

Mathilde Pierre

Weak Judicial Systems and Systematic Sexual Violence against Women and Girls:  
The Socially Constructed Vulnerability of Female Bodies in Haiti

This thesis has been submitted on this day of April 16, 2018 in partial fulfillment of the degree requirements for the NYU Global Liberal Studies Bachelor of Arts degree.

## **ACKNOWLEDGMENTS**

First and foremost, I would like to thank my thesis advisor, Professor Emily Bauman, who has guided me through every step in the year-long process of writing my thesis. The time and energy she invested in thoroughly reading and commenting on my work, in recommending other avenues of further research, and in pushing me to deepen my analysis were truly invaluable. I would also like to express my sincere gratitude to Professor Joyce Apsel who, although abroad in Florence, Italy, set aside time to speak with me over Skype, to comment on my rough draft, and to advise me on the approach of my argument in my thesis. I would additionally like to thank all of the individuals who set aside considerable time to meet with me for interviews in Port-au-Prince, most notably Attorney Claudy Gasant, Attorney Rosy Auguste, Attorney Marie Alice Belisaire, Attorney Giovanna Menard, Judge Jean Wilner Morin, Carol Pierre-Paul Jacob, Marie Yolaine Gilles, and Officer Guerson Joseph. Finally I extend a heartfelt thank you to my parents, Mathias and Gaëlle Pierre, who greatly assisted in connecting me with the individuals I interviewed and whose constant support and encouragement helped me to push through in the completion of my thesis.

## ABSTRACT

Widespread sexual violence against women and girls in Haiti is a phenomenon that largely persists due to a failure to prosecute male perpetrators and enforce the domestic and international laws that exist to criminalize rape. The failure of prosecution is primarily attributed to Haiti's weak criminal justice system, which is profoundly informed by a web of internal dysfunctions. This thesis parses out both the extrajudicial and judicial factors that contribute to the "epidemic of rape" in Haiti. It provides an in-depth analysis of the weakness of the Haitian justice system as a whole and particularly examines how they contribute to injuring women. It further illuminates how patriarchal legal practices in Haiti, most notably the medical certificate requirement, are rooted in the discrediting of women's testimonies and significantly hamper the successful prosecution of rape cases. Through various comparisons with international trends in sexual violence against women and girls, this thesis presents Haiti as a microcosm of some of the predominant factors that preserve rape cultures and impede rape prosecutions in countries around the world. This thesis argues that although the dysfunctions of the Haitian justice system affect both male and female citizens, women, and especially female victims of sexual violence, are more harmed by these dysfunctions due to the added brunt of the patriarchy in which the justice system is entrenched. It builds on the literature surrounding this issue by demonstrating that the toxic interaction of gender-neutral and gender-specific factors both within and beyond the Haitian justice system diminish women's access to *effective* legal remedies for rape, which in turn deprives them of the effective fulfillment of their human rights and preserves the vulnerability of their bodies to sexual violence.

## TABLE OF CONTENTS

<b>INTRODUCTION</b> .....	4
<b>CHAPTER 1: Systematic Sexual Violence against Women and Girls in Haiti</b> .....	14
A. The Epidemic of Rape in Haiti’s Shantytowns and Displacement Camps	
B. The Historical Use of Rape as a Political Weapon of Terror	
C. Hegemonic Masculinity and the Objectification of Female Bodies	
D. <i>Poto Mitan</i> : Patriarchal Cultural Beliefs Regarding the Inferiority of Women	
E. International Perpetrators: Gendered Humanitarian Aid in the “Republic of NGOs”	
<b>CHAPTER 2: Weaknesses of the Haitian Justice System: Gender-Neutral and Patriarchal Factors</b> .....	42
A. Poor Law Enforcement and the Low Prosecution of Rape Cases	
B. Judicial Corruption	
a. The Subordination of the Judiciary System by the Executive Branch	
b. Bribery	
C. Procedural Barriers to the Prosecution of Rape Cases	
a. The Lack of Financial and Human Resources	
b. Issues in the Transfer of Rape Cases	
D. The Medical Certificate Requirement	
a. Feminist Legal Theory: The Plague of Patriarchy in the Haitian Justice System	
<b>CHAPTER 3: Social and Structural Barriers to Women’s Access to Justice: The Revictimization of Women by a Feeble Justice System</b> .....	72
A. “It’s Just Rape”: The Trivialization of Sexual Violence Complaints	
a. Police Officers	
b. Office of the Prosecutor	
c. Cabinet d’Instruction	
B. Women’s Distrust of the Justice System	
a. <i>The Case of Nadine Prudonis</i>	
C. Judicial Corruption: The Influence of Social Status and Nepotism	
a. <i>The Case of Marie Danielle Bernadin</i>	
b. <i>The Case of Martine Lindor</i>	
D. The Influence of Financial Means and the Feminization of Poverty	
<b>CONCLUSION</b> .....	97

## INTRODUCTION

Sexual violence against women and girls has been thoroughly documented as a prevalent phenomenon in both developed and developing countries around the world. Recent data reveals that “between 19 and 76 percent of women around the world have suffered from physical and sexual violence by an intimate partner or a non-partner since the age of 15.”<sup>1</sup> According to UN Women, approximately “120 million girls worldwide [...] have experienced forced intercourse or forced sexual acts at some point in their lives.”<sup>2</sup> Furthermore, an estimated “35 percent of women worldwide have [been subjected to] either physical and/or sexual intimate partner violence or sexual violence by a non-partner at some point in their lives.”<sup>3</sup> One country in which women and girls are perpetually vulnerable to sexual violence is Haiti. Sexual violence is “the most prevalent form of violence in Haiti, affecting 35 percent of women over 15 years of age.”<sup>4</sup> A random survey of households found that, between 2004 and 2006, “35,000 women were sexually assaulted”<sup>5</sup> in Haiti’s capital, Port-au-Prince. According to a 2007 study, “46 percent of Haitian girls have been sexually abused, among whom 33 percent were between 5 and 9 years of age, and 43 percent between 10 and 14.”<sup>6</sup> A 2010 survey further revealed that approximately “10,813 individuals in Port-au-Prince were sexually assaulted in the six weeks after the [January 2010] earthquake.”<sup>7</sup>

The existing literature on systematic sexual violence against women and girls in Haiti demonstrates that this issue has prevailed at the intersection of four major interacting factors: (1) the instrumentalization of rape as a weapon of terror by government officials and armed groups to maintain control and power over slum communities as well as fulfill illicit political

---

<sup>1</sup> Benedetta Faedi, “From Violence against Women to Women’s Violence in Haiti,” *Columbia Journal of Gender and Law* 19, issue 4 (2010): 1044.

<sup>2</sup> UN Women, “Facts and Figures: Ending Violence against Women,” *UN Women*, August 2017, <http://www.unwomen.org/en/what-we-do/ending-violence-against-women/facts-and-figures>.

<sup>3</sup> UN Women, “Facts and Figures.”

<sup>4</sup> Faedi, “From Violence against Women,” 1045.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

<sup>7</sup> Athena R. Kolbe and Robert Muggah, “Securing the State: Haiti Before and After the Earthquake” in E. Lebrun (Ed.) *Small Arms Survey 2011* (Cambridge: Cambridge University Press, 2011): 241.

and economic agendas; (2) patriarchal gender norms and constructions of masculinity and femininity that form the psychosocial basis of systematic sexual violence against women; (3) the poor enforcement of domestic and international laws that exist to criminalize rape; and (4) the sexual exploitation and abuse of Haitian women and girls at the hands of international perpetrators, namely international NGO employees and UN peacekeepers.

Particularly prominent in the existing literature on this issue is Benedetta Faedi Duramy, by far the most prolific writer on systematic sexual violence in Haiti. Both in her scholarly articles and in her book, *Gender and Violence in Haiti: Women's Path from Victims to Agents*, Duramy identifies and examines the major factors that drive the prevalence of sexual violence in Port-au-Prince and, more specifically, in the shantytowns and displacement camps established in the aftermath of the January 2010 earthquake. She particularly traces the historical roots of the use of rape as a political weapon of terror in Haiti's shantytowns at the hands of armed groups; discusses the sociocultural objectification of female bodies that has driven the deliberate use of rape as a political instrument; sheds light on the grievous conditions in the tent communities that have fostered sexual violence against women and girls in the displacement camps; and identifies the international and domestic legal frameworks that currently exist to protect women and girls from sexual violence in Haiti.

As Duramy's work demonstrates, periods of national instability and entrenched gender norms regarding the inferior status of women in Haitian society have indeed played a central role in the perpetuation of violence against women. However, at the heart of the persistence of this violence is Haiti's weak judicial system, whose internal dysfunctions undermine its capacity to punish perpetrators and ensure the full realization of women's human rights to security, physical integrity, and freedom from violence. As Shannon D. Lankenau notes in her scholarly article, "Toward Effective Access to Justice in Haiti: Eliminating the Medical Certificate Requirement in Rape Prosecutions": "To date, the

Haitian government has failed to promulgate a working legal framework in which it can effectively prosecute crimes of sexual violence.”<sup>8</sup> Given the weaknesses of the justice system, the overwhelming majority of rapes go unpunished. This was demonstrated in a 2012 study that traced 62 rape complaints filed in Port-au-Prince in 2010. Per the study’s findings, “none of the [62] complaints had gone to trial more than a year after they were filed” with police, and as of December 2011 only one case made it to court.<sup>9</sup>

This thesis attempts to build on the existing literature by providing a closer examination of the role of Haiti’s weak judicial system in perpetuating the vulnerability of women and girls to sexual violence. One of the primary contributing factors to the prevalence of rape in Haiti is the lack of enforcement of domestic and international legislation that has enabled a culture of impunity to take root. In Haiti, national legislation exists to protect women from rape. Rape was made a criminal offense on July 6th, 2005 with the adoption of the “*Décret Modifiant le Régime des Agressions Sexuelles et Éliminant en la Matière les Discriminations Contre la Femme*” (“Decree Changing the Regulation of Sexual Aggressions and Eliminating Forms of Discrimination against Woman”), before which it was only considered a crime against morals. Despite the existence of this law, however, the prosecution for rape has remained extremely low.<sup>10</sup> Haiti’s feeble criminal justice system “fails to fortify women’s rights”<sup>11</sup> and has enabled a culture of impunity to flourish that encourages armed gangs and male civilians to rape women at will. As Lankenau asserts: “The Haitian government’s systematic failure to effectively investigate crimes of sexual violence and punish offenders ultimately emboldens aggressors to act without fear of consequence.”<sup>12</sup>

---

<sup>8</sup> Shannon D. Lankenau, “Toward Effective Access to Justice in Haiti: Eliminating the Medical Certificate Requirement in Rape Prosecutions,” *Hastings Law Journal* 64, no. 1759 (2013): 1759.

<sup>9</sup> Tyler Campbell, “No Prosecution for Haitian Rape Cases,” *Impunity Watch*, July 2, 2012, <http://impunitywatch.com/no-prosecution-for-haitian-rape-cases/>.

<sup>10</sup> “Rape Looms Large Over Haiti Slums,” *BBC News*, November 27, 2008, <http://news.bbc.co.uk/2/hi/7750568.stm>.

<sup>11</sup> Chanelle Fox, “Violent Sex: How Gender-Based Violence is Structured in Haiti, Healthcare & HIV/AIDS,” *Indiana Journal of Law and Social Equality* 2, issue 1 (2013): 223.

<sup>12</sup> Lankenau, “Toward Effective Access to Justice in Haiti,” 1762.

As in other countries around the world, sexual violence against women and girls prevails in Haiti despite the existence of international humanitarian law, which recognizes sexual violence against women as a severe human rights violation and a crime against humanity. For instance, the United Nations “Declaration on the Elimination of Violence against Women” affirms that “violence against women constitutes a violation of the rights and fundamental freedoms of women.”<sup>13</sup> The UN Security Council’s Resolution 1820 further identifies rape and other forms of sexual violence as constituting a war crime and a crime against humanity.<sup>14</sup> Under international law, “individual states are liable to comply with the due diligence obligation to protect girls and women from gender-based violence.”<sup>15</sup> Moreover, in 1948, the General Assembly of the United Nations adopted the “Universal Declaration of Human Rights” (UDHR), proclaiming that “all human beings are born free and equal in dignity and rights”<sup>16</sup> without distinction of any kind, including gender.

Haiti has ratified several international instruments aimed at eliminating all forms of violence against women. As Faedi states in her scholarly article, “The Double Weakness of Girls: Discrimination and Sexual Violence in Haiti”: “The intrinsic value of any individual life as well as the right to equal treatment and non-discrimination on the basis of sex have been specific objects of protection under international law not only by generally applicable provisions but also by women-specific instruments, which have been ratified [...] by the Haitian government.”<sup>17</sup> For instance, in 1979, the UN General Assembly adopted the “Convention on the Elimination of All Forms of Discrimination Against Women” (CEDAW), the first international instrument to espouse gender-equality as its sole focus and

---

<sup>13</sup> United Nations General Assembly, *Declaration on the Elimination of Violence Against Women*, A/RES/48/104 85th Plenary Meeting (20 December 1993), <http://www.un.org/documents/ga/res/48/a48r104.htm>.

<sup>14</sup> United Nations Security Council, *Resolution 1820 (2008)*, S/RES/1820 (2008) (19 June 2008: 3), <http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/CAC%20S%20RES%201820.pdf>.

<sup>15</sup> Benedetta Faedi Duramy, “Women in the Aftermath of the 2010 Haitian Earthquake,” *Emory International Law Review* 25 (2011): 1211.

<sup>16</sup> United Nations General Assembly, *Universal Declaration of Human Rights* (10 December 1948), [http://www.ohchr.org/EN/UDHR/Documents/UDHR\\_Translations/eng.pdf](http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf).

<sup>17</sup> Benedetta Faedi, “The Double Weakness of Girls: Discrimination and Sexual Violence in Haiti,” *Stanford Journal of International Law* 44, no. 147 (2008): 178.

acknowledge women as victims of gender-specific human rights violations.<sup>18</sup> As a State Party to CEDAW since July 20th, 1981, Haiti has an obligation to condemn “discrimination against women in all its forms,”<sup>19</sup> to “adopt all the appropriate measures, including legislation, to modify or abolish existing laws, customs, and social and cultural patterns of conduct held by men and women,”<sup>20</sup> and to achieve the “elimination of prejudices [...] that are based on the idea of the inferiority or the superiority of either of the sexes or on stereotypical roles for men and women.”<sup>21</sup>

Haiti’s obligation to address violence against women further extends to the “Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women (‘Convention of Belém Do Pará’),”<sup>22</sup> which it signed and ratified on April 3rd, 1996<sup>23</sup> and which imposes on State Parties an obligation to “establish mechanisms to investigate, adjudicate, and prevent violence against women, with the goal of eliminating it.”<sup>24</sup> Under the provisions of this Convention, State Parties have a duty to “establish the necessary legal and administrative mechanisms to ensure that women subjected to violence have effective access to restitution, reparations, or other just and effective remedies.”<sup>25</sup> Consequently, Haiti has an obligation under international law to establish “effective mechanisms of providing redress for gender-based violence that are accessible to all women and girls,”<sup>26</sup> and through which victims of gender-based violence can have “recourse to the

---

<sup>18</sup> Benedetta Faedi Duramy, “Legal Frameworks,” in *Gender and Violence in Haiti: Women’s Path from Victims to Agents* (New Brunswick: Rutgers University Press, 2014): 79.

<sup>19</sup> Duramy, “Legal Frameworks,” in *Gender and Violence in Haiti*, 79-80.

<sup>20</sup> *Ibid.*, 79.

<sup>21</sup> *Ibid.*, 79-80.

<sup>22</sup> Signatories: “Antigua & Barbuda, Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Perú, St. Kitts & Nevis, St. Lucia, St. Vincent & Grenadines, Suriname, Trinidad & Tobago, United States, Uruguay, Venezuela.” Organization of American States (OAS) Department of International Law, *Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women ‘Convention of Belém Do Pará’* (1994), <http://www.oas.org/juridico/english/treaties/a-61.html>.

<sup>23</sup> Duramy, “Legal Frameworks,” in *Gender and Violence in Haiti*, 85.

<sup>24</sup> Meena Jagannath, “Barriers to Women’s Access to Justice in Haiti,” *The City University of New York (CUNY) Law Review* 15, no. 1 (2011): 33.

<sup>25</sup> OAS, *Convention of Belém Do Pará*.

<sup>26</sup> Jagannath, “Barriers to Women’s Access to Justice in Haiti,” 34.

justice system free of discrimination as to gender, or any other social status.”<sup>27</sup> Despite the existence of the 2005 Decree and despite Haiti’s ratification of a number of international conventions—namely the CEDAW and the Convention of Belém Do Pará—the culture of rape<sup>28</sup> in Haiti’s shantytowns and in the displacement camps prevails. The internal dysfunctions of the judicial system and the failure to implement national and international law have left women and girls perpetually exposed to systematic sexual violence.

In addition to weak law enforcement, the prosecution of perpetrators has been hindered by a relative disregard for sexual violence against women and, more specifically, a refusal on the part of judicial officials “to recognize the serious nature of sexual offenses.”<sup>29</sup> The “absence of adequate crime prevention and judicial mechanisms”<sup>30</sup> to respond to sexual violence is largely a byproduct of state fragility. However, the patriarchy that infiltrates Haiti’s institutions, namely the justice system—the primary institution responsible for upholding the rule of law, bringing offenders to justice, and protecting citizens before the law—suggests that the Haitian state is not merely incapable of protecting women but rather systematically fails to address impediments to the fulfillment of women’s rights. Consequently, this thesis aims to answer the following research question(s): *In what ways do the internal dysfunctions of the Haitian justice system preserve the vulnerability of Haitian women and girls to systematic sexual violence? Is the ongoing vulnerability of Haiti’s female populace to sexual violence a mere consequence of state fragility and the inherent inability of the Haitian state to enforce existing domestic and international laws that criminalize rape, or*

---

<sup>27</sup> Jagannath, “Barriers to Women’s Access to Justice in Haiti,” 34.

<sup>28</sup> The term “culture of rape” refers to the “normalization and pervasiveness of rape-supportive attitudes and sexual violence in a society.” A rape culture is molded by “cultural practices that overtly and/or implicitly condone, excuse, or tolerate rape and sexual violence.” It further describes “the normalization and lack of public effort in addressing the high rates of sexual violence (e.g. police reluctance to handle rape cases).” Willumsen Laake, Anniken Lucia, and Cynthia Calkins, “Rape Culture,” in *The SAGE Encyclopedia of Psychology and Gender*, edited by Kevin Nadal, Sage Publications, 2017, [https://ezproxy.library.nyu.edu/login?url=https://search.credoreference.com/content/entry/sagepag/rape\\_culture/0?institutionId=577](https://ezproxy.library.nyu.edu/login?url=https://search.credoreference.com/content/entry/sagepag/rape_culture/0?institutionId=577).

<sup>29</sup> “Seeking Justice: The Prosecution of Sexual Violence in the Congo War,” *Human Rights Watch* (2005): 22.

<https://www.hrw.org/sites/default/files/reports/drc0305.pdf>.

<sup>30</sup> Lankenau, “Toward Effective Access to Justice in Haiti,” 1763.

*does it run deeper to patriarchy, gender discrimination, and a neglect to protect women specifically?*

This thesis primarily analyzes the Haitian judicial system in order to demonstrate how institutional and, more specifically judicial, failures construct and preserve the vulnerability of women and girls to sexual violence. It examines (1) the gender-neutral factors that weaken the Haitian judicial system and obstruct effective law enforcement, namely high levels of judicial corruption and inadequate human and financial resources; (2) the gender-specific factors that limit women's access to effective legal remedies for rape, namely a deep-seated culture of gender discrimination within the Haitian judiciary; and (3) the socioeconomic and cultural elements of the wider Haitian society that simultaneously transcend and infiltrate the justice system and that limit women's access to an effective legal remedy for rape. While focused on Haiti, this thesis also positions the latter against certain transnational dimensions of and trends in sexual violence against women documented in the international sphere. Through comparisons with various developed and developing countries around the world—namely Argentina, Brazil Canada, the Democratic Republic of Congo (DRC), Egypt, Ethiopia, India, New Zealand, the Philippines, South Africa, Tanzania, the United Kingdom, and the United States, to name a few—this thesis presents Haiti as a microcosm of some of the predominant interacting factors that preserve rape cultures and impede rape prosecutions in countries around the world. Among the factors explored both within the domestic and international arenas are the use of rape as a “weapon of war,” the prevalence of rape in humanitarian settings, the injurious consequences of gendered humanitarian aid, the sexual abuse of women and girls by UN peacekeepers, national and transnational rape corroboration requirements, the phenomenon of victim-blaming, the re-traumatizing effects of in-court interrogations, stereotypical perceptions of rape victims, the failure to prioritize sexual violence cases, and the discrediting of the testimonies of rape victims.

Much of the data collected for this thesis was focused on Port-au-Prince as this is the only province in Haiti about which a great many books, scholarly articles, reports, and empirical studies have been published. The methodological approach employed three main data-collection methods that enabled me to access the available, albeit limited, data for sexual violence against women in Haiti: (1) Historical-Archival Research: I consulted physical court records for three rape cases that I was able to access at the *Tribunal de Première Instance* (Court of First Instance) in Port-au-Prince as well as online reports of rape cases in Haiti. I additionally consulted books; news articles; scholarly articles; reports by the United Nations, the U.S. Department of State, Human Rights Watch (HRW), the International Monetary Fund (IMF), and other international organizations; and various local and global empirical research studies that all provide information regarding the issue of sexual violence in both Haiti and in other countries around the world. (2) Case Studies: Given the limited access I had to case files, both in the field and online, I employed three case studies of gender-based violence (GBV)—two rape cases and one domestic violence case—that illustrate the way in which judicial corruption, nepotism, and women’s distrust of the legal system play out in the Haitian justice system and obstruct the successful prosecution of cases of violence against women. (3) Interviews: In January 2018, I conducted interviews in Port-au-Prince with judges, magistrates, prosecutors, lawyers, notaries, police officers, and women involved in feminist organizations in order to gain more insight into the factors that hamper the successful prosecution of sexual violence cases. Employing these three data-collection methods enabled me to gain a multidimensional portrait of sexual violence against women in Haiti and to gather information regarding both the judicial and extrajudicial as well as the gender-neutral and gender-specific factors that contribute to the low prosecution of rape cases in Haiti.

This thesis demonstrates that female victims of sexual violence in Haiti lack “a functioning and accessible justice system with the capacity to vindicate their rights,”<sup>31</sup> which culminates in their revictimization by the dysfunctions of a feeble legal system. Chapter 1 provides a more nuanced view of sexual violence against women and girls in Port-au-Prince by examining the visible and invisible factors driving this phenomenon. More specifically, it sheds light on the historical instrumentalization of rape as a political weapon of terror deliberately employed, first by the Duvalier then by the Cédras régime, respectively in the late 1950s and again in the early 1990s. It further discusses the prevalence of rape in the shantytowns since the early 2000s and within the camps for internally displaced people (IDPs) since the 2010 earthquake. Chapter 1 additionally demonstrates how sexual violence against women in Haiti has persisted as a result of the enactment of patriarchal gender constructions within the context of extreme poverty as well as the direct role of international NGO employees and UN peacekeepers in sexually exploiting and abusing Haitian women and girls.

Chapter 2 examines the degree to which the Haitian justice system neglects to protect female victims of sexual violence. It illuminates some of the dominant factors that weaken the Haitian justice system as a whole and particularly traces how these weaknesses diminish women’s access to the justice system. While this chapter demonstrates that the internal dysfunctions of the Haitian justice system affect both male and female citizens, it argues that women, and especially female victims of sexual violence, are more harmed by these dysfunctions due to the patriarchy in which the justice system is entrenched.

Chapter 3 provides a closer analysis of the factors within the Haitian justice system that specifically pose barriers to women in the prosecution of sexual violence cases. It employs three case studies to illuminate the structural and social barriers that “discriminate

---

<sup>31</sup> Lankenau, “Toward Effective Access to Justice in Haiti,” 1762.

against female complainants at each level of the [legal] process.”<sup>32</sup> While this chapter underscores the negative impact of gender discrimination in the investigation of rape cases, it acknowledges that the low prosecution of sexual violence cases cannot exclusively be attributed to discriminatory attitudes. It further demonstrates that the investigation of sexual violence cases is enmeshed in a series of interacting factors both within the justice system (e.g. nepotism) and beyond the justice system (e.g. the feminization of poverty) that influence whether sexual violence cases are successfully prosecuted and convicted.

This thesis ultimately argues that, at the core of the persistence of widespread sexual violence against women and girls in Haiti lies women’s limited access to *effective* judicial remedies to ensure the effective realization of their human rights, most notably the right to be free from violence. Through the lens of cases of sexual violence against women, it demonstrates that the toxic combination of systemic, gender-neutral factors and gender-specific factors renders the Haitian justice system more inaccessible to female versus male citizens. It particularly demonstrates the problematic nature of the medical certificate requirement as an extreme rape corroboration requirement that is rooted in the discrediting of women’s testimonies and that erects the most problematic barrier to the successful prosecution of rape cases and, thus, to women’s access to an effective legal remedy for rape.

---

<sup>32</sup>Boston College Law School et al., “Access to Judicial Remedies in Haiti,” *112th Session of the United Nations Human Rights Committee* (8-9 October 2014): 2.

## CHAPTER 1

### Systematic Sexual Violence against Women and Girls in Haiti

Public understanding of sexual violence in Haiti has largely been molded by the narrative of the “epidemic of rape”<sup>33</sup> sweeping the shantytowns and internally displaced persons (IDP) camps situated in Haiti’s capital, Port-au-Prince. The discourse of popular media has framed this culture of rape as a direct consequence of the humanitarian crisis created by the 2010 earthquake and, more specifically, the displacement of hundreds of thousands of women and girls and their increased exposure to sexual assault in the camps. For instance, international news outlets have published countless articles decrying the “shockwaves of sexual violence”<sup>34</sup> generated by the earthquake and employing sensational headlines such as “*An Epidemic of Rape for Haiti’s Displaced*,”<sup>35</sup> “*How to Talk About Haiti’s Rape Epidemic*,”<sup>36</sup> and “*Rape Flourishes in Rubble of Haitian Earthquake*.”<sup>37</sup> The epidemic of rape<sup>38</sup> in Port-au-Prince’s slum communities is further characterized as a byproduct of the historical use of rape as a “political weapon of terror”<sup>39</sup> during periods of political upheaval. As quoted in a BBC news article: “Rape has been used as a political weapon in this country since 1986. The soldiers in the army used rape to frighten people. [...] Now the street gangs in the slums use rape as a powerful weapon of war.”<sup>40</sup>

Although this narrative has drawn much-needed attention to the victimization of Haitian women and girls, its reductive framing of systematic rape as a phenomenon that merely stems from periods of national instability overshadows other key factors underlying

---

<sup>33</sup> “An Epidemic of Rape for Haiti’s Displaced,” *New York Times* (2011), <http://www.nytimes.com/2011/04/04/opinion/04mon2.html>.

<sup>34</sup> Tracy Wilkinson, “Rape flourishes in rubble of Haitian earthquake,” *Los Angeles Times*, February 4, 2011, <http://articles.latimes.com/2011/feb/04/world/la-fg-haiti-women-20110204>.

<sup>35</sup> “An Epidemic of Rape for Haiti’s Displaced,” *New York Times*.

<sup>36</sup> Conor Friedersdorf, “How to Talk About Haiti’s Rape Epidemic,” *The Atlantic*, July 3, 2011, <https://www.theatlantic.com/international/archive/2011/07/how-to-talk-about-haitis-rape-epidemic/241379/>.

<sup>37</sup> Wilkinson, “Rape flourishes in rubble of Haitian earthquake,” *Los Angeles Times*.

<sup>38</sup> Sexual violence against women in Haiti is commonly referred to as an “epidemic” because “it has been occurring and continues to occur at a high rate, comparable to the rates in conflict zones despite the fact that Haiti is not at war.” Ju Yon Kang, “The Hidden Epidemic: Violence against Women in Haiti” (Honors Thesis, Duke University, 2011): 10.

<sup>39</sup> “Rape Looms Large Over Haiti Slums,” *BBC News*, November 27, 2008, <http://news.bbc.co.uk/2/hi/7750568.stm>.

<sup>40</sup> Myriam Merlet, former Head of the Ministry of Women in Haiti, quoted in “Rape Looms Large Over Haiti Slums,” *BBC News*.

widespread sexual violence in Haiti today. As such, this narrative provides too limited an explanation to understand the complexities inherent in the persistence of this culture of rape.

This chapter aims to provide a more nuanced view of sexual violence against women and girls in Haiti by examining both the visible and invisible factors driving this phenomenon. It demonstrates that periods of national instability alone are not what render women in Haiti vulnerable to sexual violence. They merely exacerbate the pre-existing vulnerability of women and girls to violence, which has been profoundly molded by historical factors and by the country's socioeconomic and cultural landscapes. This chapter argues that rape during periods of national instability in Haiti is not incidental and does not happen in a vacuum. Rather, the vulnerability of female bodies to systematic sexual violence is the byproduct of the interaction between (1) the legacy of the historical instrumentalization of rape as a tool to fulfill corrupt political and economic agendas; (2) the enactment of patriarchal gender constructions within the context of extreme poverty; and (3) the injurious consequences of gendered humanitarian aid as well as the active role of international perpetrators in sexually exploiting and abusing Haitian women and girls.

### **The Epidemic of Rape in Haiti's Shantytowns and Displacement Camps**

Before the underlying factors of the culture of rape in Haiti can be examined, a portrait of the prevalence of this issue in recent years is needed. Haiti today is considered the poorest country in the Americas and is among the poorest countries in the world, ranking 163 out of 187 on the 2016 Human Development Index.<sup>41</sup> Fifty-nine percent of the entire population (10.4 million) lives below the 2.41 USD per day poverty line and over 24 percent live below the extreme poverty line of 1.23 USD per day.<sup>42</sup> Large pockets of urban poverty are concentrated in the shantytowns of Port-au-Prince, where a high prevalence of sexual

---

<sup>41</sup> United Nations Development Programme (UNDP), "Haiti: Human Development Indicators," accessed 24 October, 2017, <http://hdr.undp.org/en/countries/profiles/HTI>.

<sup>42</sup>The World Bank Group, "Haiti: Overview," accessed 24 October 2017, <http://www.worldbank.org/en/country/haiti/overview>.

violence against women and girls exists. Studies have demonstrated that in these slum communities, “violence is part of everyday life and sexual violence is particularly rampant.”<sup>43</sup> According to a 2006 research study, for instance, an estimated 50 percent<sup>44</sup> of women in Haiti’s slums “have been victims of rape, often by more than one perpetrator.”<sup>45</sup> The UN Security Council further estimated that from 2004 to 2006, approximately 35,000 women and girls were victims of rape and sexual violence<sup>46</sup> within the slums of Port-au-Prince. Haiti’s shantytowns are particularly characterized by armed violence, often involving gun battles<sup>47</sup> among rival gangs, at the hands of whom dozens of women and girls are subjected to rape.<sup>48</sup> According to a report by the Inter-American Commission on Human Rights (IACHR), unidentified armed groups and gangs “constitute the primary perpetrators of violence against women in the urban setting.”<sup>49</sup> The 2005-2006 Demographic Health Surveys (DHS) revealed that “victims of violence were more likely to be from an urban setting (23.1 percent) than from a rural area (17.1 percent).”<sup>50</sup> Furthermore, in 2006, the prevalence of sexual violence in Port-au-Prince was estimated to be 64 percent.<sup>51</sup> “Among the rape cases documented, 53 percent were committed by armed groups and 29 percent by more than one of their members.”<sup>52</sup>

In Haiti’s slum communities, rape is used as a political weapon of terror by rival groups and criminal gangs aiming to control deprived communities. Aggressions often occur at night, with armed gangs breaking into the dilapidated houses of victims and proceeding to

---

<sup>43</sup> Benedetta Faedi, “From Violence against Women to Women’s Violence in Haiti,” *Columbia Journal of Gender and Law*, 19, issue 4 (2010): 1045.

<sup>44</sup> United Nations Security Council, “Children and Armed Conflict: Report of the Secretary General,” *United Nations A/61/529 S/2006/826* (26 October 2006): 9.

<sup>45</sup> Faedi, “From Violence against Women,” 1045.

<sup>46</sup> “Haiti’s Rape Survivors,” *IRIN News*, November 2, 2011, <http://www.irinnews.org/news/2011/11/02/haitis-rape-survivors>.

<sup>47</sup> Inter-American Commission on Human Rights (IACHR), “The Right of Women in Haiti to be Free from Violence and Discrimination,” *Organization of American States Doc. 64*, March 10, 2009,

<http://www.cidh.oas.org/countryrep/Haitimujer2009eng/HaitiWomen09.Intro.Chap.IandII.htm#I>.

<sup>48</sup> Faedi, “From Violence against Women,” 1044.

<sup>49</sup> IACHR, “The Right of Women in Haiti to be Free from Violence and Discrimination.”

<sup>50</sup> Kang, “The Hidden Epidemic,” 29.

<sup>51</sup> Faedi, “From Violence against Women,” 1046.

<sup>52</sup> *Ibid.*

beat and rape them one after another.<sup>53</sup> According to a study by the Gender Unit of the United Nations Stabilization Mission in Haiti (MINUSTAH)<sup>54</sup> and the United Nations Development Programme (UNDP), the armed groups in the slum neighborhoods are driven by both a desire for political and social change—namely as “anti-establishment champions of Haiti’s poor”<sup>55</sup>—and by criminal economic activities. As will be discussed later in this chapter, the armed groups that target women and girls for sexual violence mushroomed in the early 1990s. They fall into one of five categories: (1) *Popular Organizations*<sup>56</sup> control the territory of slum neighborhoods like Cité Soleil and Martissant<sup>57</sup> and use rape as a weapon of war and reprisals against rival factions. They emerged as supporters of former President Jean-Bertrand Aristide’s regime and remain primarily motivated by political aims. (2) *Baz Arme* gangs, comprised of adolescents “primarily motivated by organized crime purposes”<sup>58</sup> (e.g. weapon and drug trafficking),<sup>59</sup> rape women and girls as “rewards for their illegal operations.”<sup>60</sup> (3) *Armed Criminal Gangs*<sup>61</sup> have arisen as a direct result of poverty, namely the “deterioration in the standard of living”<sup>62</sup> in the slums and high unemployment rates.<sup>63</sup> They employ gang rapes, sexual abuse, and abduction “as a means of controlling the community”<sup>64</sup> and instilling terror in civilians. (4) The *Paramilitaires (Front de Résistance)*<sup>65</sup> (Resistance Front) are a political opposition group “comprised of former military, excommunicated members of the Haitian police, and civilians who overthrew Aristide in

---

<sup>53</sup> Benedetta Faedi, “The Double Weakness of Girls: Discrimination and Sexual Violence in Haiti,” *Stanford Journal of International Law* 44, no. 147 (2008): 174.

