

THIS DOCUMENT IS A DRAFT OF A BOOK CHAPTER WRITTEN IN 2003, FOR A SERIES OF BOOKS ON WOMEN'S HUMAN RIGHTS. THE SERIES WAS CANCELLED, SO THIS CHAPTER HAS NEVER BEEN PUBLISHED. THE CHAPTER SHOULD BE USEFUL FOR SCHOLARS AND IMMIGRATION ADVOCATES INTERESTED IN GENDER-RELATED VIOLENCE IN HAITI IN GENERAL, AND POLITICALLY-MOTIVATED RAPE BETWEEN 1991 AND 1994 IN PARTICULAR.

HAITIAN WOMEN'S FIGHT FOR GENDER JUSTICE
Brian Concannon Jr.

Victims¹ of political rape during Haiti's 1991-1994 dictatorship are tenaciously pursuing a groundbreaking and promising struggle for gender justice. They seek to prosecute those responsible for the rapes, including the top military leadership, as part of a larger effort to fundamentally transform the social, economic and political conditions that permitted the rapes to happen. They intend that their struggle change forever the way that Haitian women can and do respond to violence, by removing gender-based obstacles and empowering women through organization and education.

The initiative is highly ambitious: no national justice system has successfully prosecuted top leaders for political rapes. Haiti's grinding poverty, difficult transition away from centuries of dictatorship and sharp social divisions complicate the task, as does an international development assistance embargo against the government. The size and complexity of the obstacles to justice require a long-term, complex and highly persistent effort that integrates legal, political and organizational strategies. Nevertheless, the Haitian people, especially women, are well-practiced in persistence, and have overcome great odds before.² They are determined to find justice, and after nine years, their determination shows no sign of waning.

¹ Although the term "survivor" is often preferred to "victim" elsewhere, women in Haiti who have been raped for political reasons choose to call themselves "victims." Use of the term by Haitian women or in this chapter does not imply lack of agency.

² The first time was Haiti's independence in 1804, wrested from Napoleon, and the world's only example of a slave revolt succeeding in gaining independence.

The struggle so far has succeeded partially. Although no major rape trials have been held, there is a promising case in the pipeline. Public acknowledgement of the crimes has been significant, and rape survivors have received unprecedented, if still inadequate, treatment and other benefits. Perhaps most important, the nine years of democracy since the dictatorship's end, the longest in Haiti's history, have afforded women safety from systematic political rapes. It has also provided new opportunities for organizing and allowed for unprecedented participation by women in the public sphere.

This chapter will explore Haitian women's struggle for justice, including initiatives inside and outside of the formal justice system. It will briefly describe the rapes, then examine the economic and social context of the women's fight for justice. The chapter will then discuss women's organizing in Haiti before analyzing the struggle itself, and recommending how the international community can support Haitian women in this effort.

THE BASIS FOR INTERNATIONAL CRIMINAL ACCOUNTABILITY

On September 30, 1991, a military *coup d'état* 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.³ 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.

³ See generally, SIM 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

Soldiers and paramilitaries raped hundreds, possibly thousands,⁴ of women during the dictatorship. The rapes were massive, systematic, and designed to terrorize and intimidate the pro-democracy movement.⁵ The perpetrators maximized the terror through sadism: multiple rapes, forcing family members to watch, forced incest and raping young girls and pregnant women.⁶ 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

QUOTIDIEN EN HAÏTI 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).

⁴ Truth and Justice Commission Report, *supra* note 3 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).

⁵ Truth and Justice Commission Report, *supra* note 3 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.

⁶ See, e.g., Marie M. B. Racine, *LIKE THE DEW THAT WATERS THE GRASS*, 24, 25, 29 (1999).

are considered the *poto mitan* (centerpost) of Haitian society.⁷ Humiliating, intimidating and incapacitating the centerpost was a way of definitively crushing civil society.⁸

The rapes were well documented. During the dictatorship, they were reported by Haitian human rights groups,⁹ intergovernmental organizations,¹⁰ observer delegations and international human rights groups.¹¹ 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.¹² 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].”¹³ Although the OAS and later the UN did impose an embargo on fuel and other items,

⁷ Jennie M. Smith, *WHEN THE HANDS ARE MANY: COMMUNITY ORGANIZATION AND SOCIAL CHANGE IN RURAL HAITI*, 158 (2001).

⁸ 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”).

⁹ In particular, the *Plateforme des Organisations Haitiennes de Droits Humaines*, and the Catholic Church’s *Commission Justice et Paix*.

¹⁰ 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 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)].

¹¹ Human Rights Watch/National Coalition for Haitian Refugees, *Rape As a Weapon of Terror*, July 1994.

¹² Nicole Magloire, MD, *Expérience de suivi gynécologique de femmes violées*, in *HAITI: DROITS DE L’HOMME ET REHABILITATION DES VICTIMES* 54 (UN/OAS Civilian Mission to Haiti, 1998).

¹³ 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 6 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”).

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,¹⁴ often called the world's first structural adjustment program.¹⁵ 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.¹⁶

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.

¹⁴ Mildred Aristide, CHILD DOMESTIC SERVICE IN HAITI AND ITS HISTORICAL UNDERPINNINGS 108 (2003).

¹⁵ 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).

THE CONTEXT OF THE STRUGGLE

The fight for justice for political rape shapes and is shaped by dual transitions: Haitian society's struggle for democracy and the global struggle for accountability for women's human rights violations, especially political rape. Both transitions are works in progress. Before 1994, Haiti had long been a dictatorship and throughout the world large-scale political rape went almost completely unpunished. A decade later it is generally accepted, if not always observed, that Haiti is irrevocably democratic, and that politically-motivated rape is a punishable crime against humanity. Despite their imperfections, the two transitions -- individually and together -- present unprecedented opportunities for the women of Haiti to seek justice.

The International Transition

The international transition in gender justice is better described elsewhere in this volume, but for our purposes includes formal legal advances, such as the prosecutions by the *ad hoc* tribunals for Rwanda and the former Yugoslavia, treaties such as the Rome Statute of the International Criminal Court and the Convention Against Torture, changes in human rights reporting by non-governmental organizations (NGOs) and inter-governmental organizations (IGOs), and the increased ability of organizations, especially women's organizations, to advocate for women victims of human rights violations.

The international transition has helped shape the Haitian women's struggle in many ways. When they began seeking justice in 1994, Haiti's political rape survivors had no models of successful prosecution for large-scale, political rape, even to show that justice for them was possible. The *ad hoc* tribunals' trials from 1998 on proved that justice could be attained, and provided a roadmap for getting there. Even before that, the increasing organization and

¹⁶ Special Rapporteur's Report, *supra* note 4 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

mobilization of women's and human rights groups around international crimes against women ensured that the crimes were documented and reported, and that the victims received some assistance. Finally, increased talk and action about gender crimes in the international community has helped advance the discourse about political rape, within women's organizations and in the society at large.

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.¹⁷ 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.¹⁸ 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.¹⁹ 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.

