

# HUMAN RIGHTS OBLIGATIONS IN POST-DISASTER HAITI: WORKING TOWARDS INCREASED JUSTICE FOR VICTIMS OF GENDER-BASED VIOLENCE

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## I. INTRODUCTION

Recovery from the consequences of extreme natural disaster requires adequate rule of law.<sup>1</sup> To maintain peace and prosperity, effective systems for providing security must be implemented as a society recovers from disaster.<sup>2</sup> As sexual crimes increased in the wake of a devastating earthquake in 2010 and Hurricane Matthew in 2016, Haiti has been in a unique position to strengthen its protections of women by establishing effective rule of law.<sup>3</sup> Rule of law can be achieved by ensuring access to criminal and civil justice, fundamental rights, and safety, while also holding the government accountable to the people for corruption and misuse of its powers.<sup>4</sup> However, in the aftermath of these disasters, there has not been an effective response to the ensuing outbreak of criminal activity.<sup>5</sup> Crime, especially in the nation's capital of Port-au-Prince, affected a majority of citizens, even before the earthquake; however, women and girls are particularly susceptible to victimization due to misogynistic norms.<sup>6</sup> Even as human rights violations in the form of gender-based violence increased post-disaster, victims were deprived of access to justice, and the rule of law deteriorated.<sup>7</sup>

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1. Lisa Davis, *Still Trembling: State Obligation Under International Law to End Post-Earthquake Rape in Haiti*, 65 U. MIAMI L. REV. 867, 872 (2011).

2. *Id.* at 872.

3. Blaine Bookey, *Enforcing the Right to Be Free from Sexual Violence in Post-Earthquake Haiti*, 14 CUNY N.Y. CITY L. REV. 255, 258 (2011).

4. *Factors of the Rule of Law*, WORLD JUSTICE PROJECT, <https://worldjusticeproject.org/our-work/wjp-rule-law-index/wjp-rule-law-index-2016/factors-rule-law> [<https://perma.cc/MDY6-UPC6>] (last visited Mar. 19, 2017) (assessing the adequacy of the rule of law based on the following eight themes, all of which factor into protection of human rights: contracts on government powers, absence of corruption, open government, fundamental rights, order and security, regulatory enforcement, civil justice, and criminal justice).

5. Bookey, *supra* note 3, at 258.

6. INTER-AMERICAN COMM'N ON HUMAN RIGHTS, OBSERVATIONS OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS UPON CONCLUSION OF ITS APRIL 2007 VISIT TO HAITI 5, 11 (Organization of American States 2008), <http://www.cidh.org/Haiti07informe.eng.htm> [hereinafter IACHR Report].

7. Bookey, *supra* note 3, at 258.

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Female victims of rape and sexual assault in Haiti face several barriers to justice. A myriad of systemic cultural and historical issues prevent victims from seeking and receiving redress from the government: gender norms, poverty, and political unrest, just to name a few.<sup>8</sup> These problems were exacerbated by the devastating earthquake that rocked Port-au-Prince in 2010 and the destruction following Hurricane Matthew in 2016.<sup>9</sup> Following the earthquake, the rule of law in Haiti was virtually nonexistent, and incidents of rape and sexual assault increased.<sup>10</sup> For those women and girls living in the shanty-town remains of Port-au-Prince, gender-based violence became a fact of everyday life, not just a social norm.

A little over half a decade since the earthquake, sexual violence against women, especially in internal displacement camps, is still endemic; however, some improvements have been made to the official response by the Haitian government.<sup>11</sup> These improvements began to be considered and implemented by the Haitian Government even before the earthquake and have continued, despite the tumultuous situation.<sup>12</sup> They include greater public security and a special appointment of a Secretary of State for Justice.<sup>13</sup> Regarding the situation of women particularly, rape was officially criminalized in 2005, increasing sentencing for perpetrators.<sup>14</sup> Additionally, several pieces of draft legislation have been submitted for consideration to ensure women's rights, including one for increased training and accountability of the judiciary and one to address violence against women whether committed in a domestic, sexual, or criminal context.<sup>15</sup>

Haiti's human rights lawyers, armed by international human rights law and changes in domestic law and policy, have been fighting back by vigorously representing victims in criminal cases.<sup>16</sup> Still, Haiti's victims and their lawyers must combat more than just remaining cultural barriers as victims are confronted with substantive and procedural hurdles created by a need for judicial reform and lack of political will. Gender-based crimes continue to be prevalent.<sup>17</sup> To establish

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8. Benedetta Faedi, *The Double Weakness of Girls: Discrimination and Sexual Violence in Haiti*, 44 STAN. J INT'L L. 147, 166-67 (2008).

9. Rachael Revesz, *Women and Girls in Haiti at Risk of Being Beaten, Sexually Assaulted or Dying During Childbirth After Hurricane Matthew, Says Agency*, INDEPENDENT (Nov. 1, 2016), <http://www.independent.co.uk/news/world/americas/haiti-women-girls-serious-risk-sexual-assault-violence-birth-labour-emergency-funding-a7392086.html> [<https://perma.cc/8RKY-EXXD>].

10. *Id.*

11. Telephone Interview with Nicole Phillips, Staff Attorney, Institute for Justice and Democracy in Haiti (Nov. 23, 2016) [hereinafter Telephone Interview].

12. See IACHR Report, *supra* note 6, at 15.

13. *Id.* at 7.

14. IACHR Report, *supra* note 6, at 14; Telephone Interview, *supra* note 11.

15. IACHR Report, *supra* note 6, at 7, 15.

16. Telephone Interview, *supra* note 11.

17. Haiti 2016 Crime and Safety Report, UNITED STATES DEPARTMENT OF STATE OVERSEAS SECURITY ADVISORY COUNCIL, (Mar. 1, 2016) <https://www.osac.gov/pages/ContentReportDetails.aspx?cid=19193> [<https://perma.cc/PHD6-HJP8>] [hereinafter Haiti 2016 Crime Report]; Haiti 2015

rule of law adequate to ensure the rights of women, Haiti must implement changes to its criminal justice system that will honor its international obligations by providing increased access to justice for victims of rape and sexual assault.

Section II of this Note will provide a brief explanation of the cultural norms, relevant history, and recent events that have shaped Haiti's criminal system and its response to gender-based violence. Section III describes the international human rights instruments adopted or joined by Haiti which mandate that countries secure certain rights to victims of sexual violence and bind Haiti to act on behalf of these victims. Section IV lists the ways in which Haiti's judicial system and criminal law fail to comply those international mandates when victims of gender-based violence and sexual crime attempt to access the justice system. It also provides examples of proper compliance with international human rights law. Section V recommends judicial and legislative reform meant to decrease rape and sexual assault in Haiti, thereby bringing Haiti into compliance with its international obligations. This Note concludes that, without adequate rule of law, Haiti will not be able to stem the tide of sexual violence but that by instituting further reforms, it can build on its recent progress and provide safety to its female citizens and adequate prosecution of perpetrators of gender-based violence.

## II. HAITI: A BRIEF HISTORY OF GENDER DISCRIMINATION, POST-DISASTER CONDITIONS, AND POLITICAL STRIFE

Gender discrimination is not a new concern in Haiti. Even during good times, which seem few and far between for the disaster-racked nation, women and girls experience discrimination in the form of a misogynistic society.<sup>18</sup> Persistent cultural beliefs and patriarchal values underlie the systemic oppression suffered by Haitian women and girls, and “discrimination against women in Haiti is a widespread and tolerated phenomenon.”<sup>19</sup> While the role of women is essential to the function of the home and they are viewed by society as the better, more moral gender, women are not protected from gender-based oppression.<sup>20</sup>

Rather, the nature of work, the role in the home, and even the effect of poverty are all gendered in Haiti, resulting in gender inequality.<sup>21</sup> Poverty in Haiti

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Crime Report, UNITED STATES DEPARTMENT OF STATE OVERSEAS SECURITY ADVISORY COUNCIL, (June. 16, 2015) <https://www.osac.gov/pages/ContentReportDetails.aspx?cid=17819> [<https://perma.cc/W9Z7-MBM8>].

18. *Risks to Women and Girls Soar in Hurricane-slammed Haiti*, UNITED NATIONS POPULATION FUND (Nov. 4, 2016), <http://www.unfpa.org/news/risks-women-and-girls-soar-hurricane-slammed-haiti> [<https://perma.cc/69CT-X7QA>] [hereinafter *Risks to Women Soar*].

19. IACHR Report, *supra* note 6, at 12.

20. Fabienne Colas, *Caribbean Version of Vagina Monologues Highlights Domestic Violence in Haitian Community*, THE HAITIAN TIMES E BRIDGING THE GAP (October Oct. 15, 2016), <http://haitiantimes.com/2016/10/15/caribbean-version-of-vagina-monologues-highlights-domestic-violence-in-haitian-community/> [<https://perma.cc/H9UF-DG3D>].

21. Faedi, *supra* note 8, at 167-68.

frequently affects women disproportionately due to their financial dependency on men.<sup>22</sup> Indeed, there are few opportunities available to women, and women face discrimination when they attempt to access government, social, and medical services.<sup>23</sup> As early as childhood, the disparate treatment of boys and girls is apparent, and discrimination continues throughout adulthood.<sup>24</sup> Consequently, women and girls work harder, eat less, and receive less education and medical care than the men in their country.<sup>25</sup>

Moreover, the misogynistic undertone in Haitian society often results in gender-based violence and abuse.<sup>26</sup> An “environment of neglect, slavery, overwork, sexual abuse, and violence” exists in Haiti.<sup>27</sup> Unfortunately, “Haitian society systematically obstructs the ability of women to prevent or address injustice against them, and strengthens other forms of structural oppression such as economic and political discrimination.”<sup>28</sup> Therefore, women and girls are particularly vulnerable to physical and sexual violence, and assault commonly occurs in Haitian communities.<sup>29</sup>

#### A. *The Earthquake of 2010*

Repeated, devastating natural disasters have only exacerbated the existing dangers women and girls experience. On January 12, 2010, a 7.0 magnitude earthquake struck Haiti’s capital, Port-au-Prince, causing over 200,000 deaths and internally displacing over one million Haitians.<sup>30</sup> As a result, homeless citizens resorted to living in poor conditions in make-shift internal displacement camps.<sup>31</sup> In these slum areas around the capital city, including Martissant, Gran Ravine, Carrefour, Cité Soleil, and Bel Air, citizens lacked access to basic needs. Subsequently, shelter, food, and water became desperately needed and scarce

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22. Nicole Phillips, *The Vital Role of Grassroots Movements in Combatting Sexual Violence and Intimate Partner Abuse in Haiti*, COMPARATIVE PERSPECTIVES ON GENDER VIOLENCE: LESSONS FROM EFFORTS WORLDWIDE 1, 4 (Rashmi Goel and Leigh Goodmark eds. 2015).

