



**International
Legal Assistance
Consortium**



ILAC Report

Haiti, January 2005

ILAC is a global organisation, established and based in Sweden. ILAC is a consortium of NGOs throughout the world with experience in providing technical legal assistance in post-conflict situations. ILAC's more than 30 member organisations represent over 3 million judges, prosecutors, lawyers and academics.

Table of Acronyms	3
EXECUTIVE SUMMARY	4
CHART OF ILAC RECOMMENDATIONS FOR THE RECONSTRUCTION OF HAITI'S LEGAL SYSTEM	7
A. INTRODUCTION	10
B. HISTORY	10
United Nations Involvement	11
International Involvement in Judicial Reform 1994 - 2004	12
C. LESSONS LEARNED	13
Duration	13
Ownership (support - not control)	13
Government Organizations	13
Implementation (absence of absorptive capacity)	13
Cooperation and Coordination	13
Experience (Don't reinvent the wheel if it works)	14
Interim Cooperation Framework	14
D. JUDICIAL SYSTEM	15
Judiciary	15
Constitutional Structure	15
Ministry of Justice and Security	15
Court Structure	15
Supreme Court (Cour de Cassation)	16
Courts of Appeal (Cours d'Appel)	16
Courts of First Instance (Tribunaux de première instance)	16
Peace Courts	17
Special Courts	17
Public Prosecutors	17
Office de la Protection du Citoyen (Ombudsman's Office)	17
School of Magistrates	17
Association Nationale des Magistrats Haitiens (ANAMAH)	18
Bar Association	18
E. GENERAL OBSERVATIONS IMPACTING RULE OF LAW	19
Interim Government	19
Politics	19
Dual Society	19
Customary Law	19
Gender Related Crime	20
Language	20
Security	20
Poverty	20
Civil Identity	21
Corruption	21
Law Reform	21
The Judiciary	21
Public Access to legal and judicial information	22
Access to Justice	22
Impunity	22
Physical Infrastructure	23
Available talent/capacity	23
Police	23
Prisons	23
Pre-trial detention	23
Civil Society	24

International law.....	24
Gonaïves	25
F. RECOMMENDED PROJECTS	26
PROMOTION OF JUDICIAL INDEPENDENCE	27
School of Magistrates	27
Court Observer/Review Programme.....	28
PROMOTION OF LEGAL TRAINING AND INFORMATION.....	28
Training	28
Library Management.....	28
PROMOTION OF ACCESS TO JUSTICE	29
Bar Association	29
Access to Justice in outlying counties	30
PROMOTING PARTICIPATION OF WOMEN/GENDER JUSTICE	30
ENSURING RESPECT FOR HUMAN RIGHTS AND BASIC FREEDOMS	30
Human Rights and Basic Freedoms	30
Inter-American Commission	30
STRENGTHENING NATIONAL CAPACITY	31
PROMOTION OF PARTNERSHIP BETWEEN GOVERNMENT AND CIVIL SOCIETY	31
Annex 1: ILAC Meetings in Haiti.....	32
Annex 2: list of documents reviewed.....	35
Annex 3: About International Legal Assistance Consortium (ILAC)	37

Table of Acronyms

ANAMAH	National Association of Haitian Judges
CARLI	Comité des Avocats pour le Respect des Libertés Individuelles
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CIDA	Canadian International Development Agency
CONAP	Coordination Nationale de Plaidoyer pour les Droits de la Femme
DDRR	Demobilization, disarmament, reintegration, and rehabilitation
DSRSG	Deputy Special-Representative of the Secretary-General
HNP	Haitian National Police
IABA	Inter-American Bar Association
ICCPR	International Covenant on Civil and Political Rights
ICF	Interim Cooperation Framework
ICITAP	International Criminal Investigative and Training Assistance Program
IDB	Inter-American Development Bank
ILAC	International Legal Assistance Consortium
MIF	Multinational Interim Force
MINUSTAH	United Nations Stabilization Mission in Haiti
MIPONUH	United Nations Civilian Police Mission in Haiti
NGO	Non-governmental Organization
OCCBA	Organisation of Caribbean Commonwealth Bar Associations
OPDAT	Overseas Prosecutorial Development, Assistance, and Training
SIDA	Swedish International Development Cooperation Agency
UNDP	United Nations Development Programme
UNMIH	United Nations Mission in Haiti
UNSMIH	United Nations Support Mission in Haiti
UNTMIH	United Nations Transition Mission
USAID	United States Agency for International Development

EXECUTIVE SUMMARY

At the request of the Principal Deputy-Special Representative of the Secretary-General (DSRSG) for the United Nations Stabilization Mission in Haiti (MINUSTAH), Hocine Medili, the International Legal Assistance Consortium (ILAC) conducted a post-conflict assessment of the Haitian judicial system. This Report summarises ILAC's findings. In accordance with the terms of reference provided by the DSRSG and the Interim Cooperation Framework (ICF), this Report makes recommendations for sustainable short-term projects to support the reform of Haiti's legal system during the interim period.

Haiti has been independent since 1804, when the outcome of the revolution for national liberation ended slavery. The 1987 Constitution established Haiti as a republic that is governed by an elected president and a two-chamber parliament. The Constitution guarantees the right to a just and public trial. The legal system is a civil law system, based on the Napoleonic Code. The inauguration in 1991 of the first democratically elected President, Jean-Bertrand Aristide, created tremendous hope and expectations among Haitians. Instead, what followed was a decade of political and economic turmoil. Dysfunctional institutions, poor and corrupt governance, lack of transparency, and pervasive crime have intensified economic and social instability for the last decade. The working language is French, although the majority of citizens speak only Haitian Creole.

There are two parallel societies existing within Haiti. A small elite of families with mixed African/European/Middle Eastern backgrounds which constitute less than 5 percent of the population and control most of Haiti's formal wealth and a large majority of black Haitian families that live in poverty. Class and racial exclusivity lead to systemic discrimination against the majority through the denial of economic, social, and cultural rights, particularly to education, job opportunities, and health care. A small percentage of the elite are working toward sustainable reform but they don't seem to have the support of the general Haitian population.

It is estimated that two thirds of the 8 million Haitians live under the poverty threshold. The life expectancy is 49,5 years and the adult literacy rate is 51,9 percent. The political crisis, poor governance, economic instability and natural disasters have increasingly exposed the population to the volatility of traditional survival mechanisms.

Haiti's dysfunctional state is magnified by the country's deforestation, desertification, and erosion resulting from the cutting of wood for charcoal. Politics is unusually internationalised. One in five Haitians requires foreign food for support, making the country dependent on foreign donors.

On 29 February 2004, amid rebel violence and turmoil, President Aristide resigned and left the country. In conformity with the Constitution, Mr. Boniface Alexandre, Chief Justice of the Supreme Court, was sworn in as interim president. That evening, the United Nations Security Council approved resolution 1529, authorizing the immediate deployment of a Multinational Interim Force (MIF). Following a consultative process, Mr. Gerard Latortue was designated as interim Prime Minister and established his government on 17 March 2004. On 30 April 2004, the United Nations Security Council created, under resolution 1542, MINUSTAH.

MINUSTAH is committed to working with the Haitian Government to establish rule of law as a matter of urgency. At the request of the DSRSG, ILAC's assessment was designed to review the current status of the Haitian judicial system and, using the ICF (see page 15) as a baseline, to identify and prioritise sustainable short-term projects which can support the reform process

in post-conflict Haiti. To do this, the ILAC team reviewed previous assessments, lessons learned, and the ICF, and traveled to Port-au Prince and Gonaïves, Haiti. It met with more than 60 Haitians, including members of the judiciary, lawyers, police, prison officials, legal academics, representatives of non-government organisations (NGOs), human rights advocates, civil society organizations and international representatives.

Profound problems remain. Security does not exist, there is massive systemic corruption, the infrastructure is little more than a decaying shell, and there is tremendous class division within society. The majority of those who have committed atrocities have not been brought to justice. There is a lack of cohesion between the government and civil society and a serious inability to compromise. The National Assembly stopped functioning in January 2004 when the terms of all Deputies and two-thirds of sitting Senators expired; no replacements have been elected. The present Interim government is non-elected, and currently ruling by decree; in addition it exercises little control over the territory and lacks support among large sections of the population.

There is widespread distrust of Haiti's judicial system and police and a corresponding absence of the rule of law. Haiti's Constitution provides for a civil law system based on the Napoleonic Code, but in reality, there is no effective separation of powers, a limited understanding of the principles of transparency and accountability, little knowledge of contemporary notions of human rights, limited access to legal advice and defence counsel, and unconscionable delays.

A sense of pride and dignity veils the desperation lying just below the surface; after years of continuous decline Haitians want change. Civil society groups have joined together to propose a new way forward whereby the citizens and the State form a "social contract" in order to make a new start together, define new rules that will apply the stipulations of the 1987 Constitution and radically redefine the relationship between the State, civil society and the citizen.

While Haiti has qualified and experienced jurists, training in judicial and professional independence remains a priority. The legal codes require a radical overhaul; indigent citizens must be afforded the right to counsel and legal representation, and adequate detention centres must be built. Police and prison officers require comprehensive training in all aspects of their duties, and transparency and accountability must be integrated into all areas of government.

Over the last decade the international community has poured hundreds of millions of dollars into reforming the Haitian judicial system. There have been numerous assessments of the legal system and even more programmes. Hundreds of training programmes have trained thousands of judicial actors, laws have been translated into Creole and distributed, and a judicial school constructed, yet these reforms never took hold and the judicial system in Haiti doesn't function. Recent reports claim that respect for rule of law in Haiti has fallen to its lowest point since 1994. The police and judiciary fail to guarantee security and justice, and the incapacity of the courts results in de facto guilty verdicts for many of those arraigned and incarcerated, as pre-trial detention periods may last for years. The criminal justice system lacks training, the courts lack sufficient resources to conduct business properly. As Kofi A. Annan, UN Secretary-General, stated in a 2004 article on Haiti in the Wall Street Journal, "If anything, the situation looks even more daunting today than ten years ago."

The simple conclusion is that outsiders cannot solve Haiti's problems. This certainly holds more than an element of truth, but, as Mr. Annan pointed out, it is clear that Haiti can't "sort itself out, and the effect of leaving it alone would be continued or worsening chaos." Haiti still lacks the basic consensus and trust needed for democratisation to advance. A 2003 UNDP report evaluating past rule of law programmes in Haiti claimed that because the international community gave little consideration to absorptive capacity and Haiti's true interest in change it

bore significant responsibility for programme failures. Haiti provides a textbook case of the difficulties that can follow overly optimistic and unrealistic levels of intervention. 2005 finds the international community on Haiti's doorstep offering assistance, again. Can the international community provide effective assistance to support sustainable reform in Haiti? Can this decade be different from the last?

