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# Judicial Corruption in Haiti: The Need for Discipline and Civil Society Participation

BY MARIO JOSEPH AND NICOLE PHILLIPS\*\*

## I. Introduction

Corruption is one of the most critical issues facing the Haitian justice system<sup>1</sup> today.<sup>2</sup> Bribes to police, judges and prosecutors are the norm in many cases.<sup>3</sup> Chronic underinvestment and low salaries make honest practices difficult for officials.<sup>4</sup> Allegations of corruption are rarely investigated or punished since most actors in the system are complicit.<sup>5</sup> Other than moral beliefs and personal reputation, members of the judiciary have little incentive to not pay

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1. *Corruption Perception Index 2014: Results*, TRANSPARENCY INTERNATIONAL, available at <http://www.transparency.org/cpi2014/results> (last visited Oct. 14, 2015).

2. U.S. DEP’T OF STATE, Bureau of Democracy, Human Rights, and Labor, Country Reports on Human Rights Practices – 2014: Haiti, STATE.GOV (May 2015), available at <http://www.state.gov/documents/organizations/236908.pdf> (Last visited Oct. 14, 2015).

3. Meena Jagannath, *Barriers to Women’s Access to Justice in Haiti*, 15 CUNY L. Rev. 27, 15 (2011-2012); see also, Org. of Am. States, Inter-Am, Comm’n on Human Rights, Report on the Situation of Human Rights in Haiti 1995, Doc. OEA/Ser/L/V/II.8810 rev p. 65 (Feb. 9, 2005) (“IACHR Report”), available at <http://cidg.org/countryrep/EnHa95/EngHaiti.htm> (Last visited Oct. 15, 2015).

4. *Id.* at 60, 65

5. *Id.* at 63-65.

or accept bribes.<sup>6</sup> This article focuses on various forms of judicial corruption plaguing the Haitian legal system that lawyers at *Bureau des Avocats Internationaux* (BAI) (“International Lawyers Office”), a public interest law firm in Port-au-Prince, Haiti, see in their cases every day, including corruption, bribery and political interference.

BAI, through its approximately twenty lawyers and legal interns, provides free legal assistance to Haiti’s poor who do not otherwise have access to legal representation. One of BAI’s biggest projects is the prosecution of gender-based violence claims. BAI currently has over 500 sexual assault cases, but the majority of its cases involve trying to hold government officials accountable for corruption and exploitation of poor people. For example, BAI represents victims of the former, brutal dictator, Jean-Claude “Baby Doc” Duvalier. BAI also represents human rights defenders and victims of political persecution and police brutality, who are often but not always poor, but who are working for justice for the poor. Human rights defender cases are particularly troubling, as many of BAI’s “clients” are other human rights lawyers who are being persecuted for their work.<sup>7</sup>

As daunting as this widespread problem of corruption may be, significant improvement is possible with courage and persistence. Indeed, there have been many initiatives from Haitian lawyers to tackle judicial corruption.<sup>8</sup> Haiti’s penal code and other laws prohibit corruption and bribes of lawyers and public officials, such as judges and prosecutors. In March 2015, the Bar Association of Port-au-Prince adopted Haiti’s first code of professional conduct that calls upon lawyers to exercise their functions with dignity, independence, humanity, and respect for the principles of honor and loyalty.<sup>9</sup>

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6. See Kate E. Bloch & Roxane Edmond-Dimanche, *The Rule of Law and Ethical Integrity: Does Haiti Need a Code of Legal Ethics?*, 37 U. HAWAII L. REV. (forthcoming 2015).

7. See Inter-American Commission on Human Rights, MC-363-12 (Oct. 19, 2012) available at <http://www.ijdh.org/wp-content/uploads/2012/10/Cautionary-mesures-mario-joseph-REVISEDFrench.pdf>, (last visited Oct. 14, 2015); see also, Nicole Phillips, *Human Rights Activist Daniel Dorsainvil and Wife Killed*, Ryot.org, February 2014, available at <http://www.ryot.org/human-rights-activist-daniel-dorsainvil-and-wife-killed/573741> (last visited Oct. 14, 2015).

8. Dr. Jamal Beonomar, *Rule of Law Technical Assistance in Haiti: Lessons Learned*, A World Bank Conference (July 2001), pp. 4-5, available at <http://www.unrol.org/files/Rule%20of%20Law%20Technical%20Assistance%20in%20Haiti%20lessons%20learned.pdf> (last visited October 14, 2015).

9. Haitian Code of Conduct for the Legal Profession (Code de Déontologie de la Profession d’Avocat), Article 1.2.

Enforcement remains a problem, however. Discipline for judges is highly politicized; only a small handful of lawyers are disciplined every year<sup>10</sup> and criminal sanctions are rarely pursued. A common Haitian proverb, *Konstitisyon Se Papye, Bayonet Se Fe*, says, “The Constitution is made of paper, but bayonets are made of steel.” Power and money in Haiti regularly eclipse accountability.

This article explains how lawyers and jurists can support Haiti’s legal system to enforce the laws against judicial corruption. The article starts by explaining the elitist and exclusionary culture in Haiti’s legal system, which discriminates against the needs of Haiti’s poor majority and perpetuates impunity for the rich. The article argues that the elitist legal culture disincentivizes legal reform to strengthen accountability, since many jurists and their wealthy clients benefit from the corrupt system as it is. The article then describes forms of police and judicial corruption plaguing the legal system, including bribes, lack of judicial independence and impunity.

This article identifies three reforms to improve Haiti’s legal system. First, the article recommends reform from the top – creating a judicial inspection body to track and evaluate judges’ cases. Tracking cases would assist in investigating complaints of judicial misconduct, and indicate whether judges are corrupt or lack competence and need more training. It would also assist in reducing the backlog of cases that obstructs due process. Secondly, the article recommends reform from the bottom – partnering with community-based organizations to empower the Haitian people as “rights-enforcers” to know their rights and to access justice without the use of corruption, inspiring gradual change in the legal system. Lastly, the article also recommends that lawyers and judges make a stand and refuse bribes. A critical mass of ethical lawyers will change the culture rapidly.

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10. Conversation June 15, 2015, with the President of the Port-au-Prince Bar Association, Me Carlos Hercule.

## II. Haiti's Legal Culture: Elitism and Exclusion

Most Haitians have no access to the formal justice system.<sup>11</sup> Years of instability and poverty have left Haiti's legal system in disarray.<sup>12</sup> Over the past few decades, Haiti has experienced "dictatorships, military rule, democratic transition, two foreign-backed coup d'états, an embargo on humanitarian assistance,"<sup>13</sup> and an earthquake that claimed over 200,000 lives.<sup>14</sup> The victims are the Haitian people, who suffer from the worst living standards in the Western hemisphere. Seventy-seven percent of Haitians live on \$2 USD a day or less,<sup>15</sup> ranking Haiti among the poorest countries in the world by several indices. They are systematically deprived of basic needs including nutrition, shelter, medical care, employment, education, and access to justice.<sup>16</sup>

Poverty is accompanied by deep fissures within Haitian society. The most prominent divide runs between the poor majority and the "elite" – the very few who are wealthy.<sup>17</sup> The divide is loosely correlated with other distinctions, including skin color, ability to write and speak French (the majority of Haitians speak only Haitian Creole), level of education, and gender.<sup>18</sup>

As Haitian legal scholar Dr. Jomanas Eustache aptly summarizes, "[T]he administration of justice favors those who can afford the system and discriminates against those who are least able

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11. Meena Jagannath, Nicole Phillips, and Jeena Shah, *A Right-Based Approach to Lawyering: Legal Empowerment as an Alternative to Legal Aid in Post-Disaster Haiti*, 10 NW. J. INT'L HUM. RTS. 7, 11 (2011).

