



USAID | **HAITI**
FROM THE AMERICAN PEOPLE

HAITI RULE OF LAW ASSESSMENT

FINAL REPORT

April 2015

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LIST OF ACRONYMS

ABA	AMERICAN BAR ASSOCIATION
CEDAW	COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN
CSPJ	HIGH JUDICIAL COUNCIL
DOJ	DEPARTMENT OF JUSTICE
EMA	MAGISTRATES SCHOOL
GBV	GENDER BASED VIOLENCE
GOH	GOVERNMENT OF HAITI
IFES	INTERNATIONAL FOUNDATION FOR ELECTORAL SYSTEMS
INL	BUREAU OF INTERNATIONAL NARCOTICS AND LAW ENFORCEMENT
LGBT	LESBIAN, GAY, BISEXUAL, TRANSGENDER
MINUSTAH	UNITED NATIONS STABILIZATION MISSION IN HAITI
MIS	MANAGEMENT INFORMATION SYSTEMS
NCSC	NATIONAL CENTER FOR STATE COURTS
NGO	NON-GOVERNMENTAL ORGANIZATION
OAS	ORGANIZATION OF AMERICAN STATES
OECD	ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT
OPDAT	OVERSEAS PROSECUTORIAL DEVELOPMENT ASSISTANCE TEAM
PAP	PORT-AU-PRINCE
PNH	HAITIAN NATIONAL POLICE FORCE
PPD	PROLONGED PRE TRIAL DETENTION
TTDPK	TETRATECH DPK
UNDP	UNITED NATIONS DEVELOPMENT PROGRAM
USAID	UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT
USG	UNITED STATES GOVERNMENT

EXECUTIVE SUMMARY

For over 200 years Haiti has been a sovereign, independent country. In 1791, its slaves revolted against France, drove out or massacred the white settlers and plantation owners and eventually established the first black Republic in 1807.

As a colony, Haiti was known as the ‘Pearl of the Antilles’ for its prodigious production of coffee, sugar, indigo and cotton. The economy was slave-driven. At one point up to 800,000 slaves, imported from West Africa, were used in agriculture.

Central to Haitian history and a force still extant today was the development, in the latter half of the 18th century, of a class known as the people of color. Some were allegedly the offspring of white plantation owners and their black concubines. These mulattoes were free, could inherit property and were in many cases wealthy. Prior to the Haitian revolution, the mulatto population was estimated at approximately 25,000. The class also included black freemen who had bought their freedom before independence. They owned one-fourth of the slaves and one third of the land property. Initially, together with the mulattoes, they helped the French army resist the slave revolt. However, they switched sides and fought against the French. Both were called after independence the old freemen. Other segments of the population, not part of the elite, were called the new freemen.

Subsequent to the revolution many of the mulattoes owned property and acquired wealth. Both mulattoes and the black freemen became the elite. The elite gained enormous influence over the creation and evolution of the fundamental political, social and economic structures of Haitian society, and their influence remains almost as strong today. Following independence, the newly created Haitian State, which comprised the interests of the elite, felt no obligation to deliver services to the peasantry. As leaders of the new republic, the elite maintained the colonial administration’s exclusion practices, but focused them on the peasantry. Privileges and state services were concentrated in the main cities. Residing largely outside the symbolic gate of these cities, peasants had no rights and were denied access to goods and services available to urbanites.

For most of the Republic’s history, social dynamics have been driven in large part by the clash between the economic and political interests of the elite, who in essence became the aristocracy, and the rest of the black citizenry. The latter have been and continue to be dominated by the former, with the elite calling themselves the true representatives of all blacks. Elite groups have fought for two centuries among themselves to entrench their power and influence over the State. Their struggles have severely eroded the depth and breadth of Haiti’s democratic structures and, by extension, the rule of law, although many of them fought against executive encroachments on Parliament and the Judiciary. The primary challenge to cultivating an inclusive, transparent and dynamic justice system will be developing an effective counterweight to the elite and other non-elite spoilers. This assessment report examines USAID’s attempts to promote justice reform in the context of these glaring imbalances, the successes and failures of these efforts, and the lessons learned to inform future activities.

For the past 20 years, USAID and the international community have contributed significant funding in an attempt to improve the quality of justice institutions and actors. The benefits accruing to the justice system have been mixed. USAID, through its implementers, has trained judicial actors, expedited trials, improved courthouses, worked to improve civil society and legal aid infrastructure, and implemented legal education. The DOJ through its OPDAT program enhanced the performance and capacity of the prosecutorial component of the court system. INL has invested in the building of prisons and the training of personnel, and through its implementer ABA, has assisted the Haitian government in the passage and implementation of laws on trafficking, money laundering and anti-corruption. MINUSTAH and UNDP have been involved with their own projects on legal aid, code reform, and support for CSPJ, the Ministry of Justice and the Magistrates School. The OAS and the governments of France and Canada have participated as well.

Haiti lacks a genuine commitment from the executive to serious, sustainable and comprehensive justice reform. In addition, spoilers, such as some law practitioners, land surveyors and notaries (those who benefit the most from legal obscurity and the status quo) have fought justice reform efforts. These groups have kept the sector weak and under-resourced, to insulate themselves from the consequences of questionable legal practices and behavior and sustain impunity. A strong justice sector threatens the political interests of the elite and its control of Haiti’s wealth. It also challenges the benefits gained by the spoilers. Unfortunately and perhaps unwittingly, the

international community's substantial investment in justice reform has allowed the GOH to avoid its own responsibilities in committing to the reform process and ensuring reform efforts are sustainable.

While the investment of the international community in strengthening justice has resulted in substantial improvements in the justice system since the fall of Jean Claude Duvalier, it still remains under-resourced and undernourished. At the time of Baby Doc's departure, the sector was little more than a tool of manipulation for those who held the reins of power. Haiti had nothing approaching a functional justice system. While the impediments of executive interference in the judiciary and lack of real separation of powers remain, civil society and judicial actors have increased their volition and capacity to confront the calcified governmental structures that retard progress toward rule of law.

The Assessment Team recommends that assistance be continued to strengthen those forces that have the potential to alter the status quo, the forces that potentially will be able to shift the balance of power away from the executive and the spoilers. It is recommended that any assistance to the GOH for justice sector reform be strictly conditioned on unequivocal performance standards. If the GOH continues to engage in actions that work against the establishment of rule of law, then all justice reform assistance to it should cease. If USAID and other international donors are able to successfully impose these strict conditions, the Assessment Team believes that the empowered judicial actors, groups and institutions outside the executive will take up the slack, introduce the necessary reforms, and take ownership of the justice system.

The team believes that the current atmosphere of political instability creates new opportunities to advance justice sector reform. While many interventions have led to unsustainable results, some of them continue to show their impact. We contend that it was not faulty design that contributed to failure and lack of sustainability, but rather the roadblocks created by the elite and spoilers. Through new programs empowering civil society and reformers in the justice sector, these negative dynamics can be reversed.

MAJOR FINDINGS AND RECOMMENDATIONS

FINDINGS

- Haiti's elite, dominant from Independence onward, still rules and unduly influences all other governmental sectors, particularly the Judiciary.
- Political instability, lack of inclusion and failure to create national discourse retards economic, political and jurisprudential reform.
- Haitian government priorities are not focused on rule of law. The government fails to support the commitments it makes for justice reform.
- Donor assistance has enabled low revenue collection, resulting in insufficient GOH financial commitment to the justice sector and sustaining the elite's privileged status.
- The security and justice sector has been underfunded for the last 20 years. Justice institutions have received a small percentage of the funding of this sector. Thus, donor-funded justice projects have faced major obstacles in achieving sustainable results.
- New criminal and procedural codes have yet to be adopted by the Parliament. Outdated codes and laws, some almost 200 years-old, have been an impediment to reform.
- Lack of adequate GOH funding has contributed to inhumane prison conditions and has been a significant factor in the unacceptable level of detainees in pretrial detention.
- Court houses are dilapidated, seriously inadequate and lack basic resources.
- There is little oversight of judicial clerks. They engage frequently in corrupt practices, charging fees above those authorized for court services, limiting access to justice.
- Interference of the executive on judges and prosecutors has fed a culture of impunity and allowed high profile defendants to avoid accountability. It has reinforced the citizens' perception of a justice sector that is corrupt, inaccessible and inept.

- Under the Checchi program of 1996-1999, training allowed prosecutors, magistrates and lawyers to use law and codes for cases that were not politically sensitive. Lawyers became aware of improper and corrupt practices. These impacts have been sustained.
- Under the IFES program of 2001-2004, USAID strengthened understanding of rule of law by civil society organizations and legal associations and built an advocacy network. The resulting civil society-government coalition set the stage for passage in 2007 of the important laws on the status of the magistrate, magistrates' school, and CSPJ.
- The NCSC programs of 2004-2009 strengthened the capacity of justice actors through strengthening the magistrates' school. They provided legal aid and education and facilitated the participation of civil society in justice legislation development, which led to the passage of three important judicial reform laws. They did not make much progress on prolonged pretrial detention or CSPJ institutional development.
- TT DPK PROJUSTICE continued work on legal aid, legal education and PPD, as well as management information systems, earthquake-damaged file reconstruction, CSPJ vetting, mediation, and the establishment of a GBV and rape hospital-based center.
- PROJUSTICE's work on PPD has made a difference outside of PAP, but not in PAP.
- Some donors and implementers reported that PROJUSTICE did not share information openly with them, making coordination difficult. Coordination with INL and ABA appeared good.
- Donors are working in many of the same areas, such as support for prisons, the CSPJ and the MOJ, requiring detailed coordination. So far, coordination at the monthly meetings has focused more on information sharing and avoidance of duplication.
- Many donors are supplying basic equipment and consumables to justice institutions to make up for inadequate financing and poor organization. Such practices discourage management improvements.
- Work on the codes and legal aid law should continue, but cannot be implemented until passed by the new Parliament, no earlier than 2016.
- There is no evidence that political will is going to increase in the near future. Therefore, Haiti is not expected to experience major changes in the justice sector in 2015.

RECOMMENDATIONS

Short-Term

In the short-term over the next year, there is little evidence that political will for justice reform will change dramatically. Our recommendations emanate directly from that unfortunate reality:

- Extend for a year PROJUSTICE activities focusing on improved judicial efficiency and access to justice that do not require significant political or public will, such as legal aid, legal education, mediation, gender-based violence and court case MIS.
- Initiate support for efforts by the newly appointed Minister of Justice to reduce levels of prolonged pretrial detention in Port-au-Prince. He has taken an aggressive stand on reducing the shocking levels of PPD. With USAID assistance, he may have some short-term success.
- Train political parties in rule of law and judicial independence; and
- Fund assessments which focus on the security and justice budget/expenditure process, commercial law and the use of courts by the formal and informal private sector, corruption in the judiciary, and the intersection of gender and justice.

Medium Term

In the medium-term from 2016-2020, the odds are great that the climate for reform will not improve significantly. In this context, USAID has two major options: (1) disengaging from the justice sector; (2) reshaping justice sector assistance to target those areas of judicial sector development where political will is not essential and to build public and political will for reform. The assessment team recommends strongly that USAID support the second option. The purpose of reshaping USAID justice sector assistance would be to facilitate the delivery of justice services needed by Haitians and essential for the success of other USAID and USG initiatives as well as to be ready to support champions of reform if the political climate improves. Without increased political will, progress achieved thus far in establishing new justice institutions like the CSPJ, will not succeed. For activities where support is suspended, donor coordination will be particularly important so that USAID withdrawal does not encourage other donors to fill the resulting void. Activities should include:

- Support legal assistance.
- Support mediation efforts and centers.
- Strengthen legal defense/medical certification of GBV/rape victims.
- Work through the Magistrates School to train judges and prosecutors on GBV and LGBT rights, relevant laws and appropriate procedures.
- Work through the Magistrates School to train prosecutors and judges on expediting the resolution of land cases.
- Expand the Court Case Management Information System in Saint Marc and Fort-Liberté to prisons, police, justices of the peace, CSPJ and MOJ.
- Support first instance judges, investigative judges, prosecutors, lawyers, justices of the peace and prison staff to reduce prolonged preventive detention in jurisdictions within the development corridors outside Port-au-Prince. If MOJ shows political will to address the problem in Port-au-Prince, provide support to courts in this development corridor as well.
- Provide technical assistance and equipment to courts to increase transparency, accountability and access.
- Expand support for legal and civic education nationwide.
- Build a citizens' movement to fight exclusion and demand justice sector reform.
- Help political parties take Parliamentary initiatives on rule of law and judicial independence.
- Hold semi-annual meetings, one with CSPJ and one with MOJ, to identify their plans for justice reform, assess the strength of their commitment and determine resistance to these plans; and
- Establish a special account, jointly managed by the Haitian Government and USAID, to fund USAID-procured implementers of activities needed to advance justice reform.

Long-Term

While political will for justice reform may never reach a level that sustains progress, at some point, perhaps as early as 2020, USAID and the donor community may be convinced that the Haitian Government and public are ready and committed to justice reform. In the unlikely case that this occurs, the Assessment Team has included its recommendations for a full justice reform program in Annex C.

BACKGROUND AND CONTEXT

As part of a wider peace building process, the reform of the Haitian justice system has been an ostensible priority since the demise of the Duvalier authoritarian regime in 1986. The construction of a new democracy in Haiti propelled by the 1987 Constitution requires a justice system that can assure exercise of political rights and civil liberties while providing accountability mechanisms that limit the abuses of the State and guarantee the equality of all citizens (O'Donnell 2004).¹ Since this new justice system has had to emanate from a fragile democratic political transition, it faces many challenges. These challenges include:

- Implementation of security sector reform and the rule of law;
- Implementation of a judiciary independent of executive encroachments in a country marked by political insecurity and weak governance; and
- Reducing victimization through corruption and violence, such as gender based violence and kidnappings

HAITI'S SOCIAL AND POLITICAL DEVELOPMENT

Following independence from France in 1804, the newly created Haitian State, which comprised the interests of the dominant mulatto and freemen elite, felt no obligation to deliver services to the peasantry. As leaders of the new republic, these groups maintained the practices of exclusion that the colonial administration used to subjugate both slaves and freemen against the newly constituted peasantry.² Privileges and state services were concentrated in the main cities, the loci for 'civilized' people. Residing largely outside the symbolic gate of these cities, the peasantry could not exercise any civic right by participating in 'state affairs' and were denied access to goods and services available to urbanites.³

The central state has always dominated other levels of government by appointing civil and military authorities as well as paramilitary officials whose main role was to funnel local resources to the capital city, the locus of central administration.⁴ The persistent failure to respond to the needs of the large majority of rural dwellers coupled with their exclusion from participating in any political decision making would erode their confidence in the state apparatus at all levels of government. Therefore, Haitian people share a deep seated mistrust towards the political institutions of their country because in their eyes they were not designed to serve them but only the elites.

The practices of urban centralization and social and political exclusion of the 'masses', as drivers of insecurity and violence, persisted throughout Haiti's history until the elaboration of the 1987 Constitution.⁵ Avenues for political participation, however, are still restricted. "The body of laws suggests a considerable degree of reluctance to devolve genuine authority to local governments."⁶

THE HAITIAN STATE AND RULE OF LAW IN A DEMOCRATIC TRANSITION

The Haitian State is fragile; it lacks legitimate rule and authority and is incapable of responding to the basic needs of the population. As an agrarian economy, taxation and exports in the country are organized under traditional monopoly arrangements. These arrangements benefited a large class of middlemen and elites through tax exemptions on imports. Since the Haitian State is captured in a web of patronage relations that does not fall within its formal/legal jurisdiction, it cannot seek resources outside its boundaries. Consequently, it has "attacked and exploited the lower classes and rival factions, capturing their resources by threat of force or by offering protection against internal enemies".⁷

¹ See O'Donnell, Guillermo A. Why the Rule of Law Matters. *Journal of Democracy* 15(4):pp.32-46.

