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GRASSROOTS WOMEN'S ORGANIZATIONS' FIGHT FOR FREEDOM FROM SEXUAL VIOLENCE AND RECOGNITION UNDER DOMESTIC AND INTERNATIONAL LAW

April Marcus[†]

The sun was beginning to set in Port-au-Prince as we approached the new KOFAVIV¹ clinic and the open air living room let us hear the singing and clapping as we entered. Although we received a warm welcome, the stories that the women were about to share provided a harsh contrast to the pleasant scene we were presently a part of; stories of helping strangers, friends, and family members, who like them, are victims of sexual violence, displacement, and uncertainty.

The Haiti Project at the International Women's Human Rights Clinic (IWHR) at CUNY School of Law left for Port-au-Prince, Haiti on October 7, 2010. Our goal was to collect firsthand evidence of the conditions in the displacement camps. We were able to speak with three groups of people to broaden our understanding and to seek out the disconnect between what was happening on the ground and the official responses to these issues. We spoke to residents in the camps, the service providers operating in the camp, and government agencies. This information was then compiled and included in our petition for precautionary measures to be filed with the Inter-American Commission on Human Rights.

The women that we met from KOFAVIV spoke about the work they do in the camps, assisting victims and identifying rapists. If a woman becomes the victim of an attack, she is put in touch with a KOFAVIV member who then accompanies the victim to the camp committee or police, to the hospital to obtain a medical certificate,

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¹ KOFAVIV, in Creole, stands for Komisyon Fanm Viktim pou Viktim (in English, *The Commission of Women Victims for Victims*). Members are women who have been victims of sexual violence who are social workers in the displacement camps helping current victims of sexual violence.

and to the Bureau des Avocats Internationaux (BAI) lawyers in order to begin building a legal case. Due to the nature of their work, BAI lawyers and KOFAVIV agents are being targeted by the rapists and their cohorts. Some KOFAVIV agents have had to flee their camps and go into hiding after serious threats to their lives.

The leaders of KOFAVIV also spoke about their exclusion from meetings with the Gender Based Violence Sub-Cluster² (“GBV Sub-Cluster”) meetings with members of MINUSTAH (United Nations Stabilization Mission in Haiti)³ and the Women’s Ministry. These meetings are held near the UN Logistics Base (“Log Base”), extremely far from the displacement camps. We traveled by car from downtown Port-au-Prince to the Log Base in over an hour of bumper-to-bumper traffic; it is difficult to imagine having to transfer between several different crowded tap-taps (Haitian public transportation buses) in order to go to these meetings. Additionally, the meetings are conducted only in French with no Creole translation.⁴ The reasoning provided to us by the GBV Sub-Cluster representatives for this was that translating would be too time consuming.⁵ Exclusion of grassroots women’s groups’ voices from the conversation is to encourage the “waste and misdirection of aid by donor countries.”⁶ However, the UN Security Council

² The U.N. Gender-Based Violence Sub-Cluster in Haiti (the “GBV Sub-Cluster”) is coordinated by United Nations Population Fund (UNFPA) and United Nations Children’s Fund (UNICEF), and includes U.N. and NGO membership as well as Ministries of the Government of Haiti. The Sub-Cluster takes the lead on addressing gender-based violence in complex emergencies, natural disasters, and other such situations. Lisa Davis & Blaine Bookey, *Fanm ayisyen pap kase: Respecting the Right to Health of Haitian Women and Girls*, 13(1) HEALTH AND HUM. RTS. J. 14 n.69 (2011), available at <http://www.hhrjournal.org/index.php/hhr/article/viewArticle/410/618-refs1>.

³ MINUSTAH was established in June 2004 by Security Council Resolution 1542, S.C. Res. 1542, U.N. Doc. S/RES/1542 (Apr. 30, 2004), available at <http://www.un.org/en/peacekeeping/missions/minustah/>. Its original mandate was to restore a secure and stable environment, to promote the political process, to strengthen Haiti’s Government institutions and rule-of-law structures, as well as to promote and to protect human rights. *Id.* at ¶ 7(I). After the earthquake, the Security Council ordered an increase in the overall force levels of MINUSTAH to support the immediate recovery, reconstruction and stability efforts in the country. UNITED NATIONS STABILIZATION MISSION IN HAITI (MINUSTAH), *Restoring a Secure and Stable Environment*, <http://www.un.org/en/peacekeeping/missions/minustah/> (last visited Nov. 2, 2011).

