

UNITED NATIONS HUMAN RIGHTS COMMITTEE

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**SUPPLEMENTARY INFORMATION ON HAITI REGARDING
SEXUAL VIOLENCE, SEXUAL EXPLOITATION AND ACCESS TO EDUCATION
FOR WOMEN AND GIRLS**

Submitted by:

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and

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April 26, 2012

Attention: Kate Fox Principi
Human Rights Committee Secretariat
8-14 Avenue de la Paix
CH 1211 Geneva 10
Switzerland

Sent via email to kfox@ohchr.org

RE: Submission to Country Report Task Force for the adoption of the list of issues for the Government of Haiti, Scheduled for Review by Human Rights Committee during Session No. 107 (11–28 March 2013)

Dear Honorable Committee Members,

This letter is submitted to you by MADRE, the Commission of Women Victims for Victims (KOFATIV), Women Victims Get up Stand Up (FAVILEK), the International Women's Human Rights (IWHR) Clinic at the City University of New York (CUNY) School of Law, the Bureau des Avocats Internationaux (BAI), the Institute for Justice and Democracy in Haiti (IJDH), the Center for Gender and Refugee Studies, University of California Hastings College of the Law (CGRS), and the Hastings to Haiti Partnership (HHP) to assist the Human Rights Committee's (HRC) Country Report Task Force for Haiti which is scheduled to meet in July, 2012, in its review of the state party's compliance with the International Covenant on Civil and Political Rights (ICCPR) and formulation of the list of issues for the review. This letter focuses specifically on issues related to sexual violence, sexual exploitation and access to education for women and girls in Haiti. It includes suggested recommendations for questions directed at the government. Our organizations have worked collectively on human rights issues in Haiti for more than 16 years, so we hope this will be of use to the Committee as it sets the priorities for Haiti's upcoming review.

Since the devastating earthquake that struck Haiti on January 12, 2010, several delegations of U.S. and Haitian lawyers, law students, and advocates affiliated with the undersigned organizations have investigated the prevalence and patterns of rape and other vulnerable individuals in Port-au-Prince as well as the governmental, inter-governmental, non-governmental, and grassroots responses to the violence.¹ We have also looked at these issues in rural Haiti in areas outside of the earthquake zone. The memo attached to this letter is divided into three parts: the first addresses sexual and gender-based violence, the second addresses sexual exploitation, and the third addresses young women and girls' lack of access to education. Each part provides an overview of the problem as well as an analysis of the government's compliance with its obligations under the International Covenant on Civil and Political Rights (ICCPR) and suggested recommendations for questions directed at the government.

¹ Investigations were conducted in May, June, July, and October 2010; October, November, and December 2011; and February and March 2012. In addition, KOFATIV and the BAI engage in the on-going collection of information through the provision of legal and psychosocial services to women and girls in Port-au-Prince.

I. SEXUAL AND GENDER-BASED VIOLENCE IS RAMPANT AND COMMITTED WITH IMPUNITY IN HAITI (Articles 3, 6, 7, 12, 16, and 17).

Violence against women in Haiti is widespread and committed with near complete impunity. Entrenched social norms both perpetuate and justify discrimination and violence against women and deprive women of a multitude of legal rights that men enjoy. Violence occurs in both rural and urban environments, and in many forms including physical, sexual, and psychological. The government has yet to implement effective measures to curb the violence, punish perpetrators and provide redress for victims.

A. International Experts Have Called Attention to the Crisis of Sexual Violence in Haiti's Displaced Persons Camps and Poor Neighborhoods

The January 12, 2010 earthquake exacerbated underlying structural inequalities and brought with it a spike in sexual violence. Several UN Special Rapporteurs and Representatives have called attention to the sexual violence against Haiti's displaced women as an issue that must be addressed by the international community. For example, in February Michel Forst, U.N.-appointed official on human rights in Haiti, wrote:

Security in camps is still of utmost concern. Rape and Sexual Violence are serious problems facing women and girls. A more concerted effort by all authorities must be made to prevent such abuse, improve data collection, guarantee security and psychological and medical treatment for those reporting abuses, and prosecute those responsible for such violations.²

Additionally, in an October 2010 speech to the General Assembly, Rashida Manjoo, the UN Special Rapporteur on Violence Against Women, its Causes and Consequences, highlighted the disproportionate vulnerabilities of women in post-disaster settings and their increased risk of violence. She specifically cited the sexual violence faced by Haitian women and girls in the displacement camps.³ That same month, Walter Kälin, then Special Representative to the Secretary-General on the Human Rights of Internally Displaced Persons, linked pre-existing vulnerabilities of “violence and exploitation” with the post-disaster occurrence of sexual violence in Haiti's camps. He drew attention to “important levels of rape and gang-rape and also domestic violence in the camps, which [women's groups] identified to be problems that are growing in number and brutality.”⁴

² Michel Forst, *Haiti's Unfinished Human Rights Agenda*, THE MIAMI HERALD (Feb. 23, 2012), available at <http://www.miamiherald.com/2012/02/23/2657546/haitis-unfinished-human-rights.html#storylink=cpy>.

³ Rashida Manjoo, Special Rapporteur on Violence Against Women, Its Causes and Consequences, Statement at the 65th Session of the General Assembly Third Committee (Oct. 11, 2010), <http://www.un.org/womenwatch/daw/documents/ga65/vaw.pdf>. The Special Rapporteur also noted that she has “received numerous reports on the rise in violence against women and girls, in particular rape and domestic violence in IDP camps and elsewhere.”

⁴ Memorandum from Walter Kälin, Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Human Rights of Internally Displaced Persons in Haiti: Based on a Working Visit to Port-au-Prince ¶ 32 (Oct. 12–16, 2010), <http://ijdh.org/wordpress/wp-content/uploads/2010/11/Kalin-Statement-2010-Haiti-English.pdf>.

In December 2010, the Inter-American Commission on Human Rights (the Commission) granted a request for precautionary measures filed on behalf of women and girls at risk of rape.⁵ The Commission ordered both the Government of Haiti and the international community to take immediate action to prevent and respond to sexual violence. The Commission's decision calls for increased security and lighting, the provision of adequate to medical care including emergency contraception, improved accountability mechanisms, and meaningful participation by grassroots women's groups in planning and leadership (see Appendix).

In January 2012, the Center for Human Rights and Global Justice (CHRGJ) at New York University School of Law conducted a comprehensive empirical study of the prevalence of sexual violence in IDP camps, filling a much-needed gap in the lack of accurate data.⁶ The survey found that fourteen percent of IDP households reported at least one member had been a victim of sexual violence since the earthquake, with sexual violence defined as rape, unwanted touching or both.⁷ Nine percent of respondents surveyed indicated that one or more of their household members had been raped, defined as "forced into having sex when they did not want to."⁸ Additionally, seventy percent of survey respondents indicated that their worry about sexual violence against themselves or a member of their household had increased since the earthquake.⁹ The results from a separate survey of random Haitian households conducted from August 2011 to February 2012 similarly indicate a dramatic escalation in criminal violence, particularly in densely populated urban centers.¹⁰ Residents of low-income urban areas were twenty-seven times more likely to be sexually assaulted than residents of wealthier, less densely populated areas.¹¹

B. Victims of Rape Lack Adequate Access to Adequate Medical and Psychological Care (Articles 3, 7, 16 and 17).

Medical services for victims of rape are inadequate. Even where services do exist, they are difficult for women to access due to a lack of knowledge, perceived costs of medical care, inability to pay for transportation, and/or stigma associated with rape. For example, women who live in the Croix de Près neighborhood stated that a health clinic is desperately needed in their area. They reported, "The nearest clinic is very far away and the general hospital is too

⁵ Women and girls residing in 22 Camps for internally displaced persons in Port-au-Prince, Haiti, Precautionary Measures, Inter-Am. Comm'n H.R., ¶ 41, OEA/Ser.L/V/II. Doc. 5, rev. 1 (2010), <http://www.cidh.org/pdf%20files/IACHR-ANNUAL-REPORT-2010.pdf> [hereinafter IACHR Decision].

⁶ GLOBAL JUSTICE CLINIC/CENTER FOR HUMAN RIGHTS AND GLOBAL JUSTICE, *YON JE LOUVRE: REDUCING VULNERABILITY TO SEXUAL VIOLENCE IN HAITI'S IDP CAMPS*, 8–9, 43 (2012) [hereinafter CHRGJ YON JE LOUVRE].

⁷ *Id.* at 35.

⁸ CENTER FOR HUMAN RIGHTS AND GLOBAL JUSTICE, *SEXUAL VIOLENCE IN HAITI'S IDP CAMPS: RESULTS OF A HOUSEHOLD SURVEY 3* (2011), <http://www.chrgj.org/press/docs/Haiti%20Sexual%20Violence%20March%202011.pdf> [hereinafter CHRGJ HOUSEHOLD SURVEY].

⁹ *Id.* at 8.

¹⁰ ATHENA R. KOLBE AND ROBERT MUGGAH, INSTITUTO IGARAPÉ, *HAITI'S URBAN CRIME WAVE? RESULTS FROM MONTHLY HOUSEHOLD SURVEYS AUGUST 2011 - FEBRUARY 2012 1* (Mar. 2012), <http://ijdh.org/wordpress/wp-content/uploads/2012/03/Kolbe-Muggah-study-March-2012-1.pdf> [hereinafter HAITI'S URBAN CRIME WAVE?].

¹¹ *Id.*

expensive. If the doctors need gloves, we have to pay for the gloves. We have to pay for everything.” The quality and type of care varies greatly depending on the facility and the availability of supplies. Some clinics do not offer services such as HIV prophylaxis or emergency contraception, leading to unwanted pregnancies. Women also face prohibitively long waits, and may leave without being seen by a doctor. Furthermore, mental health services are virtually nonexistent, particularly for poor women and girls in need of continued care from mental health professionals whose services are too costly to access.

1. *Reproductive Healthcare: Abortion and Emergency Contraception*

Haiti’s complete ban on abortion has also resulted in physical and emotional hardship for women who have become pregnant as a result of sexual violence.¹² According to a UN population expert, sexual violence against women in displacement camps has contributed to a tripling of the birth rate in Haiti from four percent to twelve percent,¹³ while two-thirds of pregnant women reported unwanted pregnancies.¹⁴ The absolute prohibition of abortion has led some women and girls whose rapes resulted in pregnancy to seek clandestine, unregulated and potentially unsafe means of terminating the pregnancy.¹⁵ Other women and girls suffer from continued psychological trauma after giving birth to a child conceived from rape.

