

## AFFIDAVIT OF NICOLE M. PHILLIPS, ESQ.

I, **Nicole M. Phillips, Esq.**, hereby declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following statements are true and correct to the best of my knowledge.

### **I. Introduction**

1. My name is Nicole Phillips. I am a Staff Attorney at the Institute for Justice & Democracy in Haiti (IJDH), a Law Professor at the *Université de la Fondation Dr. Aristide Faculté des Sciences Juridiques et Politiques* (University of the Aristide Foundation, Faculty of Juridical and Legal Sciences) in Port-au-Prince, Haiti, and an Adjunct Law Professor at UC Hastings College of the Law in San Francisco, California. I am a member in good standing with the State Bar of California, and am also admitted to practice law in the Court of Appeals for the Ninth Circuit, Federal District Court for the Northern, Central, Eastern and Southern Districts of California.

### **II. Education and Experience**

2. I hold a B.A. in Political Science with minors in History and International Studies from the University of California, San Diego, and a J.D. from the University of San Francisco School of Law.

3. Since April 2010, I have been a Staff Attorney at IJDH. Based in Boston, Massachusetts, IJDH documents human rights violations in Haiti, and pursues human rights cases in Haitian and international courts. Our partner organization, *Bureau des Avocats Internationaux* (BAI), based in Port-au-Prince, helps victims and the justice system prosecute human rights cases. The BAI started the Rape Accountability and Prevention Project (RAPP) after the January 12, 2010 earthquake in Haiti to address the sudden increase in sexual assaults of women and girls living in earthquake internally displaced persons (IDP) camps. The program works with grassroots women's organizations, whose members were living in IDP camps and were assaulted in the camps. The BAI has over 500 gender-based violence cases, most of them victims of rape or attempted rape.

4. Since May 2010, I have spent four to seven months per year in Haiti, working at the BAI assisting on various projects, including RAPP where I have provided case support to BAI lawyers on gender-based violence cases, reviewed case files, strategized with our Haitian lawyers to prepare the case, and prepared international legal arguments to supplement legal briefings in trial court and appellate cases. I am fluent in French and have working knowledge of Haitian Creole. My work at the BAI has included trainings and collaboration with partner grassroots women's groups such as *Fanm Viktim Leve Kanpe* (FAVILEK - Women Victims Get UP and Stand Up) and *Komisyon Fanm Viktim pou Viktim* (KOFIV - Commission of Women Victims for Victims).

5. I have been in Haiti since March 1, 2017, and, with the exception of some work-related travel, I will be here until June 2017. During this trip, I have met with human rights lawyers,

victims of human rights violations, current and former government officials and grassroots activists to assess the current human rights conditions in the country.

6. When I am not physically in Haiti, I follow the human rights situation in Haiti closely through my work at IJDH. I am in almost daily telephone or electronic contact with colleagues and collaborators in Haiti, and regularly read news reports and human rights reports about Haiti. I am regularly consulted regarding human rights and legal procedure in Haiti by government officials from the U.S., Canada and France, United Nations officials, human rights organizations and journalists. I have provided training on human rights, politics and country conditions in Haiti to law students and professors, briefings to members of the U.S. Congress and their staffs, and testimony to several human rights bodies within the UN and the Organization of American States. I write regularly on human rights and law in Haiti, including book chapters and articles in academic journals and newspapers. I speak frequently about human rights in Haiti at law schools, universities and conferences, and am regularly interviewed for radio and television programs throughout the world.

7. In addition to my work at IJDH, the *Université de la Fondation Dr. Aristide* (UNIFA) *Faculté des Sciences Juridiques et Politiques* in Port-au-Prince, Haiti appointed me as a Law Professor in October 2013, and I teach international human rights to Haitian law students in French. Beginning in January 2015, I have served as an Adjunct Law Professor at UC Hastings College of the Law, in San Francisco, California, which has partnered since 1999 with the *Ecole Supérieure Catholique du Droit de Jérémie* (ESCDROJ), the first public interest law school in Haiti. Through the Hastings to Haiti Partnership (HHP), an annual delegation of UC Hastings law students engages in an academic exchange with law students at ESCDROJ. UC Hastings law students selected for the HHP delegation attend a seminar class I teach on Human Rights and Rule of Law in Haiti to prepare for the trip, which I coordinate and co-lead with other UC Hastings faculty.

8. Since 2014, I have been an Analyst for Freedom House researching and writing the Haiti chapter of the *Freedom in the World Report* and *Freedom of Press Report*. I wrote a chapter on gender violence in Haiti for a book that was released in July 2015, entitled, *Comparative Perspectives on Gender Violence: Lessons from Efforts Worldwide*. I have also testified before the UN Human Rights Council and UN Human Rights Committee on gender violence in Haiti. I have prepared and/or edited a number of reports on gender-based violence in Haiti, including submissions to international treaty bodies. Haiti underwent the Universal Periodic Review (UPR) process before the Human Rights Council in 2016. I helped prepare the UPR report in March 2016 with female Haitian lawyers specializing in gender-based violence, with input from nine Haitian grassroots women's and human rights organizations in Haiti. In January 2016, with input from ten Haitian grassroots women's and human rights organizations, I helped prepare two reports to the Committee on the Convention on the Elimination of Discrimination Against Women (CEDAW), entitled *Gender Issues Facing Women and Girls and Violence against Women, Trafficking, Prostitution, and Exploitation by UN Peacekeepers*.<sup>1</sup>

