RAPE AS A WEAPON OF PEACE: A LEGAL AND PSYCHOLOGICAL ANALYSIS OF HOW THE PERVERSIVE VIOLENCE AGAINST WOMEN LEADS TO THE DETERIORATION OF A COUNTRY’S ECONOMY, HEALTH AND GENERAL WELFARE.

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I. Introduction

Port-Au-Prince—“With the night lit by burning barricades, a delicate young woman named Eozelor was walking near her little cinder-block home when three men tried to sweet talk her into the shadows. She refused, so they punched her in the side of the head, shoved her into a dark corner of an industrial area and rapped her on the dirt and gravel. When they finished, Eozelor ran crying to the police station. One officer seemed concerned--then pulled the 21-year old into a dark guardhouse and rapped her while two other officers watched. No one ever looked for the rapists. No one reported the police abuse.” Eozelor has yet to visit a hospital shelter, nor has she sought psychological counseling. Her body is breaking out in sores, and her menstruation is coming out in clots. “The only thing I feel right now is that my body is dirty.” she said.  

This narrative and many others similar to this case are dear to my heart because I am a near gang rape survivor. In Miami, late one night, when I was fifteen years old, I was out playing tag with my adoptive cousin and his friend. We were all fifteen years of age. As we continued to play our game of tag, I was caught by both of the boys, who tagged me out. As the two captured me, one forcibly grabbed my arms while the other grabbed my legs. I weighed about ninety nine pounds at the time, and my cousins and his friend ranged at about one hundred and sixty pounds each. They picked me up and held me in a swinging like position carrying me down the street. Thinking this was just a joke, I laughed and started to kick and scream. I quickly felt their grip on my body stiffen and at that point I realized, this was not a joke.

I desperately tried to pry my body out of their hold, but they were too strong. As

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1 Juris Doctorate Candidate, May 2010, Florida A&M College of Law.

2 Joe Mozingo, Haiti’s chaos, unpunished rape was norm, The Miami Herald, May 16, 2004.
each of them tightened their grasp restraining more movement I began to cry pleading for my life, but no one could hear my cries. Darkness surrounded my once familiar neighborhood, and the only thought running across my mind at that point was, oh my God I am about to be rapped. A sense of defeat swept over my body and I began to loose hope and slowly give up. Tears hastily ran down my face. The boys attempted to drag me to the deserted elementary school parking lot. I was overcome with so many feelings of betrayal by a family member and fear. I could not believe this was happening to me. As they neared the school’s entrance, my father realizing I was not around, began to search for me and heard my desperate cries for help. He saw the boys carrying me away, he ran to where I was being held down and pried the boys off of my shaking body. As I felt their grip loosen, I ran never looking back and never uttering a word of what happened that night to anyone. I was protected that night from what many women experience as a way of life. This experience was my inspiration to write this article in order to be a light for women constantly who live in this fear every single day of their lives.

Much has been written about rape and how it has been used as a weapon of war. In Haiti, the subject of rape has falsely been used as a tactic of peace due to the miniscule role of women. Haiti has neglected to take action to prosecute rape offenders since it is an accepted practice and unmentioned silent crime. This paper will use Haiti as a case study demonstrating how a third world underdeveloped country’s lack of protection against women has a direct impact on the viability of the country.

Section one will discuss the history of Haiti and mentality of rape in Haiti. The next section will examine meaning of Democracy and Constitutionalism and how both
doctrines relate to Haiti. Third, I will give a brief introduction on rape in the United States (U.S.) and its evolution towards the protection of a woman’s body. The submergence of rape on an international level will also be discussed within this paper. Lastly, I will introduce my recommendations on what Haiti can do to progressively move forward from its catastrophic state by protecting the rights of its women. This paper will demonstrate that in order for Haiti to have a viable democracy and legal system, Haiti must protect the equal rights of all citizens, including women and minorities.3

II. History of Haiti

Carline, a fifteen year-old was assaulted by five armed men who burst into her home, threatening the entire family and attacking her father. While two of the men were burglarizing the house, the other three forced Carline to lie down on the floor raping her one after the other. Since the aggression, Carline has never been able to sleep at night or leave her room during the day: she does not want to eat and is obsessed with flashbacks. Carline does not believe in the future any longer.4

Reflected by its high unemployment rate, Haiti is known today to be one of the poorest countries in the Western Hemisphere.5 This is a result of soaring fuel, food costs, and devastating attacks caused by environmental catastrophes.6 Haiti has a current population of six million residents. In 1804, Haiti was the first country to attain its independence from France, led by former slave Toussaint L’Ouverture.7 The country has

6Id.
been faced with turmoil since it successfully attained its independence.\(^8\) The citizens of Haiti have turned to more drastic measures by fighting wars of physical violence amongst themselves, thus consequently taking independence into their own hands. Over seventy six percent of the population live in “extreme poverty,” surviving on less than $2.00 per day while fifty five percent live on less than $1.00 per day.\(^9\) The majority of Haiti’s residents are completely beyond the reach of the government or any of its services.\(^10\) Unemployment is approximately seventy percent and about fifty percent of adults cannot read or write.\(^11\) While the chaotic violence in Haiti continues to rise, one must ask; how did the first country to win its independence find itself in one of the most demoralizing conditions in the world?