Additional threats to women’s health arise because roughly sixty percent of maternity wards are now housed in temporary structures and operating with only limited funding.¹⁶ The UNFPA predicts a sharp increase in the number of births by April 2011.¹⁷ Prioritizing and providing access to prenatal medical care is increasingly important considering that even before the earthquake, Haiti had the highest rate of maternal mortality in the Western hemisphere.¹⁸

¹² Under Art. 262 of the Haitian Penal Code, the practice of abortion is criminalized and a woman is subject to imprisonment if she performs an abortion on herself or gives consent for an abortion to be performed. Any person performing an abortion, with or without the consent of the woman, is also subject to imprisonment. Furthermore, 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 in cases of rape or to protect the life of the woman. See UN Population Div. Dep’t of Econ. & Soc. Affairs, *Abortion Policies: A Global Review*, www.un.org/esa/population/publications/abortion/doc/haiti.doc; see also Information Exchange Network for Mutual Assistance in Criminal Matters and Extradition, Code Pénal 1985, www.oas.org/juridico/mla/fr/hti/fr_hti_penal.html

¹³ Jonel Aleccia and Meredith Birkett, *Children of Rape Are Latest Legacy of Haiti Quake*, MSNBC (Jan. 6, 2011), <http://www.msnbc.msn.com/id/40930866/ns/health/> (last visited Apr. 8, 2012); see UNITED NATIONS POPULATION FUND (UNFPA), ENQUÊTE SUR L’ÉVALUATION DES BESOINS ET SERVICES DE SANTÉ DE LA REPRODUCTION DANS LES ZONES AFFECTÉES PAR LE SÉISME (Oct. 2010). Also, in research conducted for a report to be published later in the year, Human Rights Watch documented reports of young teenage pregnancies as a result of rapes in displacement camps.

¹⁴ Interview by Univ. of Virginia School of Law Delegation with Igor Bosc, Representative, United Nations Population Fund (UNFPA) in Port-au-Prince, Haiti (Jan. 6, 2011).

¹⁵ Human Rights Watch, *NOBODY REMEMBERS US*, 32–34 (2011), <http://www.hrw.org/sites/default/files/reports/haiti0811webwcover.pdf>.

¹⁶ Interview by Univ. of Virginia School of Law Delegation with Igor Bosc, Representative, United Nations Population Fund (UNFPA) in Port-au-Prince, Haiti (Jan. 6, 2011).

¹⁷ *Id.*

¹⁸ “Haiti, the poorest country in the Western Hemisphere, already has by far the highest rate of maternal mortality in the region – 670 deaths per 100,000 live births. This figure is likely to skyrocket as a direct result of the powerful earthquake.” *Earthquake in Haiti: UNFPA Concerned over Critical Situation for Women*, UNFPA (Jan. 13, 2010), www.unfpa.org/public/news/pid/4693 (last visited Apr. 8, 2012).

Access to emergency contraception after a rape is limited for poor women. Without access to emergency contraception, women are forced to carry out their pregnancies under hazardous conditions in which food, water, shelter, sanitation and prenatal care are often inadequate or unavailable, risking their physical and mental health. The lack of adequate medical facilities and emergency obstetric care has led to some displaced women to give birth in tents or shelters that lack even the most basic necessities for safe childbirth.

Making emergency contraception available and informing women about it can help them prevent unintended pregnancies and reduce the risk of unsafe abortions. Furthermore, the United Nations Guiding Principles on Internal Displacement mandate that special attention be paid to the health needs, including access to reproductive health care, of displaced women and girls.¹⁹

2. *HIV Prophylaxis*

High rates of rape and other sexual assault against poor and displaced women and girls place them at an increased risk of reproductive health problems and sexually transmitted infections, including HIV/AIDS. In Haiti, access to HIV prophylaxes for victims of sexual violence is crucial to the health of women and girls living in displacement camps and poor neighborhoods. Haiti has the highest HIV-infection rate of any country in the Western hemisphere, “with one in 50 people infected.”²⁰ Thus, victims of sexual violence are subject to an increased risk of HIV infection.

Women and girls living in the IDP camps and poor neighborhoods already face limited access to basic medical care that significantly affects the health consequences of sexual violence. Ensuring that HIV prophylaxis is provided to victims of sexual violence, as required in Haiti by the recent decision of the Inter-American Commission on Human Rights,²¹ will help to mitigate any long-term health consequences. The Guiding Principles also require particular attention to be paid to the prevention of contagious and infectious diseases, including HIV/AIDS, among displaced populations.²²

3. *Access to Medical Care in Rural Haiti*

Similarly, women living in rural areas such as Jérémie often face significant barriers to medical care, including the need to travel great distances to reach a hospital. If a woman reaches a hospital, she may find that it is closed due to a strike or lack of electricity.²³ Some community workers have suggested that medical care is inadequate for many rape victims in rural areas, due

¹⁹ “Special attention should be paid to the health needs of women, including access to female health care providers and services, such as reproductive health care, as well as appropriate counseling for victims of sexual and other abuses.” OCHA, Guiding Principles on Internal Displacement, OCHA/IDP/2004/01, Principle 19, ¶ 2, <http://www.brookings.edu/fp/projects/idp/resources/GPEnglish.pdf>.

²⁰ *Rape Rampant in Haiti’s Earthquake Camps*, CBS NEWS (Mar. 17, 2010) <http://www.cbsnews.com/stories/2010/03/17/world/main6306562.shtml> (last visited Apr. 9 2012).

²¹ IACHR Decision, *supra* note 5.

²² *Id.* ¶ 3.

²³ Statement submitted to the UN Commission the Status of Women for the 56th Session, February 29 – March 9, 2012, Concerning the Empowerment of Rural Women and their Role in Poverty and Hunger Eradication, Development and Current Challenges in Haiti.

in part to insufficient training of physicians and nurses. The lack of knowledge among Haitian nurses regarding the proper response to rape makes it difficult for rape victims to receive adequate medical attention.²⁴

The State should provide or call upon the international community to support and complement the State's provision of healthcare to all women and children living in poor neighborhoods or IDP camps who lack access, and in particular, women and children who are subjected to sexual violence.

C. Conditions in Displaced Persons Camps Continue to Increase Vulnerability to Rape (Articles 3, 7, 12, 16, and 17).

The earthquake displaced more than one million men, women and children in Port-au-Prince and the surrounding areas. In March 2011, CHRGI reported that 810,000 people were living in 1,000 displacement camps in Port-au-Prince and surrounding areas.²⁵ More recent estimates released in February 2012 report that around 490,000 people are still living in displacement camps.²⁶ Studies cited elsewhere confirm that individuals living in displacement camps are much more likely to be at risk of sexual assault than the general population.²⁷ Moreover, camp residents face the threat of forced eviction, which further exacerbates the risk of violence and insecurity for displaced individuals. Efforts to relocate camp residents have been uncoordinated and incomplete, leaving thousands of displaced persons to remain in camps without access to services, while many of those who have been relocated out of camps have either moved to poor neighborhoods with inadequate housing or other informal settlements. Thus, many of the issues that plague the camps are likely to persist.

Conditions in displacement camps are bleak. Overcrowding, lack of privacy, weakened family and community structures, among other things, render women and girls particularly vulnerable to sexual violence. Women and girls live without adequate shelter, often sleeping under nothing more than a tarp or blanket, with no means of protection, and bathe in public, in view of men and boys. Deteriorating shelters, the spread of a deadly cholera epidemic, and heightened political instability have posed an increased risk to the lives of Haitian women and girls in recent months. The constant threat of sexual violence makes it difficult for displaced women and girls to access the few resources that are available in the camps. Moreover, the deteriorating security situation in Haiti has resulted in a diversion of the already scarce government resources away from those devoted to combating gender-based violence.

The State must address the aforementioned inadequacies of IDP camps in order to properly protect women and children from sexual violence.

²⁴ Interview with Bette Gebrian-Magloire and Roxanne Dimanche, Haitian Health Foundation, in Jérémie, Haiti (Mar. 7, 2012).

²⁵ CHRGI HOUSEHOLD SURVEY, *supra* note 8, at 1.

²⁶ Haiti Emergency Shelter and Camp Coordination Camp Management Cluster, Displacement Tracking Matrix, (Apr. 10, 2012), <http://iomhaitidataportal.info/dtm/>.

²⁷ HAITI'S URBAN CRIME WAVE?, *supra* note 10, at 6.

1. *Displacement Camps Lack Adequate Security and Lighting*

Preventative measures within the camps are critically lacking.²⁸ In particular, women's groups note the following issues, which have been confirmed by site visits: lack of lighting; lack of private bathing facilities; lack of tents, and even for those with tents, utter lack of security (survivors have stated that attackers have used a blade to cut the side of her tent to gain access); lack of a police presence (many survivors stated that police only patrolled the perimeter of the camps and were unwilling to enter the interior, particularly at night).

There is a striking lack of a security presence inside the camps, particularly at night.²⁹ Despite some efforts by the government and the international community the problem remains persistent. In February 2012, residents interviewed in displacement camps located in Champ de Mars and Croix de Près in Port-au-Prince repeatedly stated that the lack of security and lighting is a critical issue. One resident stated, "I have to sleep with one eye open because there is a lot of activity happening in the camp at night by non-residents."³⁰

Even where a security presence does exist, camp residents note that "security forces are not effective largely because of their lack of coordination and failure to engage in partnerships with neighborhood associations and community."³¹ The lack of coordination and meaningful security patrols does not necessarily reflect a shortage of military personnel and resources on the ground. Better coordination with grassroots groups in developing the aid response provides a promising pathway to improving the situation.³² INURED found that "relief institutions have little to no local knowledge and poor coordination with the communities."³³ This lack of engagement with Haiti's civil society and vulnerable populations has left relief organizations without valuable information and tools needed to develop an adequate response.³⁴

To fill this gap, grassroots organizations have organized their own community watchdog groups with women and men in their communities. These groups, including KOFAVIV, utilize whistles and flashlights that were distributed to community members. To some extent these efforts have been successful, but the deterrent effect is less than if police were present.

When asked what the women would need to feel safer in an interview, the answer came easily, "We would feel much safer with security and lighting." The State should provide or direct the international community to provide adequate lighting and security on IDP camps to prevent sexual violence and promote safety.

²⁸ MADRE, *OUR BODIES ARE STILL TREMBLING: HAITIAN WOMEN'S FIGHT AGAINST RAPE* 12 (2010).

²⁹ AMNESTY INT'L, *HAITI: AFTER THE EARTHQUAKE: INITIAL MISSION FINDINGS* 8 (Mar. 2010), <http://www.amnesty.org/en/library/asset/AMR36/004/2010/en/d12e3cdc-2103-40b8-af57-1412dcf3d413/amr360042010en.pdf>.

³⁰ Interview with IDP residents in Champ Mars, Port-au-Prince, Haiti (Feb. 8, 2012) (on file with authors).

³¹ INTERUNIVERSITY INSTITUTE FOR RESEARCH AND DEVELOPMENT (INURED), *VOICES FROM THE SHANTIES* 11 (2010); HAITIAN WOMEN'S FIGHT AGAINST RAPE, *supra* note 28, at 8.

