

EDUCATION WITH IMPACT

Duke Law students tackle international
human rights challenges

By Frances Presma

In the past academic year, Duke Law students have studied two highly sensitive topics involving international law and international human rights law: reform of Haiti's gender violence laws and housing issues in East Jerusalem. In their approaches to these challenging real-world problems they have demonstrated initiative, acuity, and energy coupled with compassion, cultural sensitivity, and pragmatism.



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Haiti

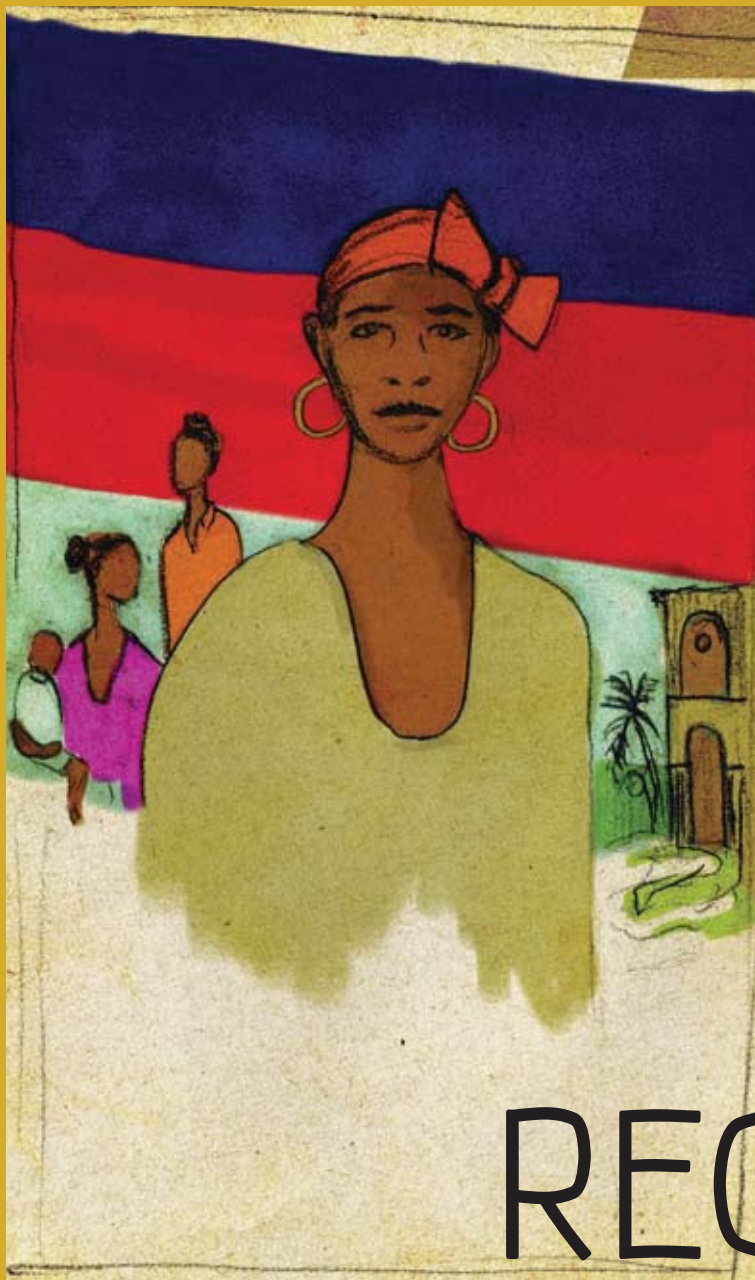


Illustration: Marc Harkness

In late February, Professor Guy-Uriel aPort-au-Prince, Haiti, at the offices of the Organization of American States (OAS).

Joining him around the table were an OAS liaison, a representative from the Haitian Ministry of Women's Affairs, and a lawyer with the International Senior Lawyers Project (ISLP), a U.S.-based organization that provides high-level legal services to advance democracy and human rights protection in developing countries. The discussion, conducted in French and Creole, focused on a comprehensively researched memorandum, drafted by 10 Duke Law students, containing provisions to reform Haitian laws pertaining to domestic violence and violence against women.

"We went over the draft in fine detail over four or five hours," reported Charles, a native of Haiti. "Everyone at the meeting said they thought the product was absolutely wonderful and their intention was to incorporate it all into final legislation that would be presented to the

RECOVERY, REFORM

Duke Law students contribute to legal protections for women in Haiti

Haitian legislature. They were all extremely positive and grateful for the work our students did.”

For the students who immersed themselves in the enterprise throughout the fall semester, finding out that their work had been considered and positively reviewed by key policymakers in Haiti was “an amazing feeling,” said Caitlin Swain ’12. “We weren’t expecting official acknowledgment, but to know that our work has now been seen by the Women’s Ministry and is helpful to them is thrilling.”

