

## Haiti

### 1. Discrimination in the family

#### a) Overarching legal framework for marriage

The presidential decree of 8 October 1982 establishes equality between men and women in marriage (Art. 1 & 2). Before this decree, married women were placed under the tutelage of their husbands. This decree abolished many articles of the Civil Code and brought the legislation in line with the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW).

Other bills are currently under consideration that would harmonise Haitian legislation and international standards. The bill on informal de-facto unions, known as « plaçage », for example has stalled; the CEDAW Committee reports that this is an issue given the high percentage of women who are in informal unions without any legal protections (CEDAW, 2016).

#### b) Child marriage

Legal age of marriage in Haiti, according to the Civil Code, is 15 years for women and 18 for men. Article 171 of the same code also establishes a large number of exceptions to this rule. Notably, article 133 gives the President the power to allow for marriage under the legal age in "grave circumstances". A marriage between two people under the legal age cannot be annulled if the demand for annulment comes six months after the spouses reach the minimum age; marriage with a girl under 15 will not be considered void if the girl becomes pregnant in the six months that follow the marriage (Art. 171).

Article 303 of Haiti's Penal Code states that in case of "enlèvement" (kidnapping) where the aggressor marries the victim, the victim has the right to demand that the marriage be void.

The UNFPA reported a relatively high prevalence of child marriage, occurring frequently among girls who are less educated, poorer and living in rural areas (Girls not Brides, 2017).

#### c) Household responsibilities

A Presidential decree from 8 December 1982 replaced the notion of "spousal authority" by "parental authority", giving women equal rights not only in relation to control of property but also in relation to guardianship over children. This decree also provides married women with certain rights to decide on their domicile, revoking a former provision of the Civil Code (Art. 91) which conferred to husbands the authority to decide on the family home. CEDAW (2008) notes the only partial reversal since the conjugal home remains that of the husband, even though this choice should be based on common agreement. The decree also establishes equality as the basis of the couple. Any reference to obedience from the wife is thus excluded.

The 2012 law on responsible paternity states, that in case where a parent, married or not, denies paternity of a child that claims filiation, until the paternity results are produced he is presumed to be the parent (Art. 5). The 2008 Haiti report to the CEDAW committee emphasizes that paternal

irresponsibility is a common practice, which means women are often abandoned by partners and left as sole responsible for child rearing. On the other hand, it also emphasizes that gender relations in Haiti are characterized by stereotypes that place men as head of the household and as having a right and obligation to control their wife.

#### **d) Divorce**

Women and men enjoy the same rights to initiate divorce. A 1982 decree revoked earlier legal provisions that established inequality of treatment between men and women in case of divorce. Article 12 of the decree lifts the obligation that existed under the Civil Code for the wife to prove that adultery had been committed under the conjugal roof in order to be able to file for divorce (Civil Code, Art. 12).

After consultation and mobilization from the MCFDF (Ministère à la Condition Féminine et aux Droits des Femmes), a July 2005 Decree modified article 269 of the Penal Code to read: « murder of a spouse by the other spouse, regardless of sex, is not excusable unless the life of the spouse who has committed the murder was endangered at that time » (IACHR, 2009).

In regards to child custody, the Civil Code gives no preference to the father or the mother, as it is the child's interests that are considered to come first (Civil Code, Art. 289). In practice, women are often abandoned by partners and left as sole responsible for child rearing (CEDAW, 2008).

Article 1248 of the Civil Code infringes on the rights of divorcees, as it states that if the wife does not formally request partition of the communal property within three months and 40 days of the divorce resolution it shall be deemed declined in favour of the husband. Haiti report to the CEDAW (2008) affirms courts' tendency to recognise equal rights to the spouse in communal property. In separation of goods arrangement, women retain total control of their goods and assets. It also affirms that in case of disagreement, the law states that the husband's word is privileged. Article 1324 also privileges the husband, in which it states that in case of separation, if the wife leaves any of her property to the husband, he only is obliged to declare existing assets; consumed assets will not provoke liability on his part.

Non-declaration of choice of regime implies separation of property, which protects women's control of their goods and assets.

#### **e) Inheritance**

The Civil Code determines that no distinction is to be made between female and male heirs in all aspects, and that married women are free to constitute a will without their husband's authorisation (Art. 583, 605 & 735). FAO (2017) points to regular practices of privileging the male family members in regards to inheritance rights. USAID (2006) reports that inheritance of land tends to be bilateral, but with women receiving smaller shares. Also impacting women's access to land and inheritance is the fact that *plaçage*, or informal de-facto unions, are not recognized by Haitian law. The fact that only 12% of the couples living together are legally married impacts women's access to heritage, added to the general suspicion women have in relation to the justice system, which in most cases prevents them from trying to legally access their inheritance (FAO, 2017).

