



Inter-American Commission on Human Rights  
Questionnaire For States And Civil Society To Assist In The Preparation Of The Annual  
Overview Of The Human Rights Situation In The Hemisphere  
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Joint Submission by the *Bureau des Avocats Internationaux* and the *Institute for Justice & Democracy in Haiti*

The Bureau des Avocats Internationaux (BAI) is a human rights organization based in Port-au-Prince, Haiti that provides legal services to low-income Haitians and engages in strategic advocacy on their behalf. The Institute for Justice & Democracy in Haiti (IJDH) is a human rights organization based in Boston, Massachusetts, that works in partnership with BAI to protect the human rights of Haitians through legal, policy and advocacy work. Together, we are grateful for the opportunity to present our joint submission to the Inter-American Commission on Human Rights regarding the human rights situation in Haiti.

Our review of recent initiatives by the Haitian government reveals that although several encouraging reforms have been made, much work remains to be done to ensure that Haitians can exercise their rights under the American Convention of Human Rights. A lack of resources, political will and coordination among government entities has hampered efforts to protect Haitian human rights, and will likely continue to do so until the Haitian government holds itself accountable through fair and timely elections. Lawful governance is a necessary precursor to developing strategic, long-lasting policies for enforcing human rights.

## **Question #2: Protection provided by security forces to those who receive and denounce threats**

### *Legal Framework for Protective Measures*

Haitian security forces consist of the Haitian National Police (PNH) and the United Nations Mission for Stabilization in Haiti (MINUSTAH). The PNH is under the authority of the inspector general of the PNH (IGPNH) and the Ministry of Justice and Public Security.<sup>1</sup> Haiti has no standing army; MINUSTAH acts as the only military force in the country.<sup>2</sup> MINUSTAH performs the majority of its work independently of the PNH, but also works in conjunction with the PNH on some security-related work, such as conducting patrols and checkpoints, and distributing medical assistance, food and water.<sup>3</sup> MINUSTAH and the PNH carry out joint operations in security-sensitive areas, including Cité Soleil, Simon Pelé and Martissant.<sup>4</sup> Finally, MINUSTAH is working with PNH to hire and train new officers.<sup>5</sup>



Haitian law requires that authorities refer all cases involving allegations of PNH criminal misconduct to the Office of the Inspector General of the Haitian National Police (IGPNH).<sup>6</sup> The Inspector General is responsible for conducting internal investigations into allegations of police misconduct and recommending action, as well as referring cases to the prosecutor.<sup>7</sup>

The Haitian Constitution protects journalists and human rights advocates by ensuring freedom of expression (article 28); freedom of the press (article 28.1); the right to petition (29.1) and freedom of association (article 31). Haiti is also a signatory to many international conventions that offer protection of freedom of expression and press, such as the International Covenant on Civil and Political Rights, which are self-executing under the Haitian Constitution. In the past few years, the Inter-American Commission on Human Rights (IACHR) has granted precautionary measures urging the Haitian government to protect human rights defenders who have been subject to threats, harassment and violence (see e.g., PM 363/12, PM 304/13, PM 157/13, PM 7/3, PM 161/14).

### *Initiatives*

Overall, the Haitian government has done little to address the threats made to human rights advocates and journalists by the Haitian National Police (PNH). A recent report written by *Plateforme des Organisations Haïtiennes des Droits Humains* (POHDH) found that approximately 38% of human rights defenders who had been threatened or harmed received those threats from state authorities or partisans of the state authorities, and 6% had received threats directly from police forces.<sup>8</sup> Many other sources have found that the PNH uses arbitrary arrests and unjustified use of force against human rights advocates and journalists.<sup>9</sup>

