



REPORT

Haiti: The Rule of Law in Peril

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The deteriorating human rights and security situation has further weakened an already struggling justice system. Fear and intimidation are now a reality that many lawyers and judges must face. It is reported that between 2016 and 2020, courts throughout the country only managed to open for a total of 205 days.¹ The independence of the justice system is under attack in ways never before seen. Political divisions have spilled over to the justice sector, and tensions between the judiciary and the executive have reached an all-time high. Meanwhile, prisons continue to fill up as pre-trial detention reaches historic levels. Haiti urgently needs to rebuild the rule of law, including making the justice system more fair, effective, and transparent.²



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Context

Haiti is at a crossroads as the country faces multiple crises. In addition to the health emergency brought about by the COVID-19 pandemic, the country faces significant challenges to the rule of law exemplified by an unprecedented level of violence, a constitutional crisis that has paralyzed most of its institutions, and a justice system that struggles to function. Popular demand for an end to corruption, stronger accountability, and rule of law as well as transformative changes to governance towards a state that respects and fulfills the rights of the people remain unfulfilled.

The murder of President Jovenel Moïse at his private residence on the night of July 7, 2021, shocked the country and the world. Mr. Moïse's murder also plunged the country further into constitutional and political crises as two prime ministers and the head of the senate vied for power in the weeks following the killing.³ On July 19, the parties reached an agreement that Ariel Henry, who had been nominated by Mr. Moïse before his death but had not yet been installed, would become Prime Minister.⁴ Mr. Henry has since formed his cabinet, which was installed officially on July 20, three days before President Moïse was laid to rest.⁵

The country also faces a severe governance crisis. In January 2020, President Moïse dissolved parliament after failing to organize elections the year before. In the absence of parliament, Moïse ruled by decree and extended his executive powers. This use of decrees is not formally permitted by the Haitian constitution. Mr. Moïse also called for a referendum aimed at changing the constitution, which is explicitly forbidden by the constitution.⁶ It seems that the current administration of Ariel Henry intends to go forward with the referendum now scheduled for November.⁷ Presidential and legislative elections are also scheduled for November, although many claim that conditions are not met for the country to hold free and fair elections.⁸

Key Points

- ❑ The murder of President Moïse has brought attention to the rule of law crisis in Haiti; however the country has been struggling for years with unprecedented levels of violence and a constitutional crisis that has paralyzed most of its institutions.
- ❑ The justice system is struggling to function due to a chronic lack of accountability, pervasive corruption, outdated laws and procedures, and political instability and rising violence affecting the judiciary and increasing barriers to access to justice.
- ❑ Civil society, legal and judicial professionals are calling for a “Haitian solution” to rebuild the rule of law through continued progress towards reforming the justice system, including speeding up the implementation of the legal aid program, legal reform to bring greater independence to the judiciary, and strengthening the bar associations.

The deteriorating human rights situation has been dubbed “an assault on the rule of law” as authorities have been unable to stem the violence and the rapid rise of armed gangs. Several incidents in 2021 highlight the severity of the situation including a major prison break in Croix-des-Bouquets and a failed police anti-gang operation in Village de Dieu.⁹ Clashes between rival armed gangs in Port-au-Prince at the beginning of June 2021 destroyed hundreds of houses and displaced thousands of women and children. Gang violence also prevents ambulances from providing COVID-19 patients with emergency care.¹⁰

Along with the gang violence, many organizations in Haiti report a significant increase in gender-based violence as a result of the insecurity. A majority of those who experience sexual and/or physical violence do not report it, and of the complaints that are filed, investigations have shown that few to none have gone to trial.¹¹ A lack of prioritization of cases of gender-based violence by the judicial system combined with a general lack of training in gender sensitivity for judicial actors further deters the reporting and advancement of cases.

The justice system has not been spared by the security and political crises. Courts at various levels have been forced to close due to widespread insecurity. Judges frequently complain of chronic underfunding, poor working conditions, and executive interference in the judicial nomination procedure. The August 2020 assassination of the President of the Port-au-Prince Bar Association, Monferier Dorval, highlighted ongoing threats to the security and independence of the justice system. Judges working on politically sensitive cases have reportedly been subject to death threats and intimidation, and progress in these cases remain delayed.¹²

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Despite this grim picture, many Haitians still believe the country can overcome its challenges and usher in respect for human rights and the rule of law for the benefit of all Haitians. There is already important progress towards this goal. The decade-long work to reform and modernize the country’s criminal laws has produced a new penal code and criminal procedure code. While there are concerns about some provisions of the penal code, there is a wide consensus that it will bring about greater protection for vulnerable groups including women and children, facilitate the fight against complex crimes such as corruption and human and drug trafficking, and reduce prison overcrowding. Justice actors also agree that the new criminal procedure code brings much needed reform that will make the system more effective, independent, and transparent although questions remain about the adoption of the penal code and criminal procedure code by decree.