12. IACHR Report, *supra* note 3, at 1-2.

13. Health & Human Rights Prison Project: Medical-Legal Advocacy, Initial Data Report (September 2009), p. 3.

14. Jaime Welch-Donahue, *Legal Reform in Haiti: "Life Goes On and Justice Cannot Stop"*, LAW.WM.EDU (Feb 22, 2010), available at <https://law.wm.edu/news/stories/2010/legal-reform-in-haiti-life-goes-on-and-justice-cannot-stop.php> (last visited Oct. 14, 2015).

15. World Development Indicators 2014, World Bank Publications (2014), SCRIBD.COM, available at <http://www.scribd.com/doc/222646575/World-Development-Indicators-2014> (last visited Oct. 14, 2015).

16. Report of the independent expert on the situation of human rights in Haiti, Gustavo Gallon, A/HRC/25/71, pp. 4-7, 10, LDH.ORG, (Feb. 7, 2014) available at <http://www.ijdh.org/wp-content/uploads/2014/03/IE-report-English.pdf> (Last visited October 14, 2015).

17. COMPARATIVE PERSPECTIVES ON GENDER VIOLENCE: LESSONS FROM EFFORTS Worldwide 50 (Rashmi Goel and Leigh Goodmark eds. 2015).

18. *Id.*

to pay.”<sup>19</sup> Lack of access to education prevents major segments of Haitian society from understanding the workings of the justice system and their legal rights. Legal costs and lawyers are too expensive for the poor to afford. Legal proceedings are generally conducted in French, which most Haitians do not speak.<sup>20</sup> Elitist legal training conditions lawyers, judges and prosecutors to give preferential treatment to the wealthy and powerful, either based on class prejudice or in search of bribes, while they discount the testimonies and legal needs of the poor.<sup>21</sup> Even where judicial officials are honest, the legal culture encourages elitism. The result is that the administrators of justice at all levels of the judiciary cater to the wealthy and operate with an elaborate system of bribes that excludes the poor.

Poor women are particularly marginalized by the limited access to the justice system due to deep-rooted gender discrimination and the added economic disfranchisement they face.<sup>22</sup> Lawyers are encouraged to avoid gender and class discrimination in exercising their profession,<sup>23</sup> but insufficient effort has been made by lawmakers or lawyers to guarantee fair representation of women and Haiti’s poor majority.

### III. Forms of Corruption Plaguing the Haitian Legal System

#### A. Police Corruption

Corruption begins with the police. In addition to low compensation, police receive insufficient training and resources to manage their cases.<sup>24</sup> They report difficulty investigating crimes and apprehending suspects due to a lack of officers, vehicles, vehicle fuel,

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19. Dr. Jomanas Eustache, *The Importance of Teaching Law and the Reinforcement of the Judiciary System in Haiti*, 32 HASTINGS INT’L & COMP. L. REV. 601, 609 (2009).

20. Org. of Am. States, Inter-Am. Comm’n on Human Rights, Report on The Right of Women in Haiti to be Free from Violence and Discrimination, OEA/Ser.L/V/II, Doc. 64 (2009), para 126.

21. Comparative Perspectives on Gender Violence, *supra* note 17, at 50.

22. *Id.*

23. Code de Deontologie Federation de Barreau, L’Avocat doit éviter, dans sa vie professionnelle, toute discrimination basée sur la race, la couleur, l’origine sociale et le sexe.

24. IACHR 2005 report, *supra* note 3, at para 94.

and other necessary resources.<sup>25</sup> It is common for police to demand “a favor” – a bribe – to investigate a case or make an arrest.<sup>26</sup> Conversely, bribes offered to police on behalf of a suspect can temporarily stop or altogether dismiss an investigation.

## ***B. Judicial Corruption***

### *1. Bribes*

On the judicial level, administration is inefficient and burdened by an intense backlog of cases, outdated legal codes, and poor facilities.<sup>27</sup> Backlogs and wait-times encourage corruption,<sup>28</sup> and exist in some cases to create a market for corruption. Attorneys often pay clerks or other officials to initiate criminal proceedings or to expedite proceedings.<sup>29</sup> In some cases, judges and prosecutors fail to respond to those who cannot afford to pay.<sup>30</sup> The U.S. State Department 2014 Haiti Human Rights Report opines that “bribes were often the principal factor in a judge’s decision to hear a case” in the lowest courts in the justice system (*Tribunaux de Paix*).<sup>31</sup> At a minimum, parties without means or lawyers are unable to sustain the pressure on the prosecutor and investigating magistrate that is often necessary to

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25. Jagannath, *supra* note 3, at 35.

26. Anne-christine d’Adesky, *Beyond Shock: Charting the Post-Quake Landscape of Sexual Violence in Haiti – Progress, Challenge and Emerging Trends*, 109, Wordpress.com (2012), available at <https://potofi.files.wordpress.com/2012/12/11-30-press-copy-beyond-shock-abridged-nov-2012-report-on-gbv-progress.pdf> (last visited Oct. 14, 2015).

27. Freedom House Haiti Freedom In The World, 2014 report, FREEDOMHOUSE.ORG, available at <https://freedomhouse.org/report/freedom-world/2014/haiti#.VXOUKM9VhBc> (last visited Oct. 14, 2015).

28. Jagannath, *supra* note 3, at 46.

29. *Id.*

30. U.S. DEP’T OF STATE, Bureau of Democracy, Human Rights, and Labor, Country Reports on Human Rights Practices-2013: Haiti, STATE.GOV (Feb. 2014) at 14, available at <http://www.state.gov/documents/organization/220661.pdf>. (last visited Oct. 14, 2015) (On challenges facing the judiciary system); see also Eustache, *supra* note 19, at 601 (“[S]ome behavior, misconduct, or practices, are mainly facilitated by the malfunction of the judiciary system. Alas, these behaviors are all too frequent in Haiti, for example, preventive detention beyond constitutional or legal limits and the plague of corruption in almost all State sectors.”).

31. State Department Report, *supra* note 2, at 14. On the question of concerns about corruption that may be involved in the prosecution of cases, see also Jagannath, *supra* note 3, at 46.

push their case forward.<sup>32</sup>

## 2. *Political Interference*

Another facet of the corruption plaguing Haiti's justice system is political interference. Judicial independence is generally recognized among Haiti's judiciary as vital to the proper functioning of the courts. The 2015 code of professional conduct adopted by the Port-au-Prince bar association mentions *independence* five times, including in the preambles: "Solemnly declaring that the orders of Lawyers in Haiti, enjoying their independence and autonomy, guarantors of the independence of the Lawyer and the defense of their interests, must ensure strict compliance with the rights and duties of the Lawyer."<sup>33</sup> But without ample public pressure and professional discipline, judicial independence remains more aspirational than enforceable.

The following are examples of political interference that has suppressed the judiciary's independence. All of these examples are BAI's current cases. These cases demonstrate a larger trend of threats, surveillance, harassment, and frivolous criminal charges used by government agents and against lawyers and other human rights defenders who denounce a lack of judicial independence.

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32. Jagannath, *supra* note 3, at 15.

33. Haitian Code of Conduct for the Legal Profession, *supra* note 9, at 1. Original text in French: « Déclarant de façon solennelle que les ordres d'Avocats en Haïti, jouissant de leur indépendance et de leur autonomie, garants de l'indépendance de l'Avocat et de la défense de ses intérêts, doivent veiller au strict respect des droits et des devoirs de l'Avocat. » Other provisions : Soucieuse de fixer les responsabilités de l'Avocat à l'égard de la justice, de ses clients, de ses confrères et public, p. 1; Article 1.7. L'Avocat doit promouvoir le respect dû à la justice et se comporter en toute circonstance avec dignité; Article 1.8. L'Avocat, même salarié relevant de l'Administration publique ou du secteur privé, ne renonce pas à l'indépendance qui caractérise l'exercice de sa profession. Le lien de subordination à l'égard de l'employeur ne subsiste que pour la détermination des conditions de son travail; Article 1.9. L'Avocat, en incompatibilité ou occupant des fonctions publiques de nature à exercer des pressions indues sur le juge ou à influencer dans un sens ou dans un autre, doit s'abstenir de pratiquer ou de la faire de la façon non équivoque par personne interposée.