Because of long-overdue elections resulting in the term expiration of most of the parliament and all local mayors, journalists, the press, political opponents, lawyers and human rights advocates have been particularly active in denouncing the administration of President Michel Martelly, which has resulted in many threats and acts of intimidation.<sup>10</sup> For example, Haitian lawyer Mario Joseph, managing attorney of the *Bureau des Avocats Internationaux* who works on many cases calling for government accountability, received repeated death after denouncing the court's dismissal of the case against former president Jean Claude Duvalier in 2012, and after complaining to the IACHR in August 2012 of corruption, impunity and human rights abuses in the Martelly Government.<sup>11</sup> In 2012, the IACHR requested Haiti adopt precautionary measures to protect Attorney Joseph after a former prosecutor reported that the Minister of Justice ordered Joseph's unlawful arrest and the closure of the BAI.<sup>12</sup>

Many political opponents have reported to MINUSTAH that hooded armed men, some wearing Haitian National Police logos, have been driving around their homes in cars with tinted windows and no licence plates during the night.<sup>13</sup> Some even reported having been beaten and illegally arrested by government agents.<sup>14</sup> Further, some of these orders have reportedly come from government officials. For example, arbitrary arrests have been made following illegal arrest warrants issued by justices of the peace and



governmental commissioners, even though only the *juge d'instruction* (Investigating Magistrate) has the power to issue such arrest warrants.<sup>15</sup> Considering the role of the police forces as a source of threats, many human rights advocates and journalists do not trust the authorities to protect them.

A new head of the Inspection Générale de la Police Nationale d'Haiti (IGPNH) was nominated in September 2013, and has taken some measures to address the issue of illegal police activities.<sup>16</sup> For example, police inspectors must now wear armbands as identification; two telephone lines have been created to take calls from the public regarding police violations; a new IGPNH supervision system of the PNH was established and monthly press conferences aimed at informing the public about IGPNH activities are planned (see response to question #3).<sup>17</sup> The IGPNH has reported that they regularly conduct disciplinary investigations when allegations are made of police misconduct.<sup>18</sup> However, MINUSTAH reported that these disciplinary measures have been either weak or inexistent, and systematically inconsistent with human rights, the Haitian Constitution, national legislation, the PIDCP (articles 9 and 14) and the IACHR (article 8).<sup>19</sup>

Second, the Haitian government has done little to protect human rights advocates and journalists from those who have threatened them. POHDH report found that 73% of human rights advocates that received threats reported them to the authorities, however, the majority were never investigated. Those who did not file a report claimed that they did not do so because of lack of confidence in the justice system.<sup>20</sup> Specific examples of threats against human rights advocates and journalists illustrate the inaction on the part of the government of Haiti to protect those who are threatened.

A human rights lawyer of the organisation *Défense des Opprimés* (DOP), Patrice Florvilus, represented several residents of the camps known as “Adoken ACRA” and “Grave Village”, set up for those who were displaced after the 2010 earthquake.<sup>21</sup> Two of these residents, Darlin Lexima and Meris Civil, were arrested and tortured while in detention, resulting in the death of the latter.<sup>22</sup> DOP lawyers helped secure a report from a Justice of the Peace of the city of Delmas stating that Meris Civil had died because of torture during detention and that Darlin Lexima suffered degrading treatment, resulting in his release.<sup>23</sup> Florvilus filed a complaint before court of first instance of Port-au-Prince, requesting reparation for Civil’s family.<sup>24</sup> As a result of his participation in this case, Florvilus received many threats and was a subject of persecutions and baseless judicial complaints.<sup>25</sup> The IACHR found that Florvilus and the other members of DOP were in urgent need of state protection, and recommended that Haiti immediately adopt the necessary measures to ensure the right to life and physical integrity of the members of the DOP.<sup>26</sup> However, no measures were taken, and Florvilus left the country with his family in December 2013.<sup>27</sup>

