

**Haiti**

**Submission to the United Nations**

**Universal Periodic Review**

26<sup>th</sup> Session of the Working Group of the UPR

Human Rights Council

October 31<sup>st</sup> – November 11<sup>th</sup>, 2016

**Violence and Discrimination against Women and Lesbian, Gay, Bisexual, and**

**Transgender (LGBT) People in Haiti**

**Submitted By:**

FASCDIS

SEROvie

MADRE

The Human Rights and Gender Justice (HRGJ) Clinic, CUNY Law School

OutRight Action International

1. This report is submitted by MADRE<sup>1</sup> (an ECOSOC accredited NGO), FASCDIS,<sup>2</sup> SEROvie, Foundation SEROvie (SEROvie),<sup>3</sup> the Human Rights and Gender Justice (HRGJ) Clinic at CUNY School of Law,<sup>4</sup> and OutRight Action International.<sup>5</sup> It focuses on violations of the rights of women and Lesbian, Gay, Transgender, and Bisexual (LGBT) individuals suffering violence and discrimination. The information in this report was gathered from personal interviews with Haitian activists and survivors of gender-based violence and discrimination. It is supported by reports by news agencies, governments, local Haitian non-governmental organizations (NGOs) and international human rights organizations.

## **I. Background and Context**

2. Thousands of Haitians today are at risk of violence and discrimination as a result of their actual or perceived sexual orientation, their gender identity, or nonconformist social behavior. The mere perception that individual may be LGBT can place their life directly at risk because extreme hostility and discriminatory attitudes toward LGBT members are so pervasive. They are deprived by of their human rights, marginalized, harassed, beaten

---

<sup>1</sup> MADRE is an international women's human rights organization that works in partnership with community-based women's organizations worldwide to address issues of health and reproductive rights, economic development, education and other human rights.

<sup>2</sup> *Femme en action contre la stigmatisation et la discrimination sexuelle* (FASCDIS) is a grassroots Haitian LGBT organization providing outreach services to LGBT persons.

<sup>3</sup> SEROvie, is a grassroots Haitian gay men's organization providing outreach services to LGBT persons.

<sup>4</sup> The Human Rights and Gender Justice (HRGJ) Clinic at CUNY School of Law (formerly known as the International Women's Human Rights (IWHR) Clinic), works on gender human rights issues both at a domestic and international level.

<sup>5</sup> OutRight Action International (formerly known as the International Gay and Lesbian Human Rights Commission (IGLHRC)), is a leading international human rights organization dedicated to improving the lives of people who experience discrimination or abuse on the basis of their actual or perceived sexual orientation, gender identity or expression.

and murdered with little action on the part of the State to prevent violence, or bring those responsible to justice.

3. Haiti's Executive Branch has been considering penal code revisions that, if approved, would be a landmark in legislation addressing gender-based violence ("GBV") in Haiti and would greatly advance Haiti towards meeting its obligations under international law to prevent and redress human rights violations.
4. This report documents various forms of violence and discrimination committed against Haitian women and Haitians because of their actual or perceived sexual orientation or gender identity. It outlines discrimination against LGBT people in the areas of law, access to justice, and healthcare.

## **II. Violence, Discrimination, and Harassment of Women and LGBT People**

5. Haitian women and girls, especially those living in resource-poor neighborhoods, are particularly vulnerable to threats and violence that place their lives directly at risk. A survey of Haitian households conducted from August 2011 to February 2012 found that residents of low-income urban areas were 27 times more likely to be sexually assaulted than residents of wealthier, less densely populated areas.<sup>6</sup>
6. Women and girls who have experienced gender-based violence in Haiti regularly experience difficulties in reporting these crimes to police.<sup>7</sup> Public officials in the justice system (often males), which includes police, prosecutors, and judges, who interact with female victims of gender-based violence frequently have attitudes that perpetuate the stigma associated with rape and obstruct female victims' access to justice.<sup>8</sup> The negative

---

<sup>6</sup>Athena R. Kolbe And Robert Muggah, Instituto Igarapé, Haiti's Urban Crime Wave? Results From Monthly Household Surveys August 2011-February 2012 1 (March 2012).

<sup>7</sup> Meena Jagannath, *Barriers to Women's Access to Justice in Haiti*, 15 CUNY L. Rev. 27, 37-38 (2011)

<sup>8</sup> Meena Jagannath, *Barriers to Women's Access to Justice in Haiti*, 15 CUNY L. Rev. 27 (2011).

attitudes of police towards victims discourage reporting instances of gender-based violence.

