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**The Bureau des Avocats Internationaux, a Victim-Centered Approach
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The Bureau des Avocats Internationaux (BAI) is a group of lawyers funded by the Haitian government that assists the judiciary with human rights cases, mostly from Haiti's 1991-94 *de facto* military dictatorship. The office's mandate is a general one: to do what it can to move human rights cases through the justice system. We use a "carrot and stick" approach: we help the system perform better through technical and material assistance, and we pressure it to do so by helping human rights and victims' groups advocate in the courtroom, on the streets, and in the media.

This chapter will discuss the BAI's experiences in the larger context of Haiti's struggle to establish accountability for past atrocities, and democratize the justice system.

I. Background

The *de facto* dictatorship ousted Haiti's first freely elected government in September, 1991. Over the next three years, the military and its paramilitary allies murdered an estimated 5,000 civilians, and beat, raped or otherwise tortured hundreds of thousands more. The justice system helplessly watched the terror from the sidelines, unable to intervene. When asked why, a prosecutor testifying in a recent human rights trial pointed to the still unpunished October 1993 assassination of Justice Minister Guy Malary, and invoked a Creole proverb: "Konstitisyon se papye, bayonet se fè" ("the Constitution is paper, bayonets are steel").

The *de facto* period was not the first time the justice system failed to protect the majority of Haitians. The entire system, from the police to judges to prosecutors and private lawyers, had always been unwilling or unable to curb the abuses of those with guns or money. Justice in Haiti is often described by the word "exclusion": the exclusion of the poor from the formal justice system, and the use of the system to exclude the poor from the country's economic, political and social spheres.

In addition to, and because of, its ideological deficiencies, the justice system suffered from acute technical deficiencies. Legal proceedings were theatrical and formalistic, with little attention paid to the presentation or analysis of facts. Lawyers were not adept at preparing cases for trial, and judges were not good at hearing them. Rigorous preparation was not deemed important where cases were decided by merits other than legal or factual ones. Formalism and shoddy practice also served to obscure the true bases for decisions.

The return to democratic rule in Haiti in October 1994 was an important victory for human rights in the country, but only the first step in establishing the rule of law. The legal system's historical exclusion of Haiti's majority, and its deep technical deficiencies made it incapable of functioning under a democracy without a fundamental overhaul. Change needed to be made in practices, but

also in people and structures. Personnel throughout the system needed to be trained to perform at a higher level than before, and to perform in a way that respected the rights and interests of the majority. Replacements needed to be found for those who could not or would not change. The codes and the administrative structure needed overhaul as well. They are largely unchanged since the 1840's, and are ill-adapted for a 20th century caseload.

II. The BAI

The Haitian government formed the BAI both to help coup victims obtain justice and to assist the overall effort to improve the justice system. We view our work in the context of the larger democratic transition, and combine political strategies with legal ones. The lynchpin of the BAI's strategy is its work with victims, which includes representing them in court proceedings through the *partie civile* (civil party) procedure, and helping them assert their rights in the courts, in the press, and on the streets.

The BAI's five core functions are: 1) representing victims in civil and criminal cases against violators; 2) assisting judges and prosecutors; 3) helping police locate and arrest suspects; 4) helping NGOs improve their human rights advocacy; and 5) promoting coordination among these actors. The office also has a training program for young Haitian lawyers, hosts interns from U.S. law schools, and collaborates with U.S. law school clinics working on its cases.

A. Representing Victims

The BAI's most important and visible core function is representing victims in civil and criminal cases against violators. In all of our cases, BAI lawyers represent the victims from the initial investigation through the trial, verdict, and recovery of civil damages. We start most cases by meeting with victims, usually through an organization. If the victims are willing to pursue a prosecution with our help, the BAI interviews the victims, conducts an investigation, and prepares a complaint.