23. IACHR Report, *supra* note 6, at 12.

24. See Phillips, *supra* note 22, at 4-5 (explaining that boys receive more education than girls and that women assume most household duties).

25. Faedi, *supra* note 8, at 167; see, David McFadden, *Mothers-to-be Struggle, Worry in Ruins of Storm-hit Haiti*, ASSOCIATED PRESS (Nov. 10, 2016), <https://apnews.com/ad75a487c79a4331b4ccd908588c6e81/mothers-be-struggle-worry-ruins-storm-hit-haiti> [<https://perma.cc/SBK9-9T5A>] (stating that the maternal mortality rate in Haiti is the highest in the Western Hemisphere and is similar to the rate in other third world countries).

26. Colas, *supra* note 20.

27. Faedi, *supra* note 8, at 167.

28. Bookey, *supra* note 3, at 261.

29. *Risks to Women Soar*, *supra* note 18.

30. Meena Jagannath, et al., *A Rights-Based Approach to Lawyering: Legal Empowerment as an Alternative to Legal Aid in Post-Disaster Haiti*, 10 NW. U. J. INT’L HUM. RTS. 7, 7 (2011).

31. *Id.*

resources.<sup>32</sup>

Further, the infrastructure of Port-au-Prince was destroyed, including its government buildings. The National Palace, the Ministry of Justice, and the Supreme Court were decimated.<sup>33</sup> A widespread loss of judicial files accompanied the destruction of these judicial institutions.<sup>34</sup> Even worse, “[k]ey personnel in the criminal justice system, including various key officials in the Ministry of Justice and various members of the *Cour de cassation* [Supreme Court], did not survive.”<sup>35</sup> In the days following the earthquake, the government of Haiti became unable to function, much less carry out needed judicial reform or formulate a plan for recovery.<sup>36</sup> The inability to craft a plan for safety, security, and stability in the wake of the hurricane intensified the already existing environment of misogynistic violence.<sup>37</sup>

In these desperate conditions, incidents of sexual violence towards women and girls dramatically increased.<sup>38</sup> In the shanty-towns surrounding Port-au-Prince, sexual abuse reached epidemic proportions.<sup>39</sup> Though advancements had been made for justice against gender-based violence in the years prior to the earthquake, much of this progress was lost due to limited security in the camps and the urgent struggle of the community to survive.<sup>40</sup>

### B. Hurricane Matthew

Less than a decade after the earthquake and while relief efforts were still ongoing, a ravaging hurricane left Haiti in ruins once again.<sup>41</sup> On October 4, 2016, the Category 4 storm, Hurricane Matthew, ripped through the western portion of the already damaged country.<sup>42</sup> Up to 1,000 people were killed as a result of the storm.<sup>43</sup> As even more Haitians were killed and displaced, the United

32. Faedi, *supra* note 8, at 159; Jagannath et al., *supra* note 30, at 7.

33. Leonard L. Cavise, *Post-Earthquake Legal Reform in Haiti: In on the Ground Floor*, 38 BROOKLYN J. INT’L L. 879, 907 (2013).

34. *Id.* at 908.

35. *Id.*

36. *Id.*

37. Davis, *supra* note 1, at 871; Bookey, *supra* note 3, at 256.

38. *See* Davis, *supra* note 1, at 878.

39. Cavise, *supra* note 33, at 9087.

40. Jagannath et al., *supra* note 30, at 16 (crediting the Haitian women’s movement for spearheading reform).

41. Bill Sherman, *In His Image Doctors Report on Destruction in Haiti*, TULSA WORLD (Nov. 12, 2016) [http://www.tulsaworld.com/homepagelatest/in-his-image-doctors-report-on-destruction-in-haiti/article\\_731c4452-5a67-5e5d-be91-ef0378aec94f.html](http://www.tulsaworld.com/homepagelatest/in-his-image-doctors-report-on-destruction-in-haiti/article_731c4452-5a67-5e5d-be91-ef0378aec94f.html) [<https://perma.cc/GQN5-4WLC>].

42. Sean Breslin, *Three Weeks Later, Haiti in Ruins from Hurricane Matthew's Effects*, THE WEATHER CHANNEL (Oct. 24, 2016), <https://weather.com/news/news/hurricane-matthew-haiti-effects-continue> [<https://perma.cc/VDH3-8P4P>].

43. *Haiti: Jovenel Moise Confirmed Winner of Presidential Election*, BBC (Jan. 4, 2017),

Nations prioritized the need for food, water, and shelter.<sup>44</sup> Once again, confidence in the central government's ability to adequately respond to the aftermath of natural disaster was low.<sup>45</sup>

In addition to the results of natural disaster cause by Hurricane Matthew, a "trail of death and destruction" was left in its wake, as crime increased.<sup>46</sup> Similar to the 2010 earthquake, the perils faced by displaced women and girls soared in Hurricane Matthew's aftermath.<sup>47</sup> Thousands of women in the areas affected by the storm were at risk of sexual violence.<sup>48</sup> However, though the United Nations appealed for funds to aid in the recovery, only a small portion of that money "ha[d] been earmarked to help women and girls, who [we]re at serious risk of violence, sexual assault and even death during childbirth."<sup>49</sup> Consequently, the safety of women was not a priority following the hurricane.<sup>50</sup>

### C. Political Instability

The political landscape in Haiti has not been conducive to formulating an effective response to the rampant, gender-based violence and has been linked to increases in such violence.<sup>51</sup> The country has endured "political instability and violence, poor governance, and recurrent deterioration of security" coupled with inconsistent and misguided foreign aid after natural disaster.<sup>52</sup> These factors have resulted in an environment promotive of oppression, especially of the poor and vulnerable women and girls living in its internal displacement camps.<sup>53</sup> In Haiti, rape has been used as a political weapon. For example, in the wake of the coup that overthrew Haiti's first democratically elected president, Jean-Claude Aristide, women were targeted for their democratic affiliations.<sup>54</sup> Perpetrators subjected women in pro-Aristide neighborhoods to systematic sexual assault with impunity.<sup>55</sup>

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<http://www.bbc.com/news/world-latin-america-38503654> [<https://perma.cc/Z8MZ-DW7N>]  
[hereinafter *Jovenel Moise Confirmed Winner*].

44. Revesz, *supra* note 9.

45. Breslin, *supra* note 42.

46. *Haiti Aid Hard to Come by One Month After Hurricane*, JAMAICA OBSERVER (Nov. 10, 2016), <http://www.jamaicaobserver.com/news/Haiti-aid-hard-to-come-by-one-month-after-hurricane> [<https://perma.cc/3PBJ-XEGJ>].

47. *Risks to Women Soar*, *supra* note 18.

48. *Id.*

49. Revesz, *supra* note 9.

50. *Id.*

51. Phillips, *supra* note 22, at 2.

52. Bookey, *supra* note 3, at 270-71.

53. *Id.*

54. See Shannon D. Lankenau, *Toward Effective Access to Justice in Haiti: Eliminating the Medical Certificate Requirement in Rape Prosecutions*, 64 HASTINGS L.J. 1759, 17623-34 (2013); Bookey, *supra* note 3, at 258.

55. See Phillips, *supra* note 22, at 32 (listing "repeated rapes, forcing family members to

Recent political events have not altered the relationship between political instability and gender-based violence in Haiti. Instead, the government has lacked the ability and will to institute long-term human rights reform since the earthquake, due to delayed elections, political violence, and an inoperable legislature.<sup>56</sup> “A dramatic increase in rapes accompanied the demonstrations protesting fraud following the November 28, 2010 presidential election.”<sup>57</sup> Due to procedural irregularities and low voter turn-out, the legitimacy of the election results was called into question.<sup>58</sup> Following the election of Michel Martelly, deteriorating security resulted in heightened danger to women and girls in the internal displacement camps.<sup>59</sup> Moreover, after midterm elections were delayed in 2011 and 2013, Haiti’s legislative branch was forced to function with only two-thirds of its seats filled.<sup>60</sup>

By January of 2015, only ten members of parliament remained with time left in their terms, allowing the executive branch to act without legislative oversight.<sup>61</sup> Then, the elections that were meant to follow President Martelly’s four-year term were rife with controversy. They began in October 2015; however, the runoff election was delayed multiple times.<sup>62</sup> The results of the initial election were annulled and new elections were scheduled and then stalled by Hurricane Matthew.<sup>63</sup> Consequently, there were no elections during President Martelly’s first term.<sup>64</sup> While Haiti’s election remained in limbo, so did human rights reform and enforcement.<sup>65</sup>

At the end of his term, President Martelly was forced to step down, and an interim president took his place in February of 2016.<sup>66</sup> However, the Haiti’s parliament, still crippled, was unable to pass legislative reform.<sup>67</sup> In November 2016, elections were finally held, and Jovenel Moise won more than fifty-five

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watch, forced incest, and the rape of young girls and pregnant women” among the tactics used by members of paramilitary regimes).

56. Bureau des Avocats Internationaux, Gender Action, Institute for Justice & Democracy in Haiti, Li, Li, Li! Read, GENDER ISSUES FACING WOMEN AND GIRLS 2 (Jan. 22, 2016) [hereinafter Gender Issues Report].

57. Bookey, *supra* note 3, at 270-71.

58. *Id.* at 272.

59. *Id.* at 270-72.

60. Gender Issues Report, *supra* note 55, at 2.

61. *Id.*

62. Camila Domonoske, *14 Months After Elections Began, Haiti Finally Has A President-Elect*, NPR (Jan. 4, 2017), <http://www.npr.org/sections/thetwo-way/2017/01/04/508171191/14-months-after-elections-began-haiti-finally-has-a-president-elect>

63. *Id.*

64. Jake Johnston, *Breakdown of Preliminary Election Results in Haiti*, HAITI RELIEF AND RECONSTRUCTION WATCH (Dec. 6, 2016), <http://cepr.net/blogs/haiti-relief-and-reconstruction-watch/breakdown-of-preliminary-election-results-in-haiti>.

