

Republic of Haiti

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*Review of Haiti's Report under the Convention on the Elimination of All Forms of
Discrimination against Women*

Violence against Women, Trafficking, Prostitution, and Exploitation by UN Peacekeepers (CEDAW Articles 1, 2, 3, 5, 6)

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I. EXECUTIVE SUMMARY

1. This report considers and informs on the real situation of women's rights under the Convention of the Elimination of Discrimination Against Women ("CEDAW") focusing on particular issues in Haiti. The issues addressed are societal discrimination and widespread sexual violence against women, impunity for perpetrators of gender based violence and sex trafficking, exploitation of prostitution and sexual abuse by peacekeepers. The issues addressed in this report were chosen due to the specific focus and expertise of the organizations that drafted the report. This is not intended to be an exhaustive examination of the situation of women's rights in Haiti.

2. Following Haiti's devastating earthquake in 2010, a number of Haitian grassroots women's organizations mobilized to support women and girls who have long suffered from cultural and political violence as well as the effects of extreme poverty, all of which was exacerbated by the earthquake damage. Groups like *Fanm Viktim Leve Kanpe* (FAVILEK) (Women Get Up Stand Up), *Komisyon Fanm Viktim pou Viktim* (KOFIV) (Commission of Women Victims for Women) and *Kodinasyon Nasyonal Mawon Viktim Direk* (KONAMAVID) (National Coordination of Direct Victims in Hiding) not only played an important role in helping earthquake victims, but also raised awareness of cultural and legal changes necessary to improve the lives of Haitian women and girls in the longer term.

3. The combined efforts of women's groups, along with the legal community, are changing the legal system. Since 2010, the police have become more receptive to women's complaints of sexual assault, and the courts are convicting record numbers of sexual assault offenders with prison sentences of 10 years to life. Moreover, support groups organized during these tragedies formed the basis of a women's movement that demands legal accountability and continues to thrive.

4. The Government of Haiti ("Government") has made some advances to combat discrimination, exploitation and violence against women and girls, but these efforts fall short of meeting their obligations under CEDAW. For example, under the leadership of the Ministry of Women's Affairs, a revised Penal Code and Violence Against Women law has been drafted, but neither has been finalized or submitted to Parliament. Similarly, while the courts are convicting record numbers of sexual assault cases, women victims still face poor treatment by police and the courts, and domestic violence is largely unprosecuted. Women and girls remain vulnerable to sex trafficking, exploitation of prostitution, and sexual abuse by UN peacekeeping soldiers, with virtually no assistance from the Government; no social services, law enforcement protection or legal remedies. As a result, victims distrust, and in some cases, have given up on the Government, and rely on whatever help their family and communities can provide.

5. Overarching recommendations that the Government should take into account in order to combat discrimination and violence against women include consulting with and providing organizational and financial support to women's groups, implementing awareness raising and educational measures on women's rights and increasing transparency and disseminating information about current governmental interventions and mechanisms available to women.

6. This report also recommends more concrete measures to address the problems of gender discrimination and gender-based violence. Adequate and effective measures must be taken to end the pervasive societal discrimination against women, for example, inserting gender equality education into school's curricula, removing the stereotyping of women in school books, and inviting women's groups to hold gender sensitivity training seminars in Parliament.

7. The Haitian justice system must be strengthened to remove the current impunity for perpetrators of gender-based violence, including domestic violence. This should be done through ensuring the gender equality of Haitian legislation, improving access to justice for women, taking measures to combat the discriminatory attitudes of law enforcement and judicial officials, and eliminating the *de facto* requirement of a medical certificate to initiate criminal proceedings for rape.

8. The legal protections for victims of trafficking and exploitation of prostitution should be clarified and existing protections should be enforced. The Government should also take effective measures to combat sexual exploitation by United Nations (UN) staff and peacekeepers.

9. Lastly, comprehensive baseline data on gender-based violence should be collected to facilitate effective targeted response planning through a national information gathering system.

II. HAITIAN AND INTERNATIONAL LEGAL FRAMEWORK AND PRACTICE

10. Under the Haitian Constitution, international treaties, once ratified, become a part of the legislation of Haiti and abrogate any pre-existing, conflicting laws.¹ Haiti ratified CEDAW in 1981, and submitted its first report in 2008.² The Constitution provides that Haitians shall be equal before the law and guarantees them freedom to exercise civil rights regardless of sex or marital status.³ The Constitution also establishes the guarantee of the right to life, health, and respect of the human person for *all citizens without distinction* in conformity with the Universal Declaration of Human Rights (UDHR).⁴

11. Haitian courts apply a set of legal codes adopted from the French legal tradition, which have generally not been updated to protect human rights. The Haitian penal code and code of criminal procedure date back to 1825. Per a 2005 executive decree, rape is punishable by 10 years⁵ to life, depending on whether the victim is under fifteen years old,⁶ the assault was a gang rape, or the victim died.⁷ Haitian law does not specifically criminalize intimate partner violence or marital rape. The 2005 rape law does not define rape, sexual assault or the elements of consent, making it difficult to use the law to prosecute rape, especially intimate partner rape.

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

A. Articles 1, 2, 3 and 5 and General Recommendation No. 19 Violence against Women: Insufficient measures to combat discrimination, violence against women and impunity for perpetrators of gender-based violence

12. The Government has the obligation to eliminate gender discrimination in all its forms⁸ and to modify the social and cultural patterns of conduct of men and women in order to eliminate prejudices and stereotypes based on the inferiority of either of the sexes.⁹ As the Committee for the Elimination of Discrimination Against Women (“Committee”) noted in its concluding observation in 2009, measures “to modify social and cultural attitudes which are the root causes of most forms of violence targeting women” are vital to combat widespread gender violence and discrimination in Haiti.¹⁰

13. CEDAW General Recommendation 19 defines gender-based violence as a “form of discrimination that seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men.”¹¹ To fulfill this obligation the Government needs to take appropriate and effective measures to eliminate discrimination and overcome all forms of gender-based violence.¹² This includes ensuring that laws adequately protect all women, encouraging the compilation of statistics and research on gender-based violence, implementing gender-sensitive training of judicial and law enforcement officers and providing effective complaints procedures and remedies.¹³

