

DECLARATION OF Expert

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

1. I do not recall having ever met XX YY in person. This affidavit is based on my review of her Declaration and my knowledge of relevant conditions in Haiti. I have not personally interviewed Ms. YY or investigated the particular details of her case. I am familiar with the broader context of her application for asylum, including the history of gender-based violence in Haiti, especially rape, and the police department's struggles with pursuing investigations against its officers accused of violent crime.

My Background on the Issue of Rape in Haiti

2. From 1998 until 2004, I helped prepare a case on behalf of victims of political rape during the 1991-1994 *de facto* dictatorship in Haiti. This case was never filed, because the 2004 coup d'état in Haiti made progress in the case impossible, and the justice system has not yet recovered to a point where a successful case is likely. In the process of preparing the political rape case, I had extensive discussions with victims of political rape, read all the available reports on political rape in Haiti in English, French and Creole, and discussed the phenomenon with lawyers, mental health providers and human rights activists. I wrote a book chapter on the rape and the efforts to prepare our case, which has not yet been published. Please see the attached excerpts from this chapter at the end of this affidavit.
3. My work on rape in Haiti has particularly focused on rape during times of political and/or social upheaval, because upheaval brings sharp increases in the reports, and I believe the numbers, of rapes. The first such upheaval I have worked on is the 1991-1994 *de facto* regime. A second increase followed Haiti's February 2004 coup d'état, and a third followed the January 2010 earthquake. Although each of these periods had unique factors contributing to the prevalence of rape, all three had three important common factors. First, a breakdown in the social fabric makes women more vulnerable to rape as the non-governmental support structures they normally depend on for protection- family, neighborhoods, houses, lockable doors – become absent or less effective. Second, a breakdown in the social fabric removes some of the restraints on would-be perpetrators, increasing the amount of perpetrators, who use increased violence. Third, the official structures, especially the police and justice system become less able and/or willing to protect women.
4. Rape has always been a crime that easy to perpetrate and hard to punish in Haiti, even outside of periods of upheaval. The justice system is particularly resistant to women victims, who carry a triple burden into the courthouse. Not only are they poor and trying to challenge the powerful, but they are also entering a place traditionally hostile to women.

5. Haitian law discriminates against women, but the practices of judges, prosecutors and lawyers are even more discriminatory. For example, until 2005 the Criminal Code treated rape as an “offense against morals,” and prescribed a lesser sentence than for assault. But judicial practice compounded, and still compounds, this injustice, requiring rape complainants to present a formal medical certificate and other evidence that the law does not require, which effectively precludes many cases. Most lawyers, when asked, contend that the lack of contemporaneous medical certificates (which would have been impossible to acquire for some women, and potentially deadly for others) precludes rape survivors from pursuing their cases.
6. Haiti has a long history of discrimination against women in the home, in government, at work and in the courts. Although Haiti has been spared some of the worst forms of discrimination, including *machismo* and religious fundamentalism, the society retains a strong patriarchal structure handed down from the slave era, reinforced by conservative Christianity and rural traditions. The low level of education, especially for women, and dictatorial filtering of information entering the country, insulated Haiti from progressive currents elsewhere in the world for much of the 20th century.
7. Gender discrimination in Haiti has systematically denied women the power to either prevent or address injustice against them. Discrimination in one sphere reinforces that in another -- a woman’s low public status decreases her ability to respond to discrimination at work; legal discrimination with respect to property and civil rights further disempowers her at home.
8. These interlocking discriminations leave women particularly vulnerable to gender-based violence, on a large scale and individually. Sexual abuse by anyone with a power advantage over women -- mates, employers, police officers, soldiers, teachers, local leaders -- has long been endemic to Haitian life. The violence has been widely tolerated by society, and rarely punished by the courts.

Rape as a Tool of Political Repression in Haiti Under the De Facto Regime

9. On September 30, 1991, a military coup d’état overthrew Haiti’s elected government. A military junta, known as the “*de facto* regime” took power, and governed Haiti until September 1994 when it was removed by a United States military intervention.
10. The *de facto* regime’s soldiers, and paramilitary groups supported and/or tolerated by the regime systematically attacked supporters of the ousted democratic government. These attacks under the *de facto* regime included killings- an estimated 5,000 people were killed by the army and its paramilitary allies. The attacks also included beatings, illegal arrest and imprisonment, forced exile, and rape.
11. Rape was used to punish or silence both men and women who engaged in political activity. Often women who were not involved in politics were raped because their partner or relative who was politically active could not be found or would not otherwise be intimidated. The rapes were organized and systematic, often perpetrated by organized groups of several

men, and following similar patterns. In several cases, a family member- sometimes a husband or partner, sometimes even young children- were forced to watch.

12. One of the most active organizations in the perpetration of rapes during this period was the Front for the Advancement and Progress of Haiti (FRAPH), a paramilitary group run by Emmanuel Constant and Jodel Chamblain. Mr. Constant was found civilly liable in U.S. Federal Court under a command responsibility theory for three rapes committed by FRAPH during this period.
13. The immediate impact of the rapes was, obviously, to terrorize the victim and her family. But it also had a debilitating secondary impact, because there were no social services available for the victims, and there was uneven support from family, friends and neighbors because rape carries with it a stigma in Haitian society. Victims were extremely reluctant to reach out for support or to even discuss their ordeal. When victims did reach out they were often shunned or ignored. As a result, many women became socially or psychologically debilitated, which made them less able to keep their family together and participate in daily life.

