

Struggling to Survive:

Sexual Exploitation of Displaced Women and Girls in Port au Prince, Haiti



MADRE

The City University of New York
CUNY SCHOOL OF LAW
Law in the Service of Human Needs

 **CHR&GJ**
center for human rights and global justice
nyu school of law

CENTER FOR
Gender & Refugee
STUDIES



Struggling to Survive:

Sexual Exploitation of Displaced Women and Girls in Port au Prince, Haiti

MADRE

The City University of New York

CUNY SCHOOL OF LAW

Law in the Service of Human Needs

CENTER FOR
Gender & Refugee
STUDIES

 **CHR&GJ**
center for human rights and global justice
nyu school of law



KOMISYON FANM VIKTIM POU VIKTIM
THE COMMISSION OF WOMEN VICTIMS FOR VICTIMS

Copyright © 2012

All rights reserved

Printed in the United States

Cover Photo & Design by Bradley Parker

Photographs: MADRE, KOFIV and CUNY School of Law. *The photographs contained in this report do not depict the victims interviewed in conjunction with this report.*

KOFIV

Port au Prince, Haiti

<http://kofiv.org>

MADRE

121 W 27th Street, Suite 301

New York, NY 10001

www.madre.org

International Women's Human Rights Clinic

City University of New York School of Law

65-21 Main Street

Flushing, NY 11367

www.law.cuny.edu/clinics/clinicalofferings/IWHRC.html

Center for Gender and Refugee Studies

University of California, Hastings College of the Law

200 McAllister Street

San Francisco, CA 94102

<http://cgrs.uchastings.edu>

Center for Human Rights and Global Justice

Global Justice Clinic

New York University School of Law

139 MacDougal Street, 5th Floor

New York, NY 10012

www.chrgj.org

TABLE OF CONTENTS

I. SUMMARY	1
II. METHODOLOGY	5
A. Sources and Methods	5
B. Definitions.....	5
C. Interviews	6
1. Focus of Interviews.....	7
2. Conduct of Interviews	7
III. FINDINGS: SEXUAL EXPLOITATION OF WOMEN AND GIRLS IN PORT AU PRINCE	9
A. Prevalence of Sexual Exploitation.....	9
B. Circumstances of Exploitation	11
C. Factors of Vulnerability to Sexual Exploitation	13
D. Effects of Sexual Exploitation.....	14
E. Barriers to Addressing Sexual Exploitation	15
1. Accessing Judicial Remedies	15
2. Accessing Medical Certificates	17
3. Reporting Sexual Violence to Police.....	18
4. Lack of Documentation and Understanding of the Issue	18
F. Services for Women and Girls Engaged in Survival Sex.....	19
IV. LEGAL ANALYSIS	21
A. The Act of Survival Sex	21
1. Sexual Exchange as an Abuse of Power or Authority	21
2. Sexual Exchange in the Absence of an Abuse of Power or Authority	23
B. Instances when Payment is Refused after Survival Sex has Occurred	24
C. Protections Concerning Abuses Commonly Occurring Alongside Survival Sex	25
1. Laws Prohibiting Rape	26
2. Laws Prohibiting Physical and Psychological Harms	28
D. Protections for Minors Engaged in Sexual Exchange	29
V. CONCLUSIONS & RECOMMENDATIONS	30
VI. APPENDIX	33
A. The Draft Law’s Treatment of Prostitution	33
B. Draft Law Provisions Related to Victims of Violence.....	34



I. SUMMARY

In the last two years, numerous reports have examined gender-based violence (GBV) in post-earthquake Haiti.¹ These reports have focused on rape and other sexual violence perpetrated against women and girls living in internally displaced persons (IDP) camps in Port au Prince. In December 2010, recognizing that sexual violence against displaced women and girls is a serious problem in Haiti, the Inter-American Commission on Human Rights (IACHR), issued a groundbreaking decision requesting that the Government of Haiti take urgent measures to address sexual violence.² These measures included increased security patrols in the camps, improved lighting, adequate medical care, legal accountability, as well as participation of grassroots women's groups in developing anti-violence policies and practices. United Nations (UN) Special Rapporteurs and the Independent Expert on Haiti have also drawn attention to the grave issues of violence against women and impunity for such acts in Haiti.³

¹ The authors of this Report have participated in several of the above-referenced studies and have worked in partnership with KOFVIV and other grassroots organizations to raise awareness and advocate for the right of women to live free from sexual violence.

² Women and Girls Victims of Sexual Violence Living in 22 Internally Displaced Persons Camps, Precautionary Measures No. MC-340-10, Inter-Am. C.H.R., (Dec. 22, 2010).

³ See Independent Expert on the situation of human rights in Haiti, *Report of the Independent Expert on the Situation of Human Rights in Haiti, delivered to U.N. Human Rights*

The Haitian Ministry for Women's Affairs and Women's Rights (Women's Ministry) is in the process of finalizing draft legislation addressing violence against women.⁴ Notwithstanding this heightened awareness and attention, violence against women and girls continues unabated.⁵ A social science researcher has recently found a staggering twenty-two percent of displaced persons and two percent of general community

Council, U.N. Doc. A/HRC/17/42 (Apr. 4, 2011); Independent Expert on the Situation of Human Rights in Haiti, *Report of the Independent Expert on the Situation of Human Rights in Haiti, delivered to U.N. Human Rights Council*, U.N. Doc. A/HRC/14/44/Add.1 (May 31, 2011); Walter Kaelin, Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, *Human Rights of the Internally Displaced Persons in Haiti: Memorandum Based on a Working Visit to Port au Prince, 12-16 October 2010* (2010).

⁴ Interview with Denise Amedée, *Coordinatrice de Centre d'Hébergement Pour Femmes Victimes de Violence*, Ministère à la Condition Féminine et aux Droits des Femmes (MCFDF), in Port au Prince, Haiti (Nov. 21, 2011). A brief analysis of the Draft Law on Violence Against Women (VAW Draft Law), currently titled the *Avant-projet de loi sur la prévention, la sanction et l'élimination des violences faites aux femmes* is included as an appendix to this Report.

⁵ CENTER FOR HUMAN RIGHTS AND GLOBAL JUSTICE, *SEXUAL VIOLENCE IN HAITI'S IDP CAMPS, SEXUAL VIOLENCE IN HAITI'S IDP CAMPS: RESULTS OF A HOUSEHOLD SURVEY* (2011), <http://www.chrgj.org/press/docs/Haiti%20Sexual%20Violence%20March%202011.pdf>; Athena R. Kolbe et al., *Mortality, Crime and Access to Basic Needs Before and After the Haiti Earthquake: A Random Survey of Port-au-Prince Households*, 26 *MEDICINE, CONFLICT AND SURVIVAL* 281, 289-90 (2010).

members have been victims of sexual assault.⁶ The Haitian grassroots women's organization KOFATIV,⁷ through its network of community outreach workers and free sexual violence hotline, documented 269 incidents of rape in and around Port au Prince from March to October 2011 alone.⁸ Around 520,000 Haitians still live in IDP camps in conditions without access to adequate food, health services, security or economic opportunity,⁹ placing them at risk for increased violence.¹⁰ As the international presence diminishes, the situation in displacement camps continues to become more precarious.

Post-earthquake conditions have made young women and girls particularly vulnerable to sexual exploitation.¹¹ Through its work combating rape and other sexual violence, KOFATIV has identified sexual exploitation as a priority issue. "Sexual Exploitation" is defined in this Report as

⁶ Jennifer Campbell, *Security in Haiti Improving*, *Studies Show*, OTTAWA CITIZEN, Nov. 16, 2011, <http://www.ottawacitizen.com/news/Security+Haiti+improving+studies+show/5716477/story.html> (citing research by Robert Muggah).

⁷ Commission of Women Victims for Victims (*Komisyon Fanm Viktim Pou Viktim*). Founded in 2005, KOFATIV runs a free sexual violence hotline that connects victims to critical emergency care including medical, psychological and legal support. KOFATIV provides psychosocial accompaniment in-house and refers victims to legal services, <http://www.madre.org/index/meet-madre-1/our-partners-6/haiti-kofativ-36.html>.

⁸ KOFATIV March-October 2011 Database Summary Statistics (on file with authors).

⁹ Anastasia Moloney, *Rape, Homelessness, Cholera Hound Haiti Two Years After Quake*, ALERTNET, Jan. 5, 2011, <http://www.trust.org/alertnet/news/rape-homelessness-cholera-hound-haiti-2-yrs-after-quake-iom>; see also CAMP COORDINATION AND CAMP MANAGEMENT CLUSTER IN HAITI, *Displacement Tracking Matrix September 2011 (2011)*, http://www.eshelter-cccqhaiti.info/pdf/DTM_V2_Report_September_English.pdf.

¹⁰ A forthcoming study documents strong correlations between difficulties accessing basic resources and vulnerability to sexual violence in the IDP camps. CENTER FOR HUMAN RIGHTS AND GLOBAL JUSTICE, *YON JE LOUVRI: REDUCING VULNERABILITY TO SEXUAL VIOLENCE IN HAITI'S IDP CAMPS (2012)*.

¹¹ The authors recognize that men and boys are also victims of sexual violence, however men and boys are not the focus of this study.

the abuse of differential power for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another, thus abrogating the victim's human right to dignity, equality, autonomy, and physical and mental well-being.¹² "Survival sex" is defined here as the exchange of sex in circumstances where those exchanging sex for survival lack other options.¹³

KOFATIV requested the assistance of its partner organizations, MADRE, the International Women's Human Rights Clinic of CUNY School of Law, the NYU Global Justice Clinic, and the UC Hastings Center for Gender & Refugee Studies, to investigate the problem of sexual exploitation, identify its causes and consequences, conduct a legal and critical analysis, and provide concrete recommendations to the Haitian government and other actors to develop more effective responses in line with international obligations.

While there are no reliable statistics on the prevalence of survival sex in IDP camps, or post-earthquake Haiti more generally, sexual exploitation has been identified as an issue in nearly every humanitarian or human rights report on women's rights since the earthquake. The United Nations 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 distribution coupons, access to direct aid distributions, cash for work programs,¹⁴ money, or

¹² ECHA/ECPS UN AND NGO TASK FORCE ON PROTECTION FROM SEA, PREVENTING SEXUAL EXPLOITATION AND ABUSE (SEA) BY AGENCY PERSONNEL DURING THE HAITI EMERGENCY: FIRST STEPS FOR HUMANITARIAN AGENCIES (2010), http://www.who.int/hac/crises/hti/haiti_guidelines_on_sexual_abuse.pdf.

¹³ SUSAN DAVIS AND RAVEN BOWEN, *LABOR ON THE MARGINS: SEX INDUSTRY SAFETY AND STABILIZATION 6 (2007)*, <http://www.nswp.org/sites/nswp.org/files/laborOnTheMargins.pdf>.

¹⁴ Such programs have been developed by international actors and funded through organizations like the United

even a single meal.¹⁵ On top of the hardships suffered by all IDP camp residents, Human Rights Watch (HRW) found that women and girls are additionally harmed by sexual violence, the need to engage in survival sex, and a lack of access to family planning, prenatal and obstetric care.¹⁶ 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. 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.¹⁷ Additionally, preliminary survey results from a 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.¹⁸ Thus, for many women, survival sex appears to be a new coping mechanism that is driven by the breakdown of family and

community structures, the loss of associated protection and safety nets, and poor economic opportunity.

In November and December 2011, teams of researchers from MADRE, the International Women's Human Rights Clinic at CUNY School of Law, NYU Global Justice Clinic and the UC Hastings Center for Gender & Refugee Studies conducted a fact-finding investigation in Haiti in an effort to respond to KOFAVIV's request for a critical analysis of the current response to sexual exploitation in Haiti and to build on existing research into the issue, such as that of the UNHCR and HRW. The investigation focused on elucidating the factors that make women and girls particularly vulnerable to exploitation, examining the effects of this exploitation, and evaluating the programs developed by the Haitian government and the international community to respond to it. During the fact-finding investigation from November 11–21 and December 12–17, team members interviewed numerous young women who exchanged sex for food, education or other necessities for themselves and their families, as well as numerous residents of camps knowledgeable about the practice. The team also interviewed a wide range of governmental and non-governmental representatives as well as service providers and outreach workers from grassroots organizations working in displacement camps. The study suggests that sexual exploitation is widespread. In addition, the study found that little is being done to address the issue, due in large part to a lack of understanding and a history of impunity for violence against women in Haiti. The findings of this Report are consistent with numerous other reports examining sexual exploitation and exchange in post-earthquake Haiti. Sexual exploitation is not unfamiliar in a country that has faced overlapping emergencies for decades.¹⁹ Yet the evidence suggests that sexual exploitation increases dramatically when levels of vulnerability are heightened and access

Nations and USAID. On the Cash-for-work programs, see for instance *Haitians in UN's cash-for-work scheme earn income as they help their country*, UN NEWS CENTER, <http://www.un.org/apps/news/story.asp?Cr1=&Cr=Haiti&NewsID=33589>; MERCYCORPS, GUIDE TO CASH-FOR-WORK PROGRAMMING, <http://www.mercycorps.org/sites/default/files/file1179375619.pdf>.

¹⁵ UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (UNHCR), *DRIVEN BY DESPERATION: TRANSACTIONAL SEX AS A SURVIVAL STRATEGY IN PORT AU PRINCE IDP CAMPS* 16 (2011), <http://www.unhcrwashington.org/atf/cf/%7Bc07eda5e-ac71-4340-8570-194d98bdc139%7d/sgbv-haiti-study-may2011.pdf>.

¹⁶ HUMAN RIGHTS WATCH (HRW), *NOBODY REMEMBERS US; FAILURE TO PROTECT WOMEN'S AND GIRLS' RIGHT TO HEALTH AND SECURITY IN POST-EARTHQUAKE HAITI* 4, 8, 17–23, 32–37, 75, 103, 120 (2011), <http://www.hrw.org/sites/default/files/reports/haiti0811webwcover.pdf>.

¹⁷ HUMANITARIAN ACCOUNTABILITY PARTNERSHIP (HAP) INTERNATIONAL, *CHANGE STARTS WITH US, TALK TO US!* 35 (2010), <http://www.hapinternational.org/pool/files/change-starts-with-us.pdf>.