<sup>54</sup> The MINUSTAH, which ran from 2004 until October 5, 2017, has been transformed into a deployment of the United Nations Mission for Justice Support in Haiti (MINUJUSTH), which is centered on bolstering Haiti’s police force, democracy, justice system, and other institutions..

<sup>55</sup> Michelle Hughes and Michael Miklaucic, *Impunity: Countering Illicit Power in War and Transition* (United States: Center for Complex Operations, 2016), 75.

<sup>56</sup> United Nations General Assembly Security Council, “Children and Armed Conflict,” 9.

<sup>57</sup> Faedi, “The Double Weakness of Girls,” 160.

<sup>58</sup> *Ibid.*

<sup>59</sup> Benedetta Faedi Duramy, “Gender-Based Violence and Women’s Violence in Context,” in *Gender and Violence in Haiti: Women’s Path from Victims to Agents* (New Brunswick: Rutgers University Press, 2014): 33.

<sup>60</sup> Faedi, “The Double Weakness of Girls,” 160.

<sup>61</sup> United Nations General Assembly Security Council, “Children and Armed Conflict,” 9.

<sup>62</sup> Faedi, “The Double Weakness of Girls,” 161.

<sup>63</sup> *Ibid.*, 160.

<sup>64</sup> *Ibid.*, 161.

<sup>65</sup> United Nations General Assembly Security Council, “Children and Armed Conflict,” 9.

2004.”<sup>66</sup> They actively participate in illicit activities (e.g. extortion, banditry) and perpetuate systematic rape against women and girls in the slum community of Gonaïves.<sup>67</sup> (5) *Vagabond Gangs*, composed of children and adolescents, carry out systematic punitive gang rapes<sup>68</sup> against girls “in order to control their moral conduct and impose macho values within their community.”<sup>69</sup> At present, these armed groups and gangs continue to sweep the slum communities, which have become “the setting for armed confrontations, rapes, and bloody slaughters.”<sup>70</sup> The groups have used rape as a “weapon of war”<sup>71</sup> within the shantytowns to “exert control over the population”<sup>72</sup> in the advancement of criminal economic agendas, namely clandestine narco-trafficking<sup>73</sup> transactions.<sup>74</sup>

This epidemic of rape in Port-au-Prince was worsened by the 7.0 magnitude earthquake that struck Haiti on January 12, 2010, killing approximately 300,000 people<sup>75</sup> and leaving 1.5 million homeless.<sup>76</sup> The collapse of houses, hospitals, and police stations as well as the enfeeblement of the already precarious capacity of national institutions—namely the “government, law enforcement forces, and judicial system”<sup>77</sup>—exacerbated the vulnerability of women and girls to sexual violence. Within the 1,300 displacement camps<sup>78</sup> established around the country there developed a pervasive culture of rape that left women and girls who previously lived in Haiti’s slum communities even more vulnerable to sexual violence. In

---

<sup>66</sup> Faedi, “The Double Weakness of Girls,” 161.

<sup>67</sup> Faedi, *Gender and Violence in Haiti*, 33.

<sup>68</sup> Ibid.

<sup>69</sup> Faedi, “The Double Weakness of Girls,” 161.

<sup>70</sup> Faedi, “The Double Weakness of Girls,” 159.

<sup>71</sup> “Rape Looms Large Over Haiti Slums,” *BBC News*.

<sup>72</sup> Faedi, “The Double Weakness of Girls,” 160.

<sup>73</sup> In her speech at the “International Donors Conference: Towards a New Future for Haiti,” then Secretary of State Hillary Clinton stated that illegal drug trafficking is a 500 million USD industry in Haiti that “thrives on political and social instability.” Hillary Rodham Clinton, “International Donors Conference: Towards a New Future for Haiti,” *U.S. Department of State*, March 31, 2010, <https://2009-2017.state.gov/secretary/20092013clinton/rm/2010/03/139313.htm>.

<sup>74</sup> Faedi, “The Double Weakness of Girls,” 159.

<sup>75</sup> Faedi, “Women in the Aftermath of the Earthquake,” *Gender and Violence in Haiti*, 137.

<sup>76</sup> Siobhan Morrin, “Survivors of Haiti’s Sexual Violence Crisis Are Finally Making Themselves Seen,” *Newsweek* (2017), <http://www.newsweek.com/2017/04/28/haiti-epidemic-sexual-violence-rape-survivors-crisis-586061.html>.

<sup>77</sup> Benedetta Faedi Duramy, “Women in the Aftermath of the 2010 Haitian Earthquake,” *Emory International Law Review*, 25 (2011): 1193.

<sup>78</sup> Mark Schuller, “Pa Manyen Fanm Nan Konsa”: Intersectionality, Structural Violence, and Vulnerability Before and After Haiti’s Earthquake,” *Feminist Studies* 41, no. 1 (2015): 197.

fact, according to a 2012 study by the Instituto Igarapé,<sup>79</sup> camp residents were twenty times more vulnerable to sexual violence than residents in other areas of Port-au-Prince.<sup>80</sup> A 2011 survey additionally revealed that “22 percent of women living in the camps experienced violence the first year following the earthquake, compared to 2 percent outside the camps.”<sup>81</sup> “The lack of lighting, private sanitary facilities, secure shelters, and police patrols”<sup>82</sup> were among the grievous living conditions in the encampment areas that increased the vulnerability of women and girls to aggression and violence.<sup>83</sup> The absence of a police force in the camps at night further resulted in a “lack of adequate measures aimed at maintaining security and enforcing the law,”<sup>84</sup> which fostered a “large number of criminal incidents and armed group activities,”<sup>85</sup> namely the perpetuation of sexual violence at the hands of members of armed groups and prison escapees.<sup>86</sup> According to Amnesty International, “more than 250 cases of rape were reported in several camps in the first 150 days after the earthquake.”<sup>87</sup> Doctors Without Borders further reported “treating 212 victims of sexual violence in the five months”<sup>88</sup> following the disaster while *Solidarité Fanm Ayisyen (SOFA)*<sup>89</sup> (Solidarity of Haitian Women) “documented 718 cases of gender-based violence”<sup>90</sup> between January and June 2010. The humanitarian and governmental response to sexual violence in

---

<sup>79</sup> The Igarapé Institute is a “think and do tank devoted to evidence-based policy and action on complex security, justice and development challenges in Brazil, Latin America, and Africa.” Igarapé Institute, “About Igarapé,” accessed December 9, 2017, <https://igarape.org.br/en/about/about-igarape/>.

<sup>80</sup> Shannon D. Lankenau, “Toward Effective Access to Justice in Haiti: Eliminating the Medical Certificate Requirement in Rape Prosecutions,” *Hastings Law Journal* 64, no. 1759 (2013): 1763.

<sup>81</sup> Mark Schuller, “Pa Manyen Fanm Nan Konsa: The Gender of Aid,” in *Humanitarian Aftershocks in Haiti* (New Brunswick: Rutgers University Press, 2016), 110.

<sup>82</sup> Duramy, “Women in the Aftermath,” 1193.

<sup>83</sup> Maggie Emery, Megan Shaw, Lisa Santosa, and Olivia Bird, “Recommendations to Reduce Sexual Violence in Haitian Internally Displaced Persons’ (IDP) Camps,” in *New Voices in Public Policy* vol. 5 (2011): 7.

<sup>84</sup> Duramy, “Women in Aftermath,” 1197.

<sup>85</sup> Duramy, “Women in the Aftermath of the Earthquake,” in *Gender and Violence in Haiti*, 140.

<sup>86</sup> The earthquake destroyed the male prison in Port-au-Prince, allowing an estimated 4,300 prisoners to escape, including some leaders and many members of armed groups.

<sup>87</sup> “Haiti’s Rape Survivors,” *IRIN News*.

<sup>88</sup> Duramy, “Women in Aftermath,” 1201.

<sup>89</sup> *Solidary of Haitian Women (SOFA)* is a popular feminist organization that works to promote and defend women’s rights in Haiti. Founded in 1986, it specifically fights for the emancipation of Haitian women from subordination, domination, exclusion, and exploitation.

<sup>90</sup> Faedi, “Women in the Aftermath,” 1201.

the IDP camps following the earthquake was “grossly inadequate”:<sup>91</sup> little attention was paid to the protection of women and girls, leaving them vulnerable to their attackers in the camps. The “physical space, design and planning,”<sup>92</sup> of the camps—namely the plastic “walls” and low lighting—increased threats against women. Rapes often occurred at night, following the departure of police forces from the camps, which enabled armed gangs to take control of the camps.<sup>93</sup> Women were often attacked by members of these groups inside their tents, in the latrines, or on their way to obtain water.<sup>94</sup> Sexual violence particularly increased in the “camps neighboring the large slums of Cité Soleil and Martissant,”<sup>95</sup> where several armed groups operate. Furthermore, the lack of sanitary provisions—namely inadequate showering facilities offering no privacy—presented particular dangers for women.<sup>96</sup> As Carine Exantus, a State University of Haiti student, explained: “young women suffer sexual aggression [in the camps] because they have to shower in public.”<sup>97</sup>

Nevertheless, poverty and weak governance in Haiti’s shantytowns and displacement camps create an environment that leaves women increasingly vulnerable to systematic rape as a weapon of terror employed by armed groups for political and economic ends. The increase of sexual violence against women following the earthquake demonstrates the heightened vulnerability of women to rape in periods of humanitarian crisis due to the “collapse of social infrastructure, inequitable access to social services, [and] absence of law and order”<sup>98</sup> that are characteristic of humanitarian settings. The displacement camps became, as Mark Schuller puts it, “symbols of the failure of the disaster response.”<sup>99</sup> The lack of basic resources and of adequate security services in the IDP camps mirrored the failure of the Haitian state and of

---

<sup>91</sup> MADRE, “Struggling to Survive: Sexual Exploitation of Displaced Women and Girls in Port-au-Prince, Haiti,” *CUNY School of Law* (2012): 15.

<sup>92</sup> Schuller, “Pa Manyen Fanm Nan Konsa: The Gender of Aid,” in *Humanitarian Aftershocks in Haiti*, 112.

<sup>93</sup> Faedi, “Women in the Aftermath,” 1200.

<sup>94</sup> Duramy, “Women in the Aftermath of the Earthquake,” in *Gender and Violence in Haiti*, 144.

<sup>95</sup> Duramy, “Women in the Aftermath,” 1199.

<sup>96</sup> Schuller, “Pa Manyen Fanm Nan Konsa: The Gender of Aid,” in *Humanitarian Aftershocks in Haiti*, 112.

<sup>97</sup> *Ibid.*, 113.

<sup>98</sup> Lankenau, “Toward Effective Access to Justice in Haiti,” 1763.

<sup>99</sup> Schuller, “Pa Manyen Fanm Nan Konsa,” 198.

aid organizations to establish adequate post-disaster relief infrastructure to ensure the protection of Haitian citizens, especially the female populace. Indeed, women's vulnerability to sexual violence has existed in humanitarian settings and conflict areas in countries around the world. For instance, a 1999 study conducted by Human Rights Watch (HRW) revealed that Burundian women living in refugee camps in Tanzania had been "raped by other Burundian refugees and by Tanzanians from nearby villages."<sup>100</sup> HRW found that "women were often attacked while carrying out routine daily tasks such as gathering firewood, collecting vegetables, farming, or seeking employment from local Tanzanian villagers."<sup>101</sup> A survey of around 3,800 women and girls between the ages of 12 and 49<sup>102</sup> carried out in a Tanzanian camp by the International Rescue Committee (IRC) further revealed that approximately "26 percent had been victims of sexual violence during their time in the camp."<sup>103</sup>

The literature on sexual violence in Haiti in the wake of the earthquake focuses on the natural disaster as the starting point in the assessment<sup>104</sup> of the prevalence of rape, which implicitly suggests that the crisis itself is the central cause of widespread sexual violence in the displacement camps. However, the 2010 earthquake merely exacerbated the *pre-existing* vulnerability of women to such violence. The epidemic of rape in Port-au-Prince at the hands of armed groups is not a new phenomenon. The armed groups that perpetuate this culture of rape are heavily linked to state actors and political leaders who have continually used them for political ends<sup>105</sup> over the past two decades. As I explain below, many arose within the specific context of the political upheavals that emerged in Haiti in 1991. Understanding the origins of the armed groups that perpetuate this culture of rape will illuminate how sexual

---

<sup>100</sup> Human Rights Watch (HRW), "Seeking Protection: Addressing Sexual and Domestic Violence in Tanzania's Refugee Camps," *Human Rights Watch* (October 2000), <https://www.hrw.org/reports/2000/tanzania/Duhweb-07.htm>.

<sup>101</sup> HRW, "Seeking Protection."

<sup>102</sup> *Ibid.*

<sup>103</sup> Leslie Shanks and Michael J. Schull, "Rape In War: The Humanitarian Response," *Canadian Medical Association Journal* 163, no. 9 (2000): 1153.

<sup>104</sup> Fionnuala Ni Aolain, "Women, Vulnerability, and Humanitarian Emergencies," *Michigan Journal of Gender and Law* 18, no. 1 (2011): 5.

<sup>105</sup> United Nations General Assembly Security Council, "Children and Armed Conflict," 9.

violence in Haiti has been driven, not exclusively by periods of national instability, but also by the corrupt political and economic agendas pursued by state, state-sponsored, and military actors in these periods.

### **The Historical Use of Rape as a Political Weapon of Terror**

Systematic sexual violence against women in Haiti today is intricately linked to the culture of political rape that Haitian politics have historically nurtured in times of upheaval.<sup>106</sup> Haiti has witnessed periods of political instability “characterized by frequent changes in government leaders”<sup>107</sup> and bloody military coups. The first documented cases of political rape can be traced back to the Duvalier regime. From 1957 to 1971, François “Papa Doc” Duvalier maintained “one of the most repressive dictatorships in history”<sup>108</sup> during which he eliminated potential rivals, prohibited opposition propaganda, and instrumentalized sexual violence against women and girls as a weapon of political intimidation.<sup>109</sup> In 1958, Duvalier established his own paramilitary force, the *Milice Volontaires de la Sécurité Nationale (MVSN)* (Militia of National Security Volunteers) to defend his autocratic regime.<sup>110</sup> Through this militia, Duvalier was able to facilitate a reign of terror that largely entailed the quelling of political dissidents through force.<sup>111</sup> Haitians who “spoke out against Duvalier’s increasingly corrupt regime were frequently kidnapped [by militiamen] in the middle of the night,”<sup>112</sup> never to be seen again. An estimated 30,000 to 60,000 Haitians<sup>113</sup> who directly or allegedly opposed Duvalier’s regime were massacred at the hands of this paramilitary force.

---

<sup>106</sup> Emery et al., “Recommendations to Reduce Sexual Violence,” 6.

<sup>107</sup> Kang, “The Hidden Epidemic,” 39.

<sup>108</sup> Faedi, “The Double Weakness of Girls,” 155

<sup>109</sup> Ibid.

<sup>110</sup> Catherine Roth, “Tonton Macoutes (Milices Volontaires de la Sécurité Nationale),” *Black Past*, <http://www.blackpast.org/gah/tonton-macoutes>.

<sup>111</sup> Kang, “The Hidden Epidemic,” 40.

<sup>112</sup> Roth, “Tonton Macoutes,” *Black Past*.

<sup>113</sup> Faedi, “The Double Weakness of Girls,” 155.

Within this militia was a special operations unit known as the *Tonton Macoutes* that served as Duvalier's personal militia and remained under his personal control.<sup>114</sup> The *Macoutes* were "an extension of Duvalier's power intended to terrorize the population."<sup>115</sup> They were authorized to commit widespread systematic violence and human rights abuses to suppress political opposition. Many of the "poorer militiamen capitalized on their newfound powerful position"<sup>116</sup> to steal land and money from local populations. However, they were primarily responsible for an unknown number of brutal murders and widespread systematic rapes of women, particularly those suspected of opposing Duvalier. In 1971, following his father's death, Jean-Claude "Baby Doc" Duvalier, ascended to power. During his reign, he too employed widespread violence, particularly rape, as a weapon of political repression. The *Tonton Macoutes* remained active even after the end of the Duvalier era. Paramilitary groups spawned from the *Macoutes* continued to carry out massacres in the decade following the Duvalier regime.<sup>117</sup> After the overthrow of the Duvalier regime in 1986, a series of interim governments arose "until the democratic election of [...] Jean-Bertrand Aristide in 1990."<sup>118</sup> Rape was more widely used as a political tool between 1991 and 1994, following the overthrow of Aristide, and again between 1994 and 2006 both during and after his second presidency.

In 1990, Aristide became the first democratically elected President of Haiti. A former Catholic priest and anti-poverty activist, he "gained the favor of the Haitian poor"<sup>119</sup> in countless sermons decrying their wretched poverty and encouraging them to "fight for a better standard of living"<sup>120</sup> against Haiti's elite. Given his lack of political experience, his support for violent uprisings, and his opposition to both the elite and the military forces that

---

<sup>114</sup> Roth, "Tonton Macoutes," *Black Past*.

<sup>115</sup> Kang, "The Hidden Epidemic," 40.

<sup>116</sup> Roth, "Tonton Macoutes," *Black Past*.

<sup>117</sup> "The Tonton Macoutes: The Central Nervous System of Haiti's Reign of Terror," *Council on Hemispheric Affairs*, March 11, 2010, <http://www.coha.org/tonton-macoutes/>.

<sup>118</sup> Faedi, "From Violence against Women," 1031.

<sup>119</sup> Faedi, "The Double Weakness of Girls," 156.

<sup>120</sup> *Ibid.*

operated under the Duvalier regime, Aristide was soon surrounded by enemies and was “overthrown in a bloody military coup”<sup>121</sup> in 1991. Thereafter, between 1991 and 1994, the military junta systematically used violence against women and girls, particularly gang rape, as a weapon of political intimidation and repression.<sup>122</sup>

In 1994, HRW “documented the use of rape as a [political weapon] during the regime of General Raoul Cédras,”<sup>123</sup> the interim national leader following Aristide’s ouster. Cédras largely patterned the use of torture and violence after the Duvalier regime.<sup>124</sup> However, Cédras’s military junta distinguished itself from the Duvalier dictatorships “by orchestrating an intensive and systematic campaign of mass sexual abuse against females in the popular opposition.”<sup>125</sup> “Sexual violence, and particularly gang rape, were [...] widely employed”<sup>126</sup> during the coup as a weapon of political oppression and as “part of a deliberate political strategy to defeat rival factions and terrorize and control the entire population.”<sup>127</sup> Women, particularly those suspected or known to be Aristide supporters, were actively targeted by uniformed soldiers, army attachés, and police officers, and denied their “basic civil and political rights to political expression, humane treatment, and due process.”<sup>128</sup> They were often beaten and raped in their homes by the military and armed groups like the *Front pour l’Avancement et le Progrès d’Haiti (FRAPH)*<sup>129</sup> (Front for the Advancement and Progress of Haiti), the most feared paramilitary group founded by a former *Tonton Macoute* in 1993.<sup>130</sup> Moreover, army attachés<sup>131</sup>—“civilians employed, armed, and directed by the military”<sup>132</sup>—

---

<sup>121</sup> Faedi, “From Violence against Women,” 1031.

<sup>122</sup> Faedi, “The Double Weakness of Girls,” 157.

<sup>123</sup> “Haiti’s Rape Survivors,” *IRIN News*.

<sup>124</sup> Terry Rey, “Junta, Rape, and Religion in Haiti,” *Journal of Feminist Studies in Religion* 15, no.2 (1999): 73.

<sup>125</sup> *Ibid.*

<sup>126</sup> Faedi, “From Violence against Women,” 1032.

<sup>127</sup> *Ibid.*

<sup>128</sup> Human Rights Watch (HRW), “Rape in Haiti: A Weapon of Terror,” *Human Rights Watch National Coalition for Haitian Refugees* 6, no. 8 (1994): 2.

<sup>129</sup> The FRAPH was comprised of “bands of civilian thugs armed by the Haitian military and [...] fashioned into [a] quasi-political organization.” HRW, “Rape in Haiti: A Weapon of Terror,” 2.

<sup>130</sup> HRW, “Rape in Haiti: A Weapon of Terror,” 3.

<sup>131</sup> The vestiges of Duvalier’s MVSN became known as army *attachés*, which were comprised of “vigilantes attached to government security forces or [corrupt] political organizations” who employed violence against their opponents. Small paramilitary bodies—many of which were formed by former *Macoutes* who “remained nostalgic for the good old days of

abused their discretionary powers through numerous crimes, namely the use of rape and sexual assault to terrorize pro-Aristide neighborhoods and to punish women for their “actual and imputed political beliefs.”<sup>133</sup> Given that the army oversaw the “investigatory and enforcement aspects”<sup>134</sup> of the justice system, crimes of rape were able to “flourish under cover of impunity assured by the military authorities.”<sup>135</sup>

In 1994, under pressure of major representatives of the Clinton Administration and under threat of an invasion of American troops, the military junta resigned from power and Aristide was restored to the Presidency. Upon his return, he “assembled his own paramilitary gang called [the] *Chimères* to ensure unfaltering support for his administration and to enforce his rule in slums by quelling dissidents.”<sup>136</sup> This gang of zealous Aristide supporters behaved like “paramilitary forces of tyranny and repression,”<sup>137</sup> organizing violent pro-Aristide demonstrations, silencing the opposition, and committing widespread human rights violations, most notably systematic sexual violence against women and girls. Following the end of his term, Aristide formed the *Fanmi Lavalas* (Lavalas Family) political party and, shortly thereafter, facilitated the organization of armed support among the poor, predominantly in the slums of Port-au-Prince. Consequently, popular organizations in the form of “armed street gangs, led by young men who had grown up in the slums”<sup>138</sup> mushroomed as “armed political pressure groups”<sup>139</sup> in support of Aristide. These gangs were primarily characterized by criminal entrepreneurialism (e.g. drug trafficking), turf protection, implicit political objectives, and local criminal activity (e.g. robbery, kidnapping, and

---

Duvalierism”—worked with these *attachés*. “The Tonton Macoutes: The Central Nervous System of Haiti’s Reign of Terror,” *Council on Hemispheric Affairs*, March 11, 2010, <http://www.coha.org/tonton-macoutes/>.

<sup>132</sup> HRW, “Rape in Haiti: A Weapon of Terror,” 11.

<sup>133</sup> *Ibid.*, 3.

<sup>134</sup> HRW, “Rape in Haiti: A Weapon of Terror,” 11.

<sup>135</sup> *Ibid.*, 7.

<sup>136</sup> Kang, “The Hidden Epidemic,” 42.

<sup>137</sup> Immigration and Refugee Board of Canada, “Haiti: The *chimères*, their activities and their geographic presence; the treatment of the *chimères* by the authorities and the presence of group members within the government and the police (2006 - May 2008),” *UN Refugee Agency* (3 June 2008), <http://www.refworld.org/docid/4a70409420.html>.

<sup>138</sup> Hughes and Miklaucic, *Impunity*, 74.

<sup>139</sup> Faedi, “The Double Weakness of Girls,” 158.

rape).<sup>140</sup> In 2000, Aristide regained power and following his second ousting—due to accusations of “corruption, political repression, and gender-based violence”<sup>141</sup>—ensued a “massive breakdown of the poor slum communities”<sup>142</sup> that had supported the former president. “Violent confrontations among rival armed groups”<sup>143</sup> and widespread sexual assaults of women and girls thereafter reigned. According to a 2004 “random survey of 1,260 households in Port-au-Prince,”<sup>144</sup> approximately 35,000<sup>145</sup> women and girls were raped by government forces, armed anti-Lavalas groups, and officers of the Haitian National Police (HNP) during the “twenty-two months of the interim government following Aristide’s [second] ouster.”<sup>146</sup>

The armed groups that have constituted the primary perpetrators of systematic rape in Haiti’s shantytowns and displacement camps in recent years found their origins in the popular organisations and gangs that emerged in favor of Aristide.<sup>147</sup> Rival armed gangs “splintered from the Lavalasian organisations”<sup>148</sup> continue to sweep the slum communities, which have become “the setting for armed confrontations, rapes, and bloody slaughters.”<sup>149</sup> The birth of these armed gangs is particularly emblematic of the use of gangs in Haiti as “instruments of illicit power”<sup>150</sup> by state actors. The bulk of these gangs, particularly those “affiliated with organized crime”<sup>151</sup> and the paramilitary, are additionally tied to Haiti’s political elite,<sup>152</sup> namely politicians, business leaders, and wealthy landowners who “serve as the gangs’ chief financial patrons”<sup>153</sup> and who use them as a means of “intimidating enemies

---

<sup>140</sup> Hughes and Miklaucic, *Impunity*, 74-7.

<sup>141</sup> Faedi, *Gender and Violence in Haiti*, 26.

<sup>142</sup> Faedi, “The Double Weakness of Girls,” 158.

<sup>143</sup> Faedi, “The Double Weakness of Girls,” 158.

<sup>144</sup> Athena R. Kolbe and Royce A. Hutson, “Human Rights Abuse and Other Criminal Violations in Port-au-Prince, Haiti: A Random Survey of Households,” *Wayne State University* (2006): 1.

<sup>145</sup> Kolbe and Hutson, “Human Rights Abuse and Other Criminal Violations,” 1.

<sup>146</sup> Faedi, “The Double Weakness of Girls,” 174.

<sup>147</sup> Hughes and Miklaucic, *Impunity*, 159.

<sup>148</sup> Faedi, “The Double Weakness of Girls,” 159.

<sup>149</sup> *Ibid.*

<sup>150</sup> Hughes and Miklaucic, *Impunity*, 74.

<sup>151</sup> *Ibid.*

<sup>152</sup> *Ibid.*

<sup>153</sup> *Ibid.*

and extending business interests.”<sup>154</sup> These gangs often align with powerful authority figures as it enables them to maintain political power over civilian populations. With this power, the impoverished members of these gangs are able to “shield the blows of economic and social deprivation”<sup>155</sup> through criminal activity.

Nevertheless, the culture of rape that prevails in Haiti is deeply embedded in the specific historical context of the instrumentalization of rape as a weapon of terror. The systematic use of political rape by state and state-supported actors sheds light on the illicit agendas of wealth and power accumulation that drive systematic sexual violence against women in Haiti. It can thus be understood that sexual violence against Haitian women during periods of national instability is not simply an incidental manifestation of brutality. Rather, it is a deliberate act that has routinely served a “strategic function [...] as a tool for achieving specific [...] objectives,”<sup>156</sup> namely the maintenance of political power and territorial authority over slum communities.<sup>157</sup> Although the culture of rape in Haiti is largely a legacy of historical periods of political instability, and more recently of the havoc wreaked by the 2010 earthquake, it is too simplistic to conclude that the epidemic of rape in Haiti is merely an inevitable byproduct of these crises. They only scratch the surface of the factors contributing to the vulnerability of women. The chain of causal links to explain ongoing sexual violence in Port-au-Prince is more complex: the vulnerability of women and girls to sexual violence stems from the interaction of more invisible underlying factors that supersede these periods of crisis, namely patriarchal gender norms and constructions within the context of extreme poverty.

### **Hegemonic Masculinity and the Objectification of Female Bodies**

---

<sup>154</sup> Ibid.

<sup>155</sup> Kang, “The Hidden Epidemic,” 43.

<sup>156</sup> Human Rights Watch (HRW), “Rape as a Weapon of War and a Tool of Political Repression,” in *The Human Rights Watch Global Report on Women’s Human Rights* (United States: Human Rights Watch Women’s Rights Project, 1995): 2. <https://www.hrw.org/sites/default/files/reports/general958.pdf>.

<sup>157</sup> MADRE, “Campaign to Disarm Rape as a Weapon of War,” accessed November 3, 2017, <https://www.madre.org/disarmrape>.

The lifeblood of sexual violence against women in Haiti draws from a deeper source often overlooked by the discourse on rape as a “weapon of terror” and the narratives of sexual and gender-based violence (SGBV) in humanitarian settings—the constructions of masculinity and femininity in Haitian society that influence male perpetrators, and the role of poverty in exacerbating their enactment. Port-au-Prince’s slum communities are home to the city’s most impoverished citizens. At their foundation, the armed gangs that carry out rapes in Port-au-Prince’s bidonvilles and displacement camps “exist as a social reality spawned by [...] abject poverty and the lack of access or opportunity that is reality for most Haitians.”<sup>158</sup> In Haiti—a patriarchal society in which male dominance is maintained through rigid gender norms—attaining manhood entails achieving a high level of financial independence, employment, or income. However, the indigence and unemployment that are characteristic of a fragile state like Haiti “significantly diminish male sources of self-esteem,”<sup>159</sup> which threatens the traditional “social role of men as the providers.”<sup>160</sup> The notion of manhood places the majority of men who find themselves in poverty or unemployment—namely those raised in the slums—“in a situation where they are unable to live up to the social expectations of manhood.”<sup>161</sup> According to hegemonic masculinity theory, masculinity is neither biologically innate nor tied to sex characteristics but is rather a gender performance<sup>162</sup>—a set of norms or expected behaviors that society prescribes to men<sup>163</sup> and a social construct of the ideal that defines a “real man” in a particular culture. According to hegemonic masculinity theory, high levels of poverty and unemployment can severely disrupt male egos and threaten

---

<sup>158</sup> Hughes and Miklaucic, *Impunity*, 75.

<sup>159</sup> Duramy, “Victims’ Help-Seeking and the Criminal Justice Response,” in *Gender and Violence in Haiti*, 103.

<sup>160</sup> *Ibid.*, 102-3.

<sup>161</sup> Monica Dore Carlson, “Individual and Contextual Determinants of Gender-Based Violence in the Democratic Republic of Congo and the Role of Armed Conflict: A Multilevel Analysis” (PhD diss., Tulane University, 2015), 30.

<sup>162</sup> Ami Lynch, “Hegemonic Masculinity,” in *Encyclopedia of Gender and Society*, by Jodi O’Brien, Sage Publications, 2009,

[https://ezproxy.library.nyu.edu/login?url=http://search.credoreference.com/content/entry/sagegs/hegemonic\\_masculinity/0?institutionId=577](https://ezproxy.library.nyu.edu/login?url=http://search.credoreference.com/content/entry/sagegs/hegemonic_masculinity/0?institutionId=577).

<sup>163</sup> Lynch, “Hegemonic Masculinity.”

concepts of masculinity.<sup>164</sup> Therefore, acts of sexual aggression often become an outlet to validate masculinity for impoverished men.<sup>165</sup> Clinical psychologist Nicholas Groth, who “popularized the explanation of sex as an act of power,”<sup>166</sup> identifies this type of rapist as the “power assertive rapist” who wishes to enhance feelings of self-worth through rape.<sup>167</sup> Although sexual violence against women in Haiti at the hand of armed groups has been politically and economically motivated, it cannot be reduced to these external agendas as it also involves the more subtle dimension of the internalization and ensuing enactment of gender constructions.

Hegemonic masculinity theory sheds useful light on the symbolic dimension of sexual violence against women, and helps to understand why armed groups in Haiti specifically target women. For instance, male perpetrators in armed gangs often rape women collectively with the deliberate intention of dominating the female body and, in turn, gaining a sensation of power and virility. In this way, gang rapes become a performance and exercise of virility. As Benedetta Faedi explains in her scholarly article, “The Double Weakness of Girls: Discrimination and Sexual Violence in Haiti”:<sup>168</sup> “The conquest of the female body becomes a vehicle for extolling rapists’ strength and masculinity as well as for displaying their status and authority within the gang.”<sup>169</sup> Sexual violence especially becomes “a tool for reclaiming men’s identity and overcoming their emasculation.”<sup>170</sup> In her scholarly article, “Women, Vulnerability, and Humanitarian Emergencies,” Fionnuala Ni Aolain sheds particular light on this enactment of masculinity within humanitarian settings:

[Hegemonic masculinity] may perform a kind of compensatory function for men vis-à-vis women when their other social and economic roles have been decimated by

---

<sup>164</sup> Carlson, “Individual and Contextual Determinants of Gender-Based Violence,” 31.

<sup>165</sup> *Ibid.*, 32.

<sup>166</sup> Shana L. Maier, “Rape Myths and Theoretical Considerations,” in *Rape, Victims, and Investigations : Experiences and Perceptions of Law Enforcement Officers Responding to Reported Rapes*, (New York: Taylor & Francis Group, 2014), 35.

<sup>167</sup> Maier, “Rape Myths and Theoretical Considerations,” in *Rape, Victims, and Investigations*, 35.

<sup>168</sup> The data informing her paper is the result of fieldwork involving “thirty-eight face-to-face interviews conducted with interviewees from international and national institutions, governmental representatives” and victims of sexual violence. Faedi, “The Double Weakness of Girls,” 149.

<sup>169</sup> Faedi, “The Double Weakness of Girls,” 176.

<sup>170</sup> Duramy, “Victims’ Help-Seeking and the Criminal Justice Response,” in *Gender and Violence in Haiti*, 103.

disaster. The social traction of [hegemonic masculinity] is intensified when violence is endemic and the cultural and social dampeners may be significantly burdened or absent.<sup>171</sup>

The use of systematic sexual violence to reassert “the eroding male identity” is indicative of the powerful interplay of poverty and masculinity in Haiti’s rape epidemic, which is increasingly aggravated in periods of national crisis.

Widespread rape is particularly emblematic of patriarchal gender constructions of femininity and the objectification of female bodies. In Haiti, the girl’s body is considered a possession that parents can claim as “private property” and transfer as a commodity to their daughters’ husbands and even to other families.<sup>172</sup> The “patriarchal misconception of the female’s body as property”<sup>173</sup> is reflected in the phenomenon of *restavéks*, in which impoverished Haitian families who are “unable to feed or educate their numerous offspring”<sup>174</sup> sell their daughters (younger than 18-years-old) to wealthier families who promise to care for them in exchange for domestic help.<sup>175</sup> In the majority of cases, these girls are raped and sexually abused by their employers because they are perceived as property of the household.<sup>176</sup> According to a 1996 empirical study on violence against women in Haiti, conducted by the “*Centre Haïtien de Recherches et d’Actions pour la Promotion Féminine*” (*CHREPROF*) (Haitian Centre for Research and Actions for the Advancement of Women), “70 percent of Haitian women had suffered some form of violence,”<sup>177</sup> namely physical, sexual, and political.<sup>178</sup> Per the findings of the same study, 80 percent of male participants “believed violence against women was justified in certain circumstances”<sup>179</sup> (e.g. when the wife disobeys the husband’s commands). These men further perceived women as “abusable

---

<sup>171</sup> Aolain, “Women, Vulnerability, and Humanitarian Emergencies,” 16.