⁴ Interview with KOFAVIV agents, in Haiti (Oct. 8, 2010) (on file with author).

⁵ Interview with MINUSTAH at U.N. Logistics Base, in Haiti (Oct. 11, 2010) (on file with author).

⁶ See Request for Precautionary Measures Under Article 25 of the Commission’s Rules of Procedure, by Int’l Women’s Human Rights Clinic (IWHR) at the City Univ. of N.Y. (CUNY) Sch. of Law, MADRE, Inst. for Justice & Democracy in Haiti (IJDH), Bureaux des Avocats Internationaux (BAI), Morrison & Foerster LLP, Ctr. for Constitutional Rights (CCR) & Women’s Link Worldwide, at Appendix A (Oct. 19, 2010),

Resolution codified the importance of grassroots women's groups' input in Resolution 1325⁷ stating that this resolution further recognizes that women and girls are "the vast majority of those adversely affected" by armed conflict or natural disaster that creates internal displacement.⁸ Due to this, the Security Council "[u]rges Member States to ensure increased representation of women at all decision-making levels in national, regional, and international institutions and mechanisms for the prevention, management, and resolution of conflict."⁹ The inclusion of grassroots groups is necessary in both law and practice. Other participants in the GBV Sub-Cluster meetings are not residents of the displacement camps and are therefore unable to provide information that is both applicable and reflective of the community there.

For example, aid agencies handed out battery-operated flashlights to women in the camps. Unfortunately, once the batteries ran out, these flashlights were useless because the women could not afford to replace the batteries.¹⁰ Including the consultation and participation of grassroots women's groups would have ensured that wind-up or solar-powered flashlights were provided, thereby using donor money in the most efficient and useful way possible.

Another instance demonstrating the exclusion of KOFAVIV and other grassroots organizations is the GBV Sub-Cluster's refusal to put KOFAVIV's name on the referral cards. These cards are handed out to rape victims in the camps providing information on medical clinics and other resources. The work that KOFAVIV does in the camps is essential to the prosecution of rapists and ensuring that camp resident victims are given proper medical attention. The fact that they are excluded from the cards is a disservice not only to KOFAVIV, but to the camp residents who need their assistance.

When formally inquired as to why they could not be included on these cards, the GBV Sub-Cluster responded that it was due to KOFAVIV's inability to ensure private areas for counseling victims to preserve their confidentiality, regardless of the fact that they had

available at <http://www.madre.org/index/press-room-4/news/iahcr-sets-recommendations-for-haitian-government-to-address-sexual-violence-in-idp-camps-544.html> [hereinafter Request for Precautionary Measures].

⁷ S.C. Res.1325, at 1, U.N. Doc. S/RES/1325 (Oct. 31, 2000), *available at* <http://www.un.org/Docs/scres/2000/sc2000.htm>.

⁸ S.C. Res. 1325, ¶ 4.

⁹ S.C. Res. 1325, ¶ 1.

¹⁰ Interviews with IDP ("Internally Displaced Persons") residents of Place St. Anne, in Haiti (Oct. 10, 2010) (on file with MADRE).

lost their clinic in the earthquake.¹¹ However, the GBV Sub-Cluster knew that KOFAVIV was in partnership with the BAI and, through previous site visits to BAI offices, knew that they had private offices where interviews with victims could take place in complete privacy and with confidentiality.

Our trip to Haiti accomplished all of the goals that we set out to achieve and more. Not only did we collect evidence that would make our petition persuasive to the Commission, but we also uncovered the discriminatory intent behind the GBV Sub-Cluster's motives. The work that KOFAVIV agents were doing under such harsh conditions and the opportunity to meet these women in person increased the need for succeeding in our petition, knowing that its success could make their jobs and lives just a little bit easier.

Before filing the request for precautionary measures, we weighed the advantages and disadvantages of such an action. A petition for precautionary measures is extremely advantageous in "serious and urgent" situations where traditional legal domestic remedies are unavailable.¹² The court system in Haiti has not been hospitable to rape prosecutions, and it is almost impossible to build a successful rape case without the cooperation of the police. The Court, like most displaced residents of Port-au-Prince, was operating out of a tent after the earthquake. Since the earthquake in January 2010, the incidence of rape has increased, and the nature of the attacks has become more violent.¹³ This situation is clearly serious as well as urgent. Residents of Port-au-Prince have been living in the camps for over a year at this point with no clear end in sight; making these camps a safer place to live and prevent future attacks against women is extremely urgent and long overdue.

