

2011

Fanm Ayisyen Pap Kase: Respecting the Right to Health of Haitian Women and Girls

Lisa Davis
CUNY School of Law

Blaine Bookey
University of California, Hastings College of the Law

[How does access to this work benefit you? Let us know!](#)

Follow this and additional works at: http://academicworks.cuny.edu/cl_pubs

 Part of the [Law Commons](#)

Recommended Citation

Davis, Lisa and Bookey, Blaine, "Fanm Ayisyen Pap Kase: Respecting the Right to Health of Haitian Women and Girls" (2011). *CUNY Academic Works*.
http://academicworks.cuny.edu/cl_pubs/85

This Article is brought to you for free and open access by the CUNY School of Law at CUNY Academic Works. It has been accepted for inclusion in Publications and Research by an authorized administrator of CUNY Academic Works. For more information, please contact AcademicWorks@cuny.edu.

Lisa Davis is the Human Rights Advocacy Director for MADRE. She received her JD from the City University of New York (CUNY) Law School, where she was editor-in-chief of the *New York City Law Review*, and her MA in International Policy from American University. For more than ten years, she has worked as an advocate for human rights and has written extensively on international women's human rights issues. Davis serves as the coordinator for the Lawyers' Earthquake Response Network (LERN) Gender Working Group and is a member of the National Lawyers' Guild Haiti Subcommittee. Davis recently returned to CUNY School of Law as an adjunct professor for the International Women's Human Rights Clinic.

Blaine Bookey is a clerk to the Honorable Dolores Sloviter, United States Court of Appeals for the Third Circuit. She was the 2009-10 legal fellow with the Institute for Justice & Democracy in Haiti (IJDH) and the *Bureau des Avocats Internationaux* (BAI). She is a graduate, *summa cum laude*, of UC Hastings College of the Law, where she was editor-in-chief of the *International and Comparative Law Review* and Director of the Hastings to Haiti Partnership. Bookey holds an undergraduate degree from Northwestern University in Social Policy and Gender Studies.

Please address correspondence to the authors at ldavis@madre.org or blaine@ijdh.org.

Competing interests: None declared.

Copyright © 2011 Davis and Bookey. This is an open access article distributed under the terms of the Creative Commons Attribution Non-Commercial License (<http://creativecommons.org/licenses/by-nc/3.0>), which permits unrestricted non-commercial use, distribution, and reproduction in any medium, provided the original author and source are credited.

FANM AYISYEN PAP KASE: RESPECTING THE RIGHT TO HEALTH OF HAITIAN WOMEN AND GIRLS¹

Lisa Davis and Blaine Bookey

ABSTRACT

Only in recent years has violence against women begun to receive international attention as both a public health and human rights concern. This article argues that the right to be free from sexual violence is a fundamental component of the right to health, and the need is particularly acute in post-disaster contexts. This article uses post-earthquake Haiti as a case study to illustrate conditions for women and girls who suffer daily threats of physical, emotional, economic, and social harm in ways that have no direct parallels for their male counterparts. In addition, this article discusses the reasons that the humanitarian response in Haiti has not effectively protected women and girls and has instead exacerbated structural inequalities, making women, girls, and their families even more vulnerable to human rights violations including interference in their right to health. The article argues that the failure to guarantee the right of women to be free from sexual violence — an essential component of the right to health — is due in large part to the exclusion of displaced women from meaningful participation in formal humanitarian interventions.

INTRODUCTION: OVERVIEW OF HEALTH AND HUMAN RIGHTS IN THE CONTEXT OF RAPE IN DISPLACEMENT SCENARIOS

Violence against women and girls is one of the most pervasive violations of universal human rights. It affects half of the world's population across cultures, nationalities, regions, and income levels and women and girls are subjected to it in various forms. Gender-based violence (GBV) is an instrument of power and a means of maintaining a status quo that favors men and boys.² In past centuries, violence against women was accepted as part of everyday life. In various patriarchal societies, a woman was first her father's property and then her husband's.

Only recently have the structural causes of violence against women begun to receive international attention as both a public health and human rights concern. It took 45 years from the approval of the Universal Declaration of Human Rights (UDHR) in 1948 to the 2nd World Conference on Human Rights in Vienna in 1993 for women's human rights to be officially recognized as "an inalienable, integral, and indivisible part of universal human rights."³ The 2009 United Nations (UN) Security Council Resolution on Sexual Violence⁴ is a signal that world bodies have taken up the issue of sexual harm against women. Nevertheless, the transformation of the written resolution into daily and universal practice remains unfinished.

The right to be free from sexual violence is a fundamental component of the right to health and is particularly threatened in post-disaster contexts.

Women living in post-disaster situations are at daily risk of physical, emotional, economic, and social harm in ways that have no direct parallels for their male counterparts. Sexual violence strips the victim of individual autonomy by destroying her health, disrupting her life, narrowing the scope of her activity, and eroding self-confidence and self-esteem.⁵ All forms of physical, psychological, and sexual violence hinder women's social and economic development.

Sexual violence compromises the ability of women to access the full panoply of their civil, political, economic, social, and cultural rights. The deprivation of these rights in turn causes a downward spiral leading to further deterioration of the right to health.⁶ Women who are displaced by natural disaster and armed conflict are particularly vulnerable to violations of the right to health, including rape and other forms of sexual violence.⁷ The right to be free from sexual violence must not be held as a right in isolation and instead must be seen as an essential component of the right to health.⁸ Responses to disaster and armed conflict must be made with an understanding that freedom from sexual violence is a health right and a humanitarian need.