## 2. Restricted Physical integrity

### a) Violence against women

Haiti has ratified both the CEDAW and the Convention of Belém do Pará, in April 1996. According to the Haitian constitution, international instruments, once ratified, are considered part of the national legislation and revoke previous legislation (Art. 276). However, no law addressing violence against women specifically has since been drafted.

The 2009 report of the Inter-American Commission on Human Rights notes the appointment of a female director for the National Haitian Police, and plans for the establishment of an office for advising the police on questions of violence against women. However, the commission also notes the lack of financial and human resources to ensure application of these measures (IACHR, 2009).

In 2003, a national committee against violence against women (Concertation nationale contre les violences faites aux femmes”) was established in order to answer the needs of girls and women who have suffered violence and to pressure state authorities to approve legislation on the issue (MCFDF, 2005). The concertation is directed by a tripartite committee made up of representatives of civil society, the Ministry for the Status of Women and Women's Rights and a technical commission. The latter is particularly in charge of the production of data and statistics as well as multidisciplinary support of women and girls victims/survivors of violence (Hurwitz, 2013).

Another bill currently being drafted on the prevention, punishment and elimination of violence against women provides in its article 5.6 the right to free legal assistance (Hurwitz, 2013).

### b) Domestic violence

No laws or bills directly address domestic violence. Article 296 of Haiti's 1835 Penal Code criminalises rape and sexual violence in marriage. The draft bill on the new Penal Code, currently under revision from the Ministry of Justice (MJSP, 2015), in its articles 247-248, 272-273, 274-278 provides for stricter sanctions in the case of crimes where a partner or spouse is implicated. Article 278 also increases penalties in case of acts of violence committed against a woman by someone who is part of her family or with whom she shares intimate relations, even without cohabitation.

According to the report «Enquête Mortalité, Morbidité et Utilisation des Service 2004-2005» from the Institut Haitian de l'enfance, physical violence against women is common, in particular committed by partners or husbands (Hurwitz, 2013). The CEDAW report (2008) states that this kind of violence goes frequently unreported due to a culture of “keeping quiet” about the issue. Patriarchal attitudes in relation to marriage tend to normalise gender-based violence. All this amounts to unreliable statistics reports (Goel and Goodmark, 2015). Women tend to denounce intimate partner violence only in cases where the relationship ends or in case of unwanted pregnancy (Goel and Goodmark, 2015).

### c) Rape

A decree from 2005 has modified Haiti's Penal Code in order to eliminate discrimination against women, especially articles 278-284. Rape had been previously considered a smaller contravention, “indecent assault”, and it is now considered a serious crime (MCFDF, 2004). Rape is directly mentioned

among the crimes of sexual aggression, but it is not defined, nor is consent mentioned in the law (Art. 268).

The penalty has also been modified by the 2005 legislation. Article 2 of the decree defines the punishment for rape as ten years of forced labour. If the crime is committed against someone younger than fifteen years old, the penalty is raised to fifteen years of forced labour.

NGOs and women's movements have been essential to lead new initiatives and call for transparency. The Table de Concertation Nationale has benefited from major inputs from the civil society. These organisations are also leading efforts in organising a multi-sectorial response to women victims/survivors of violence. The Inter-American Commission Report from 2009 provides details of services made available by national women's organisations, with the support of the Concertation, including shelters, legal assistance, medical treatment, counselling and training on women's rights (IACHR, 2009).

The Concertation Nationale has also produced a National Plan for Combatting Violence against Women. The Plan has served as platform for validating a protocol for the medical assistance of women survivors of violence; a manual for training healthcare personnel and a list of services available around the country for support and assistance of women who have suffered violence. The plan also specifically mentions the need for better medical and legal assistance for rape victims (MCFDF, 2004). One of the products of the plan is a national awareness-raising campaign for the prevention of violence against women and for spreading information on the existing services.

The country report to the CEDAW (2014) also mentions the initiative of a "School for judges". On the initiative of the Ministry for the Status of Women and Women's Rights, the obligation to implement the CEDAW was discussed with members of the country's judiciary, including lawyers, officials and district judges who tend to minimise women's complaints.

Reporting of rape appears to be a challenge for female survivors. According to the UNDP, medical certificates are required to establish a police report and judges tend to settle rape cases amicably, even though both of these practices have been revoked in article 91 of a decree approved in 1995. The study also points to the challenge that both the courts and the families and survivors tend to prefer amical solutions (Hurwitz, 2013).

#### **d) Sexual harassment**

Sexual harassment is not mentioned in the 1835 Penal Code. A draft Penal Code is currently under evaluation by Haiti's legislative bodies and justice system. In the draft, sexual harassment is mentioned in articles 307 and 308 and defined as pressure exerted on someone by an individual abusing their authority (Haïti, MJSP, 2015). Article 309 defines consent as being void if the aggressor has convinced the victim, by abusing their authority or the victim's trust in order to convince her to perform a sexual act (MJSP, 2015).