*a. Prosecution of Former Dictator Jean Claude ("Baby Doc") Duvalier*

Multiple delays, political appointments linked to the case, and a withholding of government documents are just some of the tactics used by Haiti's executive branch to quash the prosecution against Jean-Claude Duvalier and his regime.<sup>34</sup>

In January 2011, the Haitian government filed criminal charges alleging political violence, embezzlement and corruption against Duvalier a few days after he returned to Haiti following twenty – five years of exile.<sup>35</sup> A few months after newly elected President Michel Martelly took office in May 2011, the prosecutor and investigating magistrate judge in the case were replaced.<sup>36</sup> President Martelly's partiality towards Duvalier and Duvalier's supporters is well-known in Haiti.<sup>37</sup> The President presented Duvalier at public events as an elder statesman and renewed Duvalier's diplomatic passport.<sup>38</sup> The newly appointed investigating magistrate dismissed the criminal charges of political violence in January 2012, upon the recommendation of the newly appointed prosecutor.<sup>39</sup> This action prompted outcry from the United National High Commission for Human Rights, the Inter-American Commission on Human Rights

34. Boston College, et al., *Access to Judicial Remedies*, Submission for the 112th Session of the United Nations Human Rights Committee, Ijdh.org, (October 2014) 7, available at [http://www.ijdh.org/wp-content/uploads/2014/09/HRCAccess-to-judicial-remedies\\_Sept-12.pdf](http://www.ijdh.org/wp-content/uploads/2014/09/HRCAccess-to-judicial-remedies_Sept-12.pdf) (last visited Oct. 14, 2015).

35. Human Rights Watch, *Haiti's Rendezvous with History: The Case of Jean-Claude Duvalier*, Ijdh.org (2011), 24 - 25, available at [http://www.hrw.org/sites/default/files/report\\_s/haiti0411Web.pdf](http://www.hrw.org/sites/default/files/report_s/haiti0411Web.pdf) (last visited October 14, 2015).

36. Boston College, *supra* note 34, at 8.

37. Randal C. Archibold, *Haitian Dictator May Be Charged with Human Rights Crimes*, *Court Says*, N.Y. TIMES (Feb. 20, 2014), <http://www.nytimes.com/2014/02/21/world/americas/haitian-dictator-may-be-charged-with-human-rights-crimes-court-says.html> (Last visited October 14, 2015).

38. *Id.* (On May 5, 2014, President Martelly selected one of Duvalier's lawyers, Frizto Canton, as the executive branch's nomination to the Conseil Electoral Provisoire (CEP) (Provisional Electoral Council). Institute for Justice & Democracy in Haiti, *A Constitutional Electoral Council is Imperative for Haiti's Upcoming Elections*, Ijdh.org, (July 3, 2014), available at <http://www.ijdh.org/2014/07/topics/politics-democracy/a-constitutional-electoral-council-is-imperative-for-haitis-upcoming-elections/#.U7r7cfldXjU>. (last visited Oct. 14, 2015) (This appointment has political significance because President Martelly has failed to hold elections since he took office in 2011. Without elections, all House of Deputy members, two-thirds of the Senate and all local mayors will term out in 2015, leaving the President with the opportunity to rule by decree.).

39. Boston College, *supra* note 34, at 7.

(IACHR), Amnesty International, and Human Rights Watch.<sup>40</sup>

BAI represents eight victims in the case against Duvalier and his regime. BAI and other victims' lawyers denounced the dismissal as politically motivated and appealed the case to the appellate court. After six months of evidentiary hearings and legal argument, in February 2014, the Appellate Court reinstated the political violence charges against Duvalier.<sup>41</sup> But concern remained about the government's lack of political will to bring Duvalier to justice.<sup>42</sup> Criminal charges are still being investigated against members of Duvalier's regime in light of Duvalier's death in October 2014. An investigating magistrate for the Appellate Court continues his work, but progress has stalled. The Government of Haiti refuses to cooperate with the investigating magistrate or provide crucial official case documents to the representatives of the victims. The IACHR urged the Haitian government and foreign governments to provide access to the documents.<sup>43</sup> At least one of the appellate judges has

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40. Nicole Phillips, *Reinstatement of criminal charges against Duvalier a momentous victor for Haitians*, Bos. HAITIAN REPORTER (Mar. 6, 2014), <http://www.bostonhaitian.com/columns/2014/reinstatement-criminal-case-against-duvalier-momentous-victory-haitians> (last visited October 14, 2015) (Former UN High Commissioner for Human Rights, Navi Pillay, said in 2011 "Haiti has an obligation to investigate the well-documented serious human rights violations that occurred during the rule of Duvalier, and to prosecute those responsible for them." Madame Pillay further stated that "[s]uch systematic violations of rights cannot remain unaddressed. The thousands of Haitians who suffered under this regime deserve justice."); *Haiti: UN human rights chief offers help to address crimes under Duvalier*, U.N. News Centre, Feb. 1, 2011, available at <http://www.un.org/apps/news/story.asp?NewsID=37432#VApKQWRdXlo> (last visited Oct. 14, 2015) (Several NGOs such as Human Rights Watch and Amnesty International have published reports highlighting the government's obligation under international law to prosecute Duvalier); See, Human Rights Watch, *Haiti's Rendezvous with History: The Case of Jean-Claude Duvalier*, Hrw.org (2011) available at <http://www.hrw.org/sites/default/files/reports/haiti0411Web.pdf> (last visited Oct. 14, 2015); Amnesty International, *'You Cannot Kill the Truth': The Case Against Jean-Claude Duvalier*, AMR 36/007/2011, Amnesty.org (Sept. 22, 2011), available at <https://www.amnesty.org/en/documents/AMR36/007/2011/en/> (last visited October 14, 2015).

41. *Id.*

42. Press Statement of the independent expert on the situation of human rights in Haiti, Gustavo Gallon, IJDH.ORG, (Sept. 15, 2015) 7, available at [http://www.ijdh.org/wp-content/uploads/2015/09/20150915\\_Notes-de-conference-de-presse-de-lExpert-ind%C3%A9pendant-des-Nations-Unies-sur-la-situation-des-droits-de-l'Homme-enHaiti.pdf](http://www.ijdh.org/wp-content/uploads/2015/09/20150915_Notes-de-conference-de-presse-de-lExpert-ind%C3%A9pendant-des-Nations-Unies-sur-la-situation-des-droits-de-l'Homme-enHaiti.pdf). (last visited Oct. 14, 2015).

43. Press Release, Organization of American States, IACHR Calls on Member States to Open their Archives on the Human Rights Violations Committed under the Regime of Jean-Claude Duvalier, OAS.ORG, (May 5, 2014), available at [http://www.oas.org/en/iachr/media\\_center/PReleases/2014/048.asp](http://www.oas.org/en/iachr/media_center/PReleases/2014/048.asp) (last visited Oct. 14, 2015).

reportedly received threats to his safety in relation to this case.<sup>44</sup>

A BAI lawyer, Mario Joseph, started receiving anonymous death threats after he denounced the dismissal of charges against Duvalier.<sup>45</sup> A few months later, Joseph submitted a letter to the IACHR complaining about corruption, political interference, impunity and human rights abuses in the Martelly government. Death threats against Joseph intensified after the IACHR submission, and a former prosecutor reported that the Minister of Justice ordered Joseph's unlawful arrest and the closure of BAI.<sup>46</sup> Nonetheless, the appellate court's advancement in the Duvalier prosecution, despite stalls and government meddling, is an encouraging step towards restoring judicial independence.

