

**UNITED NATIONS
HUMAN RIGHTS COMMITTEE
112TH SESSION
GENEVA, SWITZERLAND
OCTOBER 2014**

**FIGHTING FOR OUR LIVES:
VIOLENCE AND DISCRIMINATION AGAINST
WOMEN AND LGBT PERSONS IN HAITI**



**IN RESPONSE TO
THE SECOND PERIODIC REPORT
OF THE REPUBLIC OF HAITI**

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MADRE

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INTRODUCTION

Haiti's history is marked by difficult periods of political instability, government repression, harmful foreign intervention, and economic hardship. While political and social movements in the country have often championed the cause of human rights, patriarchal norms that minimize the plight of women and girls, and deep-rooted discriminatory attitudes against a fledgling LGBT movement have made the enforcement of rights for all citizens of Haiti more difficult.

The ongoing effects of the earthquake in Haiti in 2010 are devastating. Pervasive sexual and gender-based violence against women and girls has plagued communities living in displacement camps and in resource-poor neighborhoods. Lesbian, gay, bisexual and transgender ("LGBT") people also experienced a drastic increase in stigmatization, discrimination and violence, which have included increasingly violent anti-LGBT protests inculpating LGBT individuals as the cause of the earthquake.

States Parties' international obligations to protect the rights of women, girls and LGBT individuals are reiterated year after year by UN agencies and treaty bodies. Having ratified the International Covenant on Civil and Political Rights ("ICCPR" or "Covenant"), in addition to its two optional protocols, Haiti is obligated to uphold these standards as well. Further, Haiti is a State party to many of the principal international human rights treaties including the Convention on the Elimination of All Forms of Racial Discrimination ("CERD"), the Convention of the Rights of the Child ("CRC"), the Convention on the Elimination of All Forms of Discrimination against Women ("CEDAW") and the International Covenant on Economic, Social and Cultural Rights ("ICESCR"). Despite the continued efforts to ensure compliance with Haiti's international human rights obligations, the situation of women, girls and LGBT individuals remains critical due to a persistent lack of accountability for continuous violations and impunity.

Haiti's current Constitution was adopted in 1987 and takes precedence over any other source of law. Under Haiti's legal system, once international treaties or agreements have been approved and ratified in the manner specified by the Constitution, they become part of Haitian legislation and abrogate any contrary law.¹

Haiti's Executive Branch is now considering penal code revisions that, if approved, would be a landmark in legislation addressing gender-based violence ("GBV") in Haiti and would greatly advance Haiti towards meeting her obligation under international law to prevent and redress human rights violations. Domestic and international advocates continue to raise awareness and build the momentum needed for the passage of this historic piece of legislation.

¹ The Constitution of Haiti. Art. 276-2 (1987). Available at <http://pdba.georgetown.edu/Constitutions/Haiti/constitution1987en.pdf> ("Once international treaties or agreements are approved and ratified in the manner stipulated by the Constitution, they become part of the legislation of the country and abrogate any laws in conflict with them"). Consequently, the ICCPR, which was approved and ratified on February 6, 1991, has been an integral part of the domestic legislation of Haiti since May 6, 1991, when it came into force. This is also the case with the optional protocols to the Covenant.

Although the Haitian government has implemented some remedial measures following the earthquake, it has largely failed to comply with its due diligence obligations under the ICCPR to investigate, prevent, protect, punish and redress human rights violations against Haitian women, girls and LGBT individuals. Likewise, the Haitian government has failed to provide victims in need adequate access to medical treatment and adequate access to the justice system. Unfortunately, in its State Report, published in January 2013, the Haitian government makes no reference to human rights violations committed against women or LGBT persons, nor does it discuss any measures taken for the prevention, protection, prosecution or redress of violations committed against them.

This report documents violations of several rights contained in the ICCPR, targeting women, girls, and LGBT people: unequal treatment and discrimination based on sexual orientation or gender identity (articles 2.1 and 26); violence and threats to the lives of women and LGBT human rights defenders (articles 2.1, 3, 6, 19, 21 and 22); failure to investigate incidents of sexual and gender-based violence (articles 3, 6, and 7); sexual violence and rape amounting to torture (article 7); arbitrary arrests and detention of LGBT people in violation of the right to privacy (article 9 and 17); violence and threats against LGBT people deterring the right to freedom of opinion, expression, and association (articles 18, 19, 21, and 22); and harassment, violence, and discrimination against women, girls, and LGBT people, preventing access to the justice system (articles 2.1, 3 and 26). The organizations submitting this report interviewed over 100 stakeholders and directly affected individuals in Haiti both through individual and group interviews. Because of the risk of retaliation to those who contributed to this report, including interviewees and activists, we have changed the names of some individuals and chosen not to identify them others.

This report is submitted to you by *Femme en action contre la stigmatisation et la discrimination sexuelle (FASCDIS)*², *Fondation SEROvie (SEROvie)*³, *KOURAJ*⁴, *Association Nationale de Protection des Femmes et Enfants Haitiens (ANAPFEH)*⁵, *MADRE*⁶, the *International Women's Human Rights (IWHR) Clinic at the City University of New York (CUNY) School of Law*⁷, and the *International Gay and Lesbian Human Rights Commission*

² *Femme en action contre la stigmatisation et la discrimination sexuelle (FASCDIS)* is a grassroots Haitian lesbian LGBT organization providing outreach services to LGBT persons.

³ *SEROvie*, is a grassroots Haitian gay men's organization providing outreach services to LGBT persons.

⁴ *KOURAJ* is a Haitian community-based LGBT organization that works to empower gay and transgender persons in Haiti through education about fundamental human rights, the creation of a strong community for LGBT persons in Haiti, and activism to facilitate fundamental societal change.

⁵ *ANAPFEH* currently works to support women and children from Haiti's poorest communities, improving their quality of life and realizing their human rights. Among these populations are sex workers and their children.

⁶ *MADRE* is an international women's human rights organization that works in partnership with community-based women's organizations worldwide to address issues of health and reproductive rights, economic development, education and other human rights.

⁷ The *International Women's Human Rights Clinic (IWHR)* of the *City University of New York (CUNY) School of Law*, works on gender human rights issues both at a domestic and international level.

(IGLHRC).⁸ The facts in this report are meant to supplement the information set forth in the second periodic report submitted by the Republic of Haiti to the Committee for its review of Haiti during the 112th Session to be held in October 2014. We hope that the findings herein will be useful to the Human Rights Committee, and will serve as a catalyst for future advocacy efforts.

⁸ The International Gay and Lesbian Human Rights Commission (IGLHRC) is an international human rights organization dedicated to improving the lives of people who experience discrimination or abuse on the basis of their sexual orientation, gender identity or expression.

I. ARTICLES 2 AND 26: RIGHT TO EQUALITY UNDER THE LAW AND FREEDOM FROM DISCRIMINATION

Article 2(1) requires States Parties to ensure that the rights granted to its citizens under the Covenant are enjoyed by *all* of its citizens “without distinction of any kind” and includes “sex” as a protected class.⁹ The decision in *Toonen v. Australia* expands the category of sex as a protected class to include sexual orientation.¹⁰ Article 26 of the Covenant re-enforces article 2 by guaranteeing all persons equality before the law, prohibiting discrimination along gender and other status lines, and holding that States parties alone are responsible for ensuring the equal enjoyment of rights without any discrimination within their respective states.¹¹

The right to non-discrimination applies to the full range of rights contained in the ICCPR, including the right to a remedy. Therefore, States Parties must not only “ensure that individuals also have accessible and effective remedies to vindicate those rights,”¹² they must ensure this right without regard for sex, gender identity or sexual orientation. To prevent such access is to deny one of the core principles of the Covenant itself, that of equality under the law (article 26).

The Committee has also expressed a positive obligation on the part of the State party to publicly announce a no-tolerance policy regarding violence against LGBT people. In its 2013 Concluding Observations to Peru, the Committee concluded that the Government of Peru must affirmatively make clear to its citizens that continuing acts of discrimination against LGBT persons will not be tolerated.¹³

1. Violence, Harassment and Discrimination against LGBT People

Although all citizens are guaranteed general equality under Haitian law,¹⁴ prevailing social norms in Haiti condemn homosexuality and gender non-conforming behavior, compelling members of the LGBT community to live in secrecy and isolation, under constant threat due to fear of violence, harassment and discrimination. For example, radio programs and newspapers have made inflammatory and hateful assertions blaming the LGBT community for the earthquake in 2010 as “punishment for their lifestyle.” Moreover, during the February 2012 Carnival celebration, popular music stations played songs proclaiming, “kill the gays” and “gays

⁹ International Covenant on Civil and Political Rights (ICCPR), art. 2, G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess. Supp. No. 16, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (ratified by Haiti on Feb. 6, 1991) [hereinafter CCPR].

¹⁰ “The Committee confines itself to noting, however, that in its view, the reference to “sex” articles 2, ¶ 1, and 26 is to be taken as including sexual orientation.” *Toonen v. Australia*, CCPR/C/50/D/488/1992, UN Human Rights Committee (HRC) (April 4, 1994).

¹¹ ICCPR, General Comment No. 18: Non-Discrimination (Art. 26) , ¶ 12, (1994); U.N. Doc. HRI/GEN/1/Rev.1 at 26 (*see also*, CCPR, art 26. U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171.

¹² ICCPR, General Comment. No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, ¶¶ 15-16, (2004) U.N. Doc. CCPR/C/21/Rev.1/Add.13

¹³ Human Rights Committee, Concluding Observations: Peru, ¶ 8 (2013) U.N. Doc. CCPR/C/PER/CO/5.

¹⁴ The 1987 Constitution of Haiti recognizes the equality of men and women without discrimination on the grounds of gender. “Haitians are equal before the law, without prejudice to the advantages vested in Haitians by birth who have never given up their nationality” CONSTITUTION OF 1987 Art. 18, Title 3 March 10, 1987.

are guilty of the situation in Haiti.”¹⁵ This creates an environment in which pervasive societal discrimination and gender-based violence against LGBT persons is normalized.

Members of the LGBT community are regularly harassed in their neighborhoods. For example, in one of many instances of harassment from her community, one lesbian was told that her neighborhood is “for poor people, not gays.”¹⁶ Others described being regularly followed during the day, with neighbors shouting threats and taunts.¹⁷ One person we spoke to told us his home was broken into by a group of men who had frequently harassed him. The men punched and kicked him and one of them broke a bottle over his head.¹⁸

Unfortunately, these crimes go largely uninvestigated. Moreover, a major source of physical violence, discrimination, and harassment against LGBT persons comes from the very police forces charged with protecting them. For example, interviewees reported that police officers routinely refuse to help LGBT individuals, based on their actual or perceived sexual orientation and/or gender identity. In one case, a man whose family abandoned and shunned him for being gay was severely beaten one night by his brother. When he reported the assault to the police, the police officer on duty told him that there would be no investigation as his brother was justified in beating him and that he should consider poisoning himself.¹⁹ Several lesbian individuals reported gang rapes committed by policemen.²⁰ While these acts themselves violate the Covenant, they also contribute to an overall lack of confidence in the Haitian government to protect LGBT victims from violence and discrimination.

2. The Failure To Investigate Gender-Based Violence Against Women and Girls Violates The Rights To Equality Under The Law And To Freedom From Discrimination

People who have experienced gender-based violence in Haiti regularly confront difficulties in reporting these crimes to police.²¹ Some note that police officers told them there are not enough resources to investigate the scene of the crime. However, women and girls subjected to sexual violence face unique challenges accessing the justice system due to gender-based discrimination. For example, when victims report crimes of sexual violence in person, officers frequently blame them for the attacks, and routinely ask female victims what they did or what they were wearing to provoke such an attack.²²

Discriminatory and sexist treatment by the prosecutor’s office towards victims further contributes to the overall failure to investigate instances of gender-based violence. These attitudes are particularly acute towards resource-poor women and girls.²³ Officials from the

¹⁵ IWHR Clinic Interview, KOURAJ, October 23, 2012 (on file with authors).

¹⁶ IWHR Clinic Interview, FASCDIS, October 9, 2013 (on file with authors)

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ IWHR Clinic Interview, FASCDIS, October 8, 2013 (on file with authors).

²⁰ Multiple cases of police harassment and violence are documented in this submission. *See pages 4-5, 10-12, 14-17 24-29, and 36-37* for more information.

²¹ Meena Jagannath, *Barriers to Women's Access to Justice in Haiti*, 15 CUNY L. Rev. 27, 37-38 (2011).

