

Republic of Haiti

Submission for the

112th Session of the United Nations Human Rights Committee, October 8 & 9, 2014

Review of Haiti's Report under the International Covenant on Civil and Political Rights

Access to Judicial Remedies in Haiti

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Date Submitted: September 12, 2014

I. INTRODUCTION

1. Under both Article 2 of the International Convention of 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.¹ 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.

2. Haiti's poor are systematically excluded from social services; half of all primary school-age children cannot attend school, and most Haitians have little access to basic healthcare, safe housing, or clean water.² Haiti is among the poorest countries in the world by several indexes.³ The unemployment rate is 60 percent,⁴ and approximately 77 percent of Haitians live below \$2 a day.⁵ Accompanying poverty creates deep fissures within Haitian society.

3. The justice system reinforces social, political and economic exclusion that prevents the poor from asserting their fundamental rights.⁶ Class discrimination and elitist legal training condition lawyers, judges and prosecutors to give preferential treatment to the powerful, either based on class prejudice or in search of bribes, while they discount the testimonies and legal needs of the poor.⁷ Corruption presents a significant barrier to access to justice at the level of the prosecutor's office and at the investigatory stage, and is further facilitated by intense backlogs, wait-times, racketeering, and gender discrimination.⁸

4. While cases of gender-based violence, specifically rape, are increasingly making their way onto the courts' dockets, the Haitian justice system still presents many structural (corruption, long procedure, and lack of resources) and social barriers that discriminate against female complainants at each level of the process and discourage women and girls from formally seeking justice.⁹ Additionally, unrepresented women's cases are rarely heard due to disorganization and corruption; cases are often prioritized based on whether bribes are available to the judges or clerks taking the case.¹⁰

5. Lack of access to education prevents major segments of Haitian society from understanding the workings of the justice system. Legal proceedings are conducted in French and most legal texts are written in French, while the majority of the population speaks only Haitian Creole.¹¹ Legal costs and lawyers are too expensive for the vast majority of Haitians to pay. The state does not sponsor legal assistance, and only a handful of civil society organizations offer legal assistance to victims.¹² As a result, most Haitians, including women, workers and families threatened with forced evictions in post-earthquake displace camps, have no access to the formal justice system.

6. The justice system also suffers from a lack of human and financial resources.¹³ Few resources are available to victims of crime. Police and judges are poorly paid and receive insufficient training and resources to manage cases.¹⁴ Chronic under-investment and low salaries make honest practices extremely difficult for officials.¹⁵ Even where judicial officials are not dishonest, the legal culture encourages elitism.

7. The earthquake struck a heavy blow to Haiti’s already broken justice system. Twenty-seven of 28 national government buildings were destroyed by the earthquake, including the Ministry of Justice, and close to 20 percent of Haiti’s civil service was killed or injured.

8. Class exclusion reinforces a culture of impunity in the justice system—a system that is controlled by the elite class and that fails to hold accountable government agents, such as politicians and law enforcement, for corruption and human rights abuses. The Haitian government’s lack of political will to advance the prosecution of former dictator Jean-Claude “Baby Doc” Duvalier to justice highlights the lack of an independent and fair judiciary.¹⁶ 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 the representatives of the victims.¹⁷

9. Additionally, 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 growing number of human rights defenders from threats, attacks, harassment, and intimidation, despite a series of precautionary measures issued by the Inter-American Commission on Human Rights 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.¹⁸

10. This report focuses on obstacles confronting human rights victims seeking to access judicial remedies in the following areas:

- Gender-based violence;
- Prosecution of Jean Claude Duvalier;
- Human rights defenders;
- Extrajudicial forced evictions in internally displaced persons (IDP) camps;
- Labor and employment; and
- Cholera.

II. HAITIAN AND INTERNATIONAL LEGAL FRAMEWORK AND PRACTICE

11. Under the Haitian Constitution, international treaties, once ratified, become a part of the legislation of Haiti and abrogate any pre-existing, conflicting laws.¹⁹ Haiti acceded to the ICCPR on February 6, 1991, and submitted its first report on November 29, 2012.²⁰ The Constitution also establishes the guarantee of the right to life, health, and respect of the human persons pursuant to the Universal Declaration of Human Rights (UDHR).²¹

12. ICCPR Article 2.3 guarantees the right to an effective remedy for rights violations regardless of the status of the actor who has committed the violation, and makes it incumbent on States party to ensure that this right is upheld.

