



Institute for Justice & Democracy in Haiti

Fighting for the human rights of Haiti's poor

April 27, 2012

Human Rights Committee
UN High Commissioner for Human Rights
Attention: Kate Fox
Secretary of the Human Rights Committee
Sent via email kfox@ohchr.org

Dear Honorable Members of the Committee,

We would like to thank the Committee for the opportunity to express our concerns regarding Haiti's struggles to comply with its international human rights obligations under the International Covenant on Civil and Political Rights (ICCPR). The issues we identify below are not exhaustive. We have limited the present submission to include information and questions on our most pressing concerns under many of the Articles related to, among other things, electoral rights, freedom of expression, and criminal justice. We have submitted separate memos jointly regarding gender-based violence and discrimination and violence against LGBT individuals that we refer the Committee to herein by reference.

Introduction: Political Climate in Haiti

Political Instability: In May 2011, President Michel Martelly took office after initial and run-off elections with historically low voter turnouts (less than 23 percent in both rounds), and allegations of widespread voter fraud and the arbitrary exclusion of political parties.¹ As a result, President Martelly's reign has been impacted by a lack of political support. Prime Minister Garry Conille resigned in February 2012, after only four months in office. A new Prime Minister has not been confirmed. President Martelly has not established an electoral council as required under the Haitian Constitution, consequently local and senatorial elections due to be held in November 2011 have not yet been scheduled. Without timely elections, the terms of one-third of the senators will expire in May 2012 and local positions will go unfilled, further crippling the Parliament and concentrating power in the executive branch.

Resurgence of paramilitaries: One of President Martelly's campaign promises was to reactivate the Haitian army, which had been deactivated by President Jean Bertrand Aristide in 1995 due to the army's history of abuse and political repression. Approximately 2,000-3,500 paramilitaries (former army soldiers and new recruits) have been convening regularly on government land. Fifty of them stormed the Parliament on April 17, 2012, demanding that the army be reactivated.²

¹ Center for Economic and Policy Research, *Haiti's Fatally Flawed Election* (January 2011), available at <http://www.cepr.net/index.php/publications/reports/haitis-fatally-flawed-election> (hereinafter "CEPR report").

² Jacqueline Charles, *As Haitian President recuperates in Miami, armed ex-soldiers stormed parliament grounds*, The Miami Herald, April 17, 2012, available at <http://www.miamiherald.com/2012/04/17/v-print/2754435/as-haitian-president-martelly.html>.

Freedom of the Press: Journalists and human rights activists complain that President Martelly and his administration threaten journalists and interfere with the freedom of the press, including being hostile, insulting and making fun of the journalists when they ask controversial questions.³ On February 2, 2012, over 30 grassroots organizations and hundreds of demonstrators demanded that President Martelly respect journalists.⁴

Prosecution of Jean Claude Duvalier: Despite Haiti's obligation under the ICCPR to try former dictator Jean Claude Duvalier for crimes against humanity, on January 30, 2012, a Haitian judge responsible for investigating the case dismissed all charges of crimes against humanity on the basis that the claims were beyond Haiti's statute of limitation.⁵ The government prosecutor also recommended dropping the embezzlement and corruption charges, but the investigating judge decided to let them stand.⁶ Such a trial would be the most significant human rights proceeding in Haitian history. It has the potential to end a long era of impunity, improve the performance of Haiti's judiciary, and deliver justice to the hundreds of thousands who were victims of the former "President-for-life."⁷ The dismissal is now on appeal.

Extrajudicial Forced Evictions in IDP camps: Over two years after the earthquake, about one-half million Haitians still live in internally displaced persons (IDP) camps in and around Port-au-Prince.⁸ UN independent expert on the situation of human rights in Haiti, Michel Forst, called for a national urban planning strategy that would enable the displaced to return to communities guaranteeing normal living conditions and respect for their economic and social rights.⁹ Living conditions in the camps are inhumane and violate basic human rights as set forth in the Sphere Standards.¹⁰ One in five Haitians living in IDP camps faces active threats of forced eviction. For most camp residents, there is nowhere to go. The International Organization for Migration (IOM) records that approximately 75,000 individuals were forcibly evicted from camps between July 2010 and February 2012 - a three-fold increase of the number of people faced with eviction from a year ago in November.¹¹ The Haitian Government has refused to take a stand against illegal forced evictions.

³ Sara Rafsky, *Was letter to Haiti website just part of Martelly's theatrics?*, CPJ Blog, February 24, 2012, available at <http://cpj.org/blog/2012/02/was-letter-to-haiti-website-just-part-of-martellys.php>.

⁴ Defend.ht, *Haiti-Press: Protests Demand President Martelly to Respect Haitian Journalists*, February 7, 2012, available at <http://defend.ht/news/articles/community/2612-haiti-press-protesters-ask-martelly-to-respect-haitian-journalists>; <http://www.lenouvelliste.com/article.php?PubID=&ArticleID=102422>.

⁵ The Guardian, *Baby Doc avoids human rights abuse charges in Haiti*, January 30, 2012, available at <http://www.guardian.co.uk/world/2012/jan/31/baby-doc-duvalier-charges-haiti>.

⁶ Id.

⁷ Reed Brody, *'Baby Doc' Duvalier: His Victims Won't Forget*, The Miami Herald, January 27, 2011, available at <http://www.hrw.org/news/2011/01/27/baby-doc-duvalier-his-victims-wont-forget>.

⁸ William Booth, *Two years after the earthquake, Haiti is trying to clear tent cities*, The Washington Post, February 19, 2012, available at http://www.washingtonpost.com/world/clearing-earthquake-camps-in-haiti-is-not-pretty/2012/01/27/gIQAnxzNOR_story.html.

⁹ *Press Release of The UN Independent Expert Michel Forst on the situation of human rights in Haiti*, February 8, 2012, available at <http://minustah.org/?p=34074>.

¹⁰ Camp Benediction, et al., *Right to Housing, Submission to the UN Universal Periodic Review* (March 2011), available at <http://ijdh.org/archives/17932>, at 6.

¹¹ Camp Coordination and Camp Management (CCCM) /E-Shelter Cluster, *Eviction Situation in Camps hosting Internally Displaced Persons (IDPs)* (February 2012), available at http://www.eshelter-cccmhaiti.info/jl/pdf/Eviction_Report_English_Feb_2012.pdf.

ICCPR Violations by Article

Article 1.1 (Determination of Political Status)

Election Fraud: In every election since April 2009, Haiti has not met its national and international commitments to hold fair elections expressing the will of the Haitian people. The Provisional Electoral Councils established by former President Rene Prèval through a process not recognized by the Haitian Constitution, systematically excluded several political parties in parliamentary and presidential elections in 2009, 2010 and 2011 without legal justification, including Haiti's largest political party.¹² This systematic and repeated exclusion violates Haiti's domestic and international commitments to fair elections that reflect the will of the voters, the right of candidacy and freedom of association. The November 2010 elections, held nine months after the earthquake, were marred with voter disenfranchisement, disorganization, voting irregularities, fraud, and an arbitrary change in electoral results.¹³

Questions:

1. What steps has the Haitian government taken to schedule senatorial elections to prevent the terms of one-third of the senate from expiring in May 2012?
2. What preparations have been made or will be made for the next set of elections to ensure that all eligible political parties may participate, and that all eligible voters are able to register to vote?
3. What steps has the Haitian government taken to prevent disorganization, voting irregularities, and fraud in future elections?
4. What will the government do in order to encourage free and full participation of all eligible political parties in future elections?
5. What is the government doing in order to establish an impartial and fair lawful permanent electoral council?