There are numerous reports declaring the many lessons to be learnt from past attempts. One thing is certain, there is no one organization, donor or international partner that can reform Haiti. Haitians must take responsibility and lead the long-term reform process. Security must be ensured. Haiti must seek regional support so that it is not again isolated in its own "neighbourhood." Potential spoilers must be dealt with, through reintegration, economic reform and rule of law. There must be support for more responsible political parties and a stronger, better informed and more involved, civil society. The process must be transparent and coordinated, both internationally and within Haiti, and support long-term Haitian goals. Haiti is likely to require significant long-term assistance from the international community; but to offer any type of sustainable and meaningful assistance, the international community must learn from these lessons of the past.

Even more important than international assistance is a joint sustained commitment to reform by the Government and civil society, at the grass roots level, to build a system which both groups can trust. There is a prominent lack of cohesion and an inability to compromise that hangs heavy over the divide between Government and civil society. If Haiti is to move forward this gap must be forged. Haiti has difficult problems to which there are no quick and easy solutions.

The team was encouraged by the approach of the ICF and international coordination efforts. It is hoped that this coordination will continue at all levels during the long reform process. ILAC is fully committed to supporting this effort.

The Report recognizes that sustainable judicial reform can not exist on its own, it is dependent on simultaneous reform in closely related areas, including: security, physical infrastructure, prisons, police, as well as being able to convince the remaining armed groups to give up their weapons and return to civilian life. This Report reflects the multi-sectoral focus of the ICF and the recommendations herein rely on concurrent implementation of the sectoral programmes identified for implementation within the ICF matrices.

Progress is possible. This Report recommends short-term, practical projects that are designed to support the sustainable reform of the Haitian judicial system in the transition period 2005 – 2006. These projects are designed for partners who are generally not dependant on the outcome of the upcoming elections. These projects fit squarely within or support the priorities identified in the ICF matrix. They will have immediate, tangible and visible benefits in Port-au-Prince and the outlying counties and will provide a foundation for medium and long-term projects. These projects support independence of the judiciary, gender justice, legal training, legal literacy, and human rights. This is a foundational step in the process of re-establishing the rule of law in Haiti, and in developing confidence, both Haitian and international, in Haiti's legal system.

The Swedish International Development Cooperation Agency (Sida) generously provided the funding for this mission.

CHART OF ILAC RECOMMENDATIONS FOR THE RECONSTRUCTION OF HAITI'S LEGAL SYSTEM

The recommendations are divided into groups that reflect the ICF matrix. The majority of these recommendations are short-term, practical projects that are designed to promote support for the Haitian judicial system during the transitional period 2005 – 2006. The recommendations are further explained on pp 26-30

PROMOTION OF JUDICIAL INDEPENDENCE

Independence of the Judiciary

Recommendation	Description	Source / Partner
Core financial support for Association Nationale des Magistrats Haitiens (ANAMAH)	Promote congeniality and independence among judges throughout Haiti. Support to include office, small staff, communication, etc	ANAMAH
Capacity building ANAMAH	Expert to train Executive Director in effective operation of Magistrates Association; programmes to include exposure to other systems and will explore establishment of fee system to cover daily operation costs	ANAMAH IABA
International Magistrate Mentor programme for all counties	Exchange with other legal systems, to include "rough rule" cases in action	IABA, OCCBA, International Association of Women Judges (IAWJ), ANAMAH
Provide Basic Principles on the Independence of Judiciary (Milan Principles), in Creole, French and pictographs	Support distribution of Milan Principles in French, Creole and pictographs to all levels of judges and libraries; combine with short course at Magistrates school to introduce international conventions and principles	School of Magistrates, law schools
Provide Inter-American Convention Against Corruption in Creole, French and pictographs	Support distribution of Inter-American Convention Against Corruption in French and Creole to all judicial actors and general availability to the public	ANAMAH, School for Magistrates, the Bar Association, IABA
Magistrates Code of Ethics	Support distribution and discussion of ANAMAH Code of Ethics in all jurisdictions	ANAMAH

School of Magistrates

Recommendation	Description	Source / Partner
Promote independence of School	Provide sample language from other systems to move oversight of school away from Ministry	School of Magistrates; Ministry of Justice
External funding for school	Provide basic funding source outside Ministry	School of Magistrates
Provide international "basic rights" protocols in Creole, French and pictographs	Support distribution of Havana Guidelines(role of prosecutors) and Havana Principles(role of lawyers) in Creole and French to all levels of courts and lawyers, make available in libraries	School of Magistrates

Court Observer Programme

Recommendation	Description	Source / Partner
International Court Observers	Observe trials; publish public reports regarding operation, application of laws, independence, etc.	International NGO
Court observer mentor programme	After International Court Observer programme established, internationals will mentor Haitian NGOs in creation of observer programme, to include manual	CARLI, Group 184 IABA

PROMOTION OF LEGAL TRAINING AND EDUCATION

Training

Recommendation	Description	Source / Partner
Human Rights Training for judges, prosecutors and lawyers, at all levels	Course on Human Rights in the Administration of Justice, manual in French and Creole	School of Magistrates, law schools
Case Management	Short course on case management for judges, prosecutors and lawyers, including primer in French and Creole	Law schools, School of Magistrates
Court Administration	Short course on court administration, including primer in French and Creole	Law schools, School of Magistrates
Visiting Professor programme	Law professors from similar systems, teaching in French and Creole	Law schools, School of Magistrates
Library Management programme	Expert to work with Magistrates School to establish model library; train the trainer programme to set up libraries in all jurisdictions. To include provision of manuals, HR documents, laws etc. available on a loan basis to all judges, prosecutors, lawyers and staff	School of Magistrates, Bar associations. Law schools

PROMOTION OF ACCESS TO JUSTICE

Haitian Bar Association

Recommendation	Description	Source / Partner
Federal Haitian Bar	Strengthen capacity and support Federal Bar programme in Haiti to create congeniality among and support for all lawyers in Haiti	Port-au-Prince Bar IABA
Regional Support	Support and facilitate active Haitian involvement with OCCBA and IABA	Port-au-Prince Bar, OCCBA, IABA
OCCBA access to justice programme	Facilitate and support law student and lawyer participation in OCCBA Access to Justice programme via computer kiosks at the Bars and law schools.	Law Schools, Bar Associations, OCCBA
Legal Aid Programme	Experts to provide models to Port-au-Prince Bar for effective legal aid programmes from similar system	Law schools, Bar associations IABA, IBA
Continuing Legal Education Programme	Experts from Bar Associations in similar systems to assist in creation of long-term CLE programmes for Judges, Magistrates, Justices of the Peace, Special Courts, Prosecutors, to include partnerships between Haitian Bars and those in other regions to provide exposure and support	Bar associations IABA, OCCBA
Access to Justice in outlying counties	Expert to work with committee representing Judiciary, Bar, Magistrates School and law schools to create incentive programme to attract qualified candidates to outlying counties, such as scholarships to law school to return for two years service in county	Ministry of Justice, Magistrates School, law schools IABA, OCCBA
Code of Ethics	Promote rules relating to professional conduct of members and encourage good relations and understanding between the Bar and the Public. Experts to provide model Codes of Ethics from other systems.	Federal Haitian Bar, Port-au-Prince Bar Association OCCBA
Inter-American Commission	Promote understanding Inter-American Commission and provide support for Haitian cases before the Commission	IABA

Educating the General Public

Recommendation	Description	Source / Partner
ANAMAH	Provide support for legal literacy programmes to general public in areas outside Port-au-Prince	ANAMAH, Justice and Peace, Group 184

PROMOTING PARTICIPATION OF WOMEN/GENDER JUSTICE

Recommendation	Description	Source / Partner
Discrimination	Experts to provide to Ministry of Women's Affairs comparative models of effective laws and programmes to combat discrimination against women from other systems	Ministry of Women's Affairs
Domestic Violence	Experts to provide to Ministry of Women's Affairs comparative models of effective laws and programmes from other systems to combat domestic violence	Ministry of Women's Affairs
Plaçage	Experts to provide to Ministry of Women's Affairs comparative models of effective laws and programmes from other systems to protect rights of couples in customary unions, outside legal marriage	Ministry of Women's Affairs
Women's rights and International Conventions	Translation and distribution of Women's rights and international conventions into Creole and pictographs	CARLI, CODAM
Gender Justice training for judges, prosecutors and lawyers, at all levels	Course on gender justice, including translation of CEDAW into Creole	School of Magistrates, Bar Association, ANAMAH, law schools International Association of Women Judges

ENSURING RESPECT FOR HUMAN RIGHTS AND BASIC FREEDOMS

Recommendation	Description	Source / Partner
Human Rights and Basic Freedoms	Support distribution of basic rights and freedoms in Creole, French and pictographs to general public and libraries	Justice and Peace; CARLI; ANAMAH
Inter-American Commission	International mentor programme to assist Haitian NGOs in bringing cases before the Commission	IABA
International and regional HR Conventions	Support distribution of international and regional conventions in Creole, French and pictographs to general public and libraries	Justice and Peace; CARLI, Bar Associations

STRENGTHENING OF NATIONAL CAPACITY

Recommendation	Description	Source / Partner
Office de la Protection du Citoyen	Experts to provide standards and comparative models of organic laws that strengthen investigative, administrative and enforcement capacity of office to better protect rights of people, including Principles relating to status and functioning of national institutions for protection and promotion of human rights	Office de la Protection du Citoyen
Office de la Protection du Citoyen	Work with experts from comparative systems to provide effective management expertise in Port-au-Prince and outlying counties to strengthen management capacity	Office de la Protection du Citoyen

PARTNERSHIP BETWEEN CIVIL SOCIETY AND GOVERNMENT

Recommendation	Description	Source / Partner
Group 184, Forum Citoyen	Provide support for civic education and partnership forums for outlying counties; including train the trainer programme	Group 184

A. INTRODUCTION

At the request of the Principal Deputy-Special Representative of the Secretary General (DSRSG) for the United Nations Stabilization Mission in Haiti (MINUSTAH), Hocine Medili, the International Legal Assistance Consortium (ILAC) conducted a post-conflict assessment of the Haitian judicial system. This Report summarises ILAC's findings. In accordance with the terms of reference provided by the DSRSG and the Interim Cooperation Framework (ICF), this Report makes recommendations for sustainable, short-term projects to support the reform of Haiti's legal system during the interim period, 2005-2006.