1. Insufficient measures to combat societal discrimination against women

14. Haiti has a long history of patriarchy and discrimination against women in the home, in government, at work and in the courts.¹⁴ Gender discrimination is still pervasive in Haiti and systematically denies women the power to either prevent or address injustice against them.¹⁵

15. The UN Human Rights Committee in its 2014 Concluding Observations noted that “the stereotyping of women remains rooted in Haitian society, particularly as regards household financial management and the image of women in some school textbooks.”¹⁶

16. One recent example of the pervasiveness of sex discrimination is a comment made by President Michel Martelly at a campaign rally in August 2015, wherein he responded to a woman’s complaint about the failure of the government to provide electricity to her area by telling her to “go get a man and go into the bushes.”¹⁷ This sexist remark by the Head of the Government was allegedly greeted by cheers and clapping from the audience.¹⁸ Three officials in Haiti’s governing coalition resigned in protest to the remark, signifying some disapproval of sex discrimination at high levels of government, but the President was otherwise unaccountable.

17. In its Response to the CEDAW List of Issues, the Government noted that “during periodic campaigns around symbolic dates the Ministry of Women’s Affairs works with the media to transmit non stereotyped images of women/girls, inform them of their rights and prevent discrimination and gender based violence.”¹⁹ The report authors are unfamiliar with this campaign, but more information on it and more action to combat existing negative stereotypes, preconceived ideas and prejudices against women are welcomed. However, such initiatives are unlikely to succeed if top government officials can make derogatory, sexist comments in public with impunity.

2. Prevalence and lack of reporting of gender-based violence

18. While reliable statistics are difficult to find, reports indicate that between 25 and 70 percent of Haitian women have been victims of gender-based violence.²⁰ In Cité Soleil, a poor commune on the outskirts of Port-au-Prince between 50-72 percent of women are estimated to have been raped (the estimates differ depending on the source).²¹ Since 2009,

reports of violence against women and girls have steadily increased, with a spike in reports after the 2010 earthquake due to the unsafe living conditions in displacement camps.²² According to the UN Office for the Coordination of Humanitarian Affairs approximately 60,000 earthquake victims still live in displacement camps in and around Port-au-Prince.²³

Intimate partner sexual violence

19. Intimate partner violence is common and widespread in Haiti. It is so ingrained in Haitian society that it is considered normal that women are raped by their husbands.²⁴ *Solidarité Fanm Ayisen* (SOFA), a women's rights NGO that offers intake and support services to women victims of violence, reports that over 85 percent of their clients are victims of domestic violence.²⁵ Such violence includes "insults, death threats, blackmail, manipulation, humiliation, harassment, isolation, rape, forcible confinement, murder, and paternal irresponsibility."²⁶ Intimate partner violence occurs when women are pregnant as well. The results of a 2008 study showed that "44 percent of pregnant Haitian women [out of 200 women interviewed seeking prenatal care at community health dispensaries in the Artibonite Valley] had experienced violence in the 6 months preceding interview, with 77.8 percent of these expectant mothers experiencing abuse perpetrated by an intimate partner."²⁷

20. Intimate partner violence cases go largely unreported unless there is a breakdown of the relationship or if the abuse results in physical injury or unwanted pregnancies.²⁸ One women's organization estimated that only a quarter of intimate partner abuse cases are reported to law enforcement.²⁹ Reasons for not reporting the incidents to authorities include embarrassment and shame, the threat of ostracism from their family and community, lack of resources, potential reprisals from the aggressor and his family, and apology and abuse from the judiciary.³⁰

Non-partner sexual violence

21. Non-partner sexual violence is also prevalent in Haiti. A 2015 study into symptoms of Post-Traumatic Stress Disorder (PTSD) in female victims of sexual violence in post-earthquake Haiti reveals the consequences of non-partner sexual violence. Participants informed that,

*Sexual violence in their experience comprised particularly injurious rapes including broken marbles, rubber bands and other objects in addition to the male genitalia. They reported each of their experiences involved multiple, unknown perpetrators who used strangulation to subdue, intimidation and silence them and who intentionally aim to 'crush the uterus' of their victims.*³¹

22. Barriers to reporting non-partner sexual violence are similar to those preventing reporting of intimate partner violence, including embarrassment and shame, fear of stigmatization, and potential reprisals from the aggressor and his family.³² One example of the types of reprisals victims face can be seen in a case the *Bureau des Avocats Internationaux* (BAI) received in January 2016. A 68-year-old man had repeatedly raped a 13 year old girl at her house when her parents were at work and threatened her with a weapon. Her father finally caught the assailant as he was raping his daughter and called the police. Since then, the family of the rapist has persecuted the family of the victim, threatening the father and his family with death.

Sexual violence against children

23. Over 25 percent of Haitian women aged 18-24 reported experiencing some sexual abuse prior to age 18, and over 6 percent reported experiencing physically forced sex.³³ Targeted interventions to protect children and encourage them to report the abuse they have suffered is necessary and important. Focusing on child victims may prevent future abuse, as unwanted sexual touching or unwanted attempted sex in childhood are “highly predictive of later unwanted completed sex.”³⁴ A study in Haiti found that over 40 percent of girls who experienced unwanted completed sex had previously experienced unwanted sexual contact.³⁵ The first abuse occurred on average two years prior to the first episode of unwanted completed sex, a “feasible time frame for effective intervention to occur.”³⁶

Sexual violence, gender and transmission of HIV/AIDS

24. Victims of sexual violence, particularly gang rapes, are at a high risk of contracting HIV/AIDS. Measures combatting sexual violence must also include measures to prevent and address HIV/AIDS transmission, through both preventive measures and rapid response for victims of rape.