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<sup>1</sup> Submission for the 63<sup>rd</sup> Session of the United Nations Committee on the Elimination of All Forms of Discrimination Against Women, Feb. 25, 2016, *Violence Against Women, Trafficking, Prostitution, and Exploitation by UN Peacekeepers*, available at: [http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/HTI/INT\\_CEDAW\\_NGO\\_HTI\\_22846\\_E.docx](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/HTI/INT_CEDAW_NGO_HTI_22846_E.docx);

9. I have over twenty years' experience working on gender-based violence issues beginning with volunteer work at a nonprofit in San Diego assisting domestic violence victims obtain restraining orders and filing for dissolution of marriage. From 1995-1996, I worked at the YWCA of San Diego County, a non-profit organization working to empower women, men, and children to break the cycle of domestic violence and homelessness, and achieve self-sufficiency. I served as an administrative assistant and a legal advocate in the Domestic Violence program, which received funding from the U.S. Department of Housing and Urban Development (HUD) as a pilot project to provide a comprehensive legal response to domestic violence. The program included legal advocacy, including training to sensitize law enforcement officials and judges to domestic violence issues, and provided shelter, including long-term care of up to one year for victims and their children, and provided re-entry services for victims. As a legal advocate, my responsibilities included helping victims obtain restraining orders and dissolutions of marriage, including cases with complex child custody issues, coordinating volunteers and staff for legal clinics, testifying in court as a percipient witness on behalf of my client, and policy advocacy. I completed the 40-hour domestic violence anger management training certificate in 1996. Subsequently, I worked as a Victim Advocate at the City Attorney's Office, Domestic Violence Unit, in San Diego where I helped domestic violence victims, mostly Latina, advocate for themselves in their criminal cases against their perpetrator. It was my work with domestic violence victims that motivated me to attend law school in the first place.

10. While in law school, I worked for the Legal Aid Society Employment Law Center in San Francisco and helped domestic violence victims secure employment rights. I also worked in the Domestic Violence Unit of the San Francisco District Attorney's Office, interviewing victims to gather testimonial evidence and researching evidentiary questions.

11. I do not recall having ever met XXX. This declaration is based on my review of Ms. XXX's statement in this case and my knowledge of relevant conditions in Haiti. I am familiar with the broader context of Ms. XXX's application for asylum, including the history of domestic violence, increased violence and retaliation victims face when they try to leave their violent partner, and legal impediments to reporting and obtaining judicial protection from domestic violence.

### **III. Social, Economic, and Cultural Context of Violence against Women in Haitian Society**

#### **A. Poverty and its effects on Haitian women**

12. Against a political backdrop and natural disasters that have resulted in greater vulnerability of Haitian women to violence – including sexual violence and intimate partner abuse – violence against women is linked to high levels of poverty, cultural stereotypes, and a lack of rights enforcement. With approximately 60 percent of the population living under the national poverty line of US \$2.42 per day and 24 percent living under the extreme poverty line of US \$1.23 per day, Haiti is the poorest country in the Americas and amongst the most

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Submission for the 63<sup>rd</sup> Session of the United Nations Committee on the Elimination of All Forms of Discrimination Against Women, Feb. 25, 2016, *Gender Issues Facing Women and Girls*, (Feb. 25, 2016), available at: [http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/HTI/INT\\_CEDAW\\_NGO-HTI\\_22847\\_E.docx](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/HTI/INT_CEDAW_NGO-HTI_22847_E.docx).

impoverished worldwide.<sup>2</sup> Economic growth has declined to around 0.8 percent, and the depreciation of the Haitian gourde has resulted in higher domestic prices and high rates of inflation.<sup>3</sup> The unemployment rate is over 60 percent.

13. Professional opportunities for women are limited, and many women believe that the only way to make ends meet is to find a man who will take care of them. Lack of education and employment opportunities persist in Haiti, but women are particularly impacted because they are financially dependent on men. Women bear the brunt of poverty due to societal stereotypes, including workplace discrimination and unequal distribution of childcare responsibilities.

### **B. Cultural attitudes towards women – violence as a form of control**

14. Patriarchy and discrimination against women in the home, in government, at work, and in the courts are pervasive in Haiti. Haitian society retains a strong patriarchal structure handed down from the slave era and reinforced by conservative religious attitudes and tradition. Women are considered subordinate to men, which manifests in varying ways throughout all aspects of life. Women's economic dependence on men reinforces societal stereotypes that women and "domestic" work, such as maintaining the household, cooking, cleaning, and raising children, are inferior. In fact, many women live in single-parent homes where they are the primary care giver. Women have far less opportunities for education, and parents are more likely to send boys to school than girls, who remain at home to help with domestic duties. Women are denied access to health care, which is illustrated by the fact that Haiti has one of the highest rates of maternal mortality in the western hemisphere. Further, women lack access to legal protection and are often denied access to justice as a result. The dire situation for women in Haiti is greatly exacerbated for women in the poorest sector and rural areas outside of Port-au-Prince, which constitutes a majority of the population. Moreover, single women are even more vulnerable due to the weak laws and enforcement surrounding child support and protection for women in domestic partnership.