13. General Comment No. 3 emphasizes that States parties' obligation under the ICCPR "is not confined to the respect of human rights, but...States parties have also undertaken to ensure the enjoyment of these rights to all individuals under their jurisdiction. This aspect calls for specific activities by the States parties to enable individuals to enjoy their rights."²² General Comment No. 31 further states "[c]essation of an ongoing violation is an essential element of the right to an effective remedy" as Article 2.3 "requires that in addition to effective protection of Covenant rights States Parties must ensure that individuals also have accessible and effective remedies to vindicate those rights...The Committee attaches importance to States Parties' establishing appropriate judicial and administrative mechanisms for addressing claims of rights violations under domestic law."²³ A State Party's failure to investigate allegations of violations could give rise to a separate breach of the ICCPR.²⁴

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

A. Access to Effective Remedies: Women's Access to the Judicial System for gender-based violence claims (Articles 2.3, 3, 6, 14, and 26)

14. As previously mentioned, most Haitians have little to no access to the formal justice system due to deep-rooted gender discrimination and prohibitively expensive court fees, legal fees and lawyers.²⁵ The result is that the administrators of justice at all levels of the judiciary do not prioritize incidents of violence against women, do not take women seriously, do not take account of the critical evidence to identify the culprits, and do not have respect for the victims and their families when they try to cooperate in investigations.²⁶ In addition to Article 2, systemic gender discrimination in the criminal justice system also violates Article 3 (equal enjoyment of ICCPR rights between men and women), Article 6 (right to life in relation to gender-based violence), Article 14 (right to equality the courts and tribunals), and Article 26 (equal-protection before the law).

15. Since 2009, the rate of violence against women and girls has steadily increased, with a spike in violence after the earthquake due to the unsafe living conditions in displacement camps.²⁷ Discrimination continues to be a widespread phenomenon in Haitian society, resulting in women having a disadvantaged position in the economic, education, health, justice, labor and decision-making sectors.²⁸ Acts of violence, including intimate partner abuse and rape against women and girls, are a grave manifestation of the discriminatory treatment women receive in Haitian society.²⁹

16. Access to justice for victims of gender-based violence is further impeded by a lack of support from the Haitian legal system. Women's organizations successfully lobbied to change the Haitian Penal Code's classification of rape from an offense against morals to a criminal offense against the person, resulting in the Decree of July 6, 2005.³⁰ The Decree does not, however, give a precise definition of rape or the elements of consent, and omits marital rape. Despite the criminalization of rape, reporting rape often remains "an exercise in futility" for many women who lack access to legal support.³¹ For example, a 2012 UN Report examined sixty-two rape cases filed in Port-au-Prince during a three-month period. Over one year after they were filed with police, none of the cases had gone to trial.³² Police and courts lack the resources they need to adequately respond to complaints of rape and other forms of sexual violence.³³ Victims often fail to report sexual assaults to police because they expect an average bribe of 1,200 gourdes (US\$28) will be expected to receive the complaint.³⁴

17. Public officials in the justice system (often males) who interact with female victims of gender-based violence frequently have attitudes that perpetuate the stigma associated with rape and obstruct female victims' access to justice.³⁵ Victims and their families are often mistreated when attempting to avail themselves of judicial remedies.³⁶ In some instances, police officers have asked female complainants what they had done or what they were wearing to have provoked the sexual assault, or whether they had already had previous sexual relations with the accused.³⁷ This abuse further inhibits women and girls from reporting their assault.

18. Police, prosecutors and judges often ignore the testimony of female victims and place undue weight on arbitrary facts and factors. For example, Haitian judges, prosecutors and police routinely dismiss rape cases when the victim does not receive a medical certificate from a doctor within 72 hours of the attack, even though medical certificates are not legally required to sustain a conviction. Medical certificates represent one of the most important obstacles to justice. Though medical certificates are not required to prosecute rape cases,³⁸ judges will often not pursue a case if: (1) their medical certificate has not been issued by the General Hospital; (2) the medical certificate did not provide sufficient detail; or (3) the medical establishment did not provide the victim with a medical certificate.³⁹

19. Such a requirement is problematic because women, especially poor women, face considerable obstacles to obtaining a medical certificate that can adequately support their legal case. Cost is one barrier. Many victims cannot afford transportation to the medical facility or are unaware of facilities offering free medical services and certificates. Fear is another barrier. Victims are also afraid to be examined and report their assault, especially with a male doctor.

20. The medical certificates are often misleading. Many rape cases do not leave injuries indicating the use of force, so the medical certificate may not produce any relevant evidence. Nonetheless, if the medical certificate does not show the use of force, which is often the case if the victim was not a virgin when assaulted, judges and prosecutors will dismiss the case for lack

of evidence of force. In one recent case now pending before the Haitian Supreme Court, the prosecutor and appellate court relied on an inconclusive medical certificate that found no evidence of force rather than the victim's detailed testimony that she was bound, beaten and raped twice.⁴⁰ This case is unfortunately typical. The requirement of a medical certificate indicates the belief that a woman's testimony by its nature is questionable.⁴¹

21. Female victims of violence and their families are reluctant to turn to the justice system due to abuse received by law enforcement, the sluggishness of prosecutions, costly legal fees, and preconceived notions of female behavior.⁴² Women's marginalization and exclusion from the justice system have led to an environment where female victims lack confidence in the system's ability to right the wrongs committed.