¹⁸ CHRGJ, *SEXUAL VIOLENCE IN HAITI'S IDP CAMPS*, *supra* note 5, at 6.

¹⁹ See, e.g., World Relief, *Haiti Food for Sex*, <http://worldrelief.org/Page.aspx?pid=1103&srcid=1103> (last visited Dec. 28, 2011).

to food and basic services needed for survival are limited.²⁰

The findings of this report suggest that much remains to be done in the way of effectively preventing, combating and responding to sexual exploitation, and other forms of violence against women in post-earthquake Haiti. As such, the report concludes by offering a series of recommendations designed to holistically address this issue. These recommendations cover four areas of concern: (1) *meeting immediate needs* of those people most vulnerable to sexual exploitation, including ensuring that poor and displaced Haitians are provided with basic necessities of life such as food, comprehensive medical and health care and temporary shelter; and improving security measures and police response to sexual exploitation and other forms of gender-based violence; (2) *meeting long-term needs*, including the provision of free education, income generating opportunities, housing and adequate health care; and the implementation of effective measures to promote and protect the right to be free from sexual violence; (3) *integrating services*, including training medical staff, police, outreach workers and other first responders on how to identify and respond to youth vulnerable to sexual exploitation; coordinating with civil society, and encouraging the full participation and leadership of women and systematizing data collection documenting the prevalence of all forms of violence against women in displacement camps; and (4) *ending impunity and ensuring accountability*, including working to finalize, pass and implement the Draft Law on Violence Against Women; ensuring that reported

cases of rape, and abuses of power by public sector and other humanitarian workers are held responsible, and, conversely, that women and girls engaging in survival sex are not punished.

²⁰ See UNHCR, DRIVEN BY DESPERATION, *supra* note 15; CHRGI, SEXUAL VIOLENCE IN HAITI'S IDP CAMPS, *supra* note 5; INTERUNIVERSITY INSTITUTE FOR RESEARCH AND DEVELOPMENT (INURED), VOICES FROM THE SHANTIES (2010), http://inured.org/docs/Voices%20from%20the%20Shanties_INURED2010.pdf; Dr. Philippe Desmangles, *Le Sexe et La Cooperation Internationale*, LE NOUVELLISTE, Sept. 11, 2011, <http://www.lenouvelliste.com/articleforprint.php?PubID=1&ArticleID=96980>; *Seules dans la Nuit*, HAITI LIBRE, Mar. 15, 2010, <http://www.haitilibre.com/article-69-seules-dans-la-nuit.html>.



II. METHODOLOGY

A. SOURCES AND METHODS

Struggling to Survive draws on the analysis of both primary and secondary sources. Primary sources consisted of interviews conducted with individuals with direct experience or knowledge of survival sex in Haiti, as well as interviews or focus groups with service providers, government officials, and experts concerned with the issue. Researchers also visited camps and neighborhoods where survival sex is reportedly occurring. Secondary sources included Haitian law, international human rights law, and international criminal law, as well as studies and reports published by humanitarian agencies, social science scholars, and human rights organizations relevant to the issue.

Research for this Report focused on qualitative rather than quantitative data. In light of the significant stigmatization that surrounds the phenomenon of survival sex, surveys and other forms of quantitative data-gathering techniques were rejected as unlikely to reveal the contours of the problem. Instead, the research team conducted in-depth interviews using a semi-structured format aimed at capturing the complexities of survival sex in Port au Prince, Haiti. Data from these in-depth interviews were compared with data gathered through interviews with experts and service providers, as well as information from secondary sources. All of these sources were

subjected to analysis under Haitian law, as well as international law and international best practice standards.

B. DEFINITIONS

The following definitions are used to describe and draw distinctions among the various types of conduct identified and reported by individuals interviewed for this Report.

“Sexual exploitation” is defined in this Report as the practice by which person(s) in a position of power or authority achieve sexual gratification or profit monetarily, socially or politically through sexual acts provided in exchange for goods or services, thus abrogating the victim’s human rights to dignity, equality, autonomy, and physical and mental well being. Under humanitarian relief guidelines, where the person obtaining sexual gratification is in a position of power or authority, “consent” is irrelevant since it requires an understanding of and ability to exercise the right to say “no.” So, for example, if beneficiaries of humanitarian aid (such as food, water, blankets, etc.) do not know they have the right to say no or if they will be denied humanitarian assistance if they say no, then sexual exploitation has occurred.²¹

“Survival sex” is defined here as the exchange of

²¹ ECHA/ECPS UN AND NGO TASK FORCE ON PROTECTION FROM SEA, PREVENTING SEXUAL EXPLOITATION AND ABUSE (SEA) BY AGENCY PERSONNEL DURING THE HAITI EMERGENCY, *supra* note 12.

sex in circumstances where those exchanging sex for survival lack other options.²² This lack of opportunity has been attributed to poverty, predatory violence, criminalization of negotiation, abusive relationships and so on. Survival sex includes the exchange of sex for food, clothes, money, shelter, the ability to attend school, make rent, or other survival needs. Consequently, the environment of survival sex has been described as “one that minimizes or eliminates a worker’s right to refuse work and otherwise imposes emotional or psychological pressure forcing the surrender of will. Self determination is subsequently lost.”²³ As in the United States,²⁴ service providers in Haiti regularly view survival sex as sexual exploitation of youth, and moreover, are concerned about the increased physical risks associated with it including HIV, sexually transmitted infections, and unintended pregnancies.²⁵

In an effort to distinguish survival sex from other forms of sexual exchange, this Report does not use the term “transactional sex,” defined here as the exchange of sexual services for compensation through money or goods, “where both parties consent and negotiate the details of the transaction.”²⁶ In some instances—such as in the UNHCR study—the term “transactional sex” has been used to describe survival sex in Haiti (situations where sex is exchanged for food, shelter, protection or other essential goods).²⁷ This Report seeks to underscore the difference between scenarios where the terms of traded sex is truly negotiated and those where the person

trading sex lacks other options. For this reason, the term is not used in this Report.

“Sexual violence” is defined as “any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic, or otherwise directed, against a person’s sexuality using coercion, by any person regardless of their relationship to the victim, in any setting, including but not limited to home and work.”²⁸

This Report will use the term “victim” rather than “survivor” because “victim” is generally used to refer to those who have been recently attacked. Because of this, the term “victim” most often refers to a person within a medical or legal context rather than the term “survivor” which is generally used to emphasize the long-term recovery process of a person who has experienced sexual violence. Thus, identifying individuals as a “victim” is consistent with the legal definitions and classifications that are discussed in this Report.

C. INTERVIEWS

The majority of the interviews conducted for this Report were carried out in person in Port au Prince; several additional interviews were conducted by telephone. In November and December 2011, researchers from MADRE, the International Women’s Human Rights Clinic of CUNY Law School, the NYU Global Justice Clinic, and the UC Hastings Center for Gender & Refugee Studies interviewed individuals who:

- Lived in IDP camps and had some knowledge of survival sex;
- Had experience engaging in survival sex;
- Worked for Haitian grassroots organizations dedicated to the rights of women and/or the rights of the lesbian, gay, bisexual and transgendered (LGBT) community and provided services or

²² SUSAN DAVIS AND RAVEN BOWEN, LABOR ON THE MARGINS, *supra* note 13, at 6.

²³ *Id.*

²⁴ See e.g., NATIONAL CHILD TRAUMATIC STRESS NETWORK, TRAUMA AMONG HOMELESS YOUTH 3 (2007), http://www.nctsn.org/sites/default/files/assets/pdfs/culture_and_trauma_brief_v2n1_HomelessYouth.pdf.

²⁵ Interviews with Representatives of KOFVIV and ANAPFEH, Port au Prince, Haiti (Nov. 16, 2011); Interviews with Representatives of FAVILEK, Port au Prince, Haiti (Nov. 15, 2011).

²⁶ SUSAN DAVIS AND RAVEN BOWEN, LABOR ON THE MARGINS, *supra* note 13, at 6.

²⁷ See UNHCR, DRIVEN BY DESPERATION, *supra* note 15.

²⁸ WORLD HEALTH ORGANIZATION (WHO), WORLD REPORT ON VIOLENCE AND HEALTH 149 (2002), http://www.who.int/violence_injury_prevention/violence/global_campaign/en/chap6.pdf.

outreach to youth or young women engaged in survival sex;

- Worked for international organizations addressing issues of survival sex; or
- Worked for the government of Haiti and had some responsibility for addressing women's rights and/or survival sex.²⁹

1. Focus of Interviews

In conducting the interviews, the research team focused on the practice of survival sex: that is, situations in which a person has exchanged sex to obtain money, water, food, housing, jobs, education, or any other resource that they or their family needed to survive. Research into this phenomenon was focused on youth between the ages of 13 and 22 years of age and on young women under 33, since they are reportedly the populations most at risk for survival sex. Individual interviews with those engaged in survival sex were only conducted with youth and young women from the ages of 18 to 32. Accounts of survival sex from victims under the age of 18 were gathered from interviews with service providers with direct contact.

The research conducted for this Report

²⁹ Representatives from the following organizations and agencies were interviewed for this study: United Nations High Commission for Refugees (UNHCR), United Nations Development Programme (UNDP), International Organizations for Migration (IOM), International Rescue Committee (IRC), Humanitarian Accountability Partnership (HAP) International, Office of the Protection of Citizens (OPC), Ministry of Women's Condition and Women's Rights (MCFDF), Ministry of Justice and Public Safety (MOJ), Haitian National Police (HNP), HNP Office for the Protection of Minors (BPM), Bureau des Avocats Internationaux (BAI), Le Groupe d'Appui aux Rapatriés et Réfugiés (GARR), Association Nationale de Protection des Femmes et Enfants Haïtiens (ANAPFEH), Unité de Recherche et d'Action Médico-Légale (URAMEL), Komisyon Fanm Viktim Pou Viktim (KOFAVIV), FAVILEK (Fanm Viktim Leve Kanpe), Femme en action contre la stigmatisation et la discrimination sexuelle (FACSDIS), SEROVie, Kodinasyon Nasyonal Viktim Direk KONAMAVID, Groupe Concertation des Femmes Victimes/ Women Victims' Dialogue Group (GCFV), Zafè Fanm Pou Yon Lòt Ayiti (ZAFALA), Kay Fanm, and Solidarité Fanm Ayisyen (SOFA).

emphasized situations in which the youth and young women engaged in survival sex for the purpose of economic survival. In addition, interviews also explored: (1) situations in which the person obtaining sex was in a position of authority, such as a member of the police force, a member of a camp committee, or those responsible for distributing resources and who extorted those resources to obtain sex; (2) situations where exchanges took place between persons living in camps, where sexual abuse or violence was a consequence; and (3) the accompanying consequences of such encounters, such as stigmatization, exclusion or retaliation from one's community or family.

2. Conduct of Interviews

All interviewees provided informed consent and were given contact information for the research team. Interviewees were informed of the purpose of the interview, how the team would use the information conveyed, and—in the case of those with direct knowledge of survival sex—the procedures used by the team to ensure anonymity. Interviewees were assured that they could decline to answer any questions and could stop the interview at any time without negative consequences. Interviews with witnesses and victims were conducted by trained female interviewers in Haitian Kreyòl. For teams without fluent Kreyòl members, these interviews were conducted with the assistance of female translators who had experience on issues pertaining to sexual violence. For interviewees with non-governmental organizations (NGOs), UN or government officials, interviews were conducted in the participant's most comfortable language: Haitian Kreyòl, French, or English.

Interviews of individuals identified as potential witnesses or victims conformed to the World Health Organization's (WHO) Ethical and Safety Recommendations for Researching, Documenting and Monitoring Sexual Violence in Emergencies.³⁰ Special attention was paid to

³⁰ The standards can be found here: www.who.int/gender/

ensure both informed consent and identity protection. Anonymity was preserved throughout the entire process; coded numbers were used for interviewees and identities were kept confidential. The authors of this Report have chosen not to provide direct citations to individual interviews with witnesses or victims for information used in this Report.

In addition to basic demographic data, those with direct experience or knowledge of survival sex were asked about living conditions and locations; those living in IDP camps were asked if their camp was managed by a camp management agency, whether there was a camp committee, and if so, whether the committee included women.



III. FINDINGS: SEXUAL EXPLOITATION OF WOMEN AND GIRLS IN PORT AU PRINCE

The findings outlined in this section are based on interviews conducted in November and December 2011 with individuals with direct experience or knowledge of survival sex in Haiti, as well as interviews or focus groups with service providers, government officials, and experts concerned with the issue. Those interviewees who had direct experience of survival sex were young women who either exchanged sex for resources themselves or witnessed others engaging in such an exchange. Two interviewees reported on engaging in exchange before the earthquake; one reported engaging in exchange both before and after the earthquake; the remainder reported engaging in exchange after the earthquake. Additionally, the findings draw from focus groups conducted with members of Haitian grassroots women's organizations involved in outreach or direct service to individuals engaged in survival sex as well as interviews with government and nongovernmental representatives. These organizations and representatives were selected based on their work addressing sexual exploitation and violence against women, girls

and sexual minorities and justice issues in Haiti more generally. Finally, the findings incorporate observations of the camps and neighborhoods where sexual exploitation is known to occur with some frequency.

A. PREVALENCE OF SEXUAL EXPLOITATION

It is commonly accepted that sexual violence and exploitation dramatically increases in post-conflict and disaster settings. According to the UN Population Fund (UNFPA),

Women and girls are vulnerable at all phases of conflict or natural disasters. Risk of infection from sexual violence and exploitation is all too common in conflict and often increases in post-conflict settings. Sexual coercion and levels of 'survival sex', often characterized by intermittent involvement, can skyrocket as women and girls suffer exploitation simply to gain access to basic needs such as food, water, shelter or security for themselves and family.³¹

³¹ *Programme Briefs No. 7: HIV Prevention in Humanitarian Settings*, HIV PREVENTION NOW (UNITED NATIONS POPULATION FUND (UNFPA)) Aug. 2002, at 2,

Reports have found that in the wake of the earthquake, Haiti experienced an alarming increase in gender-based violence and an increase in sexual exploitation, particularly of those living in IDP camps.³² The Pan American Development Foundation (PADF) reported in June 2011 that in post-earthquake Haiti “rape, violence, and child prostitution were rampant in the absence of security patrols, open public access to the camps, increased criminality and gang activity among unemployed youth, loss of family livelihoods and lack of access to information on rights and victims’ services.”³³ In a speech on December 16, 2010, the Haitian Minister for Women’s Affairs and Women’s Rights stated,

<http://www.unfpa.org/hiv/prevention/documents/hivprev7.pdf>.