Rape In Haiti From 1994-2004

14. From 1994 until 2004, Haiti enjoyed relative stability and its most successful period of democratic development. The army, which had previously fulfilled both police and national defense functions, was demobilized, and replaced with a civilian police force, the Police Nationale d'Haiti (PNH). The paramilitary organizations that thrived under the *de facto* regime were forced underground or disbanded. Although there were frequent outbreaks of some social unrest, there was no large-scale social upheaval.
15. Along with this relative stability came an end to the large waves of rape, but not the elimination of the problem. The PNH was not, to my knowledge, responsible for any systematic rape. The paramilitary groups did not function, except towards the later end of the period, and only in a limited area of Haiti's territory. But four main risks for rape persisted.
16. First, the new police and justice systems did not effectively deter or punish rape by private actors. The PNH was new, with mostly new officers. Those officers with experience came from the army, which itself had not effectively deterred or punished rape. The force was underfinanced, with inadequate vehicles, investigative capacity or manpower. It was under great public pressure to respond better to increases in crime. The pressure was greatest with regard to property crimes, drug crimes and murders, so the force invested its limited resources disproportionately in those areas.
17. Second, the PNH struggled with investigating and punishing crime by its own members. The Office of the Inspector General (IG), charged with investigating reports of police crime, was inexperienced and underequipped, and often received little support or cooperation from other police units. The IG was also hampered by internal PNH politics: an officer's connections were often a more important factor to investigations than the

details of his alleged crimes. Where the Inspector General was successful, it managed to impose administrative sanctions – suspensions or termination from the police force – but very rarely was able to secure a criminal prosecution.

18. Third, this period saw the rise of gangs, many of which became involved in rapes. The gangs were established for a range of purposes, including drugs, carjacking, kidnapping and politics, but several of them used the power acquired through guns and other criminal activity to perpetrate rapes.
19. Fourth, the historical factors that made rape easy to commit but hard to punish changed during this period, but only slowly. The justice system was still inhospitable to women, and men's power in other areas provided them protection in the criminal justice system.
20. Ms. YY's account of her rape appears highly consistent with the possibilities and challenges of pursuing rapists, especially police rapists, during the 1994-2004 period, including:

Rape Under the Interim Government of Haiti, 2004-2006

21. In February 2004, a group of rebels based across Haiti's border invaded the country, attacking and taking cities and towns in the north of Haiti. Each time the insurgency attacked a city, it released all the prisoners held in jail, some of whom joined the insurgency. Often the insurgents executed police and other officials, and prominent supporters of the elected government or *Lavalas* party. The insurgents publicly declared that they would kill *Lavalas* supporters and officials and police who would not join them, and they have made good on that promise.
22. Many of the insurgency's leaders were implicated in human rights violations during the 1991-1994 *de facto* dictatorship. For example, Jodel Chamblain, the second in command of the *FRAPH* death squad, which was responsible for mass rapes, was one of the insurgency's top leaders. Jean Pierre, alias Tatoune, was a local *FRAPH* leader in Gonaives. Both men were convicted for murder in the Raboteau trial in 2000.
23. The insurgents worked closely with less organized groups. They found some allies in the prisoners they released from jail. They also worked with local political groups, some of which provided informants to show the insurgents the homes of *Lavalas* sympathizers. Sometimes political groups carried out their own attacks, under the insurgents' protection.
24. Eventually, the insurgents took over all of Haiti. The elected government was replaced by an unconstitutional interim government, which unleashed another wave of repression against the democracy supporters, especially *Lavalas* movement. Although the arrival of international forces eventually limited their activities, they were never systematically disarmed, demobilized or prosecuted.

25. Violence in Haiti during the two years following February 2004 has been well-documented, by Amnesty International, teams from Harvard and the University of Miami Law Schools, Refugees International, the Committee to Protect Journalists and the International Crisis Group, among others.
26. The persecution included mass killings. The Port-au-Prince morgue reported disposing of over 1000 bodies in March 2004 alone, many bearing signs of summary execution. The persecution included torture by both the insurgents, who often mutilated their victim's bodies before killing them, and the police, who used torture as an interrogation technique. The persecution was carried out by a wide spectrum of *Lavalas* opponents, including the insurgents in areas they control, Haitian police, and even top government officials such as the Minister of Justice.
27. A mortality study for Port-au-Prince published in *The Lancet* indicates the overall scale of the violence. The study calculated that over 8,000 people were killed in the first 22 months of the Interim Government of Haiti (IGH) (March 2004-December 2005), almost half of them for political reasons, and that there were high levels of assault, especially sexual assault, and destruction of property. Members of opposition parties were reported to be responsible for 8.5% of physical assaults, and 12.5% of crimes against property.
28. The persecution under the IGH also included a return of politically-motivated rapes. The *Lancet* study concluded that 35,000 women were raped between March 2004 and December 2006 in Port-au-Prince alone. Although the *Lancet* study's conclusions on rape were controversial, and it is possible that the conclusion of 35,000 is high, it is clear that there was an enormous amount of politically-motivated rape during that time in Haiti.
29. The IGH period also saw the rise of many gangs that self-identified as supporters of the ousted *Lavalas* party. These gangs typically rose to prominence in poor neighborhoods that were under attack from the police and IGH allies. At the beginning of the IGH, these gangs were arrayed across a spectrum, with at one extreme gangs that were almost exclusively political in nature and not involved in criminal activities apart from neighborhood defense, and at the other extreme gangs that were primarily criminal, using their political activities as a façade to support criminal behavior. Eventually even the purely political gangs became involved in common criminal activities. These common crimes included widespread rape in the neighborhoods they operated.
30. The institutions that should have protected Haiti's citizens from violence were actually major contributors to the problem. *The Lancet* study calculated that police officers were responsible for 27% of the killings, and 20% of the assaults during the study period, and almost 14% of the sexual assaults. Human rights groups like Amnesty International documented a pattern of illegal, politically-motivated arrests by the police.
31. The Haitian police force was sharply reduced after February 2004, because many officers considered loyal to the ousted constitutional government were killed or purged. The purged officers were replaced with an influx of former soldiers, many of whom had participated in the rebellion. This replacement violated police regulations for recruitment and promotion.

