

# **Haiti**

## **Submission to the United Nations**

### **Universal Periodic Review**

Twelfth Session of the Working Group on the UPR

Human Rights Council

3 October – 13 October 2011

### **Housing Rights**

**Submitted by:**

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## **Haiti**

Report to the UN Universal Periodic Review

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- 1. The Lamp for Haiti Foundation (“the Lamp”)** is a U.S. registered non-profit organization operating a community-based human rights law office and medical clinic in the slum of Cité Soleil, in Port-au-Prince, Haiti. The Lamp works at the cross-section of human rights and medicine, housing both a medical clinic and a human rights law office on its Bois Neuf campus. Lamp’s philosophy is that many diseases are a manifestation of human rights violations. We treat diseases (the symptoms of the human rights violations) while working to improve their underlying structural, social, and economic, and political roots.

### **A. Executive Summary**

- 2.** This submission provides information under sections C, D, and E as stipulated in the General Guidelines for the Preparation of Information under the Universal Periodic Review:
  - Under Section C, this submission sets forth the domestic and international legal standards that govern housing rights.
  - Under Section D, the report highlights the results of a survey conducted in Bois Neuf a neighborhood of the Cité Soleil slum. The survey documents the subhuman living conditions typical of the slums in Haiti.
  - Under Section E, the report makes a number of recommendations for action by the Haitian government.

### **B. Introduction**

- 3.** Although Haiti’s 2010 earthquake devastated housing conditions in Haiti, the country already had millions living in slum conditions violative of their human rights. Approximately 80% of Haitians live in poverty,<sup>i</sup> a large percentage in slums. The slums are densely packed, containing mostly poorly constructed, small, crowded dwellings. This extreme amount of poverty makes it impossible for the slum residents to improve their housing conditions without government support and rights protection. Slums are plagued with extreme violence, little to no sanitation, lack of secure housing tenure, poor access to potable water, inconsistent access to electricity and inhumane living conditions. One of the largest slums in Haiti is Cité Soleil.

4. Cité Soleil is at sea level and stretches to the port. Potable, unsalty water is not reachable without sophisticated drilling equipment. Many of the homes in Cité Soleil are constructed out of a combination of tin and cement blocks. Right up until the 1990s the cement blocks used to build private homes were created using the salty water found right below the surface of the land. These homes were not sturdy and fell apart in the rain. The result is rows of decrepit homes and shells of shattered shacks. Cité Soleil appeared to have been devastated by an earthquake years before January 12, 2010.
5. Many government decisions have further contributed to inadequate housing in Cité Soleil in contravention of every Haitian's basic rights. Following the agricultural sector collapse in the 1980s and the subsequent government-encouraged migration of people from the countryside, the city became overpopulated. Former Finance Minister Leslie Delatour advocated the depopulation of the Haitian countryside encouraging people to work in cities in the growing industrial sector. The industrial sector was damaged following the 1991 coup d'état, causing a boycott of Haitian products. The capital of Port-au-Prince, once home to 250,000 people, grew to 3 million.<sup>ii</sup> Of these 3 million, approximately 500,000 live in the Cité Soleil slum.
6. Similar to IDP camps, Cité Soleil houses many people who had been forced into transition. Many of the housing settlements were created following both natural and man-made disasters, e.g., a massive fire in the slum LaSaline in 1966, a major fire in 1972,<sup>iii</sup> major hurricanes in the countryside, government-ordered burning of homes under both Duvalier dictatorships and political and gang related fires in the 1990s/2000s. Often, the governmental response was to construct permanent homes for these displaced persons without a plan for creating a sustainable community of people living with rights and dignity.

### **C. Domestic and International Legal Obligations**

#### **a. International Obligations**

7. The right to adequate housing simply requires that one has the right to living accommodations that promote health and well-being for oneself and one's family.<sup>iv</sup> The right to adequate housing includes elements of habitability, affordability, physical security, and security of tenure.<sup>v</sup> It also includes a corresponding right to be free from forced evictions, justifiable only in exceptional circumstances.<sup>vi</sup> UN-HABITAT endorses five indicators of slum conditions weighing: 1) access to water; 2) access to sanitation; 3) access to secure tenure; 4) durability of housing; and 5) sufficient living area.<sup>vii</sup>

