

## Keeping Haiti Safe: Justice Reform

### I. OVERVIEW

Haiti's justice system remains dysfunctional and continues to pose significant obstacles to its democratic process, security, reconstruction and development. While some steps have begun with regard to the police, institutional reform in the sector has lagged, allowing further impunity and persistent criminal threats to citizen safety. Despite five years of pledges, the majority of Haitians still have limited access to justice, and mistrust of the formal judicial system is widespread. President Michel Martelly and parliament must work in a non-partisan manner to at last produce reform, including by modernising the 174 year-old criminal code and procedures and setting standards for judges, giving the judiciary adequate resources and creating efficient mechanisms that guarantee proper access to justice.

The impact of the 2010 earthquake on the infrastructure of an already overcrowded and inefficient system rendered a large number of courts inoperable. Those that have remained functional are understaffed and under-resourced. The lack of proper legal services for the poor majority and inefficient case management fuelled by financial, material and human resource constraints continue to generate extensive case backlog and overcrowded prisons. The number of detainees exceeds by a factor of six the prison capacity allowable by international standards. Lack of job security, supervision, adequate training and low salaries leave judges, prosecutors and other court personnel vulnerable to corruption. Executive and legislative interference, coupled with the sluggish pace of reform, has done little to convince the population that the political will exists for transformative change.

Haiti desperately needs a functioning justice system with effective and fair investigation, prosecution and conviction capabilities, particularly with respect to serious crimes. At present, serious criminals often go free, while petty offenders languish in prison. Revision of outdated key legislation to bring the archaic system into line with 21st century reality began in 2009. But proposed reforms of penal and criminal procedure codes need to be finalised by the executive, submitted to parliament and passed into law, all after wide consultation. Necessary separation of the executive and judiciary branches awaits the appointment of eight vetted members of the Superior Judiciary Council (Conseil supérieure du pouvoir judiciaire, CSPJ) and the

launch of its work. Strengthening the Judicial Inspection Unit (JIU) and the Academy for the Training of Judges (Ecole de la magistrature, EMA) is essential to sustain reform efforts. Friction between prosecutors, judges and the Haitian National Police (HNP) must be ended to improve investigations and build a more cohesive security system.

Hopes for steady justice sector improvement were kindled in 2007 with the passage of three fundamental laws but were quashed by subsequent executive inaction. The new Martelly administration took initial actions to appoint some members of the Supreme Court (Cour de cassation). However, the president partially rejected a first slate of high court nominees submitted by the Senate, finally naming only the chief justice and one other justice. Early consultation will hopefully result in additional acceptable nominees so that the Court can be filled and the CSPJ made operational as the starting point for establishing and monitoring standards and safeguarding judicial independence. Moreover, to ensure a non-biased, transparent and efficient administration of the justice system, the Haitian authorities, with the support of their international partners, must also:

- ❑ strengthen the independence of the judiciary by providing the CSPJ with the human and material resources required for its immediate functioning;
- ❑ ensure a transparent and fearless justice system by giving special protection to those dealing with serious crimes, including prosecutors, judges and witnesses; improving work conditions and job security; and monitoring performance through the CSPJ and the JIU;
- ❑ complete drafting and passage of revised Penal and Criminal Procedure Codes and accompanying legislation, in accordance with international standards including on such matters as habeas corpus, and after consultation with key national sectors;
- ❑ ensure effective training of all justice actors in the modernised system, including by expanding and speeding up training for all judges by making the EMA fully functional and setting national standards for law school curriculums;
- ❑ improve access to justice and promote peaceful resolution of conflicts in rural communities and violence-prone slum communities by expanding mobile justice services and increasing legal aid;

- reduce lengthy pre-trial detention by improving case-management, applying fast-track procedures for minor offences and completing prison reform;
- improve co-ordination between the government and donors on reform projects, so as to develop Haitian leadership and ownership of a process with common goals and strategies; and
- increase services available to the population as well as public education on legal rights by drafting and passing statutory legislation to strengthen the office of the ombudsman and enhancing participation of civil society, including grassroots and community-based organisations, in that task.

## II. CRIMINAL JUSTICE SYSTEM

Little progress has been made on the judicial system's structural problems since 2008, when Crisis Group examined it.<sup>1</sup> That report concluded that Haiti needed a functioning, professional national police and a criminal justice system capable of prosecuting, sentencing and punishing offenders in order for stability and development to take hold. Indeed, the entire justice system needs reform to support the rebuilding of the economy and institutions, but this briefing focuses on criminal justice. Improvements in judicial performance would have an impact system-wide.<sup>2</sup>

Manifold problems exacerbated by the January 2010 earthquake continue to weaken the administration of justice. Long delays in the criminal process lead to excessive pre-trial detention, which in turn results in overcrowded and unsanitary prisons. Police abuse and inadequate infrastructure infringe on the rights of detainees. The country's outdated laws and scant resources are inadequate to cope with the scale of violent crimes.<sup>3</sup>

<sup>1</sup> Crisis Group Latin America/Caribbean Report N°28, *Reforming Haiti's Security Sector*, 18 September 2008, analysed the three components of the security system: police, justice and prisons. This briefing focuses on justice reform; also see Crisis Group Latin America/Caribbean Briefing N°26, *Keeping Haiti Safe: Police Reform*, 8 September 2011.

<sup>2</sup> Administrative and civil justice reform, in areas such as commerce, land, natural resources and mining, requires passage of pending laws to improve the economy and consequently the functioning of key sectors such as justice and public security. Crisis Group interviews, justice experts, Tabarre, 29 July 2011; email, 14 October 2011.

<sup>3</sup> In 2008-2010, 1,173 persons were tried and 743 sentenced. Some 500 cases of kidnapping and close to 4,000 of sexual violence were reported; 73 persons were sentenced for kidnapping, 157 for sexual violence. "Report on Human Rights under the René Prével Presidency May 2006-May 2010", National Network

### A. PROSECUTION AND TRIALS: LAGGING

The 1987 constitution sets out the basic legal rights of all Haitians. The multi-level court system includes a Supreme Court, five regional appeals courts and eighteen district (first instance) courts.<sup>4</sup> The twelve-member Supreme Court, including a chief and a deputy chief justice, has final say over constitutional issues. Each appeals court is also headed by a chief justice and hears cases before a panel of judges, while district court cases are heard by one judge. Each of these courts must be assisted by a prosecutor, who is appointed by and represents the executive. At the lowest level, there is at least one justice of the peace (*juge de paix*) court for each of the 140 communes, the responsibility of which is to resolve petty offences and conflicts rapidly.<sup>5</sup>

The 16 January 2011 return of former dictator Jean-Claude Duvalier and subsequent calls by victims and national and international human rights organisations for his prosecution renewed questions about Haiti's capacity to investigate and prosecute serious crimes.<sup>6</sup> The case will test progress

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for the Defence of Human Rights (Réseau national de défense des droits humains, RNDDH), May 2011, [www.rnddh.org](http://www.rnddh.org).

<sup>4</sup> The courts of appeal and district courts over which they have jurisdiction are: (Port-au-Prince), Port-au-Prince, Jacmel, Pétit Gôave, Croix-des-Bouquets; (Cap Haïtien), Cap Haïtien, Fort Liberté, Grande Rivière du Nord; (Gonaïves), Gonaïves, Port-de-Paix, St. Marc; (Les Cayes), Les Cayes, Jérémie, Anse à Veau, Aquin, Côteaux, Miragoâne; and (Hinche), Hinche, Mirebalais. "Carte judiciaire de la République d'Haïti par Cour d'Appel", Centre de recherche et d'information juridique, <http://haitijustice.com/carte-judiciaire>.

<sup>5</sup> Ibid. As of December 2009, a month before the earthquake, there was a total of 181. Some communes have more than one, because of population or geographic size. Justices of the peace, unlike in several countries in the region, are not simply respected community members who often serve as mediators. They have three functions: conciliatory, judiciary police and judge. They are required to have a law degree, a diploma in legal training from the EMA or have served at least three years as reporting clerk of a justice of peace court. Many are said to lack such qualifications. Each justice of the peace court has at least one justice, a substitute justice and a reporting clerk. See also "Loi portant statut de la magistrature", *Le Moniteur*, n° 112, 20 December 2007, Article 22; "Décret relatif à l'organisation judiciaire", 22 August 1995, Article 12, [www.oas.org/](http://www.oas.org/); Code d'instruction criminelle, Articles 9, 11, 12, 48, 49, *ibid.* Crisis Group interviews, senior Haitian justice official, Tabarre, 8 September, 9 August 2011; senior government official, Pétion-Ville, 7 September, 26 August 2011.

<sup>6</sup> For background on the Duvalier dictatorship, see Crisis Group Latin America/Caribbean Report N°10, *A New Chance for Haiti?*, 18 November 2004. Duvalier returned to Haiti on 16 January 2011, after 25 years in exile, and was charged with financial and human rights crimes. An investigation by the state prosecutor is under way. "Haiti mulls ex-dictator's intentions as crisis deepens", Agence France-Presse, 20 January 2011; "Four Hai-

toward the rule of law and stronger democratic institutions. A fair trial would send a clear message against impunity and bolster confidence in the judicial system. But the capacity of that system to successfully conduct such a politically charged trial is doubtful.<sup>7</sup>

Criminal law is based on nineteenth century French precedents. The courts and prosecutors are overburdened and the conduct of trials lagging. There is too much crime, too many arrests and too few properly trained personnel to handle the caseload, resulting in enormous backlogs.<sup>8</sup> Increases in violent crime by armed gangs further tax this fragile system.<sup>9</sup> UN-assisted police reform, though still a work in progress, has led to somewhat improved police capacity and more arrests, but the increase in police activity is not matched by more timely prosecutions.

