IFES State of the Judiciary Report Series

STATE OF THE JUDICIARY REPORT:

Haiti 2002-2003

April 2004

Léon Saint-Louis

Editor

IFES

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This State of the Judiciary Report for Haiti was written by Léon Saint-Louis, J.D., a Haitian human rights lawyer and professor of public and contract law. Léon Saint-Louis has participated as a panelist in numerous seminars and debates on human rights and public law issues in the Haitian context. He has worked as a Legal Advisor for a number of Haitian State agencies and has been a legal consultant for the international community, including the MICIVIH and UNDP.

This State of the Judiciary Report for Haiti was edited by Keith Henderson, IFES Senior Rule of Law Advisor, and Violaine Autheman, IFES Rule of Law Advisor, who are the authors of the Executive Summary and of Chapter 1 of this Report. They are also responsible for the analytical conclusions in the tables which attempt to evaluate the level of compliance with the Judicial Integrity Principles, included in the Executive Summary and in Annex 3.

STATE OF THE JUDICIARY REPORT
HAITI, 2002-2003

TABLE OF CONTENTS

Executive Summary and Analytical Evaluation, State of the Judiciary, Haiti, 2002-2003 1

CHAPTER 1: State of the Judiciary Report, a Tool for Monitoring and Reporting on Priority Judicial Integrity Reforms 3

I. Judicial Integrity Consensus Principles and Best Practices
II. IFES Rule of Law Toolkit
III. A Model State of the Judiciary Report: Multiple Purposes, Multiple Constituencies
IV. "Konbit Pou Mamman Law—a 2004" Project
V. Methodology

CHAPTER 2: General Comments and Context for the State of the Judiciary Report, Haiti, 2002-2003 9

I. General Comments
II. Social, Economic and Political Context
III. Legal and Institutional Framework

CHAPTER 3: Level of Compliance with the Judicial Integrity Principles 13

SECTION 1: Judicial Integrity Principles Guaranteeing the Independence of the Judiciary as an Institution 15

JIP.2: Institutional Independence of Judges

I. Infringements upon the Independence of Judges by the Executive
II. Infringements upon the Independence of Judges by the Legislative Branch

SECTION 2: Judicial Integrity Principles Guaranteeing the Independence of Judges 19

JIP.2: Personal, Decisional Independence of Judges

I. Infringements upon the Independence of Judges by Political Actors
II. Infringements upon the Independence of Judges by Persons with Economic Power
III. Infringements upon the Independence of Judges by Pressure Groups

JIP.4: Adequate Judicial Resources and Salaries
JIP.5: Adequate Training and Continuing Legal Education
JIP.6: Security of Tenure
JIP.9: Adequate Qualifications and Objective and Transparent Selection Process

I. Adequate Qualifications
II. Objective and Transparent Selection Process

JIP.13: Conflict of Interest Rules
JIP.14: Income and Asset Disclosure

SECTION 3: Judicial Integrity Principles Guaranteeing the Fairness of Judicial Proceedings and the Fundamental Rights of Litigants 33

JIP.1: Guarantee of Judicial Independence, the Right to a Fair Trial, Equality under the Law and Access to Justice

I. Guarantee of the Right to a Fair Trial: Trial within a Reasonable Time
II. Guarantee of Equality under the Law
III. Guarantee of Access to Justice

JIP.7: Fair and Effective Enforcement of Judgments

I. Enforcement of Judgments in Civil Matters
II. Enforcement of Judgments in Criminal Matters

SECTION 4: Judicial Integrity Priciples Guaranteeing Expression and Information Rights 45

JIP.17: Judicial Access to Legal and Judicial Information
JIP.18: Public Access to Legal and Judicial Information

CHAPTER 4: Key Recommendations, Suggested Reforms and Development Plans 49

ANNEX 1: List of Acronyms 51
ANNEX 2: Tables 53
ANNEX 3: Analytical Evaluation of the Level of Compliance with the JIP in Haiti 57

EXECUTIVE SUMMARY AND ANALYTICAL EVALUATION, STATE OF THE JUDICIARY, HAITI, 2002-2003

While many reports on the judicial reform have been prepared in Haiti over the years, this report differs in that it is strategically organized around a set of high priority issues critical to creating the enabling environment necessary to build an independent, accountable judiciary and rule of law culture in Haiti. Another distinguishing feature is that it goes beyond analyzing these issues and sets forth specific short and long-term reform recommendations from a concrete implementation perspective, as seen through the eyes of leading Haitians who are active members of IFES Civil Society Coalition in Haiti.

This unique baseline report, which was completed at the end of 2003, clearly and methodically, paints a picture of a weak, under-funded judiciary that is neither independent nor accountable to the Haitian people. If subsequent reports that follow this framework are done at least annually, reform progress and issues can then be clearly monitored and captured for the first time. This will enable many to better understand, track and support key justice reforms, particularly those related to human rights.

An analysis of eleven Judicial Integrity Principles (JIP) leads IFES to conclude that the state of the Haitian judiciary is so poor that it is not able to satisfactorily meet any of the constitutional or international obligations embedded in the principles. Indeed, it only receives a partially satisfactory nod in only three areas of JIP compliance. This all means that the Haitian judiciary needs a comprehensive reform and significantly more support if it is to rise to the historic opportunity staring at us now. For over 200 years, the Haitian judiciary has not been able to perform its institutional role to resolve disputes or protect the Haitian peoples' property rights or human rights.

IFES believes this report represents a valiant attempt to provide the Haitian people and reformers, as well as the donor community, with the strategic analysis and insights necessary to finally create the enabling environment for an independent judiciary to grow and thrive. Let's hope that this report and subsequent annual reports will serve as a guidepost and catalyst to give the Haitian Constitution and Rule of Law real meaning for the first time in Haitian history.

Important, high-priority short, medium and long-term recommendations made by the in this Report include:

(i) Enhancing the capacity of the bar association to advocate for reform and protect judges from outside interference and threats;
(ii) Drafting, adopting and implementing a judicial ethics code;
(iii) Reforming and implementing laws related to the selection of judges, judicial career processes and the public's right to legal assistance;
(iv) Enhancing the independence of the prosecutor; and
(v) Supporting a judicial education program for judges, prosecutors and the public.

Haiti State of the Judiciary: Analytical Evaluation of the Level of Compliance with the Judicial Integrity Principles, JIP[1]

JIP	SCOPE OF THE JIP (NAME OF THE PRINCIPLE)	COMPLIANCE
1	Guarantee of the right to a fair trial	
	Guarantee of equality under the law	
	Guarantee of access to justice	
2	Institutional independence of the judiciary	
	Personal/decisional independence of judges	
4	Adequate judicial resources and salaries	
5	Adequate training and continuing legal education	
6	Security of tenure	
7	Fair and effective enforcement of court judgments	
9	Adequate qualification	
	Objective and transparent selection and appointment process	
13	Conflict of interest rules	
14	Income and asset disclosure	
17	Judicial access to legal and judicial information	
18	Public access to legal and judicial information	

1 The level of compliance with each Judicial Integrity Principle (JIP) or each subcategory of a JIP is coded as follows: white corresponds to "satisfactory"; gray to "partially satisfactory"; and black to "unsatisfactory". There is an additional nuance in the assessment of the level of compliance as arrows pointed upwards or downwards indicate, respectively, improvement or regression within one category.

