Beyond the Courtroom

When the earthquake hit Port-au-Prince on January 12, 2010, the home of the thirty-eight-year-old woman and her husband collapsed on them. The husband was killed, and the woman was trapped for several hours before she was able to escape. Two days later, as the woman was searching for her husband’s body in the rubble, she was grabbed by two men carrying guns. They pulled her into a nearby tent and raped her.

Less than four months later, when the same woman was using the latrine after dark at an IDP camp, two other men forced their way into the stall. One pressed a knife against her waist, and then they raped her.

The woman has since made several attempts to commit suicide by drinking bleach. So far, her daughters have been able to stop her.¹

A few weeks later, a twenty-four-year-old woman, also a widow, was taking trash to a dumping site at the same camp. Four men forced her into a car and drove to a deserted street, where all four raped her. Then, one grabbed the woman by the throat and ordered her to open her mouth. She did so, and the man bit off the end of her tongue.²

There was no systematic effort to collect all reports of gender-based violence after the earthquake, but there is no question that attacks occurred with alarming frequency. New York University’s Center for Human Rights and Global Justice conducted a 2011 study of four different IDP camps in and around Port-au-Prince. Fourteen percent of families living in the camps reported that at least one of their household members had been victimized by sexual violence in the first year after the earthquake. Nearly one in five of the reported victims was under the age of eighteen.³
A random survey sample by University of Michigan researchers yielded an estimate that over ten thousand people were sexually assaulted in Port-au-Prince in the first six weeks after the earthquake.\(^4\) As recently as the early months of 2012, BAI was still receiving an average of four new rape victims in its offices every week, more than half of them children. Even these disturbing numbers likely underestimate the extent of the crisis; it has been well demonstrated that fear of retaliation and stigma create a reluctance to report attacks. As one Haitian woman told the NYU researchers, “If you speak about it, they will kill you.”\(^5\)

In the wake of the rape epidemic, unwanted pregnancies followed. A UN and Government of Haiti study in the fall of 2010 reported pregnancy rates in the IDP camps at three times the urban average before the earthquake, with two-thirds of the pregnancies unwanted.\(^6\) Haiti has one of the highest HIV rates in the Western Hemisphere, with one of every fifty adults HIV-positive, so the rapes are feared to have infected many victims with the virus.\(^7\) Lack of access to prenatal and obstetric care in Haiti led to maternal mortality rates that were among the world’s worst even before the earthquake devastated Haiti’s meager health-care system. Post-earthquake, a 2011 Human Rights Watch study told harrowing stories of women and girls giving birth on street corners and tent floors.\(^8\) Abortion is a criminal offense in Haiti, but the drug misoprostol, which can induce abortion, is often sold on the street. Haitian health providers reported a post-earthquake spike in patients with complications from self-administering misoprostol or using unsterilized metal objects to induce abortions.\(^9\)

Before the earthquake, women in Haiti already had it bad. Although Haitian women are referred to as poto mitan (the pillars of society), they bear the worst of Haiti’s poverty and lawlessness. Before the earthquake, less than a quarter of women had access to modern methods of contraception, and one in every ten Haitian girls had a child or was pregnant by age seventeen. Girls usually entered the education system later than boys, and early pregnancies and domestic obligations meant they usually dropped out earlier, too. Most women found their economic opportunities limited to the informal sector, and, when they did get jobs, their salaries were lower than men. In a country where land ownership is so important to peasants’ survival, women in common-law marriages—known as plasaj and constituting the majority of conjugal relationships in rural Haiti—have no legal right to the land they may cultivate for decades. Sixty percent of female-headed households lived in extreme poverty. Women have long been significantly underrepresented in political leadership and in government, with only a single female in the thirty-member senate as of 2011, and just five women in the ninety-nine-member Chamber of Deputies. A woman has not served on the Cour de Cassation (supreme court) for the past twenty years. Even the rape crisis after the earthquake had plenty of brutal precedent, with one Haitian official estimating in 2000 that as many as 90 percent of Haitian women had experienced gender-based violence in their lives. Rape was regularly used as a weapon of terror and political repression during Haiti’s military regime in 1991–1993 and during the 2004–2006 conflicts.\(^10\)
After the earthquake, things got even worse for Haitian women. Of course, the quake directly maimed and killed tens of thousands of women, including leaders in government and journalism and inspirational women’s rights activists like Myriam Merlet, Magalie Marcelin, and Anne Marie Coriolon. Historically, women tend to bear a disproportionate share of the harm after disasters. Sexual violence increased in tense, lawless post-disaster settings like those created by Hurricane Katrina and the South Asian tsunami of 2004, as well as in the aftermath of Haitian hurricanes and tropical storms. The night of the Haitian earthquake, 4,500 prisoners escaped from the Haitian National Penitentiary, further destabilizing a chaotic situation filled with despair and violence.

The IDP camps, which had almost no security presence and limited lighting after dark, proved to be the most dangerous settings of all. The camp tents and shacks offered virtually no physical barriers to intrusion, and women were attacked while walking to fetch water or to reach latrines. Many frightened women resorted to defecating in plastic bags or in the open after dark, which itself carried risk. As a 2011 report coauthored by BAI and IJDH put it, “These [post-earthquake] conditions have created an environment in which people feel frustrated, desperate, and dehumanized—emotions that all too often are channeled into sexual violence against women and girls.” Neither the US military presence immediately after the earthquake nor the long-term presence of MINUSTAH troops in Haiti provided any meaningful protection for camp residents.

Violence and deprivation walked hand-in-hand. Eighty-four percent of the IDP camps’ residents in NYU’s survey reported going at least one day without eating in the previous week, and the study found strong correlations between sexual victimization and a family’s lack of access to food, water, and adequate sanitation. Women who were forced to go far from home to search for food and water put themselves at risk of attack during their quest, and often had to leave children at home unattended and vulnerable. Hunger and thirst forced many struggling women, particularly girls whose parents died in the earthquake, to resort to so-called survival sex. In one IDP camp focus group interview by the NYU researchers, every woman present reported being asked at least once to trade sex for goods and services. For some women, there is little choice but to agree. “People will try to survive by the way they can,” one woman living in an IDP camp told Human Rights Watch. “So, for US $0.60 or $1.25, you have sex just for that. It’s not good to make prostitution, but what can you do? You have to eat.”