The National Transition

Haiti's national transition towards justice is a journey away from centuries of extreme poverty, dictatorial political and legal systems, patriarchy and social division. It is moving

whose trauma from the massacre was comparatively light.

¹⁷ Inter-American Commission Report (1995), *supra* note 10, 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).

towards a future where the population's minimum needs are met, governments are responsive to the citizenry, and the society is more egalitarian and less divided. Haitian women often sum up the transition with the single word "*chanjman*" ("change"), to indicate the comprehensiveness they seek, sometimes adding "*tout bon vre*" ("truly, completely") to indicate the depth.

The country's political history, from Columbus' arrival in 1492 until 1994, was dominated by dictatorships. Although slavery in the French colonial era was the most horrific, Haitian regimes, including most recently that of Francois and Jean-Claude Duvalier (1957-1986) and the *de facto* military dictatorship (1991-1994), brutally suppressed the population, and implanted a government structure responsive to the dictatorships' needs. This structure was most obvious in Haiti's military, but was entrenched throughout the government bureaucracy, from public works to education to justice.

Haiti's political transition to democracy started with the successful overthrow of Jean-Claude Duvalier in 1986. It continued sporadically through alternating democratic openings and repressive crackdowns until October 1994. Since then, the transition has proceeded without interruption. Such transitions are never easy, especially for very poor countries with little democratic experience. Haiti's has been remarkably successful in some ways: no *coup d'etats* have succeeded since 1994, two democratically-elected presidents have voluntarily ceded power to elected successors (for the first and second time ever). Both democracy and the government enjoy strong popular support. The army, long a key player in both repression and instability, has been demobilized. Yet, an almost continuous crisis over the legislative branch, along with the accompanying development assistance embargo, has denied Haiti's government necessary international support and diverted scarce management energy from more important institution-

¹⁸ *In re D-V*, 12 I. & N/ Dec. 77, 79 (U.S. BIA 1993).

¹⁹ Anker, *Boundaries in the Field of Human Rights*, *supra* note 17, at 142.

building work. The result is frustratingly slow progress on many critical fronts, including healthcare, education, security and justice.

The transition's significant successes in some areas have been tempered for all Haitians by the frustratingly slow pace of change in others. One of the largest sources of frustration is the interlocking of the various problems: progress in one area is repeatedly blocked by a problem in another. Interlocked problems acquire a collective strength more powerful than the sum of each part, requiring addressing the complex whole to make progress in a single area. This is especially true for women, upon whom the burdens of poverty, gender, social division and exclusionary justice converge.

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.²⁰

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.²¹ Poverty constrains women's choices about

²⁰ Bell, WALKING ON FIRE, *supra* note 13, at 18-19.

²¹ Special Rapporteur's Report, *supra* note 4, at 4, para. 11.

where to live and work, how to travel, even who to accept as sexual partners,²² 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.

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.

Haiti's democratic transition has shown some ways in which divisions can be overcome, but the society remains deeply divided. The movements that ousted Jean-Claude Duvalier in

²² Farmer, *PATHOLOGIES OF POWER*, *supra* note 13, at 39.

1986 and led to Haiti's first democratically-elected president, Jean-Bertrand Aristide in 1991, drew strength from all sectors of Haitian society. Yet, the broad-based consensus against dictatorship and for democracy subsequently fractured, often along familiar lines, when confronted with the difficult decisions of a democratic transition. Although class is rarely discussed outright in debates about democracy, the most hotly contested issues usually revolve around the respective roles and powers of Haiti's poor and poorly-educated majority, and its better-trained but less numerous elites.

Toward Justice

The dictatorships ensured that the justice system evolved to respond to the needs of those with military and economic power.²³ Legal codes mostly remain as Napoleon left them; the criminal procedures facilitate obfuscation and delay. However, the foundation of dictatorial structures in the justice system is not the law itself, but the legal system's practices and people. Corruption is widespread, skewing justice towards the highest or most powerful bidder. Chronic under-investment and low salaries make honest practices extremely difficult for officials. Even where judicial officials are not dishonest, the legal culture encourages elitism. Most proceedings are conducted primarily in French, which is not understood by two-thirds of the population. Juries are generally chosen from the middle and upper classes. There is no tradition of lawyers using their skills to help the poor challenge the powerful, and high barriers to bar admission filter out the many who enter law school seeing the law as an instrument of progressive social change.²⁴

²³ See, Brian Concannon Jr., *Beyond Complementarity: The International Criminal Court and National Prosecutions, a View from Haiti*, 32(1) COLUMBIA HUMAN RIGHTS LAW REVIEW 201, 209-14 (2000); Stotzky, SILENCING THE GUNS IN HAITI, *supra* note 3, at 81 (Haiti's judicial structure is "less developed than that of virtually any nation that has attempted" a democratic transition).

²⁴ Brian Concannon Jr., *The Bureau des Avocats Internationaux, A Victim-Centered Approach*, in EFFECTIVE STRATEGIES FOR PROTECTING HUMAN RIGHTS: ECONOMIC SANCTIONS, USE OF NATIONAL COURTS AND INTERNATIONAL FORA AND COERCIVE POWER, 61, 68 (David Barnhizer, ed., 2001).

The justice system's transition has been slow and frustrating. Entrenched people and practices responsive to a dictatorial system are proving more difficult to reform than laws. National and international investment in buildings and materials, as well as in people,²⁵ have yielded better equipped facilities, and a small corps of judges and prosecutors willing and able to apply the rule of law. However, these improvements have lagged behind increasing demands on the system,²⁶ and delay and corruption are all too common. Despite some notable successes in prosecuting major human rights cases, the overall response of the justice system to human rights issues has been disappointing.

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.²⁷ 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.

²⁵ The *Ecole de la Magistrature*, or Judicial Academy, opened in 1995, has made some strides in training judges and prosecutors, conducting continuing education sessions for existing officials, and graduating three classes from its year-long intensive program, which includes some training in gender issues.

²⁶ Part of the increase is demographic, i.e., in terms of population and urban migration. But the system is also a victim of its own success; as it responds better to the needs of the majority, more people resort to it, adding to the caseload.

²⁷ 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.

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

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,²⁸ 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

²⁸] The 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.

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.²⁹ The violence has been widely tolerated by society,³⁰ 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.

