

A Rights-Based Approach to Lawyering: Legal Empowerment as an Alternative to Legal Aid in Post-Disaster Haiti

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¶1 On January 12, 2010, a 7.0 magnitude earthquake struck Haiti, killing over 200,000 people and rendering more than one million homeless. In addition to homes, the disaster destroyed businesses and government buildings. Families lost their life savings, means of livelihood, and access to basic public services, including schools and medical care.

¶2 In the aftermath of the earthquake, displaced communities continue to live in over 1,000 internal displacement camps in and around Port-au-Prince and confront human rights violations in their struggle to find shelter, water, and food, despite the billions of dollars in aid that has been pledged. Women and girls have reported a terrifying epidemic of sexual violence in the camps. Thousands of people are being terrorized, beaten, and thrown out into the streets as the government and private landowners unlawfully evict communities from their tent and tarp encampments.

¶3 A strong justice system is necessary for the aid pledged to have a sustainable impact on those living in the camps. As Gary Haugen and Victor Boutros explain, rule-of-law aid and development aid are mutually reinforcing; as public justice systems in the developing world mature, the poor will more fully reap the benefits of the enormous investments in development being made on their behalf.¹ Accordingly, Haitian and international human rights lawyers bring individual cases of human rights violations to Haitian courts to strengthen the ability of the judiciary to respond to the needs of these communities. They have created programs that offer direct legal services to communities living in the camps; these services include representing rape victims and defending communities against unlawful evictions.

¶4 The efficacy of aid also depends on the manner in which it is disbursed. Human rights lawyers in Haiti have witnessed the failure of the humanitarian aid community to adhere to a “rights-based” approach to assistance,² which emphasizes community participation and empowerment, transparency, and accountability.³ A rights-based approach ensures that the

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¹Gary Haugen & Victor Boutros, *And Justice for All*, 89 FOREIGN AFF. 51 (May/June 2010).

²NYU School of Law Center for Human Rights and Global Justice (CHRGJ) et al., *Right to Food, Water and Sanitation Report*, SUBMISSION TO THE UNITED NATIONS UNIVERSAL PERIODIC REVIEW, TWELFTH SESSION OF THE WORKING GROUP ON THE UPR, HUMAN RIGHTS COUNCIL (2011), <http://ijdh.org/archives/17952>.

³See U.N. Interagency Workshop on a Human Rights Based Approach in the context of U.N. Reform, *The Human Rights Based Approach to Development Cooperation Towards a Common Understanding Among UN Agencies: Attachment 1 to Report of the Second Interagency Workshop on Implementing a Human Rights-Based Approach in the Context of UN Reform* (2003), available at <http://www.beta.undp.org/content/dam/aplaws/publication/en/publications/environment-energy/www-ee-library/external-publications/un-the-human-rights-based-approach-to->

beneficiaries of aid are informed of the processes that affect their lives and have the opportunity to share their perspectives in a meaningful way. The value of the rights-based approach lies not only in its means, but also in its outcomes. An approach that consults with and *listens* to the target population is more effective in responding to its needs.

¶5 The lack of a rights-based approach in the distribution of aid in Haiti, however, has resulted in the inefficient and ineffective spending of much of the disbursed humanitarian aid.⁴ International agencies have largely provided humanitarian services in Haiti through a top-down approach, making decisions about people's needs without obtaining meaningful input from the communities receiving the aid.⁵ Haitians at all levels have thus found themselves left out of the decision-making processes on aid distribution—from top government officials overwhelmed by the “republic of NGOs”⁶ operating in their country to the communities left homeless by the earthquake and struggling to survive.⁷

¶6 As traditional legal assistance to marginalized communities tends to be top-down and exclusionary,⁸ much like the traditional distribution of humanitarian aid, human rights lawyers in Haiti seek to apply the rights-based approach to their lawyering—providing “legal empowerment” as an alternative to “legal aid.”⁹ This article discusses how the legal empowerment approach to lawyering has used organizing and community engagement alongside legal representation to reinforce the capacity of Haiti's judicial system while opening up valuable political fora for communities left vulnerable by the earthquake; these communities may then use their own voices to claim their rights. Through case studies of successful advocacy strategies with two of the most vulnerable populations in post-earthquake Haiti—women and the displaced or homeless—this article highlights how international human rights lawyering can, and arguably should, include elements of grassroots organizing and community engagement to obtain justice for individual victims and to advance social justice more broadly.

development-cooperation/UN_Common_Understanding_on_Human_Rights-Based_Approach_to_Development_Cooperation_and_Programming.pdf.

⁴See e.g. CHRGI *et al.*, *supra* note 2; IJDH *et al.*, “We’ve Been Forgotten”: Conditions in Haiti’s Displacement Camps Eight Months After the Earthquake, INST. FOR JUST. & DEMOCRACY HAITI (Sept. 15, 2010), available at <http://ijdh.org/archives/14633>; Mark Schuller, *Unstable Foundations: Impact of NGOs on Human Rights for Port-au-Prince’s Internally Displaced People* (Oct. 4, 2010), available at <http://ijdh.org/archives/14855>.