On the other hand, in filing the precautionary measures, we were asking the Commission to set new precedent. If the Commission granted our petition, it would be the first time that precautionary measures were used to protect a collective group of unnamed women. In the past, petitioners were able to keep their names anonymous, but petitions were only granted for specific individuals. Here, we were asking for protection for all residents in 22 of the camps in Port-au-Prince. These camps were selected because they were locations where KOFAVIV agents lived and pro-

¹¹ Email from Sian Evans, UNFPA GBV Sub-Cluster representative, to Lisa Davis, Instructor, IWHR Clinic, CUNY School of Law (Aug. 20, 2010) (on file with author).

¹² *Article 25: Precautionary Measures*, RULES OF PROC. OF THE INTER-AM. COMM'N H.R. (2009), available at <http://www.cidh.oas.org/Basicos/English/Basic18.RulesOfProcedureIACHR.htm>.

¹³ Request for Precautionary Measures, *supra* note 6, at 4-6.

vided services. Since we were asking the Commission to break from precautionary measures precedent, we had an alternative plan if the Commission was unwilling to grant the measures solely on that basis. Thirteen women had come forward who were willing to be named in the petition, even though they faced great retaliation. In our petition we argued that the Haitian government has knowledge of the frequency and number of rapes in the displacement camps yet fails to exercise due diligence by essentially allowing the current circumstances in the camps to exist. This was yet another unprecedented argument we were asking the Commission to grant. According to the Secretary-General's Study on Violence Against Women, "States are accountable for the actions of non-State actors if they fail to act with due diligence to prevent, investigate, or punish [human rights violations] and provide an effective remedy."¹⁴ The government's failure to fulfill their role in providing lighting and security in the camps and its further failure to diligently prosecute and punish the attackers deem the state accountable for the rapes, even though they are committed by private actors. Although state responsibility for non-state actors has been addressed in human rights law, it is a relatively new and evolving concept.¹⁵ If the Inter-American Commission on Human Rights were to grant our precautionary measures, it would be the first time they would incorporate the due diligence and state responsibility standard.

Our petition to the Commission described the rape crisis in the displacement camps using accounts from KOFAVIV members collected from our trip.¹⁶ It described contributing factors to the situation in the camps, such as lack of security and lighting.¹⁷ Additionally, it included the threats to the KOFAVIV agents for their work in the camps,¹⁸ the lack of recourse for the victims, and their inability to prosecute their attackers.¹⁹ Difficulty in obtaining proper medical attention, including emergency contraception, HIV prophylaxis, availability of female doctors, and the inability to receive a medical certificate, were also addressed.²⁰ After our meetings in Port-au-Prince, and what we learned from our meetings

¹⁴ U.N. Secretary-General, *Report of the Secretary-General: In-depth Study on All Forms of Violence Against Women*, ¶ 255, delivered at the 61st Session of the General Assembly, U.N. Doc. A/61/122/Add.1 (July 6, 2006) available at <http://www.un.org/womenwatch/daw/documents/ga61.htm> (last visited Nov. 2, 2011).

¹⁵ *Id.*

¹⁶ Request for Precautionary Measures, *supra* note 6, at 4-6.

¹⁷ *Id.* at 9.

¹⁸ *Id.* at 7-8.

¹⁹ *Id.* at 9.

²⁰ *Id.* at 8.

with the representatives from MINUSTAH and the GBV Sub-Cluster, we stressed the importance of having voices from the women's grassroots movement heard in the planning. The applicable law for the petition to the Commission was the American Convention on Human Rights, which Haiti ratified in 1977.²¹

After we filed the petition for precautionary measures, we received encouraging feedback from other organizations, individuals, and our contact at the Commission. If the measures were granted, we would then have a blueprint to ending sexual violence in Haiti that is supported by a regional official ruling and could then encourage donor states to contribute to this new structure run by the Haitian government.

