



Haiti

Amnesty International submission to the UN Universal Periodic Review 12th session of the UPR Working Group, October 2011

B. Normative and institutional framework of the State

The judicial system and the administration of justice

Reform of the judiciary is essential for strengthening the rule of law in Haiti. However, key institutions for implementing such reform have still not been established. The post of President of Haiti's Supreme Court (*Cour de Cassation*) has been vacant since 2004. The role of the President of the Supreme Court is essential for moving forward a series of reforms of the justice system and the President also presides over the Supreme Council of the Judiciary (*Conseil Supérieur de la Police Judiciaire*), among other things, in charge of vetting judges.¹

The state has failed to provide security forces with adequate training and supervision in relation to the use of force, resulting in the grossly excessive use of force by the police in some instances. In January 2010 Haitian police shot dead 12 prisoners in Les Cayes during an attempted prison break.

Protection of the rights of the child

Haiti ratified the Convention on the Rights of the Child in 1997 and the authorities proposed creating a Children's Code to implement the provisions of the Convention. However, the Children's Code has not yet been adopted by Parliament and currently Haitian law does not provide a protective framework for children's rights. Child offenders are frequently sentenced outside the juvenile court system and detained in police stations or prisons in cells shared with adults.

In 2003, the Law on the prohibition and elimination of all kinds of abuses, violence and inhuman treatment of children came into force.² It removed Chapter IX of Haiti's Labour Code which regulated children in domestic service (known as 'restavek') and prohibited the "employment" of children under 12 as domestic workers. The law states, however, that children can be entrusted to a foster family in a relationship of "assistance and solidarity" without clearly defining the parameters of this relationship and without establishing the penalties for those violating its provisions. UNICEF estimates that there are 250,000 children in Haiti serving as domestic servants.³ The practice of children in domestic service has been referred to by the UN Special Rapporteur on contemporary forms of slavery as a "modern form of slavery".⁴

¹ UN Independent Expert on Haiti noted that "the appointment of the President of the Supreme Court (Cour de Cassation) is the missing keystone of the edifice." UN Press Release: "Impunity must end", 25 February 2011.

² *Loi relative à l'interdiction et à l'élimination de toutes formes d'abus, de violences, de mauvais traitements ou traitements inhumains contre les enfants*, Published in Le Moniteur No. 41, 5 June 2003.

³ See: UNICEF, Reintegrating 'restavek' children with their parents in post-earthquake Haiti http://www.unicef.org/emerg/haiti_56712.html, 3 November 2010.

⁴ Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Mission to Haiti, A/HRC/12/21/Add.1, 4 September 2009.

Since the earthquake, with families separated and schools destroyed, thousands of children have been left without protection. Children are at an increased risk of becoming prey to trafficking and exploitation networks that operated in Haiti before the earthquake.

C. Promotion and protection of human rights on the ground

Internally displaced persons (IDPs)

Hundreds of thousands of people have been left homeless by the earthquake. At the end of the 2010, nearly a million people were still living in appalling conditions in camps. The camps are severely overcrowded and the living space within the shelters is wholly inadequate. Walter Kälin, the then Representative of the UN Secretary-General on the Human Rights of IDPs, reported following his visit to Haiti in October 2010 that in many camps conditions fell short of minimum standards, especially with regard to water, sanitation and shelter.⁵

Displaced people occupying private land have been forcibly evicted by landowners, on most occasions with the assistance of the police or armed men. In April 2010, the government announced a six-week freeze on forced evictions of displaced people, but lacked the capacity to enforce the measure. The Inter-American Commission on Human Rights (IACHR) has granted precautionary measures in relation to the forcible evictions from the camps.⁶

The impact of the earthquake on public institutions has compounded chronic long-term weaknesses in government efforts to protect and promote human rights. Displaced people living in camps and host communities have had to rely largely on international agencies and NGOs. The efforts of these organizations have been hampered by the authorities' failure to produce an effective and comprehensive plan for managing disaster efforts and co-ordination with the authorities has not always been effective.

Violence against women and girls

The 2005 Presidential decree on sexual violence has yet to be promulgated into law and the government has until now failed to establish a legal framework to protect women and girls from all forms of violence. Haiti has signed regional and international human rights instruments for the protection of women, it has established a Ministry of Women's Affairs and Women's Rights and in 2005 the 2006-2011 National Plan to Combat Violence Against Women was adopted. However, little has been achieved in implementing these commitments.