Once a complaint is filed, our representation includes three components: a) traditional lawyering, b) advocacy outside of the courtroom and c) assisting the victims to advocate on their own behalf. Traditional lawyering by the BAI involves representing the victims at pre-trial, trial and post-trial hearings, preparing and presenting evidence, and preparing pleadings, especially responses to defendant appeals. Under the French system used in Haiti, a claim for civil damages can piggy-back on a criminal prosecution. A victim seeking damages is called a *partie-civile* and his or her lawyer is allowed to participate in most aspects of the proceedings. The lawyer can introduce evidence and examine witnesses and parties at trial, submit pleadings to the court, and argue legal issues relevant to the civil claim. In this role, BAI lawyers act as a backup to prosecutors where necessary. The BAI also helps victims obtain medical and other assistance.

The BAI's advocacy for the victims extends well beyond the courtroom. We meet regularly with national and local officials regarding particular cases and broader policy towards victims. This ensures that the officials understand the victims' perspective, and raises victims' concerns among the officials' diverse and sometimes conflicting priorities. BAI lawyers also communicate regularly with international organizations working on justice and human rights in Haiti.

The BAI also helps victims increase their capacity to advocate for themselves. We spend a lot of time, in both formal and informal settings, explaining the relevant legal issues and procedures for all of our cases. We involve victims as much as possible in strategic decisions, and work with them to analyze the different obstacles to their case. We advise victims and their organizations on specific initiatives, such as planning a press conference or writing an open letter to a government official.

Assisting victims to advocate on their own behalf may be the most important part of the BAI's representation. In the short term, it allows our cases to move forward. A well timed and reasoned press conference, open letter or demonstration can compel official action where legal strategies or the BAI's lower-profile advocacy could not. Active involvement by the victims also encourages long-term changes in the judiciary. Once empowered, the victims we work with become more effective at demanding the broader democratization of the justice system. The system itself becomes habituated to working with the historically excluded, and their advocacy serves as a model for others insisting on judicial reform.

An example of this collaboration was the initiative to remove the chief prosecutor, or *Commissaire de Gouvernement* in the Raboteau Massacre case. Neither the victims nor their lawyers trusted him, but he was allowed to stay in office for over a year of pre-trial preparations. Although the two Ministers of Justice over that span acknowledged the prosecutor's shortcomings, he was not replaced because of his political connections, and the difficulty of finding a better replacement. The BAI protested the *Commissaire's* original nomination, and privately urged his replacement, in both written and oral communications with officials. When that failed to work, the BAI raised the issue with victims and human rights groups, who also urged the government to replace him. Eventually, the victims in the Raboteau case made their complaints public, with the BAI's help, through open letters, denunciations on the radio, and, finally, street demonstrations. The demonstrations worked, as the *Commissaire* was removed, and replaced by another prosecutor who performed well at trial.

B. Assisting Judges and Prosecutors

The BAI's second core function is assisting judges and prosecutors. Although many people in the judiciary support human rights prosecutions, most lack the training and resources to do it well. The BAI helps judges and prosecutors rise to the task in their cases by providing technical and material support, and by advocating for the officials' needs at the national level. Technical support includes legal and factual research and analysis, consultation on strategic issues and assistance in preparing documents at the pre-trial, trial and appeal stages. Material support includes obtaining national and international legal materials, providing typing and other support services, and purchasing office supplies and equipment when necessary.

The BAI's judicial assistance complements and supplements other efforts, such as Haiti's *Ecole de la Magistrature* (Judicial Academy). While these programs attempt to raise the performance of a large number of officials to minimally acceptable levels, the BAI concentrates on helping a select few perform at a high level in complex, high profile cases.

The BAI also encourages judges and prosecutors to work closely in partnership with victims. “Professionalism” in Haiti has traditionally meant that officials ask crime victims narrow questions, expect narrow responses and prosecutors spend little time explaining their actions and strategies to victims. BAI lawyers use their own experience as an example to officials of how close collaboration with victims can enhance the “technical” preparation of the case, and how empowered victims can help with many aspects of the case, from tracking down suspects to advocating for a judge’s transportation needs.