Student initiative, community effort

It all started at Clifford Chance in New York, where associate Aleksandra Kopec ’07 worked with other law firm colleagues on a pro bono project for the OAS and ISLP — a survey conducted in developing and developed countries of anti-violence legislation that might be relevant to law-reform initiatives in Haiti. Kopec took a lead role in drafting a memorandum to the OAS summarizing a range of primary and secondary legal sources and options.

“The OAS then came back with a secondary request to craft provisions for a practical set of anti-violence laws that could work in Haiti,” said Kopec. “That’s where we paused to consider what resources we have here at Clifford Chance and where we could reach out. We thought about what sort of group would be well-versed in research, interested in these types of issues, have the time to do this, and have the legal background needed to understand analyzing and drafting legislation. That’s how we came to think of working with a group of students and professors, and Duke seemed a natural choice.”

Kopec and Clifford Chance partner Jonathan Zonis ’90, who supervises pro bono initiatives in the New York office, reached out to Laurence Helfer, Duke’s Harry R. Chadwick, Sr. Professor of Law. An expert in international law and international human rights law who has written extensively on the implementation of international legal norms in developing countries, Helfer immediately recognized the educational value of the proposal.

“I’ve long been interested in legal transplants — laws and institutions taken from one location and adapted for use elsewhere. Legal transplants raise many difficult issues, such as identifying source materials in countries with comparable features and adapting them to local needs and contexts. Those are very big challenges at the level of legitimacy and the level of expertise,” he said. “And the problem translates pedagogically into what and how we teach our students.”

The problem also is a good fit with the Law School’s and Duke University’s institutional commitment to knowledge in the service of society. Violence against women and girls in Haiti, already “widespread” and “alarming,” according to a 2009 report by the Inter-American Commission on Human Rights, intensified with the displacement caused by the January 2010 earthquake. But along with personal and societal tragedy, the earthquake presented opportunities for change. The United Nations and other international bodies have advocated rebuilding the country’s rule of law and justice systems along with its infrastructure, Helfer notes, and the Haitian Ministry of Women’s Affairs committed to drafting new legislation on gender-based violence as one important avenue for advancing these goals.

Helfer worked with Zonis, Kopec, and others to lay the groundwork for an ad hoc seminar; aided by David Thompson JD/LLM ’07 in the Law School’s Alumni and Development Office, they secured a grant for overhead and translation services from the Clifford Chance

Foundation, which supports global projects that promote equal access to justice. Helfer also recruited two Duke Law colleagues to join him as faculty advisers for the seminar — Charles, a scholar with expertise in statutory interpretation and cross-disciplinary ties to Duke University’s Haiti Lab, a site for research and teaching, and Senior Lecturing Fellow Deborah Ross who, as a longtime member of the North Carolina House of Representatives, was instrumental in drafting the state’s domestic violence legislation.

With financial and academic support for a student-run seminar in place, Helfer reached out to students he knew were interested in human rights law. He contacted Karen Gift at her 1L summer job with the International Justice Mission in Mumbai, India, where she was working on issues related to human trafficking.

“My experience in India informs my passion for the topic — combatting violence against women — and the opportunity to work

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from the legislative perspective was something that I hadn’t done,” said Gift, who was immediately persuaded to participate.

Swain, a co-chair of the Human Rights Law Society whose 1L summer work for the Center for Constitutional Rights in New York involved international criminal law as well as domestic civil rights issues, also was eager to sign on to the project. “We had been pushing hard to develop more opportunities for students interested in human rights law, so it was very exciting when Professor Helfer told us about this project,” said Swain, who worked for the Kentucky Commission on Human Rights prior to arriving at Duke.

Other students brought skills and experience in such matters as the operation of state courts that specialize in domestic violence crimes, violence in immigrant communities, and fluency in French. Their varied backgrounds allowed the group to break up their tasks based on individual students’ interests and strengths.

“This was a big undertaking because it involved considering an overhaul of both the criminal law and the civil code, which includes family law, employment discrimination, sexual harassment, and civil remedies for intra-family violence,” said Swain.

A “Herculean task”

Charles listed the many challenges the project posed for the students. “They had to transplant themselves into a different legal system, one that is *sui generis* in many respects — the laws aren’t compiled in one particular place,” he said. “There are different forms of legislation and



TEN DUKE LAW STUDENTS WORKED ON THE HAITI ANTI-VIOLENCE PROJECT. STANDING (L-R): CASSIE WEBSTER '11, KATHRYN BARRY '11, MIRA KASLIWAL '11, JACY GAIGE '12, ASHLEY WATKINS '12. SEATED (L-R): MERLYNE JEAN-LOUIS '12, THERESA GILBERTSON '12, CAITLIN SWAIN '12, KAREN GIFT '12. (NOT PICTURED: DANIELLE DUFF '12)

Divided into research teams focused on civil and criminal laws and remedies respectively, the students began by identifying and aggregating the Haitian codes, decrees, and treaties that collectively comprise Haitian law pertaining to the relevant areas and researching comparative approaches in the United States, Latin America, and other civil law jurisdictions. They then recommended changes to the law that would promote gender equality and end violence. After presenting the recommendations as a “mark-up” to existing Haitian law to the Clifford Chance team in New York during a videoconference, the students were asked to craft a comprehensive research proposal and provide legislative support for a statute actually being drafted by the Ministry of Women’s Affairs.