Sexual and gender-based violence was prevalent before the earthquake.⁷ Displacement and the consequent precarious living conditions in makeshift camps have exposed women and girls to much greater risks. Hundreds of cases of rape and other forms of gender-based violence have been reported in the camps during 2010.⁸ Many organizations working on the ground in Haiti believe that reported cases represent only a

⁵ Representative of the UN Secretary-General on the Human Rights of Internally Displaced Persons, Memorandum based on a Working Visit to Port-au-Prince, Haiti (12-16 October 2010).

⁶ The IACHR has expressed its concern over the situation in a number of camps for persons displaced by the earthquake, especially with regard to sexual violence against women and girls. The IACHR has also written to the govt requesting that it investigate the facts surrounding sexual violations in the IDP camps and prevent them from being repeated. IACHR Washington D.C. November 18 2010.

⁷ In February 2009 the Committee on the Elimination of Discrimination against Women expressed its alarm at the very high incidence of violence against women in Haiti, notably domestic violence, sexual violence, rape and sexual harassment in schools and in the workplace. 43rd Session, Haiti, Concluding Observations 19 January – 6 February 2009.

⁸ See Amnesty International Report: Haiti: Aftershocks: Women speak out against sexual violence In Haiti's camps. 6 January 2011 AMR 36/001/2011.

fraction of the real number of cases.⁹ Under international human rights law the government is responsible for ensuring security and protection in the camps, including preventing and responding to gender-based violence against women and girls.¹⁰ The challenges facing the Haitian government are unquestionably extreme; nonetheless, insufficient steps are being taken to ensure protection for women and girls.

The government has also failed to prioritise women's participation in the planning and implementation of aid efforts as a key measure to ensuring women's and girls' right to freedom from gender-based violence. Women interviewed by Amnesty International identified a number of factors as increasing the risks of gender-based violence in the camps, including the lack of security and policing inside and around the camps and the inadequate response by police officers to victims of rape. Other factors included the lack of lighting at night, insecure and inadequate shelters, the lack of adequate hygiene and sanitation facilities, the breakdown of law and order, overcrowding, lack of access to any means of earning a living or generating income, and unequal distribution of humanitarian and emergency aid between and within camps.

Reporting sexual and gender-based violence remains highly problematic. There is a lack of information about how to report crimes of sexual violence to the police and the judiciary. The lack of adequate protection mechanisms for women and girls is also discouraging them from denouncing the violence: victims of rape told Amnesty International that they did not report to the police the attacks they suffered for fear of their aggressors, and that when they did, the police response was totally inadequate. The failure of the state to effectively and comprehensively address sexual violence contributes to a pervasive state of impunity surrounding human rights violations against women and girls.

The limited prevention and response mechanisms that existed before January 2010 have been severely undermined by the destruction of police stations and court houses. Access to sexual, reproductive and maternal health care services remains deficient for victims of sexual violence and for women and girls in general. Victims of sexual and gender-based must overcome fear, discrimination and a lack of financial resources in order to get access to medical care.

The loss of livelihood and income generation due to the earthquake has deepened women's poverty, leading to an increase in the number of women and girls involved in sex work.¹¹

Impunity

Impunity for past human rights violations prevails in Haiti.¹² The return of Jean-Claude Duvalier to Haiti offers a unique opportunity to address the alleged human rights violations committed by the armed forces and paramilitary groups over which he presided throughout his 15 years in power (1971-1986). During that period, Amnesty International documented systematic and widespread torture, hundreds of extrajudicial executions and enforced disappearances, and detention without trial. Some of these human rights violations amount to crimes against humanity.

⁹ Amnesty International delegates also spoke with members of a local camp committee, local and international NGOs, community-based organizations, officials of foreign governments on mission in Haiti, and personnel from MINUSTAH and other UN agencies present in the country.

¹⁰ Haiti ratified the following binding international human rights treaties which are relevant for the protection of internally displaced persons: the International Covenant on Civil and Political Rights, the UN Convention on the Elimination of All Forms of Discrimination against Women, the UN Convention on the Rights of the Child, and the UN Convention on the Rights of Persons with Disabilities.

¹¹ Reported by the National Association for the Protection of Haitian Women and Children, a women's rights organization working with sex workers in Port-au-Prince.

¹² UN Independent Expert on the situation of human rights in Haiti has emphasised the importance of the fight against impunity. See UN Independent Expert on Haiti: "Impunity must end", 24 February 2011.

In 2005, the Supreme Court of Haiti overturned the convictions of 16 former military officers and members of FRAPH (Revolutionary Front for Haitian Advancement and Progress) paramilitary group for their involvement in the 1994 Raboteau massacre in which an estimated 20 persons were extra-judicially executed, women raped and homes ransacked and burned. None of the 16 men, who had been convicted in 2000, were in prison when their sentences were quashed: one was deceased and the others had reportedly escaped.