CEDAW (2016) reports that women working in the informal sector often face sexual harassment, as do girls on their way from/to school. As the draft code has not been approved, no measure or are in place to combat this kind of violence.

#### e) Female genital mutilation

No law addresses the practice of female genital mutilation, and there are no reported cases in the country.

#### f) Abortion

Abortion is criminalised in the 1835 Penal Code (Art. 262). The woman and any other person having contributed to the abortion, with or without her consent, are penalised with imprisonment. Medical staff condemned for abortions are penalised with forced labour without precise time limit.

A draft Penal Code decriminalises abortions undertaken before the third month of pregnancy. CEDAW (2016) reports that this draft is the result of an effort made by the Haitian Ministry of Health, and has gathered support from women's organisations. Abortion is reported to be a current method of family planning (CEDAW, 2016).

#### *More*

In 2014 Haiti ratified the International Treaty on Human Trafficking, and also approved a law on Human Trafficking the same year. The law does mention the CEDAW in its preamble, but it does not include a clear gender component, choosing to single out children particularly. The latest CEDAW committee report (2016) mentions the lack of an action plan to ensure its implementation, particularly in face of reports about women and girls compelled into "transactional sex" with UN peacekeeping mission personnel.

### 3. Restricted Access to productive and financial resources

#### a) Secure access to land and assets

Women and men enjoy the same rights to property, land and assets as men under provisions of the Haitian Constitution (Art. 36).

Agriculture is a key sector in the Haitian economy, and while women represent a large part of the sector, they are seldom considered in policy planning and measure. According to the CEDAW report, "although they are not subject to any explicit restrictions, rigid attitudes forged under the patriarchal system keep them away from discussions and decisions concerning a citizen's life" (2014). The 2012 general census of agriculture revealed that only one in four farms are managed by women; and that men tend to run larger agricultural plots than women do.

According to a recent study, land property is often disputed in Haiti, driven by conflicts over lack of supply as well as the absence of a centralised land registry. In the case of women, especially, the lack of regulation in relation to informal de facto unions, known as *plaçage*, makes it even harder for them to access land. Finally, women are reported to be less likely to claim their rights through the judicial system for lack of trust in the institution (Land Alliance, 2017).

## **b) Secure access to formal financial resources**

No legislation or mention in the commercial code exclude or discriminate women. Haiti's constitution reaffirms that no legal barriers for women's access to formal financial resources should exist.

A very low percentage of the population has access to financial resources in practice (BNH, 2014). Women face additional challenges in accessing credit from formal institutions due to the lack of land and property assets required for collateral and lower incomes. Such criteria usually also stop them from being able to apply to government programmes that could facilitate access to credit (Haiti, 2014). Women have a relatively higher access to microcredit than men, but the high interest rates usually associated with this line of credit do not benefit women's economic inclusion (FAO, 2017).

## **c) Workplace rights**

Haiti has ratified ILO Convention 100 (Equal Remuneration) and 111 (Discrimination in Employment and Occupation). It has not ratified ILO Conventions 156 (Workers with Family Responsibilities), 183 (Maternity Protection) nor 189 (Domestic Workers). In line with those ratifications, article 3 of the Haitian Labour Code states that all the workers are equal before the law. It also abolishes all discrimination, including based on sex, which means women can enter any profession and work the same night hours as men.

There is no mention in the law of discrimination in job advertisements, selection criteria, recruitment, hiring, promotions or training. Article 330 mentions terms and conditions, assignment and termination. The same article prohibits differentiating between married and single women in relation to rights and obligation in employment and conditions of work; the following paragraphs prohibit firing a woman for reason of pregnancy and also from demanding excessive physical work from pregnant employees. Article 326 of the Labour Code forbids employers from firing women during maternity leave. The Labour Code does not contain provisions on sexual harassment.

Article 320 of the Labour Code establishes a twelve week paid maternity leave, to be divided between the weeks just before and after the birth. A recent decree established paid paternity leave of five days for men in the civil service, but no similar provision exists for the private sector.

Existing labour legislation falls under the supervision of the labour courts, as per article 488 of the Haitian Labour Code. The Labour Ministry has also recently created a Higher Council on Wages by the Act of 18 August 2009 and a Labour Directorate, where anti-discrimination measures can be monitored and enforced (ILO, 2016).

In a country where formal employment is low, women are strongly concentrated in unskilled and poorly paid occupations (CEDAW, 2008). They are over-represented in sectors such as domestic work, a sector that the Labour Code has excluded from its provisions until recently. In 2007, a bill that recognises this sector of employment on an equal footing with other sectors has been approved, but not sanctioned.