It also swelled the force with a large number of officers with no civilian police experience or training, who were not accountable to the official police hierarchy or rules.

32. Neither the police nor the judiciary effectively investigate or prosecute political attacks, especially rapes. I am not aware of a single prosecution for political rape ever in Haiti.
33. The court system has often been an instrument of repression instead of a protection against it. The IGH forced out many judges, and replaced them with hand-picked successors, willing to obey the government's whims rather than the rule of law. The most notorious example happened in December, 2005, when the Prime Minister fired five Supreme Court judges who had issued an unfavorable ruling, and replaced them with his own candidates. Such interference with judicial independence is as unconstitutional in Haiti as it would be in the U.S.

2006-2010

34. In 2006, the IGH was replaced with an elected government. Large-scale political crime, including political rapes, stopped. A law change in 2005 removed rape from the "public morals" section. But rapes were still easily perpetrated and difficult to punish.
35. First, the police and justice systems did not effectively deter or punish rape by private actors. Although the PNH now had over ten years experience an institution, those ten years included the purges and politicization of the police force under the IGH, which left it less effective than it had been five years earlier.
36. Second, the PNH struggled with investigating and punishing crime by its own members. The historic difficulties were compounded by the abuses of the IGH, where officers were promoted based on their willingness to take illegal action against political dissidents. The Office of the Inspector General (IG) continued to be inexperienced and underequipped, and hampered by internal PNH politics.
37. Third, the gangs that were strengthened under the IGH continued to be involved in rapes.
38. Fourth, the historical factors that made rape easy to commit but hard to punish continued to change very slowly.

The Haitian Police Force is Corrupt, Unreliable, and Does Not Provide Meaningful Protection to Persecuted Persons

39. Police have also been implicated in common crime. The Police force's Director General, Mario Andresol, publicly conceded that a quarter of his officers might have been involved in criminal activities. The head of the Judicial Police, Haiti's main investigative unit, Michael Lucius, was fired and arrested in November 2006, for his involvement in kidnappings. He was released in December, 2007, against the protest of the judge who issued the original arrest order.

40. In February 2008 Human Rights Watch issued a report finding that “police lawlessness continues to contribute to overall insecurity. The HNP is largely ineffective in preventing and investigating crime. HNP members are responsible for arbitrary arrests, as well as excessive and indiscriminate use of force. They also face credible allegations of involvement in criminal activity, including drug trafficking, as indicated by the arrest of five HNP officers in a cocaine seizure in May. Although the HNP has participated in some training sessions, the police continue to suffer from severe shortages of personnel and equipment. Police perpetrate abuses with impunity.
41. On June 29, 2008, 13 prisoners escaped at once from Haiti’s Carrefour prison. By mid-July, none of them had been re-arrested. Many analysts asserted that the escapees likely had help from prison officials.
42. On July 10, 2008, the head of the investigative police of the Northern Department of Haiti, Darnley Louis Jean, was arrested for participating in kidnappings in the area. An arrest warrant was issued for one of his subordinates as well.
43. On November 12, 2008, police in the city of Port-de-Paix searched the house of Alain Desir, who had been arrested and deported to Florida on drug charges. According to government officials, several million dollars disappeared during the search. On January 11, 2009, the police force’s Assistant Departmental Director of the Northwest Department (which includes Port-de-Paix), Jean Raymond Philippe died under suspicious circumstances following his transportation to Port-au-Prince for questioning by Haitian and U.S. police regarding the missing money.
44. On November 28, 2008, Monique Pierre, the girlfriend of Ernst Dorfeuille, the Police Commissioner of Gonaives, a city in Haiti was kidnapped and killed. The investigation revealed that she had a large amount of cash in her home, and links to drug dealers. The police found enough links with Commissioner Dorfeuille to arrest him in early December 2008.