15. Violence against women is endemic in Haitian society, which stems from pervasive patriarchal views regarding women's role and place in society. Women are commonly viewed as objects of men. When Haitian sexual assault survivors discuss the effects of violence on their lives, they are likely to mention the oppressions of patriarchy and poverty as inextricably linked to the violence. Gender discrimination and patriarchal norms in Haiti have systematically denied women the power to either prevent or address injustice against them, and levels of impunity are alarming. These interlocking oppressions leave women vulnerable to violence on both an individual and larger scale, particularly in the home.

### **C. *Restavèk*: child domestic servitude victimizes poor children**

16. An estimated 300,000–500,000 child domestic servants rank Haiti second on a list of 162 countries with modern prevalence of slavery by a global slavery index.<sup>4</sup> The term *restavèk* is

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<sup>2</sup> The World Bank, Haiti – Overview (Sept. 16, 2016), available at: <https://www.worldbank.org/en/country/haiti/overview>.

<sup>3</sup> Id.

given to children in poor, usually rural families that live and work as domestic servants in homes. In principle, placement of a *restavèk* involves a parent from a poor family turning over childrearing responsibility to another household to feed, house and educate the child in exchange for the child's unpaid domestic service. However, many children become *restavèks* after the death of a family member. According to a 2004 study, a majority of *restavèk* placements occurred within one year of the death of another household member, usually a parent.<sup>5</sup>

17. After generations of practice, Haitian culture reinforces *restavèks* by acknowledging a clear distinction between one's own child and the child of another. This ideology is exemplified in a Creole proverb "*Lè w'ap benyen pitit moun, lave yon bò, kite yon bò,*" translated as "when you bathe someone else's child, wash one side, leave the other side unwashed."<sup>6</sup> Due to this perception, many host families do not treat them as their own children. They rationalize the practice of *restavèk* as akin to saving a life because they assume the children would have lived on the streets without food or shelter if not for their providing them the opportunity to serve. However, what they are able to provide the *restavèk* is often quite meager due to the widespread poverty.

18. Many *restavèk* children are exploited which creates a lasting effect on their education, health, mental wellbeing and overall development. A typical day for *restavèks* may include ten to fourteen hours of arduous household chores, such as cooking, washing, and cleaning, with no compensation. *Restavèks* rise before the host family, and sleep after the host family goes to bed. Host families in need of such services rely on free child labor because they cannot afford to pay for domestic help.<sup>7</sup>

19. *Restavèks* are often physically, emotionally, and sexually abused by their host parents. They are often malnourished when compared to the average Haitian child. Additionally, strenuous physical labor at a young age severely stunts a child's cognitive development. Without time to play, a *restavèk* child's cognitive development often falls short of expected growth. These circumstances are often worse for *restavèk* girls, who comprise two-thirds of the *restavèk* population.<sup>8</sup> Sexual abuse of *restavèk* girls by host-family males is extremely common.

20. While Haitian law outlaws the practice of *restavèk* and the exploitation, enforcement is almost non-existent. Haiti's weak justice system stems in part from a lack of political will to oversee law enforcement procedures. Because *restavèks* are dependent on their host families for food and lodging and isolated from society, often not able to attend school, they rarely report the abuse.

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<sup>4</sup> WALK FREE FOUNDATION, GLOBAL SLAVERY INDEX 40 (2013), available at <http://www.globalslaveryindex.org/report>.

<sup>5</sup> Glenn R. Smucker & Gerald F. Murray, *The Uses of Children: A Study of Trafficking in Haitian Children*, 27–28 (Dec. 2004), available at [pdf.usaid.gov/pdf\\_docs/PNADF061.pdf](http://pdf.usaid.gov/pdf_docs/PNADF061.pdf).

<sup>6</sup> Smucker & Murray, *supra* note 6, at 13.

<sup>7</sup> *The Plight of Restavèk (Child Domestic Servants)*, Institute for Justice and Democracy in Haiti *et al.*, Submission for the 112<sup>th</sup> Session of the United Nations Human Rights Committee, October 8 & 9, 2014 (Sept. 12, 2014) available at [http://www.ijdh.org/wp-content/uploads/2014/09/HRC\\_Restavek-Sept-12.pdf](http://www.ijdh.org/wp-content/uploads/2014/09/HRC_Restavek-Sept-12.pdf).

<sup>8</sup> *Id.* ¶ 13.

21. Ms. XXX's account of the abuse suffered at the hands of her step mother, VVV, resembles typical, though extreme, *restavèk* maltreatment. VVV moved into the house with her two sons within approximately one year of her mother's death. While her father lived in the house, he delegated care for Ms. XXX to VVV. VVV in turn took Ms. XXX out of school and forced her into domestic servitude as a *restavèk* (Declaration of XXX, para 14), while regularly beating her with her hand or horse whip. (para 15 – 16). As is typical with *restavèk*, VVV treated Ms. XXX worse than her birth sons.

