December 20, 2013

Attention: Kate Fox Principi
Human Rights Committee Secretariat
8-14 Avenue de la Paix
CH 1211 Geneva 10
Switzerland
Via Email: kfox@ohchr.org

Re: Submission to the Country Report Task Force for the Adoption of Lists of Issues for Republic of Haiti Scheduled for Review by the Human Rights Committee during the 110th Session to be held in March 2014

This letter is submitted to you by Femme en action contre la stigmatisation et la discrimination sexuelle (FASCDIS)\(^1\), Fondation SEROvie (SEROvie)\(^2\), MADRE\(^3\), the International Women’s Human Rights (IWHR) Clinic at the City University of New York (CUNY) School of Law,\(^4\) and the International Gay and Lesbian Human Rights Commission (IGLHRC).\(^5\) The issues discussed in this letter are raised to supplement the information set forth in the second periodic report submitted by the Republic of Haiti to the Committee for its review of Haiti during the 110th Session to be held in March 2014.

Our organizations wish to further the work of the Human Rights Committee (hereafter “the Committee”) Country Report Task Force for the adoption of lists of issues for the Republic of Haiti (hereafter “Task Force”) by providing independent information concerning the rights protected by the Covenant on Civil and Political Rights (CCPR).

SEROvie, FASCDIS, MADRE, the IWHR Clinic and IGLHRC respectfully request that the Task Forces’ list of selected issues cover several areas of concern related to the status of the rights of individuals facing gender-based violence and the treatment of lesbian, gay, bisexual and transgender (LGBT) individuals in the Republic of Haiti.

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\(^1\) *Femme en action contre la stigmatisation et la discrimination sexuelle (FASCDIS)* is a grassroots Haitian lesbian LGBT organization providing outreach services to LGBT persons.

\(^2\) SEROvie, is a grassroots Haitian gay men’s organization providing outreach services to LGBT persons.

\(^3\) MADRE is an international women’s human rights organization that works in partnership with community-based women’s organizations worldwide to address issues of health and reproductive rights, economic development, education and other human rights.

\(^4\) The International Women’s Human Rights Clinic (IWHR) of the City University of New York (CUNY) School of Law, works on gender human rights issues both at a domestic and international level.

\(^5\) The International Gay and Lesbian Human Rights Commission is an international human rights organization dedicated to improving the lives of people who experience discrimination or abuse on the basis of their sexual orientation, gender identity or expression.
Pervasive sexual and gender-based violence as well as discrimination committed against LBGT individuals is at epidemic proportion in Haiti. The Haitian Government’s failure to adequately and properly address this growing trend, general unwillingness to provide for victims immediate needs, and discriminatory attitudes towards victims in these cases raise urgent concerns for this Committee regarding Haiti’s compliance with multiple articles of the Convention. The LGBT community experienced a significant increase in stigmatization, discrimination and violence including anti-LGBT organizations blaming members of that community for causing the earthquake. Although the Haitian Government has implemented some remedial measures following the earthquake, numerous reports reveal that egregious acts of violence and discrimination against women, girls, and LGBT individuals continue to be carried out with inadequate State prevention and intervention. Additionally, widespread sexual and gender-based violence (SGBV) against women and girls and its consequential stigma has plagued communities especially in poor neighborhoods. Similarly,

This submission highlights six main areas of human rights violations against women, girls, and the LGBT community: unequal treatment and discrimination based on sexual orientation or gender identity; violence and threats to the lives of women human rights defenders; sexual violence and rape amounting to torture; arbitrary arrests and detention in violation of the right to privacy; violence and threats deterring the right to freedom of opinion, expression, and association; and harassment, violence, and discrimination preventing access to the justice system.


LGBT victims of gender-based violence face pervasive societal discrimination. Although all citizens are guaranteed general equality under Haitian law, Haitian society’s deep conservatism dictates that members of the LGBT community live in secrecy and isolation, under constant threat of violence, harassment and discrimination.

Radio programs and newspaper articles have made inflammatory and hateful assertions including blaming the LGBT community for the earthquake in 2010, as “punishment for their lifestyle.” For example, during the February 2012 Carnival, popular music stations played songs proclaiming, “kill the gays” and “gays are guilty of the situation in Haiti.”

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6 The 1987 Constitution of Haiti recognizes the equality of men and women without discrimination on the grounds of gender. “Haitians are equal before the law, without prejudice to the advantages vested in Haitians by birth who have never given up their nationality” CONSTITUTION OF 1987 article 18, Title 3, March 10, 1987.

7 IWHR Clinic Interview, KOURAJ, a Haitian community-based LGBT organization that works to empower gay and transgender persons through education about fundamental human rights, the creation of a strong community for LGBT persons in Haiti, and activism to facilitate fundamental societal change., October 23, 2012 (on file with authors).
A major source of physical violence, discrimination, and harassment against LGBT persons comes from the very police forces charged with protecting them. For example, victims report that police officers routinely refuse to help LGBT individuals on the basis of their actual or perceived sexual orientation and/or gender identity.\footnote{See, Infra Sections 5, 7, 9 and 11.} Victims have reported being slapped, kicked and otherwise assaulted by officers when they try to report crimes against them. Even more abhorrent are reports of gang rapes against lesbians by policemen.\footnote{Multiple cases of police harassment and violence are documented in this submission. See pages 8-13, 21-23, and 26-27 for more information.} While these acts themselves violate the Covenant, fear and distrust of the police creates an overall lack of confidence in the Haitian state to protect LGBT victims from violence and discrimination.

2. Pervasive Gender-Based Violence Violates the Right to Equality Under the Law and Freedom from Discrimination for Women and Girls in Haiti (articles 2 & 3)

Members of the Haitian LGBT community face violence and discrimination on a daily basis. Victims have frequently reported difficulties in reporting sexual violence crimes to police. Some have been told that there are not enough resources to investigate the scene of the crime. In some instances, officers have accusingly asked female victims what they did or were wearing to provoke such an attack. Additionally, some victim’s advocates and service providers have been threatened and assaulted by family members of the accused when assisting a victim in obtaining justice.\footnote{IWHR Clinic Interview, KOURAJ Interviews Oct 27, 2012 (on file with the authors).} All of these instances extend impunity to perpetrators of gender-based violence and markedly demonstrate that Haiti is not fulfilling its obligation to punish assailants and protect women from violence, harassment and intimidation under articles 2 and 26.

Yet the Government’s lack of protections for women and girls and failure to adequately investigate and prosecute perpetrators is only one component of Haiti’s failures under the Covenant. Discriminatory attitudes are particularly acute towards poor women and girls.\footnote{Meena Jagannath, \textit{Barriers to Women’s Access to Justice in Haiti}, 15 CUNY L. Rev. 27, 45 (2011).} There have been multiple incidences of officials from the prosecutor’s office attempting to discredit the victims as women or parents.\footnote{\textit{Id.}} In one case, the deputy public prosecutor told a victim’s lawyer directly, without considering the available evidence, that he simply did not believe the victim was raped and that she was trying to extort money from the accused.\footnote{\textit{Id.}}

The Haitian Government’s failure to prevent and address violence, investigate claims and prosecute the alleged offenders due to the sex, gender identity and/or sexual orientation of the victim amounts to nothing less than discrimination under article 2. Moreover, violence, harassment and intimidation against LGBT persons perpetrated by the State are acts that, at the very least, amount to a failure to recognize the equality of all persons under the law. Furthermore, by failing to address widespread issues like this...
publicly, the Government enforces a message of impunity—that discrimination and violence is tolerated, further fueling a culture and attitude of apathy, inequality and repression of the rights guaranteed under the Covenant.

Few key Haitian law enforcement officials have been implementing initiatives, though hampered by a critical lack of resources and capacity support. Officer Marie Louise Gauthier, Division Police Chief & Head of the National Office for the Coordination of Women's Affairs at the Haitian National Police (HNP), created a specialized unit specifically trained to respond to sexual and gender-based violence complaints. At the opening of the National Bureau for the Coordination of Women’s Affairs (CNAF) in April 2012, the HNP National Coordinator for Women’s Affairs, discussed how courses on violence against women and gender relations would be provided to new police recruits and that there are plans to extend training to all officers currently serving. The Haitian Ministry of Justice, in collaboration with the American Bar Association Rule of Law Initiative and the National Police Academy, the Magistrate School and the Medico-Legal Research Action Unit facilitated a training that included over 30 judges and focused on the effective investigation, prosecution, and adjudication of sexual and gender-based violence cases. However these isolated incidences are not enough to address societal stigma and impunity and systemically reduce sexual and gender-based violence.

Additionally, the few initiatives that have been taken by the Haitian government have not included any trainings or redress for LGBT victims. Most efforts have been funded by implemented through international NGOs or UN Agencies. The Government of Haiti has lacked a demonstrated commitment to reducing sexual and gender-based violence, especially the violence and discrimination specifically directed at LGBT individuals. Currently there are two draft law (see discussion below) that are pending in Haiti but have not advanced to Parliament for vote. Without a national plan of action or its equivalent, practical, long-term and sustainable change in Haiti through legislative amendments followed by rigorous implementation, impunity will persist.

3. Pending Penal Code Revisions that would strengthen Women and LGBT rights

In Haiti, women represent 52% of the Haitian population and play a fundamental role in their communities and families. In fact, more than half of Haitian households are headed by women. However, women’s political participation in Haiti is among the lowest in the world. However there has been some improvement. Haiti amended its constitution last year to require a 30 percent quota for women in politics, with 10 women now serving as Ministers (out of a total of 23 Ministers). However, out of Haiti’s 99 deputies, only 4 are women, and currently no women hold parliamentary seats.

14 *Unité de Recherche et d’Action Medico-Légale*, or URAMEL.
As a result of women’s under-representation in political decision-making processes, there is a dearth of laws to protect women’s rights. The Haitian Constitution provides for equal protection and non-discrimination on the basis of sex, but there are few other codes or judicial precedents that expand upon the meaning of these principles in practice.