²² *Id.*

²³ Meena Jagannath, *Barriers to Women's Access to Justice in Haiti*, 15 CUNY L. Rev. 27, 45 (2011).

prosecutor's office have attempted to discredit or discourage victims or their parents.²⁴ In one case, before considering the available evidence, a deputy public prosecutor told a victim's lawyer that he did not believe the victim was raped and contended that she was trying to extort money from the accused.²⁵ All of these instances serve to promote the growing culture of impunity for gender-based violence against women and girls and moreover demonstrate that Haiti is not fulfilling its obligations under articles 2 and 26 to punish assailants and protect women from violence, harassment and intimidation.

3. Pending Penal Code Revisions would Strengthen Rights for Women, Girls and LGBT People

Haiti's Executive Branch is now considering penal code revisions that, if approved by Parliament, would come a long way to address gender-based violence and violence and discrimination against LGBT people in a comprehensive manner. Haitian Penal Code revisions drafted by the Ministerial Commission for the Modernization of the Penal Code and the revisions developed for the Criminal Procedure Code would boost the legal protections of the human rights of women in Haiti through several key provisions:

1. A modernized definition of rape, including specific codification of marital rape as a crime;
2. Criminalization of sexual harassment;
3. Legalization of therapeutic abortion in the first 12 weeks of pregnancy when the health of the mother is threatened or distressed;
4. Protection for Haiti's LGBT community by expanding the identified groups protected from discrimination under Haitian law to include protection from discrimination on the basis of sexual orientation and gender identity.

Defining Rape: The draft penal code revision law provides a legal definition for rape that includes lack of consent; consent is not implied by lack of resistance and corroborating evidence is not mandatory for conviction.²⁶ Additionally, under the revised code, consent is presumed to be lacking when the victim is less than sixteen years of age.

The revised penal code also criminalizes marital rape under Haitian law. This penal code revision would bring Haiti's law into harmony with the vast majority of Latin American States. All but two countries in Latin America have criminalized such violence.

Criminalizing Sexual Harassment: Sexual harassment has traditionally been associated with and defined as occurring in the context of unequal power relations, particularly in employment contexts. As a result, sexual harassment is often dealt with solely in countries' labor

²⁴ *Id.*

²⁵ *Id.*

²⁶ Article 212-21 of the revised penal code draft law defines the crime of rape as: "Any act of sexual penetration, of whatever nature, committed without the consent of a person is rape."

codes and legal protections are only applied to those who experience such behavior in the formal employment sector. Many countries have acknowledged these limitations and have begun to address sexual harassment in a more comprehensive manner and in various areas of the law, such as anti-discrimination law and criminal law.²⁷ Haiti's Draft Penal Code Revision Law would, for the first time in Haiti's history, recognize sexual harassment as a crime and punishable by law.

Accessing Therapeutic Abortion: The current Haitian Penal Code criminalizes abortion in all circumstances, violating the human rights to physical integrity, life, health and non-discrimination as well as potentially the right to freedom from cruel, inhuman and degrading treatment. Under the code, there is an absolute ban on the practice of abortion with no exceptions and a woman is subject to imprisonment if she is found to have intentionally terminated her pregnancy or gives consent for an abortion to be performed.²⁸ Any person performing an abortion is also subject to imprisonment. Medical professionals and other health providers can be condemned to forced labor camps if they instruct or provide the means to perform an abortion. The law provides no exception, even in cases where a woman's life or health is threatened by her pregnancy, or where the pregnancy is the result of rape.

The penal code revision would amend the law and allow for the legalization of therapeutic abortions²⁹ in the first twelve weeks of pregnancy when the health of the pregnant woman is threatened or distressed. Throughout Latin America, access to therapeutic abortion has been increasingly viewed as an issue of the physical and mental health and safety of a woman, for example, who has been raped or subject to incest. The issue of pregnancy after rape is of critical concern, and the draft law situates abortion in limited instances as part of comprehensive health care for the victim in response to exceptional trauma.

Prohibiting Discrimination Based on Sexual Orientation or Gender Identity: The pending penal code revisions not only address many of the weaknesses in existing laws related to the prevention and punishment of gender-based violence but also enhance protection against discrimination experienced by many LGBT people in Haiti. Notably, the revisions would criminalize acts of violence committed against persons on the basis of their sexual orientation or gender identity in certain circumstances.

4. The Pending Draft Law: Prevention, Sanction, and Elimination of Violence against Women

In 2007, the Haitian Ministry of Women's Affairs initiated important new draft legislation that aims to eliminate discrimination against women as well as address gender-based violence in Haiti. The Draft Law on the Prevention, Sanction, and Elimination of Violence against Women³⁰ is in conformity with and intended to implement the Convention of Belém do

²⁷ For Example, Costa Rica protects against sexual harassment in the workplace, while Mexico outlaws sexual harassment among federal employees. Costa Rica, the Law against Sexual Harassment at Work and in the Home (March 3, 1995, Law 7476). Mexico, Article 259 of the Federal District Penal Code.

²⁸ Haitian Penal Code Art. 262.

²⁹ Abortion is referred to as a therapeutic abortion when it is performed for medical reasons, including to save the life of the pregnant woman or to prevent harm to the woman's physical or mental health.

³⁰ Loi cadre sur la prévention, la sanction, et l'éradication des violences faites aux femmes.

Pará. This draft legislation addresses issues pertaining to sexual and gender-based violence, including domestic violence, and provides redress for victims. Ms. Yanick Mezil of The Ministry of Women's Affairs has declared her commitment to finalizing the comprehensive Draft Law on the Prevention, Sanction, and Elimination of Violence against Women. However, due to lack of proper funding the Ministry has not been able to move forward the draft law, which has been lingering within its office since 2011.

Over the last year the Ministry on Women's Affairs has opened three centers in Port au Prince, Cap Haitian, and Les Cayes, meant to serve women, host trainings and provide technical assistance to young women and men on human rights and other themes related to women's issues. These small steps in the right direction are hampered by the fact that this Ministry is the least funded Ministry in the President's cabinet.

The same is true for those parts of the police force that have been implementing initiatives to improve law enforcement response to gender-based violence. Principle Commissar Marie Louise Gauthier, Division Police Chief & Head of the National Office for the Coordination of Women's Affairs at the National Police of Haiti (PNH), heads a specialized mobile unit specifically trained to respond to sexual and gender-based violence complaints.³¹

At the opening of the National Bureau for the Coordination of Women's Affairs (CNAF) in April 2012, the PNH National Coordinator for Women's Affairs discussed how courses on violence against women and gender relations would be provided to new police recruits and described plans to extend training to all officers currently serving. The Haitian Ministry of Justice, in collaboration with the American Bar Association Rule of Law Initiative and the National Police Academy, the Magistrate School and the Medico-Legal Research Action Unit³² facilitated a training that included over 30 judges and focused on the effective investigation, prosecution, and adjudication of sexual and gender-based violence cases. Despite these efforts by the Haitian government, continuing these initiatives remain difficult due to lack of resources.

5. Response by the Government of Haiti

In paragraph 84 of the Report of the Republic of Haiti to the Committee,³³ the government acknowledges the shortcomings of its procedural codes in many aspects of criminal justice but is silent on the current status of the Penal Code Revisions. The first steps towards addressing the barriers to accessing justice would be to pass the current pending legislation and update Haiti's Penal Code to be in compliance under international law. However the Government's report states nothing about the pending Penal Code revisions, which are currently languishing with the Executive Branch and have yet to be submitted to Parliament for vote.

³¹ Commissar Gauthier has been in the National Police of Haiti (PNH) since 1995. She has held her post, the second highest rank in the PNH, since 2003. National Coordinator for Women's Affairs in the PNH, Principal Commissar Gauthier is chief of the 4th Company of the Brigade of Motorized Intervention.

³² *Unité de Recherche et d'Action Medico-Légale*, or URAMEL.

³³ Initial Reports of States parties to the Human Rights Committee, Haiti, ¶ 84, U.N.Doc. CCPR/C/HT/1 (Jan. 23, 2013).

6. Recommendations:

- The Government of Haiti should immediately pass the pending Haitian Penal Code revisions drafted by the Ministerial Commission for the Modernization of the Penal Code and the pending Draft Law on the Prevention, Sanction, and Elimination of Violence against Women, that will also protect Haiti's LGBT community by expanding the identified groups protected from discrimination under Haitian law to include protection from discrimination on the basis of sexual orientation and gender identity.
- The Government of Haiti should take steps to provide and coordinate permanent substantive legal and sensitivity trainings for police officers, prosecutors, Judges and other relevant Government officials who may interact with victims of violence motivated by gender, sexual orientation or gender identity.
- The Government of Haiti must ensure that all complaints of gender-based violence are independently and thoroughly investigated, and if evidence exists, prosecuted; and that the perpetrators brought to justice.
- The Government of Haiti should allocate resources to local community groups that are allied to and working with the LGBT community and assisting victims of gender-based violence.

II. ARTICLE 3: OBLIGATION TO ENSURE EQUAL RIGHTS OF MEN AND WOMEN, IN CONNECTION WITH ARTICLE 6: RIGHT TO LIFE, AND IN CONNECTION WITH ARTICLE 7: FREEDOM FROM TORTURE OR CRUEL, INHUMAN, OR DEGRADING TREATMENT OR PUNISHMENT

Article 3 asserts that State parties must ensure that all rights set forth in the Covenant are protected equally for both men and women.³⁴ Under article 6, States have affirmative obligations to protect against and provide redress for violations of the right to life.³⁵ Additionally article 7 provides that all persons shall be free from torture or cruel, inhuman or degrading treatment or punishment (CIDT).³⁶ Lastly, article 3 requires “States to provide for equality between men and women in the enjoyment of all Covenant rights.”³⁷ Building upon these articles, General Comment No. 28 requires States to ensure that all persons live free from torture and discrimination based on gender.³⁸ Furthermore, the Committee has emphasized that in order for States to be compliant under articles 3 and 7, States must address the particular vulnerability of certain groups to torture, including women and LGBT persons.³⁹

Specifically, this Committee has repeatedly found that rape amounts to torture.⁴⁰ In addition, this Committee has emphasized that the State must take measures to prevent and address article 7 violations regardless of whether the perpetrator is a public or private actor.⁴¹ Similarly, General Comment No. 28 obligates States to combat discriminatory action carried out by both public and private actors that violate article 3.⁴²

Under the due diligence standard, States must also take affirmative steps to prevent, punish, investigate and redress violations of articles 3, 6 and 7.⁴³ The due diligence standard extends to non-State actors when the government knew or should have known that such

³⁴ CCPR, art. 3.

³⁵ CCPR art. 6.

³⁶ CCPR art. 7.

³⁷ *Id.* art. 3.

³⁸ Human Rights Committee, General Comment No. 28: art. 3 ¶¶ 3-4 U.N. Doc. CCPR/C/21/Rev.1/Add.10 (2000).

³⁹ Concluding Observations of the Human Rights Committee, Colombia, ¶ 12, U.N. Doc. CCPR/C/COL/CO/6 (August 4, 2010).

⁴⁰ *See e.g.*, Concluding Observations of the Human Rights Committee, Jamaica, ¶ 19, U.N. Doc. CCPR/C/JAM/CO/3 (Nov. 11, 2011); see also Concluding Observations of the Human Rights Committee, Colombia, ¶ 12, U.N. Doc. CCPR/C/COL/CO/6 (August 4, 2010).

⁴¹ Concluding Observations of the Human Rights Committee, Mexico ¶ 89 (c), U.N. Doc. CCPR/C/MEX/CO/5 (May 17, 2010) (finding that the State should conduct investigations and punish perpetrators, without concern for whether the perpetrator is a public or private actor).

⁴² Gen. Comment No. 28, ¶ 4; Haiti has also signed onto the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) treaty on August 16, 2013. CAT General Comment No. 2 that where the State knows or “has reasonable grounds to believe” that private actors are carrying out acts amounting to CIDT and/or torture, and the State fails to prevent or investigate the actions, then “the State bears responsibility and its officials should be considered as authors, complicit or otherwise responsible under the Convention for consenting to or acquiescing in such impermissible acts.” Committee Against Torture, General Comment No. 2: Implementation of art 2 by States parties, ¶ 18, U.N. Doc. CAT/C/GC/2 (January 24, 2008).

⁴³ Human Rights Committee, *Luis Asdrúbal Jiménez Vaca v. Colombia*, Communication 859/1999 (2002) U.N. Doc. CCPR/C/74/D/859/1999 ..

violations were taking place.⁴⁴ Additionally, States are required to report on the protective measures and legal remedies available to women whose article 7 rights have been violated.⁴⁵

Further, the Haitian Constitution enshrines the right to life⁴⁶ and prohibits the use of any unnecessary force or restraint against a person during apprehension, arrest or interrogation.⁴⁷ The language of the Constitution does not specify which individuals are protected, and does not make any distinction based on gender. For this reason, these rights must be construed to apply to all individuals in Haiti.

