



## ACCESS TO JUDICIAL REMEDIES IN HAITI

Under both Article 2 of the International Covenant on Civil and Political Rights (ICCPR) and Haitian law, Haitians have a right to effective remedies including a right to competent legal systems of the state to address human rights violations. As detailed in our report filed with the Human Rights Committee on September 12, 2014, entitled *Access to Judicial Remedies in Haiti*,<sup>1</sup> despite countless attempts to reform Haiti's justice system, a combination of elitism among the wealthy and lack of political will for accountability perpetuates a broken justice system. As a result, the justice system is susceptible to corruption and abuse by government officials, and reinforces social, political and economic exclusion that prevents women and Haiti's poor majority from asserting their fundamental rights.

**Women's access to the judicial system (Articles 2.3, 3, 6, 14, 26):** The rate of violence against women and girls spiked after the earthquake due to unsafe living conditions in displacement camps. While cases of gender-based violence, specifically rape, are increasingly making their way onto courts' dockets, the Haitian justice system presents many structural (corruption, long procedure, and lack of resources) and social barriers that discriminate against female complainants and discourage women and girls from formally seeking justice. Female victims of violence are reluctant to turn to the justice system due to abuse received by law enforcement, sluggishness of prosecutions, costly legal fees, and preconceived notions of female behavior. Police, prosecutors and judges often ignore the testimony of female victims and place undue weight on arbitrary factors, such as medical certificates even though they are not required to prosecute rape cases. A draft Penal Code revision law is pending before the Haitian parliament with added protections for gender-based violence offenses such as sexual harassment and marital rape; however, as of September 2014, the bill had not been approved.

**Prosecution of Jean Claude Duvalier (Articles 2, 14, 26):** Haiti has an obligation under ICCPR Articles 2, 14, and 26 to prosecute former dictator Jean-Claude "Baby Doc" Duvalier. While the Duvalier case has been characterized by multiple delays and other challenges, such as arbitrary dismissal of charges of crimes against humanity and the government's failure to provide crucial official case documents for representatives of the victims, lawyers and civil society organizations commend the Appellate Court for its decision to reinstate the case against Duvalier, which constituted a significant step towards combatting immunity. Upon reinstating the charges for political violence crimes in 2014, the Appellate Court held that the allegations against Duvalier amounted to crimes against humanity and under binding international law, statutes of limitations do not apply to crimes against humanity. However, concern remains about the Haitian government's lack of political will to bring Duvalier to justice as required under the ICCPR. President Martelly's partiality towards Duvalier is well-known in Haiti, starting with the President's replacement of the prosecutor and magistrate judge when he took office in 2011. President Martelly has presented Duvalier at public events as an elder statesman and has renewed Duvalier's diplomatic passport. More recently, on May 5, 2014, President Martelly selected one of Duvalier's lawyers, Frizto Canton, as the executive branch's nomination to the Provisional Electoral Council. This appointment has political significance because President Martelly has failed to hold elections since he took office in 2011.

**Human rights defenders (Articles 1, 9, 12, 14, 17, 19, 21):** Lawyers and leaders of Haitian human rights organizations who challenge the government's impunity and failure to uphold human rights have been targeted as human rights defenders. The Haitian government has failed to take adequate measures to protect the human rights defenders from threats, attacks, harassment, and intimidation, despite a series of precautionary measures issued by the Inter-American Commission on Human Rights in 2012-2014 on behalf of several human rights defenders against the Government of Haiti. False criminal charges levied against

human rights defenders and arbitrary arrests suggest that the Government of Haiti is instrumentalizing the judiciary for political ends and taking away human rights defenders' right to judicial remedy. Human rights defenders face increased threats as the country prepares for long-overdue parliamentary and local elections, which will likely be folded into Presidential elections in the fall of 2015. They believe that the current government is behind many of these threats, and at the very least, is failing to provide sufficient protections and legal remedies.

**Extrajudicial forced evictions in internally displaced persons (IDP) camps (Articles 2, 12, 17):** Almost five years after the 2010 earthquake that left over 1.3 million Haitians homeless, over 100,000 are still living in IDP camps. Many inhabitants of IDP camps have been forcefully evicted with the assistance and complacency of Haitian police, mayors, parliamentarians and other government agents. The United Nations Office for the Coordination of Humanitarian Affairs estimates that around 21,000 victims of the earthquake currently live under the threat of forced evictions. Haitian legal procedures provide no mechanism to request injunctive relief to prevent extrajudicial evictions, even though these evictions are often blatant violations of the law and cause irreparable harm to communities that have no housing alternatives available to them. As a consequence of the historical exclusion of Haiti's poor majority from the justice system, filing complaints on behalf of communities subjected to forced evictions has proved difficult because legal action against Haiti's traditionally powerful landowners seems futile to IDP communities. Residents and housing rights activists fear that evictions will rise as the Haitian government hopes to close all camps before the end of 2014. On September 26, 2014, Haitian armed municipal agents indiscriminately opened fire in order to remove street sellers from occupying a public road nearby a makeshift IDP camp in Port-au-Prince, and killed a woman on the spot who was a resident of the camp.

