

**AFFIDAVIT OF BRIAN CONCANNON JR., ESQ. IN SUPPORT OF ASYLUM
APPLICATION OF XX, YY**

I, _____ hereby declare under penalty of perjury that the following statements are true and correct to the best of my knowledge.

My Background on the Issue of Rape in Haiti

1. From 1998 until 2004, I helped prepare a case on behalf of victims of political rape during the 1991-1994 *de facto* dictatorship in Haiti. This case was never filed, because the 2004 coup d'état in Haiti made progress in the case impossible, and the justice system has not yet recovered to a point where a successful case is likely. In the process of preparing the political rape case, I had extensive discussions with victims of political rape, read all the available reports on political rape in Haiti in English, French and Creole, and discussed the phenomenon with lawyers, mental health providers and human rights activists. I wrote a book chapter on the rape and the efforts to prepare our case, which has not yet been published. Please see the attached excerpts from this chapter at the end of this affidavit.

The Macoutes in Haiti

2. "*Macoute*" is short for "*Tonton Macoute*" originally a bogeyman character in Haitian folklore, who would steal children at night. I believe the term was first applied to political violence to describe the dreaded "Volunteers for National Security" (VSN), a militia established by the dictatorships of Francois and Jean-Claude Duvalier (1957-1986). The VSN was established as a counterweight to the Haitian army, and as a tool to brutally and arbitrarily stifle political dissent. The VSN dressed in denim pants and red scarves to imitate the bogeyman's depiction in folklore and increase their ability to strike terror into the hearts of Haitians. They systematically attacked people who questioned their authority, criticized the Duvaliers, or organized for social change.
3. The VSN was disbanded upon the departure of Jean-Claude Duvalier in 1986, but VSN members and others continued to use the VSN methods to attack political opponents, especially people on the left side of the political spectrum. "*Macoute*" came to have a more generalized meaning, and was applied to anyone not in the army involved in right-wing political violence.
4. Attacks by people called *macoutes* increased dramatically following the 1991 coup d'état in Haiti, and throughout the reign of the *de facto* military dictatorship (September 1991-September 1994). The regime supported and tolerated a range of paramilitary groups and thugs who systematically attacked supporters of the ousted democratic government.

5. These attacks under the *de facto* regime included killings- an estimated 5,000 people were killed by the army and its paramilitary allies. The attacks also included beatings, illegal arrest and imprisonment, forced exile, and rape.
6. The principle target of the *macoutes* and their successor organizations was suspected supporters of “*Lavalas*.” *Lavalas* is a social and political movement that initially brought together all the opponents of the Duvalier regime. Although the movement has narrowed its focus over the last twenty years, the majority of Haitian voters still claim allegiance to *Lavalas*. *Fanmi Lavalas* is a political party that is generally considered to be the centerpost of the *Lavalas* movement. Some people identify with the movement, but decline to support the political party. President Jean-Bertrand Aristide, who was overthrown in coups d’état in September, 1991 and February 2004, is considered the leader of both the political party and the movement.

Rape as a Tool of Political Repression in Haiti in the 1990s

7. Rape was used to punish or silence both men and women who engaged in political activity. Often women who were not involved in politics were raped because their partner or relative who was politically active could not be found or would not otherwise be intimidated. The rapes were organized and systematic, often perpetrated by organized groups of several men, and following similar patterns. In several cases, a family member- sometimes a husband or partner, sometimes even young children- were forced to watch.
8. The immediate impact of the rapes was, obviously, to terrorize the victim and her family. But it also had a debilitating secondary impact, because there were no social services available for the victims, and there was uneven support from family, friends and neighbors because rape carries with it a stigma in Haitian society. Victims were extremely reluctant to reach out for support or to even discuss their ordeal. When victims did reach out they were often shunned or ignored. As a result, many women became socially or psychologically debilitated, which made them less able to keep their family together and participate in daily life.
9. Forcing family members to watch the rapes not only traumatized the rape victims and those forced to watch, it also often poisoned their relationships, sometimes permanently. Partners, especially, had difficulty remaining engaged with the victims, because of the stigma of rape, but also because contact with her reminded them of their own powerlessness during the ordeal.

Haitian Political Instability after 1994

10. Although democracy was restored to Haiti in 1994, a group of insurgents, comprised mostly of former soldiers and of paramilitaries from disbanded death squads, started attacking Haiti’s elected government and its civilian supporters in 2001. One of the top leaders of the insurgency was Guy Phillippe, a former soldier and police officer, trained in Ecuador. The UN peacekeeping mission had accused Mr. Phillippe of complicity in summary executions while he was a police chief. He has also been accused of drug trafficking by the U.S. Drug Enforcement Agency and the U.S. Embassy in Haiti.
11. Mr. Phillippe fled Haiti in 2000 after it was revealed that he was plotting the overthrow of the government. He was also implicated by the UN/OAS Mission in Haiti in the execution of accused criminals, and by the U.S. Embassy for drug trafficking. Mr. Phillippe, along with

other former soldiers and *Police Nationale d'Haïti* (PNH) officers, began training in the Dominican Republic. In 2001, the BAI received several reports that Mr. Philippe remained in contact with current PNH officers, and was collaborating with them to plan attacks against Haiti's civilian government. In fact, Mr. Philippe's group attacked the police academy and several police stations on July 28, 2001, killing several officers who resisted. That December 17, Mr. Philippe's group organized an attack against the National Palace. The group seized the Palace police communications, and told all officers to support them or be shot. Loyal officers eventually repulsed the attack, but one was killed. Both attacks benefited from significant help from inside the police force, and in both cases disloyal officers impeded the investigations.