As they tackled their broader mandate, the students were careful to track the sources for their suggestions, whether they were decrees or international treaties ratified by Haiti, said Gift. “We always tried to track our proposals back to existing sources of law that Haiti had already adopted in order to aid in the legitimacy of our statute, while pulling in comparative examples.” Some of their team members, for example, reviewed penalties used in Latin American countries and in France line by line, trying to find an appropriate comparative model.

“We tried to look at things that would protect women and children but also would have cultural integrity,” Gift explained.

Investing their process and product with cultural integrity meant withholding judgment as they examined societal circumstances that might put women in danger, while also crafting appropriate recommendations to improve safety. Violence against pre-teen and teenage girls who work as domestic servants is prevalent in Haiti, Ross noted by way of example. “We’re not going to suggest they outlaw child labor, but we want young women who are in people’s households to be free of sexual abuse.”

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— Karen Gift '12

legal forms, so there is both legislation and there is a law by decree. And there is no place where you can find judicial opinions collected.

“Not only did the students research and try to establish a comparative baseline — identifying what we do in the U.S. and other countries that could serve as comparisons — they had to settle on a model that would work. They had to try to understand the legal system they were writing for. And, of course, they were working on a research proposal that would support law reform for a country that has two different languages, French and Creole,” he said. “This was a Herculean task and these students were unbelievable. They brought so many skills to bear — as scholars, as statutory interpreters, as legislative drafters, and in public policy. At the same time, they never lost sight of their common sense or their humanity. They asked difficult questions and answered them with aplomb.”

Marshaling resources, institutional support

The students gathered information and assistance as they proceeded through the term. Two team members who spoke French — 2Ls Merlyne Jean-Louis and Jacy Gaige — gathered testimony from women’s groups and aid workers in Haiti to get a sense of the scope of gender-based problems there; that information was later included in an appendix to the statute.

They marshaled all of the resources available to them at Duke and abroad. Professor Ralf Michaels, a comparative law scholar, gave them guidance regarding the different legal systems — civil law and common law — that would be relevant to their research. Kristina Alayan,



THE SUPPORTING DUKE LAW FACULTY:
DEBORAH ROSS, GUY-URIEL CHARLES, AND LAURENCE HELFER



AT CLIFFORD CHANCE IN NEW YORK (L-R): ALEKSANDRA KOPEC '07, JONATHAN ZONIS '90, MARIE-CLAUDE JEAN-BAPTISTE (ISLP), AND ELIZABETH SCHULTZ

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– Jonathan Zonis '90

the Goodson Law Library's foreign and international law librarian, researched potential comparator countries and guided the students to information about their laws and policies. Faculty and students at Duke's Haiti Lab were critical partners; several undergraduates picked research projects that dovetailed with the law students' work.

Students also met, via teleconference, with a Haitian attorney who helped them understand how the country's existing law is actually applied. “We talked with him about some of the operational challenges of the law — how it is implemented on the ground, and how we could recognize those challenges and draft around them,” said Gift. “That was enormously instructive for me in understanding what the situation was like in Haiti.” Duke University faculty and Duke Law LLM students pitched in with translation services at critical times.

Their “three stars” — as Swain characterized Charles, Helfer, and Ross, the faculty trio who provided core support — were invaluable.

“They were encouraging and acted as mentors throughout the process,” she said. “They gave us the room to make decisions among ourselves about what we could accomplish, and I think the confidence they placed in us pushed everyone to work harder.”

In addition to spearheading the project along with Clifford Chance, Helfer helped the students understand how the international agreements Haiti has ratified created specific human rights obligations and how the country might also be bound by customary international law, said Gift.

Ross offered her broad experience as a legislator as well as her specific experience drafting North Carolina's laws pertaining to domestic violence, pointing out the concerns of stakeholders in that process that might be shared by those in Haiti.

Along with his academic expertise, Charles brought essential knowledge of Haitian culture and history as well as fluency in French and Creole to the project. He also encouraged the students to be forward-thinking in their recommendations. “He told us we ‘need to be true to Haiti in this moment,’” said Swain. “His point was that it was OK to focus our efforts on protecting women in the best way possible, because those are the goals the Haitian Women's Ministry has set for itself.

