

THE DOUBLE WEAKNESS OF GIRLS: DISCRIMINATION AND SEXUAL VIOLENCE IN HAITI

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TABLE OF CONTENTS

I. INTRODUCTION	148
<i>A. From Slavery to Independence</i>	150
<i>B. "Where Pigs Feast and People Starve"</i>	159
III. PRACTICES OF DISCRIMINATION AND SEXUAL VIOLENCE AGAINST GIRLS IN HAITI	161
<i>A. Fieldwork and Research Methods</i>	161
<i>B. Discrimination and Sexual Abuse Behind the Family Door</i>	165
<i>C. The Girl's Body as Property: the Practice of Restavèk</i>	168
<i>D. Political Rape</i>	170
<i>E. Gang Rape and the Girl's Body as Territory</i>	173
III. INTERNATIONAL LAW AND CRIMINAL JUSTICE RESPONSE TO SEXUAL VIOLENCE IN HAITI.....	177
<i>A. International Human Rights Benchmarks</i>	177
<i>B. National Legal Framework</i>	181
<i>C. Gender Inequality in the Criminal Justice Responses</i>	182
1. Attrition of Rape Cases.....	183
2. Internalization of Gendered Stereotypes.....	185
3. Police Response to Sexual Violence.....	187
4. Dysfunctions and Gender Bias in the Criminal Justice Institutions.....	188
V. PROPOSALS FOR CHANGE	192
<i>A. Women Fighting Back</i>	192
<i>B. Recommendations for International Commitments</i>	194
<i>C. Recommendations for National Interventions</i>	195
1. Legislative Measures	195
2. Plan of Action for Police Forces.....	196
3. Reforms of the Criminal Judicial System and Alternative Models for Change	198
<i>D. Interventions at the Community Level</i>	199

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VI. CONCLUSION.....	203
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I. INTRODUCTION

[Rape] is something you never forget. I still carry it around with me in my heart, in my soul.

I think of it when I go to bed and I think of it when I get up. It doesn't let you go.¹

This Note is about poverty, inequality, and sexual violence. Using empirical research, it explores cultural beliefs, practices of abuse, and criminal justice responses to the widespread and systematic rape affecting girls in the shantytowns of Port-au-Prince, Haiti. Dominated by the vestiges of the French colonization and plagued by destitution and political instability, Haiti faces rampant violence and disarray leaving the majority of its population in unbearable conditions of despair. Often regarded as a *pariah* state by the international community and erratically supported or invaded by foreign players, Haiti remains a forgotten country despoiled by human rights violations, decadence, and turmoil.

In the struggle of everyday life and open-air confrontations among armed groups, criminals, and political rivals, rape and practices of discrimination and abuse against girls alternatively become weapons of war and strategies for survival. When starvation, massive attacks, and deliberate slaughters occur, the distinction between distress and impermissible violence gets lost. Rape becomes an unfortunate damage and an inevitable tool of war. Shedding light on a secondary country, this paper discusses inequalities, social expectations, abuses, and legal responses to the secondary human rights for girls, who suffer the double weakness of being women in children's bodies.

Given the critical condition of children and the widespread and systematic sexual violence affecting girls in the country, the United Nations Special Representative of the Secretary-General for Children and Armed Conflict for the first time included Haiti in its Report to the Security Council of 2006. The dynamics of armed violence in Haiti are very different from the conflict situations of other countries. Adopting a pragmatic and cooperative approach, the Special Representative declared the use of rape as a weapon of war, affecting an estimated 50% of girls living in the conflict areas of Port-au-Prince, of particular concern.² Along the same line, the official delegation of the Special Rapporteur on the Rights of Women of the Inter-American

¹ Rape survivor from the war in the former Yugoslavia. ALEXANDRA STIGLMAYER, *The Rapes In Bosnia Herzegovina*, in MASS RAPE: THE WAR AGAINST WOMEN IN BOSNIA HERZEGOVINA 92 (Alexandra Stigl Mayer ed., Marion Faber trans., Univ. of Nebraska Press 1994).

² U.N.S.C., *Children and Armed Conflict—Report Of The Secretary General*, U.N. DOC No. A/61/529-S/2006/826, 9 (October 26, 2006).

Commission of Human Rights visited Haiti in December 2006 to report structural violence against women and girls in the country.³

Given the increasing attention paid to this issue, this Note explores the link between historical heritage and political failure, as well as the connections between material scarcity, warlike terror, and sexual harm. It proposes an understanding of the cultural root causes underlying the practices of discrimination and sexual violence against girls and ultimately determining the experiences of love, loss, and denial of justice. By means of an engaged analysis of the international human rights benchmarks on the one hand, and the criminal legal responses on the other, this Note identifies the gap between international law aspirations and human rights outrages: where law is lacking and women lose, where justice fails and gender bias prevails. This same analysis serves the purpose of envisioning potential strategies, future preventive approaches, legal proposals, and policy recommendations aimed at ensuring effective protection for girls in Haiti and honoring the ultimate quest for human rights.

The first part of this Note focuses on the historical legacy and economic deprivation which profoundly shape the Haitian culture and inform current practices of discrimination and abuse against girls. Slavery, a warlike past, misery, and political instability are essential factors within the greater context of human rights violations and gender-based violence occur. The second part of this Note explores cultural beliefs, discriminatory thinking, and gender disparity which often degenerate into practices of sexual violence and exploitation behind family doors as well as in the public domain. Power-imbalanced relationships and domestic abuse naturally impair girls' and women's statuses within the Haitian social hierarchies and ultimately generate patterns of gender-based violence, becoming indispensable weapons for the blind purpose of war.

The third part of this Note describes international law standards regarding human rights for girls and the evolution of national legislation on the issue, largely informed by those standards themselves. Despite the efforts undertaken to comply with the commitments assumed by Haiti to the international community, the analysis reveals that, unfortunately, criminal justice responses remain inadequate and profoundly informed by corruption, internal dysfunctions, and gender bias. Finally, the fourth part of the Note provides an assessment of extant approaches of intervention adopted by international organizations and civil society institutions. This examination offers insight into designing future preventive measures, legal proposals, and policy recommendations aimed at protecting girls more effectively in Haiti.

The data informing this Note are the result of involved fieldwork comprised of thirty-eight face-to-face interviews conducted with interviewees from international and national institutions, governmental representatives, and a few victims. Pursuing this research in Haiti in the midst of political uncertainty, social malcontent, violent confrontations, and brutal reprisals against the local population and foreigners has been a challenging, but insightful, experience. Every work is partially the fruit of personal events that

³ The term "structural violence" denotes a form of violence that corresponds to the systematic ways in which a social structure dominates, oppresses, and exploits a segment of the population.

capture one's attention, this project was no exception. In particular, two very different episodes, in which I was either a powerless spectator or a silent and compassionate listener, motivated me to contemplate the unfortunate and hostile destiny of Haitian girls.

During my stay in Port-au-Prince in December 2006, I was driven home one night, as usual for security measures by United Nations personnel. On the way, I glimpsed an unusual movement on my side of the street. Drawing nearer to the window, in the dark of a secondary narrow path almost entirely obstructed by open-air garbage, I saw a group of young men forcibly dragging a little girl and beating her on the head while she struggled. I jolted up in my seat and screamed to stop the car, but safety rules in situations such as this require personnel to leave the area and promptly report the case by radio to security forces. This we did, but when the patrol arrived at the location only few minutes later, they could not find any trace of the victim or her aggressors. I will never know what happened, but I kept thinking about that night and the little girl long afterwards.

Only few days later, through an employee of *Médecins Sans Frontières*, I arranged an interview with two representatives—victims themselves—of a national organization providing primary medical assistance to girls affected by sexual violence in a conflict area of Port-au-Prince. Because security measures prevented me from entering the area, both women consented to travel 1.5 hours each way, in the midst of political demonstrations and disorder, to reach the UNICEF compound where I was staying. On the day the meeting was scheduled, I waited for them in vain. Later I learned that they had come, but the receptionist had sent them away, being suspicious of their intentions. Nevertheless, both women returned the following day, not for money, but for the sole purpose of telling their stories. After a long, stressful, and poignant interview, they anxiously asked me to keep their names and participation confidential, fearing possible retaliations against their families or themselves. Therefore, their identities, like those of any other interviewee for this study, will remain anonymous. Their narratives, however, have inspired or informed the very core of this Note in many different ways and served as a painful memory of what no girl should have to endure.

II. CONTEXTUALIZING DISCRIMINATION AND SEXUAL VIOLENCE AGAINST GIRLS IN HAITI

A. From Slavery to Independence

Li pale franse

(He speaks French (so he is likely deceiving you).)⁴

The Republic of Haiti is located in the Caribbean between Cuba and Puerto Rico and shares the island of Hispaniola with the Dominican Republic. Separated by only two hours by plane from the United States, Haiti has a

⁴ Haitian proverb.

unique historical heritage. No proper analysis of discrimination and sexual violence against girls and women in the country can be made without an understanding of its traumatic history. Slavery, war, and poverty represent important lenses through which to appreciate the cultural root causes of the current practices of violence, which taint the power-balance of the relationship between men and women and impair their status within the Haitian social hierarchies.

Originally inhabited by the peaceful native population of Arawak, who called their land Haiti (mountainous land), the island was discovered by Christopher Columbus in 1492. Renamed Hispaniola (Spanish Island), it became the first Spanish settlement in the New World.⁵ Over the first 150 years of its colonization, the Spanish focused primarily on the eastern part of the region, which appeared to be more prosperous in resources. Disease, massive killing, and enslavement by the Europeans fostered the progressive disappearance of the Arawak and ultimately led to their extinction. Since the Spanish had introduced the cultivation of sugar cane to the region, thus requiring forced labor for the cane fields, they reverted to the slave trade and imported thousands of African slaves to the island.

Attracted by the conspicuous resources of the Caribbean lands and the potential income, the French took advantage of Spain's lack of attention and began to occupy the western half of Hispaniola in 1659. Expanding their influence and claiming their own rights within the region, the French finally obtained official control of the western part of the island in 1697 in the Treaty of Ryswick.⁶ Renamed Saint Domingue, the new colony rapidly became France's most prosperous colony, which "supplied three-fourths of the world's sugar," coffee, and cocoa, and "generat[ed] more income than that of all thirteen original North American colonies combined."⁷

In the western half of Hispaniola, the slave trade remained relatively small until 1664, when the French *Compagnie des Indes Occidentales* began to increase the number of cargo ships transporting Africans to the New World. A study of liberated slaves revealed that "34% were [prisoners of war], 30% were kidnapped, 7% were sold by relatives or superiors, 7% were sold because of debts, [and] 11% were condemned to slavery through the judicial process."⁸ An eleven-year-old boy abducted with his sister by some neighbors and sold into slavery reported his harrowing experience of being put under the deck in his 1791 memoir: "[t]here I received such a salutation in my nostrils as I had never experienced in my life: So that with the loathsomeness of the stench and crying together, I became so sick and low that I was not able to eat."⁹

⁵ MICHAEL DEIBERT, NOTES FROM THE LAST TESTAMENT: THE STRUGGLE FOR HAITI, 10 (Seven Stories Press 2005).

⁶ JOHN R. BALLARD, UPHOLDING DEMOCRACY: THE UNITED STATES MILITARY CAMPAIGN IN HAITI, 1994-1997, at 3-4 (Praeger Publishers 1998).

⁷ DEIBERT, *supra* note 5, at 11.

⁸ See EDWARD REYNOLDS, STAND THE STORM: A HISTORY OF THE ATLANTIC SLAVE TRADE 33 (Allison & Busby 1985).

⁹ RALPH PEZZULLO, PLUNGING INTO HAITI: CLINTON, ARISTIDE, AND THE DEFEAT OF DIPLOMACY 30 (Univ. Press of Mississippi 2006).

Women and men between the ages of fourteen and sixty were disembarked in Saint Domingue ports, separated from their relatives, branded with red-hot irons to indicate their new owners, and forced to overwork under their absolute domination either in homes or on plantations. Slave girls were particularly vulnerable to rape and sexual abuse by masters and slave drivers who often forced them to work away from the plantations in establishments where prostitution and depravation were rife.¹⁰ The significant number of mixed-race children confirms the widespread and systematic sexual assault of slave girls committed by white clients or owners.¹¹

“By 1700 there were nearly ten thousand slaves [in the colony of Saint Domingue, but] by the end of the century [this estimate rose to] seven hundred thousand.”¹² The disparity between the presence of slaves and whites, who numbered only forty thousand, fostered the threat of revolt and the colonists’ increasing intolerance. To that extent, a planter’s daughter wrote, “[w]e are five whites . . . surrounded by over 200 slaves From morning to night their faces stare at us Our talk is taken up with the health of slaves, the care they require, their schemes for revolt, and all our lives are bound up with these wretched beings.”¹³

Colonists’ reaction to this state of fear degenerated into the abusive practices of the institution of slavery. The documented excesses of plantation owners included indiscriminate rape, killings, and practices of common torture such as sewing the lips together, castration, breast mutilation, and ignition of the anus stuffed with gunpowder.¹⁴ “Visitors to the colony [also] reported that the whites . . . routinely crucified disobedient slaves,” tortured them to death, “burned them alive . . . in large cauldrons,” or “drowned them in weighted sacks in the [Saint Domingue’s] bays.”¹⁵

Because the colony was extensively embroiled in slavery problems, in 1685 King Louis XIV issued the “Proclamation concerning the Security of the French Islands in America.” Better known as the “Black Code,” this proclamation provided for due process, hours of work, food allotments for slaves, limits on punishment and sexual abuse, and minimal control over the despotic authority of masters.¹⁶ Unfortunately, the Black Code was largely ignored, and the combination of the freedoms granted to slaves and their increasing presence in the country ultimately exacerbated the conflicts between races and classes.

Despite the practices of domination and abuse, restrictions and curfews, slaves managed to craft their own language—Creole—from a combination of French, native African dialects, and Spanish and English words. They also contrived to maintain their native religious beliefs—known

¹⁰ BERNARD MOITT, *WOMEN AND SLAVERY IN THE FRENCH ANTILLES, 1635-1848*, at 99 (Indiana Univ. Press 2001).

¹¹ *Id.*

¹² See generally JOHN R. BALLARD, *supra* note 6, at 4.

¹³ ROBERT DEBS HEINL, JR. & NANCY GORDON HEINL, *WRITTEN IN BLOOD: THE HISTORY OF HAITIAN PEOPLE, 1492-1971*, at 33 (Houghton Mifflin 1978).

¹⁴ See PEZZULLO, *supra* note 9, at 31.

¹⁵ DEIBERT, *supra* note 5, at 11.

¹⁶ See BALLARD, *supra* note 6, at 4.

as *vodou*—often practiced secretly under the apparent observance of Catholicism imposed by French. Despite rigid prohibitions, *vodou* represented not only a religion but also a vital spiritual force and a source of psychological liberation, enabling the slaves to survive and afterwards empowering them to surmount their oppression.¹⁷

Considering the volatile mix of social hatred and the vigor of the slaves' identity and resistance, it is not surprising that in 1783 a French noble master described Saint Domingue as a tinderbox ready to erupt: "This colony of slaves is like a city under the imminence of attack; we are treading on loaded barrels of gunpowder."¹⁸ It was the French Revolution that ignited their anger and nourished their hope. On the night of August 14, 1791, nearby Cap Haitian in the north of the country, a *vodou* priest (or *houngan*) named Boukman held a religious ceremony aimed at encouraging slaves to fight for their freedom. One week later, five thousand slaves, under the leadership of Boukman, began their savage campaign against French domination. Within the first few days, approximately two thousand "whites [were] killed in a manner as barbarous as that by which they had treated the slaves" and hundreds of plantations were ransacked and destroyed.¹⁹ After a short, but bloody, suppression of the rebellion by French, the slave army finally prevailed under the military strategic design of their new leader Toussant. In 1793, the surviving white colonists were forced to leave the island.²⁰

The liberation from slavery and the independence of the country lasted only until December 1801, when Napoleon deployed twenty-five thousand soldiers in Saint Domingue to suppress the opposition of the rebels. However, rivals' resistance, the support of arms and ammunition provided to them by President Thomas Jefferson, the scarcity of food, the occurrence of the rainy seasons in the region, and the resulting proliferation of lethal diseases—including the yellow fever—continually decimated the French soldiers. Despite Napoleon's several attempts over the next two years to regain the colony and its strategic position in the Caribbean, at the end of November 1803, the French finally abandoned Saint Domingue, having lost over sixty thousand soldiers. On January 1, 1804, Toussant's successor proclaimed the island to be an independent republic under the original Arawak name of Haiti. After an estimated loss of three hundred and fifty thousand combatants between 1791 and 1804, Haiti became the first and only republic created by a slave revolt.

¹⁷ See CAROLYN E. FICK, *THE MAKING OF HAITI: THE SAINT DOMINGUE REVOLUTION FROM BELOW* 65–66 (Univ. of Tennessee Press 1990).

¹⁸ See HEINL & HEINL, *supra* note 13, at 37.

¹⁹ See DEIBERT, *supra* note 5, at 12.

²⁰ *Id.* at 12.

A. *The Struggle of Haiti*

Dye mon, gen mon

(Beyond the mountains are more mountains.)²¹

Despite any prevision, the bloody war of independence did not keep pace with the hopes of the Haitian people. In the years following the recognition of the nation as an independent state, the reins of the government passed through the hands of a series of repressive leaders, establishing a political culture based on the use of military force, discord among the population, troubled financial plans, and inefficient administration. Contested between different political parties, the nation was split between north and south from 1806 to 1820. An autocratic, but stable, and prosperous northern state contrasted with a more democratic southern system that faced constant financial difficulties.²² Reunited in 1820s, Haiti struggled with the legacy of despotic regimes, the plague of debt and inefficient administrative control, and the internal tensions between north and south, dark and light skin, elites and the poor.

During the nineteenth century, Haiti experienced a succession of twenty-one presidents in only seventy years, between 1845 and 1915.²³ Characterized by military despotism as well as the capricious attitudes and fiscal irresponsibility of their leaders, these governments continued to aggravate the situation within the country. Economically, Haiti was burdened not only by the internal disparities between north and south, but also by external yokes. France, Great Britain, and United States shared the dominance of the Haitian trade market by imposing onerous tariffs on goods. In addition, the dependence of the entire economy on a single major crop (coffee), the absence of a marketing policy, the depreciation of the currency and the reluctance of the elites to invest in the economic development of the country led Haiti toward a downward spiral.²⁴

Politically, because France had hastily recognized the independence of the colony and diffused a bad reputation of the republic, most of the European nations considered Haiti to be an outcast country and, in practice, refused to establish diplomatic relations with its representatives. Even the United States and South American nations did not recognize the Haitian democracy until the middle of the 1860s and refrained from engaging in foreign relations with the successive Haitian governments. However, in 1910 when the nation became insolvent, with the intent of neutralizing the European dominance, the United States entered into a common customs receivership of the Haitian assets with France and Germany. Indeed, given the crescent involvement of the American foreign policy in the Caribbean region—including the war over Cuba in 1898

²¹ Haitian proverb.

²² BALLARD, *supra* note 6, at 13–16.

²³ *Id.* at 16.

²⁴ *Id.*

and the interest in the Panama Canal in 1903—the United States decided to prevent the country from falling under the control of European powers.²⁵

For the same reasons, the Haitian revolt of 1915 against the existing government fostered President Wilson's decision to intervene in the island.²⁶ This first American military incursion into Haitian territory successfully achieved a basis for civilians' security, established effective communication and cooperation with the Haitian government, developed the infrastructure of the country, and suppressed the revolt without incurring any significant collateral damage.²⁷ However, the measures adopted failed to encourage long-term investment in the economic development of the country and the education of the people, or strengthen the national capacity and democratic institutions.²⁸ Furthermore, the Americans' racial biases and attempt to outlaw the practice of *vodou* generated profound discontent and disappointment among the population. Criticism and blame replaced the expectations and hope of the Haitian people.