Article 2.1 and 2.3 (Equal Application of Rights/Effective Remedies for Violations)

Access to judicial system: Under ICCPR Article 2.3, Haitians have a right to effective remedies including a right to competent legal systems of the state after their rights are violated. Most Haitians have little to no access to the formal justice system. Court fees and lawyers are too expensive for the poor to afford. Proceedings are conducted in French, which most Haitians do not speak. Elitist legal training conditions lawyers, judges, and prosecutors to give preferential treatment to the powerful while they discount the causes, testimonies, and legal needs of the poor.¹⁴ Poor women are particularly marginalized by the limited access to the justice system due

¹² *The International Community Should Pressure the Haitian Government for Prompt and Fair Elections*, INSTITUTE FOR JUSTICE & DEMOCRACY IN HAITI (June 2010), available at <http://ijdh.org/archives/13138>, at 2-6.

¹³ CEPR report, *supra* note 1; see also *Haiti's November 28 Elections: Trying to Legitimize the Illegitimate*, INSTITUTE FOR JUSTICE & DEMOCRACY IN HAITI (November 2010), available at <http://ijdh.org/archives/15456>.

¹⁴ Authors' conversations with Haitian lawyers and observations in hearings before Haitian judges, 2010-2011; see also Brian Concannon, Jr., *Beyond Complementarity: The International Criminal Court and National Prosecutions, A View from Haiti*, 32 COLUM. HUMAN RIGHTS L. REV. 201, 212-13 (2000).

to deep-rooted gender discrimination and the added economic disenfranchisement they face.¹⁵ With the exception of some legal assistance programs for prisoners, very few legal services institutions expressly challenge the violently unjust social structures in Haiti that keep the decks stacked against the poor.

Labor and employment remedies: The Haitian government has failed to effectively monitor and enforce the labor code. The International Labor Organization's (ILO) Better Works Program has exposed major compliance violations in Haiti's textile industry, including attacks on freedom of association and collective bargaining, occupational safety and health standards, and worker hours, including forced overtime.¹⁶ Exclusion from the courts, including the Labor Court, prevents workers from enforcing their labor and employment rights, making them vulnerable to illegal firing or exploitation.¹⁷ Sexual harassment is not prohibited under Haiti's labor code, though such conduct constitutes discrimination based on gender, which is prohibited under Article 2.1.¹⁸

Extrajudicial Forced Evictions in IDP camps: Exclusion from the courts also allows self-proclaimed landowners to illegally evict thousands of residents from IDP camps without proving legal ownership of the land. To legally evict under Haitian law, a landowner must show proof of legal title in court and serve a summons on each individual who occupies the disputed land.¹⁹ In addition, the Haitian Constitution limits the right to private property if it is "contrary to the general public interest."²⁰ The vast majority of camp evictions by-pass the legal system and rely on methods of force or coercion. In November 2010, the Inter-American Commission on Human Rights recommended that the Haitian government adopt a moratorium on expulsions and that IDP residents have access to legal recourse before a tribunal.²¹ The Haitian government failed to implement these recommendations and families facing eviction have little to no legal recourse.

Prosecution of Jean-Claude Duvalier: Despite Haiti's obligation under the ICCPR to try former dictator Jean Claude Duvalier for crimes against humanity, on January 30, 2012, a Haitian judge responsible for investigating the case dismissed all charges of crimes against humanity on the basis that the claims were beyond Haiti's statute of limitation.²² The government prosecutor also recommended dropping the embezzlement and corruption charges, but the investigating judge

¹⁵ Lisa Davis & Blaine Bookey, *Fanm Ayisyen Pap Kase: Respecting The Right to Health of Haitian Women and Girls*, 13 HEALTH & HUM. RTS. J. 1 (2011), <http://hrjournal.org/index.php/hr/article/view/410/618> (last visited Aug. 20, 2011).

¹⁶ *Better Work Haiti: Garment Industry 1st Biannual Report under the HOPE II Legislation*, International Labour Office, International Finance Corporation, Geneva, October 19, 2010. Also see *2007 Annual Survey of violations of trade union rights*, available at <http://survey07.ituc-csi.org/getcountry.php?IDCountry=HTI&IDLang=EN>.

¹⁷ Anten Ouvriye, et al., *Labor Rights, Submission to the United Nations Universal Periodic Review* (March 2011), available at <http://ijdh.org/archives/17948>.

¹⁸ *Id.*

¹⁹ Haitian Code of Civil Procedure, articles 35-37 and 64.

²⁰ HAITI CONST. art. 36-3 (1987).

²¹ Institute for Justice & Democracy in Haiti, et al., *Petition for Precautionary Measures Submitted to the IACHR* (November 2010), available at <http://ijdh.org/archives/17712> (hereinafter "Petition to IACHR"). See also, *IACHR Expresses Concern Over Situation in Camps for Displaced Persons in Haiti*, November 18, 2010, available at <http://ijdh.org/archives/15413/> (hereinafter "IACHR Expresses Concern").

²² The Guardian, *Baby Doc avoids human rights abuse charges in Haiti*, January 30, 2012, available at <http://www.guardian.co.uk/world/2012/jan/31/baby-doc-duvalier-charges-haiti>.

decided to let them stand.²³ Such a trial would be the most significant human rights proceeding in Haitian history. It has the potential to end a long era of impunity, improve the performance of Haiti's judiciary, and deliver justice to the hundreds of thousands who were victims of the former "President-for-life."²⁴

The UN and the Inter-America Commission on Human Rights (IACHR) expressed their concerns over the judge's invocation of statute of limitations on the crimes against humanity, which denies the rights to truth, justice and reparations to the victims.²⁵ The High Commissioner for Human Rights has reminded Haiti of its absolute obligation to investigate Duvalier's well documented serious human rights violations and to prosecute those responsible for them.²⁶ The dismissal is now on appeal.

Questions:

1. Given the unequal bargaining power between workers and employers, what is the government doing presently to enforce the labor code and ensure that impoverished laborers have access to legal remedies for labor and employment violations by their employers?
2. What steps is the Haiti government taking to strengthen the labor ministry to ensure accountability worker' rights are protected and promoted, and to ensure legal redress and not impunity in the face of violations?
3. What steps has the government taken to update the labor code to prohibit sexual harassment in the workplace and afford victims of gender discrimination with adequate legal recourse and remedies?
4. What is the Haitian government doing to ensure that residents of IDP camps threatened with eviction are provided access to legal recourse and remedies before a tribunal or an equivalent grievance mechanism so that their legal rights are protected?
5. What steps has the Haitian government taken to comply with the Precautionary Measures issued by the Inter-American Commission in November 2010 that recommends offering access to legal recourse of Haitians displaced by the earthquake and living in IDP camps?
6. What steps has the Haitian judicial system taken to guarantee greater access to the court system to Haitians, including the provision of legal aid for the poor and making sure that all proceedings are language accessible.