7. Victims of rape have reported facing discriminatory attitudes, reprisals, threats, and retaliation by their assailants. The refusal of police, prosecutors, and judges to address threats and acts of reprisal has caused the victims to fear for their lives.<sup>9</sup>
8. The case of N.R., a young woman employed as a domestic worker in Port-au-Prince demonstrates these discriminatory attitudes towards rape victims. In July 2013, N.R. was raped by a governmental official and when she reported the rape and identified the perpetrator as a government official, Haitian officials refused to investigate the case. Since N.R. filed a complaint against the perpetrator, she has begun to receive sexually explicit threats from him. These threats have caused N.R. to fear for her life.<sup>10</sup>
9. While all citizens are guaranteed general equality under Haitian law,<sup>11</sup> prevailing social norms condemn homosexuality and gender nonconforming, leading to the targeting of individuals based on both their real or perceived sexual orientation and gender identity.
10. Because of the widespread condemnation, members of the LGBT community are forced to live in secrecy and isolation, under constant threat due to fear of violence, harassment, and discrimination.
11. While the Haitian Constitution recognizes the right to freedom of movement, opinion, expression, peaceful assembly, and association for all its citizens,<sup>12</sup> LGBT people

---

<sup>9</sup> MADRE, KOFAVIV, FAVILEK, et. al, Supplementary Information on Haiti Regarding Sexual Violence, Sexual Exploitation and Access to Education for Women and Girls. Submission to Country Report Task Force, Human Rights Committee, page 9. (July 2012).

<sup>10</sup> HRGJ Clinic Interview, KOFAVIV, October 10, 2012 (on file with authors).

<sup>11</sup> The 1987 Constitution of Haiti recognizes the equality of men and women without discrimination on the grounds of gender. "Haitians are equal before the law, without prejudice to the advantages vested in Haitians by birth who have never given up their nationality" CONSTITUTION OF 1987 Art. 18, Title 3 March 10, 1987.

experience violations of these rights on a regular basis. Extreme hostility towards LGBT people is pervasive and members of the LGBT community are routinely harassed in their neighborhoods.

12. This risk becomes especially pronounced when LGBT people gather together in the community. LGBT people have frequently been attacked while gathering peacefully, both publicly and in the privacy of someone's home. Haitian LGBT organizations have documented physical attacks, robberies, and murders committed on the basis of a victim's gender nonconforming demeanor, style of dress, or association at private gatherings with other LGBT members in the community.

### **III. Impunity**

13. The Haitian government has failed to respond to prevent and investigate the pervasive sexual and gender-based violence being committed against women and girls in Haiti. The most prominent barriers for victims seeking relief through the justice system have occurred at the law enforcement level. This failure to bring perpetrators to justice implicitly condones such violence and fosters impunity that facilitates further abuse and normalizes gender-based violence.
14. Article 17 of the Haitian Constitution contains specific provisions related to access to justice, and protecting the equality of citizens before the courts and tribunals.<sup>13</sup> Yet violence against LGBT people routinely goes uninvestigated and victims are frequently

---

<sup>12</sup> Articles 41 and 41.1 of Haiti's Constitution proclaim freedom of movement for all Haitians. Article 28 of the Haitian Constitution enshrines the right to freedom of opinion and expression. The right to peaceful assembly is enshrined in article 31 of the Haitian Constitution, stating that freedom of unarmed assembly and association for political, economic, social, cultural or any other peaceful purpose is guaranteed. Article 1 of the Haitian Constitution protects the freedom of association and sets forth that Haitians are free to join together in associations, which are protected and guaranteed by articles 31, 31.1 and 31.3. CONSTITUTION OF 1987, March 7, 1987.

<sup>13</sup> "All Haitians aged over 18, without distinction as to sex and civil status, may exercise their civil and political rights provided they meet all the other requirements laid down by the Constitution and by law" CONSTITUTION OF 1987, Article 17, Title 3, Mar. 10, 1987.

prevented from seeking justice. The failure to prevent violence or conduct investigations is a grant of impunity to the perpetrators and the State's inaction "fosters the chronic repetition of these crimes, leaving the victims and their families defenseless."<sup>14</sup>

15. Fear of discrimination and abuse by police officials, along with a lack of confidence in and limited capacity of the Haitian judicial system, often deter victims from reporting crimes to authorities. Human rights defenders have documented systematic harassment by civil society and policemen when victims try to report crimes.<sup>15</sup> Crimes, including murder and serious assault, are rarely investigated further when police suspect they involve "homosexual issues."<sup>16</sup>

