



Testimony by

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Presented to:

**The Tom Lantos Human Rights Commission
James P. McGovern, Massachusetts, Co-Chairman
Frank R. Wolf, Virginia, Co-Chairman**

United States Congress

“Aid Delivery in Haiti: Development Needs, Capacity Building, and Challenges”

December 3, 2014

I. Introduction

I would like to thank Chairman Wolf, Chairman McGovern, and the distinguished members of the Commission for calling this important hearing on issues with aid delivery and development work in Haiti following the January 2010 earthquake.

Please allow me to begin by saying that MADRE greatly appreciates the opportunity to appear here today to speak about challenges related to its work with partners on enhancing the protection of women and LGBT rights and addressing gender-based violence in the development reconstruction process.

My name is Lisa Davis and I am a Clinical Professor of Law at the City University of New York (CUNY) School of Law and I also serve as the Human Rights Advocacy Director at MADRE. I provide litigation and advocacy services for women's human rights organizations in Latin America and the Caribbean, the Middle East, Africa and Asia. For over ten years I have worked as an advocate and have extensive experience researching and writing on international gender and human rights issues, including in disaster and post-conflict settings.

In my testimony, after providing background on MADRE and its work in Haiti, I will elaborate on issues and challenges that we have faced in addressing human rights violations and advocating for the protection of women and LGBT rights. I will then conclude by providing some recommendations for the consideration of the U.S. government.

II. Background

Founded in 1983, MADRE is an international women's human rights organization that supports the development of networks of community-based women's organizations in over 25 countries, directly impacting the lives of approximately 450,000 people. MADRE supports the development of women's leadership and advocates with partners locally, nationally and internationally for women's rights. MADRE is known internationally for its model of building the capacity of women's rights activists at the local level. This work is done through conducting human rights trainings and capacity-building training sessions; the implementation of behavior-change initiatives using local media and other vehicles for public education; and the provision of direct services, technical assistance, and other forms of support.

MADRE has worked in Haiti since 1994 with a broad array of Haitian women and since the 2010 earthquake, with Haitian LGBT organizations. In partnership with both international and local organizations, MADRE embarked on the project "Women Empowered to Lead and Advocate for Development (WE-LEAD)." This was done with support from USAID's Office of Women in Development (EGAT/WID) and through receipt of a grant from the Annual Program Statement (APS) on Building Women's Leadership Capacity in the Disaster Efforts in Haiti.

Over the course of two years, WE-LEAD strived to strengthen Haitian women's participation in national reconstruction and long-term development processes post-quake. Additionally, the project worked to build the leadership, networking and advocacy capacity of Haitian women's organizations and women advocates to mainstream a gender perspective in policy formulation related to post-disaster reconstruction. Some of the major project activities include: the establishment of a center for women's advocacy and networking; numerous trainings on civic participation, organizational management, and Information, Communication and Technology (ICT); support for women leaders to conduct community outreach; and the organization of a National Consultation on Women's Leadership that hosted 80 representatives from women's NGOs and other key stakeholders.

As a result of our experience and extensive collaboration on multiple projects with our local partners in Haiti, we have identified the following issues as prominent factors that impede progress towards long-term development and protection of human rights in Haiti.

III. Problem Statement

Overdue Elections and Political Instability

One of the numerous consequences of the January 2010 earthquake in Haiti was, and to an extent still is, political instability exacerbated by the loss of many government officials and massive destruction to government infrastructure. As a result, reestablishing and expanding transparency in the Haitian government has been quite challenging. This insufficient transparency has had a direct impact on aid delivery and dispersion.

Since elections were last held in Haiti when President Martelly took office in May 2011; the government has failed to hold further elections for Parliament and local authorities. One-third of the Senate seats expired on May 8, 2012, and another one-third of the Senate and all 99 members of the House of Deputies will expire in early 2015. Therefore, unless elections are held for these and other posts such as municipal councils and town delegates, the only elected positions within Haiti will be the President and only one-third of the Senate.

According to a Presidential order signed on March 10, 2014, Parliamentary elections were to take place on October 26, 2014. However, the elections scheduled for October did not take place and were further postponed. Once the seats of the Senate and the House of Deputies expire, the Executive branch will be authorized to dissolve the Parliament all together. The President signed the El Rancho Accord on March 14, 2014, which established plans for Parliamentary elections to take place in October and elections for local authorities to be held on December 28, 2014. However, according to credible reports, some of Haiti's most prominent political parties widely rejected the agreement. Furthermore, the accord has not been approved by Parliament hence lacks any legal authority.