In a decision that broke from tradition and precedent, the Commission wrote a letter to the government of Haiti asking them to investigate and document the sexual abuse in the displacement camps.²² In addition to this letter, the Commission released a public statement that raised many of the issues to which we alerted them in our petition.²³ The public statement backed our recommendations for security provisions both around and inside the camps, and especially near the bathrooms,²⁴ where many of the camp residents told us they were attacked or felt unsafe. Additionally, the statement laid out specific guidelines that the government needed to implement:

[T]he Commission recommended to the State of Haiti that it ensure the presence of security forces around and inside the IDP ("Internally Displaced Persons") camps, in particular female security forces and especially near the bathrooms; improve lighting inside the camps; implement measures to facilitate the filing of legal actions and to improve the efficiency of judicial investigations, including in particular training police officials in their duties related to cases of violence against women; and provide free assistance by specialized doctors who have experience in treating victims of sexual violence.²⁵

The GBV Sub-Cluster received our petition along with the press release from the Commission. When they read the petition, they had trouble identifying which camps were being referred to since

²¹ *Id.* at 12.

²² MADRE, IWHR CLINIC AT CUNY SCHOOL OF LAW & IJDH, OUR BODIES ARE STILL TREMBLING: HAITIAN WOMEN CONTINUE TO FIGHT AGAINST RAPE, ONE YEAR UPDATE, at 11 (2011) [hereinafter "OUR BODIES ARE STILL TREMBLING"], available at <http://reliefweb.int/rw/rwb.nsf/db900sid/KKAA-8CZ59M?OpenDocument>.

²³ *Id.*

²⁴ Request for Precautionary Measures, *supra* note 6, at 13.

²⁵ OUR BODIES ARE STILL TREMBLING, *supra* note 22, at 11–12.

only the French names are used in the Cluster system.²⁶ The 22 camps named in the petition are camps where KOFAVIV works and listed for us; therefore, the camp names are listed in Creole. And yet, they failed to ask KOFAVIV for their assistance in identifying the camps.

The Haitian government never responded to the letter from the Commission. Therefore, the Commission came out with a decision in favor of the petitioners on December 22, 2010.²⁷ The decision made legally binding recommendations on the Haitian government, which include ensuring medical and psychological care for all victims of sexual abuse in the 22 named camps.²⁸ This care is to encompass privacy during exams, availability of female staff members, issuance of medical certificates, HIV prophylaxis, and emergency contraception,²⁹ and it sets new precautionary measures precedent by protecting all of the women in the 22 named camps. Additionally, this is the first time that emergency contraception was required by the Commission in a precautionary measures decision. Hopefully this will open the door to the Commission granting emergency contraception in other rape cases, and the general availability of emergency contraception in other nations who comprise the Organization of American States.³⁰

Additionally, this petition is the first that applies the due diligence requirement from the Belem do Para,³¹ which establishes state responsibility to prevent third-party violence against women.³² The Commission found that because the Haitian government knew

²⁶ Statement of Lisa Davis, Instructor, IWHR Clinic at CUNY (Feb. 3, 2011) (on file with IWHR Clinic).

²⁷ Inter-Am. Comm'n H.R., *Case of Women and Girls Victims of Sexual Violence Living in 22 Internally Displaced Persons Camps*, Precautionary Measures Granted by the Commission, no. MC-340-10 (Dec. 22, 2010), summary of decision available at <http://www.cidh.oas.org/medidas/2010.eng.htm>. See also Inter-Am. Comm'n H.R., Letter to IWHR Clinic et al., (2010), available at <http://www1.cuny.edu/mu/law/2011/01/20/inter-american-commission-issues-unprecedented-recommendation-to-end-sexual-violence-of-displaced-women-based-on-iwhr-petition/>.

²⁸ See Request for Precautionary Measures, *supra* note 6, at 19.

²⁹ *Id.*

³⁰ The Organization of American States (OAS) was formed in 1948 with a charter signing in Bogota, Colombia. Haiti was one of the original 21 member states. OAS, *Our History*, http://www.oas.org/en/about/our_history.asp (last visited Nov. 2, 2011).

³¹ Organization of American States, Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, June 9, 1994, 27 U.S.T. 3301, 1438 U.N.T.S. 63 [hereinafter Convention of Belém do Pará], available at <http://www.cidh.oas.org/Basicos/English/Basic.TOC.htm>. Haiti ratified the Belem do Para in 1997. OAS, *Signatories and Ratifications*, <http://www.oas.org/juridico/english/sigs/a-61.html> (last visited Nov. 2, 2011).

