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Providing Justice in Haiti

Summary

- In spite of the Haitian government's stated priority of improving rule of law, a Haitian court's decision not to prosecute former dictator Jean-Claude Duvalier for crimes against humanity has cast doubt on the sincerity of that commitment.
- The failings of Haiti's judicial system are well-known, but historically reform efforts have been ineffective. Improved provision of justice is critical for the creation of conditions for stability and the eventual withdrawal of the United Nations Stabilization Mission in Haiti (MINUSTAH).
- Modernizing Haiti's antiquated legal and penal codes are an essential component of rule of law reform. Some progress is being made toward this end.
- A greater emphasis is needed on coordinating efforts among international donors and improving interaction with Haitian counterparts to achieve progress on judicial reform.

A Haitian court decision in February 2012 not to prosecute former Haitian dictator Jean-Claude "Baby Doc" Duvalier for well-documented human rights violations and crimes against humanity that occurred during his 15 year rule (1971–1986) has refocused international attention on the problem of impunity in Haiti. International reaction to the court's decision was uniformly negative, with the United Nations High Commission for Human Rights expressing "extreme disappointment" and *The Washington Post* decrying the fact that "Duvalier-era crimes are being swept under the rug."¹ Placing the Duvalier decision into a broader context, one analyst wrote that "Haiti will not achieve real democracy if its justice system remains unwilling to condemn the crimes of the past, punish the perpetrators, and make it clear that such abuses will not be tolerated in the future."²

Coming on top of other developments, the Duvalier decision has cast doubt on intentions among Haiti's leaders to reinforce and improve the provision of justice in the Caribbean nation. Referring to a presidential pardon for Duvalier hinted at by Haitian President Michel Martelly prior to the court's ruling, another observer remarked that "(t)he last thing (Haiti) needs right now is a resurfacing of Duvalierism . . . The time to end the truism that Haiti is the land of impunity has come."³ Combined with Martelly's recent push to recreate the discredited Haitian army and the presence of personalities in his administration with ties to the Duvalier dictatorship and subsequent military regimes, the Duvalier decision furthermore has donor governments questioning whether the Haitian government may turn its back on democratic reform and slide down a path toward authoritarian rule.

Donors continue to view the achievement of steady progress within Haiti toward improved administration of justice and rule of law as an essential requirement for making good on their pledges of support for post-earthquake recovery and reconstruction. Juxtaposed with the heartburn-inducing developments cited above is some evidence of progress during Martelly's

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first year in office toward enhanced provision of justice. This has included the Haitian president's stated priority focus on implementing rule of law and the government's support for the successful prosecution of officials and guards in the Les Cayes prison murder case. It has also included the Martelly administration's initiation of two pivotal judicial reform actions: (1) filling the long-vacant position of president of Haiti's Supreme Court; and, (2) establishing the long-awaited and constitutionally-mandated Supreme Council of the Judiciary, a key element in assuring the independence of the judicial branch. Combining these positive outcomes with more problematic developments over the past year, however, has sent mixed messages concerning the prospects for improving the provision of justice in Haiti.

The Compelling Notion of Reform

Since the fall of the Duvalier family dictatorship in 1986, international donors have tried to assist Haitians to reform their dysfunctional judicial system. Between 1995 and 2000 alone, the U.S. spent \$27 million on judicial reform. Results have been consistently disappointing. International programs have been imposed on Haiti with little recognition of local conditions and scant coordination with Haitian authorities. Within Haiti, governments, ministries, and legislators have only sporadically supported the investigation and prosecution of major crimes. There are numerous obstacles to this goal. For one, French, rather than Creole, is the language of the judicial system, effectively excluding Haiti's unilingual Creole majority. Judges remain highly vulnerable to intimidation by politicians, gangs, and powerful interest groups. Bribery is a key tenet of the judicial system, which is characterized by low salaries, lack of internal accountability, antiquated legal codes and run-down facilities with few amenities—including legal texts and supplies. Ill-trained and disinterested judges, who spend little time in their courtrooms, place a drag on the provision of justice.

The failings of judicial reform and of the judicial system itself are well known. Why then, despite the support, focus, and consensus on the importance of rule of law, has progress been so elusive? Certainly within Haiti there are considerable capacity constraints, but more important has been the limited political will among Haitian officials to support practical efforts needed for reform. Also, given the penchant among Haiti's economic elites to protect the status quo, it appears that they have yet to be convinced that judicial reform and improved rule of law serve not only Haiti's long-term interest, but theirs, as well. Improvement in rule of law is a *sine quo non* for greater investment, sustained economic growth, and the broader modernization of Haiti's economy. On the international side of the ledger, a reduction of the 'rampant bilateralism' that has undermined effective reform efforts and the embrace of greater coordinated efforts—among international actors and with their Haitian counterparts—are still prominent needs.