⁵Brian Concannon, Jr. & Beatrice Lindstrom, *Cheaper, Better, Longer-Lasting: A Rights-Based Approach to Disaster Response in Haiti*, EMORY INT’L L REV. (forthcoming) at *23 (on file with the authors). This was demonstrated in an evaluation of the Office for Coordination of Humanitarian Affairs, where one staff member admitted that “[w]e do not interact with local NGOs or government, forget about interacting with communities.” Abhijit Bhattacharjee & Roberta Lossio, Evaluation of OCHA Response to Haiti Earthquake 32 (2010), available at <http://ochanet.unocha.org/p/Documents/Evaluation%20of%20OCHA%20Response%20to%20the%20Haiti%20Earthquake.pdf>.

⁶Non-governmental organizations.

⁷Concannon & Lindstrom, *supra* note 5, at *2 (“The most striking aspect of the response to the earthquake in Haiti is perhaps the decision to treat Haiti as a charity case rather than as a space where legal obligations exist and guide interventions.”).

⁸Anthony V. Alfieri, *The Antinomies of Poverty Law and a Theory of Dialogic Empowerment*, 16 N.Y.U. REV. L. & SOC. CHANGE 659, 665 (1988) (“By relying on direct service and law reform litigation, poverty lawyers negate the poor as an historical class engaged in political struggle, thereby decontextualizing, atomizing, and depoliticizing that struggle.”).

⁹Vivek Maru, *Allies Unknown: Social Accountability and Legal Empowerment*, 12 HEALTH & HUM. RTS. J. 83 (2010).

I. A “LEGAL EMPOWERMENT APPROACH” TO LAWYERING

¶7 There is growing recognition in the human rights and development communities that sustainable improvement in the lives of the world’s impoverished majority requires empowering the poor to wage their own fight against the unjust structures that perpetuate poverty.¹⁰ This recognition stems from the bifurcated nature of the human rights discourse. On the one hand, the democratic liberal state often uses human rights as a rhetorical tool to legitimize or de-politicize its policies,¹¹ while on the other hand, marginalized communities employ human rights as a discourse of resistance at the grassroots level to reclaim their rights.¹² It is at the intersection of these two distinct iterations of human rights that law and politics meet; when the disfavored begin to master the language of law and rights, they seize the opportunity to insert their views into the political sphere.

¶8 Accordingly, human rights lawyers increasingly combine legal representation with community empowerment and organizing¹³ to create political spaces for disenfranchised populations to reclaim their rights. Such an approach expands the traditional legal advocacy paradigm beyond representation in the courts to include broad-based organizing, giving communities the opportunity to learn their rights and assert themselves as rights-holders. This “victim-centered”¹⁴ or “legal empowerment”¹⁵ approach develops organizing strategies that parallel legal representation in order to empower communities to define their objectives with their own voices and hold the state accountable to its human rights obligations.

¶9 Human rights advocates around the world have successfully employed different victim-centered and legal empowerment approaches to achieve legal victories and hold states accountable to poor and marginalized communities.¹⁶ One example is the Treatment Action Campaign (“TAC”) in South Africa that successfully litigated the right to access HIV/AIDS treatment for pregnant mothers in the landmark human rights case, *Minister of Health & Others v. Treatment Action Campaign & Others (No. 2)* (“TAC case”).¹⁷ It was the TAC’s building of a social movement, which combined litigation with public education and political advocacy, that allowed for the Constitutional Court’s judgment to appear “both legally obvious and morally

¹⁰ See, e.g., Vivek Maru, *Between Law and Society: Paralegals and the Provision of Justice Services in Sierra Leone and Worldwide*, 31 YALE J. INT’L L. 427, 428 (2006).

¹¹ See BALAKRISHNAN RAJAGOPAL, *INTERNATIONAL LAW FROM BELOW: DEVELOPMENT, SOCIAL MOVEMENTS, AND THIRD WORLD RESISTANCE* 200 (1st ed. 2003) (“[Human rights discourse] was built on the expectation that ‘necessary’ forms of violence needed to be perpetrated by the state on some to secure human rights for some others.”); See also COSTAS DOUZINAS, *THE END OF HUMAN RIGHTS* 7 (1st ed. 2000) (As human rights have increasingly been a feature of international politics, “human rights have been turned from a discourse of rebellion and dissent into that of state legitimacy.”).

¹² DOUZINAS, *supra* note 11, at 20 (“But human rights are also the weapon of resistance to state omnipotence and an important antidote to the inherent ability of sovereign power to negate the autonomy of the individuals in whose name it came into existence.”).

¹³ Caroline Bettinger-Lopez et al., *Redefining Human Rights Lawyering Through The Lens Of Critical Theory: Lessons For Pedagogy And Practice*, 18 GEO. J. ON POVERTY L. & POL’Y 337 (2011).

¹⁴ This phrase was coined by the Bureau des Avocats Internationaux, based in Port-au-Prince Haiti, and its sister-organization, the Institute for Justice & Democracy in Haiti, based in Boston, Massachusetts, to describe their approach to human rights lawyering for Haiti’s poor and marginalized populations.

¹⁵ Maru, *Allies Unknown*, *supra* note 9.

¹⁶ Although there are quite a few different examples of this kind of lawyering around the world, this article will only focus on a few emblematic examples.

