

Countries at the Crossroads

Countries at the Crossroads 2012:

Haiti

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Introduction

The small nation of Haiti was thrust to the center of global attention in 2010 when an earthquake killed over 200,000 and left the capital in incomprehensible ruin. This most recent humanitarian disaster is only one of many tribulations, however, with which Haiti has struggled. To fully understand its current civil and political climate one must look to the nation's complex history and geopolitical relationships. Haiti gained independence from France in 1804 as the world's first black republic, and it remains the only country in the world to establish independence through a slave revolt. Haiti paid a high price for its provenance, though, as the country was largely isolated from the global scene as world powers worried that a flourishing Haiti would encourage slave revolts elsewhere. Notably, France demanded reparations of 90 million gold Francs to compensate for its loss of slaves, a sum which took Haiti a century to repay. To this day, Haiti has still not achieved an equal footing on the world stage, and its tumultuous beginnings continue to shape and characterize its present.

Haiti's modern struggle for democracy sprung out of the demise of the Duvalier regime in 1986. The ouster of Jean-Claude "Baby Doc" Duvalier, one of the region's most notorious dictators, marked the end of nearly 30 years of a brutal father-son dictatorship, and represented a cathartic moment that ushered in a period of renewed democratic struggle. The transition to a consolidated democracy has been turbulent, repeatedly met with violence and extrajudicial power seizures. Haiti's current constitution was adopted in 1987, and in 1991, Haiti voted in its first democratically elected president. Only seven months after President Aristide's inauguration, however, he was overthrown in a violent coup. The military regime that took power hollowed out many state institutions, and the economic embargos imposed by the United States and others squeezed the Haitian economy. Haitians' resistance to the military regime was met with brutal force, setting off a period of mass flight from Haiti to neighboring countries. In 1994, the U.S. military led a UN-authorized effort to restore Aristide to power. Aristide completed his term, and the nation saw its first peaceful transition of power when democratically elected René Préval assumed office. Préval became the first elected president to complete a full term in office and voluntarily hand power to a successor when he passed the mantle back to Aristide, who was reelected to office in 2000 with an overwhelming 90 percent of the vote.

Despite limited progress in democratic transitions, power struggles continued behind the scenes. Discontent with Aristide's populism grew among important actors in Haitian politics: the political class, the diaspora, the business elite, foreign governments, and international institutions. After the United States cut off aid to the Haitian government, the atrophied administration eventually collapsed in a second coup in 2004. Aristide departed under intense pressure from domestic opposition groups and the governments of the United States, France, and Canada. The twice-deposed president boarded a U.S.-chartered plane for Africa, where he remained in exile for seven years. In March 2011, Aristide returned to Haiti amidst objections from the U.S. government, and has since been living a quiet life there.

From 2004 to 2006, the interim government of Gerard Latortue struggled to consolidate power, and was kept in office largely by the United Nations Stabilization Mission in Haiti

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(MINUSTAH), a UN peacekeeping force deployed to Haiti to stabilize the country. In 2006, Préval was reelected to office, and Haiti enjoyed a fraught but largely peaceful transition of power from Préval to Martelly in 2011. Haiti's fragile democracy still struggles to overcome a legacy of feeble governmental institutions, weak rule of law, and extreme social and economic divisions. The constitution of 1987 is the governing political charter of the country, and generally embodies democratic values and protects civil liberties. In practice, however, even the most fundamental guarantees in the constitution are often ignored, and the country's weak institutions have proven ineffective at enforcing the constitution. Haiti's profound socioeconomic inequality, the political and economic exclusion of the poor majority, and structural class tensions underlie much of the country's perceived and actual instability today.

It is against this backdrop that an earthquake decimated Haiti's capital on January 12, 2010. Aftly characterized as an "acute on chronic" event, the disaster amplified preexisting conditions that have entrenched Haiti in poverty and marginalized the poor majority.² National authorities estimated that over 200,000 people died and 1.5 million were displaced. Over 80,000 buildings crumbled in and around the capital. The international community responded swiftly with a generous outpouring of aid, and foreign governments pledged a total of \$5.6 billion for recovery efforts in 2010-2011. This tremendous pledge of support has not, however, translated into durable solutions for victims of the earthquake or much needed institution building. By mid-June of 2011, over half of donations pledged for 2010-2011 remained undelivered, and only a small percentage of disbursed aid went to support public institutions.

The earthquake placed Haiti at an important crossroads; the disaster reinforced Haiti's dependence on foreign aid, but also brought out Haitians' strong desire for self-governance and independence. A post-earthquake assessment focused on grassroots groups revealed a people eager to see their country less dependent on foreign aid and intervention.³ The participants desired a reconstruction process that would tackle preexisting structural problems and inequalities, and herald in a period of decentralization, agricultural sustainability, employment opportunities, and improved access to participation in decision-making that would empower Haitians to stand at the center of the country's development.

Accountability and Public Voice

Haiti's complex electoral framework reflects democratic values, but remains aspirational in many respects. The constitution of 1987 lays the foundation for democratic elections, and prohibits voter intimidation, ballot stuffing and other fraud.⁴ The electoral framework is operationalized through the Electoral Law of 2008, which sets conditions for free and fair elections and guarantees citizens "the right of universal suffrage ...through conditions favoring their participation in the electoral process."⁵ The constitution calls for an independent nine-member *Conseil Electoral Permanent* (CEP) to organize and supervise elections.⁶ The constitutionally mandated process for selecting the CEP is complicated, and relies on a decentralized nomination process by which local and provincial bodies appoint members. This system was never implemented in practice, resulting in the persistent reliance on a provisional council that was unlawfully constituted and subject to political manipulation. For instance, President Préval selected the provisional council that organized elections in 2009 and 2010 from a short list of candidates promulgated by sectoral representatives whom he appointed.⁷

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Constitutional amendments voted on in 2011 reformed the appointment structure to require approval of nominations by two-thirds of the parliament, but experts worry that the change strips power from the people, and that the new system will be equally difficult to implement given frequent vacancies in the parliament. The controversy surrounding the amendment process is discussed in Anticorruption and Transparency, below.