In response to this epidemic of sexual violence after the earthquake, the reactions to the victims by Haitian police and judicial officials ranged from indifference to outright hostility. The widow who was raped twice, once while searching for her husband’s body in the earthquake rubble and once in an IDP camp latrine, later saw one of the rapists return to the camp two months after she was attacked. A friend caught the man and held him down, and others called the police emergency number.
There was no response, and eventually the man broke free. The victim fears he will return and retaliate. The same fear kept the rape victim whose tongue was bitten off from initially making a police report at all. No arrests have been made in her case, even though she has since seen one of her attackers on the streets of Port-au-Prince. These women know too well that if the attackers do return, they are unlikely to be deterred by any official police presence, as law enforcement is largely absent from the IDP camps. In fact, one of BAI’s clients is a fifteen-year-old girl who was raped by a Haitian National Police officer and another man.

Under Haitian law, a woman who has been raped has several options for seeking legal intervention. She can immediately call the police, or make a later complaint to the police, justice of the peace, or the office of the prosecutor (also known as the parquet). All have the authority to order the accused to appear in court in cases of flagrant offenses, or flagrant délit, and the police have the duty to investigate, gather evidence, and make arrests for flagrant offenses. Haitian law defines a flagrant offense as one where the person is caught in the act of committing a crime or soon after, usually within forty-eight hours.

In reality, as the capturers of the widow’s rapist discovered, it was difficult to get Haitian police to respond to an emergency situation. Calls to the police at nighttime were often not answered, or the caller was told that the police could not respond because they were sleeping. On other occasions, rape victims were told that the police did not have a car or gas to allow them to travel to the scene of the crime.

So advocates urged women to make their complaints in person at the police station if possible. But the reception at the station was often intimidating. Police sometimes wrongly sent complainants to another agency or accused the woman of fabricating the allegations to obtain money—a particularly common reaction when the victim was poor. When a nineteen-year-old woman whose mother had been killed in the earthquake was raped in one of the IDP camps, the police told her, “When you catch the gangsters who raped you, then call us.”

That reaction was common in the months after the earthquake, according to advocates and UN officials, who report that Haitian National Police rarely investigated a rape complaint if the attacker’s identity was not immediately apparent. Women reporting rapes were questioned about whether they were wearing provocative clothing or somehow triggered the attack, with one Haitian judge recently telling a women’s advocacy group that he did not believe in rape. “I’ve seen male judges blame the victim and imply it’s their fault because, for example, they wore a short skirt,” says Mario Joseph. A UN report in June 2012 followed a sample of sixty-two rape reports delivered to the Haitian National Police in 2010. Only twenty-five of the sixty-two cases were reviewed by a prosecutor and only eleven of those cases were thoroughly investigated. None of the cases came to trial before the summer of 2012.

The Haitian government was undeniably weakened by the earthquake—twenty-seven of twenty-eight national government buildings were destroyed and almost one in every five Haitian civil servants was killed or injured. But even prior to the
disaster, the official precedent for ignoring or demeaning rape victims was well established. Rape was not even criminalized in Haiti until 2005. A 2009 IACHR report on violence against women in Haiti documented biased and negligent pre-earthquake treatment of gender-based violence, including one horrific story of a boyfriend beating his teenage girlfriend, pouring gasoline on her, and setting her on fire. The young man was released after one month of detention. The report concluded, “Most cases of discrimination and violence against women are never fully investigated, prosecuted, and punished by the justice system in Haiti. The Commission observed an alarming pattern of systematic impunity that sends a social message that discrimination and violence against women will be tolerated.”

Even when a Haitian rape victim was able to have her official complaint accepted, she faced significant odds against obtaining justice. Most Haitian rape victims do not seek medical treatment because they are worried about the cost, fear retaliation by their attacker, lack transportation to care, or lack awareness of available services. This poses a significant problem for prosecutions, since rape complaints without an official medical certificate are usually ignored in the Haitian legal process. Complaints supported by a medical certificate that does not conform to the preferred format are often rebuffed as well. As one Haitian lawyer reported hearing a prosecutor’s clerk say, “This is an easy case; there’s no medical certificate.” BAI complained to the UN Commission on the Status of Women in late 2011 about the de facto requirement of a medical certificate in order for a rape complaint to be pursued. That practice, BAI said, “reinforces the belief in the justice system that women’s testimony is inherently untrustworthy.”

The Haitian judicial process is notoriously slow and confusing for victims, most of whom cannot afford legal representation. If a case survives the complaint stage and gets referred to an investigating judge (juge d’instruction), the case often bogs down for months and even years. The caseloads are high, and the courts do very little work in the summer months. “Justice does not really work during the summer,” says former BAI attorney Esther Felix. The slow pace of the process provides too many opportunities for corruption, Felix says, because attorneys and intermediaries sometimes pay for beneficial scheduling of cases, or to have a case held back until the victim drops the pursuit of her complaint. In one recent case, a clerk solicited a direct payment from a BAI client’s mother in return for a promise of a favorable ruling.

Court proceedings are conducted in French, when most Haitians speak only Creole. The court staffs’ failure to provide information to the victims sometimes allows the accused to be released because the victim did not appear at a hearing. Like the police station environment, the court hearings can be extremely intimidating for rape victims. In one BAI case, a judge sat the accused adult rapist next to his fourteen-year-old victim, and many judges put the victims on the defensive during aggressive questioning from the bench. Intimidation comes from outside the courtroom as well, as the mother of a teenage rape victim told the IACHR: “Since my daughter was able to identify at least one of her rapists, his father, a former military
official, has called several times. First, he offered money if we would just ‘leave it 
alone.’ Then he mentioned that he knew I didn’t live with a man so it would be easy 
to kill me if I caused problems for his son.”