Transitions in International Relations

Haitians also seek a transition in the relationship between their country and the international community. Foreign individuals, governments and organizations have contributed much good to Haiti. On the other hand, the international community has also taken enough steps to undermine Haitians' security, autonomy and material well-being throughout history for many

²⁹ Bell, *WALKING ON FIRE*, *supra* note 13, at 20-21 (studies have found an "astronomical incidence of domestic abuse," and women have historically suffered "rampant and devastating state-sponsored violence.").

to consider foreign exploitation an integral part of the interlocking oppressions.³¹ When the Haitian Revolution of 1804 ended the horrors of slavery, the world's governments refused to recognize Haitian independence for decades, afraid of the precedent of a successful slave revolt. France recognized Haiti only after exacting a debt that saddled the economy for a century, the U.S. not until it abolished slavery 60 years later.³² Foreign powers have repeatedly propped up repressive governments that suited their interest, most recently the Duvalier dictatorship. The U.S. continued to train the Haitian military during the *de facto* dictatorship,³³ and provided funds and encouragement to the largest paramilitary group.³⁴ During the 1994 intervention that restored democracy, U.S. troops removed 160,000 pages of documents from military and paramilitary facilities, and refused to return them for six years. Most of the top military and paramilitary leaders found refuge abroad.³⁵

Most recently, North American and European governments have imposed a development assistance embargo on Haiti.³⁶ The embargo withholds approximately \$500 million dollars, some of it loans that were, by their terms, already approved and disbursable. The embargo stops many urgently needed projects in healthcare, education, nutrition and sanitation.³⁷ It

³⁰ Racine, LIKE THE DEW THAT WATERS THE GRASS, *supra* note 6, at 33.

³¹ Smith, WHEN THE HANDS ARE MANY, *supra* note 7, at 160.

³² U.S. Senator Robert Hayne of South Carolina declared, "Our policy with regard to Hayti [sic] is plain. We never can acknowledge her independence.... The peace and safety of a large portion of our union forbids us even to discuss [it]." H. Schmidt, THE UNITED STATES OCCUPATION OF HAITI, 1915-1934 (1971), 28.

³³ Training records on file with author.

³⁴ The most prominent paramilitary organization was the Front for the Advancement and Progress of Haiti (FRAPH, the French acronym is also a Creole and French homonym for "hit"). FRAPH's top leader, Emmanuel Constant, was paid and encouraged in his activities by the CIA. He lives in New York, despite a 1995 U.S. deportation order and a murder conviction in Haiti. See David Grann, *Giving "The Devil" His Due*, THE ATLANTIC MONTHLY, June 2001 54, 65-67.

³⁵ Two of the dictatorship's top military leaders, Raoul Cédras and Philippe Biamby are in Panama, the third, Michel François, is in Honduras. Much of the rest of the High Command live in the U.S., although two were deported to Haiti in January 2003.

³⁶ Paul Farmer, THE USES OF HAITI, 357-370 (2003); Paul Farmer, *Haïti, l'embargo et la typhoïde*, LE MONDE DIPLOMATIQUE, July 2003, at 26.

³⁷ Paul Farmer, Mary C. Smith Fawzi, Patrice Nevil, *Unjust Embargo of Aid for Haiti*, 361 THE LANCET 420 (February 2003); Tom Reeves, *Still Up Against the Death Plan in Haiti*, DOLLARS AND SENSE, September/October 2003, at 39-40.

disproportionately targets the poor, and therefore women, who most need these services. It also targets the development of government institutions, especially the justice and law enforcement systems.³⁸

Haiti's relationship with the international community shapes the women's struggle because they view international injustices as part of the larger context of injustices that they must combat. Accordingly, they have devoted some of their advocacy energy to international issues, including the return of the seized documents, the harboring of perpetrators and most recently, the embargo. Haitian women have also succeeded in shaping this international system. They formed an important part of the campaigns that forced the return of the seized documents in 2001, and the deportations from the U.S. of two members of the High Command in 2003.

Possibilities in the Transition

The counterpoint to Haiti's history of oppression is an inspiring history of overcoming apparently insurmountable obstacles. The horrors of slavery ended when the slaves rose up and fought a twelve year long war against better trained and financed opponents, finally prevailing against Napoleon in his prime. A valiant irregular army resisted the U.S. occupation (1915-1934) for years. Grassroots organizing against the Duvaliers led to a flowering democratic movement and nationwide protests that forced Jean Claude "Baby Doc" off to France. As horrible as the *de facto* dictatorship's terror was, in three years it never silenced the pro-democracy resistance. Today, despite worsening poverty and frustration with the pace of Haiti's transition to democracy, Haitians turn out in large numbers to almost every election, and victims keep fighting for justice every day.

³⁸ In July 2003, public pressure and Haiti's payment of \$32 million in arrears led to the release of some Inter-American Bank loans. Reeves, *Still Up Against the Death Plan in Haiti*, *supra* note 37 at 40.

This persistence in the face of adversity provides hope that *chanjman* will come to Haiti, that its citizens will acquire the minimum material, social and political conditions for a dignified life. The successful prosecution of the Raboteau Massacre case in 2000 provided an example of both what is possible in the area of justice and how to achieve it. After six years of effort, the Raboteau victims succeeded in convicting 53 defendants, including the *de facto* dictatorship's top military and paramilitary leaders. This success amid a generally poor judicial response to the dictatorship's crimes shows that the system's weaknesses and uneven commitment to human rights are formidable barriers, but ones that can be overcome with a combination of cooperation and pressure.³⁹

Women have organized in Haiti with great persistence, but against great odds. In addition to overcoming poverty and sexism, women must find ways to build bridges over deep divides, especially of class, but also over rural/urban, political and color divides. The movement must also find a way to respond to the new reality of a government that is fundamentally, if imperfectly, democratic, which requires adding engagement with the government to the traditional criticism of the authorities.

Organizing Successes

The most revolutionary success of women's organization in Haiti is its mere existence.⁴⁰ After centuries of patriarchy and brutal repression, women's organizations have flourished throughout the country in the last two decades, in all socioeconomic classes and geographical areas. Groups are established for many purposes, including commercial, credit, literacy, industrial, cultural, political, social and human rights. Many women find membership empowering far beyond their group's official purpose. They report that an organization behind

³⁹ See, Concannon, *The Bureau des Avocats Internationaux, A Victim-Centered Approach*, *supra* note 24, at 61.

⁴⁰ See, e.g., Racine, *LIKE THE DEW THAT WATERS THE GRASS*, *supra* note 6, at 31.

them, with the threat of concerted action, gives them confidence and provides leverage within the family and community. The solidarity fostered by collective action encourages reflection on women's status, and discussion of ways to create a more fair society.⁴¹

However, the women's movement has gone beyond simply persevering. Women's organizations constitute one of the most dynamic sectors of Haitian civil society, with women inserting their concerns, their perspectives and themselves into all areas of the *chanjman* struggle.⁴² Although women's rights have lagged behind the general trend,⁴³ women have made substantial gains in most areas, from the home to organizing to national politics. Among the more prominent successes since 1994 are the creation of a Ministry for Women's Affairs, the nomination of several women ministers, including a Prime Minister, and women occupying one-third of the seats in the current Senate.

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.⁴⁴ 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 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

⁴¹ Bell, WALKING ON FIRE, *supra* note 13, at 208-9.

⁴² *Id.* at 94-103.

⁴³ *Id.* at 66.

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.

