

# ENFORCING THE RIGHT TO BE FREE FROM SEXUAL VIOLENCE AND THE ROLE OF LAWYERS IN POST-EARTHQUAKE HAITI

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INTRODUCTION .....	255
I. HUMAN RIGHTS OF WOMEN AND GIRLS IN HAITI .....	259
A. Brief History of Rape in Haiti .....	259
B. Sexual Violence in Post-Earthquake Haiti .....	263
1. Vulnerability of Haitian Women and Girls ...	264
2. Psychological and Physical Effects .....	268
3. Impact of Gender-Based Violence on Women's Human Rights Defenders .....	270
4. Political Instability Generates an Increase in Rape .....	270
II. BARRIERS TO ENFORCING WOMEN'S HUMAN RIGHTS IN HAITI .....	272
III. THE ROLE OF LAWYERS IN ENFORCING WOMEN'S RIGHTS IN POST-EARTHQUAKE HAITI .....	276
A. The Comprehensive Rights-Based Approach of the BAI and IJDH .....	277
B. Post-Earthquake Projects Enforcing Women's Rights .....	281
C. Involvement of International Attorneys .....	285

## INTRODUCTION

With an enormous death toll, thousands more injured or maimed, and millions pushed into further poverty and despair, Haiti faces enormous challenges. Developing a long-term legal response that advocates for the human rights of the victims of Haiti's January 12, 2010 earthquake and reduces Haiti's vulnerability to

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the next environmental, economic or political disaster will play a central role in overcoming those challenges. International lawyers working in partnership with Haitian lawyers and their clients can also play an important role in developing a legal response that advances the human rights of Haitians.

The devastation of the earthquake exposed the disastrous effects of decades-old policies that systematically undermine the Haitian government and ignore the needs of the majority of its people. The earthquake itself was a natural phenomenon, but its horrible toll is largely the product of manmade factors. Neoliberal “adjustments” and austerity measures implemented by the international community flooded Haitian markets with low-cost agricultural products and drove large numbers of Haitian farmers to leave the countryside and move into densely crowded urban slums.<sup>2</sup> In these “bidonvilles,” the Government of Haiti failed to prevent shoddy construction on precarious slopes or to provide safer housing. As a result, victims of such measures—the poor—were some of the hardest hit victims of the earthquake. One only need compare the results of the February 27, 2010 earthquake in Chile to better understand the effects that poverty and weak rule of law can have on disaster preparedness.<sup>3</sup>

Women and girls in Haiti, facing a crisis of sexual violence in Haiti’s displacement camps, have borne the brunt of the disaster. The collapse of social infrastructures, the erosion of family and community networks, inequitable access to services, lack of secure housing, the absence of the rule of law, and dependence resulting from economic dislocation have greatly increased the risk of rape. Rape and sexual violence, extreme violations of universal human rights in their own right, compromise the ability of women to access the full panoply of their civil, political, economic, social and cultural rights.<sup>4</sup>

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<sup>2</sup> Peter Hallward, *The Fourth Invasion: Security Disaster in Haiti*, HAITIANALYSIS.COM (Jan. 22, 2010), <http://www.haitianalysis.com/2010/1/22/securing-disaster-in-haiti>. See generally PETER HALLWARD, DAMMING THE FLOOD: HAITI, ARISTIDE, AND THE POLITICS OF CONTAINMENT (2007).

<sup>3</sup> The 8.8 magnitude of the Chile quake was 500 times more powerful than the 7.0 magnitude of the Haiti quake, but Haiti suffered 230 times more mortality. Geological differences aside, it is clear that Chile’s advanced development and enforcement of laws (e.g., building codes) contributed to the lower mortality rate and minimized destruction. *Quake Comparison: Chile vs. Haiti*, THE WEEK (Feb. 28, 2010, 1:28 PM), <http://theweek.com/article/index/200198/quake-comparison-chile-vs-haiti>.

<sup>4</sup> See Catherine Albisa, *Economic and Social Rights in the United States: Six Rights, One Promise*, in 2 BRINGING HUM. RTS. HOME 25 (Cynthia Soohoo et al. eds., 2008) (finding that “a deeper accountability to all human rights, including civil and political rights, requires the recognition and implementation of economic and social rights and that

Under international law, the primary responsibility for the protection of human rights falls to the government of the individual state. However, this principle does not exempt foreign states and international organizations from sharing this responsibility when donating to and operating within a particular receiving state. When the devastation is such that the government of the receiving state cannot adequately perform its core functions, donor states must pursue a course that protects human rights in partnership with the government of the receiving state.

Under Inter-American Law, Organization of American States (OAS) Member States have obligations with regard to economic, social, and cultural rights and have obligations to work together to achieve these rights, particularly when a state is seriously affected by conditions it cannot remedy alone.<sup>5</sup> Under the OAS Charter, Member States “agree [ ] to promote by cooperative action, their economic, social and cultural development” and “the fundamental rights of the individual without distinction as to race, nationality, creed or sex.”<sup>6</sup> Under the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, known as Convention of Belém do Pará, Member States agree to undertake progressively specific measures, including programs “to foster international cooperation for the exchange of ideas and experiences and the execution of programs aimed at protecting women who are subjected to violence.”<sup>7</sup> Moreover, OAS Member States have concrete and specific obligations to respect the economic and social rights of the people of Haiti when providing international assistance in the region.<sup>8</sup>

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the protection of this set of rights is a precondition for addressing structural violence . . .”).

<sup>5</sup> See Brief submitted by Center for Human Rights and Global Justice, Robert F. Kennedy Center for Justice & Human Rights, Bureau des Avocats Internationaux, Institute for Justice & Democracy in Haiti, Zanmi Lasante, and Partners in Health to the Inter-American Commission on Human Rights [Inter-Am. Comm’n H.R.], *THE HUMAN RIGHTS OBLIGATIONS OF OAS MEMBER STATES PROVIDING INTERNATIONAL ASSISTANCE IN THE REGION* (Mar. 9, 2010), available at [www.chrgi.org/projects/docs/100309-IACHRHearingHaitiEng.pdf](http://www.chrgi.org/projects/docs/100309-IACHRHearingHaitiEng.pdf).

<sup>6</sup> Charter of the Organization of American States, arts. 2(f), 3(1), Apr. 30, 1948, 119 U.N.T.S. 3.

<sup>7</sup> Organization of American States, Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women [hereinafter Convention of Belém do Pará], art. 8(i), June 9, 1994, 27 U.S.T. 3301, 1438 U.N.T.S. 63, available at <http://www.cidh.oas.org/Basicos/English/Basic.TOC.htm>.

<sup>8</sup> Just after the earthquake, the Inter-American Commission on Human Rights reminded the Haitian government, the international community, and implementing organizations of “the importance of respecting international human rights obligations in all circumstances, in particular non-derogable rights and the rights of those

To date, the Haitian government, the United Nations (UN) and the international community have not yet developed effective responses consistent with their human rights obligations to address the epidemic of sexual violence in Haiti's displacement camps. This is due in part to the exclusion of women, especially poor women, from full participation and leadership in the relief effort despite standards requiring such participation.<sup>9</sup> Part of the failure of the relief and development effort can also be attributed to the hold up in the delivery of funds.<sup>10</sup> And, of the money that has made its way to Haiti, it has overwhelmingly been distributed to non-governmental organizations (NGOs) with little accountability to donors or to the people of Haiti. This undercuts the ability of the Haitian government to effectively provide for its people. Excluding the government now might expedite relief in the short term, but it will also expedite the return of disaster when Haiti is unable to handle the next inevitable environmental or other stress. Indeed, factors such as Haiti's lack of infrastructure and notorious corruption should be good reason for investing in infrastructure and good governance, not for bypassing the government altogether.<sup>11</sup>

This article argues that enforcing the right to be free from sexual violence—including punishing perpetrators of violence and providing adequate security and housing—is not only required under domestic and international law but is also a sound development policy. Enforcing individual legal rights simultaneously improves women's lives (as well as that of their families) while reinforcing the rule of law and the administration of justice in Haiti. It will help build government capacity and create conditions of long-term stability necessary for enforcement of a broad range of human rights and economic, political and social development.<sup>12</sup>

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most vulnerable," and provided a helpful framework to understand the obligations of Member States providing international assistance to Haiti. Press Release No. 11/10, Inter-Am. Comm'n H.R., Inter-American Commission on Human Rights Stresses Duty to Respect Human Rights During the Emergency in Haiti (Feb. 2, 2010), *available at* [http://www.cidh.org/Comunicados/English/2010/11\\_10eng.htm](http://www.cidh.org/Comunicados/English/2010/11_10eng.htm).

<sup>9</sup> See Convention of Belém do Pará, Mar. 5, 1995; Representative of the Secretary-General, *Report on the Guiding Principles on Internal Displacement, Delivered to the Commission on Human Rights*, U.N. Doc. E/CN.4/1998/53/Add.2 (Feb. 11, 1998) [hereinafter UN Guiding Principles].

<sup>10</sup> *Have Rich Countries Forgotten Haiti? Key Facts on International Assistance*, CENTER FOR ECONOMIC AND POLICY RESEARCH (CEPR) (Aug. 27, 2010), <http://www.cepr.net/index.php/blogs/relief-and-reconstruction-watch/have-rich-countries-forgotten-haiti-key-facts-on-international-assistance>.

<sup>11</sup> MARK SCHULLER, UNSTABLE FOUNDATIONS: IMPACT OF NGOS ON HUMAN RIGHTS FOR PORT-AU-PRINCE'S INTERNALLY DISPLACED PEOPLE (2010).

<sup>12</sup> See generally COMMISSION ON LEGAL EMPOWERMENT OF THE POOR & THE UNITED

Following individual cases through the Haitian legal system will reinforce larger structural reforms and development projects that have, to date, produced only marginal results.<sup>13</sup> It will also increase trust in the system from the bottom up, a necessary predicate for any system based on the rule of law.<sup>14</sup>

This article first provides a brief overview of the history of human rights in the context of sexual violence in Haiti. Next, it provides an overview of sexual violence and the vulnerability of women and girls since the earthquake. The article then discusses the historical barriers to enforcing rights in Haiti. Finally, the article discusses the role of lawyers enforcing the right to be free from sexual violence in post-earthquake Haiti, highlighting the work of the *Bureau des Avocats Internationaux* (Office of International Lawyers or BAI) and the Institute for Justice & Democracy in Haiti (IJDH) with hope of providing insight into lessons learned, recommendations, and ways for attorneys and law students in the United States to work with Haitians for positive change.

## I. HUMAN RIGHTS OF WOMEN AND GIRLS IN HAITI

### A. *Brief History of Rape in Haiti*

As Dr. Paul Farmer has stated, "a quick review of Haiti's history is indispensable to understanding the current muddle."<sup>15</sup> This section endeavors to provide a brief and by no means exhaustive overview of the recent history of rape and gender-based violence in Haiti to put the post-earthquake crisis in context.<sup>16</sup> This history will

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NATIONS DEVELOPMENT PROGRAMME, MAKING THE LAW WORK FOR EVERYONE VOL. 1 (2008), available at [http://www.undp.org/legalempowerment/report/Making\\_the\\_Law\\_Work\\_for\\_Everyone.pdf](http://www.undp.org/legalempowerment/report/Making_the_Law_Work_for_Everyone.pdf).