In Haiti after the earthquake, rape was easy to commit and very unlikely to be pun-
ished. Most rape victims, especially those living in the same IDP camp as their attack-
ers, weighed the likelihood of retaliation as higher than successful prosecution and 
made a rational choice not to lodge an official complaint. Jayne Fleming, a US-based 
human rights lawyer, submitted an affidavit to the IACHR in late 2010 describing the 
cases of twenty-three post-earthquake rape victims she represented in efforts to obtain 
humanitarian parole in the United States. Of those twenty-three victims, only two 
made a police report. In those two cases, the police did not make any arrests, and the 
rapiests threatened the families of the victims, forcing them to go into hiding. The NYU researchers found that rape victims were more willing to tell survey interviewers 
about their rape than they were to make an official report to the police. As one of the 
women told an NYU interviewer, “Justice does not exist in Haiti.”

When justice is so elusive, what is left for Haitian women and their advocates to do? 
“Since the rule of law in Haiti has been almost non-existent, you have to build it,” 
says Mario Joseph. On paper, at least, there is some framework on which to build. 

Despite Haiti’s failure to criminalize marital rape or adopt a special law pro-
hibiting domestic violence, Haiti has signed a variety of regional and international 
human rights treaties, including the International Covenant on Civil and Political 
Rights, the Conventions on the Rights of the Child, the American Convention on 
Human Rights, and the Inter-American Convention on the Prevention, Punishment 
and Eradication of Violence Against Women (“Convention of Belém Do Pará”). All 
these instruments place extensive obligations on the government of Haiti to prevent, 
investigate, and punish acts of violence against women. The 2005 reform of the 
1835 Penal Code of Haiti finally made rape a criminal offense, setting a minimum 
sentence of ten years for rape against a woman and fifteen years for rape against a girl 
(under fifteen years of age). The 1987 Haitian Constitution, inspired by the populist 
organizations that put an end to the Duvalier regime, is a sweeping and progressive 
mandate of civil, economic, and social rights. Adopted with the support of 90 per-
cent of the Haitian people, the Constitution has been called (in the words of Haitian 
economist Fritz Deshommes) “an excellent warhorse [that] must be equipped, nour-
ished, and cared for in order to achieve the real re-foundation” of the Haitian state.

Also, despite the grim history of women’s suffering in Haiti, the nation has a 
noble legacy of solidarity and activism to draw from. Most recently, Haitians 
responded bravely and unselfishly in the aftermath of the earthquake. Long before 
international rescue efforts could begin, Haitians mobilized to dig out survivors 
from the rubble, often with their bare hands, and they cared for the injured, and 
took in family members and even strangers left homeless by the destruction. The 
activist and author Beverly Bell, writing in the collection Tectonic Shifts: Haiti since
the Earthquake, quoted Mesita Attis of the market women’s support group Martyred Women of Brave Ayibobo: “If you heard your baby in the ruins crying, ‘Mommy, Mommy, Mommy,’ fourteen people would run to help you. If you did not have a piece of bread, someone would give you theirs.”

The post-earthquake solidarity and resilience sprung from a well sunk deep in Haiti’s culture. A sense of collective responsibility is steeped in the tradition of the world’s only successful slave rebellion and the powerful Creole egalitarian rallying cry, *Tout moun se moun*—everyone is a person. As Bell writes:

As tenacious as oppression and deprivation have been throughout Haitian history, the country’s highly organized grassroots movement has never given up the battle its enslaved ancestors began. The movement is composed of women, peasants, street vendors, human rights advocates, clergy and laity, workers, and others. The mobilizations, protests, and advocacy have brought down dictators, staved off some of the worst of economic policies aimed at others’ profit, and kept the population from ever fitting quietly into anyone else’s plans for them.

The legacy of Haitian women forming the core of the struggle goes back to Anacaona, a queen of the original Arawak inhabitants of Haiti, who is said to have led the fight against her people’s enslavement by the Spanish. The Ligue Feminine d’Action Sociale (Feminine League for Social Action) helped organize for women’s rights in Haiti as early as 1934, and provided a civil society example that is self-consciously imitated by current women’s rights groups like SOFA (Solidarité Fanm Ayisyen—Haitian Women’s Solidarity). Women played significant roles in the pro-democracy resistance to Jean-Claude Duvalier and the opposition to the military governments that followed him. More recently, a women’s movement led by organizations like Kay Fanm (Women’s House), KOFAVIV (Komisyon Fanm Viktim Por Viktim—Commission of Women Victims for Victims), KONAMAVID (Kodinasyon Nasyonal Mawom Viktim Direct—National Commission of Direct Victims in Hiding), and FAVILEK (Fanm Viktim Leve Kanpe—Women Victims, Get Up, Stand Up) successfully pushed for the adoption of the 2005 law on violence against women and for bolstering the status of the MCDF (Ministère à la Condition Feminine et aux Droits des Femmes—Women’s Ministry). Bell compiled a collection of first-person stories in a 2001 book, *Walking on Fire: Haitian Women’s Stories of Survival and Resistance*, that chronicles the efforts of Haitian women who were activists in the *tilegliz* (grassroots Christian “little church”) movement, union organizers, independent journalists, and the leaders of rural collectives.

When faced with the chaos and fear of the post-earthquake rape crisis, these women and their organizations responded again.

Taped to the wall next to the entrance of the KOFAVIV building are two large hand-lettered signs. One reads, *Mwen pa fè vyolans. E ou?*—“I don’t do violence. Do you?”
The other reads, Viv Egalite Ant Fanm Ak Gason—“Long Live Equality between Men and Women.” Inside, about twenty women are gathered in a semicircle, reviewing the process of reaching out to women in IDP camps, where they provide training in legal rights, pass out whistles for security, and offer a toll-free crisis number for victims of violence. These women are called “agents,” and they are the front line for KOFAVIV.

KOFAVIV was founded in 2004 by a group of women who had themselves suffered from rape and other forms of violence during the rule of Haiti’s military coup regime, from 1991 to 1994. Judith Blaise Joseph, an apprentice lawyer with KOFAVIV, explains that one of the agents’ main charges is “accompaniment”—accompanying victims of rape to medical services, to the psychologist on KOFAVIV’s staff, and to the legal services that Joseph and an avoka colleague deliver in partnership with BAI. KOFAVIV also provides emergency shelter and safe houses for victims and their families when it is dangerous for them to return to the camps or neighborhoods where their attackers may still roam.