Haiti’s Parliament is now considering penal code revisions that, if approved by Parliament, would be a landmark in legislation addressing gender-based violence in Haiti. Haitian Penal Code revisions drafted by the Ministerial Commission for the Modernization of the Penal Code and the revisions developed for the Criminal Procedure Code would change the discourse for women’s rights in Haiti through several key provisions:

1. Provide a modernized definition of rape, including specific codification of marital rape as a crime;
2. Criminalize sexual harassment;
3. Legalize therapeutic abortion in the first 12 weeks of pregnancy when the health of the mother is threatened or distressed;
4. Protect Haiti’s LGBT community by expanding the identified groups protected from discrimination under Haitian law to include protection from discrimination on the basis of sexual orientation.

Defining Rape: The draft penal code revision law provides a legal definition for rape that includes lack of consent; consent is not implied by lack of resistance and corroborating evidence is not mandatory for conviction. Additionally, under the revised code, consent is presumed to be lacking when the victim is less than sixteen years of age.

The revised penal code also criminalizes marital rape under Haitian law. Jim Yong Kim, President of the World Bank has pointed out that, “One hundred countries around the world now classify rape as a crime, but half of those still do not criminalize rape within marriage.” This penal code revision would bring Haiti’s law into harmony with the vast majority of Latin American States. All but two countries of the Latin American region have criminalized such violence.

Criminalizing Sexual Harassment: Sexual harassment has traditionally been associated with offences and defined as occurring in the context of unequal power relations (such as boss against employee). As a result, sexual harassment has often been dealt with in countries’ labor codes and only applied to those who experience such behavior in the formal employment sector. Over time, countries have acknowledged these limitations and begun to address sexual harassment in a more comprehensive manner and

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16 Article 212-21 of the revised penal code draft law defines the crime of rape as: “Any act of sexual penetration, of whatever nature, committed without the consent of a person is rape.”
17 Jim Yong Kim, Three Global Priorities for Women and Girls, Huffington Post (February 27, 2013).
in various areas of the law, such as anti-discrimination law, and criminal law. Haiti’s Draft Penal Code Revision Law would, for the first time in Haiti’s history, recognize sexual harassment as a crime and punishable by law.

**Accessing Therapeutic Abortion:** The criminalization of abortion under the current Haitian Penal Code violates the rights of victims of sexual violence. Under the code, the practice of abortion is criminalized without exception and a woman is subject to imprisonment if she is found to have intentionally terminated her pregnancy or gives consent for an abortion to be performed. Any person performing an abortion is also subject to imprisonment. Medical professionals and other health providers can be condemned to forced labor camps if they instruct or provide the means to perform an abortion. The law provides no exception to protect the life of the woman.

The penal code revision would amend the law and allow for the legalization of therapeutic abortions in the first twelve weeks of pregnancy when the health of the mother is threatened or distressed. Throughout Latin America, access to therapeutic abortion has been increasingly viewed as an issue of the physical and mental health and safety of a woman who has been raped. The issue of pregnancy after rape is of critical concern, and the draft law situates abortion in limited instances as part of comprehensive health care for the victim in response to exceptional trauma.

**Prohibiting Discrimination Based on Sexual Orientation or Gender Identity:** The pending penal code revisions not only address many of the weaknesses in existing laws related to the prevention and punishment of gender-based violence but also enhance protection against discrimination experienced by many of Haiti’s LGBT community members. Notably, the revisions would criminalize acts of violence committed against persons on the basis of their sexual orientation or gender identity in certain circumstances.

### 4. The Pending Draft Law: Prevention, Sanction, and Elimination of Violence against Women

In 2011, the Haitian Ministry of Women’s Affairs initiated important new draft legislation that aims to eliminate discrimination against women as well as address gender-based violence in Haiti, Draft Law on the Prevention, Sanction, and Elimination of Violence against Women, in conformity with the Belém do Pará. This draft legislation addresses issues pertaining to sexual and gender-based violence, including domestic violence, and provides redress for victims. In a speech given by Prime Minister Laurent Lamothe in Washington, D.C. on July 24, 2012, the Prime Minister affirmed his commitment to increasing the police force by 1,500 personnel in an effort to establish an adequate and appropriate police presence throughout Haiti. Prime Minister Lamothe also

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18 Haitian Penal Code Article 262.
19 An abortion is medically referred to as a therapeutic abortion when it is performed for medical reasons, including to save the life of the pregnant woman or to prevent harm to the woman's physical or mental health.
20 Loi cadre sur la prévention, la sanction, et l'éradication des violences faites aux femmes.
expressed government commitment to strengthening women’s rights and advancing new legislation in order to do so in the “5 E’s” plan.21

Over the last year the Ministry on Women’s Affairs has opened three centers for women in Port au Prince, Cap Haitien, and Cailles, meant to serve women’s organizations and host trainings and provide technical assistance to young men and women on human rights and other themes related to women’s issues. Ms. Yanick Mézil, Minister of Women’s Affairs is committed to finalizing the comprehensive Draft Law on the Prevention, Sanction, and Elimination of Violence against Women.

These small steps indicate the willingness of the Ministry of Women’s Affairs to addressing women’s human rights violations. However, this Ministry stays the least funded Ministry in the President’s cabinet. Due to lack of proper funding the Ministry has not been able to move forward the draft law, which has been lingering within its office since 2011.

Requests for Additional Information:

- Please indicate what steps the Haitian Government has taken, or plans to take to provide and coordinate substantive legal and sensitivity trainings for police officers, prosecutors, Judges and other relevant Government officials that may interact with a victim of violence about LGBT discrimination and gender-based violence.
- Please describe any measures the State Party has enacted or will enact to ensure that all complaints are investigated, prosecuted and the perpetrators adequately punished, so as to hold accountable those who perpetrate gender-based violence against LGBT community members and address impunity.
- Please comment on any plans the State Party has to allocate resources to local community groups that are addressing issues facing the LBGT community and assisting victims of gender-based violence.
- Please clarify the State Party’s intentions to pass the pending Haitian Penal Code revisions drafted by the Ministerial Commission for the Modernization of the Penal Code and the pending Draft Law on the Prevention, Sanction, and Elimination of Violence against Women that will protect Haiti’s LGBT community by expanding the identified groups protected from discrimination under Haitian law to include protection from discrimination on the basis of sexual orientation.

3. Haiti’s Failure to Investigate or Prevent Gender-Based and Sexual Violence (articles 2 & 26)

21 The “5 E’s” Plan refers to the priority areas listed in the Strategic Development Plan of the Martelly-Lamothe administration: 1) Rule of Law and Democracy; 2) Economy and Job Creation; 3) Environment and Urban and Country Planning; 4) Energy; and 5) Education, Human and Social Development.
Haitian women and girls, especially those living in poor neighborhoods or displacement camps, are particularly vulnerable to threats and violence that place their lives directly at risk. Following the earthquake in 2010, sexual and gender-based violence (SGBV) increased at such alarming rates that the Inter-American Commission on Human Rights granted a request for precautionary measures to combat acts of sexual violence committed against women and girls in displacement camps in Haiti. The Commission called on the Government of Haiti to take immediate measures to prevent sexual violence committed against women and girls by private actors.

Despite efforts made by the international community to address the issue, women and girls in Haiti continue to face violence and threats in significant numbers. For example, a January 2011 household survey conducted on sexual violence in Port-au-Prince found that, of respondents who indicated the gender and age of the victim, approximately 86% were women and girls. The results of a survey of random Haitian households conducted from August 2011 to February 2012 indicate a dramatic escalation in criminal violence, particularly in densely populated urban centers. The survey also found that residents of low-income urban areas were twenty-seven times more likely to be sexually assaulted than residents of wealthier, less densely populated areas.

The Case of N.R.

N.R. is a young woman who was employed as a domestic worker in Port-au-Prince. In July 2013, her employer introduced her to a man who could show her where to buy high quality rice to sell at the market. The man, a Government official, picked her up in his car and drove her around all day to various locations in Port-au-Prince in search of rice. That night, the man offered that she could stay overnight at his cousin’s home nearby, insisting that it was too dangerous for a young woman to find her way home at that hour. She agreed. While N.R. was asleep that night, the man came into her bedroom and raped her. N.R. sought help from a local service provider, who took her to seek medical attention at a hospital. There, she was informed that she was pregnant. N.R. reported the rape and identified the perpetrator as a Government official. Haitian officials have refused to investigate the case. Since N.R. filed a complaint against the perpetrator, she has begun to receive sexually explicit threats from him. These threats, in addition to the fact that her rapist is a Government official who knows she has begun to pursue a case against him, have caused N.R. to fear for her life.

Though there has been some improvement due to concerted advocacy efforts, advocates report that victims like N.R. continue to routinely face discriminatory attitudes,

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25 The name of the victim has been changed to protect her identity. IWHR Clinic Interview, October 10, 2012 (on file with authors).
distrust and minimization on the part of the police, prosecutors and judges.\textsuperscript{26} N.R. and other female victims of sexual and gender-based violence documented by service providers have also faced reprisals and threats of retaliation by their assailants, causing them to fear for their lives.\textsuperscript{27}

From January 2013 to October 2013, KOFAVIV, a Haitian grassroots women’s organization that provides outreach and direct services for victims of sexual and gender-based violence, documented a total of 279 cases of rape, roughly half of which were perpetrated against children under the age of 18.\textsuperscript{28} Similarly, in 2012, KOFAVIV documented a total of 448 cases of rape, approximately half of which were perpetrated against children under the age of 18.\textsuperscript{29} Of the 448 rape cases documented in 2012, only 4 cases culminated in a judgment finding the accused guilty.\textsuperscript{30} In the vast majority of cases that KOFAVIV has documented, police officials conducted little to no investigation of reported rape cases, and sometimes have gone as far as to verbally harass victims themselves.\textsuperscript{31} KOFAVIV has further reported that in other cases women have identified their rapists and police officials have detained the perpetrator, but then accepted bribes to release him.\textsuperscript{32} The Haitian Government has failed to adhere to its legal responsibility to uphold the due diligence obligation to prevent, punish, investigate, and redress ongoing gender-based and sexual violence against Haitian women and girls, and is therefore in violation of articles 3 and 6.

