
amnesty international

Republic of Haiti

Submission to the UN Universal Periodic Review

**Eighth session of the UPR Working Group of the
Human Rights Council**

May 2010



Executive summary

In this submission, Amnesty International provides information under sections B, C and D, as stipulated in the *General Guidelines for the Preparation of Information under the Universal Periodic Review*.¹

- Under section B, Amnesty International raises concerns over shortcomings in national legislation and national institutions to promote and protect human rights.
- Section C highlights Amnesty International's concerns about human rights violations, specifically prolonged detention without charge or trial, violence against women, impunity, and children's rights.
- In section D, Amnesty International makes a number of recommendations for action by the government to address the areas of concern.

¹ Contained in Human Rights Council Decision 6/102, Follow-up to Human Rights Council resolution 5/1, section I, adopted 27 September 2007.

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B. NORMATIVE AND INSTITUTIONAL FRAMEWORK OF THE STATE

Positive developments

In July 2005, a Presidential decree (*Décret modifiant le Régime des Agressions Sexuelles et Éliminant en la Matière les Discriminations contre la Femme*) re-classified rape as a criminal offence, prior to which it was categorized as a 'moral offence' (*attentats aux mœurs*).² The decree introduced longer prison terms for rape, particularly for rape of minors. Since the publication of the decree, the number of trials for rape is reported to have substantially increased.

In 2007, the Haitian Parliament passed three important new laws that could contribute to reforming and strengthening the justice system:

- Law on the Supreme Council of the Judiciary (*Loi sur le Conseil Supérieur de la Police Judiciaire*). The Council will, among other things, design rules for vetting, recruiting, training and disciplining judges.
- Law on the School for Magistrates (*École Supérieure de la Magistrature*). The School for Magistrates is charged with providing training for all judges and for maintaining standards by periodically testing and retraining judges.
- Law on the Statues of Magistrates (*Loi sur le statut de la Magistrature*).

In July 2007, Haiti ratified ILO Convention No. 182 on the Worst Forms of Child Labour and, in June 2009, ILO Convention No. 138 on the Minimum Age for Admission to Employment. Both are of great relevance for the protection of the thousands of Haitian children working in domestic service and in other sectors of the economy where they are vulnerable to physical and sexual abuse as well as cruel, inhuman and degrading treatment.

Judicial system

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

² *Décret modifiant le Régime des Agressions Sexuelles et Éliminant en la Matière les Discriminations Contre la Femme dans le Code Pénal*. In the absence of a parliament during the transitional government (2004-2006), the Decree was adopted by the Council of Ministers on 6 July 2005 and entered into force on 11 August 2005 upon publication in *Le Moniteur*, 160th year, No.60.

Administration of justice

Haitian law prohibits indefinite and arbitrary detention and requires that all those arrested be brought before a judge within 48 hours to determine the legality and necessity of their detention. This legal limit is routinely ignored by the judicial authorities and, as a result, preventive and long-term pre-trial detention remains a common practice in Haiti. According to Haitian human rights organizations, thousands remain imprisoned without being able to challenge the legality of their detention.

Protection of the rights of the child

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

In 2003, the Law on the prohibition and elimination of all kinds of abuses, violence and inhuman treatment of children came into force.³ The law removed Chapter IX of Haiti's Labour Code which regulated children in domestic service (known in Haiti as '*restavek*') and prohibited the "employment" of children under 12 years of age as domestic workers. This law states, however, that children can be entrusted to a foster family in a relationship of "assistance and solidarity" without clearly defining the parameters of this relationship and without establishing the penalties for those violating its provisions. The 2003 law and the elimination of Chapter IX of the Labour Code created a gap in legislation in terms of addressing the practice of children in domestic service and, by allowing children to be entrusted to foster families, it allows for the perpetuation of the practice.

C. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

Violence against women and girls

Violence against women and girls, in particular sexual violence, is pervasive and widespread in Haiti. In every other case of rape reported to Haitian women organizations, the victim is a girl aged 18 or under.

The Haitian Parliament has so far failed to promulgate the 2005 Presidential decree on sexual violence into law and the government has yet to establish a legal framework to protect women and girls from all forms of violence. However, Haitian authorities have taken some positive steps towards addressing violence against women and girls: Haiti has signed regional and international human rights treaties for the protection of women; it has established a Ministry of Women's Affairs and Women's Rights; and in 2005 the 2006-2011 National Plan to Combat Violence Against Women was adopted. However, little has been achieved in implementing these commitments.