#### **b. Domestic Obligations**

8. The Constitution of Haiti recognizes “the right of every citizen to decent housing, education, food and social security.”<sup>viii</sup> Although the constitution does not provide further information on the right to decent housing, the Constitution does incorporate standards established under international agreements that are ratified. Those agreements become part of the legislation and abrogate any conflicting domestic laws.<sup>ix</sup> Haiti has not adopted the ICESCR, but it is a party to the ICCPR, the CRC, the CRDP, and CEDAW.<sup>x</sup>
9. In addition to rights created by treaties and the constitution, the government has enacted several laws regulating the housing industry that protect the rights of renters. The government has failed to enforce these laws, particularly in Cité Soleil. Following the economic housing crisis in May 1948, the Haitian legislature enacted *Moniteur No. 41, Le loi sur les loyers du 17 mai 1948 prescrivait les délais de 3 à 5 ans ou de 2 à 4 ans selon le cas...*, or *The Rent Act of 17 May 1948 Prescribing Limits of Three to Five Years (or Two to Four Years in some cases)*. *Moniteur No. 41* created regulations governing evictions, delaying evictions between two and four years for non-commercial renters. In September 1948, the Haitian legislature passed *Moniteur No. 84, Le loi du 8 Septembre 1948 relative aux locataires pur délaisser les immeubles que les propriétaires ont l’obligation de réparer, or the Law of 8 September 1948 governing the time allowed for repair of owner neglected dwellings*.<sup>xi</sup> Although the black letter of the law protects the rights of renters, the failure of government entities to enforce the law remains a serious impediment to secure tenure and adequate housing.
10. Complicating matters, Cité Soleil, originated as a government housing project for various groups of displaced persons and, at other points in its history, has been open land available for people to construct houses upon. Thus, the land has always been government owned and impossible to be owned by Cité Soleil residents. This allows people to come freely to Cité Soleil to construct homes that do not conform to any building codes or regulations. The organic creation of Cité Soleil, without government input or professional urban planning supervision, created poorly designed overpopulated neighborhoods that eliminate the possibility of municipal roads and buildings, and cut-off access to utilities, emergency services, education and access to the commercial marketplace. Lastly, the public land creates a host of problems with insecure tenure.

### **c. Domestic Government Framework**

11. The national housing policy is administered by the Ministry of Social Affairs and Labor through the division of Social Housing Promotion and Planning (EPPLS in French).<sup>xii</sup>

## **D. The Right to Adequate Housing as it Relates Specifically to Conditions in Slum Cities**

### **a. Slum Conditions as Highlighted by Study in Bois Neuf, Cité Soleil**

- 12.** The slums in Haiti are notably inhumane and unlawful. A study of a sample of 89 families living in the Bois Neuf section of Cité Soleil by the National Black Law Students Association (NBLSA), a U.S. nationwide student organization, and the Lamp in January, 2011 highlights the tenancy conditions. The survey utilized the UN HABITAT indicators of slum conditions to draft the questions.
- 13.** Of the 89 families surveyed, 56 did not have enforceable contractual agreements preventing eviction. Of the 89 families surveyed, 40 families feared evictions from landlords, natural disasters, but mostly by “chimères” or gangsters. All respondents that confirmed forceful eviction started in 1990. Prior to 2007 those evicted in Cité Soleil all stated that “chimères,” a/k/a gangsters, were the cause. Since 2007, only one respondent confirmed a forceful eviction by a “chimère.” Approximately 10% of respondents reported being constructively evicted because the conditions of their homes were deplorable. All 89 surveyed families reported chronic problems with mosquitoes and rodents.
- 14.** Additionally, renters, even when a contractual agreement existed, reported no working relationship with landlords. The landlords were absentee landlords refusing to repair homes alleging that the rental payments were too low. Housing law in Haiti does not require a minimum rental payment amounts to require repairs by landlords. Housing law does create a cause of action for failure by landlords to maintain healthy living conditions. Renters reported not knowing nor having access to their landlord because they paid through a middleman. Many renters also reported that the owners of the homes were living in other countries while profiting off rental payments from homes in Cité Soleil in disrepair. Rental prices varied but usually were collected every six months.