² Mostly ex bossales who developed small scale agriculture in rural areas and informal rules to manage various forms of property arrangements (such as sharecropping, tenancy).

³ See Jean-Marie Theodat. 2003. *Haiti République Dominicaine. Une île pour deux*. Paris: Editions Karthala.

⁴ See Hérard Jadotte and Yves-François Pierre, "Local Governance and Sustainable Peace: The Haitian Case," in *The Paradoxes of Peacebuilding post -9/11*, ed. Stephen Baranyi, 85-93. Vancouver, British Columbia: UBC Press, 2008.

⁵ See Fritz Deshommes. *Décentralisation et Collectivités Territoriales en Haïti. Un Etat des Lieux*. Cahier No 1. Editions Cahiers Universitaires. Port-au-Prince, Haiti, 2004.

⁶ See DAI. May 2000. *Political Will For Decentralization in Haiti*. Project Report. Port-au-Prince: Development Alternatives Inc. USAID, Democracy Enhancement Project.

⁷ See Jennifer Peirce. 2007. 'Protection for Whom? Stabilization and Coercive Rule in Haiti'. *Paterson Review*, Vol 8, pp 96-112

Neither can the State provide security and justice through the repression or elimination of its political opponents in a democratic transition context. Thus, it could not limit itself to the role of the army in containing political opponents for the stabilization of an authoritarian regime, as it did from the 1950's through 1980's. Since then, as a result of democratic movements and the quest for citizenship, the State has been forced to evolve to begin to protect the fundamentally diverse rights of human beings.⁸ To guarantee these rights in a democratic system, one needs not only good governance but also social, economic and political development as a basis for a new, modernized justice reform agenda. Such a system, according to the OECD/DAC 2005 Guidelines, "includes all the actors, their roles, responsibilities and actions...working together to manage... [it] in a manner that is consistent with democratic norms and sound principles of good governance...."⁹

WEAK GOVERNANCE AND POLITICAL INSECURITY

Political instability has been a reality for Haiti for decades. Between 1986 and 2006, there were 25 changes of government and two military interventions. Transitional governments, such as the one in place in 2015, lack the mandate or the time to accomplish reforms, if they have the political will to do so.

Weak and incomplete implementation of the 1987 Constitution has resulted in minimal checks on the Executive, which is able to use the justice system to repress its opponents and protect its friends. The Parliament, when it exists, lacks the capacity to provide oversight over the Executive and allows attacks on the independence of the judiciary. Its inability to engage seriously in budget discussions has resulted in inadequate funding for the justice sector, especially courts and prisons. At the local level, the Central Government Delegate has undue influence over the justice system, and the promise of decentralization has not become a reality.

The Executive has organized several commissions to promote justice reform, but has never given them enough priority to assure implementation of their recommendations. Similarly, Parliament has passed some important justice reform laws, such as the laws on the Magistrates' School, the status of magistrates, and High Judicial Council (CSPJ) in 2007, but the Executive has resisted implementing them. The Executive and Parliament have played a negative role in naming judges and removing those that are too independent. Vetting of judges has been a very slow process.

With the establishment of the CSPJ, there is the potential for empowerment of the judiciary. While Executive resistance to strengthening the CSPJ is lower than under previous Presidents, the Council is not yet strong enough to overcome excessive control by the Ministry of Justice.

A new Parliament and Government in 2016 offer the potential for greater commitment to judicial reform, but the issue is not yet high on the list of political parties or potential candidates.

CHALLENGES RELATED TO JUSTICE REFORM

In addition to weak governance and political instability, other factors make it an enormous challenge to implement and sustain justice reform. The control of the political and economic system by the elite has not changed significantly since the country's founding. Consequently, those who would benefit from judicial reform are effectively excluded from policy discussions. Those who benefit economically from the status quo, including some lawyers and elite monopolists, oppose reforms. Political parties are weak, but have often opposed justice reform initiatives by the Executive.

Justice reform is an initiative that has more support from outside than inside of Haiti. Governments take advantage of the funding provided by donors to support the justice sector, without making true commitments to reform. While they may follow the donors' lead in seeking input from a variety of actors and stakeholders, their decisions are guided more by the interests of the elite than the nation.

In addition, the problems of the justice system, including police and prisons, are so large that many users and citizens feel powerless to address them. They have experienced no change in their treatment by the system over the last 20 years. In order to build citizen support, the GOH needs to demonstrate that justice reform will translate into meaningful and sustainable changes in the experience of justice system users.

⁸ Rapport de la Commission Présidentielle de Réflexion pour le Renforcement de la Sécurité. 2009 (manuscript)

⁹ OECD DAC 2005 Guidelines on SSR: 16 (Cited in Security System Reform, the Responsibility to Protect and Peacebuilding in Burundi, Haiti and Sudan: A Research, Policy Dialogue and Capacity-Building Project. The North-South Institute, December 2006)

More progress has been made in security sector reform than in reform of the rest of the justice sector. The Haitian National Police (PNH) has received much more funding from donors and the Government budget than other justice institutions. The PNH recruitment process has become more rational and gender-equitable, giving the force the potential to reach its planned level of 15,000 in 2016.¹⁰ Vetting of police for human rights abuses is taking place, albeit slowly.

The police and the other justice actors coordinate poorly because they lack common systems for tracking detainees and prisoners. When communication and coordination does take place, it is conducted through personal relationships and connections. Processing criminal files suffer due to these deficiencies in communication. The result is prison overcrowding, prolonged pretrial detention and the holding of detainees and sentenced prisoners in the same cells. The enormity of these problems leads anyone entering the prison system to become a victim of human rights abuse.

CORRUPTION AND THE JUSTICE SYSTEM

Corruption is largely defined as the use of public resources for personal gains and riches. It has been seen as having a serious impact on the administration of justice and on democratic governance around the world. Corruption leads inevitably to a loss of trust in public institutions.¹¹ In Haiti, the perception of corruption is rather low, relative to that of the United States and other countries in Latin America. This relatively low perception of corruption can be attributed to the fact that most bribes (given and taken) are not perceived as corruption by the public but as “job-related business”. However, the victimization caused by corruption is relatively high compared to those same countries. For instance, Haiti was ranked first (at 67.0%) in terms of number of citizens have been victimized by corruption. The rate of victimization by corruption has increased over time from 50.4% in 2006 to 67.0% in 2012. Fully 52.9% of citizens reported being asked for bribes in the courts and 11.1% had the same experience with police.¹² In other words, more than half of court users were asked for bribes in 2012. In the justice system, most requests for bribes are made by court clerks, even when the court user is aware of established rates for judicial services.

INDEPENDENCE OF THE JUDICIARY

Independence of the judiciary is not much more than a motto in Haiti, although the concept has been integrated into legislation and included in training of judges and prosecutors. From recruitment to nomination to oversight to trials, the Executive has taken advantage of opportunities to intervene to advance its interests. Parliament is too weak to challenge Executive threats to judicial independence.¹³

While the CSPJ legislation was approved in 2007, President Preval actively resisted the Council's creation. President Martelly eventually allowed it to begin operations, but attempted to control it by nominating a family friend as leader and keeping its budget extremely low. New CSPJ leadership and a larger budget provide some hope that the Council will play an increasingly strong role in defending judicial independence. Clarification of the CSPJ and the MOJ laws and establishment of a rigorous judicial inspection system are essential to its success, but it is not yet clear that its members have the commitment necessary to play a responsible and effective role in judicial reform. A rigorous inspection system for prosecutors is also required at the MOJ, but the CSPJ currently wants to inspect both judges and prosecutors.

HAITI'S TRANSITION FROM AN INQUISITORIAL SYSTEM

The Haitian Code of Criminal Procedure was passed in 1835. It was based on the 1808 French Code of Criminal Procedure. The French code reflected the exclusive and authoritarian character of colonialism and slavery that was the essence of the French regime in Haiti. The key instrument of French colonialism and exclusion was the Black Code of 1685. This legal instrument dehumanized the black man and reduced him to a condition below an animal. After independence, the new leaders had difficulty in adopting more liberal practices and more respect for the rights and freedoms for which they fought.

¹⁰ See Pierre, Yves-François and Isabelle Fortin. 2010. *La Réforme de la Police Nationale et la construction démocratique en Haiti*. Manuscript.

¹¹ Smith E. Amy, François Gélimeau. *La culture politique de la démocratie, Haiti 2012 : Vers l'égalité des chances*. Edited by Mitchell A. Seligson. Nashville: Latin American Public Opinion Project (LAPOP). Pp. 97-

¹² *Idem*, p. 101-106

¹³ Interview with Herard Jadotte, Directeur, Université d'Etat d'Haiti, March 6, 2015

Other Latin America countries required fully written criminal proceedings at the trial stage, mainly based on the investigation file, which prevents a strong defense of the accused. Haitian criminal proceedings, on the other hand, have two phases: (1) a phase of written inquisition; and (2) an adversarial phase where oral hearings allow open court statements. Nevertheless, exclusion by the State of the majority of the population has allowed justice actors to deviate from this system. The role of the victim is not sufficiently valued at the investigation stage, and the rights of suspects are inadequately protected.

A great euphoria seized Haitian society in the wake of the resignation of former dictator "Baby Doc" in 1986. The Constitution of 1987 laid the foundations for a break with authoritarian legal tradition by incorporating the Universal Declaration of Human Rights and integrating international human rights instruments ratified by Haiti into law. Arbitrary and authoritarian practices persist, however. The Parliament was unable to approve the necessary legal infrastructure for a democratic state law, and the government has yet to introduce less authoritarian practices.

Indeed, the Haitian judicial system gives great discretion to the judicial police. They can deny Haitians freedom without facing consequences for violating the law. The rule of law is violated when the suspect has enormous difficulty gaining his release in the face of unlawful and arbitrary arrest. In cases that are not *flagrante delicto*, police generally seek arrests, judges and prosecutors issue arrest warrants in cases not provided for by law, and the accused is arrested when he appears in court. By requiring counsel for the accused to maintain a passive role during interrogation, the system denies the rights of the accused. Files pile up without action in the drawers of prosecutors, and there is no control mechanism for prioritizing prosecutions or rapidly processing files. Justice of the peace rarely trial cases involving misdemeanors (*Contravention* in French). They usually refer these cases to the Prosecutors. Prosecutors rarely use the immediate appearance procedure to bring to correctional courts, defendants accused of mid-level felonies (*Délit* in French). Instead, they almost systematically transfer these files to the investigative judges, who should only be involved in investigations related to major infractions (*Crime* in French). Note that the Criminal Procedure Code requires the Justice of the Peace to hear misdemeanor cases, and to receive a complaint involving mid-level felonies, and crimes, and then transfer these cases to the prosecutor who should in turn transfer them to the investigative judge if it is a major crime or bring them to the correctional judge if it is a mid-level felony. This fixed procedure for both mid-level felonies and major crimes, is a major cause of prison overcrowding and prolonged pretrial detention. Its abuse facilitates corruption, impunity and the denial of justice and is the main issue for reform of the Criminal Procedure Code.

Today, there is a strong demand for justice, but above all a call for greater respect of due process. The pre-judgment must be reformed, and the format of the judgment itself must be reconsidered. Reformists are divided into three different groups:

- 1) The first group opposes reform of criminal proceedings, although they support updating criminal law to include new types of offense, review sentences and carry out a new classification of offenses. They believe that Haiti does not apply the criminal procedures code, which is adequate to meet the country's needs. For them, Haitian law facilitates the fight against impunity, ensures the rights of the victim and protects society. They believe the Executive must make a serious commitment to respect the law and demonstrate the will to make the judiciary a real priority. To do so, the State (GOH and Parliament) must allocate appropriate resources and assure that judicial institutions properly exercise their powers and use their legal skills.
- 2) The second group believes that in addition to creating the conditions for a strict application of the law, the penal system needs to take into account international human rights standards and international instruments ratified by Haiti. Therefore, they propose modifying Haitian law to follow the evolution of the French penal system. They do not wish to emulate justice reform in countries where there was no jury, since Haiti has had criminal juries since 1835.
- 3) The third group is calling for a thorough reform of the penal system using the model of the new criminal justice system set up in almost all Latin American countries over the last 20 years. They are convinced that this model, which was designed and implemented by people who have experienced dictatorial governments and oppressive and arbitrary judicial practices, perfectly matches Haitian aspirations for fairness and efficiency in its own judicial system. Haiti took a big step in this direction with the installation of CSPJ members and their vote in support of reforms recommended by the National Institute of Comparative Studies in Penal and Social Sciences from Argentina and the OAS' Justice Studies Center of The Americas. Another step toward the

adversarial system will be the development, passage and implementation of a new criminal procedure code. A draft was already approved by the Council of Ministers and is now being reviewed by members of the Presidential Commission for Justice Reform.

Beyond differences on the technical issues of the reform, some members of the presidential commission and a large number of senior lawyers oppose moving too far away from the French inquisitorial system in adopting a hybrid adversarial system. They do not want to move to an adversarial system because they believe that keeping the investigative judge is essential for respecting due process. Rene Magloire's group, which with USAID support developed the draft of the new Criminal Code and is now working on the new Criminal Procedure Code, is collaborating with members of the Presidential Commission to find a formula that is less controversial and more adapted to the Haitian system. The penal code has been completed and was officially handed over to the President on March 13, 2015. The focus now is on the harmonization of the two approaches in relation to criminal proceedings.

However when these issues are resolved, Haiti must place the victim at the center of the proceedings. It must take steps to separate those who investigate from those who have the power to deprive suspects of their freedom. It must revisit the role of the defense by establishing a free public criminal defense major program and by providing that any failure in the prosecution must benefit the accused. In the current legal framework, the suspect is sent to prison while the case is being investigated by the investigative Judge. According to the law the investigative judge has a two-month timeframe to conduct the investigations, but that timeframe is never respected. Once and if the case is finally brought to trial, that trial can be postponed in several occasions if witnesses or victims don't show up, and the defendant can end up spending years in pretrial detention. The groups must compromise on the principle of equality between the prosecution and the defense, develop mechanisms for settlements of certain types of crimes against people and property, reduce widespread corruption, and focus government resources on serious crime and offenses such as kidnapping and rape.

Unlike in Haiti, the process of reforming the judiciary and the penal system elsewhere in Latin America has been very participatory. The international community can raise awareness and share information on the work of the Rene Magloire's group and the Presidential Commission. When the groups come to a consensus, donors can help them develop an information campaign, including building understanding of the different stages of the reform process in Latin America countries, the challenges they faced, how they overcame them, the outcome of the reforms and their impact on the rule of law.

GENDER, GENDER-BASED VIOLENCE, AND GENDER IDENTITY

Haiti has a long history of marginalization and discrimination against women. The representation of women in society and government has been very unequal. Women play a marginal role in the formal economy. One pre-earthquake assessment noted that 44% of households were headed by women, 60% of which lived in extreme poverty. 83% of women worked in the informal economy, and 60% were illiterate.¹⁴ Women's electoral participation and representation in Parliament has been low.

Spurred by women's rights organizations, the State has developed several mechanisms to improve the protection of women and integration of gender considerations: the creation of a Ministry of Women and Women's Rights; the decision to make gender equity a cross-cutting issue in developing and implementing public policies; and the establishment of a constitutional quota of 30% participation by women in all public institutions. The GOH has ratified international instruments protecting women's rights and integrated them into Haitian law. Slow progress has been made in transforming a legal system based on the Napoleonic Codes to one that protects women's rights. The 2007 amendment to the Penal code aligned it with CEDAW, and several other revisions targeting women's rights are included in the proposed Penal code revision. The civil code needs to be updated to address such issues as equal parenting and domestic labor. In the past, women were regarded as minors. However, in 1950, women obtained the right to vote in presidential elections. In 1982, married women were given the right to perform all civil acts without the prior permission of their husbands. Judicial actors have received some training in gender, but their ability to use legislation and international instruments to protect women is limited. The percentage of women judges has increased, and they have been given priority for training.