Joseph (no relation to BAI’s Mario Joseph) is a broad-shouldered woman, nearly six feet tall and wearing a floral-print green and brown top and a long brown skirt. She smiles often and speaks in Creole—unless she really wants to emphasize a point; then she raises her voice slightly and switches to English for my benefit. Joseph and her avoka colleague, who is helping a victim file charges at the prosecutor’s office today, train the agents in the principles of the law, and act as the liaison between the victims and the police station. That outreach to the police, which has included invitations to join training sessions and participate in planning meetings, has yielded a startling result. The same police force that used to scorn the women who dared to report a rape is now bringing victims directly to KOFAVIV for help.

Joseph pulls out a Certificat Medical Pour Agression Sexuelle, the form for medical documentation of a rape victim’s injuries that BAI and KOFAVIV are urging all medical providers to use as a uniform source of evidence for prosecution. Once KOFAVIV’s agents shepherd the victim through medical and psychological intervention, Joseph guides them through the legal process. Ideally, a victim should be able to file charges and appear before the prosecutor without the benefit of counsel, because the avoka has no ability to ask questions at these stages. But the system is not to be trusted yet, Joseph says. Middlemen and racketeers haunt the legal system in Haiti, using the widespread official corruption as a wedge to take advantage of those without counsel. “We want to be present, because we want them to respect the victim’s rights,” she says. This legal representation is conducted in tandem with BAI, with whom KOFAVIV is tightly linked. (When KOFAVIV’s offices were destroyed in the earthquake, their staff worked—and some of them lived for a time—in BAI’s offices, which were damaged but intact.) Both BAI and KOFAVIV reach beyond the confines of legal representation and psychosocial support to provide craft-making and small business skills training for women, along with security programs inside the IDP camps. The need is immense. BAI and KOFAVIV together have represented over two hundred rape victims in legal proceedings, and they struggle to respond to the many others who need help pursuing justice.
The advocates focus on prevention, too. The police training and outreach is a big part of that agenda, along with constant and aggressive street protests and media outreach. BAI’s grassroots coordinator, Rose Getchine Lima, works with KOFAVIV and other women’s groups such as FAVILEK and KONAMAVID to organize regular sit-ins in front of the Ministry of Justice. On International Women’s Day (March 8) in 2012, over one thousand women marched from BAI’s offices and from the MINUSTAH base at Fort National to the Women’s Ministry and the Parliament building. The women carried signs and sang songs demanding justice for women victims of *kolera* and rape, and were joined by a group of men carrying signs saying *Gason Kore Fanm, Fanm Kore Gason*—Men Support Women, Women Support Men. When the group stopped in front of the Women’s Ministry, Judith Joseph was among the speakers calling for more women to be appointed as police officers and judges.

That advocacy has reached beyond Haiti to engage the international community. Working with IJDH, BAI and partner organizations successfully lobbied for a resolution in the US Senate and the US House of Representatives demanding better response to the rape crisis from the Haitian government and the US and international community involved in Haiti. The advocates submitted reports and solicited media attention. They lobbied UN member states to include statements of concern about violence against Haitian women in their 2011 recommendations to the UN Office of the High Commissioner for Human Rights as it conducted its Universal Periodic Review of Haiti’s human rights record. Ultimately, twenty-two member states used the process to officially register concerns about gender-based violence and/or discrimination. And, in October 2010, attorneys for BAI and IJDH, joined by other international human rights advocates, filed a formal request for precautionary measures with the IACHR. The request called for the Haitian government and the international community to immediately provide security, lighting, and medical care in the IDP camps.

Hundreds of similar requests are filed each year and only a handful granted, but the IACHR responded to this petition with strong recommendations. The commission told the Haitian government to place security patrols in the camps, train public officials to respond to complaints of sexual violence, ensure medical and psychological care for rape victims, and include grassroots women’s groups in planning and implementing these initiatives. Advocates say that the commission’s decision is the first to explicitly hold the government of Haiti legally responsible for preventing third-party violence against women, and they continue to update the commission on the progress of government compliance with its recommendations. IJDH and BAI also filed a memorandum with the UN Human Rights Committee, questioning Haiti’s compliance with the International Covenant on Civil and Political Rights.

Do all the individual interventions, mass gatherings, and international appeals make a difference? Judith Joseph and other advocates say that they see the results every day. “The events have a big impact on the media, and the government is sensitized by the protest,” she says. “Along with the trainings, the protests have made the system...”
respond better, which is causing women to be more comfortable reporting abuse.” Most importantly, there appears to be far less abuse to report. In the fifty-plus IDP camps where KOFAVIV had a presence, the number of reported rapes dropped more than 50 percent from 2010 to 2011, and the 2012 trends showed a continued decrease. Women’s groups and the Haitian National Police both reported to the UN independent expert on human rights in Haiti that violence against women in the camps dropped in 2011.46 In Place Pétion at Champs de Mars, an IDP camp located across from the National Palace, BAI and KOFAVIV selected twenty-five men for training to provide twenty-four-hour volunteer security. Wearing T-shirts and badges to identify them, the men were happy to perform the service. “We cannot stand by, allowing this to happen in the heart of our community,” Delra, one of the men, told Britain’s Guardian. “The Haitian police cannot be relied on. And long ago we lost faith in the UN. So we have taken it into our own hands. We send out a strong message that these attacks will not be tolerated and that those using sexual violence are weak, not strong men and will be brought to justice.”47 Before Delra and his colleagues, called “sensitization agents,” began their rounds, an average of five or six women and girls were being raped in the camp every week. From the time of the project’s formal start in February 2011 until the camp closed over a year later, there were no reported rapes.

One afternoon in Port-au-Prince, I spoke with a young woman with short dreadlocks and matching earrings and necklace. The woman used to live in the Place Pétion camp before the security was in place. The woman does not want her name published, but she is willing to share her story. “I survived it, so it is OK to talk about it,” she says. Her mother was killed in the earthquake and the family home destroyed, so she and some siblings and cousins sought refuge at the IDP camp at Champs de Mars. One night three months after the earthquake, she was sitting alone outside the tent when two masked men attacked her. There was no security around then. “At night, God was our only security,” she says.