Threats were also made against Pierre Espérance, Executive Director of the *Réseau national de défense des droits humains* (RNDDH). On April 2nd, 2014, Espérance received a letter accompanied by a bullet, accusing him and the members of RNDDH of diffusing false information with the goal of destabilising the government and tarnishing the reputation of Haitians. The letter also referred to an assassination attempt



made against Espérance in 1999.<sup>28</sup> On 9 April 2014, Espérance filed a complaint to the court of first instance of Port-au-Prince asking for the state to act against those responsible for the threats.<sup>29</sup> In response to these threats, the UN Independent Expert on the Situation of Human Rights in Haiti Gustavo Gallon communicated with Espérance and Haiti's Delegate Minister to the Prime Minister in charge of Human Rights and the fight against extreme poverty.<sup>30</sup> On 15 April 2014, the Delegate Minister publicly condemned all threats made against human rights advocates and asked human rights organisations to file a complaint, as had already been done by Espérance, so that the threats would be investigated and the perpetrators brought to justice.<sup>31</sup> However, no measures were taken and he continued to fear for his safety. On 2 May 2014, he filed a complaint to the IACHR asking for the issuance of a precautionary measure. In the Precautionary Measure number 161-14 (resolution 17/2014), dated 9 June 2014, the IACHR noted no measures had been taken by the state to protect Espérance's safety or to investigate the threats.<sup>32</sup> It also ordered that protective measures be taken as soon as possible. The government has not taken action to implement the measures.

Similarly, advocates of the women's organisation KOFAVIV have been receiving threats since 2013, including the attempted kidnapping of the children of Marie Eramithe Delva and Malya Apolon, both coordinators at KOFAVIV, and gun shots near the latter's home.<sup>33</sup> They filed a complaint on 17 September 2013, leading to an investigation and an arrest on 24 February 2014 of one of the suspected perpetrators of the attacks.<sup>34</sup> However, they continue to receive threats, such as intimidating calls and text messages, as well as gun shots near their office.<sup>35</sup> The members of KOFAVIV claim that these new threats are in fact a result of the arrest.<sup>36</sup> Following these new threats, they again filed a complaint to the police.<sup>37</sup> Unfortunately, as of June 2014, no measures had been taken to protect the lives and safety of these individuals, forcing Delva and Apolon to leave the country with their family.<sup>38</sup>

On February 8<sup>th</sup>, 2014, Daniel Dorsinvil, the coordinator of POHDH, and his wife, Girdly Lareche Dorsinvil, were killed by gun shot.<sup>39</sup> The PNH arrested two members of a well-known gang in Haiti, who they claimed were responsible for the killings. However, no indictments have been made and investigations have been slow and conducted with little zeal.<sup>40</sup> POHDH is sceptical of these arrests done in a hasty manner and demands an in-depth investigation.<sup>41</sup> Another organization, *Initiative pour la Mise en Place du Mouvement Patriotique Populaire* (IMPDP) also criticizes the lack of transparency of these investigations and would like a full report on the results of the investigations.<sup>42</sup> A full and transparent investigation into these killings is necessary.

Overall, although some initiatives have been taken, few journalists and human rights defenders who have been threatened receive protection from the government. Investigations into threats are rarely initiated,<sup>43</sup> due to a lack of government resources and a lack of political will.<sup>44</sup> Further, since government authorities are often the source of such threats, human rights defenders and journalists have little trust in the ability of the justice system to protect them. Initiatives must immediately and regularly be taken to protect individuals and investigate threats, no matter their source, in order to promote freedom of expression and the democratic process.



### **Question #3: Unlawful killings, forced disappearances and use of excessive force by State security forces**

#### *Legal Framework*

Haitian police officers are governed by both constitutional law and administrative law in the performance of their work. As state agents, Haitian police officers have an “absolute obligation to guarantee the right to life... in accordance with the Universal Declaration of Human Rights,” under Article 19 of the Haitian Constitution.<sup>45</sup> The Haitian government must also take appropriate steps to deter, prevent, investigate, prosecute and punish all actors who violate the right to life, based on their obligations in the International Covenant on Civil and Political Rights, the Inter-American Convention on Human Rights, and the Universal Declaration on Human Rights.

