

The Independence of the Judiciary in Haiti under the Interim Government

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“We have a culture of impunity in Haiti”, Mario Joseph, Bureau des Avocats Internationaux (BAI).

Haiti’s judicial system has suffered from a succession of overbearing Executives, a lack of adequate legal training and resources, and from the rampant perception that in this impoverished island nation, justice is only for the rich. Since the 2004 ouster of the democratically elected government of Jean-Bertrand Aristide, threats to the judicial independence, both internal and from without, have only increased under the rule of the interim government of Haiti (IGH). The IGH has limited the effective functioning of the judiciary by exerting excessive influence over the judiciary, encouraging corruption among judges, impeding judicial training, and bringing a halt to the international community’s reform efforts. This report examines the failures of the IGH in these areas and considers the prospects for improvement under René Préval’s incoming administration.

I. Separation of Powers

A. Executive Selection and Removal in Violation of the Constitution

Pursuant to Article 60 of the 1987 Constitution of Haiti, the Legislative Branch, the Executive Branch, and the Judicial Branch of Haiti are independent of one another, and the influence of each may not extend beyond the boundaries prescribed by the Constitution and by law.¹ Under the Constitution, Justices of the Cour de Cassation (Supreme Court)

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¹ Haitian Const. Art. 60, 60-1.

are appointed by the President from a list submitted by the Senate of three persons per court seat, and are to be removed only because of a legally determined abuse of authority or because of permanent physical or mental incapacity.² The judges of the lower courts are also to be appointed by the President, from lists submitted by the Departmental Assembly or the Communal Assemblies.³

While Haiti has always fostered a “culture of the Executive”, whereby the President wields more authority than a literal reading of the Constitution would provide, the interim government of Prime Minister Latortue has asserted almost absolute power in the judicial selection process.⁴ Because the Senate has not functioned since January 2004, the Prime Minister has directly picked Cour de Cassation Justices without having the three-person list selected by the Senate as the Constitution provides. The Prime Minister has also directly selected lower court judges without reference to the lists of the Departmental Assembly or the Communal Assemblies.⁵ These appointment procedures have had the effect of de-legitimizing the judicial process as a whole, and the effect has been most tangibly felt in the rural regions of the country, where many unqualified Justices of the Peace have been appointed because of their political ties to Prime Minister Latortue and not because of the credibility they hold as capable men and women within their communities.⁶

The most egregious action taken by Prime Minister Latortue in derogation of his Constitutional authority came in December 2005, when he removed five of the ten Cour de

² Haitian Const. Art. 175, 177.

³ Haitian Const. Art 175.

⁴ Interview with Supreme Ct Justice Mr. Michel D. Donatien (Mar. 10, 2006).

⁵ Interview with Attorney Mario Joseph of the Bureau des Avocats Internationaux (Mar. 8, 2006).

⁶ *Id.*

Cassation Justices, on the grounds that they were too old.⁷ Latortue alleged neither a legal abuse of authority nor mental incapacity, as required by the Constitution, nor did he follow constitutional removal procedures. Rather, Prime Minister Latortue removed the Justices by executive decree.⁸ This illegal action, in violation of the Constitution, arguably represents the nadir of Executive Branch interference with the judiciary in Haiti, at least



since the new Constitution was adopted in 1987.⁹ In fact, some have suggested that not even the Duvalier dictatorships would have attempted such an audacity.¹⁰

Strangely, this

maneuver produced an unexpected result; across the political spectrum, judges and lawyers

Delegation members with Former Supreme Court Justices Me. Michel D. Donatien and J. Jacamond Charles, center, front, their attorney, left, front, at the offices of BAI in Port-au-Prince. joined in protest against

⁷ *Supra*, note 4. The official reason for removal was that the judges were over 60 years old, even though some of the replacements were actually older than the removed Justices.