As elsewhere,⁴⁵ those who pioneered the formal feminist movement in Haiti came largely from the group of women who had the time, resources and education to take up the struggle: the middle and upper classes.⁴⁶ Although the movement obtained many civil and political rights for Haitian women in the first half of the 20th century,⁴⁷ it did not address the economic and social issues for which the majority of women felt *their* women's movement had been fighting for centuries. A common interest in fighting the Duvalier dictatorship, along with exposure to international feminist currents helped close this gap during the 1980's,⁴⁸ but since 1994, political and economic controversies have pried it back apart.

The established women's organizations, often referred to as "NGOs," have a well-developed capacity to analyze, organize, write and advocate in the national and international

⁴⁴ Racine, *LIKE THE DEW THAT WATERS THE GRASS*, *supra* note 6, at 26 (women cannot come to an organization's meetings "because they are hungry and have not eaten for days").

⁴⁵ Ann Russo, *We Cannot Live Without Our Lives: White Women, Antiracism and Feminism*, in *THIRD WORLD WOMEN AND THE POLITICS OF FEMINISM*, 297, 298 (Chandra Talpade Mohanty, Ann Russo & Lourdes Torres, eds., 1991).

⁴⁶ Bell, *WALKING ON FIRE*, *supra* note 13, at 149-50.

⁴⁷ *Femmes en Démocratie*, *GUIDE JURIDIQUE A L'USAGE DE FEMMES*, *supra* note 27, at 12.

media. They are the most visible success of women's organizing over the last two decades, in terms of their ability to communicate their message in Haiti and abroad, and to establish international links. The NGOs' leadership comes almost exclusively from the middle and upper classes, its membership mostly so. The NGOs often make efforts to reach out to poor women, through health clinics, joint advocacy projects, and institutional development assistance.

But, in terms of numbers of groups and total membership, local organizations, often called Popular Organizations, or "OPs" do the bulk of women's organizing in Haiti. The OPs are usually loosely organized, without significant financial support, international contacts, or access to the media. Their members and leaders are generally poor and not well-educated. The OPs do not organize at the national level, and have difficulty communicating amongst themselves because of illiteracy and a lack of resources such as money, cars and telephones. The OPs' main advantages are their sheer numbers -- in the thousands, and their representativeness. They also have a long experience, in evolving forms, of resisting the interlocking forms of oppression.⁴⁹

Despite some isolated successes, the NGOs and OPs have not managed to bridge the gap that separates them.⁵⁰ Although poor women and OPs participate in some joint activities with the NGOs, they do so at a decreasing rate,⁵¹ and in an *ad hoc* manner rather than as part of a unified movement. Although poor women appreciate the NGOs' outreach efforts, they complain that the offered partnership is unfair and undemocratic, because it does not grant poor women even equal power, although their numbers would justify a preponderance of power. OP leaders point to the lack of poor women's representation in NGO leadership, and complain that collaboration with NGOs usually means hitching the OPs' popular support to existing NGO

⁴⁸ *Id.* at 150.

⁴⁹ Smith, WHEN THE HANDS ARE MANY, *supra* note 7, at 157-58.

⁵⁰ Special Rapporteur's Report, *supra* note 4 at 17, para. 68.

programs run by NGO leaders. Some call the relationship exploitative, because the outreach efforts help the NGOs obtain international funding, which strengthens the NGOs without benefiting the OPs institutionally.⁵²

Haiti's painful history of social exclusion makes bridging the gap delicate and complex. The talents that NGOs tend to privilege in their organizations- formal education, written communication, European language skills- are precisely those that OP members lack most. The talents that OP leaders bring to the table- the ability to represent and inspire more women and the ability to articulate (orally) the full matrix of suffering by the majority of Haitian women- are valued less. History has made OP members highly sensitive to class-based differences. Acts that are ordinary for middle class women -- such as speaking French, driving cars, and relying on written materials in a meeting -- can effectively discriminate against and alienate poor women.⁵³

As the burdens of poverty tend to be more severe and immediate than the burdens of gender discrimination, many poor women place a greater privilege on class and economic struggles than on gender. Others, recognizing the interlocking of gender and class oppressions, consider the struggle for economic justice inextricable from the struggle for gender justice.⁵⁴ Both groups perceive well-off women, especially those who do not join in the economic and class struggles, as irretrievably on the wrong side, regardless of their work on traditional feminist issues.

⁵¹ For example, at an NGO's recent, well-publicized rally for women's rights, the largest group of participants was schoolboys in uniform, followed by schoolgirls. Only a handful of adult women, the principal constituency for feminist organizing, participated.

⁵² This divide is not, however, monolithic. Many privileged women "have transcended their class interests and made common cause with the poor." Bell, *WALKING ON FIRE*, *supra* note 13, at 151-52.

⁵³ For example, the statement in Creole that someone "is speaking French" can be code for "is being deceptive," while a popular proverb asserts that "Creole spoken is Creole understood." Robert Lawless, *HAITI'S BAD PRESS*, 1992 p. 98, 142.

⁵⁴ Smith, *WHEN THE HANDS ARE MANY*, *supra* note 7, at 160.

Over the last few years, this gap has widened in tandem with a polarization in national politics, again roughly along class lines. The NGOs are, in general, highly and publicly critical of the current government, on issues beyond the typical women's agenda. The OPs, in general, support the government, and are highly critical of the NGOs. Although frustrated with many government policies, most OPs believe the current government to be the best vehicle for the advancement of Haiti's women and its poor. They note the creation of the Women's Ministry, the appointment of women ministers, and the election of women senators. They claim that the NGOs' criticism of the government, especially on non-feminist issues, hurts the interests of the majority of women by undermining the government, and privileges partisan and class-based politics over the struggle for women's advancement. They contrast the NGOs' current criticism with their close working relationship with legislators in 1998,⁵⁵ when the Senate, then dominated by parties close to the NGOs, had an active women's committee but no women.

Divergent approaches to the government are not only a cleavage between the NGOs and OPs, but a limitation of each. Just as Haiti's government is struggling with the transition to democracy, so is civil society, especially women's groups, struggling to find new strategies to influence the new democratic government. Each type of organization has its own conundrum: groups that support the government are much more comfortable engaging than criticizing; government opponents can criticize effectively, but have trouble moving beyond their criticisms to engagement.

Groups that support the government regularly engage with government officials, and work the political system to advance their cause. They do criticize specific policies, or the

⁵⁵ See Special Rapporteur's Report, *supra* note 4, at 5-6, para. 19. The collaboration between women's groups and the Senate committee showed the potential for engagement between the two. Several proposed laws were drafted, concerning rape, sexual harassment, domestic violence and other issues. The collaboration ended when Parliament

general dysfunction of the justice system, but are often reluctant to apply pressure to individuals or the government as a whole, afraid of appearing disloyal, or of helping perceived enemies. When they do criticize individuals, government supporters pick carefully, avoiding officials who are to some extent engaging with them, or who are under attack by opponents or a potential source of patronage. Ministers of Justice, perhaps because they tend to come from the old guard, are usually criticized freely.⁵⁶

Government opponents, on the other hand, are much more effective at confrontational strategies. They have good access to the press and to the international community, and the communication skills and organization to capitalize on this access. Nevertheless, they do not complement this criticism by working with government officials. Although many of the critiques are justified, the failure to engage with officials weakens the NGOs' ability to influence policy. First, by not being in the room when solutions are discussed and negotiated, the NGOs miss opportunities to influence both the nature of government initiatives to help women, and the priority of these initiatives among other urgent governmental priorities. This is a particular loss where the government agrees with the NGOs about what needs to be done, but struggles, with actually implementing the change. Second, the distance from the government, combined with the NGOs' lesser popular support, allows elected authorities to discount their advocacy.