Haitian police officers must also follow orders and directives issued by the Haitian National Police (PNH). Haitian National Police General Order No. 003 provides that police officers may only use force “within the limits of what is strictly necessary to neutralize the resistance to the legal intervention of a police officer.”<sup>46</sup> Further, a police officer is only entitled to use lethal force as a last resort, when it is reasonably necessary to: “(1) protect themselves or others from an immediate threat, likely to cause serious injury or death; (2) prevent the commission of a crime that would put bystanders in danger of death or serious bodily injuries; (3) apprehend an individual already known to have committed a crime causing death or bodily injury to others and knowing that the flight of the same individual could cause further serious injury or death to others.”<sup>47</sup> Any abuse of force, lethal or otherwise, is strictly prohibited.

Haitian National Police General Order No. 003 also provides a framework for investigating the abuse of force by PNH officers. First, an investigation must be opened for each instance in which a PNH officer uses force that could result in serious bodily harm.<sup>48</sup> Each instance in which a PNH officer uses lethal force must be reported to the Inspector General of the PNH (IGPNH), who must perform an independent review to ensure that the lethal force used comports with the criteria of PNH General Order No. 003.<sup>49</sup> If the IGPNH determines that a PNH officer’s use of lethal force violated PNH General Order No. 003, it can recommend that a PNH officer’s contract be suspended or terminated.<sup>50</sup> In cases where there is prima facie evidence of criminal misconduct, the IGPNH is entitled to send their investigatory dossier to the criminal court to determine whether criminal charges should be filed.<sup>51</sup>

#### *Recent Initiatives to Improve this Framework to Provide Accountability*

The IGPNH has instituted several reforms to improve its investigation procedure, and thereby, promote the accountability of the PNH. In early 2014, the IGPNH created two telephone hotlines that citizens can call to report instances of abuse by PNH officials, free of charge.<sup>52</sup> Each PNH department is now required to meet weekly, and to report any issues which arise during weekly meetings to the IGPNH.<sup>53</sup> Lastly, the IGPNH now



holds monthly press conferences where it reports on the number of reports and investigations on-going, along with any action that has been taken in response to the investigations.<sup>54</sup> At the IGPNH's January 2015 press conference, it reported that 54 incidents were under review, and that 9 recommendations for further action were made, including 2 incidents that were referred to the Ministry of Justice.<sup>55</sup> The IGPNH also reported that it had new capacity to review more cases each month, due to improvements in information technology and communication.<sup>56</sup>

The IGPNH is in the process of a comprehensive review, or vetting, of all current PNH officers.<sup>57</sup> The vetting process consists of “assessing an individual’s integrity as a means of determining his or her suitability for police employment, including his or her adherence to relevant standards of human rights and professional conduct.”<sup>58</sup> Officers who successfully complete the vetting process receive certification to become lawful members of the PNH.<sup>59</sup> The last available data set on the vetting process reports that nearly half of Haiti’s 10,000 police officials have been vetted so far.<sup>60</sup>

Lastly, part of the mandate of the United Nations Mission for Stabilization in Haiti (MINUSTAH) is to work with the PNH to build its capacity and promote reform.<sup>61</sup> MINUSTAH has collected significant data on the use of force by PNH officers,<sup>62</sup> and has determined that, despite recent reform initiatives, a lack of accountability for the abuse of force by PNH officials remains.<sup>63</sup> MINUSTAH and other human rights organizations have reported that PNH officials continue to use excessive force against civilians, which has resulted in several deaths.<sup>64</sup> Few of these incidents have been investigated by the IGPNH, and none of the deaths reportedly committed by PNH officers has led to a prosecution.<sup>65</sup>

## **Question #7: Conditions of detention and violence in detention facilities**

### *Yvon Neptune v. Haiti Decision in the Inter-American Court of Human Rights*

In *Yvon Neptune v. Haiti*, the Inter-American Court of Human Rights issued a landmark decision concerning the many deficiencies within Haiti’s criminal justice system.<sup>66</sup> To date, the Haitian government has only engaged in minimal efforts to address the grave conditions of the Haitian criminal justice system.