*b. Local Mayor Reappointed After Charged with Murder*

Jean-Morose Viliéna was a mayor in Les Irois, a small isolated town in southern Haiti, from 2006 to 2012 and interim mayor from 2012 to 2015. Witnesses claim that between 2007 and 2009, Mayor Viliéna terrorized residents by ordering the murder of several human rights defenders, closing down a community radio station, and setting fire to dozens of homes of people who opposed his corrupt and violent conduct.<sup>47</sup>

An investigating magistrate indicted the mayor and nineteen of his accomplices in 2010 for murder and attempted murder committed in 2007 and 2008.<sup>48</sup> But the trial judge only prosecuted six of the twenty defendants, which did not include the mayor. Six defendants appealed their conviction, and in 2012, the appellate court vacated the judgment and ordered a new trial against the six defendants only.<sup>49</sup>

Like the prosecution against Duvalier and his regime, this case

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44. Author's personal conversation with Haitian appellate judge.

45. Boston College, *supra* note 34, at 9.

46. See Inter-American Commission on Human Rights, Precautionary Measures, Mario Joseph, Haiti, PM 363/12, Oas.org, available at <http://www.oas.org/en/iachr/decisions/precautionary.asp> (last visited Oct. 14, 2015) (In October 2012, the IACHR requested that Haiti adopt any necessary measures to guarantee Mario Joseph's life and personal integrity).

47. See Precautionary Measures Granted by the Commission during 2015, Inter-Am. Comm'n. on HR, 1-3, OAS.ORG, available at <http://www.oas.org/fr/cidh/decisions/pdf/2015/MC275-15-FR.pdf> (last visited Oct. 14, 2015).

48. 2010 court order, on file with authors.

49. 2012 court order, on file with authors.

demonstrates how corruption and political influence render Haiti's judicial system unable and unwilling to hold public officials accountable for serious crimes. Viliena's political connections ran deep; when his term as mayor expired in 2012, after delayed elections, he was appointed Interim Mayor by President Martelly despite the pending indictment for murder.<sup>50</sup> For years the victims of Viliena attempted to file police charges and criminal complaints with any law enforcement or court agent who would listen to them, but most either refused to help or threatened to arrest them. The victims suspected that the mayor and his political supporters bribed officials to stall the case. The victims also received a number of death threats and lost their jobs for pursuing legal claims.

After persistent and high-profile pressure on the court and government by the victims and BAI, a court partially retried the murder case in 2015.<sup>51</sup> The court sentenced five of the originally convicted defendants to seven years in prison for murder (the sixth defendant is deceased), and ordered the other defendants, including Viliena, to be tried in absentia. BAI is currently pursuing the case in absentia.

### *c. Appointment of Disqualified Judge Lamarre Belizaire*

The illegal appointment of Judge Lamarre Belizaire is a quintessential example of executive branch interference in Haiti's judiciary. Judge Belizaire was appointed by President Martelly in 2012, as a lower court judge in Port-au-Prince (*Tribunal Première Instance*). Belizaire was not qualified to be a judge; he did not meet Haiti's eight-year legal experience requirement for judges, nor was there a three-year mandatory rest period between his being a prosecutor and becoming a judge in the same jurisdiction.<sup>52</sup> Yet

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50. UN High Commission for Human Rights, Half-yearly report on human rights in Haiti, Reliefweb.int, (2012) 22, available at <http://reliefweb.int/sites/reliefweb.int/files/resources/HRS-2013-04-16-biannuelrapport-FR.pdf> (released in French) (last visited Oct. 14, 2015).

51. For more information on BAI's victim-centered, legal empowerment representation approach, see section advocacy approach, see Section 5(B), *Bottom Up Approach* below.

52. *Will Former President Aristide be Arrested? After 10 years of Investigation, He has Never Been Charged*, Center for Economic and Police Research Cepr.net, (Aug. 14, 2014), available at <http://cepr.net/blogs/haiti-relief-and-reconstruction-watch/will-former-president-aristide-be-arrested-after-10-years-of-investigations-he-has-never-been-charged> (last visited Oct. 14, 2015).

Judge Belizaire has been assigned to Haiti's most politically charged cases against political opposition and human rights defenders, and even cases outside of his jurisdiction.<sup>53</sup>

In August 2014, as political opposition coalesced and demanded elections from the Martelly administration, Judge Belizaire became involved in several cases targeting leaders of the opposition movement. Judge Belizaire opened an investigation involving ten-year old money laundering and drug trafficking charges against former President Jean-Bertrand Aristide, who heads one of Haiti's most popular political parties, *Fanmi Lavalas*.<sup>54</sup> President Martelly's personal and ideological disdain for President Aristide and the *Lavalas* political party is well-known in Haiti. The criminal sanctions were thought by journalists and human rights institutions to be a form of persecution to disadvantage the *Lavalas* in the 2015 elections.<sup>55</sup> The judge does not have legal authority to take this case because Aristide lives in a town outside of Belizaire's Port-au-Prince jurisdiction.<sup>56</sup> No investigation appears to have been conducted, but an arrest warrant remains pending against President Aristide.

Judge Belizaire also was assigned a case against Rony Thimothée and Byron Odigé, two *Lavalas* activists, who were arrested at a demonstration in October 2014.<sup>57</sup> The cases were assigned by a prosecutor, short-circuiting the normal case assignment process. Human rights organizations denounced the arrests and incarceration as politically motivated and illegal.<sup>58</sup> Both were held in prison until December 2014.<sup>59</sup>

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53. *Id.*

54. *Id.*

55. Randal C. Archibold, *Ex-President of Haiti Put Under House Arrest*, N.Y. TIMES (Sept. 12, 2015), available at [http://www.nytimes.com/2014/09/13/world/americas/aristide-haiti-house-arrest.html?\\_r=0](http://www.nytimes.com/2014/09/13/world/americas/aristide-haiti-house-arrest.html?_r=0) (last visited Oct. 15, 2015).

56. Press Release from National Human Rights Defense Network, RNDDH.ORG, (Sept. 12, 2014) 2, available at <http://rnddh.org/dossier-jean-bertrand-aristide-lamarre-belizaire-qui-prot%C3%A8ge-les-justiciables-contre-larbitraire-des-magistrats/> (last visited Oct. 15, 2015).

57. Press Release from National Human Rights Defense Network, RNDDH.ORG, (Oct. 27, 2014), available at <http://rnddh.org/content/uploads/2014/10/Arrestations-Opposants-Politiques-27-octobre-2014.pdf> (last visited Oct. 15, 2015).

58. *Id.*

59. *Ensuring Fair Elections in Haiti: Legal Analysis of Recent Development*, Institute for Justice & Democracy in Haiti, IJDH.ORG, (Jan. 19, 2015) 6, available at <http://www.ijdh.org/wp-content/uploads/2015/01/IJDH-Haiti-Elections-Briefing-Paper-Jan-19.pdf> (last visited Oct. 15, 2015).

Enold Florestal and Josué Florestal (brothers) were arrested in 2013, by an arrest warrant issued by Judge Bélizaire, which was related to a three-year-old murder case of Frantzi Duverseau.<sup>60</sup> Months before the arrest, Enold Florestal had filed civil corruption charges against President Martelly's wife and son.<sup>61</sup> No action had been previously taken against the Florestal brothers in the case. In fact, police officers had already been arrested and accused of shooting Duverseau. In August 2014, Judge Bélizaire formally charged the Florestal brothers and their Attorney André Michel for Duverseau's murder.<sup>62</sup> In December 2014, an appellate court finally released the Florestal brothers.<sup>63</sup>

Attorney Michel, who is also an outspoken opposition leader who has denounced the President's handling of election procedures, was detained and unlawfully arrested in October 2013, after being subjected to harassment and death threats.<sup>64</sup> Judge Belizaire received the case assignment.