*Everything changed when VVV moved in. Her word was the law. She spoke to me in a commanding way, demanding that I do house chores: cook, wash dishes, fetch water, clean. She made me responsible for her children, who were younger than me. When it came time to go to school, although my father had made preparations for me, VVV insisted that I stay home. She said that I was needed in the house and that it would be better to spend the money to send her boys to school. (para 14).*

*I did not have a childhood. I had no friends because I had no life outside of working for VVV and caring for her sons. She would not let me leave the house except for errands. (para 19).*

22. Psychological abuse to *restavèk* is common in order to dehumanize and control them. Ms. XXX was called the “*child of a dead person*” that “*would not come to anything*” in life.” (para 17). The sexual abuse by VVV's friend, the police chief ZZZ, was not uncommon for *restavèk*, though again extreme. VVV at best allowed the police chief to come to the house regularly to rape her daughter, and at worst, sold her to the police chief as a child prostitute. (para 24). Ms. XXX could not tell her father “because of ZZZ's threats to harm or even kill me” (para 25) as well as threats from VVV to starve or imprison her if she told anyone. (para 18). Ms. XXX could not tell the police, because her abuser was the only police officer in the area. She did not go to school, so she did not have contact with anyone outside of the family.

#### **D. Domestic Violence is Widespread and Unreported**

23. Domestic violence is common and widespread in Haiti, but reliable statistics are difficult to obtain. Available statistics reveal high levels of violence against women and domestic violence. Between 25 and 70 percent of Haitian women have been victims of gender-based violence.<sup>9</sup> Within these figures, between 24 and 86 percent were involved in domestic violence.<sup>10</sup> These statistics likely represent only a fraction of the actual number of cases of intimate partner abuse. *Solidarité Fanm Ayisen* (SOFA), a women's rights organization providing services to women victims of violence, reports that over 85 percent of their clients are victims of domestic violence.<sup>11</sup>

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<sup>9</sup> Haitian Ministry of Public Health and Population, *Haiti: 2012 Mortality, Morbidity, and Service Utilization Survey* (EMMUS-V) (2012), p. 16; Organization Des États Américain, Commission Interaméricaine Des Femmes, *Haiti, Reponse/S Au Questionnaire/Rapport National/Observations De L'autorite Nationale Competente (Anc)*, OEA/Ser.L/II.7.10, Jun. 24, 2008.

<sup>10</sup> Rapport - Bilan XI des cas de violence accueillis et accompagnés dans les centres d'accueil de la Sofa : Année 2010-2011 (SOFA Dec. 2011, 15) ; Canada : Immigration and Refugee Board of Canada, *Haiti : Domestic Violence, especially in rural areas ; protection and services available for victims* (Jun. 13, 2013), available at : <http://www.refworld.org/docid/51dd24534.html>.

<sup>11</sup> *Violence Against Women, Trafficking, Prostitution, and Exploitation by UN Peacekeepers*, supra note 1, at. 5.

24. The various unions in Haiti are complex, but any of them can produce a child and economic support. A study in 1980 summarized the unions into a few categories. Marriage (17 percent) and common-law marriage (34 percent) normally involve cohabitation and economic support. To like/love (6 percent), finance (6 percent) and to live with sporadically (20 percent) generally involve economic support.<sup>12</sup> Although most Haitians are practicing Christians and believe in the importance of marriage, in reality, marriage is less common due to economic, legal and other factors.

25. Domestic violence in Haiti pervades all of these unions and is widely accepted and used as a form of control in the home. A man hitting a woman during an argument is normalized and even expected as a wife (or domestic partner) must submit to her husband and her husband has the right to beat her because she is considered inferior to him. YYY's control over Ms. XXX demonstrated this type of behavior:

*I could not leave the house or talk to anybody without his permission. YYY decided when I could go and sell at the marketplace. I had to ask his permission to go to church.* (para 34).

26. Women and girls often enter relationships young to avoid abuse in the family home and or for financial stability. Women also have more prominence in society if they are partnered with a man. This appeared to be the case with Ms. XXX, who left her house at age 15 after two or three months of knowing YYY because:

*"He was sympathetic" and "He told me that he could help me escape the misery and suffering. He told me that he loved me."* (para 26).

*"YYY asked me to live with him 2 or 3 months after we started talking, and of course, I immediately went. I could not tolerate the abuse in my home anymore—the attacks on me by my stepmother, the humiliation and pain of being raped by ZZZ. I would have gone with anybody to escape that misery and pain."* (para 27).

27. Domestic violence manifests itself in many forms. Violence includes "insults, death threats, blackmail, manipulation, humiliation, harassment, isolation, rape, forcible confinement, murder, and paternal irresponsibility."<sup>13</sup> This is consistent with Ms. XXX's account of her abuse:

*He started to beat me while I was holding the baby. I struggled to free myself and managed put the baby down. YYY continued to beat me in the face and all over my body. He slammed my forehead down.* (para 32).

*The worst beatings happened at the end of the week, when he came home from drinking with friends. He would beat me with whatever was at hand: sticks, the flat of a machete, the whip. I have scars on my abdomen, my arms, and the backs of my feet where he burned me with his cigarettes.* (para 33).

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<sup>12</sup> James Allman, Sexual unions in Haiti. *International Journal of Sociology of the Family* Vol. 10, No. 1 pp. 15-39 (1980).

<sup>13</sup> Id.