From 13-20 January 2005, to conduct the mentioned assessment, a six-person team visited the Haitian capital Port-au-Prince and also rural areas of Haiti. The team comprised Christian Åhlund, Executive Director, ILAC, Sweden; Lennart Aspegren, Former Judge at the UN International Tribunal for Rwanda & Under-Secretary-General of the UN, Sweden; Célestin Kengoum, Avocat, Arbitre, Organization Pour L'Harmonisation en Afrique du Droit Des Affaires, Cabinet Kengoum, Cameroun; Peter D. Maynard, Senior Partner, Peter D. Maynard, Counsel & Attorneys, past President OCCBA and the Bar Association of the Bahamas, Bahamas; Mielle C. Nichols, Avocat au Barreau de Bruxelles, Seyfarth Shaw; Belgium; and Shelby Quast, Director-General of ILAC USA, USA, who also compiled this report. Marc Rhéal Cadet, Avocat au Barreau de Saint-Marc (Haiti), assisted the team in Haiti. The assessment was designed to review the current status of the Haitian judicial system, using the ICF as a baseline, and to identify and prioritise sustainable short-term programmes that can support the reform process during the interim period in post-conflict Haiti. To do this, the team met with more than 60 Haitians, including members of the judiciary, the executive, lawyers, police, prison officers, legal academics, representatives of non-government organisations (NGOs), human rights advocates and ordinary Haitians.¹ The team also reviewed numerous documents and reports, including the Constitution of Haiti, the ICF, and the proposed Social Contract.²

B. HISTORY

In the early 17th century, the French established a presence on Hispaniola, and in 1697, Spain ceded to the French the western third of the island - Haiti. The French colony, based on forestry and sugar-related industries, became one of the wealthiest in the Caribbean, but only through the heavy importation of African slaves and considerable environmental degradation. In the late 18th century, Haiti's nearly half million slaves revolted under Toussaint L'Ouverture and after a prolonged struggle, became the second republic in the Western Hemisphere after the US to declare its independence in 1804. Haiti recently celebrated its bicentennial, but it is a history weighed down by political chaos, violence and international involvement. Haitian leaders have furthered a culture of discrimination, leaving a weak and divided society.

Haiti is the poorest country in the Western Hemisphere, 80-90% of the population live in abject poverty. It ranks 153th out of 177 countries in UNDP's 2004 Human Development Index. The life expectancy is 49,5 years; the infant mortality rate is 79 per 1,000; HIV/AIDS affects 5,6 percent of the population; and the adult literacy rate is 51,9 percent. Haiti's dysfunctional state is magnified by the country's deforestation, desertification, and erosion resulting from the cutting of wood for charcoal. Politics is unusually internationalised. One in five Haitians requires foreign food for support, making the country dependent on foreign donors.

¹ Annex 1 is a list of Haitians met with by the team.

² Annex 2 is a list of documents on which the team relied for this report.

There were 22 changes of government in Haiti from 1843 until the US intervened militarily in 1915 and occupied the country for 19 years. In 1957, François "Papa Doc" Duvalier was elected president. He declared himself president for life in 1964 and ruled until his death in 1971. Duvalier was a dictator, whose arbitrary use of force instilled widespread fear in most Haitians. His son and successor, Jean-Claude "Baby Doc" Duvalier, fled to France in 1986 after an uprising against his dictatorship. A series of military-backed governments followed until 1991. In 1987, Haitians took action and overwhelmingly approved a constitution which included a ban on Duvalierists participating in politics for 10 years. In 1990 Haiti held its first truly democratic elections; Jean-Bertrand Aristide, a young priest, won an overwhelming 67% of the vote.

Promulgation of the Constitution in 1987 and the elections in 1990 raised many hopes among Haitians. Unfortunately, their hopes were quickly dashed by a 1991 coup d'état. Aristide was sent into exile and a new military rule took his place. This period of military dictatorship plunged Haiti into horror: 3000-5000 Haitians were murdered. Arbitrary arrest, rape, and torture, by agents of the State, threats, and destruction or confiscation of property became part of daily life for the Haitian people.

In 1994 under a US-led, UN-sanctioned invasion, Aristide returned to power to find a country wounded, mistrustful and scarred by the violations committed. Many thought this man of the people could save Haiti from the downward spiral; unfortunately, the decline continued. Aristide failed to build a broad coalition, and the opposition sought to block economic and social initiatives within Haiti. In the 2000 elections, Aristide and his political party Fanmi Lavalas claimed victory with a voter turnout of only 10%. The opposition, as well as members of the international community, contested the results and accused the Government of manipulation. Thereafter, dialogue between the Government and the opposition broke down. In late 2003 a newly united opposition movement, including local political parties, civil society actors and the private sector called for Aristide's resignation. In early February 2004, armed conflict broke out in Gonaïves, and fighting shortly spread to other cities. The insurgents took control of much of the northern part of the country. Despite international efforts, the armed opposition threatened to march on the Haitian capital. On 29 February, Aristide left the country. The President of the Supreme Court, Boniface Alexandre, was sworn in as interim President of Haiti in accordance with the constitutional rules of succession.

In March, a 13-member transitional Government was formed. In hopes of building a broad political consensus for the work for the transitional Government, the Consensus on the Political Transition Pact was signed on 4 April by the Prime Minister on behalf of the transitional Government, by members of the Conseil des Sages (Council of Wise Men), and by representatives of various political groups and civil society organizations. The signatories came to a general understanding on the political transition, which would hold municipal, parliamentary and presidential elections in 2005 and would end with the installation of a newly elected President. Fanmi Lavalas denounced the Pact.

The Pact lists several measures to be undertaken during the transitional period in the areas of security, development, the fight against impunity and corruption, decentralization, elections, judicial reform, a national conference initiative and a new social contract, institutional strengthening of political parties and civil society organizations, reintegration of former armed elements and professionalisation of the Haitian National Police Force.

United Nations Involvement

The UN involvement in Haiti started in February 1993 when the joint UN-OAS International Civilian Mission in Haiti (MICIVIH) was deployed. In September 1993, the Security Council set up the first UN peacekeeping operation in the country – the UN Mission in Haiti (UNMIH).

However, due to non-cooperation of the Haitian military authorities, UNMIH could not be fully deployed at that time to carry out its mandate.

In July 1994, the Security Council authorized deployment of a 20,000-strong multinational force to facilitate the prompt return of the legitimate Haitian authorities, maintain a secure and stable environment in the country and promote the rule of law. The multinational force was followed by a number of successive UN peacekeeping missions from 1994 to 2001, including UNMIH which assumed its functions in full in March 1995, the UN Support Mission in Haiti (UNSMIH), the UN Transition Mission in Haiti (UNTMIH) and the UN Civilian Police Mission in Haiti (MIPONUH).

After Aristide left the country in 2004, the Permanent Representative of Haiti to the UN submitted the interim President's request for assistance, which included the authorisation for international troops to enter Haiti. Pursuant to that request, the Security Council adopted Resolution 1529 authorizing the Multinational Interim Force (MIF) and declaring Council's readiness to establish a follow-on UN stabilization force to support a continuation of a peaceful and constitutional political process and the maintenance of a secure and stable environment. MIF immediately started its deployment to Haiti, as authorized by that resolution.

Subsequently, In accordance with Security Council Resolution 1542, authority was transferred from MIF to a multidimensional UN stabilization operation, MINUSTAH (Mission de Nations Unies pour la stabilisation en Haiti), effective 1 June 2004. In view of the time line for elections, scheduled for November 2005, with power to be transferred to an elected President on 7 February 2006, the mandate of MINUSTAH will last until 31 May 2006. MINUSTAH is committed to mobilizing resources for projects that make an immediate difference in people's lives.

International Involvement in Judicial Reform 1994 - 2004

Over the last decade the international community has poured hundreds of millions of dollars into reforming the Haitian judicial system. The main actors that have provided assistance in judicial reform are the United States, the UN and the French and Canadian Governments. Some of the projects included from 1994 – 2004 are listed below.

US assistance was provided through US Agency for International Development (USAID), and two departments of the Department of Justice — the International Criminal Investigative and Training Assistance Programme (ICITAP) and the Office of Overseas Prosecutorial Development, Assistance, and Training (OPDAT). Activities were directed at the judicial sector and the police force and totalled about \$97 million.

US judicial sector assistance initially consisted of assistance for improved training of magistrates and prosecutors (including a justice of the peace programme), principally through the establishment and operation of a magistrate school, improved management practices of judicial institutions, and improved access for the population to justice services. Specific programmes included case tracking and court management, legal assistance and mentoring, and judicial mentoring.

The United National Development Programme (UNDP) carried out various activities in the justice sector. These projects included a review of the draft organic law of the Ministry of Justice; compilation of all laws, decrees and treaties in force; research on customary law, in cooperation with the State University; review of the status of the civil registry issue; refinement of the Development Plan and assistance in the drafting of a new law of the Office of the Ombudsman. The combined budgets of these projects amounted to approximately \$11 million.

Canada, through the Canadian International Development Agency (CIDA), has built 14 trial courthouses and district attorney's offices in Haiti. A total of \$5 million was allocated to this activity. Under the "Judicial Support Training in Haiti" Project, CIDA began training of the non-judicial staff of these 14 courthouses. This staff included secretaries, security guards, bailiffs and court registrars. CIDA allocated about \$1.8 million for this training activity.

Many of the above programmes fall squarely within the needs identified in the ICF. The international community is urged to carefully review with Haitian actors the past programmes that were effective and may still be applicable in Haiti's current situation.

C. LESSONS LEARNED

Over the last decade there have been numerous rule of law assessments, programmes, and reports and nearly as many lessons learned. In 2003 UNDP conducted an evaluation of rule of law programmes in Haiti and reported that the international donors bore significant responsibility for the programme failures resulting from their overly optimistic presumption that huge external resources and concentrated international expertise, with little consideration of absorptive capacity or measure of the true interest in change, could quickly transform a nation. 2005 finds the international community on Haiti's doorstep offering assistance, again. Can the international community provide effective assistance to support sustainable reform in Haiti? Can this decade be different from the last? The common threads that weave together the fabric of these lessons are listed below.

Duration

After decades of authoritative rule and a period of civil disorder, judicial reform will take time and sustained attention. Judicial reform in Haiti is a long-term investment; there are no quick and easy solutions in this complex society.

Ownership (support - not control)

Projects and programmes cannot be exclusively donor driven; Haitian ownership must be ensured. Civil society organizations must have input in the design and implementation of the major donor assistance programmes in judicial reform. Previously, when donors ran programmes it had the perceived effect of keeping Haitians dependent on international assistance, which led to a general sense of scepticism regarding these initiatives and did not help to ensure public support for the reform process. The Team was informed that it was not uncommon for Haitians to "cross their arms and wait for the international programmes to fail."

Government Organizations

Programmes should not place too much emphasis on too few government organisations, leaving the programmes at the mercy of political will.

Implementation (absence of absorptive capacity)

Social and cultural factors must be considered and built into assistance plans. Programmes must be "anchored in the realities of Haiti." Recognition of the dual society, for example, can be very important. Programmes that focus only on the urban elite and don't reach the rural areas will not get grassroots commitment for legal reforms and democracy. It is important that projects be visible or tangible to the average Haitian.

Cooperation and Coordination

No one organization, donor or international partner can reform Haiti. To avoid duplication of efforts and to promote coherence and ease of transition, coordination must be at both the

highest level and the working level. Successful judicial reform requires simultaneous progress in the interrelated areas of justice, police and prisons. Without the cooperation of any one of these actors, progress is difficult and limited

Experience (Don't reinvent the wheel if it works)

Where appropriate, new programmes should build upon what works and not recreated from the ground up. Where appropriate, courses, training materials, and programmes that were reasonably successful should be updated and reintroduced. For example USAID, under its Administration of Justice Project produced several guidelines and regulations, which include a Draft Law for Governing Paralegals, a Draft Internal Regulations for Justice of the Peace Courts; and training manuals, including "A Complaint is Brought Before a Justice of the Peace Court", a "Manual for Paralegals", and a "Manual for Judicial Mentors." These should be revisited and a determination made regarding their value in the present reform process.