¹⁷ *Minister of Health v. Treatment Action Campaign* 2002 (5) SA 721 (CC) (S. Afr.).

necessary” by the time the Court handed it down.¹⁸ While many legal scholars uphold the TAC case as emblematic of the justiciability of economic and social rights, its significance lies elsewhere. The TAC case is a story “about the power that an organized movement can have if it makes strategic use of constitutionally entrenched and justiciable human rights, lays the groundwork necessary to give those abstract guarantees meaning, and energetically builds broad public support for its cause.”¹⁹ The success of TAC’s strategy in South Africa is supported by empirical analyses of law reform efforts in the U.S., which find that “the courts tend to follow behind popular reform movements, not initiate them.”²⁰

¶10 Timap for Justice, an access to justice organization in Sierra Leone, and Navsarjan, a Dalit rights organization in Gujarat, India, similarly focus on legal empowerment as opposed to traditional legal aid. The heart of their work lies in their community-based paralegals, who valorize and uphold the agency of human rights victims through public education and organizing while also helping victims identify claims ripe for judicial remedy.²¹ These paralegal programs seek to address the limitations in traditional legal advocacy, which include (1) the scarcity of lawyers compared to the very high demand for human rights defenders in the developing world; (2) the lack of understanding of and participation by systematically marginalized communities in the solutions afforded by litigation; and (3) the inability of judicial remedies to “contribute meaningfully to the agency of the people they serve.”²² At the same time, Navsarjan’s program encourages historically marginalized individuals and communities to engage more with the formal legal system, slowly strengthening the ability of Gujarat’s legal system to protect its most vulnerable populations.²³

¶11 The Bureau des Avocats Internationaux (“BAI”), a public interest law firm based in Port-au-Prince, Haiti, takes a third route to legal empowerment. Unlike TAC, a grassroots organization, or Timap and Navsarjan, which employ paralegals, BAI lawyers incorporate organizing strategies into their legal cases by using “grassroots coordinators” to reinforce the capacity of grassroots groups that work on the same issues for which the BAI’s clients seek legal assistance. The grassroots coordinators work with the BAI’s lawyers to organize rights trainings for grassroots groups and facilitate their advocacy efforts, such as engagement with the media, demonstrations, and meeting with government officials. This “victim-centered” approach deploys legal and political strategies that reinforce one another; the lawsuits provide a foundation for the communities’ organizing efforts while the political pressure helps advance cases through the courts and compel a judicial response.

¹⁸ Amy Kapczynski & Jonathan M. Berger, *The Story of the TAC Case: The Potential and Limits of Socio-Economic Rights Litigation in South Africa*, in HUMAN RIGHTS ADVOCACY STORIES 47 (2009).

¹⁹ *Id.*

²⁰ Fran Quigley, *Growing Political Will from the Grassroots: How Social Movement Principles Can Reverse the Dismal Legacy of Rule of Law Interventions*, 41 COLUM. HUM. RTS. L. REV. 13, 62-63 (2009) (citing GERALD N. ROSENBERG, *THE HOLLOW HOPE: CAN COURTS BRING ABOUT SOCIAL CHANGE?* 70-71 (2d ed. 2008)).

²¹ Maru, *Allies Unknown*, *supra* note 9.

²² *Id.* at 84.

²³ *Annual Report: New Creation 2008-2009*, NAVSARJAN 1, 19-20 (2009), <http://navsarjan.org/Documents/Annual%20Report%20Navsarjan%202008-2009.pdf>.

II. THE SOCIAL, ECONOMIC AND POLITICAL EXPERIENCE OF HAITI'S POOR

¶12 Haiti is the most impoverished country in the Western Hemisphere. Seventy-six percent of Haitians live on less than two dollars per day.²⁴ Haiti's poor are systematically excluded from social services; half of all primary school-age children cannot attend school, and most Haitians have little access to basic healthcare, safe housing, or clean water.²⁵ Life expectancy for men is 50 years and one in 93 women face the risk of dying during childbirth.²⁶ Poor Haitians are excluded from the political sphere as well. For most of its history, unelected dictatorships ruling Haiti have brutally suppressed movements seeking to end exclusion.²⁷

¶13 Haiti's earthquake on January 12, 2010, exacerbated the exclusion of the poor majority in Haiti. An estimated 200,000 people perished while over one million were left homeless.²⁸ People, especially the poor, were uprooted from the community and family structures that provided their protection. They were forced into the streets or camps for Internally Displaced Persons (IDPs), where they have been more vulnerable than ever to crime, rain, hunger, and illness. For instance, a cholera epidemic struck in October 2010, killing 6,000 people and infecting 419,000 within the first ten months of the disease's appearance in Haiti.²⁹ The epidemic disproportionately impacted the poor, who have less access to safe drinking water.³⁰

III. ACCESS TO JUSTICE IN HAITI

¶14 Haiti's justice system reinforces this social, political, and economic exclusion by preventing the poor from enforcing their basic rights. Most Haitians have little to no access to the formal justice system. Court fees and lawyers are too expensive for the poor to afford. Proceedings are conducted in French, which most Haitians do not speak. Elitist legal training conditions lawyers, judges, and prosecutors to give preferential treatment to the powerful while they discount the causes, testimonies, and legal needs of the poor.³¹ Poor women are particularly marginalized by the limited access to the justice system due to deep-rooted gender discrimination and the added economic disenfranchisement they face.³²

²⁴ *Haiti*, WORLD FOOD PROGRAMME, <http://www.wfp.org/countries/Haiti/Overview> (last visited Oct. 1, 2011).