²³ Id.

²⁴ Reed Brody, *'Baby Doc' Duvalier: His Victims Won't Forget*, The Miami Herald, January 27, 2011, available at <http://www.hrw.org/news/2011/01/27/baby-doc-duvalier-his-victims-wont-forget>.

²⁵ UN News Center, *Former Haitian leader must face charges for human rights abuses, says UN*, January 31, 2012, available at <http://ijdh.org/archives/24560>; see also *Press Release: IACHR Urges the Haitian Authorities to Investigate, Try and Punish the Grave Violations to Human Rights*, February 1, 2012, available at <http://ijdh.org/archives/24662>.

²⁶ *Press Release: UN Human Rights chief offers Haitian authorities assistance in Duvalier case*, February 1, 2011, available at <http://ijdh.org/archives/18126>.

7. How has the Haitian government ensured that it upholds its obligation to provide an impartial and fair judicial process and effective remedy to victims alleging crimes against humanity against Jean-Claude Duvalier?
8. What steps are being taken by the Haitian government, including the Ministry of Justice, to ensure that the appeal of the dismissal of crimes against humanity against Jean-Claude Duvalier is handled fairly and without any political interference?

Article 4 (Derogation From Articles)

It is our understanding that the Haitian government did not take the appropriate measures that may have allowed it under article 4 to derogate from its obligations under some of the articles of this covenant following the January 12, 2010 earthquake. Accordingly, all articles remain in full force.

Article 6 (Right to Life)

Cholera: The cholera outbreak began in October 2010, ten months after Haiti's tragic earthquake, and "has become one of the largest cholera epidemics in modern history" according to the Pan-American Health Organization (PAHO).²⁷ As acknowledged by the UN's Special Envoy to Haiti, Bill Clinton, UN troops introduced the cholera bacterium "into the waterways of Haiti, into the bodies of Haitians" and, as such, were the "proximate cause" of the epidemic.²⁸ To date, at least 7,200 Haitians have died from the disease and more than 530,000 people have been infected.²⁹ According to PAHO, Haiti is one of the most underserved countries in the world in terms of water and sanitation infrastructure.³⁰ These infrastructural weaknesses have made Haiti particularly susceptible to water-borne disease. Cholera will likely persist in Haiti absent the development of water and sanitation systems.³¹ On January 12, 2012, the presidents of Haiti and the Dominican Republic, joined by UN agencies PAHO, World Health Organization and UNICEF and the U.S. Center for Disease Control, appealed to donor countries to honor pledges and provide funds for water and sanitation infrastructure.³²

Extrajudicial Forced Evictions in IDP camps: The forced evictions in IDP camps by means of attacks or other acts of violence especially when perpetrated by State agents, constitute a clear and blatant violation of the right to life. There have been reports of violence and threats of violence by the Haitian police in dozens of IDP camps, and was the subject of a petition for precautionary measures to the Inter-American Commission on Human Rights.³³ Camp residents

²⁷ Medicalxpress.com, "Haiti cholera death toll nears 7,000: expert" (Jan. 6, 2012) (quoting Jon Andrus, PAHO).

²⁸ Clinton : *UN Soldier Brought Cholera to Haiti*, USA Today (March 7, 2012), available at <http://www.usatoday.com/news/world/story/2012-03-07/haiti-cholera/53402748/1>.

²⁹ Ministère Haitien de la Santé Publique et de la Population, *Rapport de Cas*, 20 Janvier 2012, available at <http://www.mspp.gouv.ht/site/downloads/Rapport%20journalier%20MSPP%20du%2020%20janvier%202012.pdf>.

³⁰ Dr. Luiz Augusto Cassanha Galvão, Congressional Briefing, *Cholera and the Human Right to Health In Post-Earthquake Haiti*, April 18, 2012.

³¹ Deborah Sontag, *In Haiti, Global Failures on a Cholera Epidemic*, The New York Times, March 31, 2012, available at <http://www.nytimes.com/2012/04/01/world/americas/haitis-cholera-outraced-the-experts-and-tainted-the-un.html?pagewanted=all>.

³² PAHO, Experts Call for Major Investment in Water and Sanitation to End Cholera in Haiti and the Dominican Republic (Jan. 12, 2012), <http://new.paho.org/blogs/haiti/?p=2182>.

³³ Petition to IACHR and IACHR Expresses Concern, supra note 21.

have reported gun shots, police brutality, physical and verbal threats and harassment all with the purpose of evicting displaced Haitians from their respective camps.³⁴ ICCPR Article 6's positive obligation to protect and preserve the right to life of its citizens requires the government of Haiti to take proactive measures to prevent these attacks and to provide basic human rights to families and communities living in the displacement camps.

Recognizing an increasing humanitarian disaster, the UN negotiated with the Haitian government a three-week moratorium on evictions from April 22, 2010 to May 13, 2010. This period has long since passed, and even during the moratorium, human rights observers continued to document unlawful evictions. In November 2010, the Inter-American Commission on Human Rights recommended that the Haitian government adopt a moratorium on expulsions, and that those illegally expelled from the camps be transferred to places that meet minimum health and security conditions and have access to legal recourse before a tribunal.³⁵ The Haitian government failed to implement these recommendations.

Questions:

1. What steps has the Haitian government taken to build its water infrastructure? What steps has the government taken to improve its medical care to treat waterborne diseases?
2. What has the Haitian government done to prevent violence against IDP camp residents facing threats of eviction, in particular, women, girls, the elderly, and other vulnerable populations?
3. What steps has the Haitian government taken to work with and support the efforts of the UN agencies PAHO, World Health Organization and UNICEF and the U.S. Center for Disease Control to provide water and sanitation infrastructure in Haiti?

Article 7 (Freedom from Torture and CID Treatment)

Prisoners: Government agents routinely subject Haiti's prisoners to torture or CID treatment or punishment. When interviewed, 40% of prisoners in a May 2009 census in three prisons claimed that they were subject to torture or other abusive treatment by government agents.³⁶ These high numbers of self-reports combined with several established cases of torture by government agents indicate that custodial torture is regular and frequent in Haiti. Despite having laws that prohibit torture and other CID treatment or punishment, government agents continue to employ such practices with impunity.³⁷ Frequent forms of torture in police holding cells include beatings with hands, feet and common items like sticks or bottles, and weapons including pistols, rifles, and nightsticks.³⁸ Reports document that the physical consequences of such behavior include scars,

³⁴ Petition to IACHR, *supra* note 21.

³⁵ IACHR Expresses Concern, *supra* note 21.

³⁶ INST. FOR JUSTICE & DEMOCRACY IN HAITI & BUREAU DES AVOCATS INTERNATIONAUX, HEALTH IN HUMAN RIGHTS IN PRISON PROJECT (2009), *available at* <http://ijdh.org/wordpress/wp-content/uploads/2010/02/HHRPP-Description-Website>.

³⁷ See HUMAN RIGHTS WATCH, WORLD REPORT 2008-HAITI (2008), *available at* <http://www.unhcr.org/refworld/country,,,HTI,4562d94e2,47a87c0446,0.html> (2008).