25. While educational efforts on condom use are encouraged, more needs to be done to translate knowledge into practice. A 2012 governmental survey revealed that 98 percent of men know that people can reduce their chances of contracting HIV if they consistently use condoms.³⁷ However, only 36 percent of HIV-negative and 44 percent of HIV-positive men reported using a condom the last time they had sex.³⁸ A 2014 study found that the beliefs men held regarding gender relationships were also associated with condom use; men who believed it was justified for a woman to ask her husband to use a condom were more likely to use condoms and the reverse was observed among men who believed it was justified for a husband to hit or beat his wife if she refused to have sex with him.³⁹ The study concluded that,

*Interventions designed to change gender norms and attitudes toward intimate partner violence among men may also increase condom use. Interventions that have integrated HIV prevention with gender-based violence prevention have been successful in reducing men’s negative attitudes and violence toward women and increased men’s communication with sex partners about condoms.*⁴⁰

26. The Haitian Ministry of Public Health and Population has taken positive steps toward making HIV/AIDS services accessible to rape victims by providing free ARV-PEP (post exposure drugs reducing the likelihood of infection) and pre/post HIV counselling at publicly funded facilities. However, despite governmental initiatives, uptake to ARV-PEP following sexual assault is reportedly low at l’Hopital de l’Université d’État d’Haiti, the largest publicly funded health facility in the nation.⁴¹ Suggested reasons for the low uptake include fear of stigmatization and the fact that many young victims are accompanied by non-relatives who may not be capable or authorized to make medical decisions for the child.⁴² The barriers to accessing and reasons for not accessing post-rape health care and specifically HIV/AIDS treatment should be further investigated and solutions to resolve them should be formulated to fill the “gap in tailored programming designed for the special needs of sexual assault survivors.”⁴³

3. Lack of national information gathering system

27. There is no national database collecting information on instances of sexual harassment and violence against women, which undermines the Government's ability to track the problem and develop an effective response. In its 2012-2016 National Plan, the Government vowed to introduce a system of management of information on gender-based violence, but it has failed to do so.⁴⁴ In its Response, the Government informed that a system of gathering information on the situation of women does not exist but claimed that "the Haitian Institute of Statistics and Information does studies" which "disaggregate the information according to sex and its analyses take gender into account"⁴⁵ The Institute publishes studies on economics, demographics, inquiries and census figures, but it does not publish statistics on incidents of sexual harassment, discrimination or violence against women. There is a critical need for a database and reliable statistics to monitor gender-based violence crimes, including rape, to ensure that the Government is able to implement appropriate responses and track the effectiveness of such strategies. Even with an effective information gathering system, there would still be challenges with underreporting, another problem the Government needs to address.

4. Impunity for perpetrators of gender-based violence due to the failure or inadequacy of prosecution

28. The Government recognizes that impunity exists for all crimes, including gender-based violence, and identifies the following reasons: corruption and/or politicization of the judicial system, incompetence of judges or their misunderstanding of the laws, and the insufficiency of the legal framework.⁴⁶ Although recognising these problems is a positive step, the Government does not propose any measures to combat them. It also does not address the particular problems enabling impunity for gender-based violence. Problems identified by civil society include negative attitudes of law enforcement and judicial officials and misuse of medical certificates.

Limited access to justice

29. Most Haitians have no access to the formal justice system for various socio-economic, cultural and political reasons.⁴⁷ Poverty is a significant barrier - 61 percent of the population earns less than \$1.25 per day, ranking Haiti among the poorest countries in the world,⁴⁸ and legal costs and lawyers are expensive. Lack of access to education prevents many Haitians from understanding their rights and the workings of the legal system. Legal proceedings are generally conducted in French, which 80 percent of the population does not speak.⁴⁹ The Government recognizes that "a true system of public legal assistance does not exist." It noted that the Ministry of Justice is working on this issue with the Bar Association, but did not furnish further information about concrete steps.⁵⁰

30. Women are particularly marginalized by limited access to justice due to the added economic disenfranchisement and gender discrimination they face.⁵¹ Accessing justice for crimes of gender-based violence is difficult. Administrators of justice at all levels of the judiciary do not prioritize incidents of violence against women, do not take women seriously, do not take account of the critical evidence to identify the culprits, and do not have response for the victims and their families when they try to cooperate in investigations.⁵² Police often do not take complaints of sexual abuse from sex workers, leaving them exposed to violence without recourse.⁵³

31. In 2012, the UN released a report based on a study on the treatment of reported rape cases in the criminal justice system in Port-au Prince.⁵⁴ Its findings “indicate that the low rate of prosecution of rape in the Port-au-Prince area is a result of the shortcomings of the police and judicial system in general.”⁵⁵ It monitored 62 rape cases filed in Port-au-Prince during a three-month period. Eighteen months after complaints were filed with the police, none of the cases had gone to trial.⁵⁶ The police and courts lack the basic resources they need to fulfil their duties and adequately respond to complaints of gender-based violence.⁵⁷

32. The lack of access to justice for victims further dissuades the reporting of rape and sexual assaults. To make matters worse, victims and their families are often mistreated when attempting to avail themselves of judicial remedies. This abuse further inhibits women and girls from reporting their assault.⁵⁸

33. The Government is taking welcome measures to combat low levels of reporting of rape such as “providing education on human rights and the availability of reliable and secure mechanisms for victims.”⁵⁹ More information about the human rights education training and the availability and the rates of participation of these reliable and secure mechanisms for victims is welcome. Measures to strengthen the judicial system and law enforcement capacity, as well as enforcing sanctions for wilfully inadequate, discriminatory or threatening conduct are also essential to enabling access to justice.