1. Haiti's Failure to Address and Prevent Gender-Based Violence

Haitian women and girls, especially those living in resource-poor neighborhoods or displacement camps, are particularly vulnerable to threats and violence that place their lives directly at risk. Recognizing the alarming increase in sexual violence following the earthquake in 2010, the Inter-American Commission on Human Rights (IACHR) granted a request for precautionary measures to address acts of sexual violence committed against women and girls in displacement camps in Haiti.⁴⁸ The Commission called on the Government of Haiti to take immediate measures to prevent sexual violence committed against women and girls by private actors.

Despite efforts made by the Haitian Government to address the issue, women and girls in Haiti continue to face violence and threats in significant numbers. For example, a January 2011 household survey conducted on sexual violence in Port-au-Prince found that, of respondents who indicated the gender and age of the victim, approximately 86% were women and girls.⁴⁹ The results of a survey of random Haitian households conducted from August 2011 to February 2012 indicate a dramatic escalation in violence, particularly in densely populated urban centers.⁵⁰ The survey also found that residents of low-income urban areas were twenty-seven times more likely to be sexually assaulted than residents of wealthier, less densely populated areas.

Victims of rape like N.R. report facing discriminatory attitudes, reprisals, threats, and retaliation by their assailants. They explain that the police, prosecutors and judges refuse to address these threats and acts of reprisal, causing them to fear for their lives.⁵¹

⁴⁴ *Id.*

⁴⁵ Human Rights Committee, General Comment No. 28: art.3 ¶¶ 3-4 U.N. Doc. CCPR/C/21/Rev.1/Add.10 (2000).

⁴⁶ CONSTITUTION OF 1987 Art.19, Title 3, March 10, 1987.

⁴⁷ CONSTITUTION OF 1987 Art.25, Title 3, March 10, 1987.

⁴⁸ KOFIV, International Women's Human Rights (IWHR) Clinic at City University of New York (CUNY) School of Law, MADRE, et al., Inter-American Commission, *In re Women and girls victims of sexual violence living in 22 internally displaced persons camps*, Precautionary Measures No. MC-340-10 Haiti, issued Dec. 22, 2010..

⁴⁹ Center for Human Rights and Global Justice, *Sexual Violence in Haiti's IDP Camps: Results of a Household Survey* (2011).

⁵⁰ Athena R. Kolbe And Robert Muggah, *Instituto Igarapé, Haiti's Urban Crime Wave? Results From Monthly Household Surveys August 2011 - February 2012* 1 (March 2012).

⁵¹ MADRE, KOFIV, FAVILEK, et. al, *Supplementary Information on Haiti Regarding Sexual Violence, Sexual Exploitation and Access to Education for Women and Girls*. Submission to Country Report Task Force, Human Rights Committee, page 9. (July 2012.)

□ *The Case of N.R.**

N.R. is a young woman who was employed as a domestic worker in Port-au-Prince. In July 2013, her employer introduced her to a man who would show her where to buy high quality rice to sell at the market. The man, a government official, picked her up in his car and drove her around all day to various locations in Port-au-Prince in search of rice. That night, the man offered her to stay overnight at his cousin's home nearby, insisting that it was too dangerous for a young woman to find her way home at that hour. She agreed. While N.R. was asleep that night, the man came into her bedroom and raped her. N.R. sought help from a local service provider, who then took her to a hospital for medical care. At the hospital she was informed that she was pregnant. N.R. reported the rape and identified the perpetrator as a government official. Haitian officials have refused to investigate the case. Since N.R. filed a complaint against the perpetrator, she has begun to receive sexually explicit threats from him. These threats have caused N.R. to fear for her life.

* IWHR Clinic Interview, KOFAVIV, October 10, 2012. (on file with authors).

In 2011, Digital Democracy⁵² worked closely with KOFAVIV to launch the first emergency response hotline for rape and sexual violence in Haiti. With help from UNHCR, the 572 Emergency Response Hotline Call Center extended its service to 24-hour care in 2012. Since its formal launch in September 2012, the call center has fielded over 1700 calls. The expansion to 24-hour service closes a critical gap, allowing women and girls to access resources and support during nighttime and weekend hours, when many cases of rape and GBV are happening.

Digital Democracy then worked with KOFAVIV to create a digital database for documenting accurate, verifiable cases of GBV with a mapping data component that illustrates when, where and the types of GBV crimes take place without disclosing confidential information.⁵³ Database results are then posted and distributed to relevant government members and made available to community based organizations as well as the international community.⁵⁴

From January 2013 to October 2013, KOFAVIV documented a total of 214 cases of rape, with just under half of those perpetrated against children under the age of 18.⁵⁵ Similarly, in 2012, with the assistance of Digital Democracy, KOFAVIV documented a total of 365 cases of rape, with a little more than half of those perpetrated against children under the age of 18.⁵⁶ In

⁵² Digital Democracy's (Dd) mission is to empower marginalized communities to use technology to build their futures.

⁵³ For more information see, Digital Democracy, <http://www.digital-democracy.org/blog/expanding-access-to-haitis-gender-based-violence-call-center/>; See also the Channel Foundation, <http://www.channelfoundation.org/dd.html>

⁵⁴ IWHR Clinic interview with Digital Democracy Representative May 2, 2014, (on file with authors).

⁵⁵ *Id.*

⁵⁶ Digital Democracy has partnered with KOFAVIV since 2011 to develop a cloud-based information management system to facilitate digitization, analysis and case management for GBV incidents registered by KOFAVIV. The system currently contains over 1400 cases.

the vast majority of cases that KOFIV has documented, police officials have conducted little to no investigation of reported rape cases. Victims report verbal harassment by police when they report the crimes. KOFIV has further reported cases where women identified their rapists, police officials detained the perpetrator, and then the police accepted a bribe to release them. The Haitian government has thus failed to fulfill its legal responsibility under the due diligence standard to prevent, punish, investigate, and redress ongoing gender-based and sexual violence against Haitian women and girls, and is therefore in violation of Articles 3 and 6.

2. Haiti's Failure to Investigate and Prevent Threats and Violence Against Women Human Rights Defenders

Stressing the importance of the contributions of human rights defenders to a just and democratic society, the Committee has recognized that human rights defense work can often lead to threats against the lives of those who carry it out. Specifically, the Committee underscored the State's obligation "to support the immediate, effective and impartial investigation of threats, attacks and assassinations of human rights defenders, and to prosecute and punish the perpetrators."⁵⁷

Women's human rights defenders in Haiti are regularly threatened with violence. The Haitian government, however, has done little to investigate, follow up, or to hold the perpetrators accountable for these threats. In some instances, grassroots leaders have filed complaints with police, but police refused to assist, providing reasons such as the human rights defenders' work "caused too much trouble."⁵⁸

Women's human rights defender Malya Villard-Apollon, co-founder of KOFIV, has faced numerous threats and acts of violence with little redress. As a result of the increased visibility of her work, these threats and acts against Malya's life and the lives of her family and colleagues have become increasingly severe over recent months. On August 22, 2013, gunshots were fired at Malya's home in the middle of the night while she and her children slept. In September 2013, Malya's two dogs were fatally poisoned at her home. Her children reported being followed to and from school. As a result of the threats against Malya, her family has been forced to leave their home and temporarily live elsewhere on multiple occasions. Malya has also received threatening, anonymous phone calls and voicemails at the KOFIV center. In October 2013, a man arrived on a motorcycle at the KOFIV center. He was armed and demanded Malya come outside the center. Fearful of what he might do, Malya remained trapped inside for several hours until police finally arrived. As of May 2014, the individual accused of orchestrating this intimidating and threatening visit to Malya is behind bars, pending further investigation. The KOFIV member who identified the accused's whereabouts to police authorities has since received numerous death threats and was forced to relocate.

⁵⁷ See, for example, Human Rights Committee, Concluding Observations: Guatemala, ¶ 22 (2012) U.N. Doc. CCPR/C/GTM/CO/3 (urging that immediate measures be taken to provide effective protection for defenders whose lives and security are under threat due to their professional activities).

⁵⁸ KOFIV, International Women's Human Rights (IWHR) Clinic at City University of New York (CUNY) School of Law, MADRE, et al., Inter-American Commission, *In re Women and girls victims of sexual violence living in 22 internally displaced persons camps*, Precautionary Measures No. MC-340-10 Haiti, issued Dec. 22, 2010.

Other members and employees of KOFAVIV have also been targeted for violence as a result of their affiliation with the organization. KOFAVIV accompanies rape victims to and from the hospital or police station in a clearly marked KOFAVIV vehicle. On September 4, 2013, the driver of the KOFAVIV vehicle, KOFAVIV's accountant, and a female KOFAVIV outreach worker were in the vehicle, returning from the bank. Two armed men on motorcycles blocked the vehicle and robbed them at gunpoint. One of the assailants hit the driver on the head with the handle of his gun, while the other held his gun in the female outreach worker's side. The men attempted to steal the KOFAVIV vehicle, but ran away when police officers happened to pass by.⁵⁹ As a result of these threats, other KOFAVIV members fear for their own lives and have discontinued their work at the center.⁶⁰

In January 2013, two women, well known as the daughters of KOFAVIV leaders, visited a displacement camp to conduct educational trainings for women. At the training, they saw another former outreach worker pointing them out to a group of gang members, identifying them as daughters of KOFAVIV leaders. The women notified a nearby police officer, who drove them away from the site. The gang members pursued the women but eventually gave up.⁶¹ The two women had been followed on numerous occasions prior to this incident, and believe this is a result of their association with and work for KOFAVIV.⁶²

In February 2012, FAVILEK, another Haitian grassroots women's group for victims of sexual and gender-based violence, reported that two of its outreach workers were violently raped by four men in an internal displacement camp in September 2011. The women were visiting the camp as part of a community education mission. Before the assault, the women were asked about their FAVILEK badges, which identified them as agents of the human rights organization.⁶³

3. Haiti's Failure to Investigate and Prevent Violence and Discrimination Against LGBT Persons

As previously stated, discrimination and violence against LGBT people, including by government officials, such as police, who are ostensibly charged with protecting them, is a pervasive problem in Haiti. As a result, the lives of many LGBT individuals in Haiti are characterized by secrecy, isolation, discrimination, and violence. Those who choose to live openly as LGBT individuals fear for their lives on a daily basis. Community-based organizations for LGBT persons, including FACSDIS,⁶⁴ SEROvie,⁶⁵ and KOURAJ⁶⁶ receive regular reports of

⁵⁹ IWHR Clinic Interview, KOFAVIV, October 10, 2012. (on file with authors).

⁶⁰ *Id.*

⁶¹ The outreach worker who identified the women never returned to the KOFAVIV center after that day and was assumed to be working in association with the gang members.

⁶² IWHR Clinic Interview, KOFAVIV, October 10, 2012. (on file with authors).

⁶³ IWHR Clinic Interview, FAVILEK, February 8, 2012 (on file with authors).

⁶⁴ *Femme en Action contre la Stigmatisation et la Discrimination Sexuelle (Women in Action against Stigmatization and Sexual Discrimination)* is a community-based organization comprised of lesbian and bisexual women. Its mission is to fight discrimination and violence against lesbian and bisexual women in Haiti.

targeted threats and attacks based on their work. These threats and acts of violence against LGBT persons place their lives at grave risk, and are in direct violation of articles 3 and 6. Further, under the due diligence standard, States are obligated to prevent and protect people from acts of violence committed by both State and non-State actors.

Many LGBT people in Haiti are afraid to report threats and attacks to authorities for fear of retaliation by the perpetrators and/or retribution from the police tasked with protecting them. Some Haitian police officers have verbally and physically attacked LGBT people who have reported violent crimes committed against them. Other officers have conducted minimal investigation or openly refused to investigate at all, citing the victim's sexual orientation as the justification for the refusal.⁶⁷ Below are some of the documented incidents of violence and discrimination committed against LGBT persons.

- In December 2012, members of KOURAJ were leaving a party hosted by and for a group of gay men in Pétionville. The victims reported that police officers in the vicinity perceived the men to be gay, and proceeded to beat them. The men did not report the attack to authorities because they believed they would be killed if they did so.⁶⁸
- In September 2012, a member of FACSDIS⁶⁹ was killed by her boyfriend. After discovering she was a lesbian, he beat her to death with a motorcycle chain. When the man appeared before a judge following her murder, he explained to the judge why he had killed his girlfriend, stating that she brought women to their home and, although he had instructed her not to, she continued to do so. The judge, who found the killer not guilty, called the woman “a vagabond and a delinquent.”⁷⁰
- In December 2012, a transgender woman was beaten twice within the course of two weeks and received threats ordering her to leave the country or she would be killed.⁷¹
- In March 2012, a man was killed in his home because he was gay. His relationship with his neighbors was strained because his neighbors knew he was gay. The neighbors often ridiculed and threatened him. In March 2012, the man invited a number of gay friends to his home. That evening, a group of male neighbors broke down the door, and shot and killed him.⁷²

⁶⁵ SEROVIE began as an organization that provided support to HIV/AIDS positive men who have sex with men. Today, the organization provides general support to gay, bisexual and transsexual men, regardless of HIV/AIDS status.