One of the greatest concerns is that the true extent of the problem has yet to be uncovered. Figures on sexual abuse published by Haitian women's organizations are alarming, but probably significantly underestimate the extent of such violations, since the stigma of sexual violence and the lack of confidence in the administration of justice deter many women and girls from reporting their cases.

The State's failure to effectively and comprehensively address sexual violence has contributed to consolidating the pervasive state of impunity surrounding human rights violations against women and girls. The evidence available on sexual violence in Haiti suggests that few cases of rape are reported to the police

³ *Loi relative à l'interdiction et à l'élimination de toutes formes d'abus, de violences, de mauvais traitements ou traitements inhumains contre les enfants*, Published in Le Moniteur No. 41, 5 June 2003.

and fewer still proceed to prosecution.⁴ Victims of sexual violence face stigmatisation and discrimination and often threats from their aggressor. In many cases, where the perpetrator is a male family member, girls are threatened with withdrawal of financial support (for example, to cover school fees) if they complain. The fact that most households in Haiti are living in conditions of extreme poverty exacerbates the risk of sexual exploitation and the danger that it will remain unpunished. Despite the 2005 Presidential decree and increased awareness on the part of the judicial authorities of sexual violence against women, the rate of prosecutions for sexual offences remains very low and the sentences applied by tribunals on those found guilty of rape are shorter than those provided by the 2005 Presidential decree.

Prolonged pre-trial detention

Pre-trial detention refers to the period of time between arrest and judgment of an individual accused of committing a crime. Preventive and long-term pre-trial detention remains the rule in Haiti. Detainees are arbitrarily arrested and held for long periods without being able to challenge the legality of their detention. The Code of Criminal Investigation allows for release on bail pending trial, but this measure is seldom applied (Chapter VIII, Articles 95-108). Detainees remain in prison during the investigation of the crime they are alleged to have committed, and often exceeds the three-month time limit provided by law.

According to reports from national human rights organizations and the UN Stabilization Mission in Haiti, prisons are over-crowded and less than 20% of the 8,833 prisoners held as of the end of October 2009 had been brought to trial.

Prison overcrowding is of great concern and could amount to cruel, inhuman or degrading treatment or punishment. According to a Haitian NGO, National Human Rights Defence Network (*Réseau National de Défense des Droits Humains*, RNDDH), at the end of October 2009, there were 5.5 times more prisoners in the National Penitentiary in Port-au-Prince than its maximum capacity, in blatant violation of international norms regarding the minimum conditions for the detention and treatment of prisoners (4,317 prisoners were occupying a prison built for 800 prisoners).

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

Impunity

Impunity for past human rights violations prevails in Haiti. In 2005, the Supreme Court of Haiti overturned the convictions of 16 former military officers and members of FRAPH paramilitary group for their involvement in the 1994 Raboteau massacre in which an estimated 20 persons were extra-judicially executed, women raped and homes ransacked and burned. After a six-week hearing, the jury had found 16 of the 22 defendants guilty on 9 November 2000. Twelve of them were sentenced to life imprisonment and forced labour on account of premeditated murder. At the time, the Supreme Court endorsed the Tribunal's verdict and sentences. None of the 16 men convicted in 2000 were in prison when their sentences were quashed: one was deceased and the others had reportedly escaped.

Freedom of expression

Since April 2000, eight journalists have been killed in Haiti while dozens more have been subject to harassment, imprisonment and attacks in the course of exercising their profession. Only in the case of Brignol Lindor, killed in 2001, have the perpetrators been brought to trial and convicted. The seven other cases remain shrouded in impunity. Where the authorities have conducted criminal investigations into the killings, the investigations have been characterized by a lack of political will to achieve progress, a lack of

⁴ Reports from Solidarité Femme Haïtienne (SOFA), Rapports Bilan, 2006, 2007, and 2008.

resources for the judicial authorities and threats against the investigating judges in charge of the cases and against other journalists covering the cases.

The Haitian Constitution expressly guarantees the right to freedom of opinion and expression (Article 28). However, the ability of journalists to enjoy and exercise these freedoms in Haiti is undermined by frequent threats and attacks, and by delays in bringing to justice those responsible for killing the journalists.

Children in domestic service

In 2007, UNICEF estimated that 173,000 children, aged between 5 and 17 years old, were in domestic service (known as 'restavek'). Three quarters of them are girls. The vast majority of children in domestic service are deprived of their rights, including their rights to education, adequate healthcare and food. They work long hours, mostly doing domestic chores, including cleaning, cooking, fetching water for the whole household and looking after other children in the family. Some also sell goods in the market for their host family. In exchange for their work, they are provided with lodgings, food and some clothes. They do not receive any wages for their work and only a minority receive any form of education.