16. The summer of 2014 offered no respite to the LGBT community, with at least four recorded murders of LGBT people, three each within only a few days of each other, that went uninvestigated by the police.<sup>17</sup> One man was strangled with a chain and then thrown into a latrine, while another was raped and then beaten to death with a hammer.<sup>18</sup>

17. The summer of 2013 saw numerous incidents of violence carried out against LGBT people that went uninvestigated either because the police refused to file a report or conduct an investigation or because the victim feared further brutality and discrimination. For example, in July 2013 a lesbian was attacked by two men when she tried to enter her home and was later forced to flee when her neighbors began throwing rocks at her home and threatening to burn down her home. She did not report the incident to the police

---

<sup>14</sup> Inter-American Commission on Human Rights (IACHR), Press Release,

IACHR Condemns Recent Wave of Violence Against LGBTI Persons in Haiti (July 30, 2013).

<sup>15</sup> MADRE et al., Supplementary Information on Haiti Regarding the Treatment of Lesbian, Gay, Bisexual, and Transgender Individuals (LBT), transmitted by letter dated April 27, 2012 address to the Secretariat of the U.N. Human Rights Comm., 105th Sess., July 9- 27, U.N. GOAR, 3 (April 27, 2012.)

<sup>16</sup> HRGJ Clinic Interview, witness, June 23, 2012 (on file with authors).

<sup>17</sup> Refuge Project Report, SEROvie Foundation, 2014.

<sup>18</sup> Refuge Project Report, SEROvie Foundation, 2014.

because she believed they would ignore her complaint and harass her for being a homosexual.<sup>19</sup>

18. In July 2013, a young gay man was brutally beaten by his homophobic brother. He went to the police immediately after the assault in his injured state—blood on his face and clothing torn—to report the incident but the police refused to file a report or further investigate stating, “If your brother beat you because you were gay, then you were well beaten.”<sup>20</sup>
19. In September 2012, a member of FACSDIS was beaten to death with a motorcycle chain by her boyfriend after he discovered she was a lesbian. When the man appeared before a judge following her murder, he explained to the judge why he had killed his girlfriend, stating that she brought women to their home, and although he had instructed her not to, she continued to do so. The judge, who found the killer not guilty, called the woman “a vagabond and a delinquent.”<sup>21</sup>
20. These are but a few examples of denial of access to justice and of the persistent violence carried out against LGBT persons, in part of because of the culture of impunity created by the failure of the police to prevent and investigate crimes against LGBT people.
21. Revisions to the Haitian Penal Code that Haiti’s Executive Branch has been considering would go a long way towards addressing gender-based violence and violence and discrimination against LGBT people in a comprehensive manner. The revisions to the Haitian Penal Code would boost the legal protections of the human rights of women and LGBT people in Haiti through several key provisions including a modernized definition of rape with a specific codification of marital rape as a crime, the criminalization of

---

<sup>19</sup> HRGJ Clinic Interview, LGBT individuals in Haiti, December 4, 2013 (on file with authors).

<sup>20</sup> HRGJ Clinic Interview, LGBT individuals in Haiti, December 4, 2013 (on file with authors).

<sup>21</sup> HRGJ Clinic Interview, FACSDIS/SEROVIE, February 5, 2013 (on file with authors).

sexual harassment, and the prohibition of discrimination based on sexual orientation or gender identity.

#### **IV. Lack of Access to Medical Treatment**

22. The Haitian government failed to take action to address harmful, discriminatory acts carried out within the healthcare sector against LGBT individuals.

23. Advocates report that LGBT individuals are particularly discriminated against and stigmatized when seeking medical treatment, even in grave circumstances. Because of the stigmatization and humiliation they face in public health facilities, LGBT individuals are often too afraid or ashamed to seek medical attention, resulting in the deterioration of preventable health problems, and sometimes death.<sup>22</sup> For example, in 2011, a gay man was sexually assaulted by his neighbor who forced a log into his anus. He later died of an infection because he was too afraid to seek medical attention, fearing reprisals and retaliation from both the perpetrator and the medical community.<sup>23</sup>

24. Public health agents have refused to provide medical treatment based on gender identity and sexual orientation, creating significant healthcare barriers for LGBT individuals. For example, after the 2010 earthquake, a transgender woman named J.S. suffered a broken leg and sought treatment at public hospital. The health care providers began treating her and cleaning up the injured leg. When the providers discovered that J.S. was not born with female genitalia, they told her, “all these good people need help and look at this *masisi*<sup>24</sup>!” They refused to provide her any further treatment. Discrimination is not

---

<sup>22</sup> HRGJ Clinic Interview, FACSDIS/SEROVIE, February 8, 2012 (on file with authors).

