

HAITI

INTERNAL DISPLACEMENT, FORCED EVICTIONS, STATELESSNESS – THE CATALOGUE TO VIOLATIONS CONTINUE

*Amnesty International
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Periodic Review
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**AMNESTY
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EXECUTIVE SUMMARY

This submission was prepared for the Universal Periodic Review (UPR) of Haiti in November 2016. In it, Amnesty International evaluates the implementation of recommendations made in its UPR in 2011, noting that while Haiti has taken some steps to address concerns raised in the previous review, more needs to be done to fully implement the recommendations and to address key human rights concerns in the country.

Amnesty International acknowledges Haiti's efforts to improve the justice system, including by taking measures to address the high rates of pre-trial detention. However, concerns remain regarding the lack of independence of the justice system, including the use of arbitrary detention for political reasons.

Amnesty International is deeply concerned about worsening living conditions for internally displaced people (IDPs) since the 2010 earthquake and the risk of forced eviction they continue to face. The high number of stateless persons and violence against women and girls remain ongoing concerns, as do numerous attacks on and harassment of human rights defenders, journalists, and lesbian, gay, bi-sexual, transgender, and intersex (LGBTI) persons.

In the final section of this document, Amnesty International makes a number of recommendations to Haiti to address the human rights concerns raised in this submission.

FOLLOW-UP TO THE PREVIOUS REVIEW

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

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

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

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

Haiti also accepted a number of recommendations related to strengthening the administration of justice.⁴ While Haiti has appointed a President of the Supreme Court and taken measures to address the high rates of pre-trial detention and increase the provision of legal aid, a comprehensive reform of the justice system has yet to be undertaken and access to justice remains difficult (see also below).

While the number of IDPs living in camps following the 2010 earthquake has drastically decreased, Amnesty International is concerned that Haiti has failed to provide access to durable solutions for them, or taken concrete steps towards facilitating their access to adequate housing.

THE NATIONAL HUMAN RIGHTS FRAMEWORK

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

Key national legislation is based on five Napoleonic Codes, which have remained largely unchanged, with dozens of legal and administrative provisions that are no longer relevant to the current context, discriminatory norms against women and lacking several human rights guarantees, including protection from torture and crimes against humanity. The Presidential Commission for the Reform of the Justice System, tasked with reviewing the Codes, submitted a draft reform of the Penal Code to the President in March 2015 and a draft reform of the Criminal Procedure Code in October 2015. Both of these have yet to be submitted to Parliament.

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

The political crisis, which left the country without a functional Parliament throughout 2015 and without an elected successor when the President's term

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

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

expired on 7 February 2016, has severely affected Haiti's capacity to adopt essential legislation and policies. For example, a comprehensive Bill on the prevention, prosecution and eradication of violence against women, which had been drafted in cooperation with women's rights organizations, has yet to be submitted to Parliament. The draft Nationality Law recognizing the status of stateless persons and containing measures to prevent statelessness and the draft Child Protection Code have also yet to be submitted to Parliament.

PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

INTERNALLY DISPLACED PEOPLE AND THE RIGHT TO ADEQUATE HOUSING

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

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

While Amnesty International acknowledges that the number of people living in the camps has decreased significantly from the initial estimate of about 1,500,000,⁵ it is concerned that the majority of those left in the camps has not benefitted from a durable solution to their displacement, including access to adequate housing.⁶ By December 2014, more durable solutions to displacement, including repairing, rebuilding or building housing, accounted for less than 20% of the measures provided.⁷ The main effort has been focused on the construction of temporary shelters and the provision of rental subsidies of US\$500 per family per year. The UN Special Rapporteur on the human rights of Internally Displaced Persons stated in May 2015 that the rental subsidy policy was "a transitional measure to decongest the camps".⁸ Although the Haitian government and the international community since 2014 have acknowledged the need to transform certain IDP camps into neighbourhoods, little progress appears to have been made in this respect.

⁵ Brookings and International Organization for Migration, *Supporting durable solutions to urban, post-disaster displacement: challenges and opportunities in Haiti*, 2014, pag.1.

⁶ For further information see Amnesty International's report "15 Minutes to leave" – *Denial of the right to adequate housing in post-quake Haiti* (Index: AMR/36/001/2015).

⁷ Amnesty International's report "15 Minutes to leave" – *Denial of the right to adequate housing in post-quake Haiti* (Index: AMR/36/001/2015).

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

Against this backdrop, many people have moved back to unsafe houses or started building or reconstructing their houses, in most cases with no assistance or guidance, and often in informal settlements located in hazardous areas.

Since 2011, Amnesty International has documented several cases of forced evictions from IDPs camps and other settings. There are no comprehensive figures for the number of IDPs who have been forcibly evicted since 2010, but IOM statistics suggest that since 2010 176 camps have been closed following eviction, which would suggest a total of over 60,000 individuals.⁹ Although there were fewer evictions during 2014 and 2015, those in IDP sites on private land are at risk of forced eviction.