### **b. Statistics from Slum Conditions Survey in Bois Neuf, Cité Soleil**

- 15.** The survey conducted by NBLSA and LAMP yielded the following results:
  - 56 people surveyed had no enforceable agreement preventing eviction; of the 33 that do have enforceable agreements, 10 are from individual negotiations with an individual or with public authorities.
  - 8 of 89 respondents pay property tax on land that is public and cannot be taxable. Of this 8, 2 were renters.
  - 55 of the 89 respondents have access to government electricity. Respondents reported irregular payment systems established and imposed and collected by a local resident. The

state electric company charges by access to a transformer, not by volume of electricity used.

- 10 respondents have been constructively evicted due to deplorable living conditions.
- 14 respondents reported having serious problems with flooding.
- 58 of the 89 respondents have been homeless in the last 12 months, ranging from several days to one year.
- 72 confirmed that they drank the same water as their daily use water.
- 41 had some sort of private latrine while 13 reported using any available place such as an alley or in the shell of a destroyed home.
- Houses had between 2-11 people packed into 1-3 rooms; many homes were missing doors and walls.

## **E. Recommendations**

### ***16. Regulate Local Governments***

- The Haitian government should establish and enforce systems to regulate local governments at the Commune level that are unlawfully accepting payment for property tax on the public land in Cité Soleil.
- The Haitian government should create a registry of rental units that ensure that all landlords are put on notice of their legal duties to landlord and their liability for violations of those duties.

### ***17. Legal Representation***

- Recognize a right to legal representation matters related to housing rights, and provide access to lawyers or consultants for people seeking to enforce those rights.

### ***18. Creation of Sustainable Communities***

- Encourage creating sustainable communities through providing tangibles that assist in overall community development, e.g. schools, libraries, etc.

### ***19. Create Property Interest in Land***

- Create a system of property interest in land through title registration and contracts.

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<sup>i</sup> In 2009, Haiti ranked 142<sup>nd</sup> out of 182 countries listed on the UN’s Human Development Index. Walter Kaelin, *Human Rights of Displaced Persons in Haiti: Memorandum Based on a Working Visit to Port au Prince (12-16 October 2010)*, p.2-4.

<sup>ii</sup> ActionAid, *Building for the Future: Homes and Security in Haiti*, at 6 (2011), [hereinafter, “ActionAid report”].

<sup>iii</sup> Project Plan Urban Health and Community Development, May, 1984 available at [http://pdf.usaid.gov/pdf\\_docs/PDAAT248.pdf](http://pdf.usaid.gov/pdf_docs/PDAAT248.pdf)

<sup>iv</sup> Article 25 of the Universal Declaration of Human Rights (“UDHR”) establishes that “[e]veryone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care . . .” The International Convention on Economic, Social and Cultural Rights (“ICESCR”), establishes the right “of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.”

<sup>v</sup> Committee on Economic, Social and Cultural Rights, General Comment 4, *The Right to Adequate Housing*, U.N.Doc.E/1992/23 (Dec. 13, 1991) [hereinafter Comment 4”].

<sup>vi</sup> Comment 4, para. 18.

<sup>vii</sup> Guidelines Operational definitions for Household Surveys in Cities on Secure Tenure & Slums. November 26, 2002.

<sup>viii</sup> Haiti Constitution, art. 22 (1987).

<sup>ix</sup> Haiti Constitution, art. 276-2 (1987).

<sup>x</sup> Other international agreements incorporate the right to housing, either expressly or implicitly, including the International Covenant on Civil and Political Rights (“ICCPR”), the Convention on the Rights of the Child (“CRC”), and the Convention on the Rights of Disabled Persons (“CRDP”). Non-discrimination with regard to housing is also recognized by the Covenant on the Elimination of Discrimination Against Women (“CEDAW”).

<sup>xi</sup> Descriptions of these laws are available in a ComicWeb document created based on feedback from non-governmental organizations, namely: CordAid, an informal group working on land and space issues, and GOAL documents on local government structure. Available at <https://www.cimicweb.org/cmo/haiti/Crisis%20Documents/Shelter%20Cluster/100420%20Tenure%20Security%20after%20EQ%20Haiti.pdf>.

<sup>xii</sup> Information Provided by the Government of Haiti to the United Nations Commission on Sustainable Development, 7-25 April 1997, available at, <http://www.un.org/esa/agenda21/natlinfo/countr/haiti/social.htm>.