Further, it is noted that many of the same people, both Haitian and international, which were involved in earlier attempts at Haitian legal reform are again involved in the process. These individuals such as Mr. Philip Vixamar (Ministry of Justice); Jean-Claude Bajeux (Group 184); Mr. Louis Nkopipie (UNDP); and Mr. Denis Racicort (MINUSTAH) may now be wearing different hats but their knowledge base and understanding regarding the realities of Haiti is vast. Their accumulated experience can go a long way in making this effort a more effective one for Haiti.

Interim Cooperation Framework

The ICF is the result of the lessons learned from previous involvements in Haiti and the interim Government's Consensus on Political Transition Pact. In a conscious break from the past, the ICF aims to frame external assistance on the basis of a joint and realistic identification of the needs and programmes for the transition period (2004- 2006). The ICF process reflects the partnership between the Government and donors; the opposition is notably absent from the partnership. Ten thematic groups were formed to assess current issues and priority needs in: political governance and national dialogue with two sub groups: a) security, police and demobilization, disarmament and reintegration (DDR) and b) justice, penitentiary institutions and human rights; economic governance and institutional development; rapid job creation, and safety nets and social protection; protection and rehabilitation of the environment; regional, urban and local development and decentralization; health and nutrition; education and culture; agriculture and food security; infrastructures; and development of the private sector and small- and medium-size enterprises and industries. The ICF also took into account the crosscutting themes of crisis prevention, human rights, gender and HIV/AIDS.

The Haitian transitional Government has committed itself to organizing local, legislative and presidential elections in November 2005 and to restoring macroeconomic stability. The immediate priorities are restoring security and re-establishing public services, as well as providing economic opportunities for those most affected by the crisis. The Government's main priorities are articulated around four strategic axes: strengthening political governance and promoting national dialogue; strengthening economic governance and contributing to institutional development; promoting economic recovery; and improving access to basic services.

The ILAC assessment falls within Axis 1.2: Justice, penitentiary institutions and human rights. The specific focus of this Report and the Recommendations are on justice and human rights.

The transition strategy pursues seven priorities in Justice:

- Measures against immunity
- Promotion of Judicial independence

- Rehabilitation of physical infrastructure
- Promotion of legal training and information
- Promotion of access of justice
- Promoting a participatory “front line” justice
- Promoting the participation of women

The transition strategy pursues three priorities in human rights:

- Ensuring respect for human rights and basic freedom
- Strengthening of national capacity
- Promotion of a partnership between the government and organizations that promote and protect human rights

D. JUDICIAL SYSTEM

Judiciary

Constitutional Structure

The present Constitution was approved in March 1987. It was suspended June 1988 with most articles reinstated March 1989, but after the military coup in 1991 it would take until the return of Aristide in 1994 before the country returned to constitutional rule. The Constitution establishes Haiti as a republic that is governed by an elected president and a two-chamber parliament. The Constitution guarantees the right to a just and public trial.

The Constitution, Article 10, provides for an independent judicial branch. In reality, however, the Ministry of Justice oversees Haiti’s judicial branch. The 1987 Constitution names the Supreme Court (Cour de Cassation), the Courts of Appeal (Cours d’Appel), the Courts of First Instance (Tribunaux de Première Instance), the Peace Courts (Tribunaux de Paix) and special courts (Tribunaux Spéciaux) as the entities that comprise the judiciary. The Constitution allows the Senate to act as the High Court and to hear political cases in special circumstances.

In cases that involve political offences, Haiti’s Constitution provides for the creation of special tribunals whose jurisdiction must be determined by law. The Constitution states that trials of individuals accused of political crimes or crimes committed by the press must be public.

The legal system is a civil law system, based on the Napoleonic Code.

Ministry of Justice and Security

The Ministry of Justice and Security is the executive branch entity responsible for matters related to the judicial branch, the police, and the penitentiary system, and for proposing draft laws within this field.

Court Structure

Overview

Haiti has 15 first instance jurisdictions, based in the fifteen judicial districts (nine of which are located in the country’s departmental counties - Port-au Prince, Jacmel, Les Cayes, Jérémie, Gonaïves, Hinche, Cap-Haitien, Fort Liberté, Port-de-Paix - and the remaining six in other large towns (Saint-Marc, Petit-Goâve, Anse-à-Veau, Aquin, Mirebalais, and Grande-Rivière du Nord). Each first instance tribunal is headed by a senior judge (doyen). For criminal cases, in each judicial district is established a prosecutor’s office (parquet) with at least one investigating judge (juge d’instruction). The prosecutor’s office is headed by a public prosecutor

(commissaire du gouvernement) assisted by at least one assistant prosecutor (substitut du commissaire du gouvernement). Each jurisdiction should have at least one prison, although Gonaïves has none, since the riots of August 2002.

A peace court (Tribunal de paix) is set up in every township (commune). The peace court is composed by a justice of the peace (juge de paix), who may be assisted by one or more assistance judges (substituts) in larger townships, as well as a court clerk (greffier). There are nearly 200 peace courts in the country. Port-au-Prince has 12.

Haiti's supreme court (Cour de cassation) has no administrative responsibility for the country's courts and a tradition of limited power. Below it are five appeals courts, each receiving appeals from two to four first instance courts. These upper courts also have prosecutors, clerks, and bailiffs attached to them, but play a minor role in Haitian justice, overall.

Port-au-Prince has a juvenile court; two other jurisdictions have special land courts. The Labour court and the Superior Court of Accounts and Administration Disputes have national jurisdiction.

Supreme Court (Cour de Cassation)

The Supreme Court is the highest jurisdictional authority in the country. It is composed of a president, vice-president, and ten justices, and is divided into two sections that may operate jointly or independently. The President of the Republic appoints justices from a list of at least 3 candidates prepared by the Senate. Posts are held for 10 years, during which time the justices cannot be removed.

The Supreme Court has authority over all decisions rendered by the Courts of Appeal, and those rendered on appeal by the Courts of First Instance. In its role as Superior Judicial Council, it also oversees disciplinary matters, including removal of judges; the Ministry of Justice has been active in this area, as well.

Courts of Appeal (Cours d'Appel)

There are five Courts of Appeal in Haiti: one in Port-au-Prince having jurisdiction over decisions rendered by the Courts of First Instance of Port-au-Prince, Petit-Goâve and Jacmel; the second in Cap-Haïtien with jurisdiction over the Courts of First Instance of Cap Haïtien, Fort-Liberté and Grande-Rivière du Nord; the third in Hinche with jurisdiction over the Courts of First Instance of Hinche and Mirebalais; the fourth in Gonaïves with jurisdiction over the Courts of First Instance of Gonaïves, Saint-Marc and Port-de-Paix; the fifth in Cayes with jurisdiction over the Courts of First Instance of Cayes, Aquin Jérémie and Anse-à-Veau. Each court is comprised of a president, four to nine judges, a government representative, and various prosecutors. The President of the Republic appoints the judges from lists prepared by the Senate.

Courts of First Instance (Tribunaux de première instance)

Haiti has 15 Courts of First Instance, one for each judicial district. The first instance court has jurisdiction over all civil, commercial, maritime and criminal cases that are not otherwise attributed to another court. It also has jurisdiction on appeals from decisions rendered by the Peace Courts in matters exceeding Gd 5,000 (app 135 USD). The country's Constitution establishes that judges are to be appointed by the President of the Republic from lists prepared by the Departmental Assemblies, for seven years. Judges cannot be removed from their posts. For criminal cases, the public prosecutor's offices (parquet) operate in close cooperation with the Courts of First Instance and are staffed by a prosecutor and in some instances, an assistant prosecutor.

Peace Courts

There is a Peace Court in each township (Commune), which is staffed by a judge and, in larger townships, an alternate. There are approximately 200 Peace Courts in Haiti. The Constitution states that the President shall appoint magistrates from lists prepared by the Communal Assemblies. In practice, appointments are made at the executive level due to the absence of communal nominations.

The Peace Courts are charged with various tasks, including trying criminal and civil matters and extra-judicial tasks. These courts have jurisdiction over civil and commercial cases the value of which does not exceed Gd 25,000 (app 690 USD). They also act as conciliatory courts. Additionally, they have jurisdiction over misdemeanour cases, and are granted certain investigative authority in accordance with the Haitian Code of Criminal Procedure. Many Justices of the Peace are not trained sufficiently; there is pervasive corruption, little oversight, and low salaries.

Special Courts

The Special Courts were created to hear specific types of cases. Haiti has special courts to hear cases involving labour law, juvenile and family law, property rights, and contentious administrative and financial matters, respectively. (The last is a financial and administrative court that hears disputes between agencies and officials of the state and ordinary citizens.)

Public Prosecutors

Public prosecutors are representatives of the executive branch before the courts and are responsible for order and compliance with legal judgments. In theory, they also collect information on accounting and other administrative data, which is then submitted to the Ministry of Justice. The Public Prosecutor's Office must also initiate, defend, voluntarily serve, and advise on all cases of interest to the State, including criminal matters, cases involving juveniles, and the administration of government.

Office de la Protection du Citoyen (Ombudsman's Office)

Article 207 of the 1987 Constitution defines the Office de la Protection du Citoyen as an independent institution whose principal mission is to protect individuals from governmental abuse. The Protecteur du Citoyen (Ombudsman) is elected by various authorities, including the President of the Republic and the President of the Senate. Once appointed, he or she serves a 7-year term and cannot be removed. A decree was passed in 1995 for the creation of the Office de la Protection du Citoyen; it became active in 1997. Necker Dessables is the current Protecteur du Citoyen.

There are three units within the office: protection of individual rights, protection for rights of women and public relations.

While the office is set up as an independent institution, it depends on a small budget allocated by the Government, making it even more dependent on the Government. The office currently acts as an alternative means to resolve disputes. Its power is limited by decree; it can make only recommendations to the Government but has no enforcement power. The current mandate does not reflect the Principles Relating to the Status and Functioning of National Institutions for Protection and Promotion of Human Rights ("Paris Principles").

School of Magistrates

There was a great deal of hope around the creation of the Magistrates School in 1995. It was created to train judges and other members of the judiciary. The conditions of the school were good and it had financing. Over 100 magistrates received full-time long-term training at the

school, but the judiciary lacked the capacity to integrate all the judges after they were trained. There was also a clash between the newly trained judges and the government because most of the judges wanted to stay in Port-au-Prince, but there was a shortage of trained judges in the countryside. The school is under the Ministry of Justice which also determines who will receive training.

Many hailed the School of Magistrates as *the* success story of law reform in Haiti. Yet when the Team arrived at the school, it was surprised to learn that it had not been operational for the last year. The Ministry of Justice closed the school due to what it claims is a lack of organic documents.