To understand why Haiti is in this antagonistic condition, we look first to events following World War II. The U.S. supported Haiti’s dictator Francois Duvalier, who independently declared himself president of Haiti for life.\(^12\) Under Duvalier’s dictatorship reign, sexual violence occurred in plain view of family members and was commonly used as instruments of political repression during his regime.”\(^13\) Following his death in 1971, his nineteen-year-old son, Jean-Claude Duvalier, succeeded him.\(^14\) After a revolt in 1983,

\(^14\) In Motion, From Haiti to the United States,
Duvalier was ousted out of Haiti on a U.S. Air Force jet.\textsuperscript{15} This monumental time in Haiti allowed citizens for the first time to realize their strength and autonomy. The shift in social paradigm demonstrated that the people of Haiti were finally being provided an opportunity to have a voice. Within the following years, Haiti initiated its first attempt as a democracy and incorporated a formal election process. The pioneering election process began with billboards and advertisements publicizing the upcoming event, ending with the collective majority votes for the next president.\textsuperscript{16}

In 1990, an eighty-nine percentage of votes cast declared Roman Catholic priest, Jean-Bertrand Aristide the first democratically elected Haitian President.\textsuperscript{17} However, In February 24, 2004, he was forced to leave the country due to the country’s hostility and revolt against government.\textsuperscript{18} This departure, still today, has marked a dark period for Haiti.\textsuperscript{19} For the next three years (1991-1994), Haiti suffered from civil violence as the new regime “massacred potential political opponents in the streets.”\textsuperscript{20} Several factors were involved within the worsening of the state’s economy, due to neighboring poverty, the decrease in international aid, governmental corruption and the terror of government-armed street gangs all remain prevalent factors fueling the hostility in the country and violence against women.\textsuperscript{21} For example killings by machetes and kidnappings permeate

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\textsuperscript{16} Maureen Taft- Morales, \textit{Haiti: Issue Brief for Congress}, (November 21, 2001), (This is coming from the CRS Issue Brief for Congress), \url{http://www.fas.org/man/crs/IB96019.pdf}.
\textsuperscript{17} \textit{Id. at 4.}
\textsuperscript{18} \textit{Id.}
\textsuperscript{19} Matt Halling, Blaine Bookey, \textit{Peace Keeping in name alone: Accountability for the united nations in Haiti}, 31 HSTICLR 467 (2008).
\end{flushright}
the streets of Haiti.\textsuperscript{22}

A. Rape in Haiti

During the colonial period, women of color “were thought to have particular sexual power over white men since the whites lived openly with these women and acknowledged paternity of their children.”\textsuperscript{23} By the end of the 18th century, the sons of these free women of color married the daughters of other free women of color creating a new generation of wealthy free families of color.\textsuperscript{24} After the second and third generation of mixed ancestry, the sons took over the holdings of their mothers.\textsuperscript{25} It was these sons who joined with the African slave population to overthrow the French colonial rule.\textsuperscript{26} They created a society in which their mothers and other women were regarded as second-class citizens. Members of the female gender were thrown to the “bottom [rung] of the economic and social ladder.”\textsuperscript{27}

In the struggle of everyday life during war, rape and abuse against girls was a common widespread practice by their older male counterparts.\textsuperscript{28} In September 2006, the Haiti Action Committee article - \textit{Lancet} British medical journal found that 8,000 people were murdered and 35,000 women and girls were sexually assaulted in Port-au-Prince during the twenty-two month period following the coup (which is the sudden, unconstitutional deposition of a legitimate government). The study implicates United

\begin{thebibliography}{9}
\bibitem{22} Francie Latour, \textit{Haiti Killing shake Local community Malden Man, son attacked with Machetes in Island nations}, The Boston Globe, April 13, 1999, \texttt{http://www.highbeam.com/doc/1P2-8540059.html}
\bibitem{24} \textit{Id.}
\bibitem{25} \textit{Id.}
\bibitem{26} \textit{Id.}
\bibitem{27} Haiti 1804, \textit{supra} note 8 at 300.
\bibitem{28} Benedetta Faedi, \textit{The double weakness of girls: discrimination and sexual violence in Haiti}, 44 STJIL 147 (2008).
\end{thebibliography}
Nations (U.N.) soldiers in threats of violence and sexual assault on the population.

In Haiti, the punishment for violence against women such as rape was the same for assault and battery charges.\textsuperscript{29} Even though these violent crimes against women were viewed as minor assault charges, many perpetrators were left unpunished. Article 279 of the Haitian Penal code provides: “Whosoever commits the crime of rape, or who attempts other indecent assaults, whether consummated or attempted, involving violence against individuals of either sex, will be punished with imprisonment.”\textsuperscript{30} Article 280 additionally provides: “If the crime is committed against a minor under the age of fifteen, the guilty will be subjected to punishment of hard labor of limited duration.”\textsuperscript{31} The pervasive violence interwoven within the Haitian culture often victimizes the most powerless members of society: women and children.\textsuperscript{32} In the 2008 House Report of Haiti, it was recorded that rape in Haiti was not a prosecutable offense, rather was often treated as a relatively minor infraction or a community issue. In comparison to its neighboring countries, the Amnesty International confirmed that rape continues on a daily basis and many times goes underreported.\textsuperscript{33} Cases were referred to a justice of the peace (which is the lowest level judge of the justice system) who acted as a mediator, with an emphasis on finding family or community solutions as opposed to punishing the perpetrator.\textsuperscript{34}

\textsuperscript{30} Id.
\textsuperscript{31} Id.
\textsuperscript{34} U.S. Department of State: \textit{Diplomacy in action 2008 Human Rights Report: Haiti}, February 25, 2009,
In Haiti, rape has evolved to become an accepted practice interweaved in its culture. Gang rapes are used as a systematic instrument of intimidation as a demonstration of authority over government officials and to cause fear in the local residents.35 This is a way of life in Haiti. Rapists use these fears as a benefit because he women are kidnapped, rapped, and bartered for ransom.36 Sexual violations to woman are regularly practiced symbolizing of the lack of value the culture places on women. Victims are left with no where to turn for help or protection.37 Those who have the courage to report their assault quickly realize their cry for justice falls upon deaf ears.