“I can't say enough about how impressed I was with the way the three of them were able to negotiate with us some very complex questions about what our role was and how to create a product that would matter while maintaining a commitment to building our skills,” she said.

The result: A solid statute, solid skills

In mid-December, the students delivered their work product, in the form of a fully drafted proposed statute, to Clifford Chance. Multiple footnotes explained the origins and rationale for their recommendations, and a supplement included background information such as reports relating to violence against women and testimony from activists and aid workers. Original contributions included a proposal for a specialized court to handle cases of violence against women; revisions in the asymmetric obligations of men and women within marriage and in dissolution; and structuring of penalties for crimes of violence in accordance with aggravating circumstances.

“The students looked at the issues with an academic perspective that led to a far more comprehensive product than we, working solely as a law firm, could have achieved,” said Zonis. “They also brought a level of energy that was pretty amazing. I don't think we can say

enough good things about the responsibility and professionalism shown by the Duke students who took on this task and executed it.”

The Clifford Chance team incorporated the students’ research proposal and supplement into a memorandum that was presented at the February meeting in Haiti.

For the students, the process was as educational as the substantive topics they encountered. “Professor Ross emphasized this throughout — ‘We want you as students to gain valuable skills that you are going to be able to build on through your future careers,’” said Swain. “We learned something with real practical implications,

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not just about the subject matter, but about the process of working together and producing high-quality legal work as a team.”

“I learned how to identify our limitations and where we needed to get outside help or an outside perspective,” added Gift. “Navigating and negotiating with the multiple stakeholders involved here was ultimately rewarding.”

And playing a role in reforming Haitian law in such a crucial area was well worth the work, said Swain. “This is a moment where this kind of reform is not only needed — it’s possible,” she said. “Getting a chance to play even a small part in that was just an extraordinary opportunity.” ♣

A growing curriculum in international human rights law

AS DUKE LAW HAS expanded programs in human rights law, students are gaining new opportunities to apply their knowledge and skills to real-world, practical problems in the field.

Having spent a year working on international human rights projects in Africa and South America prior to entering law school, that’s exactly what Anne Dana ’11 was hoping to accomplish with an ad hoc seminar she organized as a 2L; as one of three student conveners, she worked closely with Professor Laurence Helfer to coordinate the research curriculum and spring break field work that culminated in a report on indigenous land rights in Brazil.

“I was interested in an experience that would allow students to apply what we were learning in law school to the real world,” said Dana who, as a 3L, also conducted in-depth academic and field research on housing rights in East Jerusalem as a member of Professor Curtis Bradley’s international human rights seminar, contributing to a significant report on the situation. (See story, Page 17.)

“Both experiences helped me to understand how much more complicated the issues become once problems are no longer hypotheticals but include working with people who have different religious or cultural beliefs, stakeholders with different agendas, and real budgetary constraints,” she said.

One of Dana’s classmates in the housing seminar, Cassie Webster ’11, also took part, as a 3L, in an ad hoc seminar on reform of Haitian anti-violence laws (see story, Page 12) and a pilot course on Human Rights Advocacy that included a clinical component.

“All three seminars have contributed in some way to my personal development and assisted me in my long-term career goals,” said Webster, who

intends to make international human rights the focus of her career, as it has been during both her 1L and 2L summers.

“The Haiti seminar helped solidify my knowledge and understanding of the causes and consequences of violence against women, a human rights issue that remains one of the most prevalent around the world. The Jerusalem seminar provided me with my first on-the-ground fact-finding



DURING SPRING BREAK 2010, DUKE LAW STUDENTS CONDUCTED FIELD RESEARCH ON INDIGENOUS LAND RIGHTS IN BRAZIL WITH PROFESSOR LAURENCE HELFER.

mission, an invaluable experience to any budding human rights lawyer. And the Human Rights Advocacy seminar forced me to take a step back and analyze what it means to be a human rights lawyer and to practice from a human rights-based approach — what the ethics of human rights lawyering are and, most importantly, how to conduct human rights investigations, documentations, and interviews. All the tools I gained in these seminars will be beneficial to me when I begin to practice.”

Caitlin Swain ’12 said that her work as a co-convenor and participant in the ad hoc seminar on reform of Haitian anti-violence laws directly informed and improved the subsequent work she did in Human Rights Advocacy, both in

terms of subject matter — violence against women in developing countries — and the process for effectively working with a team on a complex matter. A co-chair of the Human Rights Law Society who worked on human rights matters prior to law school and during her 1L and 2L summers, Swain also intends to make it her career. She has watched the growth in opportunities to build skills at Duke and credits Helfer with being a critical source of faculty support and influence.

“We are building strong institutional support for students who are interested in this growing, emerging field of international human rights law,” Swain said. “I think it’s a *great* investment.” ♣