¹⁴ Beyond Shock, Charting the landscape of sexual violence in post-quake Haiti: Progress, Challenges & Emerging Trends 2010-2012, Anne-Christine d'Adesky, PotoFanm+Fi, November 2012.

The difficulties women experience in gaining justice for gender-based violence are a reflection of the problems affecting the justice system as a whole. Most women avoid using the justice system in response to gender discrimination, corruption, and expensive court fees and legal costs. Police and judicial actors give low priority to cases of violence against women, demean women complainants, make inadequate evidence to collect necessary evidence, and lack respect for the victims. Cases often take years to go to trial. The draft revised Penal Code would add protections for sexual harassment and marital rape. A comprehensive framework law on violence against women was not acted on by the last Parliament.¹⁵ In 2013, Plan International, Care and Save the Children undertook a baseline study on women, children and youth human rights abuse and safety. The study concluded:¹⁶

- Domestic violence is the most important source of violence against women;
- GBV increased dramatically due to the earthquake and IDP camps;
- GBV victims report more to hospitals and other medical services than other institutions;
- Child abandonment by fathers is more prevalent than insult and beating of women;
- Many GBV victims are aware of institutional services but do not use them;
- GBV victims are aware of protective services but do not use the court system or police, unless they receive legal aid or assistance from women's organizations; and
- Court-based mediation via peace courts, a practice and institution dominated almost entirely by men, is biased toward the male aggressor and may increase the vulnerability of women.

Today, the LGBT community is just beginning its struggle for legal and social recognition. Generally, LGBT individuals are intimidated from gathering in public spaces or taking public action to assert and defend their rights. They are frequent victims of GBV and discrimination and are reluctant to use the justice system to resolve their problems.

TRUST IN GOVERNMENT INSTITUTIONS AND RULE OF LAW

Trust in the Haitian Justice System, however, was the lowest among all Latin American and Caribbean countries in 2012 according to the Americas Barometer survey¹⁷. The barometer notes ‘...with 36.2 points, Haiti has the lowest level of confidence in the justice system in the Americas’¹⁸. While confidence in the Haitian justice system has never been particularly high, confidence has dropped still further in recent years. This drop is explained by the fact that the “justice system as a whole was barely operational after the 2010 earthquake. The Palace of Justice was reduced to rubble by the quake, the Ministry of Justice and many courts collapsed, and court records were buried in the debris....The damage to the infrastructure of Port-au-Prince along with the loss of life of judiciary employees had major consequences for the functioning of the judiciary and limited the provision of judicial services, which...translated in lower trust in the justice system.”¹⁹

¹⁵ Access to Judicial Remedies in Haiti: Submission for the 112th Session of the United Nations Human Rights Committee, October 8 & 9, 2014, Bureau des Avocats Internationaux et al

¹⁶ Smucker R. Glenn, Yves-François Pierre and Jean-François Tardieu, June 14 2013. *Do. Care/Haiti*

¹⁷ Zephyr, Dominique, Hugo Salgado. 2012. *Haiti in Distress: The Impact of the 2010 Earthquake on Citizen Lives and Perceptions*. Edited by Mitchell A. Seligson. Nashville: Latin American Public Opinion Project (LAPOP). Pp 77-93.

¹⁸ Indicators of the Americas Barometer survey included the following three questions: To what extent do you think the courts in Haiti guarantee a fair trial? Next, to what extent do you trust the Justice System? Finally, to what extent do you trust the Supreme Court? Responses given on a 7 point-scale, where 1 means ‘not at all’ and 7 ‘a lot’ were recalibrated to a 0-100 scale for ease of interpretation, with an average close to zero indicating ‘low trust’ and an average close to 100 ‘high’ trust. The index of trust was constructed on these three questions

¹⁹ Zephyr and al., *idem*, p.80.

ACHIEVEMENTS AND IMPACT OF RULE OF LAW PROGRAMMING

JUSTICE PROGRAMS IMPLEMENTED BY USAID IMPLEMENTING PARTNERS

In 1995, USAID awarded Checchi and Company Consulting Inc. a contract for a four-year technical assistance and training project designed to provide assistance to the Haitian judicial authorities in the development of a responsive and transparent justice system. To achieve their objectives they focused on, but did not limit themselves to, legal assistance and education, case tracking and court management and judicial mentoring.

Their legal aid outreach activities were conducted in Port-au-Prince and rural areas, including in the prisons. These efforts included legal education forums and public seminars that informed citizens of their rights and responsibilities under the rule of law as well as judicial independence and its positive impact on transparency and corruption. Checchi also helped establish a local radio station that broadcast awareness programs related to justice sector issues impacting the lives of Haitians.

In seeking to improve the skills of magistrates, justices of the peace, lawyers, prosecutors, paralegals and law students, Checchi implemented seminars and one-on-one mentoring discussions and trainings on judicial writing, judicial reform, and judicial independence. They helped publish bench books as well as lawyers' guides to practice. Within the court system itself, they helped improve operations by administrative training on the setting of court calendars, rules on prison visitations and the publication and posting of court costs and fees.

Checchi targeted 83 of the 100 peace courts for the development and implementation of a uniform case registration and filing system. The objective was to create a database which could be accessed by the public so that they would have accurate information on the status of prisoners, hearing schedules, proper forms for registering complaints and criminal charges, and monthly summaries of prosecutor's activities. Lastly, Checchi provided additional technical assistance and equipment support to the Ministry of Justice and the judicial sector.

Checchi's efforts were well received, resulted in a marked improvement in the motivation of many of the judicial actors, and increased the capacity of the sector itself, particularly in some of the rural areas. However the system was too weak, corrupted, under-resourced and co-opted by interference from the executive body to sustain the improvements in which USAID had invested. After Checchi's departure in 1999, the judicial sector, excepting a few minor improvements noted above, continued to suffer from the same systemic and structural problems that existed when Checchi arrived in 1995. The executive branch was still not sufficiently independent from the judiciary; code reform was still a distant dream, as was the formation of the CPSJ. This in turn led to the appointment of incompetent, sometimes corrupt judges, an inefficient and dysfunctional judicial process and above all the serious absence of due process rights for the accused. The sector remained under-resourced and, by the GOH, undervalued.

In 2001, USAID contracted with IFES for an initiative to develop and strengthen Civil Society throughout Haiti. Knowing that past 'top down' justice sector involvement bore few positive results and operating under the USG ban on direct aid to the GOH, USAID, through IFES, focused on building demand for justice sector reform within citizen interest groups. The IFES strategy targeted disparate but interrelated groups to demonstrate to them their shared values and priorities in the areas of judicial independence and reform. This resulted in the formation of a broad coalition across the political spectrum of interested parties who worked cooperatively to develop consensus on justice needs and issues. This coalition ultimately led to increased pressure on the GOH to respond to the justice sectors dysfunction.

In addition, IFES supported the magistrates school (which still functions today), trained journalists, developed a monitoring pool and Human Rights hotline, and conducted seminars on Justice Reform and Ethics. It is more than likely that the increased capacity of civil society fostered by the work of IFES in 2001, and NCSC in 2007 resulted

in the passage in 2007 of the laws on the Magistrates School, the CSPJ, and the status of magistrates. To this day, some of the civil society groups that IFES helped inspire are still working to try to affect fundamental, sustainable democratic reform. The impacts of the IFES programs were more visible and effective in the populated, urban areas, since that is where the larger of the civil society organizations did most of their work. While it is clear the IFES efforts created a more viable and energetic network of Civil Society groups, the core, fundamental structural and operational facets of the justice system remained unchanged. Executive authority continued to control and undermine the judiciary, the system still suffered from underinvestment and lack of buy-in by the GOH, and pervasive corruption further eroded citizens confidence in and respect for judicial authorities and the courts within which they worked. Again, the executive branch continued to use the judicial system as a tool for the augmentation of its power and the wealth of its elite supporters while at the same time pretending to welcome reform. This dynamic detracted from and diluted the results of USAID activities for the IFES period.

While the IFES programs to invigorate Civil Society had some positive results, the systemic, endemic justice deficiencies prevailed in 2004. Taking a different tack, USAID partnered with NCSC on a project to provide support for the professionalization of the judiciary. To this end, assistance was provided to the magistrate's school. With this help, the school trained hundreds of judges, prosecutors and other judicial personnel. Coupled with these efforts, NCSC furthered the development of the CSPJ and supported actions to reduce prolonged pretrial detention with the beginnings of a case registry system in Port-au-Prince as well as in Saint Marc and Petit-Goave.

While NCSC's work in both the rural and urban areas of Haiti resulted in more professional, better trained and motivated judges, prosecutors and court personnel, the systemic problems remained relatively unchanged. The Ministry of Justice rather than the CSPJ controlled the magistrates school, the judiciary was still under the thumb of the executive and prolonged pre-trial detention numbers stayed at alarmingly high rates mostly in Port au Prince. There certainly was increased awareness among a large segment of judicial actors of the inherent failings of their system and what needed to be fixed. However the GOH's fixation with the maintenance of the status quo and its relentless campaigns to block any real, legitimate and populist attempts to separate powers prevented any meaningful change.

Starting in 2009, TT DPK began their project to aid and strengthen the Haitian Judiciary. They initiated a case management information system in Saint Marc and Fort-Liberté, supported criminal and criminal procedures code reform as well as the CSPJ, set up mediation centers in Cité Soleil and Martissant, extended legal education to rural areas, reinvigorated the legal aid system to expedite trials and reduce levels of prolonged pre-trial detention, organized a system for aiding GBV victims, reconstructed case files lost in the earthquake and constructed a land court building in Saint Marc.

The efforts to reduce PPD in jurisdictions outside of Port au Prince have had some success. In Fort-Liberté, the number of PPD's was reduced to almost zero. In Saint Marc and Cap Haitian, those numbers were lessened dramatically until the slow process of vetting by the CSPJ resulted in a shortage of magistrates which was one of the more significant factors that negatively affected the time frame for adjudicating criminal cases. In Port-au-Prince, there has been almost no progress in reducing the number of PPD's.

DPK's work with the CSPJ has strengthened their capacity and to some degree their independence from executive interference. The mediation centers in Cité Soleil and Martissant have reduced the levels of violence and reduced the backlog of cases in the peace courts. TT DPK legal education forums and seminars have increased citizen awareness of their rights and responsibilities under the law and have correspondingly increased demands, particularly in the rural areas, for enhanced security, elimination of corruption and less costly access to judicial services. For the most part, the GOH has failed to adequately address any of these issues.

The 2010 earthquake obviously slowed significantly the progress of justice reform activities. TT DPK was fully involved in helping to reconstruct the case files that were destroyed. The early efforts to reestablish the justice system in PAP reduced the attention paid to justice issues in the rural areas. The incidences of GBV, particularly rape, rose dramatically.²⁰ The political instability of 2010 and 2011 relating to the earthquake and the chaos surrounding the election allowed the executive to continue to manipulate the judicial process. Some high profile criminal cases were never aggressively prosecuted. While the President initially supported the CSPJ he has continually intervened to influence the selection of judges. The current law controlling the operation of the Ministry of Justice allows inordinate control of the Ministry over judicial appointments.

²⁰ HRI: Final Evaluation Report. USAID. Page 15 ff. October 2013.

While TT DPK initiatives were wide-ranging and thoughtfully targeted, impacted many of the areas of the judicial landscape that had been neglected, and resulted in a new and dynamic energy within the sector, the underlying impediments to true justice reform remained. Once again, despite the best efforts of TT DPK in program design and aggressive implementation, their efforts treated the symptoms of judicial dysfunction, not the causes thereof.

ACHIEVEMENTS AND IMPACT OF JUSTICE PROGRAMMING IMPLEMENTED BY OTHER DONORS

Many other donors and international development organizations have been involved in initiatives to improve and reform justice performance in Haiti. OPDAT was involved in the creation of the Magistrates School, for a short period in 1995, and with the training of judges and prosecutors in PAP and other areas. INL has built police offices in several jurisdictions inside and outside of Port au Prince and plans to build new prisons in Cabaret, Petit-Goave and Fort-Liberté. They have worked on strengthening the DAP, training of police, prosecutors, judges and prison staff, supporting the Police School, helping to establish counter-narcotics squads and participating in efforts to reduce PPD. INL's grantee ABA, in conjunction with USAID, helped implement money laundering, anti-corruption and trafficking legislation, built support for the new codes, the police academy and the judicial inspection unit of the CSPJ. These efforts are continuing and are contributing to incremental progress in the areas enumerated. These efforts, in coordination with USAID, resulted in a strengthening of the DAP, increased capacity of police, judges and prosecutors and a better understanding among relevant actors of the laws on trafficking, money laundering and anti-corruption. They have collaborated with USAID on reducing PPD and prison overcrowding. To date there has been no improvement in that regard.

In the justice and security sectors, MINUSTAH has rehabilitated police stations and court houses, provided the secretariat for the code commissions, trained police on GBV violence, established pre-trial detention monitoring in 12 jurisdictions, implemented a community violence reduction and large prisons program and four legal aid offices in PAP, sponsored the training of the fourth class of magistrates at the magistrates school, and built a GBV center. Links with USAID include CSPJ, criminal codes, GBV, legal aid, pre-trial detention and training of judges. While the number and scope of projects initiated have been impressive, impact and achievements in terms of judicial reform have been minimal. The prisons remain obscenely overcrowded, PPD rates are largely unchanged in Port au Prince, the vetting process of CSPJ is slow and hindered by executive interference and court resources, and personnel and administrative infrastructure are still significantly under-resourced.

UNDP has worked on prison reform, providing equipment (which included a retinal scan) which was never used, and training of guards and administrative personnel. They have supported the CSPJ and financed the secretariat, helped the Cour des Comptes and have underwritten a 1 year study by Rene Magloire on the best ways to improve access to justice. The OAS has been active in supporting the vetting process of the CSPJ as well as contributing expertise to an evaluation system for judges. Additionally they have expressed their willingness to assist with the Constitutional Court when and if efforts to establish it begin.

The USG and other international donors have continued the practice of treating symptoms rather than causes of justice sector failure. However, this has not been all for naught. For the past 20 years international efforts have significantly expanded the capacity, efficiency and accountability of the justice system and its actors. Those who have labored, somewhat in vain, within and on the political and legal front are now better armed, trained and ready to pursue a course which could create a firm foundation for the establishment of a genuine Rule of Law society. The International Community may well need to provide the spark to start the process rolling.

APPROACHES TO JUSTICE SECTOR PROGRAMMING IN HAITI

In this section, we will review cross-cutting challenges in the judicial system, analyze the merits of different approaches and interventions, and identify implementation challenges. For over fifty years, Haitians have recognized the obstacles to progress created by the country's justice system and the need for reform. Committees have developed recommendations, and laws and codes have been adopted or amended. Some of the most important include the Labor Code of 1961 and the Rural Code of 1964. After the fall of the Duvalier dictatorship in 1986, the new socio-political environment allowed the adoption of the Constitution of 1987 and established conditions that made judicial reform an essential step for Haiti to become a democratic state. Several rule of law studies undertaken by the GOH since the return to democratic rule in 1994 laid the basis for advocacy by civil society and legal associations. These efforts led to the adoption in 2007 of three major laws that structure and organize the justice sector, focusing on: (1) the Higher Council of the Judiciary; (2) the status of magistrates; (3) the School of Magistrates.

Today, for justice to be perceived as a public service, much remains to be done. To assure the quality of donor assistance, a number of cross-cutting issues must be taken into account. These include enhancing absorptive capacity of the system, focusing appropriately on gender and gender identity, and maximizing the benefits of donor coordination.

CROSS CUTTING CHALLENGES

ABSORPTIVE CAPACITY

Comparing the large value of investments in the justice sector by the international community over the past 20 years to the meager results raises major questions about Haiti's ability to absorb international rule of law assistance. Low absorptive capacity is a reflection of negligible political will, poor organization and management, and corrupt practices.