CHAPTER 1

STATE OF THE JUDICIARY REPORT, A TOOL FOR MONITORING AND REPORTING ON PRIORITY JUDICIAL INTEGRITY REFORMS

I. Judicial Integrity Consensus Principles and Best Practices

Both the IFES Judicial Integrity Principles and the IFES Model State of the Judiciary Report were prepared over the course of a two-year timeframe during which IFES organized country and regional workshops and conferences in virtually all regions of the world. It was first presented formally during a Workshop on Judicial Integrity at the 11th Transparency International Global Conference held in Seoul, South Korea, May 25-28, 2003. Panelists and participants at various workshops and conferences, including judges, international and national human rights monitoring groups, donors and the business community, all strongly endorsed the need for a systematic monitoring and reporting framework as an effective tool to promote judicial integrity, priority transparency and accountability reforms, and more public confidence in the judiciary.[2]

IFES Rule of Law Tools: Judicial Integrity Principles, JIP

JIP.1 Guarantee of judicial independence, the right to a fair trial, equality under the law and access to justice
JIP.2 Institutional and personal/decisional independence of judges
JIP.3 Clear and effective jurisdiction of ordinary courts and judicial review powers
JIP.4 Adequate judicial resources and salaries
JIP.5 Adequate training and continuing legal education
JIP.6 Security of tenure
JIP.7 Fair and effective enforcement of judgments
JIP.8 Judicial freedom of expression and association
JIP.9 Adequate qualification and objective and transparent selection and appointment process
JIP.10 Objective and transparent processes of the judicial career (promotion and transfer processes)
JIP.11 Objective, transparent, fair and effective disciplinary process
JIP.12 Limited judicial immunity from civil and criminal suit
JIP.13 Conflict of interest rules
JIP.14 Income and asset disclosure
JIP.15 High standards of judicial conduct and rules of judicial ethics
JIP.16 Objective and transparent court administration and judicial processes
JIP.17 Judicial access to legal and judicial information
JIP.18 Public access to legal and judicial information

The JIP represent high priority consensus principles and emerging best practices found in virtually all global and regional governmental and non-governmental instruments and key international case law related to the independence and impartiality of the judiciary. They attempt to capture the current state-of-the-art meaning of the term "judicial independence", since this fundamental principle is found in virtually all democratic constitutions and many international treaties, guidelines and documents. The JIP also attempt to incorporate and build upon the principles and information contained in important monitoring tools and reports, such as the American Bar Association's Judicial Reform Index; the Open Society Institute Judicial Independence Accession

2 These panelists and participants included judges; parliamentarians; representatives of civil society organizations, such as human rights groups and the media; representatives of international organizations, such as the World Bank, the Inter-American Development Bank and the Council of Europe; bilateral donors; legal scholars; lawyers.

Reports; the International Commission of Jurists Reports; the US State Department's Annual Human Rights Reports, the United Nations, OAS and Council of Europe Human Rights and Anticorruption instruments; and the work of Amnesty International and Human Rights Watch.

More than anything else, however, the JIP global framework is geared towards prioritizing judicial reforms and democratizing judiciaries. Global lessons learned tell us that this is one of the key challenges confronting most established and emerging democratic countries over the next several decades and that this is the best way to establish broad-based support for more independent, accountable judiciaries worldwide. The JIP are intended as a global analytical tool designed to annually assess technical and actual compliance with core, judicial integrity principles and to promote a regional and global strategic judicial reform agenda on a country-by-country basis.

The JIP promotes best practices, lessons learned and comparative, systematic research by focusing on and emphasizing a reform agenda aimed at fostering an enabling environment and legal culture necessary for the Rule of Law to take root. For purposes of this paper, "judicial integrity" covers a wide range of independence and accountability issues related to both the institution of the judiciary and judges as individual decision-makers. IFES believes using the term "judicial integrity" to capture the contemporary, full meaning of judicial independence, and then developing a strategic framework around that evolving definition, will help promote the concrete implementation of a fundamental constitutional principle. We believe it will also serve to emphasize how important it is to carefully balance independence and accountability issues and to simultaneously promote prioritized, inextricably linked reforms that also need to be undertaken.

II. IFES Rule of Law Toolkit

The JIP represent the core framework principles that should be included in any country State of the Judiciary Report. The JIP and this annotated outline for a State of the Judiciary Report are components of the IFES Rule of Law Toolkit, which has been designed to provide civil society, reformers and other stakeholders with standardized and flexible tools to promote and undertake reform. While well-conceived regional and global indexes and reports provide necessary guidance and support to those using them, the key to their proper interpretation is that they take into account the country context within which they are developed.

The guidance provided by the IFES tools is considered to be a work in progress, and the tools are designed to integrate and promote evolving regional and international consensus principles. IFES has now formed a small, informal advisory group, the IFES Judicial Integrity Working Group, to refine these tools and methodology. Distinguished members of the working group include Judge Sandra Oxner of Canada, Judge Clifford Wallace of the United States, Chief Justice Hilario Davide, Jr. of the Philippines and Judge Luis Fernando Solano, President of the Constitutional Chamber of the Supreme Court of Costa Rica.

III. A Model State of the Judiciary Report: Multiple Purposes; Multiple Constituencies

IFES Rule of Law Tool:
Multiple Uses of the Annual State of the Judiciary Report

(i) Making judicial integrity and justice sector reforms, particularly those related to human rights higher-priority reform issues across regions;

(ii) Developing broad-based coalitions and judicial reform strategies around a common justice reform agenda within countries and across regions;

(iii) Developing strategic concrete action plans designed to implement prioritized justice reforms based on global, regional and country best practices;

(iv) Presenting prioritized recommendations for the development of strategies and policies and for a legal and judicial reform agenda;

(v) Providing the public, the media and the broader indigenous and international legal communities with the essential information they need to promote justice reforms and develop public trust in the Rule of Law;

(vi) Reporting on justice reform progress or regression through uniform but flexible indicators and monitoring standards that could be used to justify more resources domestically and increased donor and technical assistance;

(vii) Promoting higher quality empirical research, monitoring and reporting as well as coordinated, strategic action among reformers and international organizations and donors and more peer pressure among all actors in the reform process;

(viii) Enhancing the importance of the judiciary and the status of judges;

(ix) Increasing the quality of information on the judiciary and key judicial integrity principles and access to that information;

(x) Increasing the public understanding of and respect for the judiciary;

(xi) Providing judges, the legal community, reformers and civil society with the tools and information necessary to advocate for reform and funding domestically and internationally; and

(xii) Qualifying for donor assistance through the new Millennium Challenge Account and meeting terms of conditionality through the international financial institutions and development banks, such as the IMF, World Bank, IDB, ADB and EBRD, and free trade and anti-corruption conventions and protocols.

After IFES reviewed a number of judicial reports from around the world, including those promulgated by various judiciaries or human rights groups, the need to design a standardized, structured framework for an annual report assessing the state of the judiciary became very clear. IFES found no model State of the Judiciary Report in any country in the world, including the United States. It also found minimal lessons learned, best practices or comparative information or research, including underdeveloped and non-prioritized judicial and legal reform measurements of progress, such as those under consideration by the new Millennium Challenge Account in the United States.

IFES believes the JIP may be used by civil society organizations and judges to prepare an annual State of the Judiciary Report that could serve to promote high-priority reforms and as a baseline monitoring, reporting and implementation tool for establishing the enabling legal environment to globalize the Rule of Law. These country-

specific reports should be written in a participatory process, including the input of civil society organizations, judges and legal practitioners. A country's annual report should be as "national" a product as possible, in order to be useful to the local judiciary and local civil society groups. It should also be understandable and accessible to all local stakeholders and include both a technical and applied analysis of the law and practice. At a minimum, IFES hopes the analysis and framework offered here will spark more debate and attention to what has been the most neglected and probably least appreciated institution in the democratizing world.