<sup>13</sup> Indeed, the majority of aid funding has historically been spent on larger structural projects (e.g., reconstructing buildings) and training programs rather than legal aid and access to justice services. Without the latter, new buildings stand empty and newly trained staff idle.

<sup>14</sup> For the United Nations system, the rule of law is a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires as well measures to ensure adherence to the principles of supremacy of the law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness, and procedural and legal transparency. U.N. Secretary-General, *Guidance Note of the Secretary General: UN Approach to Rule of Law Assistance* 1 (Apr. 2008), available at [http://www.unroll.org/doc.aspx?doc\\_id=2124](http://www.unroll.org/doc.aspx?doc_id=2124).

<sup>15</sup> PAUL FARMER, *THE USES OF HAITI*, 376 (3rd ed. 2006).

<sup>16</sup> Gender-based violence "includes violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that

help lawyers working in Haiti better understand patterns of sexual violence and why the current humanitarian response has not yet developed effective measures to protect women and girls and in some cases exacerbated structural inequalities that pre-date the earthquake.<sup>17</sup>

Haiti is no stranger to violence against women. Under the brutal Duvalier dictatorship, women were detained, tortured, exiled, raped and executed.<sup>18</sup> On September 30, 1991, a military coup d'état overthrew Jean Bertrand Aristide, Haiti's first democratically elected President, initiating a three-year period of terror. Under the illegitimate regime of General Raoul Cédras, between 4,000 and 7,000 people were killed, hundreds of thousands were tortured, beaten, and forced into exile, and hundreds, if not thousands, of women were systematically raped by soldiers and paramilitary forces.<sup>19</sup> Women were targeted for abuse because of their political support for democracy, their intimate association with other activists, their class and their gender.<sup>20</sup>

More recently, a mortality study for Port-au-Prince published in *The Lancet* medical journal concluded that 35,000 women were raped between March 2004 and December 2006 in Port-au-Prince alone under the illegal regime of Gerard Latortue. More than ten percent of the perpetrators were identified as right-wing political actors.<sup>21</sup> Echoing these findings, the Inter-American Commission

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inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty." Gen. Rec. No. 19, Committee on the Elimination of Discrimination against Women (CEDAW), Violence Against Women (11th Session, 1992) ¶ 6, U.N. Doc. A/47/38, available at <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm> [hereinafter Gen. Rec. No. 19].

<sup>17</sup> As one coalition of Haitian civil society groups noted, "[t]he extent of the disaster is certainly linked to the character of the colonial and neo-colonial State our country has inherited, and the imposition of neo-liberal policies over the last three decades." See Statement by the Coordinating Committee of Progressive Organizations, Port-au-Prince, *Haiti: After the Catastrophe, What are the Perspectives?* (2010), <http://www.normangirvan.info/wp-content/uploads/2010/01/haiti-statement-prog-orgs.pdf>.

<sup>18</sup> In fact, ironically under Duvalier, "state violence created, for the time, gender equality," in that no one was spared from the regime's repressive tactics. Carolle Charles, *Gender and Politics in Contemporary Haiti: The Duvalierist State, Transnationalism, and the Emergence of a New Feminism (1980-1990)*, 21 FEMINIST STUDIES 135, 140 (1995).

<sup>19</sup> See Findings of Fact and Conclusions of Law for Doe et al. v. Constant, 04 Civ. 10108 (S.D.N.Y., Oct. 24, 2006) (finding Constant, who was the founder and leader of the Haitian paramilitary death squad Revolutionary Front for the Advancement and Progress of Haiti (FRAPH) under General Raoul Cédras's military regime, liable for torture, attempted extrajudicial killing, and crimes against humanity).

<sup>20</sup> Benedetta Faedi, *The Double Weakness of Girls: Discrimination and Sexual Violence in Haiti*, 44 STAN. J. INT'L L. 147, 171-73 (2008).

<sup>21</sup> Athena R. Kolbe & Royce A. Hutson, *Human Rights Abuse and Other Criminal*

on Human Rights (IACHR) observed in a 2009 report that during the two-year period of political instability following the ouster of President Aristide in February 2004, the rate of violence against women steadily rose. Increasing poverty, deep-rooted class divisions, the proliferation of arms, rise in violent crime, and the absence of adequate crime prevention and judicial mechanisms to respond to the violence exacerbated the violence.<sup>22</sup>

Gender-based violence is intimately interconnected with other forms of structural oppression within Haitian society. Like most other countries around the world, Haiti has a long history of gender discrimination, which has been reinforced over centuries.<sup>23</sup> Gender discrimination in Haitian society systematically obstructs the ability of women to prevent or address injustice against them, and strengthens other forms of structural oppression such as economic and political discrimination.<sup>24</sup> Gender-based violence expert Catherine Maternowska provides some sense of how widespread violence against women is within Haitian society. All of the women she interviewed as part of her ethnographic study of Cité Soleil reported having been beaten at some point in their lives, with the majority reporting they were beaten on a regular basis.<sup>25</sup>

Deeply entrenched economic and political inequalities within Haitian society have enabled rape and gender-based violence against women to occur. As scholar Dennis Altman argues, rape can be a way of "preserving tradition" in society.<sup>26</sup> In the Haitian context, centuries of repressive politics, the collapse of the Haitian economy, and high rates of unemployment have impaired the ability of many Haitian men to fulfill their traditional gender roles as providers. Rape and other forms of violence against women, then,

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*Violations in Port-au-Prince, Haiti: A Random Survey of Households*, 368 THE LANCET 864, 869–70 (2006).

<sup>22</sup> Inter-American Commission for Human Rights [Inter-Am. Comm'n H.R.], *The Right of Women in Haiti to be Free from Violence and Discrimination*, file OEA/Ser.L/V/II, Doc. 64, at ¶ 48 (2009), <http://www.cidh.org/countryrep/Haitimujer2009eng/HaitiWomen09.toc.htm>.

<sup>23</sup> For a general account of gender discrimination in Haiti, see Faedi, *supra* note 20; Inter-Am. Comm'n H.R., *supra* note 22. For a general account of resistance to slavery in the Haitian revolution, see C.L.R. JAMES, *THE BLACK JACOBINS: TOUSSAINT L'OUVERTURE AND THE SAINT DOMINGO REVOLUTION* (1938).

<sup>24</sup> Brian Concannon Jr., *Haitian Women's Fight for Gender Justice* 9 (2003) (unpublished), <http://ijdh.org/archives/14424>.

<sup>25</sup> CATHERINE MATERNOWSKA, *REPRODUCING INEQUITIES: POVERTY AND THE POLITICS OF POPULATION IN HAITI* 62 (2006).

<sup>26</sup> DENNIS ALTMAN, *GLOBAL SEX* (2001), quoted in MATERNOWSKA, *supra* note 25, at 70.

is a means by which men reclaim their masculinity by asserting the only power they have left—that over women.<sup>27</sup>

Notwithstanding, women have played an integral role in Haiti's struggle for democracy since the beginnings of the slave revolt and have developed, along with male allies, a strong network of civil society organizations.<sup>28</sup> Following the end of the military junta in 1994, women played a key part in compelling the reinstated government to publicly acknowledge the widespread, systematic rapes committed following the 1991 coup.<sup>29</sup> The advocacy of women's groups led the government to instruct the newly established National Truth and Justice Commission to pay close attention to politically-motivated sexual violence.<sup>30</sup> The Haitian Government also responded by establishing a *Ministère à la Condition Féminine et aux Droits des Femmes* (Women's Ministry) and launching the 2003 *Table de Concertation Nationale Contre la Violence Faites aux Femmes* (National Dialogue on the Prevention of Violence Against Women), a partnership between the government ministries, UN agencies and civil society to promote coordination between the various actors in the fight against violence against women and implement a national plan of action.<sup>31</sup> In 2005, Executive Decree No. 60, the result of tireless advocacy, reclassified rape under the Haitian Penal Code as a crime against the person rather than against morals and increased the severity of the available penalties.<sup>32</sup>

Despite advancements, challenges to enforcing women's rights remain. The layered histories of sexual violence, repression and structural inequality in Haiti, coupled with fear of social stigmatiza-

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<sup>27</sup> *Id.*

<sup>28</sup> See generally Charles, *supra* note 19; JAMES, *supra* note 23.

<sup>29</sup> Concannon, *supra* note 24, at 26–27.

<sup>30</sup> See generally *Truth Commission: Haiti*, UNITED STATES INSTITUTE OF PEACE, <http://www.usip.org/publications/truth-commission-haiti>; SI M PA RELE, *RAPPORT DE LA COMMISSION NATIONALE DE VERITÉ ET DE JUSTICE* (1997), available at <http://ufdc.ufl.edu/Pb=UF00085926&v=00001>.

<sup>31</sup> See *La Concertation Nationale*, UNFPA HAITI, <http://www.unfpahaiti.org/ConcertationNationale.htm>. In 2005, Haiti adopted the 2006–2011 National Plan to Combat Violence Against Women, aimed at preventing violence and attending to victims. The Plan's objectives include putting in place a mechanism for systematic data collection, prevention of violence, building capacity through promoting a multi-sectoral approach, and other strategies. Implementation has been limited.

<sup>32</sup> Government of Haiti, *Décret modifiant le régime des Agressions Sexuelles et éliminant en la matière les Discriminations contre la Femme* [Decree Changing the Regulation of Sexual Aggressions and Eliminating Forms of Discrimination Against Women], Decree No. 60 of Aug. 11, 2005, Art. 2 (modifying Art. 278 of the Penal Code), Art. 3 (modifying Art. 279), Art. 4 (modifying Art. 280), *Journal Officiel de la République d'Haiti*, Aug. 11, 2005, 1, available at [http://www.haitijustice.com/images/stories/files/pdfs/loi\\_agressions\\_sexuelles\\_femmes\\_haiti.pdf](http://www.haitijustice.com/images/stories/files/pdfs/loi_agressions_sexuelles_femmes_haiti.pdf).



tion and retribution, have led to repeated violations of the right of Haitian women and girls to be free from sexual violence, and have eroded the ability of women and girls to enjoy the full range of inalienable rights. The deep historical divide between the poor majority and rich minority within Haitian society has regrettably hampered the ability of women's organizations to unite and push for a common agenda.<sup>33</sup> Understanding this history is crucial for adopting effective strategies to end the cycle of violence and advance Haiti's development moving forward.