There have also been positive developments in the creation of a legal aid system that is fully owned and funded by the Haitian government and operated in coordination

with the bar associations. The National Legal Aid Law was passed in 2018, the National Legal Aid System set up last year, and legal aid offices have started to open in some jurisdictions. The National Legal Aid System is widely expected to improve access to justice and reduce prison overcrowding and extended pre-trial detention.

Lawyers and bar associations are working to improve integrity, transparency, and effectiveness within the profession. Several proposals have been put forward in a study conducted by the Federation of Bar Associations of Haiti to take stock of the working conditions of lawyers and bar associations, the first of its kind. Bar associations are studying the role of women within the profession with a view to increasing access and providing better conditions for women lawyers. The creation of a Gender Commission at the Port-au-Prince Bar Association is one such initiative. Judges are also finding ways to increase the number of women within their ranks,

At the same time, legal and judicial professionals have proposed several reforms to improve judicial independence, including reforming the Superior Council of the Judiciary, strengthening oversight mechanisms for judges and prosecutors, and legal reform to clarify the process for the nomination of judges to reduce undue influence. There is no doubt that the “Haitian solution” that many in the country have been calling for is possible.

A Justice System in Crisis

Although the problems plaguing the justice system in Haiti are widely understood, they nevertheless persist. At the heart of the dysfunction is a chronic lack of accountability, pervasive corruption, and outdated laws and procedures. These problems have become even more evident over the past four years as the political instability and rising violence spilled over into the justice system. Judges have decried a system “kidnapped by politics,”¹³ and advocates denounced increased barriers to access to justice and rising corruption. Oversight and monitoring mechanisms are inadequate, limiting the incentive for judges and prosecutors to respect deadlines and move cases quickly. The lack of accountability for high-profile cases such as the PetroCaribe corruption inquiry¹⁴ and massacres committed by armed gangs reinforces a perception that the justice system is dysfunctional and lacks independence, which in turn fuels further violence.

Threats to the Independence of the Judiciary and the Separation of Powers

Challenges to the independence of the judiciary and the separation of powers have been exacerbated by an open conflict between the executive and judicial sectors.¹⁵ Though the executive may indeed exercise undue influence over the judiciary, the judiciary has also asserted itself into the political context, which has raised concerns among some about politicization coming from inside the judiciary as well. Over the past years, judges have openly taken position against actions of the executive which they deemed in violation of the constitution. This was the case earlier in 2021 when the Superior Council of the Judiciary (Conseil Supérieur du Pouvoir Judiciaire or CSPJ), representing the judicial sector, took a position in the confusion surrounding the end of the mandate of the president. For the CSPJ, according to the constitution the president’s term ended in February 2021, not in 2022 as the president claimed.¹⁶ Members of the opposition installed a judge of the Cour de Cassation, the country’s

supreme court, in a secret ceremony as a parallel president.¹⁷ In response, president Moïse published a decree placing in retirement three judges of the Cour de Cassation who were rumored to be under consideration by the opposition to succeed Mr. Moïse.¹⁸ Many decried the president's move as being in violation of the constitution.¹⁹ One of the judges forced into retirement had previously been arrested in connection with a different alleged coup.²⁰ In response, judges across the country went on strike to denounce what they saw as the executive's unconstitutional attack on the independence of the judiciary.²¹ Although the strike has been lifted temporarily, relations between the executive and the judiciary remain frosty. This situation raises serious concerns about the separation of powers and the independence of the judiciary, pillars of the rule of law.