Under the Criminal Procedure Code (Code d'instruction criminelle), the police and prosecutors may arrest an individual only pursuant to a judicial warrant or in a matter of "flagrancy".<sup>10</sup> Those arrested must be brought before

a judge within 48 hours for a determination whether the arrest was legal.<sup>11</sup> If it was not, the detainee is to be released immediately; if it was, he or she is remanded. But many cases of illegal detention are ignored, and many persons arrested are held without formal charges well beyond the 48-hour requirement. As of October 2011, less than a third of those held in prison had been convicted; the rest were in pre-trial detention.<sup>12</sup> The Haitian National Police (HNP) arrested some 21,500 persons in 2010, but only 1,173 cases were heard in the court of assizes (cour d'assises).<sup>13</sup>

The report of the arresting officer is an important element in the criminal procedure. Despite police improvements, irregular arrest procedures,<sup>14</sup> ill-prepared reports and sketchy evidence continue to hamper the work of prosecutors and judges. Incriminating evidence at crime scenes cited in police reports is sometimes missing, resulting in delays in investigations by the judge and, in some instances, release

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tians accuse "Baby Doc" of torture, abuse", Reuters, 19 January 2011; Trenton Daniel, "Haiti's 'Baby Doc' dines out as prosecution stalls", Associated Press, 21 September 2011.

<sup>7</sup> A trial of Duvalier would likely be lengthy and trigger calls for similar action against former President Jean Bertrand Aristide. On 22 September, a press conference called by Amnesty International to present a report on the Duvalier case was reportedly interrupted by Duvalier's lawyers and some supporters, who specifically raised bringing charges against Aristide. "Haiti protesters disrupt Amnesty Int'l press [conference]", CBS News, 22 September 2011; "Amnesty International veut la poursuite de la procédure judiciaire contre Duvalier", Radio Metropole, 23 September 2011, www.metropolehaiti.com.

<sup>8</sup> On average two murders, and three rapes occur daily and one person is kidnapped every three days. These among other acts led to an average of 59 daily arrests, more than three of which are for drug trafficking, illegal possession of firearm or criminal association (*association des malfaiteurs*), a catch-all term the police usually use when in doubt as to who are the real suspects. A significant number of detainees in prolonged pre-trial detention carry that charge. "Insécurité: Lourd bilan pour l'année 2010", *Haiti Libre*, 27 January 2011. Crisis Group interviews, Haitian lawyers, Port-au-Prince, July and August 2011.

<sup>9</sup> See Crisis Group Briefing, *Keeping Haiti Safe*, op. cit. Armed violent crime, particularly in the urban slum communities of Cité Soleil, Martissant and Bel Air, with occasional spill-overs to the larger Port-au-Prince metropolitan area, remains a challenge to the HNP and the UN Stabilisation Mission (MINUSTAH) forces that support it.

<sup>10</sup> *Flagrants délits* are generally offences that have just been committed and are discovered in the act or immediately after. Articles 10 and 31 of the Criminal Procedure Code define flagrancy as acts being committed or just committed; and cases where the arrested person is denounced by public notice or is caught in possession of objects, arms, instruments or documents leading to suspicion of him/her being the author or accomplice, provided this occurs at a time close to the act. The intention of

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this provision is to avoid abusive and arbitrary practices, but it has curbed neither. Many arrests fall outside this definition and are made without arrest warrants. Several of the close to 30 arrests in relation to a stone-throwing incident in Cap-Haïtien (North) against a motorcade of President Martelly in June 2011 reportedly took place at the persons' homes or elsewhere, some days after the incident. Crisis Group interviews, legal and human rights experts, Port-au-Prince, 22 July, 6 September 2011.

<sup>11</sup> All warrants must be in Creole and French and cannot be executed between 6:00 p.m. and 6:00 a.m. Haitian Constitution, 1987, Article 24-3.

<sup>12</sup> On 10 October 2011, 6,729 inmates were being held in detention centres across the country. Crisis Group interview, senior official, national prison authority (Direction de l'administration pénitentiaire, DAP), 13 October 2011. "Insécurité", op. cit. The UN Independent Human Rights Expert for Haiti found that 90 per cent of the women in the Pétion-Ville prison were in pre-trial detention. "Report of the Independent Expert on the Situation of Human Rights in Haiti, Michel Forst", 11 April 2011, A/HRC/17/42, Human Rights Council.

<sup>13</sup> Close to 1,200 of those arrested were for drug-trafficking, illegal possession of arms and criminal association. "Insécurité", op. cit. Crisis Group interviews, Haitian lawyers, Port-au-Prince, July and August 2011. Despite the requirement of the Criminal Procedure Code, Articles 438-439, to register the identity of those convicted, there are no government statistics on convictions. Non-state institutions, such as RNDDH and the MINUSTAH Human Rights Section follow up cases, trials and prison inmates to summarise the situation. The cour d'assises (criminal assizes or court of assizes) is a re-organised district or first instance court session that the Criminal Procedure Code requires be held twice yearly, with jury, to hear cases classified as felonies of a violent or political nature. See Crisis Group Latin America/Caribbean Briefing N°14, *Haiti: Justice Reform and the Security Crisis*, 31 January 2007, p. 3.

<sup>14</sup> Constitution, Articles 24 and 26.

of the suspect because the requirement to bring charges within 48 hours has not been satisfied.<sup>15</sup>

The work of the prosecutor, with whom the decision to take a case to trial ultimately lies, is the heart of the criminal justice system. Poor classification of criminal offences by prosecutors – *crime*, *contravention* or *délit* – contribute to backlog. A *crime* approximates a felony in common law countries; *délits* are offences involving a sentence of more than six months, some can be considered the equivalent of felonies if accompanied by aggravating circumstances; a *contravention* is a minor infraction or infringement. The distinctions are important, since *contraventions* are commonly dealt with by a justice of the peace court; *délits* are tried before a district, first instance criminal court, while *crimes* are handled by a cour d’assises.<sup>16</sup>

Prosecutors have the power to submit *délits* to an investigating judge (*juge d’instruction*)<sup>17</sup> when further investigation is needed. The investigating judge, in turn, may reclassify the case as a *crime* or simply dismiss it due to lack of evidence. Long delays ensue as judges carry out their independent analysis of the file before making their decisions. The investigative process grows lengthy because there are not enough judges, they have few resources to investigate, and collaboration with the police and prosecutors is uneven. In some instances, the decision may be to refer the case back to prosecutors.

Adding to extensive delays, parallel investigations by the investigating judge and the prosecutor are required. These do not complement each other, so often lead to disagreement. The absence of a uniform, streamlined case management system poses further difficulties. Files exist only in single copy, and indexing is manual and not standardised. Criminal cases are filed in the prosecution’s registry, while the bench has its own docket. Law enforcement agents and the general population have little trust in trials as a credible mechanism to hold perpetrators accountable for serious crimes. This encourages extrajudicial killings by

the HNP and mob justice. The HNP reported 83 cases of lynching in 2010,<sup>18</sup> while at least fifteen instances of persons killed during police action or while in police custody are under investigation.<sup>19</sup>

Tardiness, absences and inadequate supervision alongside limited resources compound the problem of protracted criminal procedures. The court of assizes in Les Cayes (South), scheduled for July 2011 and with a major case involving alleged HNP extrajudicial killings, for example, only began on 18 October.<sup>20</sup> Due to low salaries many judges and prosecutors hold other jobs and are often late or do not show up at all.<sup>21</sup> In Gonaives, there are cases that remain without judgement for three or four years, largely due to the absence of investigating judges.<sup>22</sup> Likewise, the prison administration (Direction de l’administration pénitentiaire, DAP) does not always have vehicles to transport detainees to the prosecution and the investigating judge for questioning or to court for trial.

Various attempts with international support to harmonise the registration system have not yet yielded transformative change, mainly because they are not sufficiently coordinated, and the information management targets have not been clearly established or agreed. Thus, the U.S. National Center for State Courts (NCSC), with U.S. Agency for International Development (USAID) support, launched a pilot project in 2009 to enhance the registry and tracking system that was tested in 25 courts and prosecution offices and included the training of personnel. After USAID discontinued support, the continuing partner, PRO-Justice, put in place another case management program to support court registries. The UN Development Programme (UNDP)

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<sup>15</sup> Crisis Group interviews, Haitian legal experts, Pétion-Ville, 22 July and Delmas, 31 August 2011.

<sup>16</sup> Crisis Group Briefing, *Haiti: Justice Reform and the Security Crisis*, op. cit., p. 3. A *crime* is a serious offence involving violence or of a political nature. It usually involves more than a four-year sentence on conviction and aggravated circumstances (second offence, condition of the perpetrator, specific injuries or damages). It has become usual to consider certain *crimes* the equivalent of felonies regardless of the circumstances, for example drug trafficking. This forces the system to detain 100 per cent of the presumed perpetrators. Crisis Group email communication, international legal expert, 5 October 2011.

<sup>17</sup> The investigating judge originates in the Napoleonic system and has been replaced in many Latin American countries by prosecutors. There are reportedly only four investigating judges for all of Port-au-Prince, where some three million persons live.

<sup>18</sup> “Insécurité”, op. cit.

<sup>19</sup> See Crisis Group Briefing, *Keeping Haiti Safe: Police Reform*, op. cit., p. 7.

<sup>20</sup> Crisis Group interview, senior prison administration official, Pétion-Ville, 13 October 2011. “Trial starts in alleged Haiti prison massacre”, Associated Press, 18 October 2011. Delays were reportedly due to unavailability of resources requested for the trial. Crisis Group phone interviews, human rights monitor and ombudsman, September 2011.

<sup>21</sup> The constitution allows judges and prosecutors to hold only teaching positions as second jobs. Crisis Group interview, senior official, Supreme Court, Tabarre, 8 September 2011. See also “Frontline, Battle for Haiti: Interview Jean-Joseph Exumé”, 2010, www.pbs.org/. For example, in Desdunes, a commune in the Artibonite, human rights monitors said that during two consecutive visits to the justice of the peace court in May and June, only one of four judges was present. Crisis Group interview, officials, human rights network, Gonaives, 7 July 2011. A 26 July Crisis Group visit to the Port-au-Prince South justice of the peace court, still functioning in a tent and a container due to the earthquake, found one justice of the peace present and a large number of people waiting for service.

