



HAITI

AMNESTY INTERNATIONAL SUBMISSION FOR THE UN UNIVERSAL PERIODIC REVIEW

**26TH SESSION OF THE UPR WORKING GROUP,
OCTOBER/NOVEMBER 2016**

FOLLOW UP TO THE PREVIOUS REVIEW

Following its first Universal Periodic Review (UPR) in October 2011, Haiti accepted recommendations to ratify a number of international human rights treaties.¹ Of the ten treaties, Haiti has only ratified the International Covenant on Economic, Social and Cultural Rights, the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, and the Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption. Amnesty International regrets that Haiti rejected the recommendations to ratify the Convention relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness.² Both of these are pertinent to the situation in Haiti given the high number of Haitians lacking any identity documents and the presence in Haiti of stateless people expelled from the Dominican Republic.

Amnesty International also notes the adoption of important legislation such as the Law on the sale and trafficking of persons, the new Law on adoptions, the Law on paternity, maternity and filiation and the Law on prevention and sanction of corruption, as recommended during the first UPR.³

Haiti supported a number of recommendations related to improving the administration of justice.⁴ While Haiti has appointed a President of the Supreme Court and taken measures to address the high rates of pre-trial detention and to increase the provision of legal aid, comprehensive reform of the justice system has not been undertaken and access to justice remains dire (see also below).

While Amnesty International notes that the number of internally displaced people (IDPs) living in camps following the 2010 earthquake has drastically decreased, Haiti has failed to provide access to durable solutions for them or taken concrete steps towards facilitating access to adequate housing to all, including IDPs.

¹ Human Rights Council, *Report of the Working Group on the Universal Periodic Review, Haiti*, 8 December, A/HRC/19/19, recommendations 88.1 (Algeria), 88.2 (South Africa), 88.3 (Ghana), 88.4 (France), 88.5 (Poland), 88.6 (Spain), 88.7 (Norway), 88.8 (Uruguay), 88.9 (Djibouti), 88.10 (Honduras), 88.11 (Switzerland), 88.12 (Argentina), 88.13 (Norway), 88.14 (Belgium), 88.15 (Maldives), 88.16 (Spain), 88.17 (Hungary), 88.20 (Hungary).

² A/HRC/19/19, recommendations 88.18 (Norway) and 88.19 (France), and A/HRC/19/19/Add.1, paragraph 33.

³ A/HRC/19/19, recommendations 88.84 (Norway), 88.85 (Honduras), 88.86 (Australia), 88.87 (Uruguay), 88.88 (Djibouti), 88.89 (United States), and 88.104 (Turkey).

⁴ A/HRC/19/19, recommendations 88.97 (Sweden), 88.98 (Spain), 88.99 (United Kingdom), 88.100 (United States), 88.101 (Norway), 88.102 (Slovakia), 88.103 (Barbados), 88.104 (Turkey), 88.105 (Belgium), 88.106 (United States), 88.107 (Slovenia), 88.108 (Mexico), 88.109 (Belgium), 88.110 (Switzerland), 88.111 (Canada) 88-112 (France).

THE NATIONAL HUMAN RIGHTS FRAMEWORK

In 2012, a law was adopted to reform the ombudsman office (Office de la Protection du Citoyen), and in December 2013 the office received accreditation as a national human rights institution (category A) in conformity with the Paris Principles. While this is a major step forward, the office remains largely under-funded.

Key legislation is based on five Napoleonic codes, which have remained largely unchanged, with dozens of legal and administrative provisions that are no longer relevant to the current context, discriminatory norms against women and several human rights violations not covered, including torture and crimes against humanity. The Presidential Commission for the Reform of the Justice System, tasked with reviewing the codes, submitted a draft reform of the Penal Code to the President in March 2015 and a draft reform of the Criminal Procedure Code in October 2015. Both of them have yet to be submitted to Parliament.

Rape was criminalized in Haiti in 2005 through a governmental decree. However, the decree does not contain the definition of the crime and does not mention rape within marriage.

