state capacity and bring donors and the government together to lead the reconstruction process effectively. The body is designed to play a central role in Haiti's reconstruction, and could be an important step towards increased coordination and transparency. Some feel that the IHRC has not adequately engaged the Haitian population, however. While some sectors including Health and Housing have been able to work closely with ministries, donors, and partners to coordinate meetings and review the budget process, this has not been the case with all sectors. This should be something that is consistently carried out and mandated throughout the IHRC activities. The IHRC has twelve Haitian members, but their ability to participate effectively in the activities and decision-making of the IHRC has been limited.⁹⁰ Due to weaknesses in staff capacity, the IHRC has not done enough to include the government and Haitian stakeholder participation. Additional constraints limit the

ability to work closely with the government. The IHRC must work closely with the government to help the Haitian people understand the Commission and its role; without this information, the Haitian Government and people have had little ownership over the activities of the IHRC. An Oxfam poll found that only 17.5 percent of the Haitians surveyed supported the goals contained within the official Action Plan of the IHRC. As the Interim body transitions to the permanent Haitian Development Agency, improvements must be made to be more inclusive representative of Haitians.

33. Recent assessments have found that inconsistent with the rights-based approach, humanitarian services have in many circumstances been provided through a top-down approach, with international agencies making decisions about peoples' needs without securing meaningful input from the communities they are intended to benefit.⁹¹ Local communities, Haitian civil society groups and other stakeholders in the rebuilding process cannot meaningfully access the fora where decisions that directly impact them are being made. Haiti's impoverished majority is especially marginalized from the rebuilding process. In many settings, the UN and the IHRC alike inappropriately rely on international NGOs to "be the voice of the people."⁹²

34. Transparency is lacking, as rights-holders do not receive essential information about critical aspects of the reconstruction process. The state has a responsibility to communicate with the people about the programs of international actors, and the actors must therefore provide this information to the state for dissemination. Less than one third of camp residents surveyed in October 2010 said they were informed about the future – be it aid delivery or resettlement.⁹³ The lack of transparency inhibits participation in reconstruction decision-making and also hinders collaboration.⁹⁴ Moreover, it hinders Haitians' ability to hold international actors accountable for their work in Haiti. The government should strengthen the OPC or establish an effective complaint mechanism where Haitians can submit a complaint, have it investigated and receive redress when their rights are violated by international actors. One example, is that the lack of accountability has resulted in distrust of MINUSTAH among the local population due to the recent cholera outbreak, leading people to demonstrate and protest against the peacekeeping presence.⁹⁵ The absence of participation and transparency also negatively impacts local ownership over the rebuilding process. This hurts efficiency, continuity and sustainability of the projects. It also perpetuates a dependency on non-governmental actors, and exposes communities to vulnerability when funding for projects run out.

IV. CONCLUDING RECOMMENDATIONS

Recognizing the powerful and significant role that donors play in the provision of services and the reconstruction, these recommendations are focused on the Government of Haiti as well as the international donors actively working in Haiti.

A. General Recommendations

1. Ensure equal and adequate access to food, water and sanitation, and afford special attention to vulnerable groups such as IDPs, rural populations, women and children.
2. Implement a rights-based approach in all facets of international assistance to Haiti.
3. Consult and integrate the UN Guiding Principles on Internal Displacement into all policies and procedures relating to aid distribution, resettlement and disaster reconstruction.

4. Ratify the International Covenant on Economic, Social and Cultural Rights (ICESCR).

B. Specific Recommendations

1. The Government of Haiti and International Actors should ensure transparency throughout all stages of aid planning and distribution, including making information about plans and policies available in Creole. The government should enforce requirements on reporting from donors and disseminate this information.
2. Establish accessible accountability mechanisms:
 - a. The Government of Haiti should work to build the capacity of the OPC or create a national office to receive, investigate, and respond to complaints about violations of human rights relating to international assistance. The international community should provide financial and technical support to this effort.
 - b. Concurrently or in the alternative, donor states and international aid agencies should provide and publicize their own effective complaint mechanisms for aid recipients.
3. Build Local Capacity: The government and donors should encourage the use of local or regional purchase of commodities by donor countries.
4. International actors should coordinate with the government of Haiti to ensure the implementation of a rights-based approach. Donors and international aid agencies are encouraged to coordinate among themselves and with the Haitian government and civil society to develop a strategy to address the basic needs of the individuals affected by the earthquake. The IHRC must ensure consistent Haitian participation in project planning and implementation across all sectors.
5. The international community should prioritize building the Haitian state's capacity to fulfill its human rights obligations, and encourage donors to actively assist in this process.
6. Participation of IDPs and other stakeholders must be promoted at every stage of development. Formal consultations on needs assessment, aid distribution, and evaluation of programming should be mandated into project plans and policies.
7. Mobilize resources to support the government's long-term plan to construct a system of drinking water supply and sanitation using cost-effective and socially adapted technology. Realize the government's plan to achieve 60% coverage of drinking water in metropolitan zones and 73 % in other urban and rural areas; sanitation coverage of 58 % in metropolitan zones and 50 % in other urban and rural areas by 2015.

¹ Universal Declaration of Human Rights art 25(1), G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948); International Covenant on Civil and Political Rights art 6, Dec. 16, 1966, S. Treaty Doc. No. 95-20, 6 I.L.M. 368 (1967), 999 U.N.T.S. 171. (every human being has the right to life). The rights to water and sanitation derive from the right to an adequate standard of living, the right to life and human dignity, are inextricably linked to the highest attainable standard of physical and mental health.

² Constitution of the Republic of Haiti March 10, 1987 art. 22 (Haiti).

³ *Id.* art 19.

⁴ CTR. FOR HUMAN RTS. & GLOBAL JUSTICE ET AL., WÒCH NAN SOLEY: THE DENIAL OF THE RIGHT TO WATER IN HAITI 41-45(2008) [hereinafter WÒCH NAN SOLEY].

⁵ Haitian Constitution *Id.* art. 276-2 (1987).

⁶ In Haiti, the *Coordination Nationale de Sécurité Alimentaire* under the *Ministère de l'Agriculture* monitors food security with the goal of identifying particularly vulnerable areas, including in post-disaster situations.

⁷ This definition of the right to food is derived from UN Committee on Economic, Social and Cultural Rights (ESCR Committee), General Comment No. 12, *The Right to Adequate Food*, ¶ 7, UN Doc. E/C.12/1999/5 (1999).

⁸ Universal Declaration of Human Rights art 9, G.A. Res. 217A, at 71, U.N. GAOR, 3d Sess., U.N. Doc. A/810 (Dec. 10, 1948) [hereinafter UDHR]

⁹ Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) art. 12(2), adopted December 18, 1979, G.A. Res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force September 3, 1981. (recognizing the right of pregnant and lactating women to food and nutrition).

¹⁰ Convention on the Rights of the Child (CRC), G.A. Res. 44/25, art. 24(2)(c), U.N. Doc. A/44/49 (1989), entered into force September 2, 1990 (recognizing the right of children to adequate food and clean drinking water).

¹¹ See U.N. FAO Legal Office, *The Right to Food in National Constitutions*, in THE RIGHT TO FOOD IN THEORY AND PRACTICE, available at <http://www.fao.org/Legal/rtf/bkl.htm>.

¹² This encompasses two separate but related norms: the right to adequate food and the right to be free from hunger.

¹³ With respect to donor states' obligations, many of the donors operating in Haiti have signed and ratified the ICESCR, and thus are bound by the obligations contained therein.

¹⁴ ESCR Committee, Concluding Comments (Israel), E/C.12/1/Add.90 (May 23, 2003), ¶ 31 ("basic economic, social and cultural rights, as part of the minimum standards of human rights, are guaranteed under customary international law"); see also WÒCH NAN SOLEY, *supra* note 4, at 45.

¹⁵ ESCR Committee, General Comment No. 15, *The Right to Water*, U.N. Doc. E/C.12/2002/11 (Nov. 11-29, 2002) [hereinafter ESCR Committee General Comment No. 15]; see also World Health Organization, *Health and Hum. Rts. Pub. Series No. 3, The Right to Water*, 12 (2003), available at http://www.who.int/water_sanitation_health/rtwrev.pdf.

¹⁶ G.A. Res. 65/254, U.N. Doc A/RES/65/254 (July 28, 2010)

¹⁷ H.R.C. Res. 15/L14, Human rights and access to safe drinking water and sanitation, U.N. Doc [A/HRC/15/L.14](#) (Sept. 30, 2010).

¹⁸ G.A. Res. 65/254, ¶63, U.N. Doc A/RES/65/254 (July 28, 2010).

¹⁹ CEDAW, *supra* note 9, art. 14(h).

²⁰ CRC, *supra* note 10, art. 24(2)(c).

²¹ Loi Cadre de portant sur l'Organisation du secteur de l'Eau Potable et de l'Assainissement, *Le Moniteur No. 29*, March 25, 2009. DINEPA consolidated and replaced the former *Service National d'Eau Potable* (SNEP), which was responsible for water services outside of the capital, and the *Centrale Autonome Métropolitaine d'Eau Potable* (CAMEP), in charge of water supply for Port-au-Prince.

²² *Id.* at art. 1.

²³ World Bank, *Project Appraisal Document on a Proposed Grant In the Amount of SDR 3.4 Million (US\$5 Million Equivalent) to the Republic of Haiti for a Rural Water and Sanitation Project*, World Bank Report No: 38080, 28 [hereinafter "World Bank Appraisal"], available at http://www.wds.worldbank.org/external/default/WDSPContentServer/WDSP/IB/2007/01/05/000020953_20070105093521/Rendered/PDF/38080.pdf; Office of the Special Envoy for Haiti, Water and Sanitation, <http://www.haitispecialenvoy.org/about-haiti/water-sanitation/> (noting that water and sanitation is chronically underfunded).

²⁴ WÒCH NAN SOLEY, *supra* note 4, at 16-17; Interview with DINEPA officer, in Port-au-Prince, Mar. 16, 2010 (on file with author).

²⁵ Accord cadre entre la Direction Nationale de l'Eau Potable et de l'Assainissement et les Organisations Non Gouvernementales Intervenant dans le Secteur Eau Potable et de l'Assainissement.

²⁶ Interview with DINEPA officer, *supra* note 24 (on file with author).

²⁷ See e.g., Catarina de Albuquerque, Independent Expert on the Right to Water and Sanitation, U.N. Doc. A/65/254, ¶19, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N10/477/84/PDF/N1047784.pdf?OpenElement> (“While States have the primary legal obligation for the realization of human rights domestically, all States have responsibilities to create an enabling environment for human rights realization.”).

²⁸ See e.g., *id.*

²⁹ See, e.g., U.N. Hum. Rts. Committee, General Comment No. 6, The Right to Life, ¶ 5, U.N. GAOR, 16th Sess., Supp. No. 40, Annex V, U.N. Doc. A/37/40 (1982) (“The expression ‘inherent right to life’ cannot properly be understood in a restrictive manner, and the protection of this right requires that States adopt positive measures... [It] would be desirable...to take all possible measures to reduce infant mortality and to increase life expectancy, especially in adopting measures to eliminate malnutrition and epidemics.”).

³⁰ International Covenant on Civil and Political Rights (ICCPR) art. 4, adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976.

³¹ U.N. Office of the Coordination of Humanitarian Affairs (OCHA), Guiding Principles on Internal Displacement, Principle 18(2)(a), U.N. Doc. E/CN.4/1998/53/Add.2 (1998)[hereinafter Guiding Principles].

³² Sphere Project, Humanitarian Charter and Minimum Standards in Disaster Response (2004).

³³ The Guiding Principles have the force of law in Haiti through Haiti’s ratification of the American Convention on Human Rights. The Inter-American Commission on Human Rights, one of two bodies charged with interpreting State Parties’ obligations under the American Convention, adopted the Guiding Principles on Internal Displacement as the authoritative instrument when interpreting human rights law as applied to communities of displaced persons. Inter-Am. [Comm’n on Human Rights](#), Third Report on the Human Rights Situation in Colombia, ¶ 10, [OEA/Ser.L/V/II.102 \(Feb. 26, 1999\)](#). Moreover, the Guiding Principles “reflect and are consistent with international human rights law and international humanitarian law and to a large extent thus codify and make explicit guarantees protecting internally persons that are inherent in these bodies of law.” *Id.*

³⁴ Office of the Special Envoy for Haiti, Recovery grant activities by sector for 2010 and beyond in USD millions, Food security, GOH 18 month budget is 140.0, and donors have committed or disbursed 24.4 in 2010. For Water and sanitation, the GOH has an 18 month budget of 160.0, and donors have committed or disbursed 231.3 in 2010 to support this.

³⁵ UN Charter art. 56.

³⁶ International Covenant on Economic, Social and Cultural Rights (ICECSR) art. 11(1), adopted December 16, 1966, G.A. Res. 2106 (XX), annex, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1966), 993 U.N.T.S. 195, entered into force January 14, 1969 (“States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.”) *Id.* art. 11(2) calls on States Parties to take measures, “individually and through international co-operation,” to ensure the fundamental right to be free from hunger.

³⁷ General Comment 12, *supra* note 15, ¶36.

³⁸ ECOSOC, U.N. CHR, Report Submitted by the Special Rapporteur on the Right to Food in Accordance with Commission on Human Rights Resolution 2002/25, 59th Sess., ¶ 35, U.N. Doc. E/CN.4/2003/54 (Jan. 10, 2003) (prepared by Jean Zielger); see also Smita Narula, *The Right to Food: Holding Global Actors Accountable Under International Law*, 44 COLUM. J. TRANSNATIONAL LAW 691, 725 (2006).

³⁹ Albuquerque, *supra* note 27, ¶63.

⁴⁰ Charter of the Organization of American States, art. 37 Apr. 30, 1948, 2 U.S.T. 2394, 119 U.N.T.S. 3 [hereinafter OAS Charter].

⁴¹ Inter-Am. C.H.R., Press Release No. 11/10, IACHR Stresses Duty to Respect Human Rights During the Emergency in Haiti (Feb. 2, 2010), available at <http://www.cidh.org/Comunicados/English/2010/11-10eng.htm> [hereinafter IACHR Press Release 11/10].

⁴² Rights & Democracy, The Human Right to Food in Haiti 23-24 (2008)(citing 2008 report from Coordination Nationale de la Sécurité Alimentaire); World Food Programme Fact Sheet, <http://www.wfp.org/countries/Haiti/Overview>. Food insecurity is characterized by poor or borderline food consumption, severe and unsustainable coping practices and unreliable sources of food and income. Coordination

Nationale de la Sécurité Alimentaire et al., Executive Brief on the Haiti Emergency Food Security Assessment (Mar. 8, 2010)[hereinafter EFSA Brief].

⁴³ World Food Programme, *supra* note 42, <http://www.wfp.org/countries/Haiti/Overview>.

⁴⁴ REPUBLIC OF HAITI GROWTH AND POVERTY REDUCTION STRATEGY PAPER 19 (2008), <http://www.imf.org/external/pubs/ft/sr/2008/cr08115.pdf>

⁴⁵ COORDINATION NATIONALE DE LA SECURITE ALIMENTAIRE, HAÏTI : IMPACT DE LA CRISE ALIMENTAIRE SUR LES POPULATIONS URBAINES DE PORT-AU-PRINCE 13 (Nov. 2008).

⁴⁶ Beverly Bell, *Miami Rice: The Business of Disaster in Haiti*, HUFFINGTON POST, Dec. 9 2010, *available at* http://www.huffingtonpost.com/beverly-bell/miami-rice-the-business-o_b_794504.html.

⁴⁷ Bill Quigley, The U.S. Role in Haiti's Food Crisis, <http://www.counterpunch.org/quigley04212008.html>

⁴⁸ *Id.* at 11-12. ; Nathaniel Gronewold, *Post-Quake Revitalization Plans Collide in Haiti's Breadbasket*, GREENWIRE, Mar. 8, 2010, *available at* <http://www.nytimes.com/gwire/2010/03/08/08greenwire-post-quake-revitalization-plans-collide-in-hai-15994.html>.

⁴⁹ Bill Clinton, Statement to the U.S. Foreign Relations Committee, March 10, 2010; *see also* Center for Economic and Policy Research, Bill Clinton Apologizes for Past Rice Policies, Mar. 22, 2010.

<http://www.cepr.net/index.php/relief-and-reconstruction-watch/bill-clinton-apologizes-for-past-rice-policies/>

⁵⁰ *Id.*

⁵¹ World Food Programme, *supra* note 42.

⁵² World Food Programme, Food Aid Information System, *available at*

<http://www.wfp.org/fais/quantity-reporting>.

⁵³ GOV'T OF THE REPUBLIC OF HAITI, ACTION PLAN FOR NATIONAL RECOVERY & DEVELOPMENT 22 (2010).

⁵⁴ Under Secretary General for Humanitarian Affairs and Emergency Relief Coordinator John Holmes, interview with the Associated Press, March 2010, http://www.msnbc.msn.com/id/35967561/ns/world_news-americas/,

⁵⁵ 53 percent in urban areas, 52 percent in rural. Office of the Special Envoy, *supra* note 23

⁵⁶ UNDP, La vulnérabilité en Haïti: Chémin inévitable vers la pauvreté? Rapport national sur le développement humain – Haïti 74 (2004) (DHS study).

⁵⁷ World Bank, *Project Appraisal Document on a Proposed Grant In the Amount of SDR 3.4 Million (US\$5 Million Equivalent) to*

the Republic of Haiti for a Rural Water and Sanitation Project, World Bank Report No: 38080, 28 [hereinafter “World Bank

Appraisal”], *available at* [http://www.wds.](http://www.wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2007/01/05/000020953_20070105093521/Rend)

[worldbank.org/external/default/WDSContentServer/WDSP/IB/2007/01/05/000020953_20070105093521/Rend](http://www.wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2007/01/05/000020953_20070105093521/Rend)

[ered/PDF/38080.pdf](http://www.wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2007/01/05/000020953_20070105093521/Rend).

