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### Advancing Human Rights and the Rule of Law in Haiti

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#### Recommended Citation

Kate E. Bloch, Ariel Chéry, Marie Gerda Dorcy, Roxane Edmond Dimanche, Yvon Janvier, Maxo Mezilas, and Benjamin Trouille, *Advancing Human Rights and the Rule of Law in Haiti*, 30 *Clinical L. Rev.* 289 (2024).

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# ADVANCING HUMAN RIGHTS AND THE RULE OF LAW IN HAITI

KATE E. BLOCH, ARIEL CHÉRY, MARIE GERDA DORCY, ROXANE EDMOND  
DIMANCHE, YVON JANVIER, MAXO MEZILAS, & BENJAMIN TROUILLE\*

## ABSTRACT

*The rule of law in Haiti is precarious. The ESCDROJ law school clinic in the town of Jérémie champions indigent individuals whose human rights are under siege during their prolonged and unconstitutional pre-trial confinement in prison. To our knowledge, it is the only operating in-house law school clinic in Haiti. Despite myriad obstacles, during its initial pre-pandemic period of operation in 2018-2019, the inaugural clinic team represented clients in 43 cases*

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brought to trial and succeeded in garnering the release of 25 of those individuals. That is a trial release success rate of over 58%. Subsequently, however, the advent of the pandemic and social and political challenges have further eroded the functionality of the Haitian justice system. This Article is the first to chronicle and analyze the launch and impact of this pioneering clinic. It evaluates the clinic's successes and limitations to ascertain what role the clinic might play as a model for advancing human rights and the rule of law in Haiti and beyond.

## INTRODUCTION

The prison officials who have authorized our visit would prefer that we not ask questions of the men behind the barred doors.<sup>1</sup> But one man calls out to us loudly, and the leader of our group of visitors stops to listen.<sup>2</sup> The man explains that he has been held in this prison without trial for five years and that he has no lawyer. Despite the 1987 Haitian Constitution's explicit guarantee that individuals not be detained for more than 48 hours without being brought before a judge,<sup>3</sup> he informs us that he is still waiting for that first judicial audience. Presumed innocent and awaiting adjudication,<sup>4</sup> he is, like the vast majority of his brethren in Haitian prisons, routinely forgotten in the twilight of pre-trial detention.<sup>5</sup>

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<sup>1</sup> The guided visit of the prison in Jérémie, Haiti, described here occurred on March 7, 2018. The visit was conducted by a prison official. The group at the prison that morning included representatives from the Clinique de Recherche, d'Analyse, et d'Assistance Légale de l'ESCDROJ (CRAALE) of L'École Supérieure Catholique de Droit de Jérémie (Catholic Superior Law School of Jérémie, ESCDROJ) and from the Hastings to Haiti Partnership (now known as the Haiti Justice Partnership) at UC Law SF (previously University of California, Hastings College of the Law). At least two co-authors on this Article were in the visiting group.

<sup>2</sup> Co-author Professor Yvon Janvier led the visiting group. During the visit, interpretation from Haitian Creole into English was provided by Professor Janvier and Daniel Tillias. Haitian Creole is one of the two official languages of Haiti and the language spoken by almost, if not, all Haitians. See *Freedom in the Black Diaspora: A Resource Guide for Ayiti Reimagined: Haitian Creole*, LIBR. OF CONG. RSCH. GUIDES, <https://guides.loc.gov/haiti-reimagined/haitian-creole> (last visited July 18, 2023).

<sup>3</sup> See *Haiti's Constitution of 1987 with Amendments through 2012*, Constituteproject.org, (English translation (2012)) [https://www.constituteproject.org/constitution/Haiti\\_2012.pdf?lang=en](https://www.constituteproject.org/constitution/Haiti_2012.pdf?lang=en)

(last visited Dec. 13, 2022) (Article 26: "No one may be kept under arrest more than forty-eight (48) hours unless he has appeared before a judge asked to rule on the legality of the arrest and the judge has confirmed the arrest by a well-founded decision.").

<sup>4</sup> This individual indicated that he was facing a serious homicide charge and that he lacked legal representation.

<sup>5</sup> Many months or even years of such detention without representation was and remains a reality in Haiti. See U.S. DEP'T. OF STATE, HAITI 2022 HUMAN RIGHTS REPORT 6 (2023) [hereinafter HAITI 2022 HUMAN RIGHTS REP.] Prolonged pre-trial detention for women in Haitian prisons is also very common, although women constitute a much smaller fraction of the prison population. See e.g., "*N ap mouri*": rapport sur les conditions de détention en Haïti, Nations Unis, Droits de L'Homme, Haut-Commissariat & BINUH 6 (2021) [Authors' translation: "*N ap mouri*" (*We are dying*): Report on the Conditions of Detention in Haiti,

Not only is the delay unconstitutional and prolonged, but the conditions in the prison are often inhumane and “life threatening[.]”<sup>6</sup> The 2021 U.S. State Department Human Rights report on the conditions in Haiti lamented that “[p]rison facilities generally lacked adequate basic services such as plumbing, sanitation, waste disposal, medical services, potable water, electricity, ventilation, lighting, and medical isolation units for patients with contagious illnesses.”<sup>7</sup>

In addition to delay and devastating prison conditions, incarcerated individuals in Haiti generally cannot afford to hire legal representation.<sup>8</sup> Extensive and longstanding concerns about corruption in the judicial system in Haiti compound the complexities of legal representation and

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United Nations (UN), High Commission on Human Rights & UN Integrated Office in Haiti] [hereinafter *UN High Commission Report 2021*]. For information on pre-trial detention in Haiti, see e.g., HAITI 2022 HUMAN RIGHTS REP., *supra*, at 9-10 (“Many pretrial detainees never consulted with an attorney, appeared before a judge, or received a docket timeline. In some cases, detainees spent years in detention without appearing before a judge. According to estimates in September [2022] from BINUH [United Nations Integrated Office in Haiti], 83 percent of detainees were in unlawful pretrial detention. In some prisons, the rates were much higher . . . Local human rights groups reported prisoners were often held even after completing their sentences due to difficulty obtaining release orders from the prosecutor’s office. Some prisoners were held longer in pretrial detention than the required sentences for their accused crimes . . . While authorities generally acknowledged the right to counsel, most detainees could not afford a private attorney. The Office of Legal Assistance (BAL) is required to provide free legal assistance to anyone, regardless of ‘nationality, sex, age, or any other consideration,’ who the BAL’s coordinator determines cannot afford legal assistance in any judicial proceeding, including civil cases. OPC [Office of Citizen Protection] staff and human rights contacts reported, however, shortages of funding, a limited number of lawyers, and the small number of actual court hearings hampered the BAL’s effectiveness.”). The 2021 U.S. State Department Human Rights report notes that “[s]ome lawyers began to use habeas corpus actions to free clients improperly arrested; however, prisoners unable to afford private legal fees generally faced unlawful and prolonged pretrial detentions.” U.S. DEP’T. OF STATE, HAITI 2021 HUMAN RIGHTS REPORT 9-10 (2022) [hereinafter HAITI 2021 HUMAN RIGHTS REP.]; *UN High Commission Report 2021, supra*, at 1, 6 (As of May 31, 2021, these UN offices reported the following statistics on individuals detained in Haiti: “10,801 men (81% of them in pre-trial detention), 436 women (92% of them in pre-trial detention), 240 boys (94% of them in pre-trial detention) and 23 girls (96% of them in pre-trial detention) were deprived of their liberty in Haiti.”). [Authors’ translation].

<sup>6</sup> HAITI 2022 HUMAN RIGHTS REP., *supra* note 5, at 6 (“Prison conditions were harsh and life threatening due to food shortages, severe overcrowding, inadequate sanitary conditions, and poorly maintained structures. The UN Secretary-General’s June report on the country condemned deteriorating conditions in prisons and detention centers.”).

<sup>7</sup> HAITI 2021 HUMAN RIGHTS REP. *supra* note 5, at 6.

<sup>8</sup> HAITI 2022 HUMAN RIGHTS REP. *supra* note 5, at 9-10; Blaine Bookey, *Enforcing the Right to Be Free from Sexual Violence and the Role of Lawyers in Post-Earthquake Haiti*, 14 CUNY L. REV. 255, 274 (2011). Cf. Roberson Edouard & Arnaud Dandoy, *Enquête auprès de la Population Carcerale de la Prison Civile de Port-au-Prince (Haïti)*: Rapport soumis à la Direction de l’administration pénitentiaire - Police nationale d’Haïti [Authors’ translation: *Survey of the Prison Population of the Port-au-Prince Civil Prison (Haiti)*, Report submitted to the Directorate of Prison Administration - Haitian National Police] viii, x (Sept. 2016).

accessing justice.<sup>9</sup> These corruption concerns and the overall dearth of resources work to undermine the rule of law<sup>10</sup> and foment human rights violations.<sup>11</sup>

The need for legal representation in light of unconstitutional and prolonged pre-trial detention, inhumane prison conditions, and the problematic judicial environment in Haiti lay at the heart of our group's visit to the Jérémie prison in March of 2018. Just months earlier, after a near decade-long gestation, the law school located in Jérémie, L'École Supérieure Catholique de Jérémie (ESCDROJ), had begun the launch of a law school clinic, Clinique de Recherche, d'Analyse, et d'Assistance Légale de l'ESCDROJ (ESCDROJ Clinic for Research, Analysis, and Legal Assistance, (CRAALE)).<sup>12</sup> As we understood and continue to understand the situation in Haiti, CRAALE is the only operating in-house law school clinic in the country.<sup>13</sup>

This Article chronicles the launch of this clinical legal outpost in a country where the rule of law is exceptionally precarious.<sup>14</sup> It

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<sup>9</sup> See, e.g., HAITI 2021 HUMAN RIGHTS REP. *supra* note 5, at 9 (“Illegal and prolonged pretrial detention remained a problem due to the arbitrary application of court rules and discretion, corruption, and poor recordkeeping.”); 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) (“the existence of corruption among judicial personnel greatly undermines citizens’ expectation of being treated fairly.”).

<sup>10</sup> For a definition of the rule of law, see, for example, the definition provided by the United Nations. *What is the Rule of Law*, UNITED NATIONS AND THE RULE OF LAW, <https://www.un.org/ruleoflaw/what-is-the-rule-of-law/> (last visited Aug. 8, 2023) (“For the United Nations (UN) system, the rule of law is a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires measures to ensure adherence to the principles of supremacy of the law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness, and procedural and legal transparency . . . The rule of law is a core element of the humanitarian and human rights agendas.”)

<sup>11</sup> See, e.g., HAITI 2021 HUMAN RIGHTS REP. *supra* note 5, at 9. For access to the Universal Declaration of Human Rights and its limitations on inhuman treatment or punishment, see *Universal Declaration of Human Rights*, UNITED NATIONS, <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (“Article 5 No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”).

<sup>12</sup> See Yvon Janvier, *Une clinique légale à Jérémie contre la détention préventive prolongée*, LE NOUVELLISTE (March 19, 2018) [Authors’ translation: *A Jérémie legal clinic against prolonged pre-trial detention*].

<sup>13</sup> See *infra* text accompanying notes 63-80 for a more detailed account of the history that led to the launch of CRAALE.

<sup>14</sup> For a description of rule of law challenges in Haiti, see e.g., CLARE RIBANDO SEELKE & KARLA I. RIOS, CONG. RSCH. SERV., HAITI: RECENT DEVELOPMENTS AND U.S. POLICY, 1, 7-8 (2023) (“As of early 2023, Haiti still lack[ed] an elected president, legislature, and local government. . . . Furthermore, impunity prevails in Haiti’s weak justice system. . . . Gangs overtook several of Haiti’s main courthouses in summer 2022, and many of the courthouses remain inoperable. Without functioning courts, Haitian prisons continue to hold inmates, 82% of whom were in pretrial detention in May 2021, in crowded conditions rife with violence and disease. Many inmates lack access to food, water, and medical care.”).

analyzes CRAALE's impact and potential as a model in the emergence of clinical legal education in Haiti, revealing both where it offers promise and where work remains to be done. The analysis suggests that, through its focus on harnessing judicial process and prosecutorial discretionary review policy, CRAALE is buttressing the rule of law. In addition, CRAALE's success in securing release for individuals, particularly those illegally detained in prison, is furthering human rights in Haiti. However, a range of global and domestic challenges impede CRAALE's progress. The analysis considers how various of the challenges might be addressed as well as potential next steps for the CRAALE endeavor.

Part I offers a summary portrait of prison conditions in Haiti, of impediments to access to justice for those who are detained there, as well as of historical limitations in law school practical training. Part II provides an overview of the vision and pragmatics of CRAALE's launch as well as its early efforts.<sup>15</sup> Part III offers a framework for evaluating CRAALE and then assesses CRAALE's work and impact. It offers insights and takeaways from this pioneering law-school based legal clinic. This first-hand narrative and critique aims to further understanding of what it means to advance human rights and the rule of law through clinical legal education in the most economically impoverished nation in the Western Hemisphere.<sup>16</sup>

## I. LEGAL AND EDUCATIONAL LANDSCAPE

### A. *Prison Conditions*

According to the U.S. State Department 2022 Human Rights Report for Haiti, an estimated 83% of the individuals incarcerated in Haiti await trial.<sup>17</sup> The Jérémie prison, the venue of the visit described above, serves as the main prison facility for the entire GrandAnse Department, one of Haiti's ten administrative divisions.<sup>18</sup> At the time

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<sup>15</sup> The discussions in Parts I and II about the prison conditions, the limited availability of legal representation, the law school curriculum, and the history and vision of CRAALE draw in large part from prior work by two of the co-authors here. See e.g., Kate E. Bloch & Roxane Edmond Dimanche, *Human Rights from the Ground Up: Building the First Law School Legal Aid Clinic in Haiti*, 20 U. PA. J. L. & SOC. CHANGE 217 (2017) [hereinafter Bloch & Edmond Dimanche, *Human Rights from the Ground Up*].

<sup>16</sup> CENTRAL INTELLIGENCE AGENCY, HAITI, CENT. INTEL. AGENCY: THE WORLD FACTBOOK HAITI, <https://www.cia.gov/the-world-factbook/countries/haiti/> (last visited July 18, 2023) (explaining that "Haiti is the poorest country in the Western Hemisphere").

<sup>17</sup> HAITI 2022 HUMAN RIGHTS REP., *supra* note 5, at 9.

<sup>18</sup> Memorandum from Rachel Lopez at Seton Hall Law School: Fact-Finding Concerning Prison Conditions in Jérémie and Recommendations for Reform, 1-2 (Apr. 18, 2012) (on file with co-authors) [hereinafter Lopez, Fact-Finding Memorandum]; Ariel Chéry & Marie Gerda Dorcy, *Programme d'Assistance aux Détenus de la Prison Civile de Jérémie*, ESCDROJ (Mars 2017) [Authors' translation: Assistance Program for Detainees in the Jérémie Civil

of the visit on March 7, 2018, consistent with these overall statistics, our guide informed us that 268 of the 323 persons (just under 83%) incarcerated in the Jérémie prison were awaiting trial.<sup>19</sup>

For the men confined there, incarceration generally involves being held in cells whose intended maximum capacity is perhaps five to seven people but that commonly hold at least forty to fifty men.<sup>20</sup> Such severe overcrowding is the norm for incarcerated men in Jérémie and nationwide.<sup>21</sup> A 2021 United Nations Report describing detention conditions in Haiti noted that, in the cells visited, incarcerated men had, on average, just 0.57 m<sup>2</sup> (6.14 square feet) of floor space per person.<sup>22</sup> That means just under six feet two inches by one foot of ground space, less than the length and width of a standard coffin in the U.S.<sup>23</sup> In Jérémie, this translates into too little floor space for everyone in a given cell to lie down at night; instead, men may sleep in shifts on the unmattressed

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Prison, ESCDROJ (Mar. 2017)] [hereinafter Chéry & Dorcy, *Assistance Program*] (on file with co-authors).

<sup>19</sup> In Jérémie, individuals detained pre-trial and those persons convicted of crimes are held together within the same nine cells. *See, e.g.*, Lopez, Fact-Finding Memorandum, *supra* note 18, at 1-2.

<sup>20</sup> Judith Lamour & Yvon Janvier, Narrative Report Grant No. SHA70018GR0039-M001 from ESCDROJ 2 (June 2020) (on file with co-authors).

<sup>21</sup> HAITI 2022 HUMAN RIGHTS REP., *supra* note 5, at 6. The more recent information from the March, 2018, visit to the prison supplements descriptions of the prison that one or more of the current co-authors have provided in prior articles that were published before 2018. *See, e.g.*, Bloch & Edmond Dimanche, *Human Rights from the Ground Up*, *supra* note 15; Kate E. Bloch & Roxane Edmond Dimanche, *The Rule of Law & Ethical Integrity: Does Haiti Need a Code of Legal Ethics?*, 37 U. HAW. L. REV. 1 (2016); Kate E. Bloch, *Representation for the Accused: Haiti's Thirst and a Role for Clinical Legal Education*, 14 OR. REV. INT'L L. 430 (2013). In these articles, we have also offered information about the purposes, vision, and pre-launch activities of CRAALE. *Id.* The current Article draws on those writings. However, those articles were published before the CRAALE clinic launched. The current Article not only provides a narrative of CRAALE's launch, but it also offers an evaluation and critique of CRAALE's progress and impact.

<sup>22</sup> UN High Commission Report 2021, *supra* note 5, at 9. *See also* HAITI 2022 HUMAN RIGHTS REP., *supra* note 5, at 6 ("Overcrowding at prisons and detention centers was severe. In June the UN Secretary-General's report estimated the nationwide occupancy rate of prisons was nearly three times the designed capacity; however, individual prisons' occupancy rates were much higher. Nearly half of the cells in the Les Cayes prison, for example, were destroyed by the August 2021 earthquake and were unusable. This doubled the rate of occupancy in individual cells. The National Penitentiary in Port-au-Prince was designed to hold 800 prisoners; as of July, it held more than 3,700. Prison overcrowding grew worse due to high rates of pretrial detention. As of July, 83 percent of prisoners nationwide were in prolonged pretrial detention, or held without charges for longer than the 48 hours allowed by the constitution, most for years at a time; in South Department, the figure was as high as 91 percent.").