The existing mechanisms for the nomination and evaluation of judges are in urgent need of reform. The current system under which the executive nominates judges and renews their mandates means that judges are at the mercy of the executive to keep their position and earn a living.²² As a result, according to many, the nomination of judges and prosecutors too often follows political lines rather than experience and qualifications. The nomination process is reported to be a tool to influence the judiciary, rewarding judges who decide cases in favor of the government or are close to those in government and punishing those who act with independence and integrity. This situation poses a grave risk to the independence of the judiciary, and many have called for reform. According to the law creating the Superior Council of the Judiciary (Conseil Supérieur du Pouvoir Judiciaire or CSPJ), the CSPJ makes recommendations to the president regarding the nomination of judges.²³ But, reportedly, in reality the executive often ignores the CSPJ's recommendations. Infighting has prevented the CSPJ from countering the executive's undue influence through the nomination of judges. In fact, the executive has been criticized for exercising undue influence on members of the CSPJ itself. It is therefore no surprise that there are widespread calls for an end to the system of nomination of judges by the executive as a way to secure greater independence, including the creation of a competitive system for accession to the judiciary.

Strengthening the Judiciary

The Judicial Inspectorate of the Ministry of Justice (Inspection Judiciaire du Ministère de la Justice) which oversees the performance of prosecutors, or Commissaires du Gouvernement as they are known in Haiti, and the Judicial Inspectorate of the CSPJ are important tools in securing a more independent, professional, and efficient justice system. However, both Inspectorates are largely perceived as inefficient and under-resourced. The weakness of the Ministry of Justice Inspectorate and the lack of mechanisms for accountability mean that prosecutors who are criticized for being slow in handling cases have no incentive for improvement. The same is true for the Judicial Inspectorate of the CSPJ. Both are in dire need of reform to better comply with their mandate of supervision and discipline of judges and prosecutors. While advocates agree that a lack of political will is behind the inefficiency of the Inspectorates, they also recognize that both institutions lack resources to carry out their mandate effectively. They call for the creation of effective management, supervision, and accountability mechanisms as well as material and technical assistance and an increased budget for both Inspectorates.

Judges do not yet have adequate training and tools to pursue serious cases involving atrocity crimes and corruption, among others. In this sense, further support is needed for the Ecole Nationale de la Magistrature (School for Magistrates or EMA) to deliver training for judges on atrocity crimes and crimes against humanity, financial crimes, corruption, and sexual violence and applicable international law. Building capacity at

the EMA to deliver these trainings on a continuous basis in all jurisdictions should be a priority. A training-of-trainers model is therefore recommended. Similarly, support is needed to expand and modernize EMA's library, including the digitalization of materials and remote access.

The Need to Reform the Superior Council of the Judiciary

The Superior Council of the Judiciary (Conseil Supérieur du Pouvoir Judiciaire or CSPJ) is one of the most important organs of the justice system. Created in 2007, the CSPJ is responsible for the administration, control, and discipline of the judiciary.²⁴ It has the mandate to organize, supervise, and evaluate judges all over the country. The CSPJ is also responsible for monitoring and sanctioning judges.²⁵ The CSPJ is made up of representatives of various sectors including the President of the Cour de Cassation, who also presides over the CSPJ, and representatives of the appellate courts, the courts of first instance, the prosecutors, the bar associations, and civil society.²⁶ Members of the CSPJ are nominated by the president.²⁷

While the creation of the CSPJ in 2007 brought with it high expectations, the general perception today is of a dysfunctional institution that lacks independence and is resistant to change. Indeed, the CSPJ has been plagued by internal fighting, undue influence, and a lack of coordination, which has severely impaired its effective functioning. Tensions between the CSPJ and the executive and its perceived meddling into politics has further weakened its effectiveness. The death in June of the President of the CSPJ and the Cour de Cassation, René Sylvestre, has plunged the CSPJ into further uncertainty, as without Parliament there is no clear path to replace Judge Sylvestre.

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Many within the justice sector are calling for a reform of the CSPJ, including reforming the law organizing the CSPJ to provide greater independence to its members, extend members' terms, and reinforce ethical and accountability standards. The CSPJ also needs more support to reinforce its internal capacity, including financial support.

As discussed earlier, one aspect of the CSPJ that many call to be reformed is its Judicial Inspectorate, including the system for certifying judges. The certification is a process by which the CSPJ certifies that a judge meets the requirements for nomination or renewal, including regarding competence, integrity, and efficacy.²⁸ The weakness of the Judiciary Inspectorate means it cannot hold judges accountable, limiting the incentives for judges to handle cases diligently. A draft ethics code for the CSPJ has yet to be adopted. This situation directly affects the rights of those who come in contact with the law and is linked with case delays, thus worsening pre-trial detention and prison overcrowding. The problem at the CSPJ Inspectorate is not only one of political will. The Inspectorate also lacks the staff and adequate resources to allow it to fulfill its mission.