In addition to challenges caused by overdue elections, political gridlock between the Haitian Executive and Legislative branches has considerably slowed the country's progress toward reconstruction and compliance with international human rights standards. Reports suggest that the lack of political experience within Martelly's administration has led to a considerable amount of friction with the Haitian Parliament. During most of Martelly's first year in office, Haiti did not have a prime minister. For nearly five months, the President faced great difficulty in forming a government due to disputes with Parliament. Delays in establishing a government greatly hampered reconstruction efforts.

Delayed elections and political gridlock within the Haitian government have severely impacted measures to address gender-based violence in a comprehensive manner and have thwarted efforts to align the Haitian Penal Code with international human rights standards. Haiti's Executive Branch is currently considering Penal and Criminal Procedure Code revisions that, if approved by Parliament, would greatly strengthen the country's legal mechanisms to address gender-based violence.

Outdated Penal Code

Another factor that hinders Haiti's progress towards meeting its international human rights obligations is deficiencies within the country's justice system. Haitian justice system is plagued by widespread dysfunction, inefficiency and corruption, most of which stems from the outdated Penal and Criminal Procedure Codes. The Haitian Penal Code has not been comprehensively revised since 1835, leaving more than 165 legal or administrative provisions irrelevant to the current context.

Haiti's Executive Branch is now considering Penal Code revisions that, if approved, would be a landmark in legislation addressing gender-based violence in Haiti and would greatly advance Haiti towards meeting its obligation to prevent and redress human rights violations. Haitian Penal Code revisions drafted by the Ministerial Commission for the Modernization of the Penal Code and the revisions developed for the Criminal Procedure Code would boost the legal protections of the human rights of women in Haiti through several key provisions including a modernized definition of rape that is based on consent, a specific codification of marital rape as a crime, and the criminalization of sexual harassment.

Sexual harassment has traditionally been associated with and defined as occurring in the context of unequal power relations, particularly in employment contexts. As a result, sexual harassment is often dealt with solely in countries' labor codes and legal protections are only applied to those who experience such behavior in the formal employment sector. Haiti's draft penal code revision law would, for the first time in Haiti's history, recognize sexual harassment as a crime and punishable by law.

However, the Penal Code revisions are currently stalled in the Executive Branch and have yet to be submitted to Parliament for vote. Without free and fair elections and with the prospect of Parliament's dissolution on the horizon, the fate of the revisions remains to be determined, leaving thousands of victims to suffer from human rights violations and ineffective legal protection.

Therefore, in order to move towards sustainable development and ensure compliance with Haiti's human rights obligations, the government should take all necessary measures to hold free and fair elections in which all eligible political parties can participate.

Lack of Effective Implementation

For victims of gender-based violence, problems begin to arise at the earliest entry point in the criminal justice system: when victims attempt to obtain medical certificates from doctors. Although a medical certificate is not explicitly required under Haitian law as evidence of sexual violence, in practice, a medical certificate is treated as a legal requirement for pursuing a complaint. Specifically, victims of sexual violence in Port-au-Prince regularly report being turned away by the Prosecutor's office or having their cases dismissed by judges if they cannot provide a medical certificate from an approved state hospital, or if, in the court's discretion, the certificate does not provide enough detail.

Timing poses yet another hurdle to survivors' attempt to attain justice. In Haiti, any individual caught in the "act of committing a crime" (*flagrant délit*) can be held for up to 48-hours without charge. Since it takes three days at a minimum, and more commonly a week, for victims to obtain a medical certificate, prosecutors will often decline to continue with a *flagrant délit* without a medical certificate, regardless of other material evidence and the accused is released.

Haitian judges and judicial officials often lack sufficient legal training which leads to insensitive investigation mechanisms, hostile and discriminatory attitudes towards victims, undue delays in processing cases and inconsistent rulings. These deficiencies within the Haitian justice system create further barriers for victims of gender-based violence to access justice and often deter victims from reporting crimes to authorities. Moreover, insufficient training, lack of judicial uniformity, and officials' vulnerability to bribery often result in overwhelming violations of fundamental human rights.

In addition to deficiencies within the Haitian judiciary, corruption and certain practices in the law enforcement prevent victims from demanding justice. It is not uncommon for survivors of gender-based violence to face difficulties in reporting these crimes to the Haitian National Police (PNH). Women and girls are often subjected to verbal and at times physical harassment and humiliation when they report the crimes. Even if police officials take initial reports seriously, professionalism is rarely maintained. Furthermore, the majority of police officials lack sensitivity and appropriate training in investigating gender-based violence crimes, which often leads to apathy and poor evidence gathering procedures. This has a grave impact on individuals involved in gender-based violence cases because without particular medical reports or thorough crime scene investigations, cases can be easily dismissed when taken to court.