\section*{4. Haiti’s Failure to Investigate and Prevent Threats and Violence Against Women Human Rights Defenders (articles 2, 3, \& 6)}

This Committee has also recognized threats against the lives of human rights defenders as a violation of article 6. Stressing the importance of the contributions of human rights defenders to a just and democratic society, the Committee has acknowledged that their work can often lead to threats against their lives. Specifically, the Committee urged the State is obligated to support the immediate, effective and impartial investigation of threats, attacks and assassinations of women’s human rights defenders, provide protection, and prosecute the perpetrators.\textsuperscript{33}


\textsuperscript{27} Both state and private actors have perpetrated these documented acts of gender-based and sexual violence against women.

\textsuperscript{28} IWHR Clinic Interview, KOFAVIV, December 2, 2013 (on file with authors).

\textsuperscript{29} Id.

\textsuperscript{30} Id. Out of the 441 cases in 2013, only 91 were registered for official investigation. Id. Of the 448 reported cases in 2012, only 47 cases reached the prosecutors office and only ten arrests were made. Id.

\textsuperscript{31} IWHR Clinic Interview, KOFAVIV, \textit{supra} note 29.

\textsuperscript{32} Id.

\textsuperscript{33} See, \textit{for example}, Concluding Observations of the Human Rights Committee, Guatemala, U.N. Doc CCPR/C/GTM/CO/3 (April 19, 2012) (urging that immediate measures be taken to provide effective protection for defenders whose lives and security are under threat due to their professional activities).
As women working in defense of human rights, the lives of Haitian women’s human rights defenders have been threatened and placed at risk. However, the Haitian Government has done little to investigate, follow up, or to hold the perpetrators accountable for threats of this nature. In some instances, grassroots leaders have filed complaints with police but were told that the human rights defenders’ work “caused too much trouble.”

Women’s human rights defender Malya Villard-Apollon, co-founder of KOFAVIV, has faced numerous threats and acts of violence with little redress. As a result of the increased visibility of her work, these threats and acts against Malya’s life and the lives of her family and colleagues have become increasingly severe over recent months. On August 22, 2013, gunshots were fired at Malya’s home in the middle of the night while she and her children slept. In September 2013, Malya’s two dogs were poisoned at her home. Her children have reported being followed to and from school. As a result of the threats against Malya, her family has been forced to live temporarily away from their home on multiple occasions. Malya has also received threatening, anonymous phone calls and voicemails at the KOFAVIV center. In October 2013, a group of men arrived on motorcycles to the KOFAVIV center. One of the men was armed and demanded Malya come outside the center. Fearful of what the men might do, Malya remained trapped inside for several hours until police finally arrived. Because of the threats she continues to receive, she fears that she and her children may be killed.

Other members and employees of KOFAVIV have also been targets of violence. KOFAVIV accompanies rape victims to and from the hospital or police station in a clearly marked KOFAVIV vehicle. On September 4, 2013, the driver of the KOFAVIV vehicle, KOFAVIV’s accountant and a female KOFAVIV outreach worker were in the vehicle, returning from the bank. Two armed men on motorcycles blocked the vehicle and robbed them at gunpoint. One of the assailants hit the driver on the head with the handle of his gun, while the other placed his gun in the female outreach worker’s side, demanding their money. The men attempted to steal the KOFAVIV vehicle, but were scared away when police officers happened to pass by. As a result of these threats, some of the KOFAVIV members fear for their own lives as well, and have discontinued their work at the center.

In January 2013, two daughters of KOFAVIV leaders visited a displacement camp to conduct educational trainings for women. At the training, they saw a fellow KOFAVIV outreach worker pointing them out to a group of gang members, identifying them as daughters of KOFAVIV leaders. The women notified a nearby police officer who drove them away. The gang members pursued the women but eventually gave up. The outreach worker who identified the women never returned to the KOFAVIV center after that day and was assumed to be working in association with the gang members. The two

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35 IWHR Clinic Interview, KOFAVIV, supra note 29.
36 Id.
women had been followed on numerous occasions prior to this incident, and believe this is a result of their association with and work for KOFAVIV.37

In February 2012, FAVILEK, another Haitian grassroots women’s group for victims of sexual and gender-based violence, reported that two of its outreach workers were violently raped by four men in an internal displacement camp in September 2011. The women were visiting the camp as part of a community education mission. Before the rape, the women were asked about their FAVILEK badges, which identified them as agents of the human rights organization.38

5. Haiti’s Failure to Investigate and Prevent Violence and Discrimination Against LGBT Persons (articles 3, 6, & 7)

Discrimination and violence against LGBT people is a pervasive problem in Haiti. Diversity in SOGI remains taboo within the country’s largely conservative Catholic society. As a result, the lives of many LGBT individuals in Haiti are characterized by secrecy, isolation, discrimination, and violence. Those that choose to live openly as LGBT persons fear for their lives on a daily basis. Community-based organizations for LGBT persons, including FACSDIS39 and SEROvie,40 receive regular reports of targeted threats and attacks based on their work. These threats and acts of violence against LGBT persons place their lives at grave risk, and are in direct violation of articles 3 and 6.

LGBT persons in Haiti are frequently afraid to report attacks and threats against their lives for fear that they will face reprisals and retaliation from perpetrators. Some Haitian police have verbally and physically attacked LGBT victims who have come forward in the past, while other officers have either conducted little investigation of a reported incident or flat out refused to investigate at all, citing the victim’s sexual orientation as the justification for the refusal.41 Below are some of the documented incidences of violence and discrimination committed against LGBT persons.

- In December 2012, members of KOURAJ42 a Haitian LGBT community-based organization, were leaving a party hosted by and for a group of gay men in Petion-

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37 Id.
38 IWHR Clinic Interview, FAVILEK, February 8, 2012 (on file with authors).
39 Femme en Action contre la Stigmatisation et la Discrimination Sexuelle (Women in Action against Stigmatization and Sexual Discrimination) is a community-based organization comprised of lesbian and bisexual women. Its mission is to fight discrimination and violence against lesbian and bisexual women in Haiti.
40 SEROvie is not a French acronym, nor does it have a direct translation in English. When an individual tests positive for HIV/AIDS in Haiti, they are referred to as seropositive. Vie, in English, means life. SEROvie can be interpreted to mean seropositive life. SEROvie began as an organization that provided support to HIV/AIDS positive men who have sex with men. Today, the organization provides general support to gay, bisexual and transsexual men, regardless of HIV/AIDS status.
41 IWHR Clinic Interview, FACSDIS, October 8, 2013 (on file with authors).
42 KOURAJ is a Haitian community-based LGBT organization that works to empower gay and transgender persons in Haiti through education about fundamental human rights, the creation of a strong community for LGBT persons in Haiti, and activism to facilitate fundamental societal change.
ville. When Haitian police officers saw them, the victims reported that the officers perceived the men as gay based on their effeminate gestures, and proceeded to beat them. The men were afraid they would be killed if they reported the attack by the police officers.⁴³

- In September 2012, a member of FACSDIS was killed by her boyfriend. After discovering she was a lesbian, he beat her to death with a motorcycle chain. When the man appeared before a judge following her murder, he explained to the judge why he had killed his girlfriend, stating that she brought women to their home and though he had instructed her not to, she continued to do so. The judge called the woman, “a vagabond and a delinquent.”⁴⁴ The perpetrator was eventually placed behind bars but no judgment was ever issued against him, ensuring that he could be released at any time.⁴⁵

- In 2012, a transgender woman was beaten twice within the course of two weeks and received threats ordering her to leave the country or she would be killed.

- KOURAJ reported that one man was killed in his home because he was gay. He had an effeminate demeanor and because his neighbors knew of his sexual orientation, his relationship with them was strained. The neighbors often ridiculed and threatened him. In March 2012, the man invited a number of gay friends to his home. That evening, a group of men broke down the door, shot and killed him, reportedly by neighbors.

- In 2011, a gay man was sexually assaulted by his neighbor who forced a log into his anus. The man died of an infection because he was too afraid to seek medical attention, fearing reprisals and retaliation from both the perpetrator as well as the medical community. Despite the insistence by the man’s friends, there has been no investigation to date.⁴⁶

**a. Police Violence Toward the LGBT Community Amounting to Torture or CIDT**

Haitian community-based LGBT rights organizations report numerous cases of police violence and misconduct against LGBT individuals.⁴⁷ Testimony reveals that Haitian police officials often target individuals based on perceived or real sexual orientation or gender identity and commit acts of sexual violence and rape based on the belief that the victim is a member of the LGBT community. Rights groups explain that incidents of police violence, discrimination, and abuse against LGBT individuals generally go unreported to State officials out of fear of police brutality and discrimination.

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⁴³ IWHR Clinic Interview, KOURAJ, February 7, 2013 (on file with authors).
⁴⁴ IWHR Clinic Interview, FACSDIS/SEROVIE, February 5, 2013 (on file with authors).
⁴⁵ IWHR Clinic Interview, FACSDIS, December 3, 2013 (on file with authors).
⁴⁶ IWHR Clinic Interview, FACSDIS/SEROVIE, February 8, 2013 (on file with authors).
⁴⁷ IWHR Clinic Interviews, SEROVie, FASCDIS, and KOURAJ, February, July, and October 2013 (on file with authors).
or retaliation from perpetrators. The following are examples highlighting police violence and misconduct against individuals based on their sexual orientation and gender identity.

- In August 2013, a group of more than 30 community members broke into an individual’s home, beat him, and broke a glass bottle over his head. The victim identifies as gay and was open about his sexual orientation. When the victim sought advice about recourse from a lawyer, the victim was told that seeking help from the police would only exacerbate the problem. The lawyer informed the victim that he is living in the third world and must adapt himself accordingly. He continues to be threatened and is regularly followed by his neighbors to and from the FACSDIS center.