<sup>23</sup> Assuming the prison ceiling is a standard height, incarcerated individuals in Haiti have more space above their heads, although not with respect to ground space, than what a standard coffin provides. For information on standard caskets, see *e.g.*, David Tindall, *Are all Caskets the Same Size?* (Feb. 18, 2022) <https://tindallfuneralhome.com/blogs/blog-entries/1/Our-Blogs/147/Are-All-Caskets-The-Same-Size.html> (explaining that a standard casket has dimensions of 84 inches by 28 inches by 23 inches).



concrete floor.<sup>24</sup> It does not take a mathematician to understand that the space allotted is far less than the minimum required under, for example, the European Committee on the Prevention of Torture's minimum standard of four square meters (43 square feet).<sup>25</sup>

Sanitation within the cells in the Jérémie prison is also sorely lacking, with only a shared bucket for use at night.<sup>26</sup> Bathrooms and showers are available during the day in the courtyard during an incarcerated person's brief daily releases from the cell.<sup>27</sup>

Not only does the prison lack adequate space and sanitation, but prison food also generally provides insufficient nutrition to maintain health (and perhaps life), consisting of one or two bowls of porridge, oatmeal, or gruel served to each person daily.<sup>28</sup> In Jérémie, the prison official who led our 2018 visit informed us that incarcerated individuals were given one bowl per person served twice daily. Without family or friends supplying additional food (a very common and often necessary practice in Haiti),<sup>29</sup> the already high malnutrition numbers of incarcerated

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<sup>24</sup> See Lopez, Fact-Finding Memorandum, *supra* note 18, at 1-2. Like in Jérémie, in describing the situation on a national scale, the 2021 U.S. State Department report noted that “[i]n many prisons detainees slept in shifts due to the lack of space.” HAITI 2021 HUMAN RIGHTS REP., *supra* note 5, at 5.

<sup>25</sup> European Committee on the Prevention of Torture of Prisoners and Inhuman or Degrading Treatment or Punishment [CPT], *Living Space per Prisoner in Prison Establishments: CPT Standards 1* (Dec. 15, 2015) <https://rm.coe.int/16806cc449> (“The CPT’s minimum standard for personal living space in prison establishments is: . . . 4m<sup>2</sup> of living space per prisoner in a multiple-occupancy cell + fully-partitioned sanitary facility . . .”) [emphasis removed]; See also UN Minimum Standard Rules for the Treatment of Prisoners, (the Nelson Mandela Rules), UNITED NATIONS OFFICE ON DRUGS AND CRIME 5-6 (2015) [https://www.unodc.org/documents/justice-and-prison-reform/Nelson\\_Mandela\\_Rules-E-ebook.pdf](https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf) (last visited July 18, 2023) (“Rule 13 All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.”).

<sup>26</sup> See Lopez, Fact-Finding Memorandum, *supra* note 18, at 2.

<sup>27</sup> *Id.*

<sup>28</sup> In describing prison conditions on a more national scale, the U.S. State Department 2021 Human Rights Report indicates that “[p]rison authorities generally gave prisoners one to two meals a day, consisting of broth with flour dumplings and potatoes, rice and beans, or porridge. None of the regular meals provided the recommended caloric intake per day, and authorities allowed regular deliveries of food to prisoners from relatives and friends. According to Health Through Walls, approximately 500 prisoners suffered either minor or major episodes of malnutrition during the year.” HAITI 2021 HUMAN RIGHTS REP., *supra* note 5, at 7. The 2022 report indicates that “[t]he DAP [Directorate of Prison Administration] reported most prisoners did not have two meals a day; many prisoners received only one meal daily, of low nutritional quality. The NGO Health Through Walls reported 83 prisoners died between January and September. Most deaths were caused by starvation and poor living conditions. BINUH and other human rights representatives stated the low initial budget allocated to the DAP for prisoners’ food, as well as diversions of those funds for other purposes including alleged corruption, aggravated nationwide prison food shortages. On July 21, the director of the Saint Marc civil prison appealed to media, saying there was no food or water available for the 500 prisoners held there.” HAITI 2022 HUMAN RIGHTS REP., *supra* note 5, at 6-7.

<sup>29</sup> See HAITI 2021 HUMAN RIGHTS REP., *supra* note 5, at 7.

individuals<sup>30</sup> would likely skyrocket. The Office of Citizen Protection, “[t]he country’s independent human rights monitoring body,”<sup>31</sup> works to identify and remedy human rights violations. Nonetheless, delays in adjudication commonly extend for years and in prison conditions that remain degrading and dire.<sup>32</sup>

In the 2008 matter of *Yvon Neptune v. Haiti*, the Inter-American Court of Human Rights wrote that “[t]he appalling conditions of Haitian prisons and detention centers have been brought to light in this case. It is pertinent to recall that international human rights treaties, particularly the American Convention, oblige States to provide decent living conditions for persons deprived of liberty.”<sup>33</sup> The Court ordered “that the State must adopt, within a reasonable time, the necessary legislative, administrative, political and economic measures to ensure that prison conditions comply with international human rights norms; in particular, to alleviate the problems of overcrowding [and] shortcomings in the physical and sanitary infrastructure . . . .”<sup>34</sup> As the evidence of recent prison conditions attests, well over a decade later, that human rights court order still awaits implementation.

### B. Lack of Legal Representation

In addition to facing the common realities of prolonged pre-trial detention and life-threatening prison conditions, incarcerated individuals in Haiti generally cannot afford legal representation.<sup>35</sup> Over the years, a number of domestic and international entities have focused on trying to provide representation for individuals detained pre-trial.<sup>36</sup> Among others, these have included the United States Agency for International Development (USAID), the United Nations Stabilization Mission in Haiti (MINUSTAH),<sup>37</sup> the local non-governmental organization

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<sup>30</sup> HAITI 2021 HUMAN RIGHTS REP., *supra* note 5, at 7 (“International and local observers said prisoners and detainees continued to suffer from a lack of adequate nutrition. According to the NGO Health Through Walls, approximately 3,700 prisoners in the penitentiary system were acutely malnourished.”).

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at 6.

<sup>33</sup> *Yvon Neptune v. Haiti*, Merits Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 180, ¶ 181 (May 6, 2008), available at [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_180\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_180_ing.pdf).

<sup>34</sup> *Id.* at ¶ 183 & ¶ 170.

<sup>35</sup> HAITI 2022 HUMAN RIGHTS REP., *supra* note 5, at 9-10.

<sup>36</sup> Renaud Galand, Helga Klein, Joël Beauchamp, Augustin Benadieu, Lara Deramaix & Thomas Vennen, *Assessment of Legal Aid in Haiti: Lessons Learned*, USAID & UN PEACEKEEPING (MINUSTAH & JUST. AND CORR. SERV. OF THE UNITED NATIONS DEP’T OF PEACEKEEPING OPERATIONS), 1,5 (July, 2017) <https://web.archive.org/web/20220901044852/https://issat.dcaf.ch/download/125808/2568524> (last visited July 31, 2023) [hereinafter *Assessment of Legal Aid in Haiti*].

<sup>37</sup> *Id.* at 5-6.

(NGO) Bureau des Droits Humains en Haïti (BDHH) (Office of Human Rights in Haiti),<sup>38</sup> and the Bureau des Avocats Internationaux (BAI) (Office of International Lawyers).<sup>39</sup> For international governmental organizations, these efforts have largely focused on supporting the development of local legal aid offices, Bureaux d'Assistance Légale (BAL).<sup>40</sup>

A report from a joint USAID and UN team suggests that, from 2009 to 2016, the supported programs “enabled or contributed to the release of” thousands of individuals detained pre-trial.<sup>41</sup> Despite such interventions, however, the World Prison Brief indicates that the prison population in Haiti increased in each two year period reported between 2008 and 2016, with the exception of in 2010, the year of a catastrophic earthquake.<sup>42</sup> Moreover, in a 2016 report focusing on Port-au-Prince’s National Penitentiary, Haiti’s largest prison, researchers found that, in a random selection of 894 incarcerated individuals, just 3% of those individuals indicated that they were represented by an attorney, and 81% reported that they had never been visited by an attorney.<sup>43</sup>

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<sup>38</sup> See BDHH, <https://bdhhaiti.org/>; Seyi Rhodes, *The Prison from Hell*: UNREPORTED WORLD, YOUTUBE (Nov. 11, 2016) [https://www.youtube.com/watch?v=SwE\\_uUgomd0](https://www.youtube.com/watch?v=SwE_uUgomd0).

<sup>39</sup> See BAI, <https://www.ijdh.org/our-work/access-to-justice/bai-lawyer-training/>.

<sup>40</sup> See, e.g., *Assessment of Legal Aid in Haiti*, *supra* note 36, at 5-6.

<sup>41</sup> *Id.* at 6. Specifically, the report opines that “[t]he data provided for this report demonstrate[] that between 2009 and 2016, the MINUSTAH and USAID/PROJUSTICE legal aid . . . enabled or contributed to the release of 15,000 detainees and the conviction of 2,700 pre-trial detainees.” *Id.* However, the report also notes that “[c]ertain constraints were encountered while collecting information: it was not possible to visit all of the BAL; some of the offices, and the Service d’Education et d’Assistance Légale (SEAL), had already ended their activities; and access to the documentation of ProJustice and the Haitian Government was limited. . . . Very little information could be collected from the Ministry of Justice regarding the legal aid programmes put in place by the Government; statistics were available only for the legal aid office of Gonaïves. More generally, it was not possible to fully verify the validity of the available statistics.” *Id.* at 10.

<sup>42</sup> *World Prison Brief Data Haiti*, WORLD PRISON BRIEF, <https://www.prisonstudies.org/country/haiti> (last visited July 18, 2023); *Welcome*, WORLD PRISON BRIEF, <https://www.prisonstudies.org/> (last visited July 18, 2023) (explaining the World Prison Brief is “an online database providing free access to information on prison systems around the world.”). The year 2010 saw a devastating earthquake inflict death and destruction across much of Haiti and particularly in the capital. The earthquake resulted in damage to the prison and the escape of what was estimated to be thousands of incarcerated individuals. See e.g., Neil Katz, *Haiti Earthquake News, Main Prison Destroyed, 4,000 Prisoners Escape*, CBS News (Jan. 15, 2010), <https://www.cbsnews.com/news/haiti-earthquake-news-main-prison-destroyed-4000-prisoners-escape/>.

<sup>43</sup> See Edouard & Dandoy, *supra* note 8. A joint UN and USAID report from July, 2017, described the situation prior to the passage of the new law as follows: “In Haiti, the right to legal aid has been recognized since the 19<sup>th</sup> century. However, the legal framework remains fragmented and is not fully applied. The Constitution and the Code of Criminal Procedure foresee the right to a lawyer for the accused in criminal cases and the mandatory designation of counsel by judges where individuals are not represented. In practice, the Bar Association designates trainee lawyers to defend the accused in criminal cases warranting trial by jury, but there is little to no legal assistance system organized beyond that.” *Assessment of Legal Aid in Haiti*, *supra* note 36, at 5.

In 2018, just after CRAALE's launch, the government did promulgate the National Legal Assistance Program, a new law requiring government-sponsored representation for indigent individuals in criminal cases.<sup>44</sup> The new law is on the books, and the 2021 U.S. State Department report indicated that, at that time, it was in the process of being implemented.<sup>45</sup> However, more than four years after its passage, the CRAALE co-authors report that the new law has not been implemented in Jérémie.

For a law on the books to translate into real government-financed representation, implementation depends on government prioritization and bandwidth, as well as resources. With respect to resources, however, Haiti suffers a tremendous poverty burden,<sup>46</sup> which makes that translation difficult.

In addition to severely limited financial resources, recent political upheaval further decreases the likelihood that legal representation for indigent individuals will receive the government funding and personnel necessary under the new law.<sup>47</sup> For example, in the wake of the continuing failure to hold legislative elections,<sup>48</sup> in a June 2020 presentation

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<sup>44</sup> Loi Sur L'Assistance Légale (Loi N°. 006-2018) [Authors' translation: Law on Legal Assistance (Law Number 006-2018)], LE MONITEUR (Haiti) (Oct. 26, 2018); *See also, e.g.*, Ruth Cadet, *Justice: une nouvelle loi sur l'assistance légale entrée en vigueur*, LE NOUVELLISTE (Nov. 8, 2018), <https://www.lenouvelliste.com/article/194734/justice-une-nouvelle-loi-sur-l-assistance-legale-entree-en-vigueur/amp> [Authors' translation: *Justice: a new law on legal aid comes into force*].

<sup>45</sup> HAITI 2021 HUMAN RIGHTS REP., *supra* note 5, at 9-10 ("The law mandates that the National Legal Assistance Program provide free assistance to criminal defendants and victims of crimes who cannot afford a lawyer. In May the president appointed the members of the National Legal Assistance Committee charged with overseeing the program, and two of 11 planned legal assistance offices had opened as of November 22."). The United Nations Rule of Law and Global Human Rights Program also reports supporting legal clinics by bar associations to provide representation to individuals detained in prison. *See* United Nations Rule of Law and Global Human Rights Program, Haiti, <https://undprolhr2021.org/latin-america-the-caribbean/haiti.html> (last visited Jan. 16, 2023) [hereinafter UNDP website].

<sup>46</sup> There is debate about the specific causes of poverty in Haiti and the extent of each potential cause's contribution to the prevalence of poverty today, with scholars and commentators citing a variety of causes. *See, e.g.*, Catherine Porter, Constance Méheut, Matt Apuzzo, & Selam Gebrekidan, *The Root of Haiti's Misery: Reparations to Enslavers*, N.Y. TIMES (May 20, 2022), <https://www.nytimes.com/2022/05/20/world/americas/haiti-history-colonized-france.html> (arguing that debt incurred for post-revolutionary payments demanded by France was a powerful initial cause of the country's poverty and concluding that the debt incurred for those payments continues to undermine the Haitian economy today); Chris Cameron, *As U.S. Navigates Crisis in Haiti: Bloody History Looms Large*, N.Y. TIMES (Dec. 19, 2021), <https://www.nytimes.com/2021/12/19/us/politics/us-haiti-intervention.html> (last visited Feb. 3, 2023) (describing U.S. interventions in Haiti); ALEX DUPUY, HAITI IN THE WORLD ECONOMY: CLASS, RACE, AND UNDERDEVELOPMENT SINCE 1700, 4-5 (1989) ("argu[ing] inter alia] that Haiti's underdevelopment stems from its incorporation into the capitalist world-system since the end of the seventeenth century as a peripheral economy specializing in the production of primarily agricultural crops for export and later some manufactured goods").

<sup>47</sup> For a brief overview of the recent political challenges, see, e.g., RIBANDO SEELKE & RIOS, *supra* note 14, at 1-11.

<sup>48</sup> Describing the state of Haiti's legislature in 2020, the U.S. State Department's Human Rights Report noted that "in January 2020 the terms of the majority of parliamentarians expired

to the Security Council on the United Nations Integrated Office in Haiti, Jacques Letang, the president of the Haitian Federation of Bar Associations explained: “There is no more parliament, no more local authorities, no more legitimate government.”<sup>49</sup>

Exacerbating the lack of legislative functionality, in July, 2021, assassins entered the home of then President Jovenel Moïse and took his life.<sup>50</sup> The 2023 World Report on Haiti explained that, “[i]n 2022, Haiti remained in a long-standing political, security and humanitarian crisis that . . . left all government branches inoperative . . .”<sup>51</sup> On October 2, 2023, the UN Security Council condemned the “increasing violence, criminal activities, and human rights abuses and violations[.]”<sup>52</sup> and, in response to a request from Haiti, the Council authorized a “deployment of a Multinational Security Support Mission”<sup>53</sup> to Haiti. Consequently, a government focus on effective implementation of representation for indigent individuals is unlikely to be a priority.<sup>54</sup> This means that the pressing need for legal representation for indigent individuals remains largely unmet.

### C. Law School Focus on Doctrine and Theory

Haitian law schools have historically lacked a practice focus, offering instead an education based almost exclusively on legal theory and doctrine.<sup>55</sup> Admission to the Haitian Bar does require both the writing and defense of a *mémoire* (thesis) and a post-graduation legal practice apprenticeship of one to two years (*stage*).<sup>56</sup> However, formal law

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due to a failure of the country to conduct elections in 2019. Only 10 elected members of 30 remained in the upper house, while the lower house had none. As a result, parliament was unable to reach a quorum and ceased to function.” HAITI 2021 HUMAN RIGHTS REP., *supra* note 5, at 1.

<sup>49</sup> Jacques M. Letang, English version of M[aitr]e Jacques Letang’s statement before the Security Council on the UN Integrated Office in Haiti, BUREAU DES DROITS HUMAINS EN HAÏTI (June 19, 2020), <https://bdhhaiti.org/archives/495>.

<sup>50</sup> *Haiti President’s Assassination: What We Know so Far*, BBC NEWS, <https://www.bbc.com/news/world-latin-america-57762246> (last visited Feb. 3, 2023).

<sup>51</sup> *Haiti: Events of 2022*, HUM. RTS. WATCH: WORLD REPORT 2023, <https://www.hrw.org/world-report/2023/country-chapters/haiti#1070a7> (last visited Sept. 24, 2023).

<sup>52</sup> Press Release, Security Council, Security Council Authorizes Multinational Security Support Mission for Haiti for Initial Period of One Year, by Vote of 13 in Favour with 2 Abstentions, U.N. Press Release SC/15432 (Oct. 2, 2023).

<sup>53</sup> *Id.*

<sup>54</sup> Efforts to address the prolonged pre-trial detention issue are the focus of other international and domestic individuals and organizations. For a discussion of UN efforts to support legal assistance organizations in Haiti, see UNDP website, *supra* note 45. For USAID’s efforts, see, e.g., *Lost While Awaiting Trial: Advocating for Jailed Haitian Citizens*, USAID FROM THE AMERICAN PEOPLE, <https://www.usaid.gov/haiti/news/lost-while-awaiting-trial-advocating-jailed-haitian-citizens-0> (last visited Jan. 16, 2023) [hereinafter *Lost While Awaiting Trial*].

<sup>55</sup> See, e.g., Irwin P. Stotsky & Brian Concannon, Jr., *Democracy and Sustainability in Reconstructing Haiti: A Possibility or Mirage?* 44 U. MIAMI INTER-AM. L. REV. 1, 34 (2012) (arguing that “[l]aw school in Haiti is theoretical, with no practice classes or clinics.”) (citation omitted).