Instances of police apathy and blatant discrimination are not unique to gender-based violence cases. LGBT persons report that Haitian police officials often target individuals based on their perceived or actual sexual orientation or gender identity. Haitian law does not criminalize same-sex sexual conduct between consenting adults; however, police often use public indecency laws to arbitrarily arrest and/or detain individuals.

Moreover, Haitian community-based LGBT rights organizations such as FASCDIS, SEROVie, and Kouraj in partnership with international organizations including MADRE and the International Gay and Lesbian Human Rights Commission (IGLHRC) have documented numerous cases of police violence and misconduct against LGBT individuals. Rights groups explain that incidents of police violence, discrimination, and abuse against LGBT individuals generally go unreported to State officials out of fear of police brutality and discrimination or retaliation from perpetrators.¹ As a result, for the majority of victims, the Haitian justice system remains highly inaccessible due to the barriers discussed above.

MADRE commends the Haitian government for conducting a number of trainings for law enforcement officials and judges focused on the effective investigation, prosecution, and adjudication of sexual and gender-based violence cases. Over the last year the Ministry on

¹ MADRE, International Gay and Lesbian Human Rights Commission (IGLHRC), International Women's Human Rights Clinic at CUNY Law School, FASCDIS, KOURAJ, SEROVie, et al. *Fighting for our Lives: Violence and Discrimination against Women and LGBT persons in Haiti* (2014).

Women's Affairs has opened three centers in Port au Prince, Cap Haitian, and Les Cayes to serve women, host trainings and provide technical assistance to young women and men on human rights and other themes related to women's issues. These small steps in the right direction are hampered by the fact that the Women's Ministry is the least funded Ministry in the President's cabinet. The same is true for those parts of the police force that have been implementing initiatives to improve law enforcement response to gender-based violence. Principle Commissar Marie Louise Gauthier, Division Police Chief & Head of the National Office for the Coordination of Women's Affairs at the National Police of Haiti (PNH), heads a specialized mobile unit specifically trained to respond to sexual and gender-based violence complaints. However her unit is not only severely underfunded, it is one of the least funded units in the PNH.

Despite efforts made by the Haitian Government to address the issue, vulnerable victims in Haiti continue to face violence and threats in significant numbers. For example, a January 2011 household survey conducted on sexual violence in Port-au-Prince found that, of respondents who indicated the gender and age of the victim, approximately 86% were women and girls.² The results of a survey of random Haitian households conducted from August 2011 to February 2012 indicate a dramatic escalation in violence, particularly in densely populated urban centers. The survey also found that residents of low-income urban areas were twenty-seven times more likely to be sexually assaulted than residents of wealthier, less densely populated areas.

In the 2013 report issued by the Government of Haiti to the UN Human Rights Committee, the government acknowledges that violence and discrimination against women is a pervasive problem in Haiti. The report attributes gender-based violence in Haiti to sexist stereotypes cultivated in the home and internalized by women themselves. The report cites women's organizations that regularly publicize alarming rates of sexual violence, but states that the lack of reliable national statistics makes confirmation of these figures difficult. As such, the government recognizes that violence against women is a problem in Haiti, while simultaneously questioning the credibility of the non-governmental organizations that report these statistics. In terms of LGBT violence and discrimination, the Government's report is silent.

Proper resources should be allocated to provide substantive legal and sensitivity trainings for police officers, prosecutors, judges and other relevant government officials. The trainings should aim to ensure that cases involving gender-based violence including violence motivated by sexual orientation and gender identity are thoroughly investigated, and if evidence exists, prosecuted; and that perpetrators brought to justice.

Finally, it should be noted that a strong civil society holds the key to fostering significant change in policies on violence against women and LGBT individuals. A comprehensive longitudinal study³ on gender-based violence reveals that feminist mobilization in civil society is the critical factor for policy change and government action to redress violence against women. The study suggests that a civil society has a far stronger impact than intra-legislative political phenomena

² Center for Human Rights and Global Justice, *Sexual Violence in Haiti's IDP Camps: Results of a Household Survey* (2011).