⁸ *Id.* Of course, this official reasoning given that the Justices were too old to serve was ridiculous; the real reason for their removal was Prime Minister Latortue's disapproval with the Justice's ruling in a particular case. That case was *State v. Simeus*, and it concerned a candidate for President whose eligibility was being challenged by the CEP (Provisional Election Council) on the grounds that Mr. Simeus was disqualified for office due to the fact that he held U.S. citizenship. According to the 1987 Constitution of Haiti, Article 135, a candidate for the Haitian presidency must be a native-born Haitian, never have renounced his/her Haitian nationality, and have resided in the country for five consecutive years prior to the election. The Court ruled in favor of Mr. Simeus' potential candidacy even though Mr. Simeus freely admitted in press interviews that he had gained U.S. citizenship and that he had a residence in Texas. In our interview with him, former Justice Donatien was passionate in defending the legal reasoning underpinning the Court's decision, which has been roundly criticized. Justice Donatien went into great technical detail to explain that the CEP had not made an adequate showing as a matter of law that Simeus had obtained U.S. citizenship. Further, Justice Donatien argued that there is a legal difference between having Haitian and U.S. citizenship and renouncing Haitian citizenship in favor of becoming a U.S. Citizen. Additionally, Justice Donatien pointed to a 1984 Law on Publication, Article 30 of which mandated that no Haitian national could lose their citizenship without that information being printed in the Official Journal, which was not done in the case of Mr. Simeus. Finally, Justice Donatien questioned whether the provisions of the Constitution, which would seemingly bar Mr. Simeus' candidacy, could be applied retroactively to someone born prior to its adoption so as to deny him proper Haitian citizenship.

⁹ William P. Quigley, *The Absence of An Independent Judiciary in Haiti*, Human Rights Report, Draft of 12/12/2005.

¹⁰ *Supra*, note 5.

this flagrant executive encroachment on judicial independence. In fact, Judge Peres-Paul, president of the Haitian Judge's Association (L'ANAMAH) and a staunch Aristide opponent who usually deferred to the positions of Prime Minister Latortue, led the charge in calling for a judicial strike in retaliation to the Prime Minister's action.¹¹ And even though little came of the judicial strike itself, there is some reason for optimism. The implication seems to be that mere politics are no longer enough to keep judges from fighting for a Judiciary that attempts to check the Executive when it operates outside its Constitutionally mandated sphere.¹² Of course, the fact that the Haitian judicial community has finally begun to fight back gives no comfort to the five removed Justices. Shortly after their removal, five replacements were hand-picked by Prime Minister Latortue and appointed through an illegal procedure.¹³ As of the writing of this report, the removed Justices are pursuing legal challenges to both their removal and to the illegal appointment of the new Justices. Because their claims raise important Constitutional questions, however, there is a strong likelihood that the case will be appealed to the Cour de Cassation, at which point the new Justices would be forced to recuse themselves from the case. Then, the remaining Justices (who may be more sympathetic to the Prime Minister, as he decided not to remove them) will be forced to decide on the legality of Prime Minister Latortue's removal and appointment processes concerning their fellow Justices. Were this scenario to occur, it is hard to imagine a positive result, especially given the possible legal and political ramifications of such a decision. For example, if the Cour de

¹¹ Interview with Judge Jean Peres-Paul, President of L'ANAMAH (Mar. 08, 2006).

¹² Every one of the eight judges and lawyers, who represented a wide spectrum of political viewpoints that spoke to us about the removal of the Cour de Cassation Justices, were in total agreement that the Prime Minister's act was unconstitutional.

¹³ For example, the new Justices were sworn in before there was official publication of their nominations, as required by the Presidential Decree of 8/22/1995, *On the Organization of Judges*. Also, the Justices were sworn in at the Ministry of Justice and not in public, which also was a violation of the law.

Cassation rules that the Prime Minister acted lawfully, then the entire Constitution is called into question, and a dark shadow will be cast over the entire Judicial branch. If, on the other hand, the Cour de Cassation finds that the Prime Minister's activity was illegal, such a finding could create uncertainty as to whether the decisions of the illegally appointed Cour de Cassation should be overturned.