Indeed, judges continue to allow executive intervention in cases, despite having had their wages indexed to the cost of living and received legislative guarantees of judicial independence in 2007. The construction or renovation of courts and the provision of equipment, supplies and materials, despite improving the work environment, has not reduced the demand by citizens for increased access to justice and greater judicial efficiency.²¹

Notwithstanding the improvements achieved in pilot jurisdictions, the lack of improvements in the effectiveness and efficiency of the justice system overall denies citizens due process and prevents the country from moving toward rule of law. The subservience of the judiciary to the executive is a manifestation of Haiti's authoritarian traditions, which grew out of the colonialism and slavery experienced by the population before independence in 1804.

GENDER AND GENDER IDENTITY

Addressing gender appropriately is essential to increasing the effectiveness of justice strengthening. It builds on constitutional guarantees, ratification of international protocols and improvements to the legal framework. Women's organizations are maintaining pressure on the State to realize legally guaranteed rights, protections and opportunities. Donors need to continue to support both women's organizations and State institutions to advance women's rights and integrate gender more effectively into the justice system.

²¹ This situation has not changed since 2003. See UNDP Haiti Outcome Evaluation: Rule of Law, Justice and Human Rights, August 2003.

Today, more opportunities and rights are available to women, but the LGBT community is just beginning its struggle for legal and social recognition. Donors will need to support LGBT organizations for extended periods as they build social legitimacy and support for their rights.

DONOR COORDINATION

Since the first UN peacekeeping mission in Haiti in 1993, the Group of Friends of Haiti has stressed the importance of donor coordination in developing and implementing programs, particularly in the area of rule of law. Despite the establishment of joint committees and round tables, more than twenty years after the first peacekeeping mission in Haiti and a little more than ten years after the beginning of the current mission, the donor community has not overcome traditional rivalries. It never established the transparency and collaboration needed to avoid duplication and maximize project success. With overlapping mandates, donors sometimes compete for the opportunity to assist Haitian institutions. In many cases, they prefer to use international rather than Haitian expertise, which often reduces the effectiveness of their interventions.

In supporting the rule of law in Haiti, there must be two levels of coordination: (1) between donors, to achieve complementarity; (2) between donors and Haitian institutions, to focus more on government priorities and assure political will during implementation. These institutions are essential to targeting initiatives geographically or adapting them to the local environment. Donors need to take a more integrated approach that empowers the Government of Haiti to sustain implementation or impact.

ANALYSIS OF AND CHALLENGES TO VARIOUS JUSTICE SECTOR APPROACHES

The results of each USAID rule of law program during the last twenty years were impacted by the socio-political environment and level of political and public will that existed at the time. Each program has had its share of failures and successes. The overall impact, however, has been a justice system that serves the Haitian people poorly. In determining how USAID can best support justice reform, it should take into account the following lessons learned and best practices from USAID and other donor-funded justice programs in Haiti over the last twenty years.

Lessons learned from justice projects funded by USAID and other donors include:

- The executive is likely to block efforts at judicial reform that threaten its power or the power of its elite supporters.
- A full range of justice strengthening efforts will not have a significant effect unless there is strong, sustained commitment from the executive and citizens. Such commitment has not existed until now, so the results of donor programs have been very limited and unsustainable.
- GOH commitment to the rule of law and genuine justice sector reform must be judged by its actions and not by its words.
- The GOH lacks the commitment to financially sustain donor investments in the justice sector, despite the commitment of many justice actors on the ground. As long as donors subsidize justice improvements and maintenance without requiring GOH support, the GOH will not buy in with an appropriate amount of its own funds.
- Inadequate separation of power within branches of the GOH remains a major obstacle to the introduction of justice reform.
- The sustainability of training is greater when provided through the Magistrates School with Haitian trainers than elsewhere through foreign trainers.
- Legal aid staff members provided by the bar tend to be young and inexperienced. A public defender system owned but not micromanaged by the GOH would be more effective than what now exists.
- Efforts to promote transparency are not sufficient to increase accountability or reduce corruption, given poor internal oversight. Judicial Inspection units in both the MOJ and CSPJ need to be strengthened.

- Current attempts to introduce computerized court case MIS in targeted jurisdictions have been somewhat successful. It has been effective in part because it is operated and was installed by Haitians. Establishment of a nationwide court case MIS will require an enormous effort to assure electricity at all connected offices. However, it can be done and will have a very positive impact on court operations.
- Outside of Port-au-Prince, it is possible to reduce prolonged pretrial detention by providing legal aid and expediting trials. Efforts to reduce PPD in these locations have not been sustained, however, given the inability to fully staff the judiciary. Addressing this problem successfully in Port-au-Prince will require new approaches provided through approval and implementation of the new Criminal Procedure and Criminal Codes.
- Efforts by USAID to reduce prolonged pretrial detention are insufficient to resolve overcrowding in prisons. Other donors not limited by US legislation need to help the GOH in the prison sector.
- Pilot/experimental justice programs, such as legal education, civil society development, legal aid, information systems are less costly, easier to monitor and likely to produce more timely results in rural areas than in urban areas.
- The GOH and political actors have a high tolerance for inefficiency, corruption and human rights abuses in the justice system. Citizens and civil society are resigned to poor services and abuse, but have a vision of establishing rule of law.
- Civil society and government have the potential to work together on justice reform, but control of government by the elite makes such collaboration rare.
- Haitians have a very limited understanding of the government and the justice system. The high level of illiteracy means that education efforts are more effective using audio-visual rather than written approaches.
- Donor efforts to expand the capacity and the reach of media have been successful. The media has become more adept at reporting on and disseminating information about the actions and policies of the GOH.

Best practices demonstrated by USAID and other donor justice programs include:

- Basic training and continuing education for judges and prosecutors provided through the Magistrates School;
- Legal assistance to assure due process and reduce prolonged pretrial detention;
- Training legal aid staff to deal effectively with GBV;
- Establishing GBV hospital centers staffed by women police officers and doctors;
- Legal and civic education sessions to help Haitians prevent and resolve conflict and use the justice system effectively;
- Providing judges and prosecutors with up-to-date laws and codes and practical guidance manuals;
- Strengthening the MOJ and CSPJ to promote judicial independence, inspect judges and prosecutors, standardize procedures and facilitate adaptation to local needs, and remodel and maintain infrastructure;
- Training and providing grants to civil society and legal associations so they can build networks that have the capacity to advocate and participate in policy discussions;
- Supporting code revision;
- Collaborating with donors need to address the needs of police, prisons and courts;
- Designing projects to increase separations of power within the GOH;
- Building the capacity of media to do investigative reporting on respect for rule of law;

- Establishing a computerized court case management information system so judges and prosecutors can access databases of prior judicial decisions;
- Helping to increase the use of Creole within the justice system;
- Building on GOH priorities in designing and implementing justice reform initiatives;
- Helping increase the transparency of the budgetary process for justice institutions;
- Helping judges and prosecutors to monitor police stations and prisons; and
- Supporting the organization of criminal hearings and criminal trials to reduce PPD.

Any new USAID program should take into account best practices and lessons learned from USAID and other donor projects, while focusing on coordination. In the absence of political and public will, however, a very limited program should go forward. If political will were to increase significantly, USAID (or other donor) rule of law programs would need to address these factors:

TRAINING OF JUDICIAL ACTORS

The Checchi project's sustained impact on the system shows the importance of a targeted training component for lawyers, judges, prosecutors, bailiffs and clerks. This component is especially important, given that the GOH has completed work on the new Penal Code and in the midst of drafting a new code of criminal procedure. Once these codes are passed by the Parliament, they will need to be "sold" to judicial actors, who also will need training to assure due process, appropriate sentencing and reduce prolonged pre-trial detention. The successful implementation of a training program on the new codes requires support for the School of Magistrates, law schools, and the Federation of Bar Associations. It is necessary to strengthen the capacity of training institutions and ensure their ability to continue after donor assistance ends. Future training programs need to focus on building gender sensitivity, assuring the rights of LGBT persons and protecting the victims of gender-based violence.

CIVIL SOCIETY CAPACITY BUILDING

Strong grant and technical assistance is needed for professional associations directly related to the judiciary, such as the Federation of Bar Associations, other bar associations, judges associations, the clerks association, and the bailiffs association. Similar support is needed by organizations indirectly related to the judiciary, such as democracy NGOs, human rights organizations, LGBT rights organizations and women's rights organizations. The positive impact of the IFES project offers hope that support to civil society organizations can help secure rights and facilitate approval of new rule of law legislation and policies. Building the capacity of these organizations to raise and manage funds can be a plus for their sustainability. During field visits, the evaluation team noted a strong demand by these organizations to train citizens on rights and duties, legal frameworks and codes, the organization of the courts, and the role of each judicial actor.

SUPPORT FOR CODE REFORM AND LEGISLATIVE AMENDMENTS

Rule of law requires that laws reflect societal changes and are adapted to the current context. Haiti is in the midst of establishing judicial governance through the CSPJ and updating the penal and criminal procedure codes, but other codes must be revisited, such as the civil code, civil procedure code, commercial code, labor code and land tenure code. Legislation on land ownership, audit mechanisms and property rights protection must be reviewed. The National Office of Cadaster, associations of surveyors and notaries associations need support.

SUPPORT FOR LEGAL ASSISTANCE

USAID support for legal assistance has had positive results, despite the fact that the limited resources do not cover all the peace courts within the same jurisdiction. Providing legal assistance to the accused from their first appearance before the magistrate has had a substantial impact on the overcrowding problem, outside of Port-au-Prince. In these jurisdictions, decreases in prolonged pre-trial detention are due not only to the legal assistance, but also to the logistical support provided to the Courts and Prosecutor's offices to increase the number of hearings or trials. However in 2015, delays in naming new judges or renewing the mandates of existing judges eliminated some of the progress in prolonged pre-trial detention made through legal aid and expanded trial calendars. Resolution of the judicial nomination process is essential for assuring the effectiveness of legal assistance

in reducing PPD. Pending the finalization and adoption of the law on legal assistance, the need for donor-funded legal assistance will continue.

RESTRUCTURING OF THE PROSECUTORS OFFICE

Prosecutors' Offices in each court need to be restructured and the roles of prosecutors need to be clarified through a new law. This MOJ initiative would professionalize the prosecutors. Assuring that prosecutors are named for a multi-year term by the MOJ and are overseen by the MOJ Judicial Inspectorate should allow them to be more proactive and improve the quality of the cases they bring to court. Donor need to support the MoJ's and the CSPJ's Judicial Inspectorate in the development of performance indicators and criteria of evaluation for the prosecution as an institution and for rating the prosecutors.

STRENGTHENING OF THE CSPJ AND MOJ

Responsibility for judicial policy is shared jointly between the CSPJ and the Ministry of Justice. This type of coordination between two institutions is new to Haiti. It requires the MOJ to review its mandate and develop the legal and technical capacity to fulfill its new role. Thus, in addition to supporting the CSPJ to assume its share of responsibility (judicial inspection, vetting of judges, judges career management), international partners should help the Ministry of Justice define its new role as part of a new organic law. They should help the MOJ oversee the supervision and inspection of clerks and prosecutors as well as career officers of the Public Ministry. They should facilitate exchange visits between Haitian judicial actors and those from other countries in the region that have put in place new judicial governance mechanisms.

The CSPJ is not yet ready to assume all of its roles under the constitution and the law. Therefore, to avoid any blockage or slippage, donors should help it with organizational development and to define and implement a gradual transition plan with the Ministry of Justice. More detailed mechanisms must be considered for the exercise of additional powers. The 2007 laws on the CSPJ, the status of judges and the school of judges should be revised to clarify roles and ensure that there is no overlap between the authorities of the CSPJ and MOJ, particularly with regard to the careers of judges and prosecutors.

As noted above, progress in reducing the rate of prolonged pre-trial detention in certain jurisdictions was undermined due to delays in the process of nominating new judges and renewing the mandate of current judges. It is therefore urgent to support the judge vetting process and assist the MOJ and the CSPJ to clarify their roles regarding naming and renewing judges.

LOGISTICAL SUPPORT FOR COURTS AND PROSECUTOR'S OFFICE

Logistical support to courts and prosecutors for trials or hearings and computerized court case management information systems increase the capacity to process cases, improve the supervision and control of each judge's work, and allow the rapid processing of files. Good collaboration between chief judges and chief prosecutors accelerates the treatment of cases and allows correctional and criminal hearings without juries to be held regularly. Experience has shown that donor support also facilitates criminal trials with juries. Jury management and the external and internal security of the court are part of this vital logistical support. Assuring the appearance of the plaintiffs and witnesses can be a plus for the total success of the criminal hearings.

BUSINESS COURTS AND LAW

Corruption and slow proceedings are two of the main problems of the Haitian judicial system that impact investor confidence. The investment code does not offer enough security guarantees for foreign investment. Pending a thorough reform of the judicial system and complete overhaul of the land tenure system, donors should support a partial reform of business and commercial law and the establishment of special courts to accelerate resolution of disputes. Such an approach would demonstrate the willingness of the state to protect foreign and domestic investment. The establishment of a rapid dispute resolution mechanism is an additional attraction for foreign capital, including US investors, in addition to tapping Haiti's own economic potential. The various chambers of commerce, including the Center of Mediation and Arbitration of Haiti's Chamber of Commerce, would benefit from donor support.

POLICE AND PRISONS

The police must have access to the necessary tools to contribute to successful investigation and prosecution of cases of violence or abuse of vulnerable populations, including GBV victims and LGBT. Coordination and joint

work with the judicial authorities and hospitals following the model established by PROJUSTICE in Cap-Haitien would be effective.

Currently, Haiti's prisons are unable to facilitate the reintegration of prisoners through revenue-generating work programs while they are serving their sentences. It is appropriate for donors to examine the feasibility and to develop, in close collaboration with the Government of Haiti, a national reintegration program for convicts. This forces detention centers to adapt their facilities and train prison officials to monitor prisoners working in an open environment. By engaging in agricultural work, prisoners may partially contribute to the cost of their feeding.

POLITICAL WILL

The experience of the last twenty years has proved that the justice system is generally resistant to change. No significant change can be achieved at the systemic level without a strong political will and the full support of the international community in achieving realistic and feasible goals. Lack of coordination among donors and Haitian institutions combine with low political will to hobble progress toward the rule of law. A window of opportunity to build political will has opened with the start of the Parliamentary election period. As we argue in the conclusion section below, indicators of political will might include creation by the President or Prime Minister of a national conference for justice reform or the commitment to implement the citizens' movement demand for justice reform. It is therefore appropriate to take this election period to build commitment to rule of law among political parties, presidential candidates and the candidates for the legislative and to help them identify short, medium and long term priorities, strategies and initiatives. Encouraging political party leaders and candidates to make the rule of law a priority may lead to an increase in the number of elected public officials genuinely committed to taking bold steps for justice sector reform. A working meeting with elected Parliamentarians can help place the rule of law in the interests of the center of the next Parliament.

SUSTAINABILITY

Each of USAID's justice programs has been well planned and targeted to priority GOH, USAID and USG goals. Many project output targets were achieved. However, the level and sustainability of outcomes and impact have been limited. Despite strong interest from judicial actors and civil society groups to achieve project goals, they were unable to play their roles as counterparts or activity implementers effectively due to two reasons: (1) the absence of political will (volition) at the top levels of the GOH for judicial reform; (2) the absence of resources, skills and systems (capacity) to sustain their accomplishments. Both volition and capacity are essential for transforming USAID support into sustained, concrete justice reform. These factors were weak or nonexistent in previous and current projects. They must be much stronger for future USAID justice reform efforts to succeed.

VOLITION

POLITICAL WILL

Various approaches have been taken by USAID and other donors to incorporate larger numbers of the Haitian community and the organizations within which they work into the effort to reform the Haitian justice system. Besides a focus on increased participation of the citizenry at large, other activities were designed to increase the capacity of the actors and the government entities that provided justice service. The results and sustainability of these investments have been mixed. Probably the most promising intervention that has the potential to augment political will is the addition, thanks to the significant contributions of the international community, of a large number of judicial personnel from judges to clerks, from prosecutors to police, from lawyers to their support staff. They all have a vested interest in the continuation and the ongoing improvements to the system and represent an increasing source of pressure upon the GOH to bolster their efforts at justice reform.