⁵⁸ FOKAL, ETUDE SUR L'APPROVISIONNEMENT EN EAU POTABLE EN HAÏTI: ETAT DES LIEUX, PROPENSION A PAYER, MODE DE GESTION ET POSSIBILITES D'APPROPRIATION DES SYSTEMES D'ADDUCTION EN EAU POTABLE POUR LES

USAGERS 28 (2005).

⁵⁹ *See* Dennis Coday, Forging Haiti's Debt Called Key to Recovery, NATIONAL CATHOLIC REPORTER, Feb. 15, 2010, <http://ncronline.org/news/global/forgiving-haitis-debt-called-key-recovery>.

⁶⁰ *See* Wòch Nan Soley, *supra* note 4, at 10-14.

⁶¹ *See id.* The burden of collecting water often falls disproportionately on women and children, which hinders children from attending school.

⁶² World Health Organization, *supra* note 32.

⁶³ PAHO, SITUATION OF POTABLE WATER IN HAITI (2004), *available at*

www.paho.org/english/dd/ped/Water.ppt; MICHEL CAYEMITTES ET AL., ENQUETE MORTALITE, MORBIDITE ET UTILISATION DES SERVICES, HAÏTI, 2005-2006 21 (2007)[hereinafter “EMMUS-IV”], *available at* <http://www.measuredhs.com/pubs/pdf/FR192/FR192.pdf>.

⁶⁴ Haiti Earthquake, Post-disaster needs assessment: Assessment of damage, losses, general and sectoral needs, (Annex to the Action Plan for National Recovery and Development), March 2010.

⁶⁵ CP Raccurt et al., *Enteric Parasites and AIDS in Haiti: Utility of Detection and Treatment of Intestinal Parasites in Family*

Members, 66 MED. TROP. 461 (2006).

⁶⁶ Ministère de la sante publique et de la population, *Rapport de cas*, (March 2, 2010), available at www.mspp.gouv.ht/.../Rapport%20journalier%20MSPP%20du%2001%20mars%202011.pdf. The UN estimates that these numbers may actually be two to four times higher due to high levels of unreported incidents where individuals do not make it to the hospital Meeting of the U.N. Protection Cluster, Port-au-Prince, Haiti, Nov. 23, 2010 (notes on file with author).

⁶⁷ UNITED NATIONS, HAITI: SIX MONTHS AFTER, 37, available at http://www.un.org/en/peacekeeping/missions/minustah/documents/6_months_after_commemoration.pdf (noting that already high unemployment was exacerbated by the earthquake); see also Haiti Protection Cluster, *Situation Report 2* (June 2010), available at [oneresponse.info/.../Haiti/Protection/.../Haiti%20Protection%20Cluster%20Sitrep%20June%202010.doc](http://www.un.org/en/peacekeeping/missions/minustah/documents/6_months_after_commemoration.pdf).

⁶⁸ EFSA Brief, *supra* note 42, at 1.

⁶⁹ *Haiti's President Calls for Stop to Food Aid*, TELEGRAPH, Mar. 8, 2010.

⁷⁰ INSTITUTE FOR JUSTICE & DEMOCRACY IN HAITI (IJDH) ET AL., WE'VE BEEN FORGOTTEN: CONDITIONS IN HAITI'S DISPLACEMENT CAMPS EIGHT MONTHS AFTER THE EARTHQUAKE 6-7 (2010). When the families were surveyed again in December 2010, the results were nearly identical, showing little improvement in the realization of the right to food. IJDH, ONE YEAR AFTER THE EARTHQUAKE – HAITIANS STILL LIVING IN CRISIS (2011).

⁷¹ EFSA Brief, *supra* note 42, at 4;

⁷² IJDH ET AL., WE'VE BEEN FORGOTTEN, *supra* note 70, at 7.

⁷³ One respondent reported eating meals of bread and sugared water, another family stated that when they could not find food, they “fill up with water,” and one mother stated that she had resorted to eating and feeding her family mud cakes. *Id.*

⁷⁴ The July 7, 2010 Displacement Tracking Matrix database showed that only 20.8 percent of camps (171 of 822 camps listed in the metropolitan area) have an official NGO management agency. Mark Schuller, UNSTABLE FOUNDATIONS: IMPACT OF NGOS ON HUMAN RIGHTS FOR PORT-AU-PRINCE'S INTERNALLY DISPLACED PEOPLE 18 (2010).

⁷⁵ Kimberly A. Cullen & Louise C. Ivers, *Human Rights Assessment in Parc Jean, Marie Vincent, and Port-au-Prince, Haiti*, 12 :2 HEALTH & HUMAN RIGHTS 61 (2010).

⁷⁶ SCHULLER, UNSTABLE FOUNDATIONS, *supra* note 74, at 3.

⁷⁷ IJDH ET AL., ONE YEAR AFTER THE EARTHQUAKE, *supra* note 70, at 7.

⁷⁸ *Id.*, at 6.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ SCHULLER, UNSTABLE FOUNDATIONS, *supra* note 74, at 11.

⁸² *Id.*

⁸³ IJDH ET AL., WE'VE BEEN FORGOTTEN, *supra* note 70, at 10.

⁸⁴ Andrea Binder and François Grünewald, *Haiti, IACS Cluster Approach Evaluation, 2nd Phase Country Study* (April 2010), available at <http://www.alnap.org/pool/files/gppi-urd-haiti-en.pdf>. This evaluation found that the cluster system “enhanced partnership between the UN and other international humanitarian actors, facilitated information sharing, improved the predictability of leadership, limited duplications and enhanced coherence. At the same time, the evaluators found a number of important shortcomings of the cluster approach in Haiti: it was weak on ownership and connectedness, demonstrated only a low level of accountability - both toward the Humanitarian Coordinator and affected populations - and could not significantly improve coverage. The report shows that the cluster approach in Haiti has not realized its full potential.”

⁸⁵ For example, many clusters have met on MINUSTAH's Logistics Base located on the outskirts of Port-au-Prince, which is not easily accessible.

⁸⁶ Some cluster meetings are held in English, not French or Creole, effectively excluding participation by government officials and Haitian civil society.

⁸⁷ Abhijit Bhattacharjee & Roberta Lossio, Evaluation of OCHA Response to Haiti Earthquake 10 (2010) [hereinafter OCHA Evaluation].

⁸⁸ For example, the Water and Sanitation (WASH) Cluster is co-chaired by DINEPA and UNICEF, and meets in downtown Port-au-Prince at an accessible location

⁸⁹ See e.g., MARK SCHULLER, MÈT KÒ, VEYE KÒ: FOREIGN RESPONSIBILITY IN THE FAILURE TO PROTECT AGAINST CHOLERA AND OTHER MAN-MADE DISASTERS 8 (2011) [hereinafter SCHULLER, MÈT KÒ].

⁹⁰ In November 2010, the Haitian members submitted a letter of complaint to the Executive Committee, protesting that their membership in the IHRC only makes the Commission representative on paper, as they are routinely notified of meetings last minute and are not given adequate opportunities to review or provide feedback on project proposals, many of which are only available in English.

⁹¹ OCHA Evaluation, *supra* note 87, at 32. This was demonstrated in the OCHA evaluation, where one staff member admitted that “[w]e do not interact with local NGOs or government, forget about interacting with communities.”

⁹² SCHULLER, MÈT KÒ, *supra* note 89, at 32.

⁹³ *Id.* at 27.

⁹⁴ Kathleen Bergin & Nicole Phillips, *Facing Man-Made Disaster in Haiti*, HOUSTON CHRONICLE, Nov. 8, 2010, available at <http://www.chron.com/disp/story.mpl/editorial/outlook/7285602.html>. This was demonstrated in the lead-up to Hurricane Tomas in November 2010, when residents of Camp Corrail-Cesselesse chose not heed the advice of international agencies to evacuate because they were not told where they would be taken and feared that they would not be allowed to return to their camp.

⁹⁵ The cholera outbreak is a particularly pertinent example of this – as increasing evidence points to an introduction of the bacteria by UN peacekeeping forces, people’s anger at the UN’s delayed investigations and the absence of other accountability mechanisms has resulted in loud discontent with the MINUSTAH mission, challenging the international community’s ability to carry out their functions.

Gender-Based Violence Against Haitian Women & Girls in Internal Displacement Camps

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1. This report is submitted by MADRE (an ECOSOC accredited NGO), KOFAVIV FAVILEK, KONAMAVID, Women's Link Worldwide, and the International Women's Human Rights Clinic, City University of New York School of Law. It focuses on the epidemic of gender-based violence in internally displaced persons (IDP) camps in post-earthquake Haiti.

I. BACKGROUND AND CONTEXT

2. Preventative measures within Haiti's internally displaced persons ("IDP") camps are critically lacking. In particular, the following issues exist: lack of adequate lighting; lack of private bathing facilities; lack of tents; and even for those with tents, utter lack of security, and lack of police presence. All of these risk factors have increased dramatically in post-earthquake Haiti, resulting in an epidemic of gender-based violence against Haitian women and girls.

3. Though official statistics are lacking, research demonstrates that after disasters and conflicts, women and children living in IDP camps are especially vulnerable to sexual violence and rape. In Haiti, a University of Michigan survey conducted in March 2010 estimated that three percent of all people in Port-au-Prince had been sexually assaulted since the earthquake; all but one of the respondents surveyed in that study were female and half of the victims were girls under the age of eighteen.¹ Médecins Sans Frontiers reported treating 212 victims of sexual violence in the 5 months following the earthquake.² 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 2010.³ According to SOFA's assessment report issued in November, sexual violence targeting women and girls is a growing emergency. The Bureau des Avocats Internationaux (BAI), a public interest law firm in Port-au-Prince currently represents over 70 women and girls in rape cases post-earthquake.

4. Additionally, human rights defenders working with KOFAVIV and other grassroots groups, such as FAVILEK and KONAMAVID have been targeted for violence, including rape, and extortion for their work defending rape victims. This was reported to the UN Human Rights Council in testimony of a Haitian grassroots women's organization leader in June 2010. (See Appendix A testimony to the Human Rights Council by Malya Villard Apollon of KOFAVIV).

5. Examples of documented sexual violence suffered by Haitian women and girls include:

- 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 beat the victim with their handmade weapon and raped her.
- 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.
- 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.
- On July 15, 2010, an eighteen-year-old woman sleeping in a tent with her daughter, mother, and thirteen-year-old sister was awoken in the middle of the night by a man armed with a gun and a machete, who then raped her. Later that week, her thirteen-year-old sister was also raped.

- On March 14, 2010, a five-year-old girl was raped and suffers bleeding from vaginal tearing, as well as chronic fever, trouble breathing, stomach pains, and incontinence. A doctor prescribed a multitude of medications but her grandmother, who acts as her guardian, is only able to afford the medication to control the incontinence.

Limited Access to Medical Services

6. Medical services providers are overwhelmed and unable to meet healthcare needs stemming from the assaults. The quality and type of care these women have received has varied depending on the facility and availability of supplies. Some clinics do not offer services such as HIV prophylaxis or emergency contraception. Women and girls faced prohibitively long waits, and several reported leaving without ever being seen by a doctor.

7. Women also report a lack of privacy and limited access to female healthcare providers. Medical certificates are not routinely provided and several victims were unaware of the importance of the certificates in documenting rape for domestic prosecution and their right to request them.⁴ Additionally, media has reported a dramatic increase in pregnancies inside the camps, women lack access to proper pre-natal care and abortion services.⁵

8. In the short-term the Government of Haiti should comply with the Commission's December 22 recommendation, which echoes the recommendation in its 2009 report on Haiti, and adopt measures to ensure that doctors and medical personnel comply with the requirement that medical certificates are issued for free and made available to victims of sexual violence. However, in the long term, Petitioners recognize that the requirement of medical certificates for verification of rapes is ultimately discriminatory and imposing a medical certificate requirement hinders many legal cases, since rape victims are often unable to find or afford medical services, or feel intimidated trying to access them. Therefore, the requirement of medical certificates to bring legal cases forward should be eliminated.

Lack of Adequate Security in the Camps or Police Response

8. Haitian National Police (HNP) are reported to rarely patrol inside the IDP camps or respond when victims report being raped. Many victims have said they are afraid to report sexual violence to the police because of the lack of police response, threats of retaliation made by the attacker, and embarrassment due to the general social stigma associated with rape.

9. The overwhelming majority of rapes in Haiti post-earthquake have gone unpunished and the Haitian government and international community have not effectively deployed their resources to provide adequate protection. Furthermore, the Haitian government has only begun to prosecute a fraction of these cases. These domestic prosecutions progress through the system only because of tireless advocacy by Haitian human rights lawyers and their partners who diligently work with police, prosecutors and judges to end the climate of impunity. In cases where the police have made arrests, suspects are often released as a result of poor investigations.

10. However, the government of Haiti is 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. The plan will not be implemented for months, if not years. Quite simply, there is no end in sight for the dangerous conditions in which Haitian women and girls live.

II. UN AND REGIONAL RESPONSE TO THE EPIDEMIC OF SEXUAL AND GENDER-BASED VIOLENCE

11. On October 14, 2010 the UN Security Council recommended that MINUSTAH pay particular attention in providing adequate protection to the needs of Haitians, specifically internally displaced women, including through joint community policing in camps, strengthening mechanisms to address sexual and gender-based violence and promoting and protecting the rights of women as set out in Security Council resolutions 1325, 1888 and 1889. The Security Council stated, “combating criminality and sexual and gender-based violence, and putting an end to impunity are essential to ensuring the rule of law and security in Haiti.”⁶

12. Several UN Special Rapporteurs and Representatives have also 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 2010 speech to the UN General Assembly, Rashida Manjoo, the UN 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.⁷

13. That same month, Walter Kälin, then UN Special Representative to the 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.⁸ Mr. Kälin 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.”

14. On October 21, 2010, attorneys and grassroots groups submitted a Request for Precautionary Measures to the Inter-American Commission on Human Rights (IACHR).⁹ The petition called on both the government of Haiti and international actors 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 displacement camps. Advocates asked the IACHR to grant the request as an urgent measure to address the multiple acts of sexual violence women in the displacement camps are facing.

15. On December 22, the IACHR 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 B). The IACHR’s decision includes the following legally binding recommendations:

- A. 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.

- B. 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 the camps;
- C. 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;
- D. Establish special units within the police and the Public Ministry investigating cases of rape and other forms of violence against women and girls, and;
- E. 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.

III. EXCLUSION OF GRASSROOTS ORGANIZATIONS FROM PARTICIPATION IN ADDRESSING SEXUAL VIOLENCE

16. In violation of its obligations under international human rights law the UN Gender Based Violence (GBV) Sub-Cluster¹⁰ has excluded Haitian grassroots women's groups from meaningful participation in the coordination efforts to address and prevent sexual violence in Port-au-Prince IDP camps. Since the earthquake, the role of the UN GBV Sub-Cluster has been to track what remains of Haiti's human resources and momentum of the Concertation Nationale, and to "support and build on prior activities."¹¹

17. This exclusion of grassroots voices violates international law and standards requiring such participation, including the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women ("Belém do Pará"), UN Security Council Resolution 1325 and the UN Guiding Principles on Internal Displacement. Moreover, 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. However, grassroots women groups operating within displacement camps continue to be excluded in post-disaster needs assessments and in the planning of activities designed to mitigate such violence.

18. As further evidence of this exclusion, in December 2010, the UN GBV Sub-Cluster released its list of strategies for 2011 for combating gender-based violence in Haiti, a simplistic two-page summary of objectives and goals (See Appendix C). 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.

19. In response to this, in February 2011 the Haitian Minister on the Rights of Women (Women's Ministry), in a written letter to UNFPA, called on the GBV Sub-Cluster to include participation by grassroots women's groups living and operating within the IDP camps as well as to collaborate with the Women's Ministry on its activities (See Appendix D).

20. Despite this request by the Women's Ministry, the GBV Sub-Cluster Coordinator still refuses to include Haitian grassroots women's groups to meaningful participate in the planning and implementation of activities designed to address sexual violence in the displacement camps.

Nor has the UN GBV Sub-Cluster followed its obligation under international law and in respect of Haiti's state sovereignty to consult with the Women's Ministry on activities involving mapping the issue of gender-based violence in the camps and resources available for victims. This continued exclusion by Sub-Cluster leadership not only violates its obligations under international human rights law but also undermines strategies to combat gender-based violence.

IV. CONCLUSION

21. Building and strengthening the rule of law is fundamental to sustaining peace and security for societies emerging from disasters. Haiti's transition from disaster creates a unique opportunity to adopt strategies and policies for the establishment of the rule of law and the promotion of gender equality and gender justice within key areas relating to policy and law enforcement.

22. In recent decades, the Haitian women's movement has achieved considerable success, including the creation of the Women's Ministry. However, the January 12, 2010 earthquake put women and girls at an increased risk of rape by the collapse of social infrastructures, the erosion of family and community networks and inequitable access to social services. Disasters and conflicts women and children living in displacement camps are especially vulnerable to violence.

23. The IACHR's December 22, 2010 recommendations, combined with the long-term recommendations outlined in the IACHR's 2009 report on Haiti¹² provide a comprehensive roadmap for addressing and preventing gender-based violence and related discrimination against women and girls in Haiti.

V. SOLUTIONS

24. Sexual violence is greatly deterred when both adequate security and lighting are present in IDP camps. Camps surveyed by KOFVIV 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, to date, few camps possess adequate lighting and security necessary to ensure the safety of residents.