The Haitian government pays the salaries for the permanent staff of the School and the French government funds some of the programmes; CIDA and USAID no longer have programmes at the school. The school is hoping to reopen this year. The school would like to expand the curriculum to include courses in gender justice, anti-corruption, human rights, mediation, as well as teaching judges how to apply marriage laws to non-marital unions and is seeking outside experts to teach these courses. In addition, the school would like to decentralise its programmes to reach people outside of Port-au-Prince. While the Ministry of Justice must approve proposed courses, teaching schedules and those who will be trained, the school can independently offer continuing legal education courses, if they are financed.

The Team was surprised to see the former military currently housed at the School. This certainly impacts at least the perception of independence of the judiciary and training programmes.

Association Nationale des Magistrats Haitiens (ANAMAH)

ANAMAH is a national association of Haitian magistrates and was established on 1 January 2002. Of the 750 judges in Haiti, 500 are members of ANAMAH. The Association actively promotes free and accessible justice for all Haitians; its objectives are to further independence of the judiciary and further the training of both judges and the general public. ANAMAH has travelled to each jurisdiction to promote membership in the association. Its programmes have included informing, via radio skits and seminars, the general public about their rights and how to assert them. They have also offered training for judges in International conventions and human rights. In 2003 ANAMAH adopted a Code of Ethics for Haitian judges and plans to widely publicize the content of the ethical code to legal professionals and Haitian citizens all over the country. ANAMAH needs core and programmes support.

Bar Association

In 2001 the Haitian Federal Bar Association was formed. There are 15 jurisdictions and each can have its own bar association, although the exact size and activity of each bar is unclear. While some Bars barely function, the Port-au-Prince Bar Association is quite active. There are 600 lawyers in Port-au-Prince, 250 of which are in private practice and members of the bar. The bar associations are in need of better disciplinary measures.

E. GENERAL OBSERVATIONS IMPACTING RULE OF LAW

These observations reflect the current situation in Haiti and impact the recommendations made in this report.

Interim Government

The interim Government is non-elected. It is lacking in public trust and doesn't have the power to reform the Haitian codes. In the absence of a legislative assembly, the current government is limited to issuing decrees. However, the ground can be prepared for the incoming government. draft laws, in compliance with the constitution, international and regional conventions and standards can be written during this interim period and proposed to the incoming government. It is nevertheless important to keep in mind that, in the absence of public trust and given the history of lack of political will, proposals emanating from the interim government may not necessarily be approved and passed by the incoming parliament.

Politics

There is a high turnover rate of personnel at all levels. Government jobs are very politicised and the turnover after elections is very high. The Ministry of Justice has had a new minister almost every year; this election year will be no exception

Dual Society

Haitian society is divided into two parallel systems. One is urban, mainly Catholic, with a hierarchical social structure, regulated by the Napoleonic Code, with French as the official language. The other is rural, comprising the vast majority of the population, with a segmented social structure, practicing customary laws, with voodoo as the common religion and Creole the popular language. Much of the rural society is illiterate. This cultural divide coincides with a clear economic division. According to the World Bank, two-thirds of the population is rural of which 80% live in extreme poverty.

Approximately 99% of Haitians are descendants, in whole or in part, of African slaves who won a war of independence from France. The remaining population is of European, Middle Eastern, North American, or Latin American origin. The law makes no distinction based on race. However, longstanding social and political animosities are often tied to cultural identification, skin colour, and overlapping issues of class in a starkly non-egalitarian society. Racial distinctions tend to parallel social and economic strata. An elite of families with a mixed African/European/Middle Eastern families constitutes approximately 4% of the population. Class and racial exclusivity lead them to discriminate systematically against the black majority through the denial of economic, social, and cultural rights, particularly to education, job opportunities, and health care.

Haiti has signed and ratified the International Convention on the Elimination of all Forms of Racial Discrimination; although in practice, it is not implemented.

Customary Law

When the people don't trust the formal judicial system, they will turn to the customary system. These customary norms reflect social norms and beliefs and influence the formal law practiced by the justices of the peace, who deal with more than 80% of cases in the county. Customary laws are currently not codified or reflected in the official Haitian legal system. Furthermore,

case law of Peace Courts is not published, rendering it all the more difficult to have a good understanding of the current judicial development and tendencies in rural areas.

Gender Related Crime

Impunity for violence against women is a serious problem. While rape is recognised as a crime under the Haitian Penal Code (Article 279), it is simply classified among crimes against morality, without any further description or definition. Consequently, the rape of a woman who is not a virgin has been attributed less importance by courts than that of a virgin. According to women's rights groups, rape and other abuses of women are common, both within and outside marriage, and few women come forward to report a rape. Police authorities rarely arrest perpetrators or investigate incidents of rape. There are no government-sponsored programmes for victims of violence.

There are several Haitian NGOs that actively work to advance and protect women's rights, including: Comité des Avocats pour le Respect des Libertés Individuelles (CARLI) and Coordination Nationale de Plaidoyer pour les Droits de la Femme (CONAP).

Haiti has signed and ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); although in practice, it is not implemented.

Language

The Government recognises two official languages: Creole, spoken by virtually all Haitians; and French, limited to approximately 20 percent of the population including the economic elite. All court cases are heard and recorded in French and the majority of judicial training is in French. Although Creole was used in parliamentary debate in the Lower House of Parliament, the Government prepares most official documents only in French. Lack of French language skills remains a significant barrier to full access to the judicial system. In addition, many Creole speakers are illiterate.

Security

Without security there can be no progress. National reconciliation and disarmament programmes are key to the future of Haiti. A legitimate reconciliation will require a national dialogue which includes all sectors of society. Disarmament, demobilization, reintegration and rehabilitation programmes (DDRR) for all illegal armed groups, including the former military, are crucial to security. The transitional government and MINUSTAH must work together to prevent these groups from being "spoilers" of the reform process.

A number of judges, especially those in the north of the country, are very reluctant to try cases of past human rights violations because they are afraid of the repercussions. Witnesses are also reluctant to testify in public. As a consequence, lack of security is paralysing the justice system.

Poverty

Poverty affects between 80 - 90% of the population, notably the youth, which constitutes about 50% of the population. The impact of political instability and poverty has left about 60% of citizens unemployed³. Many women find themselves in a situation where they are forced to care for their entire family without sufficient means. There are no government sponsored childcare facilities and no social welfare is provided, which makes it particularly difficult for working women.

³ This figure includes those who's sole source of income does not ensure basic everyday needs.

Civil Identity

Sustainable development in Haiti requires not only political will, but the will of the people. The involvement and support of informed civil societies is key to any sustainable reform in Haiti. For effective participation, each person must have an established civil identity, which most of the Haitian population desperately lack. While there is a plan for a national election registration procedure for the upcoming elections, it can't go without mention that only 2% of the Haitian population participated in the 2000 elections. In addition, a majority of minors do not attend school, and are frequently required to work starting at a very young age, which means that although they actively participate in the country's economy they are, by law, denied the right to vote until they reach their majority. There must be additional registration mechanisms that will reach all members of Haitian society, particularly younger generations and those living in rural areas. Only with an established identity will the citizens of Haiti have an opportunity to participate in the reform process. Civil identity is also required if an individual is seeking to file a complaint. The ILAC team witnessed, on one occasion, an individual purchasing a birth certificate that was being drawn up, by hand, instantaneously, by a court clerk, based on the applicant's declarations, without any apparent verification. The need to establish an official civil identity to enable every citizen to come forward and assert his or her rights is pressing.

Corruption

The Government may have the political will but not necessarily the means; the Government is seen to be "drowning in political contradictions." The ILAC team was informed that the interim Government is waiting to try the corrupt officials under Aristide, but no one can come forward because they were all corrupt. Corruption is also pervasive among the Haitian National Police (see discussion below). As Michel Gaillard of Forum Citoyen put it: "Intolerable circumstances allow many people the opportunity to make money."

Haiti recently signed and ratified the Inter-American Convention Against Corruption and ANAMAH recently drafted a Code of Ethics for Judges.

Law Reform

The legal codes need a radical overhaul. These codes must conform to the constitution, the international and regional agreements Haiti has signed and ratified, and international human rights standards. Much work was done over the last decade with regard to updating the laws. UNDP was very active and has made proposals, in compliance with the constitution and human rights standards, for such reform. The Interim Government understands the urgent need for legal reform; however, they can only issue decrees, not pass new laws. The question becomes whether all reform should wait until there is a sitting Parliament. Many argue that legal reform can't stand still. Certain decrees can be issued during this transitional period, which can then be sent to a new Parliament. Other laws can be reviewed and drafts prepared to be submitted to Parliament; but it is doubtful that the new Parliament will be prepared for major reforms immediately post election. Regardless of the approach, Haitian involvement and ownership, by both the Government and civil society, is key to any sustainable legal reform.

The Judiciary

The independence of the judiciary is guaranteed in the Constitution under article 10. But both former Parliaments and the executive have adopted a number of laws and decrees which subordinate the judiciary to the executive and legislative branches. The situation is reportedly even worse in practice. The Executive Branch through the Ministry of Justice continues to control the Judiciary, including the judicial budget and judicial appointments, training, evaluation, and removal. In the French system, the Conseil Supérieur de la Magistrature plays a key role in the selection, discipline, and removal of judges and thus shields the judiciary from direct executive action. In Haiti, however, although a similar institution exists, its capacity is

weak and has only limited power of removal. Judges are underpaid and have no opportunities for professional development. Legal texts are not readily available. In fact, most judges do not have legal texts. More than half the Justices of the Peace do not have a law degree. There is no Haitian literature on jurisprudence. Often judges and prosecutors are not aware that a law has been repealed, key laws adopted or a treaty ratified. The Government has not supported efforts to investigate and prosecute major crimes such as drug trafficking and politically motivated killings, and impunity remains endemic. It should be noted also that the justice sector lacks oversight capacity and continues to provide limited access to justice to the majority of the population.

There are only a few women judges, but there is a women's judges association; several justices of the peace are women.

The 1985 Basic Principles on Independence of the Judiciary (Milan Principles) should be reflected in Haiti's future judiciary regulations.

For a detailed report on independence of the judiciary see the IFES report: *The State of the Judiciary: Haiti 2002- 2003*

Public Access to legal and judicial information

To effectively enjoy the right to a fair trial, citizens need to be informed of legal procedures, of the organization of judicial personnel and rule of law issues in general. There is limited public access to judicial and legal information in Haiti. The Constitution of 1987 (article 40) established that the State must publicise in the press, in Creole and French, all laws, orders, decrees, and international treaties in force in the country, but this is often lacking. While free access to judicial and legal information is guaranteed in principle, access in practice is extremely difficult, if not impossible.