22. 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, as well as a limited decriminalization of abortion in cases of rape, incest or danger to the health of the mother.⁴³ Another comprehensive framework law on violence against women, to strengthen institutions and state support for victims and survivors of gender-based violence, was drafted in 2011, but as of September 2014, the bill had not been finalized or proposed to Haiti's Parliament.

23. The failure of the justice system to provide more access to women to vindicate their right to be free from violence and discrimination denies the victims the right to a remedy and frequently leads to repeated and long-term victimization.⁴⁴ ICCPR Article 2.3 states that "the competent authorities shall enforce such remedies when granted."⁴⁵ The Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Convention of Belém do Pará), which has been ratified by the Haitian government, urges States to establish the judicial and administrative measures necessary to ensure that women who have been subjected to violence and discrimination effectively access restitution, reparation of the damage, or other just and effective means of compensation.⁴⁶ Finally, the United Nations Security Resolution 1325 on Women, Peace and Security underscores "the responsibility of all States to put an end to impunity and to prosecute those responsible for genocide, crimes against humanity, and war crimes including those relating to sexual and other violence against women and girls, and in this regard stresses the need to exclude these crimes, where feasible from amnesty provisions."⁴⁷

24. With concerted action from lawyers and women's grassroots groups, sexual assault cases can be successfully prosecuted. The *Bureau des Avocats Internationaux* (BAI), a Haitian public interest law firm, represent survivors of gender-based violence throughout the criminal proceedings as *parties civiles* (French of civil parties), protecting their client's civil interests. BAI lawyers combat gender stigmatization in the courts, pressure judicial officials to advance

rape cases without bribes, and present sophisticated legal arguments and evidence, such as medical expert testimony. In 2012 and 2013, helped obtain convictions in 12 of 14 cases of sexual assault after the January 12, 2010 earthquake, and has dozens of more cases pending before the courts. These successes show that with more training, resources and political will, more women and girls can access justice in Haiti.

25. To be compliant with Articles 2.3 and 6, the Haitian government must guarantee that acts of gender-based violence and discrimination are investigated and punished, as well as ensure the adequate reparation of the harm done, through measures of restitution, indemnity and rehabilitation.”⁴⁸ Specifically, the Haitian government must address the sluggishness of prosecution, the arbitrary use of medical certificates, discriminatory attitudes of the legal system, and pending penal code legislation.

B. Prosecution of Jean Claude Duvalier

26. The prosecution of former dictator Jean-Claude “Baby Doc” Duvalier highlights the lack of independence of the Haitian judiciary and the challenges the government must address regarding access to legal remedies under ICCPR Article 2. Article 14 of the ICCPR guarantees the right to a fair and public hearing before courts of law and Article 26 guarantees equality before the law. Multiple delays, political appointments linked to the case, and other issues raise concern regarding Haiti’s fulfillment of its ICCPR obligations. The UN High Commissioner for Human Rights, Navi Pillay, said in 2011 that “Haiti has an obligation to investigate the well-documented serious human rights violations that occurred during the rule of Duvalier, and to prosecute those responsible for them.” Madame Pillay further stated that “[s]uch systematic violations of rights cannot remain unaddressed. The thousands of Haitians who suffered under this regime deserve justice.”⁴⁹ Several NGOs such as Human Rights Watch and Amnesty International have published reports highlighting the government’s obligation under international law to prosecute Duvalier.⁵⁰

27. In January 2011, the Haitian government filed criminal charges for political violence, embezzlement and corruption against Duvalier a few days after he returned to Haiti following 25 years of exile. A magistrate judge, newly appointed to the case by President Michel Martelly shortly after he took office, upheld the financial criminal charges in January 2012, but dismissed the political violence crimes upon the recommendation of the government prosecutor, another Presidential appointee, on the basis that they were past Haiti’s ten-year statute of limitations.⁵¹ Both sides appealed the split decision. On February 20, 2014, after nine months of virtual silence on the case, the Appellate Court reinstated the political violence charges against Duvalier.⁵²

28. Upon reinstating the charges for political violence crimes, the Appellate Court held that the allegations against Duvalier amounted to crimes against humanity and under international law, to which Haiti is bound under the terms of its constitution, statutes of limitations do not apply to crimes against humanity.⁵³ The Court designated Judge Durin Duret Junior, one of the three appellate judges who issued the ruling, as the *Juge d'Instruction* (Investigating Magistrate) to conduct a thorough investigation of all relevant witnesses and those accused of these crimes to determine whether there is enough evidence for Duvalier to stand trial. Judge Durin's final report will be considered by the Appellate Court, which will then issue an order.