<sup>23</sup> HRGJ Clinic Interview, FACSDIS/SEROVIE, February 8, 2013 (on file with authors).

<sup>24</sup> *Masisi* has been defined as a “male playing the role of a female during sexual relations” and “by being in general more effeminate.” The term is not synonymous with “homosexual.”; HRGJ Clinic Interview, KOFAVIV, October 10, 2012 (on file with authors).



limited to public health facilities, however. J.S now goes to a private doctor, who significantly raised the price for treatment upon discovering J.S.'s sex at birth.<sup>25</sup>

#### **IV. Arbitrary Arrest and Detention**

25. Haitian law does not criminalize prostitution or consensual same-sex conduct. Law enforcement officials use other Haitian Criminal Code provisions such as “public indecency” laws to arbitrarily criminalize this conduct. “Public indecency” laws are used to arrest persons perceived to be engaged in or soliciting prostitution<sup>26</sup> and to harass, question, and arrest individuals they perceive as LGBT.<sup>27</sup>
26. The Haitian government has failed to ensure that LGBT people are not stigmatized and discriminated against which has led to arbitrary arrest and detention by police officials. Local LGBT rights-based groups report numerous incidents of police discrimination stigmatization leading to arbitrary arrests.<sup>28</sup> Furthermore, these unwarranted stops and invasions of privacy often lead to physical violence.

#### **V. Recommendations**

27. We respectfully request that the Human Rights Council consider providing in its recommendations for the Haitian government take the following measures:
  - A. Immediately pass the pending Haitian Penal Code revisions drafted by the Ministerial Commission for the Modernization of the Penal Code;

---

<sup>25</sup> HRGJ Clinic Interview, KOFAVIV, October 10, 2012 (on file with authors).

<sup>26</sup> MADRE, International Women’s Human Rights Clinic at CUNY School of Law, et al., *STRUGGLING TO SURVIVE: SEXUAL EXPLOITATION OF DISPLACED WOMEN AND GIRLS IN PORT-AU-PRINCE, HAITI*, Pg 16 (2012).

<sup>27</sup> U.S. Department of State, 2012 Human Rights Reports: Haiti, Societal Abuses, Discrimination, and Acts of Violence Based on Sexual Orientation and Gender Identity 33, available at <http://www.state.gov/j/drl/rls/hrrpt/2012/wha/204458.htm> (April 19, 2013).

<sup>28</sup> HRGJ Clinic Interview, SEROvie, FASCDIS, and KOURAJ, February 7, July 12, and October 9, 2013 (on file with authors).

- B. Take measures to address negative gender attitudes and discrimination against women among law enforcement and judicial officials;
- C. Build police and judicial capacity, such as through increased resources, to ensure complaints of gender-based violence are investigated;
- D. Strengthen the training curriculum for police officers to include practice sessions in LGBT communities;
- E. Strengthen corrective measures against police officers for committing violence directly against LGBT people or for failing to assist LGBT victims of violence;
- F. Implement statewide sensitivity training for police, medical professionals, and members of the judiciary and educational programs for engaging with women and the LGBT community that focus on eliminating stigmatization, humiliation, and discrimination of community members;
- G. Implement national policies to end the law enforcement practice of arbitrarily arresting and detaining individuals based on sexual orientation and social status, including perception that an individual is engaged in sex work;
- H. Work with Haitian rights-based organizations to provide human rights training and education in order to empower vulnerable groups, including of the LGBT community members;
- I. Increase the dialogue between the actors of Haitian civil society to develop a better understanding and consideration of the situation of LGBT victims of all forms of violence;
- J. Encourage concerted actions of civil society to advocate for the respect of the human rights of sexual diversity and gender identity;

- K. Engage in discussions with the Haitian parliament to adopt new legislation protecting vulnerable groups;
- L. Establish a national charter monitoring compliance with professional ethics;
- M. Organize discussion forums on the issue of violence and its negative impact on Haitian society.
- N. Ensure all individuals, including women and LGBT persons, are provided with adequate access to medical and psycho-social services.
- O. Ensure all individuals, including LGBT people, are able to access legal counsel and impartial judicial system.
- P. Allocate resources to the physical and psychological recovery of women and LGBT persons who are victims of sexual violence and to ensure that they are not re-victimized while seeking justice.
- Q. Allocate resources to the physical and psychological recovery of women and LGBT persons who are victims of sexual violence and to ensure that they are not re-victimized while seeking medical treatment.