If Haiti's Constitution is to represent more than a mere collection of platitudes, it is imperative that President Préval break the cycle of executive tampering with the judiciary, even though he may have a Constitutional obligation to remove them all. Good may result from Haiti's "culture of the Executive" if President Préval honors his campaign promise to promote the independence of the Judiciary by dutifully following the Constitution, his capable stewardship could set a strong precedent of Haitian accession to the rule of law.¹⁴

B. Other Methods of Illegitimate Executive Pressure - Effective Removal

Haitian judges remain largely vulnerable to the political, structural, and cultural pressures that have undermined the judicial system for decades. For individual judges, these forces often seem insurmountable. For example, Jean-Sénat Fleury, the judge who oversaw the much-publicized case of Fr. Gerard Jean-Juste after his first arrest in 2004, resigned after the Ministry of Justice removed his caseload.¹⁵ According to Judge Fleury, the Justice Ministry explained that his caseload was suspended on the basis of complaints that he was operating too slowly. While the actions of the Minister of Justice appear to

¹⁴ Interview with Chantal Thériault, Chef du Pilier Justice, OAS (Mar. 10, 2006). Ms. Thériault observed that this very idea was part of the platform that President-elect Préval ran on during his Presidential campaign, and that during his first Presidential term from 1996-2001 Préval had established a good record of respecting judicial independence.

¹⁵ See Brian Concannon, Jr., *An Prensip: The Subordination of the Haitian Judiciary* May 12, 2005.

constitute nothing more than bald-faced retaliation, the particular justification offered is especially stunning given the fact that Haiti's prisons are teeming with prisoners who continue to await trial after years of unconstitutional incarceration.¹⁶

Judge Fleury's resignation illustrates the damaging impact of baseless executive interference in the operations of the judiciary. In the first place, the Justice Minister's decision removed a competent, independent judge from the bench. Moreover, it served as a warning to other judges, who will now think twice before making similar, politically sensitive rulings. As long as the Ministry of Justice retains the power to micromanage individual judicial dockets, it retains the power to severely constrain the exercise of an independent judiciary. In an

interview given several months after his resignation, Judge Fleury observed that "in this system a judge has two choices. You can accept poverty and humiliation, or you can accept unemployment."¹⁷



A view from Bel Air, one of Port-au-Prince's more dangerous neighborhoods

Since leaving the bench, Judge Fleury has authored a volume on the Cour de Cassation and judicial reform in Haiti;¹⁸ however, many jurists facing the untenable choice he describes have succumbed

¹⁶ Haitian Const, Art. 26. Art. 26 provides: "No one may be kept under arrest more than forty-eight (48) hours unless he has appeared before a judge asked to rule on the legality of the arrest and the judge has confirmed the arrest by a well-founded decision." Interview with Gervais Charles, head of the Bar Association of Port-au-Prince (Mar. 7, 2006). Mr. Charles indicated that Port-au-Prince currently houses over 2000 prisoners, many hundreds of which have never seen a judge.

¹⁷ Interview with Judge Jean-Sénat Fleury (Mar. 7, 2006).

¹⁸ *Cour de Cassation en Face de la Reforme Judicial en Haiti*.

to the temptation of a third alternative – corruption. Salaries for Haitian judges are notoriously low at each level of the judicial hierarchy, and with literally thousands of detainees languishing in pre-trial detention, opportunities abound for judges to accept substantial “grease payments” in exchange for expedited treatment. It seems that even some of those who have taken principled stands against Executive Branch interference are not immune to this phenomenon. At least one well-respected judge interviewed in preparation of this report stated that after publishing findings of fact unfavorable to the Justice Ministry, he was arbitrarily disciplined by the Justice Ministry.¹⁹ The judge remained in his post, explaining that he could offer more effective resistance by working within the system. Nevertheless, shortly after giving his interview, reports emerged that this judge had previously accepted eighty thousand gourdes²⁰ from a Port-au-Prince woman to facilitate the release of her husband from prison.²¹

It seems that the most direct means by which to combat bribery in the courts requires the effective investigation, prosecution, and sanctioning of judges who abuse their power for personal financial gain. At present, however, no such mechanism exists among self-regulating judicial organizations. Tellingly, the President of the Haitian Judge’s Association (L’ANAMAH) explained in an interview that a Code of Ethics for Judges has been promulgated and is in force, but was unable to find a copy of the Code in his office at the Palais de Justice.²² Further, statutory prosecution of corrupt judges has been wholly lacking, as not a single judge has been charged under Haitian law with illegally accepting

¹⁹ The name of this prominent judge has been withheld so as not to incriminate the individual who paid him a bribe.

²⁰ Roughly equivalent to \$2,000 U.S.

²¹ The woman, whose husband was arrested and jailed on allegations of being a Lavalas (pro-Aristide) street-leader, is an outspoken activist against the illegal detention of Haitian citizens. In 2004, she bribed the judge in question, seeking to expedite her husband’s release. The woman’s husband still remains imprisoned as of March, 2006.