The government never publicly revealed evidence that would justify arresting either brother or the attorney, Michel.<sup>65</sup> The Réseau National de Défense des Droits Humains (National Network for the Defense of Human Rights, or RNDDH), a Haitian human rights organization, denounced these actions as "intended for one purpose: to reduce the plaintiff Enold Florestal to silence, and his lawyers as well."<sup>66</sup>

The judicial council charged with investigating judicial misconduct has declined to investigate Judge Belizaire, but the Port-au-Prince bar association took the highly unusual step of suspending Judge Belizaire's law license for ten years, effective the moment his term as judge ends, due to the arrest warrants he issued against

60. *Report on the General Situation of Human Rights in Haiti in the Third Year of Michel Joseph Martelly's presidency*, National Human Rights Defense Network, RNDDH.ORG, (May 2014) 37, available at <http://rnddh.org/content/uploads/2014/05/Rapport-Droits-Humains-Mai-14.pdf> (last visited Oct. 15, 2015).

61. *Id.*

62. Report on human rights in Haiti, *supra* note 60, at 37.

63. Ensuring Fair Elections in Haiti, *supra* note 59, at 6.

64. Report on human rights in Haiti, *supra* note 60, at 37.

65. *Order of Judge Lamarre Belizaire related to the Florestal Brothers Case: a degradation for Haitian Justice*, National Human Rights Defense Network, RNDDH.ORG, (Sept. 2014) 4, available at <http://rnddh.org/content/uploads/2014/09/Dossier-Fr%C3%A8res-Florestal-2-septembre-2014.pdf> (last visited Oct. 15, 2015).

66. *Id.*

government opponents.<sup>67</sup>

### 3. *Corruption Compounded with Sex Discrimination*

Corruption permeates the legal system easily in cases of sexual violence against women. The justice system is particularly difficult for female victims because they carry an extra burden into the courthouse. Not only are they poor and trying to challenge the powerful, but they are also entering a place traditionally hostile to women.<sup>68</sup> Sexism<sup>69</sup> combined with the influence of money – the accused often have some financial means to bribe – causes public officials to neglect sexual violence cases.<sup>70</sup> Misunderstood reporting requirements, limited resources, and deeply ingrained gender discrimination deter women from filing complaints with police and prosecutors. High degrees of corruption and racketeering occur at this stage, making it particularly difficult for women to access justice.<sup>71</sup>

The sexist attitudes of the police towards a victim presenting her complaint can seriously discourage victims from reporting. The police may suggest that they do not have the resources investigate the scene of the crime, or they may humiliate the victim by asking her what she wore or did to provoke the assault.<sup>72</sup> These attitudes reflect a lack of training and sensitivity to gender stereotypes.<sup>73</sup> Compounding this hostility generated by sexist attitudes, police will often ask for bribes before investigating a crime or apprehending a suspect.<sup>74</sup>

Similar sexist attitudes and bribes in the courts also disproportionately impact women victims of sexual violence. “It is common for complainants to come to the prosecutor’s office early in the morning to file a complaint and wait until noon for the officials

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67. Ensuring Fair Elections in Haiti, *supra* note 59, at 6-7.

68. Brian Concannon, Jr., *Haitian Women's Fight for Gender Justice*, IJDH.ORG, (December 2003) 12, available at <http://ijdh.org/archives/14424> (last visited Oct. 15, 2015).

69. *Id.* at 13.

70. Jagannath, *supra* note 3, at 15.

71. *Id.* at 11.

72. *Id.* at 9.

73. *Id.* at 10, 18.

74. *Id.* at 9; *see also*, d’Adesky, *supra* note 26, at 109.

to arrive . . . The individuals with representation pass ahead, or those with money may pay an intermediary or the clerk him/herself to ensure that they go ahead.”<sup>75</sup> Victims already face potential social stigmatization and retribution for reporting the crime and can easily be convinced to drop complaints because they are led to believe that their complaint will not succeed without money to bribe the system.<sup>76</sup>

Police, prosecutors and judges often ignore the testimony of female victims and place undue weight on arbitrary facts and factors. For example, Haitian judges and prosecutors routinely dismiss rape cases when the victim does not receive a medical certificate from a doctor within seventy – two hours of the attack, even though medical certificates are not legally required to sustain a conviction.<sup>77</sup> BAI sees the use of medical certificates as a form of corruption used by judges and prosecutors as pretext to dismiss sexual assault cases based on their sexist attitudes towards female victims.

#### IV. The Long Term Consequences of Corruption

Bribes may provide some benefit to lawyers in the short-term, but in the long-term, systematic corruption undermines accessibility to the courts and lawyers’ credibility in the public’s eye.<sup>78</sup> Dr. Eustache writes, “[A]ccessibility affects the confidence the public has in the judicial system; citizens seldom avail themselves of a system they distrust . . . [T]he existence of corruption among judicial personnel greatly undermines citizens’ expectation of being treated fairly.”<sup>79</sup>

The corrupt system also reinforces Haiti’s poverty. Bribery caters to the wealthy whom, when entangled in a legal matter, have the means to buy their way into or out of the justice system. Poor people without the means to pay for lawyers or bribe the system are left without a way to enforce their employment, housing, criminal due process, and child support rights, keeping them in a life of poverty.

Moreover the ubiquity of corruption makes reform difficult in

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75. *Id.* at 14.

76. *Id.* at 15.

77. *Id.* at 12.

78. Gallon, *supra* note 16, para. 46.

79. Eustache, *supra* note 19, at 609.



the long-term. Often the most successful lawyers are the ones who can navigate a corrupt system best. The skills needed to manipulate the system do not necessarily guarantee success in a system based on the rule of law. Some of the most powerful actors in the system are most opposed to reform.

Formalistic and elitist legal training excludes from the legal system many progressive lawyers who might challenge corruption. Many students enter law school intending to use the law to force fundamental reforms in the legal system and society at large.<sup>80</sup> But the vast majority of students who complete their law school coursework – some estimate up to eighty percent – never become members of the bar because they cannot afford to complete the two post-graduation requirements: preparation of a “*mémoire de sortie*,” or master’s thesis, and a two-year apprenticeship, or “*stage*” with a licensed lawyer.<sup>81</sup> Most students cannot afford to take off from work to write their *mémoire* or *stage*. Nor do they have money to access electricity, internet, a computer or pay lawyers to supervise their *stage* or *mémoire*. Both the *stage* and the *mémoire* prevent the vast majority of Haitians who are economically disadvantaged, and are often more progressive than their elitist colleagues who grew up in the system, from becoming lawyers and challenging the system.<sup>82</sup>

## V. Solutions for Haiti

Haiti’s judicial sector needs extensive reforms to address serious due process violations.<sup>83</sup> Over the past two decades, the international community has made several attempts at judicial sector reform. Haiti has partnered with a number of governments, agencies and nongovernmental organizations (NGOs) to address judicial training, security, infrastructure, and case management.<sup>84</sup> Political instability and aid fluctuations, however, contribute to uneven growth of

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80. Eustache, *supra* note 19, at 601, 609.

81. *Haiti Public Interest Lawyers Training Project Proposal*, Bureau des Avocats International and Institute for Justice & Democracy in Haiti, 5-6 (Jan. 15, 2008).

82. *Id.*

83. *Health & Human Rights Prison Project: Medical-Legal Advocacy, Initial Data Report*, Bureau des Avocats Internationaux, Institute for Justice & Democracy in Haiti, Zanmi Lasante, Partners in Health, Francois-Xavier Bagnoud Center for Health and Human Rights, 3 (September 2009).

84. *Id.*

programs and persistent judicial dysfunction.<sup>85</sup> International partners are quick to identify corruption as one of the major obstacles to justice in Haiti, but judicial reform rarely seems to address it. As Mark Twain said, “Everybody talks about the weather, but nobody does anything about it.” Providing training to corrupt judges and lawyers, and then sending them back into the same corrupt environment has yielded little change.<sup>86</sup>

This article identifies three reforms that could transform Haiti’s legal system. First, the article recommends a top down approach – creating a judicial inspection body to track and evaluate judges’ cases. Tracking cases would assist in investigating complaints of judicial misconduct, and indicate whether judges are corrupt, lack competence, or need more training. Secondly, the article recommends a bottom approach, where lawyers work with community-based organizations to empower the Haitian people to enforce their own rights and hold judges and lawyers accountable for corruption. Lastly the article recommends that lawyers and judges refuse to participate in the bribe system, which will eventually change the culture of corruption.