IV. "Konbit Pou Mamman Law—a 2004" Project

IFES's Citizen's Coalition for 2004 is an innovative, demand-oriented civil society and Rule of Law initiative focused on disseminating information and building broad coalitions across society to generate popular demand for justice reform and support a common agenda. The program is structured around an Advisory Council of respected individuals overseeing the program and offering their networks of organizations as public voices for reform. Four Working Groups of like-minded constituencies address issues specific to their own interests, i.e. legal, media, human rights and private sector. Citizen's Coalition 2004 will help equip the coalition member groups with the information, tools and skills to carry out effective, results-oriented programs, identify short and long-term strategies and promote transparency, knowledge and cooperation.

The Legal Working Group's work is now focused on enhancing the advocacy capacity of reform-oriented bar and judges' associations to promote targeted legal reforms and coordinate human rights and justice assistance. In anticipation of Haiti's bicentennial constitutional celebration, IFES has provided on-going legal and material support to the Working Groups' State of the Judiciary Report. This report was designed to serve multiple purposes, including:

- Systematically monitoring and reporting on high-priority legal, judicial and institutional reforms;
- Systematically reporting on key human rights issues and abuses;
- Establishing a targeted, prioritized reform agenda; and
- Building consensus and the demand for reform among the four Working Groups as well as Haitian civil society, including human rights groups and the media.

V. Methodology of the State of the Judiciary Report

The IFES Model State of the Judiciary Framework is built around the need to implement and link up key reforms embedded in the JIP. The State of the Judiciary Report is developed through a multifaceted methodology that incorporates an array of information resources, including users of the legal system, necessary to assess the level of JIP compliance. The JIP and their accompanying Indicators serve as the guideposts with which to regularly measure implementation progress or regression. An eminent Haitian jurist authored the Haitian State of the Judiciary Report. His work was supported through IFES's Senior Advisors in both Haiti and Washington and the Working Groups.[3]

While all the JIP are important and their relevance in the country context varies, IFES's working assumption for the State of the Judiciary Report is that certain mutually supportive principles are essential to establishing the legal enabling environment necessary to build an independent, accountable judiciary and a Rule of Law culture. We also believe that for purposes of capturing global issues, lessons learned, model programs across

3 IFES is currently finalizing Guidelines for the completion of State of the Judiciary Reports in a standardized Handbook for use by any country or groups of reformers, jurists or civil society activists.

borders, it is also important for all country reports to uniformly cover a specific set of principles. We also knew that preparing the first reports were going to take more time and resources than we had the capacity to support.

While one could debate exactly which principles should be part of any global project, the research and experience pointed us to the following seven principles: **JIP.1 (judicial independence guarantees); JIP.2 (institutional and personal independence); JIP.9 (selection); JIP.13 (conflict of interests); JIP.14 (asset disclosure); JIP.17 (judicial access to information); and JIP.18 (public access to information)**. For these reasons, we requested that country authors cover at least these seven issues. However, they were encouraged to place as much emphasis on these issues as they deemed appropriate and to include additional principles if the country context and need demanded it. In this case the Haitian author believed the following four JIP were also worthy of analysis: **JIP.4 (resources); JIP.5 (training); JIP.6 (security of tenure); and JIP.7 (enforcement).**

Assessment of the level of compliance with each JIP is guided by an examination of relevant laws and practices identified through a survey of legislation and jurisprudence and interviews of key stakeholders in the justice sector. There are three degrees of compliance:

- Formal compliance (laws and decrees);
- Compliance in practice (effective implementation of laws and decrees as well as of constitutional and conventional principles); and
- Quality and integrity of the compliance in practice (fair implementation for all).

The Report outlines, in the country context, the legal and institutional framework within which the judiciary operates. The Indicators[4] serve as guideposts for the analysis of the level of compliance with each JIP. This analytical process guides IFES, in close consultation with the Report's author, to make an overall judgment as to whether there is a "satisfactory", "partially satisfactory" or "unsatisfactory" JIP compliance, with the possible nuance of "improving" or "regressing" and to present prioritized reform recommendations.

4 The Indicators for a State of the Judiciary Report are available at IFES upon request.

CHAPTER 2

GENERAL COMMENTS AND CONTEXT FOR THE STATE OF THE JUDICIARY REPORT, HAITI, 2002-2003

I. General Comments

Justice is one of the essential components of the organization and functioning of all State entities rooted in democracy and the respect of human rights. The importance of justice has led to various interpretations of its role. While some label it a power, others simply call it an authority or a public service. This debate lacks interest since, independently of the status it is given, the main attribution of justice is to "**implement the law**", in the name of the State, in solving the conflicts inherent to life in society from which no citizen can escape.

Justice fulfills a delicate mission within the social fabric and, therefore, must be organized according to specific norms, different from those applied to other organs of the State. The principles which govern the judicial system must, among other things, insure the independence of judges and guarantee the fundamental rights of all citizens without distinction.

Haitian justice, elevated to the rank of power by the country's many constitutions, is perceived as not having fulfilled its mission in a satisfactory manner. Both national and international communities have expressed serious concerns on this issue. Common citizens, intellectuals and, as strange as it may seem, high government officials publicly denounce the weaknesses and shortcomings of the judiciary. Quite unanimously, they blame the situation on the 29-year dictatorship of the Duvaliers and on the military regime.[5] Beginning in October of 1994 with the so-called return to "**constitutional order**", several actions aimed at reorganizing Haitian justice were implemented. The most important are:

1. UN-OAS International Civilian Mission activities promoting debates on justice through forums, publications and seminars for judges, of which one of the key elements was the sensitization of legal professionals to the role of International Judiciary Instruments in Domestic Law;

2. The commentaries of Mr. Jean Frédéric Sales on the status and future of the Haitian judiciary, in homage to Mr. Guy Malary, (*Le Nouvelliste*, November 11 and 17, 1993);

3. The Conference on the administration of justice held on June 8 and 9, 1995 at the Hotel Christopher;

4. The changes made to the Law of September 18, 1985 on the organization of the Judiciary by the Decree of August 22, 1995;[6]

5. The implementation of training sessions for judges at the Magistrates' School (EMA) with the support of the French Cooperation and USAID;

6. The creation of the National Truth Commission by the Presidential Decree of March 28, 1995. Its final report was handed to the Head of State on February 5, 1996;

5 The military coup, which overthrew President Aristide, lasted from 1991 to 1994.

6 *Moniteur* (the official newspaper), No.67, August 24, 1995

7. The workshop organized by the Ministry of Justice on the new conception of justice to be promoted in Haiti (April 26 to 28, 1996);

8. The works of the Preparatory Commission for Legal and Justice Reform, submitted in March 1998;

9. The Statement of Recognition of the Jurisdiction of the Inter-American Court of Human Rights by the Republic of Haiti, on March 3, 1998;[7]

10. The Law of April 7, 1998 defining the legal framework of needed judicial reforms;[8]

11. The works of the first and second meetings on law and justice reform of the MICAH and Ministry of Justice in 2002, leading to the adoption of the following:

    - Draft project of a Law on the Status of the Magistracy;
    - Draft project of a Law on the Superior Council of the Magistracy;
    - Draft project of a Law on the Magistrates' School (EMA);
    - Draft project of Judicial Deontology;
    - Drafting and adoption by consensus of a policy on criminal reform;

12. The October 2002 audit report on Haitian Justice by the General Accounting Office (GAO) for the US Congress;

13. The Reform of Haitian Justice: Problems – Perspectives of Solution by Mrs. Michèle César Jumelle in 2000;[9]

14. The Justice Project of UNDP and the Ministry of Justice initiated in 2002; and

15. The creation of the National Association of Haitian Magistrates (ANAMAH) in January 2003.

All of these actions are clearly aimed at strengthening the judiciary so that it would become an independent and credible power, one that would effectively guarantee citizens' rights and freedoms, protect property, ensure the political balance of power and the security of the social fabric. These are all necessary conditions to the establishment of democracy and economic progress.