³² *See generally* BEVERLY BELL, *OTHER WORLDS, FROM DISASTER AID TO SOLIDARITY: BEST PRACTICES IN MEETING THE NEEDS OF HAITI'S EARTHQUAKE SURVIVORS* (Apr. 2010); Gen. Rec. No. 19, *supra* note 1; HAITIAN WOMEN'S FIGHT AGAINST RAPE, *supra* note 28.

³³ INURED, *supra* note 31, at 8.

³⁴ *NGOs Decry Total Exclusion from Donors' Conferences on Haitian Reconstruction*, INSTITUTE FOR JUSTICE AND DEMOCRACY IN HAITI, (Mar. 18, 2010) <http://ijdh.org/archives/10541> (last visited April 8, 2012).

D. Women’s Human Rights Defenders Face Particularized Risk (Articles 3, 6, 7, 17, 19, 22).

Human rights defenders working with KOFAVIV and other grassroots women’s groups, such as FAVILEK³⁵ and KONAMAVID,³⁶ have been targeted for violence, including rape, and extortion for their work defending rape victims. These events have led some organizations to limit their work providing services to victims of sexual violence in IDP camps, focusing more on community organizing efforts. The government does not provide special protection for human rights defenders.

For example, FAVILEK reported in February 2012 that two of its outreach workers were violently raped in September 2011 by four men in an IDP camp while on a community education mission.³⁷ Before the rape, the outreach workers were asked about their organization’s badges. One outreach worker said she was menstruating at the time of the rape, which did not stop the aggressors. The women were traumatized and scared. The men threatened the outreach workers and said that if they came back with the police they would get what was coming to them. The outreach workers believed this was a direct threat to their lives. They feared they would be killed if they returned. The men also took pictures of the workers to recognize them in the future, and told them to go back to their organization and tell other members what happened.

Moreover, in June 2010, leaders of a grassroots Haitian women’s organization working on sexual violence, and their families, were threatened at gunpoint.³⁸ This was a direct threat to their lives. A reported prison escapee came to speak with the two leaders living and working in the Champ de Mars IDP camp. He demanded money and threatened the leaders’ lives and said he had heard that one of the leaders had just returned from testifying before the UN Human Rights Council in Geneva³⁹ and suspected she had resources. Out of fear for their safety, the two leaders left the camp the following day with their families and have not returned. Camp residents have reported that the man has returned to the camp, looking for the leaders and harassing and threatening other group members who continue to organize women in the camp and provide support for survivors of rape.⁴⁰

The two grassroots leaders filed a complaint with the police positively identifying the man, who remains at large. The police told the women that their work in the camps “caused too much trouble” and the man “should have killed them all.”⁴¹ Moreover, a KOFAVIV member who was

³⁵ *Fanm Viktim Leve Kanpe* or Women Victims Get up Stand up.

³⁶ *Kodinasyon Nasyonal Viktim Direk* [National Coordination of Direct Victims].

³⁷ Interview with FAVILEK, in Port-au-Prince, Haiti (Feb. 8, 2012) (on file with authors).

³⁸ Attorneys from MADRE, IJDH, and the law firm Morrison & Foerster accompanied Malya Villard-Apollon, human rights defender and co-founder of KOFAVIV to Geneva to testify on this issue in front of the UN Human Rights Council in June 2010.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ See the KOFAVIV, FAVILEK, KONAMAVID, International Women’s Human Rights (IWHR) Clinic at the City University of New York (CUNY) School of Law, MADRE, the Institute For Justice & Democracy in Haiti (IJDH), Bureau Des Avocats Internationaux (BAI), Morrison & Foerster LLP, the Center for Constitutional Rights (CCR), and Women’s Link Worldwide Request for Precautionary Measures Under Article 25 of The Commission’s Rules of Procedure, <http://www.law.cuny.edu/news-events/FacultyNews/12705-petition.pdf>.

providing volunteer informal security at the request of camp members, apprehended the perpetrator and called the police emergency number. The police did not answer despite numerous phone calls and he had to let the perpetrator go. On another occasion, the man apprehended the perpetrator again and was able to get through to the police, who did not respond. The two women leaders were forced to flee the camp and, with financial support from organizations abroad, relocate to housing elsewhere in Port-au-Prince. The women remain in hiding and continue to fear for their lives as they have seen this man on public transportation moving freely through the city.

The importance of protecting human rights defenders has been recognized as essential for ensuring human rights enforcement. Special protections must be provided to individuals in Haiti who work to combat gender-based violence if gender-based violence in Haiti is to be effectively addressed.⁴²

E. Continuing Impunity and Ongoing Limited Access to Justice (Articles 3, 6, 16 and 17).

Despite increased reporting of rape and gender-based violence in recent months, significant barriers to accessing justice still exist for women and girls in Haiti. There has been some improvement due to concerted advocacy efforts conducted by KOFAVIV, the BAI and others, including visits to police stations, hospitals, and court accompaniments. However, lawyers and advocates still report that victims often face discriminatory attitudes, distrust and minimization on the part of police, prosecutors and judges. In particular, poor women and girls and those still living in the IDP camps or poor neighborhoods suffer the consequences of these barriers. Although the BAI provides legal representation for victims of sexual violence that are referred to it by KOFAVIV, among others, there are undoubtedly many women and girls that do not have access to legal representation and are not aware that these services are available. If a woman is unrepresented, her case is most likely not pursued due to disorganization and corruption that plague the justice system. Furthermore, the lack of training among police and prosecutors leads to confusion and lost opportunities for women and girls to build a viable case before evidence is lost. The Haitian system remains greatly under-resourced to effectively investigate complaints of rape, leaving many women without any hope of bringing their perpetrators to justice.

1. Reporting Rape to the Police Places Women At Risk for Retaliation.

Haitian women and girls face reprisals and threats of retaliation by their assailants, creating a significant barrier to reporting and pursuit of legal recourse. The system is nearly impossible to navigate without counsel, especially in the face of threats and offers of money to negotiate a settlement of the case and have the aggressor released. Even for those with counsel, the system is unwieldy and long. The length of delay risks the safety of women and girls living in close proximity to their aggressors, as the victims may face persistent threats from the perpetrator or the perpetrator's friends or relatives. There is a lack of long-term safe shelters to house victims during the course of the legal process. In addition, while some accused attackers are arrested,

⁴² This is reiterated by the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedom, GA Res A/Res/53/144, Annex, U.N. Doc. A/RES/53/144 (Mar. 8 1999).

communication lapses and corruption can lead to the release of the accused by the prosecutor's office shortly after arrest, especially in cases where the victim does not have access to a lawyer.

For example, a five year-old girl living in a displacement camp in Port-au-Prince was raped by a known aggressor living in the same camp. The police executed an arrest warrant. When the victim's lawyer from the BAI arrived at the prosecutor's office for the initial questioning of the accused, the lawyer was told that the camp leader came to the prosecutor's office and stated that he had heard of a rape two months ago, but not recently, thereby undermining the victim's credibility. As a result, the prosecutor's office wrongfully released the accused even before hearing the victim, and the accused went back to his tent in the victim's camp where he made repeated threats to the victim and her family. Pressure from the BAI and KOFAVIV led to the re-arrest of the aggressor. Without counsel, it is likely that the aggressor would not have been re-arrested or held to account.

2. Reporting to Police is an Exercise in Futility in Both Urban and Rural Areas.

Due to rampant corruption within the judicial system and the Haitian National Police, many rapes go unreported and/or unpunished.⁴³ Women and girls who do report their rapes are met with indifference, or worse, harassment and abuse. The abusive and discriminatory behaviors reported of some police officers when they receive complainants at the station have re-traumatizing and dissuasive effects on victims reporting sexual violence.⁴⁴ BAI attorney, Meena Jagannath, found:

Victims and lawyers have noted that these officers minimize or offend the women who come before them, commenting that the complaint is a ruse to get money out of the system. The problem is more acute for adult women, particularly poor women, whom police have refused to believe because they think she is lying. In some instances, police officers have asked female complainants what they had done or what they were wearing to have provoked the sexual assault, or whether they had already had previous sexual relations with the man.⁴⁵

Even where the police are willing to pursue an investigation, they lack adequate resources. Investigations are particularly difficult in cases where the identity of the perpetrator is unknown because the police, for example, have limited ability to analyze forensic data. Further, Attorney Janannath reported that Haiti's Criminal Procedure Code is not translated from French to Creole.⁴⁶ Thus, many police officers misinterpret or do not follow the proper process of documenting sexual assaults that are reported at the police station. In fact, many women and children are turned away by the police upon arriving at a station to report a rape and are informed that in order for the police officer to issue an order of protection, an arrest warrant and/or file a report of sexual assault, a medical certificate must be presented to the officer first. This is simply

⁴³ Inter-Am. Comm'n H.R., *The Right of Women in Haiti to be Free from Violence and Discrimination*, ¶ 109, OEA/Ser.L/V/II, doc. 62 (Mar. 10, 2009).

⁴⁴ Interview with Prosecutors in Port-au-Prince, Haiti (Feb. 24, 2012).

⁴⁵ *Id.*

⁴⁶ *Id.*

not the case, however, as the medical certificate is not an official requirement to file a complaint of sexual violence, and, furthermore, the police are not competent to evaluate or ask for this evidence. Since many police officers do not speak French or cannot read and interpret the legal codes in French, police officers often confound the procedures for documenting sexual assault, and further delay the process when women and children come forward following their attack. This is detrimental to both the health and safety of the victims who come forward and report their sexual assault.

Rape victims in rural areas in Haiti face similar challenges regarding impunity and access to justice. Sexual violence in Jérémie is much more likely to be committed by an acquaintance of the victim, as opposed to a stranger. Although it is easier to identify the offender in these cases, authorities are more likely to treat these cases as domestic problems, meaning that they will not intervene. As in urban areas, women in rural areas lack the funds to hire attorneys, and coming forward to file a complaint requires jeopardizing their personal safety. Police officers in Jérémie, are tasked with responding to rape incidents, but lack resources to do their job. One female police officer in Jérémie uses her own money to pay for her cellular phone and transportation.

Some respondents in Jérémie suggested the culture of corruption impedes justice. People occupying positions of authority, such as police and those with links to government officials routinely disregard the law. This dynamic contributes to the challenges victims of sexual violence face when seeking justice.

3. *Medical Certificates Pose A Significant Obstacle to Justice in Rape Cases.*

Medical certificates are required to pursue a complaint of rape to corroborate a woman's account of her attack. Although the medical certificate is not technically mandatory under Haitian law, in practice, officials in the Haitian justice system consider it a requirement for pursuing complaints of sexual violence. Requiring a medical certificate is extremely problematic because it reinforces the belief in the justice system that women's testimony is inherently untrustworthy, and she needs a medical certificate to corroborate her account. In addition, women, particularly poor women, face substantial barriers to obtaining a medical certificate that can adequately support their legal cases including the cost of obtaining a certificate and fear of harassment or retaliation at the hospital.