12. In the meantime, political tensions in Haiti rose, as members of the opposition openly called for the forced removal of President Aristide. Opponents of President Aristide began attacking people believed to be supporters of *Lavalas*, the movement led by President Aristide. Violence against *Lavalas* supporters increased. In many cases, houses were attacked and their contents burned. In late 2003, a prosecutor I worked with had his house burned down, by government opponents. He lost most of his belongings, including his law books, legal papers and a small community radio station. Two BAI clients, both poor, had their houses burned because of their support for *Lavalas* in 2003.
13. Haitian society in general became increasingly polarized. People who had tried to remain neutral were increasingly forced to choose a side- both camps adopted a "you are with us or you are against us" attitude.
14. In February 2004, the insurgency began a major campaign, attacking and taking cities and towns in the north of Haiti. Each time the insurgency attacked a city, it released all the prisoners held in jail, some of whom joined the insurgency. Often the insurgents executed police and other officials, and prominent supporters of the elected government or *Lavalas* party. The insurgents publicly declared that they would kill *Lavalas* supporters and officials and police who would not join them, and they have made good on that promise.
15. Many of the insurgency's leaders were implicated in human rights violations against the *Lavalas* movement during the 1991-1994 *de facto* dictatorship. For example, Jodel Chamblain was the second in command of the *FRAPH* death squad. Jean Pierre, alias Tatoune, was a local *FRAPH* leader in Gonaives. Both had been convicted for murder in the Raboteau trial.
16. The insurgents worked closely with less organized groups. They found some allies in the prisoners they released from jail. They also worked with local political groups, some of which provided informants to show the insurgents the homes of *Lavalas* sympathizers. Sometimes political groups carried out their own attacks, under the insurgents' protection.
17. Eventually, the insurgents took over all of Haiti. The elected government was replaced by an unconstitutional interim government, which unleashed another wave of repression against the democracy supporters, especially *Lavalas* movement. Although the arrival of international

forces eventually limited their activities, they were never systematically disarmed, demobilized or prosecuted.

Violence in Haiti from 2004-2006

18. Violence in Haiti during the two years following February 2004 has been well-documented, by Amnesty International, teams from Harvard and the University of Miami Law Schools, Refugees International, the Committee to Protect Journalists and the International Crisis Group, among others. Although some of the violence in Haiti is non-political, all of the reports identify perceived engagement in political activity as a significant risk factor for becoming a victim of violence.
19. The persecution of *Lavalas* supporters included mass killings. The Port-au-Prince morgue reported disposing of over 1000 bodies in March 2004 alone, many bearing signs of summary execution. The persecution included torture by both the insurgents, who often mutilated their victim's bodies before killing them, and the police, who used torture as an interrogation technique. The persecution was carried out by a wide spectrum of *Lavalas* opponents, including the insurgents in areas they control, Haitian police, and even top government officials such as the Minister of Justice.
20. A mortality study for Port-au-Prince published in *The Lancet* indicates the overall scale of the violence. The study calculated that over 8,000 people were killed in the first 22 months of the Interim Government of Haiti (IGH) (March 2004-December 2005), almost half of them for political reasons, and that there were high levels of assault, especially sexual assault, and destruction of property. Members of opposition parties were reported to be responsible for 8.5% of physical assaults, and 12.5% of crimes against property.
21. The persecution also included the illegal arrest and detention of activists, especially *Lavalas* supporters. Dissidents were routinely arrested without a warrant and kept in jail without a hearing and without access to the courts. Former Prime Minister Yvon Neptune, arrested in June 2004, was not released until July, 2006. Rev. Gerard Jean-Juste, a prominent activist priest, spent over seven months in jail in 2004, 2005 and 2006 on trumped-up charges. He was eventually released in order to obtain treatment for leukemia, but the case against him has still not been dismissed, even though the prosecution conceded that the charges against him are without merit at a hearing in April 2007.

A Return of Politically Motivated Rapes after 2004

22. The persecution under the IGH also included a return of politically-motivated rapes. The *Lancet* study concluded that 35,000 women were raped between March 2004 and December 2006 in Port-au-Prince alone. Almost 12% of the perpetrators were identified as right-wing political actors. Although the *Lancet* study's conclusions on rape were controversial, and it is possible that the conclusion of 35,000 is high, it is clear that there was an enormous amount of politically-motivated rape during that time in Haiti.

23. The institutions that should have protected Haiti's citizens from political violence were actually major contributors to the problem. *The Lancet* study calculated that police officers were responsible for 27% of the killings, and 20% of the assaults during the study period, and almost 14% of the sexual assaults. Human rights groups like Amnesty International documented a pattern of illegal, politically-motivated arrests by the police.
24. The Haitian police force was sharply reduced after February 2004, because many officers considered loyal to the ousted constitutional government were killed or purged. The purged officers were replaced with an influx of former soldiers, many of whom had participated in the rebellion. This replacement violated police regulations for recruitment and promotion. It also swelled the force with a large number of officers with no civilian police experience or training, who were not accountable to the official police hierarchy or rules.
25. Neither the police nor the judiciary effectively investigate or prosecute political attacks, especially rapes. I am not aware of a single prosecution for political rape ever in Haiti.
26. The court system has often been an instrument of repression instead of a protection against it. The IGH forced out many judges, and replaced them with hand-picked successors, willing to obey the government's whims rather than the rule of law. The most notorious example happened in December, 2005, when the Prime Minister fired five Supreme Court judges who had issued an unfavorable ruling, and replaced them with his own candidates. Such interference with judicial independence is as unconstitutional in Haiti as it would be in the U.S.
27. An unprecedented level of violent non-political crime has accompanied Haiti's political violence over the last three years. There has been a wave of kidnappings, murders, theft and violence, which the police have proven powerless to combat.
28. The common crime has two connections with the political violence. First, in some cases it is conducted by groups that originally armed themselves for political reasons. Second, the common crime can be a convenient cover for political crime. It would be easy to arrange for a political opponent to be killed, and disguise it as an ordinary murder.
29. The 2006 elections and the inauguration of an elected President and legislature in May 2006 were held without widespread violence, and the human rights and security conditions in Haiti did improve somewhat. The new government has ended the practice of systematically attacking political opponents. But several dangers of political persecution have survived the democratic transition.