Although the international community responds differently to post-disaster and conflict situations, the two cause similar patterns of displacement that create conditions under which women and girls are at a heightened risk of sexual violence.⁹ In conflict areas, civilians are often forced to flee their homes and live with inadequate food, water, and housing; families are torn apart as members are killed or go missing; and individuals retain little or no means of subsistence.¹⁰ Disaster areas have similar effects: death and disease often decimate families; people must live with insufficient food, water, and housing; and means of sustenance may be removed due to the destruction of local infrastructure.¹¹ In both contexts, many people rely on government or international actors to meet their basic needs.

Sexual and gender-based violence against women and girls are prevalent in these post-disaster and conflict areas. Several factors increase the vulnerability of women and girls, including the collapse of social infrastructure, inequitable access to social services, absence of law and order, and loss of autonomy resulting in dependence on other actors due to disruption of communities and families.¹² Disasters and conflict impact women and girls' vulnerability dis-

proportionately; in most cases, this is due to gender inequality that leaves women with limited access to resources and participation in decision making. The increased vulnerability in times of conflict or disaster exacerbates the health consequences of sexual violence.

In this article, we use Haiti as a case study to illustrate the post-earthquake crisis of rape and sexual violence. We argue that rape and sexual violence are extreme violations of the universal right to health that affect the full enjoyment of this and other rights. Rather than focusing solely on the problem, we offer critical analysis of the current humanitarian response and aim to show that rethinking rape in relation to health and other human rights can provide a better solution in both the immediate and long term.

First, the article provides a brief overview of the history of rape and sexual violence in Haiti to put the current crisis in context. Next, it provides an overview of rape and other sexual violence in Haiti since the earthquake. The article then provides a critical overview of the humanitarian response in Haiti to rape and gender-based violence in the displacement camps. We argue that including displaced women in meaningful leadership roles provides an effective way to improve the humanitarian response in Haiti and enforce the right to health in the short-term, while informing future humanitarian responses to avert future violations.

I. HEALTH AND HUMAN RIGHTS IN THE CONTEXT OF RAPE IN HAITI

Brief history of rape in Haiti

To provide context for the current crisis, we offer a brief overview of the recent history of rape in Haiti. This history is indispensable for understanding patterns of sexual violence in Haiti and the reasons why the current humanitarian response has not developed effective measures to protect women and girls. To the contrary, we argue, the humanitarian response has exacerbated structural inequalities that pre-date the earthquake, making women, girls, and their families even more vulnerable to human rights violations, including the right to health.¹³

Haiti is no stranger to violence against women. Under the brutal Duvalier dictatorship, women were detained, tortured, exiled, raped, and executed.

Carolle Charles notes that it was, ironically, under Duvalier that “state violence created, for the time, gender equality,” in that no one was spared from the regime’s repressive tactics.¹⁴ On September 30, 1991, a military coup d’état overthrew Jean-Bertrand Aristide, Haiti’s first democratically elected president, initiating a three-year period of terror. Under the illegitimate regime of General Raoul Cédras, between 4,000 and 7,000 people were killed, hundreds of thousands were tortured, beaten, and forced into exile, and hundreds, if not thousands, of women were systematically raped by soldiers and paramilitary forces.¹⁵ Women were targeted for abuse because of their political support for democracy, their intimate association with other activists, their class, and their gender.¹⁶

More recently, a mortality study for Port-au-Prince published in *The Lancet* concluded that under the illegal regime of Gérard Latortue, 35,000 women were raped between March 2004 and December 2006 in Port-au-Prince alone. More than 10% of the perpetrators were identified as right-wing political actors.¹⁷ Likewise, the Inter-American Commission on Human Rights observed in a 2009 report that during the two-year period of political instability following the February 2004 ouster of President Aristide, the rate of violence against women steadily rose. Increasing poverty, deep-rooted class divisions, the proliferation of arms, rise in violent crime, and the absence of adequate crime prevention and judicial mechanisms to respond to the violence exacerbated the violence.¹⁸

In order to understand how it is possible for widespread rape to occur repeatedly, it is important to know how rape and gender-based violence is intimately interconnected with other forms of structural oppression within Haitian society. Like most countries, Haiti has a long history of gender discrimination—starting with the patriarchal structure of the slave era and colonization—which has been reinforced over centuries.¹⁹ Gender discrimination in Haitian society systematically obstructs women from preventing or addressing injustice against them, and strengthens other forms of structural oppression such as economic and political discrimination.²⁰

Poverty has long been pervasive throughout Haiti, and women have borne the brunt of it. Poverty strongly influences how women experience violence and limits their ability to respond to it. Poor Haitian

women experience enormous social and economic pressure to have sex and give birth shortly after puberty; by the age of 19, 31% of all Haitian girls have had their first baby or are pregnant.²¹ Having a child is seen as a way to strengthen the relationship with the male partner, and a way to access the income he can provide.