²⁵ *At a Glance: Haiti*, UNICEF (Mar. 2, 2010), http://www.unicef.org/infobycountry/haiti_statistics.html.

²⁶ *See North & Central America and Caribbean: Haiti*, UK FOREIGN & COMMONWEALTH OFFICE (Nov. 9, 2009), <http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/country-profile/north-central-america/haiti>; *At a Glance: Haiti*, *supra* note 25. *But see At a Glance: United States of America*, UNICEF (Mar. 2, 2010), http://www.unicef.org/infobycountry/usa_statistics.html (stating that in the United States only one in 2,100 women die in childbirth).

²⁷ *See generally* PAUL FARMER, *THE USES OF HAITI* (3rd ed. 2006).

²⁸ *Earthquakes with 1,000 or More Deaths since 1900*, U.S. GEOLOGICAL SURVEY (Apr. 14, 2011), http://earthquake.usgs.gov/earthquakes/world/world_deaths.php.

²⁹ *Haiti: Cholera Epidemic Reached a Second Peak and Case Numbers Now Decreasing*, WORLD HEALTH ORG. (Aug. 18, 2011), <http://www.who.int/hac/crises/hti/en/>.

³⁰ *Paul Farmer Examines Haiti "After The Earthquake"*, NATIONAL PUBLIC RADIO (July 12, 2011), <http://www.npr.org/2011/07/12/137762573/paul-farmer-examines-haiti-after-the-earthquake>.

³¹ Authors' conversations with Haitian lawyers and observations in hearings before Haitian judges, 2010-2011; *see also* Brian Concannon, Jr., *Beyond Complementarity: The International Criminal Court and National Prosecutions, A View from Haiti*, 32 COLUM. HUMAN RIGHTS L. REV. 201, 212-13 (2000).

³² Lisa Davis & Blaine Bookey, *Fanm Ayisyen Pap Kase: Respecting The Right to Health of Haitian Women and Girls*, 13 HEALTH & HUM. RTS. J. 1 (2011), <http://hhrjournal.org/index.php/hhr/article/view/410/618> (last visited Aug. 20, 2011).

¶15 With the exception of some legal assistance programs for prisoners, very few legal services institutions expressly challenge the violently unjust social structures in Haiti that keep the decks stacked against the poor. Apprenticeship opportunities often favor those who support the conservative status quo and provide training to reinforce those perspectives.³³ Moreover, completing a dissertation required for entrance into the profession can be costly, beyond the means of many poor law students.

¶16 Marginalization through the law is intimately tied to economic and political disenfranchisement. One, exclusion from the courts prevents workers from enforcing their labor and employment rights, making them vulnerable to illegal firing or exploitation, and preventing them from earning their way out of poverty. Two, exclusion impedes activists' ability to effectively challenge illegal arrests; the government can easily stifle collective action by putting a few leaders in prison. Three, exclusion also allows self-proclaimed landowners to illegally evict thousands of residents from tent cities without proving legal ownership of the land. Four, it keeps women from enforcing alimony or child support, condemning their children to another generation in the cycle of poverty; it also precludes parents' chances of enforcing their children's constitutional right to the education they require to attain a better standard of living. Lastly, exclusion reinforces a culture of impunity in the justice system—a system that is controlled by the elite class and that fails to hold accountable government agents, such as politicians and law enforcement, for corruption and human rights abuses. For these reasons, progress by aid organizations and human rights advocates in creating sustainable change in the lives of poor people in Haiti will remain limited until access to justice is improved.

IV. HOUSING RIGHTS AND ADVOCACY

¶17 One of the biggest legal and humanitarian challenges facing poor Haitians is the lack of safe and affordable housing. Mass urban migration after the agriculture sector collapsed in the 1980s created a severe housing shortage in the nation's cities.³⁴ Due to the lack of economic opportunities, more than 80 percent of the population was informally employed or unemployed, and thus unable to afford decent housing.³⁵ The majority lived in shoddy rental units or informal settlements on open land. Poor urban planning combined with economic desperation led families to erect poorly constructed homes in areas prone to flooding and other natural hazards, including steep hillsides that collapsed in the earthquake.³⁶

¶18 The disparate impact of the 2010 earthquake on poor communities exacerbated Haiti's housing crisis. The earthquake not only destroyed their poorly constructed homes, but also their means of livelihoods and often as a result, their life's savings and investments.³⁷ These communities then had no choice but to move into tent and tarp encampments that sprung up

³³ Authors' conversations with Haitian lawyers, 2010-2011; *see also* Concannon, *Beyond Complementarity*, *supra* note 31, at 212.

