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The Rule of Law in Haiti After the Earthquake

Summary

- The January 12th earthquake in Haiti shook the justice system.
- Prior to the earthquake, Haiti had been making steady progress towards improving access to justice.
- After the initial panic of the earthquake, efforts began to resume the operations of the justice system.
- Reacting to the immediate situation on the ground, the Haitian government identified key priorities for the justice sector in the short term, including rebuilding court houses, prisons and police stations. Long-term priorities were also identified and are currently being integrated into a Justice Sector Strategy. A key point stressed by the government is that rule of law efforts are not starting from scratch but will build upon previous initiatives.
- Haiti has some but not all the resources to rebuild the justice sector. The government welcomes international assistance. What is important from the international side is that donors and assistance providers coordinate with each other and the government of Haiti and deliver rule of law assistance in line with the strategy developed by the government.

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Introduction

The January 12th earthquake in Haiti shook the justice system to its core. The Ministry of Justice and the Palais de Justice, where the Supreme Court, the Appeals Court and Courts of First Instance of Port-au-Prince are housed, were reduced to rubble. Numerous other courthouses and police stations have been destroyed or severely damaged. Judges, lawyers, police officers, court clerks and ministry staff died. Close to 5,000 prisoners escaped from the central prison in Port-au-Prince, some of them organized crime gang leaders and members. Prior to the earthquake, Haiti had been making slow, but steady, progress towards the rule of law. These efforts were not without difficulty. Today, the government still faces its previous obstacles, along with a plethora of new challenges stemming from the earthquake. What can be done in the short and long term to strengthen rule of law in Haiti?

This report summarizes and builds upon the February 12, 2010 event held at USIP entitled “Haiti: Addressing Rule of Law After the Earthquake” at which René Magloire, the special adviser to the president of Haiti on legal affairs and in charge of legal reform, and former minister of Justice of Haiti, spoke.

After Dictatorship: Rule of Law Challenges in Haiti

After the end of the repressive Duvalier regime in 1986, Haiti went through a series of political conflicts and periods of large-scale violence. In 1993, the first United Nations peacekeeping mission was established in Haiti, the International Civilian Mission in Haiti (MICIVIH). In 1995, the National Reconciliation and Truth Commission, in its report, issued several recommendations for the justice system reform process, which it deemed imperative and urgent. Since that time, successive U.N. missions after MICIVIH, along with other international and bilateral assistance providers, have sought to work with national counterparts to improve the justice system in Haiti.

The problems with the justice system were manifold: excessive pretrial detention and long delays in the penal process; corruption; torture and excessive use of force on the part of the police; excessive executive interference with the judiciary; poorly trained justice personnel; lack of legal aid; overcrowded and unsanitary prisons; lack of adequate infrastructure and equipment; outdated laws; increased violent crimes such as kidnapping for ransom; criminal gangs; involvement of government officials in money laundering and drug trafficking; plain disregard for rules and laws by justice actors; and the pursuit of private interests through the justice system.

Steady Progress Before the Earthquake

Significant progress was made on promoting the rule of law in recent years. The year 2007 saw the passing, and subsequent implementation, of three important new laws. A “law on the status of magistrates” was passed, establishing the criteria for the appointment of judges and the conditions of their tenure. This, coupled with the “law on the superior council of the judiciary,” charged with monitoring the performance of judges and making recommendations on the appointment of judges—was designed to ensure judicial independence in Haiti. In addition, the “law on the school for magistrates” outlines the initial and continuing education and training requirements for judges, court officials, and prosecutors.

It is not only the judiciary that is under reform. In 2006, a five-year strategic plan was adopted for the Haitian National Police. Since then, efforts have been underway to professionalize the police force; increase the number of police officers trained and on the streets; improve the working conditions of the police (e.g., through providing better pay in an effort to curb corruption); and rehabilitate and construct police stations around the country. Along with the U.N., the government of Haiti is engaged in a comprehensive vetting of police officers. In 2008, a development plan was also adopted for the prison service. It provided for the professionalization of corrections officers and an increase in their numbers; the improvement of working conditions; the improvement of conditions of detention; and the rehabilitation and construction of prisons across the country. The strategic plan for the Haitian National Police and the prison service was being implemented before the earthquake, albeit slowly. Legal aid initiatives have also been established around the country to provide free legal assistance to accused persons who cannot afford a lawyer to represent them in court.

In parallel, the Haitian government has been working with the U.N. and other donors to address serious crime problems in Haiti. In 2001, laws on money laundering and drug trafficking were passed, and measures were adopted to train personnel to investigate and prosecute such cases. A Financial Intelligence Unit and a special police unit were established to investigate organized and economic crime. To address corruption, an Anti-Corruption Department and Task Force was established. In 2007, with U.N. support, the Haitian National Police arrested organized crime gang leaders in Cité Soleil.¹

A critical effort that the U.S. Institute of Peace has been involved in since 2008—through its “Model Codes for Post-Conflict Criminal Justice in Haiti Project”—is the reform of Haiti’s outdated criminal laws. In February 2009, President René Préval established a Presidential Commission on Justice Reform. He entrusted Magloire to work on the modernization of the 1826 criminal code and criminal procedure code and other key criminal laws.²

From the international donor side, a Sectoral Group of Technical and Financial Partners was established to coordinate assistance in rule of law reform. The group is led by the United Nations Development Program and is comprised of other partners, including the U.N. Mission in Haiti (MINUSTAH), USAID, the International Legal Assistance Consortium, the U.S. Institute of Peace and the Organization of American States.