The Haitian Judicial System is Corrupt and Impunity is Widespread

45. The justice system, which still contains prosecutors and judges placed there by the IGH, including the illegal Supreme Court justices. The judiciary has made no effort to recapture any of the people convicted of persecution during the *de facto* dictatorship or other period. Jean-Tatoune was convicted *in absentia* in the Raboteau case, and although he has the right to a new trial, under Haitian law he should be arrested and held until either acquitted at trial or given pre-trial release. Three members of the 1991-1994 *de facto* High Command- Col. Carl Dorelien, Col. Hebert Valmond and Major General Jean-Claude Duperval- were all likewise convicted at the Raboteau trial, and all three were deported from the U.S. for their human rights violations. They escaped from jail in March 2004, and although they are believed to be still in Haiti, none have been arrested.

Rape Following the January 2010 Earthquake

46. On January 12, 2010 a 7.0 magnitude earthquake struck Haiti. The country's infrastructure was devastated. An estimated 200,000 people died as a result of the earthquake, and 1.5 million people were estimated to have lost their homes and been forced to live in one of 1,300 camps for Internally Displaced Persons (IDPs). Conditions in the IDP camps are bleak. Shelter is inadequate, privacy is lacking, and access to food, clean water, and hygienic facilities varies from camp to camp.
47. The Haitian government has not adequately protected the human rights of women in the IDP camps. Little or no safety or protection has been provided for women and girls living in tents and under tarps in IDP camps, leaving women and girls at great risk of rape and sexual abuse. Women in the IDP camps have experienced rape and attempted rape, severe beatings, and repeated threats to their lives in retaliation for reporting the rapes or helping other victims at the hands of private and public actors. Many women report that they have been raped on multiple occasions since the earthquake. The government has no comprehensive plan for permanent or transitional housing for IDP camp residents; there is no end in sight for the dangerous conditions in which many women and girls live.
48. On December 22, the Inter-American Commission on Human Rights ordered the Haitian government to improve protection of women in 22 IDP camps, by increasing police presence and adding lighting and other security measures.
49. I am not aware of any comprehensive statistics on rape in Haiti since the earthquake, but the partial studies I have seen all demonstrate shocking levels of rape. In the first six months after the earthquake, KOFAVIV, a grassroots women's organization, recorded at least 300 rapes in just sixteen of the hundreds of camps in Port-au-Prince. A University of Michigan survey conducted in March 2010 estimated that three percent of all people in Port-au-Prince had been sexually assaulted in the three months since the earthquake; half of the victims were girls under the age of eighteen. Doctors Without Borders reported in an interview that they treated sixty-eight rape survivors at one facility alone in Port-au-Prince in April 2010 alone.
50. Women and girls are particularly vulnerable to rape when they need to leave their dwellings, to go to the bathroom or shower, to find water or purchase food at a store.
51. It does not appear that rapes in the camps have abated over time. The Bureau des Avocats Internationaux, a public interest law firm in Haiti, reported receiving over 100 complaints from rape victims in January and February 2011 alone.
52. The post-earthquake rapes, like the rapes that took place during previous periods of upheaval in Haiti, often involve gang rapes accompanied by extreme brutality. Reports over the last year have included perpetrators beating victims savagely, biting out their tongue, multiple rapes over several days, and child rapes. Many women have been raped on more than one occasion.
53. Women who have either reported rapes to police or organized against rape have been frequently subject to retribution, including beatings, and threats of beatings and killings. In

January 2011, a leader of a grassroots women's organization told me that most rape victims who can identify their attacker(s) would not feel safe revealing the attacker's identity to the police.

54. There are no government-run shelters or witness protection programs in Haiti. Some women who have been threatened or attacked for pursuing rape cases have found shelter with friends or non-profit groups, but none of these solutions are permanent, and the women could face a return to the IDP camps or streets if funding or hospitality run out.
55. Although some police officers and units are trying to respond to the rapes, many units are unresponsive, and the units that attempt to respond are hampered by lack of resources, training and manpower. There have been numerous reports of rape victims who reported crimes to police who refused to take any action. In many cases, the victims have no choice but to continue living in camps where their perpetrators also live, at large.
56. On December 22, the Inter-American Commission on Human Rights ordered the Haitian government to improve its processing of rape complaints, through special police units and better training for police officers and judicial officials.
57. Medical, legal and psychological services for victims of rape are not adequate. Medical services can be excellent, but many rape victims report that they cannot access these services, or that they are charged fees they cannot afford for follow-up care. I am aware of one organization, the Bureau des Avocats Internationaux, that provides effective legal representation for rape victims. The Bureau files complaints in all cases where the victim desires to file a complaint, and has pursued some cases enough to result in the arrests of the alleged perpetrators. But the office is currently swamped with cases, and is struggling to provide timely follow-up to the complaints.
58. Psychological services for rape victims are extremely limited. Some medical providers provide initial counseling, and a few women's organizations provide counseling and therapeutic activities. But all these services are overwhelmed, and unable to provide the basic psychological services that anyone who suffered as much trauma as a rape victim needs to adequately recover from the attack. On December 22, the Inter-American Commission on Human Rights ordered the Haitian government to provide improved medical and psychological services to rape victims.
59. Ms. YY's account of the rape in 2010 appears highly consistent with the reports of other rapes since the January 2010 earthquake, including:
60. The Government of Haiti has launched some initiatives to respond to the epidemic of rapes in Haiti. Many police stations are currently doing a better job of receiving complaints. The investigative police have made some arrests, a total of eight in the cases my contacts are following. But these initiatives are moving slowly, and Haiti is still not complying with the December 22 Inter-American Commission on Human Rights order, nor does it effectively prevent or punish rape.

