

**UNITED STATES DEPARTMENT OF HOMELAND SECURITY
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT**

In the Matter of

Asylum Proceedings

Respondent
_____ /

AFFIDAVIT OF

I, _____, hereby declare under penalty of perjury that the following statements are true and correct to the best of my knowledge.

1. [Qualifications].

The Haitian Justice System is Corrupt

2. In general, the Haitian justice system is corrupt. Most, if not all, judges take bribes at some point. In addition, accessing the justice system requires additional payments- lawyers' fees and high court costs. The bribes and other costs leave poor people at a particular disadvantage when attempting to obtain justice.
3. Haiti has been governed by dictatorships for most of its history. The justice system evolved to respond to the needs of those with power, especially the power of force or money.¹ Legal codes mostly remain as Napoleon wrote them; the criminal procedures facilitate obfuscation and delay. However, the foundation of dictatorial structures in the justice system is not the law itself, but the legal system's practices and people. Corruption is widespread, skewing justice towards the highest or most powerful bidder. Chronic under-investment and low salaries make honest practices extremely difficult for officials. Even where judicial officials are not dishonest, the legal culture encourages elitism.
4. The justice system's transition has been slow and frustrating. Entrenched people and practices responsive to a dictatorial system are proving more difficult to reform than

¹ See, Brian Concannon Jr., *Beyond Complementarity: The International Criminal Court and National Prosecutions, a View from Haiti*, 32(1) COLUMBIA HUMAN RIGHTS LAW REVIEW 201, 209-14 (2000).

laws. National and international investment in buildings and materials, as well as in people, under Haiti's elected governments (1994-2004) yielded better equipped facilities, and a small corps of judges and prosecutors willing and able to apply the rule of law. However, these improvements lagged behind increasing demands on the system, and delay and corruption remained all too common. Despite some notable successes in prosecuting major human rights cases, the overall response of the justice system to human rights issues in particular has been disappointing. Following the forced departure of President Aristide in February 2004, the justice system went into a sharp decline. Many of the newly trained and competent judges were pushed out, illegally, and replaced by judges willing to follow the dictates of the executive branch. On December 9, 2005, the Prime Minister fired five members of the Supreme Court, the day after they issued an opinion that the government disliked. Firing the justices is as unconstitutional in Haiti as it would be in the U.S.

5. The largest single obstacle to Haitians in seeking justice through the legal system is the legal system itself. It functions poorly in general, and even worse with respect to cases involving human rights or any rights for individuals. Part of the problem of the judicial system is simply lack of qualified people. There has been inadequate formal judicial training and continuing education, and very little evaluation or supervision of judicial officials.
6. Haiti's legal codes remain largely unchanged since the early 19th century. Haiti has not ratified many international conventions. The Haitian legal culture maintains a system that is slow, formalistic and geared to serve the interests of economic, military, and political powers. For judges, the incentives to sell justice have always been strong and the possibilities of achieving real justice slight. The political upheavals of the last twenty years have exacerbated this trend by culling out anyone likely to take a principled stand in any direction.

Women In Particular Have Difficulty Securing Justice in Haiti

7. The justice system is particularly resistant to female victims, who carry a triple burden into the courthouse. Not only are they poor and trying to challenge the powerful, but they are also entering a place traditionally hostile to women. Haitian law is discriminatory, but the practices of judges, prosecutors and lawyers are even more so. For example, the Criminal Code treats rape as an "offense against morals," and until earlier this year prescribed a lesser sentence than for assault. If a man catches his wife in adultery and subsequent kills her or her lover, the murder is "excusable," meaning the husband will receive a greatly reduced sentence. No similar excuse is allowed for a woman. Judicial practice compounds these legislated injustices. For example, in the case of rape, most courts require a formal medical certificate and other evidence that the law does not, which effectively precludes many cases.