⁶⁶ KOURAJ is a Haitian community-based LGBT organization that works to empower gay and transgender persons in Haiti through education about fundamental human rights, the creation of a strong community for LGBT persons in Haiti, and activism to facilitate fundamental societal change.

⁶⁷ IWHR Clinic Interview, FACSDIS, October 8, 2013 (on file with authors).

⁶⁸ IWHR Clinic Interview, KOURAJ, February 7, 2013 (on file with authors).

⁶⁹ *Femme en Action contre la Stigmatisation et la Discrimination Sexuelle (Women in Action against Stigmatization and Sexual Discrimination)* is a community-based organization comprised of lesbian and bisexual women. Its mission is to fight discrimination and violence against lesbian and bisexual women in Haiti.

⁷⁰ IWHR Clinic Interview, FACSDIS/SEROVIE, February 5, 2013 (on file with authors).

⁷¹ IWHR Clinic Interview, KOURAJ, February 7, 2013 (on file with authors).

⁷² IWHR Clinic Interview, KOURAJ, May 24, 2012 (on file with authors).

a. Police Violence Toward the LGBT Community Amounting to Torture or CIDT

Haitian community-based LGBT rights organizations have documented numerous cases of police violence and misconduct against LGBT individuals.⁷³ LGBT individuals report that Haitian police officials often target individuals based on their actual or perceived sexual orientation or gender identity and commit acts of sexual violence and rape based on the belief that the victim is a member of the LGBT community. Rights groups explain that incidents of police violence, discrimination, and abuse against LGBT individuals generally go unreported to State officials out of fear of police brutality and discrimination or retaliation from perpetrators.⁷⁴ The following examples both highlight police violence and misconduct against individuals based on their sexual orientation and gender identity, and demonstrate how this violence has prevented many individuals from reporting cases of anti-LGBT violence to the police out of fear of further brutality and discrimination.

- In August 2013, a group of more than 30 community members attacked an openly gay man in his home. The individuals broke into the man's home, beat him, and broke a glass bottle over his head. The victim sought advice from a lawyer and the lawyer told him that seeking help from the police would only exacerbate the problem. The lawyer informed the victim that he is, "living in the third world" and "must adapt himself accordingly." He continues to be threatened and is regularly followed by his neighbors to and from the FACSDIS center.⁷⁵
- In July 2013, two men approached a 27 year-old lesbian, hit her in the back of the head and tore her clothes as she tried to enter her home. The men then continued to beat her, stating, "Lesbians can't come and live in this neighborhood.... if you stay here we will burn down your house!" Later that evening, while the woman was in her home, a group of neighbors began throwing rocks at her home and threatening again to burn down her house. She was forced to flee her home and is still unable to return for fear that the people in her neighborhood may harm her and her daughter. The woman did not report the incident to the police because she felt convinced the police would ignore her complaint, and harass her for being gay. While neighbors knew prior to 2013 that she was a lesbian, it was not until after the July 19, 2013 anti-LGBT protest that she began experiencing intensified violence and threats against her. (See pages 29-30 for more information on the July 2013 anti-LGBT protest.)⁷⁶
- In July 2013, a young gay man was brutally beaten by his homophobic brother after the brother saw that he had a male friend over to his home. The brother hit him multiple times in the face, breaking his nose and bruising him badly. The victim immediately went to the police in his injured state—with blood on his face and torn clothing—to report the incident.

⁷³ IWHR Clinic Interviews, SEROVIE, FACSDIS, and KOURAJ, February 7, July 12, and October 9, 2013 (on file with authors).

⁷⁴ *Id.* See also U.S. Department of State, 2012 Human Rights Reports: Haiti, Societal Abuses, Discrimination, and Acts of Violence Based on Sexual Orientation and Gender Identity, available at <http://www.state.gov/j/drl/rls/hrrpt/2012/wha/204458.htm> (April 19, 2013).

⁷⁵ IWHR Clinic Interview, FACSDIS, October 8, 2013 (on file with authors).

⁷⁶ IWHR Clinic Interview, LGBT individuals in Haiti, December 4, 2013 (on file with authors).

However, when he attempted to explain the incident, the police refused to file a report or further investigate stating, “If your brother beat you because you were gay, then you were well beaten.”⁷⁷

- In July 2013, two gay men left school in a vehicle with a hired driver. When the driver learned the men were unable to pay, he drove them to the police station. The driver explained to the police that the men did not have the money to pay. The men were then taken into the custody of four police officers inside of the station. The four police officers began beating the two men, leaving physical injuries on the head and knocking out the one man’s front teeth with a police baton. One police officer specifically told the two men that they were not being beaten because of the money; they were being beaten because they were gay. The police made comments such as, “Don’t you see that they are killing the gays here?” referring to the violence against the LGBT community in the surrounding area. The two men did not report the incident to the authorities because they feared police reprisal if they attempted to file a complaint against the police.⁷⁸
- In July 2013, neighbors broke into a house known in the community as a house where LGBT individuals gathered. Using rocks and bats and firing gunshots into the air, the mob forced the residents to flee their home and subsequently proceeded to loot it.⁷⁹ As of October 2013, the house remains vacant because no one feels safe enough to return. LGBT individuals who had been living in the home at the time of the raid sought assistance from the police. However, in the process of telling one police officer about the incident, another officer, who lived the neighborhood where the incident occurred, came over and told the first officer not to make a report. The officer said, “These are the gays that are causing all of the problems.”⁸⁰ No further investigation has been carried out.
- In December 2012, ten members of KOURAJ were leaving a party. Five police officers approached them on the street, and because they perceived them to be gay, proceeded to assault the members, leaving the victims with serious bodily injuries including black and swollen eyes, proof that they had been severely beaten. The victims did not report the assault out of fear of retaliation since it was Haitian police officers that carried out the attack.⁸¹
- In March 2012, while out one night, one man witnessed his gay friend brutally murdered by four men carrying guns, knives, bats, and machetes. The witness, a gay man himself, immediately ran to the police for assistance, but was told he must wait. After waiting a day to begin investigating the murder, the police finally went to the neighborhood where the incident occurred. The police questioned members of the community who confirmed that the victim was gay. Upon hearing this information the police left the area and provided no further investigation or follow up. When the witness returned to the police for information, the police turned him away saying it was his boyfriend who killed him. The witness replied,

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ IWHR Clinic Interview, FACSDIS, October 8, 2013.(on file with authors).

⁸⁰ *Id.*

⁸¹ IWHR Clinic Interview, KOURAJ, February 8, 2013 (on file with authors).

“No, I know one of the killers, I’m going to show you who he is so you can arrest him.” The police replied, “We do not deal with homosexual affairs; go back home or we’ll arrest you.”⁸²

- In January 2012, two women were leaving a festival. Approximately five police officers approached the women asking, “Where are you going?” The women replied that they were heading home. The police offered the women a ride and signaled them over to their truck. Since there were no available taxis after the event, the women agreed. However, when the two women walked over, the police officers forced them into the vehicle. Suspecting that the women were a couple, one officer stated, “Is this your woman? Ok, fine, get on top of her, have sex with her.” The police began to beat the women. When they started to cry, one officer said, “You have never been with a man? You’re not a real woman. We’ll make you one.” The police officers then raped the two women.⁸³

These are but a few examples of denial of access to justice as well as persistent abuse, assaults, and sexual violence carried out by law enforcement officials against LGBT individuals and groups. The Government of Haiti must ensure prompt changes within law enforcement agencies in order to be compliant with articles 3 and 7.

b. Lack of Access to Medical Treatment Amounting to CIDT and Torture

Advocates report that LGBT individuals are particularly discriminated against and stigmatized when seeking medical treatment, even in grave circumstances. Because of the stigmatization and humiliation they experience in public health facilities, LGBT individuals are often too afraid or ashamed to seek medical attention, resulting in the deterioration of preventable health problems, and sometimes resulting in death.⁸⁴ For example, in 2011, a gay man was sexually assaulted by his neighbor who forced a log into his anus. The man died of an infection because he was too afraid to seek medical attention, fearing reprisals and retaliation from both the perpetrator as well as the medical community. Despite the insistence by the man’s friends, there has been no investigation to date.⁸⁵ In the text box below is an account of a transgender woman who was denied access to health care services based on her gender identity.

Haiti is in violation of its treaty obligations under article 3 by permitting health care providers to stigmatize, discriminate, and withhold treatment based on gender identity and sexual orientation. Further, healthcare barriers created by public health agents refusing to provide medical treatment based on gender identity and sexual orientation, resulting in death and unnecessary suffering, amount to violations under article 7. The Haitian government’s complacency in permitting the healthcare sector to carry out harmful, discriminatory acts must be addressed in order to be in compliance with the State’s obligations under the Convention.

⁸² IWHR Clinic Interview, KOURAJ, October 27, 2012 (on file with the authors).

⁸³ *Id.*

⁸⁴ IWHR Clinic Interview, FACSDIS/SEROVIE, February 8, 2012 (on file with authors).

⁸⁵ IWHR Clinic Interview, FACSDIS/SEROVIE, February 8, 2013 (on file with authors).

*The Case of J.S.**

J.S. is a transgender woman living in Port-au-Prince. After the 2010 earthquake, J.S. suffered a broken leg. She went to a public hospital for treatment. The health care providers began treating her and cleaning up the injured leg. However, once the providers learned that J.S. was not born with female genitalia the provider told her, “all these good people need help and look at this masisi!” J.S. was subsequently refused further treatment. J.S. now goes to a private doctor who, upon discovery of J.S.’s sex at birth, significantly raised the price for treatment. In addition, J.S. is forced to go to the Dominican Republic for hormone treatments because she has no access to these treatments in Haiti.

* IWHR Clinic Interview, KOFAVIV, October 10, 2012. (on file with authors).

4. Gender-Based Violence, and Sexual Exploitation in Post-earthquake Haiti

This Committee has found that failure of police to investigate and prosecute rape cases fosters impunity and violates States’ obligations under articles 3 and 7 of the Covenant.⁸⁶ Accordingly, this Committee is clear that article 7 provides that States must guarantee the safety of rape victims as well as promptly investigate all allegations, and bring perpetrators to justice.⁸⁷

Despite these obligations, rape remains a crisis at extremely high levels with the majority of cases never reaching the prosecution or investigation stage due to the State agencies’ failure to act (*see discussion infra on pages 11-14*). The following testimonies highlight the continuing rape and sexual violence occurring in Haiti with inadequate State investigation and prosecution.

- In September 2013, a Government official raped a young woman. The official had approached the young woman under the guise of finding her work. One night, the officer told the young woman to stay at his relative’s house because it was too late for her to go home. He then proceeded to rape her at the house resulting in the young woman’s first pregnancy. Although she has reported the rape, police have refused to investigate the case. (*For more information see page 12.*)
- In August 2013, a sixteen year-old’s boyfriend and his friend raped her. The victim’s parents filed a report with the Haitian police. However, the prosecutor refused to prosecute the case, claiming that the incident was simply a “lovers’ quarrel.” The case was subsequently dropped.⁸⁸

⁸⁶ Human Rights Committee Concluding Observations: Colombia, ¶ 12 (2010), U.N. Doc. CCPR/C/COL/CO/6.

⁸⁷ Human Rights Committee Concluding Observations: Venezuela, ¶ 17 (2001), U.N. Doc. CCPR/CO/71/VEN (finding that high levels of sexual violence against women raises serious concerns and the State should implement effective measures to ensure access to effective remedies for the victim).

⁸⁸ IWHR Clinic Interview, KOFAVIV, October 11, 2013 (on file with authors).