What is more, in many cases, even the best medical exam will not produce any relevant evidence. Victims of rape or other forms of sexual violence are often unable to seek medical care within seventy-two hours, which limits the evidentiary value of the medical certificate. The collection of critical forensic evidence is lost if not collected during this period (e.g. semen, blood). The ability to act quickly depends on awareness of available services and the ability to safely travel and seek medical care. Moreover, women reported being unaware of the importance of the certificates in documenting rape and their right to request them.

The lack of uniformity between medical certificates from public and private institutions is also a problem. Specifically, victims of sexual violence in Port-au-Prince report having been turned away by the prosecutor's office (*parquet*) or dismissed from court by judges because: (1) the medical facility did not provide the victim with a medical certificate; (2) their medical certificate

did not provide enough detail, or; (3) their medical certificate was not issued by the public hospital. This last point is of particular concern since the government's protocol regarding medical certificates, issued in 2007 by the Ministry of Women's Affairs and Women's Rights (MCFDF), the Ministry of Justice and Public Security (MSJP) and the Ministry of Public Health and Population (MSPP), confirms that the certificates must be free of charge and can be issued by any health center in Haiti at the request of a victim or the judiciary. As a result, it is in the interest of justice to optimize the process by which victims and their advocates can access medical certificates that can adequately support their claims. Absent a confessing perpetrator, if a victim does not have a medical certificate, even if there are witnesses to the crime, it is highly unlikely that the case will move forward and avoid dismissal at the prosecuting stage.⁴⁷

Interviews with prosecutors and other community workers in Jérémie suggest that the importance of securing a medical certificate and the difficulty of obtaining one are issues also prevalent in rural areas. A police officer and the Chief Prosecutor in Jérémie both indicated that prosecution could not proceed without a medical certificate. It is extremely difficult for women from rural areas to obtain a medical certificate within 72 hours due to limited access to medical care. It may be necessary for women to travel long distances to attain a medical certificate. Moreover, medical professionals in Jérémie who work with rape victims appear confused about the requirements for a medical certificate. The lack of a national, uniform medical certificate exacerbates this problem. At least one community worker was under the impression that only the state obstetrician is allowed to issue a medical certificate, and that private doctors are not allowed to issue certificates because prosecutors do not consider them trustworthy.⁴⁸

Even when a victim attains a medical certificate, there are numerous obstacles to successful prosecution. Jérémie's Chief Prosecutor stated that if the rape did not involve force, the medical certificate will say there were no physical signs of rape. Evidence of rape including the victim's testimony and a ripped shirt are not considered sufficient enough to prosecute without further evidence to indicate physical signs of rape.

The State should ensure that all barriers erected which prevent or make it burdensome on women and children who are victims of sexual violence to obtain access to justice are dismantled.

F. Domestic Laws Governing Sexual Violence in Haiti Are Still Incomplete.

Haiti's Constitution of 1987 recognizes that "[t]he 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."⁴⁹ Haiti's Constitution also provides that duly ratified treaties are automatically incorporated into Haitian law and abrogate any conflicting laws.⁵⁰ Protecting women and children against sexual violence falls directly

⁴⁷ MADRE and KOFAVIV, WOMEN AND GIRLS IN HAITI'S RECONSTRUCTION: A DIALOGUE ON THE LINKAGE BETWEEN HEALTH SERVICES AND LEGAL REMEDIES FOR VICTIMS OF VIOLENCE (2012).

⁴⁸ Interview with Bette Gebrian-Magloire and Roxanne Dimanche, Haitian Health Foundation in Jeremié, Haiti (Mar. 7, 2012).

⁴⁹ CONSTITUTION DE LA REPUBLIQUE D'HAÏTI [CONSTITUTION] Mar. 10, 1987, art. 19.

⁵⁰ *Id.* at art. 276(2).

within these obligations. However, Haiti's current domestic legal framework is not sufficient for adequately prosecuting cases of sexual violence and providing redress to victims.

Until recently, Haiti has had a weak statutory framework for deterring and addressing violence against women. After years of persistent advocacy by Haitian women's advocates, in 2005, Executive Decree No. 60 introduced changes to existing provisions in the Haitian Penal Code, reclassifying rape and sexual aggression as crimes against the person (rather than a crime against morals), when perpetrated or attempted with violence, threats, surprise, or psychological pressure, against a person of either sex. The essential element is lack of consent.⁵¹ However, these provisions have rarely been enforced since the enacting of the 2005 Decree.

Along with the reclassification of rape, the severity of penalties was increased. Sentences now include ten years of prison for the crime of rape;⁵² fifteen years if the victim is under 15 years of age. The sentence for rape by a person of authority (including a family member) or by more than one person was and continues to be life in prison.⁵³ While symbolically relevant, these increased sentences are essentially theoretical, and are largely absent in application and practice.⁵⁴

Another issue with the criminal code is that many provisions are vague. In 2005, rape was codified as a crime punishable by imprisonment under Article 278,⁵⁵ but has been interpreted to not include marital rape as a crime. While the strengthening of the rape law is an important step for Haiti, the State must adequately train judicial officials and police officers to ensure that it is interpreted in the proper light and applied appropriately so it can actually serve its purpose: to protect victims of rape. The present formulation and application of the law fails to serve its foremost purpose; the State must move the law from its current position in the world of symbolism, into the realm of practice.

G. Haiti's Draft Law on the Prevention, Punishment and Eradication of Violence Against Women.

In 2007, the Women's Ministry initiated legal reform focused on the prevention, punishment, and the elimination of violence against women in line with international best practices.⁵⁶ Since the earthquake, there has been a renewed effort to finalize Haiti's Draft Law on the Prevention, Punishment and Eradication of Violence Against Women (Draft Law) and pass it into law.⁵⁷ The

⁵¹ Interview with Prosecutors, in Port-au-Prince, Haiti (Nov. 15, 2011).

⁵² Under the statute, the punishment is forced labor in Haitian prisons, but this is not usually the case.

⁵³ Le décret modifiant le régime des agressions sexuelles et éliminant en la matière les discriminations contre la Femme [Decree Changing the Regulation of Sexual Aggressions and Eliminating Forms of Discrimination Against Women]; Decree No. 60 of Aug. 11, 2005, Art. 2, (modifying Art. 278 of the Penal Code), Art. 2 (modifying Art. 279), Art. 4 (modifying Art. 280), JOURNAL OFFICIEL DE LA RÉPUBLIQUE D'HAÏTI [J.O.] [OFFICIAL GAZETTE OF HAITI], Aug. 11, 2005, p. 1.

⁵⁴ *Id.* ¶ 115.

⁵⁵ Art. 278, Haitian Criminal Code, Decree July 6, 2005 (modifying Art. 278 of the Penal Code) (before 2005, rape was considered a crime of moral turpitude in which an aggressor could marry his victim to avoid punishment).

⁵⁶ See generally RAOUL WALLENBERG INSTITUTE, GENDER JUSTICE, BEST PRACTICES (2007), <http://www.rwi.lu.se/pdf/publications/reports/genderjustice.pdf>.

⁵⁷ The Organization of American States (OAS) is actively collaborating with the Haitian Ministry on the Status of Women and Women's Rights (MCFDF or the Women's Ministry) to build the Ministry's capacity and to provide technical assistance for legal reform. See Project Completion Report to USAID/Haiti Protection of Vulnerable

Draft Law establishes rights and protections for victims of violence and seeks to revise and add to sections of Haiti's civil and penal codes related to violence against women.

Generally, under the legislation, the State is obliged to guarantee victims of violence prompt and effective access to courts, strengthen public policies in the prevention of violence against women and discrimination, strengthen the criminal and procedural framework of the State in order to ensure the protection of women victims of violence, and promote participation and collaboration of organizations working to eliminate violence against women.

Enacting the Draft Law is undoubtedly an important step towards preventing, addressing, and punishing gender-based violence. However, there are identified shortcomings in the preliminary draft of the proposed law that should be addressed to achieve full realization of human rights in Haiti and to bring the law into compliance with international law and best practices. For example, although the draft text appears to recognize that abortion is legal in at least some circumstances—*see* the prohibition of abortion without informed consent (Article 281.12) and unauthorized abortions (Article 281.13, paragraph 1)—the language does not explicitly legalize abortion at minimum in cases where the mental and physical health of the mother is in danger, as well as in cases of incest or rape. Though advocates and lawyers have suggested making this exception explicit, a revised version of the law has not been issued since Fall 2011.

If it is revised, introduced to Parliament for vote and ultimately implemented, it would serve as a step forward in the protection of victims of violence and rape. The proposed law provides for a number of protective measures for victims of gender-based violence, including rape, sexual harassment, and battery. Protective measures are also being proposed that have to do with relocation, medical care, access to social services and economic aid. Adoption of the Draft Law would be encouraging for victims who are still ashamed or too frightened to report their rape. The State should encourage the continuity of the work that has begun on the Draft Law and ensure that it is implemented and enforced. It must ensure that grassroots organizations like KOFAVIV remain involved in the continued drafting of the Draft Law.

H. Questions to the Haitian Government Regarding Sexual and Gender-based Violence in Haiti.

- Please provide information on the practical measures taken, if any, to: (a) promote reporting of sexual violence to the police; (b) combat all forms of violence against women and girls; and (c) investigate cases of sexual violence including rape, prosecute perpetrators and punish them with appropriate penalties. Please include statistics on the number of complaints of sexual violence filed with the police, prosecutions brought and convictions obtained, as well as efforts undertaken to combat sexual violence;
- Please indicate the number of public officials including police, prosecutors and judges who receive training in women's rights;

- Please provide detailed information on measures to enhance women's access to justice in low-income social groups and in rural areas;
- Please indicate when the Government expects to introduce to Parliament the Draft Law on the Prevention, Punishment and Eradication of Violence Against Women? Does the proposed version of the draft law provide for exceptions to the general ban on abortion?
- Please also indicate what effective measures have been taken to give women adequate information on contraceptive methods and the avoidance of unwanted pregnancies;
- Please provide information on measures the Government is taking to ensure access to medical certificates for rape victims and properly train judicial officials on its role in the prosecution of sexual violence;
- Please describe the legal framework for the protection of human rights defenders and the practical measures taken to ensure their safety and physical integrity and allow them to carry out their work. Please supply information on recorded cases of attacks on human rights defenders and threats against them, and indicate if anyone has been tried and convicted of such acts;
- Please provide information on the measures taken to protect the security of displaced persons and communities who are the subject of precautionary or provisional measures under the Inter-American system of human rights;
- It is well documented that women and children are extremely susceptible to sexual violence when they are living on IDP camps as opposed to when they are living in homes. What are the steps the State is taking to implement a long-term housing plan, considering that violence against women and children is exacerbated while those individuals are in a state of displacement?
- For those individuals relocated to informal living settlements or poor neighborhoods, is the State monitoring conditions of housing so as to prevent reproducing the conditions of insecurity that engender violence in IDP camps?
- Increased sexual violence has been documented in areas where there lighting is inadequate, or wholly absent. We have reports that with increased lighting on IDP camps, comes both a greater sense of safety felt by individual women and children, along with an actualized increase in safety against sexual violence. Has the State implemented a method by which all camps have adequate lighting? In cases of relocation, do the neighborhoods to which IDPs are moving have adequate lighting?
- Has the State implemented a method by which each campsite has ongoing security personnel available in cases of emergency?
- What is the State doing regarding the conduct of police officers who either do not respond to acts of violence committed on the IDP camps and/or do not understand the

process of how to document sexual violence occurring in the camps?