29. Following the Appellate Court's reinstatement of the political violence charges, the UN Independent Expert on the human rights situation in Haiti, Gustavo Gallón, praised the court, saying:

The decision of the Court of Appeals is a significant rectification in the path in which impunity for past human rights violations was so far engaged in Haiti...I congratulate the courage of the three judges from the Court of Appeals for their decision taken in a not always conducive atmosphere...I now encourage the Haitian Government to provide the appointed investigating judge an independent and secure environment to perform his long awaited and difficult task...This decision, taken in conformity with international human rights law, is particularly important as it recognises that crimes against humanity are an integral part of the Haitian legal framework...⁵⁴

30. Lawyers and civil society organizations commend the Appellate Court for its courageous decision to reinstate the case against Duvalier, which constituted a significant step towards combatting immunity. But concern remains about the government's lack of political will to bring Duvalier to justice as required under the ICCPR. The Government of Haiti has failed to cooperate with the investigating magistrate or provide crucial official case documents for the representatives of the victims, promptly the Inter-American Commission on Human Rights to call upon the Haitian government and foreign governments to provide access to the documents.⁵⁵ At least one of the appellate judges has reportedly received threats for his safety in relation to this case. In January 2011, Haitian lawyer Mario Joseph with the BAI received a number of death threats after he held a press conference in Port-au-Prince denouncing the lower court's dismissal of political violence charges.

31. 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 2011.⁵⁶ President Martelly has presented Duvalier at public events as an elder statesman and has renewed Duvalier's diplomatic passport.⁵⁷ More recently, on May 5, 2014, President Martelly selected one of Duvalier's lawyers, Frizto Canton, as the executive branch's nomination to the Conseil Electoral Provisoire (CEP) (Provisional Electoral Council).⁵⁸ This appointment has political significance because President Martelly has failed to hold elections since took office in 2011.

Without elections, all House of Deputy members, two-thirds of the Senate and all local mayors will term out in 2015, leaving the President with the opportunity to rule by decree.⁵⁹ In the meantime, Parti Unité Nationale (PUN) (National Unity Party), the political party founded by Duvalier's father, Francois "Papa Doc", has indicated its plans to enter candidates in the upcoming elections predicted for 2015.⁶⁰

C. Human Rights Defenders

32. Human rights defenders in Haiti have been increasingly subjected to threats, attacks, harassment and intimidation. The Haitian Government has failed to take adequate measures to protect them and, in fact, is engaged in violating many of their rights as defined in the ICCPR, including their rights to determine their political status (Article 1); rights to liberty of security of person and to freedom from arbitrary arrest or detention (Article 9); rights of free movement and choice of residence (Article 12); rights to equality before the courts (Article 14); right to be free from arbitrary or unlawful interference with their privacy, family, home, and correspondence and the concomitant right to protection under the law from such interferences (Article 17); freedom of expression (Article 19); and freedom of assembly (Article 21). False criminal charges levied against human rights defenders and arrests that cannot be upheld in court is another suggestion that the Government of Haiti is instrumentalizing the judiciary for political ends. 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.

33. Over the last year, leaders and members of Komisyon Fanm Viktim Pou Viktim (KOFAVIV) (Commission of Women Victims for Victims), an organization founded by rape survivors to support and empower other rape survivors, have been threatened and harassed. These threats, which have been ongoing since 2013, have continued even following the February 24, 2014 arrest of a woman whom the police held responsible for earlier threats and harassment against Marie Eramithe Delva (KOFAVIV's Secretary General), Malya Vilard Apolon (the organization's Coordinator), and other KOFAVIV members.⁶¹ Distressed by the threats, Apolon left Haiti with her children in March 2014.⁶² Although KOFAVIV members have filed complaints with the police, insufficient measures have been taken to investigate the incidents or to ensure that members of the organization are adequately protected and able to fully enjoy their rights to liberty and security as they seek to provide rape survivors from the poorest neighborhoods of Port-au-Prince with critical support.⁶³ For more information, please see *Report on Failure to Investigate and Prevent Threats and Violence against the Women Human Rights Defenders at KOFAVIV*, submitted with the Human Rights Committee in September 2014 for Haiti's review.⁶⁴