The woman fought back and screamed, only to be punched repeatedly in the jaw and head. But she put up enough of a fight and made so much noise that her attackers fled before they could complete the intended sexual assault. Still, the young woman was left physically and mentally battered. She sank into a depression and dropped out of school. “At first, I kept it hidden,” she says. “ Normally, my mother would have been the one to help me deal with this, but she was no longer with me.”

Fortunately, FAVILEK was. A companion women’s rights advocacy group to KOFAVIV, FAVILEK was founded by rape victims who had been attacked after the 1991 coup d’état. Like KOFAVIV, FAVILEK provides intervention and support for victims of post-earthquake rapes. Although the young woman went to FAVILEK for her own needs, she found herself called to help others. “Soon, I was not so much focusing on what had happened to me.”

Now, the young woman regularly meets victims at the hospital and then accompanies them as they file police reports and then see the lawyers at BAI. When
she describes FAVILEK’s efforts to sensitize Haitian men and its success in persuading the police to investigate rapes, she allows herself a small smile for the first time in the conversation. She pulls out her laminated FAVILEK identification card, which designates her as a volunteer agent, and puts it on the table in front of me. “I am a viktim,” she says. “And FAVILEK is an organization that helps victims of violence.”

When I ask KOFAVIV’s Judith Joseph for an individual example of legal advocacy having an effect, she points to sixteen different cases where rapists have been arrested and jailed, with the cases now in front of the investigating judge. In one KOFAVIV/BAI case, a man who raped a five-year-old girl in an IDP camp was arrested, only to be released by the prosecutor before the victim had been questioned by the prosecutor. The man lived only a few tents away from the victim’s family, who feared retribution and a new attack. KOFAVIV and BAI intervened immediately, and the man was rearrested and now awaits trial. In another case that advocates point to, a fifteen-year-old orphan was brutally raped by ten men, and BAI and KOFAVIV helped her get placed with the government child protection services agency, connected to psychological treatment, and returned to school. One of her attackers is now jailed and facing charges. In another recent BAI case, Haitian police responded quickly and strategically to a rape complaint: the police had the victim call her assailant to determine his location, and police went there in plainclothes to successfully arrest him.

More reason for optimism is found in the fact that the Haitian Women’s Ministry and the OAS have drafted a new comprehensive law on violence against women that includes provisions for relocation, medical care, and financial assistance to victims of numerous forms of gender-based violence. Women’s organizations have been included in consultations about the new law, although a new version has yet to be released. In July 2012, BAI attorneys helped prosecute the first post-earthquake rape cases brought to trial in Haiti. In one of the cases, the victim was a twelve-year-old girl with spinal damage because of earthquake injuries. Both cases resulted in convictions, and both defendants were sentenced to the maximum fifteen-year term. By the end of the summer of 2012, thirteen more rape convictions had been handed down. This success did not happen because of a judicial system suddenly and independently coming to its senses. “These cases worked because grassroots women’s groups made them work,” Mario Joseph says.

Judith Joseph sees these cases as reason for hope. “The system is not adequate yet, and justice is very slow in Haiti,” she says. “But since we are following so many cases in court and organizing protests in the street, things are improving.” The lawyer adopts the language of the sworn affidavit to make her point: “By information, it is better now.”

Judith Joseph grew up in Port-de-Paix in northwest Haiti, and her mother, a former schoolteacher, now lives in Miami with the rest of Joseph’s extended family. Her mother has applied for permission for Joseph to immigrate to the United States
Life in the post-earthquake IDP camps is dangerous and miserable. But for many camp residents, like those in Grace Village, there is a worse alternative: they could get evicted. Haitian law as applied to forced evictions is clear. Purported landowners who wish to evict tenants or camp residents need to first prove legal title. It is an impossible burden for most to meet, given that only 5 percent of Haitian land titles were recorded before the earthquake, and many of those recorded were obtained by fraud or theft. Even if an alleged property owner could prove title to land where earthquake refugees were staying, he would still have to pursue an order of possession in a court of law, not just push off alleged trespassers. And then, even if all those requirements were met, the Haitian government would be compelled to provide earthquake victims with alternative housing, per principle 7 of the UN Guiding Principles on Internal Displacement.

Yet, once again, Haitian law on paper often does not provide protection in reality. People claiming to own the land on which camps have been erected have been able to evict as many as 230,000 people since the earthquake, usually through sheer intimidation. An International Organization of Migration study in 2011 showed that a third of the persons who had left the IDP camps did so because they were evicted, and more than half of the persons who left the camps still lived in unsafe or unstable housing. At the end of 2012, six thousand new homes had been constructed and eighteen thousand repaired, addressing only a fraction of the need in Port-au-Prince, where 1.5 million persons were displaced by the earthquake. As the International Federation for Human Rights stated in 2012, “It is no exaggeration to suggest that for the majority of these people [former IDP camp residents], their current situation is more precarious than it was before the earthquake.”

Recognizing both the consequences of eviction and the limits of litigation strategies—Haitian law has no mechanism to obtain injunctions to stop illegal evictions from occurring—BAI turned to its grassroots coordinators and a broader advocacy strategy. First, BAI held training sessions on legal rights and camp resident solidarity in the IDP camps. As Mario Joseph and Jeena Shah put it in an essay contributed to the book Tectonic Shifts: Haiti since the Earthquake, “We aimed to get the people to stop thinking of themselves as beneficiaries of charity but rather as holders of rights; to stop thinking that the varying levels of misery in the camps meant that they were not all seeking the same thing (adequate housing); to stop thinking that their needs must be addressed by unaccountable humanitarian aid actors, but instead by government, which is charged with this duty by the Haitian Constitution.”

Success came when BAI-trained leaders of a camp near Toussaint L’Ouverture Airport were faced with a planned eviction. When the alleged landowners sent
armed men to force out the camp residents, the men were greeted by a massive sit-in and handed copies of an IACHR directive on the rights of IDP camp residents. The armed men left, and the residents stayed.