Since April 2000, at least eight journalists have been killed in Haiti while dozens more have been subject to harassment, imprisonment and attacks in the course of exercising their profession. Only in the case of Brignol Lindor, killed in 2001, have the perpetrators been brought to trial and convicted. The seven other cases remain shrouded in impunity.

The judicial authorities have also failed to identify those responsible for the April 2000 killings of journalist Jean-Léopold Dominique and his security guard Jean-Claude Louissaint. Some of the magistrates involved in previous investigations of this case have been threatened because of their involvement in the case. The investigation is still ongoing.

Prolonged pre-trial detention

Preventive and long-term pre-trial detention remains the rule in Haiti. Detainees are arbitrarily arrested and held for long periods without being able to challenge the legality of their detention. The Code of Criminal Investigation allows for release on bail pending trial, but this measure is seldom applied.¹³ Detainees remain in prison during the investigation of the crime they are alleged to have committed. This often exceeds the three-month time limit provided by law.

According to reports from national human rights organizations and the UN Stabilization Mission in Haiti, prisons are over-crowded and only a fraction of the prisoners have been tried and are serving a sentence. Amnesty International is concerned that some prison conditions could amount to cruel, inhuman or degrading treatment or punishment.

Although the right to habeas corpus is guaranteed in Article 26 of the Constitution, the authorities regularly do not respect this right. In one case known to Amnesty International, the judicial authorities failed to act on a writ of habeas corpus issued on four occasions by a lawyer on behalf of a man in his fifth year of detention without trial.

D. Recommendations for action by the State under review

Amnesty International calls on the government of Haiti:

Judicial system

- To name without delay the President of the Supreme Court and the President of the Supreme Council of the Judiciary and to proceed with the reform of the justice system;
- To provide security forces with adequate training and supervision in order to implement and ensure strict observance of international human rights standards, including the UN Basic Principles for the Use of Force and Firearms by Law Enforcement Officials;

Protection of the rights of the child

¹³ Chapter VIII, Articles 95-108.

- To adopt and implement without delay a Children’s Code incorporating the provisions of international human rights treaties, in particular the UN Convention on the Rights of the Child, ILO Convention No. 182 on the Worst forms of Child Labour, and ILO Convention No. 138 on the Minimum Age for Admission to Employment;
- To take all necessary measures to eliminate the practice of children in domestic service which has been referred to by the Special Rapporteur on contemporary forms of slavery as a “modern form of slavery”;
- To ensure that children in domestic service who are victims of ill-treatment, physical violence and sexual abuse have access to justice and reparation.

Violence against women and girls

- To ensure that the police provide a safe and confidential environment for women and girls to report sexual violence and that all such complaints are promptly, impartially and effectively investigated and prosecuted;
- To provide legal assistance to victims of rape and other forms of sexual violence;
- To decriminalize abortion in all circumstances, to provide safe and accessible abortion services for rape victims and women whose lives or health would be at risk from the continuation of pregnancy, and to guarantee accessible post-abortion care;
- To ensure that legislative measures and programmes to prevent sexual violence are fully and effectively implemented at the national and local levels;
- To ensure that judicial authorities are adequately trained in the provisions and application of international and regional human rights treaties which are binding on Haiti and have force of law in Haitian courts;
- To collect comprehensive data across Haiti to systematically measure the nature and extent of violence against women and girls and to make the results public in both official languages;
- To develop educational materials aimed at challenging discrimination and ending violence against girls and to incorporate these into the curriculum at all levels of the educational system.

Impunity

- To bring to justice those responsible for human rights violations regardless of how much time has elapsed since the commission of the crime;
- To allocate the necessary resources to the judges in charge of the investigation of the killings of journalists in Haiti and bring those responsible to justice.

Prolonged pre-trial detention and prison overcrowding

- To take all the necessary measures, as a matter of urgency, to address the backlog of cases in prolonged pre-trial detention;
- To guarantee all detainees a fair trial, in accordance with the provisions of article 14 of the International Covenant on Civil and Political Rights and article 8 of the Inter-American Convention on Human Rights, within a reasonable time frame;
- To ensure that all detainees have prompt access to procedures allowing them to challenge the lawfulness of their detention before a judge, and to release them if their detention is found to be illegal;
- To address the problem of overcrowding in prisons;
- To incorporate into in Haitian legislation alternatives to detention, in accordance with the UN Standard Minimum Rules for Non-custodial Measures.