Intermittent and corrupt regimes followed the departure of the United States in 1934 from the country until Francois Duvalier, better known as "Papa Doc," emerged as the most popular candidate in the internal confusion of the 1957 national election. A supporter of the negritude movement and the Haitian traditions, including *vodou*, Duvalier established one of the most repressive dictatorships in history. From 1957 to 1971, Papa Doc dominated the entire country by eliminating any potential rival, prohibiting opposition propaganda and student demonstrations, raping girls and women as a weapon of political intimidation, expelling Catholic priests from the region and creating his own private security force. The estimated number of Haitians massacred for their opposition, or *alleged* opposition, to the regime ranged from between thirty thousand to sixty thousand. Meanwhile, thousands of Haitian women, who were fierce resisters as well as victims of the regime, abandoned the country and took refuge in the capitals of North America and Europe.²⁹

Despite the atrocities committed during the Duvalier dictatorship, the United States tolerated and even sustained the system economically. At that time, global communism represented the primary concern for the American foreign policy and Papa Doc's regime, which expressly combated the communist movement, appeared to serve the United States' interest in opposing Fidel Castro in Cuba. After Duvalier's death in 1971, his son Jean Claude, better known as "Baby Doc", inherited power over the country. Convinced that maintaining the United States' support was vital for Haiti and his government, Baby Doc promised the Reagan Administration to generate economic reforms and improve the standard of human rights. However, the

²⁵ *Id.* at 17.

²⁶ *Id.* at 18.

²⁷ *Id.* at 21.

²⁸ See DAVID HEALY, *The U.S. Occupation Of Haiti*, in HAITIAN FRUSTRATIONS: DILEMMAS FOR U.S. FOREIGN POLICY A REPORT OF THE CSIS AMERICAS PROGRAM 44 (Georges A. Fauriol ed., The Center for Strategic & International Studies 1995).

²⁹ MYRIAM MERLET, *Between Love, Anger And Madness: Building Peace in Haiti*, in THE AFTERMATH: WOMEN IN POST-CONFLICT SITUATION 160 (Sheila Meintjes, Anu Pillay & Meredith Turshen eds., Zed Books 2002) (2001).

internal tensions and the discontent of the population as well as the widespread AIDS epidemic, which affected the entire country and destroyed Haitian tourism, led to the collapse of the Duvalier era. In 1986, with the support of the United States, Baby Doc and his family abandoned the country for asylum in France, and a new military government was established.³⁰

Many authors contend that the tremendous problems of Haiti in the late 1980s arose from the unique diplomatic isolation of the country, its poor economic development, the reluctance of rural inhabitants to change, and the absence of an effective system of internal communications. Since the bloody revolution for independence, the United States and France have consistently been the exclusive players in Haitian international affairs, but their participation has often been erratic and invasive, and aimed primarily at serving their own interests. Furthermore, the mountainous terrain of the country, the separation between the language of the elites—French—and the language of the poor—Creole—as well as an illiteracy rate of over 70% fostered the seclusion of the rural population in their hopeless poverty.³¹

A multitude of interim governments followed the Duvalier era until the democratic election of the priest, Jean-Bertrand Aristide, in 1990. As an outspoken critic of the two Duvalier regimes and the subsequent military administrations, and, therefore, expelled from the Salesian Order by the Church in 1988, Aristide gained the favor of the Haitian poor—the majority of the country—in sermon after sermon encouraging his parishioners to fight for a better standard of living against the privileged classes. Supported by his Lavalas organization, which means “we will wash away” in Creole, Aristide and his prime minister Rene Preval established a minimum wage, declared war against corruption and drugs, pursued a literacy campaign and promoted tourism and investment in the private sector. However, given Aristide’s complete lack of political experience, as well as his explicit contempt of the Catholic hierarchy and opposition to the elites and the military forces, he was rapidly surrounded by many enemies.³² In 1991, after less than one year of government, Aristide was overthrown in a bloody military coup and forced to escape in exile first to Venezuela and later to the United States.

The era that followed the subversion of the Aristide government, from 1991 to 1994, represented a complete breakdown of the Haitian civil society and the destruction of any last trace of democracy. Despite the emergence of the new Lavalasian political leader and his innovative regime, the coup demonstrated that the old powers of the elites, the Duvalierists and the armed forces were still extremely influential and persistent.³³ The military junta,

³⁰ BALLARD, *supra* note 6, at 35-41.

³¹ See generally ROBERT ROTBERG, *Haiti's Past Mortgages Its Future*, 67 FOREIGN AFFAIRS 93 (1988) (explaining the failure of democracy in Haiti after Duvalier by reference to economic and historical factors).

³² See generally ROLAND PERUSSE, *HAITIAN DEMOCRACY RESTORED 1991-1995* (Univ. Press of America 1995) (exploring the international crisis caused by Aristides overthrow in 1991 with reference to its multi-actor and cross-cultural dimensions); WILLIAM R. MCCLINTOCK AND ALEXANDER G. MONROE, *OPERATION GITMO, 1 OCTOBER 1991-1 JULY 1993* (United States Atlantic Command 1998) (analyzing historically the military operations carried out in Haiti).

³³ ROBERT FATTON JR., *HAITI'S PREDATORY REPUBLIC—THE UNENDING TRANSITION TO DEMOCRACY 77-96* (Lynne Rienner Publishers 2002).

which supplanted Aristide, banned public meetings, violently repressed any sign of political protest and confiscated the population's assets.³⁴ Practices of sexual violence against girls and women, particularly gang rape, were among the weapons of political repression employed systematically by the *putschists*.³⁵

In light of these events, the Organization of American States (OAS) and the United Nations officially condemned the military coup and strongly supported Aristide's return to the country. Meanwhile, in order to dislodge the coup leaders, the Clinton Administration decided to impose a total economic embargo on the island, freezing the Haitian elites' assets held in the United States and shutting down American commercial flights to Haiti. Despite the efforts of the international community, in 1994, it seemed clear that diplomatic negotiations, official condemnations and economic sanctions had failed to break the hold of the military junta and restore democracy in Haiti.

To that end, on July 31, 1994 the United Nations adopted Resolution 940, which authorized a military intervention aimed at removing the coup leaders and restoring Aristide to the presidency.³⁶ Under the pressure of an imminent invasion of American troops in the country and an intense diplomatic negotiation with major representatives of Clinton Administration, finally, the military junta agreed to resign from the power, and allowed U.S. troops to move peacefully into Haiti and restore Aristide's government.³⁷

However, the much-anticipated return of Aristide ended up disappointing the expectations of many supporters of Lavalas, who realized that their leader had become a dangerous demagogue. He tolerated no dissent and envisaged creating a new dictatorship based on corruption, political manipulation and human rights violations, including widespread and systematic sexual violence against girls and women. At the end of 1995, under international and domestic pressures, Aristide reluctantly declared that he would have not run for president again, and in 1996 the Lavalas candidate—Rene Preval—Aristide's first Prime Minister, was inaugurated as the new president of Haiti.³⁸

During Preval's first year in office, twenty-five thousand American soldiers were deployed back to the region to become part of the United Nations Support Mission in Haiti (UNSMIH). The mission included approximately 1300 peacekeeping troops and three hundred civilian police whose mandate was to maintain security and political stability in the country.

³⁴ See generally PAUL FARMER, *THE USES OF HAITI*, (Common Courage Press 1994) (analyzing chronically the events and processes of the political situation in Haiti); M. CATHERINE MATERNOWSKA, *REPRODUCING INEQUITIES – POVERTY AND THE POLITICS OF POPULATION IN HAITI* (Rutgers Univ. Press 2006) (exploring adverse effects of gender inequalities in family planning in the slums of Haiti); AMERICA'S WATCH COMMITTEE (U.S.) & NATIONAL COALITION FOR HAITIAN REFUGEES, *Silencing a People: The Destruction of Civil Society in Haiti* (Human Rights Watch 1993) (reporting on the violent repressions and systematic human rights abuses met out to the civil population in Haiti).

³⁵ This refers to people who take part in a secretly plotted and suddenly executed attempt to overthrow a government.

³⁶ See generally FATTON, *supra* note 33 (offering an analysis of Haiti's politics from the fall of the Duvalier dictatorship to Aristide's inauguration, to the attempted coup in December 2001).

³⁷ *Id.*

³⁸ DEIBERT, *supra* note 5, at 48–51.

Meanwhile, Aristide announced that he was forming a new political party, Fanmi Lavalas or the Lavalas Family, which soon became the machine that would have ensured his reelection and ascent to the power as well as led to the downfall of his chosen successor, Preval. Shortly, after the formation of the Fanmi Lavalas party, several organizations, called *organizations populaires*, “popular organizations,” began to spring up as armed political pressure groups in support of the former president of Haiti.³⁹

The mutual hostility between Preval and Aristide, the widespread political intimidation, and the increasing street violence that was roiling the country, paralyzed Preval’s vain attempts to effectively govern the state. When the United Nations’ mandate for its peacekeeping operation ended in 1997 and the troops were prepared to leave, the UN mission’s objectives of peace and stability were far from being achieved. In the following few years, instances of violent confrontations between supporters and opponents of Fanmi Lavalas and brutal assassinations of prominent figures, such as Jean Dominique, the director and owner of the independent Radio Haiti-Inter, continued to paralyze Haiti and throw the country into anarchy.⁴⁰

In the controversial elections of 2000, Aristide regained power in the country amidst allegations of election irregularities and fraudulent manipulations from the international community and the opponents of the Fanmi Lavalas party. Isolated from foreign relationships, deprived of international aid and surrounded by narco-traffickers, criminals and anti-democratic organizations, Aristide’s government transformed Haiti into a “pariah” nation.⁴¹ Faced with such a scenario, the American policymakers began to portray Aristide as a dangerous, radical leader and promoted a major denigratory campaign against his party. Aristide’s opponents, financed by foreign entities, continued to accuse him of corruption, political repression, and gender-based violence. In 2004, the outbreak of violence and disarray in the Haitian communities culminated in the bloody revolt of rebel groups, which erupted in the north of the country and rapidly advanced to the capital of the government, Port-au-Prince.

Strongly condemned by France and the United States, in February 2004, Aristide hastily abandoned Haiti, taking refuge first in the Central African Republic and later in South Africa, where he remains. Following the ouster of the government, there was a massive breakdown of the poor slum communities, which had supported the exiled president’s policies. In April 2004, recognizing that the critical situation of Haiti represented a threat to the peace and security of the entire region, the United Nations Security Council adopted Resolution 1542 and established the United Nations Stabilization Mission in Haiti (MINUSTAH). Despite internal tensions, widespread sexual assaults of girls and women, and violent confrontations among rival armed groups, the interim international peacekeeping government ruled the country until February 2006, when the democratic presidential elections declared Rene Preval to be the new president of Haiti.

³⁹ FATTON, *supra* note 33, at 112–13.

⁴⁰ *Id.* at 115.

⁴¹ FATTON, *supra* note 33, at 141–43.

B. "Where Pigs Feast and People Starve"⁴²

Menm solèy la nan deters
(Even the sun is in distress)⁴³

Haiti's history of political instability and violence, poor governance, and recurrent deterioration of security severely affect the country's economic growth and development. The detrimental impact of political conflicts, the intermittent cycles of foreign assistance given and withdrawn, and the high degree of inequitable and inadequate access to productive assets and public services make the country the poorest in the Latin American and Caribbean region and the most disadvantaged of the Western Hemisphere.⁴⁴ About 54% of the entire Haitian population of nearly 8 million lives below the US \$1 a day poverty line and 78% lives below U.S. \$2 a day.⁴⁵ Large pockets of urban indigence in slum areas in Port-au-Prince, including Martissant, Gran Ravine, Carrefour, Cité Soleil, and Bel Air, register even higher poverty rates.⁴⁶

Every day, in the smothering tropical heat, thousands of girls and women endure the long and exhausting journey from their shantytowns toward the markets or rich areas of the city. A market seller's daily wage barely amounts to US \$1 and the average monthly salary of a household servant is about U.S. \$20.⁴⁷ Girls as young as twelve years old work as prostitutes along the main roads of Port-au-Prince, earning around US 60 to 80 cents overall in a normal workday.⁴⁸ The level of poverty in the country can also be measured by the illiteracy rate: the vast majority of the Haitian population speaks only Creole and less than 39.5% can read;⁴⁹ only 77% of children between the ages of six to twelve are enrolled in school.⁵⁰

Degradation and lack of infrastructure, including basic services such as potable water, electricity, and latrines, burden the wretched living conditions of the slums' inhabitants and exacerbate their anger and malcontent. Controlled by rival armed groups splintered from the Lavalasian organizations, which support Aristide's return to the country, and their opponents, the Haitian poor communities have become the setting for armed confrontations, rapes, and bloody slaughters. While terror erupts, girls and women scream, and people

⁴² MATERNOWSKA, *supra* note 34, at 1.

⁴³ *Id.* (citing Cité Soleil resident, Port-au-Prince 1993).

⁴⁴ See The World Bank, *Haiti – Social Resilience and State Fragility in Haiti, A Country Social Analysis, Report No. 36069-HT* (April 27, 2006) [hereinafter The World Bank, *Social Resilience*].

⁴⁵ The World Bank, *Republic Of Haiti – Enhanced Heavily Indebted Poor Countries (HIPC) Initiative Preliminary Document, Report No. 36917* (August 15, 2006).

⁴⁶ *Id.*

⁴⁷ MATERNOWSKA, *supra* note 34, at 1.

⁴⁸ Interview with Interview Thirty-Four [pseud.], Representative, Child Protection Unit—MINUSTAH in Port-au-Prince, Haiti (Dec. 17, 2006) (on file with Stanford Journal of International Law).

⁴⁹ The World Bank, *Social Resilience*, *supra* note 44, at 30.

⁵⁰ *Id.* at 24.

starve, “hungry pigs. . . discover bodies stashed behind buildings or buried shallowly in the open trash pits, unearthing evidence of the crimes committed.”⁵¹

Poverty, violence, and insecurity also foster the conditions that allow children to become orphans, homeless, and forcibly recruited by the armed groups to carry heavy loads of looted goods and to fight as soldiers in the front line. For girls, armed groups represent the inescapable threat of rape, sexual slavery, and forced prostitution. Danise, a twenty-two year old former resident of Cité Soleil, confirms: “young girls are often raped by the members of the rival gang as a way of reprisal.”⁵²

A recent study conducted by the MINUSTAH Gender Unit and the United Nations Development Programme (UNDP) in Haiti reveals that the armed groups, which sweep the slum neighborhoods and exert control over the population, are comprised of children, adolescents and young adults between the ages of ten and twenty-five.⁵³ Girls are also involved in the armed factions, but their association is primarily as official girlfriends of the members, prostitutes, or sex slaves. Most of these niches of armed violence represent grassroots elements of the Lavalas movement, driven both by desire for political and social change as well as by criminal economic purposes. While allegedly advancing political strategies or social interests, their activities and objectives often blur with other clandestine criminal and narco-trafficking transactions. Despite their different risk factors, structures, and dynamics, the armed groups in Haiti that target girls and women for sexual violence can be profiled into the following categories:⁵⁴

1. *Popular Organizations*: These organizations are comprised primarily of children and adolescents under eighteen years old and are motivated by political aims. They control the territory of deprived communities in Port-au-Prince, including Martissant, Cité Soleil, and Bel Air. Supporters of the Lavalas party, the Popular Organizations were established in the late 1980s as socio-political associations directed to organize resistance in the final years of the Duvalier dictatorship. Later during Aristide’s regime, these organizations were converted into associations aimed at distributing resources from the state to the communities. These armed groups are responsible for the perpetration of rape and sexual violence against girls as weapons of war and reprisals against rival factions.
2. *Baz Arme*: These gangs are formed by adolescents and are primarily motivated by organized crime purposes. Based on the personal interests of their members, such as sports, cultural activities, and political reunions, these associations end up being exploited by the Popular Organizations for criminal tasks, including trafficking

⁵¹ MATERNOWSKA, *supra* note 34, at 8.

⁵² UNICEF, *Child Alert: Haiti, No 2* (March 2006).

⁵³ United Nations Stabilization Mission in Haiti (MINUSTAH) & United Nations Development Programme in Haiti (UNDP), *The Situation Of Women In The Context Of Armed Violence In Haiti* 17 (June 2006).

⁵⁴ *See Children And Armed Conflict, supra* note 2.

weapons and drugs. Rape and sexual assaults against girls and women are perpetrated as comfort facilities and rewards for their illegal operations.

3. *Armed Criminal Gangs*: Involved in organized crime, these gangs are also often linked to political elements. Their establishment is a direct consequence of the deterioration in the standard of living within the communities, the high unemployment rates, poor governance, and the proliferation of armed confrontations in the city. Girls and women are victims of gang rape, sexual abuse and abduction perpetrated by the Armed Criminal Gangs as a means of controlling the community and spreading terror among the civilians.
4. *Paramilitaries (Front de Résistance)*: These armed groups are primarily comprised of former military, excommunicated members of the Haitian police, and civilians who overthrew Aristide's government in 2004 and contested the elections of February 2006 as a national political front (*Front de Reconstruction Nationale*). Located primarily in the commune of Gonaïves, Paramilitaries represent a political opposition group involved in illicit activities, such as extortion and banditry, and are responsible for rape and sexual violence against girls and women.
5. *Vagabond Gangs*: Comprised of children and adolescents, these groups perpetuate widespread and systematic gang rapes against girls in order to control their moral conduct and impose macho values within their community. Vagabond Gangs use light weapons to carry out punitive gang rapes and to terrorize their victims.

References to these different armed groups and their acts of sexual outrage against Haitian girls will be made throughout this Note. In addition to the description of the methodology informing this research, the following part will address the specific practices of discrimination and sexual violence affecting girls and women in the private realm as well as in the public domain.

III. PRACTICES OF DISCRIMINATION AND SEXUAL VIOLENCE AGAINST GIRLS IN HAITI

A. Fieldwork and Research Methods

A collection of data from two different periods informs this study. I carried out my preliminary research in Haiti in July 2006, when I worked as a researcher for the MINUSTAH Child Protection Unit in Port-au-Prince for two months. While preparing the input document on Haiti for the Report of the Secretary General on children and armed conflict for the United Nations Security Council, I monitored and gathered information and drafted legal opinions on the widespread and systematic perpetration of rape and sexual abuse against girls in the country. At that time, I had the opportunity to attend pertinent seminars and institutional workshops on sexual violence affecting Haitian women and girls.

In spite of the outbreak of violence in the politically turbulent communities of Port-au-Prince and the subsequent and continual status of alert for international residents in the rest of the city, the curfews imposed by MINUSTAH provided a certain degree of protection for its personnel and affiliates. Although these security measures significantly constrained my movements and access to victims and sites, they eventually represented my only form of protection.

When I returned to Port-au-Prince in December 2006, the situation of the country had tremendously degenerated. Despite the attempt of Preval to pursue a conciliatory tack with armed opponent groups, gang leaders resisted surrendering their armies, refused to negotiate with the government, and continued wreaking havoc on the country. At the end of the year, rapes, killings, and especially kidnappings of foreigners, national officers of international organizations, and even school buses of children erupted throughout Port-au-Prince and forced the government to hasten MINUSTAH military operations in the slums.