³² Convention of Belém do Pará, *supra* note 32, at arts. 1, 2, 7.

of the amount and frequency of the rapes in the IDP camps and did not require more security, lighting, and medical assistance, they are responsible for the actions of third parties committing these rapes and failed in their responsibility to prevent them from happening. This new precedent has the potential to expand the number and type of precautionary measures granted in rape cases in every country that has signed an international convention with a due diligence clause. The fact that this decision was made to protect all of the women who live under the threat of sexual violence is a recognition of a woman's human right "to be free from sexual violence, [and] that sexual violence is one of the gravest forms of human rights violations."³³

The decision also required the implementation of effective security measures, including street lighting and patrolling in and around the camps.³⁴ In addition to increased patrolling of security officers, the decision required the formation of "special units within the police and the Ministry Public investigating cases of rape and other forms of violence against women and girls."³⁵ This element is extremely important to reducing the amount of rapes and attacks in the camps. The impunity for rapists in combination with the lack of security in the camps has led to the current situation. Increased security and guaranteed investigative follow-through is imperative in decreasing the instances of rape in the camps. The decision also seeks to ensure that the public officials who respond to the incidents of sexual violence have received training to "respond adequately . . . and adopt safety measures."³⁶

The Commission's decision also requires that "grassroots women's groups have full participation and leadership in planning and implementing policies and practices to combat and prevent sexual violence and other forms of violence in the camps."³⁷ This decision brings the GBV Sub-Cluster in cooperation with international law under United Nations Security Council Resolution 1325. The Committee, noting the immediate importance of the presence of grassroots women's organizations participation, makes this decision in the nontraditional venue of precautionary measures. As

³³ Inter-Am. Comm'n H.R., *Case of Women and Girls Victims of Sexual Violence Living in 22 Internally Displaced Persons Camps*, Precautionary Measures Granted by the Commission, no. MC-340-10 (Dec. 22, 2010), summary of decision available at <http://www.cidh.oas.org/medidas/2010.eng.htm>.

³⁴ OUR BODIES ARE STILL TREMBLING, *supra* note 22, at 12.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

previously mentioned, precautionary measures are more akin to preliminary injunctions whose purpose is to take effect immediately until a longer term solution can be negotiated. Here, the Committee's requirement of grassroots women's organizations participation is a long-term goal usually beyond the jurisdiction of traditional precautionary measures.

These precautionary measures have been granted, but much of the work is yet to be done. Because many elements of the Commission's decision require programs to be implemented, police and medical staff to be trained, and the breaking down of traditional ideologies and hierarchies within the UN and Haitian government, the international community must work together in realizing these goals. However, it is important to remember the essential goal as being the empowerment of the Haitian government as leaders of these new formations, so that they are not solely dependent on the foreign aid.

Currently, the International Women's Human Rights Clinic, MADRE³⁸, and the other partners to the petition have written a letter to the Commission requesting an in-person meeting to "advise [the Commission] on their negotiations with the UN and the Haitian government as well as provide technical assistance in implementing the recommendations."³⁹ In addition to the in-person meeting with the Commission, representatives from the International Women's Human Rights Clinic and MADRE went to Haiti in early February to meet with the Women's Minister and her Chief of Staff regarding the Commission's decision.⁴⁰ Although inclusion of grassroots groups was initially resisted, during the course of the meeting, the Ministry agreed to list KOFAVIV on the referral cards and look into providing Creole translation during the Sub-Cluster meetings.⁴¹ Going forward, we suggested the creation of a national consultation day where UN agencies, various Ministries in the Haitian government, and other key civil society members collaborate in drawing up a revised national plan of action for addressing and preventing gender-based violence in Haiti. The goal is to work with

³⁸ MADRE is a New York-based non-profit dedicated to advancing women's rights throughout the world. See <http://www.madre.org>.

³⁹ Letter from IWHR Clinic at CUNY et al., to Dr. Santiago A. Canton, Executive Sec'y of the Inter-American Comm'n on Human Rights (Jan. 24, 2011) (on file with IWHR Clinic).

⁴⁰ Email from Lisa Davis, Instructor, IWHR Clinic at CUNY, to author (Feb. 7, 2011) (on file with author).

⁴¹ *Id.*

the existing structures, but implement the blueprint as created by the precautionary measures and the Commission.

The progress we have made in six months has been overwhelming. Now that the precautionary measures have been granted, the potential for success has exponentially increased. The decision by the Commission, though binding, is unenforceable. Now that the petition has been won, the only way to ensure its implementation is to diligently work with the government for the advantage of all parties. With the cooperation of the Women's Ministry and the GBV Sub-Cluster, there is a greater chance that protection will be provided for the women residing in the IDP camps and that the decision will be implemented and enforced.