³⁸ Interview with Mario Joseph, Attorney, Bureau des Avocats Internationaux, in Port-au-Prince, Haiti (July 24, 2009).

pain, internal injuries, vision loss, dental problems, and difficulty walking, sleeping, and performing other daily activities.³⁹ The abuse extends beyond traditional notions of torture. Independent Expert Michael Forst has repeatedly found that the conditions in Haiti's prisons are tantamount to "cruel, inhuman or degrading treatment because of overcrowding and poor sanitation."⁴⁰

Extrajudicial Forced Evictions in IDP camps: As described above (see section under ICCPR Article 6, p. 6), the government has forcefully displaced earthquake victims out of their tent dwelling in IDP camps, which also constitutes CID treatment. Residents have suffered verbal and physical harassment at the hands of the police. Residents have been beaten with sticks and fists, others have been threatened with guns, and some have awoken to gun shots being fired while police driven bulldozers and trucks raze the remaining structures in the camp without providing prior warning to the camp's inhabitants.⁴¹

Questions:

1. What is the government doing to ensure that minimum prison conditions are met, and that the criminal justice system is fair, provides all citizens with due process of law, and does not undermine the basic human rights of all citizens?
2. What is the government doing to assure that prisons are operated in accordance with standards that respect human dignity, and guarantees the right to life, health, and respect of the human person for all citizens without distinction as required under the Haitian Constitution?
3. What is the government doing to carry out the reform of the criminal justice system articulated in the Action Plan for Recovery and Development?
4. What is the government doing to prevent government agents from perpetrating crimes on prisoners such as torture and other cruel, inhumane and degrading treatment or punishment with impunity?
5. What is the government doing to ensure compliance with the 2008 binding judicial decision in *Yvon Neptune v. Haiti* by the Inter-American Court on Human Rights that ordered the government to develop a plan to bring its "inhumane" prisons in line with minimum international standards within two years?
6. How will Haiti ensure that torture and cruel, inhumane and degrading treatment is prosecuted and does not occur in any location under its jurisdiction, power or effective control? How does Haiti propose to give effective remedy to those who have been subject to torture or cruel, inhumane and degrading treatment under its jurisdiction?
7. What steps has the Haitian government taken to prevent violent and forceful evictions from post-earthquake IDP camps and protect victims?
8. What solutions does the government have to prevent further people from being subjected to cruel, inhumane and degrading treatment during threats of evictions from IDP camps?

³⁹ Id.

⁴⁰ U.N. Independent Expert on the Situation of Human Rights in Haiti, *Report of the Independent Expert on the Situation of Human Rights in Haiti*, ¶ 58, U.N. Doc. A/HRC/11/5 (Mar. 26, 2009) (by Michel Forst).

⁴¹ Petition to IACHR, *supra* note 21.

Article 8 (Prohibition of Slavery and Forced Labor)

Restavèk children: It is estimated that between 150,000 and 500,000 children in Haiti are *restavèks*, or child domestic servants.⁴² An additional estimated 3,000 Haitian *restavèks* live and work in the Dominican Republic.⁴³ A recent survey found that 16 percent of all Haitian children were *restavèks*, and in one Port-au-Prince slum, Cite Soleil, 40 percent of children surveyed were *restavèks*.⁴⁴ *Restavèks* are generally children, sometimes as young as five, of poor families who are sent to stay with less poor, urban families and work as unpaid domestic servants for those families. Families often send their children to urban centers with the hopes they will be provided a primary education, which is guaranteed under the Haitian constitution but rarely provided.⁴⁵

A *restavèk* generally works ten to fourteen hours a day without compensation.⁴⁶ Approximately two-thirds of *restavèks* are girls, and are particularly vulnerable to the sexual abuse of males in the host family.⁴⁷ She wakes up before the host family and goes to bed after the host family. In addition to forcing a *restavèk* to work long hours, most often without access to school, host families also fail to properly care for *restavèk* children; they are often so malnourished that on average, a fifteen year old *restavèk* stands four centimeters shorter and weighs twenty kilograms less than the average Haitian child.⁴⁸ The Haitian agency charged with implementation of laws protecting children (the Brigade for the Protection of Minors) has not demonstrated a capacity to investigate, combat and seek redress for violations.⁴⁹

Questions:

1. What steps has the Haitian government taken to reduce and ultimately eliminate the incidence of unlawful child labor, in particular, the phenomenon of *Restavek* children?
2. Is the government taking steps to strengthen the Brigade for the Protection of Minors charged with implementation of laws protecting children by developing its capacity to investigate, combat and seek redress for violations, and if so, what steps?
3. What steps, if any, has the Haitian government taken to implement the 2009 recommendations by the Special Rapporteur on Contemporary Forms of Slavery to: establish a national commission on children, with special attention paid to vulnerable

⁴² Restavek Freedom, et al., *Restavèk: The Persistence of Child Labor and Slavery, Submission to the United Nations Universal Periodic Review* (March 2011), available at <http://ijdh.org/archives/17969> (hereinafter “Restavek Freedom Report”). See also, Gulnara Shahinian, *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including The Right To Development: Report of the Special Rapporteur on Contemporary Forms of Slavery, Including Its Causes and Consequences*, Addendum 7 (Sept. 2009) available at <http://www.unhcr.org/refworld/type,MISSION,,4ac0c6b42,0.html> (noting the difficult of determining the exact number of restavek children in Haiti).

⁴³ United States Department of State, *Haiti: Special Case in TRAFFICKING IN PERSONS REPORT 2010* available at <http://www.state.gov/g/tip/rls/tiprpt/2010/142763.htm>.

⁴⁴ Glenn R. Smucker, et. al. *Lost Childhoods in Haiti: Quantifying Child Trafficking, Restavèks, & Victims of Violence 31-32* (November 2009) available at <http://www.crin.org/resources/infodetail.asp?id=2149> [hereinafter Smucker Report].

⁴⁵ Restavek Freedom Report, supra note 42.

⁴⁶ United States Department of Labor Bureau of International Labor Affairs, *Haiti*, available at <http://www.dol.gov/ilab/media/reports/iclp/Advancing1/html/haiti.htm>.

⁴⁷ Jacky Delorme, *Haiti: Tarnished Children 7* (2004) available at www.beyondborders.net/docs/restavek-report.pdf.

⁴⁸ Jennifer Zimmerman, *Human Rights, Security, and Development in Haiti*, *MIGRATION* 18, 18 (Sept. 2006).

⁴⁹ Restavek Freedom Report, supra note 42.

children, to monitor and ensure protection of their rights, and to launch a public information and sensitization campaign on child slavery and bondage, in particular the practice of *restavèk*?

4. What progress has been made in establishing a registration system for all children born in Haiti to aid in the reunification of children with biological parents when they become separated from them and to aid in the prevention of trafficking?
5. What steps has the Haitian government taken to combat the root causes of *restavèk*, in particular improvements to the water infrastructure, development of a national public school system, and the creation of job programs for biological and host parents?
6. What steps, if any, has the Haitian government taken to increase monitoring of its border with the Dominican Republic to prevent the trafficking of children to the Dominican Republic and abroad to be entered into child slavery?
7. What steps is the Haitian government taking to diminish the supply of *restavèk* by increasing opportunities for rural families to provide for their families, for example, by investing in schools, healthcare and agricultural in rural areas.