The political crisis, which left the country without a functional parliament throughout 2015 and without an elected successor when the President's term expired on 7 February 2016, has severely impacted on Haiti's capacity to adopt important legislation and policies. For example, a comprehensive Bill on the prevention, prosecution and eradication of violence against women which had been drafted in cooperation with women's rights organizations has yet to be submitted to Parliament. The draft Nationality Law recognizing the status of stateless persons and containing measures to prevent statelessness and the draft Child Protection Code have also yet to be submitted to Parliament.

THE HUMAN RIGHTS SITUATION ON THE GROUND

Internally displaced people and the right to adequate housing

According to data from the International Organization for Migration (IOM), as of 31 December 2015, an estimated 59,720 individuals were still residing in 37 camps following the January 2010 earthquake.

Living conditions in the camps have been progressively worsening as many humanitarian programmes have ended due to lack of funding and to the overall strategy of closing camps. For example, in November 2015, the Office for the Coordination of Humanitarian Affairs (OCHA) reported deteriorated hygiene conditions in the camps and that many of them are located in areas at high risk of flooding.

While Amnesty International acknowledges that the number of people living in camps has fallen significantly from the initial estimate of about 1,500,000, the organization is concerned that the majority of people who left the camps have not benefitted from a durable solution to their displacement, including access to adequate housing.⁵ By December 2014, more durable solutions to displacement, including repairing, rebuilding or building housing, accounted for less than 20% of the measures provided. The rest of the solution has been the construction of temporary shelters and the provision of rental subsidies of US\$500 per family per year. The UN Special Rapporteur on the human rights of Internally Displaced Persons stated in May 2015 that the rental subsidy policy was "a transitional measure to decongest the camps".⁶ Although the Haitian government and the international community have identified, since 2014, the need to transform certain IDP camps into neighbourhoods, little progress is known to have been made in this respect.

Against this backdrop, many people have moved back to unsafe houses or started building or reconstructing

⁵ For further information see Amnesty International's report "*15 Minutes to leave*" – *Denial of the right to adequate housing in post-quake Haiti* (Index: AMR/36/001/2015).

⁶ Human Rights Council, Report of the Special Rapporteur on the human rights of internally displaced persons, Mission to Haiti, 8 May 2015, A/HRC/29/34/Add.2, para. 74.

their houses, in most cases with no assistance or guidance, and often in informal settlements located in hazardous areas.

Since 2011, Amnesty International has documented several cases of forced evictions both from IDPs camps and other settings. There are no comprehensive figures for the number of IDPs who have been forcibly evicted since 2010, but IOM statistics suggest 176 camps have been closed since 2010 following eviction, corresponding to a total of some 60,570 individuals. Although there have been fewer evictions during 2014 and 2015, many people living on IDPs site on private land remain at risk of forced eviction.

In October 2013, the government announced the adoption of the first National Policy on Housing and Habitat, which represents an essential first step. Nevertheless, the policy contains some important gaps especially on how those most in need will be identified and supported in accessing adequate housing.

Migrants' rights

Following the expiry of a national regularisation plan of irregular migrants in the Dominican Republic on 17 June 2015, tens of thousands of Haitian migrants and their families returned to Haiti. The majority declared having returned spontaneously often following threats or fearing violent expulsion, while others were deported. The Haitian authorities did not carry out a comprehensive registration at their arrival or provide adequate assistance to those with no place to go and to the most vulnerable people.

According to information gathered by IOM, as of January 2016, about 2,220 people, most of them deported or returned from the Dominican Republic, were estimated to have settled in six makeshift camps in the southern border region of Anse-à-Pitre.

As documented by Haitian human rights organizations and international humanitarian organisations, living conditions in the camps are dire. In September 2015, OCHA reported that there was a lack of water, no toilets or showers, and people were living in tents that are not resistant to storms or rain. They also reported a number of health concerns among the camp population, which worsened when cholera broke out in the area in October 2015. It was only in mid-February 2016 that IOM announced a plan to relocate all the families over the following six weeks by giving them rental subsidies for one year in order to allow them to rent an accommodation.

Stateless people

Following a ruling in 2013 by the Dominican Constitutional Court which arbitrarily deprived hundreds of thousands of people of their Dominican nationality, most of them of Haitian descent, the Haitian authorities have made statements indicating that they consider those affected by the ruling to be stateless.