³² See, e.g., CHRGI, YON JE LOUVRI, *supra* note 10; UNHCR, DRIVEN BY DESPERATION, *supra* note 15; HRW, NOBODY REMEMBERS US, *supra* note 16; CHRGI, SEXUAL VIOLENCE IN HAITI’S IDP CAMPS, *supra* note 5; MADRE, INT’L WOMEN’S HUMAN RIGHTS (IWHR) CLINIC AT CUNY SCH. OF LAW, & INST. FOR JUSTICE & DEMOCRACY IN HAITI, BUREAU DES AVOCATS INTERNATIONAUX, OUR BODIES ARE STILL TREMBLING: HAITIAN WOMEN CONTINUE TO FIGHT AGAINST RAPE (2011), http://www.madre.org/images/uploads/misc/1294686468_Haiti_Report_FINAL_011011_v2.pdf; AMNESTY INT’L, AFTERSHOCKS: WOMEN SPEAK OUT AGAINST SEXUAL VIOLENCE IN HAITI’S CAMPS (2011), <http://www.amnesty.org/en/library/asset/AMR36/001/2011/en/57237fad-f97b-45ce-8fdb-68cb457a304c/amr360012011en.pdf>; HUMANITARIAN ACCOUNTABILITY PARTNERSHIP (HAP), VOICES OF DISASTER SURVIVORS – HAITI (2010), <http://www.hapinternational.org/pool/files/hap-accountability-report-2010.pdf>; MADRE, INST. FOR JUSTICE & DEMOCRACY IN HAITI, ET AL., OUR BODIES ARE STILL TREMBLING: HAITIAN WOMEN’S FIGHT AGAINST RAPE (2010), <http://ijdh.org/wordpress/wp-content/uploads/2010/07/Haiti-GBV-Report-Final-Compressed.pdf>; REFUGEES INTERNATIONAL, HAITI: STILL TRAPPED IN THE EMERGENCY PHASE (2010), http://www.refugeesinternational.org/sites/default/files/100710_haiti_still_trapped.pdf. The authors of this Report have participated in several of the above-referenced studies and have worked in partnership with KOFIV and other grassroots organizations as well as the Haiti-based public interest law firm the *Bureau des Avocats Internationaux* (BAI) to raise awareness and advocate for the right of women to live free from sexual violence.

³³ PAN AMERICAN DEVELOPMENT FOUNDATION (PADF), PROTECTING HUMAN RIGHTS IN HAITI 52 (2011).

GBV is happening in the camps and around the country; young girls are getting raped, getting pregnant and having children at a very young age. There has been violence against pregnant women as well. If there is a better economic situation for women, there will be less GBV.... Once we change the socio-economic situation of women, we will be able to see a reduction in GBV.³⁴

One 2011 study found that sexual assault in displacement camps is at a staggering 22%, and in the general community is around two percent.³⁵

While there is a dearth of reliable statistics on the prevalence of sexual exploitation or survival sex in IDP camps, or post-earthquake Haiti more generally, sexual exploitation has been identified as an issue in many humanitarian or human rights reports on women’s rights since the earthquake. In UNHCR’s study, for example, participants in fifteen focus groups reported that they were personally engaging in survival sex or knew others in their camp who had.³⁶ The young women reported exchanging sexual acts in return for food and benefits, including coupons for aid distributions, access to direct aid distributions, cash for work programs,³⁷ money, or even a single meal.³⁸ They claimed the primary motivation for engaging in survival sex was not only their personal survival, but in cases of mothers, the survival of their children.³⁹ Many of the women noted that they would not engage in survival sex if they could find work in either the formal or informal sector.⁴⁰ The women who participated in the study reported that they had not engaged in

³⁴ *Developing Best Practices for Media Coverage of Gender Based Violence in Haiti* Conference, Port au Prince, Haiti, Dec. 16, 2011.

³⁵ Jennifer Campbell, *supra* note 6 (citing research by Robert Muggah).

³⁶ UNHCR, DRIVEN BY DESPERATION, *supra* note 15, at 16. The surveys were conducted in five IDP camps within the Port au Prince metropolitan area.

³⁷ See *supra* note 14 and accompanying text.

³⁸ UNHCR, DRIVEN BY DESPERATION, *supra* note 15, at 16.

³⁹ *Id.* at 15.

⁴⁰ *Id.* at 18.

such exchanges before the earthquake, and they did not identify themselves as “occasional commercial sex workers.”⁴¹ Instead, survival sex appears to be a new coping mechanism that is driven by the breakdown of family and community structures, the loss of associated protection and safety nets, and poor economic opportunity.

HRW released a subsequent report echoing the findings of the UNHCR.⁴² During fact-finding missions conducted between November 2010 and June 2011, HRW researchers interviewed 128 women and girls living in IDP camps who were either pregnant or had given birth since the January 2010 earthquake. On top of the hardships suffered by all IDP camp residents, HRW found that women and girls are additionally harmed by sexual violence, the need to engage in survival sex, and a lack of access to family planning, prenatal and obstetric care. Women and girls who engage in survival sex are especially at risk of unintended pregnancy, sexually transmitted diseases and other related health problems. Moreover, they are often isolated from their social networks and communities, increasing the risk of violence and despair. A study by the 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.⁴³ Additionally, survey results from a study conducted by CHRGI found 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.⁴⁴

Almost all individuals interviewed for this Report recognized that sexual exploitation is widespread in Port au Prince and has worsened since the earthquake.⁴⁵ One government representative

⁴¹ *Id.* at 16.

⁴² HRW, *NOBODY REMEMBERS US*, *supra* note 16, at 4, 8, 17–23, 32–37, 75, 103, 120.

⁴³ HAP, *CHANGE STARTS WITH US, TALK TO US!*, *supra* note 17, at 35.

⁴⁴ CHRGI, *YON JE LOUVRI*, *supra* note 10.

⁴⁵ Only two interviewees reported that she engaged in the

practice before the earthquake. stated that the perception that sexual exploitation is more prevalent since the earthquake may be due not to an actual increase in the practice, but instead to the fact that the practice occurs more publicly now as homes and neighborhoods have been destroyed.⁴⁶ Despite a lack of quantitative data and reporting statistics, it is apparent that sexual exploitation is a lived reality of many women and girls in displaced and otherwise impoverished communities. However, representatives of government agencies responsible for addressing sexual exploitation hold stereotypes related to gender and poverty that present an obstacle to implementing practical solutions.⁴⁷

B. CIRCUMSTANCES OF EXPLOITATION

Sexual exploitation is most often perpetrated against poor or IDP youth,⁴⁸ including those living in displacement camps and otherwise economically disadvantaged neighborhoods. The victims interviewed were young women between the ages of 18 to 32 living in the displacement camps Champ de Mars, Christ Roi and Croix Deprez camps, and in the neighborhood of Carrefour. Only one has been able to find refuge in a safe house run by a grassroots organization, allowing her to stop engaging in sexual exchange

practice before the earthquake.

⁴⁶ Interview with Jean Saint-Nogène Avillon, *Directeur des Affaires Judiciaires*, Ministry of Justice (MOJ), in Port au Prince, Haiti (Nov. 16, 2011).

⁴⁷ For example, one government representative stated that he believed women often choose to engage in sexual exchange and turn down job opportunities, which is evidenced by the unsuccessful attempts of his friends and colleagues to hire “maids” to clean their houses. Another government representative stated that she believed at least half of the women who engage in sexual exchange do so because they are “lazy,” not because they lack other opportunities for earning a living.

⁴⁸ NATIONAL CHILD TRAUMATIC STRESS NETWORK, *TRAUMA AMONG HOMELESS YOUTH 3* (2007), http://www.nctsn.org/sites/default/files/assets/pdfs/culture_and_trauma_brief_v2n1_HomelessYouth.pdf (finding in the U.S. that, “in order to survive, [homeless] youth often seek relationships and create social networks among those they meet on the street. Unfortunately, many of these youth end up in new abusive or exploitive relationships.”).

for survival.⁴⁹ One other woman managed to stop engaging in survival sex with the help of a grassroots organization though she continues to live in an IDP camp. Many young women are now responsible for taking care of others, including their own children or children who were orphaned in the earthquake.

Women and girls exchange 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 for this Report stressed that they especially hoped to be able to earn enough money to afford education through money obtained by exchanging sex. The earthquake destroyed much of Haiti's public and private educational infrastructure. Of the thousands of children living in IDP camps, few are reported to be able to attend school.⁵⁰ Before 2010, the education system in Haiti faced great challenges. The earthquake further crippled the sector with near 4,000 education establishments damaged or destroyed, effecting

"Kettlyne," an 18-year-old orphan, lives in Croix Deprez camp with her three-year-old daughter. After her husband died in the earthquake, she began exchanging sex for food. Most of the men she has sex with are married. They sometimes refuse to pay her and often beat her after sex. Occasionally, they recommend her to other men and beat her if she refuses these men as well. As a result of one exchange, Kettlyne became pregnant and was forced to get an illegal abortion. Kettlyne told her interviewers that she has no other options for work; she would like to go to school and pay for her daughter's education as well but, "if my baby is crying for food, I am obligated to do anything."

close to 2.5 million students.⁵¹ In October 2011, President Martelly launched a free education initiative targeting over 140,000 children in eight departments not attending school.⁵² UNICEF recently reported helping about 80,000 children return to school and attend classes.⁵³ However, the report also warned that with over four million Haitian children under the age of 18, "many of them still struggle for survival, development and protection amid glaring institutional weaknesses."⁵⁴

Interviewees reported that there are few public schools, but even public schools require money to attend, for example, to pay for uniforms, books and other necessities. Additionally, reported corruption in the few remaining schools has caused an increase in tuition making the cost of education prohibitive, forcing families to choose between allocating precious resources for education and food, water, medical care, and other basic necessities.⁵⁵

⁴⁹ Interview with Denise Amedee, *Coordinatrice de Centre d'Hébergement Pour Femmes Victimes de Violence*, MCFDF, in Port au Prince, Haiti (Nov. 21, 2011).

⁵⁰ Commission on the Status of Women, *Statement submitted by MADRE, a non-governmental organization in consultative status with the Economic and Social Council*, ¶¶ 5–10, U.N. Doc. E/CN.6/2011/NGO/41 (Dec. 3, 2010); Samuel Maxime, *Haiti: Millions Collected for Education 'Nonexistent' says Senator*, DEFEND HAITI, Dec. 13, 2011, <http://www.defend.ht/politics/articles/legislative/2206-haiti-millions-of-dollars-for-education-unaccounted-for-says-senator>; UNITED NATIONS CHILDREN'S FUND (UNICEF), CHILDREN OF HAITI: MILESTONES AND LOOKING FORWARD AT SIX MONTHS 14 (2010), http://www.unicef.org/haiti/french/ENG_UNICEF_Haiti_-_Six_Months_Report_Final_Draft.pdf.

⁵¹ UNICEF, CHILDREN OF HAITI: TWO YEARS AFTER: WHAT IS CHANGING? WHO IS MAKING CHANGE? 9 (2012), <http://www.unicef.org/media/files/2yearsReport.pdf>.

⁵² *Id.*

⁵³ UNICEF, *On Eve of Quake's Anniversary, Haitian Children See Some Progress*, Jan. 9, 2012, http://www.unicef.org/media/media_61251.html.

⁵⁴ *Id.*

⁵⁵ A specialist at the Inter-American Development Bank has estimated that rebuilding Haiti's education system will cost at least \$2 billion dollars over the next five years. Simon Romero, *With Haitian Schools in Ruins, Children in Limbo*, N.Y. TIMES, Mar. 7, 2010, at A6. *See also* UNICEF, THE STATE OF THE WORLD'S CHILDREN 2011: ADOLESCENCE: AN AGE OF OPPORTUNITY 14 (2011), <http://www.unhcr.org/refworld/pdfid/4d6cfa162.pdf> (recognizing that "poor education, health and protection outcomes are a direct result of lack of access to services and basic necessities such as water and food due to poverty,

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.⁵⁶ A protection actor confirmed that young girls often have sex with men who will pay for their schooling.⁵⁷ The women interviewed for this Report explained that they are unable to earn enough money for school, which some interviewees estimated to cost approximately \$200 a year.

19-year-old "Marie" lives in a tent in Croix Deprez camp with her daughter, her mother, and four children her mother took in from the street. Her daughter is the result of a rape that occurred in February 2010, just after the earthquake. Since her father died in the earthquake, Marie provides for the household by exchanging sex for food and money. The men she has sex with often become violent and force themselves on her. Occasionally, the men refuse to wear condoms or refuse to pay her. Marie is afraid of getting pregnant or contracting a disease or infection from these exchanges but has no money for medical attention and no access to free clinics. While she'd love to attend school, as she was doing before the earthquake, she sometimes doesn't even make enough for her family to live on. Despite the shame she feels doing such work, Marie feels that she has no other options.

Oftentimes, the men soliciting sex refuse to pay the money or to give the goods promised and either threaten or use force against the victim if she refuses to have sex. Even if money is provided, it is often a small amount ranging from 50 gourdes, or \$1.20, to 500 gourdes, or \$12.50.

Although many interviewees had heard accounts from friends and neighbors of survival sex solicited by foreigners, including UN employees and workers with INGOs,⁵⁸ the women interviewed for this Report had only engaged in exchanges with Haitian men. The men who solicit sex are often in positions of power, by virtue of their employment (administering a cash-for-work program, for example) or position on the camp committee (in camps where such a committee exists, such committees are often charged with organizing relief distributions). In other cases, men are not in positions of power, although some are advantaged by being older and they generally benefit from a superior economic status. One eighteen-year-old woman reported that the men who solicit sex from her are as old as 50 or 60.