Despite its importance within the justice system, the CSPJ remains relatively unknown and poorly understood by the general population. Creating better understanding of

the role and functioning of the CSPJ within civil society organizations, journalists, and other stakeholders would go a long way to enhancing accountability, which in turn would put pressure on the CSPJ to be more effective.

The Impact of Violence and Insecurity on the Justice System

The arrest earlier this year of major figures of the justice system, including the chief prosecutor of Port-au-Prince, a senior judge at the Cour de Cassation, and the Inspector of Police, for their alleged participation in a foiled coup sent chills through the entire system.²⁹ The constant threat of violence at the hands of criminal gangs has also not spared the system, and judges and lawyers have been the targets of attacks. The murder last year of the President of the Port-au-Prince Bar Association, Monferier Dorval, shook the legal profession.³⁰ It was the first time that such a prominent member of the legal community was so brutally murdered.³¹ According to long-time human rights advocates, this is one of the most difficult times for human rights defenders as well as judges and lawyers working on politically sensitive cases since the fall of the Duvalier dictatorship.

The violence and intimidation that judges and lawyers face directly impacts access to justice, particularly for the poorest in Haiti. According to victims' representatives, judges, fearing for their lives or afraid that their mandate might not be renewed, are too often not willing to crack down on abusive tactics used by defense lawyers and investigative judges to stall politically sensitive cases. Judges working on these cases do not always receive additional security and are indeed at risk. One illustration is the investigation into the massacres allegedly carried out by gangs in some of the poorest neighborhoods around Port-au-Prince, the murder of the President of the Port-au-Prince Bar Association, and the PetroCaribe corruption case. These cases have stalled at the early stages of the investigative process, and there are widespread reports of intimidation and undue influence on judges. Judges investigating these cases have reportedly been threatened and attacked and in other instances have had their mandate not renewed.³² In the Dorval case, judges and lawyers have condemned the removal of security measures protecting the investigative judge who, fearing for his life, has gone into hiding, effectively stopping the investigation in its tracks.³³ Judges and clerks working on the investigation of the assassination of President Moïse have also been victims of threats and intimidation.³⁴

The violence and insecurity also prevent courts from functioning properly. Reportedly, courts opened for a total of 205 days during the entire past four judicial years, from 2016 to 2020.³⁵ The Bicentenaire area of Port-au-Prince, the neighborhood that houses the Justice Palace, the prosecutors' office, and the Bar Association, is surrounded by areas controlled by rival gangs. The Bicentenaire is thus the scene of frequent confrontations between gangs and between gangs and the police. Gun battles, extortion, assaults, and kidnappings are frequent in the area. As a result, fearing for their safety, judges and lawyers have deserted the Justice Palace, leading to a suspension of almost all justice activity for the past three years.³⁶ It is reported that the prosecutors' office continued to operate from the Justice Palace at the Bicentenaire. However, without the presence of the other actors, cases could not be heard.³⁷ Judges and lawyers condemn the fact that no security is being provided to the tribunal nor the judges despite the rising insecurity in the area. They see this situation as a direct violation of the right to access to justice of the Haitian people. Indeed, the halt in activity at the Justice Palace means that several cases remain pending with no resolution and no indication of when they might be heard.

Judges, lawyers, and court clerks in Port-au-Prince have observed several strikes to demand better and safer working conditions but with little success. Requests to relocate the Justice Palace have so far gone unanswered.³⁸ Short of formally relocating the Justice Palace, discussions are under way about holding expedited hearings at other locations with a view to reducing the number of people in prisons, particularly in light of the second wave of COVID-19 infections in the country.

In addition to the security situation, judges and other court professionals have gone on strike to demand an increase in the budget allocated to the judiciary, better working conditions, higher salaries, as well as insurance policies and continuing education programs.³⁹

In the provinces, it is reported that justice activities have been able to continue more or less normally as the security situation has not been as serious as in Port-au-Prince. This past judicial year, the jurisdictions of Saint Marc and Jérémie held a series of criminal trials through the “*assises criminelles*” (criminal trial sessions). However, courts in the provinces have also faced security challenges. In 2019, during the “*peyi lòc*” protests, tribunals were burned down in various jurisdictions outside Port-au-Prince, including in Petit-Goâve, Jacmel, and Saint Marc.⁴⁰