At another camp, BAI-trained residents received a notice to come to court to face an eviction claim. They obeyed, but brought along BAI attorneys and a large contingent of camp residents and other camps’ leaders, many of whom staged a noisy demonstration outside the courtroom. The judge declined to order the eviction, instead telling the alleged property owner that he would receive possession only if he followed the proper legal procedures. It was a signature example of human rights advocacy on the international stage leading to a ground-level benefit—a success story that came about as much from a change in the camp residents’ mindset as the threat of court action. “Ideally, these kinds of statements from the UN or the IACHR shift the paradigm,” says IJDH’s Nicole Phillips, who has drafted many of the recent petitions to international agencies and helped with the lobbying efforts. “When you are living in these [IDP] camps, and you are told by everyone that you have no rights, it can be very powerful to learn that an international body has ruled that you do have the right to housing and to be free from violence.”

In other cases, camp residents held protests in front of the prime minister’s office, and residents at risk of eviction attracted international news coverage when they staged a sit-in on a busy downtown Port-au-Prince street. When the Port-au-Prince prosecutor agreed to the camp residents’ request to pursue criminal charges against the mayor of Delmas for illegal evictions, BAI lawyers discovered that community members were initially surprised and then empowered. Simultaneously with the local actions, BAI and IJDH filed international complaints and provided source material for media stories publicizing the plight of those at risk of eviction. BAI and IJDH participated in a mid-2012 campaign that combined street demonstrations in Haiti and an online petition directed to President Martelly and US secretary of state Hillary Clinton, among others, calling attention to the estimated four hundred thousand Haitians still homeless after the earthquake. “I’m pretty confident that the public advocacy around evictions has been successful,” Concannon says. “There are tens of thousands of people threatened with eviction who have not been evicted. I think at the very least what we’ve done is to make eviction harder, raised the legal and political price, and slowed it down.”

The advocacy on behalf of cholera victims has followed a similar path. While waiting for a ruling on the legal claim filed by BAI and IJDH, Mario Joseph, local grassroots organizations, and victim organizations have organized noisy demonstrations outside MINUSTAH bases, courted international media attention, and taken every opportunity to raise the profile of the suffering and ratchet up the pressure on the UN. As the Haiti Support Group, a BAI/IJDH ally, urged its members in early 2012, “How much further it [the legal claim] goes may depend crucially on much more of the same—publicity and pressure. And that means it depends on us. So on behalf of that distraught mother in the street, and the
many thousands of others she represents, take action now and demand justice (read more, learn more, do more).”

New York University law professor Margaret Satterthwaite agrees with this approach. Satterthwaite directs the school’s Center for Human Rights and Global Justice and has researched and written on humanitarian intervention and access to water in Haiti. “I think the multilevel approach in the cholera claims, and particularly the grassroots advocacy going on, is crucial here,” Satterthwaite says. She adds:

Because what we are talking about is really changing the terms of a debate. It’s not just about whether there is scientific causality you can prove using these microbial studies. It is a question about how do you talk about who is responsible as a moral matter, as a human rights matter.

Whose responsibility was it to make sure that the poorest Haitians did not die as a result of the actions that occurred by the Artibonite in October of 2010? That is definitely a legal question, but it also has to be an issue of “What is the right thing here?” too. And that requires people out in the streets making their voices heard, that includes people talking to elites and moral decision leaders, that includes reframing what the UN is in the world. That means advocates saying that we have to hold the UN to the same standards we are asking them to spread throughout the world in terms of advancing human rights.

The original agenda for a February 2012 visit to Haiti by the UN Security Council seemed designed to avoid any such discussion about the UN’s responsibility for the cholera outbreak. But Joseph and grassroots organizations helped organize cholera victim demonstrations that confronted the Security Council delegation, helping spur members of the Haitian Parliament and Haitian journalists to raise the issue with the visitors. The US permanent representative to the UN, Susan Rice, later gave a statement calling for the UN to “redouble its efforts to prevent any further incidents of this kind and to ensure that those responsible are held accountable.” The delegation added to their agenda a visit to a cholera treatment site. Three weeks later, UN special envoy to Haiti and former US president Bill Clinton became the first UN official to publicly acknowledge that the outbreak was caused by UN peacekeepers.

The beyond-the-courtroom advocacy approach after the earthquake, working in concert with local grassroots groups, followed a well-established BAI model. The Raboteau prosecution was spurred more by the weekly victim demonstrations and by Joseph and Concannon’s media campaign than by any legal arguments. After the 2004 coup, when Joseph found himself representing dozens of political prisoners, a network of the prisoners’ families and friends agitated for justice within Haiti. Joseph credits that activism for keeping most of the political prisoners alive and leading to their eventual released from jail.
BAI's and IJDH's use of international pressure to achieve justice in Haiti is another
time-honored tactic. When the military coup government of Prime Minister Gérard
Latortue arrested and jailed populist priest Father Gérard Jean-Juste for the second
time on bogus murder charges, Joseph was unable to secure a Haitian court order to
obtain Jean-Juste's release from prison. Concannon and others persuaded Amnesty
International to add Jean-Juste to its roster of political prisoners, prompting a flood
of letters and calls to Haitian officials. Concannon then reached out to his advocate
contacts in the state of Indiana. Informed by Concannon's briefing, the Indiana
advocates submitted a petition to their state's senior senator, Richard Lugar, chair
of the US Senate's Foreign Relations Committee, asking him to intervene on Jean-
Juste's behalf. (Full disclosure: I was one of those Hoosier advocates.) Lugar's staff
and then the senator himself met with the activists. Soon after, Lugar sent a letter
to Latortue, hand-delivered by State Department officials, calling for Jean-Juste's
immediate release. Latortue called Lugar, and then let Jean-Juste go.

“In the end, I don't think the legal work could have made the difference in this
case,” Concannon says. “They [Haitian officials] were going to ignore the law. They
released Gerry because of politics. It turns out the key to his jail cell was in Indiana,
not Haiti.”