- In October 2012, a mother brought her daughter to KOFAVIV for assistance after the 14 year-old girl was raped and beaten by six men. The Police arrived at the organization to pick up the mother and daughter in the car to take them to the police station. However, the police chief called and said they had to use the car for “a more serious case,” and they left the mother and daughter at KOFAVIV. The police have neglected to follow up on the case, despite repeated requests made by KOFAVIV.⁸⁹
- In July 2012, a teenage girl was with her boyfriend in the street after leaving a wedding. The police stopped the couple and asked for their identification. The boyfriend had one so they let him go, but the girl had not yet turned eighteen, and therefore did not have a national identification card.⁹⁰ Consequently, the police would not let her go. The officers took her to the police station, where one officer stayed with the girl in the car and told her that it would be too expensive for her to resolve her issue inside the police station, and she would need to have sex with him in order to be released. He then proceeded to rape her in the car. Afterward, her parents made a complaint in the local police station, but the police officer has since left that police station. No investigation has been carried out.⁹¹
- In August 2010, a woman was brutally raped outside of a displacement camp in Port-au-Prince. The victim was taking out the trash one night when four men in a car pulled up and called out to her to ask for directions. When she approached the car, a man grabbed her and forced her into the car. All four men raped her. One man began choking her and told her to stick out her tongue. She resisted and he told her that he would gouge out her eyes if she did not open her mouth. She opened her mouth and the man bit off the end of her tongue. The victim sought help from a local organization, but still faced numerous barriers while trying to access medical treatment for her tongue to the point where her tongue turned green and required reconstructive surgery.⁹² As of May 2014, the victim has received reconstructive surgery but the perpetrators have not been prosecuted.
- In January 2010, while witnessing a group of men raping another woman, a bystander confronted the attackers, pleading for them to stop. The men then proceeded to pin her to the ground, rape her and beat her with a gun on the left side of her rib cage. The woman still carries the scars from the beatings. The victim could not recall how many men there were stating that it was “too many for her to count.” During the incident the victim felt a tearing and started to bleed vaginally. One of the perpetrators noticed she was bleeding and said, “If she is going to bleed, let’s do it again,” and continued to rape her. The woman did not report the rape to authorities. She explained, “If you go to the police to get help, they do nothing.”⁹³

The lack of government investigation and prosecution of numerous sexual violence cases—

⁸⁹ IWHR Clinic Interview, KOFAVIV, October 24, 2012 (on file with authors).

⁹⁰ A nationality card is the government-issued identification that all Haitian citizens are entitled to upon turning 18 years of age.

⁹¹ MADRE and IWHR Clinic Interview, resident of an internal displacement camp, January-October 2010 (on file with authors.)

⁹² IWHR Clinic Interviews, KOFAVIV, October 2010 (on file with authors).

⁹³ *Id.*

perpetrated by both State and non-State actors—is a violation of article 7. Directly following the 2010 earthquake, the most prominent barriers for victims seeking relief through the justice system occurred at the law enforcement level. For instance, victims reported deterrents such as a lack of law enforcement resources and discrimination by police officials. Victims described statements by police such as, “we are getting too many reports of rape” and that they should “go tell it to the President if they want to take care of the problem.”⁹⁴ Numerous accounts also highlighted police humiliating victims and dissuading them from reporting the crimes based on the fact that they were sexual violence cases.⁹⁵

Although law enforcement inaction continues to be a barrier to justice, the government has implemented some remedial measures. For instance, in response to the law enforcement failures, grassroots organizations and human rights advocates worked with the international community and the Haitian government to institute additional security and training at the police level. For example, the U.N. deployed security personnel in the camps where the Haitian police were unavailable.⁹⁶ In addition, some police departments underwent sensitivity training on interacting with victims of sexual and gender-based violence.⁹⁷ Yet further training is needed at all levels of law enforcement to ensure victims’ safety across Haiti.

For the majority of victims, the Haitian justice system remains highly inaccessible because of the barriers at the prosecuting level. For instance, untrained prosecutors, police and judges often refuse to investigate, prosecute, or adjudicate cases.⁹⁸ In addition, victims are generally asked to present medical certificates from a State hospital⁹⁹ and are required to pay additional fees in order to have their case prosecuted, which creates additional barriers for resource-poorer women and girls.¹⁰⁰

Widespread sexual violence against women and girls, and the barriers to adequate remedies for victims continues to be a significant area of concern that prevents the Government of Haiti’s compliance with articles 3 and 7. The State must take action to promptly investigate rape cases without harmful delays and prevent impunity of the perpetrators caused by police and judicial inaction, complacency, and discrimination.

⁹⁴ MADRE and IWHR Clinic Interviews, residents of 22 IDP camps, January - October 2010 (on file with authors).

⁹⁵ Meena Jagannath, *Barriers to Women's Access to Justice in Haiti*, 15 CUNY L. Rev. 27, 45 (2011)..

⁹⁶ *Id.* at 40.

⁹⁷ *Id.* at 39.

⁹⁸ Jagannath at 45 (2011)

⁹⁹ Medical Certificates are documents produced by health care providers for victims of rape in order for the victim to preserve evidence of the incident. The law does not require them, however, prosecutors generally require that the victim submit a medical certificate before they will agree to investigate and prosecute a case.

¹⁰⁰ Jagannath at 40 n. 12 (2011).; *see also*, MADRE, International Women’s Human Rights (IWHR) Clinic at CUNY School of Law, Center for Gender and Refugee Studies, Center for Human Rights and Global Justice Clinic, *STRUGGLING TO SURVIVE: SEXUAL EXPLOITATION OF DISPLACED WOMAN AND GIRLS IN PORT-AU-PRINCE, HAITI* (2012) (citing to interview conducted with Prosecutor, in Port-au-Prince, Haiti (November 15, 2011) [hereinafter *STRUGGLING TO SURVIVE*]).

5. Response by the Government of Haiti

The Government of Haiti should be commended for addressing the issue of violence and discrimination against women by implementing some progressive measures to promote gender equality. Paragraph 35 of the Initial Report of the Republic of Haiti¹⁰¹ cites a 2011 Constitutional amendment proclaiming the equality of men and women before the law, and a 2005 decree revising the Criminal Code to maximize the penalty for rape and decriminalize adultery.

In paragraph 36 of report, however, the government acknowledges that violence and discrimination against women is a pervasive problem in Haiti. The report attributes gender-based violence in Haiti to sexist stereotypes cultivated in the home and internalized by women themselves. In paragraph 37, the report cites women's organizations that regularly publicize alarming rates of sexual violence, but states that the lack of reliable national statistics makes confirmation of these figures difficult. As such, the government recognizes that violence against women is a problem in Haiti, while simultaneously questioning the credibility of the non-governmental organizations that report these statistics.

In its report, the Government fails to address why it has not made any effort to consult the national database created to confirm sexual violence figures such as these. The national database contains a collection of non-confidential information documenting cases of sexual violence against women, created by non-governmental organizations. This database is publicly available, and may be accessed by the government to assist in the development of programs and legislation aimed at reducing violence against women in Haiti. Further, if the government believes these available resources to be unreliable, the government should undertake to collect its own data documenting sexual violence against women. The Human Rights Committee has encouraged States to collect national data to assist in the protection of human rights and the Government of Haiti should undertake to conduct a national study on the issue of sexual violence in the country.

While the State Party's revision of the Criminal Code is commendable, it is not sufficient to bring the Government of Haiti into compliance with international standards. Specifically, paragraph 35 of the report states that it contains no precise definition of rape, nor does it address marital rape. The government fails to acknowledge the pending draft law (*see pages 6-8*) designed to remedy this problem. It is strongly advisable that the Government of Haiti take all available measures to pass this law, as it will not only strengthen women's rights, but codify sexual orientation and gender identity as protected grounds from discrimination.

Moreover, the State Report does not address the problem of violence, discrimination and threats against the lives of LGBT individuals in Haiti, nor does it offer any information on government efforts to investigate and prevent these violations. As the pending draft law seeks to strengthen LGBT rights in Haiti, it is strongly advisable that the government pass this legislation.

The report sets forth that the right to life is constitutionally protected, as is the right to be free from unnecessary force, restraint or physical brutality. Despite this, the report acknowledges

¹⁰¹ Human Rights Committee, Consideration of reports submitted by States parties under article 40 of the Covenant, Initial reports of States Parties, Haiti. CCPR/C/HTI/1, 23 January 2013.

that the Constitution currently does not define torture as an offense under Haitian law. Further, the State Report does not specifically address violations of these rights in Haiti when they occur as a result of an individual's gender identity or sexual orientation.

6. Recommendations:

1. As a matter of particular urgency, given that much time has elapsed since the initial threats and violence were reported to police, the Government of Haiti must implement immediate and effective steps to investigate threats against women human rights defenders, specifically those perpetrated against the members of KOFAVIV.
2. The Government of Haiti should provide increased police patrols, especially at night, for the KOFAVIV office and other organizations where directors, employees, and members who are defending the rights of women and girls have been threatened.
3. The Government of Haiti should provide gender-sensitive training on violence against women for public officials, particularly law enforcement personnel, and the judiciary so as to ensure that they are sensitized to all forms of violence against women and can adequately respond to it.
4. The Government of Haiti should develop a national plan of action to address the police violence and discrimination against LGBT people in Haiti.
5. The Government of Haiti should implement statewide police sensitivity training and educational programs for engaging with the LGBT community. These trainings should focus on education about diverse sexual orientations and gender identities and eliminating stigmatization, humiliation, and re-traumatization of victims.
6. The Government of Haiti should fulfill its due diligence obligation to investigate, prosecute, and punish perpetrators of egregious acts of violence and discrimination against LGBT individuals.
7. The Government of Haiti should provide safe houses, community centers, and healthcare service facilities to ensure the safety and security of LGBT persons.

III. ARTICLES 9 AND 10: FREEDOM FROM ARBITRARY ARRESTS AND DETENTION IN CONNECTION WITH ARTICLE 17: RIGHT TO BE FREE FROM INTERFERENCE WITH PRIVACY

Article 9 explicitly recognizes that all individuals have the right to be free from arbitrary arrest and detention.¹⁰² Article 10 further provides that when individuals are detained they “shall be treated with humanity and with respect for their inherent dignity.”¹⁰³ Further, the Haitian Constitution, Chapter II, Section B, article 24 provides that individual liberty is guaranteed and protected by the State, and that no one may be arbitrarily arrested or detained.¹⁰⁴

1. Arbitrary Arrests and Violations of the Right to Liberty of LGBT Individuals

The Committee has made clear that LGBT persons are both vulnerable to and have the right to be protected from arbitrary arrest and detention, and that they have an inherent right to dignity. For example, in its 2012 Concluding Observations to the Philippines, the Committee called on the Government to “ensure that LGBT persons are neither arrested nor prosecuted on the basis of their sexual orientation or gender identity.”¹⁰⁵ Additionally, in recognition of the prevailing stigmatization and prejudice against LGBT persons by police, the Committee urged the State to adopt legislative reform that would prohibit discrimination on the basis of sexual orientation and gender identity.¹⁰⁶

Similar to the Philippines, the Haitian government has failed its treaty obligations to ensure that LGBT persons are not stigmatized and discriminated against, leading to arbitrary arrest and detention by police officials. Local LGBT rights-based groups report numerous incidents of police discrimination and stigmatization leading to arbitrary arrests.¹⁰⁷

Although Haiti does not criminalize same-sex sexual conduct between consenting adults, police use other laws to arbitrarily criminalize their conduct and harass LGBT individuals. For instance, law enforcement officials use “public indecency” laws to harass, question, and arrest individuals they perceive to be LGBT.¹⁰⁸ In addition, the unwarranted stops and invasions of privacy often leads to physical violence against LGBT individuals. The following are examples

¹⁰² CCPR art. 9 (1): Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

¹⁰³ *Id.* art. 10.

¹⁰⁴ Initial Reports of States parties to the Human Rights Committee, Haiti, ¶ 57, U.N.Doc. CCPR/C/HT/1 (Dec. 3, 2013).

¹⁰⁵ Human Rights Committee Concluding Observations: The Philippines, ¶ 10 (2012), U.N. Doc. CCPR/C/PHL/CO/4.

¹⁰⁶ *Id.* at ¶ 10-11.

¹⁰⁷ IWHR Clinic Interview, SEROVIE, FASCDIS, and KOURAJ, February 7, July 12, and October 9, 2013 (on file with authors).

¹⁰⁸ U.S. Department of State, 2012 Human Rights Reports: Haiti, Societal Abuses, Discrimination, and Acts of Violence Based on Sexual Orientation and Gender Identity 33, available at <http://www.state.gov/j/drl/rls/hrrpt/2012/wha/204458.htm> (April 19, 2013).

of such violence and discrimination committed against LGBT persons by law enforcement officers.