<sup>172</sup> Faedi, “The Double Weakness of Girls,” 167.

<sup>173</sup> *Ibid.*, 168

<sup>174</sup> *Ibid.*

<sup>175</sup> *Ibid.*

<sup>176</sup> *Ibid.*, 169.

<sup>177</sup> Josh Doherty, “Domestic and Sexual Violence in Haiti: Insufficient Remedies, Inadequate Response,” *Focus on Haiti Initiative*, <https://focusonhaiti.org/2013/08/12/domestic-and-sexual-violence-in-haiti-insufficient-remedies-inadequate-response-2/>.

<sup>178</sup> Doherty, “Domestic and Sexual Violence in Haiti,” *Focus on Haiti Initiative*.

<sup>179</sup> Kang, “The Hidden Epidemic,” 17.

objects” and held that it was “within their masculine rights to subject women to violence.”<sup>180</sup> The deep-seated cultural belief of women as property is further encapsulated in the Haitian proverb “*Fanm se kajou*,” which translates to “Woman is like mahogany”<sup>181</sup> and signifies that women are akin to a piece of wood that must be beaten into submission and “tamed by men for their own good either ‘by word or blow.’”<sup>182</sup>

“The social role of [female] bodies as male property [...] translates into their symbolic assimilation with [...] the collective spirit of an entire community.”<sup>183</sup> Haitian women and girls are specifically targeted by armed groups due to their socially constructed position as “keepers of the family honor”<sup>184</sup> and as those “providing the moral basis”<sup>185</sup> of the community. Systematic sexual violence is thus further used as a weapon of symbolic destruction and shaming of communities. It represents an important tool intended to simultaneously “reduce female bodies into ‘damaged property’”<sup>186</sup> and ultimately achieve the “breakdown of the intimate structure of Haitian families and communities.”<sup>187</sup> As explained by HRW:

Rape, wherever it occurs, is considered a profound offense against individual and community honor. [Perpetrators] can succeed in translating the attack upon individual women into an assault upon their communities because of the emphasis placed in every culture in the world on women’s sexual purity.<sup>188</sup>

Sexual violence has historically been used as a “weapon of war” in countries around the world, namely “the former Yugoslavia, Rwanda, Bangladesh, Uganda, Burma, and Somalia”<sup>189</sup> as well as the “Democratic Republic of Congo (DRC), Darfur in the Western region of Sudan, Libya, Bosnia, and Colombia.”<sup>190</sup> For instance, in the eastern region of the

---

<sup>180</sup> Ibid.

<sup>181</sup> Faedi, “The Double Weakness of Girls,” 165.

<sup>182</sup> Faedi, “The Double Weakness of Girls,” 166.

<sup>183</sup> Ibid., 175-6.

<sup>184</sup> Ibid.

<sup>185</sup> Ibid., 176

<sup>186</sup> Ibid.

<sup>187</sup> Faedi, “The Double Weakness of Girls,” 176.

<sup>188</sup> Human Rights Watch, “Rape as a Weapon of War and a Tool of Political Repression,” 3.

<sup>189</sup> L. Shanks, N. Ford, M. Schull, and K. de Jong, “Responding to Rape,” *The Lancet* 357, (2001): 304

<sup>190</sup> Maier, “Rape Myths and Theoretical Considerations,” in *Rape, Victims, and Investigations*, 36.

DRC<sup>191</sup>—notoriously known as the “rape capital of the world”<sup>192</sup> in which an estimated 48 women are raped hourly<sup>193</sup>—sexual violence is rampant and has systematically been used as a “weapon of war” by armed rebel groups in their quest to access and maintain control of Congo’s lucrative mineral reserves. “Between 2003 and 2006, the International Rescue Committee registered 40,000 cases of gender-based violence in Congo,”<sup>194</sup> which it remarked was “just the tip of the iceberg.”<sup>195</sup> Furthermore, “from January to September 2014, the United Nations Population Fund (UNFPA) recorded 11,769 cases of sexual and gender-based violence”<sup>196</sup> in Congo’s eastern provinces. The bulk of this violence is perpetuated by armed rebel groups, but reports by international organizations have demonstrated that the sexual abuse of women in eastern Congo is also largely perpetuated by soldiers in the Congolese armed forces—known as the “*Forces armées de la République démocratique du Congo*” (*FARDC*) (“Armed Forces of the Democratic Republic of the Congo”)—as well as male civilians.

The ruthlessness with which sexual violence is committed in the Congo suggests that rape is not solely sexually motivated. Armed rebel groups specifically target Congolese women because of a deeper symbolic reason. As a doctor at the Panzi Hospital in the eastern province of South Kivu explained: the rape of women “is done to destroy completely the social, family fabric of society.”<sup>197</sup> Rape is a particularly effective tool of destruction within

---

<sup>191</sup> For decades, the eastern region of the Democratic Republic of the Congo (DRC) has been steeped in a protracted conflict between armed groups in their quest to access and maintain control of lucrative mineral reserves. Today the DRC is home to untapped raw mineral deposits valued at \$24 trillion. Its mineral reserves make it one of the world’s most resource-rich nations in the world. Emily Veale, “Is There Blood On Your Hands-Free Device?: Examining Legislative Approaches to the Conflict Minerals Problem in the Democratic Republic of Congo,” *Cardozo Journal of International and Comparative Law* 21 (2012): 516.

<sup>192</sup> Malokele Nanivazo, “Sexual Violence in the Democratic Republic of the Congo,” *United Nations University* (2012). <https://unu.edu/publications/articles/sexual-violence-in-the-democratic-republic-of-the-congo.html>.

<sup>193</sup> Nicholas Webb, Sonja Peterson, and Ellen J. Kennedy, “Conflict Minerals and the Law,” *Bench & Bar of Minnesota* (December 2014): 27.

<sup>194</sup> Stacy Banwell, “Rape and Sexual Violence In the Democratic Republic of Congo: A Case Study of Gender-Based Violence,” *Journal of Gender Studies* 23 (2014): 48.

<sup>195</sup> Banwell, “Rape and Sexual Violence In the Democratic Republic of Congo,” 48.

<sup>196</sup> United Nations Security Council, “Conflict-Related Sexual Violence: Report of the Secretary-General,” *United Nations S/2015/203* (23 March 2015), [http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s\\_2015\\_203.pdf](http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2015_203.pdf).

<sup>197</sup> Sara Meger, “Rape of the Congo: Understanding sexual violence in the conflict in the Democratic Republic of Congo,” *Journal of Contemporary African Studies* 28 (2010): 129.

the context of Congolese social mores and constructions of femininity. In Congolese culture, women are perceived as the “core of the community” due to their primary role as the caregivers, child-bearers, and nurturers.<sup>198</sup> “Their social role has ‘been constructed as the locus or carriers of culture’, and as such an attack on a woman in a given community is an attack on that community.”<sup>199</sup> Leslie Shanks and Michael J. Schull shed light on this symbolic dimension of sexual violence in their article, “Rape In War: The Humanitarian Response”: “[Rape] is a highly effective means of terrorizing entire communities: because of the emphasis most cultures place on the sexual virtue of women, the rapist is able to humiliate and demoralize.”<sup>200</sup> In her book, *Rape, Victims, and Investigations: Experiences and Perceptions of Law Enforcement Officers Responding to Reported Rapes*, Shana L. Maier similarly explains that rape is often used in war-torn countries as a tool to “obtain power and control over communities, destroy communities, and gain revenge against citizens who support the enemy.”<sup>201</sup> Nevertheless, perpetrators in Haiti and in other countries like the DRC exploit constructions of femininity because they have recognized the power of sexual violence to disrupt communities. “Women are targeted not just as individuals but also as supposed embodiments of their home, family, ‘motherland,’ or as the ‘property’ of enemy groups.”<sup>202</sup>

### ***Poto Mitan: Patriarchal Cultural Beliefs Regarding the Inferiority of Women***

The objectification of female bodies primarily takes root in patriarchal cultural beliefs regarding the inferiority of women, which operate in violence against women not only within the public sphere at the hands of armed groups but also in the private sphere at the hands of unarmed perpetrators. In our interview, Carol Pierre-Paul Jacob—a member of SOFA since

---

<sup>198</sup> Meger, “Rape of the Congo,” 130.

<sup>199</sup> Ibid.

<sup>200</sup> Shanks and Schull, “Rape In War,” 1155.

<sup>201</sup> Maier, “Rape Myths and Theoretical Considerations,” in *Rape, Victims, and Investigations*, 35.

<sup>202</sup> MADRE, “Campaign to Disarm Rape as a Weapon of War.”

1992 and the organization's former Executive Director (1999-2014)—underscored the asymmetrical power dynamic between men and women in Haitian society as a key contributing factor to the vulnerability of women not only to violence but also discrimination before the law. According to her, Haitian society is “constructed on the base of a patriarchal culture.”<sup>203</sup> It is “simultaneously patriarchal and matrifocal,”<sup>204</sup> which is most notably seen in the sociocultural construction of women as the *Poto Mitan* (central pillar) of the family and society. According to Jacob, this “male chauvinist” construction serves the sole purpose of placing on women's shoulders all familial responsibilities—namely maintaining the household and educating the children—and liberating men of all household duties.<sup>205</sup> The construction of women as the *Poto Mitan* “engenders matrifocality within Haitian families,”<sup>206</sup> in which the household revolves around women who serve as both the caretaker at home and as wage earners outside the household. A 2002 World Bank report revealed that “Haiti demonstrates one of the highest female Economically Active Population (EAP) rates in the developing world, with 62 percent of the female population earning money.”<sup>207</sup> However, the high prevalence of economically active women is far from empowering and rather signals the “indispensability of women's economic activity for the survival of the household since men are not pulling their weight.”<sup>208</sup> As Ju Yong Kang notes in her thesis, “The Hidden Epidemic: Violence against Women in Haiti”: “Because women mostly work in the informal and poorly paid or unpaid sector, a large proportion of female household heads do not earn enough money to sufficiently provide for their families [...] The poorer the household, the more dependent it is on the meager earnings of women.”<sup>209</sup> Moreover, “women spend a higher portion of their income on goods for their children and collective

---

<sup>203</sup> Carol Pierre-Paul Jacob (Matrifocality in Haitian Society), interviewed by Mathilde Pierre, Port-au-Prince, Haiti, 12 January 2018.

<sup>204</sup> Ibid.

<sup>205</sup> Ibid.

<sup>206</sup> Kang, “The Hidden Epidemic,” 53.

<sup>207</sup> Ibid.

<sup>208</sup> Ibid., 54.

<sup>209</sup> Kang, “The Hidden Epidemic,” 54.

household consumption than men do.”<sup>210</sup> According to a 2006 study, 82 percent of women “gave 100 percent of their income to the household [whereas] only 49 percent of men contributed their incomes,”<sup>211</sup> often because they had obligations to extramarital relationships.<sup>212</sup> As a USAID employee stated: “You give money to a man and he’s as likely to spend it on beer or a lover as on his family. But if you give to a woman, you’re guaranteed that she will prioritize feeding herself and her children.”<sup>213</sup>

Despite the fact that many Haitian households are matrifocal, there simultaneously exists a deep-seated and historically constructed “ideology of gender hierarchy in which males occupy a higher social rank.”<sup>214</sup> The vulnerability of women to sexual violence in Haiti largely stems from social conceptions of women as “inferior”<sup>215</sup> to their male counterparts.<sup>216</sup> As in most patriarchal societies, men in Haiti are expected to be the “breadwinners” and women the “caregivers.”<sup>217</sup> Women are considered to be the sex that is “primarily responsible for domestic duties”<sup>218</sup> (e.g. preparing food, caring for children) due to their biological difference and reproductive capacity. According to a 2009 report by the IACHR, discrimination against women is a “widespread and tolerated phenomenon in Haitian society”<sup>219</sup> that is reflected in the disadvantaged and unequal position of women in the “economic, education, health, justice, labor, and decision-making sectors.”<sup>220</sup> For instance, in

---

<sup>210</sup> Ibid.

<sup>211</sup> Ibid.

<sup>212</sup> Ibid.

<sup>213</sup> Schuller, “Pa Manyen Fanm Nan Konsa: The Gender of Aid,” 113.

<sup>214</sup> Kang, “The Hidden Epidemic,” 56-7.

<sup>215</sup> This inferiority is also historically constructed. After the overthrow of French colonial rule, women in Haitian society “were treated as second-class citizens” and relegated to the “bottom rung of the economic and social ladder.” Gender inequality was further institutionalized in various constitutions written throughout Haitian history that legally subordinated women to men. For instance, “[u]ntil 1979, Haitian law deemed married women as minors who were subject to and accountable to their husbands.” Furthermore, “acceptance of abuse against women was implicitly established in the Haitian Penal Code prior to its revision in 2005” as a man was previously “permitted to kill his wife if he caught her in an act of adultery” whereas women were not granted this “license to kill their unfaithful husbands,” who was only charged a 50 USD fine if convicted of adultery. Kang, “The Hidden Epidemic,” 57.

<sup>216</sup> Kang, “The Hidden Epidemic,” 57.

<sup>217</sup> Faedi, “The Double Weakness of Girls,” 166.

<sup>218</sup> Ibid.

<sup>219</sup> IACHR, “The Right of Women in Haiti to be Free from Violence and Discrimination.”

<sup>220</sup> Boston College Law School et al., “Access to Judicial Remedies in Haiti,” *112th Session of the United Nations Human Rights Committee* (8-9 October 2014): 4.

2011, there was only “one female senator in the 30-member senate (3.33 percent)”<sup>221</sup> and 4 female deputies out of the 95 members of the 49th Chamber of Deputies (4.21 percent).<sup>222</sup> The social construction of Haitian women as the *Poto Mitan* limits their “opportunities to work outside of the home”<sup>223</sup> and, in turn, renders them almost exclusively dependent on men for economic support, which is a root cause of their subordination within the household.<sup>224</sup> This type of social assignment of gender roles promotes the inferior treatment of women both within the home and in the public sphere, at the hands of not only armed but also unarmed perpetrators (e.g. relatives, neighbors, and strangers). According to a DHS administered by USAID in 2000 to investigate domestic violence (physical, sexual, and emotional) in nine countries, “32.5 percent of Haitian women surveyed between 15 and 49 years old faced domestic violence.”<sup>225</sup> According to a World Bank study, “46 percent of all Haitian girls have been sexually abused within the household.”<sup>226</sup> A 2000 study, conducted again in 2005 and 2007 and yielding similar results, found that “30 percent of Haitian women have suffered acts of violence from husbands or partners.”<sup>227</sup> Although male partners and spouses “commit a large portion of violence against women,”<sup>228</sup> perpetrators also include non-intimate partners. According to the 2005-2006 “*Enquête Mortalité, Morbidité et Utilisation des Services*” (EMMUS) (“Survey on Morbidity, Mortality, and Use of Services”) 44 percent of victims “faced domestic violence by an aggressor(s) other than their husband or partner, whereas 28 percent faced spousal violence.”<sup>229</sup>

Nevertheless, patriarchal gender constructions are a key factor operating at the community level that increase the risk of women being subjected to sexual violence. “Social

---

<sup>221</sup> Meena Jagannath, “Barriers to Women’s Access to Justice in Haiti,” *The City University of New York (CUNY) Law Review* 15, no. 1 (2011): 28.

<sup>222</sup> Jagannath, “Barriers to Women’s Access to Justice in Haiti,” 29.

<sup>223</sup> IACHR, “The Right of Women in Haiti to be Free from Violence and Discrimination.”

<sup>224</sup> Faedi, “The Double Weakness of Girls,” 166.

<sup>225</sup> Kang, “The Hidden Epidemic,” 11.

<sup>226</sup> Faedi, “The Double Weakness of Girls,” 165.

<sup>227</sup> Doherty, “Domestic and Sexual Violence in Haiti,” *Focus on Haiti Initiative*.

<sup>228</sup> Kang, “The Hidden Epidemic,” 19.

<sup>229</sup> *Ibid.*

conceptions of the inferiority and subordination of women”<sup>230</sup> are ingrained in Haitian culture and prevail “both in times of peace and in times of unrest.”<sup>231</sup> As such, periods of national instability merely exacerbate the *pre-existing* vulnerability of women and girls to deeply entrenched cultural beliefs about the inferior status of women and their role in society. Sexual violence in Haiti is thus driven not only by the more overt factors of political unrest and humanitarian crisis, but also by the exploitation of gender constructions, capitalized upon and enacted by armed groups in the pursuit of political and economic agendas within the context of national crises.

### **International Perpetrators: Gendered Humanitarian Aid in the “Republic of NGOs”**

While many national factors contribute to the persistence of sexual violence against women in Haitian society, it is important to recognize their interaction with international factors. Due to the “limited capacity of the Haitian government”<sup>232</sup> and of national institutions, NGOs have come to play a key role in the provision of social services.<sup>233</sup> The “estimated number of NGOs operating in Haiti prior to the 2010 earthquake”<sup>234</sup> ranged from 3,000 to as many as 10,000—more NGOs per capita than any other country in the world.<sup>235</sup> Hence Haiti’s nickname, the “Republic of NGOs.”<sup>236</sup> In the aftermath of the earthquake, while infrastructure was down, NGOs helped to alleviate the provisional needs of disaster victims and displaced people through various forms of aid, namely food aid.<sup>237</sup> For instance, “between January and June 2010, USAID exported 214,000 metric tons of food aid to

---

<sup>230</sup> IACHR, “The Right of Women in Haiti to be Free from Violence and Discrimination.”

<sup>231</sup> *Ibid.*

<sup>232</sup> Vijaya Ramachandran and Julie Walz, “Is Haiti Doomed to Be the Republic of NGOs?,” *Huffington Post*, [https://www.huffingtonpost.com/vijaya-ramachandran/haiti-relief-ngos\\_b\\_1194923.html](https://www.huffingtonpost.com/vijaya-ramachandran/haiti-relief-ngos_b_1194923.html).

<sup>233</sup> Ramachandran and Walz, “Is Haiti Doomed to Be the Republic of NGOs?,” *Huffington Post*.

<sup>234</sup> Madeline Kristoff and Liz Panarelli, “Haiti: A Republic of NGOs?,” *United States Institute of Peace*, Peace Brief 23 (26 April 2010), <https://www.usip.org/sites/default/files/PB%2023%20Haiti%20a%20Republic%20of%20NGOs.pdf>.

<sup>235</sup> Kevin Edmonds, “NGOs and the Business of Poverty In Haiti,” *The North American Congress on Latin America (NACLA)*, April 5, 2010, <https://nacla.org/news/ngos-and-business-poverty-haiti>.

<sup>236</sup> Ramachandran and Walz, “Is Haiti Doomed to Be the Republic of NGOs?,” *Huffington Post*.

<sup>237</sup> Oliver Cunningham, “The Humanitarian Aid Regime in the Republic of NGOs: The Fallacy of ‘Building Back Better,’” *Josef Korbel Journal of Advanced International Studies* 4 (2012): 110.

Haiti.”<sup>238</sup> In the particular domain of food aid, the culturally valorized status of Haitian women as the *Poto Mitan* of the family and society has resulted in donor policy decisions that favor women. The intersection of this cultural component with the gendered ways in which humanitarian aid was delivered in the aftermath of the earthquake had deleterious effects as it came to be a significant factor in the rise of gender-based violence (GBV) at the hands of international actors. “Since the earthquake, donors and large NGOs have adopted the World Food Program’s guidelines to give food aid exclusively to women” through a system of ration cards in which camp committees give food cards to women the night before food distribution by NGO and UN troops.<sup>239</sup> As Mark Schuller notes in his book, *Humanitarian Aftershocks in Haiti*: “the system of distributing ration cards, designed by large NGOs as an attempt to establish order and ensure fairness, had several negative consequences because of gendered ideologies and practices.”<sup>240</sup> In many cases, women as aid recipients became targets for violence, namely sexual harassment and forced sex as camp committees, disproportionately composed of men, held the power to distribute ration cards.<sup>241</sup> As stated by Malya Villard-Appolon, a rape survivor and a co-founder of KOFAVIV, an organization that provides assistance to sexual violence survivors in Haiti: “Already [March 2010] we have heard over two dozen members tell us that they were forced to submit to sexual relations with the guy in exchange for the cards.”<sup>242</sup> A 2011 NYU investigation found that transactional sex was commonplace and that incidents of GBV and sex-for-food increased when the official food aid ended in April 2010.<sup>243</sup> Furthermore, according to a 2012 comprehensive study of GBV, 37 percent of pregnant women (1,251 women) reported having sex for survival, mostly in an attempt to exchange for shelter but also for food.<sup>244</sup>

---

<sup>238</sup> Cunningham, “The Humanitarian Aid Regime in the Republic of NGOs,” 111.

<sup>239</sup> Schuller, “Pa Manyen Fanm Nan Konsa: The Gender of Aid,” 114.

<sup>240</sup> *Ibid.*

<sup>241</sup> *Ibid.*

<sup>242</sup> *Ibid.*, 115.

<sup>243</sup> *Ibid.*

<sup>244</sup> *Ibid.*

United Nations peacekeepers have also been notorious for sexually abusing women and minors in Haiti who have been “in need of basic food and medical supplies.”<sup>245</sup> According to a draft report by the Office of Internal Oversight Services (OIOS), members of the UN peacekeeping mission in Haiti, first authorized in 2004,<sup>246</sup> “engaged in ‘transactional sex’ with [over] 225 women”<sup>247</sup> who claimed they participated in order to obtain food and medication. A 2007 internal UN report obtained by The Associated Press (AP) further revealed that 134 Sri Lankan UN peacekeepers in Port-au-Prince “exploited nine children”<sup>248</sup> in a sex ring from 2004 to 2007.<sup>249</sup> While 114 peacekeepers were sent home,<sup>250</sup> “none was ever imprisoned.”<sup>251</sup> A female victim shared with UN investigators that over a period of 3 years, “from the ages of 12 to 15, she had sex with nearly 50 peacekeepers, including a ‘Commandant’ who gave her 75 cents.”<sup>252</sup>

Similar sex scandals have occurred in other countries around the world. The UN peacekeeping mission in Haiti was “one of four peacekeeping missions that have accounted for the most allegations of sexual abuse and exploitation in recent years, along with those in Congo, Liberia and South Sudan.”<sup>253</sup> Furthermore, an AP investigation of UN missions over the course of the past 12 years “found nearly 2,000 allegations of sexual abuse and exploitation by peacekeepers and other personnel around the world,” more than 300 of which

---

<sup>245</sup> Aftab Ali, “UN Peacekeepers Sexually Abuse Hundreds of Women and Minors In Haiti In Exchange for Food and Medicine, New Report Will Reveal,” *Independent*, June 10, 2015, <https://www.independent.co.uk/news/world/americas/un-peacekeepers-sexually-abuse-hundreds-of-women-and-minors-in-haiti-in-exchange-for-food-and-10309963.html>.

<sup>246</sup> The peacekeepers arrived in 2004 as part of the mission to help stabilize Haiti following Aristide’s ouster.

<sup>247</sup> Cara Anna (The Associated Press), “UN: Sex Exploitation by Peacekeepers Underreported,” *Navy Times*, June 10, 2015, <https://www.navytimes.com/news/your-military/2015/06/10/un-sex-exploitation-by-peacekeepers-underreported/>.

<sup>248</sup> The sex ring was run in the remains of Habitation Leclerc, a resort that was well-known in Port-au-Prince, Haiti in the 1980s. In 2004, several orphaned/abandoned children found shelter in its ruins but were barely surviving. UN peacekeepers exploited the desperation of the children by luring them into a sex ring. In August 2007, the UN launched an investigation after receiving complaints of “suspicious interactions” between the peacekeepers and the children.

<sup>249</sup> Paisley Dodds (The Associated Press), “More than 100 UN peacekeepers ran a child sex ring in Haiti. None were ever jailed,” *The Star*, April 12, 2017, <https://www.thestar.com/news/world/2017/04/12/un-peacekeepers-child-sex-ring-left-victims-but-no-arrests.html>.

<sup>250</sup> *Ibid.*

<sup>251</sup> Given that the UN has no legal jurisdiction over peacekeepers, the punishment of alleged perpetrators is at the discretion of the countries that contribute the troops.

<sup>252</sup> Dodds (The Associated Press), “More than 100 UN peacekeepers ran a child sex ring in Haiti,” *The Star*.

<sup>253</sup> Cara Anna (The Associated Press), “UN says sex exploitation by peacekeepers underreported,” *The Santa Fe New Mexican*, June 9, 2015, [http://www.santafenewmexican.com/news/u-n-says-sex-exploitation-by-peacekeepers-underreported/article\\_fcb148f0-0763-527d-b2aa-e2d8ee959c4.html](http://www.santafenewmexican.com/news/u-n-says-sex-exploitation-by-peacekeepers-underreported/article_fcb148f0-0763-527d-b2aa-e2d8ee959c4.html).

involved children.<sup>254</sup> The AP additionally found that, out of the worldwide total of nearly 2,000 allegations, “some 150 allegations of abuse and exploitation by UN peacekeepers and other personnel were reported in Haiti alone between 2004 and 2016.”<sup>255</sup> According to UN interviews and data, the alleged perpetrators “came from Bangladesh, Brazil, Jordan, Nigeria, Pakistan, Uruguay, and Sri Lanka.”<sup>256</sup>

Sexual misconduct by international humanitarian organizations in Haiti also extends to international NGO employees. In February 2018, the Haitian government “suspended the aid group Oxfam Great Britain for two months”<sup>257</sup> while it investigated allegations of sexual misconduct by charity employees in the aftermath of the 2010 earthquake. The internal investigation found that “some employees patronized prostitutes on company property.”<sup>258</sup> Oxfam Great Britain disclosed that 7 staff workers were fired or resigned in 2011 after being accused of sexual misconduct while working in Haiti.<sup>259</sup> The aid group also “admitted that some of its employees used sex workers.”<sup>260</sup> Although this scandal did not entail any overt cases of rape, it is demonstrative of how the sexual misconduct of international actors can proliferate the sexual abuse of women at the local level. Nevertheless, the consequences of gendered humanitarian aid and the active role of international actors in sexually exploiting and abusing Haitian women and girls demonstrates that the persistence of sexual violence against women and girls in Port-au-Prince cannot be exclusively blamed on national factors. The international community also bears a portion of the responsibility as NGO employees, UN peacekeepers, and international donor policies have directly and indirectly contributed to the sexual abuse of Haiti’s female populace.

---

<sup>254</sup> Dodds (The Associated Press), “More than 100 UN peacekeepers ran a child sex ring in Haiti,” *The Star*.

<sup>255</sup> *Ibid.*

<sup>256</sup> Dodds (The Associated Press), “More than 100 UN peacekeepers ran a child sex ring in Haiti,” *The Star*.

<sup>257</sup> Catherine Porter, “Haiti Suspends Oxfam Great Britain After Sex Scandal,” *New York Times*, February 22, 2018, <https://www.nytimes.com/2018/02/22/world/americas/haiti-suspends-oxfam.html>.

<sup>258</sup> *Ibid.*

<sup>259</sup> Associated Press, “Haiti bans Oxfam division accused in hooker scandal,” *New York Post*, February 23, 2018, <https://nypost.com/2018/02/23/haiti-bans-oxfam-division-accused-in-hooker-scandal/>.

<sup>260</sup> *Ibid.*

## **Conclusion**

The ongoing culture of systematic sexual violence against women in Haiti lies at the intersection of three interconnected factors: (1) the historical legacy of the use of rape as a political weapon for the fulfillment of political and economic agendas; (2) the enactment of patriarchal gender constructions within the context of extreme poverty; and (3) the sexual abuse and exploitation of Haitian women and girls at the hands of international perpetrators. At the heart of the persistence of the vulnerability of female bodies lies not only the instability created by periods of national crisis like political upheavals and natural disasters, but the role of pre-existing historical, socioeconomic, and cultural elements that transcend periods of instability. Meanwhile, female victims of sexual violence in Haiti lack a strong justice system to ensure the realization of their human rights to security, dignity, and physical integrity. In failing to establish and enforce laws that provide women with effective legal remedies, the Haitian justice system perpetuates the ongoing vulnerability of Haitian women to systematic sexual violence. The following chapter explores in detail the dysfunctions that weaken the Haitian legal system as a whole and that reduce its capacity to protect both male and female citizens. It particularly examines the various ways in which these weaknesses contribute to injuring women and sheds light on patriarchal legal practices that impede women's access to effective legal remedies for rape.

## CHAPTER 2

### **Weaknesses of the Haitian Justice System: Gender-Neutral and Patriarchal Factors**

Widespread sexual violence against women in Haiti largely persists due to impunity and, more specifically, a failure to prosecute male perpetrators and enforce the laws that exist to criminalize sexual violence. The failure of prosecution is largely attributed to Haiti's weak criminal justice system,<sup>261</sup> which is profoundly informed by a web of internal dysfunctions. This chapter sheds light on the significant factors that weaken the Haitian justice system as a whole so as to parse out the gender-neutral elements that limit its capacity to protect both male and female citizens. It argues that the dysfunctions produced by the interaction of three dominant factors—(1) poor law enforcement, (2) judicial corruption, and (3) inadequate resources—weaken the capacity of the Haitian justice system to properly handle all cases, including cases of sexual violence against women. Meanwhile, this chapter demonstrates that although the weaknesses of the Haitian justice system affect both male and female citizens, women—and especially female victims of sexual violence—are more harmed by these dysfunctions due to the added impact of the patriarchy in which the justice system is entrenched.

### **Poor Law Enforcement and the Low Prosecution of Rape Cases**

In Haiti, women are not completely defenseless to sexual violence before the law: domestic legislation exists to criminalize rape. As Marie Alice Belisaire, a notary in Port-au-Prince (1999-present), repeatedly emphasized during our interview: “The laws are there. The [judicial] actors are simply not up to the task [of effective law enforcement]. The system is weak because of corrupt actors.”<sup>262</sup> Indeed, prior to 2005,<sup>263</sup> “rape was officially classified

---

<sup>261</sup> Mario Joseph and Nicole Phillips, “Judicial Corruption in Haiti: The Need for Discipline and Civil Society Participation,” *Hastings International and Comparative Law Review* 39, no. 1 (2016).

<sup>262</sup> Marie Alice Belisaire, (The Judicial Officials in the Haitian Justice System), interviewed by Mathilde Pierre, Port-au-Prince, Haiti, January 16, 2018.

[...] as an ‘assault on morals,’<sup>264</sup> merely consisting of “a damage of the victim’s honor and dignity rather than a crime against her physical integrity and well-being.”<sup>265</sup> Haitian courts further considered the “rape of a woman who is not a virgin to be less important on the grounds that her honor was not violated.”<sup>266</sup> In addition, the Haitian Penal Code failed to establish a criminal sanction for rape because it was considered a “crime against the honor of the family,”<sup>267</sup> which judges in Haiti historically addressed by negotiating a “sum of money to be paid by the perpetrator to the victim’s family.”<sup>268</sup> However, in July 2005, following the successful lobbying of local grassroots women’s organizations, the Haitian government “officially recognized rape as a crime against the person”<sup>269</sup> with the adoption of an executive decree entitled “*Décret Modifiant le Régime des Agressions Sexuelles et Éliminant en la Matière les Discriminations Contre la Femme*” (Decree Changing the Regulation of Sexual Aggressions and Eliminating Forms of Discrimination against Woman). The Decree “acknowledged that the provisions under the Haitian Penal Code established practices of discrimination against women”<sup>270</sup> and recognized that the criminal offense of rape “required a reinforcement of its sanction.”<sup>271</sup> Furthermore, two articles were added to the Haitian Penal Code that officially criminalize rape as an offense punishable by ten to fifteen years of hard labor.<sup>272</sup> At present, the “penalty for rape [in Haiti] is a minimum of 10 years of forced labor, increasing to a mandatory 15 years if the survivor was less than 16 years old or if the rapist

---

<sup>263</sup> United Nations Economic and Social Council, “Integration of the Human Rights of Women and the Gender Perspective: Report of the Special Rapporteur On Violence against Women, Its Causes and Consequences - Report on the mission to Haiti,” *United Nations E/CN.4/2000/68/Add.3* (27 January 2000): 12.

<sup>264</sup> Lankenau, “Toward Effective Access to Justice in Haiti,” 1766.

<sup>265</sup> Benedetta Faedi Duramy, “Legal Frameworks,” in *Gender and Violence in Haiti: Women’s Path from Victims to Agents* (New Brunswick: Rutgers University Press, 2014): 96.

<sup>266</sup> Ju Yon Kang, “The Hidden Epidemic: Violence against Women in Haiti” (Honors Thesis, Duke University, 2011): 10.

<sup>267</sup> Lankenau, “Toward Effective Access to Justice in Haiti,” 1766.

<sup>268</sup> *Ibid.*

<sup>269</sup> Boston College Law School et al., “Access to Judicial Remedies in Haiti,” *112th Session of the United Nations Human Rights Committee* (8-9 October 2014): 5.

<sup>270</sup> Benedetta Faedi, “The Double Weakness of Girls: Discrimination and Sexual Violence in Haiti,” *Stanford Journal of International Law* 44, no. 147 (2008): 181

<sup>271</sup> Faedi, “The Double Weakness of Girls,” 181.

<sup>272</sup> Lankenau, “Toward Effective Access to Justice in Haiti,” 1767.

was a person of authority.”<sup>273</sup> Meanwhile, gang rape imposes the maximum penalty of lifelong forced labor.<sup>274</sup>

Despite the existence of the 2005 Decree and despite the amendments to the Haitian Penal Code, the prosecution for rape has remained extremely low<sup>275</sup> and the overwhelming majority of rapes go unpunished. Indeed, low rates of prosecution and conviction for rape cases are a common phenomenon in the international community, even in industrialized nations. For instance, in the United Kingdom, “fewer than 1 rape victim in 30 can expect to see his or her attacker brought to justice.”<sup>276</sup> According to a 2013 study by the British Ministry of Justice, “only 1,070 rapists are convicted every year despite up to 95,000 people—the vast majority of them women—suffering the trauma of rape.”<sup>277</sup> According to the Central Minnesota Sexual Assault Center (CMSAC), if a rape is reported and prosecuted in the United States, there is a 58 percent chance of conviction.<sup>278</sup> However, there is only a 16.3 percent chance the rapist will end up in prison and only around “6 percent of rapists will ever spend a day in jail.”<sup>279</sup>

The prosecution and conviction of rape cases in Haiti remains low, even when compared to low rates in countries like the US and the UK. “[In] the first judicial semester of 2007 in Port-au-Prince, 41 cases of rape came to trial,”<sup>280</sup> but only one resulted in a conviction.<sup>281</sup> A 2012 study conducted by the Human Rights Section (HRS) of the Office of the High Commissioner for Human Rights in Haiti, in cooperation with Haitian law enforcement and judicial officials, reported that during a three-month period between June

---

<sup>273</sup> United States Department of State, “Haiti 2013 Human Rights Report,” *Country Reports on Human Rights Practices for 2013*, (2013): 31.