C. FACTORS OF VULNERABILITY TO SEXUAL EXPLOITATION

According to all individuals interviewed—victims, witnesses and government/NGO workers alike—economic disempowerment is the principal factor rendering women and girls vulnerable to sexual exploitation. Most aid distribution has stopped and very few jobs are available. Women and girls report that their only option is to sell their bodies to survive. Even for women who have been able to find work in the informal sector, such as cleaning houses, the income generated is frequently not enough to provide for themselves and their families.

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.⁵⁹ Moreover, this pervasive discrimination has led women and girls to believe that they are obliged to accept exploitation and abuse. In many

political instability, violence and gender-based discrimination").

⁵⁶ Interview with Representatives from *Kay Fanm*, in Port au Prince, Haiti (Nov. 15, 2011). One of these men was believed to be a police officer.

⁵⁷ Telephone Interview with protection actor (Nov. 30, 2011).

⁵⁸ *Id.*

⁵⁹ Interview with Collette Lespinasse, *Coordonnatrice*, and Patrick Camille, *Jurist*, *Le Groupe d'Appui aux Rapatriés et Réfugiés* (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).

Before the earthquake, “Stephanie” lived with her sister who took care of and fed her. Now, Stephanie’s sister must provide for her own daughter and Stephanie’s friends live too far away to offer help. She currently shares a tent with two other girls and provides for herself. The girls she lives with exchange sex for food, so Stephanie began to do the same. She states, “If I asked for food from a woman, nothing would happen. But if I asked a man for food, the man will ask me to have sex with him.” While some of the men are honest and provide the food or resources promised in exchange for sex, other men rape girls who refuse to talk to them. Stephanie says that she’s never received distributions of aid. She asks that aid be distributed equitably, in such a way that everyone receives some resources.

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 them vulnerable to sexual exploitation.⁶⁰ Representatives of the LGBT community interviewed for this Report explain that LGBT individuals are often ostracized and discriminated against by their families and communities, which leaves them with a weak support network. Discrimination in the workplace also translates into few job opportunities and options. Aid programs, when they were in existence,⁶¹ often targeted women for distribution of food and other resources, excluding male-only households.⁶² Consistent with the women interviewed, gay men who have

exchanged sex for food report that the encounters are often extremely violent.⁶³

Youth is also a significant factor that leads to vulnerability as many children were orphaned by the earthquake with no social services available. Even for young girls who have parents, conditions in the camps, including lack of privacy, make it difficult for parents to control and protect the lives of their children.⁶⁴ Further, families that have lost their residence and means of income are often unable to pay for their children’s education, leaving girls vulnerable to exploitation for school expenses.

Finally, impunity for crimes involving exploitation and other violence against women has reinforced the perception that aggressors can act without punishment.⁶⁵ Conditions in the camps, including the lack of accountability structures for camp committees, facilitate abuse.

D. EFFECTS OF SEXUAL EXPLOITATION

Engaging in survival sex puts women and girls in dangerous and vulnerable positions and increases the chances that they will eventually interact with someone willing to force unwanted sex and/or subject them to other forms of physical violence.⁶⁶

⁶⁰ Interview with Reginald Dupont, SEROVie, in Port au Prince, Haiti (Nov. 14, 2011); Interview with Representatives of FACSDIS, in Port au Prince, Haiti (Nov. 17, 2011).

⁶¹ Anastasia Moloney, *Rape, Homelessness, Cholera Hound Haiti Two Years After Quake*, ALERTNET, Jan. 5, 2011, <http://www.trust.org/alertnet/news/rape-homelessness-cholera-hound-haiti-2-yrs-after-quake-iom>; Mark Schuller, Op-Ed., *Smoke and Mirrors: Deflecting Attention Away From Failure in Haiti’s IDP Camps*, HUFFINGTON POST, Dec. 22, 2011, http://www.huffingtonpost.com/mark-schuller/haiti-idp-housing_b_1155996.html.

⁶² While aid distribution targeting women is widely credited as a good practice in preventing gender-based violence in a disaster, the inflexibility of the rule may have unintended consequences for male-only households.

⁶³ Interview with Representatives from FACSDIS, in Port au Prince, Haiti (Nov. 17, 2011); Interview with Reginald Dupont, SEROVie (Nov. 14, 2011).

⁶⁴ Interview with representatives of KOFAVIV, in Port au Prince, Haiti (Dec. 13, 2011).

⁶⁵ Interview with Collete Lespinasse, *Coordonnatrice*, and Patrick Camille, *Jurist, Le Groupe d’Appui aux Rapatriés et Réfugiés* (GARR), in Port au Prince, Haiti (Nov. 12, 2011). Also, during a workshop conducted by MADRE on November 17 and 18 with both male and female KOFAVIV community outreach workers, impunity related to sexual exploitation of young women and girls was identified as factor that leads to continued exploitation of women and girls.

⁶⁶ Kimberly A. Tyler, et al., *The Impact of Child Sexual Abuse on Later Sexual Victimization Among Runaway Youth*, 11 J. OF RES. ON ADOLESCENCE 151, 171–72 (finding that youth trading sex for survival are at a high risk for

Respondents interviewed confirmed that women and girls who have engaged in survival sex in Haiti have faced increased threats of, or experienced directly, violence before, during and after sexual exchanges. Physical violence experienced included vaginal and anal rape as well as beatings by individuals or groups of men. Representatives of ZAFALA⁶⁷ stated that since aid distribution has ceased, men do not have resources to wield power over women, so some men who previously exchanged goods or services for sex, now use weapons and other means to force women to have sex.⁶⁸

Sexual exploitation causes severe physical and psychological effects for women and girls.⁶⁹ Many women and girls reported contracting infections or becoming pregnant as a result of these sexual encounters. Of those who become pregnant, some obtain illegal abortions and others carry the baby to term, both of which expose mothers to attendant health risks and shame from others in the community.⁷⁰ Additionally, given gender, age, and economic imbalances, the ability of women and girls to negotiate condom use is often compromised and can lead to heightened rates of HIV/AIDS infection. Free or affordable and adequate medical services are not widely available. Even if available, women and girls face barriers to receiving medical care, including a lack of awareness about services or money for transport.

Respondents reported that women and girls engaged in survival sex experience a deep sense of shame and lack of self-worth, which may lead them to accept risks they would otherwise avoid.⁷¹ At least one woman interviewed mentioned thoughts of suicide. Many of the women interviewed reported feelings of fear and

insecurity. Only one of the women interviewed has been able to find shelter in a safe house, though she still fears returning to the neighborhood where she engaged in survival sex for fear of being recognized. Other women interviewed expressed feeling unsafe in their current residence, but explained that they have nowhere else to go.

E. BARRIERS TO ADDRESSING SEXUAL EXPLOITATION

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 the Ministries, law enforcement and other government offices, 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.⁷²

Access to justice for rape, sexual assault, or other violence associated with sexual exploitation is extremely limited in Haiti. Moreover, the ability of women and girls to access their economic and social rights is limited. Although some efforts are being made, the response of the government and the international community to prevent sexual exploitation is grossly inadequate. Particular obstacles arise when individuals who have been subjected to rape or other forms of GBV attempt to access judicial remedies, access medical certificates, or report incidents of violence to police.

1. Accessing Judicial Remedies

Women lack access to the justice system as a result of many interconnected factors including:

sexual exploitation).

⁶⁷ *Zafè Fanm Pou Yon Lòt Ayiti*.

⁶⁸ Interview with Representative of ZAFALA, in Port au Prince, Haiti (Nov. 15, 2011).

⁶⁹ See, e.g., Tyler, *supra* note 66.

⁷⁰ HRW, *NOBODY REMEMBERS US*, *supra* note 16, at 32.

⁷¹ Interview with Representative of ZAFALA, in Port au Prince, Haiti (Nov. 15, 2011).

⁷² Interview with Denise Amedee, *Coordinatrice de Centre d'Hébergement Pour Femmes Victimes de Violence*, MCFDF, in Port au Prince, Haiti (Nov. 21, 2011).

discrimination, fear of retaliation or punishment, and the government's inability to effectively respond to complaints or allegations. Interviewees reported that many women do not report abuse to police, in part because they fear abuse or discriminatory treatment at the hands of the police.⁷³ In some instances women do not report abuse because they fear retaliation by the abuser.⁷⁴ The International Organization for Migration (IOM) has attempted to alleviate this fear by instituting a protection program that helps relocate some victims of rape to areas outside of Port au Prince, but the reach of this program is minimal.⁷⁵ In other instances women believed reporting is futile or will result in them personally facing punishment themselves for having engaged in survival sex. Even if these fears were overcome and a woman wanted to go to the police, none of the women knew where to report abuse and none were aware of reporting mechanisms in their camps.

The abusive and discriminatory behaviors reported of some police officers when they receive complainants at the station have re-traumatizing and dissuasive effects on victims reporting sexual violence.⁷⁶ Meena Jagannath of the *Bureau des Avocats Intentionaux* (BAI) has found:

Victims and lawyers have noted that these officers minimize or offend the women who come before them, commenting that the complaint is a ruse to get money out of the system. The problem is more acute for adult women, particularly poor women, whom police have refused to believe because they think she is lying. In some instances, police officers have asked female complainants what they had done or

what they were wearing to have provoked the sexual assault, or whether they had already had previous sexual relations with the man.⁷⁷

In addition, 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. "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 (discussed *infra*).⁷⁸ The government officials interviewed, however, seemed to agree that 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.⁷⁹ That said, some government representatives admitted that a woman engaged in survival sex is unlikely to report being beaten unless the assault is particularly egregious or violent.⁸⁰

In one case that went to trial before the earthquake, a young woman 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, thereby implying consent on the part of the woman to have sex with the accused to receive the benefit.⁸¹ This case is additional evidence of the justice system's lack of attention to the vulnerability of women engaging in survival sex.

⁷³ Telephone Interview with protection actor (Nov. 30, 2011).

⁷⁴ UNHCR, *DRIVEN BY DESPERATION*, *supra* note 15, at 18.

⁷⁵ Telephone Interview with protection actor (Nov. 30, 2011).

⁷⁶ Meena Jagannath, *Access to Justice in Haiti*, 15 CITY U. N.Y. L. REV. 1 (forthcoming 2012).

⁷⁷ *Id.*

⁷⁸ Interview with Jean Saint-Nogène Avillon, *Directeur des Affaires Judiciaires*, Ministry of Justice, in Port au Prince, Haiti (Nov. 16, 2011); Interview with Prosecutor, in Port au Prince, Haiti (Nov. 15, 2011).

⁷⁹ Interview with Jean Saint-Nogène Avillon, *Directeur des Affaires Judiciaires*, Ministry of Justice, in Port au Prince, Haiti (Nov. 16, 2011); Interview with Prosecutor, in Port au Prince, Haiti (Nov. 15, 2011).

⁸⁰ Interview with Prosecutor, in Port au Prince, Haiti (Nov. 15, 2011).

⁸¹ *Id.*; Interview with Representative of GARR, in Port au Prince, Haiti (Nov. 12, 2011).

The first time 20-year-old “Carole” exchanged sex for food was after her parents died in the earthquake, while living in Champ de Mars camp. Carole heard about people fighting over food cards and was initially too scared to get one. She went to a camp committee member to ask for a food card but he would only give her one if she slept with him. Eventually, Carole was so hungry that she consented. She continued to exchange sex with him until other men found out. Once these men had decided she was “only after one thing,” they got together and raped her. Although Carole was able to travel a far distance for medical attention after the rape, she says the police only told her to “take it up with the President” when she reported it. Carole continued to engage in sexual exchange at discos and experienced further violence and rape. Most of her clients were older Haitian men, a few of whom she believes were employed by international NGOs. Carole now lives in a safe house and no longer exchanges sex for resources. She hasn’t gotten her period since the rape, however, and is now certain that she is sick as a result.

victim does not have a medical certificate, even if there are witnesses to the crime, the case cannot proceed as a practical matter.⁸⁴

Inherent in this requirement is the belief that a woman’s testimony is inherently untrustworthy, yet the government officials interviewed did not seem to be aware of this nuance. Moreover, such

2. Accessing Medical Certificates

Not all cases of survival sex involve rape or other criminal behavior. However, for exchanges that do involve crimes of sexual violence as defined under the law (discussed *infra*), medical certificates pose one of the most significant obstacles to justice and accountability. Victims of sexual violence in Port au Prince have been turned away by the prosecutor’s office (*parquet*) or dismissed from court by judges because, (1) their medical certificate was not issued by the public general hospital; (2) their medical certificate did not provide enough detail; or (3) the medical facility did not provide the victim with a medical certificate.

Although a medical certificate is not technically required under Haitian law, in practice, officials in the Haitian justice system consider it a requirement for pursuing complaints of sexual violence.⁸² A prosecutor in Port au Prince plainly stated that a complaint involving rape will not go forward unless the accused confesses to the crime or the victim comes forward with a medical certificate.⁸³ Absent a confessing perpetrator, if a

requirement is problematic because women, particularly poor women, face substantial barriers to obtaining a medical certificate that can adequately support their legal cases.⁸⁵ In many cases, even the best medical exam will not produce any relevant evidence.⁸⁶ For example, the prosecutor interviewed stated that the most important part of the medical certificate is evidence of the breaking of the hymen or other tearing. Although probative evidence is available, in many instances, a rape will not show signs of tearing, and a hymen may not be present for a wide variety of reasons. As discussed *infra*, force is not an element of the offense of rape under Haitian law, and need not be shown to prove lack of consent. Requiring a medical certificate showing proof of tearing actually hinders prosecution of all cases in which rape did not take place with use of physical force.

Although many barriers to justice exist, some positive developments were observed. To begin, some respondents stated that an increase in

⁸² Interview with Meena Jagannath, *Bureau des Avocats Internationaux*, in Port au Prince, Haiti (Nov. 11, 2011).

⁸³ Interview with Prosecutor, in Port au Prince, Haiti (Nov. 15, 2011).