More specifically, reports are used as an “example” of what not to do. For example, Gerardo Ducos, Amnesty International’s Caribbean researcher, said the lack of official attention to the problem allows those who assault and rape girls to continue committing these crimes with no fear of punishment.38 “For many girls, surviving sexual violence means keeping silent,” said Ducos. One victim, a 22-year-old woman who was raped at age 15, told Amnesty International researchers: “When you’ve been raped, it’s as though you’re shunned from society. You shouldn’t study; you shouldn’t go to the hospital; you should stay in a corner. Being raped, it makes you a person without rights, a person rejected from society. It’s as though I am raped every day because every day someone reminds me that I’ve been raped and that I am nothing, that I should put myself in a corner, that I shouldn’t speak, I should say nothing.”39 In response to these rape crimes the U.N. sent over peace keepers to protect women. Despite this effort, U.N.

http://www.state.gov/g/drl/rls/hrrpt/2008/wha/119163.htm
35 Id.
36 Id.
37 Id.
forces subsequently began joint operations with the Haitian National Police and gradually began conducting rapes independently.\textsuperscript{40}

B. Groups of Rapists

Due to the overt and frequent involvement of law enforcement officials in rape and other forms of abuse, individual Haitians have no where to turn for help when they are attacked or when they witness attacks upon others. Witnesses of these rape crimes do not report the incident because the police are generally the perpetrators.\textsuperscript{41} Rape violence affects all ages.

i. Soldiers

It is impossible for women to speak out when the majority of the offenses are committed by soldiers who disobey their duty to protect and serve. On October 1993 a report on human rights in Haiti documented several cases of soldiers raping women.\textsuperscript{42} The ages vary from thirteen and up. For example, a sixteen year old girl was rapped by an older man in the barracks of Fort Liberte at Derec, Department of the Northeast.\textsuperscript{43} Between its return to Haiti at the end of January 1994 and May 1994, United Nations/Organization of American States civilian Mission documented sixty six rapes of a political nature committed by the military.\textsuperscript{44}

ii. The Attaches:

\textsuperscript{39} Id.
\textsuperscript{40} Shirley Pate, The GazaStrip of the Caribbean, July 2005, \textit{http://hevanalysis.wordpress.com/haiti-background/}
\textsuperscript{41} Interview with S.M. Rape victim, Rape in Haiti. A weapon of terror. Vol. 6, No. 8 Human Rights Watch, National Coalition for Haitian refugees, (July 1994).
\textsuperscript{42} \textit{http://www.hrw.org/reports/pdfs/h/haiti/haiti947.pdf Vol. 6}, No. 8 at 11
\textsuperscript{44} Human Rights Watch National coalition for Haitian Refugees, \textit{Rape a weapon of terror}, July 1994,
The auxiliary groups are divided into two categories, the Attaches, and the Zenglendos. The Attaches are civilians employed, armed and directed by the military and police. They are omnipresent and abuse their enormous discretionary powers through murder, torture, arrests, beatings, extortion, imprisonment, and rape. In a country racked by generalized lawlessness, repression and terror, it is difficult to know who is an attaches and who is not. The military officials benefit from keeping the identification of attaches as fluid and hidden as possible. In this way the military can intimidate the general population while disavowing any responsibility for the abuses committed by ubiquitous armed civilians.45

ii. The Zenglendos

The Zenglendos are members of armed criminal groups, usually operating at night and particularly in the slums and working-class districts of Port-au-Prince. Some of this violence may be assumed to be purely criminal, without political motivation. However, it is widely believed in Haiti that even Zenglendos operate under the cover, or with the express tacit consent of the police.46

C. Haiti’s Current Judicial System

Under Haitian law, rape and domestic violence are illegal and subject to punishment (US 8 Mar. 2006, Sec. 5).47 In July 2005, changes concerning acts of sexual assault and [translation] “indecent assault” against women, which were designed to eliminate discrimination against women, were introduced into the Haitian penal code by a decree-

45 Id.
46 Id.
47 Immigration and Refugee Board of Canada, Haiti: Domestic violence and, in particular, the protection, services and recourse offered to women who are victims of domestic violence, January 23, 2007, http://www2.irb-cisr.gc.ca/en/research/rir/?action=record.viewrec&gotorec=451024

The main change with respect to women's rights is that rape is no longer categorized as indecent assault, but rather as sexual assault (Haïti Press Network 16 July 2005).⁴⁹ Article 278 of the penal code has been amended as follows: [translation]
“Attempted or actual rape or other sexual assault accompanied by violence, threats, surprise or psychological pressure against the victim, whether male or female, is punishable by 10 years of hard labor” (AlterPresse 6 Oct. 2005). From January to June 2006, women also began to report domestic rape.⁵⁰ However, despite the adoption of this decree-law, the perpetrators of violent acts against women still go unpunished (Syfia International 3 Feb. 2006).⁵¹

The corruption in Haiti is not only prevalent within gangs in the streets, but also the country's criminal justice system, infecting the police through the judiciary.⁵² The Haitian judicial system is widely regarded as corrupt and dominated by the army. Following the 1986 flight from Haiti of Jean-Claude (Baby Doc) Duvalier, each successive army-backed regime, despite lip service paid to the need for judicial reform, presided over a system lacking due process guarantees.⁵³ In this lawless context, it is extremely unlikely that a victim of abuse by any form of unprotected military authority can ever expect justice. According to reports by Human Rights Watch/Americas, National Coalition for Haitian Rights and other human rights groups, very few

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⁴⁸ *Id.*
⁴⁹ *Id.*
⁵⁰ *Id.*
⁵¹ *Id.*
⁵³ INS Resource Information system, *Profile Series Haiti*, August 1993,
perpetrators have ever been held accountable.\textsuperscript{54} Rape, under the Haitian penal code, is among those crimes considered to be “assaults on morals.”\textsuperscript{55} This classification of rape clearly reflects the perception of the harm is inflicted by these violent assaults and the damage it causes the victim's morals or honor.\textsuperscript{56}

i. The Role of Women and the Law

The role of women in the judicial system is close to non-existent. The Haitian culture holds a deeply patriarchal belief that women should only concern themselves with domestic work and childcare.\textsuperscript{57} Haitian women have little to no representation in their government.\textsuperscript{58} There are only three women in the eighty seat Haitian parliament and of the 127 mayors of Haitian cities and towns, only six are women.\textsuperscript{59} This lack of representation results in unequal treatment under the law.