In looking at the micro picture, it is certainly true that the justice sector institutions, both those that have been added and those that have been augmented have markedly greater capacity to dispense and deliver their different levels of judicial assistance than was the case 20 years ago. Despite the manifest increase in capacity and notwithstanding the significant contributions by USAID and the international community of donors, improvements in the delivery of services have been limited. What appears to have been overlooked is the fact that the GOH is unwilling, unmotivated, and entirely lacking in the commitment required to utilize and capitalize on the justice sector tools and enhancements that the international community has been so generous in providing. The team believes that this disposition on the part of the GOH is in fact deliberate.

We have concluded that GOH leaders and political elite see no reward to themselves in a robust, healthy, transparent and equitable dispensation of justice. Were that the case, it is more than likely that many of the former and current holders of executive power would be forced to defend their choices, decisions and actions before a court of law that, if properly functional, would likely send them to a lengthy term behind bars. In fact, their action plan to starve the judiciary of support and resources and their efforts to subvert the legal process for their own, private ends has never been seriously challenged by the international donor community. Enough external assistance has been provided to keep the justice system functioning sufficiently to provide the appearance of progress and reasonable dispensation of justice. There are courthouses, judges, prisons, prison guards, police, commissariats, the Ministry of Justice, the CSPJ, a magistrate's school, a large cadre of clerks and other administrative personnel, and record keeping systems, all of which in one way or another have been upgraded and improved by contributions from the outside.

But if you look closely and examine separately each one of these parts of the justice process, you will find that not one of them operates on a level even close to any meaningful international standard. The prison system and its shocking failures should be an international scandal. The level of prolonged pre-trial detention is excessively high and as it exists constitutes not only cruel and unusual punishment but de-facto torture, a clear violation of the human rights treaties to which Haiti is a signatory. Corruption is endemic; bribes at all levels of the rule of law process are routinely paid. With a few exceptions, court houses are dilapidated, poorly lit, cramped, unclean and lacking toilets for women. The verdict is clear. The justice system is a sham. It exists in name, not nature; in structure, not spirit. Until ways are found to reward the government for embracing meaningful reform and build

GOH and public appreciation for it, there will never be political will to undertake serious, sustainable and effective reform efforts. Some of those ideas will be discussed further in the conclusions and recommendations section.

PUBLIC WILL

While the GOH resisted most efforts to embrace rule of law reform initiatives, the public meanwhile and the justice sector actors themselves have endorsed many, if not most, of the USAID programs and initiatives and those of other international donors. Perhaps the singular and most important achievement of USAID implementers, and their international partners, has been their success in galvanizing certain segments of the Haitian populace to work towards justice reform, in particular efforts towards reducing and eventually eliminating the power of entrenched interests. Civil Society and the media have expanded their capacity to disseminate information about the policies, actions, directions and decisions of the GOH. Opposition parties and politicians, media, citizen groups and civil society organizations have become more forceful at and opportunistic about uncovering and publishing GOH misdeeds and the negative consequences thereof.

There is increased awareness about the tactics used by the GOH to undermine, manipulate and neuter those parts of the justice system that threaten any of the economic and political interests of their elite supporters. Public will is poised for a renaissance. To capitalize on this potential force for change, however, the international community must summon its own will to exert significant, external influence on the GOH to recognize its obligation to build, support and make permanent the rule of law system. Until now, the donors to Haiti, USAID included, have taken the GOH at its word and bought into the myth of the Government's commitment to human rights, democracy and the rule of law. The will of the Haitian people will only affect change if it is coupled with USG assistance that recognizes that the GOH, in its current form, is not interested in pursuing genuine reform of the rule of law. It is now clear that our confidence has been misplaced. Haiti is no democracy. It is at best a plutocracy. The long standing and generous efforts of USAID and the international community have had little success in pressuring the GOH to adopt fundamental changes in their approach to Haitian justice. The USG, by means of sanctions, embargoes, pressure on international financial institutions and other restrictive conditions, has attempted to coerce a number of poorly governed nations to comply with accepted standards of behavior. Haiti should be no different. The public will for meaningful reform needs to be catalyzed. The public now has, thanks to USAID assistance, some of the tools but not the strength to move forward meaningfully. The Haitian people will stand up and demand equitable and effective rule of law if USAID invests heavily in the capacity of the oversight institutions required to check the power of the executive. The GOH will only commit itself to justice reform if it feels pressure from both the Haitian public and the USG.

CAPACITY

USAID's efforts to strengthen the justice sector have resulted neither in improvement in the quality of justice nor sustained improvements in individual justice institutions. While political and public will has been inadequate and in some cases counterproductive, the capacity of governmental and non-governmental bodies to advance justice sector reform has been severely restricted. The government lacks leadership, human resources, funding, organization and infrastructure. Citizens, civil society organizations and much of the private sector lack the power and capacity to break once and for all the stranglehold by elites over the country's government and economy. No donor project, policy reform, or government initiative will be able to change the power imbalance that hobbles not only the justice sector, but the whole system of governance. Haiti needs a powerful, long-term citizens' movement that partners with government visionaries to give and sustain power to the vast majority of the population that has been excluded from public life for over 200 years. Any serious challenge to elite control will inevitably be met by strong resistance. USAID could play a constructive role in this process by investing in the capacity of key players, both inside and outside government, to lead this societal transformation which is more particularly described in the following sections.

BUILDING DEMAND FOR JUSTICE SECTOR REFORM

The vast majority of Haitians have little or no interaction with the justice system. Other than victims or defendants who are forced to deal with the criminal justice system, Haitians keep away from the courts if at all possible. Consequently, they lack the experience and understanding to link poor or abusive treatment by the justice system to government capture by entrenched interests. They are resigned to poor justice services, given that they have no power to hold government officials accountable. Furthermore, they have never developed an understanding of the

“public good,” such as education, equity and inclusion, which they must continuously demand from their government. To build demand for societal change and justice sector reform, Haitians must first be ready to express their anger about the abuse of citizens by the justice system and their exclusion from power. USAID could catalyze the expression of these feelings by working with civil society organizations to support widespread civic and legal education. These activities would help people understand the justice system, its importance to good governance, how to use it to secure their rights, and what changes are needed to put in place a system that meets the needs of all Haitians. Civic and legal education would also motivate Haitians to build a movement for societal change and justice reform.

The demand of the public for better justice service could also be improved by increasing the number of Haitians who use the justice system. Justice institutions must become customer friendly and increase transparency. They must show how they are reducing barriers to use by discriminated groups. USAID could help the justice system increase transparency, accountability and access through work with the MOJ and CSPJ and then individual courts. Similarly, USAID could help civil society and human rights organizations facilitate access to the justice system, analyze barriers to access, advocate steps to reduce them, and monitor justice system performance.

BUILDING OWNERSHIP THROUGH A SUSTAINABLE REFORM MOVEMENT

Like all movements, the citizens’ movement to combat exclusion and reform justice must start from a small group of committed people. First, USAID could provide funding and technical assistance to build the capacity of a small number of civil society and human rights organizations, legal associations and labor unions that already feel a sense of ownership of the political struggle for justice reform. This support would enable the network and its members to build a consensus on their objectives, strategy and tactics; raise awareness; integrate an ever-widening circle of organizations into their struggle; gain public support; and provide the required leadership for the movement. Such assistance would enable the movement to mobilize Haitians, build links with government visionaries and negotiate effectively with those in power. Other USAID assistance could assist government agencies that collaborate with the movement in establishing government-citizen or public-private sector alliances. It is essential to continue USAID assistance to these groups during any resulting transition period, to counter pushback from entrenched interests and maintain pressure for implementing and sustaining reforms.

PRIORITIZING AND SUSTAINING JUSTICE SECTOR RESOURCES

At the heart of the struggle with the elite is the size and role of government. The GOH budget is too small to meet the country’s needs, even with donors making up more than 50% of resources. The Haitian elite and large private sector businesses are under-taxed, and the GOH lacks the capacity to collect taxes that are due. Until the budget and revenue collection increase significantly, the justice sector and all other parts of government will remain starved for funds. Due to lack of counterpart funding, the impact of donor assistance will continue to be less than expected and unsustainable. A sustainable justice reform movement must prioritize increasing the size of government and increasing the contribution of the Haitian elite to government revenue. Top government officials, including the President, Prime Minister and Ministry of Finance must understand what is at stake and provide the leadership needed to chart a new course for government. Parliamentarians must have the knowledge and analytical tools to discuss budget issues cogently.

Opportunities for USAID intervention include building the capacity of the leaders of the sustainable justice reform movement to establish objectives and negotiate on their vision for a new role of government and a significant increase in its budget. Similar assistance could be provided to government and Parliamentary leaders to engage constructively in these debates. When there is sufficient commitment to increasing the size of government, USAID could provide technical assistance for development of long-term budget plans for the justice system. Such plans would need to take into consideration approval of new substantive and procedural codes and increased responsibilities of the justice system, such as providing legal aid, fighting gender-based violence, maintaining a nationwide court case management information system, and building and maintaining new court houses, judges offices, public information offices, the magistrates school, and law schools. In addition to these requirements, the plans must take into account the need for increased funding for police and prisons. Individual budgets must be based on a clarification of responsibilities between the MOJ and the CSPJ. Ideally, the CSPJ would have its own budget, but if that is not possible, the MOJ should not be allowed to interfere with its funding. Similarly, the CSPJ should be allowed to nominate and renew the mandate of judges without MOJ interference. There may be opportunities for USAID to facilitate these agreements, as well as guide the development of the civil service in line with the overall increase in the GOH budget.

CONCLUSIONS AND RECOMMENDATIONS

Below are the recommendations of DI's assessment team for whether and how USAID should continue to pursue rule of law reform initiatives in the future. The team has provided recommendations designed to guide USAID forward in the likely event that the deficiencies of public and political will discussed above continue. It is important to emphasize the Team's belief that public and political will for extensive justice reform are unlikely to improve to the point that they would support a large USAID rule of law program in the near future, and may not improve to that point at all. Due to political instability and lack of buy-in by the executive and to some extent by the public, current levels of donor support result in minimal improvements in the justice sector. Over the next five years, unless public and political will increase significantly, USAID-supported activities must focus on what is feasible, has a direct impact on those using the justice system, and builds the volition and capacity for public will. In the unlikely case that public and political will increase tremendously sometime in the next decade, the evaluation team has provided recommendations for a long-term, comprehensive rule of law program in Appendix C.

SHORT-TERM RECOMMENDATIONS

As we have noted, GOH leaders have hobbled justice reform intentionally and the public will for reform has not been manifest. We believe the conclusions of the December 2014 annual status report on USG post-earthquake recovery and development efforts in Haiti understate the problem: "The U.S. government is not, however, satisfied with the overall results of our justice sector programs to date, in particular with regard to helping Haiti to sustainably address high levels of pre-trial detention. Therefore we are re-examining our options for further assistance."²²

While there have been signs of political commitment to addressing some of the larger issues, such as code reform and prolonged pretrial detention, actual progress in these areas has been slow with almost no impact on justice actors, pre-trial detainees and citizens in Port-au-Prince. As 2015 is an election year, with an interim government that will stay on until at least early 2016, no major reforms of the justice system are imminent. The Assessment Team's recommendations for 2015 are based upon the assumption that during this year political and public will are far from adequate to transform current USAID initiatives into nationwide systemic reform.

To maximize the impact of future justice programming, however, the Team believes that USAID should continue for one year ongoing PROJUSTICE activities that have improved judicial efficiency and access to justice, areas that do not require significant political or public will. These activities include legal aid, legal education, mediation, gender-based violence and court case MIS.

Given the expressed commitment of the current Minister of Justice to reducing prolonged pre-trial detention in Port-au-Prince, USAID should redirect PROJUSTICE PPD assistance to this area. Delays in assigning or renewing the mandate of judges outside of PAP have erased the gains achieved by PROJUSTICE in reducing PPD, so continued assistance in these geographic areas is not merited. While it is doubtful that the Minister will be able to put in place sustainable systemic changes for reducing PPD in PAP, it is important for USAID to assist him in demonstrating the potential for accomplishing this objective. With sufficient political and public will, subsequent Ministers could use the achievements in 2015 as a basis for undertaking more systemic reform.

It is important that USAID provide clear signals that it will no longer fund justice activities that have little GOH support, such as an explicit commitment to address key citizen demands for fighting exclusion and reforming the justice system and increased level of funding for the justice sector. USAID should collaborate with other donors so that they do not replace dropped PROJUSTICE activities. INL activities whose success is predicated on political will, such as ABA's support for renewal of a judicial inspection system, should be allowed to expire unless a strong commitment is demonstrated.

²² Status of Post-Earthquake Recovery and Development Efforts in Haiti (December 2014), <http://www.state.gov/s/hsc/2014report/index.htm>

An important new activity to begin in 2015 would be the training of political parties in rule of law and judicial independence. Party leaders and members lack a clear understanding of these issues, which are important to platform development, electioneering and eventually legislative action. While the parties are generally weak, they are potentially important sources of demand for justice reform. Training them would complement citizen legal education in building public and political will.

In preparation for a potential follow-on justice project, USAID should fund assessments and studies to provide insight into areas essential for building public and political will. Such research should focus on the security and justice budget/expenditure process, commercial law and the use of courts by the formal and informal private sector, corruption in the judiciary, and the intersection of gender and justice. These studies will provide data and information to help citizens and government reformers build a justice reform movement.

POST-ELECTION CYCLE OPTIONS

While it is evident that no major justice reforms will take place prior to the installation of a new government, the climate for justice reforms after the election is more uncertain. Given the control that Haitian elites continue to exercise over the political and economic system, the odds are great that the climate for reform will not improve significantly. In this context, USAID has two major options: (1) disengaging from the justice sector; (2) reshaping justice sector assistance to target those areas of judicial sector development where political will is not essential and to build public and political will for reform. The assessment team recommends strongly that USAID support the second option.

Disengaging from the Justice Sector: The purpose of disengaging would be twofold: sending a message to the Haitian Government that USAID investments in the justice system have had an unacceptable return; and encouraging the GOH to increase its commitment and funding for the sector. While the Haitian Government may respond positively to assistance released upon meeting certain conditions, it would not necessarily respond to USAID's complete disengagement from the justice sector by increasing its commitment and funding. If USAID were to leave the justice sector, MINUSTAH, UNDP and OAS might be pressured by the Haitian Government to reallocate their assistance. In 2003, a similar situation occurred, and UNDP was pressured to reallocate its justice assistance. USAID's exit would need to be coordinated with other donors and INL, to pass the correct message to the GOH. If USAID decides to exit from the justice sector to pressure the Haitian Government to demonstrate greater commitment to justice reform, it needs to do so in close coordination with all justice sector donors and implementers and with input from organizations that advocate for justice reform or/and defend human rights.

The risks of disengaging in the short term would be even fewer resources, training and technical assistance flowing to justice actors, resulting in less access to justice, more difficulty in providing judicial guarantees, poorer decisions, greater corruption, and more interventions by the executive into judicial decision making. Efforts to reduce prolonged pretrial detention would slow down. Consequently, prison overcrowding and related human rights abuses would increase. Mediation efforts would slow down, increasing the potential for conflict. Women experiencing gender-based violence would have less access to support. In Saint Marc and Fort-Liberté, progress in establishing the court case MIS would stop, reducing judicial efficiency. Reformers who have been working for years on the revisions of the penal and criminal procedure codes will face set-backs. The CSPJ would find it more difficult to fight the MOJ for judicial independence and to take administrative responsibility for the judiciary. If INL also stops its assistance, additional negative impacts will be felt among the police, the prisons, the Ministry of Justice and the CSPJ.