Negative attitudes of law enforcement and judicial officials

34. Public officials in the justice system (often males) who interact with female victims of gender-based violence frequently have attitudes that perpetuate the stigma associated with rape and obstruct female victims’ access to justice,⁶⁰ which includes police, prosecutors and judges. The negative attitudes of the police towards victims discourage reporting instances of gender-based violence. Furthermore, the discriminatory or sexist form and attitude of some police officers when they receive complainants at the station re-traumatizes the victims and dissuade them from reporting.⁶¹

35. Some investigatory judges blame the victim for having done something to attract the aggression or trivialize the experience.⁶² In one harrowing case, a young woman was repeatedly badgered with the question, “What did you do to make him violate you?”⁶³ In that case, the victim spent more than 24 hours travelling from police stations to state hospitals and clinics, trying to register her complaint and obtain a medical certificate, as the officers mistakenly demanded medical certificates to open investigations or press charges, refusing to write up the rape allegation until she paid a bribe.⁶⁴

36. A 2012 study found that “[m]ore than half of sexual assault victims and household members who tried to report the crime to the police complained that officers refused to make a report or tried to dissuade the victim or family members from doing so. Roughly 12 percent of sexual assault victims reported paying or being asked for bribes by police; the average bribe given was 1200 gourdes, about USD \$30.”⁶⁵

37. The Government reports having taken measures to inform judges, prosecutors and lawyers on the provisions of CEDAW and on the negative effect of prejudices and stereotypes through training seminars and awareness raising campaigns.⁶⁶ However, the Government acknowledges that these interventions have yet to be formalized as part of

the training curriculum.⁶⁷ More rigorous training remains needed, and this training must also be extended to the police force.

Misuse of medical certificates

38. The Government notes that “[t]he medical certificate is an element of proof but is not legally obligatory in order to make a complaint.”⁶⁸ In practice, however, as noted by the UN Human Rights Committee in 2014, “a medical certificate is required to initiate criminal proceedings for rape”.⁶⁹ Judges will often not pursue a case if one has not been provided or does not provide sufficient detail.⁷⁰

39. Apart from having no basis in law, the *de facto* requirement of a medical certificate is problematic for several reasons. First, victims may not be able to obtain them due to the costs associated with the process. Medical facilities often charge fees to issue certificates, which can be cost-prohibitive. The UN Human Rights Committee noted the “progress made in enabling victims of rape to obtain a medical certificate free of charge.”⁷¹ Even if they are made available free of charge, however, victims still face costs of transportation to the medical facility. Second, victims may also prefer not to obtain a medical certificate due to fears of being examined, especially by a male doctor.

40. Moreover, a medical certificate can be misleading or irrelevant. Some doctors register only that a victim had sex, and even in violent rape cases, may refuse or fail to write up bruises, cuts, or other blatant indicators of aggression, including the victim’s psychological state.⁷² And in many instances, rapes may not leave injuries that indicate a use of force, especially if the victim was not a virgin when assaulted. Nonetheless, judges and prosecutors frequently dismiss cases where medical certificates do not indicate evidence of force, under the misconception that this indicates that no rape took place.⁷³ In a recent case currently pending before the Haitian Supreme Court, the prosecutor and appellate court relied on an inconclusive medical certificate that found no evidence of force rather than the victim’s detailed testimony that she was bound, beaten and raped twice.⁷⁴ This case is unfortunately typical.

41. This suggests that the requirement of a medical certificate indicates the belief that a woman’s testimony by its nature is questionable in Haiti. Meanwhile, men’s testimonies are accorded weight. In the above case, the young woman submitted her testimony and pressed charges, arriving to the station with ripped clothes and blood matted on her head from the assault; but the police still refused to pursue the case simply because the attacker had claimed the sex was consensual.⁷⁵

The gender inequality and inadequacy of Haitian legislation

42. The Haitian legal framework reflects the gender discrimination and disregard for the position of women and girls that is pervasive within the legal system itself. Rape was criminalized in Haiti in 2005.⁷⁶ However, the elements of the crime of rape are still not codified; consent is not defined and marital rape is not criminalized.⁷⁷ Ambiguous legal definitions are significant barriers to successful investigation and prosecution of rape cases, especially in cases of intimate partner violence. The lack of criminalization of marital rape means women in abusive relationships have no legal recourse. Sexual harassment is similarly not criminalized. The UN Human Rights Committee recommended in 2014 that “the State party should accelerate the adoption of specific legislation on violence against women with a view to strengthening the legal framework for protection against domestic violence, sexual harassment, rape, including marital rape,

and other forms of violence suffered by women.”⁷⁸

43. The Government acknowledged in its Response that the elimination of discriminatory laws has to be done by revising the Penal Code and Civil Code.⁷⁹ However, the revision of the Civil Code has not begun and the revision of the Penal Code is still pending. Other proposed reforms the Government mentions in its Response include proposed laws on Sex Equality, Gender Based Violence, Decriminalizing Abortion, Criminalizing the Trafficking of People, and Working Conditions of House Workers. The law on the Working Conditions of House Workers was passed by Parliament in 2009 but the Government still has not promulgated it, demonstrating its refusal to take women’s rights seriously.

44. The proposed law on Sex Equality and the proposed law on Gender Based Violence await parliamentary debate and approval. Due to a lack of timely elections, most of Parliament termed out in January 2015, leaving President Michel Martelly to rule without legislative oversight.⁸⁰ The Government, including the Prime Minister and Ministry of Women and Ministry of Justice must support and encourage the prompt passage of these laws once the new Parliament is seated. While these laws are pending, the Government should take even more care to aggressively pursue other efforts to address intimate partner violence, sexual harassment and gender discrimination.

45. The law on Working Conditions of Domestic Workers awaits promulgation by the executive. Parliament adopted the law on Working Conditions of Domestic Workers in 2009. The proposed law Decriminalizing Abortion is still being drafted. This drafting process needs to be completed as soon as possible. In 2008, CEDAW encouraged “the State party to enact the law on partial decriminalization of abortion as it expressed the intention to do so.”⁸¹ While abortion is a controversial issue particularly in Haiti’s socio-religious context, women are dying because abortion is illegal irrespective of the circumstances of the pregnancy.⁸² This puts women and girls in danger, as there is no legal alternative, and there is a trade in illegal abortions, which are dangerous and can be fatal. Haiti has the highest maternal mortality rate in the Western Hemisphere, with 530 maternal deaths per 100,000 children born, *at least a fifth of them linked to abortions*. Early pregnancies often happen one year after the first periods, as young as 12 or 13 years old.⁸³

B. Article 6: Sex Trafficking, Exploitation of Prostitution and Child Prostitution in Haiti

46. Sex trafficking, exploitation of prostitution and child prostitution are prevalent problems in Haiti. These terms have significant overlap, and are addressed together in the Government’s obligation to “Take all appropriate measures, including legislation, to suppress all forms of trafficking in women and exploitation of prostitution of women.”⁸⁴ To fulfill this obligation the Government needs to take specific preventive and punitive measures to overcome trafficking and sexual exploitation.⁸⁵ As a signatory to the Palermo Protocol of trafficking in persons, the Government respects the definition of trafficking as the “recruitment, transportation, transfer, harbouring or receipt of persons...for the purpose of exploitation.”⁸⁶ The Government’s obligations to prevent and punish not only trafficking, but coercion or exploitation of prostitution, especially that of children, are discussed in this report. These must be addressed through joint measures.