Access to Justice

There is no public defender's office, no systematic provision of legal assistance and most legal matters are conducted in written procedures in French while the majority of the population is illiterate and speaks only Creole. Very few lawyers practice outside Port-au-Prince, where over 80% of the population resides. Access to justice is particularly poor in the outlying counties. Before the judicial system can effectively respond to the needs of a people that have always regarded the law as an instrument of oppression a great deal must be changed, both in terms of structure and mindset. Considering that anywhere in between 60% to 80% of the Haitian population is indigent, the importance (but also the difficulty) of assuring an affordable access to justice is evident.

Impunity

There is a real desire among Haitians to see those responsible for human rights abuses prosecuted. As explained by Mr. Jean-Claude Bajeux: when Duvalier came into power in 1957 Haiti entered a cycle of criminality that has not stopped; there has been a mountain of crime that no one has done anything about. There are over 1200 uninvestigated murders per year; while some people have been arrested, there is no follow through by the judiciary. The inefficiency of the judicial system, the fact that some judges are afraid to prosecute and what appears to be a lack of political will all contribute to the problem. Civil society, specifically Groupe 184, is calling on the interim Government to begin the process of rebuilding public trust in the judicial system by prosecuting at least a few of the alleged perpetrators under Aristide. It has been more than one year since Aristide's departure, it is important that the people begin to see that the justice system can work.

Physical Infrastructure

Much of the physical infrastructure is in dire need of repair. The situation in Gonaïves, for example, is deplorable. See discussion on pg 25.

Available talent/capacity

Local capacity is limited. While many sophisticated programmes have been funded and launched, Haiti simply doesn't have the capacity to carry them out. Programmes often end the minute the international donor leaves.

Police

After dismantling the Armed Forces of Haiti, the Government established the Haitian National Police (HNP) in 1995 as the sole security force in the country. The HNP is officially an autonomous civilian institution; however, authorities did not maintain effective control of the security forces and HNP officials at all levels have been implicated in corruption and narcotics trafficking. The HNP has not been effective at maintaining order. Corruption and human rights abuses became the norm rather than the exception.

The Police do not have the trust of the people, often resulting in open clashes. Gonaïves is an extreme example: in 2004 rebel groups systematically and completely destroyed the police station, the prison and the courthouse. The new police station has been looted three times in recent months and is now under the guard of UN peacekeepers.

The problem is twofold: the number of police recruits has drastically declined, leaving the current forces with little resources to ensure law and order.

Prisons

There has been a severe problem with overcrowding in prisons. In 2002 Haiti's prisons held twice as many inmates as they did in 1995. Nearly eighty percent of those in prison were awaiting disposition of their cases. The team witnessed extreme overcrowding in the police holding cell in Gonaïves where the prison had been destroyed.

Each of the 15 jurisdictions should have at least one prison although, as seen in Gonaïve, this is not always the case. The Port-au-Prince region has several prisons, including Fort Nationale, the country's only prison for women and minors, and the National Penitentiary. Adequate prisons, with proper security, trained staff, proper health measures etc. are a central component of judicial reform.

Pre-trial detention

Nearly 80% of the detainees in Haiti's prisons are awaiting disposition of their cases. Most pre-trial detainees are held from several weeks to several months before release or trial. But for many, pre-trial detention extends to years. Young delinquents reach trial even less often than adults do, frequently bypassing juvenile courts altogether. The presumed innocent are held with the guilty; petty shoplifters and the falsely accused languish next to major criminals. Cells are overcrowded, food is scarce and conditions are generally unhealthy. The problem of pre-trial detention in Haiti is real; it must be addressed if judicial reform is to have any chance of success.

For a thorough analysis of this problem see the Vera Institute of Justice 2002 report: Prolonged Pre-trial Detention in Haiti.

Civil Society

A group of 184 institutions, associations and organizations of 13 vital sectors of Haitian society came together to form Group 184, which has proposed a social contract between the people of Haiti and the government. The first part of the contract proposal is a consultation process aimed at taking up the challenge to get rid of historical hindrances that kept the Haitian people from creating a unified nation, thereby impeding development. The contract addresses nine objectives:

- To build a new state, which applies the stipulations of the 1987 Constitution and enables Haitians to radically define the relationship between the State, Civil Society and the citizen, including the implementation of a sound and equitable judicial system.
- Encourage and promote public accountability, tolerance, self-esteem, responsibility, and respect for private property and the common good.
- Fight discrimination and exclusion, particularly those pertaining to colour, social or regional origins, age physical appearance, religious beliefs, cultural practices and gender.
- Stimulate investments and create jobs.
- Narrow the gap between the rich and poor, reduce disparities between social groups, develop a well-integrated economy and provide the basic services to those in need.
- Increase access to a quality education to all children.
- Rebuild and safeguard the environment.
- Guarantee the freedom of unions and the respect for workers' rights for both men and women.
- Establish a structured and valued political party system, engage civil society to work in a collective effort to implement a reliable electoral system and establish free and democratic elections.

The current status in Haiti reflects a lack of cohesion between the government and civil society and a serious unwillingness to compromise. There can be no sustainable legal reform without the will of the people. It is clear that judicial reform must take place on two levels: the judiciary level (training, appointments, laws) and the public level (changing the mentality of distrust).

The Coordination Committee within Group 184 consists of three groups: Haitian Solidarity International, Haitian Centre for Human Rights and Justice and Peace. The Committee sponsors citizen forums (Forum Citoyen) on such topics as: the basis for criminal law reform; the role of civil society in judicial reform; the characteristics of the Haitian judicial system; democratic criminal procedure; access to justice and corruption. These forums include both government officials and civil society. The purpose of the forums is not only to encourage Haitians to become involved and participate in the process but to forge a partnership with the Government. Members of the Government are asked to participate not only as panellists but also as partners, encouraging everyone to be part of the reform. These forums currently take place only in Port-au-Prince. The Committee's goal is to reach the majority of the people and get them involved in the reform process. It would like to expand these citizen forums to the outlying counties via a "train the trainers" programme.

There are many civil society groups in addition to Group 184 that are actively supporting legal reform in Haiti.

International law

Haiti is signatory to numerous international and regional covenants and conventions. Those include the 1966 International Covenant on Civil and Political Rights (ICCPR); 1969 Inter-American Convention on Human Rights (Pact of San Jose; including Art 62 Recognition of the jurisdiction of the American Court on Human Rights); the International Convention on the

Elimination of all Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination Against Women; the 1996 Convention on the Rights of the Child; and the Inter-American Convention Against Corruption.

Additionally, the 1948 International Declaration of Human Rights; 1985 Basic Principles on the Independence of the Judiciary (Milan Principles) and 1990 Guidelines on the Role of Prosecutors (Havana Guidelines) should be incorporated in the future judiciary regulations. Similarly, the legal profession should take into account the 1990 Basic Principles on the Role of Lawyers (Havana Principles).

Gonaïves

Prior to departing for Gonaïves the Team was told by Government officials that the city was broken and there was no sense in visiting. The state of affairs is indeed deplorable and it certainly appears that the Government has closed its doors on this region. Security is almost non-existent; Gonaïves is in the "hands of bandits."

The police in Gonaïves have a history of being corrupt and continue to have quite a bad reputation. The people do not trust them, although the police feel it is getting better. There are currently 79 police officers to protect 200,000 citizens, 300-400 officers is the target number. The police have very little resources and almost no communications equipment (they have no radios); they won't even enter "hot" areas where the rebels have control. The rebels systematically, brick by brick, destroyed the Police station in February 2004 and have looted the new police station 3 times in the last months. The station is now under the armed guard of MINUSTAH. Of the 25 police stations in the region 11 are destroyed or closed.

The prison was also destroyed in August 2002 and all the prisoners escaped. A temporary holding cell was built to house only 15 but often held up to 60 prisoners. Detainees are now sent to the neighbouring county of Saint-Marc, which is several hours away by car. Many have been there for months and still have not been charged due to problems with transportation and the difficulty of conducting an investigation in the physical absence of the detainee. As a result, many detainees now in Saint-Marc are feared forgotten.

The Police and judiciary do not work together and neither is perceived by civil groups to be working for justice; The UN CIVPOL is attempting to foster a better working relationship between the police and the judiciary.

The Court of First Instance was also destroyed in February; the majority of documents were either stolen or destroyed. The Court still has no chairs, benches or electricity and there have been no large criminal trials in Gonaïves in over a year. The judges reported that they have made many requests for assistance have been sent to the Minister of Justice, but they have received no response. None of the judges in Gonaïves have had any continuing legal education for over 4 years.

The Gonaïves Court of Appeals was burnt down in 2001. It is now temporarily housed in the same building as the administrative court. Most of the records and archives were destroyed in the fire, although several clerks and bailiffs risked their lives trying to save what files they could. There has been no attempt to rebuild the court for fear it will be destroyed again. The working conditions are dreadful, there is no place for hearings, no storage facilities, the caseload is heavy and there is no library. In addition, many judges lost their personal libraries in the hurricane and flooding in 2004. The court receives additional cases from outside the county and they are short staffed; one judge and one prosecutor have been reassigned to other counties and no replacements were sent to Gonaïves. They do not have the means to train

new judges or prosecutors. The judges say that they have written to the Minister of Justice requesting help but have received no response.

There is a Justice and Peace office in Gonaïves, a local NGO, closely related to the Catholic Church and run by law students. This group tries to educate the public, many of whom are illiterate, about their rights and obligations as well as accompany victims to court. They entice people to attend their programmes by offering food. This group requires support in the form of train the trainer programmes, training materials, basic office supplies and a small operating capital. Justice and Peace has a good relationship with ANAMAH and has worked with them in the past.

The law school in Gonaïves is currently closed but it is expected to open in the near future.

F. RECOMMENDED PROJECTS

This Report recommends short-term, practical projects that are designed to support the sustainable reform of the Haitian judicial system in the transition period 2005 – 2006. These projects are designed for partners who are generally not dependent on the outcome of the upcoming elections. These projects fit squarely within or support the priorities identified in the ICF matrix. They will have immediate, tangible and visible benefits in Port-au-Prince and the outlying counties and will provide a foundation for medium and long-term projects. The recommended projects are presented in a matrix format on pp. 8-10.

An important starting point for the entire programme of judicial reform is the fact that Haiti has signed and ratified numerous fundamental international and regional instruments regulating human rights, fair trial and due process. These include the 1966 International Covenant on Civil and Political Rights (ICCPR); 1969 Inter-American Convention on Human Rights (Pact of San Jose; including Art 62 Recognition of the jurisdiction of the American Court on Human Rights); the International Convention on the Elimination of all Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); the 1996 Convention on the Rights of the Child; and the Inter-American Convention Against Corruption.

In addition there are several relevant UN-sponsored guidelines, including, the 1985 Basic Principles on the Independence of the Judiciary (Milan Principles), 1990 Guidelines on the Role of Prosecutors (Havana Guidelines), the 1990 Basic Principles on the Role of Lawyers (Havana Principles) and the Principles Relating to the Status and Functioning of National Institutions for Protection and Promotion of Human Rights (Paris Principles).

The contents of these instruments and guidelines should be influencing the ongoing reform process and incorporated into future relevant laws and regulations.