Perpetrators of Past Persecution Remain At Large in Haiti

30. **The first remaining danger** is the fact that the perpetrators of past persecution remain at large. The IGH or the rebels freed every person imprisoned under the democratic governments in connection with human rights violations in February and March 2004. The insurgency's leaders- including those were themselves implicated in human rights violations during the 1991-1994 *de facto* dictatorship- are at large. This includes Jodel Chamblain, the

second in command of the *FRAPH* death squad, which was a successor to the *macoutes*, and Jean Pierre, alias Tatoune, a local *FRAPH* leader in Gonaives before 1994. Both had been convicted for murder in the Raboteau massacre trial in 2000. Mr. Chamblain even ran for the House of Deputies in 2006.

31. Guy Philippe, the rebel leader and former soldier, set up a military base that he later converted to a political party, the FRN (National Reconstruction Front). Although he apparently provided a few token weapons to a UN disarmament program, he and his soldiers are believed to retain significant weapons. Mr. Philippe ran as a candidate in the 2006 Presidential elections.

32. The U.S. Drug Enforcement Administration attempted to arrest Mr. Philippe in Haiti in July 2007, and again on March 25, 2008. Both times Mr. Philippe eluded capture, and soon went on the radio to demonstrate that he was “untouchable”. Mr. Philippe’s ability to elude two DEA arrest operations indicates that he has extremely good allies within the Haitian National Police. Guy Philippe, in an interview published in March 2007, admitted that some of his former soldiers are still in the police force.

33. On January 13, 2009, Mr. Philippe registered as a candidate for the Senate elections scheduled for April 2009. Despite being wanted on drug charges, Mr. Philippe was able to conduct his registration at the electoral office in the city of Jeremie. According to the Haitian press, he was accompanied by six armed men, two of whom appeared to be wearing police uniforms. His candidacy was later rejected, on technical grounds, by the electoral counsel.

34. Franck Romain, a former mayor of Port-au-Prince, spent 16 years in exile fleeing formal charges that he masterminded the 1988 “St. Jean Bosco Massacre.” St. Jean Bosco was the church of Jean-Bertrand Aristide at the time, and the focal point for pro-democracy organizing. On September 11, 1988, thugs reportedly under the control of Mr. Romain attacked the church during a mass celebrated by Fr. Aristide, killing many of his supporters and destroying the church. Mr. Romain ran for President in 2006. He lives openly in Haiti, and is widely believed to be a candidate for the 2010 Presidential elections.

35. The former insurgents were never systematically disarmed, so they retain their ability to strike at their enemies. Although the UN Mission proposed several disarmament programs, none of them led to significant disarmament of the former insurgents.

36. The thugs involved in persecution during the IGH’s reign have not been disarmed or pursued by the police for their crimes. In many cases, they continue to intimidate, and even kill political opponents.

37. On April 14, 2007, Johnson Edouard, a *Lavalas* grassroots leader and journalist, was killed by gunmen who entered his house at night. The prime suspect in the case is Wilfort Ferdinand, a.k.a “Ti Will,” a leader in the 2004 insurgency, was arrested in May 2007. But he was charged with cocaine possession, not Mr. Edouard’s murder. On September 21, 2006, human rights activist Esterne Bruner was assassinated near his home in the Grande Ravine section of Port-au-Prince, in what is widely considered a political killing.

38. On June 27, 2008, two leaders in the National Popular Party, Prad Remy Jean Vernet and Adrien Michel, were killed near the town of St. Raphael while they were visiting the town in the course of their political work. Although the circumstances of the killing are contested, the two men's families and supporters believe they were killed for political reasons.
39. On January 2, 2008, members of the former Haitian army marched in Cap Haitien, the capitol of the North Department, as a show of force, and to push their demands for a reinstatement of the army. Most Haitians fear the army, which had never successfully defended the country against foreign attack, but regularly engaged in oppressing the people and overthrowing the government. The army had been demobilized by President Aristide in 1994. On July 28, 2008, members of the army took over several government buildings, including one in Cap Haitian. Although no shots were fired, the former soldiers only left the buildings after being forced out by UN troops.

The Haitian Police Force is Corrupt, Unreliable, and Does Not Provide Meaningful Protection to Persecuted Persons

40. **The second remaining danger** for political persecution is the unreliability of the police force, because of former insurgents illegally integrated into the force under the IGH, and a high level of criminality within the force. The constitutional authorities have struggled to purge the former soldiers that the IGH illegally integrated into police ranks. The police force is sharply reduced already while common crime is very high, so the government is reluctant to take more police, even brutal or crooked ones, off the streets.
41. Police have also been implicated in common crime. The Police force's Director General, Mario Andresol, publicly conceded that a quarter of his officers might have been involved in criminal activities. The head of the Judicial Police, Haiti's main investigative unit, Michael Lucius, was fired and arrested in November 2006, for his involvement in kidnappings. He was released in December, 2007, against the protest of the judge who issued the original arrest order.
42. In February 2008 Human Rights Watch issued a report finding that "police lawlessness continues to contribute to overall insecurity. The HNP is largely ineffective in preventing and investigating crime. HNP members are responsible for arbitrary arrests, as well as excessive and indiscriminate use of force. They also face credible allegations of involvement in criminal activity, including drug trafficking, as indicated by the arrest of five HNP officers in a cocaine seizure in May. Although the HNP has participated in some training sessions, the police continue to suffer from severe shortages of personnel and equipment. Police perpetrate abuses with impunity."
43. On June 29, 2008, 13 prisoners escaped at once from Haiti's Carrefour prison. By mid-July, none of them had been re-arrested. Many analysts asserted that the escapees likely had help from prison officials.