28. A man raping his domestic partner is considered normal. In fact, the Haitian penal code does not provide for spousal rape, so most judges and prosecutors infer consent within a spousal or domestic relationship. Ms. XXX recounted regular sexual abuse throughout their relationship:

*That night, YYY came home drunk and wanted to have sex. I was still in pain and upset from the beating. As I cried, YYY forced himself on me. That was the first time he raped me. (para 31)*

*This time he raped me. He returned several times, once or twice a week, to beat me and rape me. (para. 45)*

*Every 2 or 3 days, YYY came and raped me. He would threaten to kill my son if I refused. (para 48).*

29. The violence increased over time, and extended to the children:

*He began to beat RRR once she started walking, around the time she turned one. After RRR, we had two more girls, DDD and HHH. He would get angry with them for just being children, for playing or making noise. He used his hands or sometimes a small whip. (para 36).*

*The worst injury befell HHH when she was 2 years old. YYY was out of control that day. Having forced me to have sex, he started beating me with a piece of wood breaking my right thumb. He then turned to HHH and hit her on the side of the head several times. HHH's right ear began to swell... Since that time, HHH has not had full hearing capacity in her right ear. (para 37).*

30. Many domestic violence victims are unable to leave the relationship due to lack of networks and social services. Ms. XXX has perpetually been without any assistance to find protection from her abusers. She could not leave the abuse from her step-mother as a child because she had no supportive family, friends, or network. (para 18, 19). She could not get help from her family with the police chief because her step-mother was complicit. (para 24). Her only escape was a relationship with YYY.

31. In my experience as a domestic violence legal counselor, it is very common for abusive partners like YYY to isolate their partner from their family, friends and community in order to exert more control over them and to extinguish their options for leaving the relationship. This isolation has a worse impact in Haiti due to extreme poverty, which makes women even more dependent on their abusive partner, and lack of legal protection and social resources.

*I left my home without telling anybody. YYY told me to stay quiet because otherwise my stepmother and father would not let me leave. After I left my father's house, I never saw VVV again and for several years, I did not speak to my father. (para 28).*

32. In addition, Ms. XXX became geographically isolated from her family, when YYY moved her to live in his home in L'oiseau "which was far, about a one day journey by car, from my father's home." (para 29).



#### **E. Sexual assault survivors are stigmatized in Haitian culture**

33. Like in many cultures, sexual assault survivors are stigmatized in Haitian culture. They are looked down upon as broken and damaged, their honor taken. Because of this stigma, victims feel humiliated and often do not report the crime, afraid that she will be looked down upon and ostracized by her family and community. If the victim is in a domestic relationship with the abuser, the family will invariably pressure the victim to return to him to maintain her honor and economic ties.

34. Many sexual assault victims in Haiti are minors under the age of 18. At the BAI, over 60 percent of our sexual assault cases involve minors, with some clients as young as two years old. Children survivors of sexual assault, without psychological or social support, internalize this stigma at a young age, which impacts their future domestic relationships.

35. Ms. XXX was taught about the stigma when she was a sexual assault victim at age 8, when she was raped in front of her family by thieves who also raped her younger sister and killed her mother:

*My family did not take my sister and I to get medical care because they did not want people to know that we had been raped. If people were to find out, then society would consider us to be worthless and would not be able to find husbands later in life. (para 10).*

36. The fear of stigma prevented her father from seeking medical treatment for his 6 and 8 year old daughters and reporting the heinous crimes to the police. (para 11). The stigma remained, and several years later Ms. XXX was also “*too ashamed to share [the repeated rapes by ZZZ] with anyone.*”

*Every time I lay down, even now, all I see is this person towering over me and I am afraid to even speak this person’s name because of the pain and humiliation. (para 21).*

37. The stigma from being a rape victim was so strong that Ms. XXX mentioned humiliation from ZZZ’s repeated rapes as a reason for getting out of the house and moving in with YYY. (para 28). At the same time, she did not want to tell YYY about her past abuse by the thieves and ZZZ. When she did tell YYY, he reinforced the stigma and used it against her throughout the years as a form of psychological abuse.

*YYY was very angry, demanding to know why I hadn’t told him and whether others knew. I assured him nobody knew about the rape. He warned me to never speak of it to anybody in the area. (para 30).*

*YYY disparaged me saying that if he had known strangers had raped me, he would never have taken me into his home, that I was worthless. (para 32).*

#### **IV. Retaliation and lack of protection from law enforcement make it difficult for Haitian victims of domestic violence to stay safe**

38. Haitian women in domestic violence situations live in constant state of fear, but are afraid to leave their partner or report the violence for many reasons, including shame and embarrassment, the threat of ostracism from their family and community, potential retaliation from the aggressor and his family, economic dependence on the partner, lack of social services such as emergency shelter and legal assistance, and apathy and abuse from law enforcement and the judiciary. Cases go largely unreported unless there is a breakdown of household relationship or if the abuse results in severe physical injury or unwanted pregnancies. Frustration with the judicial system deters reporting abuse. Unwilling to follow through with prosecution, judges often release suspects arrested for intimate partner violence and sexual assault, which perpetuates impunity and encourages aggressors to continue their acts of violence.