- In July 2013, a 27-year-old lesbian was walking home when two men approached her, hit her in the back of the head, and tore her clothes as she tried to enter her home. Then men continued to beat her, stating, “lesbians can’t come and live in this neighborhood…. if you stay here we will burn down your house.” Later that evening, while the woman was in her home, a group of neighbors began throwing rocks at her home and threatening to burn down her house. She was then forced to flee her home and is still unable to return out of fear that the people in her neighborhood will harm her and her daughter. The woman did not report to the police because she was certain that the police would ignore her complaint and harass her for being gay. It was known in the neighborhood that she was a lesbian, but it was not until after the July 19, 2013 anti-LGBT protest that she began experience intensified violence and threats against her. (See section on summer 2013 protest, pages 9-11).

- On July 22, 2013, a young gay man was brutally beaten by his homophobic brother after the brother saw that he had a male friend over to his home. The brother hit him multiple times in the face breaking his nose and bruising him badly. The victim immediately went to the police in his injured state—with blood still on his face and torn clothes—to report the incident. However, when he attempted to explain the incident, the police refused to file a report or further investigate stating, “If your brother beat you because you were gay, then you were well beaten.”

- In July 2013, two gay men left school with a friend in a vehicle with a hired driver. After learning that he and his friend were unable to pay, the driver drove the two men to the police station. The driver explained to the police that the men did not have the money to pay. The men were then taken into the custody of four police officers inside of the station. The four police officers began beating the two men, leaving physical injuries on the head and knocking out the one man’s front teeth with a police baton.

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49 IWHR Clinic Interviews, FACSDIS, supra note 42.
50 IWHR Clinic Interview, LGBT individuals in Haiti, December 4, 2013 (on file with authors).
51 Id.
One police officer told the two men that they were not being beaten because of the money; they were being beaten because they were gay. The police made comments such as, “don’t you see that they are killing the gays here?” referring to the violence against the LGBT community in the surrounding area. The two men did not report the incident because they feared police reprisal if they attempted to file a case.52

- In July 2013, neighbors broke into a house known in the community as a house where LGBT individuals gathered. Using rocks and bats and firing gunshots into the air the mob forced the residents to flee their home and then proceeded to loot it afterwards.53 As of October 2013, the house remains vacant because no one feels safe enough to return to the house. LGBT individuals who had been living in the home at the time of the raid sought assistance from the police. However, in the process of telling one police officer about the incident another officer, who lived the neighborhood where the incident occurred, came over and told the first officer not to make a report. The officer said, “These are the gays that are causing all of the problems.” 54 No further investigation has been carried out.

- In December 2012, ten members of the LGBT rights group KOURAJ were leaving a party and acting effeminately in the street when five police officers approached them. The police proceeded to assault the members leaving the victims with serious bodily injuries including black and swollen eyes, reporting that, “they were completely beaten to a pulp.” The victims did not report the assault out of fear or retaliation since it was Haitian police officers that carried out the attack.55

- In March 2012, while out one night, one gay individual witnessed his gay friend brutality murdered by four men with guns, knives, bats, and machetes. The witness immediately ran to the police for assistance, but was told he must wait. After waiting a day for any investigation into the murder, the police finally went to the neighborhood where the incident occurred. The police questioned members of the community who confirmed that the victim was gay. Upon hearing this information the police left the area and provided no further investigation or follow up. When the witness returned to the police for information, the police turned him away saying it was his boyfriend who killed him. The witness replied, “no, I know one of the killers, I’m going to show you who he is so you can arrest him.” The police replied, “we do not deal with homosexual affairs; go back home or we’ll arrest you.”56

- In January 12, 2012, two women were leaving a festival. About five police officers approached the women asking, “where are you going?” and the women replied that they were heading home. The police offered the women a ride and signaled them over to their truck. Since there were no available taxis after the event, the women agreed. However, when the two women walked over, the police officers forced them into the

52 Id.
53 IWHR Clinic Interview, FACSDIS, supra note 42.
54 Id.
55 IWHR Clinic Interview, KOURAJ, February 8, 2013 (on file with authors).
56 IWHR Clinic Interview, SEROvie, FASCDIS, and KOURAJ, supra note 49.
vehicle. Suspecting that the women were in a homosexual relationship, one officer stated, “Is this your woman? Ok, fine, get on top of her, have sex with her.” The police began to beat the women. When they started to cry, one officer said, “you never been with a man? You’re not a real woman. We’ll make you one.” The police officers then proceeded to rape the two women.  

These are but a few examples of denial of access to justice as well as persistent abuse, assaults, and sexual violence carried out by law enforcement officials against LGBT individuals and groups. The Government of Haiti must ensure prompt changes within law enforcement agencies in order to be compliant with articles 3 and 7.

b. Lack of Access to Medical Treatment Amounting to CIDT and Torture

Advocates report that LGBT individuals are particularly discriminated against and stigmatized when seeking medical treatment, even in the most dire of circumstances. In one instance, advocates reported that gay men have died from infections because doctors have refused to treat LGBT individuals. Advocates echo this denial of access, adding that because of the stigmatization and humiliation experienced from public health facilities, LGBT individuals are often too afraid or ashamed to seek medical attention, resulting in deteriorating preventable health problems and sometimes resulting in death. The following is an account of a transgender woman who was denied access to health care services based on her gender identity.

The Case of Jenny

Jenny is a transgender woman living in Port-au-Prince. After the 2010 earthquake, Jenny suffered a broken leg. She went to a public hospital for treatment. The health care providers began treating her and cleaning up the injured leg. However, once the providers noticed that Jenny was not a biological woman the provider told her, “all these good people need help and look at this masisi!” Jenny was subsequently refused further treatment. Jenny now goes to a private doctor who, upon discovery of Jenny’s sex at birth, exponentially raised the price for treatment. In addition, Jenny is forced to go to the Dominican Republic for hormone treatments because she has no access to these treatments within Haiti.

Haiti is in clear violation of its treaty obligations under article 3 by permitting health care providers to stigmatize, discriminate, and withhold treatment based on gender identity and sexual orientation. Further, health care barriers created by public health agents refusing to provide medical treatment based on gender identity and sexual orientation, resulting in death and unnecessary suffering, amounts to violations under article 7. The Haitian Government’s complacency in permitting the health care sector to carry out harmful, discriminatory acts must be addressed in order to be in compliance

57 Id.
58 IWHR Clinic Interview, FACSDIS / SEROvie, supra note 46.
59 IWHR Clinic Interview, FACSDIS, supra note 42.
60 The name of the victim has been changed to protect her identity.
61 Masisi is a derogatory term used in Haiti to describe LGBT individuals.
with the State’s obligations under the Convention.

**Requests for Additional Information:**

- Please provide information on the State Party’s efforts to institute an immediate nationwide plan of action to address the police violence and discrimination against the LGBT community. What steps have been taken to adopt and promote a clear zero tolerance policy for police violence and create solutions for addressing the root causes of LGBT motivated violence?

- Please indicate what steps the State Party has taken or will take to implement statewide police sensitivity training and educational programs for engaging with the LGBT community. Please give details on how these trainings focus on eliminating stigmatization, humiliation, and re-traumatization of victims.

- Please comment on how the State Party has and will continue to fulfill its due diligence obligation to investigate, prosecute, and punish perpetrators of egregious acts of violence and discrimination against LGBT individuals.

- Please describe any plans the State has developed to provide safe houses, community centers, and healthcare service facilities to ensure the safety and security of LGBT persons. Please indicate any efforts the State Party has made or plans to make to work with Haitian LGBT grassroots organizations to develop programs and LGBT specific support services.

- Please provide information on the measures adopted by the State Party to comply with the recommendations by the IACHR to adopt effective measures to prevent future incidents of violence and discrimination such as the July 2013 anti-LGBT protests.

- Given the ongoing threats and acts of violence that have been experienced by Malya Villard-Appolon and other members of KOFAVIV, and the failure of the State Party to provide redress, please indicate the plans of the State Party to investigate these threats and violent acts and prevent future threats and violence against Ms. Villard-Appolon, as well as other women human rights defenders.

**6. Sexual Violence, Gender-Based Violence, and Sexual Exploitation in Post-earthquake Haiti (articles 3, 6, & 7)**

*I still have pain in my eyes from where the attackers hit me on the side of my head… I did not go to the police because I knew they would not do anything and I am afraid of what would happen if the rapists found out I had reported because there is no protection.*

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62 MADRE and IWHR Clinic Interviews, resident of an internal displacement camp, January - October 2010 (on file with authors).
a. Sexual and Gender-Based Violence

This Committee has made clear that article 7 provides that States must guarantee the safety of rape victims, promptly investigate all allegations, and bring perpetrators to justice. Yet, rape remains a crisis at disproportionate levels with the majority of cases never reaching the prosecution or investigation process due to the State agencies’ failure to act (see discussion infra on pages 15-18). The following testimonies highlight the continuing rape and sexual violence occurring in Haiti with inadequate State investigation and prosecution.

- In September 2013, a Government official raped a young woman. The official had approached the young woman under the guise of finding her work. One night, the officer told the young woman to stay at his relative’s house because it was too late for her to go home. He then proceeded to rape her at the house resulting in the young woman’s first pregnancy. Although she has reported the rape, police have refused to investigate the case. (See the Case of N.R page 5 for further discussion).

- In August 2013, a sixteen-year old was raped by her boyfriend and his friend. The victim’s parents filed a report with the Haitian police. However, the prosecutor refused to prosecute the case claiming that the incident was simply a “lovers’ quarrel.” The case was subsequently dropped.

- In October 2012, a mother brought her daughter to KOFAVIV for assistance after the 14 year old girl was raped and beaten by six men. The Police arrived at the organization and picked up the mother and daughter in the car to take them to the police station. However, the police chief called and said they had to use the car for a more serious case, and left the mother and daughter at KOFAVIV. The police have done nothing else to follow up on the case.