65. Gender Issues Report, *supra* note 55, at 2.

66. *Jovenel Moise confirmed winner*, *supra* note 43.

67. Johnston, *supra* note 63.

percent of the votes, forestalling a need for a runoff presidential election.<sup>68</sup> Still, because the 2016 elections were not without issues, as evidenced by low voter turnout, election fraud claims, and an unachieved female leadership quota, President Moïse's administration must overcome several challenges to cement the public trust.

Election fraud claims were brought by Moïse's rejected competitors, which sparked some tension and even violence.<sup>69</sup> Supporters of another candidate took to the streets after the votes were counted—even as an election court rejected the allegations.<sup>70</sup> The claims are not surprising, as fraud and violence have traditionally contributed to the election of some officials and prevented those politicians who will not engage in such practices from successfully gaining office.<sup>71</sup> The Haitian people are now hoping their newly elected government will end the political limbo and move the country forward without further political corruption.<sup>72</sup>

However, the legitimacy of the election was compromised by a lack of voter participation. Voter turnout has been declining since the earthquake, and the overall effect of repeated natural disaster has contributed to the low voter participation.<sup>73</sup> Many Haitians are still living in internal displacement camps.<sup>74</sup> Especially in remote areas, few polling stations prevented people from voting.<sup>75</sup> Additionally, many voters, especially older members of the population, feel discouraged because they have not seen a change after previous elections.<sup>76</sup> As a result, only twenty-one percent of Haitians voted in the 2016 election.<sup>77</sup>

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68. Domonoske, *supra* note 61.

69. Jacqueline Charles, *In Haiti, a re-run election finally produces a new president*, MIAMI HERALD (Jan. 3, 2017), <http://www.miamiherald.com/news/nation-world/world/americas/haiti/article124380494.html> [hereinafter *Re-run election*].

70. *Id.*

71. See Jacqueline Charles, *No women in new Haitian parliament*, MIAMI HERALD (Jan. 18, 2016) <http://www.miamiherald.com/news/nation-world/world/americas/haiti/article55358850.html> [hereinafter *No new women*].

72. *Tension mounts as Haiti awaits election results*, ALJAZEERA (Nov. 22, 2016), <http://www.aljazeera.com/news/2016/11/tension-mounts-haiti-awaits-election-results-161122050648280.html> [hereinafter *Tension*]; Interview with Garçon Jones, Cadet Wislet, & Cadet Wood-ky, Community Leaders, LaMare and Terre-Selei, Haiti (Mar. 13, 2017) [hereinafter *Interview*] (believing that the new government will reform the justice system).

73. *Id.*

74. See Phillips, *supra* note 22, at 10 (reporting that as many as 100,000 Haitians resided in camps almost five years after the earthquake).

75. *Tension*, *supra* note 71.

76. Interview, *supra* note 71.

77. *Re-run election*, *supra* note 68; see *Haiti - Elections Voter turnout of the elections of 29 January 2017 (Official)*, HAITI LIBRE (Feb. 18, 2017), <http://www.haitilibre.com/en/news-20135-haiti-elections-voter-turnout-of-the-elections-of-29-january-2017-official.html> (reporting that 27.44% of the population voted and that high numbers of the population voted in some rural areas); see also *New Report: Troubling Weaknesses in Electoral System Overshadow Return of*



In addition to low voter participation, a lack of female leadership in government is also a problem. Haitian electoral law requires that women comprise at least thirty percent of elected officials.<sup>78</sup> However, the country is not meeting its quota for female leadership.<sup>79</sup> In the most recent elections, only eight percent of legislative candidates were women.<sup>80</sup> Women are underrepresented in official capacities, in part because the costs of running a campaign prevent them from entering the contest.<sup>81</sup> Only four women were elected to the Haitian parliament in the 2016 elections.<sup>82</sup>

#### *D. Female Leadership in Government*

While the government of Haiti has made improvements in its protections of women's human rights, it must institute further reform to fulfill its international obligations.<sup>83</sup> As a result of its misogynistic culture, post-disaster state, and unstable political climate, Haiti has failed to provide adequate access to justice for victims of gender-based violence. Justice is unavailable to most Haitians; however, poor women, in particular, experience difficulty when seeking redress through the formal justice system as a result of their social, economic, and political disenfranchisement.<sup>84</sup> When attempting to enforce their rights through the police and the courts, women often face the same culture of discrimination that resulted in their victimization.<sup>85</sup>

Women experience “gender discrimination, distrust, and marginalization at nearly every access point of the justice system.”<sup>86</sup> These barriers to justice allow rape to continue, because the crime is committed undeterred by the threat of

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*Constitutional Rule in Haiti*, HAITI ELECTIONS: A RESOURCE AND NEWS BLOG (Feb. 6, 2017), <http://haitielection2015.blogspot.ca/> [hereinafter *Haiti Elections*] (reporting that fewer women voted than men).

78. Johnston, *supra* note 63.

79. Telephone Interview, *supra* note 11.

80. *No new women*, *supra* note 70.

81. *Id.* (stating that women have difficulty accessing funding, registering as candidates, campaigning, and paying for poll-watchers and lawyers)

82. *Haiti Elections*, *supra* note 76.

83. BUREAU DES AVOCATS INTERNATIONAUX, FAVILEK (FANM VIKTIM LEVE KANPE), FEMCADH (FEMMES COMBATTANTES AVISÉES POUR LE DÉVELOPPEMENT D'HAÏTI), GENDER ACTION, INSTITUTE FOR JUSTICE AND DEMOCRACY IN HAITI, KOFIVIV (KÒDINASYON FANM VIKTIM POU VIKTIM), KONAMAVID (KÒDINASYON NASYONAL ANSYEN MAWON VIKTIM DIRÈK), LI, LI, LI! READ, MOFAS (MOUVMAN ÒRGANIZASYON FANM AKTIV SODO), RFFA (RÉALITÉ DE FEMMES POUR FORT-NATIONAL EN ACTION), VIOLENCE AGAINST WOMEN, TRAFFICKING, PROSTITUTION, AND EXPLOITATION BY UN PEACEKEEPERS (CEDAW ARTICLES 1, 2, 3, 5, 6) 2 (Jan. 22, 2016) [hereinafter *Violence Against Women Report*].

84. Cavise, *supra* note 33, at 909; Jagannath et. al., *supra* note 30, at 11.

85. Phillips, *supra* note 22, at 5.

86. Lankenau, *supra* note 53, at 1771.

prosecution.<sup>87</sup> The government fails to prescribe and implement a framework for the effective prosecution of rape due to inadequate statutory law, political interest, and judicial capacity.<sup>88</sup> Even as the government fails to act, sexual violence against women and girls continues to be a mechanism for oppression.<sup>89</sup>

### III. HAITI'S INTERNATIONAL HUMAN RIGHTS OBLIGATIONS MANDATING PROTECTIONS FOR WOMEN AND GIRLS FROM GENDER-BASED VIOLENCE

A number international human rights instruments have been ratified by Haiti that specifically regard women's human rights.<sup>90</sup> The standards contained in these instruments "make up the foundation of the due diligence standard to prevent, investigate, and punish acts of violence against women."<sup>91</sup> Therefore, these instruments create an obligation for states to make their justice systems accessible to women and girls by creating mechanisms by which they can participate in the system to seek redress as victims of crime.<sup>92</sup> Haiti further obligates itself to comply with international human rights law by providing for automatic ratification under its Constitution. Article 276.2 of the Haitian Constitution provides that international treaties, once approved and ratified, become a part of the country's domestic law and abrogate any conflicts.<sup>93</sup>

International human rights instruments that have been thereby incorporated into Haiti's domestic law include the Convention on the Elimination of all Forms of Discrimination Against Women, the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, the Inter-American Convention on the Prevention, and Punishment, and Eradication of Violence Against Women.<sup>94</sup> These instruments create a framework of human rights which Haiti must provide and protect, according to its international obligations and its own ratification.<sup>95</sup> By undertaking these obligations, Haiti has acknowledged the discrimination and violence experience by its female citizens and committed to institute corrective measures.<sup>96</sup>

#### *A. The Convention on the Elimination of Discrimination Against Women*

The Convention on the Elimination of all Forms of Discrimination Against

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87. Bookey, *supra* note 3, at 273.

88. Davis, *supra* note 1, at 874.

89. Lankenau, *supra* note 53, at 1763.

90. Davis, *supra* note 1, at 880; *see also* Bookey, *supra* note 3, at 276.

91. Meena Jagannath, *Barriers to Women's Access to Justice in Haiti*, 15 CUNY L. REV. 27, 33 (2011).

92. *Id.* at 34.

93. Bookey, *supra* note 3, at 276; Davis, *supra* note 1, at 874. *See* Jagannath, *supra* note 90, at 34.

94. Davis, *supra* note 1, at 880; *see also* Bookey, *supra* note 3, at 276.

95. Jagannath, *supra* note 90, at 31.

96. IACHR Report, *supra* note 6.

Women (CEDAW) was adopted by the UN General Assembly in 1979.<sup>97</sup> Some consider CEDAW to be an international bill of human rights for women.<sup>98</sup> It binds member states to take action to protect women from discrimination, though means such as legislation, in order to ensure that human rights are given to the female half of the world's population in equal measure.<sup>99</sup> Countries who have committed to put the CEDAW into practice are kept accountable, as they must submit a progress report every four years.<sup>100</sup>

In 1992, the CEDAW Committee strengthened its protections of women's rights by passing General Recommendation No. 19 to Article 1 of the Convention, redefining "discrimination against women."<sup>101</sup> In doing so, CEDAW "paved the road toward addressing gender-based violence as a form of discrimination against women."<sup>102</sup> CEDAW now defines "discrimination against women" as:

any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.<sup>103</sup>

This expanded definition of discrimination against women implicitly includes gender-based violence.<sup>104</sup> To ensure the right of women to be free from gender-based violence, party states must establish measures to overcome gender discrimination and gender-based violence.<sup>105</sup>

Further, the expanded definition requires that the measures undertaken by party states under each provision of the CEDAW combat such violence where the "discrimination against women" language is used.<sup>106</sup> Under Article 2, which mandates that party states condemn "discrimination against women in all its

97. *Overview of the Convention*, UNWOMEN, <http://www.un.org/womenwatch/daw/cedaw/> (Last updated 2009) [hereinafter *Overview of the Convention*].