## 4. Restricted Civil liberties

### a) Citizenship rights

Article 10 and 11 of Haiti's 1987 Constitution established nationality and citizenship rights. Women and men have the same rights to acquire, retain and transfer nationality to their children or spouses.

A law on paternity, maternity and filiation, from 2012 allows women, married or unmarried, to register children, in the same way as men (article 2).

No legal barriers infringe on the rights of women to apply for national cards or passports. Article 6 of the 2005 decree on the establishment of a National Identification Office states that to get a national card, the person will have to present his or her birth certificate (or marriage act or other similar document) that proves they are over the legal age, a picture, sign the registry, have his or her digitals registered to the National Identification Officer: Article 2 of a 2014 decree allows for belated birth registration.

The preamble to the Haitian Constitution declares that all discriminations are abolished by law.

In reality, the 2016 shadow report from the coalition of Haitian NGOs affirms that women's civil liberties in Haiti are still menaced by the fact that getting a national card proves to be very difficult, especially in rural areas (CEDAW, 2016).

### b) Voting

Women have the right to fully participate in political life (Constitution, Art. 17), even if the right to vote has been limited by challenges for rural women to obtain civil registration and documents required to vote (IDEA, 2014). Haitian Women won the right to vote in the 1950s, even though they would remain under their husbands' tutelage until the approval of a 1982 decree. Haiti has had two women prime ministers, Claudette Werleigh and Michèle Duvivier Pierre-Louis. Haiti was also the first Francophone country to have a women elected as president in 1990 (IDEA, 2014).

### c) Political voice

Quotas for women "at all levels of national life" — which means not only elected seats, but also in the public service — are provided for under the Constitution (article 17.1.) Political parties are also compelled to respect the quota principle in their structures.

Other than quotas, the 2013 Electoral Law states the importance of including women in Electoral Councils and Directorates. These are organs responsible for upholding the electoral law, and are therefore also responsible for monitoring the implementing of temporary measures. Even though sanctions are not provided for, article 92.1 of the electoral law introduces incentives for parties respecting the law. A party that puts 30% of women on their list receives a 40% reduction in the value of their registration.

The Ministry for the Status of Women and Women's Rights is responsible for assuring women's access to public life and political participation. The 2014-2034 Policy for Gender Equality has included

developing women's leadership as one of the benchmarks, and gender equality also figures on the Haiti's Development Strategy Plan (MCPE, 2012).

A commission to support the application of the quota, composed by feminist NGOs, politicians and ministries, elaborated recommendations to enforce the quota law (COTEM- Comité Technique Multisectoriel). Among them, that the Electoral Council produced gender-disaggregated statistics and that sanctions for parties that do not comply with the Electoral Law be established. The document with the recommendations was published in the press as part of an awareness-raising campaign (IDEA, 2014).

There has been resistance from the parliament in relation to the quota law, with the lower house repelling the inclusion of such provision in the electoral law. At the time of writing, only two parties have prepared strategies in order to include women in direction positions and at all levels of coordination (IDEA, 2014).

In response, women's organisations held in October 2013 a symbolic parliamentary session, composed exclusively by women from all of Haiti's departments to discuss gender equality and socioeconomic inclusion. They symbolically voted in the Assembly building policies for gender equality and discussed propositions to follow up Haiti's 2012 adherence to the UN Convention on Social, Economic and Cultural Rights. Special mention is made in the 2014 CEDAW report to the fact that the symbolic session was held in creole, one of the two official languages, spoken by the majority of the population but rarely employed in official processes (CEDAW, 2014).

#### **d) Access to justice**

Article 12 of the Haitian Civil Code determines that all nationals have civil and political rights, which includes the right to sue and be sued. Prior to 1929, women did not have the right to give testimony.

There is a strong mistrust of the justice system, which explains why women do not always claim their rights (IAHRC, 2009). The Inter-American Commission points to an insufficient number of judges, and the Women Judges association adds to that the fact that female judges are even rarer (Joseph et Dognmo Kahou, 2011). Limited legal literacy amongst Haitian women has been identified as an important barrier. Judicial procedures are usually in French, even though 80% of Haitians are not speakers and that creole is also recognised by the constitution as an official language (CEDAW, 2016).

The Ministry for the Status of Women and Women's Rights (MCFDF) was established on 8 November 1994. The Ministry is responsible for cooperation with other government agencies in order to include a gender perspective in all state policies. A protocol has been signed with the Ministry of Justice in view of rewriting Haitian law to bring it closer to international standards. It also has collaborate with the Justice Ministry on training police agents and civil servants dealing with violence against women. The MCFDF is also part of joint commissions with the Ministry for social affairs and the health ministry (Joseph et Dognmo Kahou, 2011).

Lack of financial and human resources limits the development of the Ministry's programmes and activities (CEDAW, 2014).



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