44. On July 10, 2008, the head of the investigative police of the Northern Department of Haiti, Darnley Louis Jean, was arrested for participating in kidnappings in the area. An arrest warrant was issued for one of his subordinates as well.
45. On November 12, 2008, police in the city of Port-de-Paix searched the house of Alain Desir, who had been arrested and deported to Florida on drug charges. According to government officials, several million dollars disappeared during the search. On January 11, 2009, the police force's Assistant Departmental Director of the Northwest Department (which includes Port-de-Paix), Jean Raymond Philippe died under suspicious circumstances following his transportation to Port-au-Prince for questioning by Haitian and U.S. police regarding the missing money.
46. On November 28, 2008, Monique Pierre, the girlfriend of Ernst Dorfeuille, the Police Commissioner of Gonaives, a city in Haiti was kidnapped and killed. The investigation revealed that she had a large amount of cash in her home, and links to drug dealers. The police found enough links with Commissioner Dorfeuille to arrest him in early December 2008.

The Haitian Judicial System is Corrupt and Impunity is Widespread

47. **The third remaining danger** for political persecution is the justice system, which still contains prosecutors and judges placed there by the IGH, including the illegal Supreme Court justices. These judges have demonstrated a willingness to continue persecuting political opponents. Although dozens of the IGH's political prisoners have been released since the return of democracy, others remain in prison, with no progress made on their cases.
48. The case against Yvon Neptune, the former Prime Minister and Senate President, is still outstanding, and he could be immediately rearrested at any time. Although an appeals court ordered the case against him dismissed in April 2007, justice officials refuse to serve the order, so it is not final. In June, 2008, the Inter-American Court of Human Rights issued a binding order for Haiti to stop the illegal pursuit of Mr. Neptune, but the government has, so far, ignored the order.
49. The case against former Deputy Amanus Maette is likewise outstanding. He was given provisional release in April, 2008, but the case has not advanced at the trial level since October, 2005.
50. Although the judiciary has kept political prisoners in jail, it has made no effort to recapture any of the people convicted of persecution during the *de facto* dictatorship or other period. Jean-Tatoune was convicted *in absentia* in the Raboteau case, and although he has the right to a new trial, under Haitian law he should be arrested and held until either acquitted at trial or given pre-trial release. Three members of the 1991-1994 *de facto* High Command- Col. Carl Dorelien, Col. Hebert Valmond and Major General Jean-Claude Duperval- were all likewise convicted at the Raboteau trial, and all three were deported from the U.S. for their human rights violations. They escaped from jail in March 2004, and although they are believed to be still in Haiti, none have been arrested.

Haiti's Political Situation is Unpredictable and Potentially Dangerous

51. **The fourth remaining danger** for political persecution is Haiti's politics, which continue to be hotly contested, unpredictable, and potentially dangerous.
52. Haiti's current government is a weak one. No party won a majority of seats in Parliament in the 2006 elections, which forced the construction of two coalition governments. The Ministers in the coalition governments have come from a variety of ideological perspectives, which has made the government inefficient at best, and often ineffective and contentious.
53. The first coalition government fell on April 13, 2008. Following a week of sometimes violent protests over food prices, the Senate adopted a vote of "no confidence" in the government, which led to the automatic resignation of the Prime Minister.
54. The government was not replaced for almost five months, until September 5, 2008, when the Senate approved President Préval's third nominee, Michele Pierre-Louis. Even this approval was controversial: Ms. Pierre-Louis was nominated in June, and it took almost ten weeks of negotiations to obtain parliamentary approval. The nomination actually failed on the first Senate vote on September 4, and only succeeded after a Senator who had voted against it left for home, thinking the session was over. That Senator contested the final vote.
55. A second potential source of political instability in Haiti is the elections scheduled in 2009 for every elected office in the country except President and some Senate seats. The Constitution required an election for 1/3 of the Senate by the end of 2007. These elections have not been held, over a year later. The Provisional Electoral Council (CEP) has announced that the elections will take place in April and June of 2009, but many observers believe that is unrealistic. The delays are the result of fundamental disagreements within the council and within Haitian politics. These disagreements are similar to the disagreements that led to aborted elections in 1997, contested elections of 2000, and the spiraling polarization and civil unrest that ultimately caused the 2004 coup d'état and massive political violence. The electoral council is "provisional" because twenty-two years after ratification of Haiti's 1987 Constitution, the steps to choose a Permanent Electoral Council have not been taken.
56. On February 5, 2009, the CEP disqualified 40 of the 105 registered candidates for the April senate elections, including all *Lavalas* candidates. Following a public outcry in Haiti, and condemnation by Canada, the U.S. and other foreign governments, the CEP agreed to consider appeals of this decision. On February 16, the CEP issued a new list that included an additional 13 candidates, but continued to exclude all *Lavalas* party candidates.
57. On March 9, 2009, a judge found the exclusion of all the *Lavalas* candidates to be illegal, and ordered the CEP to reinstate them. The CEP announced that it would not comply with the court's decision, setting up a potential constitutional crisis.
58. Most observers are confident that the *Lavalas* party would win many of the seats at stake in the April elections. If the CEP tries to run elections without including *Lavalas* candidates,

there is a very significant chance of violence between *Lavalas* supporters and police and electoral officials, or supporters of other parties.