Organizing Structures

The structure of the organizations themselves presents a challenge to women's organizing. Historically, Haitian organizations seeking political or social change have been hierarchical, and highly dependent on a leader or small core of leaders who made most of the

refused to ratify several nominees for Prime Minister, which created a political crisis. The members of the Senate committee were replaced in the next election.

decisions and did most of the work. This structure may have been a necessary adaptation to dictatorships; a narrow organization is less vulnerable to infiltration or attack, and can react more quickly. It may also be explained by the lack of other models within Haitian society, or an internalization of dictatorial ideologies. In any event, it is a severe handicap under democracy.

Experience shows that an organization that does not empower its membership, neither attracts new ones nor keeps existing members active. This, in turn, limits the organization's ability to implement programs, especially ones that require a large base, like political demonstrations. Broad participation is also important to define viable visions and long-term strategies, especially if the organization's goals include changes in public policy. Many organizations whose narrow structure responded effectively to the conditions of dictatorships have foundered when confronted with the more complex conditions of a democratic transition. The strategies and visions may be well-tailored to the problem, but not to the solution. This is especially true when responding to perceived undemocratic behavior by the government: many organizations effectively analyze the defect, but the solution fails for lack of popular support.

Although Haitian organizations without men tend to be less hierarchical, neither the OPs nor the NGOs effectively empower their membership or have highly democratic decisionmaking. Leaders in both types of organizations invariably complain of the burdens they carry, while the members complain of a lack of transparency and real power. What both need is their own organizational democratic transitions to accompany the broader societal transition, and to find new structures that better respond to the new needs of democracy.

The international community can play an important role in helping women's organizations develop more democratic leadership styles, and in helping to bridge the gaps

⁵⁶ Victims groups regularly organize protests on the porch of the Ministry of Justice, and from time to time spray-paint the complaints on the outside wall. A victims' song addressed to the Minister asks, "If you are not corrupt,

between women who are poor and those who are not. Financial and other support, including training resources, should be provided to OPs as well as NGOs. OPs should be provided with training in basic skills like literacy, accounting and computers. Support to all organizations should encourage participatory, empowering leadership. It should recognize the importance to Haiti's women's movement of a broad array of skills and experience, with special attention to skills and experience traditionally undervalued in wealthy nations.

THE STRUGGLE

The political rape survivors have waged their struggle around three main issues: safety, acknowledgement, and formal justice. Women have found success in some of these areas, defeat in others. In most of the struggles, the outcome is still undecided, but the women are still fighting.

Safety

The most successful issue in the victims' struggle is possibly the most important one: security from further politically-motivated rape.⁵⁷ The institutions responsible for the rapes were both eliminated by the newly returned Constitutional authorities, after a massive mobilization in which women played a central role. The Haitian Armed Forces ("FADH") were demobilized in 1995,⁵⁸ which also forced their paramilitary allies to disband. Demobilization has been called Haiti's most significant step forward since Independence in 1804, because historically the army led all types of repression, was a source of political instability, and cornered a huge percentage of the national budget. The removal of the military and paramilitaries not only eliminated the

why don't you arrest the criminals?"

⁵⁷ Judith Herman, M.D., *TRAUMA AND RECOVERY*, 61, 165 (1992).

violence that they perpetrated; the security thereby created also provided new opportunities for women to organize against all types of violence. For the first time, women were able to assemble freely to discuss any issue they desired, travel to meetings, keep membership lists, exchange documents, and confront police and judicial officials.

The apparent durable establishment of democracy in Haiti has opened the door to greater security for women as well. Democracy not only provides women, especially poor women, with increased influence in government, it also removes, for the first time in Haiti's history, the upheavals, wars and political repression that have so often accompanied political rapes.

This success is tempered by Haitian women's continued vulnerability to non-political gender-based violence. 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.⁵⁹

Acknowledgement

The women's groups have also won many victories in their struggle for public acknowledgement of the rapes. Shortly after the restoration of democracy, the government established the National Truth and Justice Commission, with a prominent Haitian sociologist and women's rights advocate as President. The government instructed the Commission to pay particular attention to politically-motivated sexual violence.⁶⁰ The Commission did so, making

⁵⁸ The army is inactive, but still recognized by the Constitution. Several grassroots groups, especially women's groups, have called for a Constitutional amendment to erase this recognition. In September 2003, Parliament began the amendment process.

⁵⁹ 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).

⁶⁰ Truth and Justice Commission, *supra* note 3, at Annex 1, at 2 (Article 3 of the decree creating the Commission).

violence against women one of four special inquiries,⁶¹ and integrating violence against women into all aspects of the report. The Commission also devoted several of its recommendations to violence against women, calling for prosecution of the perpetrators, reform of rape laws, special programs for women victims and training for medical, judicial and law enforcement professionals in responding to survivors of sexual violence.⁶² Although the Commission's impact was ultimately limited by inadequate dissemination and delays in translating it into Haitian Creole, the prominent treatment of violence against women in the report set the stage for continuing efforts to recognize women victims.⁶³

The Haitian government regularly acknowledges the rape victims, along with women's role in resisting the dictatorship. A statue to women victims sits at a primary intersection in the capitol, Port-au-Prince. Officials regularly recognize women victims in speeches at anniversaries and commemorations, especially International Women's Day on March 8 and the anniversary of the *coup d'etat* on September 30.⁶⁴ The government created the Ministry of Women, in part, as a response to the suffering of women during the dictatorship.⁶⁵

The Haitian rape survivors' struggle has also been acknowledged internationally, including in almost every discussion of overall impunity in Haiti. This includes reports by the

⁶¹ *Id.* at 40-46.

⁶² *Id.* at 85-86.

⁶³ *But see*, "Communication Respecting Violations of the Human Rights of Haitian Women," October 16, 1996 at 5 (document submitted to the Inter-American Commission on Human Rights by several Haitian and American women's and human rights organizations. The communication criticized the Truth and Justice Commission's inadequate investigation of gender-specific human rights violations, and poor outreach to women).

⁶⁴ Flanders, *Haiti: J'Accuse*, *supra* note 4, at 159 (victim quote: "When I heard [President] Aristide talk about the Haitian women, I felt huge inside. I said to myself, yes, we are the Haitian women. We are beautiful, we are strong.").