The Promises of the National Legal Aid System

Progress on the creation of a national legal aid system is a welcome development. The Law on the National Legal Aid System (Système National d’Assistance Légale or SYNAL) was approved in 2018.⁴¹ In May of this year, the Ministry of Justice installed the Board of Directors of the SYNAL (Conseil National d’Assistance Légale or CNAL).⁴² The SYNAL also has its first Director General, Judie Bazile, who was installed in 2019.⁴³ It is reported that funds for the SYNAL should be included in the next national budget. The Legal Aid Offices (Bureaux d’Assistance Légale or BAL) that had previously been supported by international partners will gradually be transferred to the now government-run SYNAL. New SYNAL-controlled BALs have already been inaugurated in Les Cayes and Petit-Goâve.⁴⁴ Tensions between the Ministry of Justice and the bar associations over differences regarding the installation of the CNAL means that the bar associations are at the time not actively engaged with the SYNAL.⁴⁵ As conversations continue with a view to reconciling their differences, the bar associations should soon be able to play a role in the SYNAL as they are an important player in the legal aid system.

The SYNAL is expected to play a major role in improving access to justice and reducing pre-trial detention. The lack of legal assistance for low-income Haitians, who make up the majority of those in contact with the criminal justice system, is one of the main causes of the high pre-trial detention rates. The Ministry of Justice’s current Strategic Plan on Prolonged Pre-Trial Detention includes the SYNAL as a priority in its efforts to reduce pre-trial detention. It also calls for international partners to support the SYNAL. Indeed, for the SYNAL to be successful, it will need international support with management, resources, and training of lawyers.

Pre-trial Detention and Prison Conditions

The excessive use of pre-trial detention has been a critical issue in Haiti for many years.⁴⁶ Despite several projects supported by international partners to address the issue, today, pre-trial detention is at an all-time high. In June 2021, the United Nations Integrated Office in Haiti (BINUH) reported that pre-trial detention in prisons across Haiti was at 84 percent.⁴⁷ The successive strikes within the justice system, the further slowdown in justice services due to the COVID-19 pandemic, and the frequent confrontations between the police and gangs have contributed to this problem. While case processing in the criminal justice system has slowed over the past three years, particularly in Port-au-Prince, the police continue to arrest people, exacerbating an already-dire situation of prison overcrowding and prolonged pre-trial detention.⁴⁸

The Monitoring Committee on the Penal Chain (Comité de Suivre de la Chaîne Pénale), an informal group of actors involved directly or indirectly in the treatment of prisoners, is an important piece of the puzzle when it comes to reducing pre-trial detention. The Committee meets regularly to strategize on solutions to reduce excessive pre-trial detention, the lead cause of overcrowding in Haitian prisons. It is chaired by the President of the Tribunal of First Instance of Port-au-Prince and includes judges, investigative judges, representatives of the BALs and human rights organization, as well as members of international organizations.⁴⁹ Proper control and supervision by the Inspectorate of the CSPJ and the Ministry of Justice to ensure that judges and prosecutors handle cases on time and effectively is another important tool in reducing pre-trial detention.

COVID-19 in the Prisons

Excessive pre-trial detention and prison overcrowding became even more serious concerns in the wake of the COVID-19 pandemic, especially considering the second wave currently underway in Haiti.⁵⁰ More urgent measures are therefore needed to address pre-trial detention. Although cases cannot be confirmed because of lack of testing in the prisons, several deaths have already been recorded which are believed to be due to COVID-19 given the symptoms registered.

To address the second wave of the COVID-19 pandemic, the Ministry of Justice has put in place an emergency plan for prisons. The Ministry has also reportedly instructed prosecutors to expedite cases. In addition, the Ministry has called on the CSPJ to follow suit and instruct judges to hold criminal trials to resolve cases as quickly as possible. Judges' reported reluctance to hold hearings for fear of COVID-19 further contributes to the threat of the virus spreading in prisons. For trials to resume, it is therefore important to create a safe environment for judges and other parties, including proper social distancing and personal protection equipment.

Last year, the government set up a special commission composed of the Ministry of Justice, prosecutors, human rights organizations, bar associations, legal aid offices, BINUH, and the Penitentiary Administration to address the threat of COVID-19 in prisons. The commission agreed on a plan to reduce the prison population to prevent the spread of the pandemic.⁵¹ The plan prioritized prisoners who had served at least 60 percent of their sentence, those aged 65 or older, and those with pre-existing conditions. Importantly, the plan benefited prisoners who had served their sentence but did not receive a release order and those unable to pay fines or court ordered damages. Under the plan, people in pre-trial detention for more than ten years were

also eligible for release.⁵² It is reported that 513 prisoners were released between March and April 2020 thanks to the plan.⁵³ Special criminal trials were held within the prisons, notably in the jurisdiction of Croix-des-Bouquet. Twenty-eight prisoners were released as a result of these special criminal trials.⁵⁴ Special hearings were also held in Port-au-Prince.⁵⁵ Parties should consider reconvening this committee now that the country faces a second wave of the pandemic with more aggressive variants.