BAI assistance to judicial officials has generated substantial results. The written work done by judges and prosecutors in our cases, from indictments to appeals briefs, is usually among the best of its kind ever produced by the justice system, and is used as models for other cases. As officials see these results, judges and prosecutors are increasingly interested in working on human rights cases, and with the BAI.

C. Helping Police Locate and Arrest Suspects

The BAI’s third core function is helping police locate and arrest suspects. Two teams of the *Brigade Criminelle*, a special investigative unit of the Haitian National Police, are assigned to BAI cases. As with judges and prosecutors, the BAI provides police with technical and material assistance. We meet with the investigators most days, and every week, to help plan strategy, not just for arrests and investigations, but also for obtaining resources and other cooperation from the government, and for working with judges, prosecutors and victims.

One 1997 arrest illustrates both the initiative of the *Brigade Criminelle*, and why they sometimes need a boost. The suspect was a former soldier, believed to be armed and possibly dangerous. The *Brigade* assembled a good file on him, including a description of his car and the location of his house. Along with the BAI, the police were trying to plan an arrest away from his home, to minimize resistance and interference from family and neighbors. One day a *Brigade* member burst into our office, breathlessly demanding the keys to the office’s car. He blurted out that the suspect was just up the street, stuck in the usual Port-au-Prince traffic.

As we handed over the keys, we asked if they had the numbers and firepower for the potentially dangerous mission, and were shown a shotgun which supplemented the service revolvers. The police caught up with the suspect in the borrowed car and made the arrest. The suspect did not resist, fortunately, as there was no ammunition in the shotgun. That arrest was number twenty-one for the case, which was, at the time, one more than the total number incarcerated for the Yugoslav War Crimes Tribunal.

D. Helping NGOs Improve Their Human Rights Advocacy

The BAI’s fourth core function is helping Haitian NGOs improve their advocacy strategy. BAI has two initiatives in this area, one for newer organizations and another for more established ones. In general, the BAI provides information to NGOs about its cases, consults on issues regarding organizational structure, helps with advocacy strategy, and provides material assistance.

Haiti has experienced a blossoming of grassroots organizations along with its democratic transition. Most of these groups, however, are underfunded and have limited organizing capability or experience. The BAI helps them develop their capacity by providing materials and contacts on organizational issues, lending them meeting space, computers and access to communications, and putting NGOs in touch with victims.

A good example of this collaboration is the Fondation 30 Septembre (FTS), which started in 1997 and is now Haiti's largest victims' group. Despite its success in organizing, the group does not yet have the funds for a permanent office. It uses BAI's facilities for meetings, telephone calls, word processing, and Internet access. The BAI and FTS meet frequently to exchange information and strategy ideas, and collaborate on initiatives of mutual interest. Partly through its collaboration with BAI, FTS has raised its profile in Haiti and abroad, to the point where it can now apply for funding to open its own facility.

The BAI also works with more established groups, helping them better engage with the government and advocate on issues related to human rights prosecutions. As governmental institutions make the transition to more democratic practices, civil society needs to make similar transitions in its strategies and engagement. The traditional denunciation by press release, although still valuable in some situations, needs to be supplemented with less confrontational, more nuanced strategies. The BAI helps with this transition by explaining its cases to NGOs "from the inside," to help them understand the real obstacles to progress, and allow them to better target their critiques. We also help them plan their strategy, and coordinate our own initiatives to maximize their impact.

For example, a coalition of established human rights organizations complained to us that judicial authorities never seemed to listen to their recommendations regarding one of the BAI's cases. A week later, a Ministry of Justice official complained that the same groups always denounced problems, but never offered any solutions. Seeing an opportunity, the BAI proposed, then facilitated, a series of meetings between the groups and the Ministry. We met with the coalition beforehand, to provide information and discuss strategy. We also helped them produce written materials, some of which were distributed to the press. The meetings were a success, as the coalition effectively advocated for several improvements in the prosecution, and established at least some ongoing relationship with the Ministry.