These objectives can, however, only be met if the judiciary functions in compliance with the **"Judicial Integrity Principles" (JIP)**, defined as a set of universally-accepted standards which govern the organization of justice and the behavior of judicial personnel and guarantee sound and fair justice to those under its jurisdiction. The JIP are enshrined in domestic law, international treaties and non-binding instruments such as the *Basic Principles on the Independence of the Judiciary* adopted by the United Nations General Assembly of November 29 and December 13, 1985.

The reform process has been underway for nine years. It is clear that public authorities, researchers and international donors interested in good governance in Haiti need to know, even if approximately, the state of the judiciary. The present study aims at drawing up an evaluation of the judiciary for judicial year 2002-2003, in

7 *Moniteur* No.55, July 27, 1998
8 *Moniteur* No.61, August 17, 1998
9 *Revue Juridique de l'UNIQ*, volume II, No.1 January-June, 2000

the light of the abovementioned JIP which are used to measure the level of performance of any judicial system. Given that the judicial subsystem inevitably interacts with other subsystems of the broader social system, it is important to explain the political, legal and socio-economic contexts within which the judiciary has evolved in Haiti.

II. Social, Economic and Political Context

The political context in which this report is being written is one of a very confusing democratic transition, further complicated by an electoral conflict borne from irregularities recorded during the legislative, municipal and presidential elections held on May 21 and November 26, 2000. The main players are the Party in power, the Opposition, the Civil Society Initiative (ISC) and the Organization of the American States (OAS). After three years of political negotiations, mediated by the OAS, no solution is on the horizon.

It is important to add that well before contestation arose of the 2002 legislative and presidential elections, a strong and constant demand for justice by the public was a landmark of the country's general political situation. The rulers, conscious of this problem, had always promised to provide a solution through a comprehensive reform of judicial institutions.

The socioeconomic context is, quite logically, the result of the political and legal framework. Indeed, the political and legal environment described herein is incompatible with economic growth and leads to calamities. Generally speaking, the socioeconomic context is characterized by a fall in investments which, in turn, has generated a decline in production, a rise in unemployment and poverty rates, and an accelerated devaluation of the national currency (at one point 52 gourdes were needed to purchase one American dollar).
Regarding the human rights situation in Haiti, the lack of respect for the physical integrity of Haitians upon arrest is an important concern. The respect of the physical integrity of those arrested upon committing an offense is one of the fundamental principles of Human Rights. The application of this principle conditions, among other things, the holding of a fair and equitable trial through the observance of "**honesty in the search of proof**". This forbids the use of any form of moral pressure or physical brutality during the arrest or interrogation. Such acts would, indeed, cast doubt as to the credibility of the statements and evidence collected.

This principle is well established under Haitian law and is expressed in instruments of high legal value such as the Constitution of 1987,[10] the International Covenant on Civil and Political Rights of 1966[11] and the Inter-American Convention on Human Rights of November 22, 1969[12]. However, this principle has been grossly ignored at the time of the arrest of Judie C. ROY, in July 2003.

In a letter published in "*Le Nouvelliste*", the detainee stated that: "*until now, I suffer from pain in my back, neck, waist and wrist. I can hardly sit. My right ear hurts and I have some dislocated bones. My left hand is still painful, though now, after 11 days my condition has obviously improved*."[13]

It is also important to mention that it was not easy for the detainee's lawyers to visit her. Indeed, even though the President of the Bar Association of Port-au-Prince obtained authorization from the public prosecutor to visit Judie Roy in the detention center of Pétionville, the prison warden denied him entrance to the jail, objecting

10 1987 Constitution, article 25: "Any unnecessary force or restraint in the apprehension of a person or in keeping him under arrest, or any psychological pressure or physical brutality, especially during interrogation, is prohibited."

11 1987 Constitution, article 7: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation."

12 1987 Constitution, article 8(3): "A confession of guilt by the accused shall be valid only if it is made without coercion of any kind."

13 Le Nouvelliste, No.36733, July 28, 2003

that the authorization had not been duly signed by the Director of APENA (National Prison Authorities). Lawyer Dilia Lemaire, who had three authorizations from the public prosecutor's office, met with the same refusal. The lawyer even asked one of the Justice of the Peace of Pétionville to record the fact. The judge refused to go to the prison on the grounds that the problem was purely political.

III. Legal and Institutional Framework

The legal situation is extremely disquieting. Some of its key characteristics include:

- Outdated laws which no longer address current domestic realities and the requirements of the "**New World Order"**;

- Accelerated replacement of the principle of legality by that of illegality; and
- Systematic violation of the most basic human rights. The general human rights situation is generally characterized by the lack of respect for the right to life, physical integrity and individual liberty and the refusal to enforce certain prison release judgments.

These violations are fueled by an institutionalized culture of **impunity**. Despite this situation, State officials have never missed an opportunity, in their official speeches, to applaud the concepts of the Rule of Law, democracy, justice and humans rights. This is consecrated by the Latin maxim: "**video meliora probo que deteriora sequor**"[14].

14 This maxim can be translated as "I see the good, I approve of it, and I do evil."

CHAPTER 3

LEVEL OF COMPLIANCE WITH THE JUDICIAL INTEGRITY PRINCIPLES

The exercise of the judicial function is governed by a set of predefined integrity principles aimed at protecting judges from external influences and at setting the boundaries within which the judge exercises his functions to avoid committing errors or abuses detrimental to the rights of citizens.

The facts under analysis lead to the logical conclusion that, during judicial year 2002-2003, there was a broad gap between the ideals of the JIP used as evaluation tools and practice in the Haitian judicial system. If one excludes access to judicial and legal information and legal training of judicial personnel, which have significantly improved in comparison to previous years, the key principles of independence and impartiality of judges as well as fair trial guarantees are clearly below the effectiveness threshold necessary for the Rule of Law to exist.

An objective observation of the functioning of the Haitian judicial system during 2002-2003 points to a state of judicial insecurity, a lack of equipment and material, and a dependence which deeply affects the credibility of the judiciary as a whole. A perceptive observer analyzing the functioning of the judicial system will not feel comfortable, and justly so, to say that the judiciary is a real power. In truth, a power of the State, to be worthy of this name, should command, among other things, **prestige, honor, respect, and responsibility, as well as the material and logistic means necessary to undertake its functions fully**.

The poor material conditions, in which Haitian judicial personnel work, reflect their lack of power as well as their incapacity to apply the basic norms consistent with integrity principles. The situation of extreme poverty, weakness and powerlessness observed during judicial year 2002-2003 is not new. It goes back decades and has been recorded in earlier studies. It is tempting to explain this, if only briefly.

The judiciary's mission of judicial review and protection of the rights and freedoms of citizens[15] is of cardinal importance in maintaining a balance of public powers and within society in general. This mission can be carried out only in a democratic and Rule of Law context. In the absence of this basic condition, the judiciary will inevitably run up against all kinds of obstacles. In Haiti, the executive has always behaved as an "**absolute power**" in its relationship to other State bodies. In this sense, the executive hardly tolerates control from the other powers. If the judiciary could fulfill its noble mission, it would provide true protection against "**absolute power**".

The most effective way to restrain the judiciary is to hold it hostage, to maintain it in a situation of extreme lack of resources so that it serves only as a democratic ornament and, if need be, as a repressive tool in the hands of the executive. The critical state of the Haitian judiciary is closely related to how the society generates and sustains political power. The problem lies in the difficulty of finding a way to force the executive to comply with the law and justice.