The need for equality results in Haitian women having a lower economic status than men, ensuring their dependence upon the male gender. For example, the Criminal Code of Haiti “excuses a husband who kills his wife or her partner upon catching them in the act of adultery in his home, but a wife who kills her husband under similar circumstances is not excused.”\textsuperscript{60} This social bondage and weakness intensifies the fight against domestic violence, as the women of Haiti do not have the financial or social power to

\textsuperscript{54}Human Rights Watch/Americas and NCHR, \textit{Terror Prevails in Haiti}, Vol. 6, No.5 April 1994, \url{http://www.nchr.org/reports/terror_prevails_1994.pdf}

\textsuperscript{55}http://www.hrw.org/reports/pdfs/h/haiti947.pdf

\textsuperscript{56}Dorothy Q. Thomas and Regan E. Ralph, "Rape in War: Challenging the Tradition of Impunity," \textit{The SAIS Review}, vol. XIV, no. 1, (Winter-Spring 1994, pp.81-99.)

\textsuperscript{57}Clark, \textit{supra} note 23 at 63.

\textsuperscript{58}Id

\textsuperscript{59}Id.

take legal action.\(^{61}\)

A main form of political violence is rape.\(^{62}\) Men do not permit women to exercise any privileges to exercise their rights thus they terrorize and victimize women continuously. Excessive penalties are assessed if women even attempt to exercise their rights and in return a fear is created subjecting women to submit themselves involuntarily. Although women were eventually given the right to vote, there was no fundamental change in their legal or social positions.\(^{63}\) Slaves and women are blended roles in Haiti. They receive less pay and are viewed as dependents. When given a right, it is seen as a “privilege.” In Haiti women are treated as being something of lesser importance and value than a man.\(^{64}\) Consequently, this inequality towards women and the lack of women’s presence in the legal arena, intensifies the suffrage for members of the female gender.

III. What is true Democracy and Constitutionalism?

A. Redefining Haiti’s cultural view of Constitutionalism

“We think that justice is very important, but at the moment, it is meaningless.”\(^{65}\)

Constitutionalism enshrines respect for human worth and dignity as its central principle.\(^{66}\) To protect this basic human value, citizens must have a right to political participation, and their government must have built-in limits to continually ensure the people are being represented and protected. Constitutional law is concerned with


\(^{63}\) Id.

\(^{64}\) Id.


creation, distribution, exercise, legitimating effects, and reproduction of power. It does not matter whether this power lies with the state or in some other organized entity. From this perspective, the very idea of law entails commitment and adherence to a theory of organized power. Stanley N. Katz the President of the American Council of Learned Societies, which specializes in the leading organization in humanistic education defines constitutionalism as politics that are based on the notion for the rule of law in which the government, reflects the basic values and aspirations of the community. Katz suggests that this is the ideology that a community is built upon.

Democracy, which derives from the Greek word “demos,” or “people,” is defined, as government in which the supreme power is vested in the people. In some forms, democracy can be exercised directly by the people in large societies through a formal election process. Although freedom and democracy are often used interchangeably, they are not synonymous. Democracy is a set of ideas and principles concerning freedom. It is a principle that transforms over time reflecting the people’s views, process, and power. Democracy is the institutionalization of freedom.

In the end, members of a democratic society must serve as the ultimate guardians of their own freedom. Citizens must forgo their own path toward the ideals set forth in the preamble to the United Nations' Universal Declaration of Human Rights:

“Recognition of the inherent dignity and of the equal and inalienable rights of all

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70 http://www.america.gov/st/democracy-english/2008/May/20080619223145eaifas0.5311657.html. (May 03, 2008).
71 Id
members of the human family is the foundation of freedom, justice, and peace in the world.\textsuperscript{72} The development of civil society contributed to democracy and constitutionalism.\textsuperscript{73} Haiti in 1804 defended their right to have freedom against the French, now it is time for the citizens to fight for this same right amongst themselves. Haiti’s elected officials should elect to adopt Katz rationale and focus its efforts on enforcing the rights of the citizens by correcting their issues.

IV. Rape in the United States

A. The evolution of rape and how it has submerged.

In 1925, eighteen states, the District of Columbia, and the Federal Government authorized capital punishment for the rape of an adult female.\textsuperscript{74} The \textit{Fruman v. Georgia} subsequently invalidated most of the capital punishment statutes in this country, including the rape statutes.\textsuperscript{75} As a result, states were faced with enacting modified capital punishment laws in an attempt to satisfy the requirements of \textit{Fruman} or of being satisfied with life imprisonment as the punishment for any offense.\textsuperscript{76}

In 1995, according to the National Crime Victimization Survey, 260,300 cases of rape were reported from children ranging from the age of 12 or older and of this figure approximately 95,000 cases related to other sexual assaults.\textsuperscript{77} Under the common law

\textsuperscript{72}http://www.un.org/Overview/rights.html
\textsuperscript{75}\textit{Furman v. Georgia}, 408 U.S. 238 (1972).
\textsuperscript{76}Id.
\textsuperscript{77}Lawrence A. Greenfeld, \textit{Sex Offenders and Offense: Analysis of data on Rape and Sexual Assaults} 5
rape is defined as the unlawful carnal knowledge of a woman, without her consent.\(^{78}\)

Traditionally, rape was a capital offense.\(^{79}\) The landmark case *Croker v. Georgia*, was the first case which in the United States to rule a sentence of death for the crime of rape of adult woman who grossly disproportionate and excessive punishment forbidden by the Eighth Amendment.