59. In addition to the April/June elections, there are elections scheduled in November and December of this year for a third of the Senate seats, the entire Chamber of Deputies and all of the local elected officials, including mayors and community councils.
60. The Senate is now missing 12 of its 30 members, and it struggles to obtain a quorum. Any four Senators can deprive the body of a quorum by leaving the building, which makes it difficult for the chamber to pass legislation. This has created a significant backlog of legislation, which will in turn increase political unrest and raise the stakes for the next elections. Other than last summer's protracted consideration of the nominated Prime Minister, the Senate does not effectively handle controversial matters.
61. Political strife has been violent in the past in Haiti, and it continues to be so. On August 12, 2007, Lovinsky Pierre-Antoine, a prominent *Lavalas* activist and announced Senate candidate in the upcoming elections, was kidnapped. Mr. Pierre-Antoine was a particularly prominent opponent of the return of the Haitian armed forces. The day after his disappearance, his car was found abandoned, and the day after that his family received a ransom demand. Although the family started negotiations, kidnappers cut off contact on August 17, 2007. There have been no communications from the kidnappers or signs of Mr. Pierre-Antoine since then. The circumstances of the disappearance, Mr. Pierre-Antoine's profile and the course of the "negotiations" indicate that Mr. Pierre-Antoine was taken because of his political activities, and is most likely related to the upcoming elections.
62. Several individuals and organizations have complained that the police are not vigorously investigating Mr. Pierre-Antoine's disappearance, including Amnesty International, the UN Peacekeeping Force, and Mr. Pierre-Antoine's friends and family.
63. Wilson Mesilien, who has replaced Mr. Pierre-Antoine at the head of their grassroots organization, has been receiving threats that have forced him into hiding. Amnesty International has issued two urgent action alerts for his protection, including one on January 9, 2008. Amnesty also notes that the government has not heeded its calls to provide Mr. Mesilien with protection.
64. On October 28, 2007, Maryse Narcisse, one of the top *Lavalas* officials in Haiti, was kidnapped on her way home from a political meeting. She was released a few days later, reportedly after a ransom was paid.
65. In early November 2007, Guy Delva, a Haitian journalist who is a correspondent for Reuters and the BBC, fled the country following a series of death threats. It has been reported that the threats were the result of his revelations that Senator Boulos, one of the leaders of the anti-*Lavalas* movement in Haiti, was ineligible for the legislature because he has a foreign (U.S.) passport. Mr. Delva did later return to Haiti.

66. It is likely that politics in Haiti will become even more hotly contested in the coming months and years, due to the anticipated return of former President Jean-Bertrand Aristide, currently in exile in South Africa. President Aristide has announced a general intention to return to Haiti when the conditions are right, and he has the constitutional right to return at will. To date, President Aristide has not announced a date for his return, in deference to President Préval's wishes. President Préval has not stated that President Aristide is currently welcome to return.
67. As President Aristide's supporters become increasingly discontent with current government policies, there is an increasing mobilization for his return. On February 28, 2009 over 10,000 people demonstrated in Port-au-Prince for Aristide's return. Several thousand attended another demonstration on March 9. If President Aristide returns, or if it appears likely that he will return, opponents of *Lavalas* will likely try to block his return through violence and intimidation of *Lavalas* supporters.
68. As of February 24, 2009, the Canadian Ministry of Foreign Affairs has a travel warning recommending that Canadians defer all unnecessary travel to Haiti. On January 28, 2009, the U.S. State Department issued a travel warning recommending that Americans defer all unnecessary travel to Haiti. Travel within Haiti by U.S. officials has been restricted.

The 2004 Elections Set a Dangerous Precedent for the Violent Overthrow of an Elected Government

69. **The fifth remaining danger** for political persecution is the precedent of 2004- where political violence overthrew an elected government. This precedent will encourage those left out of the government to seek power through violence. Although there have been some calls for President Préval's ouster, I have not seen evidence of actual preparations for this. But if the elections scheduled for 2009 are held and held fairly, and if, as expected, *Lavalas* wins them, it is highly likely that *Lavalas* opponents will attack the government and *Lavalas* supporters.

Haiti Has Been Ravaged by Tropical Storms and Suffers from a Lack of Food Security

70. **The sixth remaining danger** is the potential from civil strife as a result of hunger and damage from tropical storms. Haiti suffered food riots in April 2008 to protest rises in food prices. For most Haitians, food takes up about 80% of the family budget. By some studies Haitians suffer from one of the highest calorie deficits in the world already. When the price of food goes up precipitously for people already spending most of their money to buy inadequate amounts of food, there is little room to tighten their belt. As a result, if prices rise again, Haitians will become more desperate over food prices, with a high risk of widespread violence. The riots in April 2008 led to the downfall of the government and included attacks on UN troops, government buildings and private property. Smaller demonstrations continued up through August 2008.
71. During three weeks in late August and early September 2008, Haiti was hit by four consecutive tropical cyclones, including two hurricanes. The storms left over 500 people

killed, a million or more homeless, and devastated the country's road and infrastructure network. The storms devastated Haiti's agriculture, killing up to 80% of the crops in some areas. The United Nations has estimated the destruction from the storms to be \$1 billion, about 15% of Haiti's annual Gross Domestic Product.

72. The storms' destruction of animals and plants have decreased food supply and raised food prices in Haiti, at a time when people who lost everything in the storms are even less able to pay for food. This will lead Haiti into an extremely dangerous and volatile situation, especially combined with the political risk factors.

I declare under penalty of perjury that the foregoing is true and correct. Executed on ____, 2009 at Marshfield, Massachusetts.

Brian Concannon Jr., Esq.

ADDENDUM:

Excerpt from Brian Concannon's Draft Book Chapter: *Haitian Women's Fight for Gender Justice*. Submitted in support of XX, YY's asylum application.

HAITIAN WOMEN'S FIGHT FOR GENDER JUSTICE

Brian Concannon Jr.

On September 30, 1991, a military *coup d'etat* overthrew Haiti's first democratically elected government, and initiated a three-year reign of terror. The military and its paramilitary allies brutally suppressed all democratic activities, including grassroots organizing. Between 4,000 and 7,000 people were killed, and hundreds of thousands more were tortured, beaten or forced into internal or external exile.¹ Because women were active in the pro-democracy movement, they suffered the same atrocities that men did. But they suffered additional atrocities because they were women.

¹ See generally, SI M PA RELE, RAPPORT DE LA COMMISSION NATIONALE DE VERITE ET DE JUSTICE (1997) [hereinafter Truth and Justice Commission Report], <http://www.haiti.org/truth/table.htm>. See also Irwin Stotzky, SILENCING THE GUNS IN HAITI (1997); Commission Justice et Paix du Diocèse des Gonaïves, LA REPRESSION AU QUOTIDIEN EN HAITI 1991-1994 (Gilles Danroc & Daniel Roussière eds., 1995); Human Rights Watch/Americas, *Terror Prevails in Haiti: Human Rights Violations and Failed Diplomacy*, at 5-7 (1994).