34. On February 8, 2014, Daniel Dorsainvil and his wife Girdly Lareche were shot and killed on a Port-au-Prince street by an unidentified man who fled the scene on a motorcycle. Haitian police have not confirmed the identity of the killer or a motive for the murders, but many Haitians, including other human rights defenders, believe that the couple's murder was a political assassination related to Dorsainvil's work as General Coordinator of the Plateforme des Organisations Haïtiennes des Droits Humains (POHDH) (Platform of Haitian Human Rights Organizations), an association of eight non-profit Haitian rights institutions that have been publically critical of Haiti's "judicial-political scandals," "human rights abuses" and "deteriorating social and economic conditions" under President Michel Martelly's government.⁶⁵ A few weeks before the murder, POHDH had issued press releases and a report criticizing the Government's refusal to hold timely local and parliamentary elections and the systematic impunity enjoyed by current and former government officials, including former dictator Jean-Claude "Baby Doc" Duvalier.⁶⁶ Fears that Dorsainvil and Lareche were victims of political assassination are reasonable, given recent threats against human rights defenders and those critical of the Martelly government, and the poor murder investigation.⁶⁷

35. Several lawyers who challenge government corruption and impunity through the court system have received death threats, been placed under police surveillance, and faced false criminal charges. Haitian lawyer Mario Joseph, a finalist for the 2013 Martin Ennals Award for human rights defenders, has received repeated death threats for his work on several high profile cases calling for government accountability, including representing victims of Duvalier in criminal court. In 2012, the Inter-American Commission on Human Rights (IACHR), the human rights arm of the Organization of American States (OAS), requested that Haiti adopt any necessary measures to guarantee Attorney Joseph's life and personal integrity after a former prosecutor reported that the Minister of Justice ordered Joseph's unlawful arrest and the closure of his office, the BAI.⁶⁸ These threats to Attorney Joseph followed his denunciation of the court's dismissal of the case against Duvalier in 2012 and his submission of a letter to the IACHR in August 2012 complaining about corruption, impunity and human rights abused in the Martelly government.

36. Human rights lawyer Patrice Florvilus also received precautionary measures from the Inter-American Commission in November 2013, after receiving threats and a criminal summons for crimes he did not commit in retaliation for his legal representation of a post-earthquake displacement camp and police brutality victims.⁶⁹ The frivolous criminal charges against Attorney Florvilus were issued by Attorney Reynold George, who is defending Jean-Claude Duvalier and President Martelly's wife and son in corruption charges.⁷⁰

37. As in Attorney Florvilus's case, the police have summoned political opponents to court or even made arrests that have not been justified in court, and activists and lawyers have been continuously subjected to harassment and intimidation. Rony Timothée, a spokesperson for

opposition group *Fòs Patriotik ou Respè Konstitsyon* (FOPARK) (Patriotic Force for the Respect of the Constitution), was provisionally released on June 4, 2014, following his May 17, 2014 arrest on charges of burning a car and incitement during a demonstration against President Michel Martelly's government on May 14, 2014.⁷¹ Last year, activist Enol Florestal and his attorney, André Michel, were arrested and detained after filing a case against President Martelly's wife and their son for alleged corruption.⁷² Although Florestal has been imprisoned since August 16, 2013, his lawyer was arbitrarily arrested on October 22, 2013, though released the subsequent day. In July 2013, the judge who presided over the corruption case filed by attorneys André Michel and Newton St. Juste against President Martelly's family, Judge Serge Joseph, died under suspicious circumstances two days after he reported being threatened by top officials, including President Martelly.⁷³

38. On May 1, 2014, the police arrested 10 activists (Maurice Mathurin, James Leblanc, Ernst Verdieu, Marc Vulsaint, Renald Fanfa, Lefils Domond, Junior Jeanty, Markendy Cajuste, Julmis Gabriel and Jean Jean Ville Edouard) participating in a demonstration organized by critics of the Martelly government.⁷⁴ The police charged them with setting fire to and destroying property during the demonstration.⁷⁵ However, all of the detainees categorically denied this allegation. Following his interrogation of the prisoners on May 27 and May 29, 2014, the judge signed six release orders for those who indicated that they had not participated in the demonstration and issued detention warrants for the remaining activists who affirmed their participation (Jeanty, Cajuste, Gabriel, and Edouard).⁷⁶ The BAI is currently representing the four activists and has requested their release.