In 1974, Erlich Anthony Coker, serving multiple sentences for murder, rape, kidnapping, and assault, escaped from prison.\(^{80}\) He broke into a Georgia couple’s home, raped an adult woman and stole the family’s car.\(^{81}\) The adult woman was released shortly thereafter, without further injuries.\(^{82}\) The Georgia courts sentenced Coker to death on the rape charge.\(^{83}\) The issue in this case is whether the imposition of the death penalty for the crime of rape as a form of cruel and unusual punishment is forbidden by the Eighth Amendment. The Court held that the death penalty was a “grossly disproportionate” punishment for the crime of rape.

The United States Supreme Court noted that the majority of states at that time declined to impose such a harsh penalty. However, Georgia was one of the only states to authorize death for the rape of an adult woman. Since the crime of rape did not involve the taking of another human life, the Court found the death penalty excessive “in its severity and revocability.”\(^{84}\) Evaluating this case demonstrates how Georgia penalized rapists with the severest form of punishment a human can endure so in the end, he can

\(^{78}\) William Blackstone, commentaries on the Laws of England 210 (1769) (stating that rape is “the carnal knowledge of a woman forcibly and against her will).


\(^{80}\) *Id.* at 587.

\(^{81}\) *Id.*

\(^{82}\) *Id.* at 587

\(^{83}\) *Id.*
never be able to take another human's life again. Death was the ultimate punishment for rape, which sent out a harsh message stating that a person will put to death for doing this heinous crime of rape to women. This reflected how the state of Georgia cherished and protected their women, who were also known as southern bells. Their tradition of protecting the livelihood of their women permeated through their laws and protection of its citizens.

The Supreme Court's rationale in this case recognized that rape deserves a serious punishment, however the death penalty is an excessive penalty for the rapist who, unjustifiably take another’s life.\textsuperscript{85} The State of Georgia strongly argued against the notion, a rapist who does not take life of victim should be punished more severely than the deliberate killer of his or her victim.\textsuperscript{86} This case ultimately allowed the U.S. government to protect its citizens constitutional right afforded to them pursuant to the Eighth Amendment.\textsuperscript{87}

The law has shifted and now the punishment for rape cannot be satisfied by taking another life. The Court acknowledged that the act of rape is a highly reprehensible, both in a moral sense and in its almost total contempt for personal integrity and autonomy of female victim.\textsuperscript{88} In \textit{Warren v. The State}, the Supreme Court recognizes short of homicide, rape is the ultimate violation of self.\textsuperscript{89} The basis for protecting women from this act was attributed to the existence of rape being a violent crime normally involving force, or the threat of force or intimidation, to overcome the will and the capacity of the victim to

\begin{flushleft}
\textsuperscript{84} Id. at 585  
\textsuperscript{85} Id.  
\textsuperscript{86} Id.  
\textsuperscript{87} U.S. CONST. amend. VIII.  
\textsuperscript{88} Id.  
\textsuperscript{89} Warren v. The State, 336 S.E. 2d. 224 (1985).
\end{flushleft}
Rape is often accompanied by physical injury to the female and inflicts mental as well as psychological damage. Because rape undermines the community’s sense of security, there is public injury as well.

A. Degree of Punishment

_Croker_ set the precedent for punishment for crimes against rape. Scholars such as Immanuel Kant, a German philosopher who is regarded as one of the most influential thinkers of modern Europe and of the late Enlightenment, explained in his article “The philosophy of law,” the Proportionality of punishment in the United States. He discussed this proportionality in detail as it relates to law by measuring modes of punishment. One may ask what is the mode and measure of punishment which public justice takes as the principle and standard? Kant believes that is the principle of equality, by which the pointer of the scale of justice is made to incline no more to one side than the other. It may be rendered by saying the undeserved evil which any one commits on another is to be regarded as perpetrated on himself. Hence it may be said “If you slander another, you slander yourself; if you strike another you strike yourself; if you kill another, you kill yourself...” This is the right of retaliation (jus talionis); and properly understood, it is the only principle which regulating a public court, as distinguished from a private judgment, can definitely assign both the equality and the quantity of a just penalty.” Under Kant’s theory, the punishment should be directly related to the crime committed no matter irregardless of the level of severity.