⁸⁴ *Id.*

⁸⁵ Interview with Representatives of KOFVIV, in Port au Prince, Haiti (Dec. 16, 2011); *see also* MADRE, CUNY Law School, et al., OUR BODIES ARE STILL TREMBLING: HAITIAN WOMEN CONTINUE TO FIGHT AGAINST RAPE 20 (2011), http://www.madre.org/images/uploads/misc/1294686468_Haiti_Report_FINAL_011011_v2.pdf.

⁸⁶ Interview with Prosecutor, in Port au Prince, Haiti (Nov. 15, 2011); Meena Jagannath, *Access to Justice in Haiti*, 15 CITY U. N.Y. L. REV. 1 (forthcoming 2012).

attention to women's issues in recent years has decreased shame around the issue of rape in families and has increased reporting. Some groups interviewed reported that they have seen an increase in men reporting rape or sexual violence perpetrated against their sisters and daughters. Moreover, government representatives interviewed were seemingly aware that gender-based violence is an issue and, those who were aware of it, were supportive of the adoption of the draft law on violence against women that is currently being considered. It remains to be seen whether the political will exists to implement the law.

3. Reporting Sexual Violence to Police

The police also struggle to respond effectively due to a lack of officers, vehicles and other necessary resources. The Office of the Protection of Minors (BPM) within the Haitian National Police (HNP) is tasked with both protecting minors who are victims of crime (including sexual exploitation) as well as handling minors who transgress the law in the whole country.⁸⁷ BPM was formed in June 2011 and has only 25 officers operating in Port au Prince and only two officers in each of the Departments outside of Port au Prince. BPM does not have a special program related to sexual exploitation. BPM works in collaboration with Haiti's child welfare authority, the Institute of Welfare and Research (IBERS), which is tasked with providing legal, medical and psychosocial accompaniment for child victims. Notwithstanding this collaboration, there are undoubtedly cases that are not caught by the system.⁸⁸

The HNP recently appointed a National Coordinator for Women's Affairs to handle both internal issues related to women in the police, as well as external issues related to responding to

crimes against women.⁸⁹ While this is a positive step, at the time of the interview, the Coordinator had no office or computer and was working out of a tent with only one assistant. With the support of the Government of Norway, the Coordinator has been able to conduct some training sessions with female HNP officers on GBV and she is in the process of getting an office. In the meantime, progress is minimal. A specialized GBV unit based in the Fort National police station was destroyed in the earthquake and has yet to be fully rebuilt.⁹⁰ Officers from this unit can receive cases but are, at present, operating out of a tent with minimal personnel.⁹¹

4. Lack of Documentation and Understanding of the Issue

The lack of documentation on sexual exploitation and other violence against women prevents the government and the international community from accessing the information it needs to develop effective responses. Although the Women's Ministry has not been able to conduct its own study on the issue of sexual exploitation, groups such as KOFIV have extensive experience and documentation in this area and are eager to collaborate. Moreover, the UNHCR and HRW studies referenced above, among others, provide sufficient evidence of the widespread nature of survival sex in Haiti. Although the collection of specific statistical data is important to developing effective strategies, its absence should not stand as a barrier to taking immediate action to develop solutions.⁹²

⁸⁹ Interview with Marie Louise Gauthier, National Coordinator for Women's Affairs HNP, in Port au Prince, Haiti (Nov. 17, 2011).

⁹⁰ Meena Jagannath, *Access to Justice in Haiti*, 15 CITY U. N.Y. L. REV. 1 (forthcoming 2012).

⁹¹ Interview with Marie Louise Gauthier, National Coordinator for Women's Affairs HNP, in Port au Prince, Haiti (Nov. 17, 2011); Interview with Meena Jagannath, *Bureau des Avocats Internationaux*, in Port au Prince, Haiti (Nov. 11, 2011).

⁹² According to the World Health Organization, "[t]he lack of concrete data should not, however, be taken to mean that sexual violence is a minor problem in emergency settings." WHO, ETHICAL AND SAFETY RECOMMENDATIONS FOR RESEARCHING, DOCUMENTING AND MONITORING SEXUAL

⁸⁷ Interview with Jean Gardy Muscadin, Head of BPM, in Port au Prince, Haiti (Nov. 17, 2011).

⁸⁸ The authors were not able to interview a representative of IBERS.

F. SERVICES FOR WOMEN AND GIRLS ENGAGED IN SURVIVAL SEX

In the wake of the earthquake, some programs were developed to help women and girls engage in petty commerce. Some of these programs, however, reportedly stopped several months ago. For example, ANAPFEH⁹³ was collaborating with Oxfam to administer a microcredit lending program for girls and young women vulnerable to sexual exploitation. The program was successful in keeping some girls from engaging in survival sex but the program ended in 2010 and ANAPFEH has been unable to secure funding to continue the project.⁹⁴ Several girls and young women helped by that program have since begun exchanging sex for resources once more. One protection actor reported that the situation in displacement camps has become more precarious as the international presence diminishes.⁹⁵

After the earthquake, KOFAVIV initiated an outreach and service program for minors engaged in survival sex in Port au Prince. KOFAVIV has a committee of community outreach workers (referred to as “agents”) who work on this issue and receive a small monthly stipend. Some of the agents are young women who were formerly engaged in survival sex before finding KOFAVIV.⁹⁶ Agents work to identify youth and young women engaged in survival sex in and around displacement camps where KOFAVIV has a presence and provide outreach and support services.

KOFAVIV provides traditional on-street outreach in the form of harm reduction which includes

distributing safer sex materials, nutrition and hygiene items. A major component of this program is one-on-one peer and crisis support in the moment. By providing consistent, non-judgmental services, over time, KOFAVIV fosters a sense of community, increasing the overall health and safety of youth engaged in sexual exchange and sexual exploitation. By practicing consistency in its outreach services, KOFAVIV has built relationships that foster trust and respect of exploited youth.

Additionally, KOFAVIV’s youth program takes a three pronged approach which includes (1) skills development and self-esteem building workshops, such as jewelry making, painting, and other activities; (2) performance art, including singing and dancing lessons with cultural performances, (3) social rehabilitation, offering psychological counseling including treatment for post traumatic stress disorder when needed, and; (4) school reentry, helping youth financially and psychologically return to school. These activities are currently suspended due to lack of funding, though KOFAVIV hopes to reinstate the program.

KOFAVIV’s program in Port au Prince is highly regarded by first responders who encounter sexually exploited youth. For example, in February 2011, a HNP police inspector operating in Lasaline called KOFAVIV outreach workers and asked them to provide assistance to minors that were operating out of a known brothel. The officer reported that some of the youth had joined out of “desperation.” Other grassroots groups such as FAVILEK also conduct outreach to youth engaged in survival sex and refer them to KOFAVIV.⁹⁷

The programs developed by KOFAVIV and other organizations to prevent sexual exploitation and survival sex and respond to it when it occurs are incredibly important. However, these programs are insufficient without a robust response by the government and other actors to enforce the rights

VIOLENCE IN EMERGENCIES 6 (2007).

⁹³ ANAPFEH stands for National Association for the Protection of Haitian Women and Children (*Association Nationale de Protection des Femmes et Enfants Haïtiens*) and is a Haitian organization dedicated to advancing the rights of sex workers.

⁹⁴ Interview with Representatives from ANAPFEH, in Port au Prince, Haiti (Nov. 16, 2011).

⁹⁵ Telephone Interview with protection actor (Nov. 30, 2011).

⁹⁶ Interview with Representatives of KOFAVIV, in Port au Prince, Haiti (Nov. 16, 2011).

⁹⁷ Interview with Representatives of FAVILEK, in Port au Prince, Haiti (Dec. 15, 2011).

of women and girls. To facilitate the development of more effective strategies to combat this phenomenon, this Report now provides an analysis of the precise rights that women and girls engaged in sexual exchange enjoy.

SOMMAIRE DE LA CONSTITUTION DE LA REPUBLIQUE D'HAÏTI 1987

Section D - De l'Exercice du Pouvoir
Art. 104 à 130.3

PREAMBULE

TITRE I - DE LA REPUBLIQUE D'HAÏTI - SON EMBLEME - SES SYMBOLES

Chapitre I - De la République d'Haïti - Article 1 à 7.1
Chapitre II - Du Territoire de la République d'Haïti - Art. 8 à 9.1

TITRE II - DE LA NATIONALITE HAITIENNE - Article 10 à 15

TITRE III - DU CITOYEN - DES DROITS ET DEVOIRS FONDAMENTAUX

Chapitre I - De la Qualité du Citoyen - Art. 16 à 18
Chapitre II - Des Droits Fondamentaux

Section A - Droit à la Vie et à la Santé Art. 19 à 23
Section B - De la Liberté Individuelle Art. 24 à 27.1
Section C - De la Liberté d'Expression Art. 28 à 29.1
Section D - De la Liberté de Conscience Art. 30 à 30.2
Section E - De la Liberté de Réunion et d'Association Art. 31 à 31.3
Section F - De l'Education et de l'Enseignement Art. 32 à 34.1
Section G - De la Liberté du Travail Art. 35 à 35.6
Section H - De la Propriété Art. 36 à 39
Section I - Droit à l'Information Art. 40
Section J - Droit à la Sécurité Art. 41 à 51

SOMMAIRE DE LA CONSTITUTION DE LA REPUBLIQUE D'HAÏTI - 1987

Section D - De l'Exercice du Pouvoir Législatif
Art. 104 à 130.3

Section E - Des Incompatibilités Art. 131 à 132

Chapitre III- Du Pouvoir Exécutif Art. 133

Section A - Du Président de la République
Art. 134 à 135.1

Section B - Des Attributions du Président de la République Art. 136 à 154

Section C - Du Gouvernement Art. 155 à 157

Section D - Des Attributions du Premier Ministre
Art. 158 à 165

Section E - Des Ministres et des Secrétaires d'Etat
Art. 166 à 172

Chapitre IV- Du Pouvoir Judiciaire Art. 173 à 184.1
Chapitre V- De la Haute Cour de Justice Art. 183 à 190

TITRE VI - DES INSTITUTIONS INDEPENDANTES

Chapitre I- Du Conseil National Permanent Art. 191 à 199
Chapitre II- De la Cour Supérieure des Comptes et du Contentieux Administratif Art. 200 à 205
Chapitre III- De la Commission de Conciliation
Art. 206 à 206.1
Chapitre IV- De la Protection du Citoyen Art. 207 à 216

CONSTITUTION DE LA REPUBLIQUE D'HAÏTI 1987

PREAMBULE

Le Peuple Haïtien proclame la présente Constitution:

Pour garantir ses droits inaliénables et imprescriptibles à la vie, à la liberté et à la poursuite du bonheur; conformément à son Acte d'Indépendance de 1804 et à la Déclaration Universelle des Droits de l'Homme de 1948.

Pour constituer une nation haïtienne socialement juste, économiquement libre, et politiquement indépendante.

Pour établir un Etat stable et fort, capable de protéger les valeurs, les traditions, la souveraineté, l'indépendance et la vision nationale.

Pour implanter la démocratie qui implique le pluralisme idéologique et l'alternance politique et affirmer les droits inviolables du Peuple Haïtien.

Pour fortifier l'unité nationale, en éliminant toutes discriminations entre les populations des villes et des campagnes, par l'acceptation de la communauté de langues

IV. LEGAL ANALYSIS

Haitian women and girls who have exchanged sex for money or goods have reported experiencing a wide range of human rights violations in connection with those exchanges. This section examines international norms and Haitian legal sources that provide protections relevant to these situations.⁹⁸ This section will first consider legal protections relevant to the exchange itself. For the purpose of the analysis, a distinction is drawn between situations in which sexual exchange constitutes an abuse of power or authority (i.e. cases of sexual exploitation) and situations where there is no significant power difference between the parties to the exchange (i.e. cases of sexual exchange or survival sex). Next, the section examines legal sources that apply to protect individuals from human rights violations that are frequently associated with sexual exchange. While this section draws on Haitian criminal law, this Report does not prioritize a prosecutorial approach, using those most affected by the practice—victims themselves—rejected this approach except in egregious cases of sexual exploitation. Instead, the existence of relevant criminal code provisions—like international norms—underscores the fact that protections do exist for those who exchange sex for resources or

⁹⁸A draft law on violence against women, *Avant-projet de loi sur la prévention, la sanction et l'élimination des violences faites aux femmes* (VAW Draft Law), is currently under consideration in Haiti. The law would substantially amend national legislation on rape, gender-based violence, and sexual exchange. A detailed analysis of the relevant provisions is provided in the Appendix.

money. Such norms demonstrate that persons engaging in survival sex deserve protection, resources, and redress instead of the indifference and stigma they now commonly confront.

A. THE ACT OF SURVIVAL SEX

Survival sex takes place in a variety of contexts, including both situations where the individual obtaining sex is abusing a position of power and authority, and situations in which the individuals engaging in the exchange are not in significantly different positions of power. International law and Haitian law approach these situations in different ways.

1. Sexual Exchange as an Abuse of Power or Authority

Individuals interviewed for this Report described numerous cases in which men abused their power or authority to obtain sex. Members of camp committees, individuals charged with distributing goods or services, or those responsible for assessing eligibility for humanitarian benefits have reportedly demanded sex in exchange for basic survival resources, as well as money or shelter. In post-earthquake Haiti, where women are struggling to survive, seeking to provide for their families, and where economic activity is scarce, using humanitarian programs to obtain sex is a clear abuse of power. As such, these exchanges constitute cases of sexual exploitation and are prohibited by both international and Haitian law.

Humanitarian Standards on Prevention of Sexual Abuse and Exploitation

In recent years, international organizations have accepted that it is their responsibility to prevent sexual exploitation and abuse in the context of their humanitarian assistance efforts and have developed standards to guide this effort. Although this Report does not focus on exploitation by humanitarian workers, the standards developed by humanitarians could—if used to guide their relationships with camp governance structures—help to prevent widespread instances of sexual exploitation and abuse in IDP camps, particularly with regard to camp committees.