61. Haiti's political uncertainty continues to hamper efforts to respond to rapes. In December 2010, the capitol city, Port-au-Prince, was shut down for days during protests against the announced results of the November 28 elections. Women's groups reported an increase in rapes in the IDP camps during that time.
62. Haiti currently has a runoff election scheduled for March 20, 2011. Those elections are controversial, because the country's largest political party, *Fanmi Lavalas*, was not allowed to participate in the first round, and because the electoral council, under international pressure, reversed the placement of the announced second and third place candidates.
63. Under Haiti's Constitution, a new President should have been inaugurated on February 7, 2011. The election controversy prevented that requirement from being fulfilled, and a new inauguration is currently scheduled for May 15. In the meantime, Haiti has no functioning legislature, as the terms for the House of Deputies and 1/3 of the Senate expired last May, and the seats have not yet been filled.
64. There is significant risk that the controversy over the November 2010 and March 2011 elections will continue, perhaps for the five years of the next President's term. I fear that a government perceived as having limited legitimacy will have trouble obtaining compliance with its programs, and will have to resort to force. This force will in turn provoke a forceful response, resulting in a cycle of disruption that will lead to a high level of civil unrest. Civil unrest will likely lead to increased vulnerability to rape and increased perpetration, and a decrease in law enforcement capacity to respond.

I declare under penalty of perjury that the foregoing is true and correct. Executed on March 7, 2011 at ..

ADDENDUM:

Excerpt from Brian Concannon's Draft Book Chapter: *Haitian Women's Fight for Gender Justice*.

HAITIAN WOMEN'S FIGHT FOR GENDER JUSTICE

Brian Concannon Jr.

On September 30, 1991, a military *coup d'etat* overthrew Haiti's first democratically elected government, and initiated a three-year reign of terror. The military and its paramilitary allies

brutally suppressed all democratic activities, including grassroots organizing. Between 4,000 and 7,000 people were killed, and hundreds of thousands more were tortured, beaten or forced into internal or external exile.¹ Because women were active in the pro-democracy movement, they suffered the same atrocities that men did. But they suffered additional atrocities because they were women.

Soldiers and paramilitaries raped hundreds, possibly thousands,² of women during the dictatorship. The rapes were massive, systematic, and designed to terrorize and intimidate the pro-democracy movement.³ The perpetrators maximized the terror through sadism: multiple rapes, forcing family members to watch, forced incest and raping young girls and pregnant women.⁴ Beatings often accompanied the rapes, leaving lasting injuries and requiring ongoing medical treatment and expense. Some women were killed. The rapists often looted homes, stealing the money or trade goods that were the victims' only source of income, often accumulated painstakingly over years. The rapists were soldiers in and out of uniform, and organized paramilitary groups. The rapes tended to come in waves, coincident with waves of other human rights abuses, especially during the last eighteen months of the dictatorship. There are no reported cases of political rapes punished during the dictatorship by either civilian or military authorities.

Rape victims were targeted because of their participation in pro-democracy activities, or association with someone who did. In this way, the rape campaign was designed to intimidate activists directly. On a broader level, women were strategically targeted as a group because they are considered the *poto mitan* (centerpost) of Haitian society.⁵ Humiliating, intimidating and incapacitating the centerpost was a way of definitively crushing civil society.⁶

The rapes were well documented. During the dictatorship, they were reported by Haitian human rights groups,⁷ intergovernmental organizations,⁸ observer delegations and international

¹ See generally, SI M PA RELE, RAPPORT DE LA COMMISSION NATIONALE DE VERITÉ ET DE JUSTICE (1997) [hereinafter Truth and Justice Commission Report], <http://www.haiti.org/truth/table.htm>. See also Irwin Stotzky, SILENCING THE GUNS IN HAITI (1997); Commission Justice et Paix du Diocèse des Gonaïves, LA RÉPRESSION AU QUOTIDIEN EN HAITI 1991–1994 (Gilles Danroc & Daniel Roussière eds., 1995); Human Rights Watch/Americas, *Terror Prevails in Haiti: Human Rights Violations and Failed Diplomacy*, at 5–7 (1994).

² Truth and Justice Commission Report, *supra* note 1 at 42; Radhika Coomaraswamy, *Rapport sur la mission en Haïti de la Rapporteuse spéciale chargée de la question de la violence contre les femmes*, UN Doc. E/CN.4/2000/68/Add.3 at 14 (2000) (hereinafter “Special Rapporteur’s Report”); Laura Flanders, *Haiti: J’Accuse*, in WAR’S DIRTY SECRET, 157, 161 (Anne Llewellyn Barstow ed., 2000) (women’s groups reported up to 18 rapes in a single day).

³ Truth and Justice Commission Report, *supra* note 1 at 42. The rapes in Haiti did not include ethnic cleansing. Although there are tensions running broadly along color lines, Haiti does not have ethnic conflict *per se*, and most of the soldiers and paramilitaries were, like most of their victims, black.