Yvon Neptune, the petitioner, served as Prime Minister from 2002 to 2004, until President Jean-Bertrand Aristide was forced to flee the country due to political unrest.<sup>67</sup> Mr. Neptune was subsequently arrested and detained during the period of political and social instability that followed President Aristide’s departure, and remained in detention for over two years until he was pardoned by President René Préval in 2006.<sup>68</sup> In his petition to the Inter-American Commission on Human Rights, Mr. Neptune alleged that his arrest and detention violated several rights under the American Convention on Human Rights, including the right to a fair trial, the right to personal liberty, the right to judicial protection and the right to humane treatment.<sup>69</sup>

The Court found that the conditions of Mr. Neptune’s detention reflected greater patterns of ill-treatment, and that “there was a general context of serious shortcomings in



prison conditions in Haiti.”<sup>70</sup> On this basis, the Court found that Mr. Neptune’s right to humane treatment under Article 5 of the Convention was violated by the failure of Haitian prisons to “comply with the minimum material requirements of decent treatment pursuant to Article 5(2).”<sup>71</sup> In addition to providing Mr. Neptune an effective recourse to challenge his detention, the Court required the Haitian government to redress the systemic failures in its prison system by adopting “within a reasonable time, the necessary legislative, administrative, political and economic measures to ensure that prison conditions comply with international human rights norms; in particular, to alleviate the problems of overcrowding, shortcomings in the physical and sanitary infrastructure, deficient security system and the lack of contingency plans.”<sup>72</sup> The Court also required the Haitian government to establish a plan and action program for implementing these reforms within two years of the decision.<sup>73</sup>

#### *Recent Initiatives to Comply with Yvon Neptune v. Haiti*

Haiti’s criminal justice system, particularly the deplorable state of its prisons, has been the subject of many critiques both nationally and internationally. In his 2014 report, UN Independent Expert Gallón called for the Haitian government to implement urgent measures to improve health services, ensure access to food and healthcare and add a “more humane dimension” to the overall living quarters in Haitian prisons.<sup>74</sup> These concerns were echoed in the 2013 report by Gallón’s predecessor, Michael Forst.<sup>75</sup> Although the Haitian government has instituted several reforms to address the different deficiencies in the criminal justice system, these reforms have failed to comprehensively address the many issues plaguing the criminal justice system. Furthermore, the Haitian government has failed to honor the IACHR’s judgment with regard to providing individual remedies to Mr. Neptune.

With regard to prison overcrowding, the government has renovated several prisons in order to ensure that Haitian prisons are more in line with the standards put forth in the ACHR, and other international laws. With the help and cooperation of international governments, the Haitian government has refurbished prisons in Arcahaie, Hinche, Croix-des-Bouquets, Carrefour, Cap Haitien and Port de Paix.<sup>76</sup> Additionally, the detention facility in the Jérémie civil prison has been increased by 90 square meters, and a water tank has been built to facilitate access to treated water.<sup>77</sup> At the civil prison in Les Cayes, separate cells for minors and women have been installed.<sup>78</sup> This series of renovations, however, only affects a minor share of the entire prison system; and thus, fails to provide better conditions for the majority of Haitian prisoners.

The Haitian government has also made efforts to alleviate prolonged pre-trial detention, as another means to minimize prison overcrowding. In 2011, the government created an ad committee to review pre-trial detention, and offer recommendations to judicial authorities.<sup>79</sup> In its October 2013 report to the Human Rights Committee for the ICCPR review, the government reported that the work and recommendations of this committee led to “better management of detainee cases” and an increase in the number of cases heard.<sup>80</sup> The Ministry of Justice has also established detention boards consisting of judges, state commissioners and civil society members to review detainees’ cases so that



they can be more expediently reviewed by judges.<sup>81</sup> However, recent figures indicate that these initiatives have not secured a significant reduction in the overall pre-trial detainee population, as around 90% of Haitian prisoners are still being held within pre-trial detention.<sup>82</sup>

#### *Detainee Statistics*

In 2014, MINUSTAH reported that Haiti's prison population consists of approximately 10,250 inmates.<sup>83</sup> Statistics from 2013 estimate that women made up 4.8% of the Haitian prison population, and juveniles 3.9%.<sup>84</sup> In 2012, the prison population was approximately 8,722.<sup>85</sup> In 2010, the prison population was approximately 5,331.<sup>86</sup> In this five-year timeframe, the prison population has increased by nearly 200%, whereas the overall population has increased by around 14%.<sup>87</sup> More research is needed to determine the root causes of this dramatic increase, as well as its overall impact on the security situation in Haiti.

