



## International Covenant on Civil and Political Rights

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### Human Rights Committee

#### Concluding observations on the initial report of Haiti\*

1. The Committee considered the initial report of Haiti (CCPR/C/HTI/1) at its 3102nd and 3103rd meetings (CCPR/C/SR.3102 and 3103), held on 9 and 10 October 2014. At its 3126th meeting, held on 27 October 2014, it adopted the following concluding observations.

##### A. Introduction

2. The Committee welcomes the submission of the initial report of Haiti, which was 16 years overdue, and the information presented therein. It appreciates having had the opportunity to engage in a constructive dialogue with the State party's high-level delegation on the measures that the State party has taken since the entry into force of the Covenant to implement its provisions. The Committee is grateful to the State party for its written replies (CCPR/C/HTI/Q/1/Add.1) to the Committee's list of issues (CCPR/C/HTI/Q/1), which were supplemented by oral responses provided by the delegation during the dialogue and additional information provided in writing.

##### B. Positive aspects

3. The Committee welcomes the following legislative and institutional measures taken by the State party since the entry into force of the Covenant for the State party in 1991:

(a) The appointment of a Deputy Minister for Human Rights and Extreme Poverty and the creation of the Interministerial Human Rights Committee;

(b) The adoption of the Organic Act on the organization and functioning of the Office of the Ombudsman (*Office de la protection du Citoyen*); the Office obtained an "A" rating from the Subcommittee on Accreditation of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights in December 2013;

(c) The Paternity, Maternity and Filiation Act, which entered into force in June 2014;

(d) The Trafficking in Persons Act, promulgated on 4 June 2014;

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\* Adopted by the Committee at its 112th session (7–31 October 2014).



(e) The Act on the Inclusion of Persons with Disabilities and the measures taken to implement it.

4. The Committee welcomes the State party's accession to or ratification of a number of international human rights treaties since the entry into force of the Covenant in 1991:

(a) The Convention on the Rights of the Child (1995);

(b) The Convention on the Rights of Persons with Disabilities and its Optional Protocol (2009);

(c) The International Covenant on Economic, Social and Cultural Rights (2013);

(d) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2014).

### **C. Principal areas of concern and recommendations**

#### **Incorporation of the Covenant into domestic law and applicability of the Covenant in domestic courts**

5. The Committee notes article 276-2 of the Haitian Constitution, under which the international instruments ratified and promulgated by the State party take precedence over domestic law. It is concerned, however, that the Covenant appears to have been invoked only once to date, during proceedings in the La Scierie case (art. 2).

**The State party should take appropriate measures to raise awareness of the Covenant among judges, lawyers and prosecutors, so as to ensure that its provisions are taken into account before and by domestic courts. The State party should include in its next periodic report examples of application of the Covenant by domestic courts.**

#### **An independent national human rights institution**

6. The Committee welcomes the establishment of the Office of the Ombudsman. It remains concerned, however, about the issue of limited financial and human resources available to the Office, which do not allow it to act freely and independently. The Committee is also concerned about the lack of information provided by the State party on measures taken to implement the recommendations made by that Office following complaints or visits to detention centres (art. 2).

**The State party should ensure that the recommendations of the Ombudsman's Office are taken into account. It should also ensure that the Office has sufficient resources to carry out all the tasks entrusted to it, in accordance with the recommendations of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights. It encourages the adoption of the framework act on the creation and maintenance of independent human rights institutions.**

#### **Right to an effective remedy**

7. While welcoming the investigation of the Duvalier case and the work of the National Commission for Truth and Justice up to February 1996 to establish the truth concerning the serious human rights violations committed between 1991 and 1994, the Committee is concerned at the dilatoriness of these proceedings and mechanisms, which have not yet resulted in convictions for those responsible for the violations or reparation for the victims (arts. 2, 6, 7 and 9).

**In order to effectively combat the impunity that prevents advances in the rule of law in Haiti, the State party should pursue its investigations in the Duvalier case and bring**

to justice all those responsible for serious violations committed during that presidency and give victims fair and equitable reparation. The State should implement the recommendations of the National Commission on Truth and Justice in respect of the serious violations committed between 1991 and 1994. The Committee recalls the State party's obligation to bring criminal proceedings for any serious violation of human rights.

#### **Non-discrimination and equality between men and women**

8. Notwithstanding article 17, paragraph 1, of the Constitution, setting a quota of 30 per cent of women at all levels of national life, especially in public services, the Committee notes that the figures are still low as regards the number of women elected or appointed to positions of responsibility, including in the police and in the justice system. The Committee further notes that the stereotyping of women remains rooted in Haitian society, particularly as regards household financial management and the image of women in some school textbooks (arts. 3, 25 and 26).