8. Although judicial training is needed in many areas, it is especially needed on gender issues. Judges and lawyers who consider themselves progressive on women's issues, some of them women, steadfastly defend the discriminatory practices on technical grounds. Most have simply not been exposed to gender justice issues, sheltered by status and training. On a broader level, the repressive dictatorships of the past, combined with the traditional nature of Haitian society, deflected many of the global discussions of gender, justice and society away from the country.
9. Gender discrimination in Haiti has systematically denied women the power to either prevent or address injustice against them. Discrimination in one sphere reinforces that in another -- a woman's low public status decreases her ability to respond to discrimination at work; legal discrimination with respect to property and civil rights further disempowers her at home.
10. These interlocking oppressions leave women particularly vulnerable to gender-based violence, on a large scale and individually. Sexual abuse by anyone with a power advantage over women -- mates, employers, soldiers, teachers, local leaders -- has long been endemic to Haitian life. The violence has been widely tolerated by society, and rarely punished by the courts. The civilian police and courts have made little progress fighting non-state-sponsored violence against women, including domestic violence.

Ms. X Will Not Find Protection in the Haitian Courts

11. I have read Ms. X's personal statement and her account of subsequent threats made against them. Based on my knowledge and opinion, I think it highly unlikely that Ms. X will be provided protection by the Haitian courts from elements of the Haitian National Police (HNP), whether they are actually still involved in the HNP now or not. Based on my knowledge and opinion, if there are members of the HNP or former elements of the HNP who wish to do harm to Ms. X, they will be able to do so with impunity.
12. Since the departure of President Aristide in February 2004, the police force has become more politicized and militarized. And there is little accountability for the HNP. A plethora of reports from Amnesty International, the United Nations, U.S. law schools and other credible sources establish that the HNP routinely arrest people without warrants and are involved in summary executions.
13. Conditions in Haiti continue to deteriorate. On October 14, 2005, Thierry Fagart, the head of the UN Human Rights mission in Haiti, called the human rights situation "catastrophic." He cited an August 20 massacre of at least 10 people at a soccer game by police and machete-wielding civilians, as well as illegal arrests and torture by the police.

14. I have read Ms. X's declaration concerning the abuse she has suffered by her husband. I can state with a large degree of certainty, based on my knowledge of the Haitian judicial system, that it is highly unlikely that any court would provide her effective protection from abuse by her husband. If an order were granted, it is virtually impossible that the police could or would provide effective enforcement. Her husband would have very little reason to believe he would be punished for assaulting or killing Ms. X.
15. The current government in Haiti is exercising serious control and influence over the judiciary. For example, judges are under significant pressure not to release political prisoners, regardless of the evidence against them. In July 2004, ANAMAH, the national judge's association, issued a press release condemning executive interference in judicial matters. In December 2004, the Minister of Justice personally wrote to the Chief Judge of the Port-au-Prince Trial Court, ordering him to take all the cases away from the judges who had ordered the releases of certain so-called political prisoners. This order was as illegal in Haiti as it would be in the U.S., and one of the judges resigned in protest. Most recently, on December 9, the Executive Branch fired five members of the *Cour de Cassation* or Supreme Court, and replaced them with handpicked judges, bypassing the Constitution's procedures for judicial selection and confirmation. In response, Haiti's judges are now on strike.
16. Ms. X's husband will be able to abuse Ms. X, if he so chooses, with impunity from the Haitian judicial system. The rule of law in Haiti is so weak and dysfunctional that any attempts on her part to even avail herself to the courts would possibly place her in even greater danger due to corruption. Judges, lawyers and plaintiffs all are concerned about personal protection when bringing forth any matter regarded as controversial. Based on Haitian laws and traditions, women seeking protection from abusive husbands is controversial. The climate in Haiti at present is chaotic, violent and dangerous. Ms. X will risk corrupt officials, threats and possibly serious harm to her person if she attempts to use the Haitian courts to protect her from her husband. Her persecution will not end with her husband's abuse, but sadly will extend through the very vehicle supposed to denounce oppression and uphold individual rights, the Haitian judiciary.
17. Based on my knowledge and experience, if Ms. X is returned to Haiti, and she is subject to violence at the hands of her abusive husband, it is very unlikely that the Haitian government, police or judiciary will protect her.