In practice, the electoral process is persistently flawed and plagued by controversy. Senatorial elections held in April 2009 were marred by arbitrary exclusion of political parties and widespread boycott of the vote as Haitians, especially the poor, become increasingly jaundiced about the prospects that their vote will make a difference and that the process will result in a government willing and able to make a difference in their lives. Larger parliamentary elections scheduled for November 2009 were postponed until the following year and combined with the presidential elections. The stakes of these elections were momentous as voters were slated to elect a new president, the entire 99-member Chamber of Deputies, and one-third of the 30-seat Senate. The suspect electoral process that ensued has resulted in a government that suffers from deficits of legitimacy and popular support.

The 2010 electoral process was compromised from the outset. At least three of the nine CEP members were accused of corruption, and one member resigned amid the allegations. Moreover, the CEP excluded 19 presidential candidates and 16 political parties—including Fanmi Lavalas, Haiti's largest party—from participation in the parliamentary elections without providing legal justification or explanation.⁸ The elections were further compromised by widespread voter registration problems.⁹ In an effort to address challenges resulting from the earthquake, including massive displacement of voters and losses of electoral cards, the CEP established temporary registration centers. Because the new voter lists collected through these centers were not adequately reconciled with pre-existing lists, some voters were authorized to vote at multiple polling stations, and others were excluded from voter lists altogether.¹⁰ Moreover, the names of deceased earthquake victims remained on the rolls, creating an opportunity for fraudulent votes. Observers perceived these irregularities as an attempt by Préval's ruling party to remain in power.

Campaign financing was effectively unchecked despite the existence of regulations on the books. The CEP is tasked with monitoring all campaign donations of more than \$2,500, but lacks the institutional capacity to do so effectively. The expiration of most terms in the parliament further inhibited efforts to monitor illegal spending. As a result, suspicions regarding disproportionate campaign spending by the ruling party were never investigated.

Amidst allegations of fraud and concerns about irregularities, the elections took place on November 28, 2010 under pressure from foreign governments funding the majority of the process. As voters took to the polls, international observers reported a multitude of problems, including ballot stuffing, voter intimidation, voter indifference, violence, and vandalism at polling stations.¹¹ Hundreds of thousands of voters were unable to cast their votes due to defective voter lists at polling stations. Overall, the elections saw a very low turnout of 22.9 percent, the lowest presidential election turnout in the Western Hemisphere since 1947.¹²

The announcement of election results set off a period of political instability. No candidate won the required majority in the first round, creating a two-candidate run-off between Mirlande Manigat and ruling party candidate Jude Celestin. Protesters, mainly supporters of candidate Michel Martelly, were angered by the flawed process and took to the streets, effectively shutting down the capital for days. The provinces experienced heightened unrest, particularly in places where the legislative results were hotly contested. International observers from a joint

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CARICOM-Organization of American States (OAS) mission flew in to review the vote. After a review of 17 percent of the tally sheets, they deemed that Martelly, who had placed third in the initial count, should qualify for the run-off. Other monitors questioned the grounds for this determination, but under pressure from the OAS and the United States, the CEP revised results and a run-off was held in March 2011 between Manigat and Martelly. After another round of voting, which again suffered from many of the flaws listed above, Martelly emerged as Haiti's new president-elect. In the legislative elections, the CEP inexplicably reversed results in 18 races, with nearly all revisions favoring the incumbent party.

The constitution establishes separation of powers between the executive, legislative and judicial branches of government, but Haiti's chronically weak governmental institutions have proven ill equipped to mitigate political conflict and stand up to special interests. Severe funding shortages have hampered institutional development and drastically undercut the capacity of governmental branches to effectively oversee each other. The earthquake further debilitated the already feeble public sector—as much as 30 percent of the civil service perished¹³ and 180 government buildings collapsed, including the presidential palace, the parliament, courts of law, and a majority of the ministerial and public administration buildings.¹⁴ Hopes that Haiti would emerge from the rubble as a stronger, more just nation soon gave way to frustration. Reconstruction efforts stalled and the Haitian government remained effectively silent in the face of massive challenges. The international community lamented the government's lack of leadership, but also passed up the opportunity to strengthen public institutions. Non-governmental organizations (NGOs) received 99 percent of earthquake relief,¹⁵ which effectively reinforced the government's role as a passive observer in the reconstruction process.

Reconstruction commenced amidst a governance vacuum. Under the constitution, the parliament is assigned a crucial role in governing the country, including confirming and dismissing the prime minister and government, determining the national budget, promulgating laws, and ratifying international agreements. Contrarily, stagnancy in the parliament has concentrated power in the executive branch. Following the earthquake, the parliament voted to yield much of its power to an Interim Haiti Recovery Commission, a Haitian-international body tasked with overseeing reconstruction and approving donor-funded projects. Moreover, the bicameral parliament was essentially rendered defunct in May 2010 when the terms of one third of the Senate members and all 99 members of the Chamber of Deputies expired. A new parliament did not come into effect until May 2011, after a year of inactivity. The opposition party controlled the new legislature, leading to frequent conflicts with the president that culminated in a political stalemate concerning the appointment of a prime minister. As the head of the government, the prime minister plays a critical role in providing political leadership and managing the reconstruction process. The parliament rejected Martelly's first two choices for prime minister but finally approved his third pick, Garry Conille, in October 2011. Four months later, Conille resigned amidst a political crisis stemming from his aspirations to pursue an audit of \$300 million in reconstruction contracts issued by his predecessor, Jean-Max Bellerive.