Improved provision of justice is critical for the creation of conditions for long term internal stability and the eventual withdrawal of the United Nation's Stabilization Mission in Haiti (MINUSTAH). Rule of law is at the heart of MINUSTAH's focus. Following its arrival in 2004, the U.N. mission largely succeeded in bringing a measure of stability and security in Haiti. Haiti's devastating earthquake did not fundamentally alter that improvement. A significant challenge is to ensure that those security gains are locked-in, particularly so that they can undergird improved and sustained capacity of public institutions. Absent an effective judicial system composed of efficient police, courts and prisons, it is difficult to envisage MINUSTAH's withdrawal.

The Criminal and Penal Codes

Haiti's current criminal and penal codes date back to 1836. Modernizing these codes is an essential component of rule of law reform. Updating Haiti's codes will redefine the criminal process and

allow for prosecution of such transgressions as human rights violations that were not imagined 176 years ago. New codes will ensure a higher degree of protection for persons and address complex issues of organized crime—such as drug trafficking and money laundering—that threaten Haiti’s stability and its ability to build and protect democratic institutions and practice.

Reformed codes will also improve the justice system’s efficiency, not in a way that abrogates rights, but rather in a way that enhances the overall effectiveness of the system. Code reform can address Haiti’s unacceptable practice of prolonged pre-trial detention, in part by providing such alternatives such as house arrest, bail, and surrender of passports to limit pre-trial flight possibilities. New codes can ensure that confession alone does not lead to conviction and that confessions made under duress are not accepted. New codes can improve legal assistance provisions, including for those with mental disabilities and for juveniles.

Since initiating steps toward legal code reform in 2008, Haitians working on reform have created an excellent process for achieving results. They have ensured that code revisions have been undertaken with the participation of ordinary Haitians whose voices have been heard—and listened to—in identifying weaknesses and needs in the country’s laws. This consultative process has engendered a high degree of local ownership in the process. The dedication of Haiti’s reformers, led by former Justice Minister Rene Magloire, has ensured a continuation of the process through periods of political turmoil and in the aftermath of the earthquake, when the reform team continued to work in an ‘office’ located under a tree following the loss of its headquarters.

At present, the reformed criminal procedure code is on the legislative agenda for debate by the parliament. With no fixed calendar for that exercise, the drafters continue to reach out to parliamentarians, lawyers and other stakeholders to educate them about the codes and encourage them to act. While support among parliamentarians appears to be growing, some lawyers are resisting any change in the status quo. One apparent controversial element of reform is the proposed change of criminal investigation from the portfolio of an investigating magistrate to that of a prosecutor, a break with the tradition of French law that would bring Haitian practice into conformity with other countries in the region.

The Way Forward

Reform of Haiti’s antiquated codes will represent a major step toward the improved provision of justice. Many other steps are needed, however, to complement that envisaged achievement. They include greater oversight and protection of judges, enhanced training for lawyers and judges, and greater access to the judicial system both by Haiti’s poor and indigent, especially among Haitians who do not live in Port-au-Prince or one of the provincial capitals. Other challenges include broad reforms in the penal system, not just by resolving the issue of Haiti’s overcrowded and ill-equipped prisons, but also through enhanced training of prison guards and improving judicial administration to move cases through the judicial system. Enhanced participation of civil society in judicial reform, as has been seen in the code reform process, is also essential, as is much improved coordination among all actors—international and Haitian—in the process.

Some progress toward improvement in the provision of justice in Haiti is being achieved. Juxtaposed, however, are a number of troublesome issues that will inhibit the pace, scale and effectiveness of reform. Indeed, they have already created doubts about the government’s commitment to the process. Hopefully, Haiti’s difficult and complex politics, its significant needs, and many obstacles will not completely impede President Martelly’s stated intention to improve the provision of justice for all Haitians, which is essential to the country’s well-being and long-term development.

ABOUT THIS BRIEF

This report is based on the panel presentation and the views expressed at a public forum hosted by USIP's Haiti Program on February 15, 2012 entitled "Justice for Haiti." The panel included Ugo Solinas, senior political affairs officer in the United Nations Department of Peacekeeping Operations; Joel Danies, deputy coordinator for Political Affairs & Office Director in the U.S. State Department Office of the Haiti Special Coordinator; Mark Schneider, vice president of International Crisis Group; and Vivienne O'Connor, senior program officer in USIP's Rule of Law Center.

The author of this report, Robert Maguire, is a professor of the Practice of International Affairs in the International Development Studies Program of the Elliott School of International Affairs at George Washington University and Director of GWU's Latin America and Hemispheric Studies Program. He is also the chairman of USIP's Haiti Working Group and a former USIP Jennings Randolph Senior Fellow (2008-2009).

Endnotes

1. "Haiti's Judicial Travesty," *The Washington Post*, February 2, 2012
2. Amy Wilentz, "Impunity in Port-au-Prince," *The New York Times*, February 8, 2012
3. Jorge Heine, "Jean-Claude Duvalier should be tried for more than corruption," *The Toronto Star*, February 5, 2012.



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