<sup>22</sup> Crisis Group interview, officials, human rights network, Gonaives, 7 July 2011.

also supports court registries by providing equipment and material, although not necessarily using the PRO-Justice program.<sup>23</sup>

## B. PRISONS: OVERCROWDED

Prolonged pre-trial detention of the majority of detainees is a major consequence of these failings and one of the main challenges to the justice system. This problem, one national authorities and donors have struggled with for decades, is common to all prisons and detention centres across the country but is most severe in the National Penitentiary in Port-au-Prince, which in October 2011 held nearly 40 per cent of the 6,729 prison population nationwide.<sup>24</sup> Hundreds more are detained, some for brief periods, in police station holding cells.<sup>25</sup> Furthermore, some detainees spend indefinite periods in prison even after a judge orders their release, because an enforcement order must first be registered with the prosecutor.<sup>26</sup> The case management system is so unreliable that the prison administration continues to detain many inmates until they can prove they have already served their sentences.

The seventeen detention centres<sup>27</sup> across the country, with an area of slightly more than 5,041m<sup>2</sup>, held 8,535 inmates just prior to the earthquake. The average space of .59m<sup>2</sup> per detainee<sup>28</sup> was far below international standards of

4.5m<sup>2</sup> and the national target of 2.5m<sup>2</sup>. In the chaos following the earthquake, some 5,000 broke out of fifteen centres, though only four prisons were seriously damaged. Escapes in normal times are not uncommon given the desperate situation of detainees and the inadequacies of prison security. Inadequate access to health care, poor hygiene, little opportunity for open air and severely limited space provide fertile ground for the easy spread of communicable diseases, such as scabies and tuberculosis. The outbreak of cholera in October 2010, despite strenuous remedial measures, has killed at least 70 inmates and sickened several others. Without significant efforts to improve water and sanitation infrastructure, a new outbreak is feared throughout the country, not least in prisons.<sup>29</sup>

The 2007 National Prison Reform Plan was drawn up by the prison administration with international support and approved by the justice minister. It is designed as a policy guideline for reducing overcrowding and improving living conditions through better infrastructure and training.<sup>30</sup> The bulk of donor assistance has been focused on refurbishing infrastructure and building prisons. The largest project is the Canada-funded construction of a modern facility in Morne Cabrit, Croix-des-Bouquets (West Department) with a capacity for 750 inmates.<sup>31</sup> It was begun in May 2009 but has been delayed several times, most recently to revise its design to meet anti-seismic standards. It will have four separate units for adults and juveniles, male and female.

The International Committee of the Red Cross (ICRC) completed the repair and refurbishment of the "Titanic", the largest wing of the National Penitentiary with a capacity for 700 inmates. The installation of a new water system, renovation of the electrical system, construction of showers and installation of bunk beds has significantly improved this custody area.<sup>32</sup> Other infrastructure improvements on prisons in Cap Haïtien (North), Port de

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<sup>23</sup> Crisis Group email exchange, senior officials, MINUSTAH, Tabarre, 27 September 2011. Crisis Group interview, senior official, USAID, Tabarre, 25 June 2009. "Strengthening Rule of Law", USAID fact sheet, [www.usaid.gov/ht/docs/gjd/justice\\_fact\\_sheet\\_4\\_2009.pdf](http://www.usaid.gov/ht/docs/gjd/justice_fact_sheet_4_2009.pdf). The project is part of a \$20 million program to be implemented between 2009 and 2014.

<sup>24</sup> Crisis Group interviews, senior prison administration official, Pétiion-Ville, 13 October 2011; senior official, corrections unit, MINUSTAH, Tabarre, 27 July 2011. Though still very high, the figure represents over 70 per cent drop from January 2010 when the earthquake hit.

<sup>25</sup> In mid-October, for instance, in addition to those in prison, 443 persons were being held in four police cells jointly managed with the DAP. Crisis Group interview, senior official, prison authority, Pétiion-Ville, 13 October 2011.

<sup>26</sup> Due to poor case management and limited access to legal representation for close case follow up, the release order is not easily tracked. Crisis Group interview, Haitian legal experts, Pétiion-Ville, 20 July, 26 August 2011.

<sup>27</sup> These include a prison in Pétiion-Ville for women and a corrections facility in Delmas for minors.

<sup>28</sup> Crisis Group interview, corrections unit, MINUSTAH, Tabarre, 27 July 2011. By October 2011, with the refurbishment and expansion of centres in Port-au-Prince, Delmas and Arcahaïe, average space per detainee was .69m<sup>2</sup>. With the opening of the new or expanded facilities in Croix-des-Bouquets, Carrefour and Petit-Goave (West) and Hinche (Centre) in the next six months, space per detainee should increase to 1.2m<sup>2</sup>. Crisis Group interview, senior official, prison authority, Pétiion-Ville, 13 October 2011.

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<sup>29</sup> Crisis Group interview, senior officials, International Committee of the Red Cross (ICRC), Delmas, April 2011. See also [www.icrc.org/eng/resources](http://www.icrc.org/eng/resources) for interview transcripts and reports on prison conditions in Haiti before and after the earthquake.

<sup>30</sup> Crisis Group interview, senior official, corrections unit, MINUSTAH, 27 July 2011. The plan focuses on a detainee space-extension program through two phases of prison infrastructure rehabilitation in Cap Haïtien, Port-de-Paix, Fort Liberté, Grande Rivière du Nord, Les Cayes, Mirebalais, Jacmel and Jérémie.

<sup>31</sup> Crisis Group interviews, senior officials, Canadian embassy, Delmas, 5 June 2009, March and May 2011. Canada, through its Stabilization and Reconstruction Task Force (START), has provided \$4.4 million to the International Organisation for Migration (IOM) for the project.

<sup>32</sup> Crisis Group interview, senior officials, ICRC, Delmas, April 2011.

Paix (North West) and Saint Marc (Artibonite) were also undertaken with donor assistance.

Building and expanding prison capacity are helpful initiatives that could eventually ease overcrowding, but they will not get to the root of the problem: inefficient prosecutions that produce extended pre-trial detention. Prison authorities have recently attempted to separate convicted prisoners from those without sentences, but hardened criminals and petty offenders continue to be dangerously intermingled.<sup>33</sup> The UN Independent Expert on Human Rights for Haiti has noted that the reconstruction process provides a prime opportunity to refine the strategy for prison reform.<sup>34</sup> But without a plan to renovate all detention centres and police stations based on international norms, partial efforts contribute to uneven treatment of detainees. The question of sustainability, moreover, arises around the maintenance and operation of prisons according to international norms, given Haiti's strained economic resources.

Above all, strengthened and expanded initiatives are needed to reduce burdens on prosecutors and courts. With donor support in December 2008, a National Commission on Prolonged Pretrial Detention was established that produced a detainee database to facilitate countrywide review of prolonged prosecutions.<sup>35</sup> In April 2009, it presented the results of a pilot project to identify bottlenecks to the justice ministry, but follow-up was minimal.<sup>36</sup>

With continued international aid, the prison administration has been focusing on recovering and rebuilding its database, partly destroyed in the earthquake, so as to refine case management strategies.<sup>37</sup> Legal experts have been helping prison and judicial officers review the cases of

detainees considered to be held illegally or for longer than the sentence they would receive if found guilty. 460 persons have been released in 2011 as a result.<sup>38</sup> This initiative remains limited, however, and requires rapid expansion. An Automated Fingerprint Identification System (AFIS) developed by the prison administration with technical assistance from UNDP should boost case management and speed up the initiative. Implementation is awaiting resolution of minor technical problems and the training of penitentiary personnel.<sup>39</sup>

Some justice officials and observers see the application of habeas corpus as a measure that would bring transformative change.<sup>40</sup> The 1987 constitution, drafted after years of dictatorship, enshrines protection of personal freedom and provides for detainees to apply to the chief judge of the pertinent court to determine the legality of their arrest and detention and order their immediate release if unlawful. But citizens who could benefit from this process need to have awareness of it or access to legal representation. Most have neither.<sup>41</sup>

In partnership with the ombudsman's office (Office de protection du citoyen, OPC), USAID ran a pilot project in 2008 in Cité Soleil to inform citizens – through establishment of a legal assistance centre, Kay Jistis – about their legal rights and duties and how to intervene in potential conflict situations.<sup>42</sup> The centre received as many as 150 persons for a weekly civic education forum and has been

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<sup>33</sup> The prison in Arcahaïe is now reserved for convicted prisoners. Only one pre-trial detainee, a police officer, is being held in protected quarters there. Crisis Group interview, senior official, prison authority, Pétion-Ville, 13 October 2011.

<sup>34</sup> Michel Forst report, op. cit.

<sup>35</sup> This was the second such commission. A first was formed under ex-Justice Minister René Magloire to address the issue in Port-au-Prince. His successor, Jean-Joseph Exumé, extended its jurisdiction to the entire country in December 2008 and formed the National Commission on Prolonged Preventive Detention. "Haïti: Incompétence ou mauvaise foi de parquetiers?", *Le Nouvelliste*, 1 October 2009. The commission was headed by then State Secretary for Justice Daniel Jean and included representatives from the ministry, the ombudsman's office and the human rights community.

<sup>36</sup> Crisis Group interview, former senior official, NCSC, Pétion-Ville, 26 July 2009. See also Report of the Secretary-General on the UN Stabilisation Mission in Haiti, S/2009/439, 1 September 2009.

<sup>37</sup> Crisis Group interview, senior officials, corrections unit, MINUSTAH. These efforts also assisted authorities to recapture and identify 928 escaped prisoners by May 2011.

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<sup>38</sup> Report of the Secretary-General on the UN Stabilisation Mission in Haiti, S/2011/540, 25 August 2011. A special program, "Not One Day More", led by the office of Sonel Jean François, the Port-au-Prince prosecutor, released up to 85 detainees, including a dozen women, who had completed their sentence as of July. "Haïti: La justice face à la détention illégale et la détention préventive", Radio Signal FM, 25 July 2011.

<sup>39</sup> Crisis Group interviews, senior official, prison authority; senior technical officer, Rule of Law Project, UNDP, Pétion-Ville, 13 October 2011. The AFIS will also include a photo and case identification number as well as detainees' personal and other prison administration information, such as the cause of detention and date and name of the judge issuing the warrant.

<sup>40</sup> Crisis Group interviews, Haitian lawyer, Pétion-Ville, 22 July 2011; senior Haitian human rights expert, Pétion-Ville, 8 September 2011. See also Michel Forst Report, op. cit.