1. Sex Trafficking

47. Haiti is a source, transit and destination country for men, women, and children subjected to forced labor and sex trafficking.⁸⁷ Sex trafficking affects Haitian as well as foreign women and girls that are trafficked into the country. In 2009, 950 Haitian children were trafficked across the border; after the 2010 earthquake, that number spiked to 7,300 children.⁸⁸ They are taken by traffickers who often work with corrupted local authorities – reportedly, all the officials know who the traffickers are, but don't report them.⁸⁹ The traffickers coerce their victims into prostitution, or use rape to intimidate and control the victims.⁹⁰

48. The U.S. State Department 2015 Trafficking in Persons Report notes that citizens of the Dominican Republic are exploited in sex trafficking in Haiti."⁹¹ The Government remains responsible for Dominican women trafficked into Haiti under coercion or false employment contracts. Although in 2014, the Government secured the return of nine victims to the Dominican Republic, it has not taken systematic efforts to identify or protect similarly-placed victims, and has left NGOs to shoulder the burden of victim care.⁹² In 2014, the Government conducted some training and prosecution of trafficking cases, but opened no investigations into public official complicity trafficking.⁹³

49. On 3 December 2014, the Government noted that the anti-Trafficking law was promulgated on 28 May 2014. Since then, the United States program on Trafficking in Persons notes that the Government has made two prosecutions under this law.⁹⁴ However, in November 2015, the Government response noted that the Law on Trafficking has not yet been promulgated, and that as a result, no actions had been taken to combating trafficking.⁹⁵ Further clarification is needed on the status of this law, and the international reporting on the law; it is of great concern that Government representatives are unaware of the Trafficking law.

2. Exploitation of Prostitution

50. Consensual prostitution by adults is not criminalized in Haiti. However, consensual prostitution is also not regulated in order to protect women engaging in sex work from exploitation. In Haiti, no specific law criminalizes maintaining brothels, managing prostitution, or creating unsafe or inadequate working conditions. Women engaging in sex work have no legal protections and little to no protection in practice from abuse, exploitation or trafficking due to a lack of access to justice, (as mentioned above in section B), or health services, poor working conditions – all leading to coercion and exposure to violence.

51. As in every country, prostitution and sex work are difficult to measure and to distinguish into the categories of consensual adult sex workers and non-consensual adults or children, or those coerced into prostitution or held in sexual slavery. In serious cases of mistreatment, women's groups may receive complaints but do not necessarily record complaints unless there is further action in a particular case, or evidence beyond the victim's testimony.⁹⁶ Many women, Haitian or foreign, are coerced into sex work, and in many cases, consent of these women is implied – incorrectly – and they suffer not only exploitation but sexual violence and assault.⁹⁷

52. Both consensual and coerced adult sex workers continue to face many challenges related to traditions, perception, and insecurity. The precarious situation of women living in post-earthquake internal displacement camps, especially for women heads of

households, has driven a sex trade due to a complete lack of access to free government services and a complete destruction of their livelihoods following the earthquake. “Displaced women and girls are being forced by circumstance into survival sex,” said a prominent women’s rights activist in 2010.⁹⁸ Many continue to engage in sex work today because their circumstances are stagnant.⁹⁹ Some are women that engage in sex work with the goal of saving money and using it to improve their situation, but they nevertheless continue to face the risk of assault and attacks, and continue to hide their sex work from their immediate community for fear of reprisals.¹⁰⁰ For many more, sex work is a last resort from which they have no escape planned, and the stigma of prostitution leads many women to experience feelings of self-hate, of desperation, and of anxiety over their precarious income and security.¹⁰¹

53. The Government is encouraged to take measures to regulate the sex work industry. Studies suggest that legalization and regulation of sex work protects sex workers in countries where sex workers have more equal standing with other members of society, but not in countries facing significant problems of trafficking in persons, coercion of foreign or young women into prostitution, child prostitution, or relative disadvantage due to education, language, or cultural barriers, all of which are true in Haiti.¹⁰² Because of this, the Government must promulgate a law providing strict penalties for the solicitation of and maintenance of exploitative practices.

3. Child prostitution

54. Young women and girls are especially vulnerable to sexual exploitation and prostitution. There is a thriving market in Haiti for prostitution of children under 18 years of age. Girls leave their schooling to engage in sex work, often becoming the sole income-earner or largest income-earner in very poor families, where the entire family can come to depend on the girl’s income.¹⁰³ Parents are often conscious of the work their child is doing, but are resigned to their circumstances, and families are disrupted because of the imbalance of the situation.¹⁰⁴ One girl recounts that she entered into prostitution at the age of 16, in part due to high costs of schooling, and she regrets that she will never be able to go to college like her peers; she knows that for her, the only ways out are through marriage, or through pregnancy.¹⁰⁵

55. Children under 18 are protected under the Penal Code through strict sanctions against adults who facilitate child prostitution¹⁰⁶ and by the Optional Protocol to the Convention on the Rights of the Child (CRC) on the Sale of Children, Child Prostitution and Child Pornography (OPSC), ratified by the Government in 2014. In Haiti, sexual relations with a minor are prosecuted under this standard, using the age of majority given by the constitution (18), applying international standards regarding non-validity of consent by minors, and the increased penalties for rape of children in the Penal Code.¹⁰⁷ But there is no law specifically treating the solicitation of child prostitutes as punishable under the same regime as rape of a minor. Without this law, the potential for prosecution does not present enough of a deterrent for men who seek child prostitutes.