25. In order to strengthen respect for human rights in country and foster a strong rule of law it is critical for Haiti to implement the IACHR's Recommendations and accountability mechanisms for human rights violations. 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 IACHR's recommendations that provide a clear blueprint for such strategies.

26. To meet its obligations to combat sexual violence and fully implement the IACHR's recommendations, the Government of Haiti needs adequate resources. Yet much of the funding pledged for Haiti by Donor States has still not been released. Of the money released, a large portion has not yet been spent. Moreover, much of the money delivered has gone to international aid agencies, not to Haitian organizations or the Haitian government.

27. Government and civil society actors must be supported in the drafting of a Plan of Action to Address Sexual Violence and Related Gender-Based Discrimination ("Plan of Action") for implementing both the IACHR's short term and long-term recommendations and advocate for the inclusion of this plan in the reconstruction and development plans and policies. The Plan of

Action must be designed and framed within the context of Haiti's existing commitments to end gender-based violence and discrimination, from its national laws and policies to regional and international inter-governmental conventions and agreements. This includes establishing new policies or legislative reform that compliments other existing national policies and governmental plans of action or strategies. Finally a Plan of Action must be funded by Donor States.

VI. RECOMMENDATIONS

28. We respectfully request that the Human Rights Council ask UN GBV Sub-Cluster and the Haitian government to implement the recommendations of the IACHR's decision, and to:

A. 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.

B. Support a Plan of Action to address sexual violence and implement the IACHR's recommendations that is collaboratively drafted by Haitian government, key members of UN agencies and other key civil society organizations;

C. Ensure medical and psychological care is provided in locations available to victims of sexual abuse of 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.

C. Implement effective security measures in displacement 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 the camps;

D. 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;

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

F. Support initiatives that provide free representation of victims through the civil party mechanism in domestic prosecutions of sexual assault.

APPENDIX A



MADRE

**Demanding Rights, Resources &
Results for Women Worldwide**

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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 KOFVIV, 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. KOFVIV 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.

APPENDIXB



INTER - AMERICAN COMMISSION ON HUMAN RIGHTS
COMISION INTERAMERICANA DE DERECHOS HUMANOS
COMISSÃO INTERAMERICANA DE DIREITOS HUMANOS
COMMISSION INTERAMÉRICAIN 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.

Ms. Lisa Davis, Esq.
International Women's Human Rights Clinic
CUNY School of Law
- and -

MADRE
Human Rights Advocacy Director

Annie Gell, Esq. And Brian Concannon, Jr., Esq.
Institute for Justice & Democracy in Haiti

Mario Joseph, Av.
Bureau des Avocats Internationaux

Ms. Katherine Romero
Women's Link Worldwide
Bogotá, Colombia

Ms. Erica J. Richards, Esq.
Morrison & Foerster LLP

Sunita Patel, Esq. and others
Center for Constitutional Rights

KOFAVIV, FAVILEK, KONAMAVID

-2-

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.

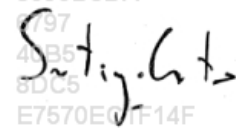
In its communication to Haiti, the Commission also requested that the State provide the Commission with information concerning compliance with these measures within 20 days of receipt of the communication, and thereafter on a periodic basis. In view of the observations of the parties on compliance, the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

APPENDIXC

STRATÉGIES DU SUB CLUSTER POUR 2011

Prévention de la VBG à travers le plaidoyer et avec la participation des acteurs de sécurité et d'autres acteurs.

- L'intensification des formations pour les acteurs de la VBG, incluant les gestionnaires de camps, la police, les organisations de base et autres ;
- Continuer l'installation des lampes solaires dans les camps des personnes déplacées ;
- Augmenter la collaboration avec le cluster WASH et les autres clusters (avec possible collaboration d'un conseiller GenCap) ;
- Appuyer les organisations de bases pour la prévention en matière de VGB au sein des communautés.

GBV prevention through advocacy and with the participation of security and other actors.

- The intensification of training for actors of GBV, including camp managers, police, grassroots organizations and others;
- Continue installation of solar lights in the camps of displaced persons;
- Increase collaboration with the WASH cluster and other clusters (with possible help of a counselor GenCap);
- Support grassroots organizations for the prevention of GBV in communities.

Améliorer la qualité, la disponibilité et l'accès aux services essentiels de la VBG

- Établir à Port-au-Prince le niveau standard des procédures opératoires pour les cas de VBG ;
- Préparer et organiser un atelier sur l'exercice de la cartographie par IRC afin de discuter sur la façon de progresser ;
- Appuyer les organisations de bases en tant que services d'accompagnement pour les victimes ;
- Produire et diffuser des cartes de référence de la VBG pour Léogane/Grand-Goâve/Petit-Goâve/Gressier et pour Jacmel (en cours, mais en arrêt pour le moment à cause du choléra) ;
- Vérifier et mettre à jour les informations sur la carte de référence ;
- Mettre en place un pool de formateurs ;

- Établir le renforcement des capacités/former un groupe de travail qui comprendra un pool de formateurs, un plan de travail, la systématisation et le catalogage des programmes et un déploiement de formations ;
- Tenir un atelier avec les acteurs de la Protection de l'Enfance et de la VBG afin d'arriver à un consensus pour établir des standards et des normes pour les abris/les maisons d'hébergement.

Improve the quality, availability and access to essential GBV

- Establish in Port-au-Prince level standard operating procedures for cases of GBV;
- Prepare and organize a workshop on the mapping exercise on IRC to discuss the way forward;
- Support grassroots organizations as support services for victims;
- Produce and disseminate reference cards for GBV Léogane / Grand Goave / Petit-Goâve / Gressier and Jacmel (in progress, but for the time off due to cholera);
- Verify and update information on the reference card;
- Establish a pool of trainers;
- Establish capacity building / form a working group that will include a pool of trainers, a work plan, systematization and cataloging programs of training and deployment;
- Hold a workshop with actors from the Child Protection and GBV in order to reach a consensus to establish standards and standards for shelter / shelters.

Coordonner, suivre et identifier les lacunes dans la prévention et la réponse de la VBG

- Veiller à ce que tous les partenaires travaillant dans la VBG sont informés et respectent le Plan National et les Protocoles ;
- Continuer et développer la coordination du Sous-Cluster à un niveau sous-national ;
- Continuer à accompagner le MCFDF dans l'augmentation de leur rôle au niveau national dans la coordination à travers le déploiement du Manuel de Coordination de la VBG au niveau national et sous-national ;
- Soutenir le MCFDF dans le déploiement à l'échelle nationale du système de gestion de l'information de la VBG.

Coordinate, monitor and identify gaps in prevention and response to GBV

- Ensure that all partners working in GBV are informed and comply with the National Plan and Protocols;
- Continue and expand coordination of the Sub-Cluster at sub-national level;
- Continue to support the MCFDF in increasing their role in coordinating national level through the implementation of the Book of GBV Coordination at national and sub-national level;
- Support the MCFDF in deployment nationwide system of information management of gbv

APPENDIX D



*Ministè Kondisyon Fanm
ak Dwa Fanm*
*Ministère à la Condition Féminine
et aux Droits des Femmes*

MCFDF/MM/ml/SM/432-11

Port-au-Prince, le 17 Février 2011

Monsieur Igor BOSC
Représentant de l'UNFPA
En ses Bureaux.-

Monsieur le Représentant,

Le Ministère à la Condition Féminine et aux Droits des Femmes (MCFDF) a le regret de vous informer que c'est avec stupéfaction qu'il constate qu'en dépit d'une sévère mise en garde publique adressée à l'égard de Mme Sian Evans, Coordonnatrice du sous cluster violence basée sur le genre (VBG), elle a encore facilité l'actualisation de la carte de référence sans l'approbation du Ministère.

Le MCFDF déplore cette attitude discriminatoire et non professionnelle de la part de Mme Evans. A cette situation il faut ajouter l'étude sur le mapping réalisée sans aucune consultation au préalable avec la titulaire du Ministère.

Le MCFDF se sent très concerné par le comportement de Mme Evans. Il vous demande de prendre les dispositions nécessaires pour remédier à cette situation intolérable. Le Ministère souhaite avoir un entretien avec vous à ce sujet dans le meilleur délai

Je vous prie de recevoir, **Monsieur le Représentant**, mes plus respectueuses salutations.


Marjory MICHEL
Ministre

Avenue Magny, N° 4 • Tél.: (509) 2940-0765 / 2813-9120
E-mail: secretariatministremcfd@gmail.com
directgenerale@yahoo.fr

L 23/02/11

¹ University of Michigan/Small Arms, *Assessing Needs After the Quake: Preliminary Findings from a Randomized Survey of Port-au-Prince Households*, Survey (2010).

² Si Médecins Sans Frontiers (MSF) *Emergency Response After the Haiti Earthquake: Choices, Obstacles, Activities and Finance*, (July 2010).

³ 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 Accueillies et Accompagnés Dans Les 21 Centres Douvanjou de la SOFA de Janvier à Juin 2010 (Nov. 2010).

⁴ It should be noted that the requirement of medical certificates for verification of rapes is discriminatory. However submitters of this report recognize that the absence of certificates can lead to lack of prosecution of a rape cases.

⁵ See for example, NTN 24. Se triplica la tasa de embarazos en campamentos de desplazados en Haití. Oct. 19, 2010.

⁶ 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).

⁷ 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).

⁸ 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.

⁹ Attorneys and grassroots groups who filed the petition include KOFAVIV, KONAMAVID, and FAVILEK, MADRE, the International Women's Human Rights (IWHR) Clinic at the City University of New York (CUNY) School of Law, Women's Link Worldwide, the Center for Constitutional Rights (CCR), the Institute For Justice & Democracy In Haiti (IJDH), Bureau Des Avocats Internationaux (BAI), and Morrison & Foerster LLP.

¹⁰ The UN Gender-Based Violence Sub-Cluster in Haiti (the "GBV Sub-Cluster") is coordinated by UNFPA 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.

¹¹ "Haiti Response Must Address Needs of Women and Girls," Haiti Earthquake 2010. *One Response*. June 2010.

¹² Inter-American Commission on Human Rights, Report on Haiti, "The Right of Women in Haiti to be Free from Violence and Discrimination." (2009).

Right to Housing

Submitted By:

Camp Benediction

Camp CAPVVA

Camp Cavil

Camp CCTT

Camp COSSBAMI

Camp CR-5*

Camp Faitree Michiko

Camp Imaculée Deplacée

Camp Michiko I

Camp Mosaique

Camp Refugee

Camp SOHOMO

Camp Toussaint Louverture

Groupe d'Action pour la Défense des Droits Humains en Haïti

International Action Ties

MOSFV

You.Me.We

Endorsed By:

Bureau des Avocats Internationaux; Center for Constitutional Rights; Institute for Justice & Democracy in Haiti; LAMP for Haiti Foundation; Link Haiti, Inc.; Moun Viktim; Paloma Institute; UC Davis Immigration Law Clinic; UnityAyiti

I. EXECUTIVE SUMMARY

1. The housing crisis in Haiti constitutes a grave violation of human rights. A majority of Haitians live in overpopulated urban centers, shanty towns or under-developed villages that fail to meet minimum standards of habitability. These settlements lack access to basic necessities such as clean water, sanitation, and electricity, and are plagued by high rates of violence, particularly sexual violence against women and girls. Moreover, there is virtually no security of tenure in Haiti, which leaves a majority of people, especially the urban poor, facing a constant threat of forced eviction and related human rights violations.

2. These conditions pre-date the earthquake that hit Haiti in January 2010, and according to the Government's own assessment, exacerbated its effects. When the Government announced a reconstruction plan in March 2010, it noted that the toll of the earthquake – 250,000 people killed, and another 2 million left homeless – did not result from the tremor alone, but from “an excessively dense population, a lack of adequate building standards, the disastrous state of the environment, disorganized land use, and an unbalanced division of economic activity.”¹ At the time of this submission, fourteen months have passed since the earthquake, and the Government of Haiti has yet to adopt a plan that will adequately achieve durable solutions to displacement, poverty or homelessness.

II. BACKGROUND AND FRAMEWORK

A. Origins of a Housing Crisis

3. Housing conditions in Haiti are directly linked to the conditions of extreme poverty. Haiti is the poorest nation in the western hemisphere and consistently ranks near the bottom of the United Nations Development Index.² Before the earthquake, an estimated 80% of the population was formally unemployed, and most people eked out a meager living as manual laborers or service providers in the underground economy.³ Few Haitians could afford to own a home, so the majority lived in shoddy rental units or informal settlements on open land.

4. Overpopulation made matters worse by creating a severe housing shortage in the nation's urban centers after the agriculture sector collapsed in the 1980s. The United States had flooded Haiti with cheap subsidized rice, and farmers who lost their livelihoods migrated to Port au Prince in search of employment.⁴ The city, once home to 250,000 people, grew to 3 million.⁵ Construction proceeded without regard for building codes or safety standards, and poor urban planning resulted in neighborhoods being established in areas prone to flooding and other natural hazards, including steep hill-sides that collapsed in the earthquake. Following an assessment in 2009, United Nations officials concluded that the Haitian government had lost the capacity to manage metropolitan Port au Prince.⁶

5. The earthquake struck less than one year later, killing up to 250,000 people. It displaced an additional two million, and few of them had the resources to secure alternative housing outside the affected area.⁷ Inside the affected area, 300,000 residences were destroyed. Rents for the remaining structures skyrocketed, three-fold in some cases,⁸ and land-lords carried forward the customary practice of requiring tenants to advance 12 months of rent to secure a lease.⁹ With nowhere else to go, 1.5 million people who were displaced by the earthquake migrated to displacement camps where they set up tents or makeshift shelters. In March 2011, close to 700,000 internally displaced people (“IDPs”) live in 1061 camps.¹⁰

6. Human rights abuses, including forced evictions, are endemic in the camps. In some instances, people who purport to own the land where a camp is located have resorted to violence and other coercive measures to force displaced people off the property. An estimated 74% of camps are situated on private land, and much of it is subject to competing claims of ownership.¹¹ Title is often unclear because a low percentage of land holdings were properly recorded before the earthquake,¹² forgery is rampant, and documents are frequently altered in an attempt to validate land grabs and unlawful transfers that were perpetrated under the Duvalier dictatorship. In 2007, a UN advisory group recognized land conflicts as a “principal cause” of forced evictions, and international organizations have expressed concern over the amount of land burdened by contested ownership claims in Haiti, and the number of purported land owners who cannot demonstrate legal title to land.¹³

B. International Obligations

7. The right to housing is a necessary component of the right to an adequate standard of living. Article 25 of the Universal Declaration of Human Rights (“UDHR”) establishes that “[e]veryone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care . . .” The International Convention on Economic, Social and Cultural Rights (“ICESCR”) establishes the right “of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.” While Haiti has not ratified the ICESCR, other international agreements to which Haiti is a party incorporate the right to housing either expressly or implicitly, including the International Covenant on Civil and Political Rights (“ICCPR”),¹⁴ the Convention on the Rights of the Child (“CRC”),¹⁵ and the Convention on the Rights of Disabled Persons (“CRDP”).¹⁶ Non-discrimination with regard to housing is also recognized by the Covenant on the Elimination of Discrimination Against Women (“CEDAW”) and the International Convention on the Elimination of All Forms of Racial Discrimination (“ICERD”).¹⁷

8. The right to adequate housing includes elements of habitability, affordability, physical security, and security of tenure.¹⁸ It also includes a corresponding right to be free from forced evictions, which can only be justified “in the most exceptional circumstances, and in accordance with the relevant principles of international law,”¹⁹ which include adequate notice, sufficient consultation with IDPs, and arrangements for alternative habitable shelter. Forced evictions must also be accompanied by a clear set of due process and procedural protections.²⁰ Further, in the context of persons displaced by the earthquake, forced evictions cater to the interests of alleged property owners, many of whom lack legal title, at the cost of leaving evicted camp residents at extreme risk, and therefore violate Haiti’s obligations under the ICCPR (Art. 26) and ICERD (Art. 5) to uphold each individual’s right to equality before the law.

9. The UN’s Guiding Principles on Internal Displacement (“Guiding Principles”) affirm that IDPs have the right to an adequate standard of living, which includes “basic shelter and housing,” essential food and water, appropriate clothing, and essential medical services and sanitation.²¹ The Guiding Principles also hold that “[e]very human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence.”²² This prohibition against arbitrary displacement applies specifically to “cases of disasters, unless the safety and health of those affected requires their evacuation...”²³ The

Guiding Principles reflect and are consistent with human rights and humanitarian law, and have the force of law in Haiti.²⁴

10. The Principles on Housing and Property Restitution for Refugees and Displaced Persons (“Pinheiro Principles”) also require States to pursue “durable solutions” to displacement, including “positive measures aimed at alleviating the situation of refugees and displaced persons living in inadequate housing.”²⁵ These include measures to ensure that “individuals, corporations, and other entities within [the] legal jurisdiction or effective control [of States] refrain from carrying out or otherwise participating in displacement.”²⁶ The Pinheiro Principles are not directly enforceable against States, but provide internationally recognized benchmarks for determining whether a State has demonstrated compliance with underlying human rights obligations.

C. Domestic Obligations

11. The Constitution of Haiti recognizes “the right of every citizen to decent housing, education, food and social security.”²⁷ The Constitution does not elaborate on the scope of this right, but does incorporate standards established under international agreements that are duly ratified or adopted. Those agreements become “part of the legislation of the country and abrogate any laws in conflict with them.”²⁸ Haiti has not adopted the ICESCR, but it is a party to the ICCPR, the CRC, the CRDP, and CEDAW.