### B. Sexual Violence in Post-Earthquake Haiti

UN Special Rapporteurs and Representatives have called attention to the sexual violence against Haiti's displaced women and girls and conditions that exacerbate insecurity. In an October 2010 speech to the General Assembly, Rashida Manjoo, the UN Special Rapporteur on Violence Against Women, Its Causes and Consequences, highlighted the disproportionate vulnerabilities of women in post-disaster settings and their increased risk of violence, citing sexual violence in Haiti's displacement camps.<sup>34</sup> That same month, Walter Kälin, the then-Special Representative to the Secretary-General on the Human Rights of Internally Displaced Persons, linked pre-existing vulnerabilities of "violence and exploitation" with the post-disaster occurrence of sexual violence in Haiti.<sup>35</sup> Likewise, in November 2010, the IACHR issued a public statement "ex-

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<sup>33</sup> Women's organizations can be roughly split into two groups, non-governmental organizations (NGOs) and grassroots organizations (also known historically as "popular organizations" or OPs). The leadership and membership of Haitian women's NGOs is made up almost exclusively of middle and upper class Haitians (though perhaps less privileged in comparison to their international counterparts). These groups also typically have access to resources that the majority of Haitians lack, such as economic resources, education and European language skills, as well as international connections. While grassroots organizations do the bulk of women's organizing within Haitian society, illiteracy and financial resources restrict their capacity.

<sup>34</sup> Statement by Rashida Manjoo, Special Rapporteur on Violence Against Women, Its Causes and Consequences, at the 65th Session of the General Assembly Third Committee (Oct. 11, 2010), *available at* <http://www.un.org/womenwatch/daw/documents/ga65/vaw.pdf>. The Special Rapporteur also noted that she has "received numerous reports on the rise in violence against women and girls, in particular rape and domestic violence in IDP camps and elsewhere," *id.* at 6.

<sup>35</sup> He drew attention to "important levels of rape and gang-rape and also domestic violence in the camps, which [women's groups] identified to be problems that are growing in number and brutality." Walter Kälin, Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, *Human Rights of Internally Displaced Persons in Haiti: Memorandum Based on a Working Visit to Port-au-Prince* (Oct. 12–16, 2010), [http://ijdh.org/wordpress/wpcontent/uploads/2010/11/Kalin\\_State\\_moment\\_2010\\_Haiti\\_English.pdf](http://ijdh.org/wordpress/wpcontent/uploads/2010/11/Kalin_State_moment_2010_Haiti_English.pdf).

press[ing] its concern over the situation in a number of camps for persons displaced by the earthquake that took place in Haiti in January 2010, especially with regard to forced evictions and sexual violence against women and girls.”<sup>36</sup>

This section provides a brief overview of the situation for Haitian women and girls living in the displacement camps in Port-au-Prince since the earthquake. It does not attempt to provide a quantitative analysis of the prevalence of rape or gender-based violence; in fact, data is hard to come by.<sup>37</sup> Rather, it provides a qualitative analysis of the current crisis of safety and security for Haitian women and girls. These findings are based on interviews—conducted in May, June, July, August and October 2010 by the author and delegations of other United States lawyers—of over seventy-five women who had been raped since the January earthquake, and observations made while touring the camps and other areas where the attacks took place. The victims interviewed range in age from five to sixty.<sup>38</sup> This section also relies on studies conducted by other fact-finding delegations where so indicated.

### 1. Vulnerability of Haitian Women and Girls

Haiti’s approximately one million Internally Displaced Persons (IDPs) live under makeshift shelters of bed sheets, tarps, and tents in overcrowded camps that largely lack basic necessities. International NGOs have implemented programs in an ad hoc manner, resulting in inconsistent, overlapping, and unequal resources and programming with gaps in coverage.<sup>39</sup> Many displaced re-

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<sup>36</sup> Press Release No. 114/10, Inter-Am. Comm’n H.R., Inter-American Commission on Human Rights Expresses Concern over Situation in Camps for Displaced Persons in Haiti (Nov. 18, 2010), *available at* <http://www.cidh.org/Comunicados/English/2010/115-10eng.htm>.

<sup>37</sup> For quantitative analyses of the epidemic see CENTER FOR HUMAN RIGHTS AND GLOBAL JUSTICE, SEXUAL VIOLENCE IN HAITI’S IDP CAMPS: RESULTS OF A HOUSEHOLD SURVEY (2011) (“An alarming 14% of households surveyed reported that, since the earthquake, one or more members of their household had been victimized by rape or unwanted touching or both.”), ATHENA R. KOLBE ET AL., SMALL ARMS SURVEY & UNIVERSITY OF MICHIGAN, ASSESSING NEEDS AFTER THE QUAKE: PRELIMINARY FINDINGS FROM A RANDOMIZED SURVEY OF PORT-AU-PRINCE HOUSEHOLDS 23 (2010) (finding that about 3% of the individuals in the sample had experienced sexual violence during the first two months after the earthquake).

<sup>38</sup> Although the term “survivor” is often preferred to “victim” in the United States, Haitians often choose to call themselves “victims.” The terms are used interchangeably herein, and it should be noted that use of the term “victim” by Haitian women or in this article does not imply lack of agency. The word “victim” is also used here as a legal term for one who experiences a crime.

<sup>39</sup> Melanie Teff, *Haiti: Still Trapped in the Emergency Phase*, FIELD REPORT (Refugees

sidents report that conditions in the camps have worsened in recent months.

Displaced women and girls face chronic and increasing inaccessibility to shelter, potable water, food, adequate sanitation, medical treatment and education. Surveys conducted during the summer and fall found that only approximately ten to twenty percent of families had tents.<sup>40</sup> Even these shelters—many of which were battered beyond repair in their first few months of use—do not provide meaningful protection against the elements or perpetrators of violence.

Poverty and displacement make women more vulnerable to sexual violence because they must place themselves in situations of increased risk out of necessity. For example, women and girls have no choice but to use unsecure bathrooms and showers and walk long distances or through dangerous neighborhoods to obtain food and water. Very few women interviewed had any source of steady income.<sup>41</sup> Ever-deepening poverty constrains essentially all aspects of women's lives—for example, choices about where to live and how to travel. Destruction of support networks and livelihoods, including loss of adult male family members who provided physical security and a source of income, has only further increased vulnerability.<sup>42</sup>

Rape survivors interviewed expressed deep concern and anxiety over their continued vulnerability to rape and other sexual violence in the camps. Lacking other options, most remain living in the same area where they were attacked, and the attackers remain at large. None of the interviewees were aware of safe spaces or shelters where they could go. At least three of the women interviewed were raped on two separate occasions since the earthquake and several others had been raped during previous periods of unrest.<sup>43</sup>

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International, Wash. D.C.), Oct. 6, 2010, *available at* [http://www.refugeesinternational.org/sites/default/files/100710\\_haiti\\_still\\_trapped.pdf](http://www.refugeesinternational.org/sites/default/files/100710_haiti_still_trapped.pdf).

<sup>40</sup> See SCHULLER, *supra* note 11, at 3; INSTITUTE FOR JUSTICE & DEMOCRACY IN HAITI (IJDH) ET AL., "WE'VE BEEN FORGOTTEN": CONDITIONS IN HAITI'S DISPLACEMENT CAMPS EIGHT MONTHS AFTER THE EARTHQUAKE 42 (2010), Appendix E, *available at* <http://ijdh.org/wordpress/wp-content/uploads/2010/09/IDP-Report-09.23.10-compressed.pdf>.

<sup>41</sup> Prior to the earthquake, most women worked as merchants in the informal market, but these activities have been limited because many lost their supplies in the earthquake. See, e.g., Interview #12 (May 5, 2010) (on file with author).

<sup>42</sup> See, e.g., Interview #6 (May 3, 2010) (on file with author).

<sup>43</sup> See, e.g., Interview #2 (May 10, 2010); Interview #7 (May 3, 2010); Interview #30 (June 8, 2010); Interview #37 (June 8, 2010); Interview #52 (June 2010); and Interview #54 (June 2010) (on file with author).

To make matters worse, government agents and purported landowners have been evicting homeless families from displacement camps, which has increased women's exposure to violence and destitution.<sup>44</sup> According to a recent survey of six displacement camps chosen at random, forty-eight percent of surveyed families have been threatened with or subjected to forced eviction.<sup>45</sup> According to another survey, 19 of 106 camps had been closed and the communities evicted.<sup>46</sup> In most cases of eviction, the government has not provided notice of an impending eviction with time to prepare or provided an alternate location in which the evicted residents can live.<sup>47</sup> Even when the Haitian government does provide new sites for evicted communities, the sites are in many cases uninhabitable and void of basic services.<sup>48</sup>

The government agents and purported property owners often lack legal grounds under Haitian and international law to evict communities from their camps. Given their inherent vulnerability, displaced persons are entitled to special protection from forced eviction under international law.<sup>49</sup> Only in rare circumstances are evictions of internally displaced communities lawfully permitted, and even then, the government must provide IDPs an alternate

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<sup>44</sup> See, e.g., Ansel Herz, *Haut-Turgeau, Haiti: The Camp that Vanished and the Priest Who Forced Them Out*, INTER-PRESS SERVICE (Mar. 9, 2010), <http://www.mediahacker.org/2010/03/haut-turgeau-haiti-the-camp-that-vanished>; Memorandum from Trans-Africa Forum Regarding Forced IDP Relocations (Apr. 12, 2010), available at <http://www.transafricaforum.org/files/Memo%20on%20Forced%20IDP%20Relocations%20041210.pdf>; Alexis Erkert Depp, *Call to Stop Forced Evictions of Haiti's Earthquake Victims*, MENNONITE CENTRAL COMM. (June 9, 2010), <http://ottawa.mcc.org/stories/news/call-stop-forced-evictions-haitis-earthquake-victims>; Charles Arthur, *Haiti: Earthquake Victims Face New Trials with Forced Evictions*, NOTICEN: CENTRAL AMERICAN & CARIBBEAN AFFAIRS (Apr. 29, 2010), available at <http://www.thefreelibrary.com/HAITI:+EARTHQUAKE+VICTIMS+FACE+NEW+TRIALS+WITH+FORCED+EVICTIONS.-a0225099633>.

<sup>45</sup> See IJDH ET AL., *WE'VE BEEN FORGOTTEN*, *supra* note 40. Forced eviction is defined as the permanent or temporary removal against their will of individuals, families, and/or communities from their homes and/or lands, which they occupy without the provision of or access to appropriate forms of legal or other protection. This definition includes forced removal from IDP camps. See Committee on Economics, Social and Cultural Rights, General Comment 7, *The Right to Adequate Housing: Forced Evictions* (Sixteenth Session, 1997), reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/Gen/1/Rev.6 at 45 (2003).

<sup>46</sup> SCHULLER, *supra* note 11, at 2.

<sup>47</sup> See Herz, *supra* note 44.

<sup>48</sup> See SCHULLER, *supra* note 11, at 10-17.