4. Trafficking and sexual abuse of “Restavèk” children (children in domestic servitude)

56. *Restavèk* is the term used to describe domestic child laborers in Haiti. UNICEF estimates somewhere between 200,700 and 300,000¹⁰⁸ children in Haiti’s *restavek* system, 60 percent of whom are girls, some as young as eight years old.¹⁰⁹ Rural poverty, low

domestic income, insufficient schools in remote areas are some of the reasons why families in the countryside often send their young children to larger towns to host families in larger towns. Host families usually promise that children will have better opportunities there.¹¹⁰

57. *Restavèk* are often mistreated, neglected, and abused emotionally, physically, and sexually, and forced to work long days without access to schools.¹¹¹ Girl *restavèk* are particularly vulnerable to the sexual abuse of males in the host family. In fact, *restavèk* girls are sometimes called *la pou sa*, there for that.¹¹²

58. For example, Church World Services gives the testimonial of Stephany a 15-years-old girl. She left her parents' house at such an early age that she does not remember how old she was at that time. A relative of hers took her from her biological parents' home with the promise to take care of her and send her to school. Stephany had seven other siblings. Once Stephany arrived in Port-au-Prince, her relative gave her to an unknown family as a *restavèk*. She has not seen her relative since. From that day on, she has worked for the family doing all kinds of chores. She is beaten every day and was raped by the family's son when she was 13. She still lives with the family because she has no other choice.¹¹³

59. The Haitian public institutions charged with implementing a government-led child protection plan (Ministry of Social Affairs (MAST), the Institute of Well Being and Research (IBESR) and the Brigade of Protection of Minors (BPM)), are characterized by weak organizational and staff capacity, poor coordination and insufficient outreach, notably in rural areas. For example, these agencies lacked adequate victim identification and referral procedures and relied on NGOs to assist victims with minimal government support. As a result, there are urgent needs on issues related to international standards to ensure a qualitative child protection response, to address child protection needs and to develop adequate child protection strategies in Haiti.¹¹⁴

5. Sexual exploitation and abuse linked to the presence of the UN mission, MINUSTAH

60. Women and girls are at increased risk of sexual exploitation and abuse (SEA) due to the presence of the 5,000 civilians, military and police personnel of the UN peacekeeping mission, MINUSTAH, which poses institutional barriers in access to justice, and creates a negative balance of power for women in the face of foreign police and military. A recent UN report states that peacekeeping and political missions registered 480 formal allegations of SEA around the world between 2008 and 2013, with over one-third of the allegations involving a minor victim.¹¹⁵ Reported instances of sexual exploitation and abuse in Haiti is disproportionately high — allegations against MINUSTAH personnel account for more than 26 percent of reported sexual assault cases against the UN, though the MINUSTAH force in Haiti makes up only 7 percent of peacekeeping forces worldwide.¹¹⁶

61. The UN reported a minimum of 81 allegations of SEA made against MINUSTAH police, military, and civilian personnel in Haiti between 2009 and 2014.¹¹⁷ These numbers drastically undercount the actual incidents of MINUSTAH SEA. In a UN survey conducted in 2015, a research team identified 231 persons in Haiti that had been involved in transactional sexual relationships with MINUSTAH workers (229 of the 231 were

female).¹¹⁸ The UN acknowledged a pervasive problem of underreporting, as each count of transactional sex should have been reported as sexual exploitation, but was not.¹¹⁹

62. Allegations of sexual exploitation by MINUSTAH personnel take several different forms. They often take the form of “transactional relationships,” where goods and services are exchanged for sex. These relationships are characterized by gross disparities in power between women and the offending UN personnel. The peacekeepers often benefit from having greater age, access to wealth and resources, protected status as a foreigner and as a member of an international organization, and from being free from social and community stigma.¹²⁰ The women in such relationships often do not have “equal control in the relationship;” they feel they cannot speak openly, and must not insist on their own physical or emotional needs, including condom use to prevent disease or pregnancy.¹²¹ Permeating this transactional dynamic is an underlying fear. One respondent explained: “[h]e is armed. You’re lucky he doesn’t just rape you. Instead he uses soft words and gives you money or food.”¹²² In some cases, these transactional relationships turn into sexual abuse, emotional or physical violence, harassment or threats.¹²³

63. In addition to these transactional relationships, there are other cases in which there is no pretence of a relationship, and women and girls are simply assaulted or raped by UN staff, and in most cases, there is little to nothing that a victim can do.¹²⁴ Victims feel defeated knowing that they cannot reach the men who raped them once they leave Haiti; they will not have the right to “see them face the judge.”¹²⁵ Despite its scale and seriousness, the Government has not taken steps to publicly acknowledge the problem of SEA by MINUSTAH personnel, to research and document it, or to work with the UN to ensure the implementation of preventative measures.

64. The Government is also failing in its obligations to protect victims’ right to remedy and access to justice in these cases. As discussed above, many barriers prevent victims of gender-based violence from accessing justice in Haiti. For victims of SEA by MINUSTAH personnel those barriers are still greater. The UN’s current mechanisms for accountability and redress are vastly inadequate and create a system of effective immunity for MINUSTAH personnel, to which the Government acquiesces.

65. According to MINUSTAH policy, victims of sexual exploitation should report the abuse to MINUSTAH’s Conduct and Discipline Unit (CDU), or the Office of Internal Oversight Services (OIOS).¹²⁶ MINUSTAH is obligated to disseminate information regarding the UN’s policies on sexual exploitation and abuse,¹²⁷ but in the study referenced above, of 231 victims, only seven knew that the UN had any policy on sexual abuse, and none knew there was a reporting mechanism.¹²⁸ Further, Haitian women who have been subjected to abuse and exploitation at the hands of MINUSTAH personnel say they are reluctant to report their abuse to the very institution that harbours the perpetrators. They cite language barriers, lack of access to the physical compound where MINUSTAH is housed, fear of recrimination from other soldiers, stigma from the Haitian staff, and the dismissal of their complaints by security and staff as reasons for not reporting abuse.¹²⁹ The Haitian Government can and should do more to ensure that women have access to information, but should acknowledge that the system of reporting does not serve the best interests of the victims.