Generally speaking, the judiciary operates in a context marked by a deep social, political and economic crisis. This report is based upon surveys of several courts and tribunals across the country; interviews with legal professionals and citizens; and documentation obtained from private and public institutions working in the field of law and justice.

15 The new responsibilities attributed to the judiciary by the Constitution of 1987 eloquently show the desire to establish a new balance of powers in favor of the judicial branch (article 111.7).

This first State of the Judiciary Report centers on an assessment of the level of compliance with eleven JIP, seven of which were selected by IFES as core principles for the establishment of the legal environment necessary to build an independent, accountable judiciary and a Rule of Law culture: **JIP.1 (judicial independence guarantees); JIP.2 (institutional and personal independence); JIP.9 (selection); JIP.13 (conflict of interests); JIP.14 (asset disclosure); JIP.17 (judicial access to information); and JIP.18 (public access to information)**. The remaining four were identify as particularly worthy of analysis in the Haitian context: **JIP.4 (resources); JIP.5 (training); JIP.6 (security of tenure); and JIP.7 (enforcement)**. They are divided into four sections designed to present the analysis thematically.

The first section studies the degree of effectiveness of the JIP as they guarantee the independence of the judiciary as an institution. The second section analyzes the level of compliance with the JIP guaranteeing the independence of judges. The third section provides insight into the respect for JIP guaranteeing the fairness of judicial proceedings and the fundamental rights of litigants. The fourth and last section studies the level of compliance with the JIP guaranteeing expression and information rights.

SECTION 1

JUDICIAL INTEGRITY PRINCIPLES GUARANTEEING THE INDEPENDENCE OF THE JUDICIARY AS AN INSTITUTION

This Section studies the independence of the judiciary as an institution. Throughout its history, the Haitian judiciary has come periodically under attack by the Executive and Legislative branches. Indeed, it has never been allowed to exercise its constitutional powers. These attacks include an inadequate legal framework, an institutionalized practice of Executive interference in the judicial career (as described in more detail under JIP.9 in Section 2), and the monopoly of the Legislative over the interpretation of laws.

This Section centers on the analysis of an important subcategory of JIP.2 – the institutional independence of judges.

JIP.2: Institutional Independence of Judges

Unsatisfactory: Both parliament and the executive have adopted a number of laws and decrees which subordinate the judiciary to the executive and legislative branches. The situation is even worse in practice. Indeed, the judiciary appears to be fully subordinate to the executive, be it the President of the Republic or the Ministry of Justice.

As everywhere else, Haitian Law recognizes the principle of institutional, personal and decisional independence of judges. Under article 60 of the Constitution, *"each Power is independent of the other two, and carries out its responsibilities separately"*. However, the independence proclaimed by the Constitution has yet to be fully applied with regards to the judiciary. Indeed, the principle of institutional independence of the judiciary is subject to serious infringements by the two other powers of the State (Executive and Legislative).

I. Infringements upon the Independence of Judges by the Executive

The supremacy of the Executive over the judiciary, which is often denounced, is not simply due to practice. It is established by decrees which are contrary to the Constitution and issued for that purpose. In many regards, the Decree of August 22, 1995 (on the Organization of the Judiciary) and the Decree of March 30, 1984 (establishing the organization and functioning of the Ministry of Justice) put the judiciary under the control of the Executive.

- Infringements based on the Decree of August 22, 1995

  The Constitution established three independent powers, giving none any particular right to monitor or protect any of the others. However, the legislature of 1995 chose to entrust the President of the Republic with the duty to guarantee the independence of the judiciary.[16] Article 6 of the Decree establishes that the President of the Supreme Court, the highest-ranking judge in the judicial hierarchy, must take an oath in the presence of the President of the Republic, accompanied by members of the Senate and of the House of Deputies. It is understandable that these two provisions have a considerable effect on the judiciary and are likely to create allegiance to the Head of the Executive.

  Moreover, the Decree of August 22 1995 establishes a certain level of subordination of the judges to the Minister for Justice. For example, according to article 73, only the Minister of Justice can grant a judge a leave of absence of more than eight days.

  The Decree opens another door for the Executive with the institution of the public prosecutor, known in Haiti as "commissaire du gouvernement». According to Article 23, public prosecutors and their substitutes are «agents of the Executive" before the courts. Thus, through these agents, the Executive can easily interfere in the administration of justice and exert its influence. It can also proceed to arrests or illegal detentions and even obstruct the execution of all judicial decisions which it considers contrary to its interests.

16 Decree of August 22, 1995, article 2: "The judiciary is independent from the two other powers of the State. This independence is guaranteed by the President of the Republic."

- Infringements based on the Decree of March 30, 1984 [17]

  The Decree of March 30, 1984, adopted under the authority of the Constitution of August 27, 1983, still regulates the organization of the Ministry of Justice. According to some of its provisions, the Minister of Justice is the actual hierarchical chief of the judiciary. Indeed, article 3 gives the Minister authority over the heads of jurisdictions and public prosecutors, including the right to discipline their personnel. In addition, the Minister has the right to monitor all judges.

The abovementioned decrees clearly establish the supremacy of the Executive over the judiciary. The legislature has surreptitiously taken away the independence granted by the Constitution to the judiciary, to the benefit of the Executive.

These considerations help us understand, for example, why some members of the judiciary in charge of investigating the assassination of the priest Jean-Marie Vincent**,** were convened at the National Palace, on August 28, 2003.

Here is an extract of this meeting as written in the columns of the State newspaper, *L'Union*[18]: "*On this occasion, the President of the Republic, Jean-Bertrand Aristide, relying on his constitutional prerogatives, convened the judicial authorities to the National Palace* ***to inform the parents and friends of the late Father on the advancement of the case***."

Upon this occasion, the President stated: "*I greet you in the name of Father Jean-Marie Vincent (…).We will meet with the judicial authorities this morning who will inform you on what has been done and what will be done so that justice be made*."[19]

The newspaper added that "*the President explained that it was his duty to accompany the Judiciary, but stressed that it remains independent*".

By means of response, the Investigative Judge in charge of the case told the President of the Republic, parents and friends who attended the meeting at the Palace that "*over twenty (20) people had been heard as witnesses. Only six are directly involved in the case and only one, former-captain Jackson Joanis, is currently detained*."[20]

In this case, there are two obvious infringements: first, on the independence of the judge; and, second, on the principle of respect of secrecy of the preliminary investigation. The image projected is that of an immature judiciary under the control of parents or tutors.

II. Infringements upon the Independence of Judges by the Legislative Branch

The Executive does not have the exclusivity of infringements on the institutional independence of judges. The legislative branch also enjoys the right to interfere in cases submitted to the judiciary. Even though the Constitution of 1987 provides for the independence of all three powers, it has given the legislative branch margins of influence over the judiciary. The fact that the legislature has the power to interpret laws by *ex officio*[21]

17 *Moniteur* No.31, Avril 30, 1984
18 *L'Union*, No.1111, August 29 to 31, 2003, page 1.
19 *Idem*
20 *Idem*, page 3
21 1987 Constitution, article 128: "The interpretation of laws *ex officio* is a prerogative or the legislative power; it is stated in the form of a law."

enables it to direct and influence the decisions of judges. Parliament, in order to influence the outcome of a lawsuit, can decide to interpret a law already in force, applicable to a pending matter. The interpretative law, fusing with the interpreted law, will naturally be imposed on the judge.

This type of intervention by Parliament was clumsily used in 1991 for the interpretation of the law of March 7, 1991 on the modalities of the public administration and judicial reforms foreseen by article 295 of the Constitution. Since then, no procedure to interpret laws has been initiated by the Haitian Parliament.