<sup>49</sup> See UN Guiding Principles, Special Rapporteur on Housing and Property Restitution, *Final Report on the Principles on housing and property restitution for refugees and displaced persons, delivered to the Commission on Human Rights, Principle 5.3*, U.N. Doc. E/CN.4/Sub.2/2005/17 (June 28, 2005).

place to live that meets international standards and due process protections such as consultation and adequate notice of eviction.<sup>50</sup>

The UN responded to the humanitarian crisis created by the forced evictions by negotiating a three-week moratorium on evictions with the Haitian government, lasting from April 23 until May 13, 2010.<sup>51</sup> It does not appear, however, that the government ever publically acknowledged the moratorium, and reports of unlawful evictions continued during this period.<sup>52</sup> Human rights observers continue to document unlawful evictions since the end of the moratorium. According to one estimate, in the ten months after the earthquake, 28,000 people were evicted and 144,000 people were subject to threats of eviction.<sup>53</sup> In February 2011, the UN Office for the Coordination of Humanitarian Affairs (OCHA) estimated that over fourteen percent of the IDP camps in Haiti were threatened with forced eviction. Haiti's actions and failures to act to prevent evictions specifically implicate the rights of women that are protected, for example, under the Convention of Belém do Pará.<sup>54</sup> The government is liable not only for the assistance provided by Haitian authorities in evicting residents, often through use of force or threat of force and without requiring proof of land rights from the property owner or providing any alternative sources of housing to the residents, but also for its failure to protect women from violence arising from the evictions.

The IACHR has granted two legal requests submitted by groups of advocates and attorneys for displaced Haitians, requesting that the government take immediate measures to prevent sexual violence against women and girls in displacement camps, and adopt a moratorium on forced evictions until a new government takes office and ensure that those who have been expelled are transferred to camps with minimum sanitary and security conditions.<sup>55</sup> Although some improvements have been made, efforts to

<sup>50</sup> Every person has the right to be free and protected against arbitrary displacement. Displacement is prohibited in cases of natural disasters unless the health and safety of the populations requires their evacuation. IDP Guidelines, Principles 6(2)(d), 7.

<sup>51</sup> See *Moratorium on Forced Evictions*, CENTER FOR ECONOMIC AND POLICY RESEARCH (Apr. 23, 2010), <http://www.cepr.net/index.php/relief-and-reconstruction-watch/moratorium-on-forced-evictions>.

<sup>52</sup> Ansel Herz, As "Temporary" Camps Linger, Tensions Rise with Haitian Landowners, IPS NEWS SERVICE (June 9, 2010), <http://www.ipsnews.net/news.asp?idnews=51774>.

<sup>53</sup> Deborah Sontag, *In Haiti, Rising Call for Displaced to Go Away*, N.Y. TIMES, Oct. 4, 2010, at A4.

<sup>54</sup> See Convention of Belém do Pará, *supra* note 7, arts. 3, 7, 9.

<sup>55</sup> See Precautionary Measures Granted by the Commission during 2010, Inter-Am. Comm'n. on H.R., <http://www.cidh.oas.org/medidas/2010.eng.htm>. The full report

implement the Commission's recommendations continue to fall short.<sup>56</sup> Incorporating the IACHR's decisions into engagement with the domestic Haitian legal system will be discussed *infra*.

## 2. Psychological and Physical Effects

Sexual violence has serious consequences for women's physical, psychological, and social health. In addition to sexual violence resulting in death and serious physical injury, reproductive and sexual health consequences include sexually transmitted infections, unwanted pregnancy, and chronic pelvic pain.<sup>57</sup> Psychological consequences include post-traumatic stress disorder, anxiety and depression.<sup>58</sup> In addition, because sexual violence in disaster or conflict areas is sometimes perpetrated by a group of armed men in public or in view of family members, it can have serious psychological consequences for not only the victim but also for witnesses. Sexual violence also leads to stigma and social ostracism, which contributes to low reporting rates of sexual violence and the failure to seek medical treatment.<sup>59</sup>

Many of the women interviewed show signs of post-traumatic stress disorder (PTSD), including extreme fear, nervousness, helplessness, inability to sleep, nightmares and signs of depression. Several women indicated suicidal tendencies and some had even taken steps towards ending their lives. At least one woman stated that she had contemplated killing herself and her children.<sup>60</sup> Almost all of the survivors complained of some physical discomfort, including stomach pain, headaches, difficulty walking, and vaginal infection and bleeding.<sup>61</sup> At least one woman became pregnant as a result of

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requests seeking protection for women and girls from sexual violence and for displaced residents from unlawful forced evictions are available at <http://ijdh.org>.

<sup>56</sup> See MADRE, CUNY SCHOOL OF LAW, IJDH, OUR BODIES ARE STILL TREMBLING: HAITIAN WOMEN CONTINUE TO FIGHT AGAINST RAPE (2011), available at <http://reliefweb.int/rw/rwb.nsf/db900sid/KKAA-8CZ59M?OpenDocument>.

<sup>57</sup> J. M. CONTRAS, ET. AL., SEXUAL VIOLENCE IN LATIN AMERICA AND THE CARIBBEAN: A DESK REVIEW 36 (2010), available at <http://www.svti.org/SexualViolenceLACaribbean.pdf>.

<sup>58</sup> AMNESTY INTERNATIONAL, DON'T TURN YOUR BACK ON GIRLS: SEXUAL VIOLENCE AGAINST GIRLS IN HAITI (2010), available at <http://www.amnesty.org/en/library/asset/AMR36/004/2008/en/f8487127-b1a5-11dd-86b0-2b2f60629879/amr360042008eng.pdf>.

<sup>59</sup> World Health Organization, "Sexual Violence in Conflict Settings," available at <http://www.who.int/gender/en/infobulletinconflict.pdf>.

<sup>60</sup> One woman said that she wanted to end her life because "this life has gone bad." She lost her husband and home in the earthquake. Her uncle had abused her growing up, and the attack re-traumatized her profoundly. Interview #41 (June 2010) (on file with author).

<sup>61</sup> See, e.g., Interview #18 (May 5, 2010) (on file with author).

the rape.<sup>62</sup> In addition to the rapes, many women and girls interviewed suffered beatings, stabbings and other injuries in the course of the attacks, and had scars and other visible injuries.<sup>63</sup>

A delegation of psychiatrists and trauma victim specialists traveled to Haiti with a group of lawyers in March 2010 to identify potential applicants for humanitarian parole to the United States. This specialized delegation conducted sixty-nine medical evaluations of earthquake victims, several of whom were victims of rape or other sexual assault, and found that 95.7% of the victims were suffering from PTSD, and 53.6% were suffering from depression.<sup>64</sup>

Serious health consequences resulting from sexual violence are further intensified due to the fact that women in post-disaster areas generally have little or no access to health care.<sup>65</sup> The majority of the women and girls interviewed had not seen a doctor or other medical professional at the time of the interview. There were several reasons for this: lack of knowledge of where to find services; lack of knowledge that services were provided free of charge; inability to pay for the transport to get to a clinic; and fear of retaliation and stigma.<sup>66</sup>

For those who had sought medical care, the majority only sought general first-aid care for injuries associated with the rapes, and did not disclose the rape to the healthcare provider because they were embarrassed or felt uncomfortable. Rape carries a stigma in Haitian society, as it does in most places. Victims were extremely reluctant to reach out for support or to even discuss their ordeal before meeting a member of KOFAVIV or FAVILEK, in whom they had trust and could confide.<sup>67</sup> When victims did reach out, they

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<sup>62</sup> Interview #26 (June 7, 2010) (on file with author).

<sup>63</sup> In one of the most egregious cases, several men attacked a woman in her thirties at her home in Martissant, a neighborhood in Port-au-Prince, during which one of the men stabbed her with an ice pick. Her small children witnessed the attack. Interview #43 (June 2010) (on file with author).

<sup>64</sup> Victor G. Carrion, *International Psychiatry in Haiti at the Aftermath of the Earthquake*, PowerPoint presentation (Apr. 2010) (on file with author).

<sup>65</sup> *Guidelines for Gender-Based Violence Interventions in Humanitarian Settings Focusing on Prevention of and Response to Sexual Violence in Emergencies*, INTER-AGENCY STANDING COMMITTEE, 63 (2005), [http://www.humanitarianreform.org/humanitarianreform/Portals/1/cluster%20approach%20page/clusters%20pages/Gender/tfgender\\_GBV\\_Guidelines2005.pdf](http://www.humanitarianreform.org/humanitarianreform/Portals/1/cluster%20approach%20page/clusters%20pages/Gender/tfgender_GBV_Guidelines2005.pdf).

<sup>66</sup> See, e.g., Interview #2 (May 10, 2010); Interview #12 (May 5, 2010); Interview #17 (May 7, 2010) (on file with author).

<sup>67</sup> KOFAVIV or Komisyon Fanm Viktim Pou Viktim (Commission of Women Victims for Victims) is a grassroots women's organization founded in 2005. FAVILEK or Fanm Viktim Leve Kanpe (Women Victims Get Up Stand Up) is grassroots women's organization founded in 1994.

were often shunned or ignored. And, of those who had seen a doctor, the quality and type of care varied depending on the facility and availability of supplies.<sup>68</sup>

When women become injured by rape or fear of rape, everyone within their circle of care, especially children, suffers. When women become injured by rape or fear of rape, their ability to participate in public life and contribute to Haiti's development also suffers.

### 3. Impact of Gender-Based Violence on Women's Human Rights Defenders

Human rights defenders working with KOFAVIV and other grassroots groups, such as FAVILEK and KONAMAVID,<sup>69</sup> have been targeted for violence, including rape, and extortion for their work defending rape victims. Police response has been negligible. For example, two outspoken grassroots leaders who had been threatened at gunpoint filed a complaint with the police positively identifying the perpetrator, who remains at large. The police told the women that the camps "caused too much trouble" and the man "should have killed them all."<sup>70</sup>

The importance of protecting human rights defenders has been recognized as essential for ensuring human rights enforcement.<sup>71</sup> Special protections must be provided to individuals in Haiti who work to combat gender-based violence, including lawyers and other advocates, if gender-based violence in Haiti is to be effectively combated.

### 4. Political Instability Generates an Increase in Rape

An increasingly unstable political situation in Haiti has only further undermined the safety of women and girls in the camps. A dramatic increase in rapes accompanied the demonstrations pro-

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<sup>68</sup> Some clinics did not offer services such as HIV prophylaxis or emergency contraception. Women faced prohibitively long waits, and left without being seen by a doctor. Women also reported a lack of privacy, and limited access to female health-care providers. Medical certificates were not routinely provided. *See, e.g.*, Interview #9 (May 3, 2010) (on file with author).

<sup>69</sup> KONAMAVID or Kodinasyon Nasyonayon Viktim Direk (National Coordination of Direct Victims) is a grassroots organization in Port-au-Prince.

<sup>70</sup> International Women's Human Rights Clinic at CUNY School of Law (IWHR) Interviews (Oct. 7, 2010) (on file with IWHR).

<sup>71</sup> *See* Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, G.A. Res. A/Res/53/144, Annex, U.N. Doc. A/RES/53/144 (Mar. 8, 1999).



testing fraud following the November 28, 2010 presidential election.<sup>72</sup> The deteriorating security situation in Haiti has resulted in a diversion of the already scarce government resources and attention devoted to combating gender-based violence.<sup>73</sup> The Women's Ministry was already dramatically underfunded.