#### **Question #8: Right to know the truth and accountability for grave human rights violations**

##### *The Prosecution of former President Jean-Claude Duvalier*

From 1957 to 1986, Haiti was governed by the Duvalier family, under which many suffered from human rights abuses at the hands of the state. When Francois Duvalier died in 1971, his son, Jean-Claude Duvalier, fled the country in 1986 due to public uprisings and international pressure.

In 2011, upon Jean-Claude Duvalier's return to Haiti, 22 complaints of crimes against humanity were filed against him by the victims of his regime.<sup>88</sup> The Haitian government led by then President Rene Préval filed criminal charges against him for political violence, embezzlement and corruption. One year later, a magistrate judge appointed by incoming President Martelly upheld the financial criminal charges but dismissed the political violence crimes on the basis that they were past Haiti's ten-year statute of limitations. The IACHR denounced this decision and urged Haiti to comply with its international human rights obligations by continuing the prosecution.<sup>89</sup> In February 2014, after long delays,<sup>90</sup> the Appellate Court reinstated the political violence charges against Duvalier, ruling that the allegations amounted to crimes against humanity, which, under international law, are not subject to statutes of limitations. An investigating magistrate was appointed to continue the investigation to determine if enough evidence existed to have a trial. These measures were praised by the UN Independent Expert Gallón<sup>91</sup> and multiple civil society organizations.<sup>92</sup>

Unfortunately, the Martelly administration has interfered with the investigation's fairness and impartiality. First, the Martelly administration failed to cooperate with the investigating magistrate to provide crucial official case documents to the representatives of the victims.<sup>93</sup> The IACHR noted that the Government of Haiti withheld official documents, and urged them to release them and any other files that might be relevant in the search of justice.<sup>94</sup> President Martelly replaced the prosecutor and magistrate judge



handling the case in 2011; after which, the new judge appointed to the case dismissed the charges a few months later.<sup>95</sup> Further, many of those involved in the case have received threats, such as at least one of the appellate judges and human rights lawyer, Mario Joseph of the BAI. Joseph, who represents victims in the proceeding, received death threats after holding a press conference denouncing the lower court's dismissal of political violence charges.<sup>96</sup>

Duvalier passed away on 4 October 2014. However, the proceedings against his co-defendants, accomplices and other government officials accused of committing or participating in crimes against humanity continue.<sup>97</sup> The investigating magistrate is still pursuing an investigation of the human rights abuses in question. Nonetheless, the history of this case shows that the executive branch has a strong influence on the justice system, creating a lack of impartiality and will to prosecute. These obstacles may prove to be a barrier to justice, and therefore this case must continue to be monitored by human rights advocates, the press and the international community.

#### *The National Commission for Truth and Justice for the coup of 30 September 1991*

On 30 September 1991, the democratically elected President Jean-Bertrand Aristide was overthrown in a coup d'état headed by Lieutenant-General Raoul Cédras, and forced into exile. Cédras led an oppressive regime characterized by human rights violations. The coup was denounced by the international community, and the Organization of American States and the United Nations imposed sanctions against Haiti. President Aristide was later reinstated in July 1994 with the help of the United Nations and the United States.

The Commission for Truth and Justice was created by executive order on 17 December 1994, with the mandate to investigate human rights abuses under the Cédras regime. The Commission was made up of seven members, three of which were non-Haitians. In its final report, the Commission identified thousands of victims and human rights abuses and recommended that Haiti investigate and prosecute a list of alleged perpetrators. As an alternative, it recommended the establishment of an international tribunal. It also recommended reforms in the justice system and the establishment of a reparations commission.