12. The Constitution also states that ownership “entails obligations,” and that “uses of property cannot be contrary to the general interest.”²⁹ The Government has not enforced these limits against private individuals who have violently and illegally evicted displaced people from land they purport to own, or who have maintained festering public health hazards as an excuse to force displaced people off the land. Judicial remedies are available under Haitian law to protect a rightful landowner who is wrongfully dispossessed of the land, but some purported landowners have sidestepped judicial mechanisms and obtained assistance from Government agents in perpetrating violent and coercive evictions.³⁰

13. The Constitution also authorizes the government to expropriate land for public purposes, so long as it follows certain procedural safeguards and provides appropriate compensation to entitled individuals.³¹ This authority has been invoked on numerous occasions in the past,³² and in March 2010, the Government authorized the seizure of more than 17,000 parcels of vacant land.³³ According to human rights monitors, however, the Government designated 450 hectares of land in downtown Port-au-Prince for government buildings, shops and offices, but only five plots of land for transitional shelter. Moreover, those plots are located on land that is far from main roads, sources of employment, commercial opportunities or existing social structures.³⁴ The Special Rapporteur on the Rights of Internally Displaced People visited one of those sites in October 2010, and called it a “barren area” that “offers virtually no sustainable livelihood opportunities.”³⁵ The Protection Cluster’s Housing Law and Property Working Group echoed that concern, stating that the “resettlement of earthquake affected [people] has not been consistent with international norms, standards and best practices.”³⁶

D. Housing Policy After the Earthquake

14. Haiti remains under a state of emergency, and decision-making authority on matters related to reconstruction is exercised concurrently by the Interim Haiti Recovery Commission (“IHRC”) and national lawmaking bodies. The IHRC was established pursuant to an emergency

presidential decree on April 21, 2010 in order to coordinate international donors and the Haitian Government.³⁷ It is co-chaired by Former U.S. President Bill Clinton and Haitian Prime Minister Jean Max Bellerive, and is responsible for “continually developing and refining development plans for Haiti,” and for approving internationally funded projects that are consistent with the *Action Plan for Recovery and Development*, Haiti’s framework document for recovery.³⁸ The IHRC has an 18 month mandate, and is vested with all “powers necessary” to conduct its activity. Decisions taken by the IHRC on significant projects must be confirmed by the President to be enforceable.

15. In September 2010, the IHRC put forth a draft *Neighborhood Return and Housing Reconstruction Framework* that it created in consultation with the Government of Haiti and the UN’s Shelter Cluster. The Framework purports to “meet the needs of the families affected by the earthquake and help restore the basis of peoples’ social and economic lives.”³⁹ It does not adequately reflect international guidelines on durable solutions for IDPs that ensure protection of their human rights, however.⁴⁰ For example, the Framework does not provide sufficient protection for renters, those with informal living arrangements, or those who have a right to occupy disputed land under domestic or international law, which make up the vast majority of those displaced by the earthquake.⁴¹

16. While the Government of Haiti has the primary role to respect, protect and fulfill the right to housing, the IHRC plays a central role in deciding the direction of Haiti’s reconstruction and as such, has a responsibility to implement a human rights based approach throughout its activities, which includes capacity building, participation, transparency and accountability.⁴² The IHRC has not engaged meaningfully with Haitian stakeholders to ensure their participation in decision-making on housing policy. The IHRC lacked a consultation mechanism that would allow IDPs, the primary stakeholders in the Framework, the opportunity to provide input on design and to ensure necessary modifications to the projects to maximize the realization of human rights. Drafts of the Framework have not been made available in Creole, the only language spoken by a majority of the population. The lack of transparency and participation is inconsistent with a human rights based approach, and has resulted in little ownership of the plan by the Government and affected communities. At the time of this submission, the Government has yet to adopt this or any other return and resettlement policy, exposing IDPs to continued vulnerability and lack of access to sustainable housing solutions.

E. Domestic Government Framework

17. At the national level, the Government has failed to exercise its constitutional authority to protect housing rights that every Haitian citizen is entitled to enjoy, or to marshal the resources of existing institutions in a way that promotes progress, transparency, and accountability in the reconstruction process.

18. National housing policy is generally administered by the Ministry of Social Affairs and Labor through the division of Social Housing Promotion and Planning, or EPPLS. The primary obligation of the EPPLS is “to prepare, plan, implement and manage social housing projects for the benefit of families and individuals with lower incomes.”⁴³ The Government of Haiti has not designated the EPPLS, or any other domestic agency for that matter, as the focal point for housing reform within the context of earthquake reconstruction. Instead, it has implemented a decentralized process that delayed the immediate earthquake response and continues to slow the pace of progress.

19. For instance, it took a full year for the Ministry of Public Transport and Public Works to release new building guidelines that developers are now encouraged to follow voluntarily. The delay stalled the initial rebuilding process, and those who did proceed with reconstruction were forced to do so without the guidance of best practices relevant to the Haitian context. Furthermore, there does not appear to be plans to promulgate enforceable building codes in the near future,⁴⁴ raising serious concerns about compliance enforcement. The practice of rebuilding without strict adherence to a code sets the stage for recreating the same structural deficiencies that caused disproportionate damage and loss of life in the January 12, 2010 earthquake.

20. Moreover, four months after the earthquake, the Government commissioned an interim Bureau on Relocations to investigate solutions for some of the largest camps in Port au Prince, particularly those in the Champs de Mars district where the Presidential Palace and most government ministries were located.⁴⁵ The Bureau launched a rubble removal project to make room for transitional shelters, but from the 19 million cubic meters of debris created by the earthquake, only 20% was removed in the first year.⁴⁶ The accumulation of debris blocking land and thoroughfares has been identified as a major obstacle to reconstruction.⁴⁷

21. Finally, despite repeated calls from housing advocates, the Government of Haiti has declined to steadily implement a temporary moratorium on forced evictions, or adopt alternative measures to protect the occupancy rights of displaced people who have no alternative shelter outside of a camp. In March 2010, the Government reportedly agreed to a three-week moratorium on forced evictions after negotiating with relevant UN entities, but that moratorium was not publicly communicated or enforced.⁴⁸ In November 2010, the Inter-American Commission on Human Rights instructed the Government of Haiti to implement a moratorium, but the Government has not taken any steps to comply with that directive.⁴⁹ The Government has also failed to publicly condemn or discourage forced evictions.

III. THE RIGHT TO ADEQUATE HOUSING AS IT RELATES SPECIFICALLY TO HAITI'S IDPS

A. Camp Conditions

22. Fourteen months after the earthquake, 800,000 homeless people still live in squalid IDP camps that fall short of the Sphere minimum humanitarian standards, or international standards for adequate housing.⁵⁰ Though conditions vary widely across existing camps, the situation has deteriorated over time as aid agencies shift attention to other countries and the Government delays in implementing a comprehensive resettlement plan.

23. Inside the camps, IDPs live in tattered tent or make-shift structure strung together from scraps of plastic and other discarded materials. Temperatures inside the tents often exceed 35 degrees during the summer, and knee-deep levels of mud accumulate in the camps after it rains. These hazards are amplified during hurricane season. The United Nations estimates that more than half of all camps face an extreme or high risk of damage from a hurricane.⁵¹

24. Most camps also lack functioning drainage systems and sanitation facilities which are necessary to control the spread of disease.⁵² Residents often face the indignity of having to relieve themselves in public, resulting in human waste that seeps under and into the tents. Furthermore, the majority of the camps lack proper lighting and security, which contributes to an epidemic of rape and sexual assault.⁵³

25. Despite these deplorable conditions, the Government has not adequately responded to the plight of IDPs living in the camps. Participants in a focus group on Haiti's Universal Periodic Review identified lack of transparency, communication and government visibility in the camps and key shortcomings in the Government's response to the post-earthquake housing crisis.⁵⁴

26. The Government has also failed to provide alternative housing options outside of the IDP camps. As of March 2011, only 32,000 transitional shelters had been built.⁵⁵ Moreover, 80% of the people rendered homeless by the earthquake were renters or occupied living space without formal title to the property.⁵⁶ Most of them lost their livelihoods in the earthquake, and cannot afford to pay the high cost of renting a structurally sound apartment. Because there is insufficient alternative shelter for the hundreds of thousands of people who have left the camps, some may be living under conditions that are even more unstable and dangerous than they were before the earthquake, such as in unsound structures that have been deemed uninhabitable due to earthquake damage.

B. Forced Evictions

27. Within weeks of the earthquake, government agents and private individuals began carrying out unlawful evictions against IDPs living in the camps. Since that time, human rights lawyers in Port au Prince have been overwhelmed with requests for assistance from IDPs facing eviction. The United Nation's Protection Cluster estimates that 28,000 people were evicted between March and October 2010, while another 140,000 people faced an imminent threat of eviction.⁵⁷ The UN Office for the Coordination of Humanitarian Affairs voiced "a growing concern" over the rise in forced evictions that now threaten 225,000 IDPs in 169 camps.⁵⁸ These numbers undermine claims that a reduction in the number of people living in the camps is evidence of progress.

28. Despite repeated calls from IDPs, human rights groups, and international actors, the Government of Haiti has steadfastly declined to implement a temporary moratorium on forced evictions since the first moratorium expired in May, or adopt alternative protective measures. To the contrary, government agents, including members of the Haitian National Police, have actively carried out unlawful evictions, sometimes on behalf of private individuals who have not proven their title to the land.⁵⁹

29. Some of these evictions are exceedingly violent and coercive. The police have beaten and terrorized IDPs in the presence of neighbors, families, and children.⁶⁰ They have arbitrarily arrested IDPs in camps targeted for eviction, held them for extended periods, and denied them access to human rights observers.⁶¹ Two IDPs who complained to the Mayor of Cité Soleil were arrested without being charged and held for several days in prison.⁶² Another IDP who refused to leave his settlement was arrested in a camp outside Port au Prince, and denied access to human rights investigators.⁶³

30. Some evictions have destroyed entire settlements. As documented in a submission to the Inter-American Commission on Human Rights, the police invaded one camp alongside state-run bulldozers and fired their weapons as the machines proceeded to flatten the whole camp.⁶⁴ Days later, after IDPs had collected their scattered belongings and established a new settlement at the far end of the camp, the bulldozers returned and destroyed that settlement. When IDPs erected a third settlement, it too was destroyed. Meanwhile, hundreds of IDPs from a different site were relocated to the camp, and a fence was set up to segregate them from the original camp residents. Humanitarian aid was distributed to the new IDPs who lived on one side of the fence, but denied

to the original camp residents who were forced to remain on the other side. Those IDPs went days without eating or drinking. Many were forced to send their children into the streets to hustle for basic survival needs.

31. The Government has also failed to protect IDPs from private evictions. A child was killed in one camp when a purported landowner set fire to thirteen tents to force them off the land.⁶⁵ Another purported landowner locked the gates to the camp, and put broken glass and barbed wire on the fence to prevent people from delivering food and water to family members inside.⁶⁶ He beat one camp resident with a stick and crushed another's tent knowing his infant child was inside. The police have also ignored reports that IDPs are being threatened by armed "bandits" carrying guns, machetes, stones, bottles, and other weapons, and that women and girls are being gang raped in the camps.⁶⁷

IV. RECOMMENDATIONS

National Housing Strategy

1. Adopt a national housing strategy that is consistent with the requirements of the Convention on Economic, Social and Cultural Rights;
2. Establish a social housing program that provides poor people access to housing that meets international standards as articulated by General Comment 4 of the Committee on Economic, Social and Cultural Rights;
3. Authorize the EPPLS to administer the National Housing Strategy, and strengthen its capacity to carry out its mandate;
4. Ensure that eligibility for housing assistance does not discriminate between landowners, renters, and people who informally occupy open land, in violation of the International Covenant on Civil and Political Rights;

Impediments to Affordable Housing

5. Implement mechanisms to control the cost of securing a lease, such as caps on rent or required down-payments;
6. Make home ownership available to poor people, including ownership of rental units, through favorable financing mechanisms such as rent-to-own programs, low-interest mortgages, access to credit, and other means;

Durable Solutions to Displacement

7. Recognize the *Guiding Principles on Internal Displacement* as providing the operative legal standard on issues relating to reconstruction;
8. Prioritize the return, resettlement or restitution of IDPs who are now living in displacement camps, in a manner that is consistent with the *Pinheiro Principles*;
9. Ensure the meaningful participation of IDPs, particularly women, the elderly, and disabled, in the search for appropriate durable solutions to displacement;
10. Identify renters and people who had an informal right to occupy land or property prior to the earthquake as groups that require special protection, and target assistance to those groups;
11. Require rental property owners to accept former tenants on preferential terms as a condition to receiving financial assistance to rebuild or repair their property;
12. Establish and enforce mandatory building codes that protect against the devastating effects of natural disasters;

Temporary Solutions to Displacement

13. Recognize a right of occupancy for IDPs who live in camps on government land until adequate alternative shelter is provided;
14. Take title to private land where IDPs camps are located, and recognize a right of occupancy favoring IDPs until adequate alternative shelter is provided;
15. Ensure that any area to be used for resettlement meets international standards in terms of safety, affordability, habitability and accessibility;
16. Create and support livelihood opportunities in rural areas that conform to Article 23 of the Universal Declaration of Human Rights to relieve urban overcrowding;

Precautionary Measures

17. Demonstrate compliance with the “precautionary measures” issued by the Inter-American Commission on Human Rights by: (1) adopting a moratorium on evictions in displacement camps; (2) ensuring that evicted IDPs are re-housed in locations that fulfill minimum standards of safety and security; (3) guaranteeing IDPs access to tribunals and other competent authorities to vindicate violations of their rights; (4) implementing effective security measures to safeguard the physical integrity of IDPs, guaranteeing special protection to women, children, the elderly and disabled; (5) training security personnel on the rights of IDPs, including the prohibition on forced evictions; (6) ensuring that international organizations have access to IDP camps;
18. Declare, communicate and enforce the moratorium to IDPs, government agents, and relevant stake-holders;
19. Investigate and prosecute private individuals and state agents who have participated in illegal evictions;
20. Identify and strengthen the capacity of state institutions responsible for responding to unlawful evictions, and widely communicate the service provided by these institutions;

Long-term Security of Tenure

21. Recognize occupancy and land use rights of people who do not have formal title to land or property, including renters and disadvantaged people in rural communities;
22. Implement a land titling procedure that provides a variety of options based on the needs and customs of the local population, including but not limited to participatory enumeration, low-cost registration and formalization of prescriptive rights; temporary occupation licenses, securing long-term tenure for communities where effective local land management practices are already in place through Community Land Trusts, and community based titles or co-operatives;

Human Rights Accountability

23. Recognize a right to legal representation in all matters related to housing rights, and provide access to lawyers for people seeking to enforce those rights;
24. Establish an agency on human rights implementation to monitor human rights compliance, and to ensure that recommendations from treaty bodies and other human rights monitors are transmitted to, and implemented by, appropriate domestic agencies.

¹ GOVERNMENT OF THE REPUBLIC OF HAITI, ACTION PLAN FOR NATIONAL RECOVERY AND DEVELOPMENT OF HAITI 5 (March 2010), *available at* http://www.haiticonference.org/Haiti_Action_Plan_ENG.pdf [hereinafter HAITI ACTION PLAN].

² In 2009, Haiti ranked 142nd out of 182 countries listed on the UN's Human Development Index. 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 2 (12-16 October 2010), *available at* <http://ijdh.org/archives/15472> [hereinafter KÄLIN MEMORANDUM].

³ KÄLIN MEMORANDUM, *supra* note 2, at 1-3.

⁴ INTERNATIONAL COMMITTEE OF NATIONAL LAWYERS GUILD ET AL., SUBMISSION TO THE UNITED NATIONS PERIODIC REVIEW OF THE UNITED STATES OF AMERICA: THE NEGATIVE IMPACT OF US FOREIGN POLICY ON HUMAN RIGHTS IN COLUMBIA, HAITI AND PUERTO RICO 6 (Nov. 3 – Dec. 22, 2010), *available at*, http://www.ushrnetwork.org/sites/default/files/declaration-treaty/Foreign_Policy_Joint_Report_USA.pdf.

⁵ ACTIONAID, BUILDING FOR THE FUTURE: HOMES AND SECURITY IN HAITI 6 (2011) [hereinafter ACTIONAID REPORT].

⁶ *See generally*, UNITED NATIONS HUMAN SETTLEMENTS PROGRAMME (UN-HABITAT), STRATEGIC CITYWIDE SPATIAL PLANNING: A SITUATIONAL ANALYSIS OF METROPOLITAN PORT-AU-PRINCE, HAITI, 6 (2010) (*prepared by Åsa Forsman*) *available at* <http://www.unhabitat.org/pmss/Publications.aspx?page=ByTheme&categoryID=277>.

⁷ ACTIONAID REPORT, *supra* note 5, at 3.

⁸ KÄLIN MEMORANDUM, *supra* note 2, at 13.

⁹ PROTECTION CLUSTER, HOUSING, LAND AND PROPERTY WORKING GROUP, ISSUE OF RENTERS IN THE POST-DISASTER SCENARIO 2 (2010) [hereinafter PROTECTION CLUSTER REPORT].

¹⁰ Displacement Tracking Matrix V2.0 Update, March 16, 2011; UNITED NATIONS OFFICE FOR THE COORDINATION OF HUMANITARIAN AFFAIRS, HUMANITARIAN BULLETIN 1 (Feb. 1-17, 2011) [hereinafter OCHA HUMANITARIAN BULLETIN].

¹¹ *Id.* at 1.

¹² Between 70-80% of alleged owners are not able to produce property records that would prove ownership to land. PROTECTION CLUSTER REPORT *supra* note 9, at 2.

¹³ UN-HABITAT ADVISORY GROUP ON FORCED EVICTIONS, FINDING SOLUTIONS TO FORCED EVICTIONS WORLDWIDE: A PRIORITY TO MEET THE MDGs AND IMPLEMENT THE HABITAT AGENDA 4 (April 2007) *available at* <http://www.unhabitat.org/list.asp?typeid=3&catid=282>.