Standards to prevent sexual exploitation and abuse (PSEA Standards) are binding on U.N. agencies and their partners¹ and have been accepted by many INGOs.² The standards prohibit any sexual activity with individuals under the age of 18; prohibit the exchange of money, employment, goods, or services for sex; and “strongly discourage[]” sexual relationships between UN personnel and beneficiaries due to the unequal power dynamics involved.³

According to a report by the Humanitarian Accountability Partnership (HAP), camp committees constitute one of the most significant threats to IDPs for sexual exploitation in Haiti.⁴ An evaluation of camp committees also conducted by HAP in Haiti found that camp committees charged with the distribution of humanitarian aid and goods often manipulated their positions of power and authority to “demand[] money and services for distribution of services intended to be free.”⁵

To address these and other concerns relating to camp committees, HAP has recommended that international actors working with committees ensure that committees have codes of conduct in place specifying that the sexual exploitation of displaced persons is prohibited.⁶ Given the operational relationships among UN agencies, INGOs, and camp committees, UN PSEA standards should be used to guide the creation of such codes of conduct. Once in place, codes of conduct should be respected and enforced. INGOs and UN agencies should ensure that the resources they intend to provide to IDPs are not used by camp committees as a tool of sexual exploitation.

¹ Report of the Secretary General, “Special Measures for Protection from Sexual Exploitation and Sexual Abuse,” ST/SGB/2003/13, 9 October 2003, available at <http://www.un.org/Docs/journal/asp/ws.asp?m=ST/SGB/2003/13> (hereinafter “Report of the Secretary-General”); Statement of Commitment on Eliminating Sexual Exploitation and Abuse by UN and Non-UN Personnel, available at http://www.un.org/en/pseataaskforce/tools_manage.shtml#ReportsnonUN (hereinafter “Statement of Commitment”).

² Statement of Commitment.

³ Report of the Secretary General. Any prohibited acts of sexual abuse or exploitation committed by UN personnel, whether or not in the scope of employment, may be grounds for summary dismissal. *Id.*

⁴ HAP, *Change Starts with Us, Talk to Us! Beneficiary Perceptions Regarding the Effectiveness of Measures to Prevent Sexual Exploitation and Abuse by Humanitarian Aid Workers*, December 2010, 66. available at www.hapinternational.org/pool/files/change-starts-with-us.pdf (hereinafter *Change Starts with Us*).

⁵ HAP, *Camp Committees in Haiti: Un-Accountability Mechanisms?*, available at <http://www.hapinternational.org/news/story.aspx?id=175>. This fact is particularly concerning when one considers that “[s]ignificant decision-making power is often allocated to these committees, related, for example, to the type and distribution of aid, selection of beneficiaries, and assistance for more vulnerable groups.” HAP, *Camp Committee Assessment Tool*. available at <http://www.hapinternational.org/pool/files/camp-committee-assessment-tool-en-sep2010.pdf> (hereinafter “Camp Committee Assessment Tool”).

⁶ Camp Committee Assessment Tool.

As will be discussed below, international law recognizes that while individuals tend to engage in sexual exchange as a result of poverty or extreme socio-economic distress, they are not to be penalized for this coping strategy, and in general such exchanges are not themselves prohibited.⁹⁹ However, where an individual is withholding necessary resources they have been

tasked with distributing, or when the individual abuses a position of power to obtain sex, the person engaging in survival sex is regarded as the victim of sexual exploitation—a human rights abuse.

International law principles require that individuals who abuse positions of power or authority to obtain sex be held responsible because such circumstances evidence a lack of

⁹⁹ See *infra* Part IV(A)(2).

valid consent on the part of the victim. Such sexual exploitation is prohibited by a number of international treaties, including the UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.¹⁰⁰ Moreover, Haiti has ratified international instruments that suggest that acts in which a person obtains sex by abusing a position of power or by taking advantage of an individual's position of vulnerability also constitutes a human rights violation.¹⁰¹

Haitian criminal law also prohibits sexual exchange achieved through an abuse of power and authority. For instance, Haitian criminal law includes provisions prohibiting the sexual exploitation of minors. Moreover, as will be discussed in Part IV(C)(1), while current Haitian legislation does not criminalize all forms of sexual exchange, these acts may constitute rape or sexual violence when there is an abuse of power or authority.

2. Sexual Exchange in the Absence of an Abuse of Power or Authority

While data suggests that women who engage in survival sex tend to do so out of economic necessity or in inherently exploitive conditions, the right to work and principles of self-determination protect the choices women make about sex and survival, even if those choices arise in severely constrained circumstances.¹⁰² This is

¹⁰⁰ G.A. Res. 317 (IV) (Dec. 2, 1949), and ratified by the Republic of Haiti on 26 August 1953. Principles derived from this Protocol and other international instruments dealing with trafficking importantly establish international rules regarding sexual exploitation that could easily be applied to situations involving survival sex.

¹⁰¹ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, art. 3(a)–(b). The notion of abuse of vulnerability is defined in the interpretative notes as including any situation “in which the person involved has no real and acceptable alternative but to submit to the abuse involved.” U.N. Doc. A/55/383/Add.1, ¶ 63 (Nov. 3, 2000).

¹⁰² Berta E. Hernández-Truyol & Jane E. Larson, *Sexual Labor and Human Rights*, 37 COLUM. HUM. RTS. L. REV. 391, 402, 405 (2006); *see also*, e.g., Committee on the

particularly true when women have “few other economic opportunities and their need is great.”¹⁰³

The international community understands that individuals who engage in survival sex need protection from abuse in those exchanges. This understanding has repeatedly been acknowledged in international instruments that seek to outlaw and prevent “forced prostitution” or the “exploitation of prostitution.”¹⁰⁴ In addition, since the mid-1990s the international community has more explicitly recognized that the rights of those who engage in sexual exchange are protected by the rights related to workers.¹⁰⁵ Most relevant to Haiti are the views of the Committee on the Elimination of Discrimination Against Women (the CEDAW Committee), which interprets the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),¹⁰⁶ which Haiti has ratified. The CEDAW Committee recognizes that sexual exchange can be either voluntary or involuntary.¹⁰⁷ Based on these

Elimination of Discrimination Against Women, Gen. Rec. No. 19: Violence Against Women, ¶ 15 (1992).

¹⁰³ Hernández-Truyol & Larson, *supra* note 102, at 402.

¹⁰⁴ *See, e.g.*, Declaration on the Elimination of Discrimination Against Women, art. 8, G.A. Res. 2263, U.N. GAOR, 22d Sess., Supp. No. 16, at 35, U.N. Doc. A/6880 (1967) [hereinafter DEDAW]; Convention on the Elimination of All Forms of Discrimination Against Women, GA Res. 34/180, art. 6, U.N. Doc. A/RES/34/180 (Dec. 18, 1979).

¹⁰⁵ *See, e.g.*, UN Special Rapporteur on Violence Against Women, *Further Promotion and Encouragement of Human Rights and Fundamental Freedoms, Including the Question of the Programme and Methods of Work of the Commission*, ¶ 205, delivered to the Economic and Social Council, U.N. Doc. E/CN.4/1995/42 (Nov. 22, 1994); Aldona Malgorzata Jany and Others v. Staatssecretaris van Justitie, 2001 E.C.R. I-08615, ¶ 7; Council of Europe Parliamentary Assembly, Resolution 1579, ¶ 4 (2007).

¹⁰⁶ Convention on the Elimination of All Forms of Discrimination Against Women, GA Res. 34/180, U.N. Doc. A/RES/34/180 (Dec. 18, 1979) [hereinafter CEDAW].

¹⁰⁷ For example, the Committee continually describes its concerns with regard to trafficking, child prostitution, and “forced prostitution.” *See, e.g.*, Concluding Recommendation for Côte d’Ivoire (2011) UN Doc. CEDAW/C/CIV/CO/1-3; Concluding Recommendations for Montenegro (2011) UN Doc. CEDAW/C/MNE/CO/1. It does not condemn or censure States that legally recognize other forms of sexual exchange. *See, e.g.*, Concluding

positions, Haitians who elect to engage in sexual exchange with individuals who are not in a position of authority or using coercive mechanisms in order to obtain sex must be provided the human rights guarantees attached to the right to work.

In addition to CEDAW, the right to work has been recognized in numerous international instruments¹⁰⁸ as an “inalienable right of all human beings.”¹⁰⁹ Some of these instruments, including CEDAW¹¹⁰ and the Charter of the Organization of American States,¹¹¹ explicitly discuss the right to work and have been ratified by Haiti.¹¹² The obligations set forth and the rights recognized in these and other treaties that Haiti has ratified have become part of national law through the Haitian Constitution.¹¹³

Haitian criminal law, like international law, does not consider prostitution, in and of itself, a crime. Although arrests of persons engaging in sexual exchange are widely reported in Haiti, national

law does not justify such arrests. While reports suggest that such arrests are generally followed by the release of the persons concerned, they represent a clear abuse of police power.¹¹⁴ Moreover, interviewees knowledgeable about these cases reported instances in which women who were arrested by the police for prostitution were asked to perform sexual services in order to obtain release. In such cases, because women were threatened with unlawful imprisonment unless they provided sexual services, sex was obtained through threats; this type of conduct falls within the scope of the crime of rape as currently defined.¹¹⁵

In some cases, women who were soliciting clients in public have been arrested, tried, and convicted for the crime of public indecency. Article 283 of the Haitian Criminal Code prohibits public indecency, defined as publicly committing any act, fondling, or other acts that might offend the morality of others. However, the research conducted for this Report suggested that there was significant confusion about where the line should be drawn between lawful and unlawful conduct in connection with sexual exchange. Under Haitian law, however, it is clear that persons should not be arrested for prostitution, since soliciting is only prohibited when it is conducted in a manner that offends public morality.

B. INSTANCES WHEN PAYMENT IS REFUSED AFTER SURVIVAL SEX HAS OCCURRED

Numerous interviewees described instances in which women engaging in survival sex were denied payment—whether money or food—which they had been promised prior to the transaction.¹¹⁶

Recommendation for Tunisia (2010) UN Doc. CEDAW/C/TUN/CO/6. Additionally, the Committee continually calls on State Parties to CEDAW to put in place “exit” or “rehabilitation and economic empowerment programs” for those individuals “who wish to leave prostitution” or end their practice of sexual exchange. *Id.* Implicit in these statements is an acknowledgment that individuals may choose to engage in sexual exchange.

¹⁰⁸ See, e.g., American Declaration on the Rights and Duties of Man, art. xiv, May 2, 1948, O.A.S. Res. XXX (1948); Charter of the Organization of American States arts. 34(g), 45(b)–(c), Feb. 27, 1967, 33 I.L.M. 1004 [hereinafter OAS Charter].

¹⁰⁹ CEDAW art. 11(1)(a), Dec. 18, 1979, 1249 U.N.T.S. 13.

¹¹⁰ See, e.g., *id.* art. 11.

¹¹¹ See, e.g., OAS Charter, *supra* note 108, arts. 34(g), 45(b)–(c). Articles 34 and 45 of the OAS Charter have provisions related to the right to work. See *id.* arts. 34(g) and 45(b).

¹¹² United Nations Treaty Collection, Status of the Convention on the Elimination of All Forms of Discrimination Against Women (Haiti ratified CEDAW on July 20, 1981 without reservation); Organization of American States, Charter of the Organization of American States (A-41): Signatories and Ratifications (Haiti ratified the Charter on Aug. 21, 1950 without reservation, understanding, or declaration.).

¹¹³ HAITIAN CONST. art. 276.

¹¹⁴ Police officers who perform such unlawful arrests might be punishable under the criminal code for the crimes of either abuse of power (if violence was used in order to arrest the person) or illegal arrest. See Haitian criminal code, Article 147 and Article 289.

¹¹⁵ See for instance the case law of the French Court of Cassation, criminal section, Judgment 29 April 1960, Bull. crim. no 225; S. 1960. 253 (Judgment 20 July 2011, case n. 11-83202, unpublished). For the current Haitian law on rape, see below, Part IV(C)(1).

¹¹⁶ See *supra* Part III(B).

International law and Haitian law offer different perspectives on how this issue may be addressed.

Under international law, the failure to recognize certain rights of women exchanging sex—even if they are the victims of sexual exploitation—could enhance their victimization. Some international instruments may also categorize this type of situation, when accompanied by an abuse of power or authority, as one of forced or compulsory labor.¹¹⁷

For example, the right to work prohibits refusal to compensate or remunerate work performed. Haiti has ratified international instruments that recognize the right to work.¹¹⁸ Interpreting this right, the Committee on Economic, Social and Cultural Rights has linked the right to work with the corresponding view that a failure to provide a wage for work performed constitutes a human rights violation.¹¹⁹ In addition, the Inter-American Court of Human Rights has determined that labor rights attach as soon as one enters a private or public employment relationship, whether that relationship is lawful or not¹²⁰ and that the failure to provide remuneration for work performed may thus constitute a human rights violation.¹²¹

Haitian law provides no clear guidance for the treatment of such cases. Haiti does not criminalize prostitution, but neither does it recognize sexual exchange as a normal economic activity under the civil code. Contracts concluded to exchange sex for money are considered void because they are considered to be based on immoral, and therefore unlawful, consideration.¹²² Thus, persons

engaging in sexual exchange do not have means of legal redress if their counterpart refuses to provide the promised resources.

However, courts in a number of civil law countries—where similar provisions to those under Haitian law exist—have begun issuing judgments that categorize a refusal to pay as rape. For instance, the French Court of Cassation confirmed a judgment convicting a man for raping a prostitute, in a case where the man refused to pay her.¹²³ The Italian Court of Cassation has also confirmed the conviction of a man who was accused of rape because he refused to pay a prostitute after sex.¹²⁴ Under Haitian law, the main element of rape is lack of consent; thus, the criminal code may be interpreted as offering protection against such forms of sexual exploitation.

C. PROTECTIONS CONCERNING ABUSES COMMONLY OCCURRING ALONGSIDE SURVIVAL SEX

Individuals—especially women and girls—who engage in survival sex are at heightened risk of rape and other forms of gender-based violence, such as physical and psychological violence. International norms and instruments require States to undertake efforts to prevent women from experiencing GBV and to punish these acts when they do occur.¹²⁵ In particular, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women,¹²⁶

¹¹⁷ See, e.g., International Labour Organization (ILO), C29: Forced Labour Convention, art. 2(1) (1930). Ratified by Haiti on Mar. 4, 1958.