##### **A. Retaliation and escalation poses danger to victim and her family**

39. As one grassroots women's leader told me, there is *always* retribution when a domestic violence victim leaves her spouse. Often the abuser cannot accept that his spouse will "win" or leave him, so he frequently will find a weapon such as a handgun, machete or baton to stop her. If the victim does leave, she will not have access to any social services, making it difficult to find shelter, food and safety. Victims' families often try to dissuade her from leaving, especially if she is married or has a child with the abuser. In Haitian culture, a union with a man brings valor for women and women are expected to be docile to their spouse and put up with the abuse. In addition, the abuser's family will often persecute the victim, threatening violence to her and her family if she reports the abuse to law enforcement. As a result many victims are too scared to leave or report the abuse to the police.

40. If the domestic violence victim leaves the relationship and moves to another part of town, the threats of violence from her spouse and his family often escalate, putting her in more danger. Even if the victim moves to another part of Haiti, if the abuser learns where she is hiding, the abuser can often find her through his family and social networks.

41. This is what happened with Ms. XXX. Both times she moved to a different location within Haiti, YYY found her and the abuse escalated towards her and/or the children.

*It was 2009 when YYY found me and my children. MMM had been very sick and needed me to go to O Kap to buy our merchandise. Until this time, MMM had always been the one to go as I couldn't risk being found out by YYY. But our work depended on buying the goods so this one time I went. While in O Kap, a woman from L'oiseau saw me; she said people thought I had died. I explained how MMM had taken me into her home in Saint-Raphaël. At the time, I never thought the woman would tell YYY. But I believe she must have and that is how he knew where to find me. (para 44)*

*...I was in the marketplace when he rode up on a motor scooter. He put a knife against my back and told me to take him to the children. When we arrived at MMM's, my youngest child, a son by another man, was playing out front. When YYY saw the boy, he became enraged, accusing me of leaving him for another man. He brought his hands down on me and began choking me. He then*

*ran at the boy, striking him in the head. He told me that if I did not return to him, he would kill me and the children. (para 45)*

*A week later, YYY came back to MMM's house, where he again beat me, demanded that I return to him and threatened to kill me. This time he raped me. He returned several times, once or twice a week, to beat me and rape me. (para 46)*

Ms. XXX tried to leave again and moved a day's drive from Cap Haitien to Ouanaminthe, but he found her, and again the beatings and rape continued.

*He came to my house demanding sex, threatening to kill me and my son. I had nowhere to go. No longer could I drag my children around seeking safety. It had been futile. To save my life and the lives of my children, I would have to endure the abuse. Every 2 or 3 days, YYY came and raped me. He would threaten to kill my son if I refused; YYY could not tolerate that I had been with another man. He beat and yelled at the children when he saw them on their way to and from school. It went on like this for two years. (para 50)*

**B. Haiti lacks effective law enforcement or social services to assist and protect victims of domestic violence**

**1. Law enforcement is unable and unwilling to respond to complaints of domestic violence**

***Legal system in Haiti***

42. Haiti's judicial system reflects a culture of exclusion, impunity and outdated laws that makes it difficult for women victims of violence to access justice. Lack of access to education prevents major segments of Haitian society from understanding the justice system. Legal proceedings are conducted and most legal texts are written in French, but the majority of the population speaks Haitian Creole. Legal costs and lawyers are too expensive for the poor. The government does not provide legal assistance, and only a small number of civil society organizations provide legal assistance to victims. As a result, most Haitians – let alone women -- do not have access to the formal justice system. Deep-rooted patriarchal norms and gender discrimination coupled with economic disenfranchisement marginalize women – and especially poor women – from accessing the justice system. Administrators at all levels of the judiciary do not prioritize incidents of violence against women, do not take women seriously, do not properly investigate cases, and demonstrate a lack of respect for victims and their families during investigations.

43. In addition to being discriminatory, the judicial system is under-resourced and inefficient, and is burdened by a large backlog of cases, under-paid staff, outdated legal codes, and poor facilities.<sup>14</sup> Bribes are common at all levels of the judicial system. Serious backlogs and long wait times encourage corruption in the Haitian justice system. Attorneys often pay clerks or other officials to have their cases heard before others in the queue. Victims without lawyers are left out

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<sup>14</sup> Mario Joseph and Nicole Philips, *Judicial Corruption in Haiti: The Need for Discipline and Civil Society Participation*, 39 *Hastings Int'l & Comp Law Rev* 183 (2015).

of the behind-the-scenes maneuvering within the courthouse and cannot exert the sustained pressure on the prosecutor and investigating magistrate necessary to push their cases forward.<sup>15</sup>

44. Haitian laws are outdated. Courts apply legal codes adopted from historic French legal tradition that have generally not been updated to reflect modern principles of human rights. For example, the Haitian penal code and code of criminal procedure date back to between 1825 and 1835. Only in 2005 was the penal code reformed by decree to criminalize rape as an offense to one's physical integrity rather than an offense to one's moral integrity and honor.<sup>16</sup> The punishment for rape ranges from 10 years to life in prison depending on the circumstances, with heightened punishment if the rape involved a victim is less than 15 years old, was a gang rape, or resulted in death.

45. The Haitian legal framework does not criminalize domestic violence or marital rape, even though they constitute the majority of cases of violence against women in Haiti. Theoretically, victims of domestic violence can seek prosecution under the 2005 rape law, but according to interviews with lawyers, judges, and grassroots women's leaders, domestic violence cases other than murder are rarely taken seriously by the police or prosecuted. While the general sexual assault, assault, and battery laws can and should be used to prosecute cases of domestic violence, these cases are not pursued because the Haitian penal code does not specifically acknowledge domestic violence, making it difficult to negate consent and other elements. Women in abusive relationships therefore have almost no effective legal recourse in Haiti. Haitian law does not provide any protective measures against pending threats or acts of violence, such as temporary restraining orders.