39. Various human rights defenders have been forced to take added precautionary measures as a result of threats they have received. In April 2014, Pierre Espérance, Executive Director of the Réseau national de défense des droits humains (RNDDH) (National Human Rights Defense Network), received a menacing letter at his organization's office in Port-au-Prince accompanied by a bullet.⁷⁷ The IACHR issued precautionary measures in his favor in May 2014.⁷⁸ Amnesty International launched an urgent action calling on the Government to investigate the threat and ensure his protection.⁷⁹

40. Oxygène David, a leader of the grassroots organization *Mouvement de Liberté, d'Égalité des Haïtiens pour la Fraternité* (MOLEGHAF) (Movement for Liberty and Equality by Haitians for Fraternity) and a prominent leader of the party *Dessalines Coordination* (KOD), has been forced to move out of his neighborhood as a result of several anti-government protests in which he has been involved and his prominence as an advocate of human rights, democracy, and rule of law. On June 7, 2014, David along with other MOLEGHAF activists and allies from FOPARK took part in a protest when President Martelly came to the Fort-National neighborhood to distribute World Cup T-shirts. Critical of the Government's efforts at boosting its popularity despite its failure to address social ills in the impoverished neighborhood, David made a radio announcement on June 9, denouncing the Government for corruption and the wave of political

persecution against him and other activists.⁸⁰ Since then, he has noted an increased police presence in his neighborhood and has heard radio reports that the police are looking for him.

D. Extrajudicial Forced Evictions in IDP Camps

41. More than four years after the 2010 earthquake that left over 1.3 million Haitians homeless,⁸¹ over 100,000 thousand are still living in internally displaced persons (IDP) camps.⁸² The International Organization for Migration (IOM) reports that between January and March 2014, 243 sites still housed approximately 137,543 persons in IDPs camps, or 37,131 households.⁸³ Many of the inhabitants of IDP camps have been forcefully evicted with the assistance and complacency of Haitian police, mayors, parliamentarians and other government agents. Many others are living under the threat of eviction. According to IOM figures, 16,118 families were evicted from 178 camps between July 2010 and December 2013.⁸⁴ The United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA) indicates that around 21,000 victims of the earthquake are currently living under the threat of forced evictions from IDP camps.⁸⁵ Additionally, of the 172 camps that are officially recognized that house 104,000 individuals, 39 are facing the threat of immediate eviction.⁸⁶ Fortunately forced evictions in IDP camps have slowed since April 2014,⁸⁷ as a result of grant programs and mediations between humanitarian actors and landowners, but residents and housing rights activists fear that evictions will rise as the Haitian government hopes to close all camps before the end of 2014.

42. The vast majority of these evictions involved force or coercion⁸⁸ and failed to respect both Haitian law and ICCPR Article 2. Under Haitian law, an eviction requires that a landowner show proof of legal title in court and serve a summons on each individual who occupies the disputed land.⁸⁹ In addition, the Haitian Constitution recognizes the right to decent housing⁹⁰ and limits the right to private property if it is “contrary to the general public interest.”⁹¹ ICCPR Article 2 guarantees the right to legal remedies to anyone who is deprived of his or her rights. These forced evictions are also a violation of Article 12 of the ICCPR, of the right to liberty of movement and freedom to choose his residence, and of Article 17, of freedom from arbitrary or unlawful interference with a person’s privacy, family, home or correspondence.

43. Despite these legal protections, the justice systems’ exclusion of the poor allows self-proclaimed landowners to illegally evict thousands of residents from tent cities without proving legal ownership of the land.⁹² Procedural safeguards are not applied in most evictions⁹³ and evictees and those facing the threat of eviction had little or no affirmative legal recourse,⁹⁴ in violation of ICCPR Article 2. Haitian legal procedures provide no mechanism to request injunctive relief to prevent the extrajudicial evictions from occurring, 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.

44. 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 also proved difficult. First, legal action against Haiti's traditionally powerful landowners seems futile to IDP communities, which is made up primarily of the poor and politically disempowered. The elitist character of Haiti's judicial system prevents many victims of forced evictions from understanding how the legal process can protect them. Secondly, many victims do not fully appreciate the importance of their role in the legal proceedings, such as collecting necessary evidence. This raises yet another barrier to collective legal action.

E. Labor and Employment

45. The Government of Haiti has failed to ensure the enjoyment of various rights elaborated in the ICCPR with respect to labor and employment. These include the right to unionize (Article 22), right to equality before the law (Article 26), right to legal remedy (Article 2.3), and women's rights to self-determination (Article 1) and equal enjoyment of their civil and political rights (Article 3).