In the medium term, history has shown that the Haitian Government would make no extraordinary efforts to improve conditions in the justice sector. Haitian political leaders and their elite supporters have a high tolerance for poor government services, corruption and human rights abuses and have not viewed rebuilding the justice sector as a priority. From 2001-2004, when USAID stopped supporting government institutions in the justice sector, it built a civil society and legal association justice reform network, but no real commitment to justice reform was demonstrated until Parliament's approval of three major laws in 2007.

Reshaping Justice Sector Assistance: The purpose of reshaping USAID justice sector assistance would be to facilitate the delivery of justice services needed by Haitians and essential for the success of other USAID and USG initiatives as well as to be ready to support champions of reform if the political climate improves. As disengaging from the justice sector may have consequences that USAID is unwilling to accept, an alternative approach would

be to adapt current justice sector strengthening efforts to an environment with low commitment to reform. Four types of assistance would be relevant: (1) increasing access to justice; (2) increasing the efficiency of justice sector actors; (3) building civil society and legal association support for justice sector reform; and (4) a new assistance area for USAID: putting in place a mechanism to build on any new commitment to justice reform.

1) In the absence of reform, increasing access to justice by helping lawyers provide legal assistance and aid to Haitian victims and defendants will advance USAID's long-term interest in building citizen confidence in the Government of Haiti. The assessment team recommends:

- *Support legal assistance.* Continue support to legal assistance teams in Saint Marc, Cap-Haitien, Fort-Liberté, Cité Soleil and Croix des Bouquets. Expand legal aid to other jurisdictions within the three development corridors not covered by other donors.
- *Support mediation efforts and centers.* Continue support to mediation centers in high crime areas such as Cité Soleil and Martissant. Establish new mediation centers in other high crime areas.
- *Strengthen legal defense/medical certification of GBV/rape victims.* Continue support to the GBV Hospital Center in Cap-Haitien. Assure that it is supplied with a regular supply of rape kits. Establish new centers in other jurisdictions within the three development corridors not covered by other donors. Train legal aid lawyers on representing GBV. Strengthen or establish GBV forensics capacity.

2) In the absence of reform, improving the access, efficiency, transparency and accountability of other justice sector actors through training, case management and increasing the number of hearings will help to increase citizen confidence in the judiciary. The assessment team recommends:

- *Work through the Magistrates School to train judges and prosecutors on GBV and LGBT rights, relevant laws and appropriate procedures, who in turn will be given the opportunity to train members of other relevant organizations.*
- *Work through the Magistrates School to train prosecutors and judges on expediting the resolution of land cases.*
- *Expand the Court Case Management Information System in Saint Marc and Fort-Liberté to prisons, police, justices of the peace, CSPJ and MOJ.*
- *Support first instance judges, investigative judges, prosecutors, lawyers, justices of the peace, prison staff and local political leaders to reduce prolonged pretrial detention in jurisdictions within the development corridors outside Port-au-Prince.* If the MOJ shows political will to address the problem in Port-au-Prince, provide support to courts in this development corridor as well.
- *Provide technical assistance and equipment to courts to increase transparency, accountability and access.*

3) Even when the climate for justice reform is hostile, USAID has learned that activities to stimulate public and political will are essential for facilitating later reforms. In efforts to build a citizens' movement for justice sector reform, the assessment team recommends:

- *Expand support for legal and civic education nationwide.* These efforts to help citizens know their rights and how to use the justice system effectively have been well received and are essential for building a citizens' movement. Participants in high crime areas have gained greater confidence in the police and justice system. Priority activities include town halls, neighborhood meetings, briefings by justice sector officials, newspaper columns, radio programs, and trainings by human rights organizations. These efforts could be supported by funding original research on the status of the justice system and sharing information on judicial reform in other countries.
- *Build a citizens' movement to fight exclusion and demand justice sector reform.* Some of the justice reform advocacy organizations strengthened or created by USAID's IFES project from 2001-2004 still exist, but are weaker and less active. To catalyze and build the capacity of the nucleus of a citizens' movement to fight exclusion and demand justice sector reform, USAID should provide funding and technical assistance to a small number of civil society and human rights organizations, legal associations and labor unions that already feel a sense of ownership of the political struggle for justice reform. These groups might include the Civic Forum, the Women Judges Association and AMANAH, the magistrates association, as well as

human rights organizations, such as members of POHDH, women's organizations, such as Kay Fanm, and gay rights organizations, such as Kouraj. USAID should help these groups expand the movement to many other organizations, associations and networks. It should assist in advocacy efforts by funding studies and surveys on the status of the justice system. USAID also should build the capacity of the leaders of the movement to establish objectives and negotiate on their vision for a new role of government and a significant increase in its budget. It should provide grants and technical assistance to facilitate access to the justice system, analyze barriers to access, advocate steps to reduce them, and monitor the performance of the CSPJ, the MOJ and the courts.

- *Help political parties take Parliamentary initiatives on rule of law and judicial independence.* Political parties would be trained by USAID in 2015, and some would include positions on justice reform in their platforms. After the elections, if the climate for reform remains hostile, USAID should respond to requests by Parliamentarians for assistance in analyzing the justice sector, providing oversight, and reviewing proposed justice sector legislation.

4) Even in the absence of justice reform, USAID needs to engage with justice sector and executive actors to continuously test their commitment to reforms. One way to do so is to hold periodic meetings to discuss potential reforms and desired USAID support. By assessing the seriousness of GOH commitment and the potential for resistance, USAID could determine whether it wishes to provide such support, and under which conditions. The assessment team recommends:

- *Hold semi-annual meetings, one with CSPJ and one with MOJ, to identify their plans for justice reform, assess the strength of their commitment and determine resistance to these plans.* If warranted, define the type of support they desire from USAID. Identify the conditionality they are willing to accept in order to receive USAID assistance. Collaborate with other donors in establishing the conditionality and assistance package.

USAID should put in place implementation mechanisms that can ramp up in response to political openings. Such assistance might be provided in response to achievement by CSPJ or MOJ of USAID's conditionality. The assessment team recommends:

- *Establish a special account, jointly managed by the Haitian Government and USAID, to fund USAID-procured implementers of activities needed to advance justice reform.* The funds can be used once the Haitian Government achieves USAID conditionality. The activities will be defined previously by negotiations among the CSPJ, MOJ and USAID. USAID assistance could be used to establish government-citizen or public-private sector alliances that advance the objectives of the citizens' movement. Assistance also could be provided to government and Parliamentary leaders to engage constructively in debates with citizens' movement representatives.

While political will for justice reform may never reach a level that sustains progress, at some point, perhaps as early as 2020, USAID and the donor community may be convinced that the Haitian Government and public are ready and committed to justice reform. Evidence might include creation by the President or Prime Minister of a national conference for justice reform, with participation by justice sector actors, citizens' movement representatives, private sector associations, Members of Parliament, political parties and local government officials. Other evidence could be a commitment by government leaders to implement the demands of the citizens' movement to fight exclusion and demand justice reform. USAID should be ready to build on this momentum by establishing priorities, reorienting its ongoing justice programs and ramping up assistance. Such a program would be designed in a participatory fashion with the CSPJ, MOJ, members of the citizens' movement and the Prime Minister's office. USAID's involvement would need to be coordinated closely with other donors. For more detail on program recommendations in the event that sufficient political and public will emerges in the coming decades, please see Annex C.

ANNEX A: SCOPE OF WORK

SECTION C – DESCRIPTION/ SPECIFICATIONS/ STATEMENT OF WORK

C.1 PURPOSE

The purpose of this assessment is to conduct a review of USAID’s justice strengthening efforts over the last twenty years, identify lessons learned, and develop recommendations for future justice programming in Haiti. The assessment must take into account USG whole-of-government January 2011 - September 2018 Strategy and the Assessing Progress in Haiti Act, passed by the U.S. Congress on July 25, 2014 and awaiting the President’s signature.

C.2 BACKGROUND

Haiti’s judicial system is characterized by outmoded laws, cumbersome procedures, a lack of training for judicial system actors, and a high rate of prolonged pre-trial detention, especially in the jurisdiction of Port au Prince that encompasses the capital city. For over two decades, USAID has provided significant support to Haiti for training, technical assistance, and material support to promote judicial sector reform. While some progress has been made in the past few years, the Government of Haiti (GOH) has made little sustained, concrete action demonstrating positive political will for justice reform. Although strengthening the rule of law (ROL) is one of the five stated policy priorities of the Government of Haiti (GOH) and the Martelly Administration took some important early steps²³ to strengthen the independence and performance of this sector, political instability²⁴ has resulted in a lack of action on pressing issues such as pretrial detention, code reform and access to justice. Examples of this inaction include:

- Despite passage of judicial reform legislation in 2007 to create, with USAID support, the Superior Judicial Council (CSPJ), the CSPJ was established by the GOH until 2012 and is not yet fully operational.
- The mandates of many judges have expired, and the CSPJ has asked them to stop processing judicial cases while it conducts judicial vetting. The slow pace of this vetting process poses a major concern, especially in some of the target jurisdictions of the USAID/ Haiti PROJUSTICE program, where the rate of the accused in pretrial detention is increasing in the absence of sitting judges to move cases along.
- While the current government was able to bring the criminal and procedural code reform process to an unprecedented level of completion, since September 2012, the Executive has delayed the presentation to Parliament of the draft revisions of the criminal code and the criminal procedures code, thus halting progress toward these important reforms.

For purposes of this assessment, “political will” of the public and private sectors encompasses both their volition and their capacity to undertake sustained priority actions that will allow Haiti to achieve meaningful and sustainable justice sector reform goals. Recent experience highlights the very real possibility that political will for justice reform will not be forthcoming the near future. This possibility raises the question of how much return on investment USAID and the donor community can expect from continuing to support ROL programs.

C.3 RELATIONSHIP TO MISSION STRATEGY

I. The USG Whole of Government Haiti Strategy (2011-2018)

The “Post-Earthquake USG Haiti Strategy, Toward Renewal and Economic Opportunity,” published in January 2011, includes the overarching goal of “a stable and economically viable Haiti,” executed within four development pillars: infrastructure (shelter, energy and ports); food and economic security; health and other basic services; and governance and rule of law.

²³ Steps include including the appointment of the Supreme Court’s Justices, the submission to Parliament of a robust budget for the Superior Judicial Council (CSPJ), and approval by the Council of Ministers of new draft criminal procedure and penal codes.

²⁴ Instability is evidenced by frequent changes of Minister of Justice (4 Ministers from May to October 2011), numerous shifts of key judicial actors in all target jurisdictions from May 2011 to date (including nine Chief Prosecutors in Port au Prince), and tensions between the executive and parliament that almost led to the suspension of the Minister of Justice by the Senate earlier this year.

The strategic framework also establishes three geographic corridors for USG investment – Port-au-Prince, Saint Marc, and Cap Haitian. USAID implements the strategy in a whole-of-government approach with the Department of State, the Department of Justice, the Treasury Department, the Centers for Disease Control, and other USG agencies.

USAID undertook a comprehensive mid-term review of its portion of the USG strategy in 2013 to capture lessons learned and identify necessary mid-course adjustments. In some cases, USAID is adopting new approaches to achieve strategic goals while making revisions to objectives and targets that are no longer viable. In addition to making adjustments in particular sectors, USAID has extended its portion of the strategy through FY 2018 in order to accommodate delays in program start-ups and to allow new programs to achieve intended results.

2. Justice and Rule of Law Programs (2001 to Present)

a) Administration of Justice Project implemented by CHECCHI (1995-1999)

This four-year technical assistance and training project was to provide assistance to Haitian authorities in developing a responsive, transparent justice system. The project had three main program components - legal assistance and information, case registration/management, and judicial mentoring - which shared the objective of strengthening the organization and management of the judicial system and increasing public access to the courts.

b) Constituency Building for Judicial Reform implemented by IFES (2001-2004)

This project helped strengthen the capacity of Haitian civil society to advocate for and participate in justice reform and to build broad coalitions across society to generate demand for reform. That project facilitated the emergence of several civil society organizations involved in the justice. This includes but is not limited to the following: The National Association of Magistrates (ANAMAH), the Women Judges Association, The Bar Federation, The Clerk's Association, as well as other human right groups and networks.

c) Training of Magistrates and Justice Personnel implemented by NCSC (2004-2005)

This project was to provide institutional support to the School of Magistrates so it could fulfill its mandate of professionalizing the judiciary branch. That program helped train hundreds of judges, prosecutors and other judicial personnel.

d) Judicial Strengthening Program implemented by NCSC (2005-2008)

The purpose of this two-year project was to strengthen the administrative, management, and technical capacity of the courts and parquets through training and technical assistance to the justices of the peace, judges, prosecutors, and court personnel. The project also worked in the area of pretrial detention by working with judicial personnel in Port-au-Prince, Saint Marc, and Petit-Goave to help improve the flow of cases through the police stations, prisons, and courts. A third component of the project was to improve citizen links to the judiciary through increasing citizens' awareness of their rights and access to legal services.

e) Judicial Strengthening and Stabilization Initiatives implemented by NCSC (2008-2009)

This was an extension of the previous project. It also included a component to help increase the administrative, management, and technical capacities of judicial authorities so they can provide more justice services effectively and efficiently. The project also had a pretrial detention reduction component to help address the issue in the jurisdictions of Saint-Marc, Petit-Goave and Port-au-Prince. Another small component of the project was to provide technical assistance and support to the justices of the peace in Cité Soleil.

f) Improving Justice Service Delivery and Sector Reform implemented by TT DPK (2009-2015)

This project was launched in 2009 with the overarching goal of strengthening the judiciary and increasing security through improved ROL. To this end, the project works closely with the Ministry of Justice, the High Judicial Council, the bar associations, judges, prosecutors, and other justice sector officials to help reduce pretrial detention, increase access to justice, enhance judicial reform and improve judicial independence. The

project activities are implemented in 5 of Haiti's eighteen jurisdictions. Specifically the program is serving the jurisdiction of Cap-Haïtien, Croix-des-Bouquets, Fort-Liberté, Saint-Marc, and Port-au-Prince.

3. Assessing Progress in Haiti Act, 2014

Assessing Progress in Haiti Act of 2014, passed by the U.S. Senate on July 10, 2014 and by the U.S. House of Representatives without amendment on July 25, 2014, expresses the sentiment of Congress that transparency, accountability, democracy, and good governance are integral factors in any congressional decision regarding U.S. assistance, including assistance to Haiti. The Act

directs the Secretary of State to report to Congress annually through December 31, 2017, on the status of post-earthquake recovery and development efforts in Haiti and directs the Secretary, through the Assistant Secretary of State for Western Hemisphere Affairs, to coordinate and transmit to Congress a three-year Haiti strategy that:

- (1) Identifies constraints to economic growth and to consolidation of democratic government institutions;
- (2) Includes an action plan that outlines policy tools, technical assistance, and resources for addressing the highest-priority constraints; and
- (3) Identifies specific steps and benchmarks to provide direct bilateral assistance to the Government of Haiti (GOH).

C.4 OBJECTIVES

The main goal of this assessment is to assist USAID in to making an informed decision on whether and how to remain engaged in the sector, absent demonstrable improvement in GOH political will to implement necessary reforms.

The specific objectives of the assessment are

- a) Assessing the fundamental impact achieved by previous and current justice programs toward strengthening and modernizing the justice sector.
- b) Identifying lessons learned and best practices from previous and current justice programs that can be applied in future justice programs to maximize their effectiveness, with an emphasis on efforts to effect fundamental reforms that will lead to reduced pre-trial detention; increased access to justice, especially for victims of violent crimes such as human trafficking and gender-based violence; and improved independence of the judiciary.
- c) Identifying the most important challenges to achieving sustainable improvement in the justice sector. Including an analysis of both the political will for reform, and limitations on capacity to put reform efforts into practice.
- d) Identifying and prioritizing opportunities in the justice sector.
- e) Providing recommendations for future justice programs under various scenarios, and describe how best to achieve sustainable systemic improvement, including exploring opportunities for government-to-government assistance and improved donor coordination around justice sector reform.