<sup>274</sup> *Ibid.*

<sup>275</sup> “Rape Looms Large Over Haiti Slums,” *BBC News*, November 27, 2008, <http://news.bbc.co.uk/2/hi/7750568.stm>.

<sup>276</sup> Nigel Morris, “100,000 assaults. 1,000 rapists sentenced. Shockingly low conviction rates revealed,” *Independent*, January 10, 2013, <https://www.independent.co.uk/news/uk/crime/100000-assaults-1000-rapists-sentenced-shockingly-low-conviction-rates-revealed-8446058.html>.

<sup>277</sup> Morris, “100,000 assaults,” *Independent*.

<sup>278</sup> Central Minnesota Sexual Assault Center (CMSAC), “Facts About Sexual Assault,” accessed April 5, 2018, <https://cmsac.org/facts-and-statistics/>.

<sup>279</sup> CMSAC, “Facts About Sexual Assault.”

<sup>280</sup> Alex Renton, “The Rape Epidemic,” *The Guardian*, December 2, 2007, <https://www.theguardian.com/lifeandstyle/2007/dec/02/women.features3>.

<sup>281</sup> Alex Renton, “The Rape Epidemic,” *The Guardian*.

and August 2010, a total of 62 complaints were registered in Port-au-Prince at the police stations reviewed.<sup>282</sup> Out of these 62 cases, 25 were effectively received by the *Parquet* (Office of the Prosecutor), but only 11 cases were referred to the *Cabinet d'Instruction* (Office of the Investigating Judges at the Trial Court) to be investigated. The HRS was unable to trace 9 out of the 25 cases due to the absence of a record of these cases in the *Parquet's* registry. Furthermore, the *Commissaire du Gouvernement* (Chief Prosecutor) “dismissed 5 out of the 25 cases received for failing to meet minimum admissibility requirements (primarily the positive identification of the alleged rapist by the victim and the existence of a medical certificate).”<sup>283</sup> Of the 11 cases referred by the prosecutor’s office to the Office of the Investigating Judges, 4 were dismissed by the assigned *Juges d'Instruction* (Investigating Judges). The remaining 6 cases were placed under investigation and, as of December 2011, only 1 case was referred to trial.<sup>284</sup> It is important to note that “not a single one of the [62] cases [...] monitored by the HRS had actually gone to trial by the end of 2011,”<sup>285</sup> well over one year after being filed with the police.

The prosecution of sexual violence cases is also significantly affected by basic administrative failures. According to the 2013 “Haiti Human Rights Report” by the U.S. Department of State, the prosecution of rape cases is “frequently not pursued due to a lack of reporting and follow-up on survivors’ claims”<sup>286</sup> by police officers. In June 2013, the Haitian National Police (HNP) reported that, since the 2010 earthquake, they had only received 301 complaints of rape and rape-related crimes.<sup>287</sup> However, according to various women’s rights NGOs, an estimated “600 rape cases had been reported to the HNP,”<sup>288</sup> thereby suggesting that “the actual number of documented rape cases exceeds what police authorities have

---

<sup>282</sup> Human Rights Section (HRS) Office of the High Commissioner for Human Rights-Haiti, “A Profile of Police and Judicial Response to Rape in Port-au-Prince,” *United Nations Stabilization Mission in Haiti* (2012): 21.

<sup>283</sup> HRS, “A Profile of Police and Judicial Response,” 22.

<sup>284</sup> Tyler Campbell, “No Prosecution for Haitian Rape Cases,” *Impunity Watch*, July 2, 2012, <http://impunitywatch.com/no-prosecution-for-haitian-rape-cases/>.

<sup>285</sup> HRS, “A Profile of Police and Judicial Response,” 22.

<sup>286</sup> U.S. Department of State, “Haiti 2013 Human Rights Report,” 31.

<sup>287</sup> *Ibid.*

<sup>288</sup> *Ibid.*

reported.”<sup>289</sup> Of these 600 cases, only 5 cases “resulted in a conviction or sentencing for the perpetrator.”<sup>290</sup> An August 2013 report by the United Nations Stabilization Mission in Haiti (MINUSTAH) further demonstrated that actors within the justice system “inadequately handled the majority of rape cases.”<sup>291</sup> The report analyzed data from 7 of Haiti’s 10 departments—including the Ouest department where Port-au-Prince is located—between January 2012 and March 2013.<sup>292</sup> The data revealed that 81 percent<sup>293</sup> of women who filed rape complaints “did so with the police.”<sup>294</sup> However, “very few of those cases that formally entered the judicial system via the police, prosecutor’s office, or the justices of the peace were ever resolved.”<sup>295</sup> Per the report’s findings, the police attended to “47 percent of the cases that victims reported to them;”<sup>296</sup> the justices of the peace “forwarded to the proper judicial authorities 61 percent of the cases they received from either the police or victims;”<sup>297</sup> the prosecutors handled 64 percent of the cases they received; the Office of the Investigating Judges “pursued 10 percent of the cases received from victims or prosecutors;”<sup>298</sup> and first instance courts treated 34 percent of the cases received from the Office of the Investigating Judges.<sup>299</sup> The data further revealed that “fewer than 2 percent of rape complaints made it to the trial phase, and an even smaller percentage<sup>300</sup> resulted in a conviction.”<sup>301</sup>

The low rate of prosecution and conviction of rape cases within the Haitian judicial system is fundamental to the weaknesses that severely handicap Haiti’s judiciary more broadly. The pervasive lack of judicial oversight and professionalism in all cases frequently contributes to a large backlog of criminal cases, which continually hampers prosecutions and

---

<sup>289</sup> U.S. Department of State, “Haiti 2013 Human Rights Report,” 31.

<sup>290</sup> *Ibid.*

<sup>291</sup> *Ibid.*, 32.

<sup>292</sup> *Ibid.*

<sup>293</sup> *Ibid.*

<sup>294</sup> The report did not specify with whom the remaining 19 percent of women filed their complaints. However, women can either file a complaint with the police, with a justice of the peace, or with the prosecutor’s office.

<sup>295</sup> U.S. Department of State, “Haiti 2013 Human Rights Report,” 32.

<sup>296</sup> *Ibid.*

<sup>297</sup> *Ibid.*

<sup>298</sup> *Ibid.*, 32-3.

<sup>299</sup> *Ibid.*

<sup>300</sup> The report did not specify whether the convicted cases involved women of the Haitian elite.

<sup>301</sup> U.S. Department of State, “Haiti 2013 Human Rights Report,” 33.

denies citizens the right to a speedy trial.<sup>302</sup> Before the failures in addressing rape cases can be analyzed, however, it is important to illuminate those factors—namely political interference, bribery, and inadequate resources—within the Haitian justice system that are divorced from gender and that seep into the treatment of all cases, including those of sexual violence against women.

## Judicial Corruption

### *The Subordination of the Judiciary System by the Executive Branch*

The Haitian justice system is steeped in the toxic interaction of various factors that systematically cripple its ability to ensure the effective fulfillment of the human rights of all Haitian citizens. At the heart of these weaknesses is judicial corruption, which primarily takes shape as the lack of judicial independence. Although Article 60 of the Haitian Constitution mandates the autonomy of the executive, legislative, and judicial branches—and therefore upholds the democratic principle of separate and balanced powers—the judicial branch is not independent in reality.<sup>303</sup> The judicial system is continually subjected to interference by the executive branch in judicial decisions and the operating capacity of the *Conseil Supérieur du Pouvoir Juridique*<sup>304</sup> (CSPJ)<sup>305</sup> (Supreme Council of the Judiciary) remains weak, all of which nurture a lack of public trust in the administration of justice.<sup>306</sup> The foremost obstacle to judicial independence is political interference<sup>307</sup> by the executive branch. Haitian Presidents and their cabinets have been notorious for pressuring and interfering with the judiciary in various ways, namely through the assigning of favored

---

<sup>302</sup> U.S. Department of State, “Haiti 2013 Human Rights Report,” 13.

<sup>303</sup> Center for Human Rights and International Justice (CHRIJ), Boston College and Alternative Chance, “Access to Judicial Remedies in Haiti,” *United Nations Human Rights Council Universal Period Review* (2016): 4.

<sup>304</sup> The Superior Council of the Judiciary is the organ of administration, control, discipline and deliberation of the judiciary power. It formulates an opinion regarding the appointment of magistrates, updates the annual chart of progression of any magistrate, and has a general power of information and recommendation on the state of the judiciary. The CSPJ is known for being ineffective in investigating the behavior and reviewing the decisions of judicial officials, and therefore, ensuring judicial accountability and transparency.

<sup>305</sup> CHRIJ and Alternative Chance, “Access to Judicial Remedies in Haiti,” 5.

<sup>306</sup> *Ibid.*, 4.

<sup>307</sup> *Ibid.*, 5.

judges and prosecutors to politically-sensitive cases, with a blatant disregard for the authority and mandate of the CSPJ. For instance, in May 2014, the mandate of 81 judges across Haiti was not renewed in defiance of the CSPJ's recommendation of other candidates "because authorities [within the executive branch] recommended other candidates."<sup>308</sup> Interference by the executive branch additionally takes shape as politically motivated, illegal appointments of under-qualified judges selected by the President to ensure that cases against public officials for serious crimes of corruption and/or human rights abuses are dismissed.<sup>309</sup> In its 2013 "Haiti Human Rights Report," the U.S. Department of State noted that "there were widespread, credible allegations of unqualified and unprofessional judges who received appointments as political favors."<sup>310</sup> It additionally reported that court deans, "who are responsible for assigning cases to judges for investigation and review,"<sup>311</sup> often "assigned politically sensitive cases to judges with close ties to figures in the executive and legislative branches."<sup>312</sup> During our interview, Attorney Claudy Gassant<sup>313</sup> made similar remarks: "The executive [branch] continues to appoint magistrates directly with specific missions to ensure the handling of shady cases in which government officials are implicated."<sup>314</sup>

Judges appointed by the executive branch are often assigned to Haiti's most "politically charged cases against political opposition and human rights defenders."<sup>315</sup> A report by the "*Réseau National de Défense des Droits Humains*" (RNDDH) ("National Network for the Defense of Human Rights") on the operation of the Haitian justice system during the 2013-2014 year sheds light on the ways in which the executive branch actively interferes in the affairs of the judiciary branch so as to subordinate the power of the latter. A

---

<sup>308</sup> CHRIJ and Alternative Chance, "Access to Judicial Remedies in Haiti," 5.

<sup>309</sup> Joseph and Phillips, "Judicial Corruption in Haiti," 196.

<sup>310</sup> U.S. Department of State, "Haiti 2013 Human Rights Report," 14.

<sup>311</sup> Ibid.

<sup>312</sup> Ibid.

<sup>313</sup> Haitian criminal lawyer registered with the Port-au-Prince Bar since 2011. Former Magistrate (1998-2011), *Juge d'Instruction* (Investigating Judge) (1999-2002), and *Commissaire du Gouvernement* (Chief Prosecutor) (2006-2008).

<sup>314</sup> Claudy Gassant (The Haitian Judicial System), interviewed by Mathilde Pierre, Port-au-Prince, Haiti, 10 January 2018.

<sup>315</sup> Joseph and Phillips, "Judicial Corruption in Haiti," 194.

typical example of this type of interference referenced by Attorney Gassant<sup>316</sup> is the illegal appointment of unqualified Judge Lamarre Belizaire, who, according to RNDDH, became the “arm of the executive within the judiciary.”<sup>317</sup> In 2012, President Michel Martelly appointed Belizaire as a trial court judge in the *Tribunal de Première Instance* (Court of First Instance) of Port-au-Prince despite the fact that he lacked the requisite eight-years of legal experience and failed to observe the mandatory three-year rest period between being a prosecutor and a judge in the same district.<sup>318</sup> In August 2014, as political opposition against Martelly coalesced, Belizaire was assigned to several politically-charged cases targeting opposition leaders<sup>319</sup> as well as human rights defenders, and even took on cases outside his jurisdiction.<sup>320</sup> The judicial council responsible for investigating judicial misconduct declined to investigate<sup>321</sup> Judge Belizaire.<sup>322</sup>

As a result of such political interference, whistleblowers and human rights lawyers who denounce the lack of judicial independence and call the government out on human rights abuses—including the neglect of the state in protecting women from sexual violence—often receive death threats and frivolous criminal charges to obstruct their ability to hold the government accountable. This is exemplified in the case of the Florestal brothers. In 2013, Judge Belizaire issued a warrant for the arrest of Ernold Florestal and Josué Florestal, formally charging them for the three-year-old murder case of Frantzi Duverseau.<sup>323</sup> Several months before the arrest, Ernold Florestal filed civil corruption charges against President Martelly’s wife and son.<sup>324</sup> Prior to this, no action was taken against the Florestal brothers in the case and police officers were arrested and accused of shooting Duverseau. Judge

---

<sup>316</sup> Gassant (The Haitian Judicial System).

<sup>317</sup> Réseau National de Défense des Droits Humains (RNDDH), “Fonctionnement de l’Appareil judiciaire au cours de l’année 2013-2014,” *RNDDH* (2014): 4.

<sup>318</sup> CHRIJ and Alternative Chance, “Access to Judicial Remedies in Haiti,” 5.

<sup>319</sup> *Ibid.*

<sup>320</sup> Joseph and Phillips, “Judicial Corruption in Haiti,” 194.

<sup>321</sup> *Ibid.*, 195.

<sup>322</sup> The reasons for this were not provided.

<sup>323</sup> Joseph and Phillips, “Judicial Corruption in Haiti,” 194.

<sup>324</sup> *Ibid.*

Belizaire also formally charged the Florestal brothers' attorney, André Michel, for Duverseau's murder.<sup>325</sup> In October 2013, Attorney Michel—an outspoken opposition leader who publicly denounced President Martelly's handling of election procedures—was detained and unlawfully arrested, after being subjected to harassment and death threats.<sup>326</sup> The government, however, never publicly revealed any information that justified the arrest of the Florestal brothers and Attorney Michel. The RNDDH denounced these actions as intended for the sole purpose of reducing Ernold Florestal and his lawyer to silence.<sup>327</sup>

### *Bribery*

Judicial corruption within the Haitian justice system additionally takes shape in the form of bribery. According to the 2015 “Haiti Human Rights Report” of the U.S. Department of State, bribes are often “the principal factor in a judge’s decision to hear a case.”<sup>328</sup> The 2013 “Haiti Human Rights Report” of the U.S. Department of State similarly noted that “judicial officials, including judges and court clerks, arbitrarily charged fees to initiate criminal prosecutions, and that judges and prosecutors failed to respond to those who could not afford to pay [bribes].”<sup>329</sup> The administration of the justice system is also highly inefficient, which creates the conditions for corruption, and more specifically bribery, to flourish. This inefficiency often results in an intense backlog of cases and prolonged wait-times that not only breed corruption<sup>330</sup> but “create a market for corruption.”<sup>331</sup> For instance, “attorneys or complainants with money have paid clerks and other officials to be heard ahead of others”<sup>332</sup> or to initiate/expedite criminal proceedings.<sup>333</sup> Racketeers have also been known to “offer to file the complaint on behalf of a victim, or to arrange for the victim to pass ahead,

---

<sup>325</sup> Joseph and Phillips, “Judicial Corruption in Haiti,” 194.

<sup>326</sup> *Ibid.*

<sup>327</sup> Joseph and Phillips, “Judicial Corruption in Haiti,” 195.

<sup>328</sup> United States Department of State, “Haiti 2015 Human Rights Report,” *Country Reports on Human Rights Practices for 2015*, (2015): 12.

<sup>329</sup> U.S. Department of State, “Haiti 2013 Human Rights Report,” 14.

<sup>330</sup> Meena Jagannath, “Barriers to Women’s Access to Justice in Haiti,” *The City University of New York (CUNY) Law Review* 15, no. 1 (2011): 46.

<sup>331</sup> Joseph and Phillips, “Judicial Corruption in Haiti,” 188.

<sup>332</sup> Jagannath, “Barriers to Women’s Access to Justice in Haiti,” 46

<sup>333</sup> *Ibid.*

in return for a sum of money.”<sup>334</sup> This leaves impoverished male and female citizens at a severe disadvantage as civil parties without adequate financial means or lawyers are “unable to sustain the pressure on the prosecutor and investigating magistrate that is often necessary to push their case forward.”<sup>335</sup>

During our interview, Attorney Gassant painted a portrait of what corruption looks like in the Haitian judicial system. As he explained: “Corruption in the Haitian judicial system is the monster that destroys and consumes all the elements of the system. The executive power does not take the necessary steps to organize and ensure the proper functioning of the system and arranges itself to introduce within the judiciary system certain tools in service of its agendas.”<sup>336</sup> Gassant identified financial bribery as the most pervasive form of corruption. He explained that in a typical case, “the judge will neither choose the path of justice nor the path of what is right but will rather choose the pecuniary route.”<sup>337</sup> As such, “the individual in a trial who has the [financial] means will win.”<sup>338</sup> Gassant further explained that judges are lured into corruption and transformed into puppets of the executive branch through the promise of political posts, whether for the judge directly, or indirectly for a member of his family.<sup>339</sup>

Due to low salaries, public officials are highly incentivized to engage in bribery and, in turn, have low incentive to maintain honest practices. For instance, police officers have been known to demand bribes from women in order to investigate rape cases or arrest perpetrators.<sup>340</sup> Conversely, bribes have been offered to the police on behalf of a suspect in order to dismiss investigations altogether.<sup>341</sup> Inadequate judicial salaries<sup>342</sup> present an

---

<sup>334</sup> Jagannath, “Barriers to Women’s Access to Justice in Haiti,” 46

<sup>335</sup> Joseph and Phillips, “Judicial Corruption in Haiti,” 188-9.

<sup>336</sup> Gassant (The Haitian Judicial System).

<sup>337</sup> Ibid.

<sup>338</sup> Ibid.

<sup>339</sup> Ibid.

<sup>340</sup> Joseph and Phillips, “Judicial Corruption in Haiti,” 187-188.

<sup>341</sup> Ibid., 188.

<sup>342</sup> According to a 2002-2003 study, a judge’s salary could lie anywhere between 145 USD and 350 USD a month. The average salary of a police officer is approximately 375 USD a month.

advantage for those who can afford to pay to have cases heard or advanced as judicial officials are less likely to process complaints without bribes.<sup>343</sup> Attorney Gassant identified several factors that foster corruption within the Haitian judiciary:

Corruption is the disease that gangrenes the entire system and one could say that this is by design if one considers the causes. The government does not release any justice policy. The courts are neither well organized nor well administered. There is a lack of proper case file management, a lack of supervision over and management of personnel, a problem of qualification of staff (e.g. clerks) who do not meet the required qualifications to occupy their positions. Moreover, there is a problem of insufficient salaries that frequently serves as a pretext for judicial personnel to justify corruption.<sup>344</sup>

That the Haitian judicial system runs on bribery “reinforces the [socioeconomic] exclusion that prevents the poor from asserting their fundamental rights.”<sup>345</sup> The culture of bribery accentuates the larger disparity in Haitian society “between the vast majority who are poor and the few who are wealthy,”<sup>346</sup> thereby hampering the access of Haiti’s impoverished citizens to effective legal remedies. Criminal cases, including rape cases, are often “prioritized based on whether bribes are available to the judges or clerks taking the case.”<sup>347</sup> Meanwhile, they fail to respond to the poor who cannot afford to pay. As Blaine Bookey notes in his scholarly article, “Enforcing the Right to Be Free From Sexual Violence and the Role of Lawyers in Post-Earthquake Haiti”: “effective navigation of the system requires the help of a paid lawyer”<sup>348</sup> and “only the rich can hire competent attorneys and finance police investigations.”<sup>349</sup> In his speech at a the 2014 conference entitled “The Initiative for the Prevention of Sexual Violence in Conflict Situations,” Mario Joseph, the managing attorney of *Bureau des Avocats Internationaux (BAI)* (Bureau of International Lawyers), similarly emphasized that the vast majority of the Haitian population has no access to the formal

---

<sup>343</sup> CHRIJ and Alternative Chance, “Access to Judicial Remedies in Haiti,” 4.

<sup>344</sup> Gassant (The Haitian Judicial System).

<sup>345</sup> Boston College Law School et al., “Access to Judicial Remedies in Haiti,” 2.

<sup>346</sup> Ibid.

<sup>347</sup> Ibid.

<sup>348</sup> Blaine Bookey, “Enforcing the Right to Be Free From Sexual Violence and the Role of Lawyers in Post-Earthquake Haiti,” *The City University of New York (CUNY) Law Review* 14, no. 255 (2011): 273.

<sup>349</sup> Bookey, “Enforcing the Right to Be Free From Sexual Violence,” 273.

justice system. He explained that poverty increasingly prevents major segments of the Haitian population from access to justice as “legal costs and lawyers are too expensive for the poor [and thus the majority of Haitians] to pay.”<sup>350</sup> This creates an elitist culture of class prejudice in which judges, lawyers, and prosecutors “give preferential treatment to the wealthy and powerful”<sup>351</sup>—in other words, individuals who can afford to pay bribes—which results in the discounting of the testimonies and legal needs of the poor. As explained by a Haitian legal scholar: “[T]he administration of justice favors those who can afford the system and discriminates against those who are least able.”<sup>352</sup> Eve Bruno, a lawyer at BAI, further stated:

Poverty [...] plays a role in the speed the cases are heard, and the outcome. The process of filing a report at the prosecutor’s office and serving warrants is handled by the state, and therefore technically free, but some lawyers say that many court officials, for instance, the *huissiers*, who serve the warrants, expect to be paid. Those with money can pay to have warrants served expeditiously, therefore guaranteeing them swifter justice.<sup>353</sup>

Additionally, officials are seldom “present in the office on time.”<sup>354</sup> As the International Crisis Group (ICG) noted: “Due to low salaries, many judges and prosecutors hold other jobs and are often late or do not show up at all.”<sup>355</sup> Once officials do arrive, “it is often the individuals with representation who pass ahead, or those with money may pay an intermediary or the clerk [...] to ensure that they go ahead.”<sup>356</sup> The Haitian justice system is highly elitist<sup>357</sup> not only due to the deep-seated culture of bribery, but also due to the fact that

---

<sup>350</sup> Mario Joseph, “Rights Enforcement as Solution a Solution to Sexual Violence in Haiti,” Speech, *The Initiative for the Prevention of Sexual Violence in Conflict Situations*, sponsored by the Mexican Ministry of Foreign Affairs and British Embassy, May 12, 2014, <http://www.ijdh.org/2014/05/topics/womens-issues/mario-joseph-sexual-violence-speech/>.

<sup>351</sup> Joseph and Phillips, “Judicial Corruption in Haiti,” 187.

<sup>352</sup> Quoted in *Ibid.*, 186.

<sup>353</sup> Eva Bruna quoted in Lisa Armstrong, “The Rapist and the Girl Next Door, the Paradox of Prosecuting Rape Cases in Haiti,” *Institute for Justice and Democracy in Haiti*, May 7, 2014, <http://www.ijdh.org/2014/05/topics/womens-issues/the-rape-and-the-girl-next-door-the-paradox-of-prosecuting-rape-cases-in-haiti/>.

<sup>354</sup> Jagannath, “Barriers to Women’s Access to Justice in Haiti,” 44.

<sup>355</sup> International Crisis Group (ICG), “Keeping Haiti Safe: Justice Reform,” *Crisis Group Latin America/Caribbean Briefing N°27* (2011): 4.

<sup>356</sup> Jagannath, “Barriers to Women’s Access to Justice in Haiti,” 44.

<sup>357</sup> The deep fissures within Haitian society are reflected not only in the disparity between the poor majority and the elite wealthy minority, but also in other distinctions, namely skin color and the ability to write and speak French (the majority of Haitians only speak Haitian Creole).

“legal proceedings are generally conducted in French,<sup>358</sup> which most Haitians do not speak.”<sup>359</sup> Class exclusion further “reinforces a culture of impunity”<sup>360</sup> by creating a system that is “controlled by the elite class and that fails to hold accountable government agents, such as politicians and law enforcement, for corruption and human rights abuses.”<sup>361</sup>

Pervasive corruption is also seen in the justice system of the Democratic Republic of Congo (DRC). According to a 2005 Human Rights Watch (HRW) briefing paper, the Congolese justice system is in a “state of disarray”:<sup>362</sup> the majority of the courts do not function, much of the personnel goes unpaid for extended periods of time, magistrates are poorly trained, and corruption characterizes the majority of cases.<sup>363</sup> Similarly to Haiti, Congo’s judiciary system is weak and its deficiencies undermine its capacity to bring justice to all victims of human rights abuses, whether “citizens seeking to bring complaints for crimes committed.”<sup>364</sup> or “persons seeking justice for crimes of sexual violence”<sup>365</sup> First and foremost, the judiciary branch has, since the mid-1970s, been essentially subordinated to the executive branch,<sup>366</sup> which has rendered it vulnerable to abuses of power by government and military officials. Judiciary officials, for instance, are “regularly subjected to threats, intimidation and interference when they attempt to investigate or prosecute crimes committed by the military.”<sup>367</sup> As explained in the HRW report, efforts at prosecutions are frequently thwarted “because others with power or official position obstructed the effort to bring those

---

<sup>358</sup> After its independence from France, Haiti did not create new laws but rather “retained French law and French as the official language used in legislation and the administration of justice.” Haiti’s criminal law is founded on the “five classic ‘Napoleonic Codes,’” namely the Civil Code (1804), the Civil Procedure Code (1806), the Code of Commerce (1807), the Criminal Procedure Code (1808), and the Penal Code (1810). These laws are seriously outdated as they reflect “the conditions of 19th century France.” Hans Joerg Albrecht, Louis Aucoin, and Vivienne O’Connor, “Building the Rule of Law in Haiti: New Laws for a New Era,” *United States Institute of Peace* (2009): 2.

<sup>359</sup> Joseph and Phillips, “Judicial Corruption in Haiti,” 187.

<sup>360</sup> Meena Jagannath, Nicole Phillips, and Jeena Shah, “A Rights-Based Approach to Lawyering: Legal Empowerment as an Alternative to Legal Aid in Post-Disaster Haiti,” *Northwestern Journal of International Human Rights* 10, no. 1 (2011): 12.

<sup>361</sup> Boston College Law School et al., “Access to Judicial Remedies in Haiti,” 3.

<sup>362</sup> Human Rights Watch (HRW), “Democratic Republic of the Congo: Confronting Impunity (Briefing Paper),” (2004): 5.

<sup>363</sup> *Ibid.*

<sup>364</sup> HRW, “Seeking Justice,” 42.

<sup>365</sup> Human Rights Watch (HRW), “Seeking Justice: The Prosecution of Sexual Violence in the Congo War,” *Human Rights Watch* 17, no.1 (2005): 42.

<sup>366</sup> HRW, “Democratic Republic of the Congo: Confronting Impunity,” 6.

<sup>367</sup> Global Witness, “Faced With a Gun What Can You Do? War and the Mineralisation of Mining in Eastern Congo,” *Global Witness* (July 2009): 26.

responsible to justice.”<sup>368</sup> For example, commanding officers often deliberately hamper the investigation of their soldiers accused of sexual violence by arranging to have them transferred elsewhere.<sup>369</sup> Furthermore, as HRW reported: “it is common practice to bribe judges or other judicial officials to influence the outcome of an investigation or a trial.”<sup>370</sup> The outcomes of most judicial proceedings are heavily dictated by corruption, which is largely encouraged by the fact that the salaries of judicial officials are below the DRC poverty line.<sup>371</sup>

Nevertheless, the prevalence of corruption in Haiti’s judicial institutions and the “inefficacy of these institutions with respect to their capacity to bring perpetrators to justice”<sup>372</sup> has fostered a “widespread lack of public confidence in the administration of justice in Haiti”<sup>373</sup> and has severely tarnished the reputation of the police and the judiciary.<sup>374</sup> Judicial corruption, whether in the form of bribery or political interference, poses severe blockades not only to government accountability but to the ability of the Haitian judicial system to ensure the effective realization of citizens’ human rights through fair judicial proceedings. These particular weaknesses of the Haitian justice system do not exclusively reduce women’s access to justice, but rather affect the judicial treatment of all cases, whether involving men or women.

## **Procedural Barriers to the Prosecution of Rape Cases**

### *The Lack of Financial and Human Resources*

---

<sup>368</sup> HRW, “Seeking Justice,” 39.

<sup>369</sup> Sara Meger, “Rape of the Congo: Understanding sexual violence in the conflict in the Democratic Republic of Congo,” *Journal of Contemporary African Studies* 28 (2010): 130.

<sup>370</sup> HRW, “Seeking Justice,” 42.

<sup>371</sup> Meger, “Rape of the Congo,” 130.

<sup>372</sup> Inter-American Commission on Human Rights (IACHR), “The Right of Women in Haiti to be Free from Violence and Discrimination,” *Organization of American States*, Doc. 64 (10 March 2009),

<http://www.cidh.oas.org/countryrep/Haitimujer2009eng/HaitiWomen09.Intro.Chap.IandII.htm#I>.

<sup>373</sup> IACHR, “The Right of Women in Haiti to be Free from Violence and Discrimination.”

<sup>374</sup> *Ibid.*

The Haitian justice system is severely weakened by a “lack of human<sup>375</sup> and financial resources.”<sup>376</sup> Judges, lawyers, and police officers are not only poorly paid but also receive insufficient training<sup>377</sup> and lack the basic resources necessary to properly perform their duties<sup>378</sup> and thoroughly investigate all cases, including rape cases. According to the 2012 HRS report, no mainstreamed policy exists to combat sexual and gender-based violence (SGBV) within the HNP. The police is severely under resourced and lacks the basic equipment, namely vehicles, vehicle fuel,<sup>379</sup> “computers, telephones, and electricity, [...] to [effectively] carry out investigations and arrests,”<sup>380</sup> for all cases including rape cases. In theory, the police can be reached by telephone, but “in most cases the number does not work or the police officers do not answer.”<sup>381</sup> As such, in order to more successfully file a rape complaint with the police, a victim must go to the police station.<sup>382</sup> However, this poses significant barriers given that not all women have the capacity to go to the station as they often cannot afford to pay for transportation.<sup>383</sup> “The first response many women or girl victims receive when they go to the police station to report an incident is that the police do not have the resources to investigate the scene of the crime,”<sup>384</sup> namely a vehicle to reach the crime scene. “[T]he failure of the police to visit the site of the alleged crime”<sup>385</sup> is a direct violation of the requirement of the *Code d’Instruction Criminelle (CIC)* (Criminal Procedure

---

<sup>375</sup> For instance, approximately 10,000 officers work under the HNP. However, according to the International Crisis Group, roughly “20,000 police officers are required to [effectively] protect Haiti’s population of 10 million and to ensure that the [HNP] is fully operational.” Immigration and Refugee Board of Canada, “Haiti: The chimères, their activities and their geographic presence; the treatment of the chimères by the authorities and the presence of group members within the government and the police (2006 - May 2008),” *UN Refugee Agency* (3 June 2008), <http://www.refworld.org/docid/4a70409420.html>.

<sup>376</sup> Joseph, “Rights Enforcement,” (2014).

<sup>377</sup> Ibid.

<sup>378</sup> Tyler Campbell, “No Prosecution for Haitian Rape Cases,” *Impunity Watch*, 2 July 2012, <http://impunitywatch.com/no-prosecution-for-haitian-rape-cases/>.

<sup>379</sup> Immigration and Refugee Board of Canada, “Haiti: The Haitian National Police (Police nationale d’Haïti, PNH), including its effectiveness, reform, and the reliability of reports issued by the police and justices of the peace; whether there is an authority that handles complaints about the police (2010-May 2013),” *United Nations High Commissioner for Refugees* (2013), <http://www.refworld.org/docid/51dd1d894.html>.

<sup>380</sup> HRS, “A Profile of Police and Judicial Response,” 13.

<sup>381</sup> Jagannath, “Barriers to Women’s Access to Justice in Haiti,” 37.

<sup>382</sup> Ibid.

<sup>383</sup> Ibid.

<sup>384</sup> Ibid., 38.

<sup>385</sup> Ibid.

Code)<sup>386</sup> that the police arrive at a crime scene as soon as possible to obtain the *procès-verbaux* (the victim's complaint).<sup>387</sup> As a result, "critical evidence is lost from the alleged crime scene and suspected perpetrators are given an opportunity to flee."<sup>388</sup> The negative impact of resource constraints on the proper investigation of criminal cases is also observed in the DRC. As depicted in a 2005 HRW report, civilian prosecutors in eastern Congo "lack vehicles and money to pay for travel to outlying areas to conduct proper investigations. Courts and prosecutors also lack basic material such as stationery [and] computers."<sup>389</sup> Due to the justice system's severe lack of resources, the wealth of a family can heavily impact criminal investigations in Haiti, including those for rape:

If a [raped] woman belongs to a wealthy family, the family will finance the investigation. They can put a car and money at the disposition of the police. The policemen will have an incentive to conduct a thorough investigation. However, if the woman is from the lower class and does not know the author of the rape, the police will have no car, no gas.<sup>390</sup>

Inadequate resources render difficult the task of apprehending unknown perpetrators. According to the HNP, victims are often unable to identify their aggressors, particularly when they are raped at night in displacement camps.<sup>391</sup> Haitian law permits the taking of legal action against unidentified perpetrators. However, the findings of HRS, BAI, and other local NGOs demonstrate that police officers "systematically refuse to register complaints if the victim is unable to identify her aggressor."<sup>392</sup> In interviews conducted by the HRS with the HNP, police officers explained that, even in cases where the identities of rape perpetrators are known, it is "difficult to locate them,"<sup>393</sup> particularly when they belong to gangs. The HRS report identified the "lack of police diligence in cases where the victim could not

---

<sup>386</sup> The criminal procedure of the Haitian justice system is directed by the Criminal Procedure Code.

<sup>387</sup> Jagannath, "Barriers to Women's Access to Justice in Haiti," 38.

<sup>388</sup> Shannon D. Lankenau, "Toward Effective Access to Justice in Haiti: Eliminating the Medical Certificate Requirement in Rape Prosecutions," *Hastings Law Journal* 64, no. 1759 (2013): 1768.

<sup>389</sup> HRW, "Seeking Justice," 43.

<sup>390</sup> Human Rights Watch (HRW), "Rape in Haiti: A Weapon of Terror," *Human Rights Watch National Coalition for Haitian Refugees* 6, no. 8 (1994): 18.