SECTION 2

JUDICIAL INTEGRITY PRINCIPLES GUARANTEEING THE INDEPENDENCE OF JUDGES

This Section studies the independence of judges as individual members of the judiciary. While there are many rules regulating the status of judges, this Section takes into account those essential to the fair and effective administration of justice. This analysis leads us to conclude that the level of compliance with the core principles guaranteeing the independence of judges is very weak and not in compliance with universally accepted norms. In Haiti, the judicial decision-making process is easily infringed by a variety of institutional, political and social actors, including the Executive, parliamentarians, powerful economic groups and pressure groups.

This Section centers on the analysis of these closely related Judicial Integrity Principles:

- JIP.2 Personal, Decisional Independence of Judges (subcategory)
- JIP.4 Adequate Judicial Resources and Salaries
- JIP.5 Adequate Training and Legal Education of Judges
- JIP.6 Security of Tenure
- JIP.9 Adequate Qualifications and Objective and Transparent Selection and Appointment Process
- JIP.13 Conflict of Interests Rules
- JIP.14 Income and Asset Disclosure

JIP.2: Personal, Decisional Independence of Judges

Unsatisfactory: The Haitian legal and judicial framework is vulnerable to interferences with the personal, decisional independence of judges. Political actors, persons with economic power and pressure groups are the main sources of these interferences. The main forms of interference appear to be (i) corruption; and (ii) direct intervention in cases.

The debate on the independence of judges seems very complex because of the fluidity of the concept itself. Quite truthfully, the notion of the independence of judges has never been clearly defined. It is, however, generally accepted that the concept of independence as it relates to the justice sector implies necessary latitude so that the judge may hear cases submitted to him, taking into account only the law and his conscience, free from all external interventions or influences. The judge must be absolutely free to interpret and qualify the facts of the case, using his judicial faculty. He certainly can make mistakes. But, precisely, the principle of appeals aims at correcting any misinterpretations, distortions and violations of the laws which may have produced a flawed decision.

Infringements upon the independence of judges are not only the work of the Executive and the legislature, as described under section 1, JIP.2. Other powerful entities direct and determine the work of the judiciary, including persons with economic power and private organizations such as trade unions, human rights groups, popular organizations, etc.

I. Infringements upon the Independence of Judges by Political Actors

Information from different sources confirms that Parliamentarians ask judges to intervene in favor of detained relatives. Some examining magistrates affirm that senators and deputies visit them to inquire into pending lawsuits. A recent conflict between a Justice of the Peace and two businessmen of the commune of Cavaillon highlights in a very obvious way the influence of members of Parliament in judicial affairs.

Radio Caraibes reported, on Saturday, August 30, 2003 (in its program called "**Ranmasé**"), that the Justice of the Peace of Cavaillon was summoned to the Ministry of Justice because of a complaint made by a victim. He was immediately revoked and detained at the Port-au-Prince police station. The Deputy of Cavaillon, accompanied by other people, allegedly forced the police to release the Justice of the Peace, who is currently in hiding to avoid sanctions.

II. Infringements upon the Independence of Judges by Persons with Economic Power

Given the ridiculously low level of remuneration of judges and court employees and the economic power of some litigants, there is a strong likelihood that, in some cases, court decisions do not represent the law and justice but rather the result of fraudulent maneuvers and bargaining. Corruption within the judiciary is still one of the most common criticisms. Our research, however, did not enable us to gather evidence to conclude with a reasonable degree of certainty that this phenomenon does exist.

Well-founded or not, these charges undermine the authority of judges and generate distrust of the judiciary in Haiti. During our research on the perception of the judiciary by the public, some litigants in various courts of the country appeared convinced that the poor cannot prevail over the rich in court. It has also been reported that many judges, lawyers, representatives, clerks, bailiffs and police officers are deeply engaged in corruption. Justices of the Peace are perceived by the public as operating in a haven of bribery, often perpetrated, with the

blessing of the Justices of the Peace, by individuals calling themselves "lawyers" without any legal and ethical training. The general perception is that Haitian justice is a good within reach of those who have the means to purchase it.

III. Infringements upon the Independence of Judges by Pressure Groups

Trade unions often exert pressure on court decisions by threatening judges handling labor cases. This year, for example, members of a labor union broke into a Special Labor Court to force the Court to settle a case to their advantage.

Insofar as human rights organizations are concerned, though they work to promote the rights of citizens in the country, their positions can influence court decisions in a positive as well as in a negative direction.

Finally, nobody can underestimate the actions of popular organizations that intervene forcefully to influence judges when political figures are summoned by Investigative Magistrates or Government Commissioners. Sometimes, they physically attack the judge as was the case in Hinche where the Mayor of the city assaulted a Justice of the Peace carrying out his duties. We could also mention the case of the Justice of the Peace of the Commune of Belladère, killed during a political demonstration.

The disrespect of these "**pressure groups**" toward justice was demonstrated, once again, at the First Instance Court of Port-au-Prince in July 2003, when the Director General of the Ministry of the Interior was summoned in the case of journalist Rigaud Delice. Members of popular organizations stormed into the building in which the Tribunal was seated to support the Director General. They insulted and threatened the judge as well as the plaintiff's lawyers. The pressure was such that the judge could not continue the hearing and was forced to adjourn it.

These offensive acts were perpetrated in contempt of the provisions of the Penal code[22] and of the Civil Procedure Code[23] which give the Judge very effective means to act, severely and immediately, against all those who disturb a hearing. This unfortunate incident reveals the weakness, powerlessness and lack of respect for the Haitian Judiciary.

22 Penal Code, articles 183 to 185

23 Civil Procedure Code, article 91

JIP.4: Adequate Judicial Resources and Salaries

Unsatisfactory: Judicial salaries are extremely low. Moreover, tribunals operate in extremely poor material conditions, characterized by a shortage of basic supplies, a lack of office space and furniture and the dire state of facilities.

As far as salaries go, judicial personnel are treated as poor relatives. They are the lowest paid of all members of the three powers of the State. The following table shows judges' salaries at different levels of the judicial hierarchy since 1999, despite the loss of value of the currency against the American dollar.

Salaries of Judges and Prosecutors (2003) (in Gourdes)

Functions	Court of Cassation	Court of Appeals	First Instance Court	Justices of the Peace
President or Senior Judge	40,000	23,000	16,000	7,000 (province) to 11,500
Judges	30,000	20,000	12,500 (province) to 14,500	6,000 (province) to 10,500
Prosecutor	20,000	20,000	16,000	--
Deputy Prosecutor	20,000	16,000	12,500	--

The poor material conditions within which the Haitian judiciary operates reflect a lack of power as well as incapacity to apply basic norms consistent with the JIP. The low salaries and the situation of powerlessness observed during judicial year 2002-2003 are not new. They go back decades and have been recorded in earlier studies. Finally, there is a constant shortage of the most basic office supplies, such as pens, envelopes, paper, registers, file cabinets, etc., in courts throughout the country.

Except for the fifteen First Instance Courts of the Republic, buildings which home the Justices of the Peace and Courts of Appeals are so dilapidated that they are not well suited to carry out the noble duty of rendering justice. For example, the Court of Appeals of Les Cayes offers the image of justice abandoned and forsaken: **an old house in the shape of a Hall, almost in ruins, apparently unkempt and partitioned in plywood, inside which there are a few chairs and tables, two typewriters, a file cabinet**. All the furniture is shabby and outdated; such is the physical appearance of this second instance jurisdiction. Despite the pitiful state of the building, the owner obtained an eviction order, thus increasing the precarious situation of the Court of Appeals.