Soldiers and paramilitaries raped hundreds, possibly thousands,² of women during the dictatorship. The rapes were massive, systematic, and designed to terrorize and intimidate the pro-democracy movement.³ The perpetrators maximized the terror through sadism: multiple rapes, forcing family members to watch, forced incest and raping young girls and pregnant women.⁴ Beatings often accompanied the rapes, leaving lasting injuries and requiring ongoing medical treatment and expense. Some women were killed. The rapists often looted homes, stealing the money or trade goods that were the victims' only source of income, often accumulated painstakingly over years. The rapists were soldiers in and out of uniform, and organized paramilitary groups. The rapes tended to come in waves, coincident with waves of other human rights abuses, especially during the last eighteen months of the dictatorship. There are no reported cases of political rapes punished during the dictatorship by either civilian or military authorities.

Rape victims were targeted because of their participation in pro-democracy activities, or association with someone who did. In this way, the rape campaign was designed to intimidate activists directly. On a broader level, women were strategically targeted as a group because they are considered the *poto mitan* (centerpost) of Haitian society.⁵ Humiliating, intimidating and incapacitating the centerpost was a way of definitively crushing civil society.⁶

The rapes were well documented. During the dictatorship, they were reported by Haitian human rights groups,⁷ intergovernmental organizations,⁸ observer delegations and international human rights groups.⁹ There were also efforts within Haiti and outside to provide the rape survivors immediate support. Victims themselves surreptitiously organized support groups. Human rights groups, social service providers and private medical professionals, sometimes with foreign support, provided medical and psychological treatment, sometimes clandestinely.¹⁰ Networks of Haitians and foreigners provided safe houses, and assisted escape abroad.

² Truth and Justice Commission Report, *supra* note 1 at 42; Radhika Coomaraswamy, *Rapport sur la mission en Haïti de la Rapporteuse spéciale chargée de la question de la violence contre les femmes*, UN Doc. E/CN.4/2000/68/Add.3 at 14 (2000) (hereinafter "Special Rapporteur's Report"); Laura Flanders, *Haiti: J'Accuse*, in *WAR'S DIRTY SECRET*, 157, 161 (Anne Llewellyn Barstow ed., 2000) (women's groups reported up to 18 rapes in a single day).

³ Truth and Justice Commission Report, *supra* note 1 at 42. The rapes in Haiti did not include ethnic cleansing. Although there are tensions running broadly along color lines, Haiti does not have ethnic conflict *per se*, and most of the soldiers and paramilitaries were, like most of their victims, black.

⁴ See, e.g., Marie M. B. Racine, *LIKE THE DEW THAT WATERS THE GRASS*, 24, 25, 29 (1999).

⁵ Jennie M. Smith, *WHEN THE HANDS ARE MANY: COMMUNITY ORGANIZATION AND SOCIAL CHANGE IN RURAL HAITI*, 158 (2001).

⁶ See Radhika Coomaraswamy, *Of Kali Born: Women, Violence and the Law in Sri Lanka*, in *FREEDOM FROM VIOLENCE: WOMEN'S STRATEGIES FROM AROUND THE WORLD*, 49-50 (Margaret Schuler ed., 1992) ("to rape a woman is to humiliate her community").

⁷ In particular, the *Plateforme des Organisations Haïtiennes de Droits Humaines*, and the Catholic Church's *Commission Justice et Paix*.

⁸ Notably the United Nations/Organisation of American States' International Civilian Mission (MICIVIH) and the Inter-American Commission on Human Rights. See, Inter-American Commission on Human Rights, Report on the Situation of Human Rights in Haiti, OEA/Ser.L/V/II.88, Doc. 10 (1995) p. 39-47 [hereinafter Inter-American Commission Report (1995)].

⁹ Human Rights Watch/National Coalition for Haitian Refugees, *Rape As a Weapon of Terror*, July 1994.

¹⁰ Nicole Magloire, MD, *Expérience de suivi gynécologique de femmes violées*, in *HAÏTI: DROITS DE L'HOMME ET REHABILITATION DES VICTIMES* 54 (UN/OAS Civilian Mission to Haiti, 1998).

Not all of this reporting was believed. In a cable leaked to the press, the U.S. Embassy concluded that “[t]he Haitian left, including President Aristide and his supporters in Washington and here, consistently manipulate or even fabricate human rights abuses as a propaganda tool... A case in point is the sudden epidemic of rapes reported... by pro-Aristide human rights activists,” suspicious because “rape has never been considered reported as a serious crime [in Haiti].”¹¹ Although the OAS and later the UN did impose an embargo on fuel and other items, foreign governments, including the U.S., continued to provide training to the Haitian armed forces and support to paramilitary organizations.

Rape survivors often discuss the political rapes as only the latest in an unbroken chain of serious crimes against them and their ancestors. A woman usually starts her account with slavery, and the French colonists’ brutal plantation system. Some will trace economic deprivation to the independence debt that France extracted in return for recognition,¹² often called the world’s first structural adjustment program.¹³ The account sometimes mentions the U.S. occupation, always the Duvalier regime. In addition to the historical connections, the women make horizontal linkages between the oppressions of violence, patriarchy and poverty. In fact, when Haitian rape survivors talk about the effects of the rapes on their lives, they are just as likely to mention the same issues that women who were not raped mention: stress and depression, the challenges of buying food, paying rent, and obtaining healthcare and education for their children, and the hazards of patriarchy.¹⁴

Women also link the various types of oppression when discussing solutions. Although the victims articulate specific goals such as arresting a perpetrator or receiving reparations, they just as often speak of establishing a true democracy, of self-determination, of freedom, of having their minimum material needs met, of *chanjman tout bon vre* (complete, total change). This is because they recognize that addressing individual events, however damaging, without also addressing the larger systematic and structural injustices will lead to short-lived victories at best, and further inevitable victimization for them or their daughters.

[The International Transition in the Struggle for Women’s Justice]

...