Haiti needs a credible government with a popular mandate to advance long-term stability and development. In July 2010, U.S. Senator Richard Lugar (R-IN) warned that "[t]he absence of democratically elected successors could potentially plunge the country into chaos."<sup>74</sup> Then, in October 2010, U.S. Congresswoman Maxine Waters (D-CA) and 44 other members of Congress sent a letter urging Secretary of State Hillary Rodham Clinton to support free and fair and open elections in Haiti. The letter warned that supporting flawed elections "will come back to haunt the international community" by generating unrest and threatening the implementation of earthquake reconstruction projects.<sup>75</sup> The international community, including the United States and other allies, ignored these warnings and well-documented evidence of unfairness, investing their influence and millions of dollars in the flawed elections.<sup>76</sup>

According to the Center for Economic Policy and Research, given the irregularities and other flaws in the November elections, the second round of elections would be based on arbitrary assumptions and exclusions and not lead to a result acceptable to the Haitian people.<sup>77</sup> Brian Concannon, expert on Haiti and former elections observer, cautioned after the November elections that un-

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<sup>72</sup> According to KOFAVIV, women lined up at its clinic on the two days after the election to report rapes and beatings. Some women witnessed armed men entering certain camps and shooting people at random. On the third day after the elections, KOFAVIV was forced to close its clinic temporarily under threat of violence. Interview with KOFAVIV leaders (Dec. 3, 2010) (on file with author).

<sup>73</sup> Inter-Am. Comm'n H.R., *supra* note 22.

<sup>74</sup> *Haiti's November 28 Elections: Trying to Legitimize the Illegitimate*, INSTITUTE FOR JUSTICE & DEMOCRACY IN HAITI (Nov. 22, 2010), <http://ijdh.org/archives/15456>.

<sup>75</sup> Press Release, Congresswoman Maxine Waters, Clinton Urged to Push for Free and Fair Haiti Elections (Oct. 8, 2010), *available at* <http://waters.house.gov/News/DocumentSingle.aspx?DocumentID=211461>.

<sup>76</sup> See, e.g., *Foreign Powers Praise Haiti Election Decision*, ASSOCIATED PRESS, Feb. 3, 2011, *available at* <http://www.cbsnews.com/stories/2011/02/03/ap/latinamerica/main7315287.shtml>; Brian Concannon Jr. and Jeena Shah, *US Will Pay for Haitian Vote Fraud*, BOSTON GLOBE, Dec. 15, 2010, *available at* [http://www.boston.com/boston\\_globe/editorial\\_opinion/oped/articles/2010/12/15/us\\_will\\_pay\\_for\\_haitian\\_vote\\_fraud](http://www.boston.com/boston_globe/editorial_opinion/oped/articles/2010/12/15/us_will_pay_for_haitian_vote_fraud).

<sup>77</sup> JAKE JOHNSTON & MARK WEISBROT, HAITI'S FATALITY FLAWED ELECTION, CENTER FOR ECONOMIC POLICY AND RESEARCH 8 (Jan. 2011, updated Feb. 2011), *available at* [www.cepr.net/documents/publications/haiti-2011-01.pdf](http://www.cepr.net/documents/publications/haiti-2011-01.pdf).

less new credible and inclusive elections are held, "the protests and disruption could continue for the next president's five-year term."<sup>78</sup> Despite these warnings, the second round elections were held on March 20, 2011. Michel Martelly (a right-wing neo-Duvalierist candidate) won the majority of votes cast, but his popular legitimacy has been questioned by Haitian authorities and citizens alike, given the pervasive irregularities throughout the process and the record low voter turnout.<sup>79</sup> This does not bode well for the development of the country as a whole, let alone the advancement of women's rights.

## II. BARRIERS TO ENFORCING WOMEN'S HUMAN RIGHTS IN HAITI

Dr. Jomanas Eustache, founder and Dean of the Catholic Law School of Jérémie, Haiti, describes the problems facing the administration of justice in Haiti.<sup>80</sup> First, he explains that "the problems facing the administration of justice in Haiti cannot be isolated from the overall political, social and economic obstacles."<sup>81</sup> In particular, political problems, such as politicization of the judiciary, present serious obstacles to the consolidation of a fair and equitable judicial sector. Second, like other Latin American justice systems, Haiti's lacks independence.<sup>82</sup> Third, the majority of Haitians lack access to the judicial system as a result of public knowledge, public confidence, cost, limited facilities and corruption.<sup>83</sup> Indeed, "citizens seldom avail themselves of a system they distrust."<sup>84</sup>

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<sup>78</sup> Brian Concannon Jr., *How to Rebuild Haiti After the Quake*, COUNCIL ON FOREIGN RELATIONS (Jan. 12, 2011), <http://www.cfr.org/haiti/rebuild-haiti-after-quake/p23781>.

<sup>79</sup> See Kim Ives, *As Martelly Mimics Aristide: Haitians Boycott Second Round Between Neo-Duvalierists*, HAITI LIBERTÉ, Mar. 23–29, 2011; Dan Coughlin, *Haiti Abstains*, THE NATION, Mar. 22, 2011, available at <http://www.thenation.com/article/159388/haiti-abstains> (quoting former Haitian presidential advisor Patrick Elie arguing that the electoral process has been a farce and that "the victor of these elections will have very little popular legitimacy").

<sup>80</sup> The Catholic Law School of Jérémie (L'École Supérieure Catholique de Droit de Jérémie) is the only law school of its kind in Haiti. It promotes public service, while welcoming students regardless of religion, gender, social, economic, or political backgrounds. See L'École Supérieure Catholique de Droit de Jérémie, <http://escdroj.org>.

<sup>81</sup> Dr. Jomanas Eustache, *The Importance of Teaching Law and the Reinforcement of the Judiciary System in Haiti*, 32 HASTINGS INT'L & COMP. L. R. 602, 608 (2009).

<sup>82</sup> *Id.* at 608–09 ("Several factors have been identified as contributing to this: (1) a tradition of Executive supremacy; (2) political instability; (3) the civil law tradition which emphasizes a bureaucratic role for the judge in application of the laws; (4) the complexity and formalism of the system; (5) lack of political base which supports and/or to whom the system is accountable; and (6) the procedures for the selection, promotion and discipline of judges.").

<sup>83</sup> *Id.*

<sup>84</sup> *Id.* at 609.

The majority of impoverished Haitians do not avail themselves of the formal justice system, but deeply ingrained gender discrimination places women at an even greater disadvantage if they try. Survivors of sexual violence face added fears of social stigmatization and retribution, which, along with distrust in the ability of the judicial system to protect them, causes many women victims of sexual violence to remain silent. This distrust of the legal system is not unfounded, since a woman's word is more likely than not to be discounted or altogether ignored. For example, Haitian judges, prosecutors and police routinely dismiss rape cases where the victim does not have a medical certificate or did not seek treatment within seventy-two hours, even though Haitian law does not require the certificates to establish the offense.<sup>85</sup> This policy reflects the belief that women's testimony is inherently untrustworthy.<sup>86</sup>

The climate of impunity created by this system in which justice goes to the highest bidder, in which only the rich can hire competent attorneys and finance police investigations, reinforces the centuries-old social division in Haitian society between the vast majority who are poor and the few who are wealthy.<sup>87</sup> Indeed, the UN Independent Expert on the situation of human rights in Haiti, Michel Forst, has chosen the fight against impunity as one of the main themes of his recent meetings with country authorities and others. During his visit to Haiti in February 2011 he urged presidential candidates to spearhead the fight against impunity: "I hope that solemn commitments will be made and that signals will be sent for a greater respect for human rights, judicial reform, the fight against impunity and access to basic services for all."<sup>88</sup>

Impunity is widespread for crimes of rape and other gender-based violence. Rape in Haiti is easy to commit and hard to deter in large part because the Haitian justice system is inaccessible to women. Women are underrepresented among Haiti's judges, prosecutors and lawyers. Effective navigation of the system requires the help of a paid lawyer. Legal proceedings are usually conducted in

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<sup>85</sup> MADRE, ET. AL., *supra* note 55.

<sup>86</sup> Lawyers are working to pursue cases even in the absence of medical evidence while at the same time working to encourage the Haitian Medical Association to take responsibility and better train doctors to complete these certificates.

<sup>87</sup> For more information regarding the structural nature of impunity in Haiti, see Mario Joseph, *Human Rights and Justice in Haiti*, in LET HAITI LIVE 99–116 (Melinda Miles & Eugenia Charles, eds. 2004).

<sup>88</sup> Press Release, Office of the High Commissioner on Human Rights, UN Independent Expert on Haiti: "Impunity Must End," (Feb. 24, 2011), available at <http://www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=10764&LangID=E>.

French, which most women do not understand, rather than the universal language, Haitian Creole. When women appear in Haitian courts, their testimony is often discounted, through rules such as the medical certificate requirement or societal bias by judges, prosecutors and jurors (most of whom are men).<sup>89</sup>

Access to legal services is particularly problematic. Eighty percent of the population is desperately poor,<sup>90</sup> and cannot afford to pay legal services. Despite the great need, Haiti lacks a tradition of organized public assistance lawyering. Although individual lawyers have and do provide pro bono assistance, there is no training or support for these efforts. More importantly, there are no structures in place for lawyers to work systematically against systemic violations of rights. The vast majority of Haitian law school graduates never become lawyers because they fail to complete the required *memoire* (thesis) and *stage* (apprenticeship) required for admission to the bar. Students of modest means, those most likely to work on behalf of the poor, find it particularly difficult to overcome these hurdles.

The justice system's inaccessibility not only inhibits rape prosecution. By preventing women from going to court to enforce the full spectrum of their rights—e.g. contract rights, employment rights, childcare and alimony rights—the inaccessibility reinforces other societal discrimination and helps keep women poor and vulnerable to a range of dangers, including rape.

The challenges facing Haiti's legal system are significant, but they are not unique. Many of Haiti's problems are common among nations emerging from decades of dictatorship or conflict. Every country endures a period where its justice system is not functional for a large group of its citizens. Indeed, in the United States the legal system is still inaccessible for many, especially women and other low-income Americans.<sup>91</sup> The road in the United States from

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<sup>89</sup> Of the women interviewed in connection with this article, only two reported receiving medical certificates; others reported that they were unaware of the importance of the certificates in documenting rape for prosecution and their right to request them. In one instance, a clinic stated that they were out of certificates. Meeting with SOFA (May 7, 2010) (on file with author).

<sup>90</sup> *The World Factbook – Haiti*, CIA, <https://www.cia.gov/library/publications/the-world-factbook/geos/ha.html>.

<sup>91</sup> See LEGAL SERVICES CORPORATION, DOCUMENTING THE JUSTICE GAP IN AMERICA: THE CURRENT UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS 27 (2009), available at [http://www.lsc.gov/pdfs/documenting\\_the\\_justice\\_gap\\_in\\_america\\_2009.pdf](http://www.lsc.gov/pdfs/documenting_the_justice_gap_in_america_2009.pdf) (“Three out of four clients are women—many of whom are struggling to keep their children safe and their families together.”).