The furniture of the Palace of Justice of Port-au-Prince is also in very poor condition. Furniture assigned to judges and clerks is mainly composed of shaky tables, uncomfortable and often broken seats, as well as outdated typewriters and metal file cabinets. In this same jurisdiction, there are eight investigative judges for five offices. Three of these judges must take turns using one office and they have no clerks or secretaries to assist them. These judges say they must use the services of better equipped colleagues to prepare their judgments. This often causes excessive delay in the handling of cases and in rendering judgments.

JIP.5: Adequate Training and Continuing Legal Education

Partially satisfactory: The 1987 Constitution created the Magistrates' School (EMA) to provide initial and continuing training to judges, but the organic law formally organizing this institution has not been adopted yet. Moreover, the EMA lacks transparent selection and recruitment criteria for candidates and trainers. However, the EMA has been providing both initial and continuing training for the past few years. The quality of the training has been called into question because of the poor quality of the judgments rendered by the new judges. Finally, debates and conferences on judicial and legal issues have been increasingly held in Port-au-Prince on the initiative of international donors and domestic civil society groups.

The effectiveness of justice relies heavily on the training and the capacities of the men and women chosen to make it function. A judge with no legal training is a dangerous decision-maker. Conscious of the importance of adequate training of the members of judicial personnel, the Constitution of 1987 created the EMA.[24] Unfortunately, this school still lacks an organic law and transparent selection and recruitment criteria for candidates and trainers.

Despite these deficiencies, the EMA trains many student-judges and also ensures the continuing legal education of serving judges. The courses, which deal with a variety of legal issues, are taught by lawyers, judges and law professors. Since its inauguration, the school has trained three classes of judges.

The legal profession, however, has expressed its concerns as to the quality of the teaching due to the poor quality of the judgments rendered by many of the new magistrates. A judge of the Criminal Court of Port-au-Prince, sitting without assistance of a jury, sentenced a defendant to five years of imprisonment and conditioned her release on the full payment of damages. Thus, even though the defendant has served her term, she is still in jail for non-payment of damages.

Such a decision is contrary to the spirit of article 7 subparagraph 7 of the Inter-American Convention on Humans Rights of November 22, 1969, ratified by Haiti.[25] This case, one among many, reveals that the legal training of new judges is too general, abstract and theoretical to enable them to settle even the simplest of disputes.

24 1987 Constitution, article 176

25 IACHR, Article 7: "No one shall be detained for debt"

JIP.6: Security of Tenure

Partially satisfactory: While security of tenure is guaranteed in the Constitution of 1987 for all judges, except Justices of the Peace, in practice there is a tendency of the executive to use disciplinary measures arbitrarily to suspend or revoke judges. However, there was no case of revocation in 2002-2003.

The illegal and partisan nature of the judicial selection and appointment process is not without consequence for the careers of judges. According to a constitutional principle, all judges, except Justices of the Peace, are guaranteed security of tenure.

Under the terms of article 177, judges may not be reassigned without their consent, even in the case of a promotion. Their judgeship may be terminated during their term of office only in the event of a duly certified permanent physical or mental incapacity. Thus, the career of the Judge is not subject to suspension, removal, reassignment or retirement upon a unilateral decision of the Executive. On this point, article 20 of the Decree of August 22, 1995 on the Organization of the Judiciary which states that upon reaching sixty years of age judges could be asked to retire is in contradiction with the provisions of article 177 of the Constitution.

It is to be observed, however, that under the pretense of **disciplinary measures**, the principle according to which judges cannot be suspended is often affected by arbitrary decisions of the Executive such as removal or suspension: **for example, a judge of the First Instance Court of Port-au-Prince was suspended from his duties at the beginning of 2003 because he allegedly had accepted bribes to release a person accused of illegal drug trafficking**.

However, during the 2002-2003 judicial year, no judge appointed for life was revoked. As required by the Constitution of 1987 and the rules specific to judiciary discipline, four complaints were filed with the Superior Council of the Magistracy against judges of First Instance Courts and Justices of the Peace throughout the Republic.

JIP.9: Adequate Qualifications and Objective and Transparent Selection Process

Good administration of justice requires, among other things, a body of qualified judges, recruited and appointed in compliance with objective and transparent criteria.

I. Adequate Judicial Qualifications

Unsatisfactory: The Haitian judiciary does not attract highly qualified jurists. Moreover, competence is never taken into account in the appointment or promotion of judges. A Judicial Evaluation Register does not even exist. Many judges have never had any legal training. This is mostly the case of Justices of the Peace, while in the Courts of First Instance some judges have received only very limited training dating back twenty years.

The extremely difficult and sensitive role assigned to judges requires sound legal qualifications for them to comprehend lawsuits and apply the law correctly. The adequate qualification of judges is, without any doubt, one of the main guarantees of the high quality of justice. A judge demonstrates his competence by his ability to direct legal debates skillfully and, most importantly, by the quality of his decisions. On this point, one can safely affirm that the Haitian judicial system can count on very few judges whose legal competence is adequate.

Criticisms against recently-appointed judges are primarily rooted in inconsistencies in their judgments. Often, these judgments do not meet the requirements of article 282 of the Civil Procedure Code or articles 145 and 171 of the Criminal Procedure Code. In support of this statement, many judgments appear affected by inconsistencies, including the lack of reasoning supporting the holding, contradictory legal findings, mistakes or even reasoning unrelated to the holding. The following judgments provide an example of this phenomenon.

Judgment of July 23, 2002 rendered by the First Instance Tribunal of Port-au-Prince in the case TROPIC S.A. v. Mrs. Christine VILME

(…) "Given that TROPIC S.A. represented by Mr. Serge COLES, owner of the vehicle subject to the accident has produced the documents proving that it complied with all the requirements of employee coverage by paying insurance premiums to the OFATMA where the name of Jean Claude Raymond is included in the list of its personnel;- (SIC)

Given that at the death of Jean Claude Raymond, his minor daughter Déborah Raymond, represented by her guardian Christine Vilmé, went to Tropic S.A. to obtain a certain value to cover burial costs for the defunct;- (SIC)

Given that in matters of civil liability and compensation, the victim or his/her representative may always seize the Tribunal to obtain compensation for his/her damage;- (SIC)
Given that the claim of Mrs. Christine Vilmé, guardian of the minor Déborah Raymond, is in compliance with the provisions of articles 1168 and 1169 of the Civil Code; that the Tribunal must therefore accept it and rule;- (SIC)

Given that Tropic S.A. as represented is responsible for the wrongs and damages caused to the minor Déborah Raymond by the disappearance of her father; that the Tribunal must therefore condemn Tropic S.A. to damages to the benefit of the minor as represented;- (SIC)

Given that the Tribunal, while recognizing that Tropic S.A., has already paid a certain value to the guardian for the funerals, rejects its motion to dismiss as not in compliance with the law;- (SIC)

Given that the losing party is responsible for court fees;- (SIC)

On these grounds, the Tribunal, having deliberated as mandated by law and heard the public ministry; receives the claim of the plaintiff as just and motivated; Holds that Tropic S.A. represented by Mr. Serge Coles, as the employer of Mr. Jean Claude Raymond is responsible for his disappearance to his minor daughter Déborah Raymond; Holds that this disappearance has caused wrongs and damages to the minor; these wrongs and damages must be compensated as provided under articles 1168 and 1169 of the Civil Code; Rejects the motion to dismiss presented by TROPIC S.A.; Condemns TROPIC S.A. to TWO HUNDRED THOUSAND GOURDES of damages to the benefit of the minor Déborah Raymond represented by her guardian Christine Vilmé; Condemns finally TROPIC S.A. to the costs in the amount of … Gdes, not including the cost of the present judgment.- (SIC)

It can easily be seen that the reasoning of this judgment presents, on the one hand, contradictory legal findings and, on the other, legal findings that bear no relevance to the holding.