¹¹⁸ See footnote 3 and accompanying text.

¹¹⁹ Committee on Economic, Social and Cultural Rights, Gen. Comment No. 18: The Right to Work (Art. 6), ¶ 7 (2005); See also Jany, *supra* note 105, ¶ 77.

¹²⁰ See, e.g., Inter-American Court of Human Rights, Advisory Opinion OC-18/03: Juridical Condition and Rights of Undocumented Migrants, ¶¶ 134, 140, 141(2003).

¹²¹ *Id.* ¶¶ 157, 158.

¹²² See Code Civil, Article 922 and Article 924; see also M. Pierre-Louis and P. Pierre-Louis, *Code civil Haïtien, Annoté*

et mis à jour, 1994, p. 17, ¶ 6, citing a French case that explicitly stated that contracts for prostitution are contrary to public morality and cannot be enforced (Limoges, 30 April 1888, D.P. 89.2.38).

¹²³ See Cour de Cassation, Chambre criminelle, 13 June 2007, case n. 07-82499 (unpublished).

¹²⁴ See Italian Court of Cassation, III Criminal Section, Judgment 17 Dec. 2009, n. 8286/2010.

¹²⁵ DEDAW, *supra* note 104, art 4; CEDAW Gen. Rec. No. 19, *supra* note 102, ¶ 24.

¹²⁶ Organization of American States, Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, “Convention of Belém do Pará” arts. 7, 8, June 9, 1994, 33 I.L.M. 1534 (1994) [hereinafter Convention of Belém do Pará]. Haiti ratified this Convention without declaration, reservation, or

which is binding on Haiti, defines violence against women to include acts that occur in the private or public sphere, are based on gender, and cause “death or physical, sexual or psychological harm.”¹²⁷ Acts that constitute violence against women include rape and sexual abuse.¹²⁸ Numerous additional treaties prohibit sexual and gender-based violence, as well as the physical or psychological harm that may be inflicted on those engaging in survival sex.¹²⁹ Haitian law addresses many of these issues through its criminalization of rape, sexual aggression, battery, and assault.

1. Laws Prohibiting Rape

Rape and sexual violence are widely reported among women who engage in sexual exchange. In particular, persons engaged in survival sex have described being raped by persons with whom they had previously engaged in exchanges. Moreover, cases were described in which perpetrators have exceeded the scope of consent, forcing victims to perform different sexual acts than those agreed upon or to perform sex under different conditions than those specified. All these instances fall within the definition of rape according to international and Haitian law.

International human rights law considers sexual violence a violation of the right to be free from torture and cruel, inhuman, or degrading treatment and the right to respect for private life. Moreover, the seriousness of sexual violence as a violation of human rights has led to its inclusion among the constituent elements of the international crimes of genocide, crimes against humanity, and war crimes, as defined in the statutes of international criminal tribunals and the jurisprudence of

information. The text of this Convention largely tracks the Declaration of the Elimination of Violence Against Women and CEDAW Gen. Rec. No. 19 issued by the Committee on the Elimination of Violence Against Women. *See generally* DEDAW, *supra* note 104; CEDAW Gen. Rec. No. 19, *supra* note 102.

¹²⁷ Convention of Belém do Pará, *supra* note 126, art. 1.

¹²⁸ *Id.* art. 2(b); *see also* DEDAW, *supra* note 104, art. 2(a).

¹²⁹ *See, e.g.*, CEDAW Gen. Rec. No. 19, *supra* note 102, ¶ 15.

international courts.¹³⁰

Various international forums have found that rape may qualify as a form of torture. For instance, the Human Rights Committee, which is the body tasked with the interpretation of the International Covenant on Civil and Political Rights (ICCPR),¹³¹ has held that rape constitutes torture and cruel, inhuman, or degrading treatment.¹³² Moreover, the American Convention on Human Rights, another human rights instrument that is binding on Haiti,¹³³ has also been interpreted to categorize rape as an act of torture or ill treatment.¹³⁴

Other bodies have also stressed that rape and sexual violence constitute human rights violations. For instance, the International Criminal Tribunal for Rwanda (ICTR) has held that rape constitutes “serious bodily or mental harm” for the purpose of the crime of genocide.¹³⁵ Additionally, the International Criminal Tribunal for the Former Yugoslavia (ICTY)¹³⁶ has held that rape may amount as an act of torture. The ICTY

¹³⁰ *See, e.g.*, Rome Statute, arts. 7(1)(g), 8(b)(xxii); Statute for the Special Court of Sierra Leone, art. 2(g); Statute of the International Criminal Tribunal for the Former Yugoslavia, Article 5(g); Statute of the International Criminal Tribunal for Rwanda, Articles 3(g) and 4(e).

¹³¹ The International Covenant on Civil and Political Rights, adopted in New York on 16 December 1966 [hereinafter ICCPR]. The Convention has been binding on Haiti since its ratification on Feb. 6, 1991.

¹³² In particular, the Committee specifically instructed States to include an analysis of their laws on rape when submitting Reports on their compliance with Article 7, which prohibits torture and cruel, inhuman and degrading treatment. *See* Human Rights Committee, Gen. Comment No. 28: Equality of rights between men and women (Article 3), UN doc. CCPR/C/21/Rev.1/Add.10, ¶ 11 (Mar. 29, 2000).

¹³³ Organization of American States, General Information of the Treaty B-32, American Convention on Human Rights “Pact of San Jose, Costa Rica,” *available at* <http://www.oas.org/juridico/english/sigs/b-32.html>.

¹³⁴ *See, e.g.*, Inter-American Commission for Human Rights, Raquel Martí de Mejía v. Perú, Case 10.970, Report No. 5/96, Inter-Am.C.H.R., § 5(B)(3)(a) (Mar. 1, 1996); Inter-American Court for Human Rights, Miguel Castro-Castro Prison v. Peru, Inter-Amer. Ct. H.R. (ser. C.) No. 160 (Nov. 25, 2006).

¹³⁵ ICTR, The Prosecutor v. Akayesu, Case No. ICTR-96-4-T, 2 September 1998, at ¶ 731.

¹³⁶ Created by UN Security Council Resolution 827 (1993).

Trial Chamber directly stated that rape “strikes at the very core of human dignity and physical integrity. . . . Rape causes severe pain and suffering, both physical and psychological.”¹³⁷

Based on the above instruments, interpretations, and international actions, it is clear that the international community considers rape a violation of some of the most basic human rights. However, beyond understanding rape as a serious human rights violation, it is also important to understand what actions may constitute rape.

Firstly, according to international human rights law, as well as international criminal law, rape does not require physical violence: the essential element of rape is lack of consent and, as such, evidence of physical resistance by the victim is not required.¹³⁸ Moreover, lack of consent, and awareness thereof on the part of the perpetrator, may be presumed whenever sexual intercourse takes place in circumstances that are *per se* coercive.¹³⁹

Secondly, rape does not require vaginal penetration. International human rights and criminal law support a broader definition of rape, which is gender-neutral and includes all forms of physical invasion having a sexual connotation.¹⁴⁰ Moreover, international human rights law supports the adoption of a broader definition of

sexual violence that would include both rape and other forms of sexual assault.¹⁴¹

According to international law that is binding on Haiti, rape occurs whenever sexual acts exceed the scope of consent—both when the victim is forced to have sex against her will, and when the victim is compelled to have sex under conditions, or in forms, to which she did not agree.

The current Haitian criminal code, as amended in 2005,¹⁴² also criminalizes rape and sexual aggression, when perpetrated or attempted with violence, threats, surprise, or psychological pressure, against a person of either sex.¹⁴³

Rape and sexual aggression are crimes that may be committed against any person, male or female. Moreover, rape and sexual aggression are punishable not only if they are committed through violence, but also when committed through threats, surprise, and psychological pressure. While the law refers to the use of violence, threats, surprise, or psychological coercion, these circumstances are considered to evidence a victim’s lack of consent, not separate elements. The essential element of the crime of rape is absence of consent.¹⁴⁴ Thus, sexual relations that take place in the course of a sexual exchange may, in and of themselves, amount to rape in some circumstances, such as when the victim is forced to perform different sexual acts than those agreed upon, or to perform sex under different conditions. Additionally, the existence of a previous consensual relationship between the perpetrator and the victim is not grounds to exclude punishment in cases of rape. If a person who has previously obtained sex in exchange for

¹³⁷ See ICTY, Prosecutor v. Delalic and Delic, case IT-96-21-T, 18 November 1998, ¶ 495.

¹³⁸ See, e.g., Committee on the Elimination of Discrimination Against Women, Communication n. 18/2008, submitted by Karen Tayag Verdido (Jul. 16, 2010); Art. 7(1)(g)-1, ICC, Elements of Crimes, ICC-ASP/1/3 (Sept. 9, 2002).

¹³⁹ See, e.g., ICTY, Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic, cases IT-96-23-T & IT-96-23/1-T, Judgment of Feb. 22, 2001, ¶ 644 ff. (holding that lack of consent could be inferred since the victim was held in captivity, although she initiated sexual intercourse).

¹⁴⁰ International law thus defines rape as including non-consensual vaginal, anal, or oral sex perpetrated not only with the use of sexual organs, but also with any objects. See, e.g., Elements of Crimes, *supra* note 138, art. 7(1)(g)-1; *Akayesu*, *supra* note 135, ¶ 598 (defining rape as “a physical invasion of a sexual nature, committed on person under circumstances which are coercive”).

¹⁴¹ See, e.g., Handbook for legislation on violence against women, developed in 2009 by the Division for the Advancement of Women in the Department of Economic and Social Affairs of the United Nations Secretariat. The Handbook is merely a soft-law instrument and thus has persuasive, non-binding value.

¹⁴² Decree July 6, 2005.

¹⁴³ Art. 278, Haitian Criminal Code.

¹⁴⁴ Interview with Prosecutors, in Port au Prince, Haiti (Nov. 15, 2011).

goods forces his former partner to have sex again, his conduct is an act of rape. Additionally, when rape is committed against a minor under the age of 15, when the perpetrator abused his official position, or where a perpetrator was aided in the commission of the crime by one or more persons, harsher penalties apply.¹⁴⁵

2. Laws Prohibiting Physical and Psychological Harms

Many of the individuals interviewed for this Report emphasized that violence commonly accompanies survival sex. According to international law, physical and psychological violence constitute a violation of the fundamental human right to physical and psychological integrity. Additionally, such violence, when occurring in the context of survival sex, clearly falls under the definition of GBV. Haitian law, which criminalizes battery and assault, also applies in these situations.

A number of international instruments explicitly or implicitly address physical and psychological harm.¹⁴⁶ For instance, the Declaration on the Elimination of Violence Against Women defines “violence against women” as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts [or] coercion . . . , whether occurring in public or in private life.”¹⁴⁷ The Committee on the Elimination of Discrimination of Women has also interpreted CEDAW to include physical and psychological violence.¹⁴⁸ Furthermore, international criminal law has defined “inhumane acts” to include beatings and psychological harm that is inflicted in the context of a sexual relationship.¹⁴⁹

¹⁴⁵ See Articles 279 and 280, Haitian Criminal Code.

¹⁴⁶ See, e.g., ICCPR, *supra* note 131; DEDAW; *supra* note 104; CEDAW, *supra* note 104.

¹⁴⁷ DEDAW, *supra* note 104, art. 1. These rights relate to the fact that there is a human “right to the highest attainable standard of physical and mental health.” *Id.* art. 3(f).

¹⁴⁸ Gen. Rec. No. 19, *supra* note 101, at ¶ 6. As mentioned in note 111, Haiti has ratified CEDAW without reservation.

¹⁴⁹ Prosecutor v. Brima, Special Court for Sierra Leone, ¶

Because these forms of abuse appear to be commonly perpetrated against individuals engaging in survival sex, concerted efforts must be made to eliminate them.

Battery and assault are crimes under Haitian law. In particular, Articles 254, 255, and 256 of the penal code criminalize battery, assault, and causing personal injury. Punishment depends on the gravity of the offence, the seriousness of the consequences, and the intensity of the mental element.

Persons interviewed for this Report who had engaged in survival sex reported a high level of psychological violence, and in particular, many told the research team that they have received threats in connection with exchanges. In most cases, such threats would fall within the scope of Article 252 of the penal code, which criminalizes oral threats, setting the punishment between 3 months and 1 year of imprisonment.

While acts of rape, violence, and battery are prohibited by international law and punishable under the Haitian criminal code, many of the women who engage in survival sex emphasized that they never report rapes or violence committed against them to the police or other officials. Several women who were victims of rape or violence in the course of sexual exchange stated that although they know that such abuse is illegal, they would not report it to the police because they fear being refused assistance or further victimized by the police. In addition, one interviewee explained that while violence occurs in a high percentage of cases, she never reported it to the police because she knows that she might need to go back to the person who beat her for a future exchange. Thus, while criminal law protects all persons against all forms of violence, police abuse, stigma, and misunderstandings concerning domestic law often prevent women and girls who engage in survival sex from reporting acts of violence that have been perpetrated against them.

184 (Feb. 22, 2008).

D. PROTECTIONS FOR MINORS ENGAGED IN SEXUAL EXCHANGE

Cases of survival sex involving minors have been widely reported, and their widespread occurrence has been confirmed in the context of this and other reports.¹⁵⁰ International and Haitian law provide specific protections to individuals under the age of eighteen who engage in sexual exchange.