98. *Id.*

99. *Id.*

100. *Overview of the Convention*, *supra* note 96; see *Country reports*, UNWOMEN, <http://www.un.org/womenwatch/daw/cedaw/> (Last updated 2009) (showing that Haiti has not submitted a country report).

101. Davis, *supra* note 1, at 881.

102. *Id.*

103. *Full text of the Convention in English*, UNWOMEN, <http://www.un.org/womenwatch/daw/cedaw/> (Last updated 2009).

104. Davis, *supra* note 1, at 881.

105. Violence Against Women Report, *supra* note 82, at 4 (reporting that measures should include "ensuring that laws adequately protect all women, encouraging the compilation of statistics and research on gender-based violence, implementing gender-sensitive training of judicial and law enforcement officers and providing effective complaints procedures and remedies").

106. Davis, *supra* note 1, at 881.

forms” by undertaking actions including the following:

- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation; . . .
- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women . . . .

Therefore, in Haiti, legislation, judicial tribunals, public institutions, and public authorities must act to protect the human rights of women by prohibiting and prosecuting gender-based violence like rape.

#### *B. The International Covenant on Civil and Political Rights*

The International Covenant on Civil and Political Rights (ICCPR) was adopted by the U.N. General Assembly in 1966, came into force in 1976, and was ratified by Haiti in 1991.<sup>107</sup> The ICCPR reads like an international bill of human rights, enumerating civil and political protections that countries should provide.<sup>108</sup> Countries that have ratified the treaty obligate themselves to enforce basic rights.<sup>109</sup> Article 2 of the ICCPR states that “Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as . . . sex . . . .”<sup>110</sup> Therefore, gender equality is included among the human rights that states must protect and preserve.

States are required to provide adequate measures through their administrative,

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107. *FAQ: The Covenant on Civil & Political Rights (ICCPR)*, AMERICAN CIVIL LIBERTIES UNION, <https://www.aclu.org/other/faq-covenant-civil-political-rights-iccpr> (last updated Apr. 2014) [hereinafter ICCPR FAQ]; *Status of Treaties*, UNITED NATIONS TREATY COLLECTION, [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-4&chapter=4&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-4&chapter=4&clang=_en) (last updated Nov. 13, 2016).

108. ICCPR FAQ, *supra* note 106.

109. *Id.*

110. United Nations, International Covenant on Civil and Political Rights, art. 2, Dec. 16, 1966.

judicial, and legislative processes to ensure the rights enshrined in the ICCPR are available to their citizens.<sup>111</sup> Article 2 further enumerates that these measures should include the following:

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.
3. Each State Party to the present Covenant undertakes:
  - (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
  - (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
  - (c) To ensure that the competent authorities shall enforce such remedies when granted.<sup>112</sup>

Additionally, and perhaps most relevantly to the purposes of this Note, Article 14 provides, “All persons shall be equal before the courts and tribunals.”<sup>113</sup> The U.N. Human Rights Committee has noted that the measures provided by countries who have ratified the ICCPR must allow the victim of a human rights violation access to the justice system and adequate reparation of the wrong.<sup>114</sup>

### *C. The Convention on the Rights of the Child of 1989*

On June 8, 1995, Haiti ratified the Convention on the Rights of the Child of 1989 (Children’s Convention), which prohibits discrimination against children

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111. ICCPR FAQ, *supra* note 106.

112. United Nations, International Covenant on Civil and Political Rights, art. 2, Dec. 16, 1966.

113. United Nations, International Covenant on Civil and Political Rights, art. 14, Dec. 16, 1966.

114. Jagannath, *supra* note 90, at 32.

and requires certain protections.<sup>115</sup> State Parties to the Children's Convention agree to ensure the enumerated rights and cannot discriminate against children based on sex.<sup>116</sup> Further, Article 19 states:

States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, *including sexual abuse* . . .<sup>117</sup>

The protective measures taken by Party States should include effective procedures "for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement."<sup>118</sup>

*D. The Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women*

In addition to its seminal human rights instrument, the American Convention on Human Rights, the Organization of American States adopted the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women (Convention of Belem Do Para) in 1994, which was ratified by Haiti in 1997.<sup>119</sup> The Convention of Belem Do Para defines violence against women and acknowledges that such violence is a violation of human rights.<sup>120</sup> Violence against women is considered "any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere."<sup>121</sup> Further, violence committed in the family or domestic unit, commonly referred to as domestic violence, is explicitly included in the definition of violence against women.<sup>122</sup>

Under the Convention of Belem Do Para, States Party are called to establish mechanisms for protecting the rights of women and asserting those rights in

115. Faedi, *supra* note 8, at 178.

116. Convention on the Rights of the Child, art. 2, ¶ 1, adopted and opened for signature Nov. 20, 1989.

117. Convention on the Rights of the Child, art. 19, ¶ 1, adopted and opened for signature Nov. 20, 1989 (emphasis added).

118. Convention on the Rights of the Child, art. 19, ¶ 2, adopted and opened for signature Nov. 20, 1989.

119. *General Information of the Treaty*, ORGANIZATION OF AMERICAN STATES, <http://www.oas.org/juridico/english/sigs/a-61.html> (last visited Jan. 17, 2017).

120. *About the Belém do Pará Convention*, ORGANIZATION OF AMERICAN STATES, (2017), <http://www.oas.org/en/mesecvi/convention.asp> [hereinafter *About the Belém do Pará Convention*]

121. Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, chap. I, art. 1, adopted and opened for signature Jun. 9, 1994.

122. Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, chap. I, art. 2, adopted and opened for signature Jun. 9, 1994.

society.<sup>123</sup> Article 7 of Chapter III charges States Party to “condemn all forms of violence against women and agree to pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence.”<sup>124</sup> Specifically, States Party should undertake, with due diligence, to “prevent, investigate and impose penalties for violence against women”; impose such legal and legislative measures that are required to that end; and provide procedures and remedies to women who are victims of violence.<sup>125</sup> Under Article 8 of the same Chapter, States Party are also charged with taking measures to socially address violence against women, such as training judicial actors, raising awareness of violence against women, and collecting appropriate statistics.<sup>126</sup> Further, under Article 9, measures should be adopted that take into consideration the vulnerability of women suffering under certain conditions, including with particular relevance to Haitian women, displaced persons.<sup>127</sup>

Moreover, the Convention of Belem Do Para requires States Party to establish mechanisms for compliance with its provisions. States Party are responsible for participating in the Convention of Belem Do Para’s assessment process, which include ensuring compliance, participation in an evaluation mechanisms, and implementation of recommendations.<sup>128</sup> However, the most recent follow-up report stated that continued efforts are required to obtain Haiti’s effective participation in the evaluation process.<sup>129</sup> In fact, Haiti did not even provide a reply for that report.<sup>130</sup> Worth noting, however, is that the Convention of Belem do Para has been translated into a variety of languages commonly used in or indigenous to the Americas, including Haitian Creole, with a view to support its dissemination and application.<sup>131</sup> This translation makes it more accessible to Haitian women compared to most legal documents.

The Inter-American Commission on Human Rights (IACHR) is an autonomous body of the Organization of American States and acts as its reporting and judicial arm where human rights are concerned.<sup>132</sup> The IACHR carries out country visits, publishes country reports, and accepts and examines petitions of

123. *About the Belém do Pará Convention*, *supra* note 119.

124. Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, chap. III, art. 7, adopted and opened for signature Jun. 9, 1994.

125. *Id.*

126. Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, chap. I, art. 8, adopted and opened for signature Jun. 9, 1994.

127. Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, chap. I, art. 9, adopted and opened for signature Jun. 9, 1994.

128. *States Party to the Belém do Pará Convention*, ORGANIZATION OF AMERICAN STATES, (2017), <http://www.oas.org/en/mesecvi/states.asp>.

129. SECOND FOLLOW-UP REPORT ON THE RECOMMENDATIONS OF THE COMMITTEE OF EXPERTS OF THE MESECVI 19 (2014) [hereinafter Second Follow-Up Report].

130. *Id.* at 20.

131. *About the Belém do Pará Convention*, *supra* note 119.

132. *What is the IACHR?*, INTER-AMERICAN CONVENTION ON HUMAN RIGHTS (2011), <http://www.oas.org/en/iachr/mandate/what.asp>

human rights violations.<sup>133</sup> One such country report was issued in 2008 by the IACHR regarding observations on the human rights situation in Haiti.<sup>134</sup> The report highlighted a special concern for the situation of women in Haiti and recommended that the Haitian government take urgent measures to ensure the rights of women and girls, protect those rights, and provide services to victims of human rights violations.<sup>135</sup> One scholar has noted that “[a]lthough some improvements have been made, efforts to implement the Commission's recommendations continue to fall short.”<sup>136</sup>

Then, in 2010, Haitian grassroots groups, organizations, and various interest legal organizations submitted a petition to the IACHR in response to the escalating gender-based violence after the earthquake.<sup>137</sup> In answer, the IACHR issued Precautionary Measures recognizing Haiti's responsibility to prevent violence against women.<sup>138</sup> The recommendations contained in the Precautionary Measures “serve as the blueprint for addressing and preventing sexual violence in Haiti's displacement camps.”<sup>139</sup> The IACHR called on the Haitian Government to take several steps to ensure the safety of women, including: to provide medical and mental health care to victims; to provide adequate security in the displacement camps in the form of increased lighting and police presence; to improve investigation of sexual violence through police training and the appointment of a special investigative units; and to incorporate the participation of grassroots organizations in planning and implementing future measures.<sup>140</sup>

#### IV. FAILURES OF HAITI'S CRIMINAL JUSTICE SYSTEM TO IMPLEMENT THE MANDATES OF INTERNATIONAL LAW AND EXAMPLES OF PROPER COMPLIANCE

In Haiti, victims begin experiencing barriers to justice from the moment the violence is committed. Society, and therefore many judicial actors, mistrust victim accounts of violence, causing difficulty at every phase of the judicial process. Further, a lack of infrastructure combined with rampant corruption construct a system in which victims require outside assistance to navigate illegal barriers presented to them—assistance which is not always available. A more

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133. *Id.*

134. *See* IACHR Report, *supra* note 6.