<sup>391</sup> *Ibid.*, 15.

<sup>392</sup> *Ibid.*

<sup>393</sup> *Ibid.*, 17.

identify her aggressor”<sup>394</sup> as one of the most common reasons for rape cases not making it to trial.<sup>395</sup>

As mentioned earlier, legal instruments, namely the 2005 Decree and the articles on “Sexual Aggression” added to the Haitian Penal Code, exist to criminalize sexual violence and rape against women. However, these remedies “continue to exist mainly on paper and not in practice.”<sup>396</sup> According to a report by the Inter-American Commission on Human Rights (IACHR), most cases of violence against women “are never formally investigated, prosecuted, and punished by the justice system in Haiti,”<sup>397</sup> which has fostered a culture of “systematic impunity [that] sends the message that [violence] against women will be tolerated.”<sup>398</sup> Indeed, impunity for rape is a transnational reality. For instance, in the DRC, the absence of the rule of law in the eastern provinces has created a political vacuum that directly enables the ongoing violence perpetrated by armed groups against civilians.<sup>399</sup> Given the atmosphere of impunity in the east, armed rebels, Congolese soldiers, and male civilians believe they can perpetuate sexual violence without being held accountable for their crimes. As articulated in a 2004 HRW briefing paper on impunity in the DRC: “Impunity for atrocities committed in the past sends the message that such crimes may be tolerated in the future.”<sup>400</sup>

Police stations in Haiti, moreover, are not properly “adapted to receiving victims of rape.”<sup>401</sup> Rape cases are often “registered in the same way as any other complaints, without affording the necessary privacy and care.”<sup>402</sup> According to the HRS report, victims are

---

<sup>394</sup> Ibid. 21.

<sup>395</sup> Statistics illustrating the proportion and frequency of this phenomenon were not provided.

<sup>396</sup> IACHR, “The Right of Women in Haiti to be Free from Violence and Discrimination.”

<sup>397</sup> Ibid.

<sup>398</sup> IACHR, “The Right of Women in Haiti to be Free from Violence and Discrimination.”

<sup>399</sup> Timothy J. Stapleton, “Congo Wars (1960s–2000s),” in *The Encyclopedia of War*, by Gordon Martel. Wiley, 2012. [https://ezproxy.library.nyu.edu/login?url=http://search.credoreference.com/content/entry/wileyenwar/congo\\_wars\\_1960s\\_2000s/](https://ezproxy.library.nyu.edu/login?url=http://search.credoreference.com/content/entry/wileyenwar/congo_wars_1960s_2000s/).

<sup>400</sup> HRW, “Democratic Republic of the Congo: Confronting Impunity,” 1.

<sup>401</sup> HRS, “A Profile of Police and Judicial Response,” 15.

<sup>402</sup> Ibid.

typically “interviewed in a large open room in front of anyone present in the room,”<sup>403</sup> which tends to make victims manifestly uncomfortable.<sup>404</sup> The deficit of female police officers properly trained to handle sexual violence cases is also problematic as female survivors “are often very reluctant to tell their stories to men.”<sup>405</sup> In fact, few police officers within the HNP are women: in 2013, only 8 percent of the force were women.<sup>406</sup> In 2017, the size of the police force increased to approximately 14,000 officers, of whom 1,301 (9 percent) were women.<sup>407</sup> The effectiveness of the HNP is further influenced by a person’s location, for instance, “in the countryside versus in Port-au-Prince, or according to the various districts of Port-au-Prince.”<sup>408</sup> The Vice-President of the Security Governance Group explained that in the districts of Saint-Martin and Bel Air as well as Cité-Soleil and Martissant—two prominent shantytowns in which sexual violence against women is prevalent—the HNP does not have “enough resources to ensure the presence required to combat criminal gangs.”<sup>409</sup> The HNP is also poorly trained in managing “serious security [including armed gangs] in shantytowns with high crime rates.”<sup>410</sup> Consequently, these districts have elevated rates of violence.

### *Issues in the Transfer of Rape Cases*

Once complaints of sexual violence are registered, the police refer the cases “to one of the three *Tribunaux de Paix* (Peace Courts) of Port-au-Prince,”<sup>411</sup> to the *Brigade de Protection des Mineurs (BPM)* (Brigade for the Protection of Minors),<sup>412</sup> or to the Chief Prosecutor.<sup>413</sup> These police referrals occur without any diligent practice. The HRS study found that out of a total of 45 cases that were transferred to the prosecutor’s office by the

---

<sup>403</sup> HRS, “A Profile of Police and Judicial Response,” 15.

<sup>404</sup> *Ibid.*

<sup>405</sup> *Ibid.*

<sup>406</sup> Immigration and Refugee Board of Canada, “Haiti: The Haitian National Police,” (2013).

<sup>407</sup> United Nations Security Council, “Report of the Secretary-General on the United Nations Stabilization Mission in Haiti,” *United Nations* (2017): 3.

<sup>408</sup> Immigration and Refugee Board of Canada, “Haiti: The Haitian National Police,” (2013).

<sup>409</sup> *Ibid.*

<sup>410</sup> *Ibid.*

<sup>411</sup> HRS, “A Profile of Police and Judicial Response,” 18.

<sup>412</sup> A specialized unit of the HNP. The police refers cases to the BPM when the victim and/or alleged aggressor is a minor.

<sup>413</sup> HRS, “A Profile of Police and Judicial Response,” 18.

HNP, the BPM, and the Peace Courts of Port-au-Prince between June and August 2010, only 25 “were received and recorded in the registry of the *Parquet* (Prosecutor’s Office) in Port-au-Prince.”<sup>414</sup> The Haitian Bar explained that “the unaccounted for cases are mainly due to a lack of diligence by the *Tribunaux de Paix*,” in which the justices of the peace, who have no jurisdiction to handle rape crimes,<sup>415</sup> “regularly fail to inform the *Parquet* of criminal cases because the former reach ‘amicable settlements’ between the victim and alleged perpetrator”<sup>416</sup> by “negotiating a financial settlement for the victim in exchange for dropping the complaint.”<sup>417</sup> “Given the shortcomings of the judicial system and the [pervasive] lack of trust in the [...] system, many victims will consider this option”<sup>418</sup> as a means to obtain a sort of reparation. This payment of compensation<sup>419</sup> is “the most frequent reason for the abandonment of rape complaints.”<sup>420</sup>

The lack of financial and human resources and the lack of diligence in the proper “referral of rape complaints to the justice system”<sup>421</sup> demonstrate the way in which certain fundamental administrative failures interfere with the prosecution of rape cases. Although such factors severely cripple judicial officials from adequately investigating and prosecuting cases of sexual violence against women, they are not specifically designed to reduce women’s access to judicial remedies. Rather these weaknesses of the system produce conditions in which cases involving women, particularly rape cases, are poorly handled. Meanwhile, what follows is a discussion on the medical certificate requirement as a

---

<sup>414</sup> HRS, “A Profile of Police and Judicial Response,” 18.

<sup>415</sup> That police officers refer rape cases to the *Tribunaux de Paix* is, in and of itself, highly problematic: Haitian law dictates that the *Juge de Paix* (Justice of the Peace) “is competent to hear cases of *contraventions* (infringements) but is not authorized to conduct full investigations in criminal cases” as this responsibility is reserved for the investigating judge. Although the justice of the peace can conduct a preliminary inquiry or *prima facie* investigation of crimes, including rapes, they are “required to refer a case to the [chief prosecutor] within 48 hours of receiving it.” HRS, “A Profile of Police and Judicial Response,” 20.

<sup>416</sup> HRS, “A Profile of Police and Judicial Response,” 18.

<sup>417</sup> U.S. Department of State, “Haiti 2013 Human Rights Report,” 32.

<sup>418</sup> HRS, “A Profile of Police and Judicial Response,” 21.

<sup>419</sup> The report did not specify the amount of money that was involved in the brokering of these out-of-court settlements.

<sup>420</sup> HRS, “A Profile of Police and Judicial Response,” 21.

<sup>421</sup> *Ibid.*, 17.

patriarchal legal practice that specifically hampers women's access to an effective legal remedy for rape.

### **The Medical Certificate Requirement**

The most problematic barrier to the prosecution of rape cases that poses for rape survivors one of the greatest impediments to justice<sup>422</sup> is the “*de facto* requirement that a woman obtain a medical certificate to corroborate her claim of rape”<sup>423</sup> and pursue a legal complaint.<sup>424</sup> Although medical certificates are “not mandated by Haitian law,”<sup>425</sup> and therefore not legally required for police and judicial authorities to prosecute rape cases, they are “the most commonly sought after piece of material evidence”<sup>426</sup> in sexual violence cases. In practice, a victim must “provide a medical certificate attesting to the existence of circumstances [indicating] that a rape occurred”<sup>427</sup> in order for a rape claim to be considered “*prima facie* admissible.”<sup>428</sup> Medical certificates are primarily useful in that they can provide forensic evidence (e.g. genital injury, semen) that can substantiate a rape claim and establish the use of force. Ideally, a medical certificate providing detailed descriptions of any observed lesions and/or physical wounds, and their links to the events reported by the victim serves the central purpose of attesting to the materiality of the facts of the rape.<sup>429</sup> The factual information provided by the certificate subsequently permits the proper legal qualification of the offense as a crime as well as allows for competent court proceedings and the application of the correct penalty to the offender.<sup>430</sup> However, deficient criminal investigations on the part of the Haitian police—due in part to severe resource constraints but also a lack of

---

<sup>422</sup> MADRE, “Struggling to Survive: Sexual Exploitation of Displaced Women and Girls in Port-au-Prince, Haiti,” *CUNY School of Law* (2012): 17.

<sup>423</sup> Lankenau, “Toward Effective Access to Justice in Haiti,” 1759.

<sup>424</sup> *Ibid.*, 1761.

<sup>425</sup> *Ibid.*, 1759.

<sup>426</sup> *Ibid.*, 1766.

<sup>427</sup> HRS, “A Profile of Police and Judicial Response,” 15.

<sup>428</sup> *Ibid.*

<sup>429</sup> Unité de Recherche et d’Action Médico Légal (URAMEL), “Manuel de Formation: Techniques de sensibilisation sur la violence,” *URAMEL* no. 1 (2016): 72.

<sup>430</sup> *Ibid.*

professional will—“fail to produce any additional evidence to be used at trial,”<sup>431</sup> which renders the medical certificate the only reliable piece of evidence that a rape occurred.<sup>432</sup>

The existence of a medical certificate should not be the sole basis upon which a rape case is prosecuted. As Shannon D. Lankenau asserts in her scholarly article, “Toward Effective Access to Justice in Haiti”: “While medical certificates may be pivotal in documenting sexual penetration or signs of injury that could indicate a lack of consent, medical certificates should never be dispositive on the issue of whether a rape occurred.”<sup>433</sup> Although the medical certificate can often serve as an aid to bolster a victim’s case against her alleged attacker, it frequently becomes “an *impediment* to further investigation and prosecution.”<sup>434</sup> In fact, its absence can severely hamper a case from moving forward and, thus, impact a victim’s right to seek redress. Before filing a complaint, police officers frequently ask a victim to “provide a medical certificate documenting evidence of sexual aggression”<sup>435</sup> in order to “establish the requisite level of suspicion”<sup>436</sup> and obtain an arrest warrant.<sup>437</sup> According to a report by MADRE, Haitian prosecutors will not proceed with rape cases unless the accused perpetrator confesses to the crime or the victim presents a medical certificate.<sup>438</sup> Given that the medical certificate is required to prove rape,<sup>439</sup> Haitian police officers, prosecutors, and judges routinely turn victims away, decline to take the case or advance with the investigation,<sup>440</sup> or “dismiss rape cases [altogether] when the victim does not receive a medical certificate from a doctor within 72 hours of the attack.”<sup>441</sup> However, neither the police nor the prosecutor needs a medical certificate to act on a complaint while

---

<sup>431</sup> Lankenau, “Toward Effective Access to Justice in Haiti,” 1761.

<sup>432</sup> *Ibid.*, 1766.

<sup>433</sup> Lankenau, “Toward Effective Access to Justice in Haiti,” 1764.

<sup>434</sup> *Ibid.*, 1765.

<sup>435</sup> *Ibid.*, 1768.

<sup>436</sup> *Ibid.*

<sup>437</sup> *Ibid.*

<sup>438</sup> MADRE, “Struggling to Survive,” 17.

<sup>439</sup> Armstrong, “The Rapist and the Girl Next Door”.

<sup>440</sup> Jagannath, “Barriers to Women’s Access to Justice in Haiti,” 43.

<sup>441</sup> Boston College Law School et al., “Access to Judicial Remedies in Haiti,” 5.

the 48-hour flagrant offense<sup>442</sup> window still exists, and this leaves victims with a narrow time window to obtain a certificate. Victims, moreover, are often unable to seek immediate medical attention within this time frame due to their inability to pay for medical services. Impoverished Haitian women “lack access to basic healthcare services due to a [...] lack of financial means,”<sup>443</sup> which prevents them from being able to get clinically tested<sup>444</sup> and, in turn, obtaining a medical certificate to substantiate their rape claim. In his scholarly article, “Documenting Mass Rape: Medical Evidence Collection Techniques as Humanitarian Technology,” Jaimie Morse acknowledges that the requirement in some jurisdictions that victims “pay a fee for completion of the [medical] certificate”<sup>445</sup> can obstruct a victim’s access to medical certificates.<sup>446</sup> As he states:

It is not uncommon for a medical certificate to be required in order for a victim to press charges within national jurisdictions that require corroboration of victim testimony. In these contexts, if a victim cannot seek medical care or cannot afford to pay for a medical certificate (where a fee is required), then the possibility of prosecution may be foreclosed if no other evidence or witness testimony is available.<sup>447</sup>

Despite a 2007 mandate by the Haitian Women’s Ministry, the Ministry of Public Health, and the Ministry of Justice and Public Security that “medical certificates [...] be provided for free,”<sup>448</sup> hospitals continue to charge victims up to 4 USD per certificate, which is expensive given that the majority of Haitians “live on less than 2 USD per day.”<sup>449</sup> This is also seen in the international sphere. In the DRC, for instance, “all victims of sexual violence are asked to provide a medical certificate in court, stating what can be medically confirmed about the

---

<sup>442</sup> According to Articles 10 and 31 of the Criminal Procedure Code (CIC), *flagrant délits* (flagrant offenses) are recently committed offenses that occur within a 24 to 48-hour window, either when a person is caught during the act or immediately after. Police officers and prosecutors are only authorized to arrest an alleged perpetrator without a judicial warrant during the “flagrancy” period (48 hours after the offense occurs).

<sup>443</sup> Chanelle Fox, “Violent Sex: How Gender-Based Violence is Structured in Haiti, Healthcare & HIV/AIDS,” *Indiana Journal of Law and Social Equality*, 2, issue 1 (2013): 225.

<sup>444</sup> Fox, “Violent Sex,” 225.

<sup>445</sup> Jamie Morse, “Documenting Mass Rape: Medical Evidence Collection Techniques as Humanitarian Technology,” *Genocide Studies and Prevention: An International Journal* 8, no. 2 (2014): 70.

<sup>446</sup> Morse, “Documenting Mass Rape,” 70.

<sup>447</sup> *Ibid.*, 71.

<sup>448</sup> Lankenau, “Toward Effective Access to Justice in Haiti,” 1774

<sup>449</sup> *Ibid.*

rape.”<sup>450</sup> According to a 2009 HRW report, these certificates should be free.<sup>451</sup> However, victims often have to pay for them and, “despite the provision in the law, courts rarely—if ever—pay for the medical treatment of the victims whose cases are on trial.”<sup>452</sup>

In order to obtain a *legally acceptable*<sup>453</sup> certificate, sexual violence survivors in Haiti are required to go to the “*Hôpital de l’Université de l’État d’Haïti*” (HUEH)<sup>454</sup> (General Hospital of Port-au-Prince) which is burdensome for women who are poor and/or displaced because public transportation is expensive<sup>455</sup> and “transportation costs [...] can be prohibitive for poorer women.”<sup>456</sup> This practice is particularly problematic for victims “when the General Hospital is closed because the hospital workers are on strike”<sup>457</sup>—a commonplace occurrence. The police officers interviewed by the HRS insisted that they “systematically inform victims of the need to have a medical certificate.”<sup>458</sup> However, they often neglect to explain “the importance of obtaining a medical examination within the 72 hours following the rape”<sup>459</sup> and, as a result, victims are often “unaware of the importance of the certificates [...] for domestic prosecutions.”<sup>460</sup> According to the “gynaecological unit of the General Hospital,”<sup>461</sup> most women—particularly poor women who are often undereducated—“only seek medical assistance several days and sometimes weeks after”<sup>462</sup> the alleged rape occurred and “often only after a police referral,”<sup>463</sup> well after the 72-hour window.<sup>464</sup> According to the

---

<sup>450</sup> Human Rights Watch (HRW), “Protecting Child Victims in Sexual Violence Trials in the DR Congo: Suggestions for the Way Forward 2009,” *Human Rights Watch* (2009): 2.

<sup>451</sup> HRW, “Protecting Child Victims,” 2.

<sup>452</sup> *Ibid.*

<sup>453</sup> Due to the fact that medical certificates from other institutions “vary greatly in terms of detail and form” officials at the prosecutor’s office insist on the certificate issued by the General Hospital and have frequently “turned away complainants because of a perceived inadequacy of their medical certificates.” Jagannath, “Barriers to Women’s Access to Justice in Haiti,” 42-3.

<sup>454</sup> Jagannath, “Barriers to Women’s Access to Justice in Haiti,” 42.

<sup>455</sup> Lankenau, “Toward Effective Access to Justice in Haiti,” 1774.

<sup>456</sup> HRS, “A Profile of Police and Judicial Response,” 16.

<sup>457</sup> Jagannath, “Barriers to Women’s Access to Justice in Haiti,” 43.

<sup>458</sup> HRS, “A Profile of Police and Judicial Response,” 15.

<sup>459</sup> HRS, “A Profile of Police and Judicial Response,” 3.

<sup>460</sup> MADRE et al., “Gender-Based Violence Against Haitian Women & Girls in Internal Displacement Camps,” *United Nations Universal Periodic Review* (3-14 October 2011): 4. <http://www.ijdh.org/2011/03/topics/womens-issues/gender-%E2%80%90based-violence-against-haitian-women-girls-in-internal-displacement-camps-madrekofaviv-cuny-school-of-law/>.

<sup>461</sup> HRS, “A Profile of Police and Judicial Response,” 16.

<sup>462</sup> *Ibid.*

<sup>463</sup> *Ibid.*

hospital personnel, “poor women often only report a rape to the hospital [sometimes months after a rape has occurred] if they experience serious health complications caused by the rape.”<sup>465</sup> This erects a significant barrier to obtaining justice: if a victim visits a medical facility “too late for the examination to be effectively conducted and for a certificate [...] to be issued,”<sup>466</sup> even if the police records the rape complaint and transfers the case to the prosecutor’s office, “the latter is very likely to dismiss the case for lack of *prima facie* evidence.”<sup>467</sup> As a result, judges often receive cases “long after an offense has been committed”<sup>468</sup> and the time to collect evidence has elapsed.

Furthermore, medical facilities are severely underfunded and “ill-equipped to receive victims of sexual assault,”<sup>469</sup> which often renders medical exams inadequate to produce any relevant evidence. However, even the best medical examinations sometimes fail to provide the demanded corroboration to support a rape claim, particularly when there are no signs of penetration or physical injury<sup>470</sup> to prove the use of force. As Rashmi Goel and Leigh Goodmark explain in their book, *Comparative Perspectives on Gender Violence: Lessons from Efforts Worldwide*: “Many rapes do not leave injuries indicating the use of force, yet if the medical certificate does not document the use of force (which is often the case if the victim was not a virgin when assaulted), judges and prosecutors will dismiss the case for lack of evidence of force.”<sup>471</sup> In Haiti, criminal law does not identify force as an element of the offense of rape and “need not be shown to prove lack of consent.”<sup>472</sup> However, as explained by a Haitian prosecutor, “the most important part of the medical certificate is evidence of the

---

<sup>464</sup> HRS, “A Profile of Police and Judicial Response,” 16.

<sup>465</sup> *Ibid.*

<sup>466</sup> *Ibid.*

<sup>467</sup> *Ibid.*

<sup>468</sup> Lankenau, “Toward Effective Access to Justice in Haiti,” 1769.

<sup>469</sup> *Ibid.*, 1775.

<sup>470</sup> *Ibid.*, 1764.

<sup>471</sup> Rashmi Goel and Leigh Goodmark, *Comparative Perspectives on Gender Violence: Lessons from Efforts Worldwide* (New York: Oxford University Press, 2015), 55.

<sup>472</sup> MADRE, “Struggling to Survive,” 17.

breaking of the hymen or other tearing.”<sup>473</sup> This is seen in other countries. In Ethiopia, for instance, rape “for the average police investigator [...] means ‘breaking the hymen.’”<sup>474</sup> Moreover, a rape complaint often will not be registered “without medical proof of virginity prior to being victimized.”<sup>475</sup> Consequently, non-virgins, for whom it is difficult to prove the use of force, are often denied due process.

In his book, *Human Rights: Global Perspectives*, Anuradha Kumar explains that “the dearth of medical facilities and professionals in Haiti has made it extremely unlikely that alleged rape victims can collect the critical forensic evidence and document injuries sustained during rape.”<sup>476</sup> Attorney Gassant shed specific light on the difficulties inherent in medical examinations in Haiti given the deficit of specialized forensic physicians:

In Haiti, there is no way to prove that a rape took place. There are [virtually] no forensic doctors and the doctors we do have lack a laboratory with adequate materials. There is no forensic medicine; legal medicine is nonexistent here. The medical certificate says nothing: it only states that penetration has taken place, but this does not mean anything. It tells you that this person may have engaged in sexual intercourse, but with who? We don’t know. There are no experts who are qualified in examining forensic evidence such as pubic hair, sperm, and blood.<sup>477</sup>

The fundamental lack of forensic physicians “with specific training and qualifications [...] who can perform the necessary forensic medical examinations”<sup>478</sup> to prepare a medical certificate speaks to the problematic nature of this over emphasis on the medical certificate as the basis upon which a rape claim can be legally pursued. Indeed, the over reliance on the medical certificate requirement is, in part, rooted in obstacles to obtaining other forms of evidence<sup>479</sup> (e.g. DNA evidence).<sup>480</sup> However, in Haiti and in other countries around the

---

<sup>473</sup> Ibid.

<sup>474</sup> Janice Du Mont and Deborah White, “The Uses and Impacts of Medico-Legal Evidence in Sexual Assault Cases: A Global Review,” *World Health Organization (WHO) Sexual Violence Research Initiative* (2007): 44.

<sup>475</sup> Du Mont and White, “The Uses and Impacts of Medico-Legal Evidence in Sexual Assault Cases,” 44-5.

<sup>476</sup> Anuradha Kumar, *Human Rights: Global Perspectives* (New Delhi: Sarup & Sons, 2002), 125.

<sup>477</sup> Gassant (The Haitian Judicial System).

<sup>478</sup> Iain Mclean and Stephan L’Heureux, “Sexual Assault Aftercare Services In Japan and the UK,” *Routledge Japan Forum* 19, no. 2 (2007): 245.

<sup>479</sup> A working paper by the Human Rights Center identifies various types of samples that can be collected as forensic evidence for rape, namely evidence of injury (e.g. photographs), clothing (e.g. items of clothing that may contain sperm or other bodily fluids), hair (either the victim’s hair or foreign hair on the body or genital area), sperm and seminal fluid, DNA (e.g. foreign DNA found in condoms, fingernail scrapings), blood and/or urine. Lauren Harris and Julie Freccero, “Sexual Violence: Medical and Psychosocial Support,” *Human Rights Center University of California, Berkeley* (2011): 7.

world, “facilities for examining victims of sexual assault have been documented as inadequate.”<sup>481</sup> In Egypt, for instance, “only one central medical forensic lab [exists] for the whole country.”<sup>482</sup> In parts of the United States, forensic labs “have been found to be plagued by ‘serious inadequacies.’”<sup>483</sup> In parts of Central America, India, and the United Kingdom, “facilities have been documented as being in short supply.”<sup>484</sup> According to a 2005 HRW report, “there are no forensic specialists in eastern Congo,”<sup>485</sup> which severely cripples the quality of investigations into all cases, including sexual violence cases. Furthermore, most prosecutorial and judicial staff are male and lack the necessary training to properly deal with traumatized victims of sexual violence.<sup>486</sup> As the HRW report reveals: “Most persons staffing military and civilian courts are poorly trained. Investigators often do not know how to gather the facts so they can be used in court, including in cases of crimes of sexual violence.”<sup>487</sup> Nevertheless, although the medical certificate requirement in Haiti exists for the objective purpose of substantiating a rape claim, it poses severe barriers in the prosecution of rape cases that demonstrate a failure within the male-dominated Haitian justice system to recognize the realities of Haitian women, and especially impoverished women.

*Feminist Legal Theory: The Plague of Patriarchy in the Haitian Justice System*

Feminist jurisprudence, also known as feminist legal theory is defined as the “analysis and critique of law as a patriarchal institution.”<sup>488</sup> More specifically, it entails the study of the theoretical foundations of law and justice<sup>489</sup> and critiques any subordination of women within the fundamental structure of the law. According to feminist legal theory, the law is neither

---

<sup>480</sup> Manouchka Remy, Officer at the *Unité de Lutte contre les Crimes Sexuels (ULCS)* (Sexual Violence Unit) in Port-au-Prince, (The Medical Certificate), interviewed by Mathilde Pierre, Port-au-Prince, Haiti, January 11, 2018.

<sup>481</sup> Du Mont and White, “The Uses and Impacts of Medico-Legal Evidence in Sexual Assault Cases,” 38

<sup>482</sup> *Ibid.*

<sup>483</sup> *Ibid.*

<sup>484</sup> *Ibid.*

<sup>485</sup> HRW, “Seeking Justice,” 42.

<sup>486</sup> *Ibid.*, 43.

<sup>487</sup> *Ibid.*, 42.

<sup>488</sup> Patricia Smith, “Feminist Jurisprudence and the Nature of Law” from *Feminist Jurisprudence* (New York: Oxford University Press, 1993), in *Readings in the Philosophy of Law*, ed. Keith C. Culver (Ontario: Broadview Press, 1999), 273.

<sup>489</sup> Thomson Gale, “Feminist Legal Theory,” in *Encyclopedia of Philosophy* (2006),

<http://www.encyclopedia.com/humanities/encyclopedias-almanacs-transcripts-and-maps/feminist-legal-theory>.

neutral nor objective: it is inherently patriarchal and conceals an “androcentric foundation”<sup>490</sup> in that it has primarily been written by men and is embedded in male norms and ideologies.<sup>491</sup> Feminist jurisprudence formulates the central argument that patriarchy, as a system of interconnected institutions that oppress women, infuses all the workings of the legal system.<sup>492</sup> It further holds that the “historical and continuing exclusions of women from the law’s protective domain have injured women.”<sup>493</sup> Feminist legal theory seeks to transform the principles governing criminal and constitutional law so as to challenge their “patriarchal blueprint”<sup>494</sup> and, more importantly, “improve the quality of jurisprudence and women’s lives”<sup>495</sup> by making the law more “responsive to women’s needs and [...] reflective of women’s perspectives.”<sup>496</sup>

Feminist legal theory provides a useful theoretical framework through which to examine the role of patriarchy in undermining the Haitian legal system. More importantly, it justifies the examination of Haiti’s weak and patriarchal justice system as a core factor perpetuating the vulnerability of Haitian women to sexual violence. Feminist jurisprudence additionally helps to understand that women remain vulnerable in Haitian society, not due to the inexistence of laws to protect them but rather due to the way in which existing laws and legal practices are a byproduct of patriarchal norms, which renders them fundamentally incapable of effectively protecting women. Through this theoretical lens, the vulnerability of Haitian women to systematic sexual violence is not incidental, but is rather entrenched in the justice system itself.

---

<sup>490</sup> Kathryn Temple, “Feminist Jurisprudence,” in *Encyclopedia of Feminist Literary Theory*, edited by Elizabeth Kowaleski Wallace. Routledge, 2010, [https://ezproxy.library.nyu.edu/login?url=http://search.credoreference.com/content/entry/routflit/feminist\\_jurisprudence/0?institutionId=577](https://ezproxy.library.nyu.edu/login?url=http://search.credoreference.com/content/entry/routflit/feminist_jurisprudence/0?institutionId=577).

<sup>491</sup> Carisa R. Showden, “Feminist Legal Theory,” in *The Encyclopedia of Political Science*, by George Thomas Kurian, James E. Alt, Simone Chambers, Geoffrey Garrett, Margaret Levi, and Paula D. McClain (CQ Press, 2011), [https://ezproxy.library.nyu.edu/login?url=http://search.credoreference.com/content/entry/cqpolisci/feminist\\_legal\\_theory/0?institutionId=577](https://ezproxy.library.nyu.edu/login?url=http://search.credoreference.com/content/entry/cqpolisci/feminist_legal_theory/0?institutionId=577).

<sup>492</sup> Melissa Burchard, “Feminist Jurisprudence,” *Internet Encyclopedia of Philosophy*, <http://www.iep.utm.edu/jurifem/>.

<sup>493</sup> Gale, “Feminist Legal Theory,” *Encyclopedia of Philosophy*.

<sup>494</sup> Catherine Wright, “Feminist Jurisprudence,” review of *Feminist Jurisprudence* (New York: Oxford University Press, 1993), by Patricia Smith, *Dalhousie Journal of Legal Studies* (1994): 272.

<sup>495</sup> Gale, “Feminist Legal Theory,” *Encyclopedia of Philosophy*.

<sup>496</sup> *Ibid.*

From a feminist jurisprudential perspective, the medical certificate requirement is a patriarchal legal practice that is emblematic of the deeply ingrained tradition of gender discrimination that pervades the Haitian legal system and injures women. The requirement is not neutral because it has been adopted by sexist<sup>497</sup> judges, prosecutors, and police officers who perceive rape as a “nonserious crime,”<sup>498</sup> routinely discredit women’s testimonies, and frequently blame victims for having provoked the rapes<sup>499</sup> committed against them. It is additionally anchored to the patriarchal belief that rape is only evidenced by the breaking of the hymen and that the “rape of a woman who is not a virgin [is] less important on the grounds that her honor was not violated.”<sup>500</sup> More importantly, the medical certificate requirement is reflective of the failure of judges to take into consideration the practical impediments to obtaining a medical certificate that make it nearly impossible for a woman to gather the evidence needed to corroborate her rape claim.

A 2011 comparative study of rape law in Haiti and other countries around the world stated that “historically, rape prosecutions were often hampered by extraordinary corroboration requirements, which reflected not only the unique nature of sexual crimes, but also a distrust of women’s accounts of rape.”<sup>501</sup> Per the study’s findings, most jurisdictions “have done away with [extreme corroboration] requirements and provide that the victim’s testimony can be sufficient to convict, without corroborating evidence.”<sup>502</sup> In countries around the world, there are “no (or no longer) formal rules regarding corroboration of a woman’s testimony in cases of sexual assault,”<sup>503</sup> namely in “parts of Latin America, Canada, Fiji, Ghana, Israel, South Africa, the United Kingdom, the United Republic of Tanzania,

---

<sup>497</sup> Joseph and Phillips, “Judicial Corruption in Haiti,” 196.

<sup>498</sup> Duramy, “Victims’ Help-Seeking and the Criminal Justice Response,” in *Gender and Violence in Haiti*, 105.

<sup>499</sup> MADRE, “Struggling to Survive,” 16.

<sup>500</sup> Kang, “The Hidden Epidemic,” 10.

<sup>501</sup> Robert Loeffler et al., “Achieving Justice for Victims of Rape and Advancing Women’s Rights: A Comparative Study of Legal Reform,” *Morrison and Foerster* (2011): 26.

<sup>502</sup> Loeffler et al., “Achieving Justice for Victims of Rape,” 26.

<sup>503</sup> Du Mont and White, “The Uses and Impacts of Medico-Legal Evidence in Sexual Assault Cases,” 35.

Zimbabwe and most parts of the United States.”<sup>504</sup> A 2007 World Health Organization (WHO) report found that in some countries, namely the United States and Canada, “a sexual assault victim seeking legal recourse is not obliged to submit to a medical forensic examination.”<sup>505</sup> In Canada, “no corroboration is required for a conviction under the sexual assault law.”<sup>506</sup> In the United States, “many judges interpret rape statutes so as to eliminate corroboration requirements.”<sup>507</sup> According to South African law, “a complainant’s previous consistent statements are admissible as evidence [and] delay in reporting a rape cannot be the basis of any negative interference.”<sup>508</sup> South African law additionally “warns judges against treating a complainant’s testimony ‘with caution’ simply because the complaint is of a sexual assault.”<sup>509</sup> Although a forensic examination is required for conviction in Brazil, if the rape is reported when a forensic examination can no longer be performed, the “testimony of the victim and witnesses can suffice for conviction.”<sup>510</sup> In the Philippines, “presentation of the medical certificate is not essential to prove the commission of rape as the testimony of the victim alone, if credible, is sufficient to convict the accused of the crime. The medical examination of the victim as well as the medical certificate is merely corroborative in character.”<sup>511</sup>

Nevertheless, the requirement that a rape survivor “present a medical certificate before pursuing a complaint of sexual violence [...] ensure[s] that only a small minority of rape cases ever makes it past the complaint stage.”<sup>512</sup> That the obstacles to obtaining a medical certificate are often insurmountable for poor women in Haiti preordains that most

---

<sup>504</sup> *Ibid.*

<sup>505</sup> Du Mont and White, “The Uses and Impacts of Medico-Legal Evidence in Sexual Assault Cases,” 10.

<sup>506</sup> Loeffler et al., “Achieving Justice for Victims of Rape,” 26.

<sup>507</sup> Lankenau, “Toward Effective Access to Justice in Haiti,” 1765.

<sup>508</sup> Loeffler et al., “Achieving Justice for Victims of Rape,” 26.

<sup>509</sup> *Ibid.*

<sup>510</sup> *Ibid.*, 26-7.

<sup>511</sup> *People vs. Dion*, G.R. No. 181035 (S.C., July 4, 2011) (Phil.), quoted in Lankenau, “Toward Effective Access to Justice in Haiti,” 1765.

<sup>512</sup> Lankenau, “Toward Effective Access to Justice in Haiti,” 1787.

rape allegations will go uninvestigated.<sup>513</sup> This over reliance on the medical certificate as a corroboration requirement and the delegitimization of women’s testimonies upon which the requirement of the certificate is predominantly based, is reflective of the gender bias and the strong heteronormative norms within the Haitian judicial infrastructure that female victims of sexual violence continually face and that make it nearly impossible for them to ensure the full realization of their human rights to security, physical integrity, and freedom from violence.