²² *Supra*, note 11.

payment for services rendered.²³ On the other hand, individuals discovered to have bribed judges are routinely prosecuted. Given the fact that a few thousand gourdes can mean the difference between freedom and indefinite detention for their loved ones, this is a



calculated risk that the family members of prisoners are likely to accept.

A sadly common example of the lack of sanitation in Port-au-Prince, vendors and pedestrians are on the sidewalk with piles of refuse in the foreground.

Beyond eliminating the “culture of impunity” that has long plagued the Haitian courts, there are methods available to reduce the incentives for judges to accept bribes.²⁴ Virtually every recent report issued on the status of the Haitian judiciary calls for legislation to raise judges’ salaries to livable levels, and to provide better material resources such as computers, telephones, and legal pads.²⁵ To develop a pay scale and working environment that affords greater dignity to their vocation, it follows that judges

²³ Interview with Léon Saint-Louis, Port-au-Prince human rights attorney (Mar. 10, 2006).

²⁴ Interview with Renan Hedouville, Secretary General of Comité des Avocats pour le Respect des Libertés Individuelles (Mar 10, 2006).

²⁵ See, e.g. Organization of American States Inter-American Commission on Human Rights report, *Haiti: Failed Justice or the Rule of Law? Challenges Ahead for Haiti and the International Community*, Oct. 26, 2005, at 59-60.

themselves will be more likely to respect the integrity of the institution. Further, by lengthening and guaranteeing judicial mandates at every hierarchical stratum, judges will enjoy a measure of job security that would help to minimize the inclination exploit their authority.

While improvement of the infrastructural and remunerative situation facing judges requires only a proper allocation of money (in Haiti, more easily said than done), the Latortue administration has only undermined the ability of judges to attain a sense of security in their positions. Since assuming power in 2004, the interim government has proven time and time again that its attitude toward the judiciary is one of capricious domination. From suspending the caseloads of judges presiding over politically volatile cases, to removing Cour de Cassation justices in outright defiance of the Constitution, the Ministry of Justice has made every effort to consolidate judicial power in the Executive Branch.²⁶ President-elect Préval has a singular opportunity to restore to the courts the independence and authority granted to them under the Constitution. To do so, Préval must not give in to the “mentality of presidentiality” that prevails among Haitian citizens and that has compelled the nation’s heads of state since the days of the Duvaliers.

When asked whether a Préval administration will reverse the harm done to the judiciary at the hands of the interim government, nearly every judge, lawyer, and academic interviewed for this report responded with hesitant optimism. This “wait and see” attitude is understandable, given that every historical attempt to consolidate Haitian democracy has been sabotaged by one faction or another. Nevertheless, there are significant reasons to expect substantial improvement once Préval assumes office. In the first place, the drama surrounding his February election seized the attention of the international media. While a

²⁶ *Supra* n. 15.

focus by outsiders on Haitian politics will naturally subside, this heightened scrutiny will encourage the incoming administration to maintain a heightened level of transparency, at least in its early days. Additionally, the fact that Préval struggled against and overcame the subterfuge of his opponents appears to have cast an aura of righteous vindication around his election. Préval received nearly fifty-two percent of the popular vote, and the fact that his election was ultimately confirmed with very little subsequent unrest suggests that even those who opposed him during the campaign are willing to give his government a chance. Of course, it remains to be seen whether Préval will achieve anything of consequence before the sabers begin to rattle anew.

II. École de la Magistrature

The Constitution of the Republic of Haiti calls for the creation of a school of the Magistrature.²⁷ The creation of a professional judiciary is one of the most important long-term investments in Haiti.²⁸ In 1995, the mandate of the Constitution, with the assistance of international funding, was fulfilled when the École de la Magistrature (EMA) was founded.²⁹ Since the school's inception in 1995 approximately 500 judges have been trained.³⁰ The EMA has not been in operation since 2004 when it was taken over by

²⁷ Haitian Const., Art. 176.

²⁸ Haiti Democracy Project, *The Restoration of Democracy and Justice*. Available at <http://www.haitipolicy.org/archives/Sept-Nov2001/part2.htm>

²⁹ Interview with Jean Claude F. Douyon, Director of the École de la Magistrature (EMA), (Mar. 9, 2006). Mr. Douyan indicated that the EMA is primarily funded by the governments of France and Canada.