<sup>56</sup> Bloch & Edmond Dimanche, *Human Rights from the Ground Up*, *supra* note 15, at 237.

school instruction ends before aspiring attorneys undertake either the writing of their thesis or the apprenticeship.<sup>57</sup> Many, if not most, such individuals lack the resources, both financial and mentoring, necessary to complete these requirements.<sup>58</sup> As a result, students have historically graduated law school without formal curricular training in a range of lawyering practice competencies and often without the opportunity and support necessary to master them through a *stage* apprenticeship.

## II. CRAALE'S VISION & LAUNCH

This is the landscape into which CRAALE was born. As one of its primary motivations, CRAALE aims to respond to the lack of adequate legal representation for individuals detained pre-trial in the Jérémie prison.<sup>59</sup> It is in a spirit of public service aligned with the values and principles of respecting and enforcing fundamental human rights that ESCDROJ launched CRAALE. Complementing service to clients, the second primary motivation for CRAALE stems from the identified limitations of practical training in law school for aspiring lawyers in Haiti.<sup>60</sup>

CRAALE aims to address these needs synergistically by providing essential client representation while training law students and recent law school graduates in the legal skills needed to represent individuals detained pre-trial in the prison.<sup>61</sup> In this way, CRAALE hopes to bridge what has often proven to be an intractable gap between law school and becoming a practicing lawyer.<sup>62</sup>

### A. Vision

The idea for the clinic began with the vision of co-author Roxane Edmond Dimanche, then a law student at ESCDROJ.<sup>63</sup> Through her challenging in-court experience handling criminal cases between her second and third year of law school<sup>64</sup> and her interactions with visitors from

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<sup>57</sup> *Id.* at 224, 237.

<sup>58</sup> *Id.*

<sup>59</sup> See e.g., Bloch & Dimanche, *Human Rights from the Ground Up*, *supra* note 15, at 219-220, 223-224, 227.

<sup>60</sup> See, e.g., Stotsky & Concannon, Jr., *supra* note 55.

<sup>61</sup> See Bloch & Edmond Dimanche, *Human Rights from the Ground Up*, *supra* note 15, at 224, 234. During its initial period of operation, CRAALE interns were recent law school graduates because, due to a rule change by the Bar, students still taking their coursework in the law school were not permitted to represent clients in serious cases in court, even with attorney supervision. However, as of June, 2023, the ESCDROJ dean has allowed students still taking their coursework to intern with CRAALE. See email with attachment from Yvon Janvier (Nov. 12, 2023, 12:33 PM PST) (on file with co-authors). As in many countries around the world, the law school program is an undergraduate degree program.

<sup>62</sup> Bloch & Edmond Dimanche, *Human Rights from the Ground Up*, *supra* note 15, at 240.

<sup>63</sup> *Id.* at 225.

<sup>64</sup> *Id.* at 224-25. Subsequent to her experience, the ability to appear in court and handle

legal clinics in the U.S., she perceived the value that clinical opportunities could provide to Haitian law students and to unrepresented individuals detained pre-trial whose constitutional and human rights were at risk.<sup>65</sup>

Roxane Edmond Dimanche and her law school colleague, Georges Gabrielle Paul, began a concerted effort to expand their understanding of law school clinical work and lay the foundation for a clinic at ESCDROJ.<sup>66</sup> They were trailblazers in this endeavor; the process was arduous and lengthy.<sup>67</sup> It drew upon partnerships with organizations and individuals in Haiti and abroad.<sup>68</sup>

During its long incubation, the vision gained practical dimensions. Like many law school clinics around the globe,<sup>69</sup> the clinic would provide service to clients and legal training to aspiring attorneys. This would include supporting law school students and graduates in completing their *mémoires* (theses) and apprenticeship requirements, nurturing a commitment to public service, and modeling ethical practice. By rejecting corrupt practices and demonstrating how to succeed on behalf of clients even in the most difficult of circumstances, CRAALE would strive to undergird and extend the reach of the rule of law and to advance human rights.<sup>70</sup>

### B. Launch

Some months after Roxane Edmond Dimanche began sharing her vision of a clinic, Dean Jomanas Eustache of ESCDROJ announced a focus on the clinic undertaking.<sup>71</sup> He extolled the virtues that a clinic could provide.<sup>72</sup> He explained:

ESCDROJ hopes to start a law clinic in order to provide both clinical training for our students and assistance to those in our community . . . who need representation. Currently, after passing a [pre-mémoire] at

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cases with the supervision of a practicing attorney became more restricted for law students.

<sup>65</sup> *Id.* at 225-26.

<sup>66</sup> *Id.*

<sup>67</sup> A more detailed discussion of the process can be found in Bloch & Edmond Dimanche, *Human Rights from the Ground Up*, *supra* note 15, at 223-44.

<sup>68</sup> *See id.* at 223-227.

<sup>69</sup> *See, e.g.*, Colleen F. Shanahan, Jeffrey Selbin, Alyx Mark & Anna E. Carpenter, *Measuring Law School Clinics*, 92 TUL. L. REV. 547, 550 (2018); Serge A. Martinez, *Law Clinics in Taiwan: Can Clinical Legal Education Succeed in this Civil Law Jurisdiction with an Undergraduate Legal Education System?*, 7 NAT'L TAIWAN U. L. REV. 343, 348 (2012).

<sup>70</sup> For a discussion of challenges to the rule of law and human rights in Haiti, *see, e.g.*, RIBANDO SEELKE & RIOS, *supra* note 14. For a discussion of the work of the Bureau des Avocats Internationaux (BAI) in Port-au-Prince rejecting bribery in its approach to client legal representation, *see, e.g.*, Bloch & Edmond Dimanche, *Human Rights from the Ground Up*, *supra* note 15, at 244.

<sup>71</sup> Eustache, *supra* note 9, at 606-07.

<sup>72</sup> *Id.*

the completion of their second year, students may represent individuals before the local court. However, by having a clinic, we could more effectively train our students in a manner that combines advocacy with a strong commitment to serve those who cannot afford justice. Students would then have the necessary tools to sharpen their legal advocacy skills. The need is great because these kinds of clinical training opportunities do not currently exist in Haiti.<sup>73</sup>

Between that early call for establishing a clinic and the actual launch in the 2017-2018 academic year, almost a decade passed. Two of the co-authors here have previously written about CRAALE's vision and the obstacles that impeded CRAALE's launch during those years,<sup>74</sup> but this is the first article to offer a detailed account and analysis of the launch, its impact, and subsequent takeaways for the future.<sup>75</sup>

During that near decade of preparation, the co-authors involved in the efforts found no other in-country models to emulate.<sup>76</sup> We came to believe that the anticipated clinic was the first of its kind in Haiti. In 2018, some months after CRAALE's launch, two of us were told that a U.S.

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<sup>73</sup> *Id.* (footnote omitted). A pre-*mémoire* can enable a student to continue their studies until the fourth and final year of law school courses. See email with attachments from Yvon Janvier to co-authors (Nov. 12, 2023, 12:33 PM PST) (on file with co-authors). Obtaining the final diploma requires successful submission and defense of a *mémoire* (thesis). See *id.* Students who have completed their law school coursework but not yet submitted and defended their thesis are referred to here as students, or graduates, or *finissants*. Law school graduates who have defended their thesis but not yet completed their apprenticeship are generally referred to here as apprentices or *stagiaires*.

<sup>74</sup> See, e.g., Bloch & Edmond Dimanche, *Human Rights from the Ground Up*, *supra* note 15.

<sup>75</sup> There was brief newspaper coverage in Haiti announcing CRAALE's launch. See Janvier, *supra* note 12. Similarly, there have been media references to the launch, for example, related to the U.S. Embassy in Haiti grants. See, e.g., *Discours de l'Adjointe au Chef de Mission sur la Vulgarisation de la Loi sur l'Assistance Légale*, AMBASSADE DES ETATS-UNIS EN HAÏTI, (Dec. 18, 2018) <https://ht.usembassy.gov/fr/discours-de-ladjointe-au-chef-de-mission-sur-la-vulgarisation-de-la-loi-sur-lassistance-legale/> [Authors' translation: *Deputy Head of Mission's speech on the popularization of the Legal Aid Law, U.S. Embassy in Haiti*]. There has also been pre-launch media discussion of the clinic. See, e.g., Jessica Carew Kraft, *Establishing the Rule of Law in a Country Where Justice Hardly Exists*, THE ATL. (Apr. 22, 2015) <https://www.theatlantic.com/education/archive/2015/04/establishing-the-rule-of-law-in-a-country-where-justice-hardly-exists/391113/>. Several of the co-authors also presented in-person orally about CRAALE's work at various gatherings, including a conference in Port-au-Prince on prisons and during the academic exchanges under the grants from the U.S. Embassy in Haiti. Various of the co-authors have also submitted required reports on the grants to the grant funder regarding CRAALE's work, and the co-authors had prepared an earlier manuscript in French about CRAALE's work that was not published. In November 2023, Professor Janvier also generated a four-page report, which provides a brief overview and update about CRAALE and its work and "highlights the project's launch, objectives, achievements and limitations[.]" Yvon Janvier, *Clinique de Recherche d'Analyse et d'Assistance Légale (CRAALE-ESCDROJ): Enhancing Legal Assistance for Detainees in Jérémie, Haiti 1* (16 November 2023) (on file with co-authors) [hereinafter *Enhancing Legal Assistance*]. To our knowledge, no previously published law journal article has analyzed the launch and subsequent impact of CRAALE.

<sup>76</sup> Bloch & Edmond Dimanche, *Human Rights from the Ground Up*, *supra* note 15, at 223-27.



grant had supported a program described as a law school clinic in perhaps the 1990s at a law school in Port-au-Prince.<sup>77</sup> It was apparently no longer functioning,<sup>78</sup> and we have not unearthed its approach or details of its work. In any event, during that period of preparation, we knew of no law school clinic models in Haiti that could inform the development of CRAALE.<sup>79</sup> Lacking in-country models, we focused on examples of clinical legal education elsewhere, hoping to find approaches that could be modified or re-envisioned to suit a Haitian context.<sup>80</sup>

With its twin primary goals of education and service, CRAALE would need foundational infrastructure. Five building blocks came to furnish that foundation and underpin its launch.

### 1. *Fact-Finding Report: Assessment of Prison Conditions and Representation Needs*

The first event was an assessment of prison conditions and the legal representation status of persons incarcerated there. In 2017, Dean Eustache commissioned a group of law students under the supervision of two of the co-authors here, Jérémie attorney Ariel Chéry and then law student Marie Gerda Dorcy, to conduct that assessment.<sup>81</sup> Their March 2017 fact-finding report noted that 284 individuals were listed as persons being detained pre-trial in the prison facility.<sup>82</sup> The report provides specific information on 134 individuals, from cells one, five, six, seven, and eight, which constitute five of the nine cells in the prison.<sup>83</sup> In terms of individuals about whom specific information was provided, the report notes health issues for most of these individuals, including individuals who acknowledged suffering from fever, cholera, tuberculosis, and HIV.<sup>84</sup> Team members conducting the project described conditions in the facility as “deplorable” and “degrading[.]”<sup>85</sup> They also documented the common lack of legal representation for those confined pre-trial in the

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<sup>77</sup> This information was transmitted to Kate Bloch and Roxane Edmond Dimanche by Jeanne Clark, then-Public Affairs Officer of the U.S. Embassy in Haiti, during a conversation about clinical legal education in Haiti. The conversation took place in Port-au-Prince in August, 2018.

<sup>78</sup> *Cf. supra* text accompanying note 73, where Dean Eustache notes in 2009 that “these kinds of clinical training opportunities do not currently exist in Haiti.” *Id.*

<sup>79</sup> See Bloch & Edmond Dimanche, *Human Rights from the Ground Up*, *supra* note 15, at 225.

<sup>80</sup> *Id.*

<sup>81</sup> Chéry & Dorcy, *Assistance Program*, *supra* note 18. The additional ten law students/graduates who volunteered to participate in the fact-finding report for Dean Eustache and were granted access to the prison were: Marie Kivienné Dimanche, Denieuse Jean Charles, Garlin Hilaire, Jean Eslin Charles, Dimitry Bourdeau, Steeve Décembre, Lanoze Baptiste, Maxo Mezilas, Jean Wesley Lundy, and Bertrand A.H. Scipion.

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> *Id.* [Authors’ translation].

prison.<sup>86</sup> The report quantified and underscored the need for action on behalf of and relief for individuals detained in the prison.<sup>87</sup>

Although the information in the report was not unexpected, evidence is often compelling where anecdote and rumor might not be. This deeper understanding of the prison conditions and the needs of those incarcerated within it underscored the urgency and scope of the service task that would animate CRAALE.

## 2. *Temporary Home for CRAALE*

The second essential event in preparation for the launch was the securing of a temporary home for the clinic. A local non-profit health organization, where one of the CRAALE founders worked, offered rent-free use of a small working space on the top floor of a building in downtown Jérémie, close to the courthouse.<sup>88</sup> With the non-profit's restoration of the space to functionality (it had been damaged during Hurricane Matthew, a category 4 hurricane that devastated much of Jérémie in October of 2016),<sup>89</sup> the pieces were falling into place for the clinic vision to become reality.

## 3. *Developing Initial Curricular Materials*

The third building block related to the educational mission of CRAALE. With no in-country models of which we were aware, the clinic would need to decide the approach and content for its curriculum and training. In the years since Dean Eustache had called for the establishment of a clinic, various law school partners and colleagues had led criminal law simulations, similar to ones that a clinic might employ, at ESCDROJ.<sup>90</sup> Dean Eustache and other ESCDROJ colleagues

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<sup>86</sup> *See id.*

<sup>87</sup> *See* Chéry & Dorcy, *Assistance Program*, *supra* note 18. As a result of the report, even before CRAALE's launch, co-author Chéry filed a number of actions for release, generally *main levée* actions, on behalf of individuals confined in the prison. *Id.* CRAALE personnel also conducted more recent fact finding on the conditions in the prison, which resulted in a fact-finding report. *See* Jess McPeake, Blake Bengier, Elena Bertucci, Sherene Grinage Gotoy, Blaine Bookey & Peter Habib, *Deteriorating Conditions in the Jérémie, Haiti Prison: A Call to Action to Preserve Due Process and Human Life* (June 2023), [https://cgrs.uclawsf.edu/sites/default/files/Jeremie%20Prison%20Report\\_2023.06%20ENGLISH.pdf](https://cgrs.uclawsf.edu/sites/default/files/Jeremie%20Prison%20Report_2023.06%20ENGLISH.pdf). The report indicates that the CRAALE team was led by Professor Janvier and included Marie Midrenne Appolon, Miranda Hophine Jean René Dorvilier, Mario Marcelin, and Flavien Janvier. *Id.* at 11.

<sup>88</sup> For a description of that space, see Bloch & Edmond Dimanche, *Human Rights from the Ground Up*, *supra* note 15, at 228-29, 231-32.

<sup>89</sup> Adam Voiland, *Hurricane Matthew Soaks Haiti*, NAT'L AERONAUTICS SPACE ADMIN.: EARTH OBSERVATORY, <https://earthobservatory.nasa.gov/images/88893/hurricane-matthew-soaks-haiti> (last visited Jan. 16, 2023); *Hurricane Matthew: Haiti Storm Disaster Kills Hundreds*, BBC NEWS (Oct. 7, 2016) <https://www.bbc.com/news/world-latin-america-37582009> (reporting that "Jeremie saw 80% of its buildings levelled").

<sup>90</sup> For a discussion of some of the materials and earlier simulations, see Bloch &

contributed in essential and valuable ways to these materials. However, they were developed primarily in conjunction with non-ESCDROJ academics who engaged students in the simulations during brief visits to the law school.<sup>91</sup> Although these materials would prove useful, no clinic manual or clinic curriculum yet existed.

To begin addressing this lacuna, supporters of the clinic gathered in California in the summer of 2017 to develop an introductory set of materials for the clinic and, in particular, a draft clinic manual.<sup>92</sup> This draft manual included a proposed mission statement, which embraced its aspirational service and educational goals as follows:<sup>93</sup>

This Clinic has four goals. First, the Clinic aims to provide exceptional legal representation to indigent clients accused of criminal offenses who are detained in the Jérémie Prison. Second, the Clinic would like to represent indigent victims of sexual violence as a *partie civile* [in criminal cases]. Third, the Clinic plans to offer mediation to indigent community members to manage disputes before they escalate into court actions. Fourth, through these legal representation and mediation opportunities, the Clinic will work to enable law students to learn fundamental theories and doctrines, as well as acquire essential skills for ethical and effective legal practice.<sup>94</sup>

Beyond an articulation of the mission, this preliminary manual contained proposed teaching materials and clinic policies.<sup>95</sup> Among other items, the draft included a confidentiality policy and related exercise, a conflicts-of-interest policy, and a no-gifts policy.<sup>96</sup> It offered guidance on fundamental tasks, like client interviewing, developing a case theory, as well as legal research.<sup>97</sup> It included proposed clinic contracts for interns and simulation materials for experiential learning opportunities.<sup>98</sup>

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Edmond Dimanche, *Human Rights from the Ground Up*, *supra* note 15, at 226; Bloch, *supra* note 21, at 444-459.

<sup>91</sup> See, e.g., Bloch, *supra* note 21, at 444-459, 467.

<sup>92</sup> Experienced colleagues, educators, and clinicians who contributed to this draft project, in-person or through other means of consultation, included ESCDROJ Dean Eustache, former UC Law SF Associate Dean for Experiential Education Nancy Stuart, former Florida International University College of Law Professor Troy Elder, CGRS Legal Director Blaine Bookey, Professor Bloch, and Roxane Edmond Dimanche. Thanks also to Professor Alina Ball of UC Law SF, whose clinic manual helped provide a model for these efforts.

<sup>93</sup> See GRAAL Clinic Manual, Oct. 5, 2017 Version in French (on-file with co-authors). Before CRAALE launched and received its official title in October of 2017, it was sometimes referred to by the acronym “GRAAL.”

<sup>94</sup> *Id.* at 4. [Authors’ translation]. Discussion of the second and third service aims, involving representation of individuals who have suffered sexual violence and providing mediation, can be found *infra* at nn.212-217 and accompanying text.