In a recent report, the UN Special Rapporteur on contemporary forms of slavery, including its causes and consequences, considered the Haitian "restavek" system of children in domestic service as a "modern form of slavery".⁵ There are increasing reports of internal trafficking of children by recruiters targeting large families living in poverty and enticing them to give up their children.

D. RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

Amnesty International calls on the government of Haiti to implement the following recommendations:

Ratification of human rights treaties

- To ratify all outstanding human rights treaties, in particular the International Covenant on Economic, Social and Cultural Rights, the First and Second Optional Protocols to the International Covenant on Civil and Political Rights, the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families;
- To incorporate the provisions of international human rights treaties already ratified into domestic law.

Reporting to UN Treaty Bodies

- To submit as soon as possible overdue reports to UN relevant treaty bodies, including the second and third reports to the Committee on the Rights of the Child, overdue since 2007; and the fourteenth to eighteenth periodic reports to the Committee on the Elimination of Racial Discrimination overdue since 2008.

Judicial system

- To name without delay the President of the Supreme Court (*Cour de Cassation*) and the President of the Supreme Council of the Judiciary and to proceed with the reform of the justice system.

⁵ Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Gulnara Shahinian, Mission to Haiti, A/HRC/12/21/Add.1, 4 September 2009.

Administration of justice

- To ensure that all detainees have prompt access to procedures allowing them to challenge the lawfulness of their detention before a judge, and to release them if their detention is found to be illegal.

Protection of the rights of the child

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

Violence against women and girls

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

Prolonged pre-trial detention

- To take all the necessary measures, as a matter of urgency, to address the backlog of cases in prolonged pre-trial detention;
- To guarantee all detainees a fair trial, in accordance with the provisions of article 14 of the International Covenant on Civil and Political Rights and article 8 of the Inter-American Convention on Human Rights, within a reasonable time frame;
- To incorporate into in Haitian legislation alternatives to detention, in accordance with the UN Standard Minimum Rules for Non-custodial Measures.

Impunity

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

Appendix: Amnesty International documents for further reference⁶

- Detention without trial in Haiti: Appeal Case: Release Ronald Dauphin (AMR 36/003/2009), 1 August 2009.
- Haiti: Fear for safety /death threats / possible prisoner of conscience: Joseph Guyler Delva (AMR 36/008/2008), 18 December 2008
- Haiti: Don't turn your back on girls: Sexual violence against girls in Haiti (AMR 36/004/2008), 27 November 2008
- Haiti: Fear for safety/death threats (AMR 36/005/2008), 27 October 2008
- Haiti: Appeal Case: Lovinsky Pierre-Antoine is still missing (AMR 36/003/2008), 28 January 2008
- Haiti: Fear for safety/ death threats (AMR 36/002/2008), 11 January 2008
- Haiti: Further information on UA 336/07: Fear for Safety (AMR 36/001/2008), 9 January 2008
- Haiti: fear for safety / possible "disappearance" (AMR 36/008/2007), 18 December 2007
- Haiti: Fear for safety/Death threats (AMR 36/005/2007), 24 October 2007
- Haiti: Freedom of expression cannot prevail if there is no justice for murdered journalists (AMR 36/004/2007), 3 May 2007
- Haiti: Jean Dominique, seven years on - forgotten by justice? (AMR 36/003/2007), 3 April 2007
- Haiti: Amnesty International condemns murder of journalist (AMR 36/001/2007), 25 January 2007
- Haiti: Open letter to the President of the Republic of Haiti, René García Prével regarding Amnesty International's recommendations for the protection and promotion of human rights (AMR 36/011/2006), 1 October 2006
- Haiti: Activist's killing shows need for disarmament programme (AMR 36/012/2006), 27 September 2006
- Haiti: Appeal Case Update: Political prisoner Annette Auguste\ finally released following 26 months of detention (AMR 36/010/2006), 31 August 2006
- Haiti: Appeal Case: Release political prisoner Annette Auguste: 20 months of arbitrary detention, (AMR 36/003/2006), 10 January 2006
- Haiti: Disarmament delayed, justice denied (AMR 36/005/2005), 27 July 2005
- Haiti: Arbitrary arrest/prisoner of conscience: Gérard Jean-Juste (AMR 36/008/2005), 24 July 2005
- Haiti: Obliterating justice, overturning of sentences for Raboteau massacre by Supreme Court is a huge step backwards (AMR 36/006/2005), 25 May 2005
- Haiti: Chamblain and Joanis overnight trials are an insult to justice (AMR 36/053/2004), 16 August 2004

⁶ All of these documents are available on Amnesty International's website: <http://www.amnesty.org/en/region/haiti>.