As women are responsible for maintaining the family unit at any cost, poor Haitian women are frequently the family breadwinners. Women typically work within the informal economy for very little pay, with a much higher proportion of their earnings going toward supporting the household.²² Women are also responsible for performing the bulk of household duties. Domestic violence against women is prevalent.²³ Gender-based violence expert Catherine Maternowska provides some sense of how widespread violence against women is within Haitian society: All of the women she interviewed as part of her ethnographic study of Cite Soleil reported having been beaten at some point in their lives, with the majority reporting they were beaten on a regular basis.²⁴

Deeply entrenched economic and political inequalities within Haitian society have enabled rape and gender-based violence against women. As Dennis Altman argues, rape can be a way of “preserving tradition” in society.²⁵ In the Haitian context, centuries of repressive politics, the collapse of the Haitian economy, and high rates of unemployment have impaired the ability of many Haitian men to fulfill their traditional gender roles as providers. Rape and other forms of violence against women, then, is a means by which men believe they can reclaim their masculinity by asserting a remaining power—that over women.²⁶ Similarly, the military junta used rape as part of their strategy to assert power and control over the Haitian population by intimidating and forcing the pro-democracy movement into submission.²⁷

In addition to deeply ingrained gender discrimination, widespread corruption within the Haitian legal system, as well as historical social divisions, work together to deny poor Haitian women access to justice. Fear of social stigmatization and retribution, as well as distrust in the ability of the judicial system to protect them, cause many female victims of sexual violence to remain silent, and even feel intimidated about seeking medical attention. This distrust of the

legal system is not unfounded, since a woman's word is more likely than not to be discounted or altogether ignored.^{28, 29} The climate of impunity created by this system, in which justice goes to the highest bidder, only the rich can hire competent attorneys and finance police investigations, reinforces the centuries-old social division in Haitian society between the vast majority who are poor and the few who are wealthy.

After centuries of patriarchy and brutal repression, civil society organizations working toward gender equality have sprung up and flourished throughout Haiti. Women have played an integral role in these organizations and have been involved in Haiti's struggle for democracy since the beginnings of the slave revolt. Carole Charles argues that the gendering of state violence under Duvalier led to a change in state gender policies that redefined women as political subjects.³⁰ For example, in a break from past policies that viewed women as passive, non-political subjects, the Tonton Macoutes paramilitary force nominated a woman as commander-in-chief.³¹

After the fall of the junta in 1994, women played a key part in convincing the reinstated government to publicly acknowledge the widespread, systematic rapes committed following the 1991 coup.³² Women's groups, for example, urged the newly established National Truth and Justice Commission to pay close attention to politically motivated sexual violence. While the impact of the commission's recommendations was ultimately limited, inclusion of violence against women in its investigations helped put gender-based violence on the agenda in Haiti.

The Haitian government subsequently established a Ministry for Women and, in 2003, launched the *Table de Concertation Nationale Contra la Violence Faites aux Femmes* (National Dialogue on the Prevention of Violence Against Women), a partnership between the Ministries of Women, Health and Justice, and civil society, including women's groups, NGOs and service providers, and UN agencies to promote coordination between the various actors in the fight against violence against women.³³ In 2005, advocates secured Executive Decree No. 60, which reclassifies rape under the Haitian Penal Code as a crime against the person rather than against morals and increases the severity of the available penalties.³⁴

Despite these advances, the deep historical divide between Haiti's poor majority and rich minority has hampered the ability of women's organizations to unite and push for a common agenda. Women's organizations can be roughly split into two groups, non-governmental organizations (NGOs) and grassroots organizations (also known as 'popular organizations' or OPs). The leadership and membership of Haitian women's NGOs is made up almost exclusively of middle and upper-class Haitians (though these members are perhaps less privileged than their international counterparts). These groups also typically have access to resources that the majority of Haitians lacks, such as economic resources, education, and European language skills, as well as international connections. While grassroots organizations do the bulk of women's organizing, illiteracy and financial resources restrict their capacity.

After centuries of structural oppression, it is difficult for women's groups in Haiti to build bridges, even around gender issues, because the burden of poverty is so severe that it takes precedence over other issues for many poor women. While there have been attempts at collaboration between NGOs and grassroots organizations, this collaboration has been relatively ad hoc, and usually occurs when an NGO invites a grassroots organization to join one of their existing projects. Grassroots groups often criticize these joint programs as 'unfair and undemocratic' because poor women are not granted equal power in decision making, nor do the smaller groups generally receive international funding an NGO may receive for the project.³⁵ The current manifestation of the deep fissures in Haitian society is addressed in more detail below.

The climate of impunity has further hampered progress. Indeed, rape in Haiti is easy to commit and hard to deter in large part because the Haitian justice system is inaccessible to women. Women are underrepresented among Haiti's judges, prosecutors, and lawyers. Effective navigation of the system requires the help of a paid lawyer, which women are often unable to afford. Legal proceedings are usually conducted in French, which few women understand, rather than the universal language, Haitian Creole. When women appear in Haitian courts, their testimony is often discounted, through rules such as the medical certificate requirement or societal bias by judges, prosecutors, and jurors (most of whom are men).³⁶

The justice system's inaccessibility does more than prevent rape prosecution. The obstacles that discourage women from going to court to enforce their rights — including contract rights, employment rights, childcare and alimony rights — reinforce other societal discrimination and keep women poor and vulnerable to dangers, including rape.

The layered histories of sexual violence, repression, and structural inequality in Haiti have led to repeated violations of the right to health of Haitian women and girls and the ability of women and girls to access their inalienable rights.

II. FACTUAL FINDINGS: RAPE IN POST-EARTHQUAKE HAITI

This section provides an overview of the current situation for Haitian women and girls living in displacement camps in Port-au-Prince since the earthquake. This section does not attempt to provide a quantitative analysis of the prevalence of rape or gender-based violence since the earthquake.³⁷ Rather, it provides a qualitative analysis of the current crisis of safety and security for Haitian women and girls. These findings are based on interviews—conducted in May, June, July, August, and October 2010 by the authors of this report and delegations of other United States lawyers—of more than 75 women and girls who had been raped since January 2010, and observations made while touring the camps and other areas where the attacks took place. The rape survivors interviewed range in age from five to 60 years old. Unless otherwise indicated, this section makes observations only with respect to the women interviewed. However, given the strikingly similar patterns that emerged in the testimonies, we believe the observations are likely applicable to the larger displacement population.