³⁰ France and Haiti – Cultural, scientific and technical cooperation, Ministère des Affaires étrangères, http://www.diplomatie.gouv.fr/en/country-files_156/haiti_473/france-and-haiti_2641/cultural-scientific-and-technical-cooperation_3005.html

members of the former military.³¹ According to Mr. Jean Claude Douyon, head of the EMA, negotiations are currently underway to remove the former military members who are occupying the school.³² With an expressed need for well-trained judges throughout the country, and a need to alleviate the backlog of cases pending in the judicial system, there is an immediate need for the EMA to begin operating. In addition to reopening the school, Mr. Douyon, has proposed that the school begin taking in students on a continuous basis, regardless of immediate need in the judicial system.³³ During the period of operation, from 1995 to 2004, the school produced three classes of judges.³⁴ His contention is that if the school operates on a continuous basis, there will always be a pool of qualified judges to draw from.³⁵ Mr. Douyon stated that regardless of the government in power, there is a plan for the EMA.³⁶

Some in Haiti have expressed concerns regarding the ability of the EMA to produce quality judges. Mr. Léon Saint-Louis, a Port-au-Prince attorney who has researched the EMA previously, criticized the EMA for its lack of organization, law, and protocol.³⁷ He stated that he believes the quality of judges that were coming out of the school was higher before. “In the beginning, we had lawyers with much experience who would accept to become a judge.”³⁸ He expressed concern that because students at the EMA are themselves recent graduates of law school, they lack the practical experience to be

³¹ Interview with Judges Jean-Sénat Fleury and Brédy Fabien (Mar. 7, 2006).

³² *Supra*, n. 29.

³³ *Id.* According to Mr. Douyon, the EMA currently admits students only at the need of the Ministry of Justice.

³⁴ *Supra*, n. 28.

³⁵ *Supra*, n. 29.

³⁶ *Id.*

³⁷ *Supra*, n. 23.

³⁸ *Id.*

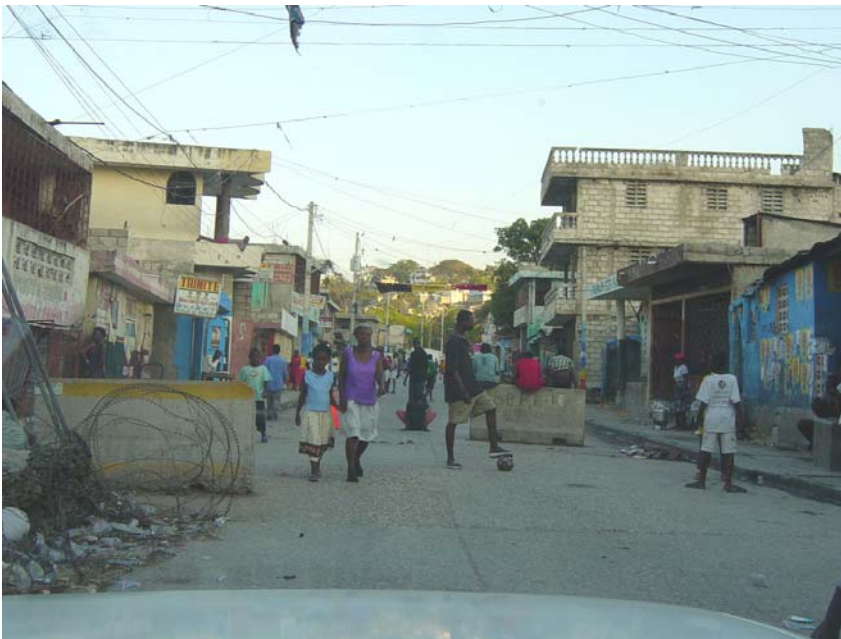
effective judges.³⁹ While Saint Louis expressed a belief that the EMA could be reformed, he stated that there must be better organization if the school is to be effective. Furthermore, he believes that more experienced candidates need to be recruited.

There is general agreement that the École de la Magistrature can serve an important function in educating judges, however, without the commitment of funding and resources to the school no changes will take place. Even with funding, all speculation on improvements to the operation of the school remains contingent on the removal of former military members from its grounds.