The Haitian women’s struggle has also helped shape the international justice transition. The horror of the attacks, combined with the survivors’ courage in telling their stories, forced the world to take notice of, report and condemn the rapes, well before the Rwandan genocide and many of the rapes in the Balkans. In fact, the Inter-American Commission on Human Rights became the first international human rights body to officially recognize rape outside of detention

¹¹ U.S. Embassy, Haiti, “Confidential Cablegram,” April 12, 1994, on file with author, p. 2-3; Beverly Bell, *WALKING ON FIRE: HAITIAN WOMEN’S STORIES OF SURVIVAL AND RESISTANCE*, 21 (2001); Racine, *LIKE THE DEW THAT WATERS THE GRASS*, *supra* note 4 at 24, 27; Paul Farmer, *PATHOLOGIES OF POWER: HUMAN RIGHTS AND THE NEW WAR ON THE POOR*, 254 (2003) (rape victim called seeing the dictatorship’s lawyer denying the rapes on CNN “one of the most debasing moments of her experience”).

¹² Mildred Aristide, *CHILD DOMESTIC SERVICE IN HAITI AND ITS HISTORICAL UNDERPINNINGS* 108 (2003).

¹³ Foreign debt consumed an estimated 80% of national revenue by the end of the nineteenth century. Charles Arthur, ed., *LIBETE, A HAITIAN ANTHOLOGY*, 209 (1999).

¹⁴ Special Rapporteur’s Report, *supra* note 2 at 14. *Médecines du Monde*’s Haiti office conducted a study of Raboteau victims for post-traumatic stress disorder. Every individual tested came up positive, including some whose trauma from the massacre was comparatively light. Psychological reports on file with author.

as torture in its 1995 report on rape in Haiti.¹⁵ A Haitian rape victim seeking asylum abroad won the first U.S. ruling in a case recognizing rape as a serious harm that could constitute persecution on the basis of political opinion.¹⁶ The case prompted the U.S. Immigration and Naturalization Service to issue national gender asylum guidelines recognizing rape as persecution, that were in turn an important international development.¹⁷ If the Haitian women succeed with their campaign to prosecute those responsible for their rapes, including the top military and paramilitary leaders, they will provide both an inspiration and a roadmap for other national prosecutions.

....

Poverty and Social Division

An account of women in Haiti can no more avoid confronting poverty than a woman with no food and hungry children can. Haiti is by far the poorest country in the western hemisphere, with a per capita income of about one U.S. dollar a day. Life expectancy is low, healthcare, education and nutrition are among the world's worst. The daily struggle to obtain the minimum food, shelter and healthcare has been the salient fact of life for three centuries for most Haitians, especially women. As elsewhere, women bear the brunt of poverty, because of discrimination in the workplace, at home and in society, and unequal distribution of childcare responsibilities, especially in the 60% of families headed by a woman alone.¹⁸

Poverty has always determined how women experience violence, and limited how they respond to it. Poor women endure abusive mates, employers and landlords, for lack of other means to support themselves or their children.¹⁹ Poverty constrains women's choices about where to live and work, how to travel, even who to accept as sexual partners,²⁰ increasing vulnerability to property crime and sexual assaults by strangers and non-strangers. Without money to pay clerks, judges and lawyers, women have not been able to access the corrupt formal justice system. Poor women's lack of resources and stature prevents them from pursuing even informal redress within society.

The fight against poverty is perhaps the most disappointing aspect of Haiti's democratic transition. Although there have been some successes in creating jobs and developing infrastructure for economic growth, and some strides against poverty's root causes, such as inadequate education, democracy has not yet brought a substantial increase in the economic well-being of most Haitians.

Accompanying poverty are deep fissures within Haitian society. The main divide runs between the vast majority who are poor and the very few who are wealthy, sometimes spectacularly so. The divide is loosely correlated with other distinctions, of skin color, ability to

¹⁵ Inter-American Commission Report (1995), *supra* note 8, at 119-123; Deborah E. Anker, *Boundaries in the Field of Human Rights: Refugee Law, Gender, and the Human Rights Paradigm*, 15 HARVARD HUMAN RIGHTS LAW JOURNAL 133, 142-143 (2002).

¹⁶ *In re D-V-, 12 I. & N/ Dec. 77, 79* (U.S. BIA 1993).

¹⁷ Anker, *Boundaries in the Field of Human Rights*, *supra* note 15, at 142.

¹⁸ Bell, *WALKING ON FIRE*, *supra* note 11, at 18-19.

¹⁹ Special Rapporteur's Report, *supra* note 2, at 4, para. 11.

²⁰ Farmer, *PATHOLOGIES OF POWER*, *supra* note 11, at 39.

write and speak French, and level of education. Centuries of erecting social and economic barriers against the masses makes building bridges now difficult, even for well-meaning elites. Centuries of repression have left the poor distrustful of those who are not poor, and a strong sense of the connection between their current suffering and the lifestyles of the elite. Haitians of all classes often view life through a class lens, and instantly place those they encounter on one or another side of the divide. One's place can be irrevocably set by the ability -- or not -- to speak French, by driving a car or taking public transportation, by the clothes one wears and the food one eats.

....

Toward Justice

....

The justice system is particularly resistant to women victims, who carry a triple burden into the courthouse. Not only are they poor and trying to challenge the powerful, but they are also entering a place traditionally hostile to women. Haitian law is discriminatory, but the practices of judges, prosecutors and lawyers are even more so. For example, the Criminal Code treats rape as an "offense against morals," and prescribes a lesser sentence than for assault. But judicial practice compounds this injustice, requiring a formal medical certificate and other evidence that the law does not, which effectively precludes many cases.²¹ Most lawyers, when asked, contend that the lack of contemporaneous medical certificates (which would have been impossible to acquire for some, deadly for others) prevents political rape survivors from pursuing their cases.

Although judicial training is needed in many areas, it is especially needed on gender issues. Judges and lawyers who consider themselves progressive on women's issues, some of them women, steadfastly defend the discriminatory practices on technical grounds. Most have simply not been exposed to gender justice issues, sheltered by status and training. On a broader level, the repressive dictatorships of the past, combined with the traditional nature of Haitian society, deflected many of the global discussions of gender, justice and society away from the country.