At most stages of its evolution, the advocacy in the United States by IJDH has been
largely a product of Concannon's efforts, supplemented by a rotating group of
undergraduate and law school interns, volunteers, and entry-level paid staff, some
of whom go on to long-term careers in human rights work. More recently, the
organization hired a communications coordinator, but the paid staff remains tiny.
Concannon sees recruiting volunteers, donors, and advocates as the core of his job,
so he was intrigued when his undergraduate alma mater, Middlebury College in
Vermont, invited him to speak at a January 2012 symposium launching the school's
Center for Social Entrepreneurship. Middlebury had joined the many universities,
business schools, and not-for-profit organizations responding to a surge of interest in
social entrepreneurship. Global heroes like Nobel Prize winner and microloan pio-
near Muhammad Yunus and Teach for America founder Wendy Kopp have inspired
a generation of young people to pursue the social entrepreneurship vision of innova-
tion and service.

Concannon was surprised by the invitation, because he did not think of IJDH’s
and BAI’s work as fitting into some advocates' definition of social entrepreneurship.
The first evening of the symposium did nothing to change his view. The keynote
speaker was Bill Drayton, founder and CEO of the organization Ashoka and widely
considered to be the originator of the term “social entrepreneur” and the trend that
grew around it. Drayton's organization defines social entrepreneurship in contrast to
the effort to achieve a governmental or political solution to injustice and suffering.
Ashoka's website answers the question “What Is a Social Entrepreneur?” in part by
stating, “Rather than leaving societal needs to the government or business sectors, social entrepreneurs find what is not working and solve the problem by changing the system.” Drayton’s speech at Middlebury followed along the same lines, ignoring political struggles and emphasizing a go-it-alone philosophy. To Concannon, it sounded like the same perspective that has led to Haiti having thousands of NGOs and no functioning government.

Around the same time as the Middlebury conference, New York Times columnist David Brooks took the social entrepreneurship model to task on this very point. Brooks praised the idealism and energy of “wonderful” young people pursuing this vision: “Often they are bursting with enthusiasm for some social entrepreneurship project: making a cheap water purification system, starting a company that will empower Rwandan women by selling their crafts in boutiques around the world.” But Brooks sharply criticized what he viewed as social entrepreneurs’ avoidance of politics and government when pursuing change. “That’s a delusion,” he wrote. “You can cram all the non-governmental organizations you want in a country, but if there is no rule of law and if the ruling class is predatory, then your achievements won’t add up to much. . . . Yet one rarely hears social entrepreneurs talk about professional policing, honest courts, or strict standards of behavior; it is more uplifting to talk about microloans and sustainable agriculture.”

Brooks’s piece—and its somewhat condescending tone—produced a torrent of replies in defense of social entrepreneurs. Some rebuttals unwittingly underscored Brooks’s argument. In an article posted on the social entrepreneurship news site Dowser, J. Gregory Dees, a professor in the Fuqua School of Business at Duke University, and creator of the first social entrepreneurship course in the United States, cited several examples of anticorruption NGOs. But Dees also could not help but champion the fact that these and other private organizations performed “functions that obviously could not be left to government alone,” and highlighted government’s limitations caused by bureaucratic and political constraints. This version of social entrepreneurship failed to resonate with Concannon. After all, his organization’s mission is to compel government to live up to its obligations to protect individual rights and provide essential services.

But the second day of the Middlebury symposium revealed a different brand of social entrepreneurship. Concannon participated in a workshop where students were critical of the notion that recent college graduates should be founding their own NGOs en masse. The clear consensus of the group was that the struggles of the poor are inextricably intertwined with local and international politics. The second evening’s keynote speaker, Jacqueline Novogratz of the Acumen Fund, cautioned against the global proliferation of NGOs and emphasized the need to steer clear of arrogance and individualism. Concannon learned that the social entrepreneurship movement claims as its own several organizations that partner with governments and push for the rule of law and functioning, transparent justice systems. As Sally Osberg, CEO of the social entrepreneurship—supporting Skoll Foundation, wrote in
response to David Brooks’s column, “They [social entrepreneurs] know that social justice depends on citizens capable of claiming their rights—and governments capable of delivering.”

_That sounds like us_, Concannon realized. Seizing the opportunity to include IJDH and BAI in a movement brimming with youthful energy and commitment, and attracting philanthropic dollars to support it, Concannon began working on ways to describe the organizations in social entrepreneurship terms. He found it easy to do. “I would argue that social entrepreneurship’s emphasis on sustainability requires significant attention to government solutions, which is of course our emphasis at IJDH,” he says. Concannon began telling audiences about the global South-North collaboration at the heart of BAI and IJDH, their multilevel approach to advocacy in both grassroots and international arenas, and the leveraging strategies involved in using individual lawsuits to instigate systemic change. His arguments found a welcome reception. After all, even the Ashoka website lists as historic examples of noted social entrepreneurs unabashed government-focused activists like Susan B. Anthony and John Muir.

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In pursuing a strategy that combines litigation with populist pressure, BAI attorneys say that they draw inspiration from a famous South African campaign to gain access to HIV treatment for pregnant mothers. The 2002 decision by South Africa’s Constitutional Court in the case of _Ministry of Health and Others v. Treatment Action Campaign and Others (No. 2)_ was the culmination of years of activism and agitation. In fact, the plaintiff, Treatment Action Campaign (TAC), had turned to litigation only after first pursuing a solution through civil disobedience, community education, meetings with drug manufacturers, and publicizing the stories of mothers who were denied access to the treatment that likely would have saved their children’s lives. That pressure continued while the suit was pending, with a series of marches, rallies, and workshops leading to a national treatment summit and a courthouse vigil before an interim hearing on the case. When the case reached the Constitutional Court, rallies and marches were held throughout the country, and activists wearing “HIV-Positive” T-shirts filled the courtroom.