Other scholars such as Jeremy Bentham who was an English jurist, philosopher,

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90 Croker, _supra_ note 73 at 597.
92 Croker _supra_ note 73.
and legal and social reformer, set the foundation regarding the principles of Morals and legislation in the United States. Here Bentham discusses the sole purpose of why we have laws, and its general object which is to prevent mischief; that is to say, when it is worth while; but that, are four cases in which it is not worth while. When it is worth while there are four subordinate designs or objects, which in the course of his endeavors to compass, as far as may be, that one general object, a legislator, whose views are governed by the principle of utility, comes naturally to propose to himself. His first most extensive, and most eligible object, is to prevent all sorts of offenses whatsoever: in other words, so to manage, that no offence whatsoever may be committed. But is a man must needs to commit an offence of some kind or other, the next object is to induce him to commit an offence less mischievous, rather than one more mischievous: in other words choose the least mischievous of the two offenses.94

The value of the punishment must not be less in any case than what is sufficient to outweigh that of the profit of the offence. The greater the mischief of the offence, the greater is the expense, which it may be worth while to be at, in the way of punishment. Where two offenses come in competition, the punishment for the greater offence must be sufficient to induce a man to prefer the less. The punishment should be adjudicated in such a manner to each particular offence that for every part of the mischief there may be a motive to restrain the offender from giving birth to it. The punishment ought in no case to be more than what is necessary to bring it into conformity with the rules here given.95

Submergence of rape in the United States:

Currently, rape is no longer defined under Common law. Now states have incorporated

94 Id. at pg 67
95 Id. at pg 68
Modern Penal Code. Under the Modern Penal Code, there are degrees of rape under which each state has autonomy to modify according to its legislation on the degree of punishment assessed.\textsuperscript{96}

V. Rape Internationally

Sexual violence internationally has been used as an instrument of subjugation and dominion over women. On the international stage, in times of war, sexual abuse, usually against women, is frequently used during investigation as a means of intimidation or torture.\textsuperscript{97} The statutes of the two ad hoc Tribunals the International Tribunal for the Former Yugoslavia and the International Tribunal for Rwanda reflect an important progression from the historically marginalized position of rape in international law by attempting to address the fact that gender difference might affect justice and law.\textsuperscript{98} Important developments were made regarding the treatment of rape as a specific tool of warfare rather than a byproduct of war or as a crime of troop discipline. Moreover, now the statues are quickly becoming normative instruments of the law of war.\textsuperscript{99} The statutes still today serves as a catalyst for establishing the precedent standard internationally for penalizing rape.

A. Historical analysis of the punishment of rape Internationally

i. Rwanda

“There was no dinner, It was me who was dinner, me, because they kicked me roughly to the ground, and they ripped off all of my clothes, and between the two

\textsuperscript{96} Model Penal Code § 213.1(1)(a)-(d) (1962). Model Penal Codes provides a general rules for crimes which varies state wide.
\textsuperscript{99} Yoram Dinstein, Mala Tabory, War Crimes in International Law, 221 (1996)
of them, they held my feet. One took my left foot, one took my right, and the same with my arms, and between the two of them they proceeded to rape me. Then all five of them rapped me.” 100 Rape is something you never forget. I still carry it around with me in my heart, in my soul. I think of it when I go to bed and I think of it when I get up. It doesn’t let you go.101

During the 1994 genocide, Rwandan women were subjected to sexual violence on a massive scale perpetrated by members of the Hutu militia groups (the Interahamwe) and soldiers of the Rwandan Armed Forces (FAR). Administrative, military and political leaders directed and encouraged the killings and sexual violence in order to further their political goal; the destruction of the Tutsi as a group. 102

For some victims, there is no life after rape; they lose their health and contentment. The survivors raped during the 1994 Rwanda genocide continue to suffer due to the belief that their survival is its own form of torture. They are desperately impoverished, commonly infected with HIV/AIDS and are responsible for several children. They see their lives as “finished” or “another form of martyrdom”; one woman described herself as “a living dead person.”103

Sexual violations against women extends throughout the country. Thousands of women were individually raped, in various forms. For instance: gang-rape, rape with sharpened objects such as sticks and gun barrels, bonded in sexual slavery through forced “marriage” or sexually mutilated. These crimes were frequently part of a pattern in which Tutsi women were raped after they had witnessed the torture and killings of their relatives and the destruction and looting of their homes. According to witnesses, many women are

102 http://www.colorq.org/humanrights/article.aspx?d=rwanda&x=rape
103 Broken Bodies, Torn Spirits Living with Genocide, Rape and HIV/AIDS,
killed immediately after being raped. Those that were spared, were often raped followed by sexual mutilation of the vagina and pelvic area with machetes, knives, sticks, boiling water, and acid.  

In 1998, the Rwanda Tribunal delivered its first judgment, in the case against Jean-Paul Akayesu. Akayesu was the highest-ranking political official in a commune where about 2000 Tutsis were slaughtered by another militia group called the Hutu. During the killings, the women fled to him for protection from the massacre, and all were subject to sexual assault, gang rapes, and humiliation. The acts often preceded their death. The judges cited testimony of a Tutsis witness who asserted that “she was taken by force near the municipal office into the cultural centre. In a group of approximately fifteen girls and women, they were all savagely raped.” Jean-Paul was raped twice by one man, and then once by the other two men. At that point, she described herself as near dead. The Trial Chamber concluded that sexual assault described in the testimonies constituted rape under Article 3, the crimes against humanities provision of the Rwanda Statute. This incidence of sexual violence was found to constitute an act of genocide. In finding Akayesu guilty, the Trial Chamber for the first time in international law undertook to define rape. The International Tribunals definition of rape is a physical invasion of sexual nature, committed under persons under certain circumstances, which are coercive. Sexual violence which includes rape is considered to be any act of a sexual nature which is committed on a person under circumstances which are coercive.