Some early measures were taken, such as the prosecutions of those responsible for the Raboteau killings in 2000. The Raboteau prosecution resulted in the conviction of 53 former military and paramilitary, including the heads of the paramilitary group *Front Révolutionnaire pour l'Avancement et le Progrès Haitiens* (FRAPH). It also awarded victims with US \$140 million in damages.<sup>98</sup> However, in 2005, the Supreme Court of Haiti reversed fifteen of those sentences.<sup>99</sup> This decision was denounced by human rights groups, and criticized for reflecting the influence of the then Latortue Administration.<sup>100</sup> The majority of alleged perpetrators of human rights abuses during the Cédras regime have not been held accountable. Additionally, a reparations commission was never established.<sup>101</sup>



### *Gender Based Violence Prosecutions*

Haiti has struggled to provide access to effective remedies for victims of gender-based violence. Since 2009, there has been a strong increase in the rate of reported gender-based violence, becoming even stronger after the earthquake.<sup>102</sup> There are many systematic barriers to access to justice for victims of gender-based violence that discourage them from coming forward, including discrimination,<sup>103</sup> the failure of the police to follow through with investigations,<sup>104</sup> and an over-reliance on medical certificates in order to sustain a conviction.<sup>105</sup> The IACHR's 2009 report noted that most cases of violence against women are not formally investigated, prosecuted and punished by the justice system, which thereby sends a message that violence against women should be tolerated.<sup>106</sup>

Notwithstanding the many difficulties faced by victims seeking justice, there have recently been some successful convictions of gender-based violence in Haitian courts. Various grass roots organisations have helped women successfully bring charges against perpetrators of sexual assault. For example, human rights attorneys at the BAI have successfully represented survivors of gender-based violence throughout criminal proceedings as *parties civiles* (civil parties). As legal counsel for victims, BAI lawyers protect their client's civil interests, combat gender stigmatization in courts, pressure judicial officials to advance rape cases without bribes, and present sophisticated legal arguments and evidence.<sup>107</sup> In 2012 and 2013, 12 out of the 14 cases the BAI helped with ended in conviction, and dozens more are pending before the courts.<sup>108</sup>

One case at a time, grassroots organizations are making headway into strengthening the rule of law and ending impunity for gender violence. This type of legal support not only benefits the individual victim, but also helps shape the administration of justice. Although these cases show that progress has been made, many civil organisations recommend more training for those involved in criminal gender-based violence cases, greater resources to speed up the trials, and reforming the use of medical certificates.<sup>109</sup>

A draft Penal code revision law is pending before the Haitian parliament that includes added protections against gender-based violence offenses such as sexual harassment and marital rape, as well as a limited decriminalization of abortion in cases of rape, incest or danger to the health of the mother.<sup>110</sup> This initiative is very welcome, however, the bill has not been passed by Haiti's Parliament.

## **#10: Positive Examples of Compliance**

### *Examples of Compliance with Precautionary Measures relating to Women and Girls residing in IDP Camps*

On December 22, 2010, the Inter-American Commission on Human Rights granted precautionary measures for women and girls living in 22 camps for internally displaced people (IDP) in Port-au-Prince, Haiti.<sup>111</sup> The precautionary measures called for the Haitian government to take decisive action to address the widespread sexual violence occurring against women and girls living in IDP camps after the January 10, 2010



earthquake. The precautionary measures called for comprehensive reforms to address this issue, by ensuring the availability of medical and mental healthcare for victims, providing adequate security at IDP camps, training law enforcement to respond to sexual violence cases, establishing special investigative police units to investigate sexual violence cases and ensuring that grassroots women's groups had a meaningful role in the planning and implementation of reforms.<sup>112</sup>