- In July 2012, a teenage girl was with her boyfriend in the street after leaving a wedding. The police stopped the couple and asked for their identification. The boyfriend had one so they let him go, but the girl had not yet turned eighteen, and therefore did not have a national identification card. Consequently, the police would not let her go. The officers took her to the police station, where one officer stayed with the girl in the car and told her that it would be too expensive for her to resolve her issue inside the police station, and she would need to have sex with him in order

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63 See Concluding Observations of the Human Rights Committee, Venezuela, ¶ 17, U.N. Doc. CCPR/CO/71/VEN (April 26, 2001) (finding that high levels of sexual violence against women raises serious concerns and the State should implement effective measures to ensure access to effective remedies for the victim). See also, Concluding Observations of the Human Rights Committee, Colombia, ¶ 12, U.N. Doc. CCPR/C/COL/CO/6 (August 4, 2010) (finding that barriers to accessing justice for rape victims, due to a lack of criminal investigations and prosecutions and the resulting impunity violates States Parties obligations under articles 3 and 7).

64 IWHR Clinic Interview, KOFAVIV, October 11, 2013 (on file with authors).

65 IWHR Clinic Interview, KOFAVIV, October 24, 2012 (on file with authors).

66 A nationality card is the Government issued identification that all Haitian citizens are entitled to upon turning 18.
to be released. He proceeded to rape her in the car. Afterward, her parents made a complaint in the local police station, but the police officer has since left that police station. No investigation has been carried out. 67

- In August 2010, a 24 year-old woman was brutally raped outside of an IDP camp in Port-au-Prince. The victim was taking out the trash one night when four men in a car pulled up and called out to her to ask for directions. When she approached the car, a man grabbed her and forced her into the car. All four men raped her. One man began choking her and told her to stick out her tongue. She resisted and he told her that he would gouge out her eyes if she did not open her mouth. She opened her mouth and the man bit off the end of her tongue. The victim sought help from a local organization, but still faced numerous barriers while trying to access medical treatment for her tongue- to the point where her tongue turned green and required reconstructive surgery. 68

- In January 2010, while witnessing a group of men raping another woman, a bystander confronted the attackers, pleading for them to stop. The men then proceeded to pin her to the ground, rape her and beat her with a gun on the left side of her rib cage. The woman still carries the scars from the beatings. The victim could not recall how many men there were stating that it was “too many for her to count.” During the incident the victim felt a tearing and started to bleed vaginally. One of the perpetrators noticed she was bleeding and said, “If she is going to bleed, let’s do it again,” and continued to rape her. The woman did not report the rape explaining, “If you go to the police to get help, they do nothing.” 69

The lack of State investigation and prosecution of numerous sexual violence cases—perpetrated by both public and private actors—is a clear violation of article 7. Directly following the 2010 earthquake, the most prominent barriers for victims seeking relief through the justice system occurred at the law enforcement level. For instance, victims reported deterrents such as a lack of law enforcement resources and discrimination by police officials. Victims described statements by police such as, “we are getting too many reports of rape” and that they should “go tell it to the President if they want to take care of the problem.” 70 Numerous accounts also highlighted police humiliating victims and dissuading them from reporting based on the fact that they were sexual violence cases. 71

Although law enforcement inaction continues to be a barrier to justice, the State has implemented some remedial measures. For instance, in response to the law enforcement failures, grassroots organizations and human rights advocates worked with the international community and the Haitian Government to institute additional security and training at the police level. For example, the U.N. deployed security personnel in the

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67 IWHR Clinic Interview, KOFAVIV, supra note 20.
68 IWHR Clinic Interviews, KOFAVIV, October 2010 (on file with authors).
69 Id.
70 MADRE and IWHR Clinic Interviews, residents of 22 IDP camps, January - October 2010 (on file with authors).
71 Jagannath at 38, supra note 12.
camps where the Haitian police were unavailable. 72 In addition, some police departments underwent sensitivity training on interacting with victims of sexual and gender-based violence. 73 Yet, further training is needed at all levels of law enforcement to ensure victims’ safety across Haiti.

For the majority of victims, the Haitian justice system remains highly inaccessible because of the barriers at the prosecuting level. For instance, untrained prosecutors, police and judges often refuse to investigate, prosecute, or determine cases. 74 In addition, victims are generally asked to present medical certificates 75 and required to pay additional fees in order to have their case prosecuted, which creates additional barriers for poorer women and girls. 76

Widespread sexual violence against women and girls, and the barriers to adequate remedies for victims continues to be a significant area of concern that prevents the Government of Haiti’s compliance with article 7. The State must take action to promptly investigate rape cases without harmful delays and prevent impunity of the perpetrators caused by police and judicial inaction, complacency, and discrimination.

b. Sexual Exploitation of Women Engaged in Survival Sex and Prostitution

While there are no reliable statistics on the prevalence of survival sex in Haiti, sexual exploitation has been identified as an issue in nearly every humanitarian or human rights report on women’s rights since the earthquake. Women and girls who engage in survival sex are especially at risk of unintended pregnancy, sexually transmitted diseases and other related health problems. They are often isolated from their social networks and communities, increasing the risk of violence and despair.

Results from a 2012 study conducted by the Center for Human Rights and Global Justice (CHRGJ) suggest that camp residents believe that trading sex for basic needs has become a more common survival strategy for women and girls in the camps since the earthquake. 77 Similarly in 2011, the UN High Commissioner for Refugees (UNHCR) conducted a study into the issue, finding that women in focus groups commonly reported exchanging sexual acts in return for food and other survival needs, including aid

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72 Id. at 40.
73 Id. at 39.
74 Id. at 45.
75 Id. at 41. Medical Certificates are documents produced by health care providers for victims of rape in order for the victim to preserve evidence of the incident. They are not required by law, however, prosecutors generally require that the victim submit a medial certificate before they will agree to investigate and prosecute a case.
76 Id. at 40; see also, MADRE, International Women’s Human Rights (IWHR) Clinic at CUNY School of Law, Center for Gender and Refugee Studies, Center for Human Rights and Global Justice Clinic, STRUGGLING TO SURVIVE: Sexual Exploitation of Displaced Women d Girls in Port-au-Prince, Haiti (2012) (citing to interview conducted with Prosecutor, in Port-au-Prince, Haiti (November 15, 2011) [hereinafter STRUGGLING TO SURVIVE].
77 CENTER FOR HUMAN RIGHTS AND GLOBAL JUSTICE (CHRGJ), YON JE LOUVRI, REDUCING VULNERABILITY TO SEXUAL VIOLENCE IN HAITI’S IDP CAMPS (2012).
distribution coupons, access to direct aid distributions, cash for work programs, money, or even a single meal. In addition to these hardships, some women and girls are additionally harmed by sexual violence, the need to engage in survival sex, and lack of access to family planning, prenatal and obstetric care. A study by the Humanitarian Accountability Partnership (HAP) mirrored these findings, confirming that single mothers are the most vulnerable population to sexual exploitation, and therefore more likely to engage in survival sex.

Women and girls in Haiti have been documented exchanging sex for food, water, and education directly, or for the money to pay for these resources. Those who have children often exchange sex to provide for their families. Some young women interviewed in the report Struggling to Survive: Sexual Exploitation of Displaced Women and Girls in Port au Prince (2012) stressed that they especially hoped to be able to earn enough money to afford education through money obtained by exchanging sex. The women’s rights organization Kay Fanm reported at least two instances where young girls had sex with men in exchange for direct payment of educational expenses. A protection actor also confirmed that young girls often have sex with men who will pay for their schooling. Some women are unable to earn enough money for school, which some interviewees estimated to cost approximately $200 a year.

Deep-seated discrimination against women deprives them of a multitude of legal rights that men enjoy, placing them in an even more precarious economic situation. For example, one local Haitian organization cites discriminatory housing laws as favoring the rights of men and leaving women insecure and dependent on men. Moreover, this pervasive discrimination has led women and girls to believe that they are obliged to accept exploitation and abuse. In many instances, women have internalized discrimination and come to believe that they deserve the treatment they receive.

LGBT individuals face particularized hardship and discrimination that makes

78 UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (UNHCR), DRIVEN BY DESPERATION: TRANSACTIONAL SEX AS A SURVIVAL STRATEGY IN PORT AU PRINCE IDP CAMPS 16 (2011).
79 Id.
82 STRUGGLING TO SURVIVE 12, supra note 78.
83 STRUGGLING TO SURVIVE, supra note 78, at 12.
84 Id. (citing to interview conducted with Representatives from Kay Fanm, in Port au Prince, Haiti (Nov. 15, 2011) (One of these men was believed to be a police officer).
85 STRUGGLING TO SURVIVE, supra note 78, at 12 (citing to a telephone interview conducted with protection actor (Nov. 30, 2011)).
86 STRUGGLING TO SURVIVE, supra note 78, at 13.
87 STRUGGLING TO SURVIVE, supra note 78, at 14 (citing to an interview conducted with Collete Lespinasse, Coordonnatrice, and Patrick Camille, Jurist, Le Groupe d’Appui aux Rapatriés et Refugiés (GARR), in Port au Prince, Haiti (Nov. 12, 2011) (discussing how real property is often only registered under a man’s name, which deprives a woman of legal rights in certain situations)).
them vulnerable to sexual exploitation.\footnote{Struggling to Survive, supra note 78 at 13 (citing to an interview conducted with Reginald Dupont, SEROvie, in Port au Prince, Haiti (November 14, 2011); Interview with representatives of FACSDIS, in Port au Prince, Haiti (Nov. 17, 2011)).} Representatives of the LGBT community interviewed in the report \textit{Struggling to Survive} explained that LGBT individuals are often ostracized and discriminated against by their families and communities, which leaves them with a weak support network.\footnote{Struggling to Survive, supra note 78, at 15.} Discrimination in the workplace also translates into few job opportunities and options. Consistent with the women interviewed, gay men who have exchanged sex for food report that the encounters are often extremely violent.\footnote{Struggling to Survive, supra note 78, at 14 (citing to and interview conducted with representatives from FACSDIS, in Port au Prince, Haiti (November 17, 2011); Interview with Reginald Dupont, SEROvie (Nov. 14, 2011)).}