In October 2013, in an essential first step, the government announced the adoption of the first National Policy on Housing and Habitat. However, the policy has some important gaps, including on how to identify those most in need and support them in accessing adequate housing.

MIGRANTS' RIGHTS

When the national regularization plan of irregular migrants in the Dominican Republic expired on 17 June 2015, tens of thousands of Haitian migrants and their families returned to Haiti. The majority said they had returned following threats or fear of violent expulsion, while others were deported. The Haitian authorities did not carry out comprehensive registration at the time of their arrival and did not provide adequate assistance to those with no place to go, or to the most vulnerable people.

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

In March 2016, Amnesty International conducted a field mission and ascertained the dismal living conditions in the camps,¹⁰ as had been documented by both Haitian human rights organizations and international humanitarian organizations.¹¹ Located in dusty and arid plots, the camps have limited access to water and sanitation and to healthcare, there are no waste management systems, and the access for children to education severely restricted. Most people interviewed by Amnesty International also complained about the lack of employment opportunities and income-generating activities in the area.

STATELESS PEOPLE

Following a ruling in 2013 by the Dominican Constitutional Court arbitrarily depriving tens of thousands of people of Dominican nationality, most being of Haitian descent, the Haitian authorities stated that they considered those affected to be stateless.

⁹ IOM, Haiti E-Shelter & CCCM Cluster, Displacement Tracking Matrix (DTM) Haiti, September 2014.

¹⁰ Amnesty International's report "*Where are we going to live?*" *Migration and Statelessness in Dominican Republic and Haiti*. (Index AMR 36/4105/2016)

¹¹ OCHA, Humanitarian Bulletin, Haiti, Issue 54, September 2015, available at https://www.humanitarianresponse.info/es/system/files/documents/files/ocha_haiti_humanitarian_bulletin_54_-_september_2015.pdf

However, in June 2015, when high numbers of people started returning to Haiti, including because they were deported from the Dominican Republic, the Haitian authorities failed to identify and register them as stateless or at risk of statelessness. By 17 March 2016, UNHCR had identified 1,237 such individuals, the majority of them children. The Haitian authorities have yet to deal with these cases either by facilitating their return to the Dominican Republic or recognizing, in accordance with their wishes, their official re-settlement in Haiti.

ACCESS TO JUSTICE

The long-awaited establishment of the Supreme Council of the Judiciary (*Conseil Supérieur du Pouvoir Judiciaire* – CSPJ), in 2012, was a major step forward in the reform of the justice system. However, its effective functioning continues to be hampered by a lack of resources and undue interference by the government. The first President of CSPJ resigned in January 2015 when a presidential advisory commission recommended that he do so due to “the loss of legitimacy and credibility of the CSPJ”.¹² Delays in the renewal of the tenure of judges and the investigation of complaints against judges have also had a negative impact on the efficiency of the judiciary.

The overall lack of independence of the justice system remains a concern. National human rights organizations have expressed concern that a decision by the Port-au-Prince criminal court in April 2015 to dismiss the case against two alleged gang members was politically motivated. Between 2013 and 2014, Amnesty International received several reports indicating that people had been arbitrarily detained on false charges, or on account of their political activities.

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

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

¹² Recommendations de la Commission Consultative, 8 December 2014, available at [http://www.miamiherald.com/news/nation-world/world/americas/haiti/article4393117.ece/binary/Read%20the%20presidential%20commission's%20report%20\(PDF\)](http://www.miamiherald.com/news/nation-world/world/americas/haiti/article4393117.ece/binary/Read%20the%20presidential%20commission's%20report%20(PDF))

VIOLENCE AGAINST WOMEN AND GIRLS

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

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

HUMAN RIGHTS DEFENDERS AND JOURNALISTS

Between 2012 and 2014, Amnesty International recorded numerous instances of attacks, threats and harassment against human rights defenders, including lawyers, which often seemed to be related to their human rights work. In most cases, the authorities have failed to carry out prompt and thorough investigations. Moreover, the authorities have not put in place effective protection measures to enable the defenders to carry out their work without fear of reprisals. More recently, national human rights organizations, as well as the International Federation of Human Rights, reported a number of instances of threats and harassment against journalists who had expressed critical opinions of the 2015 elections or the political crisis.¹³

LESBIAN, GAY, BI-SEXUAL, TRANSGENDER, INTERSEX (LGBTI) PERSONS

LGBTI persons suffer high levels of discrimination in Haiti, which often translates into acts of violence, harassment or intimidation. A spike in violence occurred in the summer of 2013, following speculation by some religious groups that LGBTI activists were seeking the adoption of legislation to authorize same-sex marriage in Haiti. Religious groups organized demonstrations against same-sex marriage, during which acts of violence and aggression against persons perceived to be LGBTI were reported by local human rights organizations.¹⁴ No individuals are known to have been prosecuted for these acts.