Historically, special interests have captured state agencies and limited Haiti's largely black, Creole-speaking poor majority from influencing politics and lawmaking. The capture has resulted in policies skewed toward the interests of the elite mercantile class and the politically powerful. Haiti does not have an effective civil service system—although merit-based in theory, most government jobs are obtained through political connections. The best talent is often usurped by international organizations working in Haiti, which are able to pay higher salaries than the government. The shortage of skilled workers contributes to a low turnover rate, and even

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individuals credibly accused of human rights abuses remain in the public service. Martelly has brought back former public servants whose track record on respect for human rights is highly suspect. This includes sons and daughters of some of Duvalier's most infamous *tonton makout* leaders as well as former military personnel and paramilitary active during the 1991–1994 period of de facto rule following the ouster of Aristide. These practices generate mistrust in the government and a sense that the government operates above the law.

Haiti's dependence on foreign aid, which was amplified by the earthquake, also results in donor countries and international organizations wielding significant influence over policy-making. While the international community has increasingly sought to ensure that the Haitian government determines national priorities and that foreign assistance is delivered in cooperation with the government, insufficient investments in state capacity continued to hinder the state from effectively asserting a central role in development.

Governance is heavily centralized in Haiti's capital. Since the 1980s, Haitians have flocked to Port-au-Prince from the countryside in search of employment and access to services. The capital has struggled to sustain the basic needs of its burgeoning population. The constitution establishes a pyramidal system with great potential to ensure local participation in governance, but the system has never been fully implemented and was partly chipped away by the 2011 amendments. The country is divided into ten departments that form the top of the pyramid. Each department is divided into municipalities, and the municipalities are partitioned into communal sections. Each communal section elects a Sectoral Assembly (ASEC). Local government is administered by Sectoral Councils (CASECs), and the ASECs advise the CASECs and serve as a check on their spending powers. The ASECs and CASECs exist to ensure community participation in the political system, and formed the foundation of the bottom-up appointment structure for the CEP and each department's trial and appellate judges, thereby serving an important role in electoral and judicial accountability. Nevertheless, inadequate investments in implementation of the system at the base of the pyramid have allowed the central government to maintain disproportionate control over both politics and purse strings, and in 2011, the constitution was amended to remove the ASECs role in CEP appointments.

Haiti's civil society is generally able to critically scrutinize the government and its policies without reprisals, but the public's ability to influence policies and legislation is limited. The policy-making process lacks transparency and civic engagement mechanisms. Moreover, civil society in Haiti reflects the nation's general societal stratifications along economic lines, with the upper classes enjoying greater access to policy makers. Haiti's rudimentary but tenacious grassroots movements operate alongside a vast number of foreign NGOs. The government does not restrict NGO funding, but due to onerous registration requirements, only a small percentage of NGOs register with the Ministry of Planning and External Cooperation, resulting in incomplete data regarding numbers (estimates range from 3,000 to 10,000) and specializations. The dearth of information hinders coordination amongst NGOs, and foreign and international organizations often operate without local partnerships, leading to exclusion of Haitian grassroots groups from key development efforts. Haitian NGOs accounted for only one percent of the organizations that received funding through the UN's first flash funding appeal after the earthquake.¹⁶ The proliferation of foreign NGOs in Haiti has also contributed to a significant power imbalance between the resource-starved government and international actors, summed up by the common reference to Haiti as "the Republic of NGOs." These foreign NGOs often take on traditional government roles, complicating the state's ability to establish and implement priorities, and diluting the accountability relationship between the government and its

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polity.

The constitution explicitly protects freedom of expression and freedom of the press, and prohibits media censorship except during time of war.¹⁷ Significant gains have been made in press freedom since 2006, and the media is generally able to report freely without fear of government retaliation or censorship. On occasion, Haiti's defamation laws have been invoked punitively against journalists critical of the government: in 2011, the director general of state owned *Télévision Nationale d'Haïti* brought a defamation action against two journalists who were fired for their critical reporting on President-elect Martelly.

Journalists in Haiti work in a difficult environment, compounded by scarce funding, lack of institutional support and difficulties accessing public information from the government. They lack professional training opportunities, an obstacle to fostering objective reporting and quality news coverage key to strengthening Haitian democracy. Periodically, journalists also become targets of violence and intimidation, which has had a chilling effect on reporting.¹⁸ During the street protests that followed the 2010 election announcement, journalists reportedly endured harassment and mistreatment. Arsonists identified as supporters of a legislative candidate burned down a radio station in March 2011 after the station announced that the final vote count reversed the candidate's lead. Such incidents do not receive adequate response or follow-up by law enforcement. Journalists have also reported that President Martelly, his bodyguards, and others affiliated with the administration disrespect and exhibit open hostility towards journalists at press conferences, especially those that are perceived as critical of the government.¹⁹

Haitian media reflects the country's broader social fragmentation along racial, political, and class lines. Radio is the predominant form of media; it is widely popular across the country and accessible to most of the population regardless of literacy. Despite the fact that approximately 80 percent of the population only speaks Creole, however, significant radio reporting is done in French and there are no major Creole language newspapers.

The earthquake severely damaged equipment and offices of media outlets. The two daily newspapers and over 95 percent of commercial and community radio stations stopped publishing or went off the air immediately after the earthquake. A drop in revenue from advertising also put a significant strain on media, which receives negligible state support, and the pledged reconstruction support has been slow to materialize.

Cell phone coverage extended to nearly two thirds of the population as of 2011, and the government increasingly employed mobile messaging to deliver public service announcements. Internet usage also grew, but access remained limited to less than 10 percent of the population as of 2010.²⁰ As investments in broadband infrastructure come to fruition, the internet will likely grow in importance as a news source, though low literacy rates and limited electricity will remain significant hurdles.