³⁴ Walter Kälin, *Human Rights of Internally Displaced Persons in Haiti: Memorandum Based on a Working Visit to Port-au-Prince*, Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, 1-2 (Oct. 2010), <http://ijdh.org/wordpress/wp-content/uploads/2010/11/Kalin-Statement-2010-Haiti-English.pdf>.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Issue of the Renters in the Post-disaster Scenario: Proposal for Redressing their Position in the Haitian Housing Assistance for the Protection Cluster's Housing*, UN HABITAT, HOUSING, LAND AND PROPERTY WORKING GROUP, at 2 (June 8, 2010), available at <https://sites.google.com/site/shelterhaiti2010/technical-info/twig-1/land-and-settlement>.

throughout the earthquake-affected areas. Within weeks of the earthquake, however, government agents and purported private landowners began forcibly evicting these IDP camps. Using violence, economic coercion, threats, and the withholding of humanitarian aid,³⁸ an estimated 50,528 households (233,941 individuals) were evicted between June 2010 and March 2011.³⁹

¶19 Human rights lawyers found it difficult to successfully defend the housing rights of displaced earthquake survivors using traditional litigation strategies alone. Preventative measures could not be achieved through the court system for two main reasons. First, most people claiming to own land on which IDP camps are housed have circumvented the law when evicting communities.⁴⁰ Second, Haitian legal procedure provides no mechanism to request injunctive relief to prevent the extrajudicial evictions from occurring, even though these evictions are often blatant violations of the law and cause irreparable harm to communities that have no housing alternatives available to them.

¶20 As a consequence of the historical exclusion of Haiti's poor majority from the justice system, filing complaints on behalf of communities subjected to forced evictions has also proved difficult. First, legal action against Haiti's traditionally powerful landowners seems futile to IDP communities, which is made up primarily of the poor and politically disempowered. The elitist character of Haiti's judicial system prevents many victims of forced evictions from understanding how the legal process can protect them. Second, many victims do not fully appreciate the importance of their role in the legal proceedings, such as collecting necessary evidence. Once a complaint against the perpetrators of a forced eviction is filed, the petitioners from IDP communities tend to believe that the criminal action will advance without their continued involvement or advocacy.

¶21 Another barrier is that IDP communities generally do not understand their rights, including the state's responsibility to provide alternative housing when they are threatened with eviction. As a result, when these communities seek legal services, they often raise issues that can be characterized as "intra-community" conflicts, such as conflicts between IDP camp leadership committees and their communities, and between IDP camps and humanitarian aid agencies for their failure to provide services in camps. The fact that communities do not believe that the

³⁸ William P. Quigley et al., *Request for Precautionary Measures for Petitioner A from Camp [---], Petitioner B from Camp [---], Petitioner C from Camp [---], and Petitioner D from Camp [---], on Behalf of Their Respective Communities, and for the Community of Camp [---]*, BUREAU DES AVOCATS INTERNATIONAUX ET AL. (Nov. 2, 2010), http://ijdh.org/wordpress/wp-content/uploads/2011/03/Precautionary-Measures_Final_Redacted.pdf; see also Mario Joseph et al., *Update to Inter-American Commission on Human Rights (IACHR) on Forced Evictions*, INST. FOR JUST. & DEMOCRACY HAITI ET AL. (June 15, 2011), <http://ijdh.org/wordpress/wp-content/uploads/2011/06/Haiti-Precautionary-Measures-Update-to-IACHR-15-June-2011REDACTED.pdf>; Jeena Shah et al., *Sylvio Cator Stadium and Camp Django – The Government of Haiti's Continuing Campaign to Close IDP Camps Without Respecting the Human Rights of Displaced Communities*, INST. FOR JUST. & DEMOCRACY HAITI ET AL. (Aug. 9, 2011), <http://ijdh.org/wordpress/wp-content/uploads/2011/08/IACHR-letter-August-9-2011-Final-REDACTED.pdf>.

³⁹ International Organization for Migration, *Displacement Tracking Matrix V2.0 Update*, CAMP COORDINATION AND CAMP MANAGEMENT 13 (Mar. 16, 2011), http://www.cccmhaiti.info/pdf/DTM_V2_Report_15_Mar_English%20_FINAL3.pdf.

⁴⁰ Camp Benediction et al., *Right to Housing*, SUBMISSION TO THE UNITED NATIONS UNIVERSAL PERIODIC REVIEW, TWELFTH SESSION OF THE WORKING GROUP ON THE UPR, HUMAN RIGHTS COUNCIL, at 3 (2011), <http://ijdh.org/archives/17932>.

state's failure to protect their right to housing can be judicially remedied illustrates how they perceive their rights and the law's ability to enforce to those rights.⁴¹

¶22 Thus, protecting IDP communities from forced evictions or seeking justice for those forcibly evicted requires moving beyond traditional legal assistance and towards legal empowerment. To that end, BAI lawyers provide "know your rights" training sessions in camps facing evictions to correct the misconceptions described above.⁴² These trainings include information on nationally and internationally recognized rights and the ways in which to enforce those rights. When legal actions on behalf of camp communities advance in the judicial system, the progress of those cases is also shared with other camps outside the lawsuit to concretely demonstrate how the efforts of marginalized communities can succeed against powerful interests.⁴³ For example, when the national prosecutor decided to pursue a criminal action brought by three camp communities against a local mayor for his unlawful evictions,⁴⁴ BAI lawyers shared this progress with the other camps in its network. Communities showed surprise and then cautious optimism when they heard that an actor as powerful as the mayor would face prosecution for his acts.