*Plessy v. Ferguson*<sup>92</sup> to *Brown v. Board of Education*<sup>93</sup> provides a salient example. As we saw in *Parents Involved v. Seattle School District* in 2007,<sup>94</sup> the road to equal education for all American youth is far from traveled.

Despite the myriad barriers, Haiti's justice system has had successes since its transition to democracy.<sup>95</sup> For example, the Raboteau massacre trial (discussed in more detail *infra*) proved that the Haitian justice system can work for victims of human rights abuses when cases are pursued with diligence and persistence. The Raboteau trial provided invaluable training in complex litigation for the lawyers and judges involved and can serve as a model for cases that seek to enforce women's human rights.<sup>96</sup>

The tools to enforce the right of women and girls to be free from sexual violence are available in Haiti. The Haitian Penal and Civil Codes, even if imperfect, provide a structure for prosecuting these cases and holding accountable those responsible for protecting women.<sup>97</sup> Haiti's Constitution explicitly recognizes that "[t]he

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<sup>92</sup> 163 U.S. 537 (1896) (upheld constitutionality of state laws requiring racial segregation in private businesses, under the doctrine of "separate but equal").

<sup>93</sup> 347 U.S. 483 (1954) (overturned *Plessy*, declared unconstitutional state laws establishing separate public schools for black and white students).

<sup>94</sup> 551 U.S. 701 (2007) (held racial balancing is not a compelling state interest and found public school plans assigning students for the purpose of achieving racial integration unconstitutional).

<sup>95</sup> See Christopher Stone, *A New Era for Justice Sector Reform in Haiti*, Harvard Kennedy School, Faculty Research Working Paper Series (July 2010), describing signs of improvement in Haiti's justice sector prior to the earthquake.

<sup>96</sup> See Brian Concannon, Jr., *Justice for Haiti: The Raboteau Trial*, 35 INT'L LAW. 641 (2001); Brian Concannon, Jr., *Beyond Complementarity: The International Criminal Court and National Prosecutions, a View from Haiti*, 32 COLUM. HUM. RTS. L. REV. 201 (2000).

<sup>97</sup> Domestic Haitian law concerning rape and sexual assault can be found in Articles 278, 279, 280, 281, and 283 of the Haitian Penal Code, which incorporate the Presidential Decree of July 6, 2005 reclassifying rape as a criminal offense rather than a moral offense. The BAI reports that recent judgments of Haitian courts have established the elements of the crime of rape as including 1) sexual penetration, 2) absence of consent, and 3) criminal intent, and that judges hearing complaints of rape in Port-au-Prince have generally adopted this legal definition.

International law is also important to domestic prosecution of rape in Haiti. Under Article 276-2 of the Haitian Constitution, once Haiti approves and ratifies a treaty, the content of the treaty becomes part of Haitian domestic law and supersedes previous inconsistent law. Haiti has ratified several treaties that contain provisions relevant to the prosecution of rape, for example, *inter alia*, the Convention on the Elimination of All Forms of Discrimination against Women, Convention on the Rights of the Child, the International Covenant on Civil and Political Rights, and the American Convention on Human Rights.

Although some reforms—for example, implementing procedures for using forensic evidence and evidentiary rules resembling rape shield legislation in the United States and other countries—would be desirable, they are not necessary for litigation to begin.

State has the absolute obligation to guarantee the right to life, health, and respect of the human person for all citizens without distinction, in conformity with the Universal Declaration of the Rights of Man."<sup>98</sup> The State also recognizes under the Constitution, "the right of every citizen to decent housing, education, food and social security."<sup>99</sup>

The Government of Haiti has ratified various international human rights instruments that have direct bearing on women's human rights, including the right to be free from rape and other gender-based violence. These include: the Women's Convention, International Covenant on Civil and Political Rights (ICCPR), International Convention on the Elimination of All Forms of Racial Discrimination (CERD), and Convention on the Rights of the Child (Children's Convention).<sup>100</sup> In the Latin American and Caribbean region, Haiti is a member of the Organization of American States (OAS), and has ratified the Convention of Belém Do Pará, as well as the American Convention on Human Rights (ACHR).<sup>101</sup> According to the Haitian Constitution, upon approval and ratification, international treaties become part of domestic law and abrogate any conflicting laws.<sup>102</sup> This article now turns to ways that lawyers can work with women and communities to take advantage of these tools.

### III. THE ROLE OF LAWYERS IN ENFORCING WOMEN'S RIGHTS IN POST-EARTHQUAKE HAITI

Enforcing the right to be free from sexual violence—including punishing perpetrators of violence and providing adequate security and housing—is not only required under domestic and international law but is also a sound development policy. Enforcing individual legal rights improves the lives of women and girls (as

<sup>98</sup> *Constitution de la République d'Haiti* 1987, art. 19.

<sup>99</sup> *Id.*, art. 22.

<sup>100</sup> Haiti ratified CERD in 1972, CEDAW in 1981, ICCPR in 1991 (by accession) and the Children's Convention in 1995. See the UN Treaty Collection Databases, Status of Ratifications, available at <http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=EN>.

<sup>101</sup> Haiti ratified the Convention of Belém do Pará in 1997 and the ACHR in 1977. See *Basic Documents Pertaining to Human Rights in the Inter-American System*, INTER-AM. COMM'N H.R., <http://www.cidh.oas.org/Basicos/English/Basic.TOC.htm>.

<sup>102</sup> "Les Traités, ou accords internationaux, une fois sanctionnés et ratifiés dans les formes prévues par la Constitution, font partie de la Législation du Pays et abrogent toutes les Lois qui leur sont contraires." ["Once international treaties or agreements are approved and ratified in the manner stipulated by the Constitution, they become part of the legislation of the country and abrogate any laws in conflict with them."] *Constitution de la République d'Haiti* 1987, art. 276-2.

well as those of their families) while reinforcing the rule of law and the administration of justice in Haiti for the benefit of many. By empowering victims and building government capacity, it will help create conditions of long-term stability necessary for enforcement of a broad range of rights and implementation of effective economic development programs.<sup>103</sup> Following individual cases through the Haitian legal system will reinforce larger structural reforms and development projects that have, to date, produced only marginal results. It will also increase trust in the system from the bottom up, a foundation necessary for any system based on the rule of law.

This section discusses the work of the *Bureau des Avocats Internationaux* and the Institute for Justice & Democracy in Haiti, which are working together with a broad range of partners to implement a comprehensive rights-based approach to enforce the rights of women and girls as a foundation for fighting poverty and reducing vulnerability.<sup>104</sup> In so doing, this section endeavors to provide practical information and strategies for Haitian and international lawyers providing legal services, as well as principles to guide governments and others in setting funding priorities and program design. The essential principles that guide the BAI/IJDH approach discussed herein can be adapted to programs enforcing a broad range of women's human rights and the rights of the poor more generally.

#### A. *The Comprehensive Rights-Based Approach of the BAI and IJDH*

The Office of the High Commission for Human Rights describes a human rights-based approach as "a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights."<sup>105</sup> It involves principles including, *inter alia*, accountability, transparency, partici-

<sup>103</sup> See MAKING THE LAW WORK FOR EVERYONE VOL. 1, *supra* note 12 ("In too many countries, the laws, institutions, and policies governing economic, social, and political affairs deny a large part of society the chance to participate on equal terms. The rules of the game are unfair. This is not only morally unacceptable; it stunts economic development and can readily undermine stability and security.").

<sup>104</sup> The author thanks BAI Legal Fellows Annie Gell and Jeena Shah and BAI Attorneys Mario Joseph and Esther Felix for their contributions and tireless advocacy advancing the rights of the poor in Haiti.

<sup>105</sup> OFFICE OF THE UNITED NATIONS HIGH COMMISSION FOR HUMAN RIGHTS, FREQUENTLY ASKED QUESTIONS ON A HUMAN RIGHTS-BASED APPROACH TO DEVELOPMENT COOPERATION 15 (2006), available at <http://www.ohchr.org/Documents/Publications/FAQen.pdf>.

pation, and capacity building. Meeting these exhortatory principles can be challenging in practice.<sup>106</sup> However, the work of the BAI and IJDH over the last sixteen years demonstrates that well-conceived and persistent advocacy can meet these challenges and have concrete effects on advancing human rights in Haiti.

Managed by renowned human rights attorney Mario Joseph, the BAI is a public interest law firm based in Port-au-Prince, Haiti.<sup>107</sup> It was founded by the Haitian government in 1995 to pursue human rights cases, originally focusing on cases arising from Haiti's 1991-94 de facto military dictatorship.<sup>108</sup> The BAI no longer receives support from the government, relying on support from IJDH and other individuals and foundations, but continues to implement its "victim-centered" approach that combines traditional legal strategies with empowerment of victims' organizations and political advocacy.<sup>109</sup> The vast majority of the BAI's clients are living in extreme poverty. IJDH, directed by well-known Haiti expert Brian Concannon who formerly co-managed the BAI, is a non-profit organization based in Boston, Massachusetts. IJDH was established in 2004 as an affiliate organization to the BAI that provides legal, financial and logistical support for BAI's work, advocates for a more just U.S. foreign policy to Haiti, and pursues litigation in international courts.

The organizations' comprehensive, rights-based approach includes three key components: (1) victim-centered legal advocacy with a focus on building the domestic legal system, which combines traditional lawyering with organizing and public advocacy work to empower poor people to help enforce their own rights; (2) grassroots collaboration and leadership development to prepare grassroots organizations to serve as equal partners in the litigation and advocacy work; and (3) a focus on programs that target the root causes of vulnerability.

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<sup>106</sup> UNITED NATIONS DEVELOPMENT PROGRAMME, PROGRAMMING FOR JUSTICE: ACCESS FOR ALL. A PRACTITIONER'S GUIDE TO A HUMAN RIGHTS-BASED APPROACH TO ACCESS TO JUSTICE (2005), available at <http://regionalcentrebangkok.undp.or.th/practices/governance/a2j/docs/ProgrammingForJustice-AccessForAll.pdf>.

<sup>107</sup> The law firm structure was chosen to provide the most protection for the office from potential government retaliation. In practice, the BAI functions more like a non-profit and does not charge for its legal services.

<sup>108</sup> Brian Concannon, Jr., *The Bureau des Avocats Internationaux, a Victim-Centered Approach*, in EFFECTIVE STRATEGIES FOR PROTECTING HUMAN RIGHTS (David Barnhizer ed., 2001).

<sup>109</sup> *Id.* See generally Ken Bresler, *If You Are Not Corrupt, Arrest the Criminals: Prosecuting Human Rights Violators in Haiti* (Harvard Kennedy School Project on Justice in Times of Transition, 2003).