³ MALA HTUN and S.LAUREL WELDON (2012). The Civic Origins of Progressive Policy Change: Combating Violence against Women in Global Perspective, 1975-2005. *American Political Science Review*, 106, pp. 548-569 doi:10.1017/S0003055412000226.

such as leftist parties, women in government or economic factors like national wealth in producing an enduring impact on gender-based violence. The reason for this is that autonomous social movements are essential to propel social policy change and furthermore to ensure that laws and policies on the national level are interpreted and implemented on the local level hence contributing to their legitimacy and effectiveness.

Therefore, all efforts to establish gender equality and address gender-based violence in Haiti should be taken into account in conjunction with immense support for the Haitian civil society, particularly the Haitian women's movement and Haiti's emerging LGBT movement to bring about significant progress in eliminating gender-based violence and discrimination in Haiti.

Women, Girls and Cholera

Another issue affecting women and girls in Haiti is lack of access to water and sanitation, which has particularly grave and urgent implications in light of the ongoing cholera epidemic described by my colleague Loune Viaud. The epidemic is a continuing economic and social human rights problem- cholera has killed over 8,600 Haitians, and Doctors Without Borders reported just last week that their current cholera caseload has almost doubled over the same period in 2013.

The cholera epidemic is also an accountability problem. A series of studies, including one conducted by a UN-appointed panel of experts, have established that cholera was introduced to Haiti through the reckless disposal of untreated human waste at a UN Stabilization Mission in Haiti (MINUSTAH) base. This scientific record triggers a legal obligation for the UN to either install the infrastructure necessary to control cholera and compensate the victims, or provide the victims a fair process to pursue claims against the organization. The UN has refused to comply with these legal obligations, which deeply undermines both the rule of law and the UN's own credibility while leaving the cholera epidemic uncontrolled and its victims without justice.

A just response to the cholera crisis by the United Nations would not only promote the rule of law and improve the UN's credibility in Haiti. It could also provide the water and sanitation infrastructure necessary to control cholera and all water-borne disease in Haiti. Installing and operating this infrastructure provides a historic opportunity to help the Haitian government build its capacity to provide an essential public service. It also provides a historic opportunity to concretely reduce many burdens disproportionately carried by women and girls, especially the carrying of contaminated water over long distances and caring for the illness it generates.

Recommendations

Among global donors, the United States government stands in a unique position to help integrate gender-based violence prevention strategies into development programs. The concern for human rights not a stand-alone issue. It is deeply woven into the fabric of all foreign aid investment and there are practical steps the United States government can take to demonstrate foreign aid leadership and assistance to those most vulnerable in Haiti. MADRE recommends the following actions for the consideration of the distinguished Commission and the Government of the United States to ensure the respect and protection of human rights in Haiti's path to development and reconstruction.

1. Urge the treatment of the issue of gender-based violence as a priority for the United States Government's development and reconstruction efforts in Haiti. The U.S. government can lead the fight against gender-based violence in Haiti's development and reconstruction process by providing support for community based organizations and calling for strengthened gender assessments, gender budgets, and gender planning in deeper collaboration with the Haitian government, the United Nations, the Inter-American Commission on Human Rights, donors, and other key stakeholders.

2. Assert its support for the passage of Haiti's Penal Code revisions drafted by the Ministerial Commission for the Modernization of the Penal Code and the Criminal Procedure Code and supported by USAID Projustice. The Penal Code revisions that were introduced to the Executive Branch offer hope that Haiti may finally be moving towards an enduring, secure democracy characterized by rule of law. The U.S. can play an important role in supporting the passage of these critically needed revisions.

3. Invest in programs that provide Haitian public officials, such as police officers, prosecutors, and judges, responsible for responding to incidents of gender-based violence with specialized trainings. Such trainings should be conducted in consultation with experienced Haitian women's and LGBT organizations and their international counter parts that have proven track records in gender sensitive protection. Funding programs should also support the creation and enhancement of effective special units within the police and the prosecutor's office investigating cases of rape and other forms of gender-based violence against women and LGBT individuals.

4. Urge the United Nations to fulfill its legal obligation to the victims of the cholera epidemic by installing comprehensive water and sanitation infrastructure, developing the Haitian government's capacity to manage the infrastructure, and compensating those injured. A Dear Colleagues letter sponsored by Rep. Conyers' is circulating the House for signature. The letter urges the United Nations Secretary-General to create a fair process to adjudicate the claims made by cholera victims that allows for the remediation of the affected communities. We urge members of the Lantos Commission to sign on to this letter and to encourage their colleagues to do as well.