¶23 While traditional legal aid works within the confines of a lawyer-client relationship, legal empowerment includes victims of human rights violations as partners in advocacy for the enforcement of their rights.⁴⁵ Thus, when BAI lawyers appear before judges to defend IDP camp communities from evictions, camp representatives are also present to actively participate in their defense. The lawyers respond in Haitian Creole to the judge's French to ensure that the camp representatives understand the arguments being made on their behalf. During legal trainings, the lawyers encourage entire camp communities to peacefully demonstrate in front of the courthouse at the time of an IDP camp's eviction hearing to draw the public's attention to their plight and to pressure judges to make fair and just decisions that consider the human rights of homeless earthquake survivors. Through active participation in their cases, IDP communities understand how their rights may be enforced, and thus are motivated and better able to continue to advocate for systemic change. At the same time, their participation helps their cases advance through the court system by sensitizing Haiti's primary rights' enforcement mechanisms—the judiciary—to human rights considerations.

¶24 Motivated community leaders have also worked to turn individual grievances of camp communities into collective action to pressure the government to implement a comprehensive rehousing plan for its IDP population.⁴⁶ In an effort to achieve the broad-based organized action necessary to exert significant pressure, IDP community leaders, with the assistance of their lawyers, worked together to form the Resistance Initiative Against Forced Evictions of Displaced

⁴¹ Maru, *Allies Unknown*, *supra* note 9, at 89.

⁴² Following the earthquake, the BAI created the Housing Rights Advocacy Project to advocate for the right of housing for those rendered homeless by the earthquake. See *Housing Rights Advocacy Project*, INST. FOR JUST. & DEMOCRACY HAITI, <http://ijdh.org/projects/housing> (last visited Oct. 19, 2011).

⁴³ Maru, *Between Law and Society*, *supra* note 10, at 428. "High profile grievances," which can be the subjects of litigation, "are often ideal vehicles for providing both the galvanizing moment and the opportunity to frame the issue as an injustice applicable to a broad population." Quigley, *Growing Political Will from the Grassroots*, *supra* note 20, at 61.

⁴⁴ See *Press Release: Human Rights Group Sues Mayor in Haiti for Terrorizing Earthquake Victims during Unlawful Evictions (BAI)*, INST. FOR JUST. & DEMOCRACY HAITI (May 31, 2011), <http://ijdh.org/archives/18984>.

⁴⁵ Maru, *Allies Unknown*, *supra* note 9, at 85.

⁴⁶ "[O]rganized action comes about when private grievances are redefined as a community's shared problem." Quigley, *Growing Political Will from the Grassroots*, *supra* note 20, at 59.

Persons.⁴⁷ The Initiative mobilizes their communities to collectively speak out against evictions and demand the right to access adequate and affordable housing. They hold joint press conferences to counter the dominant but statistically false narrative in the media that those living in camps have homes to return to.⁴⁸ They also plan collective acts of mobilization, protesting before the Prime Minister's office and blocking major roads to attract the attention of the government and the public to their issues.⁴⁹ Neither Haitian society nor the Haitian legal system is ready for litigation concerning the constitutional right to housing⁵⁰ on the scale of the TAC right to health case in South Africa. Therefore, the ability of IDP communities to assemble and protest remains a crucial tool for them to gain access to adequate housing.⁵¹

V. RAPE ACCOUNTABILITY AND PREVENTION

¶25 The 2010 earthquake brought major setbacks to the advances that the Haitian women's movement made in the early 2000s.⁵² The women's rights movement gathered its momentum in response to the staggering findings of the 1995 National Commission of Truth and Justice, which brought to light the systematic use of rape as a weapon of terror during the military regime between 1991 to 1994.⁵³ Despite this progress, women and girls in post-earthquake Haiti have been exposed to conditions of extreme insecurity, limited access to basic needs and services, and the overturned community relations that displacement brings. Consequently, the earthquake left Haitian women and girls disproportionately vulnerable to gender-based violence and further economic marginalization.⁵⁴

¶26 In response to the shocking levels of violence in the IDP tent camps in the months following the earthquake,⁵⁵ grassroots women's groups mobilized to draw attention to and address the issue.⁵⁶ Many of the members and leaders of these groups were forced to live in camps themselves and witnessed or experienced the violence first-hand. Groups like

⁴⁷ Known in Haitian Creole as the *Inisyativ Rezistans Kont Ekspilyasyon Fòse Deplase Entèn yo*, the Initiative was fully formed by September 2010 and is composed of more than a dozen IDP camps. For their statement on the one-year anniversary of the earthquake see *The January 12th Declaration of the Resistance Initiative Against the Forced Evictions of IDPs*, INST. FOR JUST. & DEMOCRACY HAITI, <http://ijdh.org/archives/16685> (last visited Oct. 29, 2011).

⁴⁸ *Overwhelming Majority of Haitians Living in Displacement Camps Want to Leave but have Nowhere to Go*, HAITI INTERNATIONAL ORGANIZATION FOR MIGRATION, <http://www.iomhaiti.com/page.php?id=52> (last visited Sept. 26, 2011).

⁴⁹ Trenton Daniels, *Protest Over Evictions in Haiti Blocks Traffic*, MIAMI HERALD, Aug. 2, 2011, <http://ijdh.org/archives/20488>.

⁵⁰ CONST. DE LA REPUBLIQUE D'HAÏTI, art. 22 (1987) (recognizing the right to housing).