135. IACHR Report, *supra* note 6.

136. Bookey, *supra* note 3, at 267-8.

137. *Request by the International Women's Human Rights Clinic at the City University of New York School of Law, Madre, The Institute for Justice & Democracy in Haiti, Bureau des Avocats Internationaux, Morrison & Foerster LLP, The Center for Constitutional Rights, and Women's Link Worldwide For Precautionary Measures Under Article 25 of the Commission's Rules of Procedure*, <http://ccrjustice.org/sites/default/files/assets/IACHR%20Petition%20Haiti%2010-20-10.pdf>.

138. *Precautionary Measures*, INTER-AMERICAN CONVENTION ON HUMAN RIGHTS (2011), <http://www.oas.org/en/iachr/decisions/precautionary.asp>.

139. Davis, *supra* note 1, at 871-72.

140. *Id.*



detailed discussion of these barriers follows below.

*A. Lack of Police Resources and Will to Investigate and Pursue Cases of Violence Against Women*

A rape victim's barriers to justice in Haiti present themselves from the beginning of the judicial process, even as early as the law enforcement investigation. Chapter II, Article 10 of the Code d'Instruction Criminelle enumerates the duty of law enforcement.<sup>141</sup> Haitian police are required to investigate crimes, prepare preliminary reports, gather evidence, and arrest perpetrators of crime.<sup>142</sup> These duties include receiving and investigating complaints from the public.<sup>143</sup> Despite clear mandates of duty, law enforcement still mistreats female victims of crime.<sup>144</sup> Police often fail to carry out their duties due to a lack of law enforcement resources and will.<sup>145</sup>

Haitian police are underequipped to respond to the needs of the public.<sup>146</sup> They are notoriously difficult to reach by telephone, either because they do not have a working phone or do not answer the one they have.<sup>147</sup> Further, when a victim goes directly to the station to report that she has been a victim of sexual violence, she is often told that the police do not have the capacity to investigate the scene of the crime.<sup>148</sup> Frequently, police cannot even travel to the scene of a crime because they do not have a vehicle or gas.<sup>149</sup> Especially for victims living in rural areas, access to policing services is difficult because law enforcement resources are centralized in Port-au-Prince.<sup>150</sup> Law enforcement resources in Haiti are stretched so thin that even prisons and jails are not secure.<sup>151</sup> Therefore, evidence—and escaping criminals—are often lost early in the investigative process.<sup>152</sup> Unfortunately, the poor investigative process also often results in the acquittal of criminal defendants.<sup>153</sup>

Additionally, Haitian police often lack the will to enforce the rights of rape victims. Haitian women fear retaliation from the attacker, and police do not

141. Bookey, *supra* note 3, at 284.

142. Bookey, *supra* note 3, at 284.

143. Lankenau, *supra* note 53, at 1768.

144. Violence Against Women Report, *supra* note 82, at 2.

145. Lankenau, *supra* note 53, at 1768.

146. Violence Against Women Report, *supra* note 82, at 8.

147. Jagannath, *supra* note 90, at 37.

148. *Id.* at 38.

149. Jagannath, *supra* note 90, at 37; Lankenau, *supra* note 53, at 1768.

150. Haiti 2016 Crime Report, *supra* note 17.

151. Press Trust of India, *100 Inmates Flee Prison in Haiti During a Mutiny, One Guard Killed: Official*, NEWS18.COM (Oct. 23, 2016), <http://www.news18.com/news/world/100-inmates-flee-prison-in-haiti-during-a-mutiny-one-guard-killed-1304428.html>.

152. Lankenau, *supra* note 53, at 1768.

153. IACHR Report, *supra* note 6.

provide adequate protection, sometimes refusing to pursue the attacker at all.<sup>154</sup> Moreover, victim-shaming is a prevalent practice during investigations.<sup>155</sup> Often, police officers harbor the “inherent tendency to be suspicious of the allegations made by women victims of violence and the perception that such matters are private and low priority within the larger context of insecurity.”<sup>156</sup> In Haiti, due to discriminatory points of view, police might call into question the behavior, actions, prior sexual history, or dress of the victim instead of seeking evidence to pursue the perpetrator.<sup>157</sup>

In addition to such discriminatory reactions, police have failed to keep victims and their families informed when they attempt to cooperate with law enforcement activities.<sup>158</sup> In fact, police have been known to provide incorrect information to victims regarding the investigation.<sup>159</sup> For example, police have instructed some victims to obtain a medical certificate before filing a complaint “though they [law enforcement] are not competent to evaluate this evidence, and are not required to have it in order to take a complaint.”<sup>160</sup> Therefore, women are often reticent to contact the police at all.<sup>161</sup>

#### *B. The Medical Certificate as an Evidentiary Barrier to Justice*

Besides serving as a source of misinformation from police, the informal requirement of a medical certificate represents an evidentiary hurdle that victims must overcome during the investigation stage. Because “deficient investigations often fail to produce any additional evidence to be used at trial and a woman's own testimony is routinely discredited,” a medical certificate is used in most prosecutions to prove the victim's claims.<sup>162</sup> Forensic evidence is documented and preserved by a medical professional when they treat the victim for injuries, sexually transmitted diseases, and contraceptive needs.<sup>163</sup> Often, the medical certificate is treated as the most important evidence in the case for corroboration of the victim's own account of her rape, though it is not formally required by law.<sup>164</sup> Notably, many jurisdictions do not require corroborating evidence and instead rely on the victim's testimony as the primary evidence required for a

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154. Bookey, *supra* note 3, at 284; Lankenau, *supra* note 53, at 1772 (2013); Violence Against Women Report, *supra* note 82, at 8.

155. Jagannath, *supra* note 90, at 37-8.

156. IACHR Report, *supra* note 6.

157. Jagannath, *supra* note 90, at 37-8; Violence Against Women Report, *supra* note 82, at 8.

158. Violence Against Women Report, *supra* note 82, at 2.

159. Jagannath, *supra* note 90, at 37.

160. *Id.* at 37-8; Violence Against Women Report, *supra* note 82, at 8.

161. Jagannath, *supra* note 90, at 37.

162. Lankenau, *supra* note 53, at 1761.

163. *Id.* at 1764.

164. *Id.*

conviction.<sup>165</sup>

Medical certificates can be difficult for victims to obtain. Victims must go to a medical professional “[seventy-two] hours after a sexual aggression to preserve evidence and obtain a medical certificate,” creating difficulties for poor or rural victims who cannot access a hospital within that time.<sup>166</sup> Obtaining a medical certificate is meant to be free of charge to the victim; however, in reality, this requirement is not enforced.<sup>167</sup> Therefore, the cost of traveling to a medical facility to receive treatment and a medical certificate may prevent some victims from asserting evidence on their own behalf.<sup>168</sup>

Moreover, the practice of requiring a victim to produce a medical certificate is discriminatory and invasive. Though a medical certificate is not a mandatory item of evidence under Haitian law, most judges require that a victim obtain one.<sup>169</sup> If the certificate does not provide the physical evidence necessary to prove penetration, further investigation or prosecution may be halted.<sup>170</sup> In a case pending before the Haitian Supreme Court, the victim’s own testimony of her rape was disregarded because her medical certificate showed no evidence of force.<sup>171</sup> When a judge, prosecutor, or police officer dismisses a victim’s claim of rape due to the lack of a medical certificate or lack of a showing of force in her medical certificate, the clear message sent to a victim is this: a woman’s testimony is inherently untrustworthy.<sup>172</sup>

### *C. Lack of Representation Available to Indigent Victims of Gender-based Violence*

Victims of rape in Haiti are left especially vulnerable to discriminative practices, because they lack access to legal representation. The cost of obtaining representation is too high for the women of Haiti’s internal displacement camps.<sup>173</sup> Only the wealthy have the resources to “hire competent attorneys and

165. THOMSON REUTERS FOUNDATION, *ACHIEVING JUSTICE FOR VICTIMS OF RAPE AND ADVANCING WOMEN’S RIGHTS: A COMPARATIVE STUDY OF LEGAL REFORM 8* (Lisa Davis & Blaine Bookey, eds.) (2011).

166. *Id.* at 1761.

167. IACHR Report, *supra* note 6 (stating that the free medical certificate requirement resulted from a protocols signed by the Ministries of Health, Justice, and of the Status of Women and Women’s Rights).

168. Violence Against Women Report, *supra* note 82, at 9.

169. Jagannath et. al., *supra* note 30, at 17.

170. See Lankenau, *supra* note 53, at 1764.

171. Phillips, *supra* note 22, at 21; Violence Against Women Report, *supra* note 82, at 9.

172. See Bookey, *supra* note 3, at 273; Violence Against Women Report, *supra* note 82, at 9 (stating that the young woman in question has been bound, beaten, and raped twice, leaving her clothing ripped and her head matted with blood; however, her attacker was not pursued by police because he claimed the sex was consensual and a contrary medical certificate proved more persuasive than her own testimony).

173. Bookey, *supra* note 3, at 274.

finance police investigations.”<sup>174</sup> For the poor, on the other hand, court fees and lawyers are a financial impossibility.<sup>175</sup> Making matters worse, most Haitians do not understand their rights or legal processes due to a lack of education and unavailability of legal texts.<sup>176</sup>

Further, few lawyers provide low-income services.<sup>177</sup> The Haitian legal community does not have a custom of providing pro bono service, though some lawyers do persist in serving low-income clients despite a dearth of training and support.<sup>178</sup> Still, for most indigent victims of crime, free legal services have been virtually unavailable.<sup>179</sup> This gap in legal representation is partly due to a lack of “structures in place for lawyers to work systematically against systemic violations of rights.”<sup>180</sup> The government does not provide public legal assistance or advocates, though the Ministry of Justice has claimed to be working with Haiti’s bar association to find solutions.<sup>181</sup>

Without representation, victims can become hopelessly confused during judicial proceedings. While Haitian Creole is a national language per Haiti’s Constitution, court proceedings are conducted in, and most legal texts are written in, French exclusively.<sup>182</sup> However, eighty percent of Haitians do not speak French.<sup>183</sup> Further, even when a judge speaks in Haitian Creole, the clerk is required to make the record in French.<sup>184</sup> For a victim who only speaks and reads Haitian Creole, the practice of proceeding and recording in French can be fatal to a victim’s understanding of her case and to successful prosecution of the perpetrator.