Efforts to release prisoners for humanitarian reasons are unpopular, especially in the context of rising violence. More efforts are needed to create public awareness of the situation in the prisons, including the high rate of people in pre-trial detention, to garner more support for these initiatives.

Prison Administration

The Department of Penitentiary Administration (Département de l'administration pénitencière or DAP) lacks the material and human resources necessary to carry out its mission effectively, including tackling overcrowding. It is reported that prisoners routinely fail to appear at hearings because the DAP is unable to secure transportation to the courthouse. Meanwhile, the situation in detention centers across the country has been described as catastrophic. Cases of rape, torture, and cruel, inhuman, and degrading treatment have been reported.⁵⁶ Initiatives to facilitate the reintegration of prisoners are sorely lacking. The absence of support for people coming out of prison also contributes to insecurity and violence as it is reported that gangs regularly recruit former prisoners.

Legal Reform

Justice actors are hopeful that new provisions in the penal code and criminal procedure code regarding alternatives to detention will have a positive impact on reducing pre-trial detention and prison overcrowding. The codes introduce new measures such as the use of electronic bracelets, bail, parole, and the creation of a judge to oversee detention and other forms of sentencing called “juge de l'application des peines.”⁵⁷ While these provisions are indeed innovative, the conditions for their effective application are not yet in place. Capacity building throughout the penal chain on these new provisions would be necessary. In addition, it is not clear that the resources, the technology, and the expertise is available in Haiti for the implementation of these new measures to be practicable. This is another area where support from international partners would be critical. Awareness-raising campaigns beyond the legal community are also needed so that the public can understand the new features of the system, particularly around the use of alternatives to detention and suspended sentences.

The lack of legal assistance in prisons also contributes to prolonged pre-trial detention and overcrowding. There is hope that with the SYNAL, the availability and quality of legal aid in the prisons will improve. In addition to legal aid, initiatives such as mediation and rights awareness campaigns for prisoners can have a positive impact on reducing detention rates. It is worth noting that the new criminal procedure code provides for alternatives to prosecution such as mediation, restitution, and community service, among others.⁵⁸

Reform of the Criminal Codes: The Road Ahead

Haiti's criminal laws date from the 19th century and are largely considered outdated. The work to reform and modernize them has been underway for over a decade and has been generally welcomed by judges and others in the legal community. A new version of the penal code and criminal procedure code were published by decree in 2020 and are scheduled to come into effect two years later, in June 2022. While the legal community generally supported the project to reform the criminal codes, their publication by decree has drawn criticism.⁵⁹ There is widespread confusion around the president's power to legislate by decree. Even those who agree the president has such power argue that the new codes would have more legitimacy if they were adopted by parliament following the regular constitutional process. The controversy surrounding the publication of the codes by decree creates a situation of legal uncertainty as it is not clear if a future administration could revoke the decrees.

The new codes introduce significant changes to the criminal justice system including new crimes such as sexual harassment and money laundering.⁶⁰ Similarly, the new criminal procedure code introduces novel procedures such as suspended sentences, house arrest, the use of electronic bracelets, as well as new judicial actors such as a judge for the supervision of sentences, among others.⁶¹

The penal code in particular was met with resistance from religious and conservative groups who objected to provisions related to LGBTI rights and abortion, among others.⁶² Members of the legal community also objected to certain provisions of the code perceived to be contrary to the constitution, including the legal age for sexual consent.⁶³ Following protests against these provisions, the government created a Follow-up Committee tasked with holding multi-sector consultations and proposing amendments to the code. The Committee was reportedly set up in June this year, but it is unclear if consultations have begun.

The decree publishing the new codes provided for a preparation period of 24 months so that the justice system can prepare for their entry into force.⁶⁴ This 24-month period ends on June 24, 2022. However, less than a year to this deadline the work has yet to begin. It is estimated that 18 accompanying pieces of legislation would need to be adopted for the codes to be fully applicable. That work also has not begun. The same goes for the critical work of the Committee of Application which oversees training and engaging with the legal community and the public about the new codes. Training of judges and lawyers on the new codes has not started either. In addition, there is a need to create new training modules at law schools to train future lawyers in accordance with the new code.