⁴ See, e.g., Marie M. B. Racine, LIKE THE DEW THAT WATERS THE GRASS, 24, 25, 29 (1999).

⁵ Jennie M. Smith, WHEN THE HANDS ARE MANY: COMMUNITY ORGANIZATION AND SOCIAL CHANGE IN RURAL HAITI, 158 (2001).

⁶ See Radhika Coomaraswamy, *Of Kali Born: Women, Violence and the Law in Sri Lanka*, in FREEDOM FROM VIOLENCE: WOMEN’S STRATEGIES FROM AROUND THE WORLD, 49-50 (Margaret Schuler ed., 1992) (“to rape a woman is to humiliate her community”).

⁷ In particular, the *Plateforme des Organisations Haïtiennes de Droits Humaines*, and the Catholic Church’s *Commission Justice et Paix*.

⁸ Notably the United Nations/Organisation of American States’ International Civilian Mission (MICIVIH) and the Inter-American Commission on Human Rights. See, Inter-American Commission on Human Rights, Report

human rights groups.⁹ There were also efforts within Haiti and outside to provide the rape survivors immediate support. Victims themselves surreptitiously organized support groups. Human rights groups, social service providers and private medical professionals, sometimes with foreign support, provided medical and psychological treatment, sometimes clandestinely.¹⁰ Networks of Haitians and foreigners provided safe houses, and assisted escape abroad.

Not all of this reporting was believed. In a cable leaked to the press, the U.S. Embassy concluded that “[t]he Haitian left, including President Aristide and his supporters in Washington and here, consistently manipulate or even fabricate human rights abuses as a propaganda tool.... A case in point is the sudden epidemic of rapes reported... by pro-Aristide human rights activists,” suspicious because “rape has never been considered reported as a serious crime [in Haiti].”¹¹ Although the OAS and later the UN did impose an embargo on fuel and other items, foreign governments, including the U.S., continued to provide training to the Haitian armed forces and support to paramilitary organizations.

Rape survivors often discuss the political rapes as only the latest in an unbroken chain of serious crimes against them and their ancestors. A woman usually starts her account with slavery, and the French colonists’ brutal plantation system. Some will trace economic deprivation to the independence debt that France extracted in return for recognition,¹² often called the world’s first structural adjustment program.¹³ The account sometimes mentions the U.S. occupation, always the Duvalier regime. In addition to the historical connections, the women make horizontal linkages between the oppressions of violence, patriarchy and poverty. In fact, when Haitian rape survivors talk about the effects of the rapes on their lives, they are just as likely to mention the same issues that women who were not raped mention: stress and depression, the challenges of buying food, paying rent, and obtaining healthcare and education for their children, and the hazards of patriarchy.¹⁴

Women also link the various types of oppression when discussing solutions. Although the victims articulate specific goals such as arresting a perpetrator or receiving reparations, they just as often speak of establishing a true democracy, of self-determination, of freedom, of having their minimum material needs met, of *chanjman tout bon vre* (complete, total change). This is because they recognize that addressing individual events, however damaging, without also addressing the larger systematic and structural injustices will lead to short-lived victories at best, and further inevitable victimization for them or their daughters.

on the Situation of Human Rights in Haiti, OEA/Ser.L/V/II.88, Doc. 10 (1995) p. 39-47 [hereinafter Inter-American Commission Report (1995)].

⁹ Human Rights Watch/National Coalition for Haitian Refugees, *Rape As a Weapon of Terror*, July 1994.

¹⁰ Nicole Magloire, MD, *Expérience de suivi gynécologique de femmes violées*, in HAITI: DROITS DE L’HOMME ET RÉHABILITATION DES VICTIMES 54 (UN/OAS Civilian Mission to Haiti, 1998).

¹¹ U.S. Embassy, Haiti, “Confidential Cablegram,” April 12, 1994, on file with author, p. 2-3; Beverly Bell, WALKING ON FIRE: HAITIAN WOMEN’S STORIES OF SURVIVAL AND RESISTANCE, 21 (2001); Racine, LIKE THE DEW THAT WATERS THE GRASS, *supra* note 4 at 24, 27; Paul Farmer, PATHOLOGIES OF POWER: HUMAN RIGHTS AND THE NEW WAR ON THE POOR, 254 (2003) (rape victim called seeing the dictatorship’s lawyer denying the rapes on CNN “one of the most debasing moments of her experience”).

¹² Mildred Aristide, CHILD DOMESTIC SERVICE IN HAITI AND ITS HISTORICAL UNDERPINNINGS 108 (2003).

¹³ Foreign debt consumed an estimated 80% of national revenue by the end of the nineteenth century. Charles Arthur, ed., *LIBETE, A HAITIAN ANTHOLOGY*, 209 (1999).

¹⁴ Special Rapporteur’s Report, *supra* note 2 at 14. *Médecines du Monde*’s Haiti office conducted a study of Raboteau victims for post-traumatic stress disorder. Every individual tested came up positive, including some whose trauma from the massacre was comparatively light. Psychological reports on file with author.