Article 9 (Right to Liberty and Security of Person)

Pretrial detention: Criminal defendants are not afforded access to judicial remedies. Between 80-90% of all prisoners in Haiti have not been tried.⁵⁰ Under Haitian law, defendants are entitled to a trial within four months, or they have the right to contest their detention in court.⁵¹ In reality, defendants spend an average of 408 days in pretrial detention.⁵² Some prisoners are held longer than the maximum allowable sentence for their offense, whether convicted or in prolonged pretrial detention.⁵³ Others remain incarcerated even after they have been acquitted of all charges.⁵⁴

Prolonged pretrial detention is also partly a result of resource and infrastructural deficiencies, which contribute to case backlogs, prolonged periods of detention, and the systematic denial of a

⁵⁰ The United Nations Development Programme (“UNDP”) states that the pretrial detention rate in Haiti is 83%. However, it is unclear what methods were used to obtain these data and estimates from different sources vary widely. See Executive Board of the United Nations Development Programme and of the United Nations Population Fund, Draft country programme document for Haiti (2009–2011), at 7, U.N. Doc. DP/DCP/HTI/1 (July 14, 2008) [hereinafter UNDP Country Programme].

⁵¹ Haiti’s Code of Criminal Instruction states: “Le juge instructeur saisi d’une affaire a un délai de deux mois pour en mener l’instruction et communiquer les pièces de l’information au Ministère public et un délai d’un mois pour l’émission de l’ordonnance de clôture, ce, sous peine de prise à partie.” CODE D’INSTRUCTION CRIMINEL, tit. II, art. 7.

⁵² U.S. AGENCY FOR INT’L DEV., AUDIT OF USAID/HAITI’S JUSTICE PROGRAM 8 (2007), available at <http://www.usaid.gov/oig/public/fy07rpts/1-521-07-008-p.pdf> [hereinafter USAID Audit]. (Apr. 24, 2007), 1-32, at 8.

⁵³ ORG. OF AM. STATES, INTER-AMERICAN COMM’N ON HUMAN RIGHTS, HAITI: FAILED JUSTICE OR THE RULE OF LAW? CHALLENGES AHEAD FOR HAITI AND THE INTERNATIONAL COMMUNITY 68 (2005), available at <http://www.cidh.oas.org/countryrep/HAITI%20ENGLISH7X10%20FINAL.pdf>.

⁵⁴ U.S. DEP’T OF STATE, 2007 COUNTRY REPORT ON HUMAN RIGHTS PRACTICES: HAITI (2008) available at <http://www.state.gov/g/drl/rls/hrrpt/2007/100643.htm>.

trial within a reasonable period of time.⁵⁵ Haiti's legal system can handle an estimated 160 to 320 trials a year; in 2007, there were 4,642 detainees awaiting trial.⁵⁶ In 2009, the country had only 109 prosecutors and assistant prosecutors.⁵⁷ Judges at all levels receive minimal logistical support and the courts are notoriously under-resourced.⁵⁸ Poor case management and persistent case backlogs translate into prolonged periods of pretrial detention for the majority of arrestees.

Corruption in the judiciary is perhaps the most significant cause of prolonged pretrial detention. Haiti's prisons are at the center of a nationwide bribery racket within the justice system in which prosecutors, defense attorneys and judges extort money.⁵⁹ The result of this collusion is that those with the financial means to hire an attorney and bribe officials are relieved of all criminal charges, while those without financial means receive increased pretrial detention with its further exposure to mistreatment and disease.⁶⁰ The corruption stems from the fact that judges and staff are underpaid and salaries are insufficient to cover basic living expenses, so they resort to other forms of money making, which may include unofficial attempts to keep pretrial detainees longer than necessary. Furthermore, lack of training impedes the work of courts, and with little opportunity for professional development, political pressures result in serious problems of corruption for which there are no effective accountability mechanisms.⁶¹

Questions:

1. What procedural safeguards are in place to ensure that any person deprived of his liberty by arrest or detention have access to proceedings before a court, in order that the court may decide without delay on the lawfulness of his detention, and order release if the detention is not lawful?
2. What efforts is the Haitian government making to release prison detainees that have been unlawfully held in pretrial detention centers?
3. What steps is the Haitian government taking to improve its case management system and advance its backlog of criminal cases to reduce incidents of pre-trial detention?
4. What is the Haitian government doing to ensure that the criminal justice system is fair and provides all citizens with due process of law?
5. What is the Haitian government doing to carry out the reform of the criminal justice system articulated in the Action Plan for Recovery and Development?

⁵⁵ Interview with Mario Joseph, Attorney, Bureau des Avocats Internationaux, in Port-au-Prince, Haiti (July 24, 2009).

⁵⁶ U.S. AGENCY FOR INT'L DEV., AUDIT OF USAID/HAITI'S JUSTICE PROGRAM 8 (2007), available at <http://www.usaid.gov/oig/public/fy07rpts/1-521-07-008-p.pdf> [hereinafter USAID Audit]. (Apr. 24, 2007), 1-32, at 8.

⁵⁷ Christopher Stone, *A New Era for Justice Sector Reform in Haiti* 1 (Harvard Kennedy School, Faculty Research Working Paper Series RWP10-033, 2010).

⁵⁸ Id.

⁵⁹ INST. FOR JUSTICE & DEMOCRACY IN HAITI & BUREAU DES AVOCATS INTERNATIONAUX, HEALTH IN HUMAN RIGHTS IN PRISON PROJECT (2009), available at <http://ijdh.org/wordpress/wp-content/uploads/2010/02/HHRPP-Description-Website.pdf> [hereinafter IJDH].

⁶⁰ Id.

⁶¹ Id.

6. What is the Ministry of Justice and other relevant Haitian agencies doing to combat corruption in the judicial and prison systems that causes the backlog of cases and pre-trial detention.

Article 10 (Treatment of Individuals Deprived of their Liberty)

Prison conditions: Haiti's prison conditions rank among the worst in the Western Hemisphere — detention centers are overcrowded, poorly maintained and unsanitary, periodically lacking in food and water as well as basic medical services and medical isolation units for contagious patients.⁶² On May 6, 2008, the Inter-American Court issued a decision in *Yvon Neptune v. Haiti*, ordering the government to develop a plan to bring its prisons, which it found to be “inhumane,” in line with minimum international standards within two years.⁶³ To date, little has been done to comply with the Court's order.

Prior to the earthquake, some 8,500 persons were reportedly being held in detention facilities designed to hold just 2,450 inmates by most international standards.⁶⁴ Prison facilities are rodent-infested, unlit, and poorly ventilated, with temperatures regularly reaching over 40 degrees Celsius.⁶⁵ The International Committee of the Red Cross (ICRC) indicates that in crisis situations, prisoners should be allotted 2 square meters per person *at an absolute minimum*. Yet the average living space per prisoner was 0.44m² before the earthquake, reduced to 0.30m² after the earthquake.⁶⁶ This means that prisoners must take turns sleeping on the floor, and many are left standing.⁶⁷ In certain cases, especially following the cholera outbreak, the conditions have resulted in an arbitrary deprivation of life because prisoners have been infected and died while in custody because they were not protected from contraction of the disease or given proper care once infected.⁶⁸ Furthermore, there are insufficient programs to improve prison conditions and provide legal assistance to prisoners in Haiti.