¹⁴ Homelessness has been found to threaten violations of the right to life (Art. 4) and forced evictions have been found to contravene the right to be free from arbitrary or unlawful interference with the home (Art. 17).

¹⁵ Convention on the Rights of the Child art. 27(3) ("State Parties in accordance with national conditions and within their means shall take appropriate measure to assist parents and others responsible for the child to implement this right and shall in the case of need provide material assistance and support programmes, particularly with regards to nutrition, clothing and housing.").

¹⁶ Convention on the Rights of the Disabled art. 28(1) ("States Parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability.").

¹⁷ Convention on the Elimination of All Forms of Discrimination Against Women art. 14(2)(h) ("State Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right... (h) to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications."); International Convention on the Elimination of All Forms of Racial Discrimination art. 5(e)(iii) ("In compliance with the fundamental obligations laid down in article 2 of this Convention, State Parties undertake to prohibit and eliminate racial discrimination in all of its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin to equality before the law, notably in the enjoyment of the following rights:... (e) in particular... (iii) the right to housing.")

¹⁸ Committee on Economic, Social and Cultural Rights, General Comment 4, The Right to Adequate Housing, U.N.Doc.E/1992/23 (Dec. 13, 1991) [hereinafter Comment 4"].

¹⁹ *Id.* at ¶18.

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- ²⁰ Committee on Economic, Social and Cultural Rights, General Comment 7, The Right to Adequate Housing: Forced Evictions, ¶15, U.N.Doc. E/1998/22 (May 20, 1997).
- ²¹ Special Advisor for the Prevention of Genocide and Mass Atrocities, *Report of the Representative of the Secretary-General, Mr. Francis M. Deng, submitted pursuant to Commission on Human Rights resolution 1997/39, Addendum: Guiding Principles on Internal Displacement*, Commission on Human Rights, Introduction, U.N. Doc. E/CN.4/1998/53/Add.2 (Feb. 11, 1998) available at, http://www.reliefweb.int/ocha_ol/pub/idp_gp/idp.html.
- ²² *Id.* at Principle 6(1).
- ²³ *Id.* at Principle 6(2)(d).
- ²⁴ The Guiding Principles have the force of law in Haiti through Haiti’s ratification of the American Convention on Human Rights. The Inter-American Commission on Human Rights, one of two bodies charged with interpreting State Parties’ obligations under the American Convention, adopted the Guiding Principles on Internal Displacement as the authoritative instrument when interpreting human rights law as applied to communities of displaced persons. Inter-Am. [Comm’n on Human Rights](#), Third Report on the Human Rights Situation in Colombia, ¶ 10, [OEA/Ser.L/V/II.102 \(Feb. 26, 1999\)](#). Moreover, the Guiding Principles “reflect and are consistent with international human rights law and international humanitarian law and to a large extent thus codify and make explicit guarantees protecting internally persons that are inherent in these bodies of law.” *Id.*
- ²⁵ United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons, Principle 8, U.N. Doc. E/CN.4/Sub.2/2005/17 (June 28, 2005), available at, http://www.unhcr.org.ua/main.php?part_id=4&article_id=179.
- ²⁶ *Id.* at Principle 5.4.
- ²⁷ HAITI CONST. art. 22 (1987).
- ²⁸ HAITI CONST. art. 276-2 (1987).
- ²⁹ HAITI CONST. art. 36-3 (1987).
- ³⁰ An eviction order can be obtained in an *action petitoire* in a local court, though it is unclear whether these actions meet substantive and procedural due process standards, and in particular, protect occupants from further displacement until adequate alternative solutions are identified.
- ³¹ HAITI CONST. art. 36-1 (1987).
- ³² See e.g., La Loi sur les reprises des biens donnés à bail ou indument occupés par les particuliers, 28 juillet 1927; La Loi établissant des règles spéciales relatives à l’habitation et à l’aménagement des villes et campagnes en vue de développer l’urbanisme, 29 mai 1963 adaptant celle du 22 juillet 1937 ; La Loi sur la déclaration d’Utilité Publique et les servitudes, 3 septembre 1979 ; La Loi accordant à l’État le droit de pénétrer provisoirement sur les propriétés en vue de faciliter l’exécution de certains travaux urgents d’intérêt général, 5 septembre 1979 ; La Loi sur l’expropriation pour cause d’Utilité Publique, 5 septembre 1979 ; l’Arrêté déclarant d’Utilité Publique la zone d’extension Nord de Port-au-Prince, 10 février 1998 ; et le Décret sur la gestion de l’environnement, 12 octobre 2005.
- ³³ See, *Arrêté déclarant d’Utilité Publique les propriétés*, LE MONITEUR at 165ème Année No. 21, March 22, 2010, and Frances Robles, *Bill Clinton, George W. Bush Visit Haiti, Vow to Help*, MIAMI HERALD, March 22, 2010, available at <http://www.miamiherald.com/2010/03/22/1542467/bill-clinton-george-w-bush-visit.html>.
- ³⁴ Kathie Klarreich, *Haiti Relief: Refugees Move to Drier Higher Ground as Rainy Season Begins*, CHRISTIAN SCIENCE MONITOR, April 15, 2010, available at <http://www.csmonitor.com/World/Americas/2010/0415/Haiti-relief-Refugees-move-to-higher-drier-ground-as-rainy-season-begins>; ACTIONAID REPORT, *supra* note 5, at 9-10.
- ³⁵ KÄLIN MEMORANDUM, *supra* note 2, at 5.
- ³⁶ REFUGEES INTERNATIONAL, HAITI: STILL TRAPPED IN THE EMERGENCY PHASE 3 (Oct. 2010).
- ³⁷ Order of the President, Rene Preval, (April 21, 2010), available at, <http://www.cirh.ht/sites/ihrc/en/About%20Us/Pages/default.aspx>.
- ³⁸ HAITI ACTION PLAN, *supra* note 1.
- ³⁹ GOVERNMENT OF HAITI AND INTERIM HAITI RECOVERY COMMISSION, NEIGHBORHOOD RETURN AND HOUSING RECONSTRUCTION FRAMEWORK: A RECOVERY PLAN FOR HAITIAN FAMILIES 4 (2011).
- ⁴⁰ See e.g., Walter Kaelin, “Framework on Durable Solutions for Internally Displaced Persons”, February 9, 2010, U.N. Doc. A/HRC/13/21/Add.4 available at http://www.brookings.edu/~media/Files/rc/reports/2010/0305_internal_displacement/0305_internal_displacement.pdf.
- ⁴¹ Jane Regan, *Haiti Resettlement Plan Excludes Almost 200,000 Families*, INTERNATIONAL PRESS SERVICE (Feb. 14, 2010).
- ⁴² See UPR Submission on the Right to Food, Water and Sanitation and the Rights Based Approach to Assistance for an explanation of the rights based approach.

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- ⁴³ Information Provided by the Government of Haiti to the United Nations Commission on Sustainable Development, 7-25 April 1997, *available at* <http://www.un.org/esa/agenda21/natlinfo/countr/haiti/social.htm>.
- ⁴⁴ According to actors in the U.N. Shelter Cluster, there are no current plans to make the building codes enforceable.
- ⁴⁵ KÄLIN MEMORANDUM, *supra* note 2, at 5.
- ⁴⁶ INTERIM HAITI RECOVERY COMMISSION, HAITI ONE YEAR LATER: THE PROGRESS TO DATE AND THE PATH FORWARD 3 (January 12, 2010); *see also*, United Nations Development Project, *Rebecca Grynspan: Remarks on the Situation in Haiti*, March 9, 2011, <http://content.undp.org/go/newsroom/2011/march/rebeca-grynspan-remarks-on-the-situation-in-haiti.en> (last visited March 20, 2011).
- ⁴⁷ ACTIONAID REPORT, *supra* note 5, at 8.
- ⁴⁸ KÄLIN MEMORANDUM, *supra* note 2, at 10-11.
- ⁴⁹ Precautionary Measures, Inter-Am. C.H.R., Report No. MC-367-10 (November 16, 2010).
- ⁵⁰ *See* The SPHERE Project, Humanitarian Charter and Minimum Standards in Humanitarian Response, *available at*, http://www.sphereproject.org/component/option,com_docman/task,cat_view/gid,70/Itemid,203
- ⁵¹ KÄLIN MEMORANDUM, *supra* note 2, at 3.
- ⁵² *See* Beverly Bell, *The Right to Housing For Internally Displaced Haitians*, DAILY KOS, Feb. 4, 2011, *available at*, <http://www.dailykos.com/story/2011/02/04/941224/-The-Right-to-Housing-for-Internally-Displaced-Haitians>; INSTITUTE FOR JUSTICE AND DEMOCRACY IN HAITI, ONE YEAR AFTER THE EARTHQUAKE: HAITIANS STILL LIVING IN CRISIS (2011), *available at* http://ijdh.org/wordpress/wp-content/uploads/2011/01/Camp-Conditions_Final.pdf.
- ⁵³ *See* INSTITUTE FOR JUSTICE AND DEMOCRACY IN HAITI, OUR BODIES ARE STILL TREMBLING: HAITIAN WOMEN CONTINUE TO FIGHT AGAINST RAPE (2011), *available at*, <http://ijdh.org/wordpress/wp-content/uploads/2011/03/1-Year-GBV-2011.pdf>.
- ⁵⁴ This was voiced as a priority concern during a UPR focus group discussion in January 2011 concerning the Government's response to the housing crisis.
- ⁵⁵ ACTIONAID REPORT, *supra* note 5, at 3.
- ⁵⁶ KÄLIN MEMORANDUM, *supra* note 2, at 2.
- ⁵⁷ *Id.* at 10.
- ⁵⁸ OCHA HUMANITARIAN BULLETIN, *supra* note 10, at 1.
- ⁵⁹ The forced evictions described in this section are described more fully in the *Request for Precautionary Measures for Petitioner A from Camp [---], Petitioner B from Camp [---], Petitioner C from Camp [---], and Petitioner D from Camp [---], on Behalf of Their Respective Communities, and for the Community of Camp [---]*, filed by the Bureau des Avocats Internationaux et al. before the Inter-American Commission on Human Rights, Nov. 2, 2010, *available at* http://ijdh.org/wordpress/wp-content/uploads/2011/03/Precautionary-Measures_Final_Redacted.pdf (Redacted) [hereinafter "IACHR Request for Precautionary Measures"].
- ⁶⁰ *Id.* at ¶ 45-49.
- ⁶¹ *Id.*
- ⁶² *Id.* at ¶¶ 38-41.
- ⁶³ *Id.* at ¶¶ 21-26.
- ⁶⁴ *Id.*
- ⁶⁵ REFUGEE INTERNATIONAL, HAITI: STILL TRAPPED IN THE EMERGENCY PHASE 3 (Oct. 6, 2010).
- ⁶⁶ IACHR Request for Precautionary Measures, *supra* note 59, at ¶¶ 33-37.
- ⁶⁷ *Id.* at ¶¶ 43-50.

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 that 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 to 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.**

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&IDLang=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:8080/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_engl.pdf.

³⁶ Consultation with KOFAVIV, 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 KOFAVIV, 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.

MINUSTAH

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I. EXECUTIVE SUMMARY

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

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

Promotion & Protection of Human Rights on the Ground

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

II. BACKGROUND AND LEGAL FRAMEWORK OF THE GOVERNMENT OF HAITI'S HUMAN RIGHTS VIOLATIONS IN CONTINUING MINUSTAH'S MANDATE

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

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

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

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

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

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

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

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

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

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

9. The SOFA provides for a Standing Claims Commission to hear private law cases against MINUSTAH members when the SOFA denies the Haitian Judiciary jurisdiction.¹⁴ The Claims Commission has never been established. The failure of the GOH to take steps to establish the Claims Commission during MINUSTAH's eight-year tenure in Haiti as a method of accountability has resulted in a blanket waiver of Haitians' human rights.¹⁵ The waiver is also a

violation of Haiti's Constitution, which guarantees the right to civil suit against persons who violate individual liberties - regardless of what body they are a member.¹⁶

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

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

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

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

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

14. As with the obligations to prevent and investigate, the Haitian Government must seek to prosecute those who violate human rights. The SOFA denies the Haitian Judiciary the right to prosecute without taking effective steps to ensure prosecution in an alternate forum.²³ And even within the limited options available under the SOFA, the GOH fails in its obligations to prosecute. The GOH should investigate claims, and submit the results and evidence gathered to members of MINUSTAH's home countries and request prosecution. There are no reports of this having ever been done. It is also unclear whether they ever presented allegations of human rights violations or the results of investigations to the Special Representative to allow for internal UN sanctions for human rights violators. The GOH also failed to establish the Standing Claims Commission which is the only available route for Haitians to receive financial compensation for certain categories of human rights violations committed by MINUSTAH or its individual soldiers.²⁴

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

III. PROMOTION & PROTECTION OF HUMAN RIGHTS ON THE GROUND

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

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

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

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

19. In addition to violating human rights law, the MINUSTAH Sri Lankan troops violated the Geneva Conventions and the Additional Protocols and may be subject to charges of war crimes and customary international law. The SOFA establishes that MINUSTAH has the duty to respect "the principles and rules of the international conventions" that include "the four Geneva Conventions of 12 August 1949 and their Additional Protocols of 8 June 1977."³⁸ Though not labeled as an "internal armed conflict" per se, this explicit inclusion of the Geneva Conventions and the Additional Protocols, in addition to its Chapter VII mandate, establish MINUSTAH's obligation to respect the laws of war.

20. A war crime has been defined to include humiliating and degrading treatment, rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence.³⁹ It is not necessary that the Sri Lankan forces committed or endorsed the sexual violence as part of a state policy as long as their actions were closely related to the

hostilities.⁴⁰ The Sri Lankan forces may be charged for war crimes since the victims were subjected to death threats, physical assaults and sexual violence for the victims to engage in sex with peacekeepers, the violence occurred during a time of political and humanitarian crisis, in a widespread manner with more than 111 soldiers and 3 officers, and with the victims being from a vulnerable population, Haitian minors. These actions also constitute crimes against humanity under customary international criminal law.⁴¹

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

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

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

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

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

25. The U.S. Center for Disease Control (CDC) has found that the strain in Haiti is the same as the strain found in South-East Asia. There was a serious outbreak of cholera in Kathmandu, Nepal over the summer of 2010, and a new group of peacekeepers from Nepal arrived in Haiti two weeks before the outbreak was officially recorded in Haiti. The UN only tests symptomatic individuals prior to deployment, but health officials say 75 percent of people infected with cholera bacteria do not show symptoms and can still pass on the disease for weeks.⁴⁴

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

27. Despite the increasing infection rate and deaths from cholera, and all the evidence pointing to the Nepalese MINUSTAH base as the source for the outbreak, the UN defended its sanitation practices and denied that the base could be a source of the infection. UN spokesman

Vincenzo Pugliese said they tested leaking water and an underground waste container at the base a week after the epidemic was first noted and had it processed at a lab in the neighboring Dominican Republic. The test results found no signs of cholera, but medical and public health experts say that false negatives are common and the Dominican lab had apparently no pathology expertise.

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

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

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

31. MINUSTAH's refusal to investigate the source of the cholera epidemic that caused thousands deaths in Haiti, when they had knowledge that their environmental practices may have been the cause, also raises serious questions of accountability for the GOH and victims of the contamination. States and other entities, such as MINUSTAH are required to investigate credible allegations of human rights violations committed by their nationals, armed forces, or those in their territory and prosecute them accordingly.⁴⁹ The duty requires that the investigations be carried out "effectively" and "promptly,"⁵⁰ thereby requiring at a bare minimum that MINUSTAH release the victim's body immediately for a forensic investigation. Because an effective investigation is "essential pre-requisite to the right of access to...an effective remedy,"⁵¹ MINUSTAH's refusal to investigate has violated its duty and impeded the protection of human rights.⁵²

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

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

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

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

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

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

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

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

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

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

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

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

on the ground in Haiti state that the cases reported by the clusters represent only a fraction of those taking place.⁷¹

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

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

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

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

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

47. Since January 12, 2010, MINUSTAH has shown a consistent inability and unwillingness to take simple measures to keep women and children safe from violence in IDP camps, despite

specific recommendations and orders from UN authorities. MINUSTAH has not worked with communities to develop security plans and include women in the process. Very few changes have been made to protect camp spaces, such as providing adequate lighting, and neither the Haitian police nor MINUSTAH has ensured adequate community policing on a 24 hour basis – to the contrary, women in camps repeatedly report that they do not see patrols, and if they do, they only see vehicles driving by.

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

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

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

50. The examples of forced eviction documented in numerous human rights reports highlight the inaction of MINUSTAH to protect the rights of camp residents.⁸² Reports described camps terrorized by armed groups at night, demanding that they vacate the land. When complaints were made to the HNP and MINUSTAH requesting permanent presences in the camps, pledges of increased patrols were made, but the patrols did not enter the camps – allowing the armed groups to simply hide in the maze of tents.⁸³

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

IV. RECOMMENDATIONS

1. Given the existing contractual waivers of civil and criminal immunity by MINUSTAH for any civil or criminal violations, including human rights violations committed by MINUSTAH, the GOH should raise objections before the Security Council to the renewal of MINUSTAH’s mandate.
2. The GOH should renegotiate the SOFA with the UN to allow for accountability of MINUSTAH members to Haitian people for human rights violations.
3. The GOH should object to MINUSTAH’s continued Chapter VII “peace enforcement” mandate that permits military action without the consent of the host country despite the lack of armed conflict or peace agreement to enforce.
4. The GOH should establish a Standing Claims Commission to hear private law cases against MINUSTAH members when the SOFA denies the Haitian Judiciary jurisdiction.