- There have been reports that police officers do not have the Haitian Criminal Procedure translated from French to Creole. Because of this critical absence, police officers have refused to take down reports by women and children at the police station, demanding that victims of sexual violence obtain a medical certificate prior to the police officers' documentation of the assault. However, a medical certificate is not necessary to file a complaint. Will the State have its Criminal Procedure Law translated from French to Creole, and make it accessible to all police officers in the State, to ensure that police officers in Haiti understand the process of how to handle cases of sexual violence?
- How many female police officers are currently working in Haiti? Will the State hire and train more female police officers that can primarily handle cases of sexual violence?
- How is the State addressing the issue of the virtual lack of medical and psychological care for poor victims of sexual violence in Haiti?

II. SEXUAL EXPLOITATION OF WOMEN AND GIRLS IS PERVASIVE IN HAITI⁵⁸ **(Articles 2, 3, 7, 9, 10, 17, 24, 26)**

A. The Pervasive Issue of Sexual Exploitation has resulted in Women and Girls Engaging in Survival Sex Post-Earthquake (Articles 2, 3, 7, 24, 26).

Reports have found that in the wake of the earthquake, Haiti experienced an alarming increase in sexual exploitation.⁵⁹ Sexual exploitation is most often perpetrated against poor or IDP youth, including those living in displacement camps and otherwise economically disadvantaged neighborhoods.⁶⁰ The Pan American Development Foundation (PADF) reported in June 2011 that in post-earthquake Haiti “rape, violence, and child prostitution were rampant in the absence

⁵⁸ In an effort to distinguish survival sex from other forms of sexual exchange, this Memo does not use the term *transactional sex* or *sex work* defined here as the exchange of sexual services for compensation through money or goods, “where both parties consent and negotiate the details of the transaction.” SUSAN DAVIS AND RAVEN BOWEN, LABOR ON THE MARGINS: SEX INDUSTRY, SAFETY AND STABILIZATION 6 (2007). *Sexual exploitation* is defined in this memo as the practice by which person(s) in a position of power or authority achieve sexual gratification or profit monetarily, socially or politically through sexual acts provided in exchange for goods or services, thus abrogating the victim’s human rights to dignity, equality, autonomy, and physical and mental well being. *Survival sex* is defined here as the exchange of sex in circumstances where those exchanging sex for survival lack other options. Survival sex includes the exchange of sex for food, clothes, money, shelter, the ability to attend school, make rent, or other survival needs.

⁵⁹ See, e.g., AMNESTY INT’L, AFTERSHOCKS: WOMEN SPEAK OUT AGAINST SEXUAL VIOLENCE IN HAITI’S CAMPS (2011), <http://www.amnesty.org/en/library/asset/AMR36/001/2011/en/57237fad-f97b-45ce-8fdb-68cb457a304c/amr360012011en.pdf>; CHR GJ YON JE LOUVRI, *supra* note 6; CHR GJ HOUSEHOLD SURVEY, *supra* note 8; HAITIAN WOMEN’S FIGHT AGAINST RAPE, *supra* note 28. The authors of this Report have participated in several of the above-referenced studies and have worked in partnership with KOFAVIV and other grassroots organizations as well as the Haiti-based public interest law firm the *Bureau des Avocats Internationaux* (BAI) to raise awareness and advocate for the right of women to live free from sexual violence.

⁶⁰ NATIONAL CHILD TRAUMATIC STRESS NETWORK, TRAUMA AMONG HOMELESS YOUTH 3 (2007), http://www.nctsn.org/sites/default/files/assets/pdfs/culture_and_trauma_brief_v2n1_HomelessYouth.pdf (finding in the U.S. that, “in order to survive, [homeless] youth often seek relationships and create social networks among those they meet on the street. Unfortunately, many of these youth end up in new abusive or exploitive relationships.”).

of security patrols, open public access to the camps, increased criminality and gang activity among unemployed youth, loss of family livelihoods and lack of access to information on rights and victims' services."⁶¹

While there is a dearth of reliable statistics on the prevalence of sexual exploitation and survival sex in IDP camps, or post-earthquake Haiti more generally, sexual exploitation has been identified as an issue in many humanitarian or human rights reports on women's rights since the earthquake. In a 2011 study by UNHCR, participants in fifteen focus groups reported that they were personally engaging in survival sex or knew others in their camp that had done so.⁶² The young women reported exchanging sexual acts in return for food and benefits, including coupons for aid distributions, access to direct aid distributions, cash for work programs, money, or even a single meal.⁶³ They claimed the primary motivation for engaging in survival sex was not only their personal survival, but in cases of mothers, the survival of their children.⁶⁴ Many noted that they would not engage in survival sex if they could find work in either the formal or informal sector.⁶⁵

Women have reported that they had not engaged in such exchanges before the earthquake, and they did not identify themselves as "occasional commercial sex workers."⁶⁶ Instead, survival sex appears to be a new coping mechanism that is driven by the breakdown of family and community structures, the loss of associated protection and safety nets, unequal access to affordable education and poor economic opportunities.

B. Women Who Engage in Survival Sex Face Heightened Risk for Sexual and Other Types of Violence (Articles 3, 7, 17, 26).

Engaging in survival sex puts women and girls in dangerous and vulnerable positions and increases the chances that they will eventually interact with someone willing to force unwanted sex and/or subject them to other forms of physical violence.⁶⁷ Women and girls who have engaged in survival sex in Haiti have faced increased threats of, or experienced directly, violence before, during and after sexual exchanges.⁶⁸ Oftentimes, the men soliciting sex refuse to pay the money or to give the goods promised and either threaten or use force against the victim if she refuses to have sex. In other instances, women and girls are raped by men with whom they

⁶¹ PAN AMERICAN DEVELOPMENT FOUNDATION (PADF), PROTECTING HUMAN RIGHTS IN HAITI 52 (2011).

⁶² United Nations High Commissioner for Refugees (UNHCR), DRIVEN BY DESPERATION: TRANSACTIONAL SEX AS SURVIVAL STRATEGY IN PORT-AU-PRINCE IDP CAMPS 16 (2011), <http://www.unhcrwashington.org/atf/cf/%7Bc07eda5e-ac71-4340-8570-194d98bdc139%7d/sgbv-haiti-study-may2011.pdf> [hereinafter DRIVEN BY DESPERATION]. The surveys were conducted in five IDP camps within the Port-au-Prince metropolitan area.

⁶³ DRIVEN BY DESPERATION, *supra* note 62, at 16.

⁶⁴ *Id.* at 15.

⁶⁵ *Id.* at 18.

⁶⁶ *Id.* at 16.

⁶⁷ Kimberly A. Tyler, et al., *The Impact of Child Sexual Abuse on Later Sexual Victimization Among Runaway Youth*, 11 J. OF RES. ON ADOLESCENCE 151, 171–72 (finding that youth trading sex for survival are at a high risk for sexual exploitation).

⁶⁸ MADRE, Int'l Women's Human Rights Clinic at CUNY School of Law, Center for Human Rights & Global Justice at NYU School of Law, Center for Gender & Refugee Studies at Hastings School of Law, KOFIVIV, STRUGGLING TO SURVIVE: SEXUAL EXPLOITATION OF DISPLACED WOMEN AND GIRLS IN PORT-AU-PRINCE HAITI 15 (2012).

previously engaged in survival sex.⁶⁹ Representatives of ZAFALA⁷⁰ stated that since aid distribution has ceased, men do not have resources to wield power over women, so some men who previously exchanged goods or services for sex, now use weapons and other means to force women to have sex.⁷¹ Physical violence experienced includes vaginal and anal rape as well as beatings by individuals or groups of men.

A 20-year-old recounted the first time she engaged in survival sex while living in the Champ de Mars camp. She had previously asked a camp committee member for a food card (which was a mechanism for obtaining food distribution) and he refused to give it to her unless she had sex with him. She declined at first but eventually consented to the exchange because she was starving. She continued to have sex with him for food until other men found out and gang-raped her. She later engaged in survival sex in discos where she faced further violence and rape. She is now one of the few fortunate who lives in a safe house and no longer engages in sex for resources. However, she has not had her period since the rape and is certain that she is sick as a result.⁷²

C. Deep-Rooted Gender Discrimination Has Perpetuated Economic Inequality, Placing Women and Girls at Risk of Sexual Exploitation (Articles 3, 26).

Economic disempowerment is the principal factor rendering women and girls vulnerable to sexual exploitation. As a result of systemic discrimination, women have little access to job opportunities.⁷³ Women and girls report that their only option is to sell their bodies to survive. Even for women who have been able to find work in the informal sector, such as cleaning houses, the income generated is frequently not enough to provide for themselves and their families. Deep-seated discrimination against women also deprives them of a multitude of legal rights that men enjoy, placing them in an even more precarious economic situation. For example, one local Haitian organization cites discriminatory housing laws as favoring the rights of men and leaving women insecure and dependent on men.⁷⁴

Women and girls exchange sex for food, water, and education directly, or for the money to pay for these resources. Those who have children often exchange sex to provide for their families. Money provided in exchange for sex is often a small amount ranging from 50 gourdes, or \$1.20, to 500 gourdes, or \$12.50.⁷⁵

⁶⁹ *Id.* at 16.

⁷⁰ *Zafè Fanm Pou Yon Lòt Ayiti* (Women's Affairs for Another Haiti)

⁷¹ STRUGGLING TO SURVIVE, *supra* note 68, at 15.

⁷² *Id.* at 17.