Prison conditions for women: Haiti has only one prison in Port-au-Prince designated exclusively for women offenders. Apart from this, women are detained in separate cells in mixed-gender

⁶² *Yvon Neptune v. Haiti*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 180 (May 6, 2008).

⁶³ *Id.*

⁶⁴ U.S. DEP'T STATE, 2008 COUNTRY REPORT ON HUMAN RIGHTS PRACTICES: HAITI (2009), *available at* <http://www.state.gov/g/drl/rls/hrrpt/2008/wha/119163.htm>.

⁶⁵ ANNE FULLER ET AL., VERA INST. OF JUSTICE, PROLONGED PRETRIAL DETENTION IN HAITI 18 (2002), *available at* http://haiticci.undg.org/uploads/Vera%20Institute_2002.pdf; see also *August v. Ridge*, 395 F.3d 123, 129 (3d Cir. 2005) (noting that Haitian prisoners are subjected to conditions of extreme deprivation).

⁶⁶ U.N. Independent Expert on the Situation of Human Rights in Haiti, *Report of the Independent Expert on the Situation of Human Rights in Haiti*, U.N. Doc. A/HRC/14/44/Add.1 (May 31, 2010) (by Michel Forst).

⁶⁷ AMNESTY INT'L, REPORT 2009: HAITI (2009), *available at* <http://thereport.amnesty.org/en/regions/americas/haiti>.

⁶⁸ Int'l Comm. of the Red Cross, *Haiti: ICRC Steps Up Work to Fight Cholera* (Nov. 26, 2010), <http://www.icrc.org/eng/resources/documents/update/2010/haiti-update-2010-11-26.htm> (reporting that 22 had died in the National Penitentiary as of November 26, 2010). Human rights lawyers investigating cholera in Hinche, Mirebalais, and Saint Marc reported that two prisoners had died in each prison as of January 2011. One American deportee held in a police holding cell died of cholera on January 29, 2011. Eric N. Marcus, M.D., *Haiti: A Deportation Death Sentence?*, HUFFINGTON POST, March 16, 2011.

facilities.⁶⁹ The women's prison was designed to house approximately 30 inmates; however, up to 300 are typically confined in the space.⁷⁰ As of February 22, 2011, there were 255 prisoners in the facility, of them only 28 had been convicted.⁷¹ Women are incarcerated indiscriminately, and pregnant and menstruating women are confined in the same clustered unsanitary conditions as described elsewhere in this report. This causes pregnant women to run a high risk of miscarriage.⁷² When babies are carried full-term, women give birth in a small makeshift clinic inside the prison, without access to emergency medical care in a room ill equipped to handle difficult births. On average, one baby is born every month in the prison.⁷³ Despite their status as new mothers, these women's cases are not expedited, and they may spend years behind bars before they are able to see children – wasting an opportunity for rehabilitation.

Lack of prison segregation for children and the accused: Accused persons are not segregated from convicted persons and are subjected to the same prison conditions and treatment as the convicted. While the Haitian Penal Code prohibits the incarceration of children under 16 years old, they are routinely held in prison.⁷⁴ Children accused of a crime are often held in pre-trial detention without the benefit of due process.⁷⁵ Outside of Port-au-Prince there are no separate prisons for children, and children are often put in the same cells as adults.⁷⁶

Questions:

1. What steps is the Haitian government taking to ensure that the prison system offers prisoners the opportunity for rehabilitation and reformation?
2. Given the well-documented adverse mental health effects of overcrowded confinement, how many prisoners with diagnosed mental health problems are currently held in such confinement and what measures are being taken to monitor, address and protect prisoners in long term imprisonment from mental health problems?
3. What is the government doing to assure that prisons are operated in accordance with standards that respect human dignity, and guarantees the right to life, health, and respect of the human person for all citizens without distinction as required under the Haitian Constitution?
4. What is the government doing to carry out the reform of the criminal justice system articulated in the Action Plan for Recovery and Development?
5. What is the government doing to ensure compliance with the 2008 binding judicial decision in *Yvon Neptune v. Haiti* by the Inter-American Court on Human Rights that

⁶⁹ Alternative Chance, et al., *Criminal Justice, Submission to the United Nations Universal Periodic Review* (March 2011), available at <http://ijdh.org/archives/17961> [Alternative Chance report].

⁷⁰ Id.

⁷¹ Id.

⁷² Id.

⁷³ Id.

⁷⁴ Inst. for Justice & Democracy in Haiti, Health & Human Rights Prison Project, Feb. 2008, 1-21, at 7-12, available at <http://www.ijdh.org/pdf/HHRPP.pdf>.

⁷⁵ U.N. Independent Expert on the Situation of Human Rights in Haiti, *Report of the Independent Expert on the Situation of Human Rights in Haiti*, U.N. Doc. A/HRC/14/44/Add.1 (May 31, 2010) (by Michel Forst)

⁷⁶ Alternative Chance Report, supra note 67.

ordered the Haitian government to develop a plan to bring its “inhumane” prisons in line with minimum international standards within two years?

6. What has been done to provide women with access to separate prison facilities as men with improved conditions, including construction of additional women’s prisons?
7. What steps is the Haitian government taking to ensure that pregnant incarcerated women in Haiti’s prisons are given access to adequate and emergency medical care during delivery?
8. What steps is the Haitian government taking to make sure that accused persons are segregated from convicted persons?
9. What steps is the Haitian government taking to ensure that incarcerated children under the age of 18 are housed separately from adults?

Article 14 (Equality Before the Courts)

Unfair Trial Procedures: Although a fair trial is a fundamental component of due process recognized under Haitian law, as well as Art 14, numerous factors inhibit the widespread exercise of the right to a fair trial. Both Creole and French are Haiti’s official languages.⁷⁷ French is only spoken by 20-40% of Haitians, yet legal proceedings at the trial and appellate courts are almost always conducted primarily in French. Despite this, translation services are almost never provided in the courts, except when a non-French speaker is being questioned.⁷⁸ Consequently, many criminal defendants cannot understand or meaningfully engage with the legal proceedings being conducted against them. Many defendants cannot challenge the state’s witnesses, call their own witnesses, or otherwise present exculpatory evidence as a result of the language barrier.⁷⁹ This effectively inhibits many defendants’ ability to mount a meaningful defense.

Lack of Defense Counsel: Most criminal defendants cannot afford a lawyer and therefore receive inadequate representation.⁸⁰ The availability and quality of legal pro bono services in Haiti is substantially inadequate. The Bar Association organizes free legal representation for all defendants at the *assises*, but the lawyers are often inexperienced, usually poorly-prepared and are frequently law school graduates who have yet to complete their requirements to practice law.⁸¹ Despite the minimum guarantee of having adequate time and means to prepare a defense, reports show that defense attorneys are often given mere days to prepare a case, including complex felony cases such as murder trials.⁸²

⁷⁷ HAITI CONST. art. 5 (1987).