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85. *Id.*

86. Addressing fairness and corruption in the judicial sector will require addressing Haiti’s political problems. “The effect of the difficult economic situation [in Haiti] cannot be underestimated particularly, with regard to how justice is dispensed. However, political problems appear to be the most serious obstacle to [ ] a fair and equitable judicial sector.” Eustache, *supra* note 20, at 608.

### A. Top-Down Solutions

Haitian law prohibits bribes to judges and public officials,<sup>87</sup> but a stronger regulatory framework is needed to discipline judges, prosecutors and lawyers. The Constitution provides for “disciplinary penalties” against judges and public prosecutors, and authorizes a High Court of Justice for abuse of authority of Supreme Court justices.<sup>88</sup> The Superior Council of Judicial Power (CSPJ) was established in 2012, to appoint judges, investigate complaints of judicial misconduct and discipline judges.<sup>89</sup> A vetting process for

87. Bloch & Dimanche, *supra* note 6, at 25, fn 109, citing Code Pénal, Haitian Penal Code, arts. 137-38, 140, [http://www.oas.org/juridico/mla/fr/hti/fr\\_hti\\_penal.pdf](http://www.oas.org/juridico/mla/fr/hti/fr_hti_penal.pdf) (Haiti).

IV. DE LA CORRUPTION DES FONCTIONNAIRES PUBLICS [Of the Corruption of Public Officials] Art. 137.-Tout fonctionnaire public de l'ordre administratif, judiciaire ou militaire, tout agent ou préposé d'une administration publique qui aura agréé des offres ou promesses, ou reçu des dons ou promesses pour faire un acte de sa fonction ou de son emploi, même juste, mais non sujet à salaire, sera puni de la dégradation civique et condamné à une amende double de la valeur de la promesse agréée ou des choses reçues sans que ladite amende puisse être inférieure à cinquante piastres. [Any public administrative, judicial or military servant/official, any agent or individual assigned to a task of public administration who has consented to offers, or received gifts or promises to perform an act in the line of his/her duty or position, even if it seems fair, but not subject to remuneration, will be punished by a demotion and will have to pay a fine that is twice the value of the agreed upon promise or of the things received, but the amount of the fine may not be inferior to fifty *piastres* (Gourdes).]. Art. 138.-La précédente disposition est applicable à tout fonctionnaire, agent ou préposé, de la qualité ci-dessus exprimée, qui par offres ou promesses agréées, dons ou présents reçus, se sera abstenu de faire un acte qui entrerait dans l'ordre de ses devoirs. [The previous provision shall apply to any public servant, agent or individual assigned to a task as defined above, who, by offers or agreed upon promises, donations or gifts received, will have abstained from performing an act that was part of his/her duties.] Art. 140.-Quiconque aura contraint ou tenté de contraindre par voies de fait ou menaces, corrompu ou tenté de corrompre par promesses, offres, dons ou présents, un fonctionnaire agent ou préposé, de la qualité exprimée en l'article 137, pour obtenir, soit une opinion favorable, soit des procès-verbaux, états, certificats, ou estimations contraires à la vérité, soit des places, emplois, adjudications, entreprises ou autres bénéfices quelconques, soit enfin tout autre acte du ministère du fonctionnaire, agent ou préposé, sera puni d'un emprisonnement d'un an à trois ans. [Whoever coerced or attempted to coerce by violence or threats, corrupted or attempted to corrupt by promises, offers, gifts or presents, a public servant, agent or individual assigned to a task, as defined and expressed in Article 137, to obtain a favorable opinion whether from minutes, statements, certificates, or untruthful estimates or whether positions, employment, auctions, firms or any other profits, or finally whether any other act from the public servant's, agent's or assigned individual's ministry, shall be punished by one to three years of imprisonment.]

88. The High Court of Justice is made up of the President of the Senate, assisted by the President and Vice President of the Supreme Court. See Haitian Constitution, Articles 184-1 and 185.

89. Le Moniteur, 162eme Année No. 112, 20 Décembre 2007, Loi Creant le Conseil Supérieur du Pouvoir Judiciaire.

police to address corruption resumed in 2012, and police misconduct complaints can now be filed with the Inspector General's Office.

But enforcement and discipline are lacking. Lawyers are rarely prosecuted for bribery under the Penal Code.<sup>90</sup> Bar associations that are mandated to discipline lawyers are faced with a lack of resources and political will to carry out investigations, as well as difficulty securing reliable evidence of corruption.<sup>91</sup> The Inspector General's Office has not demonstrated its capacity to investigate and discipline officers.<sup>92</sup>

Moreover, the nine-member CSPJ struggles to address politically motivated judicial appointments and interference in judicial proceedings,<sup>93</sup> despite their mandate to act "with total freedom."<sup>94</sup> Judges have been nominated by President Martelly's administration in an irregular manner that violates ethical codes and the Constitution. The nominations are often based on political alliances and without the consent of the CSPJ.<sup>95</sup> As of May 2014, the mandate of 81 judges across Haiti had not been renewed in defiance of the CSPJ's recommendations, often because authorities recommended other candidates.<sup>96</sup> In October 2014, without the consent of the CSPJ, the government removed three judges, promoted one, and nominated another.<sup>97</sup> In response, three members of the CSPJ submitted a joint statement against interference of the executive power in the functions of the judiciary.<sup>98</sup> The makeup of the CSPJ itself has been troubling.

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90. Hercule, *supra* note 10.

91. *Id.*

92. Report on human rights in Haiti, *supra* note 60, at 39.

93. *Id.* at 37-38.

94. Le Moniteur, 162eme Année No. 112, 20 Décembre 2007, Loi Creant le Conseil Supérieur du Pouvoir Judiciaire, Article 9.

95. Letter to Members of the CSPJ, Plateforme des Organisations Haitiennes de Droits Humains, Commission Episcopale Nationale Justice et Paix, Réseau National de Defense des Droits Humain, (July 3, 2014), RNDDH.ORG, *available at* <http://rnddh.org/content/uploads/2014/07/CSPJ-juin-14.pdf> (last visited Oct. 15, 2015).

96. Report on human rights in Haiti, *supra* note 60, at 31.

97. Letter to Members of the CSPJ, Plateforme des Organisations Haitiennes de Droits Humains, Commission Episcopale Nationale Justice et Paix, Réseau National de Defense des Droits Humain, RNDDH.ORG, (Oct. 14, 2014), *available at* <http://rnddh.org/content/uploads/2014/10/CSPJ-Mauvais-fonctionnement-Oct-14.pdf> (last visited on Oct. 15, 2015).

98. *Haiti – Justice: 3 members of the CSPJ protest against the interference of the Executive*, HAITILIBRE.ORG HaitiLibre (Oct. 14, 2014), *available at* <http://www.haiti libre.com/en/news-12278-haiti-justice-3-members-of-the-cspj-protest-against-the-interference-of-the-executive.html> (last visited on Oct. 15, 2015).

Until January 2015, the president of the CSPJ, who by law is also the president of the Supreme Court, was appointed by President Martelly despite being too old to be eligible to be a Supreme Court justice.<sup>99</sup>

Given the inherent political nature of the CSPJ, evaluating whether judges are respecting their mandate or acting with independence can be difficult. One way to evaluate judges' performance in an objective and nonpolitical manner would be to track judges' cases, including the length of time taken to render decisions and reversal rates of decisions on appeal. A judicial inspection body charged with tracking cases could be housed within the CSPJ, but it would be a technical body, separate from the CSPJ's control. Court files are already available to the public so this tracking system is both legal and feasible. The documents could be gathered confidentially so that judges do not know they are being evaluated. But the threat of inspection would be a strong deterrent of improper behavior.