- In July 2010, a member of the LGBT community hosted a pool party at her private home and invited other members of the LGBT community. Several police officers and a prosecutor came to the home and witnessed men holding hands with other men and women kissing women. They then began arresting people at the party. The police said, “What kind of shit is this? Men and men together, women and women together, we’re going to arrest everyone.” Ten individuals were still in their bathing suits at the time of arrest and when they were taken into police custody. The police claimed to be arresting them for “public indecency” even though the party was in a private home.¹⁰⁹
- In November 2012, three members of the LGBT community attended a funeral of a friend who identified as gay. The minister presiding over the ceremony called the individuals “demons” and called the police. When the officers arrived at the scene, they arrested the three attendees without giving any indication of why they were being arrested.¹¹⁰
- In October 2012, four members of FACSDIS were pulled over by the police and asked for their identification cards. When the women replied that they did not have their cards, the police officer said, “What will you give me to make me not arrest you?” Two of the women had sex with the police officers out of fear of harm and imprisonment. The other two women were put in prison after refusing to engage in sexual relations with the police officers.¹¹¹
- In November 2010, a group of nineteen gay friends gathered together at a friend’s home. A neighbor, a local judge, entered into the yard with another man pointing guns at the nineteen attendees. He commanded them not to move and stated that he was having all of them arrested and then proceeded to call the police. Other neighbors followed the judge into the yard and began beating the men. When the police officers arrived, they harassed and pushed the men around, and then arrested them and took them into police custody. At no point did the police or judge explain to the nineteen men why they were being arrested. All nineteen men were detained in police custody for 48 hours. They were kept in an overcrowded cell, forcing some of the men to stand all night. While in detention, the officers continued to harass them, stating, “You are just dirty *masisi*.” and “You are ruining the Haitian race.” The person renting the home was afraid to return and was forced to flee.¹¹²

These are not isolated incidents, but are part of a larger systemic problem faced by the LGBT community.¹¹³ The Haitian government must address the arbitrary arrests and violation of privacy rights that are preventing the State from complying with its obligations under articles 9, 10, and 17.

¹⁰⁹IWHR Clinic Interviews, SEROvie, FASCDIS, and KOURAJ, February 7, July 12, and October 9, 2013 (on file with authors).

¹¹⁰*Id.*

¹¹¹*Id.*

¹¹²MADRE and IWHR Clinic Interview, LGBT individual, December 4, 2013 (on file with authors).

¹¹³*Id.*

2. Arbitrary Arrests of Persons Engaged in Sex Work

Article 9 is clear that all persons—regardless of occupation or status—have a right to be free from arbitrary arrest. Haitian law does not criminalize prostitution. However, other Haitian Criminal Code provisions such as “public indecency” laws are used to arrest persons perceived to be engaged in or soliciting for prostitution.¹¹⁴ This practice has led to arbitrary arrests, detention, and police misconduct against individuals engaged in sex work.

Arbitrary arrest and detention of women engaged in sex work is extremely prevalent and widely ignored in Haiti. A co-founder of the organization ANAPFEH, a rights-based organization that operates by and for women engaged in sex work, reports that the majority, if not all of the members of ANAPFEH have been arrested by the police at least once for being identified as sex workers.¹¹⁵ Members report that it is common for police officers not to inform them of the charges when arrested.¹¹⁶ Many women also report being frequently coerced into providing sexual services for police officers in order to avoid being arrested, or while being held in detention before their release.¹¹⁷

*The Case of Angie**

In July of 2013, Angie was working as a sex worker one night along a street not far from her home. A police vehicle with five officers inside drove towards where she was standing. They asked Angie if had her national identification card on her and she replied no. The police then told her to get into their vehicle and that they would take her to her home to get her card. However, instead of taking Angie to her home, the police drove her to a secluded area far from anywhere Angie could identify. The officers raped her in the vehicle while punching her in the mouth. They called her derogatory names referring to her status as a sex worker. The officers then dragged her out of the vehicle, pushed her on the ground, and told her that if she dared to report the rape that they would kill her. Angie was left bruised, assaulted, and in torn clothing, unable to identify her location or how to get home. Angie has not reported the incident to any law enforcement official out of fear for her life.

* IWHR Clinic Interview, July 12, 2013 (on file with authors).

In 2009, in one of the few cases ever known to go to trial, a young woman perceived to be engaged in sex work in Mirebalais (a town about 60 kilometers from Port-au-Prince) reported that she had been raped, and the complaint was pursued. The judge ruled that it was not rape

¹¹⁴ MADRE, International Women’s Human Rights Clinic at CUNY School of Law, et al., *STRUGGLING TO SURVIVE: SEXUAL EXPLOITATION OF DISPLACED WOMEN AND GIRLS IN PORT-AU-PRINCE, HAITI*, Pg 16 (2012).

¹¹⁵ IWHR Clinic Interview, ANAPFEH, October 10, 2013 (on file with authors).

¹¹⁶ *Id.*

¹¹⁷ MADRE, International Women’s Human Rights Clinic at CUNY School of Law, et al., *STRUGGLING TO SURVIVE: SEXUAL EXPLOITATION OF DISPLACED WOMEN AND GIRLS IN PORT-AU-PRINCE, HAITI*, Pg 16 (2012).

because the perpetrator had the “habit of paying” for the woman’s education and therefore it could not be considered rape.¹¹⁸

3. Response by the Government of Haiti

In paragraphs 57 and 60 of the Initial Report of the Republic of Haiti,¹¹⁹ the Government of Haiti sets forth that individual liberty is guaranteed and protected by the State, while acknowledging that individual liberty is not always fully respected in Haiti. The report does not, however, specifically address LGBT individuals’ and sex workers heightened vulnerability to arbitrary arrest and detention in Haiti. The report fails to cite any efforts being made by the State Party to protect LGBT individuals or sex workers from violations of their right to liberty. With regard to individuals deprived of liberty, in paragraphs 63 and 64 of the State Report, the government acknowledges poor prison conditions in Haiti and states that they do not meet international standards. The report does not address the particularly negative impact these prison conditions have on LGBT individuals or sex workers who have been arrested and detained.

4. Recommendations:

- The Government of Haiti should clearly and officially state that it does not tolerate any form of violence or discrimination against persons because of their real or perceived sexual orientation or gender identity.
- The Government of Haiti should implement national policies to end the law enforcement practice of arbitrarily arresting and detaining individuals based on sexual orientation and social status, including perception that an individual engages in sex work.
- The Government of Haiti should work with Haitian rights-based organizations to provide human rights training and education in order to empower vulnerable groups, e.g., women engaged in prostitution and members of the LGBT community, with the knowledge to identify and combat police misconduct and arbitrary arrest.
- The Government of Haiti should adopt the Haitian penal code revisions drafted by the Ministerial Commission for the Modernization of the Penal Code and the Criminal Procedure Code that would afford greater protection to Haiti’s LGBT community by expanding the identified groups protected from discrimination under Haitian law to include prohibiting discrimination based on sexual orientation.

¹¹⁸ *Id.*

¹¹⁹ Human Rights Committee, Consideration of reports submitted by States parties under article 40 of the Covenant, Initial reports of States Parties, Haiti. CCPR/C/HTI/1, 23 January 2013.

IV. ARTICLES 17, 19, 21 & 22: VIOLATIONS OF THE RIGHTS TO FREEDOM OF OPINION AND EXPRESSION, PEACEFUL ASSEMBLY AND ASSOCIATION

Article 17 provides that, “no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence.”¹²⁰ Article 17 clarifies that States parties have an obligation to protect against such interferences and attacks, whether committed by State or non-State actors.¹²¹ In *Toonen v. Australia*, this Committee specifically held that laws criminalizing same sex acts between consenting adults violates the individuals’ right to privacy, stating, “it is undisputed that adult consensual sexual activity in private is covered by the concept of privacy.”¹²²

Article 19 requires that the State respect a person’s right to hold an opinion, and to respect all forms of ideas and its obligations under the ICCPR. Furthermore, article 19 stipulates that everyone has the right to hold an opinion without interference, as well as the right to freedom of expression. Working together with the freedoms protected in article 19, article 21 enshrines the right of peaceful assembly. Additionally, article 22 requires States parties to respect a person’s right to freedom to associate with others. These freedoms have been cited repeatedly by the Human Rights Committee as central to the human rights system and the Covenant.

Expanding on article 19, General Comment No. 34 sets forth the State party’s obligation to protect against violations of the freedoms of opinion and expression not only committed by State actors, but also violations committed by private actors as well.¹²³ With respect to the freedom of opinion, this Committee has stated that harassment, intimidation or stigmatization of a person on the basis of actual, perceived or supposed opinions is a violation of article 19, regardless of whether those opinions are of a political, scientific, historic, moral or religious nature.¹²⁴ Regarding the freedom of expression, General Comment No. 34 further stipulates that the scope of article 19 “embraces even expression that may be regarded as deeply offensive”¹²⁵ to some, such as the opinions or expressions of individuals living openly as LGBT persons. This Committee has also recognized that acts of violence perpetrated against human rights defenders in particular constitutes a violation of article 19, noting that the State is obligated to guarantee the right to freedom of opinion or expression in all its forms.¹²⁶

In its 2012 Concluding Observations to Ukraine, this Committee specifically discussed the right to peaceful assembly and freedom of expression of LGBT persons, stating, “While acknowledging the diversity of morality and cultures internationally, the Committee recalls that

¹²⁰ CCPR, art. 17(1).

¹²¹ Human Rights Committee, General Comment. No. 16: Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, ¶ 1 (1994), U.N. Doc. HRI/GEN/1/Rev.9 (Vol. I) (“In the view of the Committee this right is required to be guaranteed against all such interferences and attacks whether they emanate from State authorities or from natural or legal persons.”).

¹²² *Toonen v. Australia*, Communication No. 488/1992, U.N. Doc. CCPR/C/50/D/488/1992 (1994).

¹²³ Human Rights Committee, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. I) ¶ 181. (2008).

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ Human Rights Committee, Concluding Observations: Peru ¶22 (2013), U.N. Doc. CCPR/C/PER/CO/5.

all States parties are always subject to the principles of universality of human rights and non-discrimination. (The State party) should...take all necessary measures to guarantee the exercise in practice of the rights to freedom of expression and assembly of LGBT persons and defenders of their rights.”¹²⁷

Article 22 articulates a similar standard as that found in article 19. A State is prohibited from imposing restrictions on the freedom of association, except as provided for by law and as is necessary to respect the rights or reputation of others, or for the protection of national security, public order, public health or morals. In its 2012 Concluding Observations to Lithuania, the Committee noted its concern about violations of the right to freedom of association with specific respect to LGBT persons, stating, “manifestations of hatred and intolerance towards members of national or ethnic minorities as well as LGBT individuals remain widespread.”¹²⁸ The Committee urged the State party to increase efforts to prevent crimes committed with discriminatory motives.¹²⁹ Furthermore, under articles 21 and 22, the State party must ensure that rights to peacefully assemble and associate with others are protected, such as in cases of public and private gatherings of LGBT community members.

1. Violations of the Right to Exercise Freedom of Opinion, Expression, Assembly and Association Without Fear of Repercussions or Violence Against LGBT Persons

The Haitian Constitution recognizes the right to freedom of movement, opinion, expression, peaceful assembly and association for all of its citizens.¹³⁰ Though these freedoms are enshrined, LGBT persons experience violations of these rights on a regular basis. They are vulnerable to violations both as members of a minority group, and as agents of Haitian LGBT human rights organizations. Extreme hostility and discriminatory attitudes toward LGBT members are pervasive in Haiti. The mere perception that an individual may be an LGBT member can place his or her life directly at risk. This risk becomes especially pronounced when LGBT persons gather together in community with other LGBT members, or manifest expressions of their cultural identity or sexuality through their manner of speech or dress.

On July 19, 2013, over 1,000 people gathered in the streets of Port-au-Prince, Haiti to protest LGBT rights.¹³¹ The protest was marked by the use of extreme homophobic language and threats of violence, including a song in which the protesters chanted threats “to burn down

¹²⁷ Human Rights Committee, Concluding Observations: Ukraine ¶10 (2013), U.N. Doc. CCPR/C/UKR/CO/7..

¹²⁸ Human Rights Committee, Concluding Observations: Lithuania ¶15 (2012), U.N. Doc. CCPR/C/LTU/CO/3.

¹²⁹ *Id.*

¹³⁰ Articles 41 and 41.1 of Haiti’s Constitution proclaim freedom of movement for all Haitians. Article 28 of the Haitian Constitution enshrines the right to freedom of opinion and expression. The right to peaceful assembly is enshrined in article 31 of the Haitian Constitution, stating that freedom of unarmed assembly and association for political, economic, social, cultural or any other peaceful purpose is guaranteed. Article 1 of the Haitian Constitution protects the freedom of association and sets forth that Haitians are free to join together in associations, which are protected and guaranteed by articles 31, 31.1 and 31.3. CONSTITUTION OF 1987, March 7, 1987.