<sup>95</sup> *Id.* at 4-17.

<sup>96</sup> *Id.* at 5-11.

<sup>97</sup> *Id.* at 12-17, 25-31.

<sup>98</sup> *Id.* at 16-22.

Work on the clinic manual continued into the fall. But producing written materials for a clinic was inadequate to launch the clinic. Clinic supporters needed a shared opportunity in which these materials could be reviewed and potentially become a basis for demonstration, discussion, and revision.

#### 4. *Launch Workshop*

These needs coalesced into a launch and training workshop that was held in October 2017 in Jérémie. Led by Dean Eustache, Roxane Edmond Dimanche, and international faculty visitors, the four-day intensive program, conducted in French, walked participants through ethical principles and mock interactive dilemmas, legal research, programmatic and policy considerations, and an extended experiential role-play.<sup>99</sup> The workshop was based on the preliminary clinic manual and enabled consideration and review of its contents.<sup>100</sup> These materials, which aimed to highlight and apply a range of common clinical legal education best practices, furnished an introduction for the curricular foundation and educational arm of the clinic. They continue to inform training for new CRAALE interns.

It was also during this workshop that CRAALE gained its official name.<sup>101</sup> The workshop proved to be one important element in the development and launch of CRAALE.

#### 5. *Outreach to the Jérémie Legal Community*

Launching CRAALE would require more than these four essential components—more than information on service needs, a provisional home, an introductory curricular manual, and a launch workshop. As the first clinic at ESCDROJ, and as at least one of the first law school clinics in the country, it required buy-in and approval, both formal and informal, from the local legal community.<sup>102</sup> For example, local officials had to formally recognize CRAALE and its personnel.<sup>103</sup> The clinic was a new concept in Jérémie,

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<sup>99</sup> The international faculty visitors who helped lead the workshop were Nicole Phillips (adjunct professor at UC Law SF), Troy Elder (formerly a professor at Florida International University College of Law), and Professor Bloch.

<sup>100</sup> The curricular materials benefited from the insights of many thoughtful designers, including faculty, staff, and students from ESCDROJ and UC Law SF. More generally, CRAALE benefited from the infusion of resources, including funding, from a variety of supporters, including a number of the co-authors.

<sup>101</sup> In conversation with participants in the October 2017 launch workshop, Dean Eustache selected the name CRAALE.

<sup>102</sup> Cf. Bloch & Edmond Dimanche, *Human Rights from the Ground Up*, *supra* note 15, at 241.

<sup>103</sup> See, e.g., “A Qui De Droit” [Authors’ translation: To Whom It May Concern] authorization of May 24, 2018 (on file with co-authors). This document represented the prosecutor’s office’s formal recognition of CRAALE as affiliated with ESCDROJ and granted permission

and, as such, needed explanation and justification.<sup>104</sup> It was important to address potential concerns, even if these were not voiced or envisioned by members of the local legal community. For example, was the purpose of the clinic to unearth judicial errors and embarrass those responsible? Would the clinic negatively affect the livelihoods of practicing attorneys? Meetings with leaders of the legal profession and bench to dispel concerns and introduce the concept and role of CRAALE were fundamental.

Both during the launch workshop and in a series of subsequent gatherings, Dean Eustache and key ESCDROJ personnel worked to provide information and persuade members of the local Bar and bench of CRAALE's value to the community.<sup>105</sup> CRAALE personnel also clarified that the clinic would provide free legal representation for individuals who could not otherwise afford such representation. It was not intended to threaten the livelihoods of local attorneys. Fortunately, many of the community leaders, from the prosecutor to various judges and local Bar members, were ESCDROJ alumni and familiar with the good work of the law school. It probably helped that co-author Janvier, who became the CRAALE supervisor, was also the former mayor of Jérémie and understood the local political and legal landscape and worked to nurture acceptance and support from the legal community.

As is commonly the case, recognition involved not only substantial work, but also ceremony. Gatherings of important dignitaries and speeches accompanied the various launch stages of CRAALE. These not only enhanced its official recognition but also helped generate the good will needed to support its difficult tasks.

With dialogue and collaboration, CRAALE has endeavored to overcome potential objections. As a result, CRAALE personnel perceive that the legal community has largely come to understand the clinic as a benefit, a positive force that can help combat prolonged pre-trial detention.<sup>106</sup> CRAALE personnel report that these same lawyers and judicial authorities have found that they sometimes had to call on CRAALE as part of their mission.<sup>107</sup> Ultimately, hard work by many dedicated individuals, along with these five pivotal components, came together to furnish the foundation for CRAALE's 2017-2018 official launch.<sup>108</sup>

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for eight members of CRAALE to visit the Jérémie prison until the end of CRAALE's project to support low-income individuals incarcerated in the prison.

<sup>104</sup> Cf. Bloch & Edmond-Dimanche, *Human Rights from the Ground Up*, *supra* note 15, at 241.

<sup>105</sup> The work of the earlier fact-finding reporting group, which focused on individuals detained pre-trial, had also received support from local officials, including the prosecutor. See Chéry & Dorcy, *Assistance Program*, *supra* note 18.

<sup>106</sup> See email from Kate Bloch to Yvon Janvier (Sept. 30, 2023, 6:14 PM PDT); Email from Yvon Janvier to Kate Bloch (Oct. 2, 2023, 5:40 PM PDT) (emails on file with co-authors).

<sup>107</sup> See sources *supra* note 106.

<sup>108</sup> The launch began with the October, 2017, workshop and involved a number of events that took place over several months with the goal of establishing CRAALE within the legal community.

### C. *Establishing the Clinic: Service & Access to Justice*

Once the clinic launched, the next step in the pursuit of service was for the CRAALE team to begin representing individuals detained in the prison. As the new CRAALE supervisor, Professor Janvier had to request and receive official permission for CRAALE staff to access the prison to interview potential clients.<sup>109</sup> The prosecutor officially granted that permission on May 24, 2018.<sup>110</sup> With that authorization, under the direct supervision of Assistant CRAALE Supervisor Chéry, CRAALE interns could effectively visit their clients and assume responsibility for cases.

From its inception, CRAALE has specialized in representing those who have been forgotten by the system. The abandonment of these individuals manifested both symbolically and literally. Although the ways in which the system neglected people varied, three common patterns emerged.

First, CRAALE members witnessed the excessive and unconstitutional delays from initial incarceration to a first hearing with a judge. As noted at the start of the Article, the Haitian Constitution of 1987 requires that individuals be brought before a judge within 48 hours of their arrest.<sup>111</sup> The government routinely violated that mandate.<sup>112</sup> In measuring the frequency of those delays, in his role as CRAALE supervisor, Professor Janvier reported that all of CRAALE's clients in the cases CRAALE processed from 2018 through November 2022 had waited more than the constitutional limit of 48 hours without being brought before a judge.<sup>113</sup>

For example, Professor Janvier described a CRAALE client's plight as follows: the individual, whom we refer to here as A, had been accused of stealing three small bags of cement and arrested in May of 2021.<sup>114</sup> His first appearance before a judge did not take place for seven months, and that appearance was the trial on his case.<sup>115</sup>

The second pattern involved lost court files. Continuing his narrative on the case described immediately above, Professor Janvier explained that, during the trial in December of 2021, the prosecutor moved to dismiss the charges, and A was ordered released.<sup>116</sup> However, for a release to be effectuated, the court file with the order needs to be transmitted to the prison.<sup>117</sup> Months later, in February of 2022, CRAALE learned of

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<sup>109</sup> See A Qui De Droit, *supra* note 103.

<sup>110</sup> *Id.*

<sup>111</sup> See *supra* text accompanying and source cited in note 3.

<sup>112</sup> See *supra* text accompanying and sources cited in notes 3 & 5.

<sup>113</sup> Email from Yvon Janvier to co-authors (Jan. 10, 2023, 10:41 AM PST) (on file with co-authors). These are the cases described *infra* in Tables 1 & 2.

<sup>114</sup> Email from Yvon Janvier to Kate Bloch (Oct. 16, 2023, 11:23 AM PDT) (on file with co-authors).

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

the individual's continued incarceration and undertook representation.<sup>118</sup> Their efforts revealed that the client's court file had been lost and that the release order had therefore not been received at the prison.<sup>119</sup> Professor Janvier estimates that in 15% to 20% of CRAALE's cases, the court clerk's office could not find the client's file.<sup>120</sup> In many ways, lost court files epitomize the system's literal and figurative amnesia.

Lack of adequate organizational systems and technology contributes to the lost file problem. For instance, the clerk's office does not have a digital filing system.<sup>121</sup> It relies on paper files.<sup>122</sup> The photograph below was taken of a court's file archives during a visit to a courthouse in Jérémie in 2018.<sup>123</sup>



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<sup>118</sup> *Id.*

<sup>119</sup> Email from Yvon Janvier to Kate Bloch (Oct. 16, 2023, 11:23 AM PDT) (on file with co-authors).

<sup>120</sup> Email from Yvon Janvier to co-authors (Jan. 10, 2023, 10:41 AM PST) (on file with co-authors).

<sup>121</sup> *Haiti: Events of 2022, supra* note 51, (“Haitian courts do not have digital copies of files.”).

<sup>122</sup> *Id.*

<sup>123</sup> These are the archives in the Palace of Justice courthouse in downtown Jérémie. The photograph was taken with permission during a March 2018 visit to the courthouse. It has been cropped and formatted for this Article.

Third, in addition to these unconstitutional delays before the initial judicial hearing and lost file issues, individuals generally endure prolonged detention in prison awaiting trial.<sup>124</sup> For example, a case involving the client, whom we refer to here as B, illustrates all three of these problematic realities.<sup>125</sup> The CRAALE team undertook representation of B shortly after the clinic's launch in 2018.<sup>126</sup> The team learned that B had been imprisoned since August of 2014.<sup>127</sup> B had not been brought before a judge within the constitutionally required 48 hours.<sup>128</sup> When team members tried to examine B's criminal case file, they discovered that the authorities could not locate it.<sup>129</sup> It had apparently been lost for four years, during which time B languished in prison ostensibly awaiting trial.<sup>130</sup> Consistent with the circumstances in B's case, Professor Janvier reports that the overall length of pre-trial incarceration endured by clients, whom CRAALE represented during the same 2018-November 2022 period, commonly ranged from two to seven years.<sup>131</sup>

In response to these patterns, the interns and their supervisors employed several strategies to encourage the court and the prison to remember the forgotten. The first two formal strategies involved the special habeas corpus procedure and "*main levée*."<sup>132</sup> Both are designed to achieve the client's release. The first, habeas corpus, challenges the legality of the arrest or detention itself.<sup>133</sup> The CRAALE team deployed

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<sup>124</sup> See e.g., Email from Yvon Janvier with attachments to Kate Bloch et al., (June 29, 2018, 11:19 AM PDT) (on file with co-authors).

<sup>125</sup> Information about this case, like that for all of CRAALE's cases described in this Article, has been provided by CRAALE team members. See e.g., Rapport de synthèse- Juillet 2018 attachment to email from Yvon Janvier to Kate Bloch et al., (Aug. 1, 2018, 11:40 AM PDT); Email from Yvon Janvier with attachments to Kate Bloch et al., (June 29, 2018, 11:19 AM PDT); Email from Yvon Janvier to Kate Bloch (Nov. 2, 2023, 6:00 PM PDT); Email from Kate Bloch to Yvon Janvier (Nov. 2, 2023, 3:39 PM PDT) (emails on file with co-authors).

<sup>126</sup> See *supra* sources cited in note 125.

<sup>127</sup> Rapport de synthèse- Juillet 2018 attachment to email from Yvon Janvier to Kate Bloch et al., (Aug. 1, 2018, 11:40 AM PDT); Email with attachments from Yvon Janvier to co-authors et al., (June 29, 2018, 11:19 AM PDT) (emails on file with co-authors). B was accused of rape. *Id.*

<sup>128</sup> Email from Yvon Janvier to Kate Bloch (Nov. 2, 2023, 6:00 PM PDT); Email from Kate Bloch to Yvon Janvier (Nov. 2, 2023, 3:39 PM PDT) (emails on file with co-authors).

<sup>129</sup> Rapport de synthèse- Juillet 2018 attachment to email from Yvon Janvier to Kate Bloch et al., (Aug. 1, 2018, 11:40 AM PDT) (on file with co-authors).

<sup>130</sup> Rapport de synthèse- Juillet 2018 attachment to email from Yvon Janvier to Kate Bloch et al., (Aug. 1, 2018, 11:40 AM PDT); Email with attachments from Yvon Janvier to co-authors et al., (June 29, 2018, 11:19 AM PDT); Email from Yvon Janvier to Kate Bloch (Nov. 2, 2023, 6:00 PM PDT); Email from Kate Bloch to Yvon Janvier (Nov. 2, 2023, 3:39 PM PDT) (emails on file with co-authors).

<sup>131</sup> See email with attachments from Yvon Janvier to co-authors et al., (Jan. 10, 2023, 10:41 AM PST) (on file with co-authors).

<sup>132</sup> *Main levée* (literally, "lifted hand") means a provisional lifting of the investigating judge's order that keeps someone in custody during the post-arrest investigation of a case.

<sup>133</sup> For a discussion of habeas corpus challenges to prolonged pre-trial detention in Haiti, see, e.g., *Release of 17 persons in habeas corpus: a great moment for the protection of the rights*



this habeas approach in B's case, and, after years waiting for a trial that never took place, the court granted B's petition for release.<sup>134</sup> In addition to release from custody, according to Professor Janvier, although habeas corpus success, in the abstract, would not necessarily mean an end to the case, in Jérémie, for CRAALE clients during the 2018-November 2022 period, it did effectively result in an end to the prosecutorial pursuit of charges in their case.<sup>135</sup> *Main levée*, however, means being released while the case is pending.<sup>136</sup> In the U.S. context, it resembles release on one's own recognizance while awaiting further court proceedings.

Beyond applying for court intervention with habeas corpus or *main levée*, a third avenue of relief involved addressing a formal request to the government commissioner (prosecutor) to look into the cases. This approach did not require a court to make a decision to obtain the client's release. Instead, the decision to drop the charges or effectuate release rested with the prosecutor. This was the approach in the case of A as described above, against whom the prosecutor had moved to dismiss charges and whom the court had ordered released, but whose file with the release order had been lost.<sup>137</sup> After learning that A was still in the prison, the CRAALE team intervened and petitioned the prosecutor directly for the client's release, a petition that met with success and the client's freedom.<sup>138</sup>

Professor Janvier explained that, in some cases in this third category involving a request to the prosecutor, the offenses were minor, and the individuals might already have been detained for as long as their sentences would have required even if they had been convicted of the charged offense.<sup>139</sup> He explained that, in other cases in this category, the

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*of detainees in Haiti*, LAWYERS WITHOUT BORDERS CAN. (Sept. 17, 2019), <https://ascanada.ca/en/medias/release-of-17-persons-in-habeas-corpus-a-great-moment-for-the-protection-of-the-rights-of-detainees-in-haiti/>.

<sup>134</sup> Email from Yvon Janvier to Kate Bloch (Nov. 2, 2023, 6:00 PM PDT); Email from Kate Bloch to Yvon Janvier (Nov. 2, 2023, 3:39 PM PDT) (on file with co-authors).

<sup>135</sup> Email from Yvon Janvier to Kate Bloch (Oct. 4, 2023, 5:04 PM PDT) (on file with co-authors); Email from Yvon Janvier to Kate Bloch (Nov. 2, 2023, 6:00 PM PDT); Email with attachment from Yvon Janvier to co-authors (Nov. 12, 2023, 12:33 PM PST) (Professor Janvier explains the reality of habeas corpus success in Jérémie as follows: "in practice, and in the majority of cases, if the judicial actors (judge, prosecutor) consider that the individual released by [h]abeas corpus has spent . . . time in prison far exceeding the sentence required by the offense if he had been found guilty during a trial, at this time, after his release by habeas corpus, he has no fear of being prosecuted again by the courts. Only then can we assume that the system has dropped all charges against this individual.") (emails on file with co-authors) [Authors' translation].

<sup>136</sup> See *supra* note 132.

<sup>137</sup> Email from Yvon Janvier to Kate Bloch (Oct. 16, 2023, 11:23 AM PDT) (on file with co-authors).

<sup>138</sup> Email from Yvon Janvier to Kate Bloch (Oct. 16, 2023, 11:23 AM PDT); Email with attachment from Yvon Janvier to Kate Bloch (Oct. 15, 2023, 7:07 PM PDT) (on file with co-authors).

<sup>139</sup> Email from Yvon Janvier to co-authors (Jan. 10, 2023, 10:41 AM PST) (on file with co-authors).

complaints might have been withdrawn or the individuals were in prison for a minor offense, and the system had forgotten they were there.<sup>140</sup> By accompanying the CRAALE representative to the prison and viewing the files, the government commissioner was in a position to recognize that there was no longer a need to pursue prosecution, and so he had those clients released without any other form of trial.<sup>141</sup> CRAALE personnel used all three approaches, habeas corpus, *main levée*, and prosecutorial discretionary review, to effectively provide relief for clients.

Separate from these three approaches to address specific patterns of concern, in their service work to support the rule of law and reduce prolonged pre-trial detention and human rights violations, CRAALE also represented clients in numerous trials, especially in the pre-pandemic period.

#### *D. Establishing the Clinic: Educational Objectives & Expanding the Curricular Foundations*

After service commitments to clients had been forged in the early stages following the 2017-2018 launch, and approaches to addressing problematic detention became part of the CRAALE repertoire, attention returned to developing the curriculum. This section explores the process and substantive choices involved in that effort.