### **Conclusion**

A combination of factors—namely judicial corruption in the form of political interference and bribery as well as basic administrative failures and a severe lack of resources—contribute to weakening the Haitian justice system and limiting its capacity to properly handle legal cases involving both male and female citizens. However, these systemic weaknesses coupled with the influence of patriarchal legal practices harm women more than men and undermine the capacity of the system to adequately protect female citizens. The following chapter analyzes in depth the culture of gender discrimination that permeates the Haitian justice system through a demonstration of the sexist attitudes of judicial officials in the investigation of sexual violence cases. It particularly examines how the belittling of rape cases due to the gender biases of judicial officials towards women contributes to a tremendous lack of political will in the investigation of such cases. It further employs three cases studies to illustrate how certain weaknesses of the Haitian justice system render the system more inaccessible to women and especially to female victims of violence.

---

<sup>513</sup> Lankenau, “Toward Effective Access to Justice in Haiti,” 1787.

## CHAPTER 3

### **Social and Structural Barriers to Women's Access to Justice:**

#### **The Revictimization of Women by a Feeble Justice System**

This chapter provides a close analysis of the factors within the Haitian justice system that specifically pose barriers to women in the prosecution of sexual violence cases. It predominantly focuses on three case studies that illuminate the social and structural barriers that “discriminate against female complainants at each level of the [judicial] process”<sup>514</sup> and, ultimately, “discourage women and girls from formally seeking justice”<sup>515</sup> and pursuing perpetrators. The case studies particularly demonstrate some of the ways in which the weaknesses discussed in the previous chapter injure women specifically. While this chapter underscores the negative impact of gender discrimination in the investigation of rape cases, it acknowledges that the low prosecution of sexual violence cases cannot exclusively be attributed to discriminatory attitudes. This chapter thus argues that the investigation of sexual violence cases lies within a matrix of interacting gender-neutral factors (e.g. nepotism) and gender-loaded factors (e.g. sexist attitudes) that influence whether sexual violence cases are successfully prosecuted. This chapter further underscores the way in which factors that transcend Haiti's justice system, most notably the cultural inferiorization of women and the feminization of poverty, infiltrate the judicial sphere and erect more barriers to women's access to legal remedies.

#### **“It's Just Rape”: The Trivialization of Sexual Violence Complaints**

Although the prosecution of rape cases is largely hampered by procedural and institutional hurdles that cannot be directly attributed to targeted gender discrimination against women, the Haitian legal system provides an environment that is “hostile to

---

<sup>514</sup> Boston College Law School et al., “Access to Judicial Remedies in Haiti,” *112th Session of the United Nations Human Rights Committee* (8-9 October 2014): 2

<sup>515</sup> Boston College Law School et al., “Access to Judicial Remedies in Haiti,” 2.

women”<sup>516</sup> due to the influence of discriminatory attitudes. In Haiti, women lack access to secure and reliable complaint mechanisms to report sexual abuse,<sup>517</sup> which renders access to effective justice “elusive for the majority of Haitian women.”<sup>518</sup> The majority of public officials in the justice system—namely judges, prosecutors, and police officers—are males who frequently hold sexist attitudes that obstruct female victims’ access to justice.<sup>519</sup> According to MADRE, reporting sexual violence to the police is “an exercise in futility.”<sup>520</sup> Women and girls who report rapes are frequently “met with indifference [...] harassment and abuse.”<sup>521</sup> Sexual violence survivors “face discrimination and gender biases”<sup>522</sup> at all stages of the judicial process—namely the police station, the prosecutor’s office, and the office of the investigating judges—which significantly impacts whether a case makes it to the stage of prosecution.

### *Police Officers*

At the police station, women often face discriminatory reactions from police officers. In addition to requesting a medical certificate, police officers exhibit sexist attitudes and frequently “become a barrier to evidence being collected or processed.”<sup>523</sup> In his 2014 speech at the conference entitled “The Initiative for the Prevention of Sexual Violence in Conflict

---

<sup>516</sup> Mario Joseph and Nicole Phillips, “Judicial Corruption in Haiti: The Need for Discipline and Civil Society Participation,” *Hastings International and Comparative Law Review* 39, no. 1 (2016): 196.

<sup>517</sup> Inter-American Commission on Human Rights (IACHR), “The Right of Women in Haiti to be Free from Violence and Discrimination,” *Organization of American States*, Doc. 64 (10 March 2009), <http://www.cidh.oas.org/countryrep/Haitimujer2009eng/HaitiWomen09.Intro.Chap.IandII.htm#I>.

<sup>518</sup> Shannon D. Lankenau, “Toward Effective Access to Justice in Haiti: Eliminating the Medical Certificate Requirement in Rape Prosecutions,” *Hastings Law Journal* 64, no. 1759 (2013): 1787.

<sup>519</sup> Femmes en action contre la stigmatisation et la discrimination sexuelle (FASCID) et al., “Violence and Discrimination against Women and Lesbian, Gay, Bisexual, Transgender (LGBT) People in Haiti,” *26th Session of the Working Group of the Universal Periodic Review* (31 October - 11 November 2016): 2.

<sup>520</sup> Immigration and Refugee Board of Canada, “Haiti: Domestic Violence, Especially in Rural Areas; Protection and Services Available for Victims,” *United Nations Refugee Agency* (2013), accessed December 22, 2017, <http://www.refworld.org/docid/51dd24534.html>.

<sup>521</sup> *Ibid.*

<sup>522</sup> Lankenau, “Toward Effective Access to Justice in Haiti,” 1787.

<sup>523</sup> Janice Du Mont and Deborah White, “The Uses and Impacts of Medico-Legal Evidence in Sexual Assault Cases: A Global Review,” *World Health Organization (WHO) Sexual Violence Research Initiative* (2007): 44,

Situations,<sup>524</sup> Mario Joseph, the Managing Attorney of *Bureau des Avocats Internationaux* (*BAI*) (Bureau of International Lawyers) asserted:

[A]dministrators of justice at all levels of the judiciary do not consider incidents of violence against women as a priority, do not take women seriously, do not take account of the critical evidence to identify the culprits and lack respect for the victims and their families when they try to cooperate in investigations.<sup>525</sup>

Indeed, investigations into all cases within the Haitian justice system are deficient due to severe resource constraints. However, the trivialization and overall distrust of women's testimonies results in a lack of political will to diligently investigate sexual violence complaints. As the Inter-American Commission on Human Rights (IACHR) reported:

The society's discriminatory views towards women and the tendency not to take women's complaints of violence seriously are additional deterrents to pursuing a legal claim. In some cases their allegations are trivialized, doubted, or questioned. Many victims and service providers, especially civil society organizations working with women victims of violence, confirmed the widespread discrimination women face by police and judicial authorities when seeking legal redress from the State.<sup>526</sup>

The testimony of female victims is frequently ignored due to a "deep-seated cultural belief that a woman's testimony is inherently untrustworthy."<sup>527</sup> In her essay "Barriers to Women's Access to Justice in Haiti," Meena Jagannath explains that, according to interviewed victims and lawyers, "officers minimize or offend the women who come before them, commenting that the complaint is a ruse to get money out of the system." This is particularly severe in the cases of poor adult women, "whom police officers have refused to believe because they think she is lying."<sup>528</sup> The discrediting of women's testimonies due to "a general attitude of suspicion towards women's claims of rape"<sup>529</sup> as well as opinions that a complaint is false or malicious suffuses the legal structures in countries around the world. In New Zealand, for

---

<sup>524</sup> Mario Joseph, "Rights Enforcement as Solution a Solution to Sexual Violence in Haiti," Speech, *The Initiative for the Prevention of Sexual Violence in Conflict Situations*, sponsored by the Mexican Ministry of Foreign Affairs and British Embassy, May 12, 2014, <http://www.ijdh.org/2014/05/topics/womens-issues/mario-joseph-sexual-violence-speech/>.

<sup>525</sup> Joseph, "Rights Enforcement," (2014).

<sup>526</sup> IACHR, "The Right of Women in Haiti to be Free from Violence and Discrimination."

<sup>527</sup> Lankenau, "Toward Effective Access to Justice in Haiti," 1761.

<sup>528</sup> Meena Jagannath, "Barriers to Women's Access to Justice in Haiti," *The City University of New York (CUNY) Law Review* 15, no. 1 (2011): 38.

<sup>529</sup> Du Mont and White, "The Uses and Impacts of Medico-Legal Evidence in Sexual Assault Cases," 45.

instance, “exaggerated beliefs in the prevalence of false rape allegations”<sup>530</sup> is among the most destructive factors that underpins police investigations of rape claims. In 2004 in Philadelphia, Pennsylvania, it was reported that “police investigators had downgraded or ignored hundreds of sex crimes.”<sup>531</sup> In response to these allegations, one retired officer postulated that “‘half the girls that came in...were lying,’ labeling the sex-crime service there, ‘The Lying Bitches Unit.’”<sup>532</sup>

Moreover, police officers and other legal authorities are known for asking inappropriate questions that imply the woman is to blame for her attack. As Mario Joseph illustrates:

Most of the laws we have here have been made by men, and the prosecutors and judges are all men. They look for a way to accuse the women: ‘Why did you wear that dress? Why were you there at this time? Why didn’t you stay home?’ Even when you start the process it’s like you’ve lost the process.<sup>533</sup>

Police officers have also been known for asking female complainants whether she was a virgin before the incident; what she did at the time of the alleged rape<sup>534</sup> to provoke the assault; or whether she had previously engaged in intercourse with the accused perpetrator.<sup>535</sup> In some cases, they even “advise survivors against pressing charges in order to avoid the public humiliation of a trial.”<sup>536</sup> This phenomenon of victim-blaming is observed in other countries. In several countries in eastern Europe, for instance, “officers have sometimes been noted to humiliate sexually assaulted women, accuse them of having provoked the sexual assault, and to force them to confront their assailants at police stations.”<sup>537</sup> In her book, *Rape, Victims, and Investigations: Experiences and Perceptions of Law Enforcement Officers*

---

<sup>530</sup> Ibid.

<sup>531</sup> Du Mont and White, “The Uses and Impacts of Medico-Legal Evidence in Sexual Assault Cases,” 45.

<sup>532</sup> Ibid.

<sup>533</sup> Quoted in Lisa Armstrong, “The Rapist and the Girl Next Door, the Paradox of Prosecuting Rape Cases in Haiti,” *Institute for Justice and Democracy in Haiti*, 7 May 2014, <http://www.ijdh.org/2014/05/topics/womens-issues/the-rapist-and-the-girl-next-door-the-paradox-of-prosecuting-rape-cases-in-haiti/>.

<sup>534</sup> United States Department of State, “Haiti 2013 Human Rights Report,” *Country Reports on Human Rights Practices for 2013*, (2013): 32.

<sup>535</sup> Jagannath, “Barriers to Women’s Access to Justice in Haiti,” 38.

<sup>536</sup> U.S. Department of State, “Haiti 2013 Human Rights Report,” 32.

<sup>537</sup> Du Mont and White, “The Uses and Impacts of Medico-Legal Evidence in Sexual Assault Cases,” 45.

*Responding to Reported Rapes*, Shana L. Maier sheds light on the perceptions of rape held by detectives in the United States. Her interviews with detectives revealed that they often hold “victim-blaming attitudes (e.g. rape results from women’s poor judgment)”<sup>538</sup> towards rape victims that are “supportive of rape myths and negative towards victims.”<sup>539</sup> According to Maier: “Many detectives stated that rape is caused by situations women put themselves in, such as walking alone at night [...] or being too trusting.”<sup>540</sup> One detective stated that women “put themselves in a situation where they get taken advantage of.”<sup>541</sup> Maier further explains that police officers and detectives frequently question victims about “their behavior prior to the sexual victimization.”<sup>542</sup>

The investigation of rape complaints is further harmed by the brazen belittling of rape cases. The Haitian police officers interviewed by the Human Rights Section (HRS) of the Office of the High Commissioner for Human Rights in Haiti admitted that they “do not give the same level of importance to rapes as they do to other crimes, such as murder or banditry.”<sup>543</sup> Despite their legal obligation to investigate all crimes,<sup>544</sup> the police interviewed disclosed that they “do not systematically investigate each complaint or search for alleged aggressors in every case of rape.”<sup>545</sup> When the HRS inquired why investigations were not conducted, one police officer declared that “it is just rape.”<sup>546</sup> As Attorney Gassant remarked: “sexual violence cases are regarded as ordinary occurrences.”<sup>547</sup> This failure to prioritize sexual violence cases is also observed in the Democratic Republic of Congo (DRC). According to a 2005 HRW report, “judicial authorities, virtually all of whom are men, rarely

---

<sup>538</sup> Du Mont and White, “The Uses and Impacts of Medico-Legal Evidence in Sexual Assault Cases,” 45.

<sup>539</sup> Ibid.

<sup>540</sup> Shana L. Maier, “Detectives’ Perceptions of Rape,” in *Rape, Victims, and Investigations : Experiences and Perceptions of Law Enforcement Officers Responding to Reported Rapes*, (New York: Taylor & Francis Group, 2014), 49.

<sup>541</sup> Maier, “Detectives’ Perceptions of Rape,” in *Rape, Victims, and Investigations*, 49.

<sup>542</sup> Ibid., 51.

<sup>543</sup> Human Rights Section (HRS) Office of the High Commissioner for Human Rights-Haiti, “A Profile of Police and Judicial Response to Rape in Port-au-Prince,” *United Nations Stabilization Mission in Haiti* (2012): 17.

<sup>544</sup> Article 10 of the *Code d’Instruction criminelle* (Code of Criminal Procedure).

<sup>545</sup> HRS, “A Profile of Police and Judicial Response,” 17.

<sup>546</sup> Ibid.

<sup>547</sup> Claudy Gassant (The Haitian Judicial System), interviewed by Mathilde Pierre, Port-au-Prince, Haiti, 10 January 2018.

give priority to crimes of sexual violence.”<sup>548</sup> Furthermore, the prosecution of perpetrators is frequently “marred by procedural faults, failure to seriously investigate [...] responsibility for crimes, and insufficient attention to the needs of the victim.”<sup>549</sup>

### *Office of the Prosecutor*

In Haiti, the prosecutor’s office has the authority to “receive complaints and conduct investigations into all complaints, including those submitted by the police and the justices of the peace.”<sup>550</sup> Sexual violence survivors are confronted with several major obstacles at the prosecutor’s office that deter them from filing complaints and make it “particularly challenging for poor women and girls to access justice for gender-based violence claims,”<sup>551</sup> namely limited resources, a high degree of corruption and racketeering, and deeply ingrained gender discrimination. In addition to requiring that victims provide a medical certificate to corroborate their rape claim, officials in the prosecutor’s office have also been known to “make derisive statements about complainants without a medical certificate—essentially equating her lack of a medical certificate to proof that she is lying about the rape.”<sup>552</sup>

Female complainants additionally face the discriminatory attitudes of “both the clerks and the judges at the prosecutor’s office.”<sup>553</sup> For instance, officials at the prosecutor’s office receiving complaints of sexual violence commonly “discredit the victim’s story as a ruse and blame the victim or the victim’s parents for the act.”<sup>554</sup> This discriminatory treatment is especially severe in the cases of poor women and girls, whose claims are often called into question because officials in the prosecutor’s office believe that these women or the parents of minor-victims are telling a story to extract money from the accused.<sup>555</sup> This discrimination towards impoverished women and girls is often “transferred to these victims’ lawyers [...] in

---

<sup>548</sup> Human Rights Watch (HRW), “Seeking Justice: The Prosecution of Sexual Violence in the Congo War,” *Human Rights Watch* 17, no.1 (2005): 29.

<sup>549</sup> HRW, “Seeking Justice,” 29.

<sup>550</sup> Jagannath, “Barriers to Women’s Access to Justice in Haiti,” 40.

<sup>551</sup> *Ibid.*, 41.

<sup>552</sup> *Ibid.*, 43.

<sup>553</sup> *Ibid.*, 45.

<sup>554</sup> *Ibid.*

<sup>555</sup> *Ibid.*

the form of disrespect and hostility.”<sup>556</sup> For instance, clerks in the prosecutor’s office have been known to withhold information from the victim’s lawyer or refuse to share the case file on the basis of false pretexts (e.g. being “unable” to recover the file).<sup>557</sup> The unfair treatment of victims and their lawyers severely hampers the successful prosecution of a case. For example, one major impact is that “the accused could be released because the lawyer and victim cannot access the information they need to ensure their presence at the accused’s hearing during the 48-hour detention period in jail.”<sup>558</sup>

### *Cabinet d’Instruction*

The *Cabinet d’Instruction* (Office of the Investigating Judges at the Trial Court) is made up of *Juges d’Instruction* (Investigating Judges) who have the power to take complaints for flagrant offenses; issue search warrants, arrest warrants, and summonses; and receive cases from the prosecutor’s office.<sup>559</sup> Once the investigating judge has gathered testimony and other evidence and evaluated it for guilt or innocence, “the case is sent back to the prosecutor’s office with an order to drop the case (*ordonnance de non lieu*) or to refer the case to criminal or correctional court (*ordonnance de renvoi*).”<sup>560</sup> At times, the investigating judge “summon[s] the victim for a hearing with the accused (*confrontation*).”<sup>561</sup> However, there is “no well-established and reliable system of communication with the victims when they are called for a hearing or confrontation.”<sup>562</sup> The clerks often contact the victim directly by telephone, even when she has a lawyer.<sup>563</sup> In some cases, the clerk “[calls] the victim for a hearing the next day,”<sup>564</sup> which can present a problem if she is outside Port-au-Prince and “may have difficulties traveling on short notice.”<sup>565</sup> In some cases, “the victim’s phone

---

<sup>556</sup> Jagannath, “Barriers to Women’s Access to Justice in Haiti,” 45.

<sup>557</sup> *Ibid.*

<sup>558</sup> *Ibid.*, 45-6.

<sup>559</sup> *Ibid.*, 47.

<sup>560</sup> *Ibid.*

<sup>561</sup> *Ibid.*, 48.

<sup>562</sup> *Ibid.*

<sup>563</sup> *Ibid.*

<sup>564</sup> *Ibid.*

<sup>565</sup> Jagannath, “Barriers to Women’s Access to Justice in Haiti,” 48.

number has been out of service and the clerk cannot locate the person because she does not have a fixed address”<sup>566</sup>—as is the case for women living in the internally displaced persons (IDP) camps.<sup>567</sup> In other instances, the judges “fail to invite the victim altogether, hearing the accused before ever hearing the victim.”<sup>568</sup>

Furthermore, the investigating judges are inadequately trained to address the particular sensitivities of sexual violence victims, which might result in the re-traumatizing of the victim at the confrontation hearing, “where it is often the case that the victim encounters her attacker for the first time since the assault.”<sup>569</sup> Additionally, language negatively impacts the interrogation process and the accuracy of the victim’s declaration: “while the judge asks questions in Haitian Creole, the clerk must write the answers that constitute the declaration in French, since the proceedings of the court take place in French.”<sup>570</sup> This often results in problems of misinterpretation or bad translation, and “if the testifying individual does not have an attorney to review and approve the declaration for signature [...] there is a risk that the declaration inaccurately reflects the responses and meanings of the witness,”<sup>571</sup> which could stall the victim’s case at the trial stage.<sup>572</sup>

Discriminatory attitudes of most judges also jeopardize the legal process at the investigatory level. Similarly to police officers and prosecutors, investigating judges often trivialize the testimonies of victims and often blame victims for “having done something to attract the aggression.”<sup>573</sup> These attitudes are reflected in the “manner of questioning the victim, when the types of questions and the tone of the judge indicate that the judge has prejudged the woman or girl victim, or believes that she is lying.”<sup>574</sup> Survivors of sexual

---

<sup>566</sup> Jagannath, “Barriers to Women’s Access to Justice in Haiti,” 48.

<sup>567</sup> *Ibid.*

<sup>568</sup> *Ibid.*

<sup>569</sup> *Ibid.*

<sup>570</sup> *Ibid.*, 49.

<sup>571</sup> *Ibid.*

<sup>572</sup> *Ibid.*

<sup>573</sup> *Ibid.*

<sup>574</sup> *Ibid.*, 49-50.

violence are often reluctant to “testify in court about their attack”<sup>575</sup> as in-court trial inquiries are frequently humiliating and re-traumatizing. As Mario Joseph, the managing attorney of *Bureau des Avocats Internationaux (BAI)* (Bureau of International Lawyers), stated, the “line of questioning and the culture of blaming women often means women are reluctant to open up in court.”<sup>576</sup> Jagannath makes similar claims regarding the traumatizing impact of such questioning:<sup>577</sup>

Added to the discrimination the victim might receive at the prosecutor’s office, this kind of treatment by the investigating judges psychologically impacts the victim, who may leave disheartened, undermined, and re-traumatized by the process. Rather than empowering the victim to seek justice for extreme violations of her rights, the actors in the justice system cause a woman to call into question her worth in Haitian society. Experiences of this sort only serve to discourage reporting and convince women, and victims of gender-based violence in particular, that they are not valued by the state or society in general.<sup>578</sup>

According to a 2011 comparative study of the “laws and policies that address rape and other forms of sexual violence in Brazil, Canada, France, South Africa, Sweden, and the United States,”<sup>579</sup> these re-traumatizing inquiries are common in countries around the world:

The reality is that in many, if not most, societies, victims of rape and other sexual abuses continue to experience stigma and shame. Historically, these experiences often have been compounded by investigation and prosecution practices to such an extent that victims compared their experience of bringing rape charges to being “raped” for a second time.<sup>580</sup>

The discriminatory attitudes of police officers, prosecutors, and judges towards female complainants culminate in the trivialization and discounting<sup>581</sup> of sexual violence complaints, which hampers the ensuing investigation and prosecution of these complaints. Faulty investigations subsequently fail to uncover sufficient evidence to be used at trial and, given

---

<sup>575</sup> Lankenau, “Toward Effective Access to Justice in Haiti,” 1770.

<sup>576</sup> Mario Joseph quoted in Lankenau, “Toward Effective Access to Justice in Haiti,” 1770.

<sup>577</sup> The observations provided in Meena Jagannath’s paper are based on her “direct experience working on legal cases” as a Legal Fellow in the Port-au-Prince-based Rape Accountability and Prevention Project (RAPP) by *Bureau des Avocats Internationaux (BAI)*. Jagannath also gained considerable insight into rape prosecution in the Haitian justice system through “interviews, court accompaniments, and case management for over 150 adult and minor victims of sexual violence primarily from Port-au-Prince.” Jagannath, “Barriers to Women’s Access to Justice in Haiti,” 31.

<sup>578</sup> Jagannath, “Barriers to Women’s Access to Justice in Haiti,” 50.

<sup>579</sup> Robert Loeffler et al., “Achieving Justice for Victims of Rape and Advancing Women’s Rights: A Comparative Study of Legal Reform,” *Morrison and Foerster* (2011): 7.

<sup>580</sup> Loeffler et al., “Achieving Justice for Victims of Rape,” 33.

<sup>581</sup> Blaine Bookey, “Enforcing the Right to Be Free From Sexual Violence and the Role of Lawyers in Post-Earthquake Haiti,” *The City University of New York (CUNY) Law Review* 14, no. 255 (2011): 273.

that a “[victim’s] testimony is routinely discredited”<sup>582</sup> and belittled, medical certificates come to form the foundation of most prosecutions. The delegitimization of women’s testimonies is particularly paradoxical: although the Haitian woman is valorized as the *Poto Mitan* of Haitian society (see Chapter 1), the status of her word within the legal sphere is virtually worthless. The gender biases of judicial officials cannot be exclusively attributed to a deliberate will to specifically deprive women of access to legal remedies, as they are also a function of other more objective factors like a “lack of training and sensitivity to gender stereotypes”<sup>583</sup> due to a basic lack of resources. However, these discriminatory attitudes are significant in that they contribute to the fundamental lack of political will of judicial officials to diligently investigate sexual violence cases and ensure their successful prosecution.

### **Women’s Distrust of the Justice System**

Whether within the police station or in the courtroom, the discriminatory attitudes of judicial officials create a hostile atmosphere that engenders in women a profound distrust in the capacity of the justice system to vindicate their rights.<sup>584</sup> This hostile environment seriously discourages victims from testifying or even reporting rapes in the first place.<sup>585</sup> The gender biases that distort the perception of rape victims and impact the handling of sexual violence cases within the judicial sphere stem from the larger sociocultural landscape in Haitian society. These biases are enmeshed by the social construction of women as inferior members of Haitian society (see Chapter 1). During our interview, Carol Pierre-Paul Jacob, a member and former Executive Director of *Solidarité Fanm Ayisyen (SOFA)* (Solidarity of Haitian Women), one of the preeminent women’s advocacy organizations in Haiti, explained that the cultural subordination of women in Haiti translates into the wider banalisation, minimisation, and tolerance of violence against women that is observed within the Haitian

---

<sup>582</sup> Lankenau, “Toward Effective Access to Justice in Haiti,” 1761.

<sup>583</sup> Jagannath, “Barriers to Women’s Access to Justice in Haiti,” 39.

<sup>584</sup> IACHR, “The Right of Women in Haiti to be Free from Violence and Discrimination.”

<sup>585</sup> Joseph and Phillips, “Judicial Corruption in Haiti,” 196.

justice system.<sup>586</sup> The subordinate social status of women drives the trivialization of instances of violence against women, which in turn results in the minimization of women's testimonies, victim blaming, and the subsequent poor investigation of violence complaints. Attorney Gassant shed light on how cultural beliefs regarding the types of behaviors that are socially acceptable for women permeate the reception of sexual violence complaints:

It is a social attitude. For example, a woman must not enter a man's bedroom. If ever the man attacks her, it is she who will be at fault and in the wrong. Anyone who agrees to go to a place (e.g. a hotel room) with another person cannot validly make a rape complaint. For instance, if a woman agrees to go to a hotel [room] with a man, police officers will belittle the rape statement because the logic is that she should not have been there in the first place. Culturally, in Haiti, there are certain limits that a woman should not cross.<sup>587</sup>

This cultural dimension is powerful not only because it culminates in the trivialization of rape complaints by judicial officials—which in turn impedes the successful investigation and prosecution of such cases—but especially because it entails a social stigma in Haitian society regarding acts of sexual violence that largely contributes to the “culture of silence”<sup>588</sup> surrounding incidents of rape. As Blaine Bookey articulates in his scholarly article, “Enforcing the Right to Be Free From Sexual Violence and the Role of Lawyers in Post-Earthquake Haiti”: “Survivors of sexual violence face added fears of social stigmatization and retribution, which, along with distrust in the ability of the judicial system to protect them, causes many women victims of sexual violence to remain silent.”<sup>589</sup> According to the 2013 “Haiti Human Rights Report” by the U.S. Department of State, “distrust of the judiciary and legal system”<sup>590</sup> is one of the foremost barriers to the reporting of rape, next to fear of stigmatization and reprisals. According to the 2012 study conducted by the HRS, many victims never show up to testify in large part because they are afraid of stigmatization or

---

<sup>586</sup> Carol Pierre-Paul Jacob (Matrifocality in Haitian Society), interviewed by Mathilde Pierre, Port-au-Prince, Haiti, 12 January 2018.

<sup>587</sup> Gassant (The Haitian Judicial System).

<sup>588</sup> IACHR, “The Right of Women in Haiti to be Free from Violence and Discrimination.”

<sup>589</sup> Bookey, “Enforcing the Right to Be Free From Sexual Violence,” 273.

<sup>590</sup> U.S. Department of State, “Haiti 2013 Human Rights Report,” 32.

reprisals and also because of their lack of trust in Haiti's justice system.<sup>591</sup> The failure of victims to show up to testify is exemplified in the case of Nadine Prudonis.

### *The Case of Nadine Prudonis*

On 20 October 2011, following a phone call from the *Casec* (Mayor) of Carrefour—a community in Port-au-Prince—the police of Carrefour arrested David Doréus (age 24) for having allegedly raped Nadine Prudonis, per the information provided by the *Casec*.<sup>592</sup> Following the arrest, the case was forwarded to the *Juge de Paix* (Justice of the Peace) of Carrefour then transferred to the *Cabinet d'Instruction* (Office of the Investigating Judge) of Judge Legroise Avril in the *Tribunal de Première Instance* (Court of First Instance) of Port-au-Prince.<sup>593</sup> During his interrogation at the police station, Doréus completely denied the occurrence of the rape but admitted that he had brought Nadine into his bedroom with the sole purpose of protecting her from her father, who was going to beat her because she had lent one of his books to her classmate without his permission.<sup>594</sup> On 27 October 2011, the *Commissaire du Gouvernement* (Chief Prosecutor) required that the office of the investigating judge open a judiciary investigation against the alleged perpetrator, Doréus, for having committed the crime of rape against Nadine.<sup>595</sup> On 10 November 2011, Doréus was interrogated at the *Cabinet d'Instruction* and reiterated the same statement he had previously given at the police station and at the *Tribunal de Paix* (Peace Court) of Carrefour,<sup>596</sup> essentially denying the occurrence of the rape. The alleged victim, Nadine Prudonis, was reached by telephone by the investigating judge, who invited her to the *Cabinet d'Instruction* in order to interrogate her on the affair. However, she did not respond to the invitation.<sup>597</sup> Given that Nadine never presented herself, neither at the police station nor at the *Cabinet*

---

<sup>591</sup> HRS, "A Profile of Police and Judicial Response," 22.

<sup>592</sup> Tribunal de Première Instance de Port-au-Prince, Extrait des minutes du Greffe du Tribunal de Première Instance de Port-au-Prince, Dossier no. 893-10/11, 15 février 2013.

<sup>593</sup> Ibid.

<sup>594</sup> Ibid.

<sup>595</sup> Ibid.

<sup>596</sup> Ibid.

<sup>597</sup> Ibid.

*d’Instruction*, considerable doubt was brought to the existence of the infraction,<sup>598</sup> which largely worked in favor of the accused, Doréus. Furthermore, given the absence of a medical certificate capable of attesting to the occurrence of rape or of forced penetration, and given that the investigation did not reveal any concordant clues attesting to the crime, there was no sufficient evidence with which to establish the facts of the rape and upon which to retain the charge of rape against Doréus.<sup>599</sup> Consequently, on 19 February 2013, in accordance with Article 115 of the *Code d’Instruction Criminelle* (Criminal Procedure Code), the investigating judge declared that there was no need to prosecute Doréus and was forced to drop the charges against the accused on the basis of insufficient evidence to link him to the alleged rape.<sup>600</sup>

The details of the case do not specify whether Nadine was unable to obtain a medical certificate or the reasons behind her decision not to testify. However, this case demonstrates that, while the overall weakness of the Haitian justice system cripples the prosecution of sexual violence cases against women, certain more subtle factors, like the failure of victims to show up to testify—which can be attributed to issues of communication in some cases and the fear of stigmatization in others—can also pose an obstacle to the successful prosecution and conviction of rape cases. That Nadine was not the one to report the rape and that she did not show up to testify is not reflective of targeted gender discrimination against women within the Haitian justice system, but potentially speaks to women’s fundamental lack of trust in Haiti’s judicial institutions. As Eva Bruna, a lawyer at BAI, stated: “[Haitian women] don’t have trust in the system, because of the slowness in getting justice.”<sup>601</sup> Attorney Gassant similarly remarked that sexual violence survivors frequently refuse to testify because

---

<sup>598</sup> Tribunal de Première Instance de Port-au-Prince, Extrait des minutes du Greffe (2013).

<sup>599</sup> Ibid.

<sup>600</sup> Ibid.

<sup>601</sup> Eva Bruna quoted in Armstrong, “The Rapist and the Girl Next Door”.

of their “overall lack of confidence in judicial institutions, [especially] given that these cases are not processed quickly.”<sup>602</sup>

Nadine’s failure to show up to testify potentially also speaks to deeper cultural elements regarding women’s fears of social condemnation. In patriarchal societies around the world, women are often “stigmatized by societal and cultural norms that view the victim as defiled.”<sup>603</sup> In Haitian society, “a woman who has been sexually abused is often blamed for the abuse and runs the risk of being ostracized from her community and abandoned by her family.”<sup>604</sup> Both within the Haitian justice system and in the larger society, a “woman or girl who is sexually abused is perceived to have had her dignity tarnished, rather than being regarded as a victim of a human rights violation.”<sup>605</sup> The vast majority of rape survivors never file a complaint<sup>606</sup> as they often fear being rejected by their families.<sup>607</sup> The 2012 HRS study found that half of the suspects in the 62 cases that were traced were “released due to a lack of evidence.”<sup>608</sup> Per the findings of the study, one major reason for rape cases not reaching trial is “the victim’s failure to appear before the investigating magistrate to give evidence.”<sup>609</sup> Trial judges interviewed by the HRS explained that “this is due to the stigma felt by rape victims”<sup>610</sup> as well as their lack of trust in the justice system. The investigating judges further affirmed that “they cannot possibly order a case to go to trial without taking the victim’s statement first.”<sup>611</sup> However, as mentioned earlier, the system of communication that exists to contact victims is inadequate and the prosecutor’s office often “fails to inform the victim’s lawyer of the hearing directly.”<sup>612</sup> As the HRS reported, “a large proportion of victims never show up to testify in front of the juge d’instruction, mostly because they are

---

<sup>602</sup> Gassant (The Haitian Judicial System).

<sup>603</sup> Leslie Shanks and Michael J. Schull, “Rape In War: The Humanitarian Response,” *Canadian Medical Association Journal* 163, no. 9 (2000): 1153.

<sup>604</sup> IACHR, “The Right of Women in Haiti to be Free from Violence and Discrimination.”

<sup>605</sup> *Ibid.*

<sup>606</sup> U.S. Department of State, “Haiti 2013 Human Rights Report,” 32.

<sup>607</sup> Shanks and Schull, “Rape In War,” 1153.

<sup>608</sup> HRS, “A Profile of Police and Judicial Response,” 22.

<sup>609</sup> *Ibid.*, 21.

<sup>610</sup> *Ibid.*, 22.