106 Id.
Mr. Akayesu was sentenced to life imprisonment for genocide and crimes against humanity, including the relentless rapes committed upon the Tutsis women by the Interhamwe.\textsuperscript{107}

\section*{ii. YUGOSLAVIA}

In Bosnia, on January 23, 1993 (Hamilton Spectator) during a night of unimaginable horror when she was raped by at least 15 Serb soldiers, Amela, a 25-year-old Bosnian, had no doubt why she'd been singled out for such bestiality. “Because I am a Muslim,” the married, red-haired woman says simply. “Their aim was to humiliate me, to make me lose my honor, to prove that they’re the masters and they can rape and kill you just as they please. We are like their slaves.” Now she feels her life, quite literally, is ruined. It is only the thought of her two-year-old son that stops Amela from killing herself. “I try to be brave, but without even thinking about it, I just feel a physical urge to throw myself in front of a car or a tram.”\textsuperscript{108}

Yugoslavia became the sixth republic federation. Its political entities comprised of: Slovenia, Croatia, Bosnia-Herzegovina, Serbia, Montenegro and Macedonia. In 1990, Bosnia, declared independence.\textsuperscript{109}

A tribunal developed parallel lines of its conception of rape with that of its sister tribunal in Rwanda. In 2000, a Trial Chamber heard the case against Kunarac et. Al., in which three Bosnian Serbs were charged with rapes torture, and enslavement. During trial it was revealed that hundreds of Bosnian Muslim women and girls had been captured in the military takeover of the town of Foca, in eastern Bosnia. Women were held in detention centers and forced to serve as personal sexual slaves. Each of the accused were found guilty of rape as crime against humanity under Article 5 of Yugoslav Statute. The court sentenced all the perpetrator was sentenced to imprisonment ranging from sixteen

\textsuperscript{107} Dinah L. Shelton, Encyclopedia of genocide and crimes against humanity, 2005
\textsuperscript{109} http://www.religioustolerance.org/yugo_his.htm (last visited April 30, 2009).
to twenty-eight years.\textsuperscript{110}

VI. Author’s recommendations

i. Common Nexus between the three countries:

Majority of the rapes are responses of war crimes.\textsuperscript{111} Similarly, in Haiti, adopting a pragmatic approach, the Special Representative declared the use of rape as a weapon of war, affecting an estimated fifty percent of girls living in conflict areas of Port-Au-Prince.\textsuperscript{112} Perpetrators vary in rank and political office. Many women are subjected to rape as a response from vigilantes to send out a message to either the government or local civilians. For example, in Haiti the Zengledos and Attaches use rape as a power symbol in their pursuit to over throw the government by killing and raping any of former President Arstide supporters. In Rwanda, there is an ongoing battle between two tribes: the Tutsis and the Hutu’s. The only common goal these tribes share is to extinguish one another; the sign of ultimate power.\textsuperscript{113} Lastly, rape is also used in these countries as an effective weapon of war. In Yugoslavia, nearly 20,000 women, mostly Muslims, were abused by Serb soldiers.\textsuperscript{114} Soldiers rape during war as a strategy to gain an advantage against their enemies by humiliating their adversaries by the fact of failure to protect and defend their mothers and daughters.\textsuperscript{115}

As a showmanship of territory, rape is implanted in a man’s mind at an early age.

\textsuperscript{110} Dinah L. Shelton, Encyclopedia of genocide and crimes against humanity, (2005)
\textsuperscript{111} Miriam Granados, Dr. George Lopez, Evolution of Rape as a war crime (2004)
\textsuperscript{113} http://www.colorq.org/humanrights/article.aspx?d=rwanda&x=rape (last visited April 12, 2009).
\textsuperscript{114} Kitty McKinsey, MASS RAPE IN BOSNIA, (1993)
\textsuperscript{115} Id.
It will take more than laws and militia to stop this epidemic, especially since those that make up the infrastructure, judicial systems and committees of these groups are the leaders fueling this endless fight. Consequently, I believe one of the only ways to combat rape is to treat it as an illness and approach it as a disease of the mind for both the accusers and the victims.\textsuperscript{116}

Scholars such as Joshua Dressler, author and expert of Criminal law, stated that the law of rape in the United States developed in a time where women played no role in legal affairs, even as to offenses that affected them intimately.\textsuperscript{117} Similarly, in Haiti this lack of presence mentality of a woman remains current until today. The United States have gone through several changes involving how rape is assessed and penalized due to the acceptance that rape is a serious and heinous crime against a woman’s sacred temple. The Croker case was one of the first cases, which described the legislative intent behind imposing the death penalty and protecting a woman’s body. The significance of the Supreme Court recognizing rape as a crime punishable by death, illustrated how far justice extended protection for women.

In 2005, President George Busch and Condoleezza Rice launched a democracy and governance strategic framework through the USAID. The USAID is a U.S. agency that extends assistance to countries recovering from disaster, trying to escape poverty, and engaging in democratic reforms.\textsuperscript{118} This plan analyzed how engaging marginalized populations (women and minorities) by protecting their basic rights, ensures that democracy building contributes to an empowered, inclusive, and just society. To have a viable democracy, Haiti must protect the equal rights of all citizens. Marginalized groups

\textsuperscript{116} http://www.jct-science-to-society.org/Pathogenomics/disease.htm\hspace{1em} ERA-net. Pathogenomics

\textsuperscript{117} ERA-net. Pathogenomics

\textsuperscript{118} ERA-net. Pathogenomics
include women and minorities to obtain an effective legal system.\textsuperscript{119} The democracy framework study reveals how woman’s role was highly imperative for the viability of a society. The contributions that women make to the economic, social, and political lives of their nations, communities, families and the next generation make them powerful actors in effective development.\textsuperscript{120} Studies also show that gender equality is unequivocally acknowledged as “essential for economic growth, poverty reduction, environmentally sustainability and development effectiveness.\textsuperscript{121} Haiti faces a number of these issues mainly because of its lack of enforcement of laws established to penalize for crimes such as rape.