Tracking cases would assist in investigating complaints of misconduct, and indicate whether judges are corrupt or lack competence. For example, case files from judges who have been bribed may contain very little, if any, factual investigation or legal basis yielding their decisions. The files may also show abrupt changes in legal rationale or attitude prior to a decision. For corrupt judges, the statistics gathered by the inspection body could be used to recommend further investigation and possible discipline. For judges with competence issues, appropriate training and mentorship could be provided. This technical analysis may be the best way for the CSPJ to fulfill its mandate of tracking, investigating and disciplining judges in a nonpoliticized manner.

Judicial tracking would also assist in decreasing the system's backlog of cases, often neglected due to corruption. An example of the backlog problem is Haiti's notorious pretrial detention crisis. Approximately seventy percent of the prison population is in pretrial detention for over one year on average, and it is even over six years in some prisons.<sup>100</sup> Prolonged pretrial detention overburdens the legal system, contributing to severe overcrowding<sup>101</sup> and impacting

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99. Ensuring Fair Elections in Haiti, *supra* note 59, at 3.

100. International Centre for Prison Studies, *World Prison Brief – Haiti* (2013), PRISONSTUDIES.ORG, available at <http://www.prisonstudies.org/country/haiti> (last visited Oct. 15, 2015).

101. Health & Human Rights Prison Project, *supra* note 83, at iv.

the long-term health of prisoners.<sup>102</sup> A survey in 2010 of the relatives of detainees found that the poor were disproportionately burdened by pretrial detention and corruption.<sup>103</sup> Those who lived below the minimum wage reported their relatives had been in prison for an average of eight months longer than those with the money to pay bribery charges.<sup>104</sup> Judicial tracking would help document the problems on a case-by-case and judge-by-judge basis, helping determine the culpability or lack of capacity of the judiciary.

### ***B. Bottom-Up Approach***

The Haitian legal system could also become more just and independent by empowering the people. BAI lawyers combine legal representation with community empowerment and organizing.<sup>105</sup> This approach shifts the traditional legal advocacy paradigm beyond representation in the courts to include broad-based organizing that gives communities the opportunity to learn their rights and assert themselves as rights enforcers.<sup>106</sup> This “victim-centered”<sup>107</sup> or “legal-empowerment”<sup>108</sup> approach develops organizing strategies that parallel legal representation in order to empower communities to define their objectives with their own voices and hold the state

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102. *The Health Status of Prisoners at Three Rural Haitian Prisons*, Kathrerine LaMonaca, MPH, Mayur Desai, PhD, MPH, John May, MD, Frederick Altice, MD, MA (Oct. 2011) 4.

103. *The Socioeconomic and Health Consequence of Prolonged Pretrial Detention in Haiti*, Samantha Diamond and Brian Concannon, the Institute for Justice & Democracy in Haiti (2012) 2.

104. *Id.*

105. Meena Jagannath, Nicole Phillips, and Jeena Shah, *A Right-Based Approach to Lawyering: Legal Empowerment as an Alternative to Legal Aid in Post-Disaster Haiti*, 10 NW. J. INT'L HUM. RTS. 7, 11 (2012).

106. *Id.*

107. This phrase was coined by the Bureau des Avocats Internationaux, based in Port-au-Prince Haiti, and its sister-organization, the Institute for Justice & Democracy in Haiti, based in Boston, Massachusetts, to describe their approach to human rights lawyering for Haiti's poor and marginalized populations.

108. Anthony V. Alfieri, *The Antinomies of Poverty Law and a Theory of Dialogic Empowerment*, 16 N.Y.U. Rev. L. & SOC. CHANGE 659, 665 (1988) (“By relying on direct service and law reform litigation, poverty lawyers negate the poor as an historical class engaged in political struggle, thereby decontextualizing, atomizing, and depoliticizing that struggle.”).

accountable to its human rights obligations.<sup>109</sup>

As Haitians learn their rights and the tools to enforce their rights, along with the help of a new generation of public interest lawyers, they see the courts as a vehicle to demand justice. Little by little the elitist system is being challenged and forced to respond to legitimate legal cases of the poor without bribes. Reforms from “below,” initiated by the people, force the system to increase accessibility and inspire ethical lawyers and public officials to take a stand against corruption and political interference. Credibility of the legal system in the public eye will gradually improve as accessibility improves and the judiciary becomes less corrupt and politically influenced.

In the case described above against the corrupt and violent local mayor, Jean-Morse Viliéna,<sup>110</sup> for example, BAI lawyers employed this legal empowerment approach with the clients, who were both victims and leaders of the larger community in Les Irois. Attorney Joseph, organized several national press conferences with the clients and local parliamentarians to call on the prosecutor and court to enforce the indictment against Viliéna and his henchmen, and to provide visibility to the clients to protect their safety. Pressure from lawyers and the clients prompted the court (after eight years) to sentence five defendants and order the other defendants, including Viliéna, to be tried in absentia. This victory has renewed the community's faith that justice can prevail in a Haitian court.

Working with the people to become rights enforcers can be more effective in changing Haiti's legal system than working with judges and lawyers who often benefit from the unjust system as it is. Well-intentioned legal reforms by international partners often focus primarily on reform from above, such as projects to update Haiti's out-of-date legal codes, and case management and skills trainings of lawyers and judges. But these trainings do not get to the heart of the dysfunction. People in Haiti joke that hundreds of draft codes sit on lawyers' desk, but none of them is ever adopted (indeed the Code of Criminal Procedure dates back to 1825, with few modernizing amendments). High-powered lawyers welcome international delegations and funding to hold trainings and draft new codes but, at the end of the day, they and their clients may benefit from the system

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109. *Id.*

110. See section III(B)(2), under forms of judicial corruption.

staying just as it is.

Three of BAI's programs are described below to illustrate the transformational power of legal rights trainings tied to public interest lawyering.

### *1. Rape Accountability and Prevention Project*

Within weeks after Haiti's 2010 earthquake, leaders of Haitian grassroots women's groups approached BAI to ask for a legal response to high levels of violence occurring in earthquake displacement camps.<sup>111</sup> The earthquake destroyed as many as 200,000 homes and left 1.5 million people homeless. Tent and tarp encampments sprung up overnight around Port-au-Prince to temporarily house half of the city's residents. Many of grassroots leaders were themselves forced to live in the camps and were becoming victims of violence.

BAI designed the Rape Accountability and Prevent Project (RAPP) to take sexual assault referrals from women's groups.<sup>112</sup> Using the legal-empowerment model, lawyers work with and provide training to grassroots women's organizations, who are organized as a women's network to cultivate solidarity and collective mobilization among Haitian women's groups that face the same social and economic issues. Grassroots groups provide a comprehensive ensemble of services to victims of sexual violence, such as assistance with reporting complaints to police and accompaniment to medical service providers.<sup>113</sup> Assistance with filing police reports empowers the victim to file a complaint, but also sensitizes and trains police to accept gender violence claims.

BAI lawyers receive referrals from women's groups and represent the victims as *parties civiles* (civil parties). The *partie civile* procedure, from the Napoleonic system adopted by Haiti, permits crime victims to file civil claims commensurate with

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111. See Blaine Bookey et al., *Our Bodies Are Still Trembling: Haitian Women to Fight Against Rape*, INST. FOR JUST. & DEMOCRACY HAITI, IJDH.ORG, (July 2010), available at <http://ijdh.org/archives/13361> (last visited Oct. 15, 2015); see also Lisa Davis et al., *Our Bodies Are Still Trembling: Haitian Women Continue to Fight Against Rape - One Year Update*, INST. FOR JUST. & DEMOCRACY HAITI, IJDH.ORG, (Jan. 2011), available at <http://ijdh.org/archives/16451> (last visited Oct. 15, 2015).