<sup>41</sup> Crisis Group interviews, Haitian lawyers, Pétion-Ville, 20 July and Delmas, 31 August 2011.

<sup>42</sup> Kay Jistis is Creole for House of Justice. The centre offers legal advice and aid and justices of the peace whose role is to reconcile parties by neighbourhood justice (*justice de proximité*). Crisis Group interviews, senior official, NCSC, Pétion-Ville, 26 July 2009; senior staff, Kay Jistis, Cité Soleil, 20 July 2011. Crisis Group Report, *Reforming Haiti's Security Sector*, op. cit. USAID fact sheet, op. cit.

extended to the neighbourhood of Martissant.<sup>43</sup> Expansion to other slum and rural communities would contribute to public knowledge and potentially enhance people's ability to demand legal services. The ombudsman has shown the will to improve respect for citizen rights.<sup>44</sup> Her small, motivated team is prepared to take initiatives to remove bottlenecks. The office should be strengthened so it can follow up on criminal justice administration more closely. Passage of the organic OPC law is necessary to assure the personnel and authority to monitor courts and prosecutors, including how they handle their monthly caseloads.

Lagging administrative reforms also hamper sustainable change. Many day-to-day operations still rely heavily on donors. Administrative glitches in centrally managed contracts for procurement and distribution of food for detention centres nationwide led in June 2011 to shortages for inmates, which had to be filled by partners such as the military side of the UN mission (MINUSTAH), the ICRC and others.<sup>45</sup> Frequent donor interventions are also required to provide other basic needs, including water, health care, electricity and energy. Efforts to train and equip personnel received help. 300 new prison officer recruits (including 32 women), 63 registrars and 43 executive managers were trained as part of renewed post-quake efforts to build prison administration capacity.<sup>46</sup>

### III. ACCESS TO JUSTICE: INADEQUATE

The primary goal of the 2007 reform plan is to build capacity to deliver justice to all sectors of the population. A precondition is an independent judiciary, as articulated in the UN Basic Principles on the Independence of the Judiciary and the Constitution adopted in 1987.<sup>47</sup> Haiti's judiciary has yet to secure full independence, either in how judges are appointed, their ability to withstand executive and legislative pressures or the impartiality of proceedings and decisions. Access to justice remains a rare and precious

commodity. Only a tiny fraction of citizens can afford legal counsel or to pay the bribes that, given the system's distortions, are necessary to ensure speedy trials. The majority in pre-trial detention come from the desperately poor slums and rural zones. Improving access to justice in these communities largely involves several elements in addition to overall legal reform: legal and civic education; availability of legal aid; more competent justices of the peace, and expanded, mobile judicial services. Creole – spoken by 90 per cent of the people – needs to be made in practice a full language for judicial affairs.<sup>48</sup>

With close to 70 per cent of the population under the poverty line, the vast majority of Haitians cannot afford a lawyer.<sup>49</sup> In theory, bar associations are expected to provide pro bono counsel in criminal cases, but the record is poor with respect to destitute criminal defendants.<sup>50</sup> Bar associations themselves are only now being established in each of the eighteen legal jurisdictions, and there is none at the national level to structure legal aid. A draft law on legal aid, required to accompany the revised Criminal Procedure Code, is in preparation but has not yet been presented to parliament. It reportedly re-asserts the constitutional requirement that all defendants have a right to legal assistance and proposes a framework for a nationwide legal aid system patterned on the National System for Legal Aid (Système nationale d'assistance légale, SYNAL) described below. In the interim, initiatives for greater bar association involvement still often rely on international leadership and financial support.

The International Legal Assistance Consortium (ILAC), an NGO,<sup>51</sup> has been important for mobilising national and donor support for legal aid. This has been crucial for creation of SYNAL. At the end of February 2011, when ILAC

<sup>43</sup> Crisis Group interviews, senior official, U.S. embassy, Port au Prince, 13 July 2011; senior staff, Kay Jistis, Cité Soleil, 20 July 2011; senior official, IOM, Tabarre, 22 July 2011.

<sup>44</sup> Florence Elie, ombudsman for two years, has deployed nine representatives to jurisdictions with most pressing needs and four to main border crossing points. She seeks funding for improved monitoring of justice of the peace courts. Crisis Group interview, ombudsman, Port-au-Prince, 5 July 2011.

<sup>45</sup> Crisis Group interviews, prison monitors, Port-au-Prince, 27 July 2011; senior HNP officials and human rights monitors, Cap Haïtien and Fort Liberté, 8 July 2011.

<sup>46</sup> The 300 recruits graduated in the 22nd police class in May. Other training was supported by UNDP and MINUSTAH's corrections unit. Crisis Group interviews, senior HNP command, Tabarre, May-June 2011; corrections unit, 27 July 2011.

<sup>47</sup> See [www2.ohchr.org/english/law/indjudiciary.htm](http://www2.ohchr.org/english/law/indjudiciary.htm).

<sup>48</sup> Creole is used increasingly in court proceedings and core legal texts; all new laws are published in both French and Creole.

<sup>49</sup> "Haiti Earthquake PDNA: Assessment of damage, losses, general sectoral needs", March 2010, [www.cirh.ht](http://www.cirh.ht), p. 5. Crisis Group interviews, senior member, Port-au-Prince Bar Association, Delmas, 31 August 2011; senior government official, Pétiion-Ville, 26 August 2011.

<sup>50</sup> The justice and public security ministry provides counsel and legal aid but lawyers are usually young, fresh out of school or interns. Additionally, because of distrust of the justice system, many defendants still refuse legal counsel they do not personally pay. Crisis Group interviews, senior staff, Kay Jistis, Cité Soleil, 20 July 2011; Haitian lawyer, Pétiion-Ville, 20 July 2011; senior officials, Union of South American Nations (UNASUR).

<sup>51</sup> ILAC is a non-profit umbrella organisation registered under Swedish Law whose membership is open to non-governmental and other organisations interested in promoting the rule of law, including but not limited to: national, regional and international bar associations and similar bodies and human rights organisations. See [www.ilac.se](http://www.ilac.se).

money ran out, the Union of South American Nations (UNASUR) budgeted \$1.3 million for the project through January 2012.<sup>52</sup> The goal is to install and equip twenty legal aid offices across the country, one for each of the eighteen legal jurisdictions, plus two additional ones in Port-au-Prince. Bar associations are meant to provide an experienced attorney to supervise the work of recent graduates and interns and serve as lead counsel at trials.<sup>53</sup> In two years, the program had handled some 8,000 cases and led to the release from detention of at least half that number.<sup>54</sup> Each office costs approximately \$60,000 yearly. The challenge is to gradually transfer responsibility to the government and institutionalise it through legislation, backed by appropriate resources.<sup>55</sup>

Exclusion from the justice system, as noted, affects both rural areas and the sprawling urban slums. A former Haitian judge said that close proximity usually helps urban populations obtain more effective access to the judicial system, but not in Haiti.<sup>56</sup> Justices of the peace are located in the small and mid-sized municipal urban centres, so most rural areas, particularly the distant ones, are almost completely devoid of judicial services. The urban slums often do not have even justices of the peace. The USAID-funded Haiti Stabilization Initiative (HSI), implemented by the International Organisation for Migration (IOM) in partnership with PRO-Justice, has been facing enormous difficulties to provide roving justice services to Martissant, one of the most dangerous and populous urban slum areas.<sup>57</sup> Despite consent from the justice and public security ministry to deploy a justice of the peace at least once monthly, judges are allegedly hesitant to go there due to security concerns or logistic and financial constraints.<sup>58</sup>

While construction and repair of a significant number of buildings for justices of the peace is part of post-quake reconstruction, full functioning of the Academy for the Training of Judges (Ecole de la Magistrature, EMA) awaits installation of the CSPJ, whose chair will also head the

Academy administration board. Currently, there is a justice of the peace court manned by at least one justice in each of the 140 municipal centres across the country, but the rural population must still travel long distances.

Reforms are being considered to suspend their policing role to ensure justices of the peace spend more time hearing cases.<sup>59</sup> Paul Denis, former justice and public security minister (November 2009-May 2011) under the Préval presidency, intensified efforts in 2010 to bring the system closer to the population by installing thirteen annexes to justice of the peace courts in the most distant rural communities of three departments.<sup>60</sup> Population response is reportedly exceptional, with full agendas, particularly on market days. Before the quake, the USAID rule-of-law program launched a pilot project of roving justices of the peace in 82 rural communities to promote dispute resolution and provide legal education. The USAID-financed Kay Jistis legal assistance centre in Cité Soleil continues to support conflict-solving by justices of the peace. Other Port-au-Prince slums and major cities need similar projects.

#### IV. REFORMS: STALLED

Three important justice reform laws were passed in 2007:<sup>61</sup> (a) on the status of magistrates, stipulating the criteria for the appointment of judges and the conditions of their tenure; (b) on the establishment of the Superior Judiciary Council (CSPJ), charged with monitoring the performance of judges and making recommendations on merit-based appointments; and (c) on the functioning of the EMA, outlining the basic and continuing education and training requirements for judges, court officials and prosecutors.

However, failure by President Préval and his three successive prime ministers to put the CSPJ in place left reforms on hold for almost four years. Préval's concern that the Senate would produce corrupt, politically-tied or incompetent names led to his failure to act on its nominations, even for chief justice of the Supreme Court.<sup>62</sup> President

<sup>52</sup> UNASUR member states are examining the possibility of continued funding. Crisis Group interview, senior officials, UNASUR, Pétion-Ville, 23 September 2011.

<sup>53</sup> Ibid; Crisis Group interview, senior member, Port-au-Prince Bar Association, Delmas, 31 August 2011.

<sup>54</sup> "Important ILAC Breakthrough in Haiti", [www.ilac.se/](http://www.ilac.se/).

<sup>55</sup> "Haiti Government to Take over ILAC Legal Aid Program", ILAC, 2009, [www.ilac.se/](http://www.ilac.se/). The government reportedly committed to fund 20 per cent of the budget starting in 2009 and the entirety by 2014. A legal aid law has been prepared but not yet submitted to parliament. Crisis Group interview, senior government official, Pétion-Ville, 26 August 2011.