C.5 ASSESSMENT QUESTIONS

In assessing the impact of previous and current justice strengthening programs with the objective of making recommendations for future justice programming, the Assessment Team must address the questions provided below. These questions are not comprehensive or exhaustive and the Assessment Team is encouraged to propose additional questions and criteria. In addition, the Assessment Team will identify opportunities and recommendations for improvement.

- a) **Context.** Looking at existing assessments and interviewing key informants, what are key characteristics of Haiti's justice system? How do the findings differentiate between symptoms of weaknesses in the current system (i.e., high rates of prolonged pre-trial detention) and the underlying causes of these weaknesses (i.e., entrenched interests' resistance to penal and procedural code reform)?

- b) **Impact.** What impacts have USAID justice reform activities had on both the symptoms and the fundamental problems? What have been the differential impacts of the programs in rural and urban areas? Have USAID activities affected the independence of the judiciary? What have been the impacts of the 2010 earthquake, and the political instability from 2010 to date on the justice sector reform activities and have they differently impacted men and women? If so, how?
- c) **Lessons Learned & Best Practices.** What lessons and best practices can be gleaned from previous and current justice programs to inform the development of and maximize the effectiveness of future justice programs? How can we learn from past failures, successes, and areas where our efforts have “stalled” but are not necessarily without hope. Overall, how has political will played a supportive or obstructive role?
- d) **Challenges.** What remaining justice sector challenges should be addressed by future programs? What are the specific challenges that programs might face in their efforts to increase access to justice, especially for victims of gender-based violence? How are challenges in access to justice impacted by gender, sexual orientation and gender identity? What public policy reforms should be emphasized in future activities? What improvements could be made to increase the program’s effectiveness in integrating these cross-cutting issues?
- e) **Sustainability.** What is the current level of political will – both positive and negative – for justice sector reform? What steps can be taken to tackle the underlying problems of: (1) lack of public demand for better justice service, and (2) opposition by powerful entrenched interests who oppose reform? How can justice programs create sustainable justice reform-oriented civil society networks and public-private sector alliances? How can the justice sector successfully compete for scarce human and financial resources? How can future justice programming better coordinate with, support, or complement activities supported by other USAID technical teams and/or sponsored by other international donors and/or multilateral organizations? Can the newly created administrative oversight body of the judiciary, CSPJ, effectively take over the management of the judiciary so that it can truly become an independent branch that is really separated from the executive branch?
- f) **Recommendations for Future Justice Programming.** What are the Assessment Team’s prioritized recommendations for USAID to maximize the impact of future justice programming, particularly in light of the USAID/Haiti 2011-2018 Strategy and, potentially, the Assessing Progress in Haiti Act of 2014? What are the Team’s short-, medium-, and long-term recommendations? How will recommendations differ under the following scenarios for the period following completion of the 2015 Haitian Presidential election cycle?
- a. If the period is one characterized by insufficient evidence of Government of Haiti (GOH) and societal will to undertake meaningful reform, should USAID programmatic approaches to justice sector strengthening be reshaped? Or should USAID continue to work in the justice sector?
 - i. If not, what are the risks, if any, of disengaging from the justice sector, either fully or partially (i.e., “abandoning” pro-reform partners; stopping capitalization on the momentum offered by CSPJ to help improve judicial independence; undoing whatever small gains have been made to date to provide access to justice; exacerbating the human rights abuse of prolonged pre-trial detention)?
 - ii. What are the most promising interventions to stimulate political will (i.e., activities promoting demand for reform, engaging civil society and non-official justice actors; raising public awareness of related human rights issues, using realistic human-interest stories; maintaining “palliative” measures – legal aid, mediation, etc. – to alleviate justice system failures’ impact on individuals)?
 - b. If the period is one characterized by sufficient evidence of Government of Haiti (GOH) and societal will for justice reform:
 - i. What are reform priorities and what assistance should USAID provide for the reforms’ adoption and implementation? How can USAID best promote Haitian public and private sector political will, encompassing both volition and capacity to take sustained priority actions that will allow Haiti to achieve measurable and meaningful justice sector reform goals? Should other approaches to work with business courts, and other entities involved in arbitration and resolution of

commercial disputes be envisioned to help create the conditions required for investments and stability?

ii. How can USAID further stimulate support to bolster the course of justice sector reform?

C.6 ASSESSMENT METHODOLOGY

The Assessment Team will: (1) review key documents, develop a work plan including an interview list, and present its proposed methodology to USAID/Haiti via an entrance briefing; (2) conduct interviews and field visits; (3) analyze the data and compile key findings and recommendations into a draft assessment report; (4) verbally present draft findings and recommendations to USAID/Haiti; and (5) submit the draft assessment report to USAID/Haiti for comments, followed by a final assessment report approved by the Contracting Officer's Representative (COR).

The Assessment Team will conduct this assessment in the following three phases with the following illustrative timeline: (1) Desktop review of key documents, initial analysis, key informant interviews in Washington, and draft work plan (2 weeks or 10 work days); (2) Conduct interviews and field visits in some of the target jurisdictions of USAID program (3 weeks or 15 work days); (3) Draft Assessment Report (3 weeks or 15 work days).

Phase I: Desktop Review of Key Documents, Initial Analysis, and Draft Work Plan (approx. 10 days)

As a first step in the assessment process, the Assessment Team will review relevant documents. As the following list is not exhaustive, the Assessment Team will be responsible for identifying and reviewing additional materials relevant to the assessment. (All documents listed below will be made available electronically by USAID to the Assessment Team.)

USAID/Haiti Documents

- Tt DPK Annual Report 2013
- Tt DPK Annual Report 2012
- Tt DPK Annual Report 2011
- Tt DPK Annual Report 2010
- Tt DPK Annual Report 2009
- Police Station Detention & 48 Hours Rule (RJC) (2010)
- Haiti: Security and Rule of Law Assessment – The Rule of Law Report, internal document prepared by an USG Inter-Agency Team (2009)
- International Donor Assistance to the Justice System in Haiti: Evaluation Report, USAID (2008)
- USAID Study of the Processing of Penal Files from Arrest through Decision November 2007
- Office Of Inspector General Audit of USAID/Haiti's Justice Program Audit Report No. I-521-07-008-P (April 2007)
- Haiti Judicial Strengthening and reform project (TRIP REPORT) (August 28, 2006)
- USAID pre-trial detention in Haiti report (May 2006)
- Haiti: Rule of Law Assessment (2006)
- USAID Civil Society Constituency Building For Justice Reform Project Final Report: September 18, 2001 - November 30, 2004
- USAID Constituency-Building for Judicial Reform in Haiti, Independent Midterm Evaluation (February 2003)

- General Accounting Office Report, Foreign Assistance: Any Further Aid to Haitian Justice System Should Be Linked to Performance-Related Conditions (October 2000)
- General Accounting Office Testimony Before the Committee on International Relations, House of Representatives, Foreign Assistance: Lack of Haitian Commitment Limited Success of U.S. Aid to Justice System (September 2000)
- La Détection Préventive Prolongée en Haïti; Vera Institute of Justice (July 2002)
- USAID/ Haiti Administration of Justice Project, Final Report (December 1999)
- Evaluation of USAID's Administration of Justice and Human Rights Funds II Programs (1998)

USG Strategy Documents

- Post-Earthquake USG Haiti Strategy, Toward Renewal and Economic Opportunity (January 2011)
- Gender Assessment USAID/Haiti (June 2006)
- (Possible addition of Assessing Progress in Haiti Act of 2014)

GOH Documents

- Amendments to the Constitution of 1987 (published June 19, 2012)
- Ministry of Justice Strategic Plan 2007-2009
- Ministry of Justice Strategic Plan 2012-2016
- Law on the School of Magistrates 2007
- Law creating the Judicial Council 2007
- Law on the Status of the Judiciary members 2007
- Etat des lieux de l'Univers Carcéral en Haïti / Status of the prison system in Haïti (Office du Protecteur du Citoyen) (November 2002)
- Haitian Constitution of March 1987
- Haitian Penal Code (1835)
- Haitian Code of Criminal Instruction (1835)
- Avant-Projet de Code de Procédure Pénale de la République d'Haïti (June 2012)
- Avant-Projet de Code Pénal de la République d'Haïti (June 2012)
- August 22, 1995 Decree on judicial organization
- May 2005 decree on the general status of the civil servants

Other

- All Judicial Politics Are Local: The Political Trajectory of Judicial Reform in Haiti, by Louis-Alexandre Berg, *Inter-American Law Review* (Vol. 45:1, February 2014)
- Keeping Haiti Safe: Justice Reform, International Crisis Group Update Briefing (October 2011)
- International Legal Assistance Consortium (ILAC) report, Haiti (January 2005)
- Beyond Shock: Charting the landscape of sexual violence in post-quake Haiti 2010-2012, PotoFamn+Fi Coalition (2012)

- Resources and reports through the Institute for Justice and Democracy in Haiti (<http://www.ijdh.org/resources/reports/>)
- International Legal Assistance Consortium (ILAC) :Haiti Coordination Conference/ Assistance to the Justice System (June 2010)
- Mapping Justice and Rule of Law in Haiti: A Summary Report (July 2012)

Phase 2: Conducting Interviews and Field Research (approx. 3 Weeks/21 work days)

The Assessment Team will conduct key interviews with USAID/Haiti staff, contractor personnel, sub-contractors, sub-grantees of USAID’s judicial strengthening program, GOH and judicial representatives, civil society, and other relevant beneficiaries. In addition, the Team will undertake field visits to current justice program activities and to development corridors to inform recommendations for future activities in these Embassy priority regions. USAID/Haiti shall review and approve the Assessment Team’s Work Plan, which must include an interview list and proposed field visits. If necessary, six-day workweeks will be authorized while in the field.

The following are assessment methods to be utilized:

- Key Informant Interviews – to be held with beneficiaries; judges, prosecutors, investigative judges, clerks, heads of bar associations, community leaders; local, regional, and national officials; other donors; other USG personnel in Haiti including the Bureau for International Narcotics and Law Enforcement Affairs (INL); implementing partners, including but not limited to, the American Bar Association, the Organization of American States (OAS), United Nations Development Program (UNDP) and Rule of Law Division of the UN Mission for the Stabilization of Haiti (MINUSTAH); and academics.
- Focus groups – to be held with beneficiaries (disaggregated by gender, where possible); judges, prosecutors, investigative judges, clerks, heads of bar associations, community leaders; local, regional, and national officials; other donors; other USG personnel in Haiti; implementing partners; and academics.
- Document reviews – assessments, action plans, evaluations, and legal documents. Key documents will be provided to the team by USAID, but the team is expected to research documentation from other sources/organizations as well.
- Observation – fieldwork in at least two corridors outside the capital over the three-week period of Phase 2.

Interviews will be conducted with civil society organizations (CSOs), non-governmental organizations (NGOs) and GOH; USAID current and former partners, judicial officials at the national, regional, and local level; as well as with other donors working on justice reform issues. USAID/Haiti will provide written or oral input on the selection of these organizations and individuals.

Phase 3: Draft Assessment Report (approx. 15 work days)

During the final phase of the assessment, the Assessment Team will have 10 working days to analyze the data collected through documentation review, interviews, focus groups, and field visits, and to prepare a draft assessment report including findings and recommendations for USAID/Haiti. After receiving USAID’s comments on the draft report, the Assessment Team shall have five working days to revise and submit the final report.

The task outlined in this Statement of Work is substantial and shall require significant pre-planning and team building prior to conducting fieldwork. The assessment will require time both in Port-au-Prince as well as in outlying areas in the three development corridors. USAID Haiti will provide written or oral input to the team for the identification of appropriate field visits.

Findings from the fieldwork should be compared to existing data available from several sources on justice sector performance, including GOH, judicial sources, international justice reform organizations, USAID/Haiti’s 2013 Baseline Survey, and the Americas Barometer Opinion Poll supported by USAID. The Assessment Team should be creative in providing independent assessment and recommendations.

Illustrative Outline of Report:

1. Executive Summary
2. Background to include, but not be limited to:
 - a. Haiti’s transition from an inquisitorial justice system to an hybrid system that includes several aspects of an accusatorial justice system
 - b. Challenges related to Haiti’s political insecurity and weak governance and impact on justice
 - c. Challenges related to judicial independence, and judicial reform.
3. Achievements and Impact of Rule of Law Programs to Date
 - a. Justice Programs implemented by all USAID implementing partners, including DPK, NCSC and IFES.
 - b. Brief discussion of achievements, impact, and USAID links of justice reform programs funded by other donors or other USG agencies, including the Department of Justice, and INL.
4. Discussion of Various Approaches to Strengthening Justice in Haiti, with a focus on initiatives to increase access to a reformed justice system that is characterized by well-functioning courts and prosecutorial systems. Discussion of approaches to work with business courts, and other justice entities to help create the conditions required for investments and stability.
 - a. Analysis of different approaches and interventions in the justice sector(including lessons learned and best practices)
 - b. Challenges for future programming (particularly with respect to increasing access to justice in development corridors)
5. Sustainability of Justice Strengthening Efforts
 - a. Analysis of different approaches to achieving sustainability, with special attention to efforts to increase both volition and capacity (i.e., political will) to take sustained, concrete action to achieve priority reform goals.
6. Conclusions and Recommendations
 - a. Recommended areas of emphasis for future justice programming
 - b. Prioritized recommendations for short-, medium-, and long-term programs under either a “fair weather” or a “foul weather” scenario.

C.7 ILLUSTRATIVE TIMEFRAME

The timeframe for the assessment is the following.

Week	Activities
1-2	<input checked="" type="checkbox"/> Develop work plan <input checked="" type="checkbox"/> Review background documents <input checked="" type="checkbox"/> Set up interviews in Haiti

	<input checked="" type="checkbox"/> Conduct key informant and stakeholder interviews in Washington
3-4	<input checked="" type="checkbox"/> Conduct entrance briefing with USAID/Haiti Democracy and Governance Team <input checked="" type="checkbox"/> Carry out key informant interviews in Port-au-Prince
4-6	<input checked="" type="checkbox"/> Field work in the Port-au-Prince Corridor, Saint Marc and Cap Haitian Corridors: Carry out interviews with local authorities, local CSOs, community leaders, beneficiaries
6	<input checked="" type="checkbox"/> Carry out any needed final meetings in Port-au-Prince. <input checked="" type="checkbox"/> Provide USAID/Haiti DG team with exit briefing.
7-8	<input checked="" type="checkbox"/> Draft document <input checked="" type="checkbox"/> Submit draft document to USAID/Haiti DG Office Director (or her designee)
9	<input checked="" type="checkbox"/> Receive feedback from Mission <input checked="" type="checkbox"/> Incorporate feedback in document <input checked="" type="checkbox"/> Present findings, conclusions, and recommendations to Mission Democracy and Governance Team.
10	<input checked="" type="checkbox"/> Submit final document

C.8 EVALUATION TEAM COMPOSITION AND LABOR CATEGORIES

The team will consist of Team Leader, a Senior Rule of Law Advisor, two Local Consultants, and a Logistics/Administrative Support Staff person.

All team members will provide signed copies of the two forms in Section J prior to the disbursement of any funds under this Task Order.

Team Leader (Senior Social Scientist) – The Team Leader shall be responsible for coordinating assessment activities and ensuring the production and completion of the assessment report, in conformance with this Scope of Work. He or she must have significant experience leading or participating in evaluations of complex democracy and governance and/or justice reform programs. He/she must possess excellent writing and interpersonal skills and must be familiar with USAID programs, objectives, and reporting requirements. He/she must have at least 10 years of experience related to international democracy and justice programs in Haiti, other Latin American, or African countries, with experience in other Civil Law countries strongly preferred. Fluency in French and English (S/4 and R/4) is required, along with a Juris Doctorate (J.D.) in Law or a Master’s Degree in a related field such as Criminal Justice, Court Administration, Political Science, International Relations or Public Administration.