⁷⁸ Christopher Stone, *A New Era for Justice Sector Reform in Haiti* 1 (Harvard Kennedy School, Faculty Research Working Paper Series RWP10-033, 2010).

⁷⁹ Alternative Chance Report, *supra* note 67 at 8.

⁸⁰ *Id.*

⁸¹ ORG. OF AM. STATES, INTER-AMERICAN COMM’N ON HUMAN RIGHTS, HAITI: FAILED JUSTICE OR THE RULE OF LAW? CHALLENGES AHEAD FOR HAITI AND THE INTERNATIONAL COMMUNITY 68 (2005), *available at* <http://www.cidh.oas.org/countryrep/HAITI%20ENGLISH7X10%20FINAL.pdf> [hereinafter OAS Report]

⁸² Alternative Chance Report, *supra* note 67 at 9.

Corruption: Corruption in the court system also impacts equal access. Those with money are able to bribe judges, prosecutors and police, and those with higher political influences, essentially buying justice.⁸³

Questions:

1. What procedures are in place to ensure the provision of adequate counsel for indigent criminal defendants? Are there minimum requirements for establishing effective assistance of counsel, and if so, what enforcement mechanisms are in place?
2. What efforts are being made to ensure that sufficient funds are appropriated for indigent defense programs?
3. What steps have been taken to ensure that all legal proceedings are language accessible to criminal defendants, including the provision of language interpreters when necessary?
4. What is the Ministry of Justice and other relevant Haitian agencies doing to combat corruption in the judicial systems that impacts Haitians' equal access to the court system?

Article 17 (Freedom from Arbitrary Interference with Privacy, Family, Home, or Correspondence)

Extrajudicial Forced Evictions in IDP camps: As described more fully above (see section under ICCPR Article 6, p. 6), one in five Haitians living in IDP camps face active threats of forced eviction. Evicting families from their displacement camp without adequate legal protections is potentially the most arbitrary and abusive interference of one's home, family and privacy imaginable. These families who have lost everything and live at the mercy of aid agencies have the right to protection from the Haitian government against such interference and attacks. While the homes being destroyed by private landowners and Haitian police are simple shelters made of tents or tarpaulins, they have become permanent shelters for earthquake victims. Additionally, belongings of the families are destroyed during these evictions.

Questions:

1. What steps has the Haitian government taken to prevent violent and forceful evictions from post-earthquake IDP camps and protect victims?
2. What steps has the Haitian government taken to comply with the Precautionary Measures issued by the Inter-American Commission in November 2010 that recommends protection of Haitians displaced by the earthquake and living in IDP camps?
3. Has the Haitian government attempted to minimize and prevent the interference with internally displaced families of their privacy, home and family during evictions and relocations from IDP camps, and if so how?

⁸³ OAS Report, supra note 81.

Article 19 (Freedom of Expression)

Freedom of Press: On February 2, 2012, over 30 grassroots organizations and hundreds of demonstrators demanded that President Martelly respect journalists.⁸⁴ There have been reports that the President has made several verbal attacks against members of the press since taking office in May 2011, including being hostile, insulting and making fun of the press when journalists ask controversial questions.⁸⁵ The President asks journalists for which media they work for before answering a question, and frequently declines to answer questions from media outlets that have been critical of him. The following incidents were recorded by the Association of Haitian Journalists:⁸⁶

In Gonaives, May 22, 2011, agents of the Departmental Unit for the Maintenance of Order (UDMO) ransacked and broke equipment of journalists covering the visit of President Martelly following a fire in the Gonaives public market. In Port-au-Prince, July 27, 2011, President Martelly at the launch of the travel magazine, *Magic Haiti*, accused the press for being responsible for projecting the negative image of Haiti to the outside and asked the press to shut up. The President threatened to use force against those who spoke ill of the country, including the press. In Jacmel on 28 July 2011, President Martelly's security guards jostled and expelled journalists from the conference room on a visit he was doing in the city.

Other incidents have also been reported. In December 2011, President Martelly at a press conference confiscated the tape recorder of a journalist and returned it after turning off the unit and removing the batteries. On February 3, 2012, President Martelly insulted a journalist at a press event. At the end of February 2012, a meeting was held at the National Palace, chaired by the President's wife, Sofia Martelly, in an attempt to control the media in Haiti. The meeting was attended by senior officials of the State and the Chief Prosecutor of the Port-au-Prince Trial Court.

In April 2011, a few weeks before President Martelly took office, arsonists destroyed a Haitian community radio station, Tèt Ansanm Karis.⁸⁷ The director of the Haitian communications association SAKS and Haiti representative for the World Association of Community Radio Broadcasters (AMARC) said that the arsonists were identified by radio staff and neighbors as supporters of a legislative candidate from the President Preval's Unity party.⁸⁸ Five journalists have been killed since 2000 reportedly as a direct result of their reporting.⁸⁹

Questions:

1. What steps has the Haitian government taken to protect Haitians' freedom of speech and expression, including the right to disseminate information orally and in print through the media of her or his choice?

⁸⁴ <http://defend.ht/news/articles/community/2612-haiti-press-protesters-ask-martelly-to-respect-haitian-journalists;>
[http://www.lenouvelliste.com/article.php?PubID=&ArticleID=102422.](http://www.lenouvelliste.com/article.php?PubID=&ArticleID=102422)

⁸⁵ [http://cpj.org/blog/2012/02/was-letter-to-haiti-website-just-part-of-martellys.php.](http://cpj.org/blog/2012/02/was-letter-to-haiti-website-just-part-of-martellys.php)

⁸⁶ [http://www.lenouvelliste.com/article.php?PubID=&ArticleID=98121.](http://www.lenouvelliste.com/article.php?PubID=&ArticleID=98121)

⁸⁷ <http://cpj.org/2011/04/haitian-radio-station-destroyed-in-arson-attack.php>

⁸⁸ Id.

⁸⁹ <http://cpj.org/killed/americas/haiti/>

2. What is the Haitian government doing to protect journalists from retribution for their expression of opinions through their work?

Article 22 (Freedom of Association)

Freedom of association and collective bargaining remain elusive in Haiti due to the lack of adequate and just enforcement mechanisms, as well as the high rate of unemployment that guarantees employers a ready pool of replacement workers. Workers reported termination in retaliation for trying to organize, and denial of access to organizers seeking to engage with workers around their associational and bargaining rights.⁹⁰ Other workers report Haitian police facilitate the crackdown on associational and collective bargaining rights by pursuing unlawful arrests and arbitrary detention of labor leaders engaged in exercising their associational rights. Furthermore, those unions that do exist are often under the control of the employer and not the employees, leaving the workers without true representation.

In September 2011, six members of the executive committee of a new trade union formed by workers in the garment sector (SOTA) were terminated by three factories days after the union registered with the government. Better Work Haiti, a labor compliance and monitoring program between the International Labour Organization (ILO) and the International Finance Corporation (IFC), issued a report in October 2011 finding “evidence of violations of freedom of association,” including evidence that they “were terminated based on their trade union affiliation” and that the employer was undermining the new union “to curtail its growth before it had the opportunity to expand its membership.”⁹¹ The report recommended that the workers be reinstated with back pay.