### ***Barriers to Reporting and Filing Complaints***

46. In Ms. XXX's case, her father did not report the rape and her mother's murder by thieves when she was 8 years old, at least in part, out of fear of mistreatment, stigma and shame to the family from these crimes. The neighbors and local police must have known about the murder of Ms. XXX's mother, as rumors about events such as these circulate quickly and widely in Haitian rural communities, but it appears that no police investigation was done. The family may also not have reported the crimes given the political climate in Haiti at that time. In 1988, when the crimes took place, Haiti experienced insecurity due to the removal of dictator Jean-Claude "Baby Doc" Duvalier in 1986, which was superseded by a string of violent election attempts and grabs of power from Duvalier military supporters. An estimated 1,500 Haitians were killed by armed forces and secret police between 1986 and 1988,<sup>17</sup> creating great insecurity and a fear of law enforcement, especially in rural areas where Ms. XXX lived.

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<sup>15</sup> Id.

<sup>16</sup> Décret du 6 juillet 2005 *modifiant le Régime des Agressions Sexuelles et l'élimination en la Matière les Discriminations Contre la Femme* [Decree Modifying the Regulation of Sexual Assaults and Eliminating Forms of Discrimination Against Women], *Le Moniteur*, Aug. 11, 2011 (Haiti). See Code Pénal, arts. 278-281.

<sup>17</sup> Inter-American Commission on Human Rights, *Report on the Situation of Human Rights in Haiti, Chapter III, The Right to Life, Liberty and Security* (1988), available at <https://www.cidh.oas.org/countryrep/Haiti88eng/chap.3.htm>.

47. Similarly, no one in Ms. XXX's family sought assistance when the local chief of police, ZZZ, raped her weekly for five years between the ages of 10 and 15, either because they were complicit with the crimes (VVV) or because ZZZ was the law enforcement agent for the town.

*The Section Chief came to the house regularly to rape me. I could not tell my father because of ZZZ's threats to harm or even kill me. While he forced himself on me, ZZZ would hold a razor blade in one hand threatening to cut me. One time he nicked me in the thigh and asked me if it hurt. He said it would hurt a lot more if I told anybody. There was no police to go to. ZZZ was the police.* (para. 25).

*He was the government authority designated to receive crime reports in the area. The community would go to his home to make complaints and write declarations. He would take the documents to the police station in Fort-Liberté. The Section Chief was called upon to settle disputes and take care of official matters. I never saw any police in our neighborhood other than the Section Chief.* (para 22).

48. On top of this personal history of abuse from law enforcement, Ms. XXX faced the same barriers to reporting sexual violence that Haitian women around the country face. Women and their families are often mistreated when they attempt to enforce their rights resulting in lack of confidence in the judicial system's ability to provide protection and redress. Male judges and prosecutors do not have adequate training to address the sensitivities of women victims of violence and often try to intimate and threaten lawyers representing victims in court. Judges might unknowingly re-traumatize the victim at a confrontation hearing by making a victim sit next to their accuser.

49. The vast majority of law enforcement are men, and while police officers have become more receptive to women's complaints of sexual assault and rape in the capital, they lack training and experience working with women victims of violence and documenting crimes of sexual violence, especially in rural areas. Police officers frequently shame and blame victims, asking inappropriate questions such as what she wore that may have caused the sexual assault, what she did to attract the aggression, or if she had previously had sexual relations with the perpetrator. According to a 2012 study, over half of sexual assault victims who tried to report a crime to the police indicated that officers refused to take the report or dissuaded them from doing so.<sup>18</sup>

50. The accusatory, discriminatory, and sexist attitude of some police officers re-traumatizes victims and dissuades them from reporting. Although there has been an increase in sensitivity trainings for police officers on gender-based violence cases in recent years, women's organizations still report that it is common for police to demand "a favor" or "a fee" – a bribe – to investigate a case or make an arrest. While police training on gender-based violence cases has had some impact on responding to spousal abuse, police continue to be reluctant to involve themselves in domestic matters.

51. Given her family history of stigma, shame, humiliation and never reporting sexual abuse or beatings to the police, on top of the legal barriers to reporting sexual assault crimes as

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<sup>18</sup> *Violence Against Women, Trafficking, Prostitution, and Exploitation by UN Peacekeepers*, supra note 1, at 8.

described above, Ms. XXX concluded that the police was neither trustworthy nor available to assist her. Accordingly, she did not feel she could report the rapes and beatings from YYY:

*I did not go to the police. For me, there is no police or protection. The police had raped me when I was only a child. I never thought of going to the police. They would not have protected me if I had. The police do nothing to help if a man beats a woman. In Saint-Raphaël, I saw my neighbor getting her face beaten by her partner out in the street. The woman lost her eye and was blinded. No police came to help her during the beating. The woman told me that no police ever helped her. Not only would I receive no help from the police but YYY would certainly kill me if I tried. I believed him when he said he would kill me and the children if we ever told anybody. (para 47).*

52. But even if Ms. XXX had reported YYY's crimes, it's unlikely that the police would have been useful. When law enforcement does arrest the abuser, rather than prosecuting, the court's practice is to ask for conciliation between the two parties. In response, the family of the abuser will pressure the victim to withdraw the legal case and let their son out of prison, especially if the son has a job and is the breadwinner of the family. The BAI has three current cases with the aggressor in prison. The clients do not sleep in their homes out of fear of retaliation; one is sleeping in a friend's garage because the family of aggressor threatened her and her family.