In Haiti, numerous sexual violence cases still go unreported because victims are afraid of retaliation by their attackers and do not trust the police to protect them. Many fear reporting any abuse that occurs during a sexual exchange since women and girls engaged in survival sex have been the target of abuse by the police.\footnote{See Struggling to Survive, supra note 78.} “Prostitution” is not illegal in Haiti, however, police may arrest women engaged in survival sex under a provision of the penal code related to public indecency.\footnote{Struggling to Survive, supra note 78 at 16 (citing to an interview conducted with Jean Saint-Nogène Avillon, Directeur des Affaires Judiciaires, Ministry of Justice, in Port au Prince, Haiti (November 16, 2011); Interview with Prosecutor, in Port au Prince, Haiti (November 15, 2011).} Government officials interviewed, however, agreed that, in theory, if a woman is raped or beaten, even in the context of an exchange, she has the right to bring a complaint against the perpetrator for assault or rape.\footnote{Id.} However, representatives also felt certain that women engaged in survival sex are unlikely to report being beaten unless the assault is particularly egregious or violent.\footnote{Struggling to Survive, supra note 78 at 16 (citing to interview Prosecutor, in Port au Prince, Haiti (November 15, 2011)).}

The Haitian Government’s inability to develop a meaningful response to sexual exploitation is due in large part to a stark lack of resources. Representatives from key Haitian Ministries, law enforcement and other Government offices, have expressed frustration at their inability to effectively carry out their mandate as a result of these resource constraints. A representative from the Women’s Ministry reported that it has not developed programs to address sexual exploitation because it does not have the resources to conduct a needs assessment study, which it states is an essential first step it must take before addressing the issue comprehensively.\footnote{Struggling to Survive, supra note 78, at 15 (citing to an interview with Denise Amedee, Coordinatrice de Centre d’Hébergement Pour Femmes Victimes de Violence, MCFDF, in Port au Prince, Haiti (November 21, 2011)).}

\textbf{Requests for Additional Information:}

- Please provide information on the State Party’s efforts and future plans to
implement statewide police sensitivity training programs for dealing with victims of sexual violence, gender-based violence, and sexual exploitation. Please provide details as to how these trainings will include a particular focus on eliminating stigmatization, humiliation, and re-traumatization of victims.

- Please provide detailed information on immediate measures adopted by the State Party to address the barriers women and girls face to accessing justice. Please supply information on the specific efforts to provide clear and effective guidelines for the prosecutorial use of medical certificates, as well as other evidence in rape cases. Please comment on the State Party’s intentions to require sensitivity training at all level of the justice department to ensure that victims of sexual violence, gender-based violence, and sexual exploitation are not denied access to justice and effective remedies. Further, please indicate how the State Party plans to address economic barriers to accessing justice, such as unaffordable fees for investigation and prosecution of cases.

- Please describe any measures taken by the State Party to adopt legislation that would provide clarity and guidance for investigating and prosecuting rape cases in order to have consistent and effective remedies available to victims. Please comment on the State Party’s intentions to adopt the Haitian Penal Code revisions drafted by the Ministerial Commission for the Modernization of the Penal Code and the Criminal Procedure Code and the Draft Law on the Prevention, Sanction, and Elimination of Violence against Women that, if adopted by Parliament, would provide a modernized definition of rape. (See discussion on pending draft laws pages 4-6).

- Please clarify how the State Party plans to intensify efforts to comply with articles 3 and 7 by implementing a national plan of action to combat the continuing sexual violence and sexual exploitation in Haiti. Please indicate how the State Party will develop strategies and increase discussion for finding solutions to the widespread issue of violence against women and girls.

7. Arbitrary Arrests and Violations of the Right to Liberty of LGBT Individuals (article 9)

The Committee has made clear that LGBT persons are both vulnerable to and have the right to be protected from arbitrary arrest and detention and an inherent right to dignity. For example, in the Concluding Observations for the Philippines, the Committee called on the Government to “ensure that LGBT persons are neither arrested nor prosecuted on the basis of their sexual orientation or gender identity…”96 Additionally, in recognition of the prevailing stigmatization and prejudice against LGBT persons by

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police, the Committee urged the State to adopted legislative reform that would prohibit discrimination on the basis of sexual orientation and gender identity.\footnote{Id. at ¶ 10-11.}

Similar to the Philippines, the Haitian Government has failed its treaty obligations to ensure that LGBT persons are not stigmatized and discriminated against, leading to arbitrarily arrest and detention by police officials. Local LGBT rights-based groups report numerous incidents of police discrimination and stigmatization leading to arbitrary arrests.\footnote{IWHR Clinic Interview, SEROvie, FASCDIS, and KOURAJ, February, July, and October 2013 (on file with authors).} The following are specific accounts of where the State failed to protect against police misconduct and arbitrary arrests of LGBT individuals.

Although Haiti does not criminalize same sex acts between consenting adults, police are misusing other laws to criminalize LGBT individuals. For instance, law enforcement members have targeted the LGBT community and intrude on individuals’ right to privacy by harassing, questioning, and arresting perceived LGBT individuals under “public scandal” laws.\footnote{U.S. Department of State, 2012 Human Rights Reports: Haiti, Societal Abuses, Discrimination, and Acts of Violence Based on Sexual Orientation and Gender Identity 33, available at http://www.state.gov/j/drl/rls/hrrpt/2012/wha/204458.htm (April 19, 2013).} In addition, the invasion of privacy often leads to physical violence against LGBT individuals. The following are examples of such violence and discrimination committed against LGBT persons by law enforcement officers.

- **In November 2012**, three members of the LGBT community attended a funeral of a friend who identified as gay. The minister presiding over the ceremony called the individuals “demons” and called the police. When the officers arrived at the scene, they arrested the three attendees without any indication of why they were being arrested.\footnote{Id.}

- **In October 2012**, four members of FACSDIS were pulled over by the police and asked for their identification. When the women replied that they did not have their identification cards, the police officer said, “What will you give me to make me not arrest you?” Two of the women had sex with the police officers out of fear of harm and prison. The other two women were put in prison after not agreeing to engage in sexual relations with the police officers.\footnote{Id.}

- **In November 2010**, a group of gay friends were gathered together at a friend’s home. The men were holding a small gathering in one the men’s gated backyard when a neighbor, a local judge, entered into the yard with another man pointing guns at the nineteen men. He commanded them not to move and stated that he was having all of them arrested and proceeded to call the police. Other neighbors followed the judge into the yard and began beating on the men. Upon the arrival of police officers, the men were harassed and pushed around by the officers, arrested, and taken into police custody. At no point did the police or judge explain to the nineteen men why they...
were being arrested. All nineteen men were detained in police custody for 48 hours in a cell, the small size of which forced some of the men to stand in order to fit. The officers harassed the men, stating, “you are just dirty masisi\textsuperscript{102},” and “you are ruining the Haitian race.” The person renting the home was afraid to return and forced to flee.\textsuperscript{103}

- **In July 2010**, a member of the LGBT community hosted a pool party at her private home with members of the LGBT community. Several police officers and a prosecutor came to the home and witnessed men holding hands with other men and women kissing women, and began arresting people at the party. The police said, “what kind of shit is this? Men and men together, women and women together, we’re going to arrest everyone…” Ten individuals were still in their bathing suits at the time of arrest and when they were taken into police custody. The police claimed to be arresting them for “public indecency” even though the party was in a private home.\textsuperscript{104}

These are not isolated incidents, but part of a larger systemic problem faced by the LGBT community.\textsuperscript{105} The Haitian Government must address the arbitrary arrests and violation of privacy rights that are preventing the State from complying with its obligations under articles 9, 10, 17.

### 8. Arbitrary Arrests of Persons Engaged in Sex Work

**The Case of Angie**\textsuperscript{106}

In July of 2013, Angie was working as a sex worker one night along a street not far from her home. A police vehicle with five officers inside drove towards where she was standing. They asked if Angie had her national identification card on her and she replied no. The police then told her to get into their vehicle and that they would take her to her home to get her card. However, instead of taking Angie to her home, the police drove her to a secluded area far from anywhere Angie could identify. The officers proceeded to rape her in the vehicle while punching her in the mouth. They called her derogatory terms referring to her status as a sex worker. The officers then dragged her out of the vehicle, pushed her on the ground, and told her that if she dared to report the rape that they would kill her. Angie was left, bruised, assaulted, and in torn clothing, unable to identify her location or how to get home. Angie has not reported the incident to any law enforcement official out of fear for her life.

\textsuperscript{102}Masisi is a derogatory term against LGBT persons in Haitian Kreyol.

\textsuperscript{103}MADRE and IWHR Clinic Interview, LGBT individual, December 4, 2013 (on file with authors).

\textsuperscript{104}IWHR Clinic Interviews, SEROvie, FASCDIS, and KOURAJ, February, July, and October 2013 (on file with authors).

\textsuperscript{105}Id.

\textsuperscript{106}IWHR Clinic Interview, “Angie”, July 2013 (on file with authors). The name of the victim has been changed to protect her identity.
Article 9 is clear that all persons—regardless of occupation or status—have a right to be free from arbitrary arrest. Haitian law does not criminalize prostitution, however, other Haitian Criminal Code provisions such as “public indecency” laws are used to arrest persons perceived to be engaged in or soliciting for prostitution. This practice has led to arbitrary arrests, detention, and police misconduct against individuals’ engaged in sex work.

Arbitrary arrest and detention of women engaged in sex work is extremely prevalent and widely ignored in Haiti. Co-founder of the organization, ANAPFEH, a rights-based organization that operates by and for women engaged in sex work, reports that the majority, if not all of the members of ANAPFEH have been arrested by the police at least once for being identified as sex workers. Members report that it’s common for police officers not to inform them of the charges when arrested. Many women also report being frequently coerced into providing sexual services for police officers in order to avoid being arrested, or while in detention to be released.

In 2009, in one of the few cases ever known to go to trial, a young woman perceived to be engaged in sex work in Mirebalais (a city outside of Port au Prince) reported that she had been raped and the complaint was pursued. The judge ruled that it was not rape because the perpetrator had the “habit of paying” for the woman’s education and therefore it could not be considered rape.