Vulnerability of Haitian women and girls

Following the January 12, 2010 earthquake, conditions in Port-au-Prince's Internally Displaced Persons (IDP) camps are bleak and are not improving. Several factors, including overcrowding, lack of privacy, and weakened family and community structures, render women and girls particularly vulnerable to rape and other sexual violence.

Poverty and displacement make women more vulnerable to sexual violence because they must place themselves in situations of increased risk out of necessity. Internally displaced women and girls

live in inadequate shelter, often sleeping in tents or on the ground under nothing more than a tarp or blanket, with no means of protection and no friends close by. Many young girls live alone or with friends, with no adults looking after them.³⁸ Women and girls have no choice but to use non-secure bathrooms and showers. Women who lack food and clean water are forced to walk long distances and/or through dangerous neighborhoods. Even if they are not responsible for procuring food and clean water, they may be left alone in a nonsecure tent. Where food and water are lacking, no matter how much the women might think about personal security, money is spent for sustenance rather than flashlights or other security measures. These increased vulnerabilities lead to sexual violence and continued violations of the right to health.

We have observed a strong correlation between the absence of even minimal health rights, such as food, clean water, and housing, and an increased vulnerability to sexual violence. Where women are forced to live in tents in crowded displacement camps, they are more vulnerable to sexual violence because they lack secure housing. Perpetrators slash the tent and enter, sometimes with weapons and in groups, raping the women inside and/or stealing anything of value. There have been reported cases of forced evictions of camp residents that leave women even more vulnerable.³⁹ Women are also left vulnerable when walking long distances to get water and using non-secure bathrooms and showers.

The women we interviewed reported that the earthquake destroyed their support networks and livelihoods, which further increased their vulnerability. Many had also lost adult male family members who provided physical security and a source of income.⁴⁰ Surviving women are often left with the primary responsibility for the care of the most vulnerable, including infants, children, the elderly, and the newly disabled.⁴¹ Very few of the women we interviewed had any source of steady income. Prior to the earthquake, most women worked as merchants in the informal market, but these activities have been limited because many lost their supplies in the earthquake.⁴² Ever-deepening poverty constrains almost all aspects of women's lives—for example, choices about where to live and how to travel—further increasing their vulnerability to sexual assault.

Rape survivors interviewed expressed deep concern

and anxiety over their continued vulnerability to rape and other sexual violence in the camps. Lacking other options, most remain living in the same area where they were attacked, and the attackers remain at large. None of the interviewees were aware of safe spaces or shelters where they could go. At least three of the women interviewed were raped on two separate occasions since the earthquake and several others had been raped during previous periods of unrest.^{43, 44} In one case, the delegation interviewed the grandmother of a 5-year-old girl who had been raped. The 5-year-old child was herself the product of rape: both the grandmother and her daughter were raped during the 2004 coup period, and the daughter became pregnant with the little girl as a result. Such vulnerable populations have access to even fewer resources in the wake of the earthquake.

Psychological and physical effects

Sexual violence has serious consequences for women's physical, psychological, and social health. In addition to death and grave physical injury, reproductive and sexual health consequences include, "HIV [and other STIs], unwanted pregnancy, gynecological complications such as vaginal bleeding or infection, fibroids, decreased sexual desire, genital irritation, pain during intercourse, chronic pelvic pain and urinary tract infections."⁴⁵ Psychological consequences include post-traumatic stress disorder, anxiety, and depression.⁴⁶ In addition, sexual violence in disaster or conflict areas is sometimes inflicted by armed men, in public or in view of family members, including children. This has serious psychological consequences for witnesses as well as victims. Sexual violence also leads to stigma and social ostracism for the victims, which in turn contributes to low reporting rates and the failure to seek medical treatment.⁴⁷

Many of the women interviewed showed signs of post-traumatic stress disorder (PTSD), including extreme fear, nervousness, helplessness, inability to sleep, nightmares, and signs of depression. Several women indicated suicidal tendencies and some had taken steps towards ending their lives. More than one woman stated that she had contemplated killing herself and her children. One woman said that she wanted to end her life because "this life has gone bad." She had lost her husband and home in the earthquake, her uncle had abused her when she was growing up, and her recent attack had profoundly re-traumatized her.⁴⁸

Almost all of the survivors noted some physical discomfort, including stomach pain, headaches, difficulty walking, and/or vaginal infection and bleeding.⁴⁹ At least one woman became pregnant as a result of the rape.⁵⁰ Only one woman reported that her attacker had used a condom.⁵¹ The few women who had been tested for HIV had negative results. In addition to rape, many of the women and girls suffered beatings, stabbings, and other injuries in the course of the attacks and had scars and other visible injuries. In one of the most egregious cases, several men attacked a woman at her Port-au-Prince home and one man stabbed her with an ice pick. Her small children witnessed the attack.⁵²

In March 2010, a separate delegation of psychiatrists and trauma victim specialists traveled to Haiti with a group of lawyers to identify potential applicants, including victims of GBV, for humanitarian parole to the US. They conducted medical evaluations of 69 earthquake victims, several of whom were also victims of rape or other sexual assault; they found that 95.7% of the victims were suffering from PTSD and 53.6% were suffering from depression.⁵³

Access to medical services

Serious health consequences resulting from sexual violence are further intensified due to the fact that women in post-disaster areas generally have little to no access to health care.⁵⁴ Victims of sexual violence face several obstacles in accessing healthcare, including lack of knowledge that services exist or where they can be accessed.⁵⁵ As noted above, fear of stigma and social ostracism also prevents women and girls from reporting sexual violence or seeking medical services.⁵⁶ Furthermore, women are generally denied meaningful participation in decision making and therefore health issues related to sexual violence fail to be addressed.