112. Jagannath, *supra* note 3, at 30, fn 19.

113. *Id.* at 46.



criminal prosecution.<sup>114</sup> The victims' lawyers are allowed to represent their clients' civil interests throughout the proceedings, which allows them to appear at trial and most pretrial hearings, to present evidence, examine witnesses and respond to rulings, motions and appeals.<sup>115</sup>

By bringing cases through the Haitian legal system, BAI reinforces the existing legal framework to provide redress to victims of sexual violence. At the same time, the success of these legal cases depends heavily on the crucial groundwork and advocacy of partner grassroots groups that mobilize on the frontlines to identify victims and provide them with guidance and support through rehabilitation, and later reintegration into society.<sup>116</sup>

By pressuring law enforcement and judicial officials to advance rape cases without bribes, and by presenting sophisticated legal arguments and evidence such as medical expert testimony, lawyers communicate the significance of these cases to the courts and help modernize the system. Moreover, by working directly with the victims and grassroots women's organizations throughout preparation of the case and trial, BAI lawyers also help break down traditional elitist barriers and provide much needed support to survivors brave enough to navigate the legal system. Observation of court proceedings also empowers women's groups with knowledge about the justice system and their members' cases.

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114. Comparative Perspectives on Gender Violence, *supra* note 17, at 55.

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

116. COMPARATIVE PERSPECTIVES ON GENDER VIOLENCE, *supra* note 17, at 53.

## 2. Civil Engagement Program

Rights enforcement has had such a powerful impact that BAI started the Civil Engagement Program (*Program Engagement Civil* or “PEC”) as a counter-balance to the constant corruption and obstinacy of the justice system. Lawyers from BAI train community leaders in human rights advocacy and law, with special emphasis on the constitutional rights to education and health. With this knowledge, community leaders facilitate meetings and workshops in their communities to analyze the conditions of their human rights and develop community-driven strategies for claiming their rights. The program is currently in its first phase, and is being introduced in four rural communities: Saut d’eau, Bouccan Carré, La Chappelle, and Mirebalais.

The common feeling of Haitians living in rural areas is that politicians visit them only once. They provide meals and make promises as candidates, but they never return to the countryside after they are elected. Part of the goal of PEC is to train and encourage communities to build relationships with public officials such as mayors, parliamentarians, and local judges to demand their attention and enforce their rights.

In each of these examples, BAI employed organizing strategies and know-your-rights trainings with clients to empower communities to hold the state accountable against corruption and protect their rights. In the case against former mayor Viliena and the gender-based violence cases described above, the clients are poor and marginalized and would not otherwise have a chance to protect their rights in court against their attackers. By empowering entire communities for each legal case, BAI levels the playing field against powerful opponents and leaves the clients in a stronger position to defend themselves if their rights are violated again. Similarly, the civic engagement project helps build community bonds with public officials, which will hopefully discourage corruption and prevent injustices like the case against former mayor Viliena from occurring.<sup>117</sup>

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117. See section III(B)(2)(b), *Local Mayor Reappointed after Murder Charge*, above.

### C. Cultural Shifts

Haiti's legal culture is starting to shift. The bar association of Port-au-Prince (*Ordre des Avocats de Port-au-Prince*) adopted Haiti's first official code of professional conduct effective April 1, 2015.<sup>118</sup> The Code, based on a model code signed by the Federation of Bar Associations of Haiti in 2002, admonishes lawyers to "not attempt or allow anyone to try to influence the decision of the Tribunal by the use of corruption."<sup>119</sup> Under the Code, lawyers "may receive fees only from his client or agent thereof, for services rendered in accordance with the law" and "shall not seek or accept any hidden fees, unfair or unreasonable."<sup>120</sup>

Law schools are also recognizing the need to train lawyers on legal ethics. Dr. Eustache, Dean of the *L'École Supérieure Catholique de Droit de Jérémie* (ESCDROJ), in Jérémie, Haiti, prioritizes legal ethics training in his curriculum.<sup>121</sup> ESCDROJ graduate Gabrielle Paul is helping start Haiti's first legal clinic at ESCDROJ, which plans to adopt a code of ethics. When asked what she would want in the ethical code, Paul mentioned a prohibition on the offering or receiving of bribes as her first priority.<sup>122</sup>

Lawyers are also starting to say, "no." Since its formation in 1995, BAI has not used bribes in any of its legal cases. Lawyers and

118. Haitian Code of Conduct for the Legal Profession, *supra* note 10, DÉCRET DU 29 MARS 1979 RÈGLEMENTANT LA PROFESSION D'AVOCAT, CRIJHAITI.COM, *available at* <http://www.crijhaiti.com/fr/?page=decretprofavocat> (last visited Oct. 15, 2015) (which sets standards for becoming a lawyers and practicing law. The Decree sets forth rights and obligations of a lawyer with discipline ranging from suspension to expulsion from the practice of law, but corruption is never mentioned and independence is briefly referred to once).

119. *Id.* at article 9.3 (L'Avocat ne doit pas tenter ou laisser qui que ce soit tenter d'influencer la décision du Tribunal par le recours à la corruption, aux pressions personnelles ou tout moyen étranger aux modes licites de persuasion dont peut user l'Avocat. (The lawyer must not attempt or allow anyone to try to influence the decision of the Tribunal by the use of corruption, personal pressures or foreign means the lawful modes of persuasion which can use the Lawyer).

120. *Id.* at article 10.2. (L'Avocat ne doit pas demander ni recevoir des honoraires occultes, injustes ou déraisonnables. (The Advocate shall not seek or accept any hidden fees, unfair or unreasonable.); 10.3. L'Avocat ne peut recevoir d'honoraires que de son client ou d'un mandataire de celui-ci, pour les services rendus, conformément à la loi. (The Advocate may receive fees only from his client or agent thereof, for services rendered in accordance with the law.)).

121. Eustache, *supra* note 19, 606-607.

122. Bloch & Dimanche, *supra* note 6, at 35.

judges know, to their chagrin, that BAI will not engage in bribery. Even some of BAI's lawyers have complained in confidence about the difficulty of lawyering without bribing the system. BAI wins its cases through legal expertise and sustained pressure on judges and prosecutors to advance cases. When BAI suspects corruption is involved in a case, BAI lawyers publically denounce the corruption in the courtroom and in the media.

BAI has a social justice lawyer training program that accepts *finissants*, law school graduates who have not yet completed the *mémoire* requirement, and *stagiaires*, apprentice lawyers, who have defended their memoire and been accepted by the bar association.<sup>123</sup> Interns and lawyers receive trainings on legal ethics, skills and strategies to represent clients (and win) without corruption. BAI also challenges lawyers' elitist training and shows how lawyers can transform the exclusionary legal system one case at a time. Graduates of BAI's training program have moved on to become judges, prosecutors and law-makers with a stronger foundation in legal ethics and skills to be agents for change. BAI is a model for other law offices.

## VI. Conclusion

A credible and independent legal system is paramount to Haiti's development. Investors need basic infrastructure such as security, electricity, roads, and customs agencies to run their business and create jobs. They also need to be able to enforce business contracts without arbitrary interference or corruption.

The judicial system in Haiti is plagued with routine bribes on all levels, from police to prosecutors to judges, as well as political interference that has eroded judicial independence in many cases. As a result, Haiti's poor majority, almost eighty percent of the population, has little faith in the justice system's ability to enforce their rights.

Despite these challenges, lawyers and their clients are reinforcing justice in Haiti every day, but judicial reform requires a combination of reform from the top, at the level of the legal profession and the judiciary, and from the bottom up, by empowering

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123. Lawyer Training, IJDH.ORG, *available at* <http://www.ijdh.org/bai-lawyer-training/> (last visited October 15, 2015).

the people. With each case that BAI brings, whether it is on behalf of rape victims, political prisoners, or victims of the Duvalier regime, its lawyers try to fight corruption and give judges the opportunity to act with integrity.

The future of Haiti's justice system lies in empowering its clients to assert their rights just as much as code revisions and trainings for judges and lawyers. Lawyers must work hand-in-hand with community-based organizations to build their capacity and increase their accessibility to the courts. The proverbial paper has more force than the steel bayonet when civil society knows and is able to enforce their rights.