**The State party should endeavour to achieve the targets set in article 17, paragraph 1, of the Constitution and should measure its progress by means of statistics, and in particular should take steps to ensure that more women obtain positions in the civil service, including the most senior positions. The State party should continue its awareness campaigns to reduce the traditional stereotyping of women.**

#### **Discrimination based on sexual orientation**

9. While noting the willingness of the State party to eliminate discrimination against lesbians, gays, bisexuals and transgender (LGBT) persons, the Committee notes with concern a significant number of displays of hostility towards LGBT persons and other actions including acts of violence and attacks on the institutions that defend their rights, all of which are closely bound up with the persistence of stereotypes with respect to these groups (arts. 2 and 26).

**The State party should ensure that all forms of discrimination against LGBT persons are recorded and that all acts of violence against them are accounted for and punished, and that the victims are compensated for such violations. In order to combat stereotypes based on sexual identity, the State party should launch a national awareness campaign, addressing first the forces of law and order and judicial personnel and later the general public.**

#### **Right to life**

10. The Committee remains concerned by the fact that cases of firearm deaths caused by agents of the security forces continue to be reported and that this number has increased in 2014. Despite the information provided by the State party to the effect that the perpetrators are punished, the Committee finds it regrettable that they are mainly subject to disciplinary sanctions and that statistics on homicides, and on investigations and prosecutions for homicide, are not routinely maintained or made publicly available. The Committee notes the lack of information on action taken on the recommendations of the General Inspectorate of the National Police of Haiti (art. 6).

**The State party should, as a matter of urgency, look into these cases of firearm deaths caused by the forces of law and order and ensure that they are investigated in a prompt and effective manner, prosecute those thought to be responsible and, if they are found guilty, sentence them to penalties in proportion to the seriousness of the acts and grant appropriate compensation to the victims and their families. The State party should guarantee that the General Inspectorate of the National Police is able to carry**

out these investigations independently and to routinely maintain statistics on homicides committed by the forces of law and order and on the unlawful use of firearms, covering investigations carried out, prosecutions brought, penalties prescribed and reparation awarded. The Committee encourages the State party to continue its efforts to provide the forces of law and order with human rights training in accordance with its obligations under the Covenant and in line with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, in order to reduce the incidence of homicide and serious injury caused by firearms.

#### **Ratification of the Second Optional Protocol to the Covenant**

11. The Committee finds it regrettable that ratification of the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty, was recently withdrawn from the parliament's agenda without satisfactory explanation (art. 6).

**The Committee recommends that the State party consider ratifying the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty, as soon as possible.**

#### **Prohibition of torture and cruel, inhuman or degrading treatment**

12. The Committee notes that article 293 of the Criminal Code provides penalties for the physical torture of an arrested or detained person. The Committee regrets to say that such a definition is not consistent with the Covenant or the Committee's jurisprudence in this area, in particular because it includes no reference to psychological torture. With regard to alleged cases of torture or other ill-treatment, the Committee is concerned about the lack of action on recommendations made by the General Inspectorate of the National Police and the lack of systematic information regarding any investigations that have been carried out and the penalties imposed (arts. 2 and 7).

**When drafting the new criminal code which the Government has undertaken to adopt by the end of 2014, the State party should include a definition of torture that covers all the elements, including psychological torture, as reflected in the Committee's general comment No. 20 on the prohibition of torture, or other cruel, inhuman or degrading treatment or punishment. It should also ensure that the new criminal code adequately provides for the prosecution and conviction of perpetrators of such acts, and their accomplices, in accordance with the seriousness of the offence.**

#### **Violence against women**

13. The Committee is concerned about the low level of protection from violence against women, in particular rape. While noting the progress made in enabling victims of rape to obtain a medical certificate free of charge, it notes with regret that a medical certificate is required to initiate criminal proceedings for rape. It further notes that the law criminalizing such acts and other acts of violence against women has not yet been adopted. The Committee notes that shelters have been established, although they appear to be few in number and difficult to reach, especially in rural areas (arts. 2, 3 and 7).

**The State party should accelerate the adoption of specific legislation on violence against women with a view to strengthening the legal framework for protection against domestic violence, sexual harassment, rape, including marital rape, and other forms of violence suffered by women. The legislation should also include a provision stating that a victim's testimony is sufficient to initiate criminal investigations into an act of rape. The State party should also take measures to ensure that all women victims of violence have access to assistance, including legal assistance, and are able to find refuge in shelters.**

### **Elimination of all forms of slavery and servitude**

14. While acknowledging the State party's efforts in adopting the Trafficking in Persons Act, launching an awareness-raising campaign to discourage the use of children in domestic work, repealing articles of the Labour Code relating to child labour and taking steps to combat cross-border trafficking for the purpose of sexual exploitation, the Committee remains concerned about the continuing exploitation of "restavèk" children and the lack of statistics on, and results from, the investigations into the perpetrators of trafficking and the rehabilitation of victims (arts. 2, 3, 8 and 24).