66. Even if victims surmount the obstacles to reporting the SEA, complaints rarely result in prosecutions or remedies for the victims. OIOS and CDU are only responsible for administrative investigations and do not have a mandate to pursue criminal or civil claims relating to SEA. They cannot grant monetary compensation, restitution or damages as required by local and international law, nor do they point victims and claimants towards these remedies.¹³⁰ Furthermore, the OIOS and CDU investigations are extremely long - the UN notes that the average takes over a year; and they are not transparent, as victims have no right to participate or to request information about the status.¹³¹ If the UN unilaterally finds that the claims are not substantiated, the claim does not come before any court system or independent adjudicator. While the UN is required to inquire into SEA jointly with the Haitian government, including the Haitian National Police, this does not occur in practice. The Government has not taken steps to hold the UN to this obligation, to demand greater transparency in the UN investigatory process, or to conduct its own investigations into SEA allegations. The Government can and should encourage reporting to police and judicial organs as the primary sources of access to justice, and to ensure that victims are informed that the UN system is not equivalent to a justice system.

67. The immunity of UN personnel presents a further critical barrier to accountability for SEA and redress for the victims. Under the terms of the Status of Force Agreement (SOFA) signed between Haiti and MINUSTAH, UN civilian staff (including civilian police) has functional immunity, which is immunity from liability for acts done in the course of their official duties.¹³² Therefore, they theoretically remain subject to Haitian courts for crimes and civil or monetary harms committed in Haiti that are outside the course of their official duties. In the case of SEA, victims should be able to access justice through the local court system, for both criminal accountability and civil claims such as paternity. In practice, however, UN missions treat civilian staff as if they enjoy immunity against all local prosecution. Between 2008-2012, 44 SEA claims against civilian staff were investigated by various UN mechanisms, and of these, none faced criminal proceedings either in the host country or in their own countries. Only nine were referred by the UN to the civilian's own country for prosecution (no report of the process has been shared).¹³³ The Government has acquiesced to this situation of effective impunity, failing to pursue criminal accountability for UN civilian personnel, to inform victims of their rights or support them in filing civil claims (as noted above), or to call on MINUSTAH to honour its obligation to require trials in local court.

68. For UN peacekeeping military personnel, the SOFA provides that their home countries retain exclusive jurisdiction over any criminal charges.¹³⁴ Once complaints are removed to a foreign court, the process becomes obscured and nearly impossible to reach for Haitian victims, witnesses and local advocates and in practice perpetrators are rarely punished by their home state. For example, in 2008, MINUSTAH conducted a mass deportation of 114 Sri Lankan MINUSTAH troops following allegations of the sexual abuse of minor girls at their UN base in Haiti.¹³⁵ The charges invoked a special UN investigation of the allegations together with investigators from Colombo.¹³⁶ However, seven years after their repatriation, the outcome of their cases remains unknown.¹³⁷

69. Further, while military personnel are theoretically subject to the same functional immunity framework as civilian personnel for civil claims, including paternity claims, in practice a Haitian woman has never been able to take a paternity case against a military member of MINUSTAH to court. This is partly because the military members are repatriated by the time victims receives legal assistance, and partly because MINUSTAH

does not inform or refer these women to seek compensation, neither in Haiti nor in the troop contributing country.¹³⁸ Again, the Haitian Government has supported this effective immunity and thereby fallen short of its obligations to protect victims' access to justice. The Government has failed to take steps to press troop contributing countries to prosecute their military personnel for SEA, or even at the very least to ensure victims are engaged in proceedings against foreign soldiers by their home countries, even though the collection of testimony and keeping victims updated on the status of the case. The Government must also inform women of their rights to pursue paternity claims, through the diffusion of information, through assistance in collecting information about foreign personnel, and through facilitating communication with MINUSTAH.

IV. RECOMMENDATIONS

1. Improve measures to combat societal discrimination against women

- Provide more specific information about awareness raising campaigns taken so far on women's rights, any work done with the media to transmit non stereotyped images of women and girls and how women's groups may collaborate or obtain more information on these initiatives
- Invite women's groups to hold training seminars in Parliament on gender sensitivity and equality informing on the need and measures to combat societal discrimination and prejudice against women
- Raise awareness through inserting gender equality education into the formal curricula of primary and secondary schools and removing the stereotyping of women in school books

2. Strengthen measures to combat gender-based violence

- Implement interventions to help children at high risk of sexual violence through compulsory education in primary and secondary schools on sexual violence and confidential ways to report abuse, including outreach to parents of school-age children
- Investigate barriers to accessing health care for post rape victims and plan health programming to fulfil the special needs of sexual violence survivors particularly with regard to HIV/AIDS and access to emergency contraception

3. Implement a national information gathering system on instances of discrimination and violence against women

- Develop a database containing national figures on cases of rape, violence against women etc., collect, collate and systemize this information from government agencies, civil society and the UN
- Use the information to identify particularly vulnerable groups, to develop targeted interventions and as a baseline enabling realistic targets to be set and the evaluation of the efficacy of previous measures

4. Improve access to justice

- Establish a fund for free or reduced-cost legal assistance programs through the Bar, targeted toward women
- Build police and judicial capacity, such as through increased resources, to ensure complaints of gender-based violence are investigated
- Ensure that law enforcement, prosecutors and judges know that a medical certificate is not legally required to initiate criminal proceedings for rape, and

educate these officials on the challenges of obtaining and relying on a medical certificate

5. *Take measures to combat the negative gender attitudes and discrimination against women among law enforcement and judicial officials*

- Formalize and make part of the standard curricula the training seminars and awareness raising campaigns the Government has taken to inform members of the legal profession on the provisions of CEDAW and the negative effect of prejudices and stereotypes, training on gender sensitivity and on intimate partner violence. Implement similar training seminars and awareness raising campaigns as part of the law enforcement training curriculum
- Introduce a transparent process for victims to file discrimination complaints with CSPJ for judges, with the Bar for lawyers and with the Police inspector for police