<sup>56</sup> Jean Sénat Fleury, "The Challenges of Judicial Reform in Haiti" (English translation), 2009, [www.hurah-inc.org](http://www.hurah-inc.org).

<sup>57</sup> Crisis Group interviews, senior official, IOM, Martissant, 30 July 2011 and phone interview, 12 October 2011.

<sup>58</sup> Ibid.

<sup>59</sup> Justices of the peace are both judges and judiciary (investigative) police officers. Draft Criminal Procedure Code changes would eliminate the second function. Crisis Group interview, senior government official, Pétion-Ville, 26 August 2011.

<sup>60</sup> Crisis Group interviews, senior official, Rule of Law, MINUSTAH, Tabarre, 20 July 2011; senior government official, Pétion-Ville, 26 August 2011. See also "Observations générales sur le fonctionnement de l'appareil judiciaire au cours de l'année 2010-2011", RNDDH, 30 September 2011. The departments are Centre, North West and Grand Anse.

<sup>61</sup> Crisis Group Report, *Reforming Haiti's Security Sector*, op. cit.; *Le Moniteur*, no. 112, 20 December 2007.

<sup>62</sup> Crisis Group interview, senior government officials, Pétion-Ville, 10 May 2011.

Martelly initially seemed to share those concerns, returning a list for vacant Supreme Court seats to the Senate.<sup>63</sup> But days later, after talks with the Senate, he appointed the chief justice and one judge from that list.<sup>64</sup>

After the earthquake, the Préval-Bellerive administration identified key short- and long-term justice sector priorities.<sup>65</sup> These essentially built on pre-existing rule-of-law initiatives, including reconstructing, refurbishing and equipping the justice and public security ministry, courthouses, police stations and other security and justice sector infrastructure; accelerating implementation of the three 2007 laws to boost judicial independence; restructuring the ministry so it can properly oversee reform; continuing to pursue amendment of the Penal and Criminal Procedure Codes and a host of actions needed to accompany them. During its sixteen post-quake months in office, the Préval-Bellerive government, with international assistance, focused on providing transitional facilities to replace the damaged or destroyed courthouses and other infrastructure.<sup>66</sup> The process to amend the codes, led by former justice and public security minister René Magloire, also continued. The Martelly transition team announced the intention to fully respect separation of judicial and executive powers as the basis for further justice reforms.

## A. KEY APPOINTMENTS

The most criticised aspect of the justice system's dysfunction has been the lack of judicial independence. The justice and public security ministry has filled the judiciary oversight vacuum, managed the justice system's budget and practically acted as the judiciary's boss. This has resulted in constant meddling by the executive in cases and in some instances the appointment of judges or prosecutors based on political ties to the executive, legislature or political parties rather than objective criteria of qualifications and experience. In 2005 the interim Boniface Alexandre-Gérard

Latortue government dismissed three Supreme Court judges appointed in the presidency of Jean Bertrand Aristide. Préval, on taking office in 2006, declared that the three had been appointed unconstitutionally and refused to recognise them.<sup>67</sup>

The Supreme Court, which has seldom functioned to its full capacity, is required by law to establish a special chamber for disciplining judicial personnel. Reports of such action, however, are rare.<sup>68</sup> In June 2011, Arycidas (Harycidas) Auguste was removed as prosecutor of the Port-au-Prince district court after he allegedly stood by while Serge Démosthène was mistreated during interrogation at the Pétion-Ville police station. Démosthène later died, reportedly from injuries sustained as a result of police brutality.<sup>69</sup> Auguste allegedly remains in the judiciary and could be reassigned.<sup>70</sup> Sonel Jean-François, his interim successor, was removed on 31 August for abuse of power by outgoing Prime Minister (and acting justice and public security minister) Bellerive.<sup>71</sup> It is unclear whether this was a case of executive interference in judicial affairs or a fair disciplinary action. A Judiciary Inspection Unit (JIU) under the justice and public security ministry has been staffed by interns or recent graduates, lacks resources and prestige, and not been given the authority to carry out its crucial task.<sup>72</sup>

The 2007 law mandated that the CSPJ be established, similar to French and Latin American judicial oversight bodies, responsible for appointment, evaluation, promotion and discipline of judges and independent of the other branches of government. In those countries, the institution is designed to insulate the judiciary from undue ex-

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<sup>63</sup> Alphonse Roberson, "Haïti: Martelly renvoie le Sénat à ses dossiers", *Le Nouvelliste*, 26 September 2011.

<sup>64</sup> Crisis Group, phone interview, senator, 10 October 2011. Claude Gilles, "Un président à la tête de la Cour de cassation", *Le Nouvelliste*, 5 October 2011. Anel Alexis Joseph, former chief justice of the Port-au-Prince Appeals Court, was named chief justice of the Supreme Court on 5 October. Jean Louis J. Mécène, ex-Gonaïves Appeals Court judge, was appointed a justice.

<sup>65</sup> See "Haiti Earthquake PDNA", op. cit., p. 11; "Action Plan for Reconstruction and Development" (Plan d'action pour la reconstruction et le développement national, PARDN), www.cirh.ht, p. 45.

<sup>66</sup> This included sharing facilities in some instances. The Supreme Court functioned in part at the EMA. The district and appeals courts of Port-au-Prince functioned in the old USAID building in downtown Port-au-Prince. Crisis Group interview, senior official, Supreme Court, Pétion-Ville, 8 September 2011.

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<sup>67</sup> Crisis Group interview, senior government official, Pétion-Ville, 10 May 2010. The judges were dismissed following a controversial ruling in favour of including Dumarsais Siméus on the 2006 presidential ballot, who had been previously rejected by the electoral commission. "L'ancien président Boniface Alexandre sort de son silence", Radio Vision 2000.

<sup>68</sup> There is reportedly a complaint before the Supreme Court against a nominee on the Senate's list for physical aggression against a prosecutor. Crisis Group interview, senior Haitian justice official, Tabarre, 9 August 2011.

<sup>69</sup> Crisis Group interview, senior human rights monitor, Port-au-Prince, 22 July 2011.

<sup>70</sup> See "Observations générales", RNDDH.

<sup>71</sup> Jean-François was reportedly dismissed because he sought to interrogate interior ministry personnel on an RNDDH report on alleged corruption within the ministry. Alphonse Roberson, "Haïti: Bellerive révoque le commissaire du gouvernement, le RNDDH voit rouge", *Le Nouvelliste*, 1 September 2011.

<sup>72</sup> The unit is mostly staffed by interns or young graduates, who are not provided adequate training or the resources to carry out their tasks. Lack of transportation often kept them out of the field. Crisis Group interviews, senior Haitian lawyers, Pétion-Ville, 22 July 2011; Delmas, 31 August 2011.

ternal influence,<sup>73</sup> but no such body has ever functioned in Haiti, where all tasks associated with judicial councils have been performed by the ministry, under the prime minister, and with obvious opportunity for executive meddling. The JIU, which in some countries acts in tandem with the judicial council to evaluate and discipline judges, has never been effective. Low wages, insecure tenure and lax oversight leave judges susceptible to bribes, and lack of security to threats and attacks.

Political obstacles have impeded formation of key judicial bodies.<sup>74</sup> Two sets of appointments have long been needed to initiate judiciary reform: chief justice of the Supreme Court and the eight other members of the CSPJ, which he is to head. His chair was vacant from 2004 when Boniface Alexandre left to become the interim president after Aristide's departure until Martelly named Anel Alexis Joseph, a former chief justice of the Port-au-Prince Appeals Court, in early October 2011. It remains necessary to update the list of other potential CSPJ members that was vetted in 2008 and considered acceptable at the time by most observers and to make the appointments.<sup>75</sup>

President Martelly seeks to fill all six Supreme Court vacancies. The constitution requires him to select from the list submitted by the Senate in September of eighteen candidates in groups of three for each vacant seat. Some legal experts and human rights monitors have suggested that at least eleven of the candidates do not meet the academic and professional requirements, including ten years' experience as judge or lawyer.<sup>76</sup> In addition to Chief Justice Joseph, the president has only named Jean Louis Mécène, a former Appeals Court judge in Gonaïves. How the process will proceed remains unclear, but reportedly he and the Senate agree that it must be completed.<sup>77</sup>

The CSPJ's role is a double one: to impose disciplinary sanctions against judges and oversee a new judicial career path. Naming its members is the first step, but rendering it functional, with adequate staff and resources, is equally crucial. Two structures are needed for it to get to work promptly: the administrative division and the inspection division for judges. A line has been included for the CSPJ

in the national budget since 2010,<sup>78</sup> with funds to be available as soon as the council is named, vetted and sworn in. The initial period will be difficult; quick results should not be expected. To avoid needless criticism, the CSPJ should consult widely before it sets regulations, so as to ensure that current judges, the bar and civil society, as well as political leaders, are aware of what it plans and why. While it will have financial independence, truly avoiding politicisation and guaranteeing its independence will be an ongoing challenge.

## B. LEGAL REFORMS

Haiti inherited the five classic Napoleonic Codes. The penal and criminal procedure codes, virtually unchanged in nearly two centuries, have contributed significantly to the justice system's dysfunction.<sup>79</sup> More than 165 legal or administrative provisions are not relevant to the current context.<sup>80</sup> Code revision began in 2009 with a team of Haitian experts and international technical and financial support, particularly from the U.S. Institute for Peace (USIP).<sup>81</sup> The underlying goal, patterned on USIP's Model Codes Project, has been to ensure more guarantees for defendants and speedier procedures so as to fix the problems of case backlog, prolonged pre-trial detention and limited access.<sup>82</sup> Due process, however, must not be compromised in the attempt to reduce the backlog.

The arduous process to categorise and refer cases for investigation and trial based on the Criminal Procedure Code, previously described, will require thorough review and modifications, in order to ease the burden on the prosecution and the courts and eventually the prisons. Revisions proposed seek to re-classify criminal acts, reducing certain misdemeanours to petty offences.

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<sup>73</sup> Bolivia, Colombia, Ecuador, Guatemala, Mexico and Peru have already undergone similar reforms. National structures vary considerably, but all have made serious attempts to establish mechanisms to safeguard judicial independence through more transparent and democratic career guarantees.

<sup>74</sup> Crisis Group Report, *Reforming Haiti's Security Sector*, op. cit.