The Legal Profession Faces New and Old Challenges

There are reportedly 4,457 lawyers for all of Haiti's 18 jurisdictions, a ratio of one lawyer per 2,172 persons.⁶⁵ These lawyers face renewed challenges in the current context of political instability and rising insecurity and violence. A recent study revealed that lawyers' main concerns are not only corruption within the legal

system but also instability, which leads to frequent closing of the courts, financial insecurity, and a lack of social protection. As a result, young lawyers, disillusioned with the situation, are deserting the profession to pursue other activities or careers.

The frequent court closures and successive strikes have affected lawyers' financial situation as well. 98 percent of lawyers report having been financially impacted by the forced closing of the courts.⁶⁶ Others have found themselves practically "unemployed."⁶⁷ The precarious financial situation of lawyers is even more concerning when one considers that 68 percent of lawyers do not have an insurance policy.⁶⁸

Bar associations face challenges including a lack of infrastructure and financial resources, limited opportunities for continuing education, a disparity in the mechanisms for entry into the profession, limited control over the implementation of ethical and professional standards, and the obsolescence of the laws regulating the profession.⁶⁹ In Port-au-Prince, the Bar Association, whose building is located in the same area as the Justice Palace, faces the same difficulties related to the security situation in that area. Members are not able to access the building or the library. As an alternative, the Bar Association has arranged to conduct certain activities in other locations, including conducting classes online, but the full range of services remain limited.

The murder of the President of the Port-au-Prince Bar Association, Monferier Dorval, in 2020 sent shockwaves through the legal community. Such a brutal attack against a highly regarded figure of the legal profession was unprecedented. Lawyers who so far believed their profession afforded them a level of security no longer feel safe. Despite the fear, lawyers and judges have denounced the murder of Mr. Dorval and are closely monitoring the investigation to see that justice is delivered.

The Role of Women in the Legal Profession and the Judiciary

The judiciary and the legal profession in Haiti are dominated by men. A recent study shows that only 13 percent of lawyers are women; there are seven times more men than women lawyers.⁷⁰ Although women are overrepresented in law schools, very few go on to practice law. Even among those who go on to practice law, few choose to litigate, preferring instead to work as legal advisors within law firms or as in-house counsel.

Within the judiciary, the number of women is reported at 12 percent for the whole country although recruitment of women at the EMA is reported at 50 percent. Women similarly make up a small percentage of court clerks and bailiffs (greffiers and huissiers). Only about 10 percent of court clerks are reported to be women.

It is widely acknowledged that many aspects within the legal profession and the justice system discourage women from joining the profession. It is reported for example that women choose not to practice law or prefer to play less visible roles within the justice system because of the machismo and lack of respect they regularly experience from their male counterparts. In a recent informal poll, women lawyers in Port-au-Prince reported being victims of sexual harassment and aggression at work.

While there is controversy around quotas for women within the legal profession,

there is a willingness to engage in more training and awareness-raising on the role of women within the profession. There is also interest on the part of the bar associations to further understand why women are under-represented, including creating incentives for women to join the profession. The Port-au-Prince Bar Association has created a Gender Commission to study the problem and propose solutions. This welcome initiative could be extended to the other jurisdictions as well.

The Impact of the Security and Political Crises on Women

The recent violence that has gripped Port-au-Prince and its surroundings has particularly affected the poorest neighborhoods, including women living in these areas. There is little to no police presence in these neighborhoods, which are under the control of armed gangs. Human rights organizations report a significant increase in reports of sexual violence against women in poor neighborhoods. With the absence of any state security control, gangs roam free and “have taken control of women’s bodies.” Sexual exploitation is common and for many women part of daily life. Several report being victims of sexual violence multiple times. Others do not report for fear of retaliation and lack of trust in the justice system. A similar situation has been observed in the centers housing those displaced by gang violence. Human rights organizations have also noted an increase in sexual and gender based violence (SGBV) cases related to massacres allegedly committed by the gangs, including cases of gang rapes.

Advocates condemn the lack of action from the authorities to address these cases and protect victims. Civil society and government run programs that provide shelters, psychosocial support, and specialized medical care to victims of violence are ill-equipped to handle such a large number of victims. Despite the creation of SGBV specific services within the police and prosecutors’ offices, cases are not handled with professionalism and sensitivity. Advocates report facing the same challenges of corruption when litigating SGBV cases. Several SGBV cases related to the massacres have been stalled because the mandates of the investigative judges have not been renewed. Advocates call for the adoption of coherent public policies to tackle violence against women, including an emergency plan to address SGBV in gang-controlled areas as well as the provision of economic support for women in situations of violence and gender sensitivity training for justice actors.