Within such a scenario, collecting data for this study became a difficult and complicated process. Since the access to deprived communities was extremely dangerous, I organized most of my meetings with interviewees in MINUSTAH and other international institutions' offices, the Ministry for the Status of Women, the Hotel Montana, and public places located within the authorized areas of the city. Because traveling throughout the country was equally dangerous, I canceled my initial plan to visit and personally collect data in the other two main communes of Haiti, Les Cayes and Gonaïves, and, ultimately, I resigned myself to relying on internal information provided by MINUSTAH personnel working in the two cities. In spite of these precautions, during those days I often felt the imminent risk hanging threateningly over my head.

Semi-structured and face-to-face interviews, numbering thirty-eight in total, represent the primary source of data for this research. The sample of interviewees used was intentionally non-random, and obtained through and comprised of my contacts within national and international institutions. The non-random sampling methodology was chosen both for sensitivity and practical reasons. Rape and sexual abuse by their very nature, and, particularly in Haiti, are perceived as banned subjects of discussion on the grounds of morality and danger. Therefore, the interview process required an intimate knowledge of the sample population. Because records on cases and victims of sexual assaults are kept only sporadically by organizations of the Haitian civil society and no national aggregate data on these issues are available,⁵⁵ a random sampling methodology could not possibly have been adopted for the purposes of this study.

Moreover, given the critical circumstances in Port-au-Prince and the resultant difficult access to interviewees and settings for interviews as well as limited time and funds, my sample size was relatively small but interestingly heterogeneous. The sampling categorization was intentionally kept diverse to gain a broader perspective on the practices of discrimination and sexual

⁵⁵ Interview with Interview Twenty [pseud.], Representative, Gender Unit—MINUSTAH in Port-au-Prince, Haiti (Jan. 3, 2007) (on file with *Stanford Journal of International Law*).

violence against girls, to draw a more extensive analysis of the cultural root causes of such violations, and to propose effective law and policy recommendations. The participants in this study belong to the following categories:

1. Professional civilian personnel of MINUSTAH working in the field of sexual violence against girls in the Office of the Child Protection Unit, the Gender Unit, and the Special Investigation Unit of the Human Rights Section;
2. Child professional officers of UNICEF Haiti responsible for programs related to sexual violence and abuse against girls;
3. Representatives of the Inter-American Commission on Human Rights, investigating issues of violence against women, access to justice, and medical services for victims;
4. Representatives of international non-governmental organizations (NGOS) working in the conflict areas of Port-au-Prince in the field of sexual violations against girls, such as *Médecins Sans Frontières* (Doctors without Borders), Save the Children, International Committee of the Red Cross (ICRC), Plan International Haiti, and AVSI;
5. Representatives of the Ministry of Justice;
6. Representatives of the Ministry for the Status of Women;
7. Prosecutors and magistrates working for the *Tribunal des Mineurs* (Tribunal for Minors);
8. Police officers of the Haitian National Police and the *Brigade de Protection des Mineurs* (Police section responsible for minors);
9. Director of the prison for girls in Port-au-Prince;
10. Members of the Bar Council's legal board in Port-au-Prince;
11. Representative of the Ombudsman in Haiti;⁵⁶
12. Representatives of national NGOs and institutions working in the conflict areas in the field of sexual violations against girls, including URAMEL, GHESKIO, IFES, KOFAVIV and KOPADIM; and
13. The parish-priest of the Catholic Church in Martissant, who is also the director of a specific program for children affected by sexual abuse.

Since conducting interviews with victims of rape and sexual abuse, especially minors, is a sensitive and emotionally wrenching task for the interviewee as well as for the interviewer and requires enough time to build a trusting relationship between the two,⁵⁷ only those few victims who spontaneously volunteered to share their experience with violence have been included as participants in this study. Given the time constraints of my stay in

⁵⁶ Established in 1997, the Ombudsman's mandate is to protect all citizens from violations by government officials. Most of the cases submitted to the Ombudsman concern allegations of police brutality, including sexual violence against girls and women.

⁵⁷ See generally JOHN LOFLAND & LYN H. LOFLAND, *ANALYZING SOCIAL SETTINGS: A GUIDE TO QUALITATIVE OBSERVATION AND ANALYSIS* (Wadsworth 2005) (offering comprehensive guide on qualitative data collection and analysis).

Haiti and the compelling ethical considerations involved in undertaking field research on such a delicate and personal issue, a more extensive analysis of the victims' perspectives will be the specific object of future research.

Although the sample size for this study is relatively small, and therefore, the findings of the investigation cannot statistically represent large populations, the variety of the interviewees and their specific knowledge and experience in the field nevertheless minimize the potential limitations of the initial outcomes. Moreover, since the goal of the research was to gain insight into the cultural root causes of discrimination and sexual violence against girls and to envisage effective recommendations for change, the very essence of the project has not been compromised. The findings are not intended to convey all of the opinions and approaches of institutional actors or the totality of the experiences and perceptions of victims, but rather to display cultural patterns of violence against girls in order to inform potential future strategies and practical intervention measures.

The objectives of the interviews were to collect and assess information about extant political and socio-cultural norms, practices, and decision-making processes, as well as local understanding, histories, experiences, and preferences of value and changes. Thus, the protocol included open-ended questions aimed at accommodating extended narratives and encouraging personal opinions. Primarily conducted in French, with very few exceptions in English and one in Creole, the interviews elicited participants' demographic information, work history, responsibilities, experiences or perceptions, analysis of the dynamics, and possible explanations for the widespread and systematic sexual violence against girls in Haiti.

This was followed by a discussion and report on specific cases of rape and sexual abuse against girls. For each of those, the following information was recorded: time, location, victim, perpetrators, modality; medical and legal assistance provided; and investigation and prosecution of the case. Furthermore, the interviewees were invited to describe existing approaches and programs adopted by their organizations or institutions aimed at protecting girls from sexual assaults and providing medical and legal assistance to victims. Suggestions about potential strategies and practical measures to be implemented to address rape and sexual abuse against girls and improve their performance in this field were also noted.

Finally, in order to corroborate the findings obtained by qualitative interviews and substantiate their analysis, a review of historical, social science, and international law literature has been employed. Further data on the political economy and social-cultural context was also gathered through a careful analysis and synthesis of relevant official reports, contemporary media, and public documents.

B. Discrimination and Sexual Abuse Behind the Family Door

Fanm se kajou:
(Woman is like mahogany)⁵⁸

In Haiti, the household represents the first domain where power, authority, and conflict define the contours of gender relations.⁵⁹ It is behind the family door that cultural beliefs and rules, misery and violence, loss and love generate power imbalance in relationships between men and women.⁶⁰ Strategies for survival shape the gender disparity of responsibilities, resources, and possibilities, which embed themselves into the practices of discrimination and often degenerate into the sexual abuse and slavery of girls. Inequality and violence perpetrated inside the household ultimately impair girls' and women's status within the Haitian social hierarchies and generate patterns of gender-based violence in the public sphere.

Constructed using rudimentary materials, including cement blocks and wooden planks, and topped with tin plates that trap the burning rays of the sun, the Haitian shanties usually have one or two rooms where as many as twelve adults and children live.⁶¹ Very poorly furnished and humid, they are often only partially locked, and remain dark due to lack of electricity. Given the cramped living spaces, easily accessible to neighbors and strangers, "[s]leeping in Haiti is dangerous."⁶² Interviewees unanimously revealed that girls' first sexual contacts begin at the age of five or six and are primarily experienced with relatives or neighbors.⁶³

According to a recent World Bank study, "Factors Impacting Youth Development in Haiti," violence is part of everyday life and, particularly, sexual abuse against girls is highly prevalent. The study reports that 46% of all Haitian girls have been sexually abused within the household: 33% of the victims were girls from five to nine years of age, and 43% were girls between

⁵⁸ Haitian proverb which means that since women are like the mahogany wood that needs to be polished to become beautiful, they also need to be subdued by men for their own good.

⁵⁹ MATERNOWSKA, *supra* note 34, at 44.

⁶⁰ *Id.*

⁶¹ *Id.* at 46.

⁶² *Id.*

⁶³ Interview with Interview Two [pseud.], Representative, Human Rights—MINUSTAH in Port-au-Prince, Haiti (Dec. 13, 2006) (on file with *Stanford Journal of International Law*); Interview with Interview Seven [pseud.], Representative, Ministry of Justice in Port-au-Prince, Haiti (Dec. 16, 2006) (on file with *Stanford Journal of International Law*); Interview with Interview Sixteen [pseud.], Representative, GHESKIO in Port-au-Prince, Haiti (Dec. 19, 2006) (on file with *Stanford Journal of International Law*); Interview with Interview Seventeen [pseud.], Representative, MSF in Port-au-Prince, Haiti (Dec. 17, 2006) (on file with *Stanford Journal of International Law*); Interview with Interview Nineteen [pseud.], Representative, Ministry for the Status of Women in Port-au-Prince, Haiti (Dec. 21, 2006) (on file with *Stanford Journal of International Law*); Interview with Interview Twenty-Four [pseud.], Representative, Child Protection Unit—MINUSTAH in Port-au-Prince, Haiti (Dec. 15, 2006) (on file with *Stanford Journal of International Law*); Interview with Interview Twenty-Four [pseud.], Representative – UNICEF in Port-au-Prince, Haiti (Dec. 15, 2006) (on file with *Stanford Journal of International Law*); Interview with Interview Thirty-Two [pseud.], Representative, KOFIV in Port-au-Prince, Haiti (Dec. 28, 2006) (on file with *Stanford Journal of International Law*).

ten to fourteen years of age.⁶⁴ Yet, approximately 35% of women over fifteen years of age are the victims of physical violence with a higher prevalence in rural areas (41%) than in the metropolitan communities (34%).⁶⁵ In 2000, the Special Rapporteur on violence against women reported that 66% of girls and women victims of domestic and sexual abuse never denounced acts of violence for fear of reprisal and social stigmatization.⁶⁶

Interviewees in this study confirmed that Haitian society is imbued with a culture of violence. As a result, the sexual assault of girls and women inside the household represents the product of customary norms of repression against the vulnerable and the “inferior.” As in many other patriarchal societies, Haitian marital unions are informed by the “model of [a] male breadwinner and [a] female caregiver.”⁶⁷ Primarily responsible for domestic duties, including washing, preparing food, and caring for children, women look to men almost exclusively for economic support. The daily struggle for survival forces girls to choose their partners for their most basic asset—good health and the ability to work—which will eventually provide security and income for the household.

Given these societal standards and the constrained means for living, sexual relationships are primarily structured on gender-based expectations. In the realm of sexuality, women’s concern for financial gain becomes the basis for men’s power and legitimacy in dictating conjugal rules, mistreating their partners, and engaging in polygamy. Interviewees revealed that women’s economic dependence represents the primary root cause of their subordination within the family or relationships.⁶⁸ It is commonly and customarily accepted for men to make decisions in the household, sexually dispose of their partners and interweave several unions with different women concurrently.⁶⁹ By contrast, women and girls are expected to be tamed by men for their own good either “by word or blow”⁷⁰ in the event that they “interrupt the domestic peace by disobedience.”⁷¹

Childbearing and motherhood represent women’s major sources of bargaining power in relationships, even though they generally become their own load and plight. Participants recalled the popular Haitian proverb “*ti*

⁶⁴ Michael Justesen & Dorte Verner, *Factors Impacting Youth Development in Haiti*, 4 (World Bank Policy Research Working Paper Series, Paper No. WPS4110 2007).

⁶⁵ The World Bank, *Social Resilience*, *supra* note 44, at 33.

⁶⁶ U.N. Econ. & Soc. Council [ECOSOC], Special Rapporteur on violence against women, its causes and consequences, *Integration of the Human Rights of Women and the Gender Perspective – Violence Against Women, Report of the Special Rapporteur on Violence Against Women on the Mission to Haiti*, ¶ 32 U.N. Doc E/CN4./2000/68/Add. 3 (January 27, 2000) (prepared by Radhika Coomaraswamy). [hereinafter Report of the Special Rapporteur on Violence Against Women on the Mission to Haiti].

⁶⁷ ESTELLE B. FREEDMAN, *NO TURNING BACK, THE HISTORY OF FEMINISM AND THE FUTURE OF WOMEN* 124 (Ballantine Books 2002).

⁶⁸ Interview with Interview Twenty-Four [pseud.], Representative, UNICEF in Port-au-Prince, Haiti (Dec. 15, 2006) (on file with *Stanford Journal of International Law*).

⁶⁹ *Id.*

⁷⁰ FREEDMAN, *supra* note 67, at 293.

⁷¹ Interview with Interview Twenty-Four [pseud.], Representative, UNICEF in Port-au-Prince, Haiti (Dec. 15, 2006) (on file with *Stanford Journal of International Law*).

*moun se riches pòv malèrè*⁷²—children are the wealth of the poor—but a Cité Soleil resident also declared: “When a man gives you a child now, he leaves, without even looking back. It’s a huge injustice. You wish that he had killed you instead. And when you’re pregnant, I don’t need to tell you about the hunger, bare feet on the ground, everything in your body cries out.”⁷³

Cultural beliefs and patriarchal values as well as hand-to-mouth existence highlights the importance of children in the maintenance of the household. Girls as young as five years of age are expected to carry water, prepare food, wash dishes and clothes, help sell goods in the markets, and go on errands for their relatives. Representatives of the Ministry for the Status of Women interviewed for the purpose of this study declared that even poverty in Haiti is gendered. Raised in an environment of neglect, slavery, overwork, sexual abuse, and violence, females are fed less than their male counterparts, forced to work harder, given less schooling and denied equal access to medical care.⁷⁴

While parents toil outside the house and brothers are often given preferential opportunities to attend school or to take apprenticeships, girls as young as seven or eight years old are charged with watching younger siblings and working inside the home.⁷⁵ Behind closed doors, due to the obliviousness of the parents, the unconsciousness of the victims, and the complacency of responsible adults, sexual abuse, and violence against girls take place undisturbed.⁷⁶ Since chastity and a virtuous reputation are prerequisites for marriage, which represents women’s principal goal and their only means for subsistence, sexual violations against them, especially if committed by relatives or those close to the family, often remain secret. Representatives of UNICEF Haiti recalled the case of a minor who was raped by her stepfather, abandoned by her own mother, and eventually blamed by the entire community for divulging the aggression.⁷⁷

In Haiti, as in other patriarchal societies, the girl’s body is one of the very few possessions that even poor parents can claim as their own and defend as private property. Since women’s offspring represent a commodity to be transferred from fathers to their daughters’ husbands and the paternity of the children needs to be ensured, girls had to be chaste before marriage and remain faithful all along.⁷⁸ Domestic practices of sexual abuse and violence against girls are generally perceived as unfortunate events of life, rather than crimes

⁷² Interview with Interview Two [pseud.], Representative, Human Rights—MINUSTAH in Port-au-Prince, Haiti (Dec. 13, 2006) (on file with *Stanford Journal of International Law*); Interview with Interview Twenty-Three [pseud.], Representative, Child Protection Unit—MINUSTAH in Port-au-Prince, Haiti (Dec. 15, 2006) (on file with *Stanford Journal of International Law*).

⁷³ MATERNOWSKA, *supra* note 34, at 44.

⁷⁴ Interview with Interview Eight [pseud.], Representative, Ministry for the Status of Women in Port-au-Prince, Haiti (Dec. 19, 2006) (on file with *Stanford Journal of International Law*); Interview with Interview Thirteen [pseud.], Judge, Tribunal pour l’enfants and COHADDE in Port-au-Prince, Haiti (Dec. 20, 2006) (on file with *Stanford Journal of International Law*).

⁷⁵ Interview with Interview Twenty-Four [pseud.], Representative, UNICEF in Port-au-Prince, Haiti (Dec. 15, 2006) (on file with *Stanford Journal of International Law*).

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ See generally GERDA LERNER, *THE CREATION OF PATRIARCHY* (1986) (exploring the history of female subordination, including the practice of exchanging women).

against the integrity of victims' bodies. They are almost never being reported because of social expectations and the fear of stigmatization.

Social pressure and economic needs also foster the conditions that encourage girls to mate soon after puberty: by the age of seventeen, 19% of all Haitian girls have already had their first baby or are pregnant, and the rate increases to 31% by the time they are nineteen years old.⁷⁹ Teenage mothers account for 8% of all births in the country and contribute to Haiti's high fertility rate of approximately 4.2 children per woman.⁸⁰ Due to the lack of health care, information, and family counseling, contraceptive use is among the lowest in the Western Hemisphere. HIV/AIDS has reached epidemic levels; the highest prevalence in Latin America and the Caribbean region and, indeed, the highest incidence outside Africa.⁸¹ Among the age group of fifteen to nineteen years old, 5.2% of the population is afflicted by HIV/AIDS.⁸² Teenage pregnancies and HIV/AIDS primarily impact girls from low-income households and deprived communities. Sexual survival strategies and low use of condoms, in addition to patterns of sexual abuse and gender inequality, significantly affect girls' ability to negotiate with their partners and effectively protect themselves.

C. *The Girl's Body as Property: the Practice of Restavèk*

In Haiti, the patriarchal misconception of the female's body as property generates a specific practice of exploitation against girls: *restavék*, meaning "to stay with" in Creole, which currently engages around one out of ten children from ten to seventeen years old in domestic work away from their own families.⁸³ Girls account for 75% of the 300,000 Haitian child workers sent from indigent parents out of desperation to work as domestic help in richer households. Families, especially in rural areas, who barely eke out an existence living on the economic margins and are unable to feed or educate their numerous offspring, resolve to sell females for a few *gourdes*⁸⁴ to wealthier families living in urban communities.

Prospective employers typically visit the birth parents and promise to feed, educate, and care for their *restavéks* in exchange of domestic help. However, transferred as a commodity from one family to another, these girls, in most cases, end up being sexually abused and exploited. In addition, they are forced into slavery, overworked, given meager food rations, and provided with limited possibilities for receiving education. As an example of this practice, UNICEF's *Child Alert: Haiti* of March 2006 reports the story of Celine, a thirteen year old girl, who was "sexually abused and severely burned by the men who 'owned' her."⁸⁵

⁷⁹ MATERNOWSKA, *supra* note 34, at 46.

⁸⁰ Justesen & Verner, *supra* note 64.

⁸¹ *Id.* at 3.

⁸² *Id.*

⁸³ UNICEF, *supra* note 52, at 3.

⁸⁴ Denomination of Haitian currency.

⁸⁵ UNICEF, *Child Alert: Haiti*, *supra* note 52.

In 2000, the Special Rapporteur on Violence Against Women reported that young girls working as *restavék* are often at the mercy of their employers and that the high incidence of sexual violence resulting in pregnancy is of serious concern.⁸⁶ More recently, a random survey of 1,260 households (5,720 individuals) in Port-au-Prince revealed that, during the twenty-two month period following the departure of Aristide in 2004, 35,000 women were sexually assaulted, half of whom were under the age of eighteen.⁸⁷ In particular, the study reported that female *restavéks* accounted for a substantial portion (36.2%) of all sexual violence victims; 9.6% of all female *restavéks* had been sexually abused; and the rate of sexual assault for female *restavéks* was 4.5 times greater than that for girls who were not *restavéks*.⁸⁸

Advocates of a specific program for child *restavéks* at the Catholic Church of Martissant, who were interviewed for the purpose of this research, declared that because female *restavéks* are perceived as being the *property* of the household, they are often raped and sexually abused by their employers with full impunity.⁸⁹ Fear of reprisal and social stigmatization as well as the ineffectiveness of the criminal legal system cause victims never to report the aggression. A culture of neglect and abuse toward children, particularly girls, inform the Haitian society and practices of violence are widely employed as methods of imparting education and discipline.⁹⁰ Poverty, lack of solidarity toward indigent families, and a culture of exploitation and enslavement of girls represent the root causes of the practice of *restavék*.