<sup>75</sup> Crisis Group interviews, senior government officials, Port-au-Prince, March and May 2010; Pétion-Ville, 7 September 2011.

<sup>76</sup> Crisis Group interviews, legal expert, UN, Tabarre, 23 September 2011; senior official, national human rights group, Pétion-Ville, 8 September 2011.

<sup>77</sup> Crisis Group phone interview, senator, 10 October 2011.

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<sup>78</sup> Crisis Group interviews, senior government official, Pétion-Ville, 26 August and 7 September 2011.

<sup>79</sup> Ibid. René Magloire, former justice and public security minister, presentation, "Legal Reform in Haiti", panel discussion, U.S. Institute of Peace (USIP), April 2010; also "Frontline, Battle for Haiti", op. cit.

<sup>80</sup> Crisis Group interviews, senior government official, Pétion-Ville, 26 August and 7 September 2011.

<sup>81</sup> The team was led by René Magloire, justice and public security minister (June 2006-April 2008) under Préval. Ibid.

<sup>82</sup> The USIP project, launched in 2001 with the Irish Centre for Human Rights, the UN High Commissioner for Human Rights (HCHR) and the UN Office on Drugs and Crime (UNODC), was to provide guidance to countries coming out of conflict and seeking justice reform as part of peace-building. Vivienne O'Connor and Colette Rausch, "Model Codes for Post-Conflict Criminal Justice: Model Code of Criminal Procedure", USIP, 2008. Crisis Group interviews, senior team member, Pétion-Ville, 26 August, 7 September 2011; senior official, Rule of Law section, MINUSTAH, Tabarre, 20 July, 23 September 2011.

The reform of criminal procedure is part of a substantial shift from an inquisitorial to an accusatorial system, similar to what has been done in many Latin American countries over the past 25 years. One proposal is to suppress the investigative judge phase of the investigation. Current procedures allow the judge three months for his inquiry, which he rarely respects, thus compounding the already slow categorising and referral phase conducted by the prosecutor.<sup>83</sup> The amendments not yet sent to parliament would put investigations solely in the hands of the prosecutor's office, assisted by the judiciary police (the HNP's criminal investigation unit). Elimination of the judge's inquiry would also increase the opportunity to collect evidence at fresher crime scenes. Because judges often receive cases weeks after an offence has been committed, that opportunity is frequently minimised or lost entirely. Nonetheless, a new supervising judge would be introduced who would be in charge of issuing warrants, including for searches, electronic surveillance and orders for provisional detention.<sup>84</sup>

The accusatorial system is intended to give a defendant more protection, make provisional detention an exception and add a layer to the authorisation of warrants. Judge and prosecutor would have to agree on any provisional detention or warrant. Eliminating the judge's investigation and thus giving more weight to the prosecutor's work would also put more responsibility on the state to meet the constitutional requirement it has had since 1987 to provide legal assistance and counsel to indigent defendants. Given that the majority of the population lives in deep poverty, this could challenge the strained economy.<sup>85</sup> New tensions could be added within the penal chain if the police resist a weakening of their powers. The multiple, simultaneous, thus confusing responsibilities given prosecutors and investigating judges also need to be addressed, as does the HNP role in investigating crime and preserving evidence. These have made relations between judges, prosecutors and police historically problematic, as each has sought to work as an individual institution, not necessarily a component of a single system.

A more traditional school of thought argues that elimination of the investigative judge's inquiry and giving full responsibility for investigations to the prosecutor could facilitate executive interference, as prosecutors would remain under the influence of the justice and public security ministry. Indeed, success of the accusatorial system relies on prosecutors being fully independent. A law on the func-

tioning of the prosecutors' office is being drafted, which foresees creation of the post of attorney general to oversee investigations and the careers of prosecutors.

The idea of moving to an accusatorial system is good in itself but hardly sufficient.<sup>86</sup> The system must not be introduced in parts, thus leaving room for impunity to take deeper root.<sup>87</sup> Accompanying reforms must be rapidly implemented to guarantee independence of the prosecutor's office; transfer the investigatory competence to the prosecutors and subordinate the police to them; put in place the supervising judge and create independent, well-funded public defenders, beyond the influence and control of judges and prosecutors. Many of these are being drafted, including to make the prosecutors' office independent of the justice and public security ministry.<sup>88</sup>

The accusatorial system would provide for a guilty plea and plea-bargaining. There is some agreement that the guilty plea could help speed up procedures without creating major difficulties. Plea-bargaining is being encouraged to provide incentives to lesser offenders to contribute evidence to corruption prosecutions of senior officials or rogue police officers.<sup>89</sup> It is also viewed as an opportunity to avoid trials, which could be exploited by those with financial power.<sup>90</sup> It has presented a challenge across the globe for civil law systems, which have difficulty conceiving of justice as meted out via mechanisms negotiated by the parties. Traditionally guilty pleas were not admissible, since judges made the ultimate determination of guilt or innocence. Nevertheless, nearly all civil law systems have eventually found ways to admit plea-bargaining and guilty pleas so as to adapt to the realities of rising crime and prevent case backlog.<sup>91</sup> Haiti faces both realities.

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<sup>86</sup> The accusatorial system allows the prosecution to lead criminal investigations, unlike the inquisitorial system in which it may only provide an opinion and later bring a charge, but not otherwise participate in the investigation.

<sup>87</sup> Crisis Group email exchange, international legal expert, 27 September 2011.

<sup>88</sup> Though the budget of the prosecutor's office would be within the justice and public security ministry, the structure of the office would be autonomous, with an attorney general responsible for its administration. Crisis Group interviews, senior team member, Pétion-Ville, 26 August and 7 September 2011; senior official, Rule of Law section, MINUSTAH, Tabarre, 20 July and 23 September 2011.

<sup>89</sup> Crisis Group Briefing, *Haiti: Justice Reform and the Security Crisis*, op. cit., p. 5.

<sup>90</sup> Crisis Group interviews, senior official, Rule of Law section, MINUSTAH, Tabarre, 20 July and 23 September 2011; senior member, Port-au-Prince Bar Association, Delmas, 31 August 2011.

<sup>91</sup> Crisis Group Briefing, *Haiti: Justice Reform and the Security Crisis*, op. cit., p. 5.

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<sup>83</sup> Crisis Group interviews, senior government official, Haitian lawyer, Pétion-Ville, 26 August 2011, 20 July 2011.

<sup>84</sup> Crisis Group interviews, senior team member, Pétion-Ville, 26 August and 7 September 2011.

<sup>85</sup> Crisis Group interviews, senior international legal experts, Tabarre, 23 September 2011; email communication, 26 September 2011.

Another mechanism usually introduced in these reforms would allow the prosecutor to exclude a person from a criminal investigation for a number of reasons, including the relevance of the offence vis-à-vis the investment in time and resources in the investigation. This would enable prosecutors to exercise greater flexibility in determining whether to pursue an indictment against petty offenders.

The planned reforms would be very expensive and take a long time to deliver results. Successful implementation of the codes and accompanying laws would require significant investments in personnel, material and financial resources. This also demands more capacity to handle physical evidence, such as forensics, departing from the previous dependence on written statements and documents. Training would be required for all judicial actors, including the law schools. Infrastructure, in particular, would pose great difficulties. Adjustments to court structures would be necessary to accommodate the new style of trials. In many countries that have undergone similar change, the public is disappointed with what it perceives as growing impunity, because the system is “on the side of the criminals”. But Haiti has to move forward progressively and with strong, long-term support from and engagement with donors.

### C. JUDICIAL CAREER

Years of political appointments by the justice and public security ministry have contributed to system dysfunction. The lack of training and skills of lawyers and judges has been one of the most persistent problems. A 1995 decree requires all judges to have either a law degree (*licence en droit*) or a diploma from the EMA established that same year. But many possess no legal education or training. This is most common among justices of the peace, the lowest ranking judges, who work in the municipalities. Their efficiency is vital to the overall operation and image of the system, as they are the first, and frequently the only entrance gate to judicial services for the population. After graduating three classes, the EMA closed in 2004. It resumed in 2009, was interrupted by the earthquake, reopened some months later, but is not yet at full capacity.

Twenty student judges, who received ten months training in France, are completing the in-country six-month EMA training to satisfy their diploma requirements.<sup>92</sup> Training involving a mix of judicial actors is also being encouraged to promote cohesion. From 29 August to 2 September 2011, twenty police officers and twenty prosecutors

studied investigative techniques for narcotics and money laundering.

The constitution seeks to provide bottom-up participation by and shared responsibility of the executive and legislative in appointment of judges. All are selected by the president. Each of the twelve Supreme Court judges, as noted above, is chosen from a list of three submitted by the Senate. The second rank of judges (courts of appeal), as well as the third rank (district or first instance) are selected from a list submitted by the departmental assemblies. Justices of the peace are named from a list prepared by the municipal assemblies.<sup>93</sup> The prime minister appoints prosecutors, who represent the executive, based on a justice and public security ministry proposal.<sup>94</sup>

The municipal and departmental assemblies, which represent the legislative branch at the lower level, are supposed to be put in place by indirect elections, but these have never been held. Their complex process and the absence of a legal framework for their organisation have consistently stalled efforts. This gave the executive the liberty to unilaterally name and dismiss judges. Under the Latortue interim government (2004-2006), three Supreme Court judges were dismissed.<sup>95</sup>

Provisions related to salary regulations under the 2007 law establishing standards for judges have been applied, but all others, including for recruitment, promotions and dismissals, depend on the CSPJ becoming functional. Full implementation of its legislation would be a major step toward strengthening rule of law. It foresees two forms of admission to the bench: competitive exams organised by the EMA and direct integration. The first is straightforward. Examinations would be open to candidates from all geographic departments aged 23 to 50 and judged by legal professionals, civil society representatives and other experts in accordance with provisions outlined in the EMA law and internal regulations.<sup>96</sup> Direct integration would replicate the basic principles of the bottom-up approach outlined in the conditions for the nomination of all judges below the Supreme Court.

<sup>92</sup> Crisis Group interviews, senior official, EMA, June, August and September 2011. The training in France was made possible by UNDP and MINUSTAH support.