⁷³ See STRUGGLING TO SURVIVE, *supra* note 68, at 14; Commission on the Status of Women, Statement submitted by IGLHRC and MADRE, non-governmental organizations in consultative status with the Economic and Social Council, ¶ 2, U.N. Doc. E/CN.6/2012/NGO/14 (Nov. 29, 2011); BEVERLY BELL, WALKING ON FIRE: HAITIAN WOMEN'S STORIES OF SURVIVAL AND RESISTANCE 21 (2001). The Women's Ministry Office in Jérémie identified women's lack of economic autonomy and independence as the main reason for violence against women. See Interview with Kerline St. Juste Gaspard and Pacaud Mie Therese (on file with authors).

⁷⁴ Interview with Collete Lespinasse, Coordonnatrice, and Patrick Camille, Jurist, Le Groupe d'Appui aux Rapatriés et Réfugiés (GARR), in Port-au-Prince, Haiti (Nov. 12, 2011). Also, during a workshop conducted by MADRE on November 17–18, KOFAVIV community outreach workers, impunity related to sexual exploitation of young women and girls was identified as factor that leads to continued exploitation of women and girls.

⁷⁵ STRUGGLING TO SURVIVE, *supra* note 68, at 13

Sex is solicited by Haitian men, including police, teachers and other public officials, as well as foreign aid and humanitarian workers, including MINUSTAH soldiers.⁷⁶ Men who solicit sex are often in positions of power, by virtue of their employment (administering a cash-for-work program, for example) or position on the camp committee (in camps where such a committee exists, such committees are often charged with organizing relief distributions). In other cases, men are not in positions of power, although some are advantaged by being older and they generally benefit from a superior economic status.⁷⁷

D. Adequate Medical Services Are Not Available for Women and Girls Who Engage in Survival Sex (Article 7).

Free or affordable and adequate medical services are not widely available. Moreover, women and girls who engage in survival sex are often isolated from their social networks and communities, exacerbating their circumstances and circumscribing their ability to access even the minimal services that are available.⁷⁸

Sexual exploitation causes severe physical and psychological effects for women and girls.⁷⁹ Many who engage in survival sex contract infections and/or become pregnant as a result of these sexual encounters. Of those who become pregnant, some obtain illegal abortions and others carry the baby to term, both of which expose mothers to attendant health risks and shame from others in the community. Additionally, given gender, age, and economic imbalances, the ability of women and girls to negotiate condom use is often compromised and can lead to heightened rates of HIV/AIDS infection.⁸⁰

An 18-year-old, from Croix-des-Prez whose husband died in the earthquake, began exchanging sex for food to feed her three-year-old daughter. She became pregnant as a result of survival sex and was forced to get an illegal abortion.⁸¹ A 19-year-old who lives in a tent in Croix-des-Prez with her daughter, mother, and four children her mother took in from the street, provides for the household by exchanging sex for food and money. The men she has sex with often become violent and force themselves on her. Sometimes the men refuse to wear condoms or refuse to pay her. She is afraid of becoming pregnant or contracting a disease and has no money for medical attention or access to free clinics.⁸²

E. Conditions in Rural Haiti Contribute to Sexual Exploitation (Articles 3, 7, 17, 24, 26).

Sexual exchange and exploitation is also prevalent in rural provinces, including the Grand'Anse. Women and girls engage in sexual exchange to provide basic necessities for themselves and their families, including food and education. Women who exchange sexual favors may be more likely

⁷⁶ *Id.* at 13.

⁷⁷ *Id.* at 13.

⁷⁸ *Id.* at 15.

⁷⁹ See Tyler, *supra* note 67.

⁸⁰ STRUGGLING TO SURVIVE, *supra* note 68, at 15.

⁸¹ *Id.* at 12.

⁸² *Id.* at 13.

to attain employment, receive higher pay, or better-located positions. Employees at the Haitian Health Foundation in Jérémie indicated that some students could not pass a class, or receive high grades without engaging in sexual exchange the instructor.⁸³

Community workers in Jérémie reported that young girls between the ages of 17 and 18 often proposition men for money to attend school and other items. Typically, these men are acquaintances, including teachers, friends, neighbors and pastors. Many leaders and government officials, solicit sex.⁸⁴

When Haitian girls from rural communities attend schools in cities, they are particularly vulnerable to sexual exploitation. Adolescent and teenage girls who leave their homes to attend school in major cities frequently return to their villages pregnant. Implementing universal education would be a significant step toward alleviating sexual exploitation, as it would reduce reliance on transactional sex.⁸⁵

Government officials in Jérémie indicated that societal discrimination against women prevents the reporting of sexual exploitation or other violence brought upon women and girls who engage in survival sex. Women fear discrimination and ostracism if they would be forced to admit in court that they have traded sex for money or some other necessity.

F. Limited Access to Justice for Individuals Engaged in Survival Sex (Articles 9, 10, 17, 26).

As discussed above, access to justice for rape, sexual assault, or other violence associated with sexual exploitation is extremely limited in Haiti. Women rightfully believe that reporting abuse to the police is futile or will result in them personally facing punishment themselves for having engaged in survival sex.

While Haitian criminal law does not recognize sexual exchange as a crime for adults, arrests of persons engaging in sexual exchange are widely reported in Haiti. In some cases, women who were soliciting clients in public have been arrested, tried, and convicted for the crime of public indecency.⁸⁶ Moreover, women who have been arrested by the police for prostitution reported being asked to perform sexual services in order to obtain release.⁸⁷

For minors under the age of 18, however, Articles 281 and 282 of the penal code relating to

⁸³ Interview with Bette Gebrian-Magloire and Roxanne Dimanche, Haitian Health Foundation in Jérémie, Haiti (Mar. 7, 2012).

⁸⁴ *Id.*; Interview with Kerline St. Juste Gaspart and Pacaud Mie Therese, field agents, Women's Ministry in Jérémie, Haiti (Mar. 7, 2012).

⁸⁵ Interview with Bette Gebrian-Magloire and Roxanne Dimanche, Haitian Health Foundation in Jérémie, Haiti (Mar. 7, 2012); STRUGGLING TO SURVIVE, *supra* note 68, at 13; Commission on the Status of Women, Statement submitted by MADRE, a non-governmental organization in consultative status with the Economic and Social Council, ¶¶ 2, 4, U.N. Doc. E/CN.6/2011/NGO/41 (Dec. 3, 2010); Interview with Kerline St. Juste Gaspart and Pacaud Mie Therese, field agents, Women's Ministry in Jérémie, Haiti (Mar. 7, 2012) (economic autonomy is the number one factor, domestic violence is rarely reported due to economic dependence).

⁸⁶ Article 283 of the Haitian Criminal Code prohibits public indecency, defined as publicly committing any act, fondling, or other acts that might offend the morality of others.

⁸⁷ STRUGGLING TO SURVIVE, *supra* note 68, at 24.

crimes against morals do punish individuals who facilitate or commit the prostitution or corruption of youth by six months to two years' imprisonment, and a prohibition on having guardianship over children for a prescribed period of time, respectively.⁸⁸ Still, these laws are rarely applied in the context of sexual exploitation of children in IDP camps or poor neighborhoods.

Women engaged in sexual exchange also face additional stigmatization and discrimination in accessing justice through the judicial system. In one case that went to trial before the earthquake, a young woman in Mirebalais (a city outside of Port au Prince) reported that she had been raped and the complaint was pursued. The judge ruled that it was not rape because the perpetrator had the "habit of paying" for the woman's education, thereby implying consent on the part of the woman to have sex with the accused to receive the benefit.⁸⁹ Furthermore, if a woman wanted to report a sexual violence associated with sexual exploitation despite fears of being arrested or minimized, women are often unaware of reporting mechanisms in their camps.

G. The Haitian Government Has Still Not Engaged in Effective Programming to Address Sexual Exploitation. (Articles 2, 3, 26)

Despite the prevalence of sexual exploitation and its increase since the earthquake, representatives of government agencies responsible for addressing sexual exploitation hold stereotypes related to gender and poverty that present an obstacle to implementing practical solutions.⁹⁰

The Haitian government's inability to develop a meaningful response to sexual exploitation is due in large part to a stark lack of resources allocated to this issue. Representatives from the Ministries, law enforcement, and other government offices expressed frustration at their inability to effectively carry out their mandate as a result of these resource constraints.⁹¹ A representative from the Haitian Women's Ministry reported that it has not developed programs to address sexual exploitation because it does not have the resources to conduct a needs assessment study, which it states is an essential first step it must take before addressing the issue comprehensively.⁹²

The Office of the Protection of Minors (BPM) within the Haitian National Police (HNP) does not have a special program related to sexual exploitation. BPM is tasked with both protecting minors who are victims of crime (including sexual exploitation) as well as handling minors who transgress the law in the whole country. BPM was only recently formed in June 2011 and has only twenty-five officers operating in Port au Prince and only two officers in each of nine

⁸⁸ See Arts. 281–282, Haitian Criminal Code.

⁸⁹ STRUGGLING TO SURVIVE, *supra* note 68, at 16.

⁹⁰ For example, one government representative stated that he believed women often choose to engage in sexual exchange and turn down job opportunities, which is evidenced by the unsuccessful attempts of his friends and colleagues to hire "maids" to clean their houses. Another government representative stated that she believed at least half of the women who engage in sexual exchange do so because they are "lazy," not because they lack other opportunities for earning a living.

⁹¹ STRUGGLING TO SURVIVE, *supra* note 68, at 15.

⁹² Interview with Denise Amédée, Coordinatrice de Centre d'Hébergement Pour Femmes Victimes de Violence, MCFDF, in Port-au-Prince, Haiti (Nov. 21, 2011).

departments outside of Port au Prince. BPM works in collaboration with Haiti's child welfare authority, the Institute of Social Welfare and Research (IBESR), which is tasked with providing legal, medical and psychosocial accompaniment for child victims. Despite this collaboration, there are undoubtedly cases that are not caught by the system.⁹³

In the wake of the earthquake, some programs were developed to help women and girls engage in petty commerce. Some of these programs, however, reportedly stopped several months ago. For example, ANAPFEH⁹⁴ was collaborating with Oxfam to administer a microcredit lending program for girls and young women vulnerable to sexual exploitation. The program was successful in keeping some girls from engaging in survival sex but the program ended in 2010 and ANAPFEH has been unable to secure funding to continue the project.⁹⁵ Several girls and young women helped by that program have since begun to exchange sex for resources again. One protection actor reported that the situation in displacement camps has become more precarious as the international presence diminishes.⁹⁶

After the earthquake, KOFIVIV initiated an outreach and service program for minors engaged in survival sex in Port au Prince. KOFIVIV agents work to identify youth and young women engaged in survival sex in and around displacement camps where KOFIVIV has a presence and provide outreach and support services. KOFIVIV's youth program takes a multi-pronged approach which includes (1) skills development and self-esteem building workshops, such as jewelry making, painting, and other activities, (2) performance art, including singing and dancing lessons with cultural performances, (3) social rehabilitation, offering psychological counseling including treatment for post traumatic stress disorder when needed, and (4) school reentry, helping youth financially and psychologically return to school. These activities are currently suspended due to lack of funding, though KOFIVIV hopes to reinstate the program. The programs developed by KOFIVIV and other organizations to prevent sexual exploitation and survival sex and respond to it when it occurs are incredibly important. However, these programs are insufficient without a robust response by the government and other actors to enforce the rights of women and girls.