Furthermore, because most jury members also only speak and understand Haitian Creole, they are unable to “impartially receive, understand, and review the evidence and to pronounce a verdict.”<sup>185</sup> Where the juror is already reticent to act and cannot understand the proceedings, justice is less likely to be achieved.<sup>186</sup> When a woman who does not know French is unrepresented, she has no advocate to review a clerk’s transcription of her statements, interact with the judge, or explain her case to the jury. Therefore, she is vulnerable to disenfranchisement in the form of an inaccurate record of the proceedings or

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174. *Id.* at 273.

175. Jagannath et. al., *supra* note 30, at 11.

176. Violence Against Women Report, *supra* note 82, at 7.

177. Cavise, *supra* note 33, at 888 ; Phillips, *supra* note 22, at 13.

178. Bookey, *supra* note 3, at 273.

179. Jagannath, *supra* note 90, at 34.

180. Bookey, *supra* note 3, at 273.

181. Violence Against Women Report, *supra* note 82, at 7.

182. Constitution of the Republic of Haiti, title I, chap. 1, art. 4, [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=217598](http://www.wipo.int/wipolex/en/text.jsp?file_id=217598) (providing that Haitian Creole and French are both official languages of Haiti); Jagannath et. al., *supra* note 30, at 11; Phillips, *supra* note 22, at 12.

183. Violence Against Women Report, *supra* note 82, at 7.

184. Cavise, *supra* note 33, at 892-3; Jagannath, *supra* note 90, at 49.

185. Cavise, *supra* note 33, at 893.

186. *Id.* at 892-3.

hesitant jury determination.<sup>187</sup>

*D. Lack of Judicial Resources and Prevalence of Judicial Corruption*

Moreover, judicial officers cannot be trusted in Haiti to preserve the rights of disenfranchised litigants because “accountability of government officials is nonexistent.”<sup>188</sup> The lack of oversight allows corrupt clerks and judges to use the system for their own pecuniary gain.<sup>189</sup> Further, “[c]hronic under-investment in the court system and low salaries create incentives for corruption among police and judges.”<sup>190</sup> Even as judicial actors are held unaccountable for their actions, they are given elitist training that causes them to provide “preferential treatment to the powerful while they discount the causes, testimonies, and legal needs of the poor.”<sup>191</sup> Judges have even released perpetrators of gender-based violence due to an unwillingness to prosecute.<sup>192</sup>

A need for greater resources creates additional issues: Haiti’s judicial system is unequipped to handle the large volume of cases that have arisen post-disaster, resulting in back-logs.<sup>193</sup> In the nation’s capital of Port-au-Prince, the docket of the court is particularly large.<sup>194</sup> Some clerks take advantage of the desperation of victims to receive swift justice. Haiti’s justice system is “rife with corruption and racketeers who try to intimidate and threaten the attorney representing the victims in court.”<sup>195</sup> These clerks accept bribes from litigants who can afford to pay them in exchange for allowing those cases to be heard earlier, resulting in long wait times for poor victims.<sup>196</sup> Even worse, those clerks sympathetic to, or in the pay of, perpetrators of rape have kept information from the victim and manipulated the perpetrator’s release.<sup>197</sup>

As long as Haiti’s poor are disenfranchised by corruption in the legal system, victims of rape will struggle to receive justice. The “exclusion [of the poor from the justice system] reinforces a culture of impunity in the justice system” and perpetuates corruption and human rights abuses.<sup>198</sup> While the justice system fails to adequately investigate, prosecute, and punish perpetrators, offenders will act with impunity, and gender-based violence will be perpetuated by inaction.<sup>199</sup>

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187. Jagannath, *supra* note 90, at 49.

188. *Id.* at 909.

189. Phillips, *supra* note 22, at 12.

190. *Id.* at 13.

191. Jagannath et. al., *supra* note 30, at 11; *see also* Phillips, *supra* note 22, at 12.

192. Phillips, *supra* note 22, at 8.

193. Jagannath, *supra* note 90, at 30.

194. IACHR Report, *supra* note 6.

195. Jagannath et. al., *supra* note 30, at 17.

196. Jagannath, *supra* note 90, at 30.

197. *Id.* at 50-51.

198. Jagannath et. al., *supra* note 30, at 12.

199. IACHR Report, *supra* note 6; Phillips, *supra* note 22, at 8.

*E. Lack of Comprehensive Legislation to Prosecute and Prevent  
Violence Against Women*

Finally, though various international human rights protections are incorporated in Haitian law, as discussed in Section III, justice for victims of rape will continue to be inconsistent and inadequate without domestic legislation. The IACHR has noted that the justice system is comprised of “antiquated legal texts and overly formalistic and time consuming procedures.”<sup>200</sup> Though the Haitian Penal Code was revised in 2005 to comply with international human rights requirements, further domestic legislation is still needed because “Haiti lacks a comprehensive evidence code that governs the special circumstances involved in cases of rape.”<sup>201</sup>

Currently, Article 278 of the Haitian Penal Code reads, “Whoever commits the crime of rape, or sexual aggression, perpetrated or attempted with violence, threats, surprise or psychological pressure, against a person of either sex, will be punished by ten years of hard labor.”<sup>202</sup> Article 279 further mandates, “If the crime was committed against a child below the age of fifteen years, the offender shall be punished by fifteen years of hard labor.”<sup>203</sup> These additions to the Haitian Penal Code represent more stringent sanctions of perpetrators than previously available; however, the provisions are often inadequate to reach a conviction of rape.<sup>204</sup>

While the revised legislation provides harsher punishments, the crimes of rape and sexual aggression are left undefined. “The 2005 rape law does not define rape, sexual assault or the elements of consent, making it difficult to use the law to prosecute rape, especially intimate partner rape.”<sup>205</sup> Because no elements of the crime are enumerated, judges are forced to determine the elements on their own.<sup>206</sup> As individual judges apply and interpret the law, it is left “vulnerable to misinterpretation and misapplication.”<sup>207</sup> For example, the language of the law does not explicitly condemn domestic violence, allowing judges to ignore spousal rape.<sup>208</sup> Additionally, sexual harassment is not criminalized.<sup>209</sup> Further, preventative protections for victims of gender-based violence, such as restraining orders, are currently non-existent under Haitian law.<sup>210</sup>

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200. IACHR Report, *supra* note 6.

201. Davis, *supra* note 1, at 873; Lankenau, *supra* note 53, at 1767.

202. Lankenau, *supra* note 53, at 1766.

203. *Id.*

204. Davis, *supra* note 1, at 873.

205. Violence Against Women Report, *supra* note 82, at 3.

206. Lankenau, *supra* note 53, at 1766.

207. *Id.*

208. Telephone Interview, *supra* note 11.

209. Violence Against Women Report, *supra* note 82, at 9.

210. Phillips, *supra* note 22, at 14.

## V. RECOMMENDATIONS

In order to fulfill its international human rights obligations and ensure the rights of women and girls, Haiti must take action. “Under international law, the primary responsibility for the protection of human rights falls to the government of the individual state.”<sup>211</sup> Therefore, Haiti should build on the progress it has already made by knocking down the remaining barriers to justice that victims of gender-based violence face. A comparison of best practices and proper compliance in other developing countries which have adopted all or some of the international instruments which form Haiti’s obligations yields ideas for how Haiti can begin to fulfill its responsibility to victims. By replacing existing barriers with its own versions of the best practices discussed below, Haiti can begin to establish safety and justice for victims of gender-based violence.

*A. Need for Accurate, Timely Reporting and Ongoing Collection of Information on Violence Against Women*

Developing appropriate and effective measures to end violence against women will require a thorough understanding of the remaining systemic failures. Moreover, the human rights instruments that Haiti has ratified require reporting.<sup>212</sup> Mexico has fulfilled its obligation to collect information by statutorily establishing a National Data and Information Bank on cases of Violence against Women to facilitate the analysis of the needs of women and to aid in providing required services.<sup>213</sup> Haiti can begin to better understand the nature of gender-based violence and accurately fulfill its reporting obligations by regularly collecting accurate statistics related to gender-based violence.<sup>214</sup> “This information should be used as a foundation for designing and assessing the effectiveness of public policies and other measures.”<sup>215</sup> As it stands, reliable information about the number of women affected by gender-based violence is hard to find.<sup>216</sup> Though Haiti has promised to begin tracking violence against women, it has not yet created a system for gathering and managing such information.<sup>217</sup> The creation of a database of information about gender-based crimes is critical to measuring the effectiveness of Haiti’s protections of women’s

211. Bookey, *supra* note 3, at 257.

212. See examples of reporting requirements at *States Party to the Belém do Pará Convention*, ORGANIZATION OF AMERICAN STATES, (2017), <http://www.oas.org/en/mesecvi/states.asp>; *Overview of the Convention*, *supra* note 96; see *Country reports*, UNWOMEN, <http://www.un.org/womenwatch/daw/cedaw/> (Last updated 2009) (showing that Haiti has not submitted a country report).

213. INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, ACCESS TO INFORMATION, VIOLENCE AGAINST WOMEN, AND THE ADMINISTRATION OF JUSTICE IN THE AMERICAS, 44 (2015). [hereinafter *Access to Information Report*].

214. *Access to Information Report*, *supra* note 212, at 34.

215. *Id.*

216. *Violence Against Women Report*, *supra* note 82, at 4-5.