Civil Liberties

Civil liberties are protected on paper, but in practice victims of state terror, unjustified imprisonment, and torture suffer without recourse. The Haitian National Police (HNP) is regularly implicated in reports of extrajudicial killings.²¹ Authorities have initiated preliminary investigations in response, but investigations are incomplete and prosecutions rare. Victims of police brutality and excessive use of force receive little protection or legal recourse. The prosecution of state officers implicated in a prison massacre in Les Cayes a few days after the

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earthquake marks one notable achievement in accountability for state terror. Officers from the departmental riot control police (UDMO) responded to a prison uprising by opening fire on unarmed prisoners, killing 12 and injuring 40 others. Under persistent pressure from international media, the government launched a joint investigation with the United Nations which eventually resulted in the prosecution and conviction of eight officers, including two senior law enforcement officers. The trial was a welcomed departure from the norm of impunity for state abuse.

Haiti's prison conditions are among the worst in the world, despite constitutional guarantees that prisons respect human dignity. Police officers and guards routinely torture, beat and mistreat individuals detained in police holding cells and prisons. Even when detainees are free from direct acts of torture, experts have repeatedly found that conditions in the prisons and other detention facilities rise to the level of torture and cruel, inhuman and degrading treatment. Prisons and holding cells are overcrowded well beyond capacity, with the average inmate having only 0.72m² of space in 2011. Prisoners frequently have to sleep on the floor in rotating shifts due to space constraints, and regularly go without basic necessities like water, food, toilets, bathing facilities, clean clothes, and beds. Close quarters and scant sanitation and medical care make the prison population vulnerable to preventable diseases such as AIDS, malaria, and drug-resistant tuberculosis. Only after dozens of individuals died from cholera in the prisons did authorities provide chlorinated water and other simple measures that eventually curbed prison mortality from the disease.

Once commonplace, the arrest of political opponents has diminished, and there were no reports of political prisoners in 2010-2011. The state provides inadequate protection against attacks on activists and members of civic groups, however, and individuals refrain from speaking out on certain issues out of fear of violent reprisals. Despite legal prohibitions on arbitrary arrests and provisions affording the right to challenge an arrest before a judge within 48 hours of detention, arbitrary arrests remain a problem in Haiti, and those accused of a crime often languish in prison without opportunity to challenge their arrest. The constitution contains important due process guarantees, but implementation and compliance is weak. Although the right to a speedy trial is guaranteed under the constitution, prolonged pretrial detention is a severe problem. By the end of 2010, 70 percent of detainees had not been convicted of a crime, and approximately 30 percent of pretrial detainees had been incarcerated for over a year.²² These numbers do not include those held indefinitely in temporary holding cells or police stations. The problems of pretrial detention result from a combination of pervasive corruption and resource deficiencies, which contribute to case backlogs. The earthquake worsened the backlog, as it affected roughly 80 percent of the justice sector, causing widespread loss of judicial files and the destruction of 49 judicial buildings.²³ This has further diminished judicial activity and drawn out waiting times. Some efforts were made to reduce prolonged detention; in 2011, for example, 490 prisoners who were still detained after having served their sentence were released through efforts by the Office for the Protection of Citizens (OPC) and MINUSTAH.

Public security has generally improved over the last decade, and notably, the collapse of ordered life and the rise of excruciating post-earthquake conditions did not cause an eruption of crime. One study showed an increase in crime in Port-au-Prince during the second half of 2011, but overall, kidnapping has generally decreased since 2006 and Haiti reported one of the lowest murder rates in the Caribbean in 2010, at 6.9 per 100,000, compared to 52.1 in Jamaica and 24.9 in the neighboring Dominican Republic.²⁴ Overall improvements in security are attributable to a strengthening of the HNP and the relative political stability since the inauguration of Préval in

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2006. Security is jointly provided by the HNP and MINUSTAH, whose mandate includes fortifying the HNP by training new and existing officers. The size of the HNP has tripled since 2004, to roughly 10,000 officers in 2010.²⁵ The earthquake presented a major setback to these efforts as hundreds of officers perished. To respond to escalated needs, the UN authorized a surge in MINUSTAH forces after the earthquake, increasing its presence to 8,940 military troops and 4,391 police officers.²⁶ In 2012, troops were reduced back to pre-earthquake levels, but there is no prospective withdrawal date of the mission as a whole. MINUSTAH's continued presence in Haiti is met with mixed response from the Haitian people, who lack agency in setting the terms of MINUSTAH's presence and increasingly perceive it as an occupying force.

Despite notable improvements, Haiti still struggles to respond to crime and enforce the rule of law. An estimated 6,000 prisoners, including notorious gang leaders, escaped from the national penitentiary when it collapsed in the earthquake, and police have only recaptured about 500.²⁷ Protection of victims of the earthquake has been grossly inadequate, especially in poor neighborhoods and displacement camps. Sexual violence against women and girls is alarmingly common in displacement camps, and women's organizations report reluctance among police to respond to calls for protection. Police frequently demand bribes and subject victims to sexual harassment.

Human trafficking, especially of children, persists and is facilitated by a lack of anti-trafficking legislation and Haiti's porous border with the Dominican Republic. There are around 300,000 involuntary child domestic laborers in Haiti, known as *restaveks*, and several thousand have been trafficked to the Dominican Republic. The government has made efforts to increase protection of children through the work of the *Institut du Bien-Etre Sociale et de Recherches* (IBESR) and the Brigade for the Protection of Minors, a specialized force within the HNP, but funding and capacity constraints have limited their effectiveness. The parliament is considering adoption of an anti-trafficking bill.