<sup>93</sup> Constitution, Article 175; “Loi portant statut de la magistrature”, *Le Moniteur*, no.112, 20 December 2007, Articles 7-11.

<sup>94</sup> See “Loi portant”, op. cit., Article 13.

<sup>95</sup> The judges were dismissed following a controversial ruling in favour of including Dumarsais Siméus on the 2006 presidential ballot, who had been rejected by the electoral commission. “L’ancien président Boniface Alexandre sort de son silence”, Radio Vision 2000.

<sup>96</sup> For instance, twenty students were selected from a pool of 600 in July 2010 for a sixteen-month training program (ten in France, six in Haiti). Crisis Group interviews, senior official, EMA, Pétion-Ville, June, August and September 2011.

Efforts must be undertaken to hold the indirect elections following the pending local and municipal elections if judicial independence is to be strengthened.<sup>97</sup> No date has yet been announced, but technical consultations with the operational arm of the Provisional Electoral Council and international technical assistance partners are taking place.

Likewise, implementation of the law would standardise promotions based on fairness and curtail arbitrary career advancements generally perceived as political appointments. The CSPJ is to be responsible for promotions of judges based on reports on their professional service published yearly in the official gazette, *Le Moniteur*. Tenure is guaranteed until expiration of term or retirement.<sup>98</sup> Those on the Supreme and Appeals Court have ten-year renewable terms, those on first instance courts, seven-year renewable terms.<sup>99</sup> Standards, if applied as provided in the 2007 law, which are, in general, in line with the UN Basic Principles on the Independence of the Judiciary and the Constitution, would go a long way to improve performance and strengthen judicial independence.<sup>100</sup>

However, the 2007 law does not update the framework for the recruitment, training and general career of judicial and prosecutorial support staff, such as clerks, registrars, bailiffs and warrant servers.<sup>101</sup> The salaries of court personnel, such as clerks and registrars, are said to be but 10

per cent of those of judges.<sup>102</sup> Post-quake, court clerks and registrars had added tasks, such as classifying documents recovered from collapsed court facilities, but continued to earn approximately \$275 monthly.<sup>103</sup> Human rights monitors who follow court proceedings report a considerable number of absences among support staff due to dissatisfaction with work conditions.<sup>104</sup> It has not been uncommon for judicial personnel, like other public servants, to go without pay for months, thus increasing their vulnerability to corruption and intimidation.<sup>105</sup>

Regulating the work of these personnel could also contribute to improved system performance, as their role relates directly to categorising, referral and management of cases. Re-examination of the role of court clerks and their improved work conditions was part of the discussions at a recent retreat on justice reform organised by the justice and public security ministry.<sup>106</sup> A committee was formed to draft a law regulating the functioning of recorders and possibly other judicial support staff.

## V. IMPROVING JUSTICE REFORM

Haiti needs an integrated plan for justice reform that takes into account pending key appointments, legal reforms, laws to render these reforms applicable and institution building to ensure the primary judicial bodies are fully operational. Vital to its success would be integration of three elements: ongoing training for judicial actors across the board, civic education for the population and coordination of continued, sustained international support.

### A. NEW GOVERNMENT STRATEGY

On 23 September, President Martelly declared at the UN General Assembly that stability requires construction of the rule of law, and this necessitates a strong, independent and responsible justice system. While he regularly identifies rule of law as one of his priorities, putting it into practice is the challenge. The justice and public security ministry, with international assistance, has developed a strategy

<sup>97</sup> Discussions on holding local and municipal elections as well as for a third of the Senate are taking place in government circles. In addition to the apparent need for a new council to organise the vote, several technical undertakings will be necessary, particularly for the local elections. Crisis Group interview, senior government official, Pétion-Ville, 23 August 2011. A draft law on the framework for the elections submitted to parliament on 11 May 2009 has scarcely been considered.

<sup>98</sup> The constitution forbids dismissal of judges except for legally asserted misprision; suspension is permitted only on criminal charges, and termination of service during a term only for mental or physical incapacity, Article 177.

<sup>99</sup> “Loi portant statut de la magistrature”, op. cit., Articles 14-16. Judges not renewed are to be kept in a recruitment reserve database.

<sup>100</sup> See [www2.ohchr.org/english/law/indjudiciary.htm](http://www2.ohchr.org/english/law/indjudiciary.htm). The principles on tenure include the term of office of judges, their independence, security, remuneration, conditions of service, pensions and the age of retirement. Judges, whether appointed or elected, are to have guaranteed tenure until a mandatory retirement age or expiration of their term; promotion, where such a system exists, should be based on objective factors, in particular ability, integrity and experience; assignment of cases within the court is an internal administrative matter.

<sup>101</sup> The 1995 “Decret relatif à l’organisation judiciaire” outlines some provisions for administrative careers – education requirements for clerks at each level, for instance – but conditions for nomination and promotion are unclear.

<sup>102</sup> An appeals court judge reportedly earns \$2,250. “4ème journée de grève des greffiers et huissiers”, Radio Metropole, 16 April 2010.

<sup>103</sup> Ibid.

<sup>104</sup> Crisis Group interviews, human rights monitors, Gonaïves, Fort Liberté and Cap Haïtien, 7-9 July 2011.

<sup>105</sup> Two deputy prosecutors of the district court of Jacmel went on a two-week strike in February 2011 demanding payment of salaries fifteen months late. “Jacmel: Haute tension au sein de la justice”, Radio Nouveau Monde, 25 February 2011.

<sup>106</sup> Crisis Group interviews, retreat participants, Pétion-Ville, 7 September and Tabarre, 23 September 2011.

whose implementation is aligned with fiscal years (1 October-30 September). It is expected to put justice reform, which has shown no substantial progress since 2007, back on track. However, it will require concerted efforts and strong political will to move beyond the blueprint. Progress has already been hampered by delays in the formation of a new government.<sup>107</sup>

Implementation is meant to be in four phases. The first and second focus on separation of state branches and strengthening judicial independence. But only two of the six vacant Supreme Court seats have been filled, a situation that has prevented proper functioning of the Supreme Court, the CSPJ and the Magistrates' School for over four years. The third phase concentrates on access to justice by opening the revised Penal and Criminal Procedure Codes to assessment by a committee of national and international legal experts, accompanied by a public information campaign. The fourth phase is meant to include adoption of the revised codes, as well as standards for court assistants and re-organisation of the legal profession.

Successful implementation of this four-phase calendar would go far toward consolidating judicial independence and strengthening the fight against corruption. There is a general public perception that releases of detainees result from political influence and bribes. Justice reform is not a technical exercise but rather highly political, and it is being pursued within Haiti's zero-sum game politics.<sup>108</sup> An early test for Martelly is to build consensus and political will around the reform initiatives. The international community must also make this a top priority and anticipate considerable resistance from the spoilers who see justice reform as a threat. While most political actors agree that reforms are necessary, accord on the details is still pending.<sup>109</sup> It is crucial to enhance a legal culture that protects judges from external influence and ensures public trust in the credibility and accessibility of the system. The new government should determine and publicise a way forward, with a clear calendar for completing evaluation, parliamentary approval and implementation.

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<sup>107</sup> Crisis Group interviews, senior member, Martelly transition team, Port-au-Prince, 27 July 2011; senior UN official, Tabarre, 22 July 2011. Parliament has rejected two of Martelly's prime minister nominees: Daniel Gérard Rouzier in June and Bernard Gousse in August. Crisis Group Briefing, *Keeping Haiti Safe*, op. cit. His third nominee, Garry Conille, was approved on 4 October after protracted negotiations. "Le Premier Ministre ratifié salue le vote des parlementaires, le support de la Présidence et le courage du peuple haïtien", press release no. 1, prime minister's office, 5 October 2011.

<sup>108</sup> Crisis Group phone interview, international legal expert, 15 July 2011.

<sup>109</sup> Crisis Group interviews, senior member, Port-au-Prince Bar Association, Delmas, 31 August 2011; senior Haitian official, Pétiou-Ville.

## B. KEEPING ORGANISED CRIME IN CHECK

Crime structures are better organised than the justice sector, with more knowledgeable lawyers who can negotiate charges, particularly if plea-bargaining is introduced into the Criminal Procedure Code. Because criminal records are poorly handled, without links between jurisdictions, there are virtually no conviction records other than those kept by correctional authorities and no connections between that database and the courts or police. There is no system to determine whether a suspect is wanted elsewhere or has a prior record. This helps criminals move freely around or out of the country and is a significant obstacle to fighting organised crime.<sup>110</sup>

The Judicial Police, responsible for good character certificates, have no reliable basis to determine whether an applicant has a previous conviction. A reform foreseen in the revised code would create an automated biometric records system to link police records and information from prisons, courts, prosecution, immigration, and National Revenue and national ID cards but would also require technical support, such as for fingerprinting, that is not in place. If this reform proceeds, it must be developed in a manner protective of civil liberties.

A second gap favourable to organised crime is the lack of protection for judges, prosecutors and witnesses involved with sensitive cases.<sup>111</sup> Threats from those seeking to influence criminal trials are not rare. There is no witness protection program and little security at court hearings (in some cases, none).<sup>112</sup> Prosecution witnesses, even in cases of not very serious crimes, often do not appear, leading to postponements. This absence is not only due to security but also to insufficient awareness of civic responsibility and workers' concerns about losing their jobs when attending hearings.<sup>113</sup>

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<sup>110</sup> Amaral Duclona, a notorious Cité Soleil armed gang leader who had escaped arrest during the 2006-2007 HNP-MINUSTAH anti-gang operations and was wanted by the HNP for the killing of a French honorary consul, Paul-Henri Moural, in 2005, was arrested by Dominican security forces in 2009. "Le chef de gang Amaral Duclona tombe dans l'escarcelle de la police dominicaine", Radio Kiskeya, 9 September 2009.

<sup>111</sup> The UN Basic Principles require that national law guarantee the security of judges to perform their duties.

<sup>112</sup> In some instances, judicial personnel or defendants, based on acquaintance with police, would call from private phones for help. Crisis Group interviews, human rights monitors, Gonaives, 7 July 2011; also "Observations générales", RNDDH, op. cit.