For instance, a twelve-year-old girl from a rural area reported her experience of *restavék* working for two different families in Port-au-Prince:

I have worked for two households. At the beginning I was a *restavék* for a family in Delmas. It was terrible; they mistreated me often, injured me and battered me. When my master was wrathful she forced me to raise my arms against the wall, then she put some stones in my mouth and beat me very hard. She left me without food until the next day. I run away and became *restavék* for another family in Pernier. They also beat me...I would love to go back to my parents or at least to see them once and then come back to Port-au-Prince and find another family . . . where I can carry out domestic works proportional to my forces such as preparing food or cleaning the home ...But more than everything I want go to school.⁹¹

⁸⁶ Report of the Special Rapporteur on Violence Against Women on the Mission to Haiti, *supra* note 66, at 12.

⁸⁷ Athena R Kolbe & Royce A Hutson, *Human Rights Abuse and Other Criminal Violations in Port-Au-Prince, Haiti: A Random Survey of Households*, 368 THE LANCET 863, 870–71 (2006).

⁸⁸ *Id.* at 872.

⁸⁹ Interview with Interview Thirty-Seven [pseud.], Representative, Church in Martissant, Haiti (Dec. 27, 2006) (on file with *Stanford Journal of International Law*). Interview No. 37.

⁹⁰ *Id.*

⁹¹ HAITIAN MINISTRY OF SOCIAL AFFAIRES, LES FONDAMENTS DE LA PRATIQUE DE LA DOMESTICITE DES ENFANTS EN HAITI 29-30 (2002) [hereinafter HAITIAN MINISTRY OF SOCIAL AFFAIRES].

Participants in this research from UNICEF Haiti highlighted the fact that female *restavéks* are relegated to a secondary status of citizenship, which makes them more vulnerable to sexual exploitation and abuse, as well as depriving them of basic human rights.⁹²

Generally considered to be a modern-day form of child slavery, the practice of *restavék* recalls the harsh treatment of girl slaves and atrocities committed against them at the time of French colonialism.⁹³ “The colonialists left but the psychological implications connected to their domination have been deeply absorbed by the Haitian culture. Rich men have power and money to enslave poor and women.”⁹⁴ Since the country’s independence, the practice of *restavék* has been employed continually throughout the centuries and has significantly contributed to the massive migration from the rural provinces to Port-au-Prince.⁹⁵ Whereas, initially, the families of destination were relatively wealthy and educated, nowadays only the modest and disadvantaged households take on the jobs of *restavéks*.⁹⁶ Starvation, demographic expansion, and migration toward urban communities entrap birth families and girls into a downward spiral of slavery, abuse and sexual violence.

D. Political Rape

Le corps se souvient (The body remembers)⁹⁷

Inequality and sexual violence perpetrated against girls and women inside the household and within their intimate relationships gravitate into the public sphere, tracing patterns of gender-based violence and leaving the Haitian society in misery and distress. Whether expressed in terms of patriarchy, sexual stereotypes, male dominance, or female subordination, power lies at the very core of gender disparities and strains.⁹⁸ In Haiti where poverty, instability, and violence contaminate the history of the country and impede its development, and politics and power viciously intertwine, practices of gender-based violence become tools of political confrontation and repression.

No proper understanding and analysis of systematic rape of girls as a political weapon can be made without examining the period of the military regime from 1991 to 1994 more closely. During this period, acts of sexual

⁹² Interview with Interview Twenty-Four [pseud.], Representative, UNICEF in Port-au-Prince, Haiti (Dec. 15, 2006) (on file with *Stanford Journal of International Law*).

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ See generally HAITIAN MINISTRY OF SOCIAL AFFAIRES, *supra* note 91 at 35–40.

⁹⁶ *Id.*

⁹⁷ Report of the Special Rapporteur on Violence Against Women on the Mission to Haiti, *supra* note 66, at 17.

⁹⁸ PROPERTY, POWER AND GENDER RELATIONS, WOMEN AND PROPERTY – WOMEN AS PROPERTY I (Renee Hirschon, ed. 1984).

violence victimizing girls and women were a part of the regular political strategy aimed at controlling and terrorizing the entire population.⁹⁹ Already employed during the two Duvalier dictatorships, widespread and systematic rape for political purposes culminated in 1991, when the leaders of the Haitian army overthrew the Aristide regime, leading the country toward war and public disorder.¹⁰⁰

In particular, following the military coup, the phenomenon of *zenglendos*, or thugs, which consisted of bursting into a house at any time, raping and beating girls and women, became a common practice of political pressure and violence against the opponents of the regime. Approximately 1,680 girls and women, who either supported democracy or were relatives of those who did, were brutalized and victims of political rape.¹⁰¹ The Report of the Special Rapporteur on Violence Against Women on the Mission to Haiti in 2000 collected some of their stories, among which was the following one:

On 13 February 1993, a group of armed men came into the house where Esperance was living with her parents, who were political activists. They created disorder in the house, raped her 19-year-old sister in front of her, beat her and her brothers, beat her mother, beat her father and took him away. Esperance has not seen her father again. Esperance fled to a southern province. When her mother died in 1995, traumatized by the loss of her husband, Esperance had to leave school to take care of her younger siblings. Since they had no permanent place to live, her family is now dispersed, the siblings living temporarily wherever they find a place...Her sister still suffers from serious medical conditions as a consequence of the rape ("le corps se souvient"--the body remembers).¹⁰²

During the Haitian coup of 1991 to 1994 when widespread repression and violence created circumstances akin to war, the perpetration of rape as a punitive and intimidating weapon against the opposing political factions resembled the accounts of brutalization committed in wartime.¹⁰³ Participants of this study contended that the outbreak of violence that engulfed the communities and generated practices of gender-based assault, including gang rape and battery, led the country to a status of formal war.¹⁰⁴ Within this scenario, systematic political rape was not only intended to target girls and women, but above all to affect their fathers and partners, who were implicated

⁹⁹ MERLET, *supra* note 29, at 163.

¹⁰⁰ *Id.*

¹⁰¹ Report of the Special Rapporteur on Violence Against Women on the Mission to Haiti, *supra* note 66 at 17.

¹⁰² *Id.* at 16.

¹⁰³ MYRIAM MERLET, *supra* note 29 at 164.

¹⁰⁴ Interview with Interview Seven [pseud.], Representative, Ministry of Justice in Port-au-Prince, Haiti (Dec. 16, 2006) (on file with *Stanford Journal of International Law*).

in the movements of resistance supporting Aristide's return.¹⁰⁵ Since girls and women were socially considered to be the property of men within the households as well as in the public settings, their bodies became "legitimate booty . . . [and a] battle-camp trophy" for enemies.¹⁰⁶

Political rape often degenerated into the abhorrent variant of "forced rapes" in which men were induced, under threat, to rape their own daughters, sisters, or mothers before the eyes of other relatives.¹⁰⁷ Atrocities included psychological and physical torture of the victims, such as rapes performed by barrels of guns or other bruising objects.¹⁰⁸ Several girls and women were shot inside their vaginas or died from the injuries inflicted by the brutal rapes; others are still experiencing the emotional and physical consequences of those traumatic experiences. Representatives of MINUSTAH from the Human Rights Section, interviewed for the purpose of this research, reported the recent testimonies of survivors of political rapes committed during the military coup. The following is one such testimony:¹⁰⁹

Yvette's boyfriend was a militant fighter for democracy. That night, six armed masked men forced their way into Yvette's home. They killed her boyfriend, beat and kicked Yvette in the stomach with their army boots and finally raped her before the eyes of her two sons of 3 and 6 years old. Yvette was seven months pregnant. One week later, she had contractions and heavy bleeding. Despite the efforts of the doctor, Yvette's baby was born dead . . . after the aggression she also contracted sexually transmitted diseases and suffered from recurrent hallucinations. At that time, Yvette did not report the case because she was threatened to be killed . . . almost 15 years later she finally told her story.¹¹⁰

Since those dreadful manifestations of political rape and pressure, Haitian girls have continued to endure what the Special Rapporteur on Violence Against Women referred to as structural violence targeting them as the most vulnerable of the society.¹¹¹ Today, political violence against girls,

¹⁰⁵ MYRIAM MERLET, *supra* note 29 at 164.

¹⁰⁶ SUSAN BROWNMILLER, AGAINST OUR WILL MEN, WOMEN AND RAPE 33 (Simon & Schuster 1975). See also KATHARINE T. BARTLETT AND DEBORAH L. RHODE, GENDER AND LAW – THEORY, DOCTRINE, COMMENTARY 803 (4th ed. Aspen Publishers 2006) (Textbook exploring gender law in theory and practice). [No superscript.]

¹⁰⁷ MERLET, *supra* note 29, at 164.

¹⁰⁸ DANIELE MAGLOIRE, *La Violence À L'égarddes Femmes: Une Violation Constante Des Droits De La Personne* in 5 CHEMINS CRITIQUES, No 2–De la violence 75 (2002).

¹⁰⁹ Interview with Interview Two [pseud.], Representative, Human Rights—MINUSTAH in Port-au-Prince, Haiti (Dec. 13, 2006) (on file with *Stanford Journal of International Law*); Interview with Interview Three [pseud.], Representative, Human Rights—MINUSTAH in Port-au-Prince, Haiti (Dec. 13, 2006) (on file with *Stanford Journal of International Law*).

¹¹⁰ Interview with Interview Five [pseud.], Representative, Human Rights—MINUSTAH in Port-au-Prince, Haiti (Dec. 13, 2006) (on file with *Stanford Journal of International Law*).

¹¹¹ Report of the Special Rapporteur on Violence Against Women on the Mission to Haiti, *supra* note 66, at 4.

including the phenomenon of *zenglendos*, remains a common punitive practice of rival political groups as well as a tool for terrorizing the entire population and controlling a territory.¹¹²

Recent studies have also highlighted a clear relationship between the use of violence against girls as a political weapon and domestic abuse, revealing a proportional correlation between the two, such as the similar acts of violence employed, and the degree of cruelty.¹¹³ These outcomes confirm that practices of discrimination and sexual abuse perpetrated behind the family door similarly affect girls in the public setting, where sexual assault becomes not simply a random crime, but rather a deliberate weapon of political and social oppression.

E. Gang Rape and the Girl's Body as Territory

Nou pa gen renmen ankò
(We don't have love anymore)¹¹⁴

In a country torn apart by poverty, political instability, inequality, and internal tensions, the widespread and systematic rape of girls has become not only a political weapon of rival groups, but also a common practice of criminal gangs aimed at controlling deprived communities. Interviewees from MINUSTAH contended that in Haiti, identifying and distinguishing different groups and objectives is a difficult task because their political strategies and social interests often blur with criminal and narco-trafficking activities.¹¹⁵

After Aristide's return to the government in 1994, the much-anticipated democratic consolidation was undermined by deep conflicts among erstwhile democratic allies, which ultimately led the country to a political and economic stalemate. Internal discord and contradictions within the democratic party transformed important parts of urban popular organizations into violent government enforcers and criminal gangs struggling for control of metropolitan slums and state favor. Given the numerous migrations from rural areas to Port-au-Prince, the poverty-trap awaiting immigrants in the urban bidonvilles, and the lack of state institutions and stability, the pool of potential recruits for criminal and political violence continues to grow.

In the slum areas of the capital, including Cité Soleil and Carrefour Feuillie, where armed gangs battle over territory, violence and public disorder escalate to the point that even the Haitian National Police and MINUSTAH forces cannot intervene. Girls, sometimes as young as four years old, suffer from widespread and systematic gang rape as a weapon of war and reprisal among rival groups.¹¹⁶ According to the 2006 Report of the Secretary General

¹¹² *Id.*

¹¹³ MERLET, *supra* note 29, at 164.

¹¹⁴ Cité Soleil resident. See MATERNOWSKA, *supra* note 34, at 59.

¹¹⁵ Interview with Interview Twenty-Four [pseud.], Representative, Child Protection Unit—MINUSTAH in Port-au-Prince, Haiti (Dec. 17, 2006) (on file with *Stanford Journal of International Law*).

¹¹⁶ *Id.*

on Children and Armed Conflict an estimated 50% of girls have been victims of rape, in most of the cases, by more than one perpetrator in the conflict areas of Port-au-Prince.¹¹⁷ Yet, the Lancet survey of August 2006 reported that, during the twenty-two months of the interim government following Aristide's ouster in 2004, an estimated 19,000 girls were sexually assaulted in Port-au-Prince, primarily by criminals and political armed groups.¹¹⁸

Representatives of the Ministry for the Status of Women revealed that no national aggregate data on sexual violence against girls and women are available to date.¹¹⁹ However, some non-governmental organizations (NGOs) and institutions, working on issues of sexual violence against girls in the conflict areas, individually keep records of victims and aggressive attacks. Interviewees from GHESKIO, a national NGO providing primary medical assistance, reported that from 2000 to 2006 3% of the victims were girls under ten years old and 73% were girls between ten to eighteen years of age; 39% were virgins before the aggression; 49% were sexually assaulted by more than one aggressor, and 35% by several aggressors.¹²⁰

Even though the pattern of violence against girls is not always motivated by political purposes, it often resembles the practice of *zenglendos*: the aggressions occur in the evening or late at night, the criminals, who are armed and in groups of between three and twelve, break into the houses of the victims, beating and raping them one after the other, the aggressors sometime abduct or kill the men of the family, leaving the victims to fend for themselves, and they often return with more threats and intimidation. Interviewees from GHESKIO reported the testimony of Carline, a fifteen year-old girl, who resorted to their medical assistance after being sexually assaulted:

That night while Carline was sleeping, five armed men burst into her home, threatening the entire family and attacking her father. While two of the men were burglarizing the house, the other three forced Carline to lie down on the floor raping her one after the other. Since the aggression, Carline has never been able to sleep at night or leave her room during the day; she does not want to eat and is obsessed with flashbacks. Carline does not believe in the future any longer.¹²¹

In the midst of the social disorder and widespread violence ruling Port-au-Prince's shantytowns, girls are also victims of gang rape in the middle of the street before the eyes of terrorized spectators and tacit accomplices. Participants from the Child Protection Unit of MINUSTAH collected the

¹¹⁷ *Children And Armed Conflict – Report Of The Secretary General*, *supra* note 2.

¹¹⁸ KOLBE & HUTSON, *supra* note 87.

¹¹⁹ Interview with Interview Twenty-Four [pseud.], Representative, Ministry for the Status of Women in Port-au-Prince, Haiti (Dec. 19, 2006) (on file with *Stanford Journal of International Law*).

¹²⁰ Interview with Interview Sixteen [pseud.], Representative, GHESKIO in Port-au-Prince, Haiti (Dec. 19, 2006) (on file with *Stanford Journal of International Law*).

¹²¹ Interview with Interview Eighteen [pseud.], Representative, KOFVIV in Port-au-Prince, Haiti (Dec. 28, 2006) (on file with *Stanford Journal of International Law*).

testimony of Marie, a sixteen year old girl who was recently sexually assaulted in the slum of Carrefour:

Marie and her twenty-three year-old sister went to visit a friend who had had a baby the same day. On the way back home, they met three armed men, who shoved the girls into a secondary street. Marie was raped in the middle of the alley by two of the men, while her older sister was sexually assaulted by the other. None of the neighbors or passersby intervened for fear of reprisal or because they were affiliated with the same gang. The perpetrators were identified as members of a criminal armed group responsible for gang rapes and kidnappings in the area. After the aggression, the victims have repeatedly been threatened with death in the event that they report the assaults or even seek medical assistance.¹²²

Activists of KOFIVIV, a national NGO which provides medical assistance to victims of sexual violence, revealed that criminals intentionally target virgins as a punitive weapon and because they are presumably not affected by HIV/AIDS.¹²³ As a result, most of the HIV-infected victims assisted by the organization contracted the virus through rape.¹²⁴ Interviewees from *Médecins Sans Frontières* added that several times rapists use sharp metal objects and bullets underneath their penis' skin to assault girls, provoking long-lasting hemorrhages and effects, and permanently damaging their childbearing ability.¹²⁵ According to the Lancet survey of August 2006, "the majority of sexual assaults [committed in Port-au-Prince (92.1%)] involved penetration of the victim's mouth, anus or vagina with the perpetrator's genitalia or other [bruising instruments].¹²⁶ The remainder of sexual aggressions includes] sexual touching... and the forced [observation] of sexual acts."¹²⁷

As was the case during the bloody military regime, the current outbreak of armed violence in the slums of Port-au-Prince and the diffuse violations of human rights are reminiscent of the features of a formal conflict. In the game of war, the social role of girls' bodies as male property and

¹²² Interview with Interview Twenty-Three [pseud.], Representative, Child Protection Unit—MINUSTAH in Port-au-Prince, Haiti (Dec. 15, 2006) (on file with *Stanford Journal of International Law*).

¹²³ Interview with Interview Sixteen [pseud.], Representative, GHESKIO in Port-au-Prince, Haiti (Dec. 19, 2006) (on file with *Stanford Journal of International Law*); Interview with Interview Eighteen [pseud.], Representative, KOFIVIV in Port-au-Prince, Haiti (Dec. 28, 2006) (on file with *Stanford Journal of International Law*).

¹²⁴ SARAH FORT, *Violence: An Ever-Present Threat: HIV in Haiti is Spread by Violence—and Little is Done to Prevent the Attacks*, in THE CENTER FOR PUBLIC INTEGRITY—INVESTIGATIVE JOURNALISM IN PUBLIC INTEREST (November 30, 2006).

¹²⁵ Interview with Interview Seventeen [pseud.], Representative, MSF in Port-au-Prince, Haiti (Dec. 17, 2006) (on file with *Stanford Journal of International Law*).

¹²⁶ ATHENA R. KOLBE & ROYCE A. HUTSON, *supra* note 87.

¹²⁷ *Id.*

appendage translates into their symbolic assimilation with the territory and the collective spirit of an entire community. As keepers of the family honor and those providing the moral basis of a group's system, Haitian girls and women become specific targets of gang rapes and armed violence perpetrated by rival factions as a weapon of destruction, submission, and humiliation of the counterparts. Sexual assault and violence are not only intended to reduce female bodies into "damaged property,"¹²⁸ but ultimately represent important tools for achieving the breakdown of the intimate structure of Haitian families and communities.

In contrast to the primitive myth, which referred to rape as a sexual expression of the male instinct, modern studies contend that "rape is not an aggressive manifestation of sexuality, but rather a sexual manifestation of aggression."¹²⁹ Perpetrators' purposes do not have much to do either with impulsive sexual desire or a violent lack of self-control, but rather with the deliberate resolution to dominate and deprecate female bodies' virtue and value. Studies of the victims' perceptions report that their experience relates more to the feeling of submission and the invasion of physical and emotional boundaries than to their bodies' sexual subjugation.¹³⁰ Even the perpetrators, on the other side, rarely experience sexual satisfaction, but rather perceive an intense sensation of power, dominance, self-confidence, and virility.¹³¹

Manliness and pre-eminence among the members of the group represent a prevalent motivation for sexual violence against girls, particularly in the case of gang rape. The conquest of the female body becomes a vehicle for extolling rapists' strength and masculinity as well as for displaying their status and authority within the gang.¹³² As also described by several research studies conducted in very different contexts,¹³³ participants in this research stated that rapes are often executed by the Haitian adolescents affiliated with Vagabond Gangs, using a specific procedure, in which the order and the entitlement to choose their victims is based on the gang member's rank and power in the group.¹³⁴

Interlocutors from the Ministry of Justice emphasized that "machismo is a transversal phenomenon"¹³⁵ concerning the young and poor as well as the more mature and rich in the Haitian society. Within such a scenario, collective sexual violence becomes an exercise of virility, aimed more at developing

¹²⁸ SUSAN BROWNMILLER, *Making Female Bodies the Battlefield*, in *MASS RAPE: THE WAR AGAINST WOMEN IN BOSNIA HERZEGOVINA* 181 (Univ. of Nebraska Press 1994).