⁶⁵ The Women's Ministry was originally placed in the former army headquarters, although it has since moved. The Ministry is charged with representing women's opinions and interests in all government policy deliberations. Its success has been mixed. The Ministry has never been adequately funded, and does not have a high profile in policy matters. On the other hand, it has directors in each of the country's nine departments, who act as a conduit for information between the Ministry and local women's groups. As of this writing, women's interests are also represented by women at the heads of the Ministries of Education, Social Affairs, Communication and Planning.

U.N. Human Rights Commission's Independent Expert on Haiti⁶⁶ and Special Rapporteur on Violence Against Women,⁶⁷ the U.N./O.A.S. human rights mission in Haiti,⁶⁸ and international human rights organizations.

Although there is no substitute for the trial and punishment of the offenders, societal acknowledgement and the opportunity to have their stories listened to provide substantial benefits to the survivors.⁶⁹ Telling the story is therapeutic;⁷⁰ it allows the women to see their trauma in the larger context of the strategic rapes, and it forges connections among victims. Women also find the mere fact that they can speak out without retaliation liberating, and a tangible sign of their struggle's progress.

Justice for the dictatorship's rape survivors is also an effective focal point for women's organizing and advocacy. Women's and victims' organizations pay special attention to the issue at commemorations, and whenever talking about justice for the dictatorship. One group of women victims, FAVILEK⁷¹ has produced a play about their experiences, which they perform throughout the country. The play has also been made into a documentary.⁷² The International Tribunal on the Elimination of Violence Against Haitian Women, convened over several days in November 1997 by 80 Haitian NGOs, focused on the political rapes.⁷³

The political rapes are particularly valuable in organizing efforts because they have resonance beyond the usual constituency for feminist issues. The *de facto* dictatorship's brutality

⁶⁶ Adama Dieng, Report of the United Nations Human Rights Commission's Independent Expert for Haiti, E/CN.4/1996/94 (1996) 55; Adama Dieng, Report of the United Nations Human Rights Commission's Independent Expert for Haiti, E/CN.4/1997/89 (1997) 27.

⁶⁷ Special Rapporteur's Report, *supra* note 4.

⁶⁸ See e.g. HAITI: DROITS DE L'HOMME ET REHABILITATION DES VICTIMES 54 (UN/OAS Civilian Mission to Haiti, 1998).

⁶⁹ Bell, WALKING ON FIRE, *supra* note 13, at 33-36.

⁷⁰ Herman, TRAUMA AND RECOVERY, *supra* note 57, at 175, 178.

⁷¹ *Fanm Viktim Leve Kanpe*, ("Women Victims Stand Up"), www.favilek.interconnection.org.

⁷² *Ochan pou tout fanm yo bliyé* ("Tribute to All Forgotten Women"), Rachel Magloire, Producer, 2002.

touched almost everyone in Haitian society.⁷⁴ Most of those not personally attacked had friends and relatives who were, and almost everyone lived in fear of an attack. Placing the rape within the context of the larger repression permits general discussions of rape, including the psychological trauma and the links between rape and power, to otherwise unsympathetic audiences. Because Haitians are pre-disposed to credit claims of victimization under the dictatorship, the skeptical have no trouble seeing the political rape survivors as victims. The brutality and organization of the rapes precludes any suggestion of consent. In fact, much of the successful advocacy for women victims is done by mixed victims' or political groups that might not otherwise take up women's issues.

Linking feminist constituencies with groups working on broader victims' rights issues also bolsters international advocacy efforts. From 1994 until 1998, a broad platform of human rights and women's groups in Haiti and the U.S. submitted a series of communications to the Inter-American Commission on Human Rights.⁷⁵ The communications' starting point was gender-based violence during the coup, but it widened to include the overall treatment of women before the justice system and in society, criticism of obstacles to justice imposed by the international community, legal reform and gender training in Haiti, and the impact of international economic policies on Haitian women's rights.⁷⁶ The initiative eventually lost

⁷³ Racine, *LIKE THE DEW THAT WATERS THE GRASS*, *supra* note 6, at 138. The Tribunal did manage to convene women across class lines; and although it was mostly run by the NGOs, women from grassroots groups still talk about the proceedings six years later.

⁷⁴ It should be noted that a small minority of the most wealthy Haitians managed to escape the brutality, and to this day minimize or even deny it.

⁷⁵ *Communication Respecting the Violations of Human Rights of Haitian Women*, September 1994; *Communication Respecting Violations of the Human Rights of Haitian Women*, October 1996, *supra* note 63 (the "Second Communication"); *Update to the Communication Dated October 16, 1996 Respecting Violations of the Human Rights of Haitian Women*, March 3, 1997 (the "Third Communication"); and *Fourth Communication Respecting the Human Rights of Haitian Women*, October 1998 (the "Fourth Communication").

⁷⁶ Fourth Communication, *supra* note 75, at 2-13.

momentum without obtaining a definitive ruling, but it did forge some lasting links, contributed to some ultimately successful efforts, and focussed organizing and advocacy.

Formal Justice Initiatives

Rape survivors have always prioritized the conviction and imprisonment of those responsible for the rapes. Women see a fair trial as a just way of punishing the perpetrators and deterring future attacks, as societal acknowledgement of the rapes and an opportunity for them to tell their stories, and as a step in obtaining compensation for their injuries. Victims also see forcing their case through the justice system as a way of transforming the system, a traditional tool of oppression, into a tool of liberation.

Successes in establishing safety, acknowledgement and mobilization for survivors have not yet translated into prosecutions. Much of the problem lies with shortcomings within the justice system, but some of it is a failure of previous strategies to effectively engage the system, with its shortcomings and opportunities. Other recent human rights cases in Haiti proved that persistent engagement of the justice system, combined with political pressure, can overcome many of the obstacles to justice. As the women victims develop their capacity to engage the system, and adapt their struggle to the pitfalls and opportunities of Haiti's democratic transition, there is promise that they too will succeed.

The Haitian justice system's transition from dictatorship toward democracy is slow and frustrating, and presents women victims with more than their share of difficulties. However, it also presents opportunities, increasing as the transition progresses. A new, better-trained judge or prosecutor, a Minister of Justice wanting to make his mark, or increased material support for a particular court or case could make all the difference. Obstacles that resist system-wide reform efforts can still be overcome in a particular case with the right mix of legal and non-legal

strategies. The key is to take advantage of the opportunities and avoid the difficulties, with strategies that are persistent, flexible, and well-tailored to both the transition's challenges and its possibilities.

Most of the initiatives in support of women victims have addressed the justice system, but without directly engaging it. Although the rapes have been reported, and sometimes documented, this has been to non-judicial bodies, e.g., international observers and organizations, the Truth and Justice Commission, and national organizations, rather than to the less welcoming justice system. Most of the critiques of the system, and the recommendations for reform, have been made out of court, in both the national and international arenas. Although many of the critiques are justified and the recommendations sensible, they are not, by themselves, likely to induce a semi-functional justice system to action. In order to do this, the critiques need to be accompanied by direct engagement with the justice system.