III. The International Community Relative to the Independence of the Judiciary

The view of professors and practitioners and judges is that there are two prerequisites to judicial reform in Haiti: 1) a democratically elected government, and 2) assistance from the international community to apply the system.⁴⁰ However, it is believed

that too many conditions are placed on the supply of international aid.⁴¹ As Mario Joseph of the BAI noted in an earlier interview, the judges in Haiti are like water in a vase, they will conform to the shape of their



Bel Air, Port-au-Prince. The barbed-wire at left demarcates a small UN guard-post.

³⁹ *Id.*

⁴⁰ Interview with Professor Josué Pierre-Louis, Doyon Université Quisqueya, Faculté de Droit (Mar. 9, 2006).

⁴¹ *Id.*

container.⁴² As long as the system requires corruption, they will acquiesce. If, however, the system demands independence, impartiality, competence, and adherence to the law, they will likewise comply. Although the international community had many projects afoot in Haiti during the previous democratic governments seeking to reform the judiciary, each donor has a distinctly-shaped container, and the conflicting views and methods coupled with the uncoordinated nature of international community involvement in Haiti have resulted in little to no change in the system itself. Furthermore, many blame the international community itself for actively kidnapping President Aristide and forcing him into exile⁴³ or providing the resources, funding and training for the rebel groups that overthrew the democratic government of Haiti⁴⁴ and financially strangling the Aristide Administration through withholding IMF and World Bank funds while forcing Haiti to service the debts.⁴⁵ Prior to the installment of the IGH, evidence of the role of USAID in Haitian politics was apparent in the role of the International Foundation for Electoral Systems (IFES), a USAID subcontractor, in intentionally subverting the Aristide government.⁴⁶ “They [IFES workers interviewed by the authors of the University of Miami Report] further stated that IFES/USAID workers in Haiti want to take credit for the ouster of Aristide, but cannot ‘out of respect for the wishes of the U.S. government.’”⁴⁷ Although the international community demanded reform of the judicial and other

⁴² *Supra*, n. 4.

⁴³ IJDH, BAI, Yale Law School and TransAfrica Petition to the Inter-American Commission on Human Rights Against U.S., Haiti and Dominican Republic for Overthrowing Haiti's Democracy, *available at*: http://www.ijdh.org/articles/article_iachr_2-1-06.htm, Amy Wilentz, Coup in Haiti, The Nation March 4, 2004, *available at*: <http://www.thenation.com/doc/20040322/wilentz>.

⁴⁴ http://www.law.miami.edu/cshr/CSHR_Report_02082005_v2.pdf, 20-24. *See also*: IJDH, BAI, Yale Law School and TransAfrica Petition to the Inter-American Commission on Human Rights Against U.S., Haiti and Dominican Republic for Overthrowing Haiti's Democracy, *supra* n.. 43,

⁴⁵ Nicolas Rossier, *Aristide and the Endless Revolution*, Film (2005).

⁴⁶ http://www.law.miami.edu/cshr/CSHR_Report_02082005_v2.pdf, 20-22.

⁴⁷ http://www.law.miami.edu/cshr/CSHR_Report_02082005_v2.pdf, 22.

institutions throughout this time, it also stands accused of undermining the very democratic foundation of Haiti.

The National Center for State Courts (NCSC) has operated in Haiti in conjunction with USAID since August 2004⁴⁸. According to its website, the operation in Haiti has focused on improving the performance of the Justice of the Peace (JP) courts in Haiti as 80% of Haiti's cases are decided on the JP level.⁴⁹ However benign the intention to reform Haiti's courts, the NCSC has drawn the ire of other judicial reform actors as a result of its

location, in Pétionville⁵⁰, and because other organizations believe that the NCSC is hand-feeding the IGH decrees without local input. One



Bel-Air UN guard post

representative of an international organization characterized the work of the NCSC as such: “Il n’y a pas un échange, c’est un théâtre.”⁵¹ Another asked where the Haitian identity was in reform of this kind.⁵² Even the mere perception of a bias towards one

⁴⁸ http://ipd.ncsconline.org/ncsc/main.aspx?dbID=DB_LatinAmericaandCaribbean296#hai

⁴⁹ *Id.*

⁵⁰ A relatively affluent suburb of Port-au-Prince.