¹²⁹ RUTH SEIFERT, *War and Rape: A Preliminary Analysis*, in *MASS RAPE: THE WAR AGAINST WOMEN IN BOSNIA HERZEGOVINA* 55 (Univ. of Nebraska Press 1994).

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² MAGLOIRE, *supra* note 108, at 74.

¹³³ See generally PEGGY REEVES SANDAY, *FRATERNITY GANG RAPE – SEX, BROTHERHOOD, AND PRIVILEGE ON CAMPUS* (1990). (A study of the culture of sexual subjectivity of women found in various college fraternities in the United States.)

¹³⁴ Interview with Interview Sixteen [pseud.], Representative, GHESKIO in Port-au-Prince, Haiti (Dec. 19, 2006) (on file with *Stanford Journal of International Law*); Interview with Interview Thirty-Two [pseud.], Representative, KOFIV in Port-au-Prince, Haiti (Dec. 28, 2006) (on file with *Stanford Journal of International Law*).

¹³⁵ Interview with Interview Seven [pseud.], Representative, Ministry of Justice in Port-au-Prince, Haiti (Dec. 16, 2006) (on file with *Stanford Journal of International Law*).

bonds among men rather than sexual contacts with women:¹³⁶ “Serial rape involves each successive male penetrating and ejaculating, where another man has just done the same, a pattern of inter-male intimacy...which psycho-analysis proposes as primarily a sexual relationship between the men themselves.”¹³⁷ Detached from girls’ images, rapists rarely remember their victims after the aggression, as if the object of violence was not an individual, but only a conceptual personification of a piece of unworthy property.¹³⁸

Contemporary theories explain the different incidences of rape within various societies in terms of several variables.¹³⁹ A low rate of sexual assaults seems to occur in contexts in which male supremacy or strong female positions are assured, whereas societies characterized by uncertainty of the male social role and female subordination report a higher incidence of rapes.¹⁴⁰ In Haiti, poverty, poor governance, and armed violence further exacerbate strong patriarchal values, cultural patterns of a power-imbalance between men and women, and gender-specific sexual asymmetry, which ultimately foster the widespread and systematic rape of girls and women.

The above analysis regarding practices of discrimination and sexual violence affecting girls in Haiti has revealed that gender disparity, patriarchal burdens, and abuse conceived inside the household are at the very source of gender-based violence perpetrated in the public sphere as well. By examining the expected Haitian compliance with the international obligations and the criminal justice responses to violence against girls and women, the following part of this Note reflects the severe impact gender bias has on the security and judicial systems, resulting in the lack of prevention strategies and protection measures for girls’ human rights violations.

III. INTERNATIONAL LAW AND CRIMINAL JUSTICE RESPONSE TO SEXUAL VIOLENCE IN HAITI

A. International Human Rights Benchmarks

Women’s rights in international law are articulated primarily in two different categories of provisions: non-discriminatory norms, providing equal treatment for women and men, and protective measures from gender-based violence. The initial and major focus of human rights for women has been devoted to the right to non-discrimination on the basis of sex, followed more recently by the emphasis on girls’ and women’s protection from specific risks faced due to their gender and age alike, as in the case of young girls.¹⁴¹ Since Haiti has ratified the paramount international treaties dealing with women and

¹³⁶ MAGLOIRE, *supra* note 108, at 73.

¹³⁷ ROLAND LITTLEWOOD, *Military Rape*, in ANTHOLOGY TODAY, Vol. 13 14 n.2 (1997).

¹³⁸ See generally SEIFERT, *supra* note 129 (describing rape within the context of wartime social conduct and behavioral expectations.)

¹³⁹ ROY PORTER, *Rape – Does It Have A Historical Meaning?*, in RAPE: AND HISTORICAL AND SOCIAL ENQUIRY 235 (Sylvana Tomasell & Ray Porter, eds., Blackwell 1986).

¹⁴⁰ *Id.*

¹⁴¹ See HILARY CHARLESWORTH AND CHRISTINE CHINKIN, THE BOUNDARIES OF INTERNATIONAL LAW, A FEMINIST ANALYSIS 213 (Juris Publishing 2000).

children, the Haitian criminal justice system inevitably should refer to and sustain these human rights benchmarks in response to practices of discrimination and sexual violence against girls in the country.

The Charter of the United Nations signed on June 26, 1945 was the first international agreement recognizing “the equal rights of men and women”¹⁴² and including as a purpose of the United Nations itself the promotion and encouragement of respect for human rights and for fundamental freedoms for all without any distinction based on sex.¹⁴³ On the same path, in 1948 the General Assembly of the United Nations adopted and proclaimed the Universal Declaration of Human Rights setting forth the fact that all human beings are born free and equal in dignity and rights without any distinction of sex.¹⁴⁴ The intrinsic value of any individual life as well as the right to equal treatment and non-discrimination on the basis of sex have been specific objects of protection under international law not only by generally applicable provisions but also by women-specific instruments, which have been ratified *inter alia* by the Haitian government.

According to the Convention on the Elimination of All Forms of Discrimination Against Women (hereinafter the “Women’s Convention”), adopted by the General Assembly in 1979, the term *discrimination against women* “shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women . . . of human rights and fundamental freedoms.”¹⁴⁵ States Parties to the Women’s Convention, among which Haiti has been included since July 20, 1981, condemn discrimination against women in all its forms; agree to adopt all the appropriate measures, including legislation, to modify or abolish existing laws, customs and social and cultural patterns of conduct held by men and women, with a view towards achieving the elimination of prejudice, customary and all other practices, which are based on the idea of inferiority or superiority of either of the sexes or on stereotypical roles for men and women.¹⁴⁶

As highlighted in the General Recommendation No. 19 adopted by the Committee on the Elimination of Discrimination Against Women (CEDAW) in January 1992, the broad definition of *discrimination against women* also “includes any practice of gender-based violence, that is, violence . . . directed against a woman because she is a woman or that affects women disproportionately.”¹⁴⁷ Traditional attitudes and cultural norms regarding women as being inferior to men and victims of social stereotypes perpetuate a structure of subordination and generate patterns of gender-based violence, which ultimately impair or nullify women’s enjoyment of human rights and

¹⁴² See Charter of the United Nations, Preamble, 26 June 1945.

¹⁴³ Charter of the United Nations, art. 1(3). Other references in the Charter of the United Nations to non discrimination on the basis on sex are included in arts. 13, 55(c) and 76(c).

¹⁴⁴ Universal Declaration of Human Rights, arts. 1 and 2, 10 December 1948.

¹⁴⁵ Convention on Elimination of All Forms of Discrimination Against Women, 18 December 1979, *opened for signature* Mar. 1, 1980, 19 I.L.M. 33 art. 1 (1980) [hereinafter CEDAW].

¹⁴⁶ See *id.* arts 2 and 5.

¹⁴⁷ See General Recommendation No. 19, Committee on the Elimination of Discrimination Against Women, U.N. Doc A/47/38 (1992).

fundamental freedoms.¹⁴⁸ CEDAW's attention to issues of violence against women culminated in the Declaration on the Elimination of Violence Against Women, adopted by the United Nations General Assembly in 1993. The Declaration provided that *violence against women* includes "any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life."¹⁴⁹

Similarly, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, the "Convention of Belem Do Para," adopted by the Organization of American States (OAS) in 1994, declares that *violence against women* "shall be understood as any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere."¹⁵⁰ State Parties to the Convention of Belem Do Para, among them Haiti after being goaded to ratify the convention by the national organization *Mouvement des Femmes* on April 3, 1996,¹⁵¹ acknowledge that "violence against women is an offence against human dignity and a manifestation of the historically unequal power relations between women and men."¹⁵²

Specifically for girls, the Convention on the Rights of the Child of 1989, ratified by Haiti on June 8, 1995, prohibits discrimination against children on the basis of their sex and provides that State Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or maltreatment, including any form of sexual abuse and exploitation.¹⁵³ In addition, State Parties shall ensure that no child is subjected to "torture or other cruel, inhuman or degrading treatment or punishment."¹⁵⁴ Particularly in situations of armed conflict and violence, State Parties should respect and guarantee the compliance with rules of international humanitarian law applicable to them in armed conflicts, which are relevant to the child, and take all feasible measures to ensure the protection and care of children who are affected by armed conflicts.¹⁵⁵

Commitments undertaken by the members of the World Conference on Women in Beijing in 1995 include the determination to ensure full enjoyment by the female child of all human rights and fundamental freedoms and to take effective action against their violation and failure of protection by repealing

¹⁴⁸ *Id.*

¹⁴⁹ Declaration on the Elimination of Violence Against Women, *adopted* 20 Dec. 1993, G.A. Res. 48/104, U.N. GAOR, 48th Sess., 85th plen. mtg., U.N. Doc. A/RES/48/104 (1993), art. 1.

¹⁵⁰ Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, "Convention of Belem Do Para", 9 June 1994, *entered into force* March 5, 1995, 33 I.L.M. 1534 (1994), art. 1, [hereinafter Inter-American Convention].

¹⁵¹ See MAGLOIRE, *supra* note 109, at 70.

¹⁵² See Inter-American Convention, *supra* note 150, Preamble.

¹⁵³ Convention on the Rights of the Child, adopted 20 Nov. 1989, G.A. Res. 44/25, U.N. GAOR 44th Sess., Supp. No. 49, U.N. Doc. A/44/49 1989 (*entered into force* 2 Sept. 1990), arts. 2.1, 19.1, 34 [hereinafter CRC].

¹⁵⁴ *Id.* art. 37(a).

¹⁵⁵ *Id.* art. 38.

existing laws and regulations as well as by removing discriminatory customs and practices affecting the female child.¹⁵⁶ Moreover, members of the Conference acknowledged that the maintenance of peace and security at the global, regional, and local levels, together with the prevention of policies of aggression and ethnic cleansing and the resolution of armed conflict, is crucial for the protection of the human rights of women and girls, as well as for the elimination of all forms of violence against them and of their use as a weapon of war.¹⁵⁷

Although Haiti is party to both the Women's Convention and the Convention on the Rights of the Child, no national reports on measures adopted to comply with the treaty obligations have been yet submitted to the respective committees. Interviewees from the Gender Unit of MINUSTAH deplored the fact that since the United Nations Special Rapporteur on Violence Against Women visited Haiti in 1999 little has changed. Practices of violence against girls and women continue to occur on a structural level, concerns and reproaches from the international community remain unchanged and largely ignored, and recommendations aimed at eradicating discrimination and violence against girls and women in the country have not been effectively implemented.¹⁵⁸

Given the difficult conditions faced by children and the widespread and systematic perpetration of sexual violence against girls in the country, the United Nations Special Representative of the Secretary-General for Children and Armed Conflict, for the first time, included Haiti among the countries listed in the Report of the Secretary-General on Children and Armed Conflict to the Security Council of 2006. As a general principle, the Security Council Resolution 1539 of April 22, 2004 strongly condemns, *inter alia*, "rape and other sexual violence mostly committed against girls . . . as well as forms of slavery and all other violations and abuses committed against children affected by armed conflict."¹⁵⁹

Although the dynamics of violence in Haiti are very different from the conflict situations in other countries, paragraph 96 of the Secretary-General Report on Children and Armed Conflict to the Security Council expressly provides that "there is no universally applicable definition of armed conflict...and the Special Representative of the Secretary-General for Children and Armed Conflict has adopted a pragmatic and cooperative approach to this issue, focusing on ensuring broad and effective protection for children exposed to situations of concern, rather than on the definition of the term armed conflict."¹⁶⁰

¹⁵⁶ See generally The United Nations Fourth World Conference on Women, Beijing Declaration, September 1995 (committing to recognize and protect human rights for women).

¹⁵⁷ *Id.*

¹⁵⁸ Interview with Interview Twenty [pseud.], Representative, Gender Unit - MINUSTAH in Port-au-Prince, Haiti (Jan. 3, 2007) (on file with *Stanford Journal of International Law*); Interview with Interview Thirty-Six [pseud.], Representative, URAMEL in Port-au-Prince, Haiti (Dec. 19, 2006) (on file with *Stanford Journal of International Law*).

¹⁵⁹ S.C. Res. 1539, ¶1, U.N. Doc. S/RES/1539 (Apr. 22, 2004).

¹⁶⁰ The Secretary General, *Report of the Secretary-General on Children and Armed Conflict*, ¶7, delivered to the Security Council and the General Assembly, U.N. Doc. S/2005/72, A/59/695 (Feb. 9 2005).

Specifically regarding gender, Resolution 1325 on Women, Peace and Security adopted by the Security Council in 2000, asserts the important role of women in the prevention and resolution of conflicts and in peace-building operations as well as the need to implement fully international humanitarian and human rights law protecting women's and girls' rights during and after conflicts.¹⁶¹ Along the same line, the United Nations Security Council Resolution 1743 of February 15, 2007, which extended the mandate of MINUSTAH until October 15, 2007, strongly condemns the widespread rape and other sexual abuse of girls in Haiti and reaffirms MINUSTAH's policy to promote and protect women's rights as well as to reckon with gender considerations as a cross-cutting issue throughout its mandate.¹⁶²

B. National Legal Framework

The classification of sexual assaults and rape under the Haitian criminal justice system has been distinguished by different evolutions. Until very recently, according with article 279 of the Haitian Penal Code of 1835, which is predominantly based on the French Penal Code of 1810, anyone who committed a crime of rape or was responsible for any other assault on morals, executed or attempted with violence against individuals of one sex or the other, should have been punished with detention.¹⁶³ Pursuant to the following article 280, in the event that the crime was committed against a child under the age of 15, the perpetrator should have been punished with forced labor.¹⁶⁴

This initial taxonomy of rape among the *atteintes aux bonnes moeurs*—assaults on morals—reflected the common understanding that the harm inflicted by sexual violence consisted in a damage of the victim's honor and dignity rather than a crime against her physical integrity and well-being.¹⁶⁵ The language and wording adopted in the Haitian criminal provisions revealed both the patriarchal perception of girls and women's social role as keepers of the family honor and responsible for the community's moral system as well as the customary misconception of their own bodies as men's property value.

More recently, the *Decret Modifiant le Régime des Agressions Sexuelles et Éliminant en la Matière les Discriminations Contre la Femme*, adopted in July 2005, recognized that the crime of rape required a reinforcement of its sanction. The Decree acknowledged that the provisions under the Haitian Penal Code established practices of discrimination against women which were incompatible with the international commitments undertaken by the Republic of Haiti, and, redefined rape as a criminal offense and a sexual aggression against the victim rather than a moral assault.¹⁶⁶

¹⁶¹ S.C. Res. 1325, U.N. Doc. S/RES/1325 (Oct. 31, 2000).

¹⁶² S.C. Res. 1743, U.N. Doc. S/RES/1743 (Feb. 15, 2007).

¹⁶³ Haitian Penal Code, art. 279 (1835).

¹⁶⁴ Haitian Penal Code, art. 280 (1835).

¹⁶⁵ HUMAN RIGHTS WATCH NATIONAL COALITION FOR HAITIAN REFUGEES, RAPE IN HAITI: A WEAPON OF TERROR, Vol. 6, No. 8, at 21 (1994).

¹⁶⁶ See "Le Decret Modifiant le Régime des Agressions Sexuelles et Éliminant en la Matière les Discriminations Contre la Femme" (Decree Changing the Regulation of Sexual Aggressions and

Included under a new section of the Haitian Penal Code entitled “Sexual Aggressions,” the amended article 278 provides that anyone who commits a crime of rape or is responsible for any other type of sexual aggression, executed or attempted with violence, threats, surprise or psychological pressure against an individual of one sex or the other, shall be punished with ten years of forced labor.¹⁶⁷ Yet, the new version of the following article 280 stipulates that in the event that the crime is committed against a child under the age of fifteen, the perpetrator shall be punished with fifteen years of forced labor.¹⁶⁸

Specifically for girls and *restavéks*, the Statute Related to the Interdiction and the Elimination of all Forms of Abuse, Violence, Maltreatment and Inhuman Treatment Against Children, adopted on June 5, 2003, provides that the term *abuse and violence against children* refers to any form of maltreatment or inhuman treatment. Ultimately, the Statute interdicts any practice of abuse and violence against children, including their sale, traffic and employment for forced services and labor, as well as their recruitment for sexual abuse and exploitation or their use as a weapon of war.¹⁶⁹

Interviewees from UNICEF and representatives of the Ministry of Justice interviewed for the purpose of this study revealed that although significant amendments have been made to the Haitian Penal Code and important enactments have been adopted, in practice, little substantive change has occurred and the Haitian legal culture still remains deeply imbued with its discriminatory and macho heritage.¹⁷⁰ The legacy of social hierarchies and patriarchal values as well as the lack of capacity and resources in security and justice services impede the legal implementation’s pace and undermine its effective application.

C. Gender Inequality in the Criminal Justice Responses

In spite of the commitments to the international community assumed by Haiti and the efforts undertaken by the national legislature, practices of sexual abuse and rape remain widely and systematically perpetrated throughout the country across social and economic classes. Inequalities in the formal legal system, the victims’ internalization of gender stereotypes and hierarchy, fear of social stigmatization and reprisal, high levels of corruption and dysfunction

Eliminating Forms of Discrimination Against Woman), July 2005. [I think we only capitalize the first word of a foreign language string.]

¹⁶⁷ *Id.* at art. 278.

¹⁶⁸ *Id.* at art. 280.

¹⁶⁹ See “Loi relative à l’interdiction et à l’élimination de toutes formes d’abus, de violences, de mauvais traitements ou traitements inhumains contre les enfants” [Statute related to the Interdiction and the Elimination of all Forms of Abuse, Violence, Maltreatment and Inhuman Treatment Against Children] art. 2, June 5, 2003, available at http://www.crijhaiti.com/fr/?page=loi_interdiction.

¹⁷⁰ Interview with Interview Seven [pseud.], Representative, Ministry of Justice in Port-au-Prince, Haiti (Dec. 16, 2006) (on file with *Stanford Journal of International Law*); Interview with Interview Twenty-Four [pseud.], Representative, UNICEF in Port-au-Prince, Haiti (Dec. 15, 2006) (on file with *Stanford Journal of International Law*). See also Amnesty International, Open Letter to the President of the Republic of Haiti, René Garcia Préval, Regarding Amnesty International’s Recommendations for the Protection and Promotion of Human Rights (Oct. 2, 2006), available at [http://web.amnesty.org/library/pdf/AMR360112006ENGLISH/\\$File/AMR3601106.pdf](http://web.amnesty.org/library/pdf/AMR360112006ENGLISH/$File/AMR3601106.pdf).

within the security and judicial sectors as well as the shortage of capacity and resources result in the underreporting of girls' rights violations, the loss of rape cases at various stages of the criminal justice process and, ultimately, the widespread impunity with which males perpetuate sexual violence against girls. Within such a scenario, the proper understanding of the shortcomings and failures of the criminal justice system's responses to the victims of sexual violence and abuse requires an engaged analysis of the different actors, functions and responsibilities involved in the system.