Discrimination against workers

46. 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. Public and private employers generally enjoy impunity for their labor and employment violations. Haiti lacks experienced and qualified labor lawyers willing to represent low-wage workers who cannot pay legal fees or costs. Similarly, the judiciary generally favors employers in labor and employment disputes, and workers and union organizers struggle to find justice.⁹⁵

Union Suppression

47. Haiti has the third lowest monthly wages in the apparel industry, surpassing only Cambodia and Bangladesh.⁹⁶ However, in violation of Article 22 of the ICCPR, the Government has prevented workers from organizing for higher wages. As many as hundreds of workers, especially union activists, were suspended or terminated 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 have little or no legal recourse due to the difficulties of bringing cases before labor courts or the Ministère des Affaires Sociales et du Travail (MAST) (Ministry of Social Affairs and Labor).⁹⁷

48. The Government's interpretation of the 2009 Minimum Wage Law has also created a conflict in interpretation that allows factory owners to violate the law with impunity. Article 2.2

of the *Law Fixing the Minimum Wage in Industrial and Commercial Establishments in Haiti*, Law No. CL-09-2009-010 (the Minimum Wage Law) provides that:

From 1st October 2012, for companies oriented exclusively towards re-export and employing workers essentially by the piece or by the task, the price paid per unit of production (in particular piece, dozen, gross, meter) must be set in a manner that permits a worker to earn at least 300 Gourdes for an eight hour workday; the minimum wage of reference in these companies being set at 200 Gourdes.⁹⁸

49. Creating a conflict between the plain meaning of the text and its own interpretation, the Government of Haiti issued a notice in October 2013 indicating that 300 Gourdes per day was not a minimum wage.⁹⁹ Through this notice, the Minister of Labor and the Commission Tripartite de Mise en Oeuvre de la Loi HOPE (CTMO-HOPE) (Tripartite Commission for Implementation of the HOPE law)¹⁰⁰ backpedaled on the Minimum Wage Law, supporting factory owners' interpretations and, hence, non-compliance with the piece rate wage of 300 Gourdes per workday. A *Better Work Haiti* assessment¹⁰¹ conducted between September 2013 and February 2014 and involving 23 factories found that 39 percent of apparel industry workers earned between 200 and 249 Gourdes for an eight-hour workday, while only 29 percent earned 300 or more.¹⁰²

50. In November 2013, the Conseil Supérieur des Salaires (CSS) (Haiti's Wages High Council) recommended that the government increase the minimum wage in various sectors, including the garment industry, from 200 Gourdes a day (\$4.65) to 225 Gourdes (\$5.23).¹⁰³ On December 10 and 11, 2013, factory workers (primarily women) in Port-au-Prince's industrial zone, Société Nationale des Parcs Industriels (SONAPI), responded by walking off the job and holding demonstrations protesting underpayment of their wages and demanding 500 Gourdes a day (\$11.63) to reflect the actual cost of living.

51. A committee of unions representing workers in SONAPI's factories organized the walkout and demonstrations. On the third day, December 12, the Association of Haitian Industries locked out the workers, claiming they had to shut the factories for the security of their employees. Most workers returned to work on December 13 but others continued to protest in the streets. Unions have documented at least 36 terminations in seven factories throughout December and January in retaliation for the two-day protest, mostly of union representatives.¹⁰⁴ Under the Haitian Labor Code, workers only have the right to a one-hour strike that includes stopping work and leaving the work establishment.¹⁰⁵ This law does not give workers a meaningful right to association and protest grievances.

52. On April 16, 2014, President Martelly issued a decree raising the minimum wage from 200 to 225 Goudes.¹⁰⁶

53. Although workers continue to advocate for a living wage, they face significant obstacles. Terminated workers in particular encounter difficulties as they seek legal remedies for violations. Legal procedures for the labor court are obscure and proceedings are conducted in French, despite the fact that most Haitians do not speak it.¹⁰⁷ Significant time is lost because there are no clear mechanisms for the MAST to receive procedural questions from workers or their lawyers.¹⁰⁸ Employers and their lawyers are able to capitalize on these obstacles in order to delay the judicial and administrative proceedings and to weaken workers who, due to a lack legal representation and limited information about how the system works, often opt to drop their cases.¹⁰⁹ 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.¹¹⁰

Anti-union persecution

54. All five members of the leadership of the *Syndicat des Employés Conséquents de l'Électricité d'Haïti* (SECEdH)(Union of Employees of Haiti Electricity), a union of employees of Haiti's state-owned electricity company, were terminated after they held a press conference on January 10, 2014, alleging company mismanagement and corruption.¹¹¹ One union officer was severely injured when EdH's security guards violently broke up the press conference.