¹³¹ “More Than 1,000 Show up for Haiti Anti-Gay Protest,” ABC NEWS, July 19, 2013, <http://abcnews.go.com/International/wireStory/thousand-show-haiti-anti-gay-protest-19713866>.

parliament if its members make same-sex marriage legal.”¹³² Some protesters, armed with knives, sticks, blocks, and other objects, began attacking people they perceived of being homosexuals.¹³³

On June 25, 2013, the organizers of the protest held a nationally televised press conference and announced plans to march against homosexuality and in protest of recently passed same-sex marriage legislation in other countries. During the press conference, a spokesperson for the organization stated, “God does not agree nor do we because we rely on God, and because we saw the misfortunes it brought to Sodom and Gomorrah. So, because we do not want to experience the same misfortunes, we are compelled to take a position.”¹³⁴

In anticipation of the demonstration, Haitian LGBT rights groups, SEROvie, FASCDIS, KOURAJ, and Gran Lakou, mobilized to denounce the scheduled protest out of concern for the safety of both LGBT human rights defenders and members of the LGBT community-at-large. Concerned that the rally would incite hatred against LGBT people and lead to an increase in violence against them, the organization issued a press release voicing these concerns and reaffirming the legal guarantee of universal human rights for all.¹³⁵ Additionally, the Bureau des Avocats Internationaux (BAI), a public interest law office in Port-au-Prince, and KOURAJ held a press conference condemning “a series of threats targeting” the country’s “small gay community.”¹³⁶

The LGBT community continues to suffer from egregious acts of humiliation and violence subsequent to the protests. Between July 17th and 24th, 2013, SEROvie and FASCDIS documented forty-seven cases of physical aggression and threats—including eight cases of attacks with a knife and 19 cases of beatings with pieces of wood or cement blocks.¹³⁷ (*See further examples on pages 15-18*).

Haitian law enforcement officials were well aware of the anti-LGBT protests and the high likelihood of violence against the LGBT community resulting from the protests. The organizers of the protest announced on national television their intention to hold a massive rally, inciting threats and using hate-speech against the LGBT community. In addition, LGBT rights groups and lawyers publicly warned the State that the LGBT community would suffer cruel, inhuman or other degrading treatment and torture as a result. Yet, the State failed to protect against the subsequent violence or conduct investigations against the perpetrators. The IACHR

¹³² Dan Littauer, “Two men beaten to death during Haiti anti-gay demonstration,” LGBTQ NATION, July 20, 2013, <http://www.lgbtqnation.com/2013/07/two-men-beaten-to-death-during-haiti-anti-gay-demonstration>.

¹³³ “Haiti: Two assumed homosexuals beaten to death by protest mob,” THE SENTINEL, July 19, 2013, <http://www.defend.ht/news/articles/crime/4786-haiti-two-accused-homosexuals-beaten-to-death-by-protest-mob>.

¹³⁴ “Groups Condemn Threats Against Haiti’s Gay Society,” ABC NEWS, July 17, 2013, <http://abcnews.go.com/International/wireStory/groups-condemn-threats-haitis-gay-society-19691244>.

¹³⁵ SEROvie, FASCDIS, and KOURAJ, Note de Presse (Press Release), (July 2, 2013) (calling upon the Haitian government and the international community to prevent the scheduled protest in order to deter increase violence and threats against LGBT individuals).

¹³⁶ Mario Joseph, “The BAI denounces religious leaders’ march against Haiti’s LGBT community,” BUREAU DES AVOCATS INTERNATIONAUX (BAI), July 17, 2013, <http://www.ijdh.org/wpcontent/uploads/2013/07/LGBT-Press-Release-Final-with-Letterhead.pdf>.

¹³⁷ IGLHRC and MADRE Interviews, SEROvie, July 24, 2013 (on file with authors).

found this to be a grant of impunity to the perpetrators and stated that the State's inaction "fosters the chronic repetition of these crimes, leaving the victims and their families defenseless."¹³⁸

Due to the recent escalation in violence against LGBT Haitians, UNHCR called for a series of trainings to foster collaboration, strengthen accountability, and begin much needed dialogues on how to prevent and address both the abuses committed against LGBT persons, and the resulting displacement crisis in the LGBT community. The following examples are additional documented cases of violations of LGBT community members' rights to freedom of opinion, expression, assembly, association and movement.

- In February 2013, a group of men came to the home of LGBT human rights activists, holding knives, machetes, bottles and metal sticks. The leader of the gang stated they had come because he was told there were "faggots" living in the house. The group began to approach the house, throwing bottles at the victims, and threatening to throw tear gas at them and set the house on fire. After contacting the police for help, officers said they would not enter the neighborhood because it was an "at risk" zone. When the victims reported the incident a second time, other officers advised them that they could no longer live safely in the home and they would need to move within days. When the perpetrators were informed that the activists had contacted the police, the men returned and threatened to kill them.¹³⁹
- In August 2013, a group of individuals attacked a leader of a prominent Haitian lesbian organization, throwing rocks and bottles at her home, shouting, "We do not want the gays!" "We are going to burn down this house! The gays are ruining the neighborhood. Leave!" "Gays and lesbians cannot stay here!" They continued to throw rocks and bottles at her home for two hours, during which time the victim and her houseguests hid in their bedrooms in fear. The next morning, a man from the neighborhood came to her home. He told her he gathered the group of people together the night before because he did not want any gays in the area. Immediately following this incident, the victim left her home and has not returned because she fears for her safety.¹⁴⁰
- In June 2013, a group of people gathered in front of a gay man's home and threw a rock at him. One member of the group broke a bottle over the man's head, causing him to fall and lose consciousness, as his mouth filled with blood. Four men in the group tore up the planks in front of the victim's home, and broke through his front door with machetes and rocks.
- In December 2011, two men were in a tent in a displacement camp when a neighbor discovered them engaged in romantic activity and immediately proceeded to tell other members of the camp. Members came into the tent and started beating the two men making statements such as, "Oh, look at the gay people... It's these gay people that made the

¹³⁸ Inter-American Commission on Human Rights (IACHR), Press Release, *IACHR Condemns Recent Wave of Violence Against LGBTI Persons in Haiti* (July 30, 2013).

¹³⁹ IWHR Clinic Interview, FACSDIS/SEROvie, February 8, 2012 (on file with authors).

¹⁴⁰ *Id.*

earthquake happen.”¹⁴¹ Although the men told the police what happened, no report was taken and no investigation was made. Consequently the men were forced to flee the camp for their safety.

LGBT persons in Haiti have frequently been attacked while gathering peacefully to share in community together, both publicly and in the privacy of someone’s home. Haitian LGBT organizations have documented physical attacks, robberies, and murders committed on the basis of a victims’ gender-nonconforming demeanor, style of dress, or association at private gatherings with other LGBT members in the community.¹⁴² With respect to LGBT persons, the Haitian government has failed to protect the freedom of opinion, expression, assembly and association against violations by private actors. In addition, the Government itself has committed direct violations.

For example, in July 2013, a SEROvie member hosted a gathering for LGBT community members at his apartment. This home was known in the neighborhood as one where LGBT members frequently met.¹⁴³ That night, a group of men from the neighborhood came with machetes and torches and chased the victims from the home, beating them as they fled. The perpetrators threw rocks at the home, broke windows and fired guns into the air. The victims attempted to flee through the back door of the home, but some victims were beaten with baseball bats. Others were injured by rocks thrown at their heads. The perpetrators threatened to burn the house down, and only stopped when the landlord came out of the home. (*See page 17 for more information on this incident.*)

Some of the victims went to the police that night to report the attack, but were told that because they were gay, the perpetrators were “free to do as they pleased.”¹⁴⁴ One officer stated that they would not respond to the incident because the victims appeared to be LGBT persons. Following the attack, many of the victims in the group moved out of the neighborhood to the countryside, for fear that they would experience another assault that endangered their lives. The SEROvie member who hosted the party has since left his home and his neighborhood. His neighbors told him that if he were seen there again, they would kill him. He has been too frightened to return and has been staying at a SEROvie shelter since August 2013.¹⁴⁵

In 2010, a judge went to an openly gay neighbor’s pool party carrying a gun and demanding to know why no women were present. The judge forced all fourteen men at the party to lie on the ground at gunpoint, and proceeded to call the police. Two police cars arrived at the home and the officers handcuffed and arrested all of the attendees. As police led the men away in their bathing suits, neighbors rallied and chanted, “Kill the gays!” The men were detained at the precinct for several days, at which point they were released far from where they’d been arrested

¹⁴¹IWHR Clinic Interview, KOURAJ, October 23, 2012 (on file with authors).

¹⁴² Documented by FACSDIS and SEROvie.

¹⁴³ IWHR Clinic Interview, FACSDIS, October 8, 2013 (on file with authors).

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

and forced to walk home barefoot, some still dressed only in their bathing suits.¹⁴⁶ (*For more information on this incident see page 25*).

In 2009, a transgender woman, and member of FACSDIS was arrested in her home in the Turgeau neighborhood of Port-au-Prince after the police raided a party there. Police officers entered the party with their weapons drawn, proceeded to ransack the house and forced everyone in attendance to assemble. When the Port-au-Prince prosecutor arrived, he asked everyone for identification. Upon discovering the woman was transgender, the prosecutor accused her of hosting an orgy, telling her, “You’re not a woman, you’re a man!”¹⁴⁷ Police officers then proceeded to harass her, demanding that she undress in front of them in order to discover whether she was a “real woman.” According to interviews with the victim, the police repeatedly referred to her as an “element” and “non-human.”¹⁴⁸

2. Response by The Government of Haiti

The Initial Report of the Republic of Haiti¹⁴⁹ sets forth in paragraphs 90 and 100 that a person’s privacy is constitutionally protected in Haiti, and that every Haitian may freely express his opinions on any matter and in any way he chooses. The Haitian Constitution recognizes the right of peaceful assembly within the scope of freedom of expression, and protects the freedom of association with specific regard to the free practice of religion and faith.

The report does not acknowledge, however, that LGBT persons are particularly vulnerable to violations of these rights in Haiti, regularly facing threats and violence as members of a minority group, and as agents of Haitian LGBT human rights organizations

3. Recommendations:

- The Government of Haiti should develop sensitivity trainings for police officers and judges dealing with cases of violence against women and LGBT persons. The government should provide law enforcement personnel with proper training on documenting and investigating crimes committed based on real or perceived sexual orientation or gender identity.
- The Government of Haiti should strengthen measures to address corruption and confront official impunity. Specifically, the government must implement well-defined guidelines, as well as punitive measures, to address impunity and hold law enforcement and judicial authorities accountable for corruption or acts of unlawful violence.
- The Government of Haiti should initiate a public education campaign to raise awareness and de-stigmatize victims of violence and discrimination based on SOGI.

¹⁴⁶ IWHR Clinic Interview, KOURAJ, February 8, 2013 (on file with authors).

¹⁴⁷ IWHR Clinic Interview, FACSDIS, SEROvie, June 24, 2012 (on file with authors).

¹⁴⁸ *Id.*

¹⁴⁹ Human Rights Committee, Consideration of reports submitted by States parties under article 40 of the Covenant, Initial reports of States Parties, Haiti. CCPR/C/HTI/1, 23 January 2013.

- The Government of Haiti should take measures to alleviate the crisis of displacement and provide alternate means of shelter to women and LGBT persons who report attacks, abuse or threats and seek to flee their environment, so that they need not remain in or return to life threatening situations.

V. ARTICLE 14: EQUAL ACCESS TO JUSTICE AND DUE PROCESS OF LAW

Article 14(1) entitles all persons to equality before courts and tribunals regardless of class, race, sexual orientation, gender or gender identity.¹⁵⁰ Furthermore, article 14 requires States to ensure that individuals are granted a fair and public hearing by a competent, independent, and impartial judiciary.¹⁵¹ In General Comment No. 32 the Committee specifies that the right to equality before the courts includes equal access and equal entitlement to any and all remedies as well as protection of all parties from discrimination within the judiciary.¹⁵²

To this end, the Committee has commented that the impartiality of certain judgments, such as those involving victims of gender-based violence, in the Committee's view, cannot be affected by personal bias or prejudice of the judge, nor should the judge harbour preconceptions about the particular case before them or act in ways that improperly promote the interests of one of the parties to the detriment of the other.¹⁵³

In its Concluding Observations to Belize in 2013¹⁵⁴ and Jamaica in 2011¹⁵⁵, the Committee strongly urged those States to provide resources to the judiciary to expedite the delivery of justice.

Furthermore, the Committee has expressed that States have a continuing obligation to provide redress for victims of gender-based violence.¹⁵⁶ Specifically, States must provide access to justice.¹⁵⁷ For example, in its 2013 Concluding Observation to Peru, the Committee urged the State to facilitate complaints of violence against women and LGBT individuals and ensure that all reports are investigated and perpetrators brought to justice.¹⁵⁸ In 2012 the Committee called upon the Dominican Republic to provide substantive training for legal staff and police forces around adequately addressing issues of gender-based violence.¹⁵⁹

Article 19 of the Constitution of Haiti provides an "absolute obligation to guarantee the right to life, health, and respect of the human person of all citizens without distinction."¹⁶⁰ The article was explicitly created to ensure that the post-dictatorship government be in accordance with the Universal Declaration of Human Rights.¹⁶¹ Article 17 of the Haitian Constitution contains specific provisions related to access to justice, and protecting the equality of citizens

¹⁵⁰ CCPR art. 14(1).