5. The GOH should urge the UN Security Council and MINUSTAH to assure that all MINUSTAH members and soldiers have adequate training on human rights, especially sensibility training on the protection of women and children.
6. The GOH should recommend to the United Nations that the approximately \$2.5 million dollars a day spent on sustaining MINUSTAH's mission be reallocated to provide immediate potable water distribution, the creation of long-term water and sanitation systems and support for local food development and procurement.

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

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

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

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

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

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

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

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

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

¹⁰ SOFA, *supra* note 9, para. 51(b)

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

¹² SOFA, *supra* note 9, para. 52(b).

¹³ 1987 CONST. OF THE REPUBLIC OF HAITI arts. 19, 24-5, 27, 36-2, 40, 276; International Covenant on Civil and Political Rights, G.A. Res. 2200 A (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316, art. 2(1), 14(1) (Dec. 16, 1966) (hereinafter ICCPR).

¹⁴ SOFA, *supra* note 9, para. 55.

¹⁵ ICCPR, *supra* note 13, art. 14(1).

¹⁶ 1987 CONST. OF THE REPUBLIC OF HAITI art. 27.

¹⁷ MINUSTAH Resolution, *supra* note 1, 7(I)f; MINUSTAH Renewal Resolution, *supra* note 6.

¹⁸ 1987 CONST. OF THE REPUBLIC OF HAITI arts. 19, 272.

¹⁹ ICCPR, *supra* note 13, arts. 2(1), 14(1).

²⁰ *Id.*

²¹ 1987 CONST. OF THE REPUBLIC OF HAITI art. 27.

²² ICCPR, *supra* note 13, art. 2(1), 14(1).

²³ SOFA, *supra* note 9, para. 51-52.

²⁴ *Id.* at para. 55.

²⁵ ICCPR, *supra* note 13, arts. 2(1), 14(1).

²⁶ 1987 CONST. OF THE REPUBLIC OF HAITI art. 42-3 (authorizing civil suits and criminal prosecutions against human rights abusers).

²⁷ AFP, *Sri Lanka to probe sex charges*, Nov. 2, 2007, available at <http://afp.google.com/article/ALeqM5jv1Dg19IGQjacW3GTAozDzgm43iQ>.

²⁸ Carol Williams, *UN confronts another sex scandal*, LOS ANGELES TIMES, Dec. 15, 2007, available at <http://articles.latimes.com/2007/dec/15/world/fg-haitisex15>.

²⁹ AFP, *supra* note 27.

³⁰ Reuters, *Peacekeeper accused of abuse in Haiti*, Nov. 2, 2007, available at <http://uk.reuters.com/article/2007/11/02/uk-un-abuse-srilanka-idUKN0259118620071102>.

- ³¹ *UN troops face child abuse claims*, BBC NEWS, Nov. 30, 2006, available at <http://news.bbc.co.uk/2/hi/americas/6195830.stm>; Stephanie Busari, *Charity: Aid workers raping, abusing children*, CNN, May 27, 2008, available at <http://edition.cnn.com/2008/WORLD/europe/05/27/charity.aidworkers/>; U.N. *Faces More Accusations of Sexual Misconduct*, WASHINGTON POST, March 13, 2005, available at <http://www.washingtonpost.com/wp-dyn/articles/A30286-2005Mar12.html>; Ansel Herz, *Haiti: Looking More Like a War Zone*, IPS NEWS, March 30, 2010, available at <http://www.ipsnews.net/news.asp?idnews=50855>.
- ³² Athena Kolbe and Royce Hutson, *Human rights abuses and other criminal violations in Port-au-Prince, Haiti: a random survey of households*, THE LANCET 368 (2006): 864-73.
- ³³ Save the Children, *No One to Turn to: The Underreporting of Child Sexual Exploitation and Abuse by Aid Workers and Peacekeepers*, (2008), available at http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/27_05_08_savethechildren.pdf.
- ³⁴ *Id.*
- ³⁵ Declaration on the Elimination of Violence Against Women, U.N. Doc. A/RES/48/104, arts. 1-2 (Dec. 20, 1993); Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. GAOR, 3d Sess., U.N. Doc. A/810, arts. 1, 3 (Dec. 10, 1948) (hereinafter UDHR); American Convention on Human Rights, arts. 5, 11 (San Jose, Costa Rica, Nov. 22, 1969), 1144 U.N.T.S. 143 (hereinafter American Convention); a discussion of rape under Article 5 of the American Convention can be found in *Loayza Tamayo v. Perú*, Interpretation of the Judgment of Reparations (art. 67 American Convention on Human Rights), Judgment of June 3, 1999, Inter-Am. Ct. H.R. (Ser. C) No. 53 (1999) and *Martí de Mejía v. Perú*, Case 10.970, Report No. 5/96, Inter-Am.C.H.R., OEA/Ser.L/V/II.91 Doc. 7 at 157 (1996). The European Court of Human Rights has also recognized rape as a violation under its right to privacy. See *X & Y v. Netherland*, (1986) 8 EHRR 235 (Application no. 8978/80).
- ³⁶ See Amnesty International, *Bosnia and Herzegovina, Rape and Sexual Abuses by Armed Forces* (January 1993); The Inter-American Court of Human Rights recognized rape as torture in *Raquel Martí de Mejía v. Perú*, Case 10.970, Report No. 5/96, Inter-Am.C.H.R., OEA/Ser.L/V/II.91 Doc. 7 at 157 (1996); the European Court of Human Rights also recognized rape as torture in *Aydın v. Turkey*, (2004) 25660/94; *Prosecutor v. Delalic [et al]*, Case No. IT-96-21-T (Celebici); *Prosecutor v. Furundzija*.
- ³⁷ As cited in Theodor Meron, *Rape as a Crime under International Humanitarian Law*, 3 AMERICAN JOURNAL OF INTERNATIONAL LAW 424, 426 (1993); Fourth Geneva Convention, art. 147; Additional Protocol II, art. 4(e).
- ³⁸ SOFA, *supra* note 9, para. 6.
- ³⁹ Rome Statute of the International Criminal Court, A/CONF.183/9, July 17, 1998, entered into force July 1, 2002, art.8.
- ⁴⁰ *Celebici*, *supra* note 36, ¶ 193.
- ⁴¹ Article 3 common to all four Geneva Conventions has attained the status of customary international law, applicable to international, or internal armed conflicts. See *Prosecutor v. Kunarac Kovac, and Vukovic*, Judgment, Case No. IT9623/1T (Feb. 22, 2001), ¶ 406 citing *Prosecutor v. Tadić*, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, Case No. IT941AR72, ¶¶ 98, 134 (Oct. 2, 1995).
- ⁴² Carol Williams, *supra* note 28.
- ⁴³ Associated Press, *UN Probes Base as Source of Cholera Outbreak*, Oct. 27, 2010; *Cholera in Haiti Matches Strains Seen in South Asia, U.S. Says*, NEW YORK TIMES, Nov. 1, 2010, available at <http://www.nytimes.com/2010/11/02/world/americas/02haiti.html>.
- ⁴⁴ Associated Press, *Experts: Did UN Troops Infect Haiti?*, WASHINGTON POST, Nov. 3, 2010, available at <http://www.washingtonpost.com/wp-dyn/content/article/2010/11/03/AR2010110306660.html>.
- ⁴⁵ Mission Report on the Cholera Epidemic, Nov. 7-27, 2010, UCLA SCHOOL OF PUBLIC HEALTH, available at http://www.ph.ucla.edu/epi/snow/cholera_haiti_piarrouxreport.html.
- ⁴⁶ Committee on Economic, Social and Cultural Rights, General Comment 15, The Right to Water, ¶ 8, U.N. Doc. E/C.12/2002/11 (Nov. 26, 2002) (hereinafter General Comment 15).
- ⁴⁷ For more information on the right to water, see the Shadow Report on the Right to Water.
- ⁴⁸ General Comment 15, *supra* note 46, at ¶ 8; see also Committee on Economic, Social and Cultural Rights, General Comment 14, The right to the highest attainable standard of health, ¶ 15, U.N. Doc. E/C.12/2000/4 (Aug. 11, 2000) (hereinafter General Comment 14).
- ⁴⁹ Human Rights Watch, *Turning a Blind Eye*, April 10, 2010, available at http://www.hrw.org/en/node/89574/section/5#_ftnref145 citing Fourth Geneva Convention, art. 146 (States Parties “shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts”). See International Committee of the Red Cross, *Customary International Humanitarian Law*, Cambridge University

(2005), rule 158; *see also* Rome Statute of the International Criminal Court, A/CONF.183/9, July 17, 1998, *entered into force* July 1, 2002, art. 21., Preamble (noting "the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes"); *see also Velásquez Rodríguez v. Honduras*, Case, INTER-AM. CT. H.R. (ser. C) No. 4, ¶ 166 (July 29, 1988).

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

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

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

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

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

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

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

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

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

⁵⁹ *Id.*

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

⁶¹ *Case of Velásquez-Rodríguez v. Honduras*, INTER-AM. CT. H.R., Judgment of July 29, 1988. Series C No. 4, para. 176.

⁶² *IDP Camp Joint Security Assessment Report*, MINUSTAH HUMAN RIGHTS SECTION, Mar. 30, 2010.

⁶³ *Our Bodies are Still Trembling, Haitian Women Continue to Fight Against Rape: One Year Update*, INSTITUTE FOR JUSTICE & DEMOCRACY IN HAITI, Jan. 2011, *at* <http://ijdh.org/archives/16451>.

⁶⁴ *Id.*

⁶⁵ *Our Bodies are Still Trembling, Haitian Women Continue to Fight Against Rape*, INSTITUTE FOR JUSTICE & DEMOCRACY IN HAITI, July 27, 2010, *at* <http://ijdh.org/archives/13361>.

⁶⁶ *Id.*

⁶⁷ *MINUSTAH Facts and Figures*, UNITED NATIONS, *available at* <http://www.un.org/en/peacekeeping/missions/minustah/facts.shtml>.

⁶⁸ Institute for Justice and Democracy & The LAMP for Haiti Foundation, *One Year After the Earthquake – Haitians Still Living in Crisis*, Jan. 10, 2011, *at* <http://ijdh.org/archives/16403>.

⁶⁹ *Haitian Human Rights Lawyer Slams Elections, Aid*, CBC NEWS, Nov. 25, 2010, *available at* <http://www.cbc.ca/world/story/2010/11/18/f-clibbon-mario-joseph-qanda-haiti-human-rights.html>.

⁷⁰ *Aftershocks: Women Speak Out Against Sexual Violence in Haiti's Camps*, AMNESTY INTERNATIONAL, Jan. 6, 2011, *available at* <http://www.amnesty.org/en/library/info/AMR36/001/2011/en>.

⁷¹ *Id.*

⁷² Haiti Protection Cluster, *Situation Report*, June 2010, *available at* <http://tinyurl.com/2g4rnm5>.

⁷³ *UN Projects for Haiti on Gender Based Violence and Education Win Approval*, UN NEWS CENTRE, Oct. 6, 2010, *available at* <http://www.un.org/apps/news/story.asp?NewsID=36362&Cr=haiti&Cr1>.

⁷⁴ Haiti / Sexual Violence, UNITED NATIONS NEWS AND MEDIA, Jan. 21, 2011, *available at* <http://www.unmultimedia.org/tv/unifeed/d/16830.html>.

⁷⁵ Press Release, *Security Council, United Nations Mission in Haiti Should be Maintained at Current Strength at Least Until After November Elections, New Government's Formation, Security Council Told*, UN Doc. SC/10026 (Sept. 13, 2010), *available at* <http://www.un.org/News/Press/docs/2010/sc10026.doc.htm>.

⁷⁶ Press Release, *Security Council, Renewing Haiti Mission Mandate in Resolution 1944 (2010), Looks to Review of Situation After Pending Elections, New Government*, UN Doc. SC/10054 (Oct. 14, 2010), available at <http://www.un.org/News/Press/docs/2010/sc10054.doc.htm>.

⁷⁷ Walter Kalin, Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, *Human Rights of Internally Displaced Persons in Haiti: Memorandum Based on a Working Visit to Port-au-Prince (12–16 Oct. 2010)*, available at <http://ijdh.org/wordpress/wpcontent/uploads/2010/11/Kalin-Statement-2010-Haiti-English.pdf>.

⁷⁸ According to an August study by the United States Institute for Peace, seventy-five percent of displaced persons interviewed reported rarely or never having ever seen any police or UN security forces inside the camps.

⁷⁹ Committee on Economic, Social and Cultural Rights, General Comment 7, *Forced Evictions, and the right to adequate housing*, U.N. Doc. HRI/Gen/1/Rev.6 at 45 (2003).

⁸⁰ 1987 CONST. OF THE REPUBLIC OF HAITI .

⁸¹ For more information on the right to housing, see the Shadow Report on the Right to Housing.

⁸² International Action Ties, *“We Became Garbage to Them” Inaction and Complicity in IDP Expulsions*, Aug. 14, 2010, at <http://ijdh.org/archives/14448>.

⁸³ International Action Ties, *Vanishing Camps at Gunpoint: Failing to Protect Haiti’s Internally Displaced*, July 14, 2010, at http://ijdh.org/wordpress/wp-content/uploads/2010/07/IAT_vanishing_camps_report_haiti.pdf.

⁸⁴ *One Year After the Earthquake – Haitians Still Living in Crisis*, *supra* note 68.

⁸⁵ Humanitarian Bulletin 01- 17 February 2011, U.N. OFFICE FOR THE COORDINATION OF HUMANITARIAN AFFAIRS, Feb. 17, 2001, available at <http://www.reliefweb.int/rw/rwb.nsf/db900sid/ADGO-8E7LJK?OpenDocument>.

Restavèk: The Persistence of Child Labor and Slavery

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A. EXECUTIVE SUMMARY

This individual report highlights the plight of restavèk children, child domestic servants, in Haiti as stipulated in the General Guidelines for the preparation of Information under the Universal Periodic Review. Part B notes the continuing practice of restavèk despite its prohibition under international and Haitian law. Part C describes the restavèk practice and focuses on the neglect, mistreatment, and abuse suffered by restavèk children. Part D highlights the challenges posed by cultural perception, ubiquitous poverty, the lack of government infrastructure and enforcement, and the earthquake on the abolishment of restavèk and the protection of children's rights

B. BACKGROUND AND FRAMEWORK

1. Haiti is party to the Universal Declaration on Human Rights (UDHR) and the Convention on the Rights of the Child (CRC). Haiti has also ratified the ILO Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, Convention 182, and the ILO Minimum Age Convention, Convention 138. Each of these conventions prohibits child slavery and servitude and provides for children to have the right to education and the right to be free from degrading and inhumane treatment.

2. In accordance with these international conventions, Article 335 of the Haitian labor code prohibits the employment of minors below the age of fifteen. Furthermore, an Act passed in June 2003 specifically outlawed the placement of children into restavèk service and the abuse and maltreatment of children generally.¹

3. Despite the enactment of these laws, the practice of restavèk persists and grows. It is estimated that between 150,000 and 500,000 children are restavèk in Haiti,² with an additional estimated 3,000 restavèk children in the Dominican Republic (DR).³

C. CONDITION OF RESTAVÈK CHILDREN IN HAITI

4. The term restavèk comes from the French and Creole meaning "to stay with." Restavèk are generally children of poor rural families who are sent to stay with and work as unpaid domestic servants for less poor, urban families. Parents send a child away with the hope that in return for the child's labor, the host family will provide the child with food and shelter and send the child to school.

5. The biological parents are promised that their child will be treated well and sent to school; unfortunately, in the overwhelming majority of cases these are false promises. Restavèk children instead live a life of hardship and work. These children, constantly occupied with work, seldom, if ever, attend school.⁴ This denial of the right to education is in contravention of Haiti obligations under the UDHR (Art. 26), the CRC (Art. 28), and the ILO Convention 182 (Art. 7).

6. This system started out with poor families placing their children in the houses of wealthier urban families, often relatives, to gain access to education and other social services. However, it has deteriorated into a system of slavery in which poor children are trafficked to serve as unpaid domestic laborers in poor urban neighborhoods.⁵

7. For the most part, restavèk are found in middle to lower middle class homes, as well as the poorest slums of Port-au-Prince. The lack of local water infrastructure and overall lack of public services such as electricity in poor neighborhoods creates high demand for domestic workers to fetch water each day, and provide other basic services. Since families in these poor neighborhoods usually lack employment and are unable to pay for domestic help, these families rely on free child labor.⁶ A recent survey conducted by the Pan-American Development

Foundation (PADF) and USAID found that Cite Soleil, the largest slum of Port au Prince, had the highest percentage of children who were living in restavèk. While sixteen percent of all Haitian children surveyed were found to be restavèk, forty percent of all children surveyed in Cite Soleil were restavèk.⁷

8. Additionally, the practice originally involved the transfer of the child from one family to another. However, the restavèk system is more accurately characterized as trafficking⁸ and now often involves middlemen recruiters, or *koutchye*, who are paid to find a restavèk for host families. This system of trafficking often results in the complete loss of contact between the restavèk child and her biological family.⁹

9. A restavèk generally works ten to fourteen hours a day without compensation.¹⁰ A restavèk wakes up before the host family and goes to bed after the host family. Her typical day has her bringing water to the home each day as well as completing all the household chores including cooking, cleaning, and washing. She also runs errands and walks her host parents' children to and from school.¹¹

10. Children become restavèk as young as age five. Therefore their labor, even if paid and under better conditions, violates the rights of the child as provided for in Article 32 of the CRC as well as Article 2 of ILO Convention 138 and Article 335 of the Haitian labor code which each set the minimum age for child labor at fifteen.