⁵¹ "Without the political space to assemble, express views contrary to unreasonable state policy, and popularize and clarify demands through a free press, the socio-economic demands of TAC regarding access to state resources for addressing people's health needs would most likely not have been realized." Kapczynski & Berger, *supra* note 18, at 29.

⁵² Lisa Davis, *Still Trembling: State Obligation Under International Law to End Post-Earthquake Rape in Haiti*, 65 U. MIAMI L. REV. 867, 873-78 (2011).

⁵³ Bryant C. Freeman, *Si'm Pa Rele: 29 Septembre 1991 – 14 Octobre 1994*, 14 COMMISSION NATIONALE DE VERITE ET DE JUSTICE 1, 35 (1998).

⁵⁴ Blaine Bookey, *Enforcing the Right to be Free from Sexual Violence and the Role of Lawyers in Post-Earthquake Haiti*, N.Y. CITY L. REV. (forthcoming 2011).

⁵⁵ See Blaine Bookey et al., *Our Bodies Are Still Trembling: Haitian Women to Fight Against Rape*, INST. FOR JUST. & DEMOCRACY HAITI (July 2010), <http://ijdh.org/archives/13361>; see also Lisa Davis et al., *Our Bodies Are Still Trembling: Haitian Women Continue to Fight Against Rape - One Year Update*, INST. FOR JUST. & DEMOCRACY HAITI (Jan. 2011), <http://ijdh.org/archives/16451>.

⁵⁶ Davis, *Still Trembling*, *supra* note 52, at 869.

KOFAVIV,⁵⁷ FAVILEK,⁵⁸ and KONAMAVID,⁵⁹ which lost their offices in the earthquake, convened to organize press conferences, demonstrations, and rallies to denounce the numbers of rapes taking place in the camps.

¶27 In light of this flurry of activity by its grassroots partners, the BAI decided to develop a program to address the gender-based violence in a multi-faceted manner that works to prevent rape and hold accountable those responsible for these extreme violations of women's rights.⁶⁰ Through this program, BAI lawyers provide legal assistance to women and children victims of sexual violence, while working closely with grassroots groups on organizing and capacity-building to address and prevent future gender-based violence.⁶¹ The grassroots groups are organized, with the aid of a grassroots coordinator, as a Women's Network⁶² to cultivate solidarity and collective mobilizing among the women's groups facing the same social and economic issues in Haiti. By bringing cases through the Haitian legal system, the BAI reinforces the existing legal framework to provide redress to victims of sexual violence. At the same time, the success and advancement of the legal cases depend heavily on the crucial groundwork and advocacy of partner grassroots groups that mobilize on the frontlines to identify victims and provide them with accompaniment⁶³ to rehabilitate and reintegrate them into society.

¶28 Before the concerted advocacy on behalf of victims of sexual violence after the earthquake, rape was not widely reported despite its known prevalence in all sectors of Haitian society.⁶⁴ Victims faced significant obstacles and barriers to reporting rape, including stigmatization, limited resources and information about available services, fear of reprisal, and lack of confidence in the justice system.⁶⁵ While these obstacles still exist, grassroots groups have gone a long way in sensitizing women and girls to speak out, obtain critical medical care immediately after an aggression, and file complaints with the police.

¶29 The women's groups are made up of survivors of sexual violence and deploy community agents to encourage victims of rape to report and seek services. Many of these agents have lived in camps themselves since the earthquake and are crucial in documenting the rapes and raising

⁵⁷ KOMISYON FANM VIKTIM POU VIKTIM [COMMISSION OF WOMEN VICTIMS FOR VICTIMS], <http://kofaviv.org> (last visited Sept. 26, 2011).

⁵⁸ FANM VIKTIM LEVE KANPE [WOMEN VICTIMS, GET UP STAND UP], <http://favilek.interconnection.org> (last visited Sept. 26, 2011).

⁵⁹ KODINASYON NASYONAL MAWON VIKTIM DIREK [NATIONAL COORDINATION OF DIRECT VICTIMS IN HIDING]. A group formed in response to the violence during the 1991-1994 military regime, which forced many victims of rape and other forms of violence to go into hiding.

⁶⁰ See Davis & Bookey, *supra* note 32, at 1-2. Following the earthquake, the BAI established the Rape Accountability and Prevention Project to advocate for adequate police and judicial protections to women victims of gender-based violence.

⁶¹ See *Women's Rights Rape Accountability and Prevention Project*, INST. FOR JUST. & DEMOCRACY HAITI, <http://ijdh.org/projects/rapp> (last visited Aug. 20, 2011).

⁶² The BAI Women's Network primarily consists of KOFAVIV, FAVILEK, KONAMAVID, FEMCADH (Women Alert and Fighting for the Development of Haiti - Femmes Combattantes Avisées pour le Développement d'Haiti), and GCFV (Women Victims' Dialogue Group - Groupe Concertation des Femmes Victimes).

⁶³ While Paul Farmer introduced this term as a basis for guiding policy flowing from the global North, "accompaniment" as a practice has always been a central feature in the Haitian grassroots women's work with victims of sexual violence. See Paul Farmer: "Accompaniment" as Policy, HARVARD MAGAZINE, <http://harvardmagazine.com/2011/05/paul-farmer-accompaniment-as-policy> (last visited Aug. 20, 2011).