¹⁵¹ *Id.*

¹⁵² Human Rights Committee, General Comment No. 32: Right to Equality before the Courts and tribunals and To a Fair Trial, ¶ 8 (2007), U.N. Doc. CCPR/C/GC/32.

¹⁵³ *Id.* at ¶ 21.

¹⁵⁴ Human Rights Committee, Concluding Observation: Belize ¶20 (2013), U.N. Doc. CCPR/C/BLZ/CO/1.

¹⁵⁵ Human Rights Committee, Concluding Observations: Jamaica ¶19 (2011), U.N. Doc. CCPR/C/JAM/CO/3.

¹⁵⁶ Human Rights Committee Concluding Observations: Dominican Republic ¶¶10-11 (2012), U.N. Doc. CCPR/C/DOM/CO/5.

¹⁵⁷ *Id.*

¹⁵⁸ Human Rights Committee Concluding Observations: Peru ¶¶8-10 (2013), U.N. Doc. CPPR/C/PER/CO/5.

¹⁵⁹ Human Rights Committee Concluding Observations: Dominican Republic ¶¶10-11 (2012), U.N. Doc. CCPR/C/DOM/CO/5..

¹⁶⁰ CONSTITUTION OF 1987, Art. 19. Title 4, Mar. 10, 1987.

¹⁶¹ *Id.* "The State has the absolute obligation to guarantee the right to life, health, and respect of the human person for all citizens without distinction, in conformity with the Universal Declaration of the Rights of Man.

before the courts and tribunals.¹⁶² Despite these provisions applying to all people, LGBT persons and victims of gender-based violence are routinely denied these protections.

1. Violence against LGBT people is not investigated and victims are frequently prevented from seeking justice.

In addition to fear of discrimination and abuse by police officials, a lack of confidence in and limited capacity of the Haitian judicial system often deter victims from reporting crimes to authorities. Human rights defenders have documented systematic harassment by civil society as well as from police when victims try to report crimes.¹⁶³

Crimes, including murder and serious assault, are rarely investigated further when police suspect they involve “homosexual issues.”¹⁶⁴ Specifically, one victim witnessed his gay friend murdered by a group of men with guns, knives and bats.¹⁶⁵ He immediately ran to the police, but was told that it was probably the gay man’s partner who murdered him and that the police “do not deal with homosexual affairs.”¹⁶⁶ (*See page 18 for further information*)

LGBT persons, victims of violence, have also reported that lawyers are reluctant to represent some individuals due to strong religious affiliations or fear of being associated with the LGBT community.¹⁶⁷ For example, after suffering an assault in his neighborhood at the hands of a group of men shouting anti-gay slurs, a lawyer told one victim “you live in the third world, so you need to adapt yourself.”¹⁶⁸ In instances when individuals can find a lawyer willing to represent them, victims are forced to pay higher fees for representation and are often pressured to drop the cases. In one instance, a gay couple was arrested after getting into an argument with a group of men attending a party across the street from their home. Ultimately, the couples’ lawyer, wary of developing a reputation as an ally to the LGBT community, pressured the couple to compensate the complainants and provided no defense.¹⁶⁹

2. Victims of gender-based violence face discrimination, hostility and other barriers when attempting to seek justice.

For victims of gender-based violence, problems begin to arise at the earliest entry point in the criminal justice system: when victims attempt to obtain medical certificates from doctors. Although a medical certificate is not explicitly required under Haitian law as evidence of sexual violence, in practice, a medical certificate is treated as a legal requirement for pursuing a

¹⁶² "All Haitians aged over 18, without distinction as to sex and civil status, may exercise their civil and political rights provided they meet all the other requirements laid down by the Constitution and by law" CONSTITUTION OF 1987, Article 17, Title 3, Mar. 10, 1987.

¹⁶³ MADRE et al., Supplementary Information on Haiti Regarding the Treatment of Lesbian, Gay, Bisexual, and Transgender Individuals (LGBT), transmitted by letter dated April 27, 2012 address to the Secretariat of the U.N. Human Rights Comm., 105th Sess., July 9-27, U.N. GOAR, 3 (April 27, 2012.)

¹⁶⁴ IWHR Clinic Interview, witness, June 23, 2012 (on file with the authors).

¹⁶⁵ IWHR Clinic Interview, KOURAJ Interviews, October 27, 2012 (on file with the authors).

¹⁶⁶ *Id.*

¹⁶⁷ IWHR Clinic Interview, KOURAJ, October 8, 2013 (on file with the authors).

¹⁶⁸ *Id.*

¹⁶⁹ IWHR Clinic Interview, KOURAJ, November 24, 2012 (on file with authors).

complaint.¹⁷⁰ Specifically, victims of sexual violence in Port-au-Prince regularly report being turned away by the Prosecutor's office or having their cases dismissed by a judge if they cannot provide a medical certificate from an approved state hospital, or if, in the court's discretion, the certificate does not provide enough detail.

Timing poses yet another hurdle to survivors' attempt to attain justice. Best practices for collecting DNA evidence dictate victims of sexual violence should seek medical treatment within the first 72 hours of a rape.¹⁷¹ However, very few places issue medical certificates, and fewer doctors still are authorized to issue them,¹⁷² therefore victims are often unable to obtain one within the 72-hour window.¹⁷³ In Haiti, any individual caught in the "act of committing a crime" (*flagrant délit*) can be held for up to 48-hours without charge.¹⁷⁴ Since it takes three days at a minimum, and more commonly a week, for victims to obtain a medical certificate, prosecutors will often decline to continue with a *flagrant délit* without a medical certificate, regardless of other material evidence and the accused is released.¹⁷⁵

Another barrier to women's access to justice is the insensitive and inefficient judicial system which forces victims to recount the details of the stories of the crimes committed against them repeatedly and unnecessarily. During investigations and throughout trials, victims are forced to retell, and relive, their horrific stories over and over again, within the protracted judicial system that does not prioritize nor understand the sensitivity required for cases of gender-based violence.¹⁷⁶ Investigating judges interrogate victims repeatedly as to the circumstances that surrounded the assault, and whether or not they (the victim) had done something to attract the aggression.¹⁷⁷ In certain jurisdictions, some judges will question victims in Haitian Creole but communicate with the attorneys in French, alienating and disempowering victims within their own proceedings.¹⁷⁸

Regular delays in the cases of victims of gender-based violence, and hostile attitudes from some clerks and judges in the prosecutor's office also impede victims who seek justice. For

¹⁷⁰ Representatives of the judiciary in Haiti have noted that although other forms of evidence such a victim and witness testimony can also be used in determining guilt or innocence conviction without a medical certificate are rare.

¹⁷¹ The 72-hour window is vital for collection DNA evidence, and the administration of various prophylaxes that can prevent unwanted pregnancy, STDs and HIV. Although the perseverance, analysis and use of forensic evidence in cases of rape are still severally underdeveloped in Haiti, the reliability of the medical certificate still depends on quick action. See, <http://www.rainn.org/get-information/aftermath-of-sexual-assault/importance-of-dna>; see also, Meena Jagannath, *Barriers to Women's Access to Justice in Haiti*, 15 CUNY L. Rev. 27, 45 (2011).

¹⁷² In Haiti, only doctors that work in public medical facilities are authorized to issue medical certificates.

¹⁷³ IWHR Clinic Interviews, KOVAVIV, October 24, 2012 (on file with authors).

¹⁷⁴ *Flagrant délit* literally means "flagrant offense", but denotes either when a person is caught in the act of committing a crime or immediately after usually within a 24 to 48-hour window. In such cases, public action is taken almost immediately against the accused. *Code D'Instruction Criminelle D'Haiti* [CIC] [Code of Criminal Procedure], arts 10, 30-31.

¹⁷⁵ Meena Jagannath, *Barriers to Women's Access to Justice in Haiti*, 15 CUNY L. Rev. 27, 50 (2011).

¹⁷⁶ *Id.* at 49-50

¹⁷⁷ *Id.*

¹⁷⁸ Although recognized along with Creole as one of Haiti's two official languages, less than 10% of Haiti's 10 million citizens speak French fluently. See, CREOLE: THE NATIONAL LANGUAGE OF HAITI, <http://www.indiana.edu/~creole/creolenatlangofhaiti.html>

example, one victim spoke about the changes in attitudes of the clerk of the court responsible for the case when the clerk learned that this was a case of sexual assault.¹⁷⁹ When the victim's lawyer inquired about the case number, which they need in order to gain access to the interrogation of the accused, the clerk sarcastically told them, that his "fingers hurt" so he could not access the files.¹⁸⁰ Because the victim and her lawyer were not able to access the file, they were unable to ensure their presence at the hearing.¹⁸¹

Furthermore, lack of sensitivity within certain procedural formalities frequently re-traumatizes victims. In the confrontation stage of the investigatory process, the survivor must encounter their attacker, possibly for the first time since the attack occurred. In one case, when the accused arrived for the confrontation, the investigating judge asked the 14 year-old victim's family member to get up from her seat next to the victim to allow for the older accused aggressor to sit down.¹⁸² This disregard for the sensitive nature of victims being forced to confront their attackers often leaves victims disheartened and re-traumatized by the process.

Very little is done on behalf of the Haitian government to provide the victims with critical psychological or emotional counselling at any point in the judicial process. Legal advocates have documented instances of attempted suicide by victims as result of the social stigmatization and lack of psychological services available to them.¹⁸³

These facts reveal a lack of gender equality before the courts, and the delay for processing cases related to gender-based violence demonstrate a systemic failure to provide timely delivery of justice. Moreover, the repeated questioning over an extended period of time and lack of training and sensitivity of the judges in these cases demonstrates instances of unequal treatment, prejudice, and an attitude of apathy from officials, violating the principle that each person, regardless of their gender, is entitled to a competent, impartial and independent tribunal codified in article 14 of the ICCPR.

3. Response by the Government of Haiti

In paragraph 72 of the Initial Report¹⁸⁴ the Government of Haiti assures the Committee that anyone whose rights are violated should be provided with access to justice "without any discrimination." However, as with the other article violations addressed in this report, there is no mention of rights violations suffered by victims of gender-based violence or by LGBT persons, nor is there any mention of the myriad violations they face when they attempt to seek justice or redress through the courts.

We commend the Government for recognizing in its report to the Committee that there has thus far been a "limited access to justice in Haiti, for various reasons."¹⁸⁵ However, chief among these reasons is the failure of its police forces to investigate crimes against victims of

¹⁷⁹ Meena Jagannath, *Barriers to Women's Access to Justice in Haiti*, 15 CUNY L. Rev. 27, 45 (2011).

¹⁸⁰ *Id.*

¹⁸¹ *Id.* at 46

¹⁸² *Id.* at 48.

¹⁸³ IWHR Clinic Interview, Bureau des Avocats Internationaux (BAI), October 8, 2013 (on file with authors).

¹⁸⁴ Initial Reports of States parties to the Human Rights Committee, Haiti, ¶ 72, U.N.Doc. CCPR/C/HT/1 (Dec. 3, 2013)

¹⁸⁵ *Id.* at ¶ 81.

gender-based violence, and members of the LGBT community; and admitted reluctance amongst members of its own Bar to represent victims who seek access to justice that the Haitian Constitution establishes. These reasons are not addressed in the Government's report.

4. Recommendations:

- The Government of Haiti should provide enhanced and permanent sensitivity trainings for Judges and Police Officers on sexual violence and the impact of the criminal process on victims, to address the discouraging effects of gender discrimination and prejudice in the mechanisms for access to justice.
- The Government of Haiti should ensure police investigate and prosecute perpetrators of crimes committed against people on the basis of their sexual orientation and gender identity.
- The Government of Haiti should ensure all individuals, including LGBT people, are able to access legal counsel, particularly in criminal matters.
- The Government of Haiti should create a uniform checklist containing the required criteria for medical certificates that would adequately support court cases and permit all qualified, degree-holding medical personal to issue them.
- The Government of Haiti should allocate more resources to the Judiciary to ensure quicker, more efficient trials.
- The Haitian government should allocate resources towards the establishment of counselling and other direct services that can be available to victims almost immediately after contacting a lawyer.
- The Haitian government should allocate resources to the physical and psychological recovery of women and girls who are victims of sexual violence and to ensure that they are not re-victimized while seeking justice.
- The Haitian government should finalize and pass the Draft Law on the Prevention, Punishment and Eradication of Violence Against Women, and include an explicit provision that a victim's testimony alone should be sufficient to secure a conviction. Furthermore, the Haitian government should finalize and pass the pending penal code revisions addressing gender-based violence in Haiti. (*See pages 6-8*)