<sup>113</sup> A recent report lists several cases where witnesses and jurors failed to appear during the 2010-2011 criminal assizes. "Observations générales", RNDDH, op. cit.

### C. DONOR COORDINATION

A central goal of donor support for institutional reform since 1994 has been to create an integrated judicial system. However, projects in each of its components – police, justice and prisons – were undertaken in isolation of each other and never fully integrated. Donors are currently struggling to help local authorities improve the judiciary and the prisons to the point that they complement the performance of the police, who have gained a stronger grip on crime as a result of reforms and increased public confidence. The separate reform plans of those three institutions are not producing the synchronised action necessary for a coherent, efficient criminal system.<sup>114</sup> There has been in particular a tendency to focus overly on the HNP ever since President Aristide disbanded the army in 1995.<sup>115</sup> The equally important justice and prison components have yet to be addressed with the same vigour.<sup>116</sup>

A five-year HNP reform was launched in 2006, the first phase of which is expected to end in December 2011. Separate justice and prison reforms followed in 2007, neither of which were given the same priority or enjoy the same level of local buy-in or donor support. While the justice and public security minister signed off on them, the HNP plan is an official document between Haiti and the UN Security Council signed by then Foreign Minister Jean Rénald Clerismé and Secretary-General Kofi Annan.<sup>117</sup> While UN Security Council resolutions usually had explicit provisions regarding police reform, those about justice reform were vague.<sup>118</sup> MINUSTAH kick-started police reform, but justice and prison initiatives have always lagged. A senior justice and public security ministry official recently commented: “Each donor came with its own project” in the absence of an operational strategy and set calendar.<sup>119</sup> Now the ministry is putting together a strategy to address all three components and calling on donors to align aid with it.

A host of donors support justice reform. UNDP’s security sector program encourages a stronger criminal justice sys-

tem by reinforcing links with the police,<sup>120</sup> while MINUSTAH gives technical aid to improve judicial coordination.<sup>121</sup> The U.S. is the largest current funder: \$20 million for a five-year program to strengthen justice sector institutions, improve delivery of criminal justice services, better citizen access to justice and enhance control and oversight of the system.<sup>122</sup> Canada has given more than \$6 million to build and refurbish prisons and train and mentor correctional authorities.<sup>123</sup> These efforts helped keep the system working but are not the holistic approach systemic reform demands.

The country has some but not all the resources needed to push reform forward. Donor aid remains essential and welcomed by the authorities.<sup>124</sup> But donors must not work in an ad hoc, uncoordinated way, as so often on rule of law. They should always ask three questions: who is doing what; is it in line with the government’s strategy; and is it coordinated among donors and the government? Guidance should be sought from and provided by the government on how they can best assist in rebuilding and strengthening the justice system.

MINUSTAH needs to improve its role in coordinating rule-of-law assistance provided by the UN and others. Past justice reform efforts have failed due to lack of such coordination, strategic planning and a holistic approach, but the new government claims to have a plan and a calendar.<sup>125</sup> All donors should work with MINUSTAH and the government to fashion a revised five-year justice sector strategy covering police, prosecutors, judiciary and prisons. Once it is final, the Interim Haiti Reconstruction Commission (IHRC) should ensure that donor projects and the work of the Haiti Reconstruction Fund fit within it.

<sup>114</sup> Crisis Group interviews, Port-au-Prince, July-September 2011.

<sup>115</sup> Crisis Group interview, senior UN police (UNPOL) official, Pétion-Ville, 7 September 2009; also Charles T. Call, “UN Peace Operations and State-Building: A Case Study of Haiti”, Centre on International Cooperation, May 2009, [www.usip.org](http://www.usip.org).

<sup>116</sup> Crisis Group interviews, director, HNP training school, Tabarre, 9 June 2009; senior UNPOL official, Pétion-Ville, 7 September 2009.

<sup>117</sup> See “Haitian National Police Reform Plan”, UN Security Council, S/2006/726, 12 September 2006.

<sup>118</sup> UN Security Council Resolution 2012 (14 October 2011), which extended MINUSTAH’s mandate, however, also reiterated continued support for justice reform.

<sup>119</sup> Crisis Group interview, senior officials, justice and public security ministry, Port-au-Prince, 27 July 2011.

<sup>120</sup> UNDP is supporting the modernisation of the criminal justice registry system beginning with prisons. It has already installed an AFIS system to link all detention centres across the country. It is expected that this registry will also be linked with the police, prosecutors and the courts. Crisis Group interview, senior technical officer, rule of law program, UNDP/Haiti, Pétion-Ville, 13 October 2011. See also “Country Program Document for Haiti 2009-2011”, UNDP, December 2008.

<sup>121</sup> Report of the Secretary-General, S/2009/439, op. cit.

<sup>122</sup> Crisis Group interview, senior official, USAID, Tabarre, 25 June 2009. See also USAID Fact Sheet, op. cit. The program, which will run from 2009 to 2014, introduced Haiti’s first case registry and tracking system, tested in 25 pilot courts. The contract with USAID’s executing partner, however, was later terminated.

<sup>123</sup> Crisis Group interviews, senior official, START project, Delmas, 5 June 2009, March and May 2011.

<sup>124</sup> Crisis Group interview, senior justice and public security ministry officials, Port-au-Prince, 27 July 2011.

<sup>125</sup> Crisis Group interview, senior member, Martelly transition team, Port-au-Prince, 27 July 2011.

## **VI. CONCLUSION**

Decisive, swift headway with justice reform is vital for any sustainable solution to Haiti's political and economic, as well as security problems. The dysfunctional justice system has for too long impeded the democratic process. One capable of prosecuting, sentencing and punishing offenders, in particular those responsible for serious crimes, is urgently needed. Bold measures are necessary to combat the security risk represented by increased kidnappings and organised crime perpetrated by armed gangs. But turning the government's ideas into an integrated, institutional structure still requires innovative thinking and long-term attention.

Reforming the judiciary, prosecutors and prisons demands enormous political will from all three branches of the state and from civil society and the private sector, as well as significant technical and financial donor aid. The most immediate requirement is for President Martelly and the Senate to fill the remaining seats on the Supreme Court, so that the Superior Judiciary Council can be made operational. Measures must also be taken to build civic trust by providing opportunities for citizens to participate in the reform process. Opening the revision of the Penal and the Criminal Procedure Codes to broader consultation would be a starting point.

Another important and immediate requirement is for donors to support the strategy President Martelly's team presented to national and international experts in September, including implementation not only of the strategy but also of the corresponding schedule of interventions planned by the Haitian authorities. They should focus on advancing two objectives: building the credibility of the justice system and improving access to it.

Decades of failed, timid reform attempts have left impunity almost untouched. The lack of a comprehensive, legally mandatory, justice reform plan is a major obstacle to making changes in the country that are sustainable and that citizens perceive as benefiting them. The need now is to concentrate on four steps. First, fill all key judicial positions. Secondly, approve the revised codes and substantive legislation, particularly for the criminal justice system. Thirdly, implement these and pass complementary legislation. Finally, give the newly established institutions adequate human and financial resources. Haiti would thus demonstrate that a totally new chapter has been opened to secure justice for its people.

**Port-au-Prince/Bogotá/Brussels, 27 October 2011**

## APPENDIX A

### MAP OF HAITI



## APPENDIX B

### ABOUT THE INTERNATIONAL CRISIS GROUP

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**October 2011**

## APPENDIX C

### CRISIS GROUP REPORTS AND BRIEFINGS ON LATIN AMERICA AND THE CARIBBEAN SINCE 2008

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- Latin American Drugs I: Losing the Fight*, Latin America Report N°25, 14 March 2008 (also available in Spanish).
- Latin American Drugs II: Improving Policy and Reducing Harm*, Latin America Report N°26, 14 March 2008 (also available in Spanish).
- Colombia: Making Military Progress Pay Off*, Latin America Briefing N°17, 29 April 2008 (also available in Spanish).
- Bolivia: Rescuing the New Constitution and Democratic Stability*, Latin America Briefing N°18, 19 June 2008 (also available in Spanish).
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- Reforming Haiti's Security Sector*, Latin America/Caribbean Report N°28, 18 September 2008.
- Correcting Course: Victims and the Justice and Peace Law in Colombia*, Latin America Report N°29, 30 October 2008 (also available in Spanish).
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- Haiti: Saving the Environment, Preventing Instability and Conflict*, Latin America/Caribbean Briefing N°20, 28 April 2009.
- The Virtuous Twins: Protecting Human Rights and Improving Security in Colombia*, Latin America Briefing N°21, 25 May 2009 (also available in Spanish).
- Venezuela: Accelerating the Bolivarian Revolution*, Latin America Briefing N°22, 5 November 2009 (also available in Spanish).
- Uribe's Possible Third Term and Conflict Resolution in Colombia*, Latin America Report N°31, 18 December 2009 (also available in Spanish).
- Haiti: Stabilisation and Reconstruction after the Quake*, Latin America/Caribbean Report N°32, 31 March 2010.
- Guatemala: Squeezed Between Crime and Impunity*, Latin America Report N°33, 22 June 2010 (also available in Spanish).
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- Colombia: President Santos's Conflict Resolution Opportunity*, Latin America Report N°34, 13 October 2010 (also available in Spanish).
- Haiti: The Stakes of the Post-Quake Elections*, Latin America/Caribbean Report N°35, 27 October 2010.
- Learning to Walk without a Crutch: The International Commission Against Impunity in Guatemala*, Latin America Report N°36, 31 May 2011 (also available in Spanish).
- Guatemala's Elections: Clean Polls, Dirty Politics*, Latin America Briefing N°24, 17 June 2011 (also available in Spanish).
- Post-quake Haiti: Security Depends on Resettlement and Development*, Latin America Briefing N°25, 28 June 2011.
- Cutting the Links Between Crime and Local Politics: Colombia's 2011 Elections*, Latin America Report N°37, 25 July 2011 (also available in Spanish).
- Violence and Politics in Venezuela*, Latin America Report N°38, 17 August 2011 (also available in Spanish).
- Keeping Haiti Safe: Police Reform*, Latin America/Caribbean Briefing N°26, 8 September 2011 (also available in French).
- Guatemala: Drug Trafficking and Violence*, Latin America Report N°39, 11 October 2011.

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