[The International Transition in the Struggle for Women's Justice]

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The Haitian women's struggle has also helped shape the international justice transition. The horror of the attacks, combined with the survivors' courage in telling their stories, forced the world to take notice of, report and condemn the rapes, well before the Rwandan genocide and many of the rapes in the Balkans. In fact, the Inter-American Commission on Human Rights became the first international human rights body to officially recognize rape outside of detention as torture in its 1995 report on rape in Haiti.¹⁵ A Haitian rape victim seeking asylum abroad won the first U.S. ruling in a case recognizing rape as a serious harm that could constitute persecution on the basis of political opinion.¹⁶ The case prompted the U.S. Immigration and Naturalization Service to issue national gender asylum guidelines recognizing rape as persecution, that were in turn an important international development.¹⁷ If the Haitian women succeed with their campaign to prosecute those responsible for their rapes, including the top military and paramilitary leaders, they will provide both an inspiration and a roadmap for other national prosecutions.

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Poverty and Social Division

An account of women in Haiti can no more avoid confronting poverty than a woman with no food and hungry children can. Haiti is by far the poorest country in the western hemisphere, with a per capita income of about one U.S. dollar a day. Life expectancy is low, healthcare, education and nutrition are among the world's worst. The daily struggle to obtain the minimum food, shelter and healthcare has been the salient fact of life for three centuries for most Haitians, especially women. As elsewhere, women bear the brunt of poverty, because of discrimination in the workplace, at home and in society, and unequal distribution of childcare responsibilities, especially in the 60% of families headed by a woman alone.¹⁸

Poverty has always determined how women experience violence, and limited how they respond to it. Poor women endure abusive mates, employers and landlords, for lack of other means to support themselves or their children.¹⁹ Poverty constrains women's choices about where to live and work, how to travel, even who to accept as sexual partners,²⁰ increasing vulnerability to property crime and sexual assaults by strangers and non-strangers. Without money to pay clerks, judges and lawyers, women have not been able to access the corrupt formal justice system. Poor women's lack of resources and stature prevents them from pursuing even informal redress within society.

¹⁵ Inter-American Commission Report (1995), *supra* note 8, at 119-123; Deborah E. Anker, *Boundaries in the Field of Human Rights: Refugee Law, Gender, and the Human Rights Paradigm*, 15 HARVARD HUMAN RIGHTS LAW JOURNAL 133, 142-143 (2002).

¹⁶ *In re D-V-, 12 I. & N/ Dec. 77, 79* (U.S. BIA 1993).

¹⁷ Anker, *Boundaries in the Field of Human Rights*, *supra* note 15, at 142.

¹⁸ Bell, WALKING ON FIRE, *supra* note 11, at 18-19.

¹⁹ Special Rapporteur's Report, *supra* note 2, at 4, para. 11.

²⁰ Farmer, PATHOLOGIES OF POWER, *supra* note 11, at 39.

The fight against poverty is perhaps the most disappointing aspect of Haiti's democratic transition. Although there have been some successes in creating jobs and developing infrastructure for economic growth, and some strides against poverty's root causes, such as inadequate education, democracy has not yet brought a substantial increase in the economic well-being of most Haitians.

Accompanying poverty are deep fissures within Haitian society. The main divide runs between the vast majority who are poor and the very few who are wealthy, sometimes spectacularly so. The divide is loosely correlated with other distinctions, of skin color, ability to write and speak French, and level of education. Centuries of erecting social and economic barriers against the masses makes building bridges now difficult, even for well-meaning elites. Centuries of repression have left the poor distrustful of those who are not poor, and a strong sense of the connection between their current suffering and the lifestyles of the elite. Haitians of all classes often view life through a class lens, and instantly place those they encounter on one or another side of the divide. One's place can be irrevocably set by the ability -- or not -- to speak French, by driving a car or taking public transportation, by the clothes one wears and the food one eats.

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Toward Justice

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The justice system is particularly resistant to women victims, who carry a triple burden into the courthouse. Not only are they poor and trying to challenge the powerful, but they are also entering a place traditionally hostile to women. Haitian law is discriminatory, but the practices of judges, prosecutors and lawyers are even more so. For example, the Criminal Code treats rape as an "offense against morals," and prescribes a lesser sentence than for assault. But judicial practice compounds this injustice, requiring a formal medical certificate and other evidence that the law does not, which effectively precludes many cases.²¹ Most lawyers, when asked, contend that the lack of contemporaneous medical certificates (which would have been impossible to acquire for some, deadly for others) prevents political rape survivors from pursuing their cases.

Although judicial training is needed in many areas, it is especially needed on gender issues. Judges and lawyers who consider themselves progressive on women's issues, some of them women, steadfastly defend the discriminatory practices on technical grounds. Most have simply not been exposed to gender justice issues, sheltered by status and training. On a broader level, the repressive dictatorships of the past, combined with the traditional nature of Haitian society, deflected many of the global discussions of gender, justice and society away from the country.

From Patriarchy to Equality

²¹ Even a progressive legal guide by feminist organizations repeats this myth. *Femmes en Démocratie, GUIDE JURIDIQUE A L'USAGE DE FEMMES* (2002) at 132. A medical certificate is valuable evidence of rape, but is not technically required by the law.

Haiti, like most countries, has a long history of patriarchy and discrimination against women in the home, in government, at work and in the courts. Although Haiti has been spared some of the worst forms of discrimination, including *machismo* and religious fundamentalism,²² the society retains a strong patriarchal structure handed down from the slave era, reinforced by conservative Christianity and rural traditions. The low level of education, especially for women, and dictatorial filtering of information entering the country, insulated Haiti from progressive currents elsewhere in the world for much of the 20th century.