⁶⁴ See Inter-American Commission on Human Rights, *The Right of Women in Haiti to be Free from Violence and Discrimination* (Mar 10, 2009), <http://cidh.org/countryrep/Haitimujer2009eng/HaitiWomen09.toc.htm> (last visited Oct. 4, 2011) [hereinafter *IACHR Report*].

⁶⁵ See Davis, *Still Trembling*, *supra* note 52. See also *IACHR Report*, *supra* note 64.

awareness among camp communities about the importance of going to a doctor 72 hours after a sexual aggression to preserve evidence and obtain a medical certificate.⁶⁶ The medical certificate, while not technically required by any written law, is usually required by judicial officials.⁶⁷ Victims and advocates thus consider it a key piece of evidence in rape prosecution.⁶⁸ Advocates periodically provide “Know your rights” trainings to the women’s groups to empower them to identify and respond to infringements they encounter as they accompany a victim through medical and law enforcement institutions post-rape. Although the reported numbers still do not reflect the true levels of gender-based violence in Haiti, the networks of community agents have been increasingly effective in conveying the importance of seeking legal and medical services after an aggression. Victims are also encouraged to reintegrate into social activities that empower and enable them to surmount their trauma in the company of fellow victims of violence.

¶30 As a result of victims’ increased awareness of their rights under Haitian law, legal services are in great demand. Community-based agents refer and accompany victims to the BAI for free legal assistance if desired, but the grassroots groups’ involvement goes a step further. Agents also accompany BAI lawyers to court to provide comfort to victims and increase the number of supporters in a system rife with corruption and racketeers who try to intimidate and threaten the attorney representing the victims in court.⁶⁹

¶31 Realizing the importance of integrating advocacy with the legal casework, the Women’s Network has formed an Advocacy Committee to discuss the issues affecting the legal cases and strategize with the BAI lawyers about how the women’s groups can organize to make legal representation more effective.⁷⁰ Added awareness of the unacceptable nature of sexual violence and exposure of the inefficacy of the legal system in cases involving gender-based violence will produce greater public outcry. This public pressure, in turn, will force the justice system to pay attention to these cases that have historically been marginalized. This tactic proved successful in the TAC case, which recognized the importance of engaging civil society in generating political pressure during the trial.⁷¹

¶32 The model thus moves beyond legal representation in the courts. It utilizes the community networks as well as the innovation and the solidarity of women facing common ills to drive forward the legal process while empowering communities with the language and space to push for social and political change. It is not without results: the persistent engagement with police stations, court personnel, other lawyers and government officials has produced a noticeable change in attitudes from 2010 to 2011.⁷² BAI lawyers and advocates have noted that while many

⁶⁶ See Davis, *Still Trembling*, *supra* note 52, at 869.

⁶⁷ See Davis, *Our Bodies Are Still Trembling*, *supra* note 55, at 20.

⁶⁸ Davis & Bookey, *supra* note 32.

⁶⁹ Interview with Esther Felix, Staff Attorney for the Rape Accountability and Prevention Project, THE BUREAU DES AVOCATS INTERNATIONAUX (Aug. 2011) (on file with author); focus group data from July 26-28, 2011, MADRE/CUNY training in Port-au-Prince, Haiti, with women’s grassroots groups (on file with author); See also Benedetta Faedi, *The Double Weakness of Girls: Discrimination and Sexual Violence in Haiti*, 44 STAN. J. INTL. L. 147, 188 (2008).

⁷⁰ For example, the Advocacy Committee, with the aid of BAI attorneys, held a press conference on August 23, 2011, at the BAI office to draw attention to the effect that a strike at the general hospital in Port-au-Prince has been having on the quality and accessibility of medical certificates, an important piece of evidence for cases of rape. The recommendations offered in the conference were intended to catalyze the process of improving the medical certificate and access to it.

⁷¹ See Kapczynski & Berger, *supra* note 18, at 62-64.

⁷² Felix interview, *supra* note 69.

police officers continue to express discriminatory attitudes towards complainants of rape or other forms of gender-based violence,⁷³ there is an increasing number of trained officers who do not display the same level of reticence when receiving a complaint of rape.⁷⁴ Furthermore, prosecutors are not as dismissive of cases of rape today as had been the case immediately following the earthquake.⁷⁵ Although considerably more public sensitization and trainings for the various actors in the justice system are needed, grassroots groups along with the BAI have established a framework for public involvement in rape prosecution and the treatment of women in the Haitian justice system.

VI. CONCLUSION

¶33

The victim-centered approach to human rights lawyering strives to valorize the struggles of the poor and marginalized communities while arming them with the language of rights to bring their voices into the political dialogue. As opposed to viewing those communities as passive recipients of legal assistance, lawyers and legal advocates should employ a rights-based model that blends traditional litigation with broad-based organizing strategies to empower and mobilize communities to engage directly with the state and pursue their basic human rights. In Haiti, although this empowerment has been lacking in much of the post-earthquake assistance, the projects that have made use of this approach have gone a long way towards achieving systemic change, community empowerment, and greater political participation by historically disenfranchised groups.

⁷³ See IACHR Report, *supra* note 64.

⁷⁴ See Felix interview, *supra* note 69.

⁷⁵ *Id.*