⁵¹ Interview with Guilaine Moinerie, Conseillère Technique UNDP Haïti (Mar. 10, 2006).

⁵² Interview with Gracia Joseph S. Maxi, Expert National UNDP Haïti (Mar. 10, 2006).

political party or ideology will hinder the development of meaningful judicial reform in Haiti, and sadly, the USAID funded projects have done just that.

During our recent visit to Haiti, interviews with the UNDP and the OAS indicated that most of the international community initiatives meant to promote judicial reform have ceased to operate during the administration of the Interim Government of Haiti. Exacerbating the problem further is the fact that there remains a lack of coordination among the many inter-governmental organizations, the non-governmental organizations, foreign development actors and the Haitian authorities as competing organizations vie for ideological dominance. “It is a war, and here [Haiti] is a front for many ideological battles.”⁵³ One of the overarching problems remains that the international community’s absence of a clear plan, and the confusion created by competing reform movements, only augments the corruption in Haiti.⁵⁴

The United Nations Development Program’s attempt to inculcate an independent judiciary in Haiti centers on the use of participatory democracy to create Haitian ownership of reform through its support of the Forum Citoyen pour la Réforme de la Justice.⁵⁵ The UNDP representatives we spoke with during our delegation confirmed that their work, outside the act of promulgating discussion documents, effectively ground to a halt over the past two years under the IGH.

Until the coup, the OAS Mission in Haiti’s judicial reform component sent Haitian judges to study the judicial systems of other OAS member states with an eye to reform.

⁵³ *Supra*, n. 51. See Also, Walt Bogdanich and Jenny Nordberg, *Mixed U.S. Signals Helped Tilt Haiti Toward Chaos*, New York Times, January 29, 2006, available at: <http://www.nytimes.com/2006/01/29/international/americas/29haiti.html?ex=1143954000&en=d8d56a8b6c504ae5&ei=5070> (Outlining the conflicting messages coming from the United States, one, the ‘official’ policy from the embassy and the conflicting policy from the International Republican Institute which claimed to be the real voice of Bush Administration policy in Haiti.).

⁵⁴ *Supra*, n. 14.

⁵⁵ www.forumcitoyen.org.ht, www.undp.org/surf-panama/docs/cso.doc

However, instability in Haiti forced the OAS to suspend the project with the exception of one training mission to Chile in May of 2004. The focus of the OAS shifted predominantly to the distribution of electoral cards to facilitate the elections, a necessary step [as outlined above] for the process of judicial reform in Haiti. In preparation for the new government, the OAS judicial reform pillar is “brainstorming” to create a plan for working with the future government.⁵⁶

IV. Conclusion

An illegitimate executive actively meddles with the constitutional order, even high-minded judges are bribed with impunity, the EMA is occupied by the disbanded army, and



Rene Prével being sworn in as president.

the international community’s efforts at judicial reform have been largely suspended. The situation in Haiti is dire, yet there is hope that the approaching return of democratic rule will bring with it a renewed respect for the rule of law and its embodiment in the Haitian Constitution.

⁵⁶ *Supra*, n. 14

Perhaps the most important prospect for positive change once democracy resumes is in the person of René Préval himself. After all, his upcoming inauguration will mark the beginning of the President-elect's second tenure in Palais National. During his previous term, from 1996 to 2001, Préval displayed a commitment to the investigation of human rights abuses by government actors, and to the independent judicial resolution of such issues. Notably, then-President Préval was the first, and thus far only, Haitian president to⁵⁷ leave office at the natural expiration of his term. Dubious though this distinction may be, it does indicate that Préval has demonstrated respect for Constitutional limits on executive authority, and that he can successfully resist the trappings and enticements of presidential power that have so thoroughly possessed others in his position. Because the problems plaguing the Haitian legal system are so entrenched and widespread as to have become virtually institutionalized, a Préval government will certainly have to struggle mightily to undo these wrongs while operating within Constitutional strictures. Consequently, any substantial change achieved through legal means is unlikely to take place overnight. Nevertheless, to the same extent that Préval must honor the promises of his campaign while adhering to the laws of his office, the Haitian citizens who gave him his mandate must also give him the trust and patience to fulfill it.

⁵⁷ <http://www.cbsnews.com/stories/2006/05/14/ap/world/mainD8HJS1O80.shtml>, *May 7, 2006*