The targets of the critiques -- officials working in the system-- know better than anyone that it does not yet provide adequate justice to rape survivors or to criminal defendants, victims of common crime or parties to breached contracts. The officials also know that they cannot deal with all the deficiencies at once; the problems are too overwhelming, the support too inadequate. So, the best officials focus on areas where they can succeed relatively easily, and where they are encouraged or forced to address the problem. Actions that merely advise or critique unfortunately neither make it easy for officials to succeed, nor force them to address problems. Such initiatives are therefore too easily ignored in the day-to-day press of judicial work.

Rape survivors' initiatives that have technically engaged the justice system have not been adequately tailored to the difficulties and opportunities of Haiti's transition. Most have lacked systematic, persistent follow-up; many lack lawyers advocating for the survivors. These choices

are understandable, as prosecutors should pursue complaints without pressure from victims, and lawyers are expensive, mistrusted and not disposed to working closely with victims. But without follow-up by persistent lawyers, efforts are probably doomed to failure. Most initiatives engaging the justice system have also failed to capitalize on the transition's opportunities by identifying allies within the justice and political systems, and supplementing legal strategies with political ones.

The largest attempt by rape survivors to engage the justice system came immediately after the restoration of democracy in 1994. Many women, individually or as a group, filed complaints with local justice officials or a special Complaint Bureau designed to collect information for local prosecutors. Although the complaints technically should have sparked investigations, and in many cases a trial, they in fact languished in courthouse files. Officials did not pursue them, and there was no effort to force them to do so.

A more organized effort in 1998 went further. SOFA (*Solidarite Fanm Ayisyen*), one of Haiti's leading women's NGOs, filed complaints by women victims of rape, beatings and theft during the dictatorship. The complaints referenced the previous efforts for justice, including providing information to the Inter-American Commission on Human Rights and the Truth and Justice Commission. They asserted a case against the top military and paramilitary leaders on command responsibility theories, as well as against unnamed individual perpetrators. SOFA pursued the cases through the initial legal proceedings, and applied enough pressure that the prosecutor referred the case to a justice of the peace, who interviewed some victims. However, although the victims were willing to collaborate, the initiative was not designed to apply continuous sustained pressure on the system. The cases soon languished, and eventually stalled completely.

Another initiative seeks to build on prior efforts of women victims and apply lessons from the Raboteau Massacre case.⁷⁷ Coordinated by the *Bureau des Avocats Internationaux* (BAI),⁷⁸ the initiative attempts to surmount the myriad obstacles with a comprehensive strategy including legal, political and organizational components. In order to implement these components, the effort draws on a network of allies, expertise and other assistance, in Haiti and abroad.

The organizational component strengthens the victims' groups' capacity to advocate for themselves, both inside and outside of the courtroom. A successful case will require the rape survivors to surpass all previous victim advocacy efforts. They will need to apply the same pressure as other victims to overcome the same barriers, plus additional pressure to overcome the obstacles of gender. They will also need to reach the general public, to build a constituency for the case, attract resources and sensitize potential jurors. In order to maximize the symbolic value of the case, the public advocacy will need to go beyond the political rapes to provoke more general discussions of violence against women.

The organizational component started with programs to help grassroots victims' groups strengthen their internal structure, develop their advocacy skills and enhance cooperation with

⁷⁷ The Raboteau victims started fighting for justice the day after the massacre, when they reported their complaints to a sympathetic justice of the peace. Following the return of democracy, they stubbornly forced their case onto the agenda of judicial and political officials, through press statements, letters, faxes and demonstrations. After six years of pre-trial preparation and six weeks of testimony, the Raboteau jury convicted 16 former soldiers and paramilitaries in connection with the massacre, a 1994 attack on a pro-democracy neighborhood. Thirty-seven more defendants, including the dictatorship's top leaders, were convicted *in absentia*. Two former members of the High Command were deported to Haiti for re-trial in January 2003. The Raboteau case pioneered the use of documentary evidence, expert testimony, including several foreign experts, and earned praise by national and international observers as fair to victims and defendants alike. Brian Concannon Jr., *Justice for Haiti: The Raboteau Trial*, 35(2) THE INTERNATIONAL LAWYER 641 (2001); Chris Cynn and Harriet Hirshorn, "Pote Mak Sonje: The Raboteau Trial" 2003 (film documentary available at chriscynn@msn.com). Those prosecuting the Raboteau case were not able to find solid evidence of rape or other gender-based crimes. Women were shot, beaten, and harassed the same as men, and played a significant role at trial as witnesses and in the victims' organizations.

⁷⁸ See *supra*, note 24. The Bureau des Avocats Internationaux (BAI) was established by the Haitian government in 1995 to help victims and the justice system prosecute human rights cases. It spearheaded the Raboteau prosecution, and represented the victims throughout the process.

each other. This work includes training in basic communication, accounting and computer skills and support for leadership and organizational development. It includes using methods called Open Space Technology and Touchstones, which help groups develop habits of constructive dialogue. This dialogue can help build mutual respect, shared leadership and collective learning. BAI lawyers provide seminars on relevant legal issues, and the women's organizations participate in a series of meetings designed to help victims' groups exchange strategic advice and develop collective responses to impunity. The BAI also provides the women's groups office space, access to telephones and computers, and the services of a community organizer.

The legal component involves preparing complaints and accompanying the rape survivors through the legal process from complaint through trial. The BAI has drafted a general complaint describing the context to the rapes, which it will supplement with individual testimonies. The complaints focus on the military and paramilitary leadership because they are the most morally responsible, and easily identifiable. Few victims, especially in the cities, are able to identify their attackers,⁷⁹ except as soldiers or paramilitaries. However, many can establish the military or paramilitary affiliation, because of what the attackers wore or carried, what they said and how they operated. To the extent that lower level perpetrators can be identified and arrested, they will be pursued.

The case against the leadership is based on command responsibility and accomplice theories, as the investigation has yet to discover direct evidence of the leaders' participation in any particular rape. Overwhelming evidence establishes that the leaders knew that political rapes were being carried out by their subordinates on a regular basis, and failed to either prevent or

⁷⁹ The dictatorship's repression in the capitol tended to be anonymous, carried out by unknown men, often with masks or other disguises. In contrast, rural victims usually knew the local soldiers and paramilitaries well enough to identify them. Some local commanders relished and cultivated reputations for sadism.

punish the crimes. The leaders also continued to provide money and supplies over three years to units notorious for human rights violations against civilians. According to the military experts who testified at the Raboteau trial, the entire military structure was intentionally distorted to facilitate systematic misbehavior by regular soldiers and terrorization of civilians by paramilitaries.