Despite the increased danger that gang violence poses for women, the number of organizations assisting women, particularly in SGBV cases, is declining. Leaders of these organizations are leaving the country because of the deteriorating security situation. Women’s rights advocates also report that funding sources for work with women has dwindled. As a result, even more organizations have closed their doors due to financial difficulties.

Recommendations

To the Government of Haiti

- ¶ Together with the judiciary and bar associations, create a contingency plan to allow justice activity to resume in Port-au-Prince, including the provision of effective security.
- ¶ Create comprehensive public policies on sexual and gender-based violence and provide legal, psychosocial, and security assistance to victims.
- ¶ Create effective monitoring and accountability tools for specialized SGBV response units within the police and the prosecutor's office and provide gender sensitivity training.
- ¶ Provide appropriate support and resources to the Monitoring Committee on the Penal Chain (Comité de Suivre de la Chaine Pénale).
- ¶ Reconvene the Special Commission to address the threat of COVID-19 in the prisons in light of the second wave of the COVID-19 pandemic.
- ¶ Set up and provide appropriate resources to the commission for the implementation of the new criminal codes.
- ¶ Ensure that the Follow-up Committee on the Penal Code is functional and provide it with support and appropriate resources to carry out its work.
- ¶ Implement reform to strengthen the Ministry of Justice's Judicial Inspectorate including improving management, supervision, and accountability mechanisms.
- ¶ Engage with the judiciary, the bar associations, civil society, and other stakeholders to create an inclusive process to study the reform of the CSPJ, including its Judicial Inspectorate.
- ¶ Engage with the judiciary to create an inclusive process to study the procedures for the nomination of judges and recommend reforms to achieve greater transparency and independence in accordance with international standards.
- ¶ Continue to engage in a good faith dialogue with the bar associations to reconcile differences over the SYNAL.

To the Judiciary

- ¶ Increase recruiting and mentoring of women in the judiciary.
- ¶ Adopt and enforce the ethical code of the CSPJ and strengthen accountability mechanisms.
- ¶ Reform and strengthen the Judicial Inspectorate of the CSPJ to improve management, supervision, and accountability mechanisms.
- ¶ Engage with the executive, the bar associations, civil society, and other stakeholders in an inclusive process to study the reform of the

Recommendations

CSPJ and reform of the procedures for the nomination of judges to achieve greater transparency and independence in accordance with international standards.

To the Bar Associations

- ¶ Increase recruiting and mentoring of women in the legal profession.
- ¶ Reform the ethical code for lawyers and strengthen accountability mechanisms.
- ¶ Continue to engage in a good faith dialogue with the Ministry of Justice to reconcile differences over the SYNAL.
- ¶ Continue to engage with the Monitoring Committee on the Penal Chain (Comité de Suivie de la Chaine Pénale).
- ¶ Engage with the executive, the judiciary, civil society, and other stakeholders to create an inclusive process to study the reform of the CSPJ and reform of the procedures for the nomination of judges to achieve greater transparency and independence of the judiciary in accordance with international standards.

To International Partners

- ¶ Support exchange programs and create capacity at the EMA through training of trainers to provide continuing legal education for judges, prosecutors, lawyers, and the police on investigation and prosecution of atrocity crimes, financial crimes, corruption, sexual violence, and ethics.
- ¶ Support the EMA to expand and modernize its library, including the digitalization of materials and remote access.
- ¶ Support the rollout of the National Legal Aid System.
- ¶ Provide technical and administrative support to the BALs including training of BAL lawyers.
- ¶ Support training for court clerks and bailiffs and provide assistance including strengthening the mechanisms for recruitment and supervision.
- ¶ Support bar associations with continuing legal education and technical support to improve monitoring, accountability, and professionalism within their ranks.
- ¶ Provide material, technical, and financial assistance to the Judicial Inspectorate at the Ministry of Justice and the CSPJ including support to create effective management, supervision, and accountability mechanisms.
- ¶ Engage with the Monitoring Committee on the Penal Chain (Comité de Suivie de la Chaine Pénale) to evaluate needs and provide appropriate support.
- ¶ Increase support to women's rights groups, including financial and technical assistance.

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