217. *Id.* at 7.

rights.<sup>218</sup>

*B. Necessary Judicial Reform to Prosecute and Prevent Violence  
Against Women*

Judicial reform will be necessary to increase faith in the judicial system and produce just outcomes for victims.<sup>219</sup> Haiti can begin its judicial reform by better training judicial actors to respond to cases of gender-based violence.<sup>220</sup> Women's grassroots organizations have already pressured law enforcement to institute sensitivity training.<sup>221</sup> Since awareness and reporting of violent crimes against women has increased, improvement in the treatment of victims has been seen in officers who have been appropriately trained.<sup>222</sup> The effectiveness of such training has been seen in Jamaica, where to combat discriminatory attitudes, the establishment of special sex crimes police units encourages women to report incidents in a safe environment.<sup>223</sup> Efforts to train judges, prosecutors, and lawyers on the provisions of international human rights instruments and the discriminatory effect of misogynistic attitudes and stereotypes have been undertaken by the Haitian government with some success.<sup>224</sup> However, the government of Haiti should institute a formalized training program for all judicial actors who will participate in the investigation and prosecution of gender-based violence.<sup>225</sup>

Haiti can utilize training of police, prosecutors, and judges to encourage courts to consider evidence other than the medical certificate in rape cases. Due to a lack of investigative resources, courts must rely on testimonial evidence.<sup>226</sup> However, "a woman should not be precluded from pursuing a viable claim of rape just because she is unable to obtain a medical certificate or it does not provide sufficient corroboration of her account."<sup>227</sup> Consequently, in Colombia, the Constitutional Court has "held that rape victims have a constitutional right to be protected from evidentiary measures that represent an unreasonable, unnecessary, and disproportionate invasion of their privacy," perhaps indicating that their testimony should be relied upon by lower courts.<sup>228</sup> Haiti can follow suit by teaching prosecutors to use expert testimony to bolster the effect of a medical

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218. *Id.*

219. Bookey, *supra* note 3, at 272 (explaining that citizens will not attempt to use a judicial system that they cannot trust).

220. Cavise, *supra* note 33, at 917.

221. Phillips, *supra* note 22, at 2.

222. Jagannath, *supra* note 90, at 39.

223. INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, ACCESS TO JUSTICE FOR WOMEN VICTIMS OF VIOLENCE IN THE AMERICAS, 99 (2015) [hereinafter Access to Justice Report].

224. Violence Against Women Report, *supra* note 82, at 8.

225. *Id.* at 8-9.

226. IACHR Report, *supra* note 6.

227. Lankenau, *supra* note 53, at 1764.

228. Access to Justice Report, *supra* note 221, at 103.



certificate, as victims' lawyers have been in the practice of doing.<sup>229</sup> More importantly, by fostering an understanding of the effect of discriminatory practices, the Haitian government can strengthen investigation and prosecution of violent crimes against women, especially by urging judicial actors to acknowledge and believe the testimony of the victim.<sup>230</sup>

Furthermore, Haiti's judicial system must be pulled out of the quagmire of corruption. Haiti must "adopt measures to address deficiencies in the administration of justice."<sup>231</sup> Increased judicial accountability is critical to ensuring equal protection to victims of gender-based violence.<sup>232</sup> For example, reports of police misconduct and subsequent consequences should be made public to enforce accountability and encourage public trust.<sup>233</sup> Often, judges conduct investigations in secrecy, allowing corruption to flourish.<sup>234</sup> Transparency and accountability of judicial actors is essential to inspire public confidence that the justice system will protect human rights.<sup>235</sup> In several countries, judicial councils or internal disciplinary entities have been vested with the authority to discipline and sanction corruption committed by judges, ensuring accountability and transparency.<sup>236</sup> The justice system must be able to assure victims that it can achieve just results without the corrosive influence of corruption.<sup>237</sup> Draft laws proposed by the Justice Ministry to create "a superior council of magistrates to oversee and sanction misconduct by judges" must be swiftly implemented.<sup>238</sup>

As a corollary to ending judicial corruption, Haiti must prioritize increasing judicial capacity. This will require the allocation of resources to long-term reform.<sup>239</sup> The human resources of the justice system must be supported and increased. Financial resources should be allocated to increasing salaries for judges and court staff.<sup>240</sup> Moreover, the police force must be strengthened, as effective

229. Telephone Interview, *supra* note 11 (explaining that the legal services organization Bureau des Avocats Internationaux uses expert testimony when it represents victims).

230. See Violence Against Women Report, *supra* note 82, at 9

231. IACHR Report, *supra* note 6.

232. *Id.*

233. *Id.*

234. ANNE-CHRISTINE D'ADESKY, BEYOND SHOCK: CHARTING THE LANDSCAPE OF SEXUAL VIOLENCE IN POST-EARTHQUAKE HAITI: PROGRESS, CHALLENGES & EMERGING TRENDS 2010-2012 135 (PotoFanm+Fi Nov. 2012) <https://potofi.files.wordpress.com/2012/12/beyond-shock-abridged-version-haiti-gbv-progress-report-nov-2012.pdf>.

235. *Id.*

236. Judicial Corruption report 45 (listing Argentina, Bolivia, Peru, Ecuador, Colombia, El Salvador, Mexico, Uruguay, Chile, Brazil, Panama, Costa Rica, Nicaragua, Guatemala, the Dominican Republic, Venezuela, and Paraguay as countries that have vested disciplinary power in some sort of institution or council)

237. Cavise, *supra* note 33, at 910.

238. *Id.*

239. IACHR Report, *supra* note 6.

240. D'Adesky, *supra* note 218 (noting a correlation between low salaries and corruption because relative poverty causes judges to accept bribes).

investigation and prosecution requires more police to take victim complaints and more prosecutors to prosecute cases.<sup>241</sup> In an effort to achieve this result, Brazil staffs police units twenty-four hours a day with specially trained officers to respond and investigate sexual violence.<sup>242</sup> Likewise, in the Dominican Republic, resources have been designated for police stations to accept complaints from women who have been raped and give them specialized information and protection.<sup>243</sup> Just as critically, the physical infrastructure of the judicial system must be rebuilt to its pre-quake state. Judges and their staff need better access to adequate facilities, equipment, materials, and legal texts.<sup>244</sup>

Even as Haiti bolsters its capacity to accept and dispose of cases involving violence against women, it must improve victims' access to the justice system, especially for the poor. One way in which the Haitian criminal justice system already gives victims superior access is by giving them status as a *partie civile*, or party to the case.<sup>245</sup> "The *partie civile* procedure is particularly useful in responding to the challenges and opportunities of Haiti's justice system."<sup>246</sup> This status gives victims access to the proceedings.<sup>247</sup> Haiti's criminal code provides victims with access of a kind not seen in other accusatorial systems.<sup>248</sup> Victims have the right to demand an investigation, to counsel, to present evidence, to present experts, and to be notified of the progress of the case, and, by court order, the victim can access the case file and evidence.<sup>249</sup>

However, in order to ensure that the courts honor the victim's procedural role, the victim needs to understand the proceedings and have access to legal counsel. Therefore, court proceedings should be held in Haitian Creole if the victim does not speak French, and courts should offer translators to assist victims and juries when a mixture of French and Creole speakers is present.<sup>250</sup> Nearby Antigua and Barbuda have begun assigning an advocate who can guide the victim through court proceedings in a protective order matter, a measure that could help Haitian victims understand their cases in prosecutions in Haiti.<sup>251</sup> Haiti must also

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241. Telephone Interview, *supra* note 11.

242. Thomson Reuters Foundation, *supra* note 163, at 41.

243. Access to Justice Report, *supra* note 221, at 99.

244. IACHR Report, *supra* note 6.

245. See Cavise, *supra* note 33, at 903-904.

246. Phillips, *supra* note 22, at 22.

247. Cavise, *supra* note 33, at 902.

248. *Id.*

249. *Id.* at 913.

250. OFFICE OF THE HIGH COMMISSIONER, CONCLUDING OBSERVATIONS ON THE COMBINED EIGHTH AND NINTH PERIODIC REPORTS OF HAITI, (United Nations 2016), <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsgGIUyogsos8GkK8DnmVpywnQKqSmU2B5P55dflytuiZF8samyQ3k4vPRUCDuFgnTlaR1FM TgxFuhvNljy7TUIt0FRM1u7q19iWjHrYy4YRbifjId%2b6nRmd%2btznzJq15tg%3d%3d> [hereinafter CEDAW Committee Report].

251. Access to Justice Report, *supra* note 221, at 99.

“create a corps of well-trained and motivated public interest lawyers.”<sup>252</sup> A pro bono initiative should seek to create a culture of low-income assistance within the lawyering community. A solution was found in Bolivia and in Peru in the form of multidisciplinary clinics and centers that include legal services to women. Haiti should allocate funds to the courts to create a low-income legal aid program specifically for indigent victims of violence against women.<sup>253</sup>

Of course, some low-income legal services organizations are representing victims already without government assistance—for example, the Institute for Justice & Democracy in Haiti and the Bureau des Avocats Internationaux.<sup>254</sup> “By bringing cases through the Haitian legal system, lawyers reinforce the existing legal framework to provide redress to victims.”<sup>255</sup> Using impact litigation, these organizations seek rule of law reform by bringing cases, utilizing the *partie civile* procedure.<sup>256</sup> By using the work of these organizations and the model of state created legal services in other countries as a guide, the government of Haiti can develop legal services for poor women who want to exercise their rights to join a case in the *partie civile* capacity.

### *C. Critical Legislation to Ensure the Human Rights of Women and Comprehensively Protect the Women from Violence*

Due to the postponement of Haiti’s elections, human rights reform has not been a legislative priority.<sup>257</sup> For meaningful reform to take place, Haiti requires greater political stability.<sup>258</sup> Draft legislation that will eliminate discriminatory laws and provide great assurances of protection to women has been pending before Haiti’s parliament for years, and one draft law meant to protect women situated as domestic workers was passed in 2009 but was not promulgated.<sup>259</sup> However, some scholars are skeptical that new legislation will yield practical results.<sup>260</sup> Previous attempts to provide greater assurance of women’s rights through legislation have failed, “owing to a lack of consistent and coordinated actions, and inadequate financial, technical and human resources.”<sup>261</sup> Still, the newly elected parliament must promptly pass new legislation to provide greater

252. Bookey, *supra* note 3, at 282.

253. IACHR Report, *supra* note 6.

254. *See About*, Bureau des Avocats Internationaux Institute for Justice & Democracy in Haiti (2013), <http://www.ijdh.org/about/>.

255. Phillips, *supra* note 22, at 2.

256. Telephone Interview, *supra* note 11; Phillips, *supra* note 22, at 22-3.

257. Violence Against Women Report, *supra* note 82, at 10.

258. Press Statement, John Kerry, Secretary of State, (Jan. 9, 2015), <http://www.state.gov/secretary/remarks/2015/01/235755.htm>.