##### *1. Assessing and Engaging with Best Practice Options*

In order to prepare interns to actually conduct the work of representing clients, law school clinics generally aim to provide foundational training. In a law school clinic environment with real-world clients, a significant temptation, especially when service needs are as vivid and urgent as those for clients confined in the Jérémie prison, is for the supervisors to take over the representation themselves, rather than rely on the less practiced interns. Succumbing to that temptation can preempt the training that would prepare the intern for such a task in the future. Consequently, among common best practices, training that prepares students to assume case responsibilities is usually central to the work of law school clinics.<sup>142</sup>

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<sup>140</sup> *Id.*

<sup>141</sup> *Id.*

<sup>142</sup> See e.g., Adrian Evans, Anna Cody, Anna Copeland, Jeff Giddings, Mary Anne Noone & Simon Rice, BEST PRACTICES: AUSTRALIAN CLINICAL LEGAL EDUCATION 18 (2012) available at [https://cald.asn.au/wp-content/uploads/2012/11/Item\\_12.3\\_Best\\_Practices\\_Australian\\_Clinical\\_Legal\\_Education\\_Sept\\_2012.pdf](https://cald.asn.au/wp-content/uploads/2012/11/Item_12.3_Best_Practices_Australian_Clinical_Legal_Education_Sept_2012.pdf) (last visited Aug. 3, 2023) (“Students are thoroughly prepared/ trained to conduct interviews with clients, when necessary.”) Cf. Frank S. Bloch, *New Directions in Clinical Legal Education: Access to Justice and the Global Clinical Movement*, 28 WASH. U. J.L. & POL’Y 111, 121 (2008) (describing “professional skills training,

Beyond the introductory clinic manual and curriculum, for CRAALE to reach this goal of training interns for their professional roles, educators in Jérémie sought to enhance their understanding of clinical curricular pedagogy.

In August of 2018, the CRAALE and UC Law SF teams learned from U.S. Embassy in Haiti personnel that there might be a possible funding opportunity from the Embassy, which, at that time, through its publicly posted notice of funding opportunity, was soliciting applications for its Public Affairs Section Grants Program.<sup>143</sup> As a result, ESCDROJ and UC Law SF personnel subsequently applied for, and the Embassy awarded, paired grants to advance clinical legal education by supporting CRAALE and funding two academic exchanges for curricular development and implementation.<sup>144</sup>

Access to significant funding for academic exchanges to develop curriculum opened new vistas. We had previously operated on very limited budgets. For the first exchange under the grant, one held in San Francisco, instead of the usual practice of inviting one Haitian colleague to visit at a time, the UC Law SF team could invite and host eight Haitian colleagues simultaneously. In addition, a sizeable team of local SF clinical educators could readily participate, and all of the gathered participants could collaborate and present live and in real time.

Having already launched the clinic, and having taught, supervised, and learned within it, the CRAALE team would be able to draw on those on-the-ground experiences for material to revise and enrich the curriculum. With additional participants, the UC Law SF team would

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experiential learning, and instilling professional values of public responsibility and social justice” as common components of clinical legal education globally). How much responsibility should devolve to students for cases is subject to debate. Frank S. Bloch, *The Andragogical Basis of Clinical Legal Education*, 35 VANDERBILT L. REV. 321, 339 n.66 (1982) (“Clinicians differ on the extent to which students should assume responsibility.”).

<sup>143</sup> For a copy of the Embassy website posting from the Web Archive from August 7, 2018, see Call for Proposals: U.S. Embassy Public Affairs Section Grants Program, U.S. Embassy Haiti PAS Annual Program Statement, <https://web.archive.org/web/20180807040835/https://ht.usembassy.gov/education-culture/call-for-proposals-grants-program/>. In the summer of 2018, after Professor Janvier, a Hubert Humphrey Fellow, learned about the possibility of funding, he introduced then U.S. Embassy in Haiti Public Affairs Officer Jeanne Clark to Professor Bloch. A meeting was convened with Public Affairs Officer Clark, Roxane Edmond Dimanche, and Professor Bloch, all of whom happened to be in Port-au-Prince in August of 2018.

<sup>144</sup> U.S. Embassy in Haiti grant documents (on file with co-authors). Professors Kate Bloch and Jessica Vapnek spearheaded the grant application for UC Law SF. Professor Janvier and Roxane Edmond Dimanche did the same for ESCDROJ. In terms of the application and review process, former U.S. Embassy in Haiti Public Affairs Officer Jeanne Clark notes that the grant “opportunity was public, competed, . . . [and] a grant committee review[ed] all proposals . . . [before] selection was made.” See email from Jeanne Clark to Kate Bloch (Jan. 1, 2024, 5:17 AM PST). The exchanges pursuant to the grants would draw upon institutional competencies and resources, including supportive staff, students, and faculty at both institutions.

be able to draw on more than 75 years of combined clinical legal teaching experience. Experience was valuable in planning for the grant's first formal academic exchange. This process required answering critical design questions: How could the two teams, one from UC Law SF and one from CRAALE, join together to enhance understanding of clinical methodologies and best practices? How and what might be shared such that the Haitian contingent would have approaches from which they might ultimately select, adapt or reject methods and content? What should be the focus of the interactions? Clinical legal education is a rich and robust domain. But, in a five-day symposium, we could engage with only a limited subset of its riches.

In reflecting on what it meant for a legal clinic to have an educational focus, the UC Law SF team perceived one of the most difficult and important capacities of a clinical educator as the ability to help a student effectively learn to fly solo, while still providing adequate support so that the student feels confident spreading their wings. Scholar and clinician Ann Shalleck opines that “[n]owhere is the intersection of legal theory and legal practice more intense than in supervising students representing real clients on real cases.”<sup>145</sup> Since a fundamental goal of many law school clinics (including CRAALE) involves preparing aspiring attorneys to practice, success in that supervisory dynamic would be central.

In the end, in light of the challenges of scaffolding students and recent graduates in their inaugural flights in real cases, the UC Law SF team focused on common best practices for a clinic supervisor to effectively guide students and recent graduates. UC Law SF former Academic Dean and Clinical Professor Shauna Marshall offered a concise overview of three proposed core concepts for clinic supervision: 1) the “professor should be non-prescriptive in her teaching method”; 2) “the student should learn through an interactive process”; and 3) “professors should critique students as they learn new skills.”<sup>146</sup>

In addition to a focus on what the UC Law SF team understood as common supervisory best practices, while developing materials for the symposium (including adapting some prior simulations conducted at ESCDROJ), the team drew on core principles of client-centered

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<sup>145</sup> Ann Shalleck, *Clinical Contexts: Theory and Practice in Law and in Supervision*, 21 N.Y.U. REV. L. & SOC. CHANGE 110, 110 (1993).

<sup>146</sup> Shauna Marshall, Presentation at the International Clinical Legal Education Symposium & Training of Trainers Workshop, UC Law SF, San Francisco, CA (Feb. 7, 2019) (video on file with co-authors). For a discussion of providing feedback as a best practice in clinical legal education in Australia, see e.g., Evans et al., *supra* note 142, at 19 (explaining that “[t]he constructive provision of feedback is central to student supervision. . . Feedback is provided in a timely manner so as to enable the student to address and build on the feedback”). These three approaches highlighted and served as vehicles for exploring potential best practices in clinical legal education.

lawyering.<sup>147</sup> Although not unique to the U.S., this approach to lawyering, which seeks to uplift the client and their agency as central to understanding and pursuing the case, has become a foundational philosophy in clinical legal education in the U.S.<sup>148</sup> In describing the prevalence and impact of this philosophy, Professor Katherine Kruse opines that “the client-centered approach has so thoroughly permeated skills training, it is not an exaggeration to say that client-centered representation is one of the most influential doctrines in legal education today.”<sup>149</sup> Client-centered principles, in turn, manifested in various contexts during the symposium, including through client interviewing role plays and the related supervision exchanges with students about those interviews.

Beyond approaches to supervision and client-centered lawyering, the symposium also focused on the critical process of reflection that is often understood as a clinical legal education best practice<sup>150</sup> and regularly anticipates debriefing as an important tool.<sup>151</sup> Supervision approaches, including an emphasis on interactive learning, client-centered lawyering, and debriefing became common best practice options highlighted during the symposium.

## 2. *Logistical Challenges*

Concurrently with developing a basic framework and content for the first academic exchange, both the Haiti and California contingents were juggling the logistical realities of scheduling and travel. In many ways, the essentials of how and what content would be chosen represented only a fraction of the important considerations for the symposium workshop. Engaging cross-culturally and bridging the language differences (the symposium took place in French and English) as well as geographic complexities offered their own challenges. For example,

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<sup>147</sup> See, e.g., Elliot Milstein, *Experiential Education and the Rule of Law: Teaching Values Through Clinical Education in China*, 22 *GLOBAL BUS. & DEV. L. J.* 55, 61 (2009) (“One of the core values of most American clinical programs is client-centered lawyering. By this we mean that lawyers represent clients and must do it in a way that ensures the autonomy of the client as the primary decision-maker over the life of a case. It assumes that all important decisions involved in solving a legal problem involve value-choices and that a primary job of a lawyer is to help a client make those decisions in a way that is consistent with the client’s values.”); Katherine R. Kruse, *Fortress in the Sand: The Plural Values of Client-Centered Representation*, 12 *CLINICAL L. REV.* 369, 370-71 (2006). Beyond discussion of this approach in the U.S. context and for the academic exchanges with the CRAALE clinic team, this Article does not explore whether or the extent to which the client-centered approach is a core approach in legal education or lawyering in other jurisdictions globally.

<sup>148</sup> See, e.g., Milstein, *supra* note 147.

<sup>149</sup> Kruse, *supra* note 147, at 370-71.

<sup>150</sup> See e.g., Evans, et al., *supra* note 142, at 12, 20-21 (describing reflection as among clinical legal education best practices in Australia).

<sup>151</sup> *Id.* at 20-21.



suggestions have been foundational throughout the gestation and establishment of CRAALE, although her studies of law school clinics had also been substantially focused on U.S. clinical legal education.<sup>157</sup>

In addition to the CRAALE team, the Embassy had authorized the inclusion of Jacques Letang, who directs the Bureau des Droits Humains en Haïti (Office of Human Rights in Haiti),<sup>158</sup> a well-respected human rights legal organization in the capital, in the symposium. As noted above, he has (more recently) assumed leadership as the president of the Federation of Bar Associations (FBH) in Haiti.<sup>159</sup> In addition to the presentation that President Letang gave in which he shared key approaches to human rights representation in Haiti, his engagement with the clinical approaches that were highlighted and his commentary provided important perspective on those clinical options.<sup>160</sup>

Reducing the chance of realizing the risks also meant building in space and time for the CRAALE team to share their experiences and reflections in both larger and smaller group settings and for their wisdom to govern decision making in a variety of contexts.

Perhaps the most powerful check on the potential influence of U.S. colleagues was the track record throughout the multi-year collaboration of Haitian colleagues explicitly providing guidance when U.S. colleagues made incorrect assumptions or proposed approaches that were not likely to work well in a Haitian context.<sup>161</sup>

In the 2019 symposium, Haitian participants appreciated the value of being open to new approaches while recognizing the importance of being discerning in exploring those approaches. They knew it would be necessary to evaluate new theories and practices critically and evaluate them within the Haitian legal context.<sup>162</sup> Even approaches that looked

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number of other institutions, including Seton Hall and Florida International University College of Law, and she, along with Georges Gabrielle Paul, presented the vision for CRAALE at the Global Alliance for Justice Education (GAJE) in Valencia, Spain in July of 2011.

<sup>157</sup> *Id.*

<sup>158</sup> See BDHH, <https://bdhhaiti.org/>.

<sup>159</sup> See, e.g., Jacques Letang, *Jacques Letang (FBH & BINUH) on the UN Integrated Office in Haiti (BINUH) - Security Council Open VTC*, UNITED NATIONS: UN WEB TV (June 19, 2020), <https://media.un.org/en/asset/k1w/k1wypz7hq9>.

<sup>160</sup> FBH President Letang subsequently participated in all four of the additional U.S. Embassy in Haiti grant-sponsored symposia and trainings that UC Law SF and/or ESCDROJ have hosted. Notably, he presented at the symposium in San Francisco in the spring of 2023, and he was a principal in the planning and presenting for the training conducted by BDHH and ESCDROJ in Jérémie in August of 2023.

<sup>161</sup> See e.g., Kate E. Bloch and Roxane Edmond Dimanche, *The Rule of Law and Ethical Integrity: Does Haiti Need a Code of Legal Ethics?*, 37 U. HAW. L. REV. 1, 3 (2016). For a discussion of developing and modifying experiential simulation materials for use in a Haitian context, see, e.g., Bloch, *supra* note 21, at 453.

<sup>162</sup> Email with attachment from Roxane Edmond Dimanche to Kate Bloch, Building a Legal Aid Clinic from Scratch, (Feb. 3, 2023, 10:45 AM PST) (on file with co-authors).

promising would likely need to be adapted, in light of Haitian cultural customs, law, and principles.<sup>163</sup>

The California hosts hoped that the presentations by U.S. colleagues would offer options that could be accepted, rejected, or adapted. The dialogue, respect, and reflection at the heart of the exchange also enabled revising approaches in real time during the symposium. Still, concerns about imposing methodologies and practices and infusing the selection and rejection process of Haitian colleagues with U.S. colleagues' limited understandings and clinical legal education preferences remained.

#### 4. *First Academic Exchange Under the Grant*

Finally, and with various caveats in mind, the symposium was underway. The initial two days offered a whirlwind of presentations, experiential role-plays, and opportunities to discuss clinical supervision, with guests and hosts deeply immersed in clinical approaches (and we hope best practices).<sup>164</sup>

On the third day of the visit, we joined colleagues at the regional Northern California Clinicians' Conference.<sup>165</sup> This brief interlude enabled the group to engage with clinicians from throughout Northern California and beyond. The expectation was that this engagement would provide broader and more diverse contacts and perspectives on clinical legal education than could be offered within the confines of the symposium. In some perhaps unexpected ways, this regional gathering did turn out to provide a particularly important moment for international clinical collaboration.

That was because of Jean.<sup>166</sup> It appears that Jean was six years old when his parents traveled from Haiti to Chile and left him behind with a caregiver in a mountainous and remote region of Western Haiti.<sup>167</sup> When we learned about Jean, his parents had been unsuccessfully trying to contact Jean's caregiver for some time. As a consequence of their inability to locate their son, they had approached clinicians at a law school clinic in Santiago, Chile, hoping perhaps that these lawyers could reach the more than 3500 miles across the sea and through the international challenges to reunite the family. But as of early February of 2019, the clinicians had had no success.

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<sup>163</sup> *Id.*

<sup>164</sup> See e.g., Agenda from International Clinical Legal Education Symposium & Training of Trainers Workshop (Feb. 7-12, 2019) (on file with co-authors).

<sup>165</sup> The conference was hosted by Golden Gate University Law School on February 9, 2019.

<sup>166</sup> The child's name was changed to protect their privacy.

<sup>167</sup> Jean's age at the time of separation was calculated based on Jean's birth certificate (on file with co-authors) and a subsequent news article about Jean and his family, which is cited *infra* in footnote 262.



Then, as part of the growing global clinical community, like the CRAALE participants, clinicians from the Santiago law school clinic in Chile happened to also be in attendance at the same Northern California Bay Area clinicians' event in San Francisco. On that Saturday morning, after the clinicians from Chile heard the introduction of the clinicians from Haiti, a conversation began, one to which we will return later.

Following the regional conference, gathering once again at UC Law SF on the third day of our symposium, we stepped back from the role plays and immersion to focus on designing curriculum. We worked together to reverse engineer one of the supervision exercises from the initial days of the symposium. Our goal was to surface educational objectives in the materials that had guided the work thus far. With alacrity, guests identified the educational objectives embedded in the exercise.

With these concepts now explicit and available for scrutiny, the time had come for members of the Haitian team to ascertain the underlying ideas or tasks that they would want to teach the interns in CRAALE and which, if any, of the approaches discussed might be useful. In an engaging session, with their recent practice experiences informing their discussion, the Haitian team quickly generated a list. From this, given the challenges the team members had encountered in their early representation endeavors, they selected learning how to address the recurring problem of lost court files as the overarching frame for a training exercise that could be valuable for the CRAALE curriculum.

It is worth noting that CRAALE's experience in Jérémie with lost files is not unique. For instance, a description of USAID support for a legal aid office in the Haitian city of St. Marc<sup>168</sup> narrates a client's circumstances that largely mirror the challenges CRAALE personnel had identified.<sup>169</sup> The article indicated that the client had been imprisoned on a petty theft charge four years earlier, was still awaiting trial, and had already served the equivalent of multiple times the expected sentence (even if convicted).<sup>170</sup> The case description expressly noted that the client's "lengthy incarceration was due to a lost case file."<sup>171</sup>

With lost court files as the focus, on the final day together, the Haitian team began brainstorming and documenting the learning objectives for the experiential role-play they chose to develop. Here, in light of how role-play scripts are often generated in the U.S., the UC Law SF team might have anticipated the Haitian team sitting and drafting a script for an experiential exercise. But instead, the Haitian

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<sup>168</sup> See *Lost While Awaiting Trial*, *supra* note 54.

<sup>169</sup> See *id.*

<sup>170</sup> See *id.*

<sup>171</sup> *Id.* The website article reports that the legal aid office in St. Marc also has an impressive record of client releases (251 clients released). See *id.*



Protests took over the streets,<sup>177</sup> and UC Law SF and CRAALE team members sheltered in place at a hotel. Pictured below is a photograph of some of the protests from the hotel window.<sup>178</sup>



Despite the challenges, days later, both teams collaborated to plan and host a second academic exchange at another hotel nearby.<sup>179</sup> We opened this exchange to share information with approximately 30 guests on CRAALE's progress and accomplishments. Our guests included Haitian attorneys and law students, as well as individuals affiliated with Lawyers without Borders, the U.S. Embassy in Haiti, and the UN.<sup>180</sup>

It was with this audience that CRAALE shared its service accomplishments thus far and its now finished role-play on clinical pedagogy and supervision in the case of lost court files. It was here in Haiti that we engaged audience members as participants in experiential clinical legal education opportunities. It was here that we celebrated the two-year anniversary of CRAALE. It was here that audience members were moved to ask how they could create a

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<sup>177</sup> *Id.*

<sup>178</sup> The photograph was taken by Professor Bloch. It has been cropped and formatted for this Article.

<sup>179</sup> The agenda for the second exchange is on file with the co-authors.

<sup>180</sup> Sign-in sheets for the second academic exchange are on file with the co-authors, although it is not clear that they include all audience members in attendance at the event.