The majority of the women and girls interviewed had not been examined by a doctor or other medical professional after they were assaulted. There were several reasons for this: they did not know where to find services; they did not know that services would be provided free of charge; they were unable to pay for transport to get to a clinic; and they feared retaliation and stigma.^{57, 58, 59} Of those who had sought medical care, the majority only sought general first aid care for injuries inflicted when they were raped, and did not

disclose the rape to the healthcare provider because they felt embarrassed or uncomfortable. Victims were extremely reluctant to seek support or to discuss their ordeal before meeting a member of the grassroots organizations KOFAVIV (Komisyon Fanm Viktim pou Viktim, The Commission of Women Victims for Victims) or FAVILEK (Fanm Viktim Leve Kanpe, Women Victims Get Up Stand Up), in whom they had trust and could confide.^{60, 61} When victims did reach out, they were often shunned or ignored.

The women who had seen a doctor reported that the quality and type of care varied depending on the facility and availability of supplies. Some clinics did not offer HIV prophylaxis or emergency contraception. Women faced prohibitively long waits and left without seeing a doctor. Women also reported a lack of privacy and limited access to female healthcare providers. Medical certificates were not routinely provided.⁶² Only two women reported receiving medical certificates; others reported that they were unaware of the importance of the certificates in documenting rape and did not know they had the right to request them. In one instance, a rape victim was told that a clinic had run out of certificates.⁶³ On October 29, 2010, the authors learned that one women's health clinic informed a rape victim that they would charge her more than US\$250 to treat a severe vaginal infection with a series of shots. Several survivors reported treating their injuries with traditional remedies, including special teas and baths.⁶⁴

Furthermore, lack of access to medical care concerning pregnancies resulting from sexual violence creates various short- and long-term health consequences. Short-term consequences can include prenatal or postnatal complications for the infant and mother, vaginal infections and bleeding. Long-term consequences include increased infant and maternal mortality rates, malnourished infants and children, and anxiety and depression. For rape victims who are impregnated by their assailants, the trauma and stigma of rape are compounded by the circumstances of extreme deprivation in which they are forced to carry out their pregnancies. Throughout their pregnancies, women often lack access to prenatal care, adequate nutrition, clean water, secure housing, and economic opportunities. Under such circumstances, the risk of

infant and maternal mortality is greatly increased. Women have also had difficulty breastfeeding their babies, threatening the health of the most vulnerable members of Haiti's displaced population.

Health consequences for children

Children suffer direct and indirect health consequences due to sexual violence. As our interviews established, children are sometimes present and witness the rape of their mothers, sisters, or grandmothers; this can cause psychological trauma. A parent's fear and depression can further impact a child; the parent may be overprotective and prevent the child from attending school, leaving the tent, or being left alone. A victim's fear and terror ultimately limits her child's access to needed services or resources. Moreover, displaced children themselves experience sexual violence at very high rates. Siblings who witness an attack suffer from impaired health and limited rights; parents of rape victims experience psychological trauma and the difficulty of caring for a child with ongoing physical and psychological trauma. Other adult caregivers may be unwilling or unable to leave the child unattended in order to access food, water, medical care, and other necessities.

Exclusion of grassroots groups

Poor and displaced women, have been excluded from full participation and leadership in the relief effort, and are specifically excluded from addressing sexual and gender-based violence in the IDP camps. This occurs despite the existence of standards requiring their participation, including the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women (Belém do Pará), and the UN Guiding Principles on Internal Displacement.⁶⁵ According to Walter Kälin, Representative of the UN Secretary-General on the Human Rights of Internally Displaced Persons, gender-specific violence is understood under the guiding principles "as an act of violence that results in, or is likely to result in, physical, sexual, or psychological harm or suffering on account of one's gender, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life."⁶⁶

Despite this, the UN GBV Sub-Cluster, which takes the lead in addressing gender-based violence in complex emergencies, natural disasters, and other such situations, primarily conducts its meetings in

French and occasionally English. The Sub-Cluster, which is coordinated by UNFPA and UNICEF, refuses to provide translation into Creole, the main spoken language of most Haitians. This lack of translation renders meaningful participation by grassroots groups impossible.⁶⁷ In response to this exclusion, on December 22, 2010, the Inter-American Commission on Human Rights called on the Haitian government to “ensure that grassroots women’s groups have full participation and leadership in planning and implementing policies and practices to combat and prevent sexual violence and other forms of violence in the camps.”⁶⁸

However, that same month, the UN GBV Sub-Cluster released its 2011 list of strategies for combating GBV in Haiti, a simple one-and-a-half-page bulleted summary of objectives and goals.⁶⁹ There is still no specific mention of including grassroots women’s organizations in meaningful participation in the coordination of efforts to address and prevent sexual violence in Port-au-Prince IDP camps, as mandated by international law. This continued exclusion by Sub-Cluster members not only violates their obligations under international human rights law but also undermines strategies to combat gender-based violence.

This exclusion has had a direct and profound impact on at-risk populations and has also led to significant waste and misdirection of aid by donor countries. For example, because of a failure to consult and coordinate with grassroots organizations, battery-operated flashlights were purchased and distributed to increase lighting in the IDP camps. These flashlights are now useless because camp residents cannot afford replacement batteries. Solar flashlights, available at a comparable price, would still be working and could significantly increase lighting and security in the camps. The continued exclusion of grassroots organizations means that this mistake, committed with the best intentions, is doomed to be repeated in a variety of contexts. The implementation of security measures must be undertaken with the input of camp residents.