A number of deep-rooted factors also contribute to the perseverance of crime, including the prevalence of guns, low access to legitimate income sources (formal employment represents only 5.1 percent of available jobs, and unemployment rates are estimated at 40.6 percent),²⁸ and the presence of politically affiliated gangs, many of which are linked to the military disbanded under Aristide's rule. Haiti's disreputable penal system, in conjunction with the prominence of former military officers credibly accused of human rights abuses, create an air of impunity and counteract deterrence. In addition to the general court system, the Office of Citizen Protection (OPC) exists as an ombudsman for citizens seeking redress for abuses committed by government officers. The OPC recently opened nine offices in the provinces in order to better respond to needs outside the capital, though it remains underfunded and lacking in administrative support.

Haitian women have long been subjected to widespread gender discrimination and mistreatment, which hinder full expression of their civil and political rights. Despite the cultural adage that women are the central pillars of Haitian society, they experience lower access to political participation, labor rights, personal autonomy, physical safety, and basic social services. The constitution formally recognizes the equality of women, but does little practically to protect equality or prohibit gender discrimination. The Ministry for the Status of Women and Women's Rights, created in 2005 and tasked with formulating and implementing policies intended to improve gender equality, remains a new and resource-strapped entity. In 2011, President Martelly proposed subsuming it in the Ministry of Social Affairs, but retracted the proposal amid opposition from women's groups. A 2011 constitutional amendment reserves a minimum of 30 percent of public posts of responsibility for women. Haitian law provides for equal working

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conditions regardless of gender, beliefs, or marital status, but does not explicitly prohibit sexual harassment, which is rampant in the workplace.

Pervasive violence against women and girls represents the most severe manifestation of discrimination. Fourteen percent of respondents in a household survey in displacement camps in the Port-au-Prince area reported having a family member who had been a victim of sexual violence since the earthquake, and 86 percent of these victims were female.²⁹ Another study of sexual violence after the earthquake found that half the victims of rape were children under the age of 18, highlighting the vulnerability of young girls.³⁰ The earthquake put displaced women and girls into a particularly precarious situation, with disrupted social safety nets and makeshift tents providing little physical security. Women and girls reported being raped while using public latrines, forcing them to organize brigades to accompany each other to the bathroom at night. Support for women was further undercut by the earthquake's devastation of civil society organizations that provided reproductive health services, safe shelter and psychosocial support for victims of rape. Extreme vulnerability and poverty has also led some women to resort to transactional sex for survival.³¹

Although rape is classified as a crime against the person under Haiti's penal code, the state is ill equipped to respond adequately. The police have been unwilling to respond to reports of sexual abuse and domestic violence, and the judiciary has shown reluctance in prosecuting cases. Additionally, The HNP special unit for victims of sexual violence was destroyed during the earthquake.³² Though there has been some effort to train police and judges on dealing with cases of gender-based violence, these trainings are not provided in a sufficiently uniform and coordinated manner, and resources are not made available to effectively implement the skills learned from these trainings. Furthermore, grassroots women's groups who have been at the forefront of responding to sexual violence against women and girls reported being intentionally excluded from public efforts to address the epidemic of rape,³³ reflecting the broad political polarization in the women's rights movement. The combination of institutional deficiencies and a lack of political will reinforce the norm that violence against women is to be tolerated rather than eradicated and results in underreporting. .

Some important efforts have made progress, however, in reshaping the response to sexual violence. The Ministry of Women is leading the drafting of a comprehensive law on violence against women that would address wide gaps in existing law, and proposed reforms to the labor code would account for workplace discrimination and harassment, but it is unclear when these laws will be introduced to parliament for a vote. Meanwhile, there is also an ongoing effort to update the penal code to criminalize harassment and increase penalties for rape. Women's rights groups and legal services organizations have undertaken massive efforts to document rape and provide services to women victims. Through concerted efforts to push for and train state officers and public servants to respond to rape, law enforcement and the judiciary are increasingly investigating and prosecuting rape and sexual violence in accordance with the law.

Haiti's constitution does not explicitly outlaw discrimination on the basis of race, gender, disability, language, or social status. Discrimination along class lines is severe, and the *moun andeyo* (the rural poor) and the urban poor are systematically excluded from meaningful participation in political and judicial systems. Seventy-five percent of Haiti's population lives below the poverty line on less than \$2 per day.³⁴ Ninety-five percent of the population is black, and the few ethnic minorities of European, Arabic, and Jewish descent generally enjoy a higher level of wealth and political capital. Educational disparities, the concentration of decision-making in the capital, and the domination of French in government affairs have historically

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excluded the undereducated and Creole-speaking poor majority from decision-making fora. The earthquake exacerbated that marginalization.

Sexual minorities, generally forced to live a life in secrecy to avoid facing discrimination and homophobic harassment, reported experiencing heightened levels of discrimination and prejudices after the earthquake, including from state agents, despite the fact that homosexual relations between consenting adults is legal. The mentally and physically disabled were already severely disadvantaged in Haitian society, and the earthquake drastically increased the number of disabled persons while decreasing access to basic services. Simultaneously, the massive rebuilding required by the earthquake creates an opportunity to improve access for the disabled. The parliament is currently considering a law proposed by the Secretary of State for the Integration of Persons with Disabilities that would require public buildings and transportation to be handicap accessible.