Requests for Additional Information:

- Please indicate the ways that the State Party intends to clearly and officially state that it does not tolerate any form of social stigmatization of lesbian, gays, bisexuals, or transgender persons, or harassment of or discrimination or violence against persons because of their sexual orientation or gender identity.

- Please describe any plans the State Party has to implement national policies to end the law enforcement practice of arbitrarily arresting and detaining individuals based on sexual orientation and social status. Please provide detailed information on the measures the State Party proposes to implement to address the root causes of targeted arbitrary arrests and develop remedial measures for ending law enforcement violations.

- Please clarify if and how the State Party will work with Haitian rights-based organizations to provide human rights training and education in order to empower vulnerable groups, e.g., women engaged in prostitution and members of the LGBT community, with the knowledge to identify and combat police misconduct and arbitrary arrest.

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107 For further information see, STRUGGLING TO SURVIVE supra note 78, at 30.
108 IWHR Clinic Interview, ANAPFEH, October 10, 2013 (on file with authors).
109 Id. at 24.
110 STRUGGLING TO SURVIVE 24, supra note 78.
111 Id. at 16.
• Please comment on the plans of the State Party to adopt the Haitian penal code revisions drafted by the Ministerial Commission for the Modernization of the Penal Code and the Criminal Procedure Code that would afford greater protection to Haiti’s LGBT community by expanding the identified groups protected from discrimination under Haitian law to include prohibiting discrimination based on sexual orientation.

9. Violations of the Right to Exercise Freedom of Opinion, Expression, Assembly and Association and Freedom of Movement without Fear of Repercussions or Violence against LGBT persons (articles 12, 17, 19, 21 & 22)

The Haitian Constitution recognizes the right to freedom of movement, opinion, expression, peaceful assembly and association for all of its citizens. Though these freedoms are enshrined, LGBT persons experience violations of these rights on a regular basis. They are vulnerable to violations both as members of a minority group, and as agents of Haitian LGBT human rights organizations. Extreme hostility and discriminatory attitudes toward LGBT members are pervasive in Haiti. Even the perception that an individual is an LGBT member can place his or her life directly at risk. This risk becomes especially pronounced when LGBT persons gather together in community with other LGBT members, or manifest expressions of their cultural, sexual orientation or gender identity through their manner of speech or dress.

Additionally article 17 provides that, “no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence…. Article 17 clarifies that States Parties have an obligation to protect against such interferences and attacks, whether committed by State or private actors. In Toonen v. Australia, this Committee specifically held that laws criminalizing same sex acts between consenting adults violates the individuals’ right to privacy, stating, “it is undisputed that adult consensual sexual activity in private is covered by the concept of privacy.”

However the Government of Haiti has failed to take steps to protect these rights for LGBT persons who are victims of violations of their right to privacy and freedom of movement.

112 Articles 41 and 41.1 of Haiti’s Constitution proclaim freedom of movement for all Haitians. Article 28 of the Haitian Constitution enshrines the right to freedom of opinion and expression. The right to peaceful assembly is enshrined in article 31 of the Haitian Constitution, stating that freedom of unarmed assembly and association for political, economic, social, cultural or any other peaceful purpose is guaranteed. Article 1 of the Haitian Constitution protects the freedom of association and sets forth that Haitians are free to join together in associations, which are protected and guaranteed by articles 31, 31.1 and 31.3.


114 Human Rights Committee, General Comment. No. 16, ¶ 1, UN. Doc. HRI/GEN/1/Rev.9 (Vol. I) (“In the view of the Committee this right is required to be guaranteed against all such interferences and attacks whether they emanate from State authorities or from natural or legal persons.”).

The State’s Disregard of the Anti-LGBT Protests which Incite Violence against LGBT People

On July 19, 2013, over 1,000 people gathered in the streets of Port-au-Prince, Haiti to protest LGBT rights.116 The protest was marked by extreme homophobic language and threats of violence, including a song in which the protesters chanted threats “to burn down parliament if its members make same-sex marriage legal.”117 Some protesters, armed with knives, sticks, blocks, and other objects, began attacking people they accused of being homosexuals.118

On June 25, 2013, the organizers of the protest held a nationally televised press conference and announced plans to march against homosexuality and in protest of recently passed same-sex marriage legislation in other countries. During the press conference, a spokesperson for the organization stated, “God does not agree nor do we because we rely on God, and because we saw the misfortunes it brought to Sodom and Gomorrah. So, because we do not want to experience the same misfortunes, we are compelled to take a position.”119

In anticipation of the demonstration, Haitian LGBT rights groups in Haiti, SEROvie, FASCDIS, KOURAJ, and Gran Lakou, mobilized to denounce the scheduled protest out of concern for the safety of both LGBT human rights defenders and members of the LGBT community-at-large. Concerned that the rally would incite hatred against LGBT people and lead to an increase in violence against them, the organization issued a press release voicing these concerns and reaffirming the legal guarantee of universal human rights for all.120 Additionally, the Bureau des Avocats Internationaux (BAI), a legal organization, and KOURAJ held a press conference condemning “a series of threats targeting” the country’s “small gay community.”121

The LGBT community continues to suffer from egregious acts of humiliation and violence subsequent to the protests. Between July 17 - 24, 2013, SEROvie and FASCDIS documented forty-seven cases of physical aggression and threats—including eight cases of attacks with a knife and 19 cases of being beaten with pieces of wood or cement

120 SEROvie, FASCDIS, and KOURAJ, Note de Presse (Press Release), (July 2, 2013) (calling upon the Haitian Government and the international community to prevent the scheduled protest in order to deter increase violence and threats against LGBT individuals).
blocks. \(^{122}\) (See examples in subsection a).

Haitian law enforcement and officials were well aware of the anti-LGBT protests and the high likelihood of violence against the LGBT community resulting from the protests. The organizers of the protest announced on national television their intention to hold a massive rally, inciting threats and hate-speech against the LGBT community. In addition, LGBT rights groups and lawyers publicly warned the State that the LGBT community would suffer cruel, inhuman or other degrading treatment (CIDT) and torture as a result. Yet, the State failed to protect against the subsequent violence and conduct investigations against the perpetrators. The Inter-American Commission on Human Rights (IACHR) found this to be an allowance of impunity of perpetrators and that the State’s inaction “fosters the chronic repetition of these crimes, leaving the victims and their families defenseless.”\(^ {123}\)

Due to the recent escalation in violence against LGBT Haitians, UNHCR called for the series of trainings to foster collaboration, strengthen accountability, and begin much needed dialogues on how to prevent and address abuses committed against LGBT persons, and the resulting displacement crisis. The following examples are additional documented cases of violations to these rights.

- In February 2013, a group of men came to the home of LGBT human rights activists, holding knives, machetes, bottles and metal sticks. The leader of the gang stated they had come because he was told there were “faggots” living in the house. The group began to approach the house, throwing bottles at the victims, threatening to throw tear gas at them and set the house on fire. After contacting the police for help, officers said they would not enter the neighborhood because it was an “at risk” zone. When the victims reported the incident a second time, other officers advised them that they could no longer live safely in the home and they would need to move within days. When the perpetrators were informed that the activists had contacted the police, the men returned and threatened to kill them.\(^ {124}\)

- In August 2013, a group of individuals attacked a leader of a prominent Haitian lesbian organization, throwing rocks and bottles at her home, shouting, “We do not want the gays!” “We are going to burn down this house! The gays are ruining the neighborhood. Leave!” “Gays and lesbians cannot stay here!” They continued to throw rocks and bottles at her home for two hours, during which time the victim and her houseguests hid in their bedrooms in fear. The next morning, a man from the neighborhood came to her home. He told her he gathered the group of people together the night before because he did not want any gays in the area. Immediately following this incident, the victim left her home and has not returned because she fears for her safety.\(^ {125}\)

\(^{122}\) IGLHRC and MADRE Interviews, SERovie, July 24, 2013 (on file with authors).

\(^{123}\) Inter-American Commission on Human Rights, Press Release, IACHR Condemns Recent Wave of Violence Against LGBTI Persons in Haiti (July 30, 2013).

\(^{124}\) IWHR Clinic Interview, FACSDIS, SERovie, supra note 37.

\(^{125}\) Id.
• In June 2013, a group of people gathered in front of a gay man’s home and threw a rock at him. One member of the group broke a bottle over the man’s head, causing him to fall and lose consciousness, as his mouth filled with blood. Four men in the group tore up the planks in front of the victim’s home, and broke through his front door with machetes and rocks.

• In December 2011, two men were in a tent in an IDP camp when a neighbor discovered them engaged in romantic activity and immediately proceeded to tell other members of the camp. Members came into the tent and started beating the two men making statements such as, “oh, look at the gay people... It’s these gay people that made the earthquake happen.” Although the men told the police what happened, no report was taken and no investigation was made. Consequently the men were forced to flee the camp for their safety.

LGBT persons in Haiti have been frequently attacked while gathering peacefully to share in community together publicly as well as in the privacy of someone’s home. Documented physical attacks, robberies, and murders have been committed on the basis of a victims’ gender-nonconforming demeanor, style of dress, or association at private gatherings with other LGBT members in the community. With respect to LGBT persons, the Haitian Government has failed to protect the freedom of opinion, expression, assembly and association against violations by private actors. In addition, the Government has committed direct violations itself.

For example, one FACSDIS member and her friends were attacked at home because of their sexual orientation. In July, 2013, the FACSDIS member hosted a gathering for LGBT community members at his apartment. This home was known in the neighborhood as one where LGBT members frequently met. That night, a group of men from the neighborhood came with machetes and torches and chased the victims from the home, beating them as they fled. The perpetrators threw rocks at the home, broke windows and fired guns into the air. The victims escaped through the back door of the home. While no one was shot, some victims were beaten with baseball bats. Others were injured by rocks thrown at their heads. The perpetrators were prepared to burn the house down, and only stopped because the landlord was home that night.