H. Questions to the Haitian Government on Sexual Exploitation.

- What is the state doing to protect vulnerable groups specifically from sexual exploitation?
- What measures have been taken to prevent discrimination against women eliminate stereotypes which discriminate against women?
- Please elaborate on the aims, strategies and results of programs addressing the sexual exploitation of children and provide information on cases investigated and their outcome;

⁹³ Interview with Jean Gardy Muscadin, Head of BPM, in Port-au-Prince, Haiti (Nov. 17, 2011).

⁹⁴ ANAPFEH stands for National Association for the Protection of Haitian Women and Children (*Association Nationale de Protection des Femmes et Enfants Haïtiens*) and is a Haitian organization dedicated to advancing the rights of sex workers.

⁹⁵ Interview with Representatives from ANAPFEH, in Port-au-Prince, Haiti (Nov. 16, 2011).

⁹⁶ Telephone Interview with protection actor (Nov. 30, 2011).

- How many women and girls were arrested for public indecency under Article 283 of the Penal Code in the last year? What were the circumstances surrounding the majority of the arrests?
- What steps has the State taken to ensure that investigations into rape claims are carried out for rape victims who may have engaged in sexual exchange?
- Are officers trained in how to respond to complaints of rape and other forms of violence surrounding sexual exploitation?
- What steps has the State taken to collect data related to sexual exploitation and survival sex?

III. YOUNG WOMEN AND GIRLS LACK ACCESS TO EDUCATION (Articles 3, 5)

A. The Promise of Universal Primary Education is Rarely Fulfilled and the Earthquake Hampered Efforts to Provide Education.

Lack of access to education after the earthquake has worsened multiple forms of discrimination against young women and girls that reside in IDP camps (Art. 3). Since the ability to access education is contingent upon the realization of other human rights, the denial of such rights has resulted in further violation of the right to education. Specifically, the right to employment (Art. 5) cannot be realized without the realization of the right to education, creating a cycle of marginalization and gender discrimination (Art. 3). We applaud the Government of Haiti for ratifying the International Convention on Economic, Social and Cultural Rights this year.⁹⁷ However there remain a critical number of poor and displaced children who do not have access to school.

The Haitian Constitution guarantees free primary education.⁹⁸ However, in reality, fewer than 60% of Haitian children attend school, and the number of affordable private or public schools is not sufficient to accommodate all school-age children. The number of children living in IDP camps that attend school may be even fewer.⁹⁹

⁹⁷ Ratified January 31, 2012.

⁹⁸ CONSTITUTION DE LA REPUBLIQUE D'HAÏTI [CONSTITUTION] Mar. 10, 1987, Preamble, arts. 22, 32, *available at* <http://pdba.georgetown.edu/constitutions/haiti/haiti1987.html> .“Education is the responsibility of the State and its territorial divisions. They must make schooling available to all, free of charge, and ensure that public and private sector teachers are properly trained.” *Id.* at art. 32-1. “Primary schooling is compulsory under penalties to be prescribed by law. Classroom facilities and teaching materials shall be provided by the State to elementary school students free of charge.” *Id.* at art. 32-3; *see also* Asamble Vwazen Solino, Submission to the United Nations Universal Periodic Review, 12th Session of the Working Group on the UPR Human Rights Council, October 3 - 14, 2011 (Mar. 24, 2011), <http://ijdh.org/wordpress/wp-content/uploads/2011/03/UPR-Education-Final-English.pdf>.

⁹⁹ Commission on the Status of Women, Statement submitted by MADRE, a non-governmental organization in consultative status with the Economic and Social Council, ¶¶ 5–10, U.N. Doc. E/CN.6/2011/NGO/41 (Dec. 3, 2010); Samuel Maxime, *Haiti: Millions Collected for Education 'Nonexistent' says Senator*, DEFEND HAITI Dec. 13, 2011, <http://www.defend.ht/politics/articles/legislative/2206-haiti-millions-of-dollars-for-education-unaccounted-for-says-senator>; UNITED NATIONS CHILDREN’S FUND (UNICEF), CHILDREN OF HAITI: MILESTONES AND LOOKING FORWARD AT SIX MONTHS 14 (2010),

Nearly 4,000 education establishments remain damaged or destroyed by the earthquake, affecting close to 2.5 million students.¹⁰⁰ UNICEF recently reported helping approximately 80,000 children return to school and attend classes.¹⁰¹ However, with over four million Haitian children under the age of 18,¹⁰² many families in internal displacement camps must choose between allocating precious resources for education and food, other basic necessities such as food, water, and shelter.

While lack of access to education was a problem before the earthquake, children who were orphaned by the earthquake were also left with no social services available, and therefore are less likely to be able to attend school.¹⁰³ Many of the surviving families who have lost their residence and means of income are also often unable to pay for their children's education. This is supported by women in internal displacement camps who report that their children cannot attend the so-called "free" elementary schools because of the cost of uniforms, books and related necessities.¹⁰⁴

In October 2011, Haitian President Michel Martelly launched a free education initiative targeting over 140,000 children in eight departments not attending school.¹⁰⁵ The initiative, known as the National Fund for Education, raises money to pay for education from taxes on international calls and money transfers to Haiti.¹⁰⁶ Thus far, the initiative has produced concerns about whether the money raised has actually been used for this purpose given the large number of Haitian children who do not attend school.¹⁰⁷ For example, the Chairman of the Haitian Senate Finance Committee, Jocelerme Privert, has claimed "that millions of dollars collected for education" have been unaccounted for, and that "[u]nfortunately, there is a total opacity surrounding the creation, the collecting, and the use of resources for the National Fund for Education."¹⁰⁸

http://www.unicef.org/haiti/french/ENG_UNICEF_Haiti_-_Six_Months_Report_Final_Draft.pdf.

¹⁰⁰ UNICEF, CHILDREN OF HAITI: TWO YEARS AFTER WHAT IS CHANGING? WHO IS MAKING CHANGE? 9 (2012),

<http://www.unicef.org/media/files/2yearsReport.pdf>.

¹⁰¹ UNICEF, On Eve of Quake's Anniversary, Haitian Children See Some Progress (Jan. 9, 2012),

http://www.unicef.org/media/media_61251.html (last visited Apr. 8 2012).

¹⁰² *Id.*

¹⁰³ STRUGGLING TO SURVIVE, *supra* note 68, at 14.

¹⁰⁴ Interview with women in Croix-des-Prez, an internal displacement camp in Port-au-Prince, Haiti (Feb. 6-10, 2012).

¹⁰⁵ UNICEF, CHILDREN OF HAITI: TWO YEARS AFTER WHAT IS CHANGING?, *supra* note 100.

¹⁰⁶ *Haiti - Education : Launch of the National Fund for Education (FNE) by Martelly*, HAITI LIBRE, May 27, 2011, <http://www.haitilibre.com/en/news-3034-haiti-education-launch-of-the-national-fund-for-education-fne-by-martelly-update-1h03pm.html> (last visited Apr. 8, 2012).

¹⁰⁷ Stephanie Strom, *A Billionaire Lends Haiti a Hand*, N.Y. TIMES, Jan. 6, 2012,

<http://www.nytimes.com/2012/01/07/business/digicels-denis-obrien-helps-rebuild-haiti.html?pagewanted=all> (In a profile of Denis O'Brien, the owner of Digicel, stated after news broke out that \$26 million raised in the new National Fund for Education was missing, "I've spoken with President Martelly about this, and there will be an audit. I will make it my business that it will be audited, one way or the other."); *Haiti: President's Tax on Diaspora Is Not Funding Free Education*, DEFEND HAITI, Jan. 3, 2012, <http://defend.ht/news/articles/education/2350-fne-money-not-used-for-education>; *"National Fund for Education is not operational" says Haiti Education Minister*, DEFEND HAITI, Nov. 26, 2011, <http://defend.ht/politics/articles/executive/2075-qnational-fund-for-education-is-not-operationalq-says-haiti-education-minister> (last visited Apr. 8, 2012).

¹⁰⁸ Samuel Maxime, *Haiti: Millions Collected for Education 'Nonexistent' says Senator*, DEFEND HAITI, Dec. 13, 2011, <http://www.defend.ht/politics/articles/legislative/2206-haiti-millions-of-dollars-for-education-unaccounted-for-says-senator> (last visited Apr. 8, 2012).

Families have recently reported that many schools have been closed for several months because the teachers, ostensibly to be paid by the National Fund for Education, have not yet been paid.¹⁰⁹ Additionally, reported corruption in the few remaining schools has caused an increase in tuition making the cost of education prohibitive, forcing families to choose between allocating precious resources for education and food, water, medical care, and other basic necessities.¹¹⁰ In one case, a mother of nine school-aged children reported that she was able to send some to a free school in September of 2011, but by December of the same year the school told the children not bother going because the teachers were not being paid by the government.¹¹¹ The children showed up to a vacant school, as no teachers were present. When the mother attempted to speak to the principal of the school to ask why there were no teachers, the principal told her to, “[w]ell, go protest.”¹¹² The woman also reported having to pay tuition for her elementary school aged children. According to her, registration costs 1,300 Haitian dollars and every trimester costs 300 gourdes. Additionally, the uniforms are costly as one must purchase the fabric first then pay someone to sew it for a cost of approximately 1,000 gourdes per uniform.¹¹³

B. Access to Education in Rural Haiti is Also Inadequate.

Access to education in rural Haiti was not directly affected by the earthquake, but children in Jérémie face similar obstacles to access to primary and secondary education. Access to education in Jérémie is limited and even more difficult in the more rural villages of the Grande’Anse Department. Since many schools in Jérémie and the Grande’Anse are private, the cost often prohibits families from sending their children to school.¹¹⁴ Even where tuition is free, costs including supplies, books, and uniforms serve as additional obstacles for families who may face the difficult choice of prioritizing one child’s education over another.

Non-governmental organizations have stepped in to fill the need, but face funding problems.¹¹⁵ One organization recently opened a school in one of Jérémie’s most impoverished neighborhoods in a building that had been abandoned by another school because parents were concerned about sending their children to school in a dangerous neighborhood.¹¹⁶ Children who live in the surrounding neighborhood now attend the school, which provides one of Jérémie’s few preschool classes.¹¹⁷ Despite applying for grants, the organization has yet to secure the

¹⁰⁹ Interview with women in Champs Mars, an internal displacement camp, in Port-au-Prince, Haiti (Mar. 2, 20102)

¹¹⁰ A specialist at the Inter-American Development Bank has estimated that rebuilding Haiti’s education system will cost at least \$2 billion dollars over the next five years. Simon Romero, *With Haitian Schools in Ruins, Children in Limbo*, N.Y. TIMES, Mar. 7, 2010, at A6. See also UNICEF, THE STATE OF THE WORLD’S CHILDREN 2011: ADOLESCENCE: AN AGE OF OPPORTUNITY 14 (2011), <http://www.unhcr.org/refworld/pdfid/4d6cfa162.pdf> (recognizing that “poor education, health and protection outcomes are a direct result of lack of access to services and basic necessities such as water and food due to poverty, political instability, violence and gender-based discrimination.”).