Senior Rule of Law Advisor (Senior Social Scientist)– The Senior Advisor must possess a Juris Doctorate (J.D.) in Law or a Master’s Degree in a relevant field such as Political Science, International Relations, or Public Administration and have at least 10 years of experience working on international democracy and justice programs. The Senior ROL Advisor must be familiar with the operation of USAID or other international donor programs. The Senior Rule of Law Advisor is considered to be key personnel. He/ She must be fluent in French and English (S/4 and R/4) is required. Knowledge of Creole is an asset.

Local Consultants: (CCN Mid-Level) The two Local Consultants with at least 5 years of experience working on issues related to justice in Haiti. Candidates for the Local Consultant positions must hold Bachelor’s degrees in relevant fields, such as political science or law. The Local Consultants are considered to be key personnel. They must be Fluent in French and English (S/4 and R/4). Knowledge of Creole is an asset.

Logistical/Administrative Support Staff: No specific requirements.

In addition, USAID/Haiti may propose additional staff from USAID/Washington or USAID/Haiti to participate on the Assessment Team, for part or all of the assessment activities

[END OF SECTION C]

ANNEX B: LIST OF INTERVIEWEES

USAID Rule of Law Assessment – Haiti List of Interviewees February 23, 2015 - March 13, 2015

Name	Position/Organization
Amos Auguste	Director, Office of Citizen Protection
Pierre Esperance	Executive Director, RNDDH
Joseph Andre Gracien Jean	Director, School of Political Science (ESSPA)
Michelle Bruneau	Former Minister of Justice
Antonal Mortime	Executive Secretary, POHDH
Edmonde Supplice Beauzile	President, Fusion Political Party
Marceau J. Edouard, Jr.	Director, Pro Justice
Monica J. Underwood	Assistant Director, Pro Justice
Philippe LaMarche	Director, ABA/ROLI
Miguel Sanon	Assistant Director, ABA/ROLI
Kherson Darius Charles	Chief Prosecutor, Port au Prince
Claude Jean	Assistant Prosecutor, Port au Prince
Kesner Michel Thermezi	Director General, Magistrates School
Mme. Daloush	Director, DAP
Rene Magloire	Architect, Reformed Criminal Code
Luc Cote	Coordinator, Rule of Law, MINUSTAH
Garry Paul Angrand	Doyen, Fort-Liberté
Herode Bien-Aime	Chief Prosecutor, Fort-Liberté
Artiste Remy	Legal Aid Lawyer-Pro Justice
Maitre Joseph Claude	
Maitre Edouard Lionel	
Ulrick Belony	
Meus Daniel	
Pierre Hompremier	Peace Court Judge
Joseph DesRosiers	Director of Prison-FL

Fort-Liberté Focus Group

Name	Position/Organization
Pierre Guiteau	Mayor
Vladimir Jean Charles	Head, FL Chamber of Commerce
Hugo Charles Delegue	
Charles Nazaire Noel	Director of Police
Patrick Dumas	District Governor
Alex Fucien	Doyen-Fl
Jacquelin Tadeus	Chief Prosecutor
Obei Elima	Peace Court Judge

Meeting with Leaders of MPVN

Pierre Loras Catuis
Vixamar Dubend
Valbrun Jean Baptiste

Cap Haitien Focus Group

Name	Position/Organization
Jean Barthelemy DeCois	
Sylvain Eddit	HNP
Saint Martin Andre	Legal Aid Lawyer
Valrum Marizoni	Pro Justice Coordinator

Saint Marc Focus Group

Name	Position/Organization
Willy DeRose	President Saint Marc Bar Association
Estilus Estiverne	Peace Court Judge
Max Antoine Dalmeus	
Joshua Pazour	Pro Justice MIS
Pierre Louis Massillon	Doyen Saint Marc
Herard Jadotte	Director, University of Haiti Publications
Tim Schwartz	Anthropologist
Pierre Labissiere	Attorney
Stuart Smith	INL
Earnest Issac	Chief Prosecutor Croix de Bouquet
Lionel R. Dimanche	Doyen Croix de Bouquet

Croix de Bouquet Focus Group

Name	Position/Organization
Guy-Olivier Jeanty	Executive Director, Am. Chamber of Commerce
Marie-Louise A. Russo	Executive Director, ADIH
Nino Karamaoun	Senior Rule of Law Advisor OAS
Carl Alexandre	DSRSG- MINUSTAH
Frances James	Coordinator Governance UNDP
Dillia LeMaire	Member CSPJ
Mirlande Manigat	Former Presidential candidate
Charlot Judy	President, KOURAJ
Geraldine Clemenceau	Executive Secretary, KOURAJ

ANNEX C: RECOMMENDATIONS IN THE EVENT OF SUFFICIENT POLITICAL WILL

USAID Justice Reform Priorities with Sufficient Political and Public Will

The priorities for USAID assistance will be dependent upon the progress or lack thereof that has been made up to the time that there is clear evidence of adequate political and public will for justice reform. It also will be dependent upon government and public justice reform priorities at that time. Assuming that Haiti maintains the same rate of justice sector improvements until then, USAID priorities might include:

- assuring that the CSPJ has the will and capacity to guarantee judicial independence;
- assuring drafting, passage and implementation of a revised CSPJ organic law that clarifies the process for nominating and renewing the mandates of judges;
- assuring drafting, passage and implementation of a revised MOJ organic law that lays out its role in assuring judicial independence;
- assuring that inspection systems for judges, prosecutors and court staff are restructured and implemented.
- gaining commitment by the Executive and Parliament for sustained increases in budgets for the CSPJ and MOJ;
- reducing MOJ oversight of the CSPJ budget;
- gaining passage and assuring implementation of revised criminal and criminal procedural codes;
- gaining passage and assuring implementation of a new legal aid law that increases access to justice;
- assuring drafting, passage and implementation of new civil, civil procedure, commercial, labor and land tenure codes;
- assuring that all judicial actors are trained on the new codes and laws;
- assuring that all judicial actors are trained on laws and procedures for dealing with gender-based violence and protecting LGBT rights;
- assuring that GBV victims have access to and use medical certification centers and that investigators use forensic techniques and centers;
- putting in place a sustainable nationwide system that minimizes prolonged pretrial detention;
- establishing a nationwide court case management information system;
- assuring the creation of business courts with judges trained in commercial and labor laws and codes;
- improving the capacity of courts and land record offices to resolve land problems; and
- assuring the sustainability and collaboration with government of the citizens' movement to fight exclusion and demand justice sector reform.

Recommended USAID Assistance for Adoption and Implementation of these Reforms

A sustained effort by USAID and other donors will be required to achieve these objectives and build both the volition and capacity needed to sustain achievement of measurable and meaningful justice sector reform goals. Other donors, including INL, would need to strengthen other justice-related institutions, such as the police and prisons. USAID's assistance could be implemented during several projects lasting three to five years each. The assessment team recommends:

- *Provide long- and short-term assistance to the CSPJ.* The CSPJ may benefit from embedded technical assistants, who could help it develop a leadership role within government and among non-governmental actors in advancing judicial independence. It will require heavy organizational development, including strengthening of strategic planning, public communications and monitoring and evaluation skills, to build the capacity needed to promote and protect judicial independence throughout Haiti. USAID could facilitate partnerships with judicial councils from other countries, so CSPJ members can learn from their peers. Technical assistants could help the CSPJ draft a revision of its organic law and the magistrates' status law to clarify its responsibilities for nominating and renewing the mandates of judges. Revisions of these laws could also clarify the role of CSPJ in inspecting judges and prosecutors, and USAID technical assistants could help the Council develop and implement an effective judicial inspection system. USAID could assist the CSPJ in establishing and implementing a judicial inspection system.
- *Provide long- and short-term technical assistance to the Ministry of Justice.* The Ministry of Justice needs to grow into its new role of partner with the CSPJ and co-guarantor of judicial independence. Lack of clarity of roles can be dealt with by revising the MOJ organic law. USAID could provide technical assistants that help the MOJ draft the organic law revisions, facilitate passage by Parliament and guide implementation. They also could help the MOJ with organizational development, strategic planning, public communications, monitoring and evaluation, improvement of management and control systems, strengthening information management, improving case management, expediting code revision, and guiding career development for prosecutors and court staff. Their assistance would be essential to establishing and implementing inspection systems for prosecutors and court staff.
- *Guide coordination among institutions to increase judicial sector funding and improve budgeting.* The Haitian Government cannot undertake sustainable justice sector reform without increasing funding to the sector. USAID's technical assistant at the CSPJ could build its budgeting and financial capacity and help it to negotiate reduced oversight by the MOJ. USAID's technical assistant at the MOJ could build its budgeting and financial capacity and help it to make stronger budgeting requests to the Ministry of Finance. Separate technical assistance could be provided to the Ministry of Finance to address obstacles to increasing the justice sector budget. Other assistance could build the capacity of the Parliamentary Commission Economy, Finance, Trade and Budget to review security and justice budget requests. The commission also could be trained in the principles of judicial independence in order to appreciate the importance of increased and consistent funding to CSPJ.
- *Provide assistance to draft, pass and implement code revisions and other important justice sector laws.* The new criminal and criminal procedure codes have been in the planning process for years. While the criminal code is further along than the criminal procedure code, both will require a significant amount of public review before final versions are submitted to Parliament. If the Haitian Government is truly committed to judicial reform, it will give priority to gaining public and Parliamentary approval of these codes. The big challenge will be in implementing them. If USAID is convinced that the Haitian government is committed to judicial reform, it should provide the required assistance to move these codes forward. At the drafting stage, USAID can provide technical assistance to the commissions responsible for drafting, editing and engaging in government and public consultation. At the Parliamentary review stage, it can assist Parliamentarians in analyzing the codes and organizing hearings. At the implementation stage, USAID can assist the magistrates' school and law schools in training judicial actors on the codes and provide technical assistance to help the courts put in place the new procedures and reflect them in the court case management system. It also can work with the CSPJ and MOJ to integrate the new codes into their evaluation and oversight systems. Similarly, USAID can provide assistance to draft, pass and implement other justice sector laws and codes. These include the legal aid law, which is currently being drafted, as

well as other codes that need revision or are in the process of revision, including the civil code, civil procedure code, commercial code, labor code, and land tenure code.

- *Build capacity for training all justice system actors on and implementing laws and procedures for addressing gender and dealing with gender-based violence and protecting LGBT rights.* The percentage of women at all levels of the judiciary is much lower than the Constitutionally-mandated 30%. Many Haitian women avoid using the justice system, which they believe discriminates against them. Haitian victims of GBV or LGBT discrimination lack trust in the security and justice system. While there has been some training of police and other justice system actors on these issues, a much stronger effort is required. If USAID is convinced that the Haitian government is committed to judicial reform, it should collaborate with other donors to increase the number of women at all levels and train judges, prosecutors, lawyers and police on appropriate laws and procedures. This initiative would require building the capacity of the magistrates' school, law schools and police academy to sustain the training. Equally important is building the capacity of systems to enforce laws and procedures. In Cap-Haitien, PROJUSTICE has demonstrated a good model for hospital-based referral to the police of GBV cases. USAID should replicate this model throughout the three development corridors and work with other donors to replicate it nationwide. Each center should have a continuous supply of rape kits procured by the GOH. USAID should also provide technical and material assistance to establish forensic capacity in the areas served by GBV centers. In cooperation with other donors and in assisting the GOH to implement the new legal aid law, USAID should facilitate the provision of legal aid to both victims and perpetrators of GBV and LGBT discrimination.
- *Provide technical and material assistance to develop and implement systemic reforms that reduce prolonged pretrial detention.* USAID projects have shown that with some political will, courts can organize more trials and use legal aid effectively to reduce prolonged pretrial detention. These efforts have been more effective outside of Port-au-Prince. If there is sustained political will to address this issue nationwide, USAID and other donors could not only ramp up this assistance, but also provide technical assistance to judges in making use of new procedures and mechanisms to be contained in the new criminal procedure code, such as release on bail or personal recognizance. These efforts could be complemented by USAID assistance to MOJ and CSPJ oversight of criminal procedure code implementation and sustained reduction of prolonged pretrial detention.
- *Provide equipment, software, networking and training to expand the pilot court case management information system nationwide.* The PROJUSTICE pilot court case MIS in Saint Marc is impressive but does not yet cover the whole criminal justice system. While it is currently being expanded to Fort-Liberté, it must still be expanded to police, prisons, justices of the peace, the MOJ and CSPJ. The management systems of each organization must be adapted or replaced (such as establishment of a single case number), personnel trained and power sources guaranteed. Building on sufficient political will, USAID and other donors could help the MOJ expand the system nationwide. Increased, sustained funding for the justice system is a prerequisite for this initiative. The MOJ and donors could negotiate a phase-in plan for funding of servicing, maintaining and replacing equipment and software.
- *Provide assistance to create business courts with judges trained in commercial and labor laws and codes, to help create conditions required for investment and stability.* Haiti's commercial code was revised in 1944 but needs extensive revision to provide commercial legal remedies for modern business practices and to facilitate the formalization of Haiti's enormous informal sector. Efforts have stalled to revise the labor code. USAID should build on political will to assist in drafting and seeking passage of the revised codes. Rather than improving existing courts, special courts are needed to assure legal protection and guarantees for investors and entrepreneurs, issue civil judgments and enforce contracts. If political will is strong, USAID should partner with the MOJ, CSPJ, the Ministry of Commerce and Industry to establish separate business courts. USAID could provide technical assistance to revise legislation and regulations and seek their passage or approval. It should collaborate with the magistrates' school to provide intensive training to judges who become specialists in commercial and labor law cases. USAID could assist the MOJ and CSPJ in supporting these courts, expediting cases, strengthening the enforcement of judgments and facilitating referral of appropriate cases to existing mechanisms for arbitration and conciliation. These courts could be established to be customer friendly to both large investors and newly formalized business owners.

- *Provide assistance to courts and land record offices to resolve land problems.* Businesses, large and small, are handicapped by land issues. Judges struggle to resolve property conflicts in a system that provides few guarantees of clear title. If political will is strong, USAID should work with other donors, such as the World Bank and Inter-American Development Bank, to help the Government of Haiti establish a comprehensive civil property registry. USAID should train judges and land office staff to use the new registry to resolve problems, particularly for investors and newly formalized business owners.
- *Strengthen the citizens' movement to fight exclusion and demand justice reform.* Regardless of how public will for justice reform is demonstrated, USAID will need to cultivate the citizens' movement to assure sustained volition and capacity for justice sector reform. USAID should provide grants and technical assistance. It also should facilitate meetings and collaboration with executive and community leaders and justice sector actors. The focus should be on strengthening organizations and networks at the national, regional and local levels. USAID should build their capacity to advocate, engage in policy dialogue and provide oversight of justice reform. To ensure constructive dialogue with justice sector actors, USAID should build strategic planning, public communications and monitoring and evaluation skills of the MOJ and CSPJ as well as build the capacity of the magistrates' school to train justice actors in public communications.
- *Strengthen the capacity of Parliamentarians and political parties to promote rule of law and judicial independence.* In a period of strong commitment to justice reform, Parliamentarians may need training and guidance on developing and/or reviewing proposed justice sector legislation, reviewing justice sector budgets and providing oversight of justice institutions. USAID should consider establishing a justice sector analysis office in Parliament to respond to such requests. In addition, political parties may be interested in refining their platforms and communicating more effectively with supporters and opponents on justice reform issues. USAID should provide non-partisan training and guidance in response to these requests.
- *Build the capacity of the Presidency or Prime Minister's Office to lead justice sector reform.* If political commitment to justice sector reform is strong, USAID and the Embassy should explore the interest of the Presidency and Prime Minister's Office in receiving technical assistance to lead sustainable justice reform efforts across the government and judiciary and to engage the citizens' movement. In other countries, USAID has embedded advisors into these offices and helped them to become the focal points for justice sector reform.

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