Limited Remedies for Sexual Harassment in the Workplace

55. Sexual harassment is not prohibited under Haiti's labor code,¹¹² though such conduct constitutes discrimination based on gender, which is prohibited under ICCPR Article 2.1. This is also a violation of Article 1 of the ICCPR of a woman's right to self-determination and a failure of the Government to ensure women's equal enjoyment of their civil and political rights under ICCPR Article 3. *Better Work Haiti* notes several incidents of such discrimination, particularly in the garment industry. However, the problem is difficult to assess given victims' fears of retaliation.¹¹³ Such incidents likely remain significantly underreported because of the limited availability of information about remedies and limited access to such remedies.¹¹⁴

F. Cholera

56. In October 2010, health officials confirmed the first cases of cholera in a remote region of Haiti—a disease never before reported in the country.¹¹⁵ Independent investigations traced the outbreak to the Mirebalais base of the Mission for the Stabilization of Haiti (MINUSTAH), where reckless sanitation management led to the contamination of the local water supply and ultimately the Artibonite River.¹¹⁶ International experts have widely concluded that the disease was introduced into Haiti by UN peacekeeping forces from Nepal.¹¹⁷

57. As of June 2014, 703,510 cases and 8,562 cholera-related deaths have been reported.¹¹⁸ Both the Convention on the Privileges and Immunities of the United Nations (CPIUN) and the status of forces agreement (SOFA) signed by the UN and the Haitian government, provide for settlement mechanisms for harms arising out of MINUSTAH's operations in Haiti. However, as further elaborated in our other appended report entitled, "ICCPR Violations in the Context of the Cholera Epidemic in Haiti", the UN has asserted its immunity and refused to receive the claims of Haitian cholera victims.¹¹⁹

III. RECOMMENDATIONS

We respectfully urge the Human Rights Council to recommend that:

Women's Access to the Judicial System

- Judges, prosecutors and police change the practice of de facto requiring medical certificates as a necessary prerequisite for rape prosecutions as the medical certificates are being used to supplant female victims' testimony and the practice is discouraging complaints;
- Law makers undertake concrete steps to pass the proposed revised penal code before Parliament, including provisions criminalizing spousal abuse and marital rape, as well as a provision ensuring that police, judges and prosecutors do not unofficially mandate medical certificates;
- Ministry of Justice in collaboration of the Ministry of Women ensure that public officials responsible for responding to incidents of sexual violence receive sensitivity training addressing the varied psychological, emotional and physical trauma and implications of gender-based violence, thus enabling them to respond adequately to these complaints;
- Courts, under the direction of the Ministry of Justice, facilitate the use of experts in cases prosecuting sexual violence to provide further clarification on the behavior of psychological, emotional and physical implications of gender-based violence;
- The judiciary, under the direction of the Ministry of Justice, supports initiatives that provide free legal representation of victims through the civil party mechanism in domestic prosecutions of sexual assault;
- 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;
- Ministry of Justice in collaboration of the Ministry of Women circulate information nationwide about women's rights to be free of violence and judicial resources available to women victims of violence, in Haitian Creole and French;

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- 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 judiciary, under the direction of the Ministry of Justice, ensures that any human rights defenders who are arrested are promptly informed of the charges against them;
- The Government of Haiti respect the right of its citizens to determine their political status and freely express their political opinions in both private and public fora;
- 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 Remedies

- Haitian government ensure that public employers stop terminating workers in retaliation for lawful union activity and reinstate workers with back pay;
- The Ministry of Social Affairs and Labor (MAST) ensure that workers who file claims against their employers obtain fair and impartial hearings, especially garment workers terminated as a result of the December 10 and 11, 2013 protests;
- The Government of Haiti establish mechanisms to address sexual harassment in the workplace;
- MAST widely disseminate information about avenues for redress for labor and employment violations;

Cholera

- Take all necessary measures to ensure that the UN to establish a standing claims commission, or some equivalent body, that will ensure access to fair, impartial, and transparent adjudication of cholera victims' claims;
- Call on the UN to provide just compensation to victims of cholera, and ensure transparency and participation of victims at all stages of the compensation process;
- Renegotiate the SOFA with the UN to allow for accountability of MINUSTAH members to Haitian people for human rights violations;

- Raise objections before the UN to the renewal of MINUSHAH’s mandate until a standing claims commission or some equivalent body is established to provide access to justice for all Haitian citizens, including cholera victims;
- Ensure that public hospitals provide medical certificates to cholera victims certifying that they were treated for cholera;
- Strengthen the water and sanitation sectors through the allocation of increased technical and financial resources;
- Take appropriate measures to ensure coordination of international organizations providing health care, access to water, and other services; and
- Enable the full participation of Haitian stakeholders in project design and policy development to respond to cholera, and ensure that all projects are implemented using a human-rights based approach.

ANNEX I: ENDNOTES

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¹¹⁶ *Peacekeeping without Accountability*, supra note 115 at 18-19.

¹¹⁷ *Peacekeeping without Accountability*, supra note 115 at 18-19

¹¹⁸ Pan American Health Organization & World Health Organization, *Epidemiological Update: Cholera* (June 27, 2014) <http://www.paho.org> (Epidemiological Alerts and Updates).

¹¹⁹ Boston College, et.al, *Violations in the Context of the Cholera Epidemic in Haiti*, submission to Human Rights Committee (Sep. 12, 2014).