**The State party should continue its efforts to provide training to law enforcement officials, border guards and other relevant personnel on measures to deal with human trafficking. It should increase its efforts to ensure that all those involved in human trafficking are brought to justice and that adequate reparation is provided to victims. The State party should also take steps, as a matter of urgency, to put an end to the exploitation of children and to strengthen child protection mechanisms such as the Minors' Protection Unit.**

### **Liberty and security of person**

15. The Committee is concerned about the disproportionate use of pretrial detention for excessive periods and the lack of alternatives to pretrial detention. It is regrettable that there is no specific information on the approach and work of the High Council of the Judiciary and judges to address effectively the issue of prolonged pretrial detention. The lack of an organized approach in this regard has a direct impact on prison overcrowding, which has reached such a critical point that it amounts to inhuman and degrading treatment. The Committee is further concerned about the lack of separation between adults and minors and between remand and convicted prisoners (arts. 7, 9, 10 and 14).

**The State party should ensure that all persons who are arrested and detained enjoy the effective right to habeas corpus. It should also encourage courts to promote alternatives to deprivation of liberty for indicted persons, taking into account the United Nations Standard Minimum Rules for Non-custodial Measures. It should take urgent steps to address the situation of persons who have been in pretrial detention for many years in a way which will directly help reduce prison overcrowding. The State party should also take appropriate action to ensure the separation of remand and convicted prisoners and of adults and minors.**

### **Independence of the judicial system, right to a fair trial**

16. The Committee takes note of the steps taken to improve access to justice, in particular the recruitment and training of new judges, the reform of the Criminal Code and the Code of Criminal Procedure and the decentralization of magistrates' courts (*tribunaux de paix*) and some courts of first instance to the regional administrations. The Committee notes, however, that insufficient progress has been made with regard, in particular, to the role of patronage in relation to variable court fees, the lack of legal aid for people with low incomes and the slowness and unresponsiveness of the courts (art. 14).

**The State party should take all necessary measures to guarantee, in law and in practice, effective access to justice for all, including the right to legal aid.**

17. The Committee is concerned about the lack of independence of the judiciary, due in particular to interference in the operation of the justice system and especially with regard to the selection of judges and certain judicial decisions, the lack of clear information on judges' tenure and the conditions for the renewal of their terms of office, the poor material situation of judges and the slowness and unresponsiveness of the courts (art. 14).

**The State party should ensure the independence of the judiciary, in particular by protecting judges from interference by the executive and legislative branches with regard to judicial decisions. It should, as a matter of urgency, ensure the effective operation of the Judicial Inspectorate of the High Council of the Judiciary and thus enable the State party to comply with the provisions of the Covenant by means of an effective and independent judicial system.**

#### **Freedom of movement and right to privacy and to protection of the family**

18. While noting the considerable efforts of the State party to find lasting solutions for those displaced by the 2010 earthquake, the Committee is concerned that persons living in the camps continue to be forcibly evicted. Despite the assurances given by the State party, the Committee is concerned by the fact that some individuals initially registered as displaced persons were subsequently removed from the lists of beneficiaries of relocation programmes and are thus at risk of forced eviction (arts. 12, 17 and 23).

**The State party should ensure that no persons are evicted from the camps unless another solution has been found for them and their families and that all persons displaced by the earthquake are able to benefit from lasting solutions.**

#### **Freedom of opinion, expression, assembly and association**

19. The Committee is concerned about allegations of threats, harassment and intimidation by the police, security forces and political authorities against human rights defenders, journalists and members of the opposition and the lack of protection provided by the State party in this connection (arts. 19, 21 and 22).

**The State party should take the necessary steps to protect human rights defenders and journalists so as to enable them to carry out their activities with complete freedom and no restrictions. The State party should, as a matter of priority, investigate all attacks on the life and dignity of these persons and bring the perpetrators to justice.**

#### **Participation in political affairs**

20. The Committee is concerned that the legal framework for the holding and conduct of legislative and municipal elections in Haiti, originally scheduled for 2011, has still not been put in place by the State party. The Committee considers that this situation deprives Haitian citizens of their right to vote and be elected at periodic elections in accordance with the Covenant (art. 25).

**The State party should, as a matter of urgency, take the necessary steps to organize the legislative and municipal elections due to have been held in 2011, in order to ensure that citizens have effective access to their rights under article 25 of the Covenant.**

21. The State party should widely disseminate the Covenant, the text of the initial report, the written replies to the list of issues drawn up by the Committee and the present concluding observations, both in French and in Creole, in order to increase the awareness of the judicial, legislative and administrative authorities, civil society and NGOs operating in the country, as well as the general public. The Committee also requests that the State party, when preparing its second periodic report, broadly consult with the Office of the Ombudsman and civil society.

22. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year, relevant information on its implementation of the Committee's recommendations in paragraphs 7, 10, 19 and 20 above.

23. The Committee requests the State party to provide in its next periodic report, due by 31 October 2018, specific, up-to-date information on all its recommendations and on the Covenant as a whole.

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