



## Education with impact: Duke Law students contribute to reform of Haitian gender violence law

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In late February, Professor [Guy-Uriel Charles](#) attended a meeting outside of Port-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 that contained 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 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."

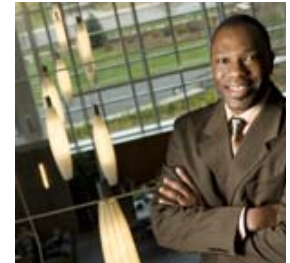


*Ten Duke Law students worked on the Haiti anti-violence project. Top row (L-R): Cassie Webster '11, Kathryn Barry '11, Mira Kasliwal '11, Jacy Gaige '12, Ashley Watkins '12; Bottom row (L-R): Merlyne Jean-Louis '12, Theresa Gilbertson '12, Caitlin Swain '12, Karen Porter Gift '12 (Not pictured: Danielle Duff '12)*

### 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



*Professor Guy-Uriel Charles*



*Professor Laurence R. Helfer*



*Senior Lecturing Fellow Deborah K. Ross*

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 a legal background so it could 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 transplant 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 is also 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 noted, 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, securing a grant for overhead and translation services from the [Clifford Chance Foundation](#), which supports global projects that promote equal access to justice. He 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's Haiti Lab](#), 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 Porter Gift at her IL 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 — combating violence against women — and the opportunity to work from the legislative perspective was something that I hadn't done," said Porter Gift, who was immediately persuaded to participate.

Swain, a co-chair of the Human Rights Law Society whose IL 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 onto 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 ranging from 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 legal forms, so



*Clifford Chance in New York, L-R: Aleksandra Kopec '06, Jonathan Zonis '90, Marie-Claude Jean-Baptiste (ISLP), and Elizabeth Schultz*

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.”

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 source for all of their suggestions, whether it was a decree or an international treaty that had been ratified by Haiti, said Porter 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 proposals, and at the same time pulling in comparative examples.” Some of their team members, for example, reviewed penalties used in other 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,” Porter Gift explained.

Investing their process and product with cultural integrity meant withholding judgment as they examined societal circumstances that might put women in danger, and 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.”

### **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 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 Porter 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 be also bound by customary international law, said Porter 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, and fluency in French and Creole to the project, and 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 surveyed. 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 its dissolution; and structuring 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, 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 Porter 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."