1. Attrition of Rape Cases

As asserted several times by the representatives of the Ministry for the Status of Women interviewed for the purpose of this study, the lack of official national statistics on violence against girls and women significantly limits any accurate evaluation of the situation in the country and, ultimately, compromises any attempt from women's associations and civil society institutions to raise awareness and promote the political legitimacy of the issue.¹⁷¹ According to a study of 1705 women undertaken by the "Centre Haïtien de Recherches et d'Actions pour la Promotion Féminine" (CHREPROF) in 1996 and reported by the Special Rapporteur on Violence Against Women on the Mission to Haiti in 2000, an estimated 66% of female victims never reported the aggression for fear of reprisals and social prejudice, as well as due to the lack of adequate legal mechanisms and support structures.¹⁷² More recently, respondents from MINUSTAH and national NGOs confirmed that the majority of sexual abuses and rapes against girls and women are never reported to the police or other competent organizations; and, among those referred to court in 2006, only one rape case has been successfully prosecuted.¹⁷³

Despite the dearth of reporting of human rights violations against girls and women, the *Commission Collecte des Données*—Commission of Data Collection—of the *Table de Concertation Nationale sur les Violences spécifiques faites aux Femmes et leur Prise en Charge*—National Coordination Body on the Prevention of Violence Against Women¹⁷⁴—ascertained that from

¹⁷¹ Interview with Interview Eight [pseud.], Representative, Ministry for the Status of Women in Port-au-Prince, Haiti (Dec. 19, 2006) (on file with *Stanford Journal of International Law*); Interview with Interview Twelve [pseud.], Representative, Ministry for the Status of Women in Port-au-Prince, Haiti (Dec. 21, 2006) (on file with *Stanford Journal of International Law*); Interview with Interview Nineteen [pseud.], Representative, Ministry for the Status of Women in Port-au-Prince, Haiti (Dec. 21, 2006) (on file with *Stanford Journal of International Law*).

¹⁷² CENTRE HAÏTIEN DE RECHERCHES ET D' ACTIONS POUR LA PROMOTION FEMININE, *VIOLENCES EXERCÉES SUR LES FEMMES ET LES ENFANTS EN HAÏTI* (Nov. 1996). See also Report of the Special Rapporteur on Violence Against Women on the Mission to Haiti, *supra* note 66.

¹⁷³ Interview with Interview Sixteen [pseud.], Representative, GHESKIO in Port-au-Prince, Haiti (Dec. 19, 2006) (on file with *Stanford Journal of International Law*); Interview with Interview Thirty-Two [pseud.], Representative, KOFIV in Port-au-Prince, Haiti (Dec. 28, 2006) (on file with *Stanford Journal of International Law*); Interview with Interview Thirty-Four [pseud.], Representative, Child Protection Unit—MINUSTAH in Port-au-Prince, Haiti (Dec. 28, 2006) (on file with *Stanford Journal of International Law*). See also SARAH FORT, *supra* note 124.

¹⁷⁴ The "Table de Concertation Nationale sur les Violences spécifiques faites aux Femmes et leur Prise en Charge" is a coordination network comprised of the following partners: the Ministry for the Status of Women, the Ministry of Justice, the Ministry of Public Health, several civil society institutions (KONAP, URAMEL, GHESKIO, MDM and CARITAS) and the United Nations agencies

2002 to 2005 the number of documented cases of sexual violence increased at a faster rate per annum than any other type of violence.¹⁷⁵ Considering the disaggregated data of the three major national organizations providing medical assistance to victims of sexual violence, the Commission reported the following figures:¹⁷⁶

- At SOFA, the rate of rape cases in 2005 was twelve times greater than 2003;
- At KAY FANM, the number of rape cases almost tripled from 2003 to 2005; and
- At GHESKIO, the rate of rape cases in 2004 was 4.5 times greater than in 2002, and the number tripled in 2005.

According to SOFA, which provided the only available data on victims' recourse to medical assistance and judicial system from 2003 to 2005:¹⁷⁷

- In 2003, almost 8% of the victims resorted to a medical assistance and visited the police subsequent to the aggression;
- In 2004, 31% of the victims resorted to a medical assistance, and 11% visited the police after the aggression; and
- In 2005, almost 19.4% of the victims resorted to a medical assistance, whereas only 7.2% visited the police after being sexually assaulted.

The lack of reporting of girls' and women's human rights violations and the extent of rape cases' attrition in the Haitian criminal justice system result from the combination of several factors, including the victims' internalization of gender inequalities and stereotypes, fear of social stigmatization and reprisal, the corruption and dysfunction of the security and formal legal systems, and the exercise of discretionary power by criminal justice personnel at the various stages of the process. Whether intended in terms of discretion, reluctance or complicity, the significant loss of rape cases from the criminal justice system reveals a troubled pattern of incentives aimed at the recurrent denial of justice for victims of sexual violence and abuse.

(UNFPA, UNDP, WHO and MINUSTAH). The "Table de Concertation Nationale sur les Violences spécifiques faites aux Femmes et leur Prise en Charge" is composed of three technical commissions: (i) "Commission Collecte des Données," responsible for the standardization of the process and the intervention; (ii) "Commission de Prise en Charge," responsible for the production of standardized forms and guidelines; and (iii) "Commission de Prévention et Sensibilisation," responsible for the establishment of a coordinated response.

¹⁷⁵ Table de Concertation Nationale sur les Violences spécifiques faites aux Femmes et leur Prise en Charge, Rapport De Commission De Collecte De Données, November 2005, 5.

¹⁷⁶ *Id.* at 8.

¹⁷⁷ *Id.* at 10.

2. Internalization of Gendered Stereotypes

The internalization process of customary norms placing men at the top of the gender hierarchy and women at the subservience level of families and communities was corroborated in all the victims' stories collected for the purpose of this study.¹⁷⁸ The common pattern of male dominance and female subordination experienced by girl interviewees within the Haitian households was embedded, on the one hand, in the social role of men as the providers and primary owners of the family assets and, on the other hand, in the women's duty to serve their spouses and comply with their orders and will.¹⁷⁹ The interviews revealed unanimously the stereotypical gender roles of boys and girls in the family unit, the perception of the household as inclusive of an extended family and the pervasive attitude of maintaining secrecy about abusive practices and sexual assaults.¹⁸⁰

Participants from MINUSTAH and representatives of the Ministry of Justice contributing to this research contended that in Haiti, as in other countries affected by post-conflict or socio-political crises, violence often arises from a shift of the gender system under heavy economic, social, and political pressures.¹⁸¹ By undermining men's ability to find paid work in legitimate income-generating activities, the economic decline of the Haitian society ends up depreciating the status of men as breadwinners and shaking the male identity profoundly. In these shifts of gender roles, power is expressed in multiple ways: through machismo and aspirational male sublimation as well as, in its most extreme form, through structural violence in the household and community.¹⁸² While indigence, unemployment, and grim economic conditions significantly diminish male sources of self-esteem, sexual violence becomes a tool for reclaiming men's identity and overcoming their plight of emasculation.

Rape . . . is a way of 'preserving tradition' and in the case of Haitian men, who are fast losing all of their traditional roles in society, this makes unfortunate sense. It is clear, too, that through acts of violence and rape, men are responding to the structural systems--both political and economic--that control

¹⁷⁸ Interview with Interview Sixteen [pseud.], Representative, GHESKIO in Port-au-Prince, Haiti (Dec. 19, 2006) (on file with *Stanford Journal of International Law*); Interview with Interview Seventeen [pseud.], Representative, MSF in Port-au-Prince, Haiti (Dec. 17, 2006) (on file with *Stanford Journal of International Law*); Interview with Interview Eighteen [pseud.], Representative, KOFAVIV in Port-au-Prince, Haiti (Dec. 28, 2006) (on file with *Stanford Journal of International Law*).

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ Interview with Interview Thirty-Four [pseud.], Representative, Child Protection Unit—MINUSTAH in Port-au-Prince, Haiti (Dec. 19, 2006) (on file with *Stanford Journal of International Law*); Interview with Interview Seven [pseud.], Representative, Ministry of Justice in Port-au-Prince, Haiti (Dec. 16, 2006) (on file with *Stanford Journal of International Law*).

¹⁸² Interview with Interview Twenty-Four [pseud.], Representative, UNICEF in Port-au-Prince, Haiti (Dec. 15, 2006) (on file with *Stanford Journal of International Law*). See also M. CATHERINE MATERNOWSKA, *supra* note 34, at 70.

them. Violence in its many forms is a way of reasserting the eroding male identity.¹⁸³

Victims' stories revealed that the impact of gender roles on their decision making was threefold.¹⁸⁴ First, the internalization of gender stereotypes determined a victim's attitude to accept the aggression as an inevitable by-product of the socio-economic collapse in the Haitian communities and the resultant troubled state of men within the domestic realm as well as in the public setting.¹⁸⁵ Second, girl victims of sexual violence failed to take any action because they were conscious that holding relatives, intimates, or even gang members accountable for the aggressions would have been socially unacceptable.¹⁸⁶ Third, the fear of being stigmatized and abandoned by husbands or partners as well as of being subject to reprisals either against their families or themselves paralyzed any genuine attempt to ask for help or justice.¹⁸⁷

According to representatives of ENFOFANM—Organization for the Defense of Women's Rights—one of the most activist women's associations in the country:

Gender stereotypes, which have striking psychological and cultural connotations, are at the base of violence against women. Power relationships become entrenched in a definitive hierarchical order. On the basis of social differences between men and women in roles, behavior, and mental and emotional structures, women find themselves at the bottom of the hierarchy.¹⁸⁸

The socialization of boys and girls through stereotypical notions, the expectations to comply with asymmetrical models of gender roles and the isolation and silence imposed on victims of sexual abuse and violence significantly impinge on the reporting rate of rape cases, and ultimately strengthen the social persuasion and understanding that violence against girls and women is a normal everyday fact, which needs to be accepted with a loose threshold of tolerance and conceived of as a natural expression of the Haitian culture.¹⁸⁹

¹⁸³ MATERNOWSKA, *supra* note 34, at 70 (citing DENNIS ALTMAN, *GLOBAL SEX* (Univ. of Chicago Press 2001)).

¹⁸⁴ Interview with Interview Sixteen [pseud.], Representative, GHESKIO in Port-au-Prince, Haiti (Dec. 19, 2006) (on file with *Stanford Journal of International Law*); Interview with Interview Thirty-Two [pseud.], Representative, KOFIVIV in Port-au-Prince, Haiti (Dec. 28, 2006) (on file with *Stanford Journal of International Law*).

¹⁸⁵ *Id.*

¹⁸⁶ Interview with Interview Thirty [pseud.], Consultant, Brigade des Mineurs—UNICEF in Port-au-Prince, Haiti (Dec. 18, 2006) (on file with *Stanford Journal of International Law*).

¹⁸⁷ *Id.*

¹⁸⁸ MERLET, *supra* note 29, at 168.

¹⁸⁹ *Id.*

3. Police Response to Sexual Violence

Victims' accounts of their engagement with police forces revealed a common pattern of further victimization against girls and women who report sexual assaults.¹⁹⁰ Ridiculed and blamed by the officers receiving them at the police station immediately after the aggression, they are often discouraged from lodging complaints or even dismissed in the first place. This occurs because rape is either perceived as a non-serious crime or because, especially in the event that the violence occurred within the family domain or was committed by acquaintances of the victim, regarded as an unfortunate event, which needs to be settled among the parties involved as a strictly private matter.¹⁹¹ This critical assessment of victims' interaction with the security system confirms once more the pattern of discriminatory norms and gendered stereotypes plaguing the Haitian society and produces adverse effects on the complainants affected by sexual violence.

Rape victims who did not report the aggression to the police forces displayed an overwhelming distrust of the system. They contended that the authorities would not have believed them or protected them from further retaliations, but, on the contrary, that they themselves would have been blamed for the attack and would not be able to struggle with the court process.¹⁹² A victim of rape interviewed by advocates of Human Rights Watch claimed that going to the police and pressing charges would be the equivalent of a "death wish."¹⁹³ Interviewees from MINUSTAH Child Protection Unit and the International Committee of the Red Cross (ICRC) contended also that victims not only fear being humiliated and derided by police officers, but possibly being subject to further acts of violence from the security forces themselves. Behind the police station's closed doors, where depravation and brutality take place to the extent that fifteen year-old girls entering the prison as virgins become pregnant by police officers in custody,¹⁹⁴ victims themselves often do feel less secure than in the middle of the street.¹⁹⁵

Specifically for girls, the two sections of the Brigade de Protection des Mineurs within the Haitian National Police—the section responsible for minor

¹⁹⁰ Interview with Interview Sixteen [pseud.], Representative, GHESKIO in Port-au-Prince, Haiti (Dec. 19, 2006) (on file with *Stanford Journal of International Law*); Interview with Interview Thirty-Two [pseud.], Representative, KOFIVIV in Port-au-Prince, Haiti (Dec. 28, 2006) (on file with *Stanford Journal of International Law*).

¹⁹¹ *Id.*

¹⁹² Interview with Interview Sixteen [pseud.], Representative, GHESKIO in Port-au-Prince, Haiti (Dec. 19, 2006) (on file with *Stanford Journal of International Law*); Interview with Interview Thirty-Eight [pseud.], Representative, Child Protection Unit—MINUSTAH in Port-au-Prince, Haiti (Dec. 15, 2006) (on file with *Stanford Journal of International Law*).

¹⁹³ HUMAN RIGHTS WATCH NATIONAL COALITION FOR HAITIAN REFUGEES, *supra* note 165, at 18.

¹⁹⁴ Report of the Special Rapporteur on Violence Against Women on the Mission to Haiti, *supra* note 66, at 14. See also Report of the Secretary-General on Children and Armed Conflict, *supra* note 2.

¹⁹⁵ Interview with Interview Twenty-Three [pseud.], Representative, Child Protection Unit—MINUSTAH in Port-au-Prince, Haiti (Dec. 15, 2006) (on file with *Stanford Journal of International Law*); Interview with Interview Thirty-Four [pseud.], Representative, Child Protection Unit—MINUSTAH in Port-au-Prince, Haiti (Dec. 17, 2006) (on file with *Stanford Journal of International Law*).

victims of abuse and maltreatment and the section for domestic violence—are designed for the search, investigation, identification, and arrest of instigators, perpetrators, accomplices, and facilitators of sexual violence and abuse against girls and *restavéks*.¹⁹⁶ Established in 2002 and inaugurated on May 23, 2003 as a specialized unit of the Central Direction of the Judiciary Police, the Brigade de Protection des Mineurs is not simply a functional division within the security system, but rather a specific institution financed by UNICEF, USAID and the French Cooperation aimed at the implementation of the international dictates under the Convention on the Rights of the Child for the prevention, protection, and repression of violence committed by minors or against them.¹⁹⁷

According to a recent evaluation of the unit, out of the total 250 infractions reported from May 2003 to November 2006, 105 (46%) of them were rape cases.¹⁹⁸ Despite efforts to effectively respond to the increasing juvenile delinquency and the widespread and systematic sexual violence against girls in Port-au-Prince, the Brigade de Protection des Mineurs suffers from a lack of capacity, resources, and specialized personnel, and remains a hybrid institution between the international aspirations and the decadence and corruption of the national security system.

4. Dysfunctions and Gender Bias in the Criminal Justice Institutions

The Haitian judicial system has been widely infused with corruption, dysfunction, and forced military intrusions throughout the history of the Republic. Any feeble attempt to improve the standards of the criminal justice institutions and proceedings has been constantly subverted, starting with the two Duvalier dictatorships, continued by the bloody military coup, and, finally, by the decline of Aristide's government. Due process and judicial redress in criminal proceedings are still extremely difficult to obtain. Very few cases are adjudicated each year, and prisoners are commonly held for lengthy periods without trial or sentence. The resolution of these cases often depends more on money and power than on justice. Poverty, corruption, and abusive discretion interfere at every stage of the judicial process, from the investigation of a case to the final disposition, intimidating and compromising the independence, transparency, and performance of judges, prosecutors, and attorneys.

Within such a scenario, rape is not an exception to the prevalent rule of impunity for human rights violations in Haiti. A 1994 memoir from a United Nations Civilian Mission's former Director of Legal Services is still an accurate portrayal of the current situation:

A system that already is so rife with intimidation, bribery, corruption, and outside pressures cannot ensure that victims' rights will be respected, and that perpetrators of assaults will be punished in accordance with the law. Even in business

¹⁹⁶ GASTON SANANES, UNICEF, *Evaluation De La Brigade De Protection De Mineurs*, 9, March 2007.

¹⁹⁷ *Id.* at 11.

¹⁹⁸ *Id.* at 18.

disputes and other simple crimes, there is just too much room for something to go wrong. There is no reason for anyone, and especially a victim of rape . . . to believe that there is a chance for judicial redress. It just won't happen. Furthermore, the woman would probably be putting her life in danger. It is no accident that the justice system in Haiti does not work. The government . . . has fostered this and benefits from it.¹⁹⁹

Judges and prosecutors interviewed for this study claimed that the inefficiency and unresponsiveness of the system originate from a lack of capacity and resources, the low salaries that compel legal professionals and judges to work multiple jobs, as well as the external and intimidating pressures, which put their own lives at stake.²⁰⁰ Justices from the Tribunal des Mineurs, established in 1961 near Bel Air, a conflict area of Port-au-Prince, and responsible for offenses and crimes committed by minors from the age of thirteen to sixteen,²⁰¹ deplored the fact that the outbreak of violence which overwhelms the capital has prevented the regular functioning of the court. Violence has also hampered the everyday access to work for judges and administrative personnel in the last few years.²⁰²

Advocates from Human Rights Watch reported the view of the president of the Port-au-Prince Bar Association released a few years ago, but still very applicable to the present-day situation:

If a [raped] woman belongs to a wealthy family, the family will finance the investigation. They can put a car and money at the disposition of the police. The policemen will have an incentive to conduct a thorough investigation. However, if the woman is from the lower class and does not know the author of the rape, the police will have no car, no gas It is all so expensive. It will be a difficult situation for the girl.²⁰³

Police officers from the Haitian National Police and the Brigade de Protection des Mineurs confirmed that the lack of basic resources and services, including cars, computers, telephones, and electricity, severely impede the pursuit of

¹⁹⁹ See HUMAN RIGHTS WATCH NATIONAL COALITION FOR HAITIAN REFUGEES, *supra* note 165, at 18.

²⁰⁰ Interview with Interview Thirteen [pseud.], Judge, Tribunal pour L'enfant and COHADDE in Port-au-Prince, Haiti (Dec. 20, 2006) (on file with *Stanford Journal of International Law*); Interview with Interview Twenty-One [pseud.], Representative, Human Rights Unit—MINUSTAH in Port-au-Prince, Haiti (Dec. 20, 2006) (on file with *Stanford Journal of International Law*).

²⁰¹ Office de la Protection du Citoyen (OPC), Manuel Guide En Matière De La Legislation Applicable À La Protection Des Enfants, Sept. 2006, 33.

²⁰² Interview with Interview Thirteen [pseud.], Judge, Tribunal pour L'enfant and COHADDE in Port-au-Prince, Haiti (Dec. 20, 2006) (on file with *Stanford Journal of International Law*).