The earthquake also created a new distinct group in need of protection: the internally displaced. Approximately 1.5 million people lost their homes in the earthquake and sought shelter in displacement camps. By the end of 2011, over half a million people remained in camps, where they lived in squalid conditions without access to basic services³⁵ and under constant threat of forced evictions. The government has failed to present a comprehensive resettlement policy or take measures to protect the displaced in accordance with Haitian law and international standards. The camps lack public security, and the HNP neglects patrolling the camps and does not respond effectively to endemic violence and rape. Displaced communities are left to fend for themselves in the face of increasing forced evictions, often carried out under the threat or use of violence. In response to worsening conditions, the Inter-American Commission for Human Rights called upon the government to improve protective measures and issue a moratorium on forced evictions, but these directives went unheeded. Even more alarmingly, government agents played a primary role in carrying out forced evictions from public land, and heavily armed HNP officers are commonly deployed to aid purported private landowners in forced evictions.

The government generally respects the constitutionally guaranteed right to religious freedom in law and in practice. Religion, especially Christianity and Vodou, plays a prominent role in Haitian society. About 55 percent of the population is Roman Catholic, and over 30 percent Protestant.³⁶ Roughly half of the population practices Vodou, often jointly with Christianity. While the state generally practices religious tolerance, there is some societal discrimination based on religion, particularly against Vodou practitioners and leaders. Amidst panic following the cholera outbreak in October 2010, mobs killed around 50 Vodou priests in the countryside, accusing them of having spread cholera by placing contaminated powder into the Artibonite River. These killings were not adequately investigated or prosecuted.

Haitian law guarantees the rights to freedom of association and assembly, and demonstrations and public protests are frequent. In the past, the government has brutally cracked down on protests, but it has generally respected the rights of public demonstrators in recent years. There were some reports, however, that the HNP and MINUSTAH met the election protests in December 2010 with excessive force. Additionally, the government utilized a heavy security presence to quell demonstrations protesting conditions at IDP camps and the lack of accountability for the cholera outbreak, justifying its presence by construing the protests as violent uprisings to subvert the November 2010 elections.

Haiti's labor code protects the right to form, join, and participate in trade unions, but the right remains elusive due to a serious lack of monitoring and enforcement, and because the law

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does not protect temporary workers or workers in the informal economy. While employers who interfere with the right to unionize are subject to fines under the law, sanctions are rarely enforced, and union organizers report having limited access to workers in the workplace. Moreover, wrongful termination of union organizers and participants is common, and not punished by authorities. Some workers report that Haitian police facilitate crackdowns on associational and collective bargaining rights by pursuing unlawful arrests and arbitrary detention of labor leaders. The labor code provides a very limited right to strike, which is frequently utilized.

Rule of Law

Fair and effective administration of justice in Haiti is more often the exception than the rule. The constitution establishes the judicial branch as independent, but the judiciary suffers from institutional weaknesses that subject it to undue economic and political influence. Bribery of lawyers, prosecutors, and judges often determines whether a case moves forward. In addition to corruption, absenteeism remains an issue. Low salaries perpetuate this problem, as judges struggle to cover basic living expenses and occasionally resort to other work to supplement their income. In 2009, the government enacted raises in salaries for judicial officers, a positive step.

The executive branch has untoward influence over the judiciary through the Ministry of Justice's management and administration of the courts. One prominent example is the prosecution of notorious dictator Jean-Claude Duvalier for crimes against humanity and financial crimes committed during his reign of terror between 1971 and 1986. His return to Haiti on January 16, 2011, after 25 years in exile, presented the government with a rare opportunity to signal an end to impunity for gross human rights violations and corruption through the investigation and prosecution of the historic crimes. Unlike the prior president, however, Martelly has known ties to Duvalierists and made repeated statements supporting an amnesty for Duvalier. After his election, the new minister of justice in his administration reassigned the case to a new prosecutor and judge. The prosecutor argued for dismissal, citing the statute of limitations, and the new judge granted dismissal in direct contravention of binding and unequivocal international law under which the statute of limitations is inapplicable to the relevant crimes. The ability of the executive branch to assert its will in such a manner is a symptom of an enfeebled judiciary.

The judiciary's ineffectiveness stems primarily from its lack of resources, a shortcoming that has been exacerbated by the widespread destruction of judicial buildings and massive loss of judicial files in the earthquake.³⁷ Moreover, judges lack professional training and have few opportunities for professional development. In 2009, the government inaugurated the *École de la Magistrature*, a training facility for judges, but the school is not fully functional. Unlawful appointments and dismissals of judges further undermine the legitimacy of Haiti's judicial system, and prolonged vacancies on key tribunals impede operations. Taken as a whole, these circumstances severely impact the credibility of the judiciary, which undermines compliance with judicial decisions. Martelly has publicly committed to improving rule of law as one of the four pillars of his presidency, and the government adopted a Roadmap for the Rule of Law in 2011 that includes short, middle, and long-term action targets and goals aimed at improving the rule of law. In 2012, Martelly filled the posts of four judges on the *Cour de Cassation*, including the Chief Justice, ending a 12-year paralysis of Haiti's supreme tribunal. These commitments

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have not translated into executive promotion of rule of law in response to specific cases, however. In general, lack of political will to change the system is a major barrier to progress, as those who have the power to change the system also benefit from being able to capture it.

Most Haitians who come in contact with the justice system receive a degree of justice commensurate with their monetary resources and political clout. Although the presumption of innocence and the right to a fair trial are fundamental guarantees under Haitian law, the accused indefinitely await trial in prison, sometimes for longer than the maximum sentence of the alleged crime. When cases do reach trial, they are often tried solely in French despite the fact that majority of Haitians only speak Creole. Consequently, many criminal defendants cannot understand or meaningfully engage with the legal proceedings conducted against them, and are unable to mount a meaningful defense. Most criminal defendants cannot afford a lawyer and receive inadequate representation. The bar association organizes free legal representation for all defendants at criminal jury trials, but these lawyers are frequently inexperienced apprentices who have yet to be licensed, and they are allowed little time to prepare the defense.³⁸ In regard to the resolution of civil disputes, courts are often inaccessible and generally underutilized, especially for the millions that live in remote rural areas.