After the Earthquake: “Life Goes on and Justice Cannot Stop”

After the earthquake hit, a wave of panic swept the country. The minister of Justice and Public Security literally had to haul himself out of the rubble of the ministry building where many of his staff lay dead. In the days after the earthquake, President Préval summoned his ministers and advisers to meet at the government’s new central command station near the airport. Re-establishing the rule of law was declared a key priority for the government. In the midst of rescue efforts and a massive humanitarian crisis, the Haitian National Police worked to restore public order with the support of U.N. and U.S. forces.

In his speech at USIP on February 12th, Minister Magloire quoted the saying of the 19th-century Haitian King, Henri Christophe: “I am reborn from my ashes.” From the ashes, the Haitian population rose, and even though struck by grief, joined together in the spirit of brotherhood and sisterhood and began their journey to recovery. Minister Magloire also stated that, “life goes on and justice cannot stop.” And it did not.

Efforts to re-establish the justice system were conducted without fanfare and out of sight, a fact which prompted some to believe that nothing was happening from the justice side. The country’s justice minister, Paul Denis, immediately took emergency, short-term measures in the days after the earthquake. Justice Minister Denis contacted representatives from the 18 courts of the country, along with prosecutors’ offices and police stations, and requested them to take an inventory of damage and fatalities in their jurisdictions. In addition, the ministry conducted a detailed inventory of urgent needs—both in terms of infrastructure and basic supplies.

The minister also reactivated the functioning of the ministry itself. Operations resumed in warehouses located near the collapsed ministry. Staff returned to work, including some who had lost family members. Others had lost everything and lacked even clean clothes. All justice actors were urged to return to their damaged posts and to resume their activities. Many did, even though they were afraid to enter police stations and courthouses in case another aftershock hit. Therefore, where they could, they worked outside.

A task force was immediately put together by the minister to re-arrest escaped prisoners and to investigate how the prisoners escaped, despite only minor damage to the central prison in Port-au-Prince. Many of the escapees have now been re-arrested. Finally, work began to reconstruct court records, files and evidence that would be vital to prosecute alleged criminals. Much evidence that was to be used in criminal trials was stored in the now collapsed Palais de Justice. After the earthquake, there were reports of criminal elements going to the Palais de Justice in an attempt to destroy any remaining evidence.

ABOUT THIS BRIEF

USIP hosted an event on February 12, 2010 entitled “Haiti: Rule of Law After the Earthquake” at which René Magloire, the special adviser to the president of Haiti on legal affairs and in charge of legal reform (and two-time minister of Justice) spoke. This Peace Brief by Vivienne O’Connor, a senior rule of law adviser, summarizes and builds upon this event.

Looking ahead, the Haitian government has identified a number of key short and long-term justice sector priorities. In addition to rebuilding damaged infrastructure, the government’s priorities essentially builds on pre-existing rule of law initiatives. One of the principal messages conveyed by the Haitian government is that justice efforts do not need to start from scratch.

The priorities identified by the Haitian government include:

- Rebuild/repair the Ministry of Justice, courthouses, police stations and other justice sector infrastructure and provide necessary equipment and materials;
- Accelerate the implementation of the three magistracy-related laws outlined above to secure judicial independence in Haiti;
- Restructure the Ministry of Justice so that it can monitor the implementation of reform;
- Continue to pursue the legal reforms—of the criminal code and criminal procedure code—that had commenced before the earthquake. In addition, support the development of other important new laws, including those related to juvenile justice, prosecutors, courts, police, prisons, legal aid, conditional release and criminal records;
- Establish a national system of legal defense/assistance;
- Improve court procedures and court management;
- Establish a managerial system throughout the justice system;
- Assist in institutional-strengthening of the justice system, particularly to address enforcement of the law and existing procedural delays; and
- Solicit assistance in training and professionalizing the justice sector in Haiti.

These priorities form the essence of a strategy being discussed now between the donors and the Ministry of Justice.

Conclusion

Minister Magloire concluded his presentation at USIP by noting that Haiti faces enormous challenges in rebuilding the rule of law. It will take time and commitment. According to him, the country has some but not all the necessary resources to move forward with legal reform. International assistance is essential and welcomed by the Haitian government.

What will be important in the coming weeks and months as external actors offer rule of law support is that they do not work in an ad hoc and uncoordinated fashion, as is so often the case in rule of law reform efforts. Guidance should be sought from the Haitian government on how outside actors can best assist Haiti as they work together to rebuild and strengthen the justice sector in Haiti.

Endnotes

1. See Michael Dziedzic and Robert Perito. “Haiti: Confronting the Gangs of Port-au-Prince.” USIP, September 2008. <http://www.usip.org/resources/haiti-confronting-the-gangs-port-au-prince>
2. See Hans Joerg Albrecht, Louis Aucoin and Vivienne O’Connor. “Building the Rule of Law in Haiti: New Laws for a New Era.” USIP, August 2009. <http://www.usip.org/resources/building-the-rule-law-in-haiti-new-laws-new-era>



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