The legal case is based on Haitian law, with international law filling gaps or supplementing the national law. The rapes, assaults and murders were illegal under the Haitian Criminal Code, and the Military Code imposed a duty to adequately supervise subordinate officers. No legal privilege, excuse or immunity protects the perpetrators. But Haiti lacks both jurisprudence and experience in complex rape and command responsibility cases, so the case will borrow experience from elsewhere to fill in the domestic law's gaps in these areas. The most fruitful source is the timely and developing jurisprudence of the *ad-hoc* international tribunals for Rwanda and the Former Yugoslavia. Additional help is supplied by other Latin American countries' experience prosecuting top military leaders.⁸⁰

Once the complaints are filed, BAI lawyers will represent the survivors as *parties civiles*. The *partie civile* procedure, from the Napoleonic system adopted by Haiti, permits crime victims to piggy-back a civil case onto a criminal prosecution. The victims' lawyers are allowed to represent their clients' civil interests throughout the proceedings, which allows them to appear at trial and most pre-trial hearings, to present evidence, examine witnesses and respond to rulings, motions and appeals.

The *partie civile* procedure is particularly useful in responding to the challenges and opportunities of Haiti's transitional justice system. A persistent and aggressive civil lawyer can

⁸⁰ Clinical students at Harvard Law School have worked with the BAI on the case since 2000, analyzing jurisprudence from international tribunals, the U.S. and Latin America, among other projects.

apply pressure to keep the case moving through the justice system, and ensure that officials perform adequately. A civil lawyer can also provide a bulwark against efforts to corrupt the process, especially if his clients can complain loudly. The civil lawyer can provide judicial officials with legal research and analysis, and help locate material and expert witnesses and documentary evidence. This role is even more effective where an overloaded judicial official's other duties preclude sustained attention to a complex case. The civil lawyer can provide the institutional memory for the case, which is essential when case preparation is long and the tenure of officials short. The *partie civile* procedure also provides the lawyer with a pulpit to educate the public about the case and focus political pressure.

The survivors' legal strategy advocates judicial education on gender issues. Although Haiti has some tradition of women in the judiciary, and their numbers are increasing rapidly, it is still a male-dominated system not particularly sensitive to victims of gender-based crimes. Despite recommendations by the Truth and Justice Commission, women's organizations in Haiti and abroad, and international observers, there has been no systematic gender training for justice officials beyond a few classes in the Judicial Academy. The survivors and the lawyers are working with international organizations that provide gender justice training, and seek to have a program in place before their trial.

The BAI and women's groups also advocate for a representative jury pool. Although Haiti's Procedural Code provides for a somewhat representative pool,⁸¹ in practice jurors tend to be exclusively male, and usually large landowners or prominent teachers or businessmen. Jury pools have become slightly more representative since democracy returned in 1994, and special

⁸¹ A literacy requirement eliminates about 60% of the citizenry, tradition and inertia exclude most of the rest. The foundation of the code's jury selection is the census, which has not been completed for decades. In practice, the chief prosecutor and judge, entrusted by law with the final list, skip all the intermediate steps and supplement last

initiatives around two prominent trials in 2000 produced fairer pools. Nevertheless, even those trials had only one or two women among the twelve jurors.

Assuring women's representation on the jury for a major trial is complicated by societal discrimination and poverty.⁸² 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.

In the Raboteau trial, a judicial official who helped prepare the jury list reached out to prominent women in the community, including leaders of women's groups and the local director of the Women's Ministry. His efforts resulted in the names of only a handful of women willing to serve as jurors. The eventual Raboteau jury list contained only a few women, and only one made it onto the jury.

The mobilization surrounding the political rape case will need to sensitize both the justice system and potential women jurors to the importance of women serving on juries. Advocacy should focus on the need to have women jurors in the rape case, but more broadly discuss jury

year's list with people they consider qualified, following the traditional criteria. *See* Concannon, *Beyond Complementarity*, *supra* note 23, at 213.

service as a means of women exerting influence in the justice system. These initiatives will need to produce a very well-balanced jury list to result in the effective participation of women.

Defense lawyers can recuse potential jurors for any or no reason, and may oppose most women.

The number of defense recusals depends on the size of the pool and the number of prosecution recusals, but in any event would suffice to eliminate a handful of women on the list.

THE INTERNATIONAL COMMUNITY

The international community can make important contributions to the Haitian women's struggle for justice. International assistance will be most effective if it supports rather than supplants Haitian actors, including the survivors and their organizations, and Haiti's judicial system. The contributions can be grouped into three main areas: support for the women and their organizations, support for the legal case, and support for Haiti's democratic transition.

Support for the women and their organizations should seek to empower them to better pursue the legal case in court, and advocate for it within and outside the country. This support could include training in leadership and organizational development, as well as in the skills needed for the initiative, especially communication, computers, and literacy skills. It could include medical and psychological assistance for the survivors, to help them recover from the violence and make the process of seeking justice and testifying less difficult. International help could also include financial contributions to the organizations,⁸³ and solidarity, including providing moral support and joining foreign voices to national and international advocacy campaigns. Foreign involvement could also help bridge divisions among women's groups.

⁸² 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 6, at 33.

International support for the case itself could include providing jurisprudence, evidence, suspects and experts. Case law from the *ad hoc* tribunals has been especially important, but national cases, treaties and treatises will benefit the struggle too. The international community can provide evidence, especially intelligence information gathered during the dictatorship,⁸⁴ and could deliver the many defendants living abroad to the justice system. Finally, international expertise, including forensic anthropology, psychology, military organization and legal issues, would make an important contribution to the case's preparation and success.⁸⁵

Finally, the international community should support Haiti's democratic transition. This should include the immediate end of the development assistance embargo on Haiti, and substantial investment in the government structures essential for Haiti's democracy, especially the justice system. International support for justice could include training for judges and prosecutors, especially regarding gender issues, and materials for courtrooms and officials, especially in support of prominent prosecutions.

CONCLUSION

Haitians often invoke the proverb, "*deye mon gen mon*" ("behind the mountain are more mountains"). The adage describes, with equal accuracy, the country's mountainous terrain, the people's uphill survival struggle renewed each day, and the multiple challenges of the democratic transition. But the proverb is not just about obstacles, it is also about overcoming them. Those invoking it know that Haiti's highest mountains are criss-crossed with paths trod by

⁸³ This aid needs to be well coordinated and directed. See Special Rapporteur's Report, *supra* note 4, at 17, para. 67 (women's organizations complained that international programs were not coordinated with the government or women's groups. U.N. agencies in turn complained that the women's organizations were not cooperative).

⁸⁴ One of the most compelling documents in the Raboteau trial was a report by the U.S. Embassy that contradicted the self-defense claims of the defendants.

centuries of bare feet carrying goods to market, guns to battle, and messages of hope and solidarity to neighbors. In the same way, Haiti's victims of political rape are beating their own path as they go into new terrain. They have climbed their share of mountains thus far, and doubled back from dead ends. Although there are many more mountains and other challenges ahead, the women intend to climb one obstacle after another, until they reach justice, and properly conclude this chapter.

⁸⁵ International expertise in forensic anthropology, genetics, military organization, and human rights under the dictatorship made an important contribution to the Raboteau trial. Concannon, *Justice for Haiti: The Raboteau Trial*, *supra* note 77, at 646.