²⁰³ See HUMAN RIGHTS WATCH NATIONAL COALITION FOR HAITIAN REFUGEES, *supra* note 165, at 18.

investigations and arrests.²⁰⁴ Financial means also have an important impact on legal assistance for victims. In Haiti, only wealthy families can afford to hire good attorneys. Girls from low-income households and deprived communities must resort to state legal aid services, comprised of recently-graduated trainees, who intervene at the trial without enough experience and influence to effectively defend their clients' interests.²⁰⁵

Given the limited funds and the lack of information regarding the competencies and functions of the judicial institutions, the very poor, who need legal protection the most, commonly defer to informal mechanisms of dispute resolution.

Disputes are normally resolved in either of two ways: by brute force or bribery. In any event, it is not the custom of the people, and especially women, to use lawyers and the judicial system. The law has never protected women. The solution is to bribe someone who is in power and in cases of political rape, you would be bargaining with the devil.²⁰⁶

Interviews conducted with judges of the Tribunal des Mineurs revealed that informal instruments of justice include private retaliation by means of brutal force, reconciliation through the "wise discernment" of the chief of the community as well as fetishism and voodooist ceremonies to evoke natural spirits and demand revenge.²⁰⁷ Justices and representatives of the Ombudsman Haiti contend that rape is seen as a crime to be settled man-to-man outside the courtroom by the parents themselves, who are willing to discharge the cases out of desperation in exchange for a small compensation from the counterparts.²⁰⁸ By contrast, victims lament that "money often pays other hands to shuck off the case."²⁰⁹

When seeking justice for the aggressions committed against them, girls and women in Haiti confront not only the obstacle of a corrupt and inefficient judicial system but also procedural hurdles for gathering the evidence necessary to support a rape allegation. Sexual assault survivors are required to

²⁰⁴ Interview with Interview Thirty [pseud.], Consultant, Brigade des Mineurs in Port-au-Prince, Haiti (Dec. 18, 2006) (on file with *Stanford Journal of International Law*).

²⁰⁵ Interview with Interview Two [pseud.], Representative, Human Rights—MINUSTAH in Port-au-Prince, Haiti (Dec. 13, 2006) (on file with *Stanford Journal of International Law*); Interview with Interview Thirteen [pseud.], Judge, Tribunal pour L'enfant and COHADDE in Port-au-Prince, Haiti (Dec. 20, 2006) (on file with *Stanford Journal of International Law*).

²⁰⁶ See HUMAN RIGHTS WATCH NATIONAL COALITION FOR HAITIAN REFUGEES, *supra* note 165, at 18.

²⁰⁷ Interview with Interview Twenty-One [pseud.], Representative, Human Rights Unit—MINUSTAH in Port-au-Prince, Haiti (Dec. 27, 2006) (on file with *Stanford Journal of International Law*).

²⁰⁸ Interview with Interview Thirteen [pseud.], Judge, Tribunal pour L'enfant and COHADDE in Port-au-Prince, Haiti (Dec. 20, 2006) (on file with *Stanford Journal of International Law*); Interview with Interview Thirty-One [pseud.], Ombudsman in Port-au-Prince, Haiti (Dec. 26, 2006) (on file with *Stanford Journal of International Law*).

²⁰⁹ Interview with Interview Sixteen [pseud.], Representative, GHESKIO in Port-au-Prince, Haiti (Dec. 19, 2006) (on file with *Stanford Journal of International Law*); Interview with Interview Thirty-Two [pseud.], Representative, KOFIVIV in Port-au-Prince, Haiti (Dec. 28, 2006) (on file with *Stanford Journal of International Law*).

provide a medical certificate proving that forcible sexual intercourse has occurred. The majority of victims, though, struggle to reach hospitals or other competent institutions, often located very far from their shantytowns.²¹⁰ Participants from the Ministry for the Status of Women emphasized that girls from remote areas of the country or the deprived slums of the capital often arrive at the hospital too late to assess whether forcible sexual intercourse has occurred, or, even worse, they are provided with medical certificates that eventually prove to be incomplete or invalid.²¹¹ Despite the fact that a protocol of agreement providing for free medical certificates to rape victims was signed by the Ministry for the Status of Women on November 17, 2006,²¹² girls still face major practical obstacles and perils in reaching hospitals or private doctors. This lack of medical care can cause further problems.

In Haiti, without a certificate confirming rape, a woman may try to proceed with filing a charge, but it will be exceedingly difficult, bordering on the impossible. It is not that she cannot file a complaint. It is that the complaint will go nowhere, or in the countryside, where medical certificates are difficult to get due to the absence of doctors, the judge hearing the case will be able to wield incredible discretionary power regarding the type of questions he subjects the women to. Without the corroborating evidence, it is the woman's word against the man's and she is bound to lose.²¹³

Interestingly, aggregate data from URAMEL and Médecins du Monde reported that between 2002 and 2005, out of 372 victims of sexual violence, 76.1% were minors and only 23.9% were adult women.²¹⁴ Yet, data from SOFA collected between 2003 and 2005 revealed that all victims who visited the police and pressed charges after the aggression were minors.²¹⁵ Research participants from MINUSTAH Gender Unit explained that in Haiti it is easier to report a case of sexual violence against a girl rather than a woman, because the latter is more exposed to shame and social reprobation.²¹⁶ Young girls are

²¹⁰ Interview with Interview Thirty-Six [pseud.], Representative, URAMEL in Port-au-Prince, Haiti (Dec. 19, 2006) (on file with *Stanford Journal of International Law*).

²¹¹ Interview with Interview Thirty-Six [pseud.], Representative, URAMEL in Port-au-Prince, Haiti (Dec. 19, 2006) (on file with *Stanford Journal of International Law*); Interview with Interview Eight [pseud.], Representative, Ministry for the Status of Women in Port-au-Prince, Haiti (Dec. 19, 2006) (on file with *Stanford Journal of International Law*).

²¹² Jean Max St Fleur, *Un Certificat Médical Gratuit Aux Victimes D'agressions Sexuelles* [A Free Medical Certificate for Sexual Aggressions], LE NOUVELLISTE (Haiti) Nov. 24, 2006.

²¹³ See HUMAN RIGHTS WATCH NATIONAL COALITION FOR HAITIAN REFUGEES, *supra* note 165, at 20.

²¹⁴ See Table de Concertation Nationale, *supra* note 175, at 8.

²¹⁵ *Id.* at 10.

²¹⁶ Interview with Interview Twenty [pseud.], Representative, Gender Unit-MINUSTAH, in Port-au-Prince, Haiti (Jan. 3, 2007) (on file with *Stanford Journal of International Law*).

perceived to be innocent victims of an unfortunate occurrence, whereas adult women are often blamed or held accountable for the aggression itself.²¹⁷

Another pertinent explanation for the significant reporting and prosecution disparity between girls and women is based on the social understanding that rape is a crime *only* when it is committed against a virgin. Patriarchal misconceptions and gender bias classifying the girl's body as the property of a family and a commodity to be transferred from man to man still deeply pervade Haitian culture and society. While judges interviewed declared that no distinction is made before the law,²¹⁸ victims revealed that in practice anyone who alleges rape must endure public scrutiny of her own virtue.²¹⁹ International organizations and national women's associations denounce the fact that raping a non-virgin, whose honor is already believed to be compromised, is commonly considered a less serious offense. Based on the assumption that women with previous sexual experiences would or should consent to all subsequent sexual contacts, rape charges by non-virgin victims are often dismissed.²²⁰

V. PROPOSALS FOR CHANGE

A. Women Fighting Back

Despite the pervasive gender stereotypes embedded in the Haitian culture and the socially-produced archetypes burying females at the very bottom of the hierarchy, some women refuse to yield to practices of inequality and violence. By presenting an account of their efforts to counter gender-based violations and to reclaim equality and protection, the following analysis serves to identify past and extant approaches, opinions, and programs employed by civil society groups devoted to advancing human rights for women in the country. Only by implementing a patient, cooperative, and multilateral approach with local resources and decision-making can international organizations operating in the country successfully convey human rights principles to a practical context and, in so doing, serve their ultimate purpose.

Since the fall of the two Duvalier dictatorships, women's organizations have sprung up on the Haitian political scene, commemorating the renaissance of the Mouvement des Femmes Haitiennes—the Haitian Women's Movement—on April 3, 1986, when 300,000 women poured into the streets of

²¹⁷ *Id.*

²¹⁸ Interview with Interview Thirteen [pseud.], Judge, Tribunal pour L'enfant and COHADDE in Port-au-Prince, Haiti (Dec. 20, 2006) (on file with *Stanford Journal of International Law*).

²¹⁹ Interview with Interview Twenty-One [pseud.], Representative, Human Rights Unit—MINUSTAH in Port-au-Prince, Haiti (Dec. 27, 2006) (on file with *Stanford Journal of International Law*).

²²⁰ Interview with Interview One [pseud.], Representative, Human Rights Unit—MINUSTAH in Port-au-Prince, Haiti (Dec. 13, 2006) (on file with *Stanford Journal of International Law*); Interview with Interview Three [pseud.], Representative, Human Rights Unit—MINUSTAH in Port-au-Prince, Haiti (Dec. 13, 2006) (on file with *Stanford Journal of International Law*); Interview with Interview Twenty-Eight [pseud.], Representative, AVSI in Port-au-Prince, Haiti (Dec. 16, 2006) (on file with *Stanford Journal of International Law*).

Port-au-Prince and several provincial towns demanding political inclusion and a firm agenda on women's poverty and sexual violence.²²¹ A few years later, during the military regime from 1991 to 1994, the specific issue of violence became one of the primary spearheads in mobilizing Haitian women's associations against widespread and systematic rape used as a political weapon by *putschists*. At that time, a coalition of more than one hundred women's organizations convened the First National Meeting Opposing Violence Against Women, in which more than 300 victims shared their stories and established a resistance movement.²²²

The struggle against gender-based violence finally emerged on the national political agenda in 1997 when, due to the failure of the government to provide victims with adequate justice, women's associations held the International Tribunal on Violence Against Women in Haiti.²²³ During the three-day sessions of the Tribunal, an international panel of judges heard testimonies of rape victims, proposed recommendations addressing political violence, domestic violence and sexual violence against women in the country, and declared the shortcomings of law enforcement, the judiciary, and social and public health services to be of great concern.²²⁴

Representatives of several women's organizations—some of whom are victims themselves—confirmed having joined their associations at the time of the military coup, believing in the reconciliatory and relieving power of their narratives before the Tribunal as well as condemning future violence and claiming judicial proceedings and compensation.²²⁵ Nevertheless, despite the return to constitutional order in Haiti in 1994, victims of political violence never obtained any redress, justice, or financial support from the government.²²⁶ Nowadays they have simply exhausted their hopes of the past, but continue to commit their efforts to oppose the very foundations of women's oppression and to build equal and democratic institutions. The failure of the Tribunal's expectations left community-based women's associations with the profound conviction that claiming justice for sexual violence was a vain effort, and drove them to organize for adequate primary medical assistance to victims of sexual violence.

The most recent experiment to date is that of the *Table de Concertation Nationale sur les Violences spécifiques faites aux Femmes et leur Prise en Charge*, established in December 2003 at the initiative of UNFPA and other agencies of the United Nations system; the Ministry for the Status of Women; the Ministry of Public Health; the Ministry of Justice and civil society organizations, including KONAP, URAMEL, SOFA, KAY FAMN,

²²¹ MAGLOIRE, *supra* note 108, at 68.

²²² MERLET, *supra* note 29, at 169.

²²³ Report of the Special Rapporteur on Violence Against Women on the Mission to Haiti, *supra* note 66, at 46.

²²⁴ *Id.*

²²⁵ Interview with Interview Eighteen [pseud.], Representative, KOFIVIV in Port-au-Prince, Haiti (Dec. 28, 2006 (on file with *Stanford Journal of International Law*)); Interview with Interview Thirty-Two [pseud.], Representative, KOFIVIV in Port-au-Prince, Haiti (Dec. 28, 2006 (on file with *Stanford Journal of International Law*)).

²²⁶ *Id.*

GHESKIO, MDM, and CARITAS.²²⁷ In February 2005, the Table de Concertation Nationale finalized a National Plan for the period of 2006 to 2011, aimed at addressing all forms of violence against women and realizing a unique forum of international and national partners planning concrete strategic action.²²⁸ Interviewees from MINUSTAH Gender Unit, being part of the *Table de Concertation Nationale*, highlighted the extensive potential of the committee to combine different perspectives and methodologies. On the other hand, MINUSTAH also emphasized the challenge of reaching an agreement among so many varied partners regarding desirable responses to violence against women.²²⁹

B. Recommendations for International Commitments

As recommended by the Special Rapporteur on Violence Against Women in 2000, the government of Haiti should ratify without delay the Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment of December 10, 1984,²³⁰ as well as the Inter-American Convention to Prevent and Punish Torture of November 12, 1985. Specifically for children, the Haitian government should promptly ratify the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, both adopted on May 25, 2000.

In addition to ratifying such international treaties, Haiti should immediately comply with its existing obligations under human rights law by harmonizing all relevant domestic law provisions with the international standards and reporting to the treaty-monitoring bodies.²³¹ The recommendation of the Special Rapporteur on violence against women to the Government of Haiti suggesting cooperation with non-governmental and women's organizations for preparing a consolidated comprehensive report to the Committee on the Elimination of Discrimination against Women has never been implemented.²³²

Representatives of MINUSTAH Gender Unit, interviewed for the purpose of this study, reaffirmed the fact that the preparation of the comprehensive report represents one of the primary goals of their agenda. According to the timeline established by the *Table de Concertation Nationale*, they estimate that the first report should be submitted to the Committee by the end of 2007.²³³ Along the

²²⁷ Table de Concertation Nationale sur les Violences spécifiques faites aux Femmes, Plan National De Lutte Contre Les Violences Faites Aux Femmes 2006-2011, November 2005.

²²⁸ *Id.*

²²⁹ Interview with Interview Twenty [pseud.], Representative, Gender Unit—MINUSTAH in Port-au-Prince, Haiti (Jan. 3, 2007) (on file with *Stanford Journal of International Law*).

²³⁰ Report of the Special Rapporteur on Violence Against Women on the Mission to Haiti, *supra* note 66.

²³¹ *Id.*

²³² *Id.*

²³³ Interview with Interview Twenty [pseud.], Representative, Gender Unit—MINUSTAH in Port-au-Prince, Haiti (Jan. 3, 2007) (on file with *Stanford Journal of International Law*).

same lines, representatives of MINUSTAH Child Protection Unit ensured their intent to cooperate with non-governmental organizations and civil society associations in preparing the first report to the Committee on the Rights of the Child as well as to promote the ratification by the Haitian government of both of the Optional Protocols to the Convention itself.²³⁴

C. Recommendations for National Interventions

Despite the need for the Haitian government to ratify and comply with international treaties and commitments as a first step toward the fulfillment of those standards, effective advancement of human rights for girls and women in the country cannot be accomplished without a multi-pronged approach among the different institutional actors, functions and sectors of the nation state. Therefore, a proper implementation of international law dictates and benchmarks cannot deviate too far from specific strategies and measures of intervention at the various levels of the society.

1. Legislative Measures

Although the adoption of the *Decret Modifiant le Régime des Agressions Sexuelles et Éliminant en la Matière les Discriminations Contre la Femme* in July 2005 represented a significant breakthrough toward the compliance with the international human rights standards, the Haitian government still must introduce comprehensive legislation on domestic violence condemning, *inter alia*, practices of sexual abuse and exploitation against girls.²³⁵ As also contended by interviewees from Ombudsman Haiti, the resistance to adopting such legislation relies on the high threshold of tolerance for practices of violence and abuse perpetrated inside the household, the customary belief that the law should never interfere with family matters as well as the social understanding that severe discipline and violent correction need to be employed on girls and women for their own good.²³⁶

The implementation of an official mechanism for the collection and analysis of national data on violence against girls and women is a mandatory reform for an accurate assessment of the real nature and extent of the problem facing Haitian society. Representatives of the Ministry for the Status of Women participating in this study emphasized that the extant lack of official national statistics significantly compromises any attempt to raise awareness and promote the political legitimacy of the issue.²³⁷ A successful campaign for the adoption of comprehensive legislation on domestic violence as well as the

²³⁴ Interview with Interview Thirty-Four [pseud.], Representative, Child Protection—MINUSTAH in Port-au-Prince, Haiti (Dec. 17, 2006) (on file with *Stanford Journal of International Law*).

²³⁵ Report of the Special Rapporteur on Violence Against Women on the Mission to Haiti, *supra* note 60.

²³⁶ Interview with Interview Thirty-One [pseud.], Ombudsman in Port-au-Prince, Haiti (Dec. 26, 2006) (on file with *Stanford Journal of International Law*).

²³⁷ Interview with Interview Twelve [pseud.], Representative, Ministry for the Status of Women in Port-au-Prince, Haiti (Dec. 21, 2006) (on file with *Stanford Journal of International Law*).

controversial decriminalization of the abortion in rape cases cannot be pursued without reliable data on the high incidence of sexual violence and abuse against girls and women throughout the entire country.²³⁸

2. Plan of Action for Police Forces

Police forces represent both the primary institutional resort for victims of sexual violence and the essential connection between the first report of a crime and the judicial system's responses. Therefore, a concrete plan of action should be implemented to improve the extant shortcomings and dysfunctions affecting the security system. First of all, given the crucial role of the police in preventing and addressing violence against girls within their own communities, the entire system for lodging victims' complaints needs to be revised. Interviewees from several international and national institutions unanimously confirmed the urgency of providing police stations with a separate room in which victims of rape and sexual assaults can be adequately received and their complaints confidentially collected.²³⁹ A prompt and efficient follow-up to reporting a crime should also be undertaken by police officers.²⁴⁰

Together with the establishment of specific lodging facilities, expanded police training, including components on women's human rights and violence against girls and women must be increased to strengthen an approach that views police forces as actual agents of protection within their own communities.²⁴¹ To that extent, close cooperation with the Ministry for the Status of Women and women's civil society associations engaged in the field may help to design specialized and competent training modules for police cadets as well as police officers already in service with respect to violence against women and appropriate responses. The United Nations presence in the country, through the specific involvement of MINUSTAH Gender Unit, MINUSTAH Child Protection Unit and above all the United Nations police force (UNPOL), can also certainly play a crucial role in accompanying, monitoring and guiding the Haitian national police in its work, as well as providing consistent and integrated police training on human rights and violence against women. This training would be an essential contribution to increasing reporting for cases of sexual assault and designing strategies to combat the widespread phenomenon.

The development of a plan for coordination between the Ministry for the Status of Women, the Ministry of Justice and the Haitian National Police to

²³⁸ *Id.*

²³⁹ Interview with Interview Twenty-Three [pseud.], Representative, Child Protection Unit—MINUSTAH in Port-au-Prince, Haiti (Dec. 15, 2006) (on file with *Stanford Journal of International Law*); Interview with Interview Twenty-Four [pseud.], Representative, UNICEF in Port-au-Prince, Haiti (Dec. 15, 2006) (on file with *Stanford Journal of International Law*); Interview with Interview Thirty [pseud.], Consultant, Brigade des Mineurs in Port-au-Prince, Haiti (Dec. 18, 2006) (on file with *Stanford Journal of International Law*); Interview with Interview Thirty [pseud.], Representative, Child Protection Unit—MINUSTAH in Port-au-Prince, Haiti (Dec. 15, 2006) (on file with *Stanford Journal of International Law*).

²⁴⁰ See Report of the Special Rapporteur on Violence Against Women on the Mission to Haiti, *supra* note 66.

²⁴¹ Interview with Interview Thirty [pseud.], Consultant, Brigade des Mineurs in Port-au-Prince, Haiti (Dec. 18, 2006) (on file with *Stanford Journal of International Law*).

elaborate a coherent multilateral approach to violence against women remains an issue of fundamental importance. In particular, the establishment of a women's police unit comprised of female police officers, responsible *inter alia* for receiving complaints and conducting investigations in cases of violence against girls and women is highly recommended. On a larger scale, the recruitment and participation of women in the police force represent an important challenge for the national security system.