A group of the victims went to the police that night to report the attack, but were told that because they were gay, the perpetrators were “free to do as they pleased.” One officer stated that they would not respond to the incident because the victims were LGBT members. Following the attack, many of the victims in the group moved out of the neighborhood to the countryside, for fear that they would experience another assault that endangered their lives. The FACSDIS member who hosted the party has since left his home and his neighborhood. His neighbors told him that if he were seen there again, they

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126 IWHR Clinic Interview, KOURAJ, supra note 8.
127 Reports cases as documented by FACSDIS and SEROvie.
128 IWHR Clinic Interview, FACSDIS, supra note 34.
129 Id.
would kill him. He has been too frightened to return and has been staying at a SEROvie shelter since August 2013.\textsuperscript{130}

In 2010, a judge went to an openly gay neighbor’s pool party with a gun, demanding to know why no women were present. The judge forced all fourteen men at the party to lie on the ground at gunpoint, and proceeded to call the police. Two police cars arrived at the home and the officers handcuffed and arrested all of the attendees. As police led the men away in their bathing suits, neighbors rallied and chanted, “Kill the gays!” The men were detained at the precinct for several days, at which point they were released far from where they’d been arrested and forced to walk home barefoot, some still dressed only in their bathing suits.\textsuperscript{131} (\textit{For more information on this incident see page 24}).

In 2009, a transgender woman, and member of FACSDIS was arrested in her home in Turgeau after the police raided a party there. Police officers entered the party with their weapons drawn, proceeded to ransack the house and forced everyone in attendance to assemble. When the Port-au-Prince prosecutor arrived, he asked everyone for identification. Upon discovering the woman was transgender, the prosecutor accused her of hosting an orgy, telling her, “You’re not a woman, you’re a man!”\textsuperscript{132} Police officers then proceeded to harass her, demanding that she undress in front of them in order to discover whether she was a “real woman.” According to interviews with the victim, the police repeatedly referred to her as an “element” and “non-human.”\textsuperscript{133}

Unfortunately, in its State Report, published in January 2013, the Haitian Government makes no mention of human rights violations committed against women or LGBT persons.

\textbf{Requests for Additional Information:}

- Please indicate the ways in which the State Party will develop stronger, more specific measures to strengthen law enforcement. These measures should include sensitivity trainings for police officers and judges dealing with cases of violence against women, human rights defenders and LGBT persons. In addition, please comment on how the State Party will provide law enforcement personnel with proper and comprehensive training in documenting and investigating crimes against gender-based and sexual violence and crimes committed against LGBT members.

- Please describe any actions the State Party will undertake to strengthen measures to address corruption and confront official impunity. Specifically, please elaborate on any well-defined guidelines, as well as punitive measures, that will be set in place to address impunity and hold law enforcement and judicial authorities accountable for corruption.

\textsuperscript{130} \textit{Id.}
\textsuperscript{131} IWHR Clinic Interview, KOURAJ, February 8, 2013 (on file with authors).
\textsuperscript{132} IWHR Clinic Interview, FACSDIS, SEROvie, June 2012 (on file with authors).
\textsuperscript{133} \textit{Id.}
• Please identify what measures the State Party plans to adopt to protect human rights defenders from violence and harassment, and to investigate, prosecute, and punish perpetrators of such violations.

• Please provide information on the specific measures the State Party will take to prevent, punish and redress violence against women, girls and LGBT persons. Preventative measures should include public education addressing violence against these groups, in order to raise awareness and de-stigmatize victims. Please comment specifically on how the State Party will work to punish and redress violence against LGBT persons, and ensure these individuals are provided equal access to justice.

• Please describe what actions the State Party will take to alleviate the crisis of displacement and provide alternate means of shelter to Women and LGBT members who report attacks, abuse or threats and seek to flee their environment, so that they need not remain or return to life threatening situations.

11. Violence against the LGBT community is almost never investigated and victims are actively prevented from seeking justice (articles 14 & 26)

Fear of discrimination and abuse by police officials along with lack of confidence in and limited capacity of the Haitian judicial system often deter victims from reporting crimes to authorities. LGBT Service providers have documented and experience regular and sustained harassment by civil society actors and the police when they try to report crimes against members the LGBT community. LGBT members report being routinely detained while traveling together in cars at night. In another example, one man, forced to live apart from his family after coming out to them, was severely beaten one night by his brother. The police refused to further investigate the attack, telling the victim that his brother was justified in beating him and that he should consider poisoning himself. Other crimes, including murder and rape, are rarely investigated further when it becomes clear that they involve “homosexual issues.”

LGBT victims have also reported that lawyers are reluctant to represent LGBT individuals due to their strong religious affiliations or unwillingness to be associated with the LGBT community. In one instance, a gay couple was arrested after getting into an argument with a group of men attending a party across the street from their home. Victims are forced to pay higher fees for representation, only to be strongly encouraged to drop the cases. Ultimately, the couples’ lawyer pressured the couple to pay the complainants and provided no defense.

135 IWHR Clinic Interview, FACSDIS, SEROvie, supra note 37.
136 IWHR Clinic Interview, FACSDIS, supra note 34.
137 IWHR Clinic Interview, witness, June 23, 2012 (on file with the authors).
138 IWHR Clinic Interview, KOURAJ, November 24 2012 (on file with authors).
For victims of gender-based violence, problems begin to arise at the earliest entry point in the criminal justice system: when victims attempt to attain medical certificates from doctors. Although a medical certificate is not explicitly required under Haitian law as evidence of sexual violence, in practice, a medical certificate is treated as a legal requirement for pursuing a complaint. Specifically, victims of sexual violence in Port-au-Prince report being turned away by the Prosecutors office or having their cases dismissed by a judge if they cannot provide a medical certificate, or that certificate does not provide enough detail.

Timing is yet another hurdle in survivors attempt to attain justice. Ideally, women should seek medical treatment within the first 72 hours of a rape, however, because very few places issue medical certificates, and fewer doctors still are authorized to issue them, victims can sometime be left without one within the 72-hour window. In one case, a girl was raped and the police were able to locate and detain the perpetrator. However, since it took 2 days for the issue of the medical certificate, the perpetrator was released before the case could be brought before a judge.

In the courtroom, judges will question the victim in Kreyol; yet communicate with the attorneys in French, alienating the victims from their own proceedings. During trials, victims are forced to retell, and in a sense re-live, their horrific stories over and over again, due to an inefficient and protracted judiciary that does not prioritize nor understand the sensitivity required for cases of gender-based violence. In comparison, a victim may have to tell their stories three to four times in other, more victim-centric jurisdictions. This forces the victim to testify repeatedly for up to three months before there is any resolution. Legal practitioners stressed that these delays occur frequently in sexual violence cases, with apathetic judges who feel the need to question the victim repeatedly about their ordeal, without regard for the victim’s mental or emotional well-being.

Delays in the victim’s case, and hostile attitudes against both the victim and the victim’s lawyer also impact the direct safety of the victim. For example, one victim spoke about the changes in attitudes of the clerk of the court responsible for the case when the clerk learned that this was a case of sexual assault. When the victim’s lawyer inquired about the case number, which they need in order to gain access to the interrogation of the accused, the clerk sarcastically told them, that his “fingers hurt”, so he could not access the files.

Furthermore, lack of sensitivity within certain procedural formalities frequently re-traumatizes victims. In the investigatory process in the confrontation stage, the

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139 Representatives of the judiciary in Haiti have noted that although other forms of evidence such a victim and witness testimony can also be used in determining guilt or innocence conviction without a medical certificate are rare.

140 IWHR Clinic Interviews, KOVAVIV, supra note 29.

141 Id.

142 IWHR Clinic Interview, Bureau Des Avocats Internationaux (BAI), October 8, 2013 (on file with authors) [hereinafter IWHR Clinic Interview, BAI].

143 Id.

144 Jagannath at 9, supra note 12.
survivor must encounter their attacker for the first time since the attack occurred. In one case, when the accused arrived for the confrontation, the investigating judge asked the 14 year-old victim’s family member to get up from her seat next to the victim to allow for the older accused aggressor to sit down.\textsuperscript{145}

Very little is done on behalf of the State to provide assistance to the victims in the form of critical psychological or emotional counselling at any point in the justice process. Legal advocates point to instances of attempted suicide by victims as result of the social stigmatization and lack of psychological services available to the victim.\textsuperscript{146}

These facts alone reveal a lack of gender equality before the courts, while the delay for particular cases cast doubt on the timely delivery of justice. Moreover, the repeated questioning over an extended period of time and lack of training and sensitivity of the judges of these cases demonstrates instances of unequal treatment, prejudice, and an attitude of apathy from the finder of facts, violating article 14’s commitment to the principle that each person, regardless of their gender, is entitled to a competent impartial and independent tribunal. Lastly, the lack of services for victims does not allow for an equality of arms to ensure that they, as victims, are not treated with discrimination, and does not adequately address the issues of sexual violence that are continuously before the court.

Requests for Additional Information:

- Please supply information on plans of the State Party to work diligently to coordinate sensitivity trainings for Judges, Police Officers and other Legal Staff on sexual violence and the impact of the criminal process on victims, which would help address the discouraging effects of gender discrimination and prejudice in the access to justice.

- Please provide information on the intentions and actions of the State Party to finalize and pass the Draft Law on the Prevention, Punishment and Eradication of Violence Against Women, and include an explicit provision that a victim’s testimony alone should be sufficient to secure a conviction.

- Please provide detailed information on the existence of specific measures to increase the State Party’s ability to establish greater accountability mechanisms within the justice system, as well as the Government’s commitment to the hiring of more judges to address the issue of delays.

- Please describe any actions undertaken by the State Party to create a uniform checklist containing the required criteria for medical certificates that would adequately support court cases.

\textsuperscript{145} Id. at 49.
\textsuperscript{146} IWHR Clinic Interviews, BAI, supra note 136.
• Please comment on the intentions of the State Party to publically commit the Government to better allocation of resources that will allow for quicker, more efficient trials.

• Please state what steps have been, or will be taken to allocate resources towards the establishment of counselling and other direct services that can be available to victims almost immediately after contacting a lawyer.

• Please indicate what measures are being taken by the State Party to increase the resources allocated to the physical and psychological recovery of women and girls who are victims of sexual violence and ensure that they do not suffer secondary victimization in gaining access to justice.