6. *Take measures to ensure the gender equality and adequacy of Haitian legislation*

- Take measures to accelerate the adoption of the law on Sex Equality and the law on Gender Based Violence
- Finalize the drafting of a law decriminalizing abortion
- Promulgate the law on Working Conditions of House Workers

7. *Clarify legal protections for victims of trafficking and exploitation of prostitution*

- Promulgate the law Criminalizing the Trafficking of People
- Criminalize exploitation of prostitution, while providing legal protection for sex workers
- Criminalize solicitation of child prostitutes by the same standards as rape of minors

8. *Take measures to enforce existing protections for victims of exploitation of prostitution and trafficking*

- Create a functional complaints mechanism in a non-police body for women to register police harassment by PNH as well as by UN police
- Train police to carry out inspections of suspected trafficking locations, regulate border crossings, prosecute traffickers and investigate government officials' complicity
- Enforce the prohibition on soliciting children, prosecute offenders
- Promulgate a law criminalizing the exploitation of prostitution

9. *Take affirmative steps to prevent against the intrastate and interstate trafficking of children for restavèk placement:*

- Enforce all existing laws to protect *restavèk*; strengthen Haitian law enforcement through intensive training on *restavèk* issues including an emphasis on changing attitudes regarding the acceptability of the practice and on instruction for working with victims of rape.
- Strengthen capacity of Haitian child protective services MAST, IBESR and BPM, to identify, document and provide services to *restavèk*.

10. *Take measures to combat sexual exploitation by UN staff and peacekeepers*

- Acknowledge the prevalence of SEA committed by MINUSTAH in Haiti, and take steps to publish official UN figures as well as collect unofficial reports from advocacy groups
- Require the UN to release information concerning the status of on-going case investigations, personnel repatriated, and results of prosecutions occurring in other countries which involve Haitian victims
- Clarify the liabilities of UN staff and peacekeepers in Haiti regarding SEA, and regarding the rights of victims, diffuse this information to UN officials, PNH, local leaders and women's advocates, and establish benchmarks for the Government to take steps to combat SEA by MINUSTAH
- Conduct PNH investigations into allegations of UN SEA in collaboration with MINUSTAH as required by SOFA, to best protect the interests of the victim's right to remedy
- Advocate for the referral of cases received by the UN to the local judicial system as contemplated by the terms of the SOFA and proactively pursue legal proceedings against UN personnel that fall within the jurisdiction of the Haitian court system

¹ LA CONSTITUTION DE LA REPUBLIQUE D'HAÏTI, Art. 276.2 [hereinafter HAITI CONST. 1987].

² U.N. Committee on the Elimination of Discrimination Against Women (hereinafter CEDAW Committee), *Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women: Combined initial, second, third, fourth, fifth, sixth and seventh periodic reports of States parties Haiti* CEDAW/C/HTI/7 (July 9, 2008).

³ HAITI CONST. 1987, art. 17, 18.

⁴ HAITI CONST. 1987, art. 19.

⁵ CODE PENAL, art. 278.

⁶ CODE PENAL, art. 279.

⁷ CODE PENAL, art. 280.

⁸ UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women United Nations*, Treaty Series, vol. 1249 p. 13 (Dec. 18, 1979) (hereinafter CEDAW) art 2.

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- ¹²⁴ *Id.* at 19.
- ¹²⁵ Armstrong, *supra* note 116.
- ¹²⁶ *Frequently Asked Questions*, OFFICE OF INTERNAL OVERSIGHT SERVICES, (2015), <https://oios.un.org/page?slug=frequently-asked-questions>.
- ¹²⁷ *UN Strategy – Prevention*, UNITED NATIONS CONDUCT AND DISCIPLINE UNIT, <https://cdu.unlb.org/UNStrategy/Prevention.aspx> (a key part of the “prevention” pillar of CDU activities is awareness raising, which includes popularizing the UN SEA policy).
- ¹²⁸ Kolbe *supra* note 118 at 18.
- ¹²⁹ *Id.* at 19.
- ¹³⁰ *See, e.g.*, OIOS EVALUATION REPORT *supra* note 115, ¶4 (“victim assistance does not include monetary compensation,”); *see also UN Strategy: Remedial Assistance*, UNITED NATIONS CONDUCT AND DISCIPLINE UNIT, (2010), <https://cdu.unlb.org/UNStrategy/RemedialAction.aspx>.

¹³¹ OIOS EVALUATION REPORT *supra* note 115 ¶30 (average length was 16 months); *see also* *Frequently Asked Questions*, OFFICE OF INTERNAL OVERSIGHT SERVICES, <https://oios.un.org/page?slug=frequently-asked-questions> ("Besides an acknowledgement of receipt for your report, OIOS will not generally provide updates on the status of your report.").

¹³² SOFA MINUSTAH, ¶¶ 51(a), 52, 57 (For criminal charges against a civilian, SOFA 51.a requires the Government of Haiti to inform the head of MINUSTAH of any criminal prosecution. In the case that MINUSTAH opposes the prosecution, an independent tribunal must determine whether prosecution is appropriate, under section 57 of the SOFA; For civil claims against civilians, paragraph 52 of the SOFA UN-HAITI notes that civil proceedings may be initiated against UN personnel provided that the government of Haiti informs the head of mission, and seeks certification that the acts in question were not carried out on official UN duty.)

¹³³ OIOS EVALUATION REPORT *supra* note 115 ¶ 37-38 ("member States do not regularly provide such information on taking action or providing information to the United Nations as this lies within Member States' discretion").

¹³⁴ SOFA MINUSTAH *supra* note 132, ¶ 51(b).

¹³⁵ OIOS EVALUATION REPORT *supra* note 115, ¶ 42.

¹³⁶ Carol J. Williams, *U.N. confronts another sex scandal*, LA TIMES, (December 15, 2007), <http://articles.latimes.com/2007/dec/15/world/fg-haitisex15/2>.

¹³⁷ OIOS EVALUATION REPORT *supra* note 115, ¶ 42.

¹³⁸ MINUSTAH, personal communication, November 2015.