Recent data report that on December 18, 2006, out of 565 police cadets recruited, only 25 (4.4%) were women. On February 5, 2007, by contrast, 78 out of 649 police cadets recruited were women and, therefore, the proportion increased to 12% compared to the previous year. The Chief of Police declared that women's presence in the national security system represents a "revolution in the Haitian mentality hard to be achieved."²⁴² Interviewees from the *Brigade de Protection des Mineurs* as well as representatives of UNICEF interviewed for this study revealed that one of the objectives for 2008 is increasing the female presence in the police forces to 25%.²⁴³ Because of the resistance to involving women in the process of capacity building within the security system, the adoption of an affirmative quota in their favor may be explored as well as attempting to improve working conditions for female police officers, including their treatment by peers and commanders.

Interviewees from the *Brigade de Protection des Mineurs* and UNICEF pointed out the detrimental impact of a dysfunctional judiciary on the effectiveness of the security sector.²⁴⁴ It is necessary for police forces to develop a notion of working for an efficient system, since ineffective, or lack of, follow-up by the judiciary of cases submitted by the police leads to demoralization, disregard and an increase in human rights violations. A multilateral and cooperative approach as well as more constructive and coherent relationship between police forces and the judiciary system are essential in providing adequate responses to sexual violence affecting girls and women in Haiti.

As far as the future of the police force is concerned, three structural challenges should be overcome in order to consolidate the role of the civilian police and to establish a respected tradition of the security system in Haiti: first, the politicization of the security force by political factions promoting their own purposes needs to be stopped; second, the extant widespread corruption, including that connected with drugs and other illicit activities, should be addressed; and third, significant efforts must be devoted to battling the active participation and involvement of members of the force in armed gangs.

²⁴² SANANES, *supra* note 197.

²⁴³ *Id.* at 30. See also Interview with Interview Thirty [pseud.], Consultant, *Brigade des Mineurs*—UNICEF in Port-au-Prince, Haiti (Dec. 18, 2006) (on file with *Stanford Journal of International Law*).

²⁴⁴ Interview with Interview Twenty-Three [pseud.], Representative, Child Protection Unit—MINUSTAH in Port-au-Prince, Haiti (Dec. 15, 2006) (on file with *Stanford Journal of International Law*); Interview with Interview Twenty-Four [pseud.], Representative, UNICEF in Port-au-Prince, Haiti (Dec. 15, 2006) (on file with *Stanford Journal of International Law*); Interview with Interview Thirty [pseud.], Consultant, *Brigade des Mineurs*—UNICEF in Port-au-Prince, Haiti (Dec. 18, 2006) (on file with *Stanford Journal of International Law*).

Finally, according to a recent study conducted by UNICEF on the functioning of the *Brigade de Protection des Mineurs*, practical interventions and international aid should be employed to improve the police officers' working conditions and to increase the limited financial resources. Recommendations for practical measures include: the adoption of a radio and functioning telephone system; the installation of surveillance cameras in police stations and detention cells; the endowment of computers, cars or motorcycles; the establishment of a specific fund to provide victims or minors arrested with food and primary assistance; and an effective and reliable system of referral for victims of rape and sexual abuse to competent international organizations and national institutions responsible for medical assistance and psychological support.²⁴⁵

3. Reforms of the Criminal Judicial System and Alternative Models for Change

Considering the shortcomings and dysfunctions of the Haitian criminal judicial system, representatives of the Ministry of Justice as well as magistrates of the Tribunal des Mineurs interviewed for this study recognized the pressing need for judiciary reforms in order to bring the inadequate national legislation and responses to violence against women into harmony with Haiti's obligations under international human rights instruments.²⁴⁶ Since the lack of an effective judicial system itself represents a major violation of human rights, a number of substantive strategies for the future must be formulated. Efforts devoted to the general goal of modernizing the existing law and creating new legal instruments should be accompanied by improved judicial institutions devoid of corruption and decadence.

To that extent, a concrete plan of action may begin, first, by embarking on a revised training curriculum for a new generation of judges, including principles of women's human rights and domestic violence concerns; second, by negotiating an increase in judges' salaries to attract newly-qualified professionals in the judiciary sector and to preclude justices from undertaking other concurrent jobs or appointments to compensate for the limited income; and, third, by implementing an official and organized system of records and database collection for rape cases, perpetrators and victims.²⁴⁷ On a practical level, Haitian tribunals need to be endowed with resources and basic materials, such as computers and registries, in order to facilitate the justices' work and to encourage improved performance of their duties.

Magistrates of Haitian ordinary tribunals as well as the Tribunal des Mineurs emphasized that it is mandatory to ameliorate communication and collaboration between the police force and the judiciary system. Interlocutors revealed that to date the lack of liaison between the two sectors has escalated

²⁴⁵ SANANES, *supra* note 197.

²⁴⁶ Interview with Interview Thirteen [pseud.], Judge, Tribunal pour l'enfants and COHADDE in Port-au-Prince, Haiti (Dec 20 2006) (on file with *Stanford Journal of International Law*); Interview with Interview Twenty-One [pseud.], Representative, Human Rights Unit—MINUSTAH in Port-au-Prince, Haiti (Dec. 27, 2006) (on file with *Stanford Journal of International Law*).

²⁴⁷ Interview with Interview Thirteen [pseud.], Judge, Tribunal pour l'enfants and COHADDE in Port-au-Prince, Haiti (Dec 20 2006) (on file with *Stanford Journal of International Law*).

to the point that mandates of arrest issued by judges are often disregarded and unexecuted by the police. Thus, the only hint of collaboration between the two bodies is the initial dossier containing the allegation that the police sends to the judiciary authority. Due to the deficiency of communications and the negligence in compliance, magistrates complain that they need to identify perpetrators of violence by themselves. Incurring personal danger and being unable to proceed with the arrest, they instead convoke the parties to reach a reasonable settlement of the case outside the courtroom.²⁴⁸

Given the extensive recourse to informal dispute resolution, alternative models for change, such as mediation and restorative justice, should be explored to, on the one hand, administer to victims' needs and concerns at both the individual and community level, including privacy, preservation of relationships and networks, economic costs, social security and support; and, on the other hand, officially regulate informal mechanisms of dispute resolution otherwise employed, that often result in the corruption or intimidation of either the judges or the victims.

The social cohesion and strong sense of community evidenced family and kinship networks, the extensive degree of expectations and control, and the fear of stigmatization and reprisal, represent the first agencies to which the victims resort to reach informal dispute settlements. Implementing mediation and restorative justice models in the criminal judicial system at the post-adjudicative stage—after the offender has pled guilty—may represent a first step toward the accountability and restitution for crimes of sexual violence as well as a course of action to avoid the dysfunctional and abusive practices of prosecutorial discretion, which contribute to widespread impunity and denial of responsibility.

Other valid reasons for adopting such alternative models rely on the intent to encourage and facilitate victims' participation in the process as well as to envisage strategies of negotiation and solution, which do not victimize girls and women any further, but rather empower the parties to take responsibility for the past and set boundaries for future behavior. Finally, introducing alternative models for dispute resolution within a larger framework of criminal justice reforms may ultimately lead to a more realistic and effective approach of intervention inherent in the Haitian reality and strengthening local support systems and resources.

D. Interventions at the Community Level

The proposed models for change—through the implementation of legislative measures, a concrete plan of action for police forces and reforms of the criminal justice system—still cannot effectively deliver enduring protection for girls or significant improvements in responses to violence and support for victims without the concurrent adoption of specific interventions at the community level. To that extent, the establishment of and improvement in shelters available for girls and women affected by rape and sexual abuse

²⁴⁸ Interview with Interview Twenty-One [pseud.], Representative, Human Rights Unit—MINUSTAH in Port-au-Prince, Haiti (Dec. 27, 2006) (on file with *Stanford Journal of International Law*).

should be an immediate focus. Currently, the very few women's shelters operating in Haiti are disproportionately concentrated in Port-au-Prince, rather than in the rural and most disadvantaged areas of the country.

Essentially run by women's organizations and solidarity groups, such as GHESKIO, KAY FANM, KOFAVIV, SOFA and URAMEL, the shelters respond to rape survivors' immediate needs by providing free medical assistance and counseling, testing and treatment for sexually-transmitted infections, prenatal care for women who become pregnant as a result of rape as well as medical certificates attesting to the aggression and serving as indispensable evidence to press charges and prosecute the case in court. Primarily funded by international donors, among whom Canada and United States represent the most generous, Haitian shelters often rely on the efforts of survivors, as is the case of KOFAVIV, a women's association founded and led by a group of women from poor neighborhoods in Port-au-Prince, who were raped during the military coup of 1991-1994.²⁴⁹

However, because of the limited resources and the widespread and systematic sexual violence affecting girls and women throughout the country, the number of shelters is inadequate to provide an appropriate response to the high victims' demand. As mentioned, since shelters are almost exclusively located in Port-au-Prince, girls and women from remote areas of the countryside or inaccessible shantytowns of the capital are unable to benefit from their assistance and support. Due to the long distances involved, the poor system of internal communications, the cost of transportation and the fear of being subjected to further acts of violence or reprisal along the way, victims often either refrain from embarking on the journey or end up reaching the shelters too late to receive preventative treatment for HIV and unwanted pregnancies as well as to verify the fact that forcible sexual intercourse has occurred.²⁵⁰

Therefore, while an additional portion of international aid could be devolved to the establishment of new shelters for victims of sexual violence, international organizations already present in the country should implement a capillary system of small structures operating in the rural areas and deprived urban communities in order to provide prompt and effective service to victims. Interviewees from Médecins Sans Frontières, which runs the only two hospitals existing in the conflict areas of Martissant and Cité Soleil, confirmed the pressing need for shelters, to which survivors of sexual violence may turn for medical assistance and psychological support.²⁵¹ Considering the long-

²⁴⁹ Interview with Interview Sixteen [pseud.], Representative, GHESKIO in Port-au-Prince, Haiti (Dec. 19, 2006) (on file with *Stanford Journal of International Law*); Interview with Interview Thirty-Two [pseud.], Representative, KOFAVIV in Port-au-Prince, Haiti (Dec. 27, 2006) (on file with *Stanford Journal of International Law*).

²⁵⁰ Interview with Interview Eight [pseud.], Representative, Ministry for the Status of Women in Port-au-Prince, Haiti (Dec. 19, 2006) (on file with *Stanford Journal of International Law*); Interview with Interview Sixteen [pseud.], Representative, GHESKIO in Port-au-Prince, Haiti (Dec. 19, 2006) (on file with *Stanford Journal of International Law*).

²⁵¹ Interview with Interview Seventeen [pseud.], Representative, MSF in Port-au-Prince, Haiti (Dec. 17, 2006) (on file with *Stanford Journal of International Law*).

term, severe emotional consequences affecting victims of rape, extended post-trauma counseling should also be guaranteed.²⁵²

Since women's shelters often represent the primary resource, providing survivors of sexual violence not only with medical and psychological services but also with adequate legal assistance may ensure that victims receive accurate information about their own rights and the different stages of the judicial process. To date, URAMEL represents the only organization in the country which employs such a multilateral approach by requiring victims of rape in Port-au-Prince to fill out a basic form about the aggression, which may ultimately serve to press charge.²⁵³ Although interviewees from several national organizations acknowledge that a plural strategy of assistance may encourage victims' participation in undertaking collective action against gender-based violence, they also emphasize the critical need to strengthen professional training and capacity building in medical, psychological and legal competencies.²⁵⁴

A fundamental intervention at the community level aimed at producing long-term solutions requires practical and coordinated prevention strategies. An extensive campaign of sensitization is necessary to inform the public about the prevalence of rape and domestic abuse affecting girls and women in the country, their status as criminal offenses and any relevant consequences as well as the government's concern and determination to eradicate the phenomenon. Raising awareness about the incidence, impact and responses to practices of sexual violence should be conducted in strategic public settings, including schools, under the vigilant supervision of teachers, religious institutions and other aggregative or recreational centers for youth.²⁵⁵

Interviewees from several civil society associations revealed that one of the major obstacles to overcome is the victims' lack of information about the shelters, services and resources available.²⁵⁶ Therefore, a sensitization campaign cannot succeed without close collaboration with media communication organs, including radio and television as well as flyer coverage in deprived urban communities and remote rural areas. Along the same lines, the Ministry for the Status of Women together with the members of the *Table de Concertation Nationale sur les Violences spécifiques faites aux Femmes et leur Prise en Charge* have recently launched the adoption of a confidential free telephone hotline service for victims of sexual violence and domestic abuse.²⁵⁷

²⁵² Interview with Interview Sixteen [pseud.], Representative, GHESKIO in Port-au-Prince, Haiti (Dec. 19, 2006) (on file with *Stanford Journal of International Law*).

²⁵³ Interview with Interview Thirty-Six [pseud.], Representative, URAMEL in Port-au-Prince, Haiti (Dec. 19, 2006) (on file with *Stanford Journal of International Law*).

²⁵⁴ Interview with Interview Thirteen [pseud.], Judge, Tribunal pour l'enfants and COHADDE in Port-au-Prince, Haiti (Dec. 20, 2006) (on file with *Stanford Journal of International Law*).

²⁵⁵ Interview with Interview Thirty-Four [pseud.], Representative, Child Protection Unit—MINUSTAH in Port-au-Prince, Haiti (Dec. 17, 2006) (on file with *Stanford Journal of International Law*).

²⁵⁶ Interview with Interview Sixteen [pseud.], Representative, GHESKIO in Port-au-Prince, Haiti (Dec. 19, 2006) (on file with *Stanford Journal of International Law*).

²⁵⁷ Interview with Interview Thirty-Four [pseud.], Representative, Child Protection Unit—MINUSTAH in Port-au-Prince, Haiti (Dec. 17, 2006) (on file with *Stanford Journal of International Law*).

An intense effort should also be made to include notions of women's human rights and prevention against gender-based violence in the public educational curriculum for new generations. Introducing specific modules on sex education in schools may, on the one hand, engender girls' understanding of their own rights and, on the other, raise boys' consciousness of their responsibilities, for the ultimate purpose of building the basis for future equitable-power relationships. Indeed, any long-term strategy for the eradication of discrimination and violence against girls and women cannot deliver durable and sustainable change without the active involvement of boys and men alike. As recommended by the United Nations report on "The Role of Men and Boys in Achieving Gender Equality":

A gender equal society is one that is free of gender-based violence. Involving men and boys is a strategy for creating a non-violent and gender equal society. Men and boys are important agents for changing attitudes, behaviors and the wider power relations which sustain gender-based violence. Programmes for men against gender-based violence aim at positively influencing both men who oppose violence and those who do not.²⁵⁸

However, considering the critical living conditions, the lack of resources and services and the widespread street violence, children in the shantytowns are often unable to attend school. Very few international and national organizations operating in the conflict areas of Port-au-Prince respond to their needs. In Martissant, in addition to the shelter, KOFAVIV's solidarity group runs the project KOPADIM that provides basic education, peer support groups and a small micro-credit loan program for victims of sexual violence and their children.²⁵⁹ In Cité Soleil, the international NGO AVSI organizes modules of education, handicraft and cosmetology for boys and girls living in the slum, who are often forcibly affiliated with armed groups.²⁶⁰

Increasing the presence of educational and recreational programs for children in disadvantaged neighborhoods of the capital as well as in remote areas of the countryside is of primary importance. Representatives of MINUSTAH interviewed for this study revealed that the lack of activity and entertainment for youth significantly contributes to the prevalence of gang rapes committed by groups of adolescents, like the Vagabonds.²⁶¹ Interestingly, in Cité Soleil during the 2006 World Cup, while boys and men were occupied in watching football matches on mega-screens, endowed by the

²⁵⁸ U.N. Division for the Advancement of Women, *The Role of Men and Boys in Achieving Gender Equality, Report of the Expert Group Meeting*, Brasilia, Brazil, Oct. 24, 2003.

²⁵⁹ Interview with Interview Thirty-Two [pseud.], Representative, KOFAVIV in Port-au-Prince, Haiti (Dec. 28, 2006 (on file with *Stanford Journal of International Law*)).

²⁶⁰ Interview with Interview Twenty-Eight [pseud.], Representative, AVSI in Port-au-Prince, Haiti (Dec. 16, 2006) (on file with *Stanford Journal of International Law*)).

²⁶¹ *Id.*

International Organization for Migration (IOM), the incidence of rape and domestic abuse against girls and women decreased significantly.²⁶²

Along the same lines, interviewees from Médecins Sans Frontières reported that when armed confrontations among rival groups escalate in the shantytowns, the incidence of rape and domestic violence drops significantly.²⁶³ Education, employment and entertaining activities, therefore, represent important tools for engaging boys and men as well as girls and women in alternative and productive occupations, responding to the ultimate purpose of socializing them toward mutual respect and the condemnation of violence.

VI. CONCLUSION

Practices of discrimination and the widespread and systematic rape affecting girls in the shantytowns of Port-au-Prince in Haiti are intimately tied to inequitable gender-based power relationships. This research has revealed that survival strategies and selective choices and neglect made inside the household often engender the discrimination against, and sexual abuse and slavery of girls. Inequality and domestic violence severely impair girls' and women's status within the Haitian social hierarchies, diminishing their bargaining power in relationships as well as their decision-making in the public sphere.

Gender disparity and sexual harm perpetrated in the private realm shift dramatically to patterns of gender-based violence in the public domain. The patriarchal misconception of the girl's body as the *property* of men and as a commodity to be transferred from one family to another translates into its symbolic assimilation with the concept of *territory* and the preservation of morals in the Haitian shantytowns, ruled by armed violence and street confrontations among rival groups. In the ruthless game of war, rape not only aims to reduce female bodies to *damaged property*, but eventually becomes a specific weapon for achieving the breakdown of entire communities.

Despite the international commitments undertaken by the Haitian government and the recent efforts made by the national legislature to comply with international human rights standards, criminal justice responses to violence against girls and women still remain largely inadequate. By analyzing the victims' internalization of gendered stereotypes as well as the internal dysfunction and gender bias of the security and judiciary systems, this study has shed light on the gap between legal principles and human reality. Policy recommendations, practical measures and prevention strategies proposed in this paper are intended solely to stimulate a new and sensitive debate about violence against girls in Haiti and adequate responses to guarantee their protection.

Finally, in concluding this Note, I wish to emphasize that there are many other conditions hostile to girls and women in Haiti as well as challenges that they need to face in their everyday lives. Most serious are those I have

²⁶² *Id.*

²⁶³ Interview with Interview Seventeen [pseud.], Representative, MSF in Port-au-Prince, Haiti (Dec. 17, 2006) (on file with *Stanford Journal of International Law*).

mentioned indirectly: contaminated water, food shortages, the lack of sanitation and electricity, grossly inadequate medical care, the absence of basic facilities, massive killings and the abduction of their men and children. I have focused instead on rape and abuse of women's bodies, which, within the greater context of war, desperation and human rights violations, may just become a "bad chance," as a girl once told me.²⁶⁴ Nevertheless, only by addressing discrimination and sexual violence against girls and women and ensuring their full protection and active participation in the private realm as well as in the public domain can there be an enduring and sustainable peace in Haitian society.

²⁶⁴ Interview with Interview Sixteen [pseud.], Representative, GHESKIO in Port-au-Prince, Haiti (Dec. 19, 2006) (on file with *Stanford Journal of International Law*).