Gender discrimination in Haiti has systematically denied women the power to either prevent or address injustice against them. Discrimination in one sphere reinforces that in another -- a woman's low public status decreases her ability to respond to discrimination at work; legal discrimination with respect to property and civil rights further disempowers her at home. Gender-based oppression of women in turn reinforces and is reinforced by other oppressions: poverty and poor education restrict women's ability to organize on gender issues, dictatorial and militaristic governments buttress patriarchy, restrictions at home censor many woman pro-democracy activists.

These interlocking oppressions leave women particularly vulnerable to gender-based violence, on a large scale and individually. Sexual abuse by anyone with a power advantage over women -- mates, employers, soldiers, teachers, local leaders -- has long been endemic to Haitian life.²³ The violence has been widely tolerated by society,²⁴ and rarely punished by the courts. Although the return of democracy and demobilization of the army and paramilitary groups have eliminated large-scale, political rape, the civilian police and courts have made little progress fighting non-state-sponsored violence against women.

Haiti's democratic transition has made substantial and concrete inroads into the historical patriarchy. As discussed below, the ability to organize freely over the last eight years has allowed women to make irrevocable progress. Women now play an unprecedented role in the public sphere, as top government officials and civil society leaders, as voters and organization members. An increasing number of women go to school, have access to the courts and participate in decision making in the home. Nevertheless, despite the enormous strides to date, most of the progress lies ahead. Women still lag far behind in political and economic power, in education, at work and at home.

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Obstacles To Organizing

Poverty is the largest single obstacle to women's organizing. Simply surviving poverty requires most of the energy of most Haitian women, leaving little time or energy for organizing.²⁵ Neither society nor individuals have resources to spare to support women's groups, and personal property that fuels work in other countries, like cars and telephones, are in short supply in Haiti. Poverty complicates continuity and consistency within organizations, by forcing groups to balance long-term struggles with short-term emergencies affecting society and

²²The explanations for why this is so are varied. Many attribute it to the less egalitarian social and religious traditions from Africa, others to differences between Spanish and French colonialism. Others say that life has just been so hard for Haitian men and women alike, that it limits inequality.

²³ Bell, *WALKING ON FIRE*, *supra* note 11, at 20-21 (studies have found an "astronomical incidence of domestic abuse," and women have historically suffered "rampant and devastating state-sponsored violence.").

²⁴ Racine, *LIKE THE DEW THAT WATERS THE GRASS*, *supra* note 4, at 33.

²⁵ Racine, *LIKE THE DEW THAT WATERS THE GRASS*, *supra* note 4, at 26 (women cannot come to an organization's meetings "because they are hungry and have not eaten for days").

their members. Within organizations, the attention of leaders and members is often diverted to family emergencies, or consumed by their own health problems. Communication is difficult within and between organizations, as most women have no telephones or cars, and have increasing difficulty paying for public transportation to meetings. The organizations themselves have few resources to make photocopies, arrange meetings and purchase basic supplies.

The next largest obstacle to women's organizing are the deep historical fault lines in Haitian society. The fissures stretch back to 1804 and beyond, and permeate every aspect of Haitian society. The main divide sits between the poor majority and the comfortable minority, but similar cleavages lie between city and countryside, along color and education lines, between those who can read and those who cannot. Despite many efforts, and some non-systematic successes, women's solidarity has yet to effectively bridge these divides, leaving on one side the majority of women with education, international contacts, large-scale organizing skills, and economic resources, and on the other side, the vast majority of Haitian women.

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Although some arrests are made and some perpetrators sentenced, the justice system and police are not an effective deterrent to violence against women. Although precise figures are hard to come by, most women perceive rape as widespread, and unpunished by both the justice system and society at large.²⁶

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Assuring women's representation on the jury for a major trial is complicated by societal discrimination and poverty.²⁷ Those making the lists tend not to think of women as appropriate jurors, considering them too "emotional," or too easily influenced or intimidated. Favoring education for boys over girls in cash-strapped families leads to fewer women satisfying the literacy requirement. Women's lesser participation in the formal sector and in high profile societal roles decreases the chance that officials preparing the jury list will know them.

Even when officials try to remedy the gender imbalance, they have difficulty finding women willing to serve. Women often feel they cannot abandon their household duties or their jobs, especially for a long trial. Poor women, especially, cannot afford alternate childcare or to miss a day's pay, however meager. Women heading households fear that if they are killed or injured there will be no one to look after the children."

²⁶ Although it is neither systematic nor politically motivated, rape by men in the law enforcement system does exist. *Dwa Fanm and Enfofanm*, "Justice for Haitian Rape Victims," (internet appeal in support of a woman raped by a health care worker while in prison, February 28, 2003, on file with author).

²⁷ Even women's representation does not ensure a sensitive hearing for the victims. Prosecutors in the U.S. say women jurors in rape cases can be harder on victims than men are. In Haiti, women are often the principal enforcers of discriminatory social norms. See Racine, *LIKE THE DEW THAT WATERS THE GRASS*, *supra* note 4, at 33.