11. In addition to forcing a restavèk to work long hours most often without access to school, host families also fail to properly care for restavèk children. In fact, restavèk are often so malnourished that on average a fifteen year old restavèk stands four centimeters shorter and weighs twenty kilograms less than the average Haitian child.¹²

12. Restavèk are mistreated, neglected, and abused emotionally, physically, and sexually in a myriad of ways.¹³ Synthia, a former restavèk, recounts the extreme and regular physical abuse she suffered in her godmother's house. Synthia's mother died when she was an infant and she was eventually sent to live with her godmother, her mother's youngest sister. Synthia was never sent to school and had to remain at home to do all the household work. She was never shown any love or affection and would get beatings if she did not work fast enough, if she took too long to fetch the water, or if anything was misplaced or missing around the house. One night, Synthia was sent on a late night errand. The area where she lived is known for some of the worst gang members and thieves in Haiti; so naturally, as a young girl, she was afraid. By the time she arrived at the merchant, the shop was closed. Synthia knew that she would be beaten, but she also knew that she had no control over the situation. When she arrived the beating was severe and she was made to sleep outside for the night.¹⁴

13. The majority, approximately two-thirds, of restavèk are girls. Girl restavèk are particularly vulnerable to the sexual abuse of males in the host family.¹⁵ In fact, restavèk girls are sometimes called *la pou sa*, there for that.¹⁶ Fabiola is a twenty-one year old woman who has suffered most of her life as a restavèk. She was three when she lost her mother and was then raised by an aunt. Her aunt had other people living in the home including Fabiola's godmother. One night the godmother's boyfriend tried to rape Fabiola. A neighbor heard her screaming and came to her rescue. Once everyone became aware of the incident, the man lost face and left the home. Fabiola was blamed for the man leaving and her life became more miserable than ever. She was so badly mistreated that a neighbor offered to take her. In the beginning the neighbor treated her decently, but after a time she began to slap Fabiola across the face and beat her.

Fabiola eventually ran away from this home and went to live with a woman she barely knew. The woman had a boyfriend that lived nearby and Fabiola was required to take food to him every afternoon. The man was a man of authority and had a gun; he knew that he could manipulate Fabiola. On one occasion he asked her to get something for him inside his room; he then followed her and attacked her. He threw her on his bed and raped her. He threatened to kill her if she told anyone of the incident. Fabiola was also afraid that no one would believe her story. Fabiola then tried to get others to take the food to the man, but when he realized what she was doing he made things worse for her. This went on for two years before Fabiola finally managed to escape.¹⁷

14. Some *restavèk*, while not suffering from such overt abuse, suffer emotionally from neglect and isolation. Guerda was given to her father's brother and was treated like a *restavèk*. Guerda was not allowed to use her family name as it was the same last name as the man she was now living with and he did not want anyone in the community to know that she was his niece. Guerda recounted how painful and humiliating it was for her when her uncle refused to recognize her as a relative. He also always told her that she would never be more than a "little thief," that she would never succeed, and that her mother was of bad blood. He was constantly putting her down and making her feel inferior.¹⁸

15. Many *restavèk* also have stunted child development. Since children have little time to play, they often lack imagination and fail to develop personal dreams and goals. It is difficult for many *restavèk* children to imagine a better and different future.¹⁹

16. The Haitian government's failure to protect children from mistreatment and abuse violates the right to be free from inhumane and degrading treatment as provided for in Article 5 of the UDHR, the right to protection from violence, abuse, and exploitation as outlined in Article 19 of the CRC, and the right to be free from work which harms the health and safety of the child as put forth in Article 3 of ILO Convention 187.

D. CHALLENGES AND CONSTRAINTS TO ELIMINATING CHILD LABOR IN HAITI

17. President Jean Bertrand Aristide once explained that the practice of *restavèk* is "so ingrained in Haiti that too many people do not even know they are breaking the law."²⁰

18. Parents in dire economic straights give their children away as a means of coping with their poverty. Parents see child placements as an opportunity for social mobility for the child and the family. They believe working as a domestic servant in the city at least increases the child's opportunity to access education and other services rather than living in the impoverished family home with no chance for advancement.²¹

19. Moreover, other collateral consequences and causes of poverty such as the lack of proper maternal health, large family size, reduced paternal responsibility, unemployment, classism, lack of parental education, and cultural acceptance perpetuate the *restavèk* system.

20. Haitian culture allows for the distinction between one's own child and the child of another. As one Haitian Creole proverb states *Lè w'ap benyen pitit moun, lave yon bò, kite yon bò*, when you bathe someone else's child, wash one side, leave the other side unwashed.²²

21. Most host families do not even see *restavèk* as children.²³ Host families recognize that without their benevolence the *restavèk* child most likely would have to live on the street without food or shelter; therefore, they rationalize the practice of *restavèk* as beneficial and generous.²⁴ However, Nadine Burdet, child psychiatrist and founder of L'Escale, a school for *restavèk*

children, explains, "I [have] spent most of my time listening to the children, because if we were to have faith in what most people say, we would end up believing that these children are better off in service than with their impoverished families. But that did not tally at all with what the children told me."²⁵

22. Furthermore, in most cases, host families themselves are poor and are often unable to properly feed even their own children.²⁶ Many host families do not even have the resources to send their own children to school since there is a dearth of free and public education.²⁷ In fact, the PADF and USAID study found that a not insignificant minority, 11%, of host families themselves send their children into restavèk placement.²⁸

23. While Haitian law condemns restavèk placement and child slavery, the system of enforcement has many shortcomings. Most obviously, the 2003 law prohibiting restavèk placement fails to include penalties for violating the law. While it allocates jurisdiction for investigating these cases to the Ministry of Social Affairs, it does not outline any specific punishments and only generally alludes to the possibility of judicial action.²⁹ Admittedly, Article 340 of the Haitian Labor Code provides for the levying of a fine of 3,000 – 5,000 gourdes against any employer who employs a child under 15 or a child 15-18 without a work permit, but there is no evidence Article 340 is being enforced.

24. For example, the Ministry of Social Affairs' Institut du Bien Etre Sociale et de Recherches (IBESR) implemented SOS Timoun, a hotline for citizens to call and report violations of children's rights in 2000. IBESR reported receiving approximately 200 calls for assistance each year. Unfortunately, the minimally staffed program offered limited assistance. It would make an initial inquiry into the case and try to educate host parents to stop the abuse. It also occasionally removed the child from the host family or took a case to court. However, generally there was no follow-up beyond the initial investigation.³⁰ At this point in time, there is no evidence that this hotline continues to exist.

25. Recognizing the Haitian government's limitations, several organizations and NGOs are now addressing restavèks. However, there is no uniform approach and little to no government support or coordination. As a result, most organizations are only able to create "pockets of change," but do not have the resources to solve the restavèk problem on a national scale.³¹

26. While restavèk placement has occurred for years, the earthquake has worsened the problem. The earthquake orphaned many children. Moreover, in the effort to find the nearest emergency shelter and medical care, families were separated without any record. There continues to be no effective data system in place for individuals to find lost family members.³² Other orphaned and lost children are easy prey for traffickers. As one UNICEF official explained, "Traffickers fish in pools of vulnerability, and we've rarely if ever seen one like this."³³

27. The Haitian/Dominican border is an open border, but regulation is sparse with the two national governments only monitoring a few major crossing points. Subsequently, a large number of individuals regularly cross the border illegally.³⁴ Haiti's complete lack of anti-trafficking legislation, its largely unregulated Haitian border, and its weak law enforcement enable many of these traffickers to remove children to the DR and abroad with impunity.³⁵

E. RECOMMENDATIONS

28. Take affirmative steps to enforce the law against restavèk that ensures the fundamental human rights of all children, in accordance with the Haitian Labor Code, the UDHR, the CRC, and ILO Conventions 138 and 182. Those measures can include the following:

- a. Working alongside civil society organizations to ensure that every child has access to basic food, shelter, and education.
- b. Investigate and ensure accountability for neglect, mistreatment, and abuse of restavèk children
- c. Strengthen the institutions such as IBESR and the Brigade for the Protection of Minors (BPM) who are charged with child protection

29. Take affirmative steps to ensure those children who are in a restavèk situation are guaranteed their basic human rights to education, health, food, as well as the right to be free from isolation, neglect, mistreatment, and abuse.³⁶

30. Take affirmative steps to interact more proactively with the international community to ensure that development builds capacity in Haiti and promotes domestic industry, sustainability, and autonomy.

31. Develop a plan of action, in consultation with civil society, and specifically those organizations seeking to combat the problem of restavèk, to address the root causes of the restavèk situation to ensure that no children find themselves in situations of slavery or forced labor, but instead are entitled to enjoy their childhood and grow up to their full potential. Such a plan should include strategies for creating:

- a. jobs for biological and host parents to alleviate the stress and weight of poverty³⁷
- b. a national public school system that serves all children in both rural and urban areas³⁸
- c. literacy and training programs for adults to build individual capacity and personal dignity, to foster greater respect education and the rights of children, and to teach parent alternatives to corporal punishment
- d. water infrastructure to eliminate the need for servants to carry water each day
- e. family planning programs to alleviate the economic pressure of large families and maternal health programs to reduce the maternal mortality rate and prevent against motherless children
- f. a public information campaign to change the perspective of the Haitian population from accepting restavèk placement to viewing the practice as an unacceptable form of child slavery and bondage

32. Take affirmative steps to prevent against the intrastate and interstate trafficking of children for restavèk placement by:

- a. Enacting legislation which prohibits all forms of trafficking and specifically defines restavèk placement as a form of trafficking
- b. Strengthening Haitian law enforcement through intensive training on restavèk issues including an emphasis on changing attitudes regarding the acceptability of the practice and on instruction for working with victims of rape
- c. Providing increased monitoring of the Haiti/DR border

APPENDIX A

Stories of restavèk children collected by Restavèk Freedom.

Synthia's Story:

This is a recent story of a child assisted by Restavèk Freedom. The name was changed to protect her privacy.

Synthia celebrated her 15th birthday recently. This was the first time anyone had celebrated her birth. Her mother died when Cynthia was an infant and she was taken to live with her mother's oldest sister for three years and then sent to live with her godmother, who was her mother's youngest sister.

She was never sent to school by her godmother and had to remain at home to do all the work. She was never shown any love or affection and would get beatings for not working fast enough or if she took too long to fetch the water and she would get beatings if anything was misplaced around the house. She was in charge of all household work including taking care of the younger children.

During an emotional recount of one incident she described the fear that she encountered as she was sent on a late night errand. The area where she lived is known for some of the worst gang members and thieves of Haiti so naturally, as a young girl, she was afraid. Because it was late at night she had difficulty finding the item she was sent to purchase. By the time she arrived at the merchant, she was closed. Cynthia knew that she would be beaten but she also knew that she had no control over the situation. When she arrived the beating was severe and she was made to sleep outside for the night.

Synthia wanted to end her life. She tells Restavèk Freedom that the only thing that stopped her was the fact that she was in school and felt loved by the child advocate from our organization and that she would miss her.

Synthia has been removed from this situation and is now in a loving and supportive environment. She often comments that she feels as if she is in a dream. She is very intelligent and wants to study computer engineering.

Fabiola's Story:

Fabiola is a 21 year old woman who has suffered most of her life as a restavek. She was 3 when she lost her mother and was then raised by an aunt until the age of 10. Her aunt had other people living in the home including Fabiola's godmother. One night the godmother's boyfriend tried to rape Fabiola. A neighbor heard her screaming and came to her rescue. The neighbor then told the aunt of the incident. Once everyone was aware of this the man lost face, was embarrassed and left the home. No one actually kicked him out.

Fabiola was blamed for the man leaving the home and made her life more miserable than before. The godmother had two children with the man and he was no longer willing to help care for these children. She was so badly mistreated that a neighbor offered to take her. In the beginning the neighbor treated her decently, as Fabiola describes, not beating her or cursing her. After time she began to slap Fabiola across the face and beat her, blaming her for things she did not do. She ran away from this home and went to live with someone she barely knew.

Fabiola had to do all the work in this home and take care of the woman's children. The woman had a boyfriend that lived nearby and Fabiola was required to take food to him every afternoon. The man was a man of authority and had a gun, he knew that he could manipulate

Fabiola. On one occasion he asked her to get something for him inside his room...he then followed her and attacked her. He threw her on his bed and raped her. He threatened to kill her if she told anyone of the incident. She did not tell anyone because he had showed her the gun and she was also afraid that no one would believe her story. Fabiola would often try to get others to take the food to the man but then he realized what she was doing and made things worse for her every time she did not bring the food herself. This went on for 2 years before she ran away.

Fabiola has recently begun school for the first time in her life and is struggling, as one would expect. She wants desperately to learn and is working extremely hard studying for hours each day.

Rosaline's Story:

Rosaline was living with a biological aunt until the aunt moved her due to the abuse she was receiving from the children of the man she married. She is now living with another woman who already had a restavek. Rosaline reported that the woman did not beat her but it was the way she cursed at her and talked to her that was the hardest.

Rosaline's mother lives in the countryside but Rosaline does not want to go back to her mother because she believes that her mother sent her in the hope that she can go to school and have a better life. She believes that her mother would not accept her back home.

Rosaline is one of Restavèk Freedom's children that comes to school looking nice. Her hair is done and her clothes are pressed. To observe her from the outside one might believe that she has a good life but you cannot see the suffering inside her soul from someone who needs love. She does not dream nor does she have any idea of what she would like to become someday. She doesn't dare to hope.

Lena's Story:

Lena was sent to Port-au-Prince when she was 8 years old. She lives with a host family that has 3 children, all attending school. Lena is 15 years old and had never attended school until Restavèk Freedom supported her schooling.

After 2 weeks in school she can now write her name for the first time in her life. She is in charge of all the household chores and also takes care of the children and all of their needs as the host aunt died, leaving her with the woman's husband. Her body is young but her face is older than 15 years.

She became very emotional as she told Restavèk Freedom of her misery and the burdens she carries. She is never treated with respect and often misses school due to responsibilities in the home.

Guerda's Story:

Guerda was sent to live with a man and his family in a rural community. Guerda's father was not poor but he had remarried and the woman he married would not allow the child from another woman to live in the house. Guerda was given to the father's brother. Guerda was not allowed to use her family name as it was the same last name as the man she was now living with and he did not want anyone in the community to know that she was his niece. Guerda was treated like the restavek in the family. She had to do all the household chores and take care of the other children. The man owned a school so he did allow her to attend school but our foundation was paying for her to attend.

When Restavèk Freedom interviewed Guerda she recounted how painful it was for her that he did not want to recognize her as his niece and the humiliation she suffered in the fact that he would not recognize her as a relative. She said that he always told her that she would never be more than a “little thief” and she would never succeed and that her mother was of bad blood. He was constantly putting her down and making her feel inferior to the rest of the family. She was never given much time to study or prepare her lessons and would then be punished for not being prepared.

Guerda is one of the brightest children in the Restavèk Freedom home. She has already skipped two grades and works extremely hard. She has no interest in contacting her father even though we had him sign that we had the right to have her. He also has no interest in having her return home. Guerda is thriving in the program but there is much damage that she needs healing from.

¹ Act on the Prohibition and Elimination of All Forms of Abuse, Violence, Abusive or Degrading Treatment Against Children. June 5, 2003 [hereinafter 2003 Act].

² Gulnara Shahinian, *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including The Right To Development: Report of the Special Rapporteur on Contemporary Forms of Slavery, Including Its Causes and Consequences*, Addendum 7 (Sept. 2009) available at <http://www.unhcr.org/refworld/type,MISSION,,4ac0c6b42,0.html> (noting the difficulty of determining the exact number of restavek children in Haiti).

³ United States Department of State, *Haiti: Special Case* in TRAFFICKING IN PERSONS REPORT 2010 available at <http://www.state.gov/g/tip/rls/tiprpt/2010/142763.htm>.

⁴ International Organization for Migration, *Child Trafficking and Abuse in Haiti: IOM Efforts to Rescue Restaveks* available at www.iom.int/unitedstates/Home/Restavek%20info%20sheet.pdf.

⁵ Jennifer Zimmerman, *Human Rights, Security, and Development in Haiti*, MIGRATION 18, 18 (Sept. 2006).

⁶ *Id.* at 19.

⁷ Glenn R. Smucker, et. al. *Lost Childhoods in Haiti: Quantifying Child Trafficking, Restavèks, & Victims of Violence* 31-32 (November 2009) available at <http://www.crin.org/resources/infodetail.asp?id=2149>[hereinafter Smucker Report].

⁸ The *Trafficking in Persons Report* published in 2009 by the United States Department of State defines trafficking to include “the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.” Available at <http://www.state.gov/g/tip/rls/tiprpt/2009/>. This definition clearly encompasses the practice of restavek.

⁹ Shahinian at 7.

¹⁰ United States Department of Labor Bureau of International Labor Affairs, *Haiti*, available at <http://www.dol.gov/ilab/media/reports/iclp/Advancing1/html/haiti.htm>.

¹¹ Tone Sommerfelt, et al. *Living and Working Conditions of Child Domestic Workers in CHILD DOMESTIC LABOUR IN HAITI: CHARACTERISTICS, CONTEXTS, AND ORGANISATION OF CHILDREN’S RESIDENCE, RELOCATION, AND WORK* 44, 48 (2002) available at www.fao.no/ais/other/haiti/childlabour/EEDH_Report_draft_english.pdf.

¹² Zimmerman at 19.

¹³ Glenn R. Smucker & Gerald F. Murray, *The Uses of Children: A Study of Trafficking in Haitian Children*, 34-35 (December 2004) available at pdf.usaid.gov/pdf_docs/PNADF061.pdf.