Impunity for abuses by security forces and the military is widespread. Haiti's military was disbanded in 1995 because of its involvement in coups and human rights abuses, but few individual soldiers were tried. Delivering on a campaign promise, President Martelly has pushed to reinstate the military to reportedly secure the country's borders and to respond to natural disasters. Many Haitians and members of the international community oppose the proposal because of the military's history of brutality and the need to use scarce resources to build up Haiti's infrastructure. The proposal is temporarily tabled in deference to a special commission set up to decide its fate. Meanwhile, former military officers, including some credibly accused of human rights abuses, train in informal military camps, constituting a potential threat to stability.

Popular discontent regarding MINUSTAH has been on the rise, spurred by regular reports of sexual abuse by soldiers and a lack of accountability for its role in the outbreak of cholera in 2010 that started on a MINUSTAH base with haphazard waste management and killed more than 7,000 and sickened over 500,000 by the end of 2011. The Status of Forces Agreement (SOFA) that governs MINUSTAH's operations in Haiti affords individuals and the organization immunity from legal pursuit in Haiti. Troop-contributing countries have exclusive jurisdiction and responsibility to prosecute individual abusers, but despite the UN's "zero tolerance" policy, no soldiers accused of abuse had been prosecuted in their home country through the end of 2011. A SOFA-mandated claims commission is the sole mechanism allowed to hear private claims for injury, but it has never been established, leaving Haitians injured by MINUSTAH's actions without an avenue to seek justice. This has resulted in a worsening sense of disempowerment vis-à-vis the foreign security force, and a growing perception that the perpetual presence of MINUSTAH constitutes an encroachment on national sovereignty. One household study conducted in the Port-au-Prince region in 2011 found that 72 percent of respondents wanted MINUSTAH to leave within a year.³⁹

Haitians have the right to own property individually and in association with others, though the constitution conditions that right on use consonant with the public interest. The state is a major landowner, and state land has often been distributed for political gain. A small minority of Haiti's elite control most land, and only a fraction of land ownership is recorded in the national land registry. As a result, both formal and informal titles to land are most often enforced extra-judicially, and ownership is determined de facto by might over right. Disputes

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over ownership present a central impediment to reconstruction and resettlement, along with the scarcity of available land and the difficulty establishing clear title to private land. The immense destruction of property and human displacement resulting from the earthquake kindled a historical battle over land distribution, pitting private interests against public needs. Generally, protection of the rights of the displaced has been weak. The government has not enforced use of the legal evictions process, allowing individuals to carry out violent evictions without meeting any burden of proof of land title.

The constitution authorizes the government to expropriate land for public purposes, provided that it follows certain procedural safeguards and furnishes fair compensation.⁴⁰ The government has not made significant use of this power to acquire land for temporary housing or resettlement. The only land expropriated for resettlement was acquired amidst muddled communication and compensation delays that led to mass settlement of displaced persons on disputed land. The dispute has prevented Haiti's largest displaced community from accessing basic humanitarian services. To address the lack of land for resettlement, some mayors have issued public easements for transitional housing in accordance with their municipal powers.

Anticorruption and Transparency

Corruption poses a grim challenge to effective governance in Haiti and to the country's ability to attract resources and investment. Haiti is widely perceived as one of the most corrupt countries in the world. Transparency International rated Haiti the 7th most corrupt country on the Corruption Perception Index in 2011,⁴¹ and the World Bank's World Governance Indicators continue to rank Haiti in the bottom 10 percent of all countries for control of corruption. While use of public office for private gain is routinely denounced, corruption persists at all levels of government. The heads of Haitian government are regularly implicated in widely publicized corruption allegations. Former Prime Minister Jean-Max Bellerive was accused of receiving bribes in connection with reconstruction contracts, and his successor resigned after the president opposed his decision to conduct an audit of the contracts. Investigations by a Dominican journalist alleged that Martelly received close to \$2.6 million in bribes for granting reconstruction contracts to Dominican construction companies in 2011.⁴² Such scandals quickly become politicized, but are rarely independently investigated or prosecuted.

Haiti's extensive, dysfunctional, and under-resourced bureaucracy is also ripe with opportunities for corruption. Public officials commonly demand bribes or charge unofficial fees to process paperwork or carry out their duties, a situation that is spawned by low salaries among public employees and insufficient institutional resources. For example, victims of crime often have to pay for police officers and investigatory judges' transportation to the crime scene because they lack official vehicles or adequate gasoline. The bribery racket extends from law enforcement to social services, and makes obtaining basic services without partaking in bribery extremely difficult. The Préval government has undertaken efforts to improve financial disclosure among public officials, but compliance is still low. The president, the prime minister, cabinet ministers, other high-level public officials, and members of the HNP must declare assets annually, but in 2010, less than 10 percent of these officials observed the law and filed disclosure statements by the deadline.⁴³ Public officials who do not fulfill the obligation are subject to progressively severe punishment for failure to disclose, but by the end of 2010, the government had not sanctioned any officials.

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The Haitian government plays a relatively small role in the country's economy; state activity accounted for 20 percent of total domestic output in 2011.⁴⁴ Public enterprises are generally poorly regulated and managed, and have undergone increasing privatization, including the privatization of Teleco in 2010.