CRAALE in Port-au-Prince.<sup>181</sup> It was, thus, here that CRAALE had taken the next step in becoming a model for clinical legal education in Haiti.<sup>182</sup>

### III. ANALYZING CRAALE'S IMPACT

The enthusiastic reception of the CRAALE team's presentation at the exchange in the capital and the interest in replicating CRAALE outside of Jérémie were invigorating. However, considering CRAALE as a potential model warrants an analysis and evaluation of CRAALE's successes and limitations. This Part offers such an assessment.

Depending on a clinic's goals and context, criteria for such an assessment may vary. For the assessment here, we have chosen six lenses: service, ethics, teaching, logistics and managerial considerations, collaboration, and societal challenges. The first three, service, ethics, and teaching, represent essential goals announced as part of CRAALE's mission.<sup>183</sup> Consequently, evaluating CRAALE's work on those criteria furnishes an opportunity to determine to what extent CRAALE is fulfilling its animating principles. These domains also enable consideration of some of the theories, approaches, and practices the CRAALE team decided were appropriate to apply in the Haitian context. In addition, these three lenses open a window into whether CRAALE's work is furthering the rule of law and human rights. The remaining three criteria, logistics and managerial considerations, collaboration, and societal challenges seem appropriate bases for review for most organizations, especially those that aim to survive in complex and resource-scarce environments.

#### A. *Service: Clients' Lives, Human Rights, & the Rule of Law*

In evaluating CRAALE's service, this section considers first a quantitative assessment of CRAALE's work and then turns to more qualitative dimensions and implications of CRAALE's engagement with clients. Finally, it considers limits on the scope of CRAALE's service aspirations.

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<sup>181</sup> See Lamour & Janvier, *supra* note 20, at 8.

<sup>182</sup> The exchanges did not end with the 2019 presentation in Port-au-Prince. The pandemic struck, but we engaged in a mediation workshop virtually in May of 2021. We also held a fourth academic exchange in the spring of 2023, the International Human Rights, Mediation & Restorative Justice symposium, which was a four and one-half day hybrid event with most participants engaged in person on the UC Law SF campus in San Francisco. Following that fourth exchange, the CRAALE contingent hosted a training in August of 2023 focused on topics from the recent symposium, including mediation and alternative dispute resolution.

<sup>183</sup> For CRAALE's mission statement, see *supra* text accompanying notes 93-94.

## 1. *Data and Scale*

In March of 2018, when the CRAALE and UC Law SF Haiti Justice Partnership<sup>184</sup> teams visited the Jérémie prison, CRAALE was poised to begin representing clients. On that day, the prison held 323 individuals of whom 268 were detained pre-trial.<sup>185</sup> In CRAALE's first 18 plus months of service, from May, 2018, through 2019, the CRAALE team processed 49 cases. "Processed" here means that CRAALE represented these clients and handled these cases.<sup>186</sup> During this period, these 49 individuals constituted CRAALE's full client caseload.<sup>187</sup>

The initial team succeeded in garnering the formal release of individuals from the prison in 29 of those 49 cases.<sup>188</sup> Even as a new clinic, overall, CRAALE's representation persuaded courts, juries, or the prosecutor to release clients in more than half of the cases processed by the team during that initial period. These were not temporary releases awaiting trial; these 29 cases reached resolution. Resolution of a case here means that the client was either convicted or released without further prosecution on the charges in the case. Resolving a case could occur in a number of ways. These include: 1) a case could resolve at trial, in which the client was acquitted or convicted or the charges were dismissed; 2) a case could resolve through a court process that resulted in release, such as a successful habeas corpus petition, which could apply to both individuals detained pre-trial or those who were in custody post-trial; 3) a case could also resolve through administrative or executive action either pre-trial or post-trial, such as prosecutorial dismissal of charges, or prosecutorial release without further prosecution, or presidential clemency.

Of the remaining 20 cases that did not result in release, individuals in 18 of them were convicted, and client petitions for habeas corpus release in two cases were rejected. For the 18 clients who were convicted, their cases also reached resolution. Only the cases for the two clients whose habeas petitions were unsuccessful did not reach resolution in this period.

Thus, of the total 49 cases processed in 2018 and 2019, CRAALE was able to resolve 47 of them. Of these 47 resolved cases during this

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<sup>184</sup> Formerly the Hastings to Haiti Partnership (HHP).

<sup>185</sup> Jérémie prison population statistics were supplied by the prison during the visit on March 7, 2018.

<sup>186</sup> See email with attachment from Yvon Janvier to co-authors (Aug. 24, 2023, 4:52 PM PDT) (on file with co-authors).

<sup>187</sup> *Id.*

<sup>188</sup> Information on CRAALE's cases was compiled and provided by CRAALE team co-authors.

initial window, a period in which both jury and non-jury trials were still being conducted, there were 43 cases brought to trial, and clients were released in 25 of those 43 cases, for a trial release success rate of over 58%. In other words, in cases that were brought to trial, more than half of the clients were not convicted and were, instead, released.

The table below provides a snapshot of CRAALE's service during that initial period.

Table 1: 2018-2019 CRAALE Service Results

Nature of Cases	Released	Convicted	Rejected	Number of cases processed	Number of cases resolved
Habeas Corpus	4		2	6	4
Correctional Court (less serious offenses)	11	4		15	15
Criminal Jury Hearings	6	9		15	15
Criminal Hearings without Juries	8	5		13	13
<b>Total</b>	<b>29</b>	<b>18</b>	<b>2</b>	<b>49</b>	<b>47</b>

Although CRAALE's representation of clients has continued after 2019, in this more recent period, substantial additional hurdles have further complicated its efforts. For this Article, the recordkeeping of CRAALE's statistical data was divided into two periods, reflecting, *inter alia*, the advent of these new impediments. For example, in 2020, the COVID-19 pandemic struck worldwide.<sup>189</sup> More generally, socio- and geo-political instability has substantially stymied the CRAALE team's ability to advocate on behalf of its clients.<sup>190</sup> As noted earlier, on July 7<sup>th</sup> of 2021, assassins murdered President Jovenel Moïse, Haiti's leader.<sup>191</sup> The assassination, coupled with the lack of elections and the lack of a functioning parliament, has largely paralyzed Haiti's government.<sup>192</sup> These problems multiplied when, in August 2021, a 7.2 magnitude

<sup>189</sup> See, e.g., Harrison Bardwell, *Crisis in Haiti Intensifies [ETR 2020 Report]*, VISION OF HUMAN., <https://www.visionofhumanity.org/etr-2020-the-pandemics-toll-on-food-insecurity-and-undernourishment-in-haiti/> (last visited Apr. 14, 2023). However, the death toll directly attributed to COVID has not necessarily been as high in Haiti as in a number of other countries. See, e.g., Jason Beaubien, *One of the World's Poorest Countries has one of the Lowest COVID Death Rates*, NPR (May 4, 2021), <https://www.npr.org/sections/goatsandsoda/2021/05/04/992544022/one-of-the-worlds-poorest-countries-has-one-of-the-worlds-lowest-covid-death-rat>. Commentators suggest that, among other factors, the on-average younger age of the Haitian population may play a role. *Id.*

<sup>190</sup> For discussion of the social and geopolitical instability, see, e.g., RIBANDO SEELKE & RIOS, *supra* note 14, at 1-11.

<sup>191</sup> See *id.* at 4.

<sup>192</sup> See, e.g., *supra* text accompanying notes 47-51.

earthquake struck Haiti.<sup>193</sup> It devastated much of the Western portion of the country, where Jérémie and CRAALE are located.<sup>194</sup> These events negatively impacted the functioning of the judicial system, sometimes paralyzing it for substantial periods.<sup>195</sup> For example, although there were intermittent judicial proceedings, no trials in criminal cases, which are defined in Haiti as involving more serious offenses, were conducted in Jérémie in 2020 or 2021.<sup>196</sup>

Despite these impediments, the team processed 31 client cases overall and 30 client cases to resolution in the 2020-November, 2022 period.<sup>197</sup> In those cases, CRAALE secured the release of 23 individuals from the local prison. Although no trials involving more serious offenses were conducted, in other court proceedings handled by CRAALE, there were seven convictions and six releases of clients in cases that went to trial, and one case was dismissed because the offense was misclassified. There was also one client whom CRAALE represented, but where their hearing did not go forward. In addition, two clients were released through an appeal to the prosecutor to use his discretionary power to release.<sup>198</sup>

Concern about COVID-19's contagious nature also offered an opportunity for the CRAALE team to petition the prosecutor to exercise discretion, through a pandemic-related presidential clemency policy, for release of a number of individuals held in the Jérémie prison.<sup>199</sup> Because the CRAALE team was present in the prison with some frequency, team members were often familiar not only with their clients but also with individuals who were not their clients but might qualify for this presidential clemency. Thus, although a significant number of the individuals involved were not CRAALE's clients (and not part of CRAALE's regular caseload), the CRAALE team was in a position to recommend

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<sup>193</sup> See, e.g., Daniel Politi, *Hundreds Killed in Massive Magnitude 7.2 Earthquake in Haiti*, SLATE (Aug. 14, 2021), <https://slate.com/news-and-politics/2021/08/massive-earthquake-haiti-death-toll.html>.

<sup>194</sup> See, e.g., *id.*

<sup>195</sup> See, e.g., National Human Rights Defense Network (RNDDH), *Dysfunction of the judicial and penal systems: RNDDH calls for respect for rights for a judicial guarantee*, 1, 36 (2022), <https://web.rnndh.org/wp-content/uploads/2022/11/12-Rap-Justice-Prisons-11Nov2022-ENG.pdf> (last visited Feb. 2, 2023) [hereinafter *Dysfunction of the judicial and penal systems*] (“The courts of the first instance of Cap Haïtien, Coteaux, Grande Rivière du Nord, Hinche, Jacmel, Jérémie, Mirebalais, Port-au-Prince, and Port-de-Paix did not hold any criminal hearings.”).

<sup>196</sup> For a discussion, dated November 11, 2022, about the lack of criminal trials in Haiti in 2021 and 2022, see *id.*

<sup>197</sup> See *infra* Table #2.

<sup>198</sup> For a discussion more generally of appealing to the prosecutor in Jérémie, see *Dysfunction of the judicial and penal systems*, *supra* note 195, at 15-17.

<sup>199</sup> For information regarding the presidential pardon and related releases in 2020, see, e.g., U.S. DEP'T OF STATE, HAITI: HUMAN RIGHTS REPORT 2020, 7 (2021).

approximately 70 individuals for release.<sup>200</sup> As explained by Professor Janvier, these were primarily individuals in pre-trial detention who were accused of minor crimes as well as individuals whose situations merited urgent attention.<sup>201</sup> Professor Janvier reported that, ultimately, 15 individuals of the approximately 70 recommended were approved for release under the presidential clemency policy.<sup>202</sup> Fourteen of the fifteen were CRAALE clients,<sup>203</sup> for a total number of 23 clients released during the 2020–November 2022 representation period.

The table below summarizes CRAALE's results in cases processed over the near two-year period from 2020 through November of 2022.

Table 2: 2020 - November 2022 CRAALE Service Results:

Nature of case	Released	Convicted	Number of cases processed	Number of cases resolved
Habeas corpus	-	-	-	
Request directed to the prosecutor's office for release	2	-	2	2
Clients granted clemency pursuant to COVID-19 Presidential Clemency policy	14		14	14
Cases brought to Correctional Court (jurisdiction over less serious offenses)	6	7	13	13
Criminal hearings, with Jury Assistance	1 (misclassified offense) <sup>204</sup>		1	1
Criminal record, potentially without Assistance from Jury	-	-	1	
<b>TOTAL</b>	<b>23</b>	<b>7</b>	<b>31</b>	<b>30</b>

<sup>200</sup> The seventy individuals included here reflect the cases in which the CRAALE team recommended release. It does not necessarily reflect every case considered by the team. In short, CRAALE can sometimes take steps that help individuals other than those for whom they have accepted representation, as in the non-client cases where CRAALE recommended presidential clemency.

<sup>201</sup> Email from Yvon Janvier with attachment to co-authors (Aug. 18, 2023, 8:01 AM PDT) (on-file with co-authors).

<sup>202</sup> Email from Yvon Janvier to Kate Bloch (Sept. 5, 2023, 2:35 PM PDT) (on file with co-authors).

<sup>203</sup> *Id.*

<sup>204</sup> Due to the misclassification of the offense, the charges were dismissed. *See* email with attachments from Yvon Janvier to co-authors (Jan. 10, 2023, 10:41 AM PST) (on file with co-authors).



Unfortunately, CRAALE lacks the staff to represent all indigent incarcerated individuals who need representation. So, the CRAALE team must choose which clients to assist and in which order.<sup>205</sup> Over the years, factors that have informed prioritization include: pre-trial detention in excess of two years, failure to bring the client before a magistrate within six months of their arrest, and cases involving women and minors who are victims<sup>206</sup> of violence.<sup>207</sup>

While CRAALE's service impact can be measured in multiple dimensions, both immediate and far-reaching, there is, first, the scale of its work in sheer numbers. From the spring of 2018 through November of 2022, CRAALE generally functioned with one or two members of the Bar as supervisors, a *stagiaire* or apprentice attorney working on his apprenticeship, a coordinator for part of this period, and a small cadre of pre-apprenticeship interns (usually limited to no more than five at a given time). With this staff, the CRAALE team processed 80 client cases and wrestled 77 of those 80 cases to resolution through the tangled and under-resourced judicial processes in Jérémie. Three cases did not reach resolution. These were the two cases involving a denial of habeas corpus in Table 1 and the one case where the hearing was postponed, as listed under Criminal record in Table 2. Whether CRAALE would be able to bring those cases to resolution at a later point, through a release of the client or a conviction by trial, remained to be determined. Of the 77 cases that reached resolution, the team obtained the release of clients in 52 of those cases.<sup>208</sup>

Even with release of clients in 52 of the 77 cases brought to resolution over the 2018–November 2022 period, the legal proceedings for the

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<sup>205</sup> For the 2022 calendar year, Professor Janvier reported that CRAALE collaborated with a government unit, the Office de Protection du Citoyen (Office of Citizen Protection) and two NGOs, Justice et Paix (Justice and Peace) and Lawyers without Borders Canada (LWBC). He explained that cases were selected by mutual agreement based on the following criteria, criteria that were retained and shared by LWBC: 1) the most problematic detention cases: detention without trial for more than two years, detention of women and minors; 2) individuals detained under warrant from the Government Commissioner (prosecutor) without being informed of the charges against them; 3) individuals detained under the arrest warrant of the investigating judge exceeding the 90-day period for investigating the case; 4) individuals who were convicted or released during a trial but who had not received the required notice of the judgment; 5) detained individuals without a file at the registry office (usually people taken to prison by authorities not competent to do so); 6) detained individuals who have never appeared before a detainee magistrate for 6 months, counted from the day of their arrest until the day when the CRAALE team identified their file; 7) individuals detained under the warrant of committal of a dismissed judge or Commissioner; 8) cases of women and minors who are victims of violence; 9) any other case where the vulnerability of the person is proven. See CRAALE-ESCROJ-Report Brief – 2018-2022; Email with attachment from Yvon Janvier to co-authors (Aug. 24, 2023, 4:52 PM PDT) (both sources on file with co-authors).

<sup>206</sup> Terminology varies regarding individuals who have suffered sexual assault crimes. In Haiti, the term is generally “victim,” whereas in some places it might be “survivor.”

<sup>207</sup> See *supra* note 205.

<sup>208</sup> See *supra* Tables 1 & 2.

remaining 25 clients resulted in a conviction. Nonetheless, whether it produced the result of release or conviction, prioritizing clients in older, often forgotten cases served to bring clients out of the legal limbo in which they had been trapped.

Stepping back to provide perspective on CRAALE's service work in terms of the numbers, just for illustrative purposes, let us compare the number of cases CRAALE handled from the spring of 2018 through 2019 (Table 1) to the overall prison population on March 7, 2018. CRAALE's work representing clients in 47 cases brought to resolution would mean representation for 14.5% of the 323 persons held in the prison on that date.<sup>209</sup> If we include the two clients whose cases did not reach resolution, the proportion becomes just over 15%. The above ratios do not, of course, capture the realities of the situation because, *inter alia*, the prison population was not static during this time. Still, they can provide a useful approximation to understand the scope of CRAALE's service. While such figures might be a testament to the need for and potency of that service, they would still mean that, during that initial period, almost 85% of the individuals in the total prison population who were incarcerated on March 7, 2018, would not have been represented by CRAALE. Few of those individuals were likely to have had other access to representation.

## 2. *Qualitative and Holistic Outcomes*

Statistics can offer insight, but they furnish only one portal into CRAALE's work. They don't capture the visceral and cognitive benefits for clients. For those who are released, the benefits of freedom are myriad and apparent. But even for clients whose cases result in conviction, they finally know their sentence, and they likely have already served part or all of that sentence during their pre-trial incarceration. As a general rule under Haitian law, detention in custody in excess of two months is to be credited as time served and deducted from an individual's sentence if they are convicted of the charged offense(s).<sup>210</sup>

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<sup>209</sup> Although CRAALE's primary focus is on representing individuals detained pre-trial, occasionally, CRAALE also represented individuals who had been convicted of crimes. In these cases, for example, clients had not necessarily received appropriate communication of their judgments, such as not having been informed of how much time remained to be served on their sentences. CRAALE-ESCDROJ-Report Brief – 2018-2022; Email with attachment from Yvon Janvier to co-authors (Aug. 24, 2023, 4:52 PM PDT) (both sources on file with co-authors).

<sup>210</sup> For a discussion of the Haitian approach to credit for time served for time spent in custody generally and the separate calculation for hard labor, see Vanessa Dalzon, *Détention préventive prolongée, habeas corpus, Loi Lespinasse, que disent les législations?*, [Authors' translation: *Prolonged Pretrial Detention, Habeas Corpus, Lespinasse Law: What Do the Statutes Say?*] (May 3, 2020), <https://balistrad.com/detention-preventive-prolongee-habeas-corpus-loi-lespinasse-legislations/#:~:text=I'appel%20p%C3%A9nal.-,La%20Loi%20Lespinasse,lespinasse%2C%20intervient%20en%20sa%20faveur.>

One of the most profound results of CRAALE's work is relieving client suffering through release from prison. Even working in a challenging system with minimal resources, this team of clinic attorneys and interns had a dramatic impact on the liberty of many incarcerated people.