A cross cutting theme throughout these recommendations is gender. This includes the protection of women's rights, in law and practice, and the promotion women's participation at all levels of the judiciary, bar, Government and civil society. All training programmes should include women and education and access to justice programmes should target women.

PROMOTION OF JUDICIAL INDEPENDENCE

Independence of the Judiciary

The Team was told that the present Minister of Justice is committed to leaving a legacy of judicial independence. This is clearly a long-term goal but the transitional government can begin to lay the seeds for judicial independence. The Ministry's support for independence of the judiciary must include: immediate resumption of the operation of the School of Magistrates to facilitate training in the basic principles for independence of the judiciary; training in human rights and anti-corruption; a clear separation of powers between the Ministry of Justice and the Courts; a clear separation of powers between the Ministry and the Office de la Protection du Citoyen (based on the Paris Principles); and support of efforts to investigate and prosecute major crimes, including politically-motivated killings. The following projects are proposed to help carry out these goals.

Strengthen the capacity of the Association Nationale des Magistrats Haitiens (the National Association of Haitian Judges) (ANAMAH). ANAMAH was created in 2002 and includes 500 of the 750 Haitian judges in its membership. It is active within Port-au-Prince but needs core funding to support an office and small staff to promote congeniality and independence among judges throughout Haiti, particularly in the outlying counties, as well as distribute and promote its new Magistrates Code of Ethics. ANAMAH also has programmes that promote legal literacy to both legal actors and civil society and explain not only a person's rights but how to properly access the legal system. These programmes require support to reach the outlying counties, where they are most needed. Further it is recommended that an international expert work with the Executive Director of ANAMAH to strengthen the effective operation of ANAMAH as well as expose the Association to other systems, including procedures to cover daily operating costs.

Partner: ANAMAH

International Magistrates Mentor Programme

Promote international mentor programme through funding and support of an exchange programme for Haitian judges, including women, to visit other jurisdictions and work directly with judges from that system, including being present for "rough rule" cases.

Partner: ANAMAH, IABA, OCCBA, International Association of Women Judges (IAWJ)

Inter-American Convention Against Corruption

Haiti signed and ratified the Inter-American Convention Against Corruption. Training programmes to explain how the Convention affects legal actors in Haiti as well as a menu of anti-corruption programmes that have worked in other systems are needed. The Convention must be translated into Creole and pictographs for distribution to legal actors at all levels and made generally available through the School of Magistrates, Law Schools, human rights associations, civil society and libraries.

Partner: Haitian Bar associations, IABA

School of Magistrates

The school of Magistrates was built in 1995 and was designed to promote judicial independence. The school is currently not operating because the Ministry of Justice claims a lack of proper organic documents. To promote independence of the judiciary it is suggested that sample organic documents from other systems be provided to move oversight and financing of the School away from the Ministry of Justice to the Supreme Court, or some other judicial institution. Professors and international experts from other countries are needed to

teach seminar courses at the school, including courses on gender justice, human rights, anti-corruption, and mediation. Ideally courses should be offered in Creole and/or French.

Potential partners: School of Magistrates

Court Observer/Review Programme

Haiti has a history of problematic court procedures and trial outcomes, (see e.g. case of Guy Mallory). It is recommended that an international court observer/case review programme be created for a period of not less than three years to report on court procedures and proper application of law and international human rights standards. The findings should be published and readily available to the public. The programme would include a mentor component to train and finance a local Haitian NGO to eventually take over the role of court observation/case reviewer. The programme could also include a training manual so that future observers/reviewers could be easily trained. The programme could begin in Port-au-Prince but should expand, as soon as reasonably possible, to include all jurisdictions.

Potential Partner: CARLI, Peace and Justice

PROMOTION OF LEGAL TRAINING AND INFORMATION

Training

Both new and refresher legal training courses, in Creole and French, are required for judges, prosecutors and lawyers at all levels. Recommended courses for judges, prosecutors and lawyers include Human Rights in the Administration of Justice; gender justice; judicial independence; and seminars explaining the relevant international treaties, covenants and guidelines. A short course with manuals, should also be offered on training judges, prosecutors, lawyers and staff in case management and court administration.

Qualified law professors, fluent in French and/or Creole, are required for a visiting professor programme. The specific course requirements can be worked out with the School of Magistrates and law schools.

Potential Partners: School of Magistrates, Law Schools

Library Management

Many judges, prosecutors and lawyers do not have copies or access to law books, international conventions and other legal documents, although many of these materials were provided over the last few years. We were told that books and files were often taken away with no record of who took them. A library management programme is proposed. There exists a small library at the School of Magistrates which could serve as a model library. An international expert would work with the School of Magistrates to create an effective management programme for the library as well as a book loan record process. A manual should be created and used in a train the trainer programme. The library model can be replicated at least once for each jurisdiction. Law books, Supreme Court cases, International and Regional Conventions, human rights documents, manuals and other materials should be provided in Creole, French and pictographs. These documents should be available to judges, lawyers, prosecutors, staff and the general public.

Potential Partners: School of Magistrates, Law Schools, ANAMAH, Haitian Bar Associations

PROMOTION OF ACCESS TO JUSTICE

Bar Association

There are 15⁴ jurisdictions within Haiti and each is entitled to have a bar association, although it is unclear which jurisdictions currently have active bar associations. The Port-au-Prince Bar Association is an active bar and is promoting the further development of the newly formed Federal Haitian Bar. A strong unified federal bar can encourage congeniality and support among all lawyers within Haiti. Additionally, a federal bar can more easily promote standard education, ethics, licensing and fee programmes within Haiti. The Port-au-Prince Bar requires support to work with the bar associations in other jurisdictions to strengthen the capacity of the federal bar. It is recommended that an international expert provide training and support for the effective development and management of the federal bar association.

Partner: Port-au-Prince Bar Association, Federal Bar Association, IABA

Regional Support

There are two regional bar associations in which Haiti should be more active: the Inter-American Bar Association (IABA) and the Organisation of Caribbean Commonwealth Bar Associations (OCCBA). Both OCCBA and IABA have a wealth of expertise in judicial reform and can provide Haitian lawyers with the support they need to be a moving force in judicial reform as well as promote congeniality among lawyers within the region.

Regional bar support can facilitate Haiti's exposure to other legal systems, including participation in their annual meetings, promotion of a Code of Ethics, development of Continuing Legal Education agenda, and bar to bar partnership programmes.

OCCBA has an on-line access to justice programme for its member bars. The site includes support for legal aid, including relevant forms: see www.nsulaw.nova.edu/occba/access_tojustice.cfm. The Project is funded by the Inter-American Development Bank and has been quite successful. It is recommended that the Haitian Bar work with OCCBA to propose that IDB include Haiti in the next round of the OCCBA Access to Justice Project. A special kiosk could be set up within the Bar in each jurisdiction, including a wireless computer and printer, to help facilitate access to the Project. It is further recommended that OCCBA organise a train the trainer programme to educate Haitian lawyers on how to effectively utilise the site and interact with other lawyers within the region. OCCBA may want to consider Haiti as a first step towards expanding its membership to include regional non-Commonwealth countries.

The purpose of the Inter-American Bar Association is to promote the rule of law and the improvement of the administration of justice through the establishment and maintenance of independent judicial systems in all countries of the Hemisphere; to preserve and defend human rights and liberties; to seek the ethical strengthening and ennobling of lawyers, and to encourage profession relationships among jurists from the Hemisphere. The IABA could support Haiti as it struggles to establish the same ideals. The IABA also has several committees that could support and facilitate the development of similar programmes in Haiti, including: human rights, the practice of law, women's rights, law school faculty, legal education and anti-corruption. The IABA should encourage and facilitate an active Haitian membership in the IABA, including participation in the annual conference.

Partner: Port-au-Prince Bar, Federal Bar, OCCBA, IABA. Possible funding: IDB

⁴ There is some confusion as to the exact number of jurisdictions within Haiti. The former President of the Bar stated it was 13 while the Haitian Embassy in Washington DC stated the correct number as 15 and previous UNDP reports have the number at 16.

Access to Justice in outlying counties

Educating civil society should be a priority within Haiti. It is an essential step for harmonisation of the dual system. To achieve the grass roots effort required for judicial reform in Haiti, civil society, but particularly those living in the outer counties, must be informed of their rights under the law. Many of the Haitians most in need of this assistance are illiterate and speak only Creole. Education must be in Creole and pictographs, where appropriate.

Several Haitian NGOs and organizations already have outreach programmes but need support to introduce these programmes to the outlying counties. This support includes financial backing for travel, meetings, and printing; technical support in the form of manuals, translation of laws, conventions and international standards into Creole and pictograms, and training by experts from similar situations. The NGOs that have current programmes include: Justice and Peace, ANAMAH, Group 184 and CARLI. These programmes must be coordinated to minimise duplication of effort and working at cross-purposes.

Potential partners: Haitian Bar Associations, ANAMAH, Justice and Peace, Group 184 and Carli, IABA

PROMOTING PARTICIPATION OF WOMEN/GENDER JUSTICE

The Ministry of Women's Affairs has requested assistance for the promotion of gender justice in Haiti. Specifically, they have asked for support in creating comparative law papers for the areas of discrimination, domestic violence, and *plaçage* (common law marriage). These papers should include the laws and systems of implementation for several countries. The Ministry can then have a tool from which to work when developing drafts for Haitian laws in these areas.

The Ministry has also asked for assistance in evaluating Haiti's current laws against the international conventions, which Haiti has signed and ratified, and international standards. This evaluation can be used as a tool from which the Ministry can work when drafting new laws for Haiti.

Partner: Ministry of Women's Affairs

ENSURING RESPECT FOR HUMAN RIGHTS AND BASIC FREEDOMS

Human Rights and Basic Freedoms

See discussion on Training Programmes and International Instruments above.

Inter-American Commission

Due to the current status of the Haitian judiciary, it is important for Haitians to explore additional approaches for access to justice. One such method is through the Inter-American Court of Human Rights. It is recommended that an expert with experience in bringing cases before the Inter-American Court of Human Rights share that experience with the Haitian Bar Associations and NGOs. The Inter-American Bar Association could be a strong resource for Haiti in this area. It is further suggested that experts be identified within the Inter-American Bar Association that can assist Haitian lawyers with any cases that may come before the Inter-American Court of Human Rights.

Potential Partners: Haitian Bar Associations, IABA

STRENGTHENING NATIONAL CAPACITY

The Office de la Protection du Citoyen's power is limited by decree; it can make only recommendations to the Government regarding the resolution of disputes but has no enforcement power. The current mandate does not reflect the Principles Relating to the Status and Functioning of National Institutions for Protection and Promotion of Human Rights ("Paris Principles"). It recommended that the Office de la Protection du Citoyen and the Ministry of Justice be provided with a comparative law paper for a more effective Ombudsman's office. This paper should include the laws and systems of implementation for several countries in different areas. The Ministry and Ombudsman's office can then have a tool to work from when developing drafts for Haitian laws in these areas.