The Raboteau massacre trial, spearheaded by the BAI, provides the most successful example of this comprehensive approach and a starting point for understanding the organizations' current legal responses to needs generated by Haiti's earthquake.<sup>110</sup> Under the Haitian legal system, BAI lawyers who represented the victims in the Raboteau case were able to take advantage of the *partie-civile* (civil party) process, which allows a claim for civil damages to piggyback on a criminal prosecution. *Partie-civile* lawyers are permitted to participate in most aspects of the proceedings including introducing evidence and examining witnesses.<sup>111</sup> Indeed, involvement of the victims and their lawyers was essential to moving the case forward.<sup>112</sup>

In November 2000, after years of tireless advocacy, a jury convicted fifty-seven defendants, including the top military and paramilitary leadership of Haiti's 1991–94 *de facto* dictatorship. The defendants who were present in Haiti were taken into custody. During the civil damages portion of the trial, victims were awarded 1 billion gourdes, the equivalent of US\$140 million at the time. The defendants were also ordered to pay fines and costs to the State.<sup>113</sup> The trial is considered the best complex prosecution ever in Haiti and one of the most significant human rights cases any-

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<sup>110</sup> Raboteau is a neighborhood in the coastal city of Gonaïves located in northwest Haiti. Under the Duvalier and *de facto* regimes, Raboteau was considered one of the "hearts of resistance." See POTE MAK SONJE: THE RABOTEAU TRIAL (Hirshorn & Cynn, 2008). Immediately following the first coup d'état in 1991, Raboteau residents took to the streets in protest where soldiers met them with bullets. From 1991–1994, the people of Raboteau continued their nonviolent resistance despite systematic repression by the military and paramilitary forces. From April 18–22, 1994, preceding the imminent return of deposed President Aristide, the attacks culminated. Forces killed and wounded many and arrested, imprisoned, and tortured many more. The death toll will never be known. See Concannon, *Justice for Haiti*, *supra* note 96.

<sup>111</sup> See Jeremy Sarkin, *Reparations for Gross Human Rights Violations as an Outcome of Criminal Versus Civil Court Proceedings*, in *OUT OF THE ASHES: REPARATION FOR VICTIMS OF GROSS AND SYSTEMATIC HUMAN RIGHTS VIOLATIONS* 171 (K. De Feyter et al., ed. 2005) ("In the *partie civile* system, the benefits for victims are considerable . . . right to be represented . . . and be fully informed of all important issues and developments in the case.").

<sup>112</sup> For example, lawyers and victims distrusted the chief prosecutor in Raboteau. The BAI urged his replacement privately, to no avail. However, when victims protested his placement publicly through letters, radio announcements and protests, the prosecutor was eventually replaced. Concannon, *Justice for Haiti*, *supra* note 96.

<sup>113</sup> Victims' attorneys, led by the U.S.-based Center for Justice & Accountability, successfully recovered, in Florida state court, some damages from Colonel Carl Dorélien. Dorélien had been convicted *in absentia* in the Raboteau trial and was thereafter found liable by a federal jury in the United States for torture, extrajudicial killing, arbitrary detention and crimes against humanity. Coincidentally and conveniently, Dorélien was living in Florida and had won the lottery. On May 16, 2008, \$580,000, what was left of the lottery funds, was disbursed to victims.

where in the Americas, and has been hailed by observers on both sides of the aisle as fair.<sup>114</sup>

Although the victims were unable to collect the money damages for several years, they were eventually able to collect a small portion of the judgment through legal action taken in the United States.<sup>115</sup> The Raboteau Victims' Association, one of the grassroots organizations that worked with the BAI over more than a decade on the case, voluntarily gave ten percent of its recovery to their lawyers so that they could continue to represent victims in similar situations.<sup>116</sup> This action demonstrates that the case went a long way towards meeting one of the BAI's stated goals in pursuing the case: to build at least a "scintilla of trust" in the justice system.<sup>117</sup> The lawsuit not only achieved some justice for the victims in that case, it had significant benefits for Haiti's justice system on a more global scale.<sup>118</sup>

Since the earthquake, the organizations are working to apply this proven approach to enforce the right of women and girls to be free from sexual violence, including prosecuting perpetrators of violence and holding government authorities accountable for failing to meet their obligations to protect. The organizations have a long-standing commitment to advancing the rights of women in Haiti. Lawyers with the BAI and IJDH were integral to the prosecution of Emmanuel "Toto" Constant, former paramilitary leader, in the

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<sup>114</sup> Concannon, *Justice for Haiti*, *supra* note 95.

<sup>115</sup> See Jean v. Dorélien: *Haiti: The High Command and the Raboteau Massacre*, CENTER FOR JUSTICE AND ACCOUNTABILITY, <http://cja.org/article.php?list=type&type=78> (summarizing federal and state cases).

<sup>116</sup> The Raboteau Victims' Association is still active and continues to advocate on behalf of the right of the poor. They were organized and ready to take action after several hurricanes ravaged Gonaïves in 2008.

<sup>117</sup> Bresler, *supra* note 108, at 8.

<sup>118</sup> On April 21, 2005, shortly after the second coup, the *Cour de Cassation* (Haiti's highest court) vacated the convictions of the sixteen defendants found guilty during the Raboteau trial. The court reversed a determination—including its own affirmation in 2000—that the Haitian Constitution required a jury trial. Defendants convicted *in absentia* have sought to have their convictions vacated based on the High Court's decision. See Mario Joseph and Brian Concannon Jr., *Analysis of Cour de Cassation Decision Vacating Raboteau Massacre Convictions* (June 6, 2005), [http://www.ijdh.org/articles/article\\_recent\\_news\\_6-6-05-c.htm](http://www.ijdh.org/articles/article_recent_news_6-6-05-c.htm). Although the decision arguably did not vacate the *in absentia* rulings, given its limited discussion of the impropriety of the jury, there are lower court opinions from Gonaïves holding that the 2005 reversal applies to both sets of defendants. It remains to be seen how the *Cour de Cassation* will deal with this issue. The Court's reversal, and release of several defendants from prison following the 2004 *coup d'état*, was obviously a blow to the victims. However, the victims still believe that their fight was worthwhile and the benefits for the justice can still be seen. Indeed, the case is now taught in some law schools.

United States.<sup>119</sup> In 2006, a United States District Court issued a default judgment, finding Constant liable for torture, crimes against humanity and the systematic use of violence against women, including rape, and awarded plaintiffs US\$19 million in damages. To date, this suit remains the only successful action holding someone for the state-sponsored campaign of rape that occurred during the 1991–94 period.<sup>120</sup> Starting in the mid-1990s, the BAI laid the groundwork for domestic prosecution of the military and paramilitary commanders who sponsored the widespread rape of Haitian women. However, before the case came to fruition, Haiti's democracy suffered another setback with the ouster of President Aristide in 2004.<sup>121</sup>

Many of the barriers to enforcing women's rights in Haiti remain—poverty, discrimination, deep fissures between the poor and the elites—but the BAI and IJDH are hopeful that with the devastation of the earthquake has also come renewed attention and commitment to advancing human rights in Haiti.<sup>122</sup>

#### *B. Post-Earthquake Projects Enforcing Women's Rights*

In the several months following the earthquake, the BAI office in Port-au-Prince (luckily spared from collapse) served as a central gathering spot for individuals and groups to coordinate emergency actions.<sup>123</sup> Dozens of women, girls and other displaced persons who came to the BAI reported instances of rape, forced evictions and other human rights violations. In response to this great need,

<sup>119</sup> Constant is the founder of the *Front pour l'Avancement et le Progrès Haitien* (Front for the Advancement and Progress of Haiti or FRAPH), a Haitian death squad organized in mid-1993.

<sup>120</sup> See *Doe v. Constant*, 354 Fed. Appx. 543 (2d Cir. 2009), *cert. denied*, *Constant v. Jane Doe 1*, 131 S. Ct. 179 (2010). See also *Doe v. Constant: Haiti: Death Squads and Gender-Based Violence*, CENTER FOR JUSTICE & ACCOUNTABILITY, <http://www.cja.org/section.php?id=75>.

<sup>121</sup> Concannon, *Gender Justice*, *supra* note 24.

<sup>122</sup> Former dictator of Haiti, Jean-Claude "Baby Doc" Duvalier returned to Haiti after twenty-five years in exile in France. It is unlikely Duvalier would have returned without a belief that he would not be held to account for the human rights violations committed during his reign. However, the Haitian government is pursuing a legal case against him, with the help of BAI lawyers, for financial and other crimes. This demonstrates that the climate in Haiti has progressed. The Duvalier case presents another opportunity to provide justice for victims and end impunity. However, it remains to be seen how a new administration, elected through irregular and fatally flawed procedures (discussed *supra*) will do.

<sup>123</sup> Even before the earthquake, the BAI office hosted press conferences and meetings for grassroots groups, which bring in dozens of people every day. The office also provides workspace, computers and telecommunications to grassroots groups that would not otherwise have access to such facilities.

the BAI and IJDH launched the Rape Accountability and Prevention Project (RAPP) and the Housing Rights Advocacy Project (HRAP).<sup>124</sup> The Projects incorporate victim-centered legal and public advocacy as well as grassroots collaboration and development. By punishing perpetrators and forcing a more effective response by law enforcement and the justice system more generally, the Projects aim to deter future violations. Despite the myriad challenges, steady progress is being made.

The legal advocacy components of the Projects include a combination of criminal and civil lawsuits in Haitian courts and initiatives with international forums such as the UN Human Rights Council, UN Commission on the Status of Women and the Inter-American Commission on Human Rights. The BAI has hired two Haitian attorneys and paralegals to pursue the cases, assisted by international legal fellows and volunteers. Indeed, another goal of the projects is to create a corps of well-trained and motivated public interest lawyers in Haiti.<sup>125</sup> With established connections to grassroots organizations, including KOFAVIV, FAVILEK and KONAMAVID, the Projects were able to begin work immediately and have conducted several training sessions with grassroots groups to prepare them to participate as partners in the litigation.<sup>126</sup>

With respect to RAPP, the legal actions pursue individual perpetrators, where identifiable, and authorities who fail to respect their duty to protect vulnerable women and girls and provide assistance to rape victims. BAI involvement has led to arrests of alleged perpetrators in several cases, including a police officer suspected of raping a fifteen-year-old girl.<sup>127</sup> Most cases are still in the investigatory phase. However, in one case, involving the rape of a four-year-old girl, the investigatory judge has transferred the case to the Criminal Tribunal. The BAI expects the Criminal Tribunal to hear the case by June or July 2011, which will be the office's first completed case. This case will set the bar for future cases and help

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<sup>124</sup> For more information see *Haiti Rape Accountability and Prevention Project*, IJDH, <http://ijdh.org/projects/rapp> and *Haiti Housing Rights Advocacy Project*, IJDH, <http://ijdh.org/projects/housing>.

<sup>125</sup> BAI training has become a feeder program for public service careers. BAI alumni serve as judges, prosecutors, non-profit lawyers and top Ministry of Justice officials.

<sup>126</sup> In the weeks following the earthquake, the organizations distributed thousands of "Know Your Rights" fliers in the camps through the BAI's networks. Fliers available at <http://ijdh.org/projects/lern#lern-projects>.