Haiti's anticorruption mechanisms have limited effectiveness, resulting in inadequate and inconsistent investigation and prosecution of corruption allegations. The Anti-Corruption Unit (ULCC) within the Ministry of Economy and Finance is responsible for monitoring governance and corruption, investigating individual allegations and developing a national strategy to combat corruption. The government adopted the ministry's strategy in 2009. The Supreme Auditing Tribunal is responsible for auditing government accounts, but it is years behind schedule. Haiti's penal code prescribes criminal penalties for corruption by government officers, but enforcement is weak. Whistleblowers find little legal protection or redress, and though the government has increasingly declared commitments to fight corruption, it often launches cases or makes arrests with inadequate follow-up. Thorough investigations and prosecutions are still rare. The constitution mandates that high-level officials and parliament members accused of official corruption are to be prosecuted before the Senate, not within the judicial system. In 2010, there were no investigations by the Senate. Notably, Haiti has shown a commitment to investigate and prosecute Duvalier for the embezzlement of hundreds of millions in national funds. The investigatory judge decided in February 2012 that he would face trial on well-documented corruption charges. The Duvalier prosecution is an important barometer as to the Martelly administration's true commitment to rule of law and ending impunity.

Corruption is facilitated by limited public access to information about governmental deliberations. Although Article 40 of the constitution requires the government to publicize all laws, orders, and treaties on issues affecting the national life—orally and through print and electronic media in both Creole and French—a recent debacle illustrates the lack of transparency in the lawmaking process. Haiti was plunged into a constitutional crisis when parliamentarians discovered that constitutional amendments officially published in 2011 differed from the version of the amendments ratified by the National Constituent Assembly. Martelly annulled the published amendments, and appointed an investigatory commission that found 17 discrepancies between the amendments as ratified and as published. Despite the commission's conclusion that adoption of the faulty version would violate the rule of law, Martelly agreed under pressure from the international community to enact the amendments in June 2012.

Haiti lacks legislation that would establish a legal right to information about government operations. Transparency in government is further complicated by the large role that international donors play in decision-making. Limited coordination in the planning and implementation of projects by foreign sources means that there is no centralized way to obtain information about reconstruction and development initiatives. Less than one third of camp residents surveyed in October 2010 reported feeling informed about the future of reconstruction and resettlement.⁴⁵ Those directly affected are therefore often unable to meaningfully participate in reconstruction decision-making. Moreover, Haitians' are generally unable to hold international actors accountable for their work in Haiti.

The government operates on a shoestring: 2010-2011 marked the first time in history that the budget exceeded \$2.5 billion. By comparison, the neighboring Dominican Republic with a similar population size had a budget of \$11.3 billion for the same time period. The Ministry of Economy and Finance proposes the annual budget and submits it for approval by the parliament. The ministry posts quarterly expenditure reports on its website, and is accountable to donors for

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meeting any conditions related to budget support. In 2010, 66 percent of Haiti's budget came from foreign donors.⁴⁶ Low internal revenues stem from a poor tax base and the ability of the wealthy to abuse a tax administration that is rife with bribery and corruption. Efforts to strengthen the tax administration have achieved some success; despite drop-offs in tax generation and collection due to the earthquake, Haiti has consistently increased tax revenue over the past few years. Martelly introduced a new tax on international money transfers and phone calls to fund a national education program, which in effect taxes the Haitian Diaspora.

In response to the earthquake, aid to Haiti tripled between 2009 and 2010, and foreign aid constituted four times the government's 2010 internal revenue. Donors pledged to help Haiti "build back better," and joined with the Inter-American Development Bank, the UN Development Group, and the World Bank, to establish the Haiti Reconstruction Fund, aimed at pooling and coordinating donor resources to reduce costs and duplication of efforts.⁴⁷ The Interim Haiti Recovery Commission (IHRC) was established in March 2010 to oversee the use of these funds.⁴⁸ Co-chaired by former U.S. President Bill Clinton and Haiti's prime minister, the IHRC consisted of equal parts Haitians and donor representatives. The IHRC's powers were approved under a controversial emergency law that has been criticized by Haitians as affording too strong a voice to foreign actors in managing the earthquake response.⁴⁹ The Haitian government did not renew the IHRC's mandate in 2011, and no body has taken its place, causing a delay in reconstruction.

Haiti has historically struggled to generate international support for institution building. After the earthquake, the government requested general budget support directly to the Haitian treasury as the preferred modality of aid, but only one percent of relief aid and 23 percent of reconstruction aid was disbursed directly to the government.⁵⁰ As a result, the government has not been able to significantly strengthen public institutions through foreign support, and Haitian actors played too small of a role in the administration and distribution of foreign assistance. The National Commission for Public Markets (NCPM) is charged with ensuring proper and transparent use of public funds through the certification and adjudication of public procurement contracts. In June 2009, parliament passed a new law to bring its procurement procedures in line with international standards. The NCPM makes information available online, including a bid/tender page.

Recommendations

- The government should build its capacity to organize fair and regular elections, including the maintenance of accurate voter lists; the encouragement of free and full participation of all eligible political parties and candidates; and the implementation of a constitutionally based system to facilitate the appointment of an independent and impartial Permanent Electoral Council.
- The government should increase funding and technical and logistical support to the judiciary to accelerate processing of cases, reduce pre-trial detentions, insulate judges from undue influence, and sustain equitable application of the rule of law regardless of economic or social status. It should also ensure timely prosecution of Duvalier for both financial crimes and crimes against humanity in accordance with Haitian and international law.

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- The government should develop and implement revised civil and criminal codes that align with modern needs and lay the foundation for a system grounded in rule of law.
- The government should enable civic participation of all sectors of civil society by establishing civic engagement mechanisms and increasing transparency of government deliberations, such as through frequent press briefings, community radio, and the publication and release of key government documents in both Creole and French.
- The government should develop the capacity to sustain self-governance by prioritizing investments in public institution building and long-term infrastructure.
- The government should increase protection and implement durable solutions for displaced people by enacting a comprehensive resettlement policy that ensures access to adequate housing, using legal procedures to allocate land for resettlement, instituting land reform to address titling issues, and ensuring that displaced communities enjoy meaningful participation in reconstruction.

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