The Annual reports of the U.N. Development Fund illustrate a strong, persistent correlation between community progress and women’s emancipation.\textsuperscript{122} In Haiti one of the first steps that need to be employed is increasing the number of women representation in office to strengthen the voice and presence of women. Haiti should continue to work towards building the education of its residents on violence prevention and deterrence mechanisms. Also, the capacity of women-led Non Governmental Organizations to advocate for their legislative and judicial rights needs to increase, because this heighten awareness has proven that women’s broad participation in the political process is indispensable and essential for progression.\textsuperscript{123}

Haiti must recognize there is a direct link between economic security and civic

\begin{footnotesize}
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\item[\textsuperscript{117}] Dressler, supra note 93.
\item[\textsuperscript{118}] http://www.usaid.gov/about_usaid/ (last visited March 27, 2009).
\item[\textsuperscript{119}] USAID article http://www.usaid.gov/policy/0512_democracy_framework.pdf (last visited April 13, 2009).
\item[\textsuperscript{120}] Id.
\item[\textsuperscript{121}] European Consortium for Political Research Empowering Women by Elizabeth Sidney
\item[\textsuperscript{122}] Id.
\end{itemize}
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participation. More laws need to be enforced so women can feel a sense of assurance that they are adequately protected. The constant sexual aggression towards women currently infesting the streets of Haiti creates a hostile atmosphere for women, causing extreme trauma, which impedes a woman’s ability to invest into society. Moreover, if Haiti starts to empower the rights of their women, it can help circumvent fundamental issues he country presently faces.

The U.N. Commission together with several member states and non-governmental organizations emphasizes that the role of women are significant because they create life. Women also are consumers, caretakers, and educators. These women play an important role in promoting a stable democracy in their concern for the quality and sustainability of life for present and future generations.124

Women are often responsible for protecting the basic survival needs of their families.125 Therefore, their leadership is vital to engaging their communities and building a sustainable peace. In conflict ridden and post conflict societies, the United States have created USAID to assist women and minorities to participate in community decision-making efforts, by providing reconciliation training and facilitating access to resources.126

Haiti has to realize there is a greater benefit for prevention of this heinous crime. It is something that either can enhance or destroy a community. If Haiti realizes this notion and begin to adopt the proposed U.S. plan, it would be beneficial in directing Haiti’s economy into the right direction. This is not a battle that can be solved overnight.

123 Id.
124 United Nations Fourth World Conference (1995), http://www.archive.org/stream/unitednationsfou00unit/unitednationsfou00unit_djvu.txt
125 Supra note 121.
With the assistance of USAID and the U.N. Haiti has the support, power and tools to combat this epidemic and survive. Haiti must start with protection of women’s rights against rape, which in return will add life into its wounded community, thereby causing drastic improvements in its society.

ii. Current action taking place to Revamping the Haitian community

Change is in the air for Haiti. The Kore Fanm Fund is helping to bring relief to the island’s women and girls, who have long been denied their legal, political, and personal rights.127 Women have been denied legal redress from this silent killer rape, far to long. Recently although rape has been considered as a crime in Haiti there is still more that needs to be done to enforce this crime. Amnesty’s researcher on Haiti and author of reports on Haiti, Gerard Ducos, stated, “The situation is decaying and more recent victims of rape are not confident in confiding in the police, since they are seen as a repressive force. Lots of victims of rape don’t come forward to file a complaint to the Haitian National Police or Non-Government organizations.” 128 Change comes from within a society first before anyone else can have an impact.

What women of Haiti must recognize that this systematic tool of oppression needs to cease. To cure any infection the disease has to be detected and once detected diagnosed so that dosages of antibiotics needed to either extinguish or control the disease can be administered. The exposure needs be made by the women of Haiti so that the government is compelled to prescribe the necessary antibiotics needed to cure this disease. The time for submission has passed and women have to tap into their God given

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126 Supra at note 110
127 http://www.acdi-cida.gc.ca/CIDAWEB/acdicida.nsf/En/FRA-27144455-R6M
ability to be warriors and survivors. I remained silent after my encounter, and the same 
perpetrators that attempted to rape me never was reprimanded and exposed. As a result, 
they continued and successfully raped other women. If I could change time, I would 
have spoken out then. Silence is never the proper antidote.

Organizations such as the The Kore Fanm Fund is a testament to show how 
speaking out ignites a fire in not only the local governments but internationally as well. 
For example, the Government of Canada has devoted $8 million to this fund to help 
Haitian organizations and institutions promote, protect, and defend women’s rights.\(^\text{129}\) In 
addition to providing shelter, legal aid, and medical support to victims of violence, these 
organizations work to remove the barriers that prevent women from contributing to their 
country’s social, economic, and political life.\(^\text{130}\)

Following last July's $520 million Canadian International Development Agency 
announcement dedicated to reconstruction and development efforts in Haiti, the 
Government of Canada will ensure that roll-out programming reflects the important for 
equality between women and men.\(^\text{131}\) Organizations such as the Kore Fanm Fund, is 
commended for advocating on behalf of women’s rights and for bringing awareness 
about women’s rights and about violence against women.\(^\text{132}\) Due to this small gesture, 
there has been a significant change in Haiti’s legal, social, and political arena.

iii. Women declaring their places

Currently, estimates reveal that there are more women voters and candidates

\(^\text{130}\) \textit{Id.}
running for office in Haiti. Women’s organizations formed a non-partisan network to share knowledge with the candidates, regardless of political affiliation. The network also developed a shared platform on issues of concern and each candidate made a commitment to promote the platform within their political parties. Since then, five bills supporting women’s rights have been finalized and a law was passed making rape a crime. As women we must fight for each other rights and stand up for justice. Women deserve to be protected from sexual assault against their bodies. The time for change is now. The disease has been exposed and now it is time to take the requisite steps needed to cure this epidemic.

133 http://www.acdi-cida.gc.ca/CIDAWEB/acdicida.nsf/En/FRA-27144455-R6M
134 Id.
135 Id.
136 Id.