However, when high numbers of people started returning or being deported from the Dominican Republic to Haiti in June 2015, the Haitian authorities failed to identify and register people who are stateless or at risk of statelessness. By 17 March 2016, UNHCR had identified 1,237 such individuals, the majority of them children. The Haitian authorities had yet to deal with those cases by either facilitating their return to the Dominican Republic or their official settlement in Haiti, according to their wishes.

Access to justice

The long-awaited establishment of the Supreme Council of the Judiciary (*Conseil Supérieur du Pouvoir Judiciaire* – CSPJ), in 2012, was a major step forward in the reform of the justice system. However, its effective functioning continues to be hampered by a lack of resources and undue interference by the government. The first CSPJ President resigned in January 2015 when a presidential advisory commission recommended that he do so due to “the loss of legitimacy and credibility of the CSPJ”.⁷ Delays in the renewal of judges’ tenure and in the investigation of complaints against judges have also had a negative impact on the efficiency of the judiciary.

The overall lack of independence of the justice system remains a concern. National human rights organizations

⁷ Recommendations de la Commission Consultative, 8 December 2014, available at [http://www.miamiherald.com/news/nation-world/world/americas/haiti/article4393117.ece/binary/Read%20the%20presidential%20commission's%20report%20\(PDF\)](http://www.miamiherald.com/news/nation-world/world/americas/haiti/article4393117.ece/binary/Read%20the%20presidential%20commission's%20report%20(PDF))

expressed concern that a decision by the Port-au-Prince court of first degree in April 2015 to dismiss the case against two alleged gang members was politically motivated. Between 2013 and 2014, Amnesty International received several reports indicating that people have been arbitrarily detained on false charges or on account of their political activities.

Some measures have been taken to address the high rate of pre-trial detention, such as the case review carried out in penitentiaries in the Port-au-Prince region (so-called operation “*Coup de poing*”). However, as the Independent Expert on Haiti pointed out in a press conference following his visit to Haiti in February 2016, 72% of all detainees are held in pre-trial detention, contributing to heavy over-crowding in prisons.

On 20 February 2014, the Port-au-Prince Court of Appeal re-established the charges of crimes against humanity and crimes related to serious human rights abuses against former dictator Jean Claude Duvalier and others, reversing a 2012 ruling by an investigative judge. The Court of Appeal judge tasked with carrying out additional investigations continued these after Duvalier’s death in October 2014; however, further efforts are needed to establish the individual criminal liability of Duvalier’s subordinates, and ultimately to conduct a fair and impartial trial. The government has not allocated sufficient resources to enable the investigating judge to carry out a complex investigation of this kind.

Violence against women and girls

Research by national and international human rights organisations reveals a pattern of gender-based violence. However, it is difficult to measure the trends of such violence and the impact of policies, due to the lack of effective mechanisms to collect and collate disaggregated data.

Access to justice for victims of gender-based violence remains difficult due to several factors, including police failure to systematically and adequately register the complaints, the backlog of cases in courts, and the unlawful practice of seeking conciliation between the victim and the alleged perpetrator, mainly carried out by justices of the peace. Moreover, the authorities are not willing to process complaints of rape in the absence of a medical certificate or frequently dismiss cases where the medical certificates do not show injuries consistent with a certain level of physical violence.

Human rights defenders and journalists

Between 2012 and 2014, Amnesty International recorded numerous attacks, threats and harassments against human rights defenders, including lawyers, which in many cases, seemed to be related to their human rights work. In most cases, the authorities have failed to carry out thorough and prompt investigations. Moreover, the authorities have not provided effective protection measures to enable the defenders to carry out their work without fear of reprisals. More recently, national human rights organizations, as well as the International Federation for Human Rights, have reported a number of cases of threats and harassment against journalists who have been critical regarding the 2015 elections or on the political crisis.⁸

Lesbian, gay, bi-sexual, transgender, intersex (LGBTI) persons

LGBTI persons suffer high levels of discrimination in Haiti, often translating into acts of violence, harassment and intimidation. A spike in violence occurred in the summer of 2013, following speculation by some religious groups that LGBTI activists were seeking the adoption of legislation authorizing same-sex marriage in Haiti. Religious groups organized demonstrations against same-sex marriage, during which acts of violence and aggression against persons perceived to be LGBTI were reported by local human rights organizations.⁹ No individuals are known to have been prosecuted for these acts.