¹¹¹ Interview with women in Champs Mars, an internal displacement camp in Port-au-Prince, Haiti (Feb. 8, 2012).

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ Informal interview with administrative staff at Union Patriotique de Camagnole, a primary school in Jeremié (March 6, 2012)

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

funding needed for the upcoming school year.¹¹⁸

Even when children attend school, their education is often inadequate. Many children only attend school for half of the day, with one set of pupils attending for four hours in the morning and another set for four hours in the afternoon.¹¹⁹ Teachers are underpaid, if paid at all, which results in under-qualified instructors.¹²⁰ Classrooms are typically split between two grades or classes, with blackboards facing opposite directions.¹²¹ Supplies like paper, pencils, and books are limited, and some schools do not have restrooms or potable water available.¹²² Teenage students attending a human rights training at the Haitian Health Foundation in Jérémie reported that students have gone on strike to protest the low teacher salaries that result in inadequate instruction.¹²³

Children who attend school have reported abuse. In one case, a 65-year-old teacher at a state school raped his 12-year-old student; the teacher is now in prison in Jérémie.¹²⁴ One respondent reported that she observed a female student turn in her phone number written on a sheet of paper in place of a history test.¹²⁵ This suggests that in some cases students solicit teachers, or at a minimum know it would be sufficient if not necessary to do so to pass the class.

The search for education places rural girls at risk of abuse when they leave their homes to go to school. Girls from rural communities may attend school in Jérémie where there are more resources, or may even travel to Port au Prince, especially if they wish to study beyond high school.¹²⁶ Jérémie, for example, has a nursing school and a baccalaureate law school, but no liberal arts undergraduate education is available outside of Port-au-Prince.

C. Lack of Education Places Girls at Risk for Additional Violations.

The consequences of lack of access to education also vary from the general, such as lack of access to employment, to the very specific problem of increased vulnerability to sexual exploitation for school expenses of young women and girls in IDP camps.¹²⁷ While these general consequences existed before and were exacerbated by the earthquake, the specific consequence of increased vulnerability to sexual exploitation brought on by lack of access to education gives rise to a serious violation by the State of the ICCPR.

¹¹⁸ *Id.* (Budget in US dollars: \$5000 a year to run the school; additionally, \$50 a month would provide potable water for the students).

¹¹⁹ *Id.*

¹²⁰ Informal interview with administrative staff at Union Patriotique de Camagnole, a primary school in Jérémie (March 6, 2012)

¹²¹ *Id.* (delegation observations).

¹²² *Id.*

¹²³ Human rights training led by Roxanne Dimanche and U.C. Hastings law students, at the Haitian Health Foundation in Jérémie, Haiti (Mar. 6, 2012).

¹²⁴ Interview with Kerline St. Juste Gaspart and Pacaud Mie Therese, field agents, Women's Ministry in Jérémie, Haiti (Mar. 7, 2012).

¹²⁵ Interview with Bette Gebrian-Magloire and Roxanne Dimanche, Haitian Health Foundation in Jérémie, Haiti (Mar. 7, 2012).

¹²⁶ Commission on the Status of Women, Statement submitted by MADRE, a non-governmental organization in consultative status with the Economic and Social Council, ¶ 5, U.N. Doc. E/CN.6/2011/NGO/41 (Dec. 3, 2010).

¹²⁷ STRUGGLING TO SURVIVE, *supra* note 68, at 14.

Young women and girls living in IDP camps and poor neighborhoods suffer particular harms as a consequence of these barriers to access, such as vulnerability to sexual exploitation. Recent studies indicated there's a trend of young women and girls in Port-au-Prince who are exchanging sex for tuition directly, or for the money to pay for tuition, uniforms, and books.¹²⁸ Between 2010 and 2012, informants consistently reported that young women and girls had sex with men in exchange for direct and/or indirect payment of educational expenses.¹²⁹ A protection actor confirmed that young girls often have sex with men who will pay for their schooling.¹³⁰ Women interviewed explained that they are unable to earn enough money for school, which some interviewees estimated to cost approximately \$200 a year.¹³¹ More recently, one woman reported that, out her 9 children, not one attends school.¹³²

In sum, lack of access to education after the earthquake has further blocked young women and girls' ability to acquire employment necessary to buy food and clean water, putting them in a position of heightened vulnerability to ongoing sexual violence and exploitation.

We urge that implementation of the right to education for young women and girls is a direct point of entry which will create the opportunities for the implementation of the right to work under Article 5 and the right to be free from gender discrimination under Article 3.

D. Questions to the Haitian Government on Access to Education.

- We applaud the Government of Haiti for ratifying the International Convention on Economic, Social and Cultural Rights. In light of the reports of continued high number of displaced persons in Haiti, what measures is the Government taking to remedy the lack of socio-economic assistance especially in fields such as the education of children?
- What measures is the Government taking to ensure that all children are afforded equal opportunities for access to schooling, and that school fees do not prevent them from receiving primary education?
- How is the State implementing capacity-building programs in the Education sector, such as rebuilding school buildings, training and employing teachers, and budget allocation?
- What factors does the State use to determine which children will be eligible for free education?
- Does the State have national standards for curriculum and achievement at the primary and secondary school levels so that all children are guaranteed equal access to education?

¹²⁸ *Id.* at 13.

¹²⁹ See generally HAITIAN WOMEN'S FIGHT AGAINST RAPE, *supra* note 28; STRUGGLING TO SURVIVE, *supra* note 68.

¹³⁰ Telephone Interview with protection actor (Nov. 30, 2011).

¹³¹ STRUGGLING TO SURVIVE, *supra* note 68, at 13.

¹³² Interview with women in Champs de Mars, an internal displacement camp in Port-au-Prince, Haiti (Feb. 8, 2012).

- What steps is the State taking to ensure that poor and displaced children have equal access to education as non-displaced children?
- How is the Ministry of Education ensuring that special recruiting and training efforts for new teachers are implemented quickly to meet educational needs?
- Please provide national statistics on education, disaggregated by rural and urban areas?
- How is the State ensuring that all teachers are paid on time and schools remain open during the school year?
- How are the Ministry of Education and Ministry of Labor collaborating to ensure that students are developing the necessary skills required for newly created jobs?

II. CONCLUSION

We hope that the information provided in this letter will be useful to the Task Force in drafting the list of issues to be raised with the Government during its fourth periodic review. Please do not hesitate to contact us should you have any questions.

Appendix



INTER - AMERICAN COMMISSION ON HUMAN RIGHTS
COMISION INTERAMERICANA DE DERECHOS HUMANOS
COMISSÃO INTERAMERICANA DE DIREITOS HUMANOS
COMMISSION INTERAMÉRICAINÉ DES DROITS DE L'HOMME



ORGANIZATION OF AMERICAN STATES

WASHINGTON, D.C. 20006 U.S.A.

December 22, 2010

**RE: Women and girls victims of sexual violence living
in 22 internally displaced persons camps
Precautionary Measures no. MC-340-10
Haiti**

Dear Sirs and Madams:

On behalf of the Inter-American Commission on Human Rights (IACHR), I am pleased to address you with respect to your request for precautionary measures regarding sexual violence against women and girls living in 22 Port-au-Prince internally displaced persons camps.

I also wish to inform you that in a note of today's date, the Commission addressed the State of Haiti pursuant to Article 25 of the Commission's Rules of Procedure in order to request the adoption of urgent measures in favor of the above-mentioned persons. Specifically, the Commission requested that the Government of Haiti take the following measures (reproduced in the official language of the State):

1. Assurer que des soins médicaux et psychologiques soient fournis dans des endroits accessibles aux victimes de violence sexuelle des 22 camps de déplacés internes objet de cette mesure conservatoires. En particulier, assurer :
 - a. la privacité pendant les examens ;
 - b. la disponibilité de membres de personnel médical féminin, possédant une sensibilité culturelle ainsi que de l'expérience avec des victimes de violence sexuelle ;
 - c. l'expédition de certificats médicaux ;
 - d. la prophylaxie HIV ; et
 - e. la contraception d'urgence.

Ms. Lisa Davis, Esq.
International Women's Human Rights Clinic
CUNY School of Law
- and -

MADRE
Human Rights Advocacy Director

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Ms. Erica J. Richards, Esq.
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Sunita Patel, Esq. and others
Center for Constitutional Rights

KOFAVIV, FAVILEK, KONAMAVID

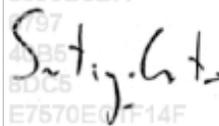
2. Implémenter des mesures de sécurité effectives dans les 22 camps, en particulier, assurer l'éclairage public, un patrouillage adéquat autour et à l'intérieur des camps, et un plus grand nombre de forces de sécurité féminines dans les patrouilles et dans les commissariats de police à proximité des camps ;
3. Assurer que les agents publics chargés de répondre aux incidents de violence sexuelle reçoivent des formations leur permettant de répondre adéquatement aux plaintes de violence sexuelle ainsi que d'adopter des mesures de sécurité ;
4. Promouvoir la création d'unités spéciales au sein de la police judiciaire et du Ministère Public chargées de l'enquête des cas de viol et d'autres formes de violence à l'égard des femmes et des jeunes filles ; et
5. Assurer que les groupes de femmes de base aient pleine participation et leadership dans la planification et l'exécution des politiques et pratiques destinées au combat et à la prévention de la violence sexuelle et d'autres formes de violence dans les camps.

In its communication to Haiti, the Commission also requested that the State provide the Commission with information concerning compliance with these measures within 20 days of receipt of the communication, and thereafter on a periodic basis. In view of the observations of the parties on compliance, the Commission will decide whether to extend or lift the measures.

The Commission wishes to note that in accordance with Article 25(9) of the Commission's Rules of Procedure that the granting of these measures and their adoption by the State shall not constitute a prejudgment on the merits of a case.

The IACHR posts on its Web site (www.cidh.org) a summary of the precautionary measures that have been granted. The summary identifies the beneficiaries of the precautionary measures by name, with the exception of children and victims of sexual violence. In cases in which the beneficiaries of these precautionary measures prefer that their complete name not be made public on the Web site, they are required to immediately inform the IACHR in writing.

Sincerely,



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Santiago A. Canton
Secrétaire exécutif