### ***No shelters, few government services***

53. Lack of human and financial resources hampers the justice system, limiting the help available to victims of sexual assault, such as legal assistance, shelter, or psychological counseling. There is also no mandatory police reporting system of child and domestic abuse as there are in many states in the U.S., nor are there social services to refer victims. There are no government-funded shelters for women in Haiti. Based on conflicting conversations with government officials and grassroots women's activities, it's unclear how many private shelter beds are available to victims of gender based violence, or whether any are available. I know of a few organizations that have provided a small number of beds in Port-au-Prince, but due to funding, none of those organizations currently provide emergency shelter. Very few organizations provide support to victims of rape, and these organizations are under-resourced and lack governmental support. Virtually all services for women are located in the capital; services for women in secondary cities and provincial areas are virtually nonexistent.

54. Victims who seek emergency shelter generally stay in the homes of family or friends, which, due to poverty and a significant housing shortage in Haiti, often are already overcrowded. These homes are also not secure against an armed abuser, which was the case with YYY. When Ms. XXX left YYY to live a day's drive away in 2005, he eventually found her both times she escaped and was able to beat and rape her regularly because the homes lacked security. (para 44, 49).

### **C. Not safe to return**

55. Haiti's geography, economics, and social system make it difficult for victims of repression to find safety elsewhere in the country. Haiti is small, about the size of the State of Maryland. Furthermore, Haiti is considered a "high context" society. Personal networks of

family and friends are extremely important to one's ability to function in society. It is hard to find work or fit into a new social network outside of one's previous network. Because leaving one's town, community and social network is rare, when someone does so they typically attract attention in their new surroundings. For example, when Ms. XXX fled the first time, an acquaintance of YYY saw her and told YYY where to find her.

*While in O Kap, a woman from L'oiseau saw me; she said people thought I had died. I explained how MMM had taken me into her home in Saint-Raphaël. At the time, I never thought the woman would tell YYY. But I believe she must have and that is how he knew where to find me. (para 44).*

56. Social networks also operate in two directions. Although they permit survival under difficult economic conditions (sharing food, shelter and other resources), they also ensure that personal information is available to other members of the network. YYY has demonstrated that he will find Ms. XXX if she returns to Haiti, and he will beat and rape her, as did continuously when they were together between 2000 – 2005, and after she escaped but he stalked and found her in 2009 – 2011. After Ms. XXX carefully left with her three children, she took precautions so that he wouldn't find her. She had no contact with YYY or her family, and yet, he still found her five years later. YYY maintains contact with the children and her aunt, who reports that he still is abusing them and hoping for Ms. XXX's return. This demonstrates a strong likelihood that he will find her if she returns to Haiti.

*Around the end of 2013 when I was living in Santa Catarina, my aunt told me that she saw YYY in the marketplace in Ouanaminthe. He approached her, asked where I was and threatened to kill me if he ever saw me. He began to really harass my family in early 2015, when my sister LLL died. My aunt reported that YYY showed up at the funeral asking when I was going to arrive; he believed I had to come back at some point for my sister's death. He went to my aunt's house and our neighbors' homes asking about me. He began to harass and attack the children again. My daughters have said that he often has attacked them on their way home from school, hitting them and threatening them even in front of their friends. (para 60).*

*I believe that he hurts them in an attempt to hurt me, or in an attempt to provoke my return Haiti to protect them so he can then rape and kill me. (para 63).*

*Yet if I return to Haiti, YYY will kill me. (para 64).*

*If I return to Haiti, I know that YYY will beat, rape, and kill me. I have scars on my body from where he has beaten and burned me. For years, I suffered his brutality—physical abuse, threats, humiliation, and rape. He has held a machete to my head and threatened to kill me. The government will not protect me because the police do not provide assistance to rape victims, nor do they treat domestic violence as a crime. There is nowhere in Haiti that I could live without YYY finding me and harming me. Haiti is a small country and communities know who comes and leaves. Wherever I have tried to escape, YYY has hunted me down and abused me. (para 65).*

## V. Conclusion

In my opinion, it is extremely likely that if Ms. XXX returned to Haiti, she would continue to be a victim of domestic violence of the nature that she previously experienced before she left Haiti. YYY has demonstrated repeatedly his lack of control and violent tendencies towards Ms. XXX and her family. Threats and violence even escalated in 2013 after she had ended the relationship. Given gender discrimination, the lack of training, resources and responsiveness from law enforcement, and the lack of social services available to victims of domestic violence, Ms. XXX and her family would be on their own to fend for their safety. If Ms. XXX made contact with her family and friends, YYY would be able to eventually find her if he wanted to.

Executed on: May 19, 2017

Signature:

A handwritten signature in blue ink, appearing to read 'J. L. P.' or similar, written over a faint dotted line.