III. TOWARDS A RESPONSE THAT RESPECTS THE RIGHT TO HEALTH OF HAITIAN WOMEN AND GIRLS

Post-disaster and conflict areas generally lack a variety of basic protections and fundamental needs. Where a

large number of people are displaced, there tends to be a lack of adequate housing and little or no access to food and clean water. In this context, the failure of government or international actors to fulfill basic rights may ultimately result in increased incidents of sexual violence as women are left in vulnerable positions.

While existing international standards clearly articulate the need to address and prevent sexual violence committed against displaced women, high rates of sexual violence against displaced women and children persist. The Inter-Agency Standing Committee’s guidelines for gender-based violence interventions in humanitarian settings recognize that “Survivors/victims of GBV are at high risk of severe and long-lasting health problems, including death from injuries or suicide. Health consequences can include unwanted pregnancy, unsafe self-induced abortion, infanticide, and sexually transmitted infections, including HIV/AIDS. Psychological trauma, as well as social stigma and rejection, is also common.”⁷⁰ The Beijing Platform for Action states that “HIV/AIDS and other sexually transmitted diseases, the transmission of which is sometimes a consequence of sexual violence, are having a devastating effect on women’s health, particularly the health of adolescent girls and young women...”⁷¹ The severity of such health consequences, particularly in the context of displacement, demands that displaced women and children be guaranteed the right to be free from sexual violence as a humanitarian need.

Customary international law recognizes the right to be free from sexual violence and imposes clear standards for addressing and preventing violence, and for providing redress for victims, but there has been little effectiveness in implementing the law. The failure to guarantee women’s right to be free from sexual violence is due in large part to the exclusion of displaced women from meaningful participation in formal humanitarian interventions.

The participation of and consultation with impacted women is mandated in situations of armed conflict by UN Security Resolution 1325, which recognizes that women are disproportionately impacted by armed conflict and calls for “increased representation of women at all decision-making levels in national, regional and international institutions and mechanisms for the prevention, management, and resolution of conflict.”⁷² In addition to protect-

ing women and girls from systemic rape and other forms of sexual assault perpetrated during — and in some cases to further — armed conflict, UN Security Resolution 1325 also protects women rendered vulnerable to attacks as a result of their conflict-induced displacement.

The importance that the Security Council has placed on post-conflict protection of displaced women is evident in the language of Resolution 1325 itself, as the Council “[e]xpress[es] concern that civilians, particularly women and children, account for the vast majority of those adversely affected by armed conflict, *including as refugees and internally displaced persons...*” [emphasis added] and “[r]eaffirm[s] also the need to implement fully international humanitarian and human rights law that protects the rights of women and girls during *and after* conflicts,” [emphasis added] and “[c]alls upon all parties to armed conflict to respect the civilian and humanitarian character of refugee camps and settlements, and to take into account the particular needs of women and girls...”^{73, 74, 75}

In October 2010, the UN Security Council adopted Resolution 1944 (2010) on Haiti, which states that the “Council calls upon the Government of Haiti, with the support of MINUSTAH and the United Nations country team, to continue to promote and protect the rights of women and children as set out in Security Council resolutions 1325 (2000), 1612 (2005), 1820 (2008), 1882 (2009), 1888 (2009), and 1889 (2009)”⁷⁶ This Resolution expands the applicability of Resolution 1325 to women displaced by natural disasters.

By helping ensure that Haitian women, in particular poor women, are included in situations where important decisions about their lives are being made, and by working to transform the social context that underlies the vulnerability of all poor Haitians, especially women and girls, we will give meaning to the oft-repeated adage *fanm ayisyen pap kase* — Haitian women will not break.

ACKNOWLEDGMENTS

The authors would like to thank Shannon Williams, Eleanor Smiley, Bradley Parker, Brian Concannon, Jr., and Jessica Hsu for their contributions to this article.

REFERENCES

1. *Fanm ayisyen pap kase* or “Haitian women will not break.”
2. Gender-based violence “includes violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.” Committee on the Elimination of Discrimination against Women (CEDAW), Gen. Rec. No. 19, Violence Against Women (11th Session, 1992) ¶9, U.N. Doc. a/47/38, available at <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.html>.
3. United Nations, World Conference on Human Rights: Vienna Declaration and Programme of Action, Vienna, July 12, 1993, UN Doc. No. A/CONF.157/23 (July 12, 1993), para.18.
4. Security Council Res. 1325, UN Doc. No. S/RES/1325 (Oct. 31, 2000); see also Security Council Res. 1888, UN Doc S/RES/1888 (September 30, 2009), and Security Council Res. 1889, UN Doc S/RES/1889 (October 5, 2009). Available at <http://www.un.org/documents/scres.htm>.
5. R. Copelon, “Recognizing the Eggregious in the Everyday: Domestic Violence as Torture,” *Columbia Human Rights Law Review* 25/291 (1994), pp. 291–367.
6. C. Albisa, “Economic and Social Rights in the United States: Six Rights, One Promise,” in C. Soohoo, C. Albisa and M.Davis, eds. *Bringing Human Rights Home, Vol. 1*, ed. (Westport, CT: Greenwood Publishing Group, 2008) p. 26.
7. World Health Organization, *WHO ethical and safety recommendations for researching, documenting and monitoring sexual violence in emergencies* (Geneva: WHO, 2007), p. 6. Available at http://whqlibdoc.who.int/publications/2007/9789241595681_eng.pdf and World Health Organization, *Sexual violence in conflict settings and the risk of HIV* (Geneva: WHO, 2004), p. 1. Available at <http://whqlibdoc.who.int/unaid/2004/a85593.pdf>.
8. P. E. Berg, “Ill/legal: Interrogating the meaning and function of the category of disability in anti-discrimination law,” *Yale Law and Policy Review* 18/1