Beyond relieving the physical torments of prison life, the CRAALE team perceived that representation and release often produced powerful change in clients' beliefs about their future. In initial meetings with clients, CRAALE staff encountered individuals enmeshed in an oppressive and archaic judicial system, which frequently did not treat them as human beings and had often forgotten them for years in foul-smelling cells. Any traces of belief in their country's justice had often long ago evaporated. Developing rapport between a client trapped in the prison and their attorney could start a cycle of trust, with release potentially initiating first steps of a renewal of faith in humanity and rule of law. The impact here on human beings and on the human spirit is critical. It furnishes another dimension of what CRAALE's work means.

In reflecting on the process and outcomes of CRAALE's practice, at least four additional takeaways emerge. First, the successful pursuit of legal process advanced clients' human rights. Article 5 of the Universal Declaration of Human Rights states that "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."<sup>211</sup> CRAALE's work has become a key that can open prison doors to usher individuals back into the light of freedom and stem human rights violations.

Second, the hesitancy of a legal community to embrace a new law school legal aid clinic could be overcome. The CRAALE team achieved this by meeting with members of the legal community to explain and discuss the value of the clinic as part of its launch process as well as by subsequently providing high-quality legal services that benefited the justice system.

Third, CRAALE's success is also a portrait of the system's propensity to forget those caught within it. That amnesia illustrates the precarious nature of rule of law without continued vigilance on the part of client and human rights advocates. Whether the result in a particular case was a release from custody or a conviction, CRAALE's work upholds the rule of law as both releases and convictions were effectuated through judicial and prosecutorial process.

Fourth, CRAALE's important impact is significantly constrained by limited resources. Despite the many successes, an inability to represent most of the individuals incarcerated suggests that there remains much work to do in this service domain.

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<sup>211</sup> Article 5, *Universal Declaration of Human Rights*, *supra* note 11.

### 3. *Limits on Range of Service Domains*

A final consideration about CRAALE's service goals merits acknowledgement. The initial vision for CRAALE imagined its service encompassing not only representation for individuals detained in the prison, but also two additional service domains: community mediation services and representation for those who have suffered sexual assaults.<sup>212</sup>

As we reflect more generally on the scope of CRAALE's clinical aims, we realize that, in light of resource constraints, it was pragmatic and arguably necessary to circumscribe the service domains for the initial launch. That has been a limitation in the piloting of CRAALE. We are optimistic, however, that CRAALE's services can someday expand to include mediation and representation of victims/survivors, the two additional domains originally contemplated.

With respect to mediation services, trainings and exchanges about such services have been a focus under the U.S. Embassy in Haiti grants. The initial symposium in San Francisco included a presentation on mediation, and a subsequent May 2021 virtual workshop offered a series of presentations and interactive simulations on mediation. More recently in late spring of 2023, the grant funding supported a multi-day symposium in San Francisco with a substantial focus on mediation. This symposium resulted in the Dean of ESCROJ authorizing doubling the number of CRAALE interns from five to ten and authorizing Professor Janvier to incorporate mediation as a topic in his course for first-year law students in Jérémie.<sup>213</sup>

Haitian Bar Federation President Jacques Letang, BDHH attorney Nathan Laguerre, Dean Eustache, and Professor Janvier, all participants in the spring 2023 symposium from BDHH and ESCDROJ, also conducted a final training under the grants in Haiti in August 2023, with an emphasis on providing a foundation for CRAALE interns on mediation principles and skills.<sup>214</sup> Consequently, the envisioned mediation component of CRAALE now has some of the seminal groundwork to move toward fruition. What additional resources might be needed to make this service dimension a reality of CRAALE's work remains to be assessed.

With respect to representing individuals who have been victims/survivors of sexual assault, that goal for CRAALE could also reach fruition soon. In Haiti, the law allows those who have been harmed

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<sup>212</sup> Bloch & Edmond Dimanche, *Human Rights from the Ground Up*, *supra* note 15, at 227-28.

<sup>213</sup> As of November 12, 2023, Professor Janvier reported that CRAALE had 14 members. See email with attachment from Yvon Janvier to co-authors (Nov. 12, 2023, 12:33 PM PST).

<sup>214</sup> Among other speakers, Pauline Lecarpentier, the secretary general of BDHH, also presented at this training event.

by criminal conduct to participate directly in the criminal trial (partie civile process), with representation by their own attorney.<sup>215</sup> In entering into this service domain, CRAALE may need to implement additional procedures to avoid conflicts of interest between representation of individuals accused of sexual assault who are detained in the prison and its representation of victims/survivors of sexual assaults.<sup>216</sup> With this caveat in mind, through collaborations with other human rights organizations, and training that it has already implemented, the CRAALE team anticipates expanding the scope of its efforts to encompass such representation.<sup>217</sup>

### B. Ethical Practice

CRAALE's success extends beyond the benefits to clients and their human rights and the rule of law described above. With concerns about corruption a persistent refrain in assessments of the judicial system in Haiti,<sup>218</sup> CRAALE has been developing an alternate narrative, one based on adherence to ethical practice. CRAALE supervisors school their interns in handling client cases and files with professionalism and respect for confidentiality.<sup>219</sup> CRAALE, as the legal clinic arm of ESCDROJ, concentrates on meeting the ethical values advocated both by the law school and by the national decree regulating the legal profession.<sup>220</sup>

Like other participants in the judicial system, CRAALE personnel report being exposed to ethical challenges. For example, one CRAALE co-author lamented that some people thought CRAALE had resources available that CRAALE should "share" to obtain the desired service. The co-author noted that this type of expectation is one of the major issues within the Haitian judicial system. However, because, from its

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<sup>215</sup> For a discussion of the partie civile process, see Mario Joseph & Nicole Phillips, *Judicial Corruption in Haiti: The Need for Discipline and Civil Society Participation*, 39 HASTINGS INT'L & COMP. L. REV. 183, 205-06 (2016).

<sup>216</sup> When representation for victims/survivors of sexual assaults was contemplated as a concurrent part of the original representation mission, CRAALE had anticipated a policy that would limit representation of individuals detained in the prison to those persons not accused of sexual assault. See Bloch & Edmond Dimanche, *Human Rights from the Ground Up*, *supra* note 15, at 227.

<sup>217</sup> See Section E. *infra*.

<sup>218</sup> See, e.g., HAITI 2022 HUMAN RIGHTS REP., *supra* note 5, at 2, 7, 10-11.

<sup>219</sup> See, e.g., Yvon Janvier, CRAALE-ESCDROJ Training Agenda, Feb. 17-18, 2023 (on file with co-authors) (describing training for new CRAALE interns, including a focus on general ethical obligations and competencies and specific attention to confidentiality and conflicts of interest and independence).

<sup>220</sup> Jean-Claude Duvalier, *Décret du 29 mars 1979 règlementant la profession d'Avocat*, <https://metienne.wordpress.com/2016/10/11/decret-du-29-mars-1979-reglementant-la-profession-davocat/> (last visited July 23, 2023) [Authors' translation: Decree of March 29, 1979 Regulating the Legal Profession].

conception, CRAALE began with and adheres to a no-gifts policy,<sup>221</sup> the answer to an intimation that such resources should be made available is always “no.”

CRAALE’s steadfast dedication to ethical practice means that CRAALE is not plagued by rumors of suspicion of corruption and embezzlement, which shadow much of the judicial system in Haiti.<sup>222</sup> CRAALE’s supervisors train aspiring lawyers in key values involving justice and integrity. Developing a culture of practice with these values at the forefront can nurture generational adherence to and advocacy for the rule of law.

In looking prospectively to the possibility of versions of the CRAALE model elsewhere, it is important to recognize that taking the proverbial high road may risk bad outcomes for clients if corruption governs legal practice and there is inadequate support for refusing to bow to its nefarious reach; thus, beyond adopting and implementing a non-corruption, no-gifts policy, it may be important to advise clients about the potential consequences to the client’s case of the clinic’s refusal to engage in corrupt practices.<sup>223</sup>

### C. *Teaching and Mentoring*

In addition to evaluating service and ethical practice, the third domain of assessment involves teaching and mentoring. Four aspects of the educational mission of CRAALE receive explicit treatment here. They are: 1) *mémoire* writing, 2) implementing client-centered approaches to lawyering and supporting student autonomy, 3) navigating the potential tension between service and educational goals, and 4) inspiring each other.

#### 1. *Mémoire Mentoring & Apprenticeship Supervision*

Law students finish their coursework with the challenging tasks of writing their *mémoire* and completing an apprenticeship still before them.<sup>224</sup> Although at the time that Roxane Edmond Dimanche imagined a

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<sup>221</sup> See Bloch & Edmond Dimanche, *Human Rights from the Ground Up*, *supra* note 15, at 241, 243-44. The policy from the Oct. 5, 2017 version of the CRAALE clinic manual follows: “[CRAALE] NON-CORRUPTION, NO GIFTS POLICIES: [CRAALE] pursues a non-corruption, no gifts policy. You must therefore not offer money or other gifts to justice system officials or employees in connection with a case handled by the Clinic.” CRAALE Clinic Manual, Oct. 5, 2017 Version in French, at 9 (on-file with co-authors) [Authors’ translation].

<sup>222</sup> See, e.g., HAITI 2022 HUMAN RIGHTS REP., *supra* note 5, at 10-11.

<sup>223</sup> See Bloch & Edmond Dimanche, *Human Rights from the Ground Up*, *supra* note 15, at 241, 243-44. For the language of the CRAALE “no-gifts” policy and the recommendation that clients be advised about the policy and its potential consequences for their case, see *supra* note 221 and the CRAALE Clinic Manual, Oct. 5, 2017 Version in French, at 9 (on-file with co-authors).

<sup>224</sup> See Bloch & Edmond Dimanche, *Human Rights from the Ground Up*, *supra* note 15, at 224.

clinic at ESCDROJ, law students were permitted to handle even relatively serious cases in court under the supervision of a practicing lawyer, a subsequent rule change by the Bar has limited the scope of practice opportunities for students in Jérémie.<sup>225</sup> As a result, until June of 2023, CRAALE interns were generally individuals who had completed their coursework and were trying to prepare their *mémoires* or fulfill their apprenticeships, rather than current students taking classes.<sup>226</sup> Mentorship by CRAALE supervisors, who are practicing members of the Haitian Bar, can be instrumental in helping the *finissants*, who are writing their *mémoires*, and *stagiaires*, who have completed and defended their *mémoires* and need to complete their practice apprenticeships, build their new professional careers. Once engaged as interns at CRAALE, they have support in these essential stages needed to become attorneys. For example, CRAALE has offered training on research methodologies for the *mémoire*. Later, CRAALE supervisors provided feedback to interns who had submitted written work and met with them to provide additional support.

Nonetheless, even with the supervision and mentoring offered by CRAALE attorneys to these engaged interns, completing one's *mémoire* and defending it remain significant obstacles to entering practice, especially in the face of sweeping social and political upheaval. Of the initial four CRAALE interns who proposed *mémoire* subjects to their CRAALE mentors, two made only limited progress, one wrote a first draft, and one successfully completed and defended his *mémoire*.<sup>227</sup> That last intern also has engaged in his apprenticeship through CRAALE and has been admitted to the Jérémie Bar.<sup>228</sup>

Two important takeaways surface here. First, the situation of instability in the country can be so draining it breaks interns' momentum and makes them lose sight of their resolutions and dreams. Second, undermining resolve may also be a function of exhaustion and other work demands, as interns cannot rely on a stipend for interning at CRAALE. Thus, they commonly must find independent employment to support themselves, while they intern at CRAALE doing research

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<sup>225</sup> See email with attachments from Yvon Janvier to co-authors (Aug. 18, 2023, 8:01 AM PDT) (on file with co-authors).

<sup>226</sup> Since the second symposium under the U.S. Embassy in Haiti grant at UC Law SF, which concluded in June of 2023, Dean Eustache has authorized CRAALE to accept interns who were still taking their coursework at ESCDROJ. See email with attachments from Yvon Janvier to co-authors (Nov. 12, 2023, 12:33 PM PST) (on file with co-authors).

<sup>227</sup> Email with attachments from Yvon Janvier to co-authors (Jan. 10, 2023, 10:41 AM PST) (on file with co-authors).

<sup>228</sup> Professor Janvier reports that this intern has been sworn into the Bar, but that, due to the dysfunction of the judicial system during the recent two-plus-year period, the Bar will not consider his internship complete until the spring of 2024, when this intern is expected to receive his final certificate. Email with attachment from Yvon Janvier to co-authors (Nov. 12, 2023, 12:33 PM PST) (on file with co-authors).

and representing clients. These realities can erode the best intentions of both the interns and their CRAALE mentors.

## 2. *Implementing Client-Centered Approaches and Supporting Student Autonomy*

A client-centered philosophy has served as a lodestar of best practice options in the exchanges between UC Law SF and Haitian colleagues in the gestation and launch of CRAALE. Starting at least with the early simulations at ESCDROJ in 2009, this focus on various values embedded in client-centeredness featured in simulations and training.<sup>229</sup> For example, ascertaining client goals, establishing rapport, and giving deference to client narratives were central to curricular demonstrations and shared opportunities in which the U.S. and Haitian partners engaged.<sup>230</sup> CRAALE intern trainings have emphasized being attentive to and developing rapport with the client, as well as how to engage effectively with their cases and the judicial system.<sup>231</sup>

By choosing to present and implement key client-centered norms in their teaching and practice, CRAALE staff perceive that this has helped spark and maintain client trust in legal representation by CRAALE personnel. As one co-author explains: “In their haggard eyes, emptied of any hope of seeing the sun of freedom again, we read distrust quite often. [It seems as] if, at first glance, their question [is], ‘What can motivate these lawyers who come to offer me their service for free?’ However, their attitude changes once we gain their trust after a few visits and exchanges. They begin to cling to life again. Moreover, in the process, we manage to help them regain their freedom[, which] was lost for too long. [For many of CRAALE’s clients, it is as if a new person] returns to society . . . determined to rebuild [a] life.”<sup>232</sup>

The CRAALE team reports that client-centered approaches for those accused of crimes were not the norm in Haitian legal practice in Jérémie. Often in Jérémie, for example, lists of cases to be adjudicated at trial would be posted a day or so prior to the semi-annual trial court sessions (assizes). At that time, attorneys would be assigned to handle a case of someone who was incarcerated and whose trial was to be held.<sup>233</sup>

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<sup>229</sup> Bloch, *supra* note 21, at 444-59.

<sup>230</sup> *See, e.g., id.*

<sup>231</sup> *See e.g.,* Ariel Chéry, email from Yvon Janvier, with attachments, to co-authors (Jan. 10, 2023, 10:41 AM PST) (on file with co-authors) (on being attentive and handling cases).

<sup>232</sup> Email with attachments from Yvon Janvier to co-authors (Dec., 11, 2022, 10:27 AM PST) (on file with co-authors).

<sup>233</sup> *Cf. Assessment of Legal Aid in Haiti, supra* note 36, at 5 (describing the approach in a July, 2017, report and opining that, “In practice, the Bar Association designates trainee lawyers to defend the accused in criminal cases warranting trial by jury, but there is little to no legal assistance system organized beyond that.”).



It was then, often just a day or so prior to trial or even at the trial itself, that an attorney would often meet their incarcerated client for the first time. Thus, they had little time or opportunity to develop trust or rapport or to engage with the client and their narrative. The teaching, training, mentoring, and earlier intervention in cases by CRAALE staff may be ushering in a modified conception of client-attorney relationships, at least in some legal practice contexts.

This modified approach appears to support confidence and sharing between clients and their CRAALE representatives and to help establish the trust that is often vital to effective representation. One co-author intern explained: “With clients or detainees, collaborating was easy as they considered me as a person whom they could trust. This is a skill that CRAALE has developed in me, especially thanks to the training sessions prepared by the UC [Law SF] team.”<sup>234</sup>

Moreover, client narratives and their trust in their legal representatives commonly, in turn, invigorate those representatives. This mutually reinforcing experience can benefit clients and inspire CRAALE interns to continue pursuing their public service ideals.

The dynamic among interns and supervisors also deserves mention. Because CRAALE selects interns who make the voluntary commitment to the clinic with a focus on service, their participation renews the spirit of the CRAALE team as a whole. Thus, not only do relationships with clients invigorate CRAALE personnel, the energy and engagement of interns and their supervisors offers a reinforcing circle of dedication to common justice values, learning, and clients.

With respect to student autonomy, support for such independence, as reflected in supervision approaches, served as a centerpiece of proposed best practices of the first academic exchange under the U.S. Embassy in Haiti grant. Although respect for intern autonomy might, in practice, pre-date the academic exchanges under the grant, the CRAALE team also incorporates this approach as a principle for the clinic. Autonomy comes in the form, for example, of interns conducting client interviews without a supervisor present and communicating directly with the court clerk. This autonomy appears to foster intern confidence in their responsibilities and effectiveness.

While client-centered approaches and supporting student autonomy might not work in every culture and legal system, at least some elements of those approaches seem valuable for CRAALE personnel to engage in their effective representation.

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<sup>234</sup> Email with attachment from Maxo Mezilas to Kate Bloch, (Jan. 11, 2023, 5:01 AM PST) (on file with co-authors). [Authors’ translation].

### 3. *Tension Between Service and Education Goals*

In light of the pressing service needs of clients in the Jérémie prison, CRAALE is not immune from the common tension in clinical legal education between service and education goals.<sup>235</sup> A law school clinic is not synonymous with a community legal aid clinic. The former usually has a substantial, if not predominantly, educational focus and the latter usually a predominantly service focus.<sup>236</sup> In the 2017 USAID and UN report, the authors acknowledge that service, rather than education, is often the priority of the legal aid offices that have been funded in Haiti, noting, that “[i]n existing projects . . . the objective of building the capacity of trainee lawyers is regarded as secondary or supplementary to other aims and is rather a consequence of the operational decision to rely on trainees as the main service providers.”<sup>237</sup>

Helping interns make their solo flights and supporting them in handling a variety of important responsibilities takes a serious investment of time and training. It would be far more efficient in the short run for supervisors to undertake many of the difficult tasks. Staying focused on the longer-term commitment to training interns can be challenging in the face of the dire circumstances of clients. Consequently, emphasis on and support for the teaching and mentoring process can be critical to clinic success.