**Labor and employment (Articles 1, 2.3, 3, 22, 26):** Exclusion from the courts prevents workers from enforcing their labor and employment rights, making them vulnerable to illegal firing or exploitation, and preventing them from earning their way out of poverty. In violation of Article 22 of the ICCPR, the Government has prevented workers from organizing for higher wages and as many as hundreds of workers, especially union activists, were suspended or terminated in retaliation for their protest in December 2013 against low wages. Despite the Government's obligation to ensure equality before the law and access to legal remedies under Articles 26 and 2.3, terminated workers generally face tremendous obstacles to enforcing their labor rights before labor courts or the Ministry of Social Affairs and Labor. Legal procedures for the labor court are obscure and proceedings are conducted in French, despite the fact that most Haitians speak Haitian Creole. Significant time is lost because there are no clear mechanisms for the Ministry to receive procedural questions from workers or their lawyers. Additionally, Haiti lacks experienced and qualified labor lawyers willing to represent low-wage workers who cannot pay legal fees or costs. Employers and their lawyers are able to capitalize on these obstacles in order to delay judicial and administrative proceedings and weaken workers who often opt to drop their cases. At the same time, lawyers, judges and prosecutors are conditioned by their elite legal training to give preferential treatment to the powerful and discount the causes, testimonies, and legal needs of the poor.

**RECOMMENDATIONS:** We respectfully encourage the Human Rights Committee to recommend the following:

**Women's Access:**

- Judges, prosecutors and police change the practice of de facto requiring medical certificates as a necessary prerequisite for rape prosecutions;
- Law makers undertake concrete steps to pass the proposed revised penal code before Parliament, including provisions criminalizing spousal abuse and marital rape;
- The government combat discriminatory social patterns by implementing public policies and programs designed to promote awareness and eradicate the stereotypes and social conceptions about the role of women in society that obstruct their access to justice;

### **Prosecution of Jean Claude Duvalier**

- The government provide all the required documentation to representatives of the victims in the case;
- The Ministry of Justice ensures an independent and fair trial;

### **Human Rights Defenders**

- The police promptly and thoroughly investigate threats made against human rights defenders and prosecute those responsible;
- The Government of Haiti take the necessary measures to ensure adequate protection of human rights defenders;

### **Extrajudicial Forced Evictions in IDP Camps**

- The Ministry of Justice ensure that the necessary safeguards are applied in eviction processes including the provision of adequate notice, legal remedies, and alternative housing to IDPs;

### **Labor and Employment**

- The Haitian government ensure that public employers stop terminating workers in retaliation for lawful union activity and reinstate workers with back pay; and
- The Ministry of Social Affairs and Labor ensure that workers who file claims against their employers obtain fair and impartial hearings.

### **QUESTIONS:**

#### **Women's access:**

1. What progress has been made regarding approval of the draft penal code revision law that is pending before the Haitian Parliament?
2. What measures has the Government enacted to promote awareness and eradicate stereotypes at all levels of government, including in the courts, about the role of women in society?

#### **Prosecution of Jean Claude Duvalier**

1. What steps will the Government take to ensure the independence of the judiciary and a fair trial in the case against Jean Claude Duvalier?
2. When does the Government expect to provide all required documentation to representatives of the victims in the case against Jean Claude Duvalier?

#### **Human rights defenders**

1. What steps will the Government take in order to provide human rights defenders access to a judicial remedy?
2. What measures will the Government take to protect human rights defenders from threats, attacks, harassment, and intimidation?

#### **Extrajudicial Forced Evictions in IDP Camps**

1. What steps has the Government taken to prevent extrajudicial forceful evictions of inhabitants of IDP camps?

#### **Labor and Employment**

1. What measures has the Government taken to prevent retaliation against workers and union activists who were terminated for protesting against low wages?
2. What progress has the Government made to ensure that workers who file claims against their employers obtain fair and impartial hearings?

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<sup>1</sup> *Access to Judicial Remedies in Haiti*, Institute for Justice and Democracy in Haiti *et al.*, Submission for the 112th Session of the United Nations Human Rights Committee, October 8 & 9, 2014 (Sept. 12, 2014) available at [http://www.ijdh.org/wp-content/uploads/2014/09/HRC\\_Access-to-judicial-remedies\\_Sept-12.pdf](http://www.ijdh.org/wp-content/uploads/2014/09/HRC_Access-to-judicial-remedies_Sept-12.pdf).