⁸ FIDH, Lettre ouverte à Gustavo Gallón, l’Expert indépendant sur la situation des droits humains en Haïti, 9 February 2016, <https://www.fidh.org/fr/regions/ameriques/haiti/lettre-ouverte-a-gustavo-gallon-l-expert-independant-sur-la-situation>

⁹ Amnesty International, *Haiti: Anti-LGBTI march threatens more violence* (Index: AMR 36/015/2013) and Amnesty International, *Haiti: Further information: Anti-LGBTI march threatens more violence* (Index: AMR 36/016/2013).

RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

Amnesty International calls on the government of Haiti to:

Internally displaced persons and the right to adequate housing

- End all forced evictions, including from displacement camps;
- Ensure that all evictions comply with international law and standards on forced evictions;
- Ensure that programmes aimed at transforming IDP camps and informal settlements into formal neighbourhoods do not result in forced evictions, provide security of tenure to all beneficiaries and enable those living in poverty and other vulnerable groups to access adequate housing;
- Ensure that all rental subsidy programmes are linked to livelihoods and income generating activities and benefit the entire community where IDPs are settled, and that all rental subsidy programmes are accompanied by legal support in housing, land and property matters as recommended by the UN Special Rapporteur on the Human Rights of Internally Displaced Persons;
- Fully implement the National Policy on Housing and Habitat in a manner that ensures access to adequate housing, particularly for those living in poverty.

Migrants' rights

- Systematically register people returning or being deported from the Dominican Republic and facilitate the access to identity document to those who are Haitian nationals;
- Provide returnees with immediate assistance and protection, with a special attention to marginalized groups and people at risk;
- Ensure access to adequate housing for all returnees, and especially those who cannot provide for themselves.

Stateless people

- Identify and register people who are stateless or at risk of statelessness;
- Facilitate settlement in Haiti and access to identity documents to stateless people born in and expelled from the Dominican Republic who wish to remain in Haiti;
- Facilitate, including through dialogue with the Dominican authorities, the return to the Dominican Republic of people born in the Dominican Republic who wish to do so;
- Adopt and effectively implement the draft Nationality Law;
- Ratify and implement the Convention relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness.

Access to justice

- Ensure that the judiciary, including the Supreme Council of the Judiciary (CSPJ), is provided with adequate resources and able to operate free from interference;
- Implement practical measures throughout the country to progress the cases of those in pre-trial detention and implement alternative measures to incarceration to ensure that pre-trial detention is used only as an exceptional measure;
- Ensure that the judicial authorities have sufficient resources to continue the investigation into the crimes against humanity and crimes related to serious human rights abuses allegedly committed during Jean-Claude Duvalier's era, without any political interference;
- Finalize the reform of the Criminal Code, including to ensure that rape, torture, crimes against humanity and discrimination are defined in line with international standards.

Human rights defenders and journalists

- Fully, promptly and effectively investigate all allegations of attacks, threats and intimidation against human rights defenders, including lawyers, and journalists make the results public, and bring the perpetrators to justice;
- Provide effective protection measures to lawyers, human rights defenders and journalists, including by fully implementing the precautionary measures of the Inter-American Commission for Human Rights where these have been granted.

Violence against women and girls

- Collect comprehensive data across Haiti and systematically measure the nature and extent of violence against women and girls, including rates of successful prosecution, and make the results public;
- Adopt and effectively implement comprehensive legislation on violence against women, including a definition of rape that is consistent with international standards and criminalizes rape within marriage;
- Ensure that the police and judicial authorities systematically and effectively register all complaints of gender-based violence, and that such complaints are promptly, impartially and effectively investigated;
- Train prosecutors and judges in sensitive handling of cases of rape and sexual violence, including international standards on the use of forensic medical evidence.

LGBTI persons

- Fully investigate all acts of violence suspected of being motivated by discrimination against individuals because of their real or perceived sexual orientation and gender identity and bring those responsible to justice;
- Carry out training for police officers and other state agents on how to handle cases of violence, harassment and intimidation against people because of their real or perceived sexual orientation and gender identity;
- Implement human rights education and anti-discrimination awareness-raising programs in collaboration with LGBTI rights organizations.