- (1999) pp. 1–51.
9. J. Goldscheid, “Women and disasters: Imagining recovery programs from the victims’ perspective,” *Women’s Rights Law Reporter* 28/1 (2007), pp.15–18.
 10. World Health Organization, *Sexual violence in conflict settings and the risk of HIV* (see note 7).
 11. Ibid.
 12. Ibid; see also World Health Organization, *WHO ethical and safety recommendations for researching, documenting and monitoring sexual violence in emergencies* (see note 7).
 13. As one coalition of Haitian civil society groups noted, “The extent of the disaster is certainly linked to the character of the colonial and neo-colonial State our country has inherited, and the imposition of neo-liberal policies over the last three decades.” Coordinating Committee of Progressive Organisations, *Haiti, After the Catastrophe, What Are the Perspectives?* (January 2010). Available at <http://www.normangirvan.info/wp-content/uploads/2010/01/haiti-statement-prog-orgs.pdf>.
 14. C. Charles, “Gender and Politics in Contemporary Haiti: The Duvalierist State, Transnationalism, and the Emergence of a New Feminism (1980 - 1990),” *Feminist Studies* 21/1 (1995), pp. 135–163.
 15. B. Concannon, Jr., *Haitian women’s fight for gender justice* pp. 2–3. Available at <http://ijdh.org/archives/14424> (unpublished, 2003).
 16. Ibid., pp. 2 – 4; B. Faedi, “The Double Weakness of Girls: Discrimination and Sexual Violence in Haiti,” *Stanford Journal of International Law* 44 (2008), pp. 171- 73.
 17. A. R. Kolbe and R. A. Hutson, “Human rights abuse and other criminal violations in Port-au-Prince, Haiti: A random survey of households,” *The Lancet* 368 (2006), pp.864–73.
 18. Inter-American Commission for Human Rights, *The right of women in Haiti to be free from violence and discrimination*, file OEA/Ser.L/V/II, Doc. 64, para. 48 (2009). Available at <http://www.cidh.org/countryrep/Haitimujer2009eng/HaitiWomen09.toc.htm>.
 19. For an account of the history of the Haitian revolution, see C.L.R. James, *The black Jacobins: Toussaint L’Ouverture and the San Domingo Revolution* (New York: Vintage, 1938).
 20. Concannon, p. 9 (see note 13).
 21. Faedi, p. 68 (see note 16).
 22. For a historical account of the gendered divisions of labor and how unequal access to work in a newly urbanized economy forces women to resort to “prostitution in order to survive”, see M.J. N’Zengou-Tayo, “*Fanm se poto mitan: Haitian women, the pillar of society,*” *Feminist Review* 59 (1998), pp.118 – 142.
 23. Catherine Maternowska, *Reproducing Inequities: Poverty and the Politics of Population in Haiti* (Rutgers University Press 2006), ch. 3.
 24. Ibid., p. 62.
 25. D. Altman, *Global sex*, (Chicago, IL: University of Chicago Press, 2001), quoted in Maternowska, *Reproducing Inequalities*, p. 70 (see note 23).
 26. Ibid., p. 70.
 27. Faedi, p. 171 (see note 16).
 28. Concannon (see note 13).
 29. Institute for Justice & Democracy in Haiti et al., *We’ve been forgotten: Conditions in Haiti’s displacement camps eight months after the earthquake*, (2010). Available at <http://ijdh.org/archives/14633#full-idp-report>.
 30. Charles, pp. 156–57 (see note 14).
 31. Ibid., p. 140.
 32. Concannon, p. 17 (see note 15).
 33. See UNFPA Haiti, *La concertation nationale*. Available at <http://www.unfpahaiti.org/ConcertationNationale.htm>. In 2005, Haiti adopted the 2006-2011 National Plan to Combat Violence Against Women, aimed at preventing violence and attending to victims. The plan’s objectives include putting in place a mechanism for systematic data collection, prevention of violence, capacity-building through promoting a multisectoral approach, and

other strategies. Implementation has been limited.

34. Government of Haiti, *Le decret modifiant le regime des agressions sexuelles et eliminant en la matiere les discriminations contre la femme*, [Decree changing the regulation of sexual aggressions and eliminating forms of discrimination against women]. Decree No. 60 of August 11, 2005, Art. 2, (modifying Art. 278 of the Penal Code), Art. 3 (modifying Art. 279), Art. 4 (modifying Art. 280),” *Journal Officiel de la Republique d’Haiti*, August 11, 2005, 1.

35. Concannon, pp. 17–25 (see note 15).

36. Haitian judges, prosecutors, and police routinely dismiss rape cases where the victim does not have a medical certificate or did not seek treatment within 72 hours, even though Haitian law does not require the certificates to establish the offense. Institute for Justice & Democracy in Haiti, MADRE, et al., *Our bodies are still trembling: Haitian women’s fight against rape* (July 2010). Available at <http://ijdh.org/wordpress/wp-content/uploads/2010/07/Haiti-GBV-Report-Final-Compressed.pdf>.

37. For quantitative analyses of the epidemic, see Center for Human Rights and Global Justice, *Sexual violence in Haiti’s IDP camps: Results of a household survey* (2011) (“An alarming 14% of households surveyed reported that, since the earthquake, one or more members of their household had been victimized by rape or unwanted touching or both.”) A.R. Kolbe et al., Small Arms Survey & University of Michigan, *Assessing needs after the quake: Preliminary findings from a randomized survey of Port-au-Prince households* 23 (2010) (Finding that about 3% of the individuals in the sample had experienced sexual violence during the first two months after the earthquake.)