A new industrial park in the north of Haiti, outside Cap Haitien, touted as “the largest single private investment in modern Haitian history”, is part of a larger effort to put textile manufacturing at the heart of Haiti’s economic development. Only one out of the 23 textile existing factories in Haiti is unionized.⁹² Unless the government takes affirmative actions to protect workers’ rights to collectively bargain and establish/join a trade union, workers’ rights will be routinely violated.

Questions:

1. What actions has the Haitian government taken to monitor and ensure that employers comply with workers’ rights to freedom of association and bargain collectively?

⁹⁰ See Solidarity Center, *UNEQUAL EQUATION: THE LABOR CODE AND WORKER RIGHTS IN HAITI*, for a detailed account of workplace abuses in Haiti, specifically around the rights to collective bargaining and freedom of association, July 2003, available at <http://www.solidaritycenter.org/files/UnequalEquation.pdf>.

⁹¹ Better Work, *Report on Dismissals of the SOTA I Union, Executive Committee Members*, 24 November 2011, available at <http://crocodoc.com/8RLi79d>.

⁹² Center for Economic and Policy Research, *Investigation Finds Evidence of Violations of Union Rights in Garment Industry*, November 30, 2011, available at <http://www.cepr.net/index.php/blogs/relief-and-reconstruction-watch/investigation-finds-evidence-of-violations-of-union-rights-in-garment-industry>.

2. What steps has the Haitian government taken to protect the right to freedom of association and to form trade unions for the benefit of collective bargaining, particularly in the textile industry, including the provision of adequate remedies for violations?
3. What steps is the Haiti government taking to strengthen the labor ministry and labor court to investigate, monitor and provide remedies for allegations of violations for workers' rights to freedom of association and to collectively bargain?

Article 24 (Special Protection of Children)

Approximately 50 percent of the Haitian population is under 18 years old. Children's rights in Haiti are routinely violated; children lack access to basic services critical to survival and development and are subject to trafficking, sexual violence, and mistreatment in prisons. Following the January 12, 2010 earthquake, conditions ensuring protection for children in Haiti have worsened considerably. For example, homes, schools, and other infrastructure that protect children and are essential to their development were destroyed. While the government's resources are limited, the precarious situation creates a heightened responsibility to protect children.

Article 50 of the Haitian Penal Code provides that when a child over 13 years and under 16 years violates the law, he shall simply be admonished or given to his parents, his guardian or the person having custody. She may also be sent to any other institution of remedial education, in order to receive a moral, civic, and professional education for the number of years the offence requires.

While the Haitian Penal Code prohibits the incarceration of children under 16 years old, children less than 16 years old are routinely held in prison.⁹³ Outside of Port-au-Prince there are no separate prisons for children, and in some cases children are incarcerated with adults.⁹⁴ One study found that 22 prisoners were younger than 18, the age of majority in Haiti. Further analysis revealed that 27 prisoners were minors at the time they were arrested, suggesting that five turned 18 during custody. In addition, the sample included one 13-year old, one 14-year old, and two 15-year olds. Additionally, minors were not segregated from the adult population. Another study found that pre-trial detention, used in Haiti to detain juveniles who have not been convicted of a crime, accounted for 22.2% of the prisoners.⁹⁵

Haitian law addressing children in conflict with the law is greatly outdated. The Haitian government should urge the parliament to pass a Family Code which will provide mechanism to better deal with children in conflict with the law. The institutions of remedial education as required under the Penal Code are nonexistent. Accordingly, steps must be taken to improve prison conditions and to prevent pre-trial detention, especially for juveniles.

⁹³ Institute for Justice & Democracy in Haiti, *Health & Human Rights Prison Project*, at 7-12 (February 2008), available at <http://www.ijdh.org/pdf/HHRPP.pdf>.

⁹⁴ US Dept of State, Bureau of Democracy, Human Rights, and Labor, *2008 Human Rights Report: Haiti*, available at <http://www.state.gov/g/drl/rls/hrrpt/2008/wha/119163.htm> (February 25, 2009).

⁹⁵ Kolbe, and Hutson, *Human Rights Abuse and Other Criminal Violations in Port-au-Prince, Haiti*.

Questions:

1. What measures is the Haitian government taking to comply with Article 50 of the Haitian Penal Code, which prohibits the incarceration of children under the age of 16? What measures can children under the age of 16 who are incarcerated, and their parents, take to challenge their unlawful incarceration with the justice system?
2. What steps is the Haitian government taking to ensure that incarcerated children under the age of 18 are housed separately from adults?
3. What steps is the Haitian Ministry of Justice or other relevant ministries taking to address and update conflicts in the law to ensure full protection for minors?

Article 25 (Right to Political Participation)

Election Fraud: As described more fully above (see section under ICCPR Article 1, p. 3), recent elections in Haiti have not allowed Haitians to freely determine their political status. The Constitution calls for a nine-member *Conseil Electorale Permanente* (CEP) to organize and supervise elections independently from the rest of the government.⁹⁶ The constitutionally mandated process for selecting the CEP is complicated, and relies on a decentralized nomination process by which local and provincial bodies appoint members. This system, the ASEC system, has never been implemented in practice, in part because the local and provincial bodies have not been established, resulting in the persistent reliance on a provisional council that is unlawfully constituted and subject to political manipulation.⁹⁷

President Martelly has not established a Permanent Electoral Council or even a Provisional Electoral Council, consequently local and senatorial elections required to be held in November 2011 by the Constitution have not yet been scheduled. One-third of the senate will term out in May 2012 and local positions will go unfilled, further crippling the Parliament and potentially concentrating power in the executive branch. One-third of the senate will term out in May 2012 and local positions will go unfilled, further crippling the Parliament and potentially concentrating power in the executive branch.

Questions:

1. What steps has the Haitian government taken to schedule senatorial elections to prevent the terms of one-third of the senate from expiring in May 2012?
2. What preparations have been made or will be made for the next set of elections to ensure that all eligible political parties may participate, and that all eligible voters are able to register to vote?
3. What steps has the Haitian government taken to prevent disorganization, voting irregularities, and fraud in future elections?

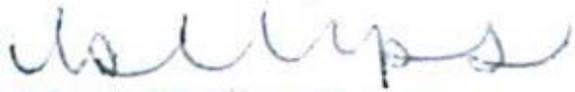
⁹⁶ 1987 Constitution, 191-199

⁹⁷ *The International Community Should Pressure the Haitian Government for Prompt and Fair Elections*, INSTITUTE FOR JUSTICE & DEMOCRACY IN HAITI (June 2010), available at <http://ijdh.org/archives/13138>, at 2-6.

4. What will the government do in order to encourage free and full participation of all eligible political parties in future elections?
5. What is the government doing in order to establish an impartial and fair lawful permanent electoral council, for example under the ASEC system as required under the Haitian Constitution?

We thank you again for your consideration of this report and the proposed questions herein.

Sincerely,

A handwritten signature in blue ink, appearing to read "N. Phillips". The signature is written in a cursive, flowing style.

Nicole M. Phillips, Esq.
Staff Attorney, IJDH