<sup>611</sup> *Ibid.*

<sup>612</sup> Jagannath, “Barriers to Women’s Access to Justice in Haiti,” 44.

afraid but sometimes because the summons never reach the victim as the *huissier de justice* [bailiff or process-server] often fails to locate the victim.”<sup>613</sup> Consequently, the accused is often released from jail because the survivor “was not present for the accused’s interrogation within 48 hours of [his] arrest.”<sup>614</sup>

Women’s fear of the criminal justice system and fear of stigmatization is seen in other countries like the United States. According to U.S. detectives interviewed by Maier, one significant reason why victims do not report rapes is their negative perception of the criminal justice system.<sup>615</sup> As Maier explains: “if victims ‘failed’ to reduce their own risk by excessively drinking or some other behavior, or if there is lack of evidence, the police may tell them that the chances of successfully prosecuting the assailant are slim.”<sup>616</sup> One detective stated that women are often afraid to report because they are “afraid of the whole [legal] process.”<sup>617</sup> For instance, if a victim’s case makes it to trial, she will need to “face the perpetrator in court, and could have her credibility and character questioned by defense attorneys.”<sup>618</sup> According to the detectives interviewed, victims “may not report [rapes] because they do not want to be blamed by others, or may blame themselves.”<sup>619</sup> The detectives further revealed that victims are often ashamed of themselves and fear the stigma that they put themselves in a position to be raped.<sup>620</sup>

In addition to Nadine’s failure to show up to testify, the absence of a medical certificate introduced more doubt to her case, thereby posing another significant obstacle to the prosecution of the alleged perpetrator, Dorélus. Nadine’s case thus additionally demonstrates the weight that judicial officials place on the medical certificate, without which the occurrence of the rape is more severely called into question and the prosecution of rape is

---

<sup>613</sup> HRS, “A Profile of Police and Judicial Response,” 22.

<sup>614</sup> Jagannath, “Barriers to Women’s Access to Justice in Haiti,” 44.

<sup>615</sup> Maier, “Detectives’ Perceptions of Rape,” in *Rape, Victims, and Investigations*, 59

<sup>616</sup> *Ibid.*, 60.

<sup>617</sup> *Ibid.*, 59.

<sup>618</sup> *Ibid.*, 60.

<sup>619</sup> *Ibid.*

<sup>620</sup> *Ibid.*, 61.

thwarted. Meanwhile, it would have been unlawful to arrest the accused without sufficient evidence. As Attorney Gassant explained: “In these cases, the man [accused perpetrator] can be a victim rather than the woman. If for some reason a woman wants to smear the reputation of an individual by claiming that this individual raped her, she can invent a whole story. As such, it is very difficult for the judge to prosecute a rape that is not definitive.”<sup>621</sup> In this way, although the medical certificate is problematic due to the barriers it poses to poor women, its importance in attesting to the facts of a rape cannot be ignored. It can potentially serve as an instrument to protect accused perpetrators from false rape accusations.<sup>622</sup>

### **Judicial Corruption: The Influence of Social Status and Nepotism**

As mentioned in the previous chapter, the Haitian justice system is steeped in a culture of elitism in which judges, lawyers, and prosecutors give preferential treatment to wealthy and powerful individuals who can afford to pay bribes, which results in the discounting of the testimonies and legal needs of the poor. In our interview, Attorney Gassant underscored the power of elitism in the treatment of all cases, including sexual violence cases, within the Haitian judicial system:

The social status of the people involved in a case—namely their importance and power—will determine whether the case is handled expeditiously or treated period. Not all cases are treated with the same level of importance. Why? Because [...] there is no overarching criminal policy that has been established by the government, particularly in sexual violence cases. There is no will to discriminate. The discrimination here is cultural, sociological, and historical. Within the legal domain, there is not a will to *not* protect women. Rather the justice system in its entirety is dysfunctional. The same treatment is reserved for any case. Everything depends on the status of the party involved. If the woman has powerful people behind her, the justice system will ensure that she finds justice, that the administration of justice sways in her favor, and that the case file follows its due course. If the perpetrator has powerful people behind him, the woman will be doubly victimized. It depends on who is implicated in the case.<sup>623</sup>

---

<sup>621</sup> Gassant (The Haitian Judicial System).

<sup>622</sup> The Yale Law Journal Company, Inc., “The Rape Corroboration Requirement: Repeal Not Reform,” *The Yale Journal* 81, no. 7 (1972): 1373.

<sup>623</sup> Gassant (The Haitian Judicial System).

One high-profile and highly publicized case that illustrates the influence of social status in the Haitian justice system and, more specifically, the way in which powerful individuals can use their social connections to sway the administration of justice in their favor is the case of Marie Danielle Bernadin.

*The Case of Marie Danielle Bernadin*

On 26 November 2012,<sup>624</sup> Marie Danielle Bernadin, a then 27-year-old secretary at the Ministry of Interior, accused Josué Pierre-Louis—“a one-time minister of justice”<sup>625</sup> and the first president of the 2012 “*Conseil Electoral Permanent*” (CEP) (Permanent Electoral Council) created by former President Michel Martelly—for having beaten and raped her.<sup>626</sup> Bernadin filed a complaint and a judicial investigation was opened against Pierre-Louis for acts of assault and rape.<sup>627</sup> The case file was transferred to the *Cabinet d’Instruction* of Judge Joseph Jeudilien Fanfan, the investigating judge handling the case, who proceeded to issue a departure ban against Pierre-Louis.<sup>628</sup> Pierre-Louis’ brother, Judge Ikenson Edume—an investigating judge in the *Tribunal de Première Instance* of Port-au-Prince—proceeded to intervene personally in response to Judge Fanfan’s investigation. Edume threatened to attack Judge Fanfan if his brother’s public image was tainted by the investigation.<sup>629</sup> In December 2012, after multiple threats, Judge Fanfan recused himself from the case<sup>630</sup> and the file was rerouted to the *Cabinet d’Instruction* of Judge Merlan Belabre.<sup>631</sup> The media reported that Judge Fanfan had been repeatedly threatened by Pierre-Louis’ family.<sup>632</sup>

---

<sup>624</sup> Réseau National de Défense des Droits Humains (RNDDH), “Bilan des réalisations de l’Appareil Judiciaire au cours de l’année judiciaire 2012-2013,” *RNDDH* (2013): 4.

<sup>625</sup> U.S. Department of State, “Haiti 2013 Human Rights Report,” 33.

<sup>626</sup> *Ibid.*

<sup>627</sup> RNDDH, “Bilan des réalisations de l’Appareil Judiciaire,” (2013): 4.

<sup>628</sup> *Ibid.*

<sup>629</sup> RNDDH, “Bilan des réalisations de l’Appareil Judiciaire,” (2013): 4.

<sup>630</sup> U.S. Department of State, “Haiti 2013 Human Rights Report,” 33.

<sup>631</sup> RNDDH, “Bilan des réalisations de l’Appareil Judiciaire,” (2013): 4.

<sup>632</sup> U.S. Department of State, “Haiti 2013 Human Rights Report,” 33.

Meanwhile, Pierre-Louis denied Bernadin’s allegations, publicly claiming she was his girlfriend<sup>633</sup>—that “the two were involved in a long-term, consensual relationship”<sup>634</sup>—and that he did not understand her accusations against him. He then proceeded to file charges against Bernadin for allegedly engaging in “espionage” by accessing highly confidential files on his phone<sup>635</sup> without prior authorization. The espionage case file was entrusted to the investigating judge, Lamarre Belizaire.<sup>636</sup> Consequently, Bernadin was required to appear before both the *Magistrat Instructeur* (Investigating Magistrate) investigating the facts of her rape claim and the *Juge d’Instruction* investigating the espionage charges against her.

On 27 January 2013, Bernadin dropped her charges against Pierre-Louis.<sup>637</sup> On 6 February 2013, Judge Belabre—the *Juge d’Instruction* who investigated the facts of assault and rape—issued an *ordonnance de non lieu* (an order to drop the case) in favor of Pierre-Louis.<sup>638</sup> On 11 February 2013, Bernadin appealed the said order and several days later, Judge Belizaire issued an *ordonnance de non lieu* for the espionage charges against her.<sup>639</sup> According to Bernadin’s family, “associates of Pierre-Louis had offered significant financial and professional inducements in an attempt to persuade her to drop the case.”<sup>640</sup> Although Pierre-Louis was eventually dismissed from his position as president of the electoral council, “authorities never prosecuted him because Bernadin eventually dropped her complaint.”<sup>641</sup> According to Attorney Rosy Auguste, a woman lawyer and the Assistant Program Director at the “*Réseau National de Défense des Droits Humains*” (*RNDDH*) (“National Network for the Defense of Human Rights”) (2002-present) who provided Bernadin with legal representation through RNDDH, Bernadin was blamed by the public for wanting money and received repeated death threats on the phone for having filed a rape complaint against Pierre-

---

<sup>633</sup> RNDDH, “Bilan des réalisations de l’Appareil Judiciaire,” (2013): 4.

<sup>634</sup> U.S. Department of State, “Haiti 2013 Human Rights Report,” 33.

<sup>635</sup> *Ibid.*

<sup>636</sup> RNDDH, “Bilan des réalisations de l’Appareil Judiciaire,” (2013): 5.

<sup>637</sup> *Ibid.*

<sup>638</sup> *Ibid.*

<sup>639</sup> *Ibid.*

<sup>640</sup> U.S. Department of State, “Haiti 2013 Human Rights Report,” 33.

<sup>641</sup> *Ibid.*

Louis.<sup>642</sup> Attorney Auguste further revealed that the victim grew increasingly discouraged with the slowness of the system in reaching a verdict on the case.

It can be drawn from this case that individuals with status and power can easily maneuver their way through the Haitian justice system to drag out investigations and exert pressure on judicial officials—for instance through family members—in ways that make the administration of justice sway in their favor. This case also illustrates how state agents are rarely prosecuted and convicted for acts of violence against women.<sup>643</sup> The case of Martine Lindor further demonstrates how nepotism obstructs the administration of justice for survivors of domestic violence. While not a sexual violence case, this case is highly emblematic of the judicial corruption that suffuses the Haitian judicial system and of the blatant disregard, on the part of judicial officials, for cases of violence against women that can obstruct a woman’s right to due process.

#### *The Case of Martine Lindor*

On 26 January 2008, in Petit-Goâve, Martine Lindor—a then 27-year-old young woman in her second year at the *Faculté de Droit des Gonaïves* (Faculty of Law of Gonaïves)—was beaten by her ex-partner, Berthony Sagesse,<sup>644</sup> to the point of losing sight in her left eye.<sup>645</sup> During a press conference on 27 February 2008, Martine shared her testimony regarding the violence she had been subjected to by Berthony. Martine had been involved with Berthony for 8 months, during which he frequently beat her. As a result of this, she ended the relationship. Berthony, however, would continually go to her house to request that they get back together. On the night of 26 January 2008 at 9:30 PM, Berthony went to Martine’s house and pressured her to engage in sexual intercourse with him. When she

---

<sup>642</sup> Rosy Auguste (The Haitian Judiciary System), interviewed by Mathilde Pierre, Port-au-Prince, Haiti, 12 January 2018.

<sup>643</sup> IACHR, “The Right of Women in Haiti to be Free from Violence and Discrimination.”

<sup>644</sup> Olga Benoit and Rosy Auguste, “Conférence de presse en solidarité à une jeune femme victime de violence conjugale et d’abus de pouvoir d’un Juge d’Instruction près le Tribunal de Première Instance de Petit-Goâve Mercredi 27 février 2008: Interventions de SOFA et de RNDDH,” *Solidarite Fanm Ayisyèn (SOFA) and Réseau National de Défense des Droits Humains (RNDDH)* (2008): 1.

<sup>645</sup> United States Department of State, “2008 Haiti Human Rights Report,” *Bureau of Democracy, Human Rights, and Labor* (2009), <https://www.state.gov/j/drl/rls/hrrpt/2008/wha/119163.htm>.

refused, Wilson Sagesse, Berthony's younger brother, restrained Martine and Berthony proceeded to hit her face with a piece of wood, striking her left eye. A neighbor who heard the commotion called the police, who, upon arriving, took Martine to the General Hospital of Petit-Goâve. The damage was so severe that she was transferred to a hospital in Port-au-Prince. On 29 January 2008, Martine underwent surgery and was informed that she had permanently lost sight in her left eye.

On the morning of 27 January 2008, the police of Petit-Goâve conducted a swift investigation and proceeded to arrest and detain Berthony in the police station of Petit-Goâve.<sup>646</sup> "That same day, [Judge] Hévince Eltimard, an investigating judge at the Court of First Instance of Petit-Goâve,"<sup>647</sup> intervened and released Berthony without notifying the prosecutor nor speaking to Martine to hear her testimony.<sup>648</sup> According to Martine, Berthony was close friends with Judge Eltimard as he was the judge's chauffeur.<sup>649</sup> At around 5:30 PM, Berthony called Martine on the phone and told her: "What did you think was going to happen? People who know people [...] don't stay in prison."<sup>650</sup> With the complicity of Judge Eltimard, Berthony fled Petit-Goâve and has since remained in flight, "relishing impunity,"<sup>651</sup> as Martine put it. On 28 January 2008, prior to her transfer to Port-au-Prince, Martine, upon learning that Berthony had fled, went to the Chief Prosecutor of Petit-Goâve and Judge Kébreaux Zamor ordered the arrest of Wilson Sagesse, Berthony's little brother who had restrained Martine so that Berthony could beat her.<sup>652</sup> That same morning, she gave her testimony to Judge Eltimard in the prosecutor's office in Petit-Goâve. When she explained what Berthony had done to her, the judge stated the following: "I am an authority figure. I

---

<sup>646</sup> Benoit and Auguste, "Conférence de presse en solidarité à une jeune femme victime," 1.

<sup>647</sup> Ibid.

<sup>648</sup> U.S. Department of State, "2008 Haiti Human Rights Report."

<sup>649</sup> Martine Lindor quoted in Solidarité Fanm Ayisyèn (SOFA) and Réseau National de Défense des Droits Humains (RNDDH), "Konferans Pou Laprès: solidarite avèk yon fanm ki victim vyolans konjigal ak abi pouvwa yon Jij Enstriksyon nan Tigwav Mèkredi 27 Fevriye 2008: Temwayaj Martine Lindor," (2008): 2.

<sup>650</sup> Lindor quoted in SOFA and RNDDH, "Konferans Pou Laprès," 1.

<sup>651</sup> Lindor quoted in Ibid., 2.

<sup>652</sup> Ibid.

can release people any time I want to.”<sup>653</sup> During the press conference a month later, Martine posed the following question: “In light of Judge Eltimard’s actions, does this mean that whenever an individual is friends with a judicial authority figure, he has the right to do whatever he wants? Is the authority of a judge to protect his friends or is it to protect citizens before the law?”<sup>654</sup> Although Martine attempted to pursue further legal action, “a higher court returned the case to the same judge.”<sup>655</sup>

Judge Eltimard’s actions in arbitrarily giving the police a written order to release the accused perpetrator in *flagrante delicto* without listening to Martine’s testimony and without informing the prosecutor’s office of the case file clearly demonstrated his partiality in the treatment of this case file.<sup>656</sup> Eltimard abused his power by using his authority to circumvent the law when confronted with a case involving a crime committed by his friend. His actions were in direct violation of the *Convention of Belém Do Pará*, which “requires that the State sanction any and all acts of violence of which a women is victim.”<sup>657</sup> They were also in violation of the 2005 Decree, which reinforces the sanctions against perpetrators guilty of violence against women. In their press conference, RNDDH and SOFA denounced the fact that judicial authorities continue to serve as accomplices of acts of violence perpetuated against women by liberating perpetrators on the basis of friendship and bribes offered by aggressors.<sup>658</sup> As SOFA declared: “The logic of the judge is clear: Berthony Sagesse, his dear friend, has only beaten his ex-partner, a commonplace deed. Therefore, the judge does not need to take notice of the case file, nor is it necessary to listen to the victim’s testimony because his friend cannot remain in custody.”<sup>659</sup> In this way, the case of Martine Lindor is a

---

<sup>653</sup> Lindor quoted in SOFA and RNDDH, “Konferans Pou Laprès,” 2.

<sup>654</sup> Ibid.

<sup>655</sup> U.S. Department of State, “2008 Haiti Human Rights Report”.

<sup>656</sup> Ibid.

<sup>657</sup> SOFA and RNDDH, 2.

<sup>658</sup> Ibid.

<sup>659</sup> SOFA and RNDDH, 2.

blatant example of the impunity that male aggressors enjoy in Haiti and of the way judicial authorities both trivialize and tolerate the violence to which women are subjected.

Nevertheless, the cases of Marie Danielle Bernadin and Martine Lindor are emblematic of the way in which judicial corruption in the form of nepotism—whether through family members or friends—can severely impede the administration of justice in cases of violence against women and deny a victim of her right to a legal remedy. The case of Martine Lindor is particularly demonstrative of how the trivialization of incidents of violence against women results in the failure of judicial officials to properly investigate gender-based violence cases and ensure their prosecution. Nepotism is not a factor that is isolated to gender discrimination as it reflects the wider corruption that infects the Haitian justice system. As Attorney Auguste stated during our interview: “The judiciary system is weak. This weakness is not centered on women but is general.”<sup>660</sup> Meanwhile, the interaction of judicial corruption with the trivialization of, and sometimes blatant disregard for, incidents of violence—which is influenced by the sociocultural inferiorization of women as well as discriminatory beliefs regarding acceptable behaviors for women—impacts the treatment of cases of violence against women in a way that renders legal remedies more inaccessible to women.

### **The Influence of Financial Means and the Feminization of Poverty**

The subordination of women in the wider Haitian society is such that certain factors that befall women, as a result of their gender and within the specific context of poverty in Haitian society, infiltrate the administration of justice and render the judicial system more inaccessible to women. The feminization of poverty in Haiti provides a useful lens through which to analyze how women’s diminished access to legal remedies is embedded in the larger context of women’s inferior socioeconomic status in Haitian society. In his 2014 speech, Mario Joseph asserted: “Poor women are particularly marginalized by the limited

---

<sup>660</sup> Auguste (The Haitian Judiciary System).

access to the justice system due to deep-rooted gender discrimination and the added economic disenfranchisement they face.”<sup>661</sup> During our interview, Attorney Gassant emphasized the powerful role of financial means in determining whether a case is properly investigated. According to him, the weak prosecution of sexual violence cases is not reflective of an overt will to discriminate against women given that most cases—not limited to but including those involving women—are guaranteed proper treatment when the parties involved have the financial means to bribe their way through the system. As he explained:

The administration of justice is subject to corruption rather than gender discrimination because it can happen that a victim is from a wealthy family. If the parents of the victim can pay or if the judicial authority treating the case sees certain advantages in taking the side of the victim, there will be no gender discrimination.<sup>662</sup>

Attorney Gassant’s emphasis on the influence of wealth in the prosecution of all cases by the Haitian judiciary demonstrates that the low prosecution of rape cases cannot be singularly attributed to discriminatory attitudes. The poor treatment of all cases, including rape cases, is a byproduct of the dysfunctional Haitian judicial system as a whole because “justice goes to the highest bidder.”<sup>663</sup> However, financial constraints “disproportionately impact poor women who cannot afford to hire an attorney or pay the necessary court fees.”<sup>664</sup> As such, there is something to be said about the larger role of gender inequality that suffuses the socioeconomic fabric of Haitian society. According to a 2003 report entitled “Women and Poverty in Haiti” by the Fond för Mänskliga Rättigheter (The Swedish NGO Foundation for Human Rights), the burden of poverty in Haiti increasingly falls on women.<sup>665</sup> As the report explains: “[T]he majority of the people living on 1 dollar a day or less are women. In addition, the gap between women and men caught in the cycle of poverty has continued to

---

<sup>661</sup> Joseph, “Rights Enforcement,” (2014).

<sup>662</sup> Gassant (The Haitian Judicial System).

<sup>663</sup> Bookey, “Enforcing the Right to Be Free From Sexual Violence,” 273.

<sup>664</sup> Jagannath, “Barriers to Women’s Access to Justice in Haiti,” 44.

<sup>665</sup> Fond för Mänskliga Rättigheter, “Women and Poverty In Haiti: Report on a Mission to Haiti March 14-18, 2003,” *Frivilligorganisationernas* (2003): 14.

widen in the past decade.”<sup>666</sup> The International Monetary Fund (IMF) 2008-2010 “Haiti: Poverty Reduction Strategy Paper” sheds further light on women’s economic disenfranchisement. According to the paper, the incidence of extreme poverty is higher in households where the main wage earner is female (58 percent) than in households where the main wage earner is male (53 percent).<sup>667</sup> Furthermore, the incidence of extreme poverty is 64 percent among females in urban areas and 48 percent among males.<sup>668</sup> Inequalities in the social sphere are more marked among women than men as women’s level of education is generally lower than that of men and the majority of women are in low-skilled professions.<sup>669</sup> For instance, “83 [percent] of women’s economic activity occurs within the informal sector.”<sup>670</sup> The low socioeconomic status of women in Haitian society is further depicted in the U.S. Department of State 2008 “Haiti Human Rights Report”:

[In 2008] women did not enjoy the same social and economic status as men. In some social strata, tradition limited women’s roles. The majority of women in rural areas remained in the traditional occupations of farming, marketing, and domestic labor. Very poor female heads of household in urban areas also often faced limited employment opportunities, such as domestic labor and sales. Laws governing child support recognize the widespread practice of multiple father families but rarely were enforced. Government and private sectors seldom promoted women to supervisory positions.<sup>671</sup>

The subordinate position of poor women and girls within the larger sociocultural and economic structure of Haitian society makes them more vulnerable than their male counterparts to the weaknesses of the Haitian judicial system that transcend gender discrimination, namely judicial corruption and bribery. More importantly, the increased exposure of poor women to endemic poverty due to the feminization of poverty cripples their ability to gain the kinds of social connections and financial resources with which men are usually equipped that enable the latter to more successfully maneuver their way through the

---

<sup>666</sup> Fond för Mänskliga Rättigheter, “Women and Poverty In Haiti,” 14.

<sup>667</sup> International Monetary Fund (IMF), “Haiti: Poverty Reduction Strategy Paper,” *IMF Country Report No. 08/115* (2008): 22.

<sup>668</sup> *Ibid.*

<sup>669</sup> *Ibid.*

<sup>670</sup> Jagannath, “Barriers to Women’s Access to Justice in Haiti,” 28.

<sup>671</sup> U.S. Department of State, “2008 Haiti Human Rights Report,” 12.

justice system and sway the administration of justice in their favor. Above all, the fact that the entire income of poor women is invested in the survival of the household (see Chapter 1) precludes them from being able to use their meager earnings to pay for expensive legal costs, namely legal representation, bribes, and medical certificates.

### **Conclusion**

The weaknesses of the Haitian judicial system in the investigation and prosecution of cases of sexual violence against women do not exist with the explicit purpose of reducing women's access to justice. Rather, the prosecution of sexual violence lies at the intersection of numerous factors—namely judicial corruption in the form of bribery and nepotism, the presence or absence of a medical certificate, the distrust of the justice system, the fear of stigmatization and reprisals, and the lack of financial resources—that influence whether sexual violence cases are successfully handled. Meanwhile, the cultural inferiorization of women that contributes to the trivialization of women's complaints, and the role of the feminization of poverty in hampering poor women's ability to successfully maneuver their way through the gender-neutral obstacles within the Haitian justice system are inherently tied to the gender of Haitian women. As such, the fact that there is no blatant attempt to impede the access of women to justice does not discount the key role of gender in influencing the prosecution of cases of violence against women. Rather it demonstrates that the Haitian judicial system is so enmeshed in the larger patriarchal fabric of Haitian society that both gender discrimination and the other more objective weaknesses of the judicial system interact in a way that renders the justice system more inaccessible to female citizens than their male counterparts and that particularly culminates in the revictimization of sexual violence victims by the dysfunctions of the justice system.

## CONCLUSION

### **No Effective Remedies, No Effective Rights**

The “epidemic of rape” against women and girls in Haiti is a multifaceted issue spawned by both visible and invisible as well as national and international factors. The historical use of rape as a political weapon of terror, particularly during Jean-Bertrand Aristide’s second presidency (2001-2004), gave birth to the armed gangs that have perpetuated rape against women and girls in Haiti’s shantytowns and displacement camps in recent years. The endemic poverty in Haiti drives sexual violence on a psychosocial level by provoking the enactment of patriarchal constructions of masculinity and femininity, namely the restoration of “the eroding male identity” and the symbolic destruction of communities through the rape of women, the *Poto Mitan* of Haitian society. The proliferation of rape has further been exacerbated by international factors, most notably the injurious consequences of gendered humanitarian food aid and the active role of NGO employees and UN peacekeepers in sexually exploiting and abusing Haitian women and girls.

Meanwhile, sexual violence in Haiti largely persists due to the neglect of the Haitian state in adequately addressing the weaknesses of the justice system, the primary institution responsible for upholding the rule of law and punishing perpetrators of sexual violence. The weak enforcement of national and international laws that criminalize rape has fostered a culture of impunity in Haiti. As Attorney Rosy Auguste explained during our interview: “Impunity permeates the system as a whole. The entire system is founded on impunity. When citizens know they will be arrested [for first offenses] or that they will get longer prison sentences for second offenses, they stay in line.”<sup>672</sup> Men in Haiti rape simply because they are “confident that they will not be punished.”<sup>673</sup> This thesis has acknowledged that the weaknesses of the Haitian justice system deprive all Haitian citizens, both male and female,

---

<sup>672</sup> Rosy Auguste (The Haitian Judiciary System), interviewed by Mathilde Pierre, Port-au-Prince, Haiti, 12 January 2018.

<sup>673</sup> Ibid.

of a “functioning and accessible justice system”<sup>674</sup> with the capacity to ensure the full realization of their human rights. As demonstrated throughout this thesis, a combination of systemic, gender-neutral factors—namely judicial corruption in the form of interference by the executive branch, bribery, elitism, and nepotism as well as basic administrative failures and a severe lack of financial and human resources—contribute to weakening the Haitian justice system and rendering it incapable of properly handling legal cases involving both male and female citizens. However, these systemic weaknesses coupled with more gender-specific elements—most notably the discriminatory attitudes of judicial officials, predominantly seen in the discrediting of women’s testimonies and the trivialization of cases of violence against women—have resulted in patriarchal legal practices that weaken the capacity of the system to successfully prosecute rape cases and ultimately render the judicial system more inaccessible to women. Furthermore, the lack of political will in addressing cases involving women and the belittling of sexual violence cases culminates in the poor investigation of rape cases. The sexist attitudes of judicial officials, and the stigmatization they often entail, are especially problematic as they engender in women a profound distrust in the capacity of the justice system to protect them, which in turn discourages them from reporting rapes, and thus claiming their right to a legal remedy for rape, in the first place.

Particularly inimical to the successful prosecution of rape cases in Haiti is the *de facto* requirement that a sexual violence survivor present a medical certificate in order to corroborate her rape claim. The medical certificate itself exists at the intersection of gender-neutral factors: the lack of resources and the deficit of forensic physicians qualified to perform the necessary forensic medical examinations to prepare a medical certificate result in deficient investigations incapable of producing additional evidence to prove a rape occurred. However, the medical certificate is primarily anchored to a fundamental distrust of a

---

<sup>674</sup> Shannon D. Lankenau, “Toward Effective Access to Justice in Haiti: Eliminating the Medical Certificate Requirement in Rape Prosecutions,” *Hastings Law Journal* 64, no. 1759 (2013): 1762.

woman's testimony. Even though police officers and prosecutors do not need the certificate to receive a rape complaint, they often dismiss rape cases for lack of evidence when a victim does not present a medical certificate. More importantly, the vulnerable position of poor women within the socioeconomic and cultural fabric of Haitian society makes the medical certificate requirement an extreme corroboration requirement that renders convictions for credible rape accusations virtually unobtainable. The inferior status of poor women within the echelons of Haitian society, molded by the cultural inferiorization of women and by the feminization of poverty, places them in a position in which they are disproportionately affected by the weaknesses of the justice system. Poor women face countless obstacles in obtaining a medical certificate, the most prohibitive of which is the cost of transportation to reach the General Hospital in Port-au-Prince—the only hospital where a legally acceptable certificate can be obtained—and the cost of the medical certificate itself, which the majority of Haitian women cannot afford to pay. That the meager incomes of poor women primarily go towards sustaining their families especially precludes them from paying for the medical certificate and for other legal costs, namely legal representation and bribes to navigate the corruption in which the system is steeped. The testimonies of poor women are especially distrusted because they are viewed as ruses to obtain money from the accused or from the system. As such the gender-neutral and gender-related flaws in the Haitian justice system are compounded in a way that renders poor women's already diminished access to justice exponentially more limited in sexual violence cases.

Indeed, rape is difficult to prove and the possibility of false rape charges cannot be discounted. While the medical certificate is highly problematic due to the barriers it poses to poor women, its importance as a legal safeguard to protect an accused perpetrator against false rape charges<sup>675</sup> cannot be ignored. Given that the latter is innocent until proven

---

<sup>675</sup> The Yale Law Journal Company, Inc., "The Rape Corroboration Requirement: Repeal Not Reform," *The Yale Journal* 81, no. 7 (1972): 1373.

guilty,<sup>676</sup> it would be unlawful to arrest an accused perpetrator without sufficient evidence attesting to the occurrence of a rape. However, the *over reliance* on the medical certificate as the sole basis upon which a complaint of sexual violence can be successfully prosecuted and, more importantly, the discrediting of a woman's testimony upon which the request for the medical certificate is primarily based, ensures that "only a small minority of rape cases ever makes it past the complaint stage."<sup>677</sup> In this way, the medical certificate requirement erects the most problematic barrier to the successful prosecution of rape cases in Haiti and, in turn, to women's access to an effective legal remedy for rape. It further reflects how "perpetrators of sexual violence ultimately benefit from a system that is plagued by enormous obstacles and few protections for victims."<sup>678</sup>

While countries around the world—including Canada, Ghana, South Africa, the United Kingdom, Zimbabwe, and parts of the United States<sup>679</sup>—have retreated from extreme corroboration requirements for sexual violence and recognized a women's testimony as admissible evidence, judicial officials in Haiti continue to overemphasize the centrality of the medical certificate as the only evidence that a rape occurred. Indeed, extreme rape corroboration requirements also exist in other countries. For instance, in the Islamic Republic of Iran, "in order to prove rape, a woman's story must be corroborated by four male or three male and two female witnesses."<sup>680</sup> In Argentina, the courts allow that a victim "need not be physically injured in order to prove rape."<sup>681</sup> However, in practice, "medical documentation of physical trauma is generally expected."<sup>682</sup> Meanwhile, in India, "a victim's past sexual

---

<sup>676</sup> Darren Ell, "Fighting for the Rule of Law in Haiti: Interview with Mario Joseph," *Bureau des Avocats Internationaux and Institute for Justice and Democracy in Haiti* (2007), <http://www.ijdh.org/2007/04/topics/politics-democracy/fighting-for-the-rule-of-law-in-haiti-interview-with-mario-joseph/>.

<sup>677</sup> Lankenau, "Toward Effective Access to Justice in Haiti," 1787.

<sup>678</sup> *Ibid.*

<sup>679</sup> Janice Du Mont and Deborah White, "The Uses and Impacts of Medico-Legal Evidence in Sexual Assault Cases: A Global Review," *World Health Organization (WHO) Sexual Violence Research Initiative* (2007): 35.

<sup>680</sup> Du Mont and White, "The Uses and Impacts of Medico-Legal Evidence in Sexual Assault Cases," 35.

<sup>681</sup> *Ibid.*

<sup>682</sup> *Ibid.*

history may be used to discredit her [rape] complaint.”<sup>683</sup> The interacting factors that perpetuate rape in Haiti (e.g. the objectification of female bodies) and hamper women’s access to effective legal remedies for rape (e.g. extreme rape corroboration requirements) are not unique to Haiti. As demonstrated with the international comparisons employed throughout this thesis, these factors have historically and contemporaneously existed in both developed and developing countries around the world. In this way, the examination of sexual violence against Haitian women and girls presented in this thesis offers Haiti as a microcosm of some of the major elements inherent in the problem of widespread rape and patriarchal legal practices that hamper the successful prosecution and conviction of rape in countries around the world.

This thesis was driven by the following research question(s): *In what ways do the internal dysfunctions of the Haitian justice system preserve the vulnerability of Haitian women and girls to systematic sexual violence? Is the ongoing vulnerability of Haiti’s female populace to sexual violence a mere consequence of state fragility and the inherent inability of the Haitian state to enforce existing domestic and international laws that criminalize rape, or does it run deeper to patriarchy, gender discrimination, and a neglect to protect women specifically?* Throughout this thesis, I have attempted to answer this question by parsing out the complexities that underlie women’s limited access to justice for rape so as to illustrate the deeply intersectional nature of this issue. While it cannot be said that there is a targeted effort to deprive Haitian women of protection before the law, the neglect of the Haitian state to provide the judicial infrastructure needed to protect its female populace in light of their increased vulnerability in the larger Haitian society, culminates in their decreased protection before the law. The state’s active role in undermining the justice system is a violation of all Haitian citizens’ right to effective legal remedies, namely the “right to competent legal

---

<sup>683</sup> Du Mont and White, “The Uses and Impacts of Medico-Legal Evidence in Sexual Assault Cases,” 35.

systems of the state to address human rights violations.”<sup>684</sup> However, it is particularly harmful to women due to their vulnerable position in Haitian society. As demonstrated throughout this thesis, the prosecution of sexual violence cases in Haiti is enmeshed in a matrix of interacting factors—simultaneously within and beyond the justice system and simultaneously linked to but not merely reducible to gender—that influence why and how sexual violence cases are so poorly handled. While there is no specific project designed to make the justice system inaccessible to women, the complex interaction of weaknesses within the justice system (e.g. judicial corruption) and beyond the justice system, in the wider Haitian society (e.g. the feminization of poverty), transform the justice system into a place that is continually hostile to women and that is largely incapable of rendering justice to the majority of Haitian women, most notably in cases of sexual violence.

When a rape victim’s testimony is distrusted, trivialized, and/or ignored due to gender biases about women, “her right to a remedy and equality before the law is violated.”<sup>685</sup> Both domestic and international laws grant victims of sexual violence in Haiti the right to a legal remedy. Article 19 of the Haitian Constitution “explicitly details the right to a remedy under Haitian law”<sup>686</sup> and stipulates that “all citizens, without distinction, shall have the right to life, health, and respect of the human person.”<sup>687</sup> Article 42 further states that “no citizen shall be ‘denied access to the courts open to him under the Constitution and the laws’ of Haiti.”<sup>688</sup> Article 276.2 additionally “incorporates international treaties and covenants that have been ratified by the government into domestic law without requiring additional legislation.”<sup>689</sup> Meanwhile, Article 3 of the United Nations “Declaration on the Elimination of Violence against Women” stipulates that “women are entitled to the equal enjoyment and

---

<sup>684</sup> Boston College Law School et al., “Access to Judicial Remedies in Haiti,” *112th Session of the United Nations Human Rights Committee* (8-9 October 2014): 2.

<sup>685</sup> *Ibid.*

<sup>686</sup> Lanckenau, “Toward Effective Access to Justice in Haiti,” 1778.