Haitian human rights organizations consider the response by the police to cases of violence and harassment of LGBTI persons to be generally inadequate. Police officers often appear reluctant to intervene in such cases or themselves demonstrate discriminatory attitudes towards the victims. As a consequence, LGBTI persons are discouraged from reporting incidents to the police. In a positive development, LGBTI groups contributed to the training of new police recruits in 2015.

¹³ FIDH, Lettre ouverte à Gustavo Gallón, l'Expert indépendant sur la situation des droits humains en Haïti, 9 February 2016, <https://www.fidh.org/fr/regions/ameriques/haiti/lettre-ouverte-a-gustavo-gallon-l-expert-independant-sur-la-situation>

¹⁴ Amnesty International, *Haiti: Anti-LGBTI march threatens more violence* (Index: AMR 36/015/2013) and Amnesty International, *Haiti: Further information: Anti-LGBTI march threatens more violence* (Index: AMR 36/016/2013).

RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

Amnesty International calls on the government of Haiti to:

Internally displaced persons and the right to adequate housing

- End all forced evictions, including from displacement camps;
- Ensure that all evictions comply with international law and standards on forced evictions, including the UN Basic Principles and Guidelines on Development-Based Evictions and Displacement;
- Ensure that programmes aimed at transforming IDP camps and informal settlements into formal neighbourhoods do not result in forced evictions and provide security of tenure to all beneficiaries;
- Ensure that all rental subsidy programmes are linked to livelihoods and income generating activities and benefit the entire IDP community, and are accompanied by legal support for housing, land and property matters, as recommended by the UN Special Rapporteur on the Human Rights of Internally Displaced Persons;¹⁵
- Fully implement the National Policy on Housing and Habitat in a manner that ensures access, on the basis of non-discrimination, to adequate housing, particularly for those living in poverty.

Migrants' rights

- Update the 1999 Protocol of understanding with the Dominican Republic on the mechanisms of repatriation to ensure its full compliance with international law and standards;
- Systematically register people returning or being deported from the Dominican Republic and facilitate access to identity document for those who are Haitian nationals;
- Provide returnees with immediate assistance and protection, paying special attention to marginalized groups and persons at risk;
- Ensure access to adequate housing for all returnees, especially those who cannot provide for themselves.

Stateless people

- Identify and register persons who are stateless or at risk of statelessness;
- Facilitate settlement in Haiti and access to identity documents for stateless persons born in and expelled from the Dominican Republic and who wish to remain in Haiti;
- Facilitate, including through dialogue with the Dominican authorities, the return to the Dominican Republic of people born in the Dominican Republic who wish to return;

¹⁵ Human Rights Council, *Report of the Special Rapporteur on the human rights of internally displaced persons*, 8 May 2015, A/HRC/29/34/Add.2, paragraph 74.

- Adopt and effectively implement the draft Nationality Law;
- Ratify and implement the Convention relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness.

Access to justice

- Ensure that the judiciary, including the Supreme Council of the Judiciary (CSPJ), is provided with adequate resources and able to operate free from political interference;
- Implement practical measures throughout the country to accelerate consideration of the cases of those held in pre-trial detention and implement alternative measures to incarceration to ensure that pre-trial detention is used only as an exceptional measure;
- Ensure that the judicial authorities have sufficient resources to continue, free from political interference, the investigation into the crimes against humanity and crimes related to serious human rights abuses allegedly committed during Jean-Claude Duvalier's era;
- Finalize the reform of the Criminal Code, and ensure that rape, torture, crimes against humanity and discrimination are defined in line with international standards.

Human rights defenders and journalists

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

Violence against women and girls

- Ensure that the police and judicial authorities systematically and effectively register all complaints of gender-based violence, including by collecting and disaggregating data across Haiti on the nature of the violence, the alleged identity of the perpetrator, their relationship with the victim, the rate of successful prosecution, and make the results public;
- Ensure that the judicial authorities investigate all report of gender-based violence promptly, impartially and effectively and bring to justice the suspected perpetrators in fair trials;
- Adopt and effectively implement comprehensive legislation on violence against women, including a definition of rape consistent with international standards, and criminalizing rape within marriage;
- Train prosecutors and judges in the handling of cases of rape and sexual violence in a manner which is compliant with international standards, including in relation to the use of forensic evidence, and which avoids gender stereotyping.

LGBTI persons

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

ANNEX

AMNESTY INTERNATIONAL DOCUMENTS FOR FURTHER REFERENCE¹⁶

“Where are we going to live?” Migration and statelessness in Haiti and the Dominican Republic (Index: AMR 36/4105/2016)

Haiti: Open letter to Paul Evans, the new Prime Minister of Haiti: Make human rights priority for your new government (AMR 36/0004/2015)

Post-quake Haiti: left in the rubble, campaign, 12 January 2015

Haiti: five years after devastating earthquake tens of thousands still homeless and desperate, news, 8 January 2015

¹⁶ All of these documents are available on Amnesty International’s website:
<https://www.amnesty.org/en/countries/americas/haiti/>