Numerous international instruments prohibit the sexual exploitation and abuse of children.¹⁵¹ According to the ILO Convention on the worst forms of child labor, the use, procuring, or offering of a child—defined as a person under the age of 18—for prostitution represents one of the worst forms of child labor, to be eradicated rapidly.¹⁵² Additionally, the Convention on the Rights of the Child (CRC),¹⁵³ which also defines a child as any person under the age of 18, requires States to “protect [children] from all forms of sexual exploitation and sexual abuse”¹⁵⁴ and prevent “[t]he inducement or coercion of a child to engage in any unlawful sexual activity [and] [t]he exploitative use of children in prostitution or other unlawful sexual practices.”¹⁵⁵

Haitian law also prohibits the involvement of minors in sexual exchange. Haitian law prohibits the recruitment, transportation, transfer, harboring, receipt or use of children for sexual

exploitation, prostitution, or pornography.¹⁵⁶ The criminal code also punishes corruption of minors, which is defined as inciting or facilitating the immoral behavior of minors of either sex. The code also provides for an aggravating circumstance when incitement to, or facilitation of, the minor’s prostitution or corruption is committed by the victim’s parents, guardians, or persons charged with their supervision.¹⁵⁷

Although the Haitian criminal code does not include a specific provision criminalizing statutory rape, Article 278, which criminalizes rape and sexual aggression, is deemed to apply to all cases of sexual relations with a minor. As confirmed in an interview with a Haitian prosecutor,¹⁵⁸ the crime of rape is understood as requiring lack of consent on the part of the victim. Article 16.2 of the Haitian Constitution provides that “the age of majority is set at 18 years of age;”¹⁵⁹ and minors are not considered to be able to give valid consent until they reach that age. Thus, to prove statutory rape, it is not necessary to prove that the sexual relation took place with force, threats, surprise, or psychological pressure when a minor is involved. Minors are protected against sexual relations even when they are otherwise consensual, meaning that all survival sex with individuals under the age of 18 constitute acts of rape.

¹⁵⁰ See, e.g., Part III; UNHCR, DRIVEN BY DESPERATION, *supra* note 15; PotoFi Haiti Girls Initiative, PowerPoint, *Après Le Choc: Les Filles, la Grossesse, et la Violence Sexuelle en Haiti: Premiers Résultats d’une Enquête de Terrain Avec les Adolescents*, Dec. 2011 (on file with authors).

¹⁵¹ Including the ILO Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (Convention 182) and the Convention on the Rights of the Child (CRC), which have both been ratified by Haiti.

¹⁵² ILO, C182: Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, Article 3(b).

¹⁵³ Convention on the Rights of the Child, U.N. G.A. Res. 44/25 (Nov. 20, 1989), ratified by Haiti on June 8, 1995.

¹⁵⁴ *Id.* art. 34.

¹⁵⁵ *Id.* art. 34(a)–(b).

¹⁵⁶ See Article 2, Law 29 Apr. 2003.

¹⁵⁷ See Article 281, Haitian criminal code.

¹⁵⁸ Interview with Prosecutors, in Port au Prince, Haiti (Nov. 15, 2011).

¹⁵⁹ The age of civil majority is 18, according to the Haitian Constitution (see Article 16-2). Although Article 279 provides for an aggravating circumstance for rapes committed against minors aged 15 or younger, thus possibly implying that minors older than 15 might be considered to have reached the age of consent, the law is currently interpreted as prohibiting sexual relations with all minors, that is, with all persons under the age of 18.



V. CONCLUSIONS & RECOMMENDATIONS

Two years after the January 2010 earthquake that rocked Haiti women and girls in IDP camps and throughout Haiti generally, continue to face brutal rapes, attempted rapes, and other forms of sexual violence with little to no access to treatment, support, or remedy. As this report has shown, post-earthquake conditions have made young women and girls particularly vulnerable to sexual exploitation. While there are no reliable statistics on the prevalence of sexual exploitation and survival sex in post-earthquake Haiti, women and girls have reported exchanging sexual acts in return for food and benefits, including coupons, access to direct aid distributions, cash for work programs, money, or even a single meal. Women and youth who engage in survival sex are especially at risk of involuntary or unintended pregnancy, sexually transmitted diseases and other related health problems. They further face isolation from their social networks and communities, which increases their vulnerability to violence and the belief that an end to such violence is nowhere in sight.

Haitian women have undertaken courageous efforts to create systems of support and prevention, and the Women's Ministry has made great strides to create legal protections and heightened awareness around this critical issue. However, as this analysis reveals, violence against

women and girls in all its forms continues unabated in post-earthquake Haiti. In light of these findings, the following series' of recommendations aim to address violence against women and girls, and particularly sexual exploitation in Haiti from a holistic perspective. The recommendations are made with an eye toward not only meeting the short-term needs of women and girls, but toward creating conditions where the root causes of such violence and exploitation are addressed and eradicated.

Meeting immediate needs:

- Ensure that poor and IDP youth vulnerable to sexual exploitation are provided with the basic necessities of life including adequate food, medical care, and temporary shelter programs specifically for women and youth.
- Provide comprehensive health care for IDP youth in response to their high risk of injuries, physical abuse, sexually transmitted infections, homicide, suicide, and emotional or psychological problems;
- Provide displacement camps with adequate lighting and security; provide community security groups, police and outreach workers with training to know which steps to take if they encounter an instance of GBV or those engaged in survival sex (for example, what to do and who to report to).

Meeting long-term needs:

- Provide free or affordable education and/or vocational training for youth; micro-loan/micro-credit opportunities to start small, personal businesses; increase employment opportunities;
- Provide access to long term, affordable healthcare for prevention and treatment of sexually transmitted diseases or other health conditions; provide access to ongoing psychosocial support for those engaged in survival sex and victims of GBV;
- Act with due diligence to prevent, investigate and punish acts of violence and promote the full protection and promotion of women's human rights;
- Design and fund programs to increase women's and girls' access to information on preventing and addressing gender-based violence and reproductive care;
- Provide access to sustainable and affordable housing.

Integration of Services:

- Train medical staff, police, outreach workers, teachers, and other first responders on how to identify and respond to youth vulnerable to sexual exploitation;
- Provide uniform trauma screening training to first responders of poor and IDP youth as part of the intake process in order to identify those who need trauma-specific services;
- Coordinate services among providers and ensure interagency cooperation so that identified youth are provided with the appropriate services;
- Provide funding to organizations providing services to young women and girls vulnerable to sexual exploitation;
- Invite the Inter-American Rapporteur on Haiti to visit and provide technical assistance for the coordination and development of programs to

address the needs of those engaged in survival sex and to prevent and address gender-based violence;

- Guarantee women's full participation and leadership in all phases of the reconstruction of Haiti as mandated by UN Security Council Resolution 1325 and other internationally recognized standards;
- Enact a systematic collection of data that documents the prevalence and incidences of all forms of violence against women in the IDP camps in collaboration with civil society organizations.

Ending Impunity and Ensuring Accountability

- Work to finalize, pass and implement the Draft Law on Violence Against Women (VAW Draft Law), currently titled the *Avant-projet de loi sur la prévention, la sanction et l'élimination des violences faites aux femmes*;
- Ensure that reported cases of rape are prosecuted even in the absence of a medical certificate or when the certificate does not provide evidence of physical violence;
- Ensure that abuses of power by public sector workers are prosecuted and punished;
- Ensure that humanitarian workers who engage in sexual exploitation are held responsible;
- Ensure that women and youth engaging in sexual exchange are not punished for it;
- Train judges, prosecutors and police officers on sexual exploitation and working with victims;
- Comply with international standards relating to the protection of human rights, and guidelines on the treatment of internally displaced persons;
- Ensure that camp committees charged with distributing resources, coordinating services, and providing protection are governed by codes of conduct that prohibit sexual exploitation;

- Create, fund, and publicize a centralized complaint mechanism for those who experience sexual exploitation at the hands of humanitarian aid workers, international NGO staff, or camp committee members. Ensure that those lodging complaints have access to services.

VI. APPENDIX

This Appendix analyzes the Draft Law on Violence Against Women (VAW Draft Law), currently titled the *Avant-projet de loi sur la prévention, la sanction et l'élimination des violences faites aux femmes*.¹⁶⁰ The VAW Draft Law was under active consideration at the time of writing. Particular attention is paid to proposed provisions related to sexual exploitation, prostitution, and sexual exchange. If enacted in its current form, the VAW Draft Law would substantially alter the legal regime related to sexual exchange, including survival sex.

A. THE DRAFT LAW'S TREATMENT OF PROSTITUTION

At the time of writing, the text of the VAW Draft Law envisioned the criminalization of enforced prostitution,¹⁶¹ kidnapping a woman to force her into prostitution,¹⁶² pimping, and aggravated pimping. The crime of pimping would include aiding, assisting, or protecting, or profiting from, the prostitution of others; recruiting, corrupting or pressuring a person to prostitute herself; and inciting a woman to enter into a brothel.¹⁶³ Additionally, the law would criminalize persons who act as mediators between a prostitute and a person who exploits or pays for prostitution; who aids a pimp in justifying his economic resources; who are not able to justify their lifestyle while having habitual relationships with one or more prostitutes; or who hinder action to help prostitutes or persons at risk of prostitution.¹⁶⁴ Pimping would be aggravated in a number of circumstances—for instance, when committed against a minor less than 16 years of age or a particularly vulnerable person, or when

committed with violence.¹⁶⁵ Moreover, conduct such as managing a brothel, accepting the presence of prostitutes who are soliciting clients in a public establishment, and providing a space to be used for prostitution, would also be criminal acts.¹⁶⁶ Thus, the VAW Draft Law attempts to criminalize most conduct surrounding—but not including—prostitution, while, at the same time, explicitly stating that prostitutes can never be considered accomplices to the crime of pimping. The VAW Draft Law would therefore ensure that all persons exploiting prostitution could be punished and will simultaneously preserve the position that prostitution is a lawful activity. This could be promising for the rights of women and girls engaged in survival sex.

The VAW Draft Law seeks to protect all persons from sexual exploitation. As a result, the proposed law makes an important step towards ensuring adequate protection is provided to persons engaging in sexual exchange. However, if enacted in its current form, the law might unintentionally limit the protections accorded to those engaged in survival sex because it criminalizes most of the conduct surrounding prostitution. This may lead to the further marginalization and isolation of those engaged in survival sex, as has already been the case in some countries that have adopted this approach.¹⁶⁷ Because the law makes it more difficult to engage in sexual exchange, it will likely force the phenomenon further underground, making it more likely that those who engage in survival sex will be further exploited and subjected to gender-based violence.

One additional positive proposal in the Draft Law is found in Article 281, which would criminalize

¹⁶⁰ 'Avant-projet de loi sur la prévention, la sanction et l'élimination des violences faites aux femmes.' The text analyzed is that circulated after the July 12, 2011 meeting.

¹⁶¹ Article 281.

¹⁶² See Article 281.1.

¹⁶³ Article 281.2.

¹⁶⁴ Article 281.3.

¹⁶⁵ See the circumstances listed in Article 281.4 and 281.5.

¹⁶⁶ Article 281.6.

¹⁶⁷ For an example of how this approach to prostitution might turn prostitution into a "black market," notwithstanding its apparent lawfulness, see the Italian law on prostitution (Law 75/1958), which follows the same approach. See the comments by T. Padovani, 'Prostituzione e tratta,' in Associazione On the Road (ed.), *Stop tratta*, 2002, 45–52, in particular at 51, available at <http://www.ontheroadonlus.it/wp-content/uploads/StopTratta.pdf>.

compelling a woman to have sex by using force, threats, constraint caused by fear of violence, intimidation, psychological pressure, or abuse of power, or making her believe that she will obtain any material advantage. Given Article 281's current phrasing, it is clear that this provision would only apply when the perpetrator promises economic advantages but subsequently refuses to provide them. This intended amendment would have the effect of enhancing the protection of human rights of all persons engaging in survival sex, in particular, by protecting their right to obtain the promised payment, in full compliance with international human rights law.¹⁶⁸

physical and psychological violence, the new crimes and the related protective measures would not be applicable to boys and men who engage in survival sex. However, violence which occurs during a sexual transaction, or which is a direct consequence thereof, should always be criminalized, irrespective of the victim's sex.

B. DRAFT LAW PROVISIONS RELATED TO VICTIMS OF VIOLENCE

The VAW Draft Law also represents an important step forward in the protection of victims of violence and rape, particularly when such acts occur after a sexual exchange. The proposed law provides for a number of protective measures for victims of GBV, including rape, sexual violence, and battery. Proposed protective measures include relocation, medical care, access to social services, and economic aid.¹⁶⁹ The adoption of such measures might encourage women victims of rape and physical violence to report the crime.

Additionally, the VAW Draft Law proposes provisions punishing violence directed against women and girls, including most forms of assault, battery, and psychological violence. In particular, physical violence against women would be criminalized regardless of its consequences; thus no proof of personal injury would be required.¹⁷⁰ Moreover, the proposal increases the penalties for all forms of physical violence against women and criminalizes stalking.¹⁷¹

While the Draft Law, if approved, would increase the protection offered to women and girls against

¹⁶⁸ For a discussion on how this is treated currently under international law and Haitian law see Part IV(B).

¹⁶⁹ See Articles 4 ff., and in particular Articles 5, 6, and 11.

¹⁷⁰ See Art. 278.3.

¹⁷¹ See Art. 279.2.

Acknowledgments

Report Authors

MADRE / International Women's Human Rights (IWHR) Clinic at CUNY School of Law

Lisa Davis, Human Rights Advocacy Director & Clinical Professor of Law

Bradley Parker, Legal Advocacy Coordinator & Clinic Fellow

Marleecia Deck, IWHR Legal Intern

Alejandra Franco, IWHR Legal Intern

Veronica Joya, IWHR Legal Intern

Center for Human Rights and Global Justice/Global Justice Clinic NYU School of Law

Margaret Satterthwaite, Professor of Clinical Law

Naila Awan, Law Student Advocate

Isabelle Figaro, Law Student Advocate

Rosa Raffaelli, Law Student Advocate

UC Hastings Center for Gender & Refugee Studies

Blaine Bookey, Staff Attorney

Additional Assistance Provided by:

Anina Tweed (Center for Gender & Refugee Studies); Ben Buchwalter, Jessica Owen, Elaine Zhong (Hastings-to-Haiti Partnership); Jessica Rofé, Rebecca A. Phipps, Emily A. Kenney and Alyson Zureick (NYU Law Students For Human Rights); J. Kirby, Cassandra Atlas, Sahita Pierre-Antoine and Stephanie Kung (MADRE).

MADRE

The City University of New York

CUNY SCHOOL OF LAW

Law in the Service of Human Needs

CENTER FOR
Gender & Refugee
STUDIES



KOMISYON FANM VIKTIM POU VIKTIM
THE COMMISSION OF WOMEN VICTIMS FOR VICTIMS