<sup>687</sup> *Ibid.*

<sup>688</sup> *Ibid.*

<sup>689</sup> *Ibid.*

protection of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field,” including “(b) The right to equality; (c) The right to liberty and security of person; (d) The right to equal protection under the law; [and] (e) The right to be free from all forms of discrimination.”<sup>690</sup> Article 4 further stipulates that States have an obligation to “condemn violence against women”<sup>691</sup> and to develop adequate penal sanctions in domestic legislation to “punish and redress the wrongs caused to women who are subjected to violence.”<sup>692</sup> The Declaration additionally underscores the necessity of providing female victims of violence with access to judicial mechanisms and to “just and effective remedies for the harm that they have suffered.”<sup>693</sup>

The Haitian state has neglected to fulfill its obligations to adequately enforce existing penal sanctions to redress the wrongs caused to female victims of violence. It has particularly neglected to provide its female populace with access to *effective* judicial mechanisms and remedies for the sexual violence they are continually subjected to. In his book *Freedom from Want*, George Kent asserts: “Where there are no effective remedies, there are no effective rights.”<sup>694</sup> He explains that in a human rights system, members of society, or “rights holders,”<sup>695</sup> must have institutional remedies (e.g. judicial) to which they can turn when their rights have been/are being violated. For Kent, the purpose of human rights is to “restrain and give direction to the exercise of governance.”<sup>696</sup> In a properly functioning democracy, specific mechanisms are needed to hold the government accountable to its obligation to fulfill the human rights of its citizens. The absence of such constraints enables governments to act with impunity and, according to Kent, the most fundamental mechanism of accountability is

---

<sup>690</sup> United Nations General Assembly, *Declaration on the Elimination of Violence Against Women*, A/RES/48/104 85th Plenary Meeting (20 December 1993), <http://www.un.org/documents/ga/res/48/a48r104.htm>.

<sup>691</sup> UN General Assembly, *Declaration on the Elimination of Violence Against Women*.

<sup>692</sup> *Ibid.*

<sup>693</sup> *Ibid.*

<sup>694</sup> George Kent, *Freedom From Want: The Human Right to Adequate Food* (Washington DC: Wilsted & Taylor Publishing Services, 2005), 146.

<sup>695</sup> *Ibid.*, 65.

<sup>696</sup> *Ibid.*, 63.

for rights holders to have effective remedies through which they can complain when their rights have been violated so as to correct the government's behavior.<sup>697</sup>

In theory, formal judicial remedies for rape exist in Haiti. In addition to the adoption of the 2005 Decree, two articles were added to the Haitian Penal Code that officially criminalize rape as an offense punishable by ten to fifteen years of hard labor.<sup>698</sup> Furthermore, Haiti has been a State Party to the "Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women ('Convention of Belém Do Pará')" since 1996. Article 7(b) stipulates that states have a duty to "apply due diligence to prevent, investigate, and impose penalties for violence against women,"<sup>699</sup> and thus to take action to "ensure that perpetrators of sexual violence are punished."<sup>700</sup> In other words, there must be legal institutions in place through which female rights-holders can hold the perpetrators of sexual violence accountable. Furthermore, according to Article 7(f) of the Convention, State Parties must "establish fair and effective legal procedures for women who have been subjected to violence which include, among others, protective measures, a timely hearing and effective access to such procedures."<sup>701</sup>

The formal existence of these judicial remedies for rape in Haiti is fundamentally inadequate for protecting women. As the Inter-American Commission on Human Rights (IACHR) explains:

[F]or access to justice to be adequate, the *formal* existence of judicial remedies will not suffice; instead, those remedies must be *effective* for prosecuting and punishing the violations denounced and in providing redress. [...] [A]n effective judicial response to acts of violence against women includes the obligation to make simple, rapid, adequate and impartial judicial recourses available, *without discrimination*, for

---

<sup>697</sup> Ibid., 65.

<sup>698</sup> Lankenau, "Toward Effective Access to Justice in Haiti," 1767.

<sup>699</sup> Organization of American States (OAS) Department of International Law. Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women 'Convention of Belém Do Pará' (1994). <http://www.oas.org/juridico/english/treaties/a-61.html>.

<sup>700</sup> Lankenau, "Toward Effective Access to Justice in Haiti," 1779.

<sup>701</sup> OAS, *Convention of Belém Do Pará*.

the purpose of investigating and punishing these acts and providing redress, so that in the end these acts do not go unpunished.<sup>702</sup>

Despite the existence of formal judicial remedies for rape in Haiti, Haitian women lack access to *effective* judicial remedies that can ensure the successful prosecution of credible rape claims and the punishment of guilty male perpetrators. As demonstrated throughout this thesis, female survivors of rape in Haiti are unable to effectively avail themselves of the legal remedies that exist for rape as their access to these remedies is obstructed by factors that increase their vulnerability both within and beyond the justice system, the most problematic of which is the medical certificate requirement. However, given that the medical certificate can serve as a legal safeguard against false rape charges and given the deficit of specialized forensic physicians to produce other evidence to corroborate rape claims, one major avenue of further research is to assess the extent to which the medical certificate requirement can be eliminated and Haitian law amended to “affirmatively state that a woman's credible testimony regarding her attack can be legally sufficient to secure a conviction in a rape case.”<sup>703</sup>

Nevertheless, the lack of a strong judicial framework in Haiti to ensure the fulfillment of civilians’ human rights and to hold the government accountable to its obligation to fulfill those rights embodies the concept of *structural violence*—the systematic ways in which the social arrangements embedded in the political and socioeconomic organization of a society harm individuals and/or populations.<sup>704</sup> The cultural inferiorization of Haitian women intersects with poverty and the weaknesses of the justice system to produce the *structural violence* that renders women’s access to effective judicial remedies more limited than that of their male counterparts. This in turn produces the *socially constructed vulnerability* of Haitian women to the near-constant exposure of their physical bodies to arbitrary violence. In

---

<sup>702</sup> Inter-American Commission on Human Rights (IACHR), “Access to Justice for Women Victims of Violence in the Americas,” *Organization of American States*, Doc. 68 (20 January 2007), <https://www.cidh.oas.org/women/access07/chap1.htm#framework>.

<sup>703</sup> Lankenau, “Toward Effective Access to Justice in Haiti,” 1779.

<sup>704</sup> Paul Farmer, Bruce Nizeye, Sara Stulac, and Salmaan Keshavjee, “Structural Violence and Clinical Medicine,” *PLOS Medicine* 3, no.10 (2006): 449.

neglecting to provide women with *effective* legal remedies for rape, the Haitian legal system deprives women of the effective fulfillment of their human rights and plays a central role in perpetuating the vulnerability of female bodies to systematic sexual violence.

## Works Cited

- Albrecht, Hans Joerg, Louis Aucoin, and Vivienne O'Connor. "Building the Rule of Law in Haiti: New Laws for a New Era." *United States Institute of Peace* (2009).
- Ali, Aftab. "UN Peacekeepers Sexually Abuse Hundreds of Women and Minors In Haiti In Exchange for Food and Medicine, New Report Will Reveal." *Independent*. June 10, 2015. <https://www.independent.co.uk/news/world/americas/un-peacekeepers-sexually-abuse-hundreds-of-women-and-minors-in-haiti-in-exchange-for-food-and-10309963.html>.
- "An Epidemic of Rape for Haiti's Displaced." *New York Times* (2011). <http://www.nytimes.com/2011/04/04/opinion/04mon2.html>.
- Anna, Cara (The Associated Press). "UN says sex exploitation by peacekeepers underreported." *The Santa Fe New Mexican*. June 9, 2015. [http://www.santafenewmexican.com/news/u-n-says-sex-exploitation-by-peacekeepers-underreported/article\\_fcb148f0-0763-527d-b2aa-e2d8eee959c4.html](http://www.santafenewmexican.com/news/u-n-says-sex-exploitation-by-peacekeepers-underreported/article_fcb148f0-0763-527d-b2aa-e2d8eee959c4.html).
- Anna, Cara (The Associated Press). "UN: Sex Exploitation by Peacekeepers Underreported." *Navy Times*. June 10, 2015. <https://www.navytimes.com/news/your-military/2015/06/10/un-sex-exploitation-by-peacekeepers-underreported/>.
- Aolain, Fionnuala Ni. "Women, Vulnerability, and Humanitarian Emergencies," *Michigan Journal of Gender and Law* 18, no. 1 (2011): 1-23.
- Armstrong, Lisa. "The Rapist and the Girl Next Door, the Paradox of Prosecuting Rape Cases in Haiti." *Institute for Justice and Democracy in Haiti*. May 7, 2014. <http://www.ijdh.org/2014/05/topics/womens-issues/the-rapist-and-the-girl-next-door-the-paradox-of-prosecuting-rape-cases-in-haiti/>.
- Associated Press. "Haiti bans Oxfam division accused in hooker scandal." *New York Post*. February 23, 2018. <https://nypost.com/2018/02/23/haiti-bans-oxfam-division-accused-in-hooker-scandal/>.
- Auguste, Rosy. (The Haitian Judiciary System). Interviewed by Mathilde Pierre. Port-au-Prince, Haiti. January 12, 2018.
- Banwell, Stacy. "Rape and Sexual Violence In the Democratic Republic of Congo: A Case Study of Gender-Based Violence." *Journal of Gender Studies* 23 (2014): 45-58.
- Belisaire, Marie Alice. (The Judicial Officials in the Haitian Justice System). Interviewed by Mathilde Pierre. Port-au-Prince, Haiti. January 16, 2018.
- Benoit, Olga and Rosy Auguste. "Conférence de presse en solidarité à une jeune femme victime de violence conjugale et d'abus de pouvoir d'un Juge d'Instruction près le Tribunal de Première Instance de Petit-Goâve Mercredi 27 février 2008: Interventions de SOFA et de RNDDH." *Solidarite Fanm Ayisyèn (SOFA) and Réseau National de Défense des Droits Humains (RNDDH)* (2008).
- Bookey, Blaine. "Enforcing the Right to Be Free From Sexual Violence and the Role of Lawyers in Post-Earthquake Haiti." *The City University of New York (CUNY) Law Review* 14, no. 255 (2011): 255-287..
- Boston College Law School et al. "Access to Judicial Remedies in Haiti." *112th Session of the United Nations Human Rights Committee* (8-9 October 2014).
- Burchard, Melissa. "Feminist Jurisprudence." *Internet Encyclopedia of Philosophy*. <http://www.iep.utm.edu/jurisfem/>.
- Campbell, Tyler. "No Prosecution for Haitian Rape Cases." *Impunity Watch*. July 2, 2012. <http://impunitywatch.com/no-prosecution-for-haitian-rape-cases/>.
- Carlson, Monica Dore. "Individual and Contextual Determinants of Gender-Based Violence in the Democratic Republic of Congo and the Role of Armed Conflict: A Multilevel Analysis." PhD diss., Tulane University, 2015.
- Center for Human Rights and International Justice (CHRIJ). Boston College and Alternative

- Chance. "Access to Judicial Remedies in Haiti." *United Nations Human Rights Council Universal Period Review* (2016).
- Central Minnesota Sexual Assault Center (CMSAC). "Facts About Sexual Assault." accessed April 5, 2018, <https://cmsac.org/facts-and-statistics/>.
- Clinton, Hillary Rodham. "International Donors Conference: Towards a New Future for Haiti." *U.S. Department of State*. March 31, 2010. <https://2009-2017.state.gov/secretary/20092013clinton/rm/2010/03/139313.htm>.
- Cunningham, Oliver. "The Humanitarian Aid Regime in the Republic of NGOs: The Fallacy of 'Building Back Better.'" *Josef Korbel Journal of Advanced International Studies* 4 (2012): 101-126.
- Dodds, Paisley (The Associated Press). "More than 100 UN peacekeepers ran a child sex ring in Haiti. None were ever jailed." *The Star*. April 12, 2017. <https://www.thestar.com/news/world/2017/04/12/un-peacekeepers-child-sex-ring-left-victims-but-no-arrests.html>.
- Doherty, Josh. "Domestic and Sexual Violence in Haiti: Insufficient Remedies, Inadequate Response." *Focus on Haiti Initiative*. <https://focusonhaiti.org/2013/08/12/domestic-and-sexual-violence-in-haiti-insufficient-remedies-inadequate-response-2/>.
- Du Mont, Janice and Deborah White. "The Uses and Impacts of Medico-Legal Evidence in Sexual Assault Cases: A Global Review," *World Health Organization (WHO) Sexual Violence Research Initiative* (2007).
- Duramy, Benedetta Faedi. *Gender and Violence in Haiti: Women's Path from Victims to Agents*. New Brunswick: Rutgers University Press, 2014.
- Duramy, Benedetta Faedi. "Women in the Aftermath of the 2010 Haitian Earthquake." *Emory International Law Review* 25 (2011): 1193-1215.
- Edmonds, Kevin. "NGOs and the Business of Poverty In Haiti." *The North American Congress on Latin America (NACLA)*. April 5, 2010. <https://nacla.org/news/ngos-and-business-poverty-haiti>.
- Ell, Darren. "Fighting for the Rule of Law in Haiti: Interview with Mario Joseph." *Bureau des Avocats Internationaux and Institute for Justice and Democracy in Haiti* (2007). <http://www.ijdh.org/2007/04/topics/politics-democracy/fighting-for-the-rule-of-law-in-haiti-interview-with-mario-joseph/>.
- Emery, Maggie, Megan Shaw, Lisa Santosa, and Olivia Bird. "Recommendations to Reduce Sexual Violence in Haitian Internally Displaced Persons' (IDP) Camps." *New Voices in Public Policy* vol. 5 (2011): 1-34.
- Faedi, Benedetta. "The Double Weakness of Girls: Discrimination and Sexual Violence in Haiti." *Stanford Journal of International Law* 44, no. 147 (2008): 147-204.
- Faedi, Benedetta. "From Violence against Women to Women's Violence in Haiti." *Columbia Journal of Gender and Law* 19, issue 4 (2010): 1029-1075.
- Farmer, Paul, Bruce Nizeye, Sara Stulac, and Salmaan Keshavjee. "Structural Violence and Clinical Medicine." *PLOS Medicine* 3, no.10 (2006): 1686-1691.
- Femmes en action contre la stigmatisation et la discrimination sexuelle (FASCID) et al. "Violence and Discrimination against Women and Lesbian, Gay, Bisexual, Transgender (LGBT) People in Haiti." *26th Session of the Working Group of the Universal Periodic Review* (31 October - 11 November 2016).
- Fond för Mänskliga Rättigheter. "Women and Poverty In Haiti: Report on a Mission to Haiti March 14-18, 2003." *Frivilligorganisationernas* (2003).
- Fox, Chanelle. "Violent Sex: How Gender-Based Violence is Structured in Haiti, Healthcare & HIV/AIDS." *Indiana Journal of Law and Social Equality* 2, issue 1 (2013): 202-229.
- "Fragile States." In *The Politics of Development: A Survey*. Edited by Heloise Weber.

- Routledge, 2014.  
[https://ezproxy.library.nyu.edu/login?url=http://search.credoreference.com/content/entry/routpds/fragile\\_states/0?institutionId=577](https://ezproxy.library.nyu.edu/login?url=http://search.credoreference.com/content/entry/routpds/fragile_states/0?institutionId=577).
- Friedersdorf, Conor. "How to Talk About Haiti's Rape Epidemic." *The Atlantic*. July 3, 2011. <https://www.theatlantic.com/international/archive/2011/07/how-to-talk-about-haitis-rape-epidemic/241379/>.
- Gale, Thomson. "Feminist Legal Theory." In *Encyclopedia of Philosophy* (2006).  
<http://www.encyclopedia.com/humanities/encyclopedias-almanacs-transcripts-and-maps/feminist-legal-theory>.
- Gassant, Claudy. (The Haitian Judicial System). Interviewed by Mathilde Pierre. Port-au-Prince, Haiti. January 10, 2018.
- Global Witness. "Faced With a Gun What Can You Do? War and the Mineralisation of Mining in Eastern Congo." *Global Witness* (July 2009).
- Goel, Rashmi and Leigh Goodmark. *Comparative Perspectives on Gender Violence: Lessons from Efforts Worldwide*. New York: Oxford University Press, 2015.
- Guidi, Ruxandra. "U.N. Attempts Tough Police Reform In Haiti." *National Public Radio (NPR)*. October 27, 2008.  
<https://www.npr.org/templates/story/story.php?storyId=96175824>.
- "Haiti's Rape Survivors." *IRIN News*. November 2, 2011.  
<http://www.irinnews.org/news/2011/11/02/haitis-rape-survivors>.
- Harris, Lauren and Julie Freccero. "Sexual Violence: Medical and Psychosocial Support." *Human Rights Center University of California, Berkeley* (2011).
- Hughes, Michelle and Michael Miklaucic. *Impunity: Countering Illicit Power in War and Transition*. United States: Center for Complex Operations, 2016.
- Human Rights Section (HRS) Office of the High Commissioner for Human Rights-Haiti. "A Profile of Police and Judicial Response to Rape in Port-au-Prince." *United Nations Stabilization Mission in Haiti* (2012).
- Human Rights Watch (HRW). "Democratic Republic of the Congo: Confronting Impunity (Briefing Paper)." *Human Rights Watch* (January 2004).
- Human Rights Watch (HRW). "Protecting Child Victims in Sexual Violence Trials in the DR Congo: Suggestions for the Way Forward 2009." *Human Rights Watch* (2009).
- Human Rights Watch (HRW). "Rape as a Weapon of War and a Tool of Political Repression." In *The Human Rights Watch Global Report on Women's Human Rights*. United States: Human Rights Watch Women's Rights Project (1995).  
<https://www.hrw.org/sites/default/files/reports/general958.pdf>.
- Human Rights Watch (HRW). "Rape in Haiti: A Weapon of Terror." *Human Rights Watch National Coalition for Haitian Refugees* 6, no. 8 (1994).
- Human Rights Watch (HRW). "Seeking Justice: The Prosecution of Sexual Violence in the Congo War." *Human Rights Watch* 17, no.1 (2005).
- Human Rights Watch (HRW). "Seeking Protection: Addressing Sexual and Domestic Violence in Tanzania's Refugee Camps." *Human Rights Watch* (October 2000).  
<https://www.hrw.org/reports/2000/tanzania/Duhweb-07.htm>.
- Igarapé Institute. "About Igarapé." accessed December 9, 2017.  
<https://igarape.org.br/en/about/about-igarape/>.
- Immigration and Refugee Board of Canada. "Haiti: The chimères, their activities and their geographic presence; the treatment of the chimères by the authorities and the presence of group members within the government and the police (2006 - May 2008)." *UN Refugee Agency* (3 June 2008). <http://www.refworld.org/docid/4a70409420.html>.
- Immigration and Refugee Board of Canada. "Haiti: Domestic Violence, Especially in Rural

- Areas; Protection and Services Available for Victims.” *United Nations Refugee Agency* (2013). accessed December 22, 2017.  
<http://www.refworld.org/docid/51dd24534.html>.
- Inter-American Commission on Human Rights (IACHR). “The Right of Women in Haiti to be Free from Violence and Discrimination.” *Organization of American States*, Doc. 64. March 10, 2009.  
<http://www.cidh.oas.org/countryrep/Haitimujer2009eng/HaitiWomen09.Intro.Chap.Ia.ndII.htm#I>.
- International Crisis Group (ICG). “Keeping Haiti Safe: Justice Reform.” *Crisis Group Latin America/Caribbean Briefing N°27* (2011).
- International Monetary Fund (IMF). “Haiti: Poverty Reduction Strategy Paper.” *IMF Country Report No. 08/115* (2008).
- Jacob, Carol Pierre-Paul. (Matrifocality in Haitian Society). Interviewed by Mathilde Pierre. Port-au-Prince, Haiti. January 12, 2018.
- Jagannath, Meena. “Barriers to Women’s Access to Justice in Haiti.” *The City University of New York (CUNY) Law Review* 15, no. 1 (2011): 27-52.
- Jagannath, Meena, Nicole Phillips, and Jeena Shah. “A Rights-Based Approach to Lawyering: Legal Empowerment as an Alternative to Legal Aid in Post-Disaster Haiti.” *Northwestern Journal of International Human Rights* 10, no. 1 (2011): 7-18.
- Joseph, Mario and Nicole Phillips. “Judicial Corruption in Haiti: The Need for Discipline and Civil Society Participation.” *Hastings International and Comparative Law Review* 39, no. 1 (2016): 183-210.
- Joseph, Mario. “Rights Enforcement as Solution a Solution to Sexual Violence in Haiti.” Speech. *The Initiative for the Prevention of Sexual Violence in Conflict Situations*. Sponsored by the Mexican Ministry of Foreign Affairs and British Embassy. May 12, 2014. <http://www.ijdh.org/2014/05/topics/womens-issues/mario-joseph-sexual-violence-speech/>.
- Kang, Ju Yon. “The Hidden Epidemic: Violence against Women in Haiti.” Honors Thesis, Duke University, 2011.
- Kent, George. *Freedom From Want: The Human Right to Adequate Food*. Washington DC: Wilsted & Taylor Publishing Services, 2005.
- Kolbe, Athena R. and Royce A. Hutson, “Human Rights Abuse and Other Criminal Violations in Port-au-Prince, Haiti: A Random Survey of Households,” *Wayne State University* (2006).
- Kolbe, Athena R., and Robert Muggah. “Securing the State: Haiti Before and After the Earthquake” in E. Lebrun (Ed.) *Small Arms Survey 2011* (Cambridge: Cambridge University Press, 2011): 239-259.
- Kristoff, Madeline and Liz Panarelli. “Haiti: A Republic of NGOs?” *United States Institute of Peace*. Peace Brief 23 (26 April 2010).  
<https://www.usip.org/sites/default/files/PB%2023%20Haiti%20a%20Republic%20of%20NGOs.pdf>.
- Kumar, Anuradha. *Human Rights: Global Perspectives*. New Delhi: Sarup & Sons, 2002.
- Lankenau, Shannon D. “Toward Effective Access to Justice in Haiti: Eliminating the Medical Certificate Requirement in Rape Prosecutions.” *Hastings Law Journal* 64, no. 1759 (2013): 1759-1787.
- L’Équipe internationale de conseil au secteur de la sécurité (ISSAT). “Haiti Country Profile.” *ISSAT*. January 16, 2015. <https://issat.dcaf.ch/fre/Apprendre/La-bibliotheque-des-ressources/Fiche-des-profils-des-pays/Haiti-Country-Profile>.
- Loeffler, Robert et al. “Achieving Justice for Victims of Rape and Advancing Women’s Rights: A Comparative Study of Legal Reform.” *Morrison and Foerster* (2011).
- Lynch, Ami. “Hegemonic Masculinity.” In *Encyclopedia of Gender and Society*, by Jodi

- O'Brien, Sage Publications, 2009.  
[https://ezproxy.library.nyu.edu/login?url=http://search.credoreference.com/content/entry/sagegs/hegemonic\\_masculinity/0?institutionId=577](https://ezproxy.library.nyu.edu/login?url=http://search.credoreference.com/content/entry/sagegs/hegemonic_masculinity/0?institutionId=577).
- MADRE. "Campaign to Disarm Rape as a Weapon of War." accessed November 3, 2017.  
<https://www.madre.org/disarmrape>.
- MADRE et al. "Gender-Based Violence Against Haitian Women & Girls in Internal Displacement Camps." *United Nations Universal Periodic Review* (3-14 October 2011). <http://www.ijdh.org/2011/03/topics/womens-issues/gender-%E2%80%90based-violence-against-haitian-women-girls-in-internal-displacement-camps-madrekofaviv-cuny-school-of-law/>.
- MADRE. "Struggling to Survive: Sexual Exploitation of Displaced Women and Girls in Port-au-Prince, Haiti." *CUNY School of Law* (2012).
- Maier, Shana L. *Rape, Victims, and Investigations: Experiences and Perceptions of Law Enforcement Officers Responding to Reported Rapes*. New York: Taylor & Francis Group, 2014.
- McLean, Iain and Stephan L'Heureux. "Sexual Assault Aftercare Services In Japan and the UK." *Routledge Japan Forum* 19, no. 2 (2007): 239-255.
- Meger, Sara. "Rape of the Congo: Understanding sexual violence in the conflict in the Democratic Republic of Congo." *Journal of Contemporary African Studies* 28 (2010): 119-135.
- Morrin, Siobhan. "Survivors of Haiti's Sexual Violence Crisis Are Finally Making Themselves Seen." *Newsweek* (2017). <http://www.newsweek.com/2017/04/28/haiti-epidemic-sexual-violence-rape-survivors-crisis-586061.html>.
- Morris, Nigel. "100,000 assaults. 1,000 rapists sentenced. Shockingly low conviction rates revealed." *Independent*. January 10, 2013.  
<https://www.independent.co.uk/news/uk/crime/100000-assaults-1000-rapists-sentenced-shockingly-low-conviction-rates-revealed-8446058.html>.
- Morse, Jamie. "Documenting Mass Rape: Medical Evidence Collection Techniques as Humanitarian Technology." *Genocide Studies and Prevention: An International Journal* 8, no. 2 (2014): 63-79.
- Nanivazo, Malokele. "Sexual Violence in the Democratic Republic of the Congo." *United Nations University* (2012). <https://unu.edu/publications/articles/sexual-violence-in-the-democratic-republic-of-the-congo.html>.
- Organization of American States (OAS) Department of International Law. *Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women 'Convention of Belém Do Pará'* (1994).  
<http://www.oas.org/juridico/english/treaties/a-61.html>.
- Porter, Catherine. "Haiti Suspends Oxfam Great Britain After Sex Scandal." *New York Times*. February 22, 2018.  
<https://www.nytimes.com/2018/02/22/world/americas/haiti-suspends-oxfam.html>.
- Ramachandran, Vijaya and Julie Walz. "Is Haiti Doomed to Be the Republic of NGOs?" *Huffington Post*. [https://www.huffingtonpost.com/vijaya-ramachandran/haiti-relief-ngos\\_b\\_1194923.html](https://www.huffingtonpost.com/vijaya-ramachandran/haiti-relief-ngos_b_1194923.html).
- "Rape Looms Large Over Haiti Slums." *BBC News*. November 27, 2008.  
<http://news.bbc.co.uk/2/hi/7750568.stm>.
- Remy, Manouchka. Officer at the *Unité de Lutte contre les Crimes Sexuels (ULCS)* (Sexual Violence Unit) in Port-au-Prince. (The Medical Certificate). Interviewed by Mathilde Pierre. Port-au-Prince, Haiti. January 11, 2018.
- Renton, Alex. "The Rape Epidemic." *The Guardian*. December 2, 2007.  
<https://www.theguardian.com/lifeandstyle/2007/dec/02/women.features3>.
- Réseau National de Défense des Droits Humains (RNDDH). "Bilan des réalisations de

- l'Appareil Judiciaire au cours de l'année judiciaire 2012-2013." *RNDDH* (2013).
- Réseau National de Défense des Droits Humains (RNDDH). "Fonctionnement de l'Appareil judiciaire au cours de l'année 2013-2014." *RNDDH* (2014).
- Rey, Terry. "Junta, Rape, and Religion in Haiti." *Journal of Feminist Studies in Religion* 15, no.2 (1999): 73-100.
- Roth, Catherine. "Tonton Macoutes (Milices Volontaires de la Sécurité Nationale)." *Black Past*. <http://www.blackpast.org/gah/tonton-macoutes>.
- Shanks, Leslie and Michael J. Schull. "Rape In War: The Humanitarian Response." *Canadian Medical Association Journal* 163, no. 9 (2000): 1152-1156.
- Shanks, L., N. Ford, M. Schull, and K. de Jong. "Responding to Rape." *The Lancet* 357. (2001): 304
- Schuller, Mark. *Humanitarian Aftershocks in Haiti*. New Brunswick: Rutgers University Press, 2016.
- Schuller, Mark. "'Pa Manyen Fanm Nan Konsa': Intersectionality, Structural Violence, and Vulnerability Before and After Haiti's Earthquake," *Feminist Studies* 41, no. 1 (2015): 184-210.
- "Seeking Justice: The Prosecution of Sexual Violence in the Congo War." *Human Rights Watch* (2005). <https://www.hrw.org/sites/default/files/reports/drc0305.pdf>.
- Showden, Carisa R. "Feminist Legal Theory." In *The Encyclopedia of Political Science*, by George Thomas Kurian, James E. Alt, Simone Chambers, Geoffrey Garrett, Margaret Levi, and Paula D. McClain. CQ Press, 2011. [https://ezproxy.library.nyu.edu/login?url=http://search.credoreference.com/content/entry/cqpolisci/feminist\\_legal\\_theory/0?institutionId=577](https://ezproxy.library.nyu.edu/login?url=http://search.credoreference.com/content/entry/cqpolisci/feminist_legal_theory/0?institutionId=577).
- Smith, Patricia. "Feminist Jurisprudence and the Nature of Law" from *Feminist Jurisprudence*. New York: Oxford University Press, 1993. In *Readings in the Philosophy of Law*, ed. Keith C. Culver. Ontario: Broadview Press, 1999.
- Solidarité Fanm Ayisyèn (SOFA) and Réseau National de Défense des Droits Humains (RNDDH). "Konferans Pou Laprès: solidarite avèk yon fanm ki victim vyolans konjigal ak abi pouvwa yon Jij Enstriksyon nan Tigwav Mèkredi 27 Fevriye 2008: Temwayaj Martine Lindor" (2008).
- Stapleton, Timothy J. "Congo Wars (1960s–2000s)." In *The Encyclopedia of War*, by Gordon Martel. Wiley. 2012. [https://ezproxy.library.nyu.edu/login?url=http://search.credoreference.com/content/entry/wileyenwar/congo\\_wars\\_1960s\\_2000s/](https://ezproxy.library.nyu.edu/login?url=http://search.credoreference.com/content/entry/wileyenwar/congo_wars_1960s_2000s/).
- Temple, Kathryn. "Feminist Jurisprudence." In *Encyclopedia of Feminist Literary Theory*, edited by Elizabeth Kowaleski Wallace. Routledge, 2010. [https://ezproxy.library.nyu.edu/login?url=http://search.credoreference.com/content/entry/routfl/feminist\\_jurisprudence/0?institutionId=577](https://ezproxy.library.nyu.edu/login?url=http://search.credoreference.com/content/entry/routfl/feminist_jurisprudence/0?institutionId=577).
- "The Tonton Macoutes: The Central Nervous System of Haiti's Reign of Terror." *Council on Hemispheric Affairs*. March 11, 2010. <http://www.coha.org/tonton-macoutes/>.
- Tribunal de Première Instance de Port-au-Prince. Extrait des minutes du Greffe du Tribunal de Première Instance de Port-au-Prince. Dossier no. 893-10/11. 15 février 2013.
- Unité de Recherche et d'Action Médico Légal (URAMEL). "Manuel de Formation: Techniques de sensibilisation sur la violence." *URAMEL* no. 1 (2016).
- United Nations Development Programme (UNDP). "Haiti: Human Development Indicators." accessed October 24, 2017. <http://hdr.undp.org/en/countries/profiles/HTI>.
- United Nations Economic and Social Council (UNESCO). "Integration of the Human Rights of Women and the Gender Perspective: Report of the Special Rapporteur On Violence against Women, Its Causes and Consequences - Report on the mission to Haiti." *United Nations E/CN.4/2000/68/Add.3* (27 January 2000).
- United Nations General Assembly, *Declaration on the Elimination of Violence Against*

- Women*, A/RES/48/104 85th Plenary Meeting (20 December 1993), <http://www.un.org/documents/ga/res/48/a48r104.htm>.
- United Nations General Assembly. *Universal Declaration of Human Rights* (10 December 1948). [http://www.ohchr.org/EN/UDHR/Documents/UDHR\\_Translations/eng.pdf](http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf).
- United Nations Security Council. "Children and Armed Conflict: Report of the Secretary General." *United Nations*. A/61/529 S/2006/826 (26 October 2006).
- United Nations Security Council, "Conflict-Related Sexual Violence: Report of the Secretary-General," *United Nations* S/2015/203 (23 March 2015), [http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s\\_2015\\_203.pdf](http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2015_203.pdf).
- United Nations Security Council. "Report of the Secretary-General on the United Nations Stabilization Mission in Haiti." *United Nations* (2017).
- United Nations Security Council. *Resolution 1820 (2008)*. S/RES/1820 (2008) (19 June 2008). <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/CAC%20S%20RES%201820.pdf>.
- United States Department of State. "2008 Haiti Human Rights Report." *Bureau of Democracy, Human Rights, and Labor* (2009). <https://www.state.gov/j/drl/rls/hrrpt/2008/wha/119163.htm>.
- United States Department of State. "Haiti 2013 Human Rights Report." *Country Reports on Human Rights Practices for 2013* (2013).
- United States Department of State. "Haiti 2015 Human Rights Report." *Country Reports on Human Rights Practices for 2015*. (2015).
- UN Women. "Facts and Figures: Ending Violence against Women." *UN Women*. August 2017. <http://www.unwomen.org/en/what-we-do/ending-violence-against-women/facts-and-figures>.
- Veale, Emily. "Is There Blood On Your Hands-Free Device?: Examining Legislative Approaches to the Conflict Minerals Problem in the Democratic Republic of Congo." *Cardozo Journal of International and Comparative Law* 21 (2012): 503-543.
- Webb, Nicholas, Sonja Peterson, and Ellen J. Kennedy. "Conflict Minerals and the Law." *Bench & Bar of Minnesota* (December 2014).
- Wilkinson, Tracy. "Rape flourishes in rubble of Haitian earthquake." *Los Angeles Times*. February 4, 2011. <http://articles.latimes.com/2011/feb/04/world/la-fg-haiti-women-20110204>.
- Willumsen Laake, Anniken Lucia, and Cynthia Calkins. "Rape Culture." In *The SAGE Encyclopedia of Psychology and Gender*, edited by Kevin Nadal. Sage Publications, 2017. [https://ezproxy.library.nyu.edu/login?url=https://search.credoreference.com/content/entry/sagepag/rape\\_culture/0?institutionId=577](https://ezproxy.library.nyu.edu/login?url=https://search.credoreference.com/content/entry/sagepag/rape_culture/0?institutionId=577).
- World Bank Group. "Haiti: Overview." accessed October 24, 2017. <http://www.worldbank.org/en/country/haiti/overview>.
- Wright, Catherine. "Feminist Jurisprudence." Review of *Feminist Jurisprudence*. New York: Oxford University Press, 1993. by Patricia Smith, *Dalhousie Journal of Legal Studies* (1994).
- The Yale Law Journal Company, Inc. "The Rape Corroboration Requirement: Repeal Not Reform." *The Yale Journal* 81, no. 7 (1972): 1365-1391.