#### *D. Logistics and Managerial Considerations*

The first three criteria above for assessing CRAALE’s work focused on measuring progress on goals that CRAALE defined as essential to its mission (service, ethics, and teaching). We now turn to an exploration of three additional evaluation rubrics that undergird the health and efficiency of the organization and its survival. Three facets of the first, logistics and managerial considerations, are explored briefly here.

First, there is the question of language. It was valuable that some of the Haitian partners spoke English while some of the U.S. partners spoke French and/or Kreyòl. This language fluency can be especially important if funders have a preference or requirement for grant applications and reports to be prepared in a particular language.

Second, for a clinic to endure, planned training and knowledge transfer for personnel transitions is crucial. A number of the original

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<sup>235</sup> See, e.g., Douglas A. Blaze, *Deja Vu All over Again: Reflections on Fifty Years of Clinical Education*, 64 TENN. L. REV. 939, 949 (1997); Cf. Jane H. Aiken & Stephen Wizner, *Teaching and Doing: The Role of Law School Clinics in Enhancing Access to Justice*, 73 FORDHAM L. REV. 997, 999 (2004).

<sup>236</sup> Cf. Aiken & Wizner, *supra* note 235, at 999.

<sup>237</sup> *Assessment of Legal Aid in Haiti*, *supra* note 36, at 19.

CRAALE participants have moved on to other stages of their careers or had life events preclude their continued participation. CRAALE needs effective and efficient methods for passing knowledge from one generation of participants to the next as well as for recruiting for various roles within the organization. For example, one vital administrative role is that of the clinic coordinator. Ideally, this individual will have grant writing and budgeting experience, along with fluency in more than one language. If funding permitted, this role might be designated as at least a regular weekly part-time commitment to provide stability and consistency in managing the work load in the clinic.

Third, as the clinic evolves, it may be valuable to further clarify the scope of the various roles, decision making accountability, and authority of each stakeholder, e.g., faculty, law school dean, clinic director, lawyer-supervisors, partners, interns, and donors.

#### *E. Collaboration with Other Human Rights Advocates*

CRAALE is certainly not alone in the Jérémie landscape in fighting human rights violations and advocating for positive change in the justice domain.<sup>238</sup> CRAALE, however, has the advantage of having practicing Haitian lawyers as well as legal interns among its personnel such that the CRAALE team can bring cases before the court and litigate through the criminal trial stage. In contrast, the interventions of entities that do not employ Haitian lawyers are commonly limited to other avenues of advocacy work or requesting change on behalf of the accused. Because of its access and capabilities, CRAALE has been finding itself in a position to play a critical role in joint projects to further progress with key human rights actors and organizations. Professor Janvier reports that, in 2022, for example, CRAALE collaborated with the Office of Citizen Protection (a government organization) and two NGOs, Justice and Peace, and Lawyers Without Borders Canada.<sup>239</sup> The CRAALE team also anticipates that these collaborations will allow CRAALE staff to undertake representation of victims/survivors of sexual assault in the future.

#### *F. Societal and Financial Constraints*

Law school clinics do not operate in a vacuum. They are generally subject to the constraints and demands of the society in which they find themselves. This section uses several of these as the sixth criterion

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<sup>238</sup> For example, among other advocates for the rights of incarcerated persons, the Office of Citizen Protection has had a representative in Jérémie.

<sup>239</sup> Email from Yvon Janvier, with CRAALE Update 2022 attachment, to co-authors (Dec. 2, 2022, 10:59 AM PST) (on file with co-authors).

for evaluation of CRAALE's work. It interrogates their impact and whether or how they impair CRAALE's utility.

### 1. *Growth in Prison Population*

Although CRAALE's endeavors have engendered substantial positive change, CRAALE's work has also had limitations. One important such limitation involves the prison population in recent years. In the period between the March 7, 2018 visit and November 30, 2022, the end of the reporting period in Table 2, the Jérémie prison population grew substantially.<sup>240</sup> Whereas in March of 2018, shortly after CRAALE was launched, there were 323 incarcerated individuals, by November 30, 2022, the number had increased by more than a third, to 444 individuals.<sup>241</sup>

In particular with the advent of the pandemic and the increasing dysfunctionality of the Haitian court system, the number of people held in the prison surged, while the number and size of the cells remained unchanged.<sup>242</sup> Consequently, the population growth exacerbated the already dire overcrowding and related tribulations described at the start of this Article.

At least as alarming as the growth in overall numbers of individuals incarcerated is the increasing ratio of persons detained pre-trial to those who have been convicted. Whereas, in 2018, the percentage of pre-trial detainees in the Jérémie prison hovered just under 83%, as of the end of November 2022, the percentage was approaching 97% (430 individuals detained pre-trial out of 444 individuals in the total Jérémie prison population).<sup>243</sup>

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<sup>240</sup> For prison population figures from November 30, 2022, see email from Yvon Janvier, with CRAALE Update 2022 attachment, to co-authors (Dec. 2, 2022, 10:59 AM PST) (on file with co-authors).

<sup>241</sup> *Id.* For information on the more recent reduction in the prison population, although not to March 7, 2018 levels, see Janvier, *Enhancing Legal Assistance*, *supra* note 75, at 1 (on file with co-authors) and *infra* note 243.

<sup>242</sup> The Jérémie prison contains nine cells for detained individuals. One is reserved for adult women and female minors. Six are for adult men. One is for male minors, and one cell serves as an isolation unit for those who have contagious illnesses. Currently, Professor Janvier reports that, for individuals showing symptoms of certain illnesses, including cholera and tuberculosis, transportation to the hospital can be arranged.

<sup>243</sup> See *supra* note 240. Although this Article focuses on CRAALE's launch and its work in the 2018 through November 2022 period, CRAALE's work continues. See Janvier, *Enhancing Legal Assistance*, *supra* note 75, at 1-4. Professor Janvier's November 2023 CRAALE update, covering the December 2022-November 2023 period, reports that 360 individuals were incarcerated in the Jérémie Prison on November 16, 2023, with approximately 95.5% of those individuals (344 of 360) detained pre-trial. See *id.* at 1. The November 2023 update also discusses, inter alia, CRAALE's work on behalf of clients in habeas corpus and in correctional court trials during the December 2022-November 2023 period. See *id.* at 2-3. The update notes that "[s]ince January 2023, no criminal trial . . . with or without a jury has been held in the jurisdiction of Jérémie." *Id.* at 3.

This growth underscores the larger context in which CRAALE and law-school clinics around the world function. Global maladies like COVID-19 and governmental upheaval, which impede or prevent courts from functioning, can capsize the ability of clinics to provide effective representation. Similarly, outbreaks of diseases, like cholera, which re-emerged in Haiti in the fall of 2022,<sup>244</sup> can also negatively impact conditions for incarcerated clients. In addition, in the capital, gang violence and control of neighborhoods impedes the judicial system.<sup>245</sup>

In Jérémie specifically, other factors also raise obstacles to or complicate representation. For instance, there are three positions for investigating judges, who, in the Haitian judicial system, conduct post-arrest case investigations. However, as of August 2023, the mandates of two had not been renewed.<sup>246</sup> Without investigating judges, cases are not prepared for judges to conduct the trials. In addition, as of August 2023, neither the prosecutor's office nor the prison owned the necessary vehicle (a car or minivan) to regularly transport detained individuals to court.<sup>247</sup>

Moreover, strikes and other work stoppages by the judiciary have compounded the difficulty of getting cases heard.<sup>248</sup> Together, factors like these, in addition to the larger socio-political turmoil, have largely paralyzed the judicial system in recent years.<sup>249</sup> This paralysis is so profound that, as noted above, in Jérémie, no criminal trials, which involve more serious offenses, were conducted in 2020 or 2021, with or without a jury.<sup>250</sup>

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<sup>244</sup> The RNDDH report notes that, "One hundred and seventy-two (172) detainees died from January to October 2022, including twenty-four (24) from Cholera." *Dysfunction in the judicial and penal systems*, *supra* note 195, at 5.

<sup>245</sup> See UNDP website, *supra* note 45 ("In 2021, the activity of criminal gangs slowed down all of the judicial proceedings in Port-au-Prince, the capital."). For a recent report by the UN on gang violence and intimidation in Cité Soleil in Port-au-Prince, see *The Population of Cité Soleil in the Grip of Gang Violence: Investigative report on human rights abuses committed by gangs in the zone of Brooklyn from July to December 2022*, UN HUM. RTS OFF. OF THE HIGH COMM'R. & BINUH (Feb. 2023).

<sup>246</sup> See email with attachments from Yvon Janvier to co-authors (Aug. 18, 2023, 8:01 AM PDT) (on file with co-authors).

<sup>247</sup> See email with attachment from Yvon Janvier to co-authors (Aug. 24, 2023, 4:52 PM PDT) (on file with co-authors). Professor Janvier reports that the authorities use other substitute vehicles when available, including one of the judges contributing the use of a private car (a pickup truck), or the prosecutor using a car from the national police, when it is available, or, sometimes the Government Commissioner borrows the private car of one of his contacts in the city. *See id.*

<sup>248</sup> The RNDDH report notes such stoppages during the 2021-2022 judicial year. See *Dysfunction of the judicial and penal systems*, *supra* note 195, at 4. ("at least four (4) work stoppages were recorded").

<sup>249</sup> See, e.g., *id.*; see also *supra* note 47.

<sup>250</sup> See email with attachments from Yvon Janvier to co-authors (Nov. 12, 2023, 12:33 PM PST) (on file with co-authors); See also *Dysfunction of the judicial and penal systems*, *supra* note 195, at 36, dated November 11, 2022, for discussion of the lack of criminal trials in

While the factors in this subsection may fairly be described as outside of CRAALE's purview or control, they compromise CRAALE's ability to effectively represent clients. They speak to the reality that law school clinics live within the constraints of the society around them, subject to much the same buffeting winds of societal upheaval and challenge.

## 2. *Lack of Re-entry Resources/Programs*

Another important recognition that has emerged from CRAALE's work lies in Jérémie's lack of re-entry resources and programs. One important direction for CRAALE moving forward would be for the clinic to explore creating a follow-up and resource system for its clients released from prison to ensure their access to rehabilitation services and reintegration opportunities into society. Without such resources, released clients may be vulnerable to a cycle of exclusion that can undermine their progress and encourage them to engage in behavior that could result in harm and in reincarceration.<sup>251</sup>

An important refrain in our reflections on CRAALE's work is that CRAALE's success involves a continuing journey. The need for and lack of re-entry services furnishes another example of structural work that remains to be done.

## 3. *Financial Challenges*

For CRAALE, financial challenges take many forms. These include a dearth of funding for supervisor, coordinator, and intern stipends, the inability to fund space dedicated to the clinic, as well as limited or lack of money for transportation, projects, and additional service domains.

Fundraising efforts have accompanied CRAALE throughout much of its gestation and establishment. Often, they involved donated time, funds, and intellectual capital of the founders and true believers in the CRAALE enterprise. Notable contributions have also derived from fundraising efforts at partner law schools in the U.S., where students, staff, and faculty contribute to or engage in fundraising activities and then make the funds available to ESCDROJ.<sup>252</sup> Over the years, other organizations and individuals have also contributed their time, funds, and talent. At one stage, the UN donated shipping containers as

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various places in Haiti, including in Jérémie, during the 2021-2022 judicial year.

<sup>251</sup> The CRAALE co-authors note the particular importance of developing a re-entry program in light of an individual released and returned to prison in 2023, where both imprisonments involved accusations of theft. *See* email with attachment from Yvon Janvier to co-authors (Nov. 12, 2023, 12:33 PM PST) (on file with co-authors).

<sup>252</sup> Fundraising has taken a variety of forms, including group events and direct appeals to interested individuals.

potential convertible space for offices.<sup>253</sup> More recently, as noted earlier, the U.S. Embassy in Haiti provided critical support through generous grants for academic exchanges to advance clinical legal education under CRAALE's auspices.<sup>254</sup>

An important takeaway from these fundraising endeavors lies in the value of searching for funding in sometimes unexpected places. For example, we had not explored the possibility of U.S. Embassy funding before a fortuitous discussion about clinical legal education transpired between Professor Janvier and Public Affairs Officer Jeanne Clark at the U.S. Embassy in Haiti.

The grant to ESCDROJ had the particular benefit of including stipends for members of the CRAALE team.<sup>255</sup> That meant that there was some monetary compensation for the extensive investment of time in learning and support for interns. Nonetheless, the stipends were relatively modest sums not designed to last an extended period of time,<sup>256</sup> and the grant to CRAALE has now concluded. If stipends could be a regular feature of CRAALE for faculty, supervisors, a coordinator, and interns, that would be a positive development.

Funding constraints have also impacted space for the clinic. Over time, the space that had been made available free-of-charge by a local non-profit became unavailable. The law school itself shares space with a nursing program, which occupies the building during typical business hours.<sup>257</sup> On weekdays, the law school has classes and general use of the building only in the evenings.<sup>258</sup> Although CRAALE personnel visit their clients at the prison, they still need space to research and work where they can make progress on their *mémoires* and cases. Taking the next step to represent individuals who have suffered sexual assault and to conduct mediations also suggests the need for dedicated clinic space. Finding such space and preserving it for the clinic represents both an unmet need and a critical takeaway.

An overarching consideration, then, from CRAALE's early years is the importance of funding and of ensuring a renewable or adequate stream of funding.<sup>259</sup> In a law school context where almost all faculty

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<sup>253</sup> For a description of the donation process and the items delivered from the UN, see Bloch & Edmond Dimanche, *Human Rights from the Ground Up*, *supra* note 15, at 229.

<sup>254</sup> See *supra* text accompanying note 144.

<sup>255</sup> See *supra* note 144.

<sup>256</sup> See *id.*

<sup>257</sup> See Bloch & Edmond Dimanche, *Human Rights from the Ground Up*, *supra* note 15, at 228. There is a new space upstairs in the building, which includes a large open room used for a law library and instructional purposes. However, it is a communal space, so even if it were/is reserved for law school purposes, it is not dedicated to the clinic.

<sup>258</sup> See *id.*

<sup>259</sup> This challenge is certainly not unique to CRAALE. Clinics in many countries lack adequate funding. See, e.g., Bloch & Edmond Dimanche, *Human Rights from the Ground Up*,

have only part-time appointments, funding can make it possible for supervisors to devote significant time to the clinic endeavor. Funding can also enable interns to focus on their research, writing, and service to clients, without needing full-time employment elsewhere. Funding can preserve clinic space for case work, writing, and research.

Funding can further other critical clinic aims, including supporting structural change. One such change might involve working toward a re-entry program. The clinic might also undertake other structural change projects to improve implementation of the rule of law. For example, one idea that had been floated previously would involve scanning the public record court files and generating a digital database for the court to improve its tracking and processing of cases.<sup>260</sup>

If we now imagine that the new National Legal Representation Assistance Law were ultimately funded in Jérémie,<sup>261</sup> financial support for CRAALE might fall within its purview. One could also imagine CRAALE interns, who had completed their *mémoires*, moving onto a similarly-funded local legal aid office, where they could continue their service, complete any remaining apprenticeship, and start their legal careers as attorneys.

Although adequate clinic funding may not solve all the challenges that CRAALE faces, it remains a fundamental limitation on the power of CRAALE to effectively engage in its day-to-day service and educational functions and to make long-term holistic and structural change.

## CONCLUSION

This work of launching and establishing the CRAALE clinic has highlighted innovation, legal intervention, collaboration, and leadership that is motivated by compassion, humility, respect, and a deep belief in the fundamental importance of justice. It has reminded us of the value of persistence and rewarded us with a sense of positive change. CRAALE's journey also reflects the importance of recognizing context. Context here embodies respect for the decision making of colleagues on the ground and knowledgeable about the circumstances of the local legal and cultural environment. What works in Jérémie, Haiti, a place where many, if not most, legal and judicial actors are graduates of ESCDROJ, might be different than what works elsewhere. However,

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*supra* note 15, at 233 (providing examples, including funding challenges at the University of Namibia as described in the scholarship of Professor Yvonne Dausab, *Access to Justice: The Use of International Law Clinics to Advance the Case for Vulnerable Members of Society*, 26 MD. J. INT'L L. 8 (2011)).

<sup>260</sup> For a discussion of this potential project, see Bloch & Edmond Dimanche, *Human Rights from the Ground Up*, *supra* note 15, at 243.

<sup>261</sup> See *supra* text accompanying note 44.



the underlying premise that context should inform theory and implementation promises broader applicability.

You may be asking what became of the search for Jean and why it is important in this narrative and evaluation of CRAALE's work. After the serendipitous encounter with clinicians from Chile at the San Francisco conference, the search for Jean by members of CRAALE began. Shortly after the conference, CRAALE clinicians located Jean and his caregiver. The two of them traveled to the CRAALE clinic in Jérémie. Then, in coordination with CRAALE representatives and the Chilean clinicians, Jean and his caregiver journeyed to the Chilean Embassy in Haiti's capital to arrange the necessary documentation for travel overseas. Within four months of the day the CRAALE team learned of Jean's plight, Jean arrived in Chile and reunited with his family.<sup>262</sup> CRAALE's joining the global clinical community was a *sine qua non* and a proximate cause of the happy reunion for Jean and his family.

In various places in the world, one hears that it takes a village, a community, to successfully raise a child.<sup>263</sup> Here, it took a village, a clinical community, to bring this young child back to his family. We would argue that it can take a village, a legal community, both local and international, to successfully nurture clinical legal education and its potential to advance the rule of law and human rights.

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<sup>262</sup> The Northern California Clinicians' conference was held on February 9, 2019, and an article from the Chilean law school on the reunification (that explicitly notes the assistance of the ESCDROJ clinic team) reports that the family reunion occurred on May 25, 2019. See *Familia haitiana representada por la Clínica Jurídica Derecho UC consiguió visa humanitaria de reunificación familiar*, PONTIFICIA UNIVERSIDAD CATÓLICA DE CHILE (June 13, 2019), <https://www.uc.cl/noticias/familia-haitiana-representada-por-la-clinica-juridica-derecho-uc-consiguio-visa-humanitaria-de-reunificacion-familiar/>. The article also noted that the family separation had lasted two years. *Id.*

<sup>263</sup> For discussion of the origins of this adage, see e.g., Joel Goldberg, *It Takes A Village To Determine The Origins Of An African Proverb*, NAT'L. PUB. RADIO (July 30, 2016).