The decision by the Constitutional Court held that the government of South Africa had a positive obligation to implement the country’s constitutional guarantee of access to health services—a part of a broad set of rights similar to those contained in Haiti’s constitution. The government breached that obligation, the court ruled, when it failed to develop a comprehensive antenatal HIV treatment program. The sweeping decision made the TAC case one of the most celebrated human rights decisions in history, and one that has its roots in activism outside the boundaries of formal litigation. When the South African government dragged its feet in complying with the court order, TAC staged a twenty-thousand-person march on the opening of Parliament in 2003, launched a campaign of sit-ins and voluntary arrests, and filed charges of culpable homicide against two government officials. The South African
cabinet responded, finally committing the government to provide the HIV treatment previously ordered by the court.

Amy Kapczynski and Jonathan Berger wrote in their history of the case, “[The] story is less about a judgment or a doctrine than it is about a movement. . . . TAC did the political and technical work to make the Constitutional Court’s judgment seem both legally obvious and morally necessary.”67 There are other recent precedents for successfully combining litigation with a broader campaign for social justice, including the Right to Food Campaign in India and coordinated challenges in Nigeria to evictions and displacement of communities by corporations and the government.68

Joseph and Concannon call their similar approach “victim-centered.”69 The term corresponds to the *viktim* label adopted by many Haitian grassroots organizations, which can sound dated to advocates outside the country. “After living in Haiti, it is curious to me that the word ‘victim’ is considered a pejorative in the US,” Concannon says. “In Haiti, they use it simply to describe a situation where a group needs help enforcing its rights because someone has done them harm. The word *viktim* is used to explain that these aren’t people who have been bad or lazy or have some intrinsic problem. There is a lot of pride in victim’s organizations in Haiti, and it is certainly not a pejorative term there. In the United States, ‘victim’ is pejorative precisely because we so frequently blame victims for having their rights violated.

BAI’s partnership with organizations like KOFAVIV, the Duvalier survivors group, and cholera victims is the foundation of the victim-centered approach. The goal is for the relationships to mutually support the organizations and the legal advocacy. BAI lawyers prefer the term “legal empowerment” over “legal aid,” and are very comfortable labeling all their work as political in nature. Invoking the TAC campaign as an example, they say that their lawsuits provide a platform for community organizing while the activism helps the litigation be taken seriously in a system where quiet cases can be ignored or even dropped. As BAI lawyers Meena Jagannath, Nicole Phillips, and Jeena Shah put it in a 2012 law review article, “The victim-centered approach to human rights lawyering strives to valorize the struggles of the poor and marginalized communities while arming them with the language of rights to bring their voices into political dialogue.”70

The Haitian state of affairs has demanded this approach, Concannon says, pointing to a legal system long characterized by an unwillingness or lack of capacity to place limits on the actions of the powerful and wealthy. So BAI turns to the *partie civile* procedure to allow the poor and victimized to stick their collective foot in the courthouse door. Once inside, the advocates adopt a carrot-and-stick approach to improving the Haitian justice system. BAI and IJDH provide governmental officials with technical assistance, such as the draft questions and technology enhancements offered to the Duvalier investigators or the training offered to Haitian police in responding to rape complaints. The lawyers also provide more mundane material support for an often cash-strapped system. As recently as 2011, Joseph provided gas
money to police who needed to drive to arrest a rape suspect. But they also push the government hard. The demonstrations and constant outreach to media and the international community provide the “stick” to prod a reluctant system to protect human rights. Beyond short-term gains for the individual and the cause, the advocacy secures for the poor a recognized role in the political discourse and legal system going forward.

It is a beautiful March morning at the BAI offices in downtown Port-au-Prince. On the front porch of the building, an open-air area rebuilt after earthquake damage, five students from Drexel University’s law school in Philadelphia sit in front of their laptops, cardboard boxes of documents at their sides. They are spending their spring break gathering and inputting data on the thousands of cholera claims made by BAI clients. Fordham Law students just left the building, and are on their way to make observations and collect statements at IDP camps that have not received promised services of water and toilets. A contingent from Duke Law will be here next week. Behind the building, about twenty women from a group living just outside the slum of Cité Soleil hold a press conference, calling for more women to be appointed to government office. “Ti machan [women street merchants] and women farmers are the engine of Haiti’s development, so they should be a part of the decision-making,” one of the group leaders tells a TV camera and a reporter with a tape recorder.

There are several Haitian lawyers and clerks in action here as well (not including Mario Joseph and a colleague, who are in Geneva for the UN Human Rights Council’s review of Haiti). Nick Stratton, an American intern working on BAI’s communications, steps away from the Drexel students to tell a visitor about video of a recent cholera protest he has uploaded to YouTube. A man walks out of an office in the back of the building, carrying a stack of newspapers, and hands out several, pointing out the English-language articles to the Americans. The newspaper is Haïti Liberté, distributed in the United States, Canada, and Haiti, with its Haitian headquarters here at BAI. This week’s headline story is “Qui Est Laurent Lamothe?,” an examination of some questionable business dealings by Lamothe, the prime minister-designate. (Lamothe was officially named prime minister in May 2012.) In 2011, Haïti Liberté, in partnership with US magazine the Nation and the transparency-advocacy group WikiLeaks, drew from thousands of diplomatic cables from US embassies around the world for a series of damning articles about US policies toward Haiti.

The man distributing the papers is Yves Pierre-Louis, recognizable with his gray-flecked beard and plaid shirt as one of the people in the front lines of several recent demonstrations in and around Port-au-Prince. The Haitian editor of Haïti Liberté, Pierre-Louis studied law before finding his calling in advocacy journalism. “It is because I have a political view that I am a journalist,” he says. “The newspaper and I both fight against oppression and violence.”
To Pierre-Louis, the Haitian women’s group, and the US law students, it makes perfect sense for BAI to be hosting this mix of investigative journalism, community organizing, and international partnerships. Pierre-Louis points to President Martelly’s platform of “Four E’s”—*Éducation, Emploi, Environnement, and État de Droit* (Education, Employment, the Environment, and Rule of Law)—and insists they would not exist but for the people of Haiti demanding the president take action. “Yes, law exists on paper in Haiti,” Pierre-Louis says. “But corruption is so high that poor people cannot afford justice. So we have to hold demonstrations and protests to force the judge to reach fair results and the president to respect the rights of the poor.

“The government claims there is a state of law. We are fighting hard to make that claim a reality.”