259. Violence Against Women Report, *supra* note 82, at 10 (claiming that the Haitian government does not “take women’s rights seriously.”).

260. *See Cavise*, *supra* note 33, at 909 (observing that “It is not enough to pass new codes. That kind of formal recognition of rights has yet to yield practical results in Haiti”).

261. CEDAW Committee Report, *supra* note 227.

protections of women's human rights for the country to realize long-term reform.<sup>262</sup>

Any new legislation designed for the protection of women should further define acts of violence, provide remedies to victims, and strengthen prosecution of perpetrators. Haiti's criminal code was adopted from the French legal tradition and, aside from the 2005 criminalization of rape, has not been updated to protect the human rights of women.<sup>263</sup> Its neighbors, by contrast, have been legislating protections for women. In Brazil, for example, sexual contact without consent, defined in terms of the victim's ability to state her free will, is considered rape or sexual assault.<sup>264</sup> Statutory condemnation of sexual harassment is now common.<sup>265</sup> Domestic violence is also commonly outlawed.<sup>266</sup> Moreover, many countries allow victims to seek protective orders, with a variety of remedies available through the order.<sup>267</sup> To ensure and protect these rights in Haiti, new legislation must codify the elements of rape and consent, criminalize spousal rape and domestic violence, criminalize sexual harassment, and provide for restraining orders.<sup>268</sup>

The draft laws waiting before Haiti's parliament should be expedited, and parliament should commit to a time frame for passage and promulgation now that successful elections have been held.<sup>269</sup> The draft laws awaiting the debate and approval of parliament will achieve these goals, if passed and promulgated. The first of these laws is a comprehensive bill which addresses violence against women and girls.<sup>270</sup> Haiti's Ministry for the Status of Women and Women's Rights, in conjunction with the Organization of American States, drafted a law that would provide new remedies to victims of gender-based violence.<sup>271</sup> Currently, rape is not criminalized in marriage.<sup>272</sup> Likewise, sexual harassment is

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262. Violence Against Women Report, *supra* note 82, at 10.

263. *Id.* at 3.

264. Thomson Reuters Foundation, *supra* note 163, at 19.

265. Access to Justice Report, *supra* note 221, at 109 (listing some countries in situations comparable to Haiti that have outlawed sexual harassment, including Argentina, Brazil, Chile, the Dominican Republic, Honduras, Ecuador, El Salvador, and Paraguay).

266. *Id.* at 104 (listing Antigua and Barbuda, Argentina, the Bahamas, Barbados, Belize, Bermuda, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominica, the Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Lucia, Saint Vincent and the Grenadines, St. Kitts and Nevis, Trinidad and Tobago, Uruguay, and Venezuela among countries with revised penal codes that criminal domestic violence).

267. *Id.* at 106 (including the Dominican Republic, Venezuela, Paraguay, Argentina, Chile, and Colombia).

268. See Phillips, *supra* note 22, at 14.

269. CEDAW Committee Report, *supra* note 227.

270. Phillips, *supra* note 22, at 14-15.

271. *Id.*

272. Second Follow-up Report, *supra* note 128, at 43.

not a criminal act.<sup>273</sup> Nor are victims able to seek protection through restraining orders.<sup>274</sup> The bill would criminalize stalking and sexual harassment, expand the definition of rape to include intimate partner rape, provide for restraining orders in domestic violence cases, and establish a Court of Violence Against Women.<sup>275</sup> By explicitly criminalizing more acts of sexual assault and making new legal options available to victims, this draft bill, if passed, would transform the way victims encounter the justice system.<sup>276</sup>

The second draft law pending before parliament is a draft penal code.<sup>277</sup> It addresses some of the shortcomings of the 2005 rape law.<sup>278</sup> Under the draft penal code, sexual assault would be criminalized, even if a relationship exists between the perpetrator and victim, thereby explicitly encompassing domestic violence.<sup>279</sup> Further, the draft defines the elements of consent.<sup>280</sup> It also includes a statutory rape provision and enumerates aggravated sexual assault in situations of incest or when a firearm is used.<sup>281</sup> These provisions would bolster the use of the penal code in prosecutions of gender-based violence.

By quickly passing these draft bills, the Haitian parliament would be making a commitment to protecting women from gender-based violence and ensuring full enjoyment of human rights. However, as long as “these laws are pending, the Government should take even more care to aggressively pursue other efforts to address intimate partner violence, sexual harassment and gender discrimination.”<sup>282</sup>

#### *D. More Women Included in Public Leadership and Decision-making Roles*

To institute changes that will benefit women, more women should be included in leadership positions within the government. Overall, women are underrepresented in every branch of Haiti’s government.<sup>283</sup> There are some female judges, despite the fact that women receive less education, but the judiciary is male-dominated.<sup>284</sup> In nearby countries, significant steps to include women in high level judiciary positions have been taken, as women have been appointed to the highest courts of Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, El Salvador, Guatemala, Honduras, Panama, Nicaragua, and

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273. Violence Against Women Report, *supra* note 82, at 9-10.

274. Telephone Interview, *supra* note 11.

275. Phillips, *supra* note 22, at 14-15.

276. *Id.*

277. Violence Against Women Report, *supra* note 82, at 2.

278. Phillips, *supra* note 22, at 14-15.

279. *Id.*

280. *Id.*

281. *Id.*

282. Violence Against Women Report, *supra* note 82, at 10.

283. Gender Issues Report, *supra* note 55, at 3.

284. Telephone Interview, *supra* note 11.

Paraguay.<sup>285</sup> Additionally, “female members of the judiciary expressed discontent with the lack of female representation in the justice system, and provided numerous examples of unequal treatment compared to their male colleagues” in a recent IACHR report.<sup>286</sup>

Women must be represented in the Haitian government in order for there to be a gender perspective reflected in public policies and programs.<sup>287</sup> Unfortunately, a best practices example of adequate representation of women in government does not exist, and the IACHR has noted that “women continue to be grossly underrepresented here [in the countries that comprise the IACHR] and everywhere else in the world.”<sup>288</sup> Therefore, Haiti has an opportunity to be a world leader and must ensure that it is encouraging female leadership and participation in public life. To do this, the Superior Council of the Judiciary should “publicly commit to ensuring more equal representation and appoint more female judges.”<sup>289</sup> The government should also seek to meet its quota for women assuming elected office by incentivizing parties to submit female candidates and encouraging female candidates with an expanded civic education campaign.<sup>290</sup> In conjunction with efforts to increase female leadership in individual roles, the government should adequately fund the Ministry for the Status of Women and Women’s Rights.<sup>291</sup>

## VI. CONCLUSION

Haiti has faced many difficulties in recent years. Repeated natural disaster destroyed the infrastructure of the government, and along with it, the safety and security of the Haitian people as violence became prevalent in internal displacement camps.<sup>292</sup> Political instability persisted as the government scrambled to recover, institute the rule of law, and hold subsequent elections. In the midst of the recovery, violence against women increased as the rule of law decreased, and governmental focus on human rights enforcement fell to the wayside.<sup>293</sup> Consequently, Haiti has not been fulfilling its international human rights obligations.

However, over time, improvements have been made. Signs of recovery are promising, as reconstruction is ongoing, displacement is decreasing, and health and economic indicators are improving.<sup>294</sup> Moreover, law enforcement has become more responsive to complaints of gender-based violence, and a record

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285. Access to Justice Report, *supra* note 221, at 103.

286. IACHR Report, *supra* note 6.

287. *Id.*

288. Access to Justice Report, *supra* note 221, at 103.

289. Gender Issues Report, *supra* note 55, at 4.

290. *Id.* at 9.

291. CEDAW Committee Report, *supra* note 227.

292. *See* Davis, *supra* note 1, at 878.

293. Bookey, *supra* note 3, at 258.

294. Kerry, *supra* note 233.

number of perpetrators are being convicted for sexual assault.<sup>295</sup> Public trust in law enforcement is now higher when compared to other government agencies.<sup>296</sup> With the advent of successful elections, Haiti is now poised to continue improving its human rights response.<sup>297</sup>

Still, more can be done to protect the human rights of women. Victims of gender-based violence face barriers to justice in the form of discrimination, high costs, and uncertain outcomes when they attempt to access the judicial system.<sup>298</sup> Often, law enforcement, prosecutors, and judges fail to act on behalf of female victims due to a combination of a lack of resources, corruption, and misogynistic attitudes.<sup>299</sup> Women also face procedural battles when attempting access the courts in the form of evidentiary difficulties and inadequate statutory protections.<sup>300</sup>

As Haiti continues to create solutions to protect victims, prevent gender-based violence, and prosecute offenders, it should begin to maintain accurate data collection and reporting systems.<sup>301</sup> The country should implement judicial reform to combat corruption and bolster judicial resources.<sup>302</sup> The newly elected government should pass and promulgate new legislation that will condemn more acts of gender-based violence and provide more options to victims.<sup>303</sup> Few women hold positions of governmental authority, compared to men, but by encouraging women to run for public office and assume public leadership roles, Haiti can expedite changes in women's right protections.<sup>304</sup> Haiti must act to prevent violence against women, prosecute perpetrators of such violence, and eradicate violence and discrimination against women, once and for all. By instituting judicial and legislative reform, Haiti can establish greater rule of law thereby fulfilling its international obligations and protecting women from human rights violations.

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295. Phillips, *supra* note 22, at 2.

296. Haiti 2016 Crime Report, *supra* note 17.

297. Interview with Garcon Jones, Cadet Wislet, & Cadet Wood-ky, Community Leaders, LaMare and Terre-Selel, Haiti (Mar. 13, 2017) [hereinafter Interview] (believing that the new government will provide stability, is anti-violence, and will support women and human rights).

298. See Bookey, *supra* note 3, at 274.

299. Violence Against Women Report, *supra* note 82, at 8.

300. See Lankenau, *supra* note 53, at 1761; IACHR Report, *supra* note 6.

301. Violence Against Women Report, *supra* note 82, at 7.

302. Bookey, *supra* note 3, at 272.

303. Violence Against Women Report, *supra* note 82, at 10.

304. IACHR Report, *supra* note 6.