<sup>127</sup> The BAI expects a decision soon from the investigating judge either dismissing the case or transferring the case to the trial court.

identify bottlenecks in the system for future legal strategy and focus advocacy efforts.<sup>128</sup>

Recognizing that international law can play an important role in filling gaps in domestic law as well as strengthening legal bases for responsibility, BAI attorneys are working to incorporate into domestic work the IACHR decision granting precautionary measures to victims of gender-based violence in the camps.<sup>129</sup> For example, BAI led a press conference announcing the IACHR decision to women's groups and the Haitian press in January 2011, and is working on incorporating the decision into the standard written complaint filed in gender-based violence cases in Haitian courts.

With respect to HRAP, the BAI is currently developing an action in Haitian courts that will seek to enforce rights related to housing provided under Haitian law, as well as the IACHR decision ordering the Haitian government to halt evictions of camp residents.<sup>130</sup> Meanwhile, BAI lawyers have used the IACHR housing decision as an organizing and negotiating tool to prevent illegal,

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<sup>128</sup> While pursuing these cases, the BAI is also committed to ensuring that the defendants' due process rights are respected. For more information regarding the BAI's representation of indigent defendants and efforts to enforce the rights of prisoners, see *Health and Human Rights in Prisons Project*, IJDH, <http://ijdh.org/projects/hhrpp>.

<sup>129</sup> The Commission's gender-based violence decision, Precautionary Measure 340/10, includes the following legally binding recommendations:

1. Ensure medical and psychological care is provided in locations available to victims of sexual abuse of 22 camps for those internally displaced. This precautionary measures decision, in particular, ensures that there be: a. privacy during examinations; b. availability of female medical staff members, with a cultural sensitivity and experience with victims of sexual violence; c. issuance of medical certificates; d. HIV prophylaxis; and e. emergency contraception.
2. Implement effective security measures in the 22 camps, in particular, provide street lighting, an adequate patrolling in and around the camps, and a greater number of female security forces in police patrols in the camps and in police stations in proximity to the camps;
3. Ensure that public officials responsible for responding to incidents of sexual violence receive training enabling them to respond adequately to complaints of sexual violence and to adopt safety measures;
4. Establish special units within the police and the Public Ministry investigating cases of rape and other forms of violence against women and girls; and,
5. Ensure 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.

*Precautionary Measures Granted by the Commission during 2010*, INTER-AM. COMM'N HUM. RTS., <http://www.cidh.oas.org/medidas/2010.eng.htm>.

<sup>130</sup> The Commission's housing decision, Precautionary Measure 367/10, includes the following legally binding recommendations:

violent evictions, outside of the court system. In one camp, a landowner used armed men to intimidate displaced residents. The residents showed the armed men a letter from the Commission, which surprisingly caused them to leave. The BAI then distributed more extensive "Know Your Rights" materials in the camp that included, *inter alia*, the IACHR decision. After the landowner saw the materials, he offered to negotiate with the residents and the International Office for Migration, an intergovernmental organization working in Haiti on housing and migration issues. The landowner specifically requested that the BAI be present at the meeting, scheduled for March 2011. This change of events has turned the oft-repeated Creole proverb on its head: *konstitisyon se papyè, bayonet se fè* (the Constitution is paper, bayonets are steel).

As discussed above, many barriers to enforcing women's rights in Haiti remain, some resulting from a lack of governmental will, others from a lack of governmental capacity. For example, police officers often refuse to pursue aggressors unless they are caught in the act or immediately thereafter. This reflects a lack of will on the part of the police to protect women, but also reflects the realities of police capacity. Without facilities to conduct an investigation, police understand that arrest may be futile. BAI lawyers can help investigate vital evidence as well as break down discriminatory views that a woman's testimony alone is insufficient.

The fear of retaliation presents a barrier to the pursuit of legal action. Many of the BAI's clients have been threatened by their alleged rapists (or their friends or family). Some clients have relocated their homes or gone into hiding. In some instances, the suspects' family or friends have tried to bribe the victim to not bring cases forward. In many cases, clients have expressed to the BAI that they are at risk of violence whether or not they bring legal action.

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1. Adopt a moratorium on the expulsions from the camps for internally displaced persons until a new government can take office;
  2. Ensure that those who have been illegally expelled from the camps are transferred to places with minimum sanitary and security conditions;
  3. Guarantee that those who have been internally displaced have access to effective remedies in court and before other competent authorities;
  4. Implement effective security measures to safeguard the physical integrity of the camps' inhabitants, guaranteeing in particular the protection of women and children;
  5. Train security forces on the rights of displaced persons, in particular their right not to be expelled from the camps by force; and
  6. Ensure that international cooperation agencies have access to the camps for internally displaced persons.

*Id.*

The BAI is unable to guarantee the safety of its clients and discusses the risks before taking on a case, but ultimately the clients must decide for themselves if bringing legal action is worth the risk.<sup>131</sup> The support of grassroots groups helps clients deal with their fear, cope with their trauma, and empower themselves to pursue legal action despite the challenges, which reiterates the importance of the comprehensive, victim-centered approach.

Although daunting, the myriad barriers are not insurmountable. Domestic legal action is a vital part of a multi-faceted approach to enforcing women's rights, though often neglected.<sup>132</sup> Filing cases that can be used to highlight the successes and expose the failures of the system will force the Haitian justice system to perform better and build public confidence therein. International attorneys can play an important role in supporting these efforts through developing meaningful and sustained partnerships with Haitian attorneys and grassroots federations.

### C. *Involvement of International Attorneys*

The BAI and IJDH have always collaborated with a wide range of partners on all of their work, including several law school clinics, law firms, and organizations such as the International Senior Lawyers Project (ISLP). As the Creole proverb goes, *men anpil chay pa lou* (many hands makes the load light). In 2010, for example, ISLP sent two attorneys from Canada and Belgium to support the BAI's work providing representation to indigent defendants in rural jurisdictions. The attorneys provided training to the Haitian lawyers as well as the prosecutors, other defense attorneys, judges and local law enforcement officials. The impacts of this work have been felt; BAI lawyers have been successful in securing pre-trial release and speedy trials for several prisoners. In 2011, ISLP will send an attorney to support the rape cases.

In response to an outpouring of offers from U.S. lawyers and law students wanting to get involved in justice projects in Haiti after the earthquake, IJDH created the Lawyers' Earthquake Response Network (LERN).<sup>133</sup> LERN is a national network of lawyers

<sup>131</sup> Protection of victims and witnesses is not provided for in Haiti law. HANS JOERG ALBRECHT, LOUIS AUCOIN AND VIVIENNE O'CONNOR, UNITED STATES INSTITUTE OF PEACE, BUILDING THE RULE OF LAW IN HAITI: NEW LAWS FOR A NEW ERA 4 (2009), available at [http://www.usip.org/files/resources/haiti\\_rol.pdf](http://www.usip.org/files/resources/haiti_rol.pdf).

<sup>132</sup> See Concannon, *Beyond Complementarity*, *supra* note 96.

<sup>133</sup> The Student Hurricane Network, set up to provide legal services for victims of Hurricane Katrina in New Orleans, provided inspiration for the name of the group. See STUDENT HURRICANE NETWORK, <http://www.studentjustice.org>.

working with Haitian lawyers, primarily at the BAI, to implement a legal response to the recent earthquake in Haiti.<sup>134</sup> LERN members, individuals as well as those affiliated with law schools, law firms and other organizations, support the work of the BAI and also direct their own projects in areas related to enforcing environmental rights and advocating for just immigration opportunities in the U.S. and for long-term, effective international assistance to Haiti.

Lawyers and law students involved with LERN's Gender and Housing Working Groups have been involved in a wide array of activities supporting the BAI's rape and housing projects. They have conducted legal research for use in domestic Haitian cases, orchestrated fact-finding delegations collecting evidence and testimony for legal cases, held strategy and training sessions with BAI lawyers and grassroots groups, and filed reports and testified before UN bodies.<sup>135</sup>

A team of lawyers and law students affiliated with LERN, led by MADRE, CUNY Law School's International Women's Human Rights Clinic, the Center for Constitutional Rights, and IJDH, achieved the groundbreaking victories before the IACHR discussed above. More recently, in February 2011, lawyers with the BAI, IJDH and MADRE team led international law trainings empowering women to engage with the UN system and educating women about their human rights under Haitian and international law. Lawyers, with the help of the U.S. Human Rights Network, are working with grassroots groups to engage in the Haiti Universal Periodic Review (UPR) held by the UN Human Rights Council in October 2011. Among the UPR submissions include recommendations for enforcing the right to be free from sexual violence, including the importance of domestic legal systems to this end.

In addition, NYU's Center for Global Justice and Human Rights has conducted an academic study regarding gender-based violence as related to violations of other economic and social rights that will help inform domestic legal and advocacy strategies.<sup>136</sup> The University of Miami Law School's Human Rights Clinic is con-

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<sup>134</sup> Since then, over 400 lawyers, law professors and law students—many of them top experts in their field—have joined the network. See *Earthquake Response*, IJDH, <http://ijdh.org/projects/lern> (last visited Mar. 24, 2012).

<sup>135</sup> The fact-finding delegations included several collaborators: Center for Constitutional Rights, Digital Democracy, Goldin Institute, IJDH, MADRE, Morrison & Foerster LLP, TransAfrica Forum, the University of Virginia Human Rights Clinic and the You.We.Me. Disaster Law and Policy Center.

<sup>136</sup> See CENTER FOR HUMAN RIGHTS AND GLOBAL JUSTICE, *supra* note 37.



ducting research regarding the responsibility to protect for use in domestic litigation. TransAfrica Forum has hosted several congressional briefings featuring Haitian women grassroots leaders in a forum traditionally closed to their voices. The full depth of these projects and others are beyond the scope of this article, but it is enough to say, the approaches are many.

Training and solidarity from international lawyers cannot be underestimated. Involvement of international attorneys provides invaluable substantive knowledge and practical lawyering skills that empower Haitian attorneys to take the best from all systems to inform their work. It also provides valuable training for government officials and court employees rooted in the context of a real case. It helps Haitian attorneys at the BAI feel less isolated and raises their profile, which not only improves the efficacy of their advocacy but also helps keep them safe. When challenging a system that has long run on corruption and inequality, one can make enemies. International support can work to deter those who would seek to stop BAI attorneys from continuing their work.

The BAI and IJDH are working to transform the social context that underlies the vulnerability of all poor Haitian women and girls to assault and other violations of their human rights. Following cases through the Haitian justice system, as evidenced by the Raboteau trial, requires perseverance and support of a larger movement. Lawyers and law students in the United States and elsewhere can support these efforts through LERN or other partnerships where Haitians set the priorities. These collaborations will not only improve conditions in Haiti, but also provide international attorneys unique insight into the connections between poverty and injustice and provide tools that will help lawyers use legal skills to serve the poor in Haiti and elsewhere to achieve positive, fundamental change, or as they say in Haiti, *chanjman tout bon vre*.<sup>137</sup>

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<sup>137</sup> "Haitian women often sum up the transition [of Haiti from a society rife with corruption and social division to a more egalitarian society where minimum needs are met] with the single word '*chanjman*' ('change'), to indicate the comprehensiveness they seek, sometimes adding '*tout bon vre*' ('truly, completely') to indicate the depth." Concannon, *Gender Justice*, *supra* note 24.