Government initiatives to address the widespread sexual violence against women and girls living in IDP camps have principally occurred via two means: (1) through legislative reforms; and (2) through the work of the Ministry of Women's Affairs and grassroots women's groups. The Draft Law on the Prevention, Sanction, and Elimination of Violence of Women (DLVW), submitted to Parliament in 2011, codifies enhanced protections for women and girls. The DLVW criminalizes "enforced prostitution, kidnapping a woman to force her into prostitution, pimping and aggravated pimping," but does not criminalize prostitution itself so that the people being exploited by this system are not penalized.<sup>113</sup> It also provides protective measures to victims of sexual violence such as "relocation, medical care, access to social services, and economic aid."<sup>114</sup> Furthermore, it criminalizes stalking and increases penalties for violence directed at women and girls, including most forms of assault, battery and psychological violence.<sup>115</sup> Unfortunately, this Draft Law has yet to be voted on by Parliament.<sup>116</sup>

Similarly, the Ministerial Commission for the Modernization of the Penal Code has proposed several reforms that would enhance protections to women and girls. The Commission's proposal includes a more modernized definition rape that is based on a lack of consent, and no longer requires evidence of force.<sup>117</sup> Furthermore, marital rape is included as a crime.<sup>118</sup> The proposal criminalizes sexual harassment – which has yet to be codified as a crime under Haitian law.<sup>119</sup> Unfortunately, Parliament has failed to vote on this proposal to date.

The Ministry of Women's Affairs has made some effort to address the concerns of grassroots women's groups. The Ministry of Women's Affairs met with grassroots groups such as KOFVIV and WE-ADVANCE to review initiatives the Draft Law on the Prevention, Sanction, and Elimination of Violence of Women, and the proposed reforms to the Penal Code.<sup>120</sup> The Ministry of Women's Affairs also worked with grassroots groups to develop concrete measures to offer increased protection to women and girls in IDP camps in order to comply with the 2010 IACHR precautionary measure. In 2013, the Ministry opened three centers in Port au Prince, Cap Haitien and Les Cayes to "serve women, host trainings and provide technical assistance to young people on human rights and other women's issues."<sup>121</sup>

The Ministry created a National Office for the Coordination of Women's Affairs at the Haitian National Police, which is a specialized investigative unit "trained to respond to sexual and gender-based violence complaints."<sup>122</sup> With the help of grassroots women's groups, this specialized investigative unit has conducted some trainings on gender-based violence awareness with Haitian National Police officers.<sup>123</sup> Similarly, the UN has worked to provide trainings to judges and prosecutors to facilitate the investigation and prosecution of sexual violence cases.<sup>124</sup> Finally, grassroots groups



worked with international community and Haitian government to provide more security personnel at camps, and conducted gender-based violence awareness trainings with certain security personnel.<sup>125</sup>

However, it is important to note that cooperation between grassroots women's groups and international actors has largely occurred on an ad hoc basis. Despite the fact that the IACHR's Precautionary Measure called for women's groups to take part in planning and implementing reforms, many women's groups reported continued exclusion from key decision-making processes, such as the United Nations Gender Based Violence Sub-Cluster.<sup>126</sup> Other non-governmental organizations (NGOs) that played a prominent role in developing reforms to address gender-based violence have similarly failed to incorporate the perspectives of women's groups.<sup>127</sup>

### *Examples of Compliance with Precautionary Measures relating to Human Rights Defenders*

The IACHR has granted precautionary measures to several of Haitian human rights defenders in recent years, as discussed in more detail above, and has called on the Haitian government to ensure the protection of human rights defenders whose lives have been threatened due to their human rights work. To date, there is no evidence that the Haitian government has taken steps to protect human rights defenders.

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<sup>1</sup> *Haiti 2013 Human Rights Report, Country Reports on Human Rights Practices for 2013*, United States Department of State, Bureau of Democracy, Human Rights and Labor, p. 11, available at <http://www.state.gov/documents/organization/220661.pdf> [hereinafter US Department of State Human Rights Report 2013]

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<sup>17</sup> *Ibid.*, p. 19-20.

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