38. See, for example, interview #16, May 3, 2010 (on file with authors).

39. Institute for Justice & Democracy in Haiti et al., *We’ve been forgotten: Conditions in Haiti’s displacement camps eight months after the earthquake*,” (2010). Available at <http://ijdh.org/archives/14633#full-idp-report>.

40. See, for example, interview #6, May 3, 2010, (on file with authors).

41. See, for example, interview #1, May 3, 2010, (on file with authors).

42. See, for example, interview #12, May 5, 2010 (on file with authors).

43. Interview #30, June 8, 2010; interview #37, June 8, 2010; interview #52, June 2010; interview #54, June 2010 (on file with authors).

44. See, for example, interview #2, May 10, 2010; interview #7, May 3, 2010.

45. J. M. Contreras, et al., “Sexual Violence in Latin America and the Caribbean: A Desk Review,” (March 2010), commissioned by the Sexual Violence Research Initiative. Available at <http://www.svri.org/SexualViolenceLACaribbean.pdf>.

46. Amnesty International, *Don’t turn your back on girls: Sexual violence against girls in Haiti*, (London: Amnesty International, 2008). Available at <http://www.amnesty.org/en/library/asset/AMR36/004/2008/en/f8487127-b1a5-11dd-86b0-2b2f60629879/amr360042008eng.pdf>.

47. World Health Organization, *Sexual violence in conflict settings and the risk of HIV* (see note 7).

48. Interview #41, June 2010, (on file with authors).

49. See, for example, interview #18, May 5, 2010 (on file with authors).

50. Interview #26, June 7, 2010, (on file with authors).

51. Interview #18, May 5, 2010, (on file with authors).

52. Interview #43, June 2010, (on file with authors).

53. See V.G. Carrion, International psychiatry in Haiti at the aftermath of the earthquake,” PowerPoint Presentation, April 2010, (on file with authors).

54. Inter-Agency Standing Committee, “IASC Guidelines for Gender-Based Interventions in Humanitarian Settings Focusing on Prevention of and Response to Sexual Violence in Emergencies,” (2005), p. 63. Available at http://www.humanitarianreform.org/humanitarianreform/Portals/1/cluster%20approach%20page/clusters%20pages/Gender/tfgender_GBVGuidelines2005.pdf.

55. Ibid.

56. *Ibid.*, p. 4.
57. See, for example, interview #2, May 10, 2010 (on file with authors).
58. See, for example, interview #17, May 7, 2010 (on file with authors).
59. See, for example, interview #12, May 5, 2010 (on file with authors).
60. Komisyon Fanm Viktim Pou Viktim (Commission of Women Victims for Victims), grassroots organization founded in 2005.
61. Fanm Viktim Leve Kanpe (Women Victims Get Up Stand Up), grassroots organization founded in 1994.
62. See, for example, interview #9, May 3, 2010 (on file with authors).
63. Meeting with SOFA, May 7, 2010 (on file with authors).
64. See, for example, interview #4, May 5, 2010 (on file with authors).
65. UN Guiding Principles on Internal Displacement, UN Doc. No. E/CN.4/1998/53/Add.2 (1998). Available at <http://www.idpguidingprinciples.org>.
66. W. Kälin, *Guiding principles on internal displacement annotations*, (Washington, DC: American Society of International Law: 2008. This definition follows the 1993 UN Declaration on the Elimination of Violence against Women and the Inter-American Convention of Belém do Pará.
67. Meeting with UN GBV Sub-Cluster Representative and Author (Oct. 11, 2010) (on file with author). See also, University of Virginia, One year later: Haitian government and INGO response to gender-based violence in post-earthquake internally displaced persons camps, (March 2011) p. 35 (citing the GBV Sub-Cluster Coordinator's statement that providing translation would be "tedious."
68. The Inter-American Commission on Human Rights, *In re Women and girls victims of sexual violence living in 22 internally displaced persons camps* Precautionary Measures No. MC-340-10 Haiti, issued December 22, 2010. Available at http://www.law.cuny.edu/clinics/clinicalofferings/IWHRC/research/Haiti_Commission_PM_Decision_2010.pdf.
69. The UN Gender-Based Violence Sub-Cluster in Haiti (the "GBV Sub-Cluster") is coordinated by UNFPA and UNICEF, and includes UN and NGO membership as well as ministries of the government of Haiti. The Sub-Cluster takes the lead on addressing gender-based violence in complex emergencies, natural disasters and other such situations. GBV AoR Working Group, *GBV Coordination at the Local Level, One Response* (July 4, 2010). Available at <http://onerresponse.info/GlobalClusters/Protection/%20GBV/Pages/Gender-Based%20Violence%20Working%20Group.asp>.
70. Inter-Agency Standing Committee, *Guidelines for Gender-Based Violence Interventions in Humanitarian Settings*, (2005), p. 4. Available at <http://www.unhcr.org/453492294.html>.
71. Beijing Declaration and Platform for Action, adopted at the Fourth World Conference on Women, UN Doc. No. A/CONF.177/20 (1995), para. 98.
72. Security Council Res. 1325, para. 1, (see note 4).
73. *Ibid.*, para. 4.
74. *Ibid.*, para 6.
75. *Ibid.*, para.12.
76. Security Council Res. 1944, U.N. Doc. S/RES/1944 (Oct. 14, 2010) para. 14.