¹⁴ Testimony of restavek child to Restavek Freedom. The child’s name has been changed to ensure her safety and privacy. For further details see Appendix A.

¹⁵ Jacky Delorme, *Haiti: Tarnished Children* 7 (2004) available at www.beyondborders.net/docs/restavek-report.pdf.

¹⁶ Jonathan Blagbrough, *Child Domestic Labour: A Modern Form of Slavery*, 22 CHILDREN & SOCIETY 179, 186 (2008).

¹⁷ Testimony of former restavek to Restavek Freedom. For further details see Appendix A.

¹⁸ Testimony of former restavek to Restavek Freedom. For further details see Appendix A.

¹⁹ Timothy C. Janak, *Haiti’s “Restavek” Slave Children: Difficult Choice, Difficult Lives . . . Yet . . . Lespwa fe Viv* 8 INT’L J. OF CHILDREN’S RIGHTS 321, 326 (2000).

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- ²⁰ Quoted in Tim Padgett & Kathie Klarreich, Of Haitian Bondage, TIME, March 5, 2001 available at <http://www.time.com/time/magazine/article/0,9171,999363,00.html>.
- ²¹ Janak at 326.
- ²² Smucker & Murray at 11, 154.
- ²³ Quoted in Jim Loney, Haiti “Restavèk” Tradition Called Child Slavery, REUTERS, Feb. 18, 2010 available at <http://www.reuters.com/article/2010/02/18/us-quake-haiti-restaveks-idUSTRE61H3F920100218?pageNumber=1>.
- ²⁴ Padgett & Klarreich.
- ²⁵ International Confederation of Free Trade Unions, *Interview with Nadine Burdet, Child psychiatrist and Founder of Escalé* available at <http://www.icftu.org/displaydocument.asp?index=99121892>.
- ²⁶ Viviana Fernandez & Linda Tom, UNICEF and Partners Help Child Domestic Workers in Haiti Regain Their Rights available at http://www.unicef.org/infobycountry/haiti_39418.html.
- ²⁷ Shahanian at 7. For more information, see coalition stakeholder report on Education, submitted in coordination with BAI/IJDH.
- ²⁸ Smucker Report at 18.
- ²⁹ 2003 Act.
- ³⁰ National Coalition for Haitian Rights, *Restavèk No More: Eliminating Child Slavery in Haiti* (2002).
- ³¹ Janak at 330.
- ³² Satchit Balsari et al. *Protecting the Children of Haiti*, 362 NEW ENG. J. MED. e25 (2010).
- ³³ Tim Padgett & Bobby Ghosh, *Human Predators Stalk Haiti’s Vulnerable Kids*, TIME, Jan. 27 2010 available at http://www.time.com/time/specials/packages/article/0,28804,1953379_1953494_1957160,00.html.
- ³⁴ Smucker & Murray at 41.
- ³⁵ Balsari at e25.
- ³⁶ For more information, see coalition stakeholder report on Children’s Rights, submitted by Bureau des Avocats Internationaux, Institute for Justice & Democracy in Haiti, and LAMP for Haiti.
- ³⁷ For more information, see coalition stakeholder report on Labor Rights, submitted by the Transnational Legal Clinic, University of Pennsylvania, in coordination with BAI/IJDH.
- ³⁸ For more information, see coalition stakeholder report on Education.

National Sovereignty (French)

Submitted By:

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Introduction

1. La question de la souveraineté nationale, garantie par la Charte des Nations unies, [Article 2(7)] est explicitée dans le titre V¹ de la Constitution de 1987 en vigueur actuellement en Haïti. Selon les prescrits de l'article 58 de la dite constitution, « les citoyens exercent directement les prérogatives de la souveraineté » par l'élection du personnel politique du pays (Président de la République; membres du Pouvoir législatif; tous autres corps ou de toutes assemblées prévues par la constitution et par la loi). Or ce n'est pas ce que l'on constate dans la pratique. Notre droit à la souveraineté commence à être bafoué par la façon même que les gouvernements de notre pays organisent l'ensemble des processus démocratiques devant conduire à la mise en place du personnel politique du pays. D'autre part, l'ingérence sans bornes de la communauté internationale dans les affaires internes du pays constitue un véritable obstacle qui empêche la souveraineté du peuple haïtien d'être effective. Donc, dans ce présent document, nous ferons l'état d'un ensemble de cas de violations graves au droit à la souveraineté de notre nation en abordant la question sur deux angles:

1. Violation interne à la souveraineté nationale par le gouvernement haïtien
2. Violation externe à la souveraineté nationale par la communauté internationale

Violation interne à la souveraineté nationale par le gouvernement haïtien

Exclusion sociale et Politique

- ***Exclusion sociale***

2. Le Conseil Electoral Provisoire (CEP) est l'institution autonome chargée d'organiser des élections libres et démocratiques dans tout le pays. Les citoyens haïtiens sont les seuls à pouvoir élire, à travers un processus démocratique, le président de la république et l'ensemble des parlementaires formant le corps législatif. Or, d'après ce que l'on constate dans la pratique, bon nombre de citoyens haïtiens sont privés de leur droit de vote, un droit fondamental reconnu dans la Déclaration universelle des droits de l'homme. [Article 21]

3. L'inexistence d'une politique électorale faisant cas de la citoyenneté, du respect du droit de vote des électeurs, ont prêté à équivoque les résultats du premier tour des élections du Novembre 2010 publiés par le Conseil Electoral Provisoire (CEP). La préparation des listes électorales ne suit pas la procédure normale prévue par la loi électorale, selon laquelle l'Office Nationale d'Identification ONI doit rentrer les données relatives aux changements d'adresse des citoyens et fournir les informations au Conseil Electoral Provisoire qui à son tour devrait en tenir compte pour mettre à jour le registre et préparer les listes électorales partielles. Le Conseil Electoral, loin de prendre des décisions qui considèrent les prérogatives de l'ONI se lance dans une véritable campagne dit des COV (Centre d'Opération et de Vérification) qui a largement contribué à un désordre électoral au cours duquel les citoyens se sont égarés de leur centre de vote et/ou de leur bureau de vote. La désinvolture des autorités locales, le retard enregistré dans le processus de délivrance des cartes d'identification nationale devant habiliter les citoyens à exprimer leur vote entraîne l'exclusion d'une bonne partie de l'électorat haïtien. De ces faits, ce travail piétiné, ne répond pas aux attentes des citoyens, provoquant ainsi une faible participation aux élections. Par conséquent, les résultats reflètent peu la volonté du peuple, et sont sujet aux manipulations électorales, aux dictats de la communauté internationale. Cet état de faits ne correspond pas aux exigences « d'élire... dans le cadre de consultations périodiques

authentiques, tenues au suffrage universel et égal, et par scrutin secret garantissant la libre expression de la volonté des électeurs. » [Article 23 de la Convention américaine relative aux droits de l'homme] Un fait marquant pour illustrer nos propos : « Les partisans du candidat à la présidence sous la bannière du parti politique « REPONS PEYIZAN » à contester les décisions électorales du Conseil Electoral Provisoire, paralyser l'ensemble des activités de la vie nationale et semer la pagaille pendant plus de trois jours ». Un tel état de fait obligeait un CEP paniqué, à inviter la communauté internationale qui ne s'est pas fait prier, à recompter les bulletins au niveau du centre des tabulations.

4. La dépendance financière du CEP de la communauté internationale et la mise en place même de cette institution éphémère par le président de la république, font du CEP une institution toujours influencée, dépendante des gouvernements et de la communauté internationale.

5. L'état provisoire du CEP, le roulement continu de ces personnels, fait de lui une institution inexpérimentée, faible, accumulant toujours de graves irrégularités lors de l'organisation des élections.

6. Donc, à défaut d'améliorer cette privation de droits, l'intervention internationale a servi de l'approfondir.

- *Exclusion Politique*
- *Liberté d'association et de réunion*

7. La Constitution et la Déclaration universelle des droits de l'homme, [Article 20] garantissent expressément la liberté d'association et de réunion à des fins politiques ou à toutes autres fins pacifiques, mais leur jouissance est très limitée. Le parti politique Fanmi Lavalas est exclu par le CEP volontairement de la scène politique deux fois de suite (durant les élections législatives visant à renouveler les deux tiers du sénat de la république en 2008 et lors de l'organisation des élections présidentielles et législatives organisées en Novembre 2010), réfrénant ainsi toutes idéaux convergeant vers ce parti. Les avantages et privilèges réservés au parti Fanmi Lavalas, sa liberté de se former et d'exercer librement ses activités comme le stipule la Constitution en son article 31.1 sont sévèrement compromises.

Violation externe à la souveraineté nationale par la communauté internationale

8. La souveraineté nationale est un droit mis en relief par la Charte des Nations unies et par la Déclaration relative aux Principes du droit international. La Déclaration prescrit qu' « [a]ucun Etat ni groupe d'Etats n'a le droit d'intervenir... dans les affaires intérieures... d'un autre Etat... [T]oute... forme d'ingérence... contre ses éléments politiques... [est] contraire au droit international. » Néanmoins, le résultat du vote de la population est délibéré sous pressions internationales, comme l'atteste les faits suivants :

9. En date du 29 Janvier 2011 à Port-au-Prince, le Conseil électoral Provisoire est exhorté à réviser les résultats contestés de l'élection présidentielle ayant lieu le 28 Novembre 2010 par plusieurs représentants de la communauté internationale. Et à exclure le candidat de la plateforme politique INITE Jude Célestin au profit du candidat Michel Joseph Martelly (Repons Peyizan) au second tour des élections, sous peine du retrait volontaire du support américain dans le pays.

10. La prise de décisions arbitraire de la communauté internationale à l'initiative des élections en Haïti ne date pas d'hier. En effet, celle-ci est intervenue en 2006 pour supprimer le second tour des élections présidentielles et concéder la victoire à un candidat, René Préval, qui n'avait pas réuni toutes les conditions dictées par la loi pour briguer la présidence.

11. En date du 29 Janvier 2004, le président élu démocratiquement Jean Bertrand Aristide est contraint lors du coup d'Etat (du Canada, de la France, des Etats Unis) de quitter le pays vers l'Afrique du Sud, escorté par un commando des Forces spéciales des Etats Unis.

12. Dans le souci de la communauté internationale de toujours a adopter des mesures qui ne reflètent pas les décisions et intérêts du peuple haïtien, en 1996 le président Aristide Jean Bertrand sous pression du gouvernement américain écarta pouvoir et organisa des élections qui méta au pouvoir le président René Garcia Préval.

13. En 1994, Aristide Jean Bertrand, après avoir essuyé un sanglant coup d'Etat mené par Raoul Cedras et les militaires soutenus par la bourgeoisie d'affaires et les Etats Unis en 1991 (7 mois après avoir remporté haut la main les élections), est rétabli au pouvoir par l'administration de Bill Clinton qui lui fixe des conditions.

14. Acculé au départ en mars 1990 sous la pression américaine, Aristide s'exila pour ouvrir la voie à des élections sous contrôle international.

15. Donc, compte tenu de ces occurrences, la communauté internationale s'est comportée d'une façon contraire aux exigences fondamentales du droit international concernant la souveraineté nationale des Etats.

Droit à l'alimentation

Souveraineté alimentaire

16. La souveraineté alimentaire d'Haïti fut violée par la communauté internationale. Selon le Pacte international relatif aux droits économiques, sociaux et culturels, « [l]es Etats parties au présent Pacte... adopteront... les mesures nécessaires... pour assurer une répartition équitable des ressources alimentaires mondiales par rapport aux besoins, compte tenu des problèmes qui se posent tant aux pays importateurs qu'aux pays exportateurs de denrées alimentaires. » [Article 11(2)(b)] Haïti est l'un des pays de la caraïbe où le niveau de production et d'exportation est le plus faible et dont le tarif douanier est le plus bas. Le marché haïtien est fortement dépendant des produits provenant de l'étranger. Il fut forcé d'être ouvert par la FMI et la Banque Mondiale au dumping américain des produits : riz, sucre, maïs sous le règne de la junte militaire dirigé par le général Henry Namphy. L'inexistence de politique alimentaire en faveur de la population conduit à une déstabilisation effrénée de la production nationale et à une entrave de l'indépendance alimentaire du pays. Cette volonté manifeste de la communauté internationale de toujours à adopter des mesures qui violent et sapent les intérêts de la population haïtienne, s'est encore révélé récemment après le séisme dévastateur du 12 janvier. L'avalanche d'aide alimentaire offerte par la communauté international, à défaut de combler durablement les besoins alimentaires de la population haïtienne, contribue encore à la destruction la production locale. Donc finalement, malgré de bonnes intentions, la réponse de la communauté internationale a nui la souveraineté alimentaire du peuple haïtien.

Sécurité Nationale

17. La Sécurité nationale est outrageusement bafouée. Les opérations menées par les forces onusiennes de maintien de la paix en Haïti portent atteinte à l'intégrité physique et morale de la population et contredisent les impératifs de la Charte des Nations unies. « Aucune disposition de la... Charte n'autorise les Nations Unies à intervenir dans des affaires qui relèvent essentiellement de la compétence nationale d'un État.» [Charte Article 2(7)]. Ces opérations constituent, donc, une violation flagrante de cette directive. Les quelques faits relatés ci-dessous suffisent à le démontrer.

18. En 2005, la Mission de l'ONU pour la stabilisation en Haïti (MINUSTAH) a pris d'assaut un quartier populaire de la zone métropolitaine (Cite soleil) et commis des fouilles illégales de maisons, arrestations brutales non motivées, fusillades meurtrières. Des dizaines de morts furent enregistrés ce jour là.

19. Fort souvent les soldats de la force onusienne en Haïti sont impliqués directement dans divers crimes faisant hautement cas de violation de droit de l'homme. Citons : viols contre les jeunes femmes et adolescentes haïtiennes, meurtres (récemment un jeune homme de nationalité haïtienne a été pendu dans la base des soldats népalais au Cap haïtien, Nord d'Haïti), pour ne citer que ceux-là. Les soldats de la force onusienne en Haïti bénéficient l'immunité des Nations Unies. Ils représentent une menace pour les haïtiens quand on sait que les lois haïtiennes ne peuvent pas les juger ; alors qu'ils auraient du être une force là, pour sécuriser les haïtiens.

20. Des dirigeants et responsables du Parti d'Aristide sont arrêtés et jetés en prison sur simple dénonciation d'indicateurs de police, souvent déguisés en défenseurs des droits de l'homme.

Souveraineté à la CIRH

21. Les décisions prises au sein de la CIRH, co-présidée par l'ancien président américain Bill Clinton, portent atteinte à la souveraineté nationale, car le mode de fonctionnement de la commission intérimaire, son budget, l'avenir du pays sont décidés en compagnie des étrangers. Des parlementaires haïtiens ont voté pour que les étrangers à travers la CIRH s'occupent directement de la reconstruction d'Haïti, une violation grave de notre souveraineté nationale et de la Charte des Nations unies. [Article 2(7)]

Liberté d'élections des membres du pouvoir législatif

22. La Constitution traite de cette liberté en son article 58, mais son application est défailante. L'escamotage du vote du peuple aux législatures, par la prise d'assaut des candidats se réclamant du pouvoir politique INITE des centres de vote le 28 Novembre 2010 est un exemple flagrant d'atteinte grave à la liberté des citoyens de voter librement, et de prendre des décisions cadrant avec leur desideratas.

Souveraineté au pouvoir législatif

23. L'article 59 de la Constitution prévoit que les citoyens délèguent l'exercice de la souveraineté nationale au pouvoir législatif. Cependant, la Minustah, le PNUD sont très présents quand à l'accord de logistique au Législatif. A titre d'exemple, le Bureau des Affaires Civiles de la Minustah a remis le 7 février 2011 au personnel administratif du Parlement un lot de 24 ordinateurs mis à sa disposition par le PNUD. Le local pour accueillir le Parlement sera construit à l'initiative de la Minustah. Ces ingérences répétées de la communauté internationale dans les

affaires internes du pays, nuisent sans conteste au droit du peuple d'être souverain, et d'entreprendre des actions pour le bien être de tous.

Souveraineté au pouvoir exécutif

24. Le pouvoir exécutif adopte des mesures sous la dictée de la communauté internationale. En effet, des conditions sont fixées au président pour qu'il se plie à des programmes néfastes au bien être de la population. En 1994, un programme libéral, de privatisation des services publics est proposé au président Aristide.

Souveraineté au pouvoir judiciaire

25. Le système judiciaire en Haïti est déliquescant. Il est décapité, et fonctionne au solde du plus offrant. De nombreux criminels sont en cavale, et mettent en danger la vie de paisibles citoyens. Ce manque flagrant de responsabilité entrave le droit des citoyens d'être confiant en la justice de leur pays, et d'avoir de la sécurité.

Indépendance du pouvoir législatif, exécutif, judiciaire

26. Comme le stipule la Constitution en son article 60, chaque pouvoir est indépendant des deux (2) autres dans ses attributions qu'il exerce séparément. Cependant, la pratique va à l'encontre de la loi mère, dans la mesure où les 3 pouvoirs dépendent l'un de l'autre. A titre d'exemple, le pouvoir judiciaire dépend grandement du pouvoir Exécutif; car les juges doivent être nommés par le président de la république. Sans l'Exécutif, il n'y aurait point de Législatif, et vice versa car la raison d'être du Législatif est de voter des lois proposées par l'Exécutif. Cette interdépendance des 3 pouvoirs constitue un manque flagrant de responsabilités et une entrave à la Souveraineté nationale.

¹ Cf. Articles 58 ; 59 ; 59.1 ; 60 ; 60.1 ; 60.2 de la *Constitution de la République d'Haïti - 29 mars 1987* (Une édition est disponible chez les Editions Henri Deschamps, Port-au-Prince, 1991).