Partners: Office de la Protection du Citoyen, Ministry of Justice

PROMOTION OF PARTNERSHIP BETWEEN GOVERNMENT AND CIVIL SOCIETY

Support and financial backing for Group 184's forums on legal literacy in the outlying counties is required. These programmes serve to inform civil society about their rights, how to access the judicial system and how to participate in the reform process.

Partner: Group 184

Annex 1: ILAC Meetings in Haiti

- 13 January **Marc Rhéal Cadet**, Avocat au Barreau de Saint-Marc
- 14 January **Joseph Riguard Duplan**, Avocat (former President of the Bar)
- Bernard Gousse**, Ministre de la Justice et de la Sécurité Publique
- Philip Vixamar**, Membre du Cabinet Ministère de la Justice et la Sécurité Publique (MJSP), national coordinator for the Justice, human rights sectorial table
- Gervais Charles**, le Bâtonnier
- 15 January Group 184 seminar
- Louis Nkopipie Deumeni**, UNDP, Conseiller Technique, Renforcement du Système Judiciaire et Appui à la Réforme du Droit et de la Justice
- 17 January **Michel Gaillard**, Forum Citoyen
- Mme Adeline Magloire Chancy**, Ministre de la condition Féminine
- Mme Dilia Lemaire**, Assistante, Ministère de la Condition Féminine
- Neckar Dessables**, le Protecteur du citoyen
- Denis Racicort**, Electoral Commission, MINUSTAH
- Cissé Goure**, PNUD, Human Rights focal point for the Justice for the international community, Human Rights sectorial table
- Regis Mamet**, Coordonnateur, Project État de Droit, PNUD, Justice focal point, representing the international community, for the Justice Human Rights sectorial table
- 18 January **Philip Vixamar**, Membre du Cabinet Ministère de la Justice et de la Sécurité Publique (MJSP), national coordinator for the Justice, Human Rights sectorial table.
- Jean Peres Paul**, Juge, President de L'ANAMAH
- Jocelyn J. Rosemberg**, Juge au tribunal de 1st instance de Port-au-Prince, Vice President de L'ANAMAH
- Juges de la Cour de Cassation
- Georges Henri**, Acting President
- Charles Djacaman**, Juge
- Gérard Arthur Delhair**, Juge
- Pierre-Louis Menan**, Juge
- Raoul Lyncu**, Juge

Charles Danastor, Juge

Jean-Claude Douyon, le Directeur de l'Ecole de la Magistrature

Hocine Medili, Principal Deputy Special Representative for the Secretary General, MINUSTAH

Hervey Sylvain, Prime Minister's Strategic Office, Haiti

Terseli Loial, Senior Legal Advisor, MINUSTAH

Auguste Kouame, Special Representative, Haiti Country Office, Latin American and the Caribbean Region, The World Bank

19 January

Gonaïves, Haiti

Cecilia Piazza, Responsable MINUSTAH Bureau Régional des Affaires Civiles

Denise Arbonville, Affaires Civiles

Didier Lesigne, CIVPOL

Jean Lafaille, Commandant Régional CIVPOL

Commission Justice et Paix

Novembre Maxi, Secrétaire Adjoint

Arvel Moise, Juriste

Démézier Canès, Coordinateur du Programme Réforme de la Justice Pénale

Isaac Dezumé

Tribunal de Première Instance

Me Octélus Dorirlien, Doyen

Me Louiselmé Joseph, Commissaire du Gouvernement

Cour d'Appel

Me Hugues Saint-Pierre, Président

Me Grégoire Jean-Baptise, Juge Président

Me Roland Paphius, Commissaire du Gouvernement

Police National d'Haïti

Demangles Weismann, Commissaire de Police, a.i.

Emmanuel Chérilus, Service Départemental Police Judiciaire

Port-au-Prince

Jean Jacques Y. Descartes

Lawyers' Committee for the Respect of Individual Liberties (CARLI)
Chargé des Relations Internationales

National Coalition for Haitian Rights

Denis Racicort, MINUSTAH

**Louis Nkopie Deumeni, UNDP, Conseiller Technique,
Renforcement du Système Judiciaire et Appui à la Réforme du Droit et
de la Justice**

DSRSG Prisons, MINUSTAH

20 January

Jean Vandal, former Minister of Justice

**Jean-Claude Bajoux, director of the Ecumenical Centre for
Human Rights**

Annex 2: list of documents reviewed

These documents, listed alphabetically, were reviewed and, where appropriate, used in the report.

A New Chance for Haiti? International Crisis Group 2004 Report

Amnesty International: Republic of Haiti 2004 Year End Report

Analysis and Lessons Learned of ROL and Law Technical Assistance Haiti 2001

Appendix II, US and Other Donors' Assistance to the Haitian Judicial Sector, Fiscal years 1993-2001

Background and History of the Groupes Des 184 (2005)

BBC News Timeline Haiti 12/31/2004

Checklist on Human Rights Issues Haiti ICF

Commission Interaméricaine des Droits de l'Homme, Rapport # 78/02, Dossier 11.335, Guy Malary (2002)

Décret relatif à l'organisation judiciaire, République D'Haïti, Décret

Final Report on OPDAT/Haiti Programmes of Justice Sector Assistance 1995 – 2000

Forum Citoyen Pour La Réforme de la Justice, Vers la construction de l'indépendance du pouvoir judiciaire

Gender Analysis of Post Conflict in Haiti and Implementation of UNIFEM Mandate (2004)

Gender Analysis of Post Conflict in Haiti and Implementation of UNIFEM Mandate

General Accounting Office, Foreign Assistance Haiti (2001)

Haiti, by Henry F. Carey (2004)

IDP/CGCED, Challenges of Capacity Development Towards Sustainable Reforms of Caribbean Justice System

IFES State of the Judiciary Report: Haiti 2002 – 2003 (2004)

Interim Cooperation Framework 2004-2006, Summary Report

Justice Studies Center for the Americans: Haiti

Justices en Haïti, Programme des Nations Unies Pour le Développement, Bureau pour l'Amérique Latine et les Caraïbes, Projet regional de justice (1999)

Le Systeme Judiciaire En Haiti, Analyse des aspects pénaux et de procedure pénale (1996)

Lesson Learned: Peacebuilding in Haiti, International Peace Academy (2002)

Ministère à la condition féminine et aux droits des femmes (2004 – 2005)

Ministère de la Justice et de la Sécurité Publique, Colloque consacré à la réforme du Droit et de la Justice

Ministère de la Justice et de la Sécurité Publique Cadre de Coopération Intérimaire (2004)

National Judicial Reform in Haiti, Coalition for Haitian Rights

Office de la Protection du Citoyen, Rapport Trimestriel (avril – juin 2004)

Principles relating to the status and functioning of national institutions for protection and promotion of human rights ("Paris Principles").

Prolonged Pretrial Detention in Haiti, Vera Institute of Justice (2002)

Propositions Pour Debat National Autour Du Contract Social, Mise en perspective des themes et des débats des ateliers diagnostic, Le Groupe des 184 (2005)

Rapport Number 113/00, Affaire 11.335, Guy Mallery. Commission Interaméricaine des Droits de l'Homme (2000)

Report and recommendations of the independent expert, Mr. Adama Dieng, on the situation of human rights in Haiti.

Rule of Law Technical Assistance in Haiti: Lessons Learned 2001, A World Bank Conference, Saint Petersburg, Russia

Status de L'Association Nationale des Magistrats Haitiens (ANAMAH)

Table Sectorielle De Concertation Justice Et Droits Humains (2005)

The Role of Canada in Post-Aristide Haiti: Structures, Options and Leadership (2005)

The World Fact Book: Haiti 12/16/2004

UN ECOSOC, Integration of the Human Rights of Women and the Gender Perspective, Violence Against Women (2000)

UN PeaceKeeping, Discussion Paper, Haiti, Lessons Learned (2004)

UN Resolution 1542 (2004)

UN Stabilization Mission in Haiti (MINUSTAH) Mandate

UNDP Haiti, Outcome Evaluation, Outcome 7: Rule of Law, Justice and Human Rights

US Department of State, Haiti, Country Reports on Human Rights Practices (2003)

USAID/Haiti, Administration of Justice Project, Final Report, Checchi and Company (1999)

Wall Street Journal, Haiti: This time we must get it right, by Kofi A. Annan (2004)

Annex 3: About International Legal Assistance Consortium (ILAC)

The International Legal Assistance Consortium (ILAC) was formed in 2002 as an umbrella organisation for associations of legal and human rights experts world wide. The membership is constantly growing. In March 2005, the following organisations, representing more than three million individuals, had joined ILAC:

- American Bar Association
- Arab Lawyers Union
- Association Internationale des Jeunes Avocats
- Australian Legal Resources Institute
- Bar Association of India
- Bar Council of England and Wales
- Canadian Bar Association
- Commonwealth Lawyers Association
- Council of the Bars and Law Societies of the European Union (CCBE)
- Faculty of Advocates (Scotland)
- Hong Kong Bar Association
- ILAC - USA
- Inter-American Bar Association
- International Association of Prosecutors
- International Association of Women Judges
- International Bar Association
- International Commission of Jurists
- International Foundation for the Independence of Lawyers and Judges (FIDIAM)
- International Human Rights Law Institute
- LAWASIA
- Law Society of Botswana
- Law Society of England and Wales
- Law Society of Scotland
- Law Society of South Africa
- Macedonian Business Lawyers' Association
- National Association of Women Judges (USA)
- Nepal Bar Association
- Norwegian Bar Association
- Organisation of Commonwealth Caribbean Bar Associations
- Public International Law and Policy Group
- Pan African Lawyers Union
- Raoul Wallenberg Institute
- Swedish Bar Association
- Union Internationale des Avocats

The purpose of ILAC is to assist in rebuilding legal systems in post-conflict countries. The ILAC head office is located in Stockholm, Sweden. ILAC is a non-profit association, registered under Swedish law. ILAC also has branch offices in the UK and US.

ILAC's work is carried out in a two-step approach. First, at the invitation of the authority in charge of the country in question, ILAC dispatches an assessment mission to make a "diagnosis" of the judicial system. The members of the mission are selected from the member organisations. Language abilities and familiarity with the legal and cultural environment are important selection criteria. Through ILAC's geographical spread, we can usually select at least some team members from the relevant region, which typically adds to the legitimacy of the mission.

The assessment team produces a report with recommendations, which are prepared in coordination with the governing structure in the country. Typically, the recommendations are proposals for projects, necessary for the reconstruction of the judicial system.

As a second step, ILAC distributes the proposed projects to its member organisations, soliciting offers of implementation. The implementation of the proposed projects, as well as the fund-raising, is then basically the responsibility of the implementing organisation. However, ILAC remains in the picture as coordinator of the projects and as an advisor and go-between with the implementers and the governing structure.

Projects initiated by ILAC are currently being implemented in Afghanistan, Iraq, Liberia and Sri Lanka. More information about ILAC will be found at www.ilac.se.