E. Promoting Coordination

The BAI's fifth core activity is promoting coordination among the various actors involved in its cases. As discussed above, there has traditionally been poor communication among judicial officials and either victims or NGOs. There has also been poor communication within the justice system: prosecutors do not always speak with investigating judges, both often neglect to listen or talk to police, and all three usually failed to coordinate with the prison system. The BAI has tried to bridge these gaps, by holding coordination meetings, serving as a conduit for information, and encouraging closer collaboration.

III. BAI Training Programs

The BAI is helping train a new generation of human rights lawyers through its programs for Haitian law graduates and U.S. law students. In our experience, the lack of trained lawyers willing and able to do high quality human rights or public interest work is the largest single problem with the justice system. Existing lawyers and institutions have shown their unwillingness to change this situation, so the BAI is creating a new structure to train a corps of new lawyers willing and able to change the system.

The main cause of this human resources problem is a training system that: a) does not train lawyers to prepare a quality, fact-based case, and b) perpetuates a legal culture that reinforces existing injustices. Law school in Haiti is theoretical, with no practice classes or clinics. Once a prospective lawyer completes law school, he or she must write a "*memoire de sortie*," or master's thesis, then complete a two year apprenticeship, or "*stage*" with a licensed lawyer. Both the *stage* and the *memoire* serve as numerical and ideological filters, preventing progressive students from becoming progressive lawyers. Both also miss opportunities to properly train law school graduates.

Although the *memoire* affords an opportunity to gain expertise and produce useful research in human rights issues, in practice it almost never does so. Technical support and guidance for the *memoire* are not integrated into the curriculum, so a graduate must find a lawyer to "godfather" it, and must pay for this service. Less than 25% of graduates ever clear this hurdle. Those who do are channeled down the well-worn paths, as existing lawyers are not interested in graduates and topics that either challenge the structure that supports them or are outside their professional experience.

The *stage* is the largest squandered opportunity to prepare lawyers to work on human rights cases. Practical training replicates the habits of the practitioner, which in Haiti means someone neither ideologically nor professionally qualified to prepare high quality human rights cases. As lawyers in Haiti have always sided with those able to pay or intimidate them, there are few people who can and will train young lawyers to cross the line to assert the rights of the poor or powerless. The experienced lawyers' own emphasis on procedure and theater at the expense of the presentation and analysis of facts precludes them from being able to train an apprentice in the rigorous preparation of a case.

The BAI provides free assistance on the *memoire* to graduates willing to do research on a topic of interest to the program. The most promising of these then enter the office to complete their *stage* through supervised work on the office's cases. Upon completion, some of the newly licensed lawyers will continue at the BAI, while others will enter the system as prosecutors, judges and private lawyers. The BAI will stay in contact with the graduates, and work to place them where motivated, trained candidates are needed for important judicial posts.

The BAI also trains law students from the U.S. We host interns from U.S. law schools each summer and most winters. More recently, we have established relationships with clinical programs at DePaul, Harvard and Yale Universities to work on our cases. This program exposes U.S students to real "developing world" human rights cases, with all their attendant promise and

frustration. Interns in Port-au-Prince work closely with victims, and are consequently exposed to a very different economic, social and political reality.

III. Conclusion

The BAI's system has already produced results. The Raboteau trial was completed in November of 2000, and is considered by far the best legal proceeding in Haitian history. Sixteen of the twenty-two defendants in custody were convicted, as well as thirty-seven *in absentia* defendants, including the dictatorship's top military and paramilitary leaders. National and international observers agreed that the case provided justice for the victims, while respecting the rights of the accused. The BAI's system of preparation is being copied in other high profile cases.

The Raboteau trial has also changed the way victims and official alike view justice. The victims now believe that the system can respond to their demands, and expect it to provide high quality justice, at least in important cases. Judicial officials as well have started believing in the system, and have recalibrated their own expectations.

The BAI's largest impact, however, may eventually come from its training program. If the office can add three to six well trained public interest lawyers to the bar every year, it will change legal training and the way lawyers relate to their clients forever.

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