From Patriarchy to Equality

Haiti, like most countries, has a long history of patriarchy and discrimination against women in the home, in government, at work and in the courts. Although Haiti has been spared some of the worst forms of discrimination, including *machismo* and religious fundamentalism,²² the society retains a strong patriarchal structure handed down from the slave era, reinforced by conservative Christianity and rural traditions. The low level of education, especially for women,

²¹ Even a progressive legal guide by feminist organizations repeats this myth. *Femmes en Démocratie, GUIDE JURIDIQUE A L'USAGE DE FEMMES* (2002) at 132. A medical certificate is valuable evidence of rape, but is not technically required by the law.

²²The explanations for why this is so are varied. Many attribute it to the less egalitarian social and religious traditions from Africa, others to differences between Spanish and French colonialism. Others say that life has just been so hard for Haitian men and women alike, that it limits inequality.

and dictatorial filtering of information entering the country, insulated Haiti from progressive currents elsewhere in the world for much of the 20th century.

Gender discrimination in Haiti has systematically denied women the power to either prevent or address injustice against them. Discrimination in one sphere reinforces that in another -- a woman's low public status decreases her ability to respond to discrimination at work; legal discrimination with respect to property and civil rights further disempowers her at home. Gender-based oppression of women in turn reinforces and is reinforced by other oppressions: poverty and poor education restrict women's ability to organize on gender issues, dictatorial and militaristic governments buttress patriarchy, restrictions at home censor many woman pro-democracy activists.

These interlocking oppressions leave women particularly vulnerable to gender-based violence, on a large scale and individually. Sexual abuse by anyone with a power advantage over women -- mates, employers, soldiers, teachers, local leaders -- has long been endemic to Haitian life.²³ The violence has been widely tolerated by society,²⁴ and rarely punished by the courts. Although the return of democracy and demobilization of the army and paramilitary groups have eliminated large-scale, political rape, the civilian police and courts have made little progress fighting non-state-sponsored violence against women.

Haiti's democratic transition has made substantial and concrete inroads into the historical patriarchy. As discussed below, the ability to organize freely over the last eight years has allowed women to make irrevocable progress. Women now play an unprecedented role in the public sphere, as top government officials and civil society leaders, as voters and organization members. An increasing number of women go to school, have access to the courts and participate in decision making in the home. Nevertheless, despite the enormous strides to date, most of the progress lies ahead. Women still lag far behind in political and economic power, in education, at work and at home.

....

Obstacles To Organizing

Poverty is the largest single obstacle to women's organizing. Simply surviving poverty requires most of the energy of most Haitian women, leaving little time or energy for organizing.²⁵ Neither society nor individuals have resources to spare to support women's groups, and personal property that fuels work in other countries, like cars and telephones, are in short supply in Haiti. Poverty complicates continuity and consistency within organizations, by forcing groups to balance long-term struggles with short-term emergencies affecting society and their members. Within organizations, the attention of leaders and members is often diverted to family emergencies, or consumed by their own health problems. Communication is difficult within and between organizations, as most women have no telephones or cars, and have increasing difficulty paying for public transportation to meetings. The organizations themselves have few resources to make photocopies, arrange meetings and purchase basic supplies.

The next largest obstacle to women's organizing are the deep historical fault lines in Haitian society. The fissures stretch back to 1804 and beyond, and permeate every aspect of

²³ Bell, *WALKING ON FIRE*, *supra* note 11, at 20-21 (studies have found an "astronomical incidence of domestic abuse," and woman have historically suffered "rampant and devastating state-sponsored violence.>").

²⁴ Racine, *LIKE THE DEW THAT WATERS THE GRASS*, *supra* note 4, at 33.

²⁵ Racine, *LIKE THE DEW THAT WATERS THE GRASS*, *supra* note 4, at 26 (women cannot come to an organization's meetings "because they are hungry and have not eaten for days").

Haitian society. The main divide sits between the poor majority and the comfortable minority, but similar cleavages lie between city and countryside, along color and education lines, between those who can read and those who cannot. Despite many efforts, and some non-systematic successes, women's solidarity has yet to effectively bridge these divides, leaving on one side the majority of women with education, international contacts, large-scale organizing skills, and economic resources, and on the other side, the vast majority of Haitian women.

....

Although some arrests are made and some perpetrators sentenced, the justice system and police are not an effective deterrent to violence against women. Although precise figures are hard to come by, most women perceive rape as widespread, and unpunished by both the justice system and society at large.²⁶

....

Assuring women's representation on the jury for a major trial is complicated by societal discrimination and poverty.²⁷ Those making the lists tend not to think of women as appropriate jurors, considering them too "emotional," or too easily influenced or intimidated. Favoring education for boys over girls in cash-strapped families leads to fewer women satisfying the literacy requirement. Women's lesser participation in the formal sector and in high profile societal roles decreases the chance that officials preparing the jury list will know them.

Even when officials try to remedy the gender imbalance, they have difficulty finding women willing to serve. Women often feel they cannot abandon their household duties or their jobs, especially for a long trial. Poor women, especially, cannot afford alternate childcare or to miss a day's pay, however meager. Women heading households fear that if they are killed or injured there will be no one to look after the children."

²⁶ Although it is neither systematic nor politically motivated, rape by men in the law enforcement system does exist. *Dwa Fanm and Enfofanm*, "Justice for Haitian Rape Victims," (internet appeal in support of a woman raped by a health care worker while in prison, February 28, 2003, on file with author).

²⁷ Even women's representation does not ensure a sensitive hearing for the victims. Prosecutors in the U.S. say women jurors in rape cases can be harder on victims than men are. In Haiti, women are often the principal enforcers of discriminatory social norms. See Racine, *LIKE THE DEW THAT WATERS THE GRASS*, *supra* note 4, at 33.