Summary Order of September 30, 2003 rendered by the First Instance Tribunal of Port-au-Prince in the case Mr. Richard ACCEDE v. Mrs. Francilia OMEGA

(…)"Given that the Decree of September 14, 1983 gives exclusive jurisdiction to the Juge des Référés (Judge in Chambers) to hear custody and alimony claims, which explains that in these cases the Juge des Référé is competent to decide these cases;- (SIC)

Given that in her petition, the plaintiff validly argued the reasons for which her claim was submitted and the defender did not contest the claim of Mrs. Omega but presented reservations in proposing to pay the sum of fifteen hundred gourdes;- (SIC)

Given that for alimony debts the sentence must be proportional to the resources of the debtor, even though the sentence may be modified, of course, depending on the increase or decrease of the revenues of the debtor or on the cost of life and requirements of the time;- (SIC)

Given that the fact that child custody is awarded in priority to the closest parents is clearly defined by the laws, the Constitution and the conventions on the rights of children, as per article 261 of the 1987 Haitian Constitution and the Decree of September 14, 1983;- (SIC)

Given that in the case under scrutiny, custody has be requested by the mother who had already been awarded it and was currently in a better position to have it, therefore custody is awarded to her;- (SIC)

Given that the losing party is responsible for court fees, and given the urgency provisional enforcement is ordered;- (SIC)

On these grounds, the Juge des Référés, having deliberated as mandated by law, Receives the claim of Mrs. Born Francilia Omega as just and motivated; consequently, awards custody of the minor Marvin Dylan Accédé to his mother; Condemns the father to pay monthly the sum of seventy-five hundred gourdes in alimony and child support of the minor. Holds that this judgment will be enforced at the care of the Government Commissioner, protector of minors; Orders the provisional execution appeals notwithstanding; Compensates the costs.- (SIC)

In this order, there is no relationship between the legal findings and the holding. The judge has not provided the reasoning for rejecting the amount of 1,500 gourdes nor does he justify the amount of 7,500 gourdes awarded to the mother as alimony and child support.

II. Judicial Selection and Appointment Process

Unsatisfactory: Formal rules for the selection and appointment processes of judges exist, but they are both insufficient and not implemented in practice. There are a number of problems affecting the objectivity and the transparency of the selection and appointment process. Loopholes and inconsistencies in the formal legal framework include (i) selection criteria for Justices of the Peace do not respond to any logic; and (ii) departmental and communal assemblies are not operational yet, which creates a legal vacuum. In terms of implementation problems, the main issue is that the main criterion for judicial appointment is political affiliation.

Although there is only one judiciary, there are several ways to enter it. The Constitution of 1987 and the Decree of August 22, 1995 on the Organization of the Judiciary define the different roads open to candidates wishing to enter the judiciary. In principle, contrary to previous regimes, bench judges are no longer directly named by the Head of the State whose traditional powers at this level are now shared with other recently-created bodies such as the Departmental and Communal Assemblies.[26]

Supreme Court justices are appointed for ten years by the President of the Republic from a list of three candidates per court seat submitted by the Senate. The requirements for the appointment of judges are set forth in article 15 of the abovementioned Decree, which provides that:

No one can be appointed judge to the Supreme Court if he does not meet one of the following requirements:

- *To have held, during seven years at least, the functions of judge or of Public Prosecutor in a Court of Appeal;*
- *To have practiced as a lawyer during ten years at least."*

Appeal Court Judges, under articles 174 and 175 of the Constitution, are appointed for ten years from a list submitted by the relevant Departmental Assembly. They are chosen in agreement with requirements stated in article 14 of the Decree of August 22, 1995, conceived in these terms:

"To be a judge at the Court of Appeal, it is necessary to have held, during seven years at least, the functions of judge in a Court of First Instance or of Public Prosecutor in such a Court or to have practiced as a lawyer during seven years at least."

According to the abovementioned constitutional provisions, First Instance Court judges are appointed for seven years from a list submitted by the relevant Departmental Assembly. Article 13 of the Decree of August 22, 1995 provides that:

The candidates to the position of First Instance judge must have graduated from the EMA or have practiced as a lawyer for at least three years.

As for the Justices of the Peace, they are selected from a list submitted by the Communal Assemblies and are appointed for indeterminate terms. Taking into account the levels of development of the Communes or Neighborhoods, the Legislature of 1995 established four levels of Justices of the Peace. The requirements vary according to the levels:

26 1987 Constitution, article 175

- *To be appointed as first and second-level Justice of the Peace, it is necessary to have a master's degree in law and to have graduated from the EMA.*
- *To be appointed as third-level Justice of the Peace, it is necessary to have a Bachelor's degree in law, to have litigated before the Courts of the Peace and to pass an evaluation test at the Ministry of Justice.*
- *To be appointed as fourth-level Justice of the Peace, it is necessary to have at least served as clerk in a Court of the Peace and to pass an evaluation test at the Ministry of Justice.*

This classification does not resist scrutiny. Indeed, the legal difficulties that the Justices of the Peace have to solve are all the same and are not related to the level of development of the community where the court sits. The *rationae materiae* competence of the Justices of the Peace is defined in a uniform way by the same law. It is, therefore, absurd to require different levels of education for them.

The objective and transparent selection and appointment of judges is dependent upon the abovementioned rules. However, the system has evolved in such a way that one could believe that there is a legal vacuum on this matter. It is evident that these principles are not taken into account in the appointment of judges, except for those of the Supreme Court. This is linked to the fact that Departmental and Communal Assemblies are still not operational, more than 16 years after the Constitution was adopted.

The data gathered[27] reveals that the main criterion in the appointment of judges is their membership in or allegiance to powerful political groups. Judges, throughout the country, are appointed, for the most part, based upon recommendations of local elected officials (mayors, representatives, senators), of delegates of the central government or of popular organization leaders. Even graduates of the EMA need strong political backing to support their candidacy.

Justice is not administered exclusively by judges of the courts of general jurisdiction. It is also the work of a single administrative court, the Superior Court of Auditors and Administrative Disputes. Specific rules govern the selection and appointment of its Members[28]. Requirements to become a Member of the Superior Court of Auditors and Administrative Disputes (CSC/CA) are stated in article 200-5 of the Constitution. Candidates must meet the following six requirements:

- *Be Haitian and never have renounced one's nationality;*
- *Be at least thirty-five (35) years old;*
- *Be relieved of their responsibilities if they have managed public funds;*
- *Have a Bachelor of Law degree, be a certified public accountant or hold an advanced degree in government administration, economics or public finance;*
- *Have five years of experience in public or private administration; and*
- *Enjoy their civil and political rights.*

27 Sources: interviews with acting and student judges
28 The word "members" is used to designate auditors and administrative judges.

These conditions seem insufficient, considering the sum of knowledge in public law required to handle administrative and financial disputes. A Bachelor degree in Law, Accounting, Economy or Public Administration does not, in all objectivity, prepare one to fulfill tasks as delicate as ruling on conflicts of an administrative or financial nature.

Members of the Court are chosen through elections by the Senate of the Republic. Article 200-6 of the Constitution establishes the process as follows: the candidates file their candidacy at the Senate's office which elects the ten members who then select the President and Vice-President amongst themselves.

These proceedings are thus free, in principle, from any intervention by the Executive. It is considered to be an "**exclusive prerogative**" of the Senate. However, the Executive did put its stamp on the final phase of the electoral process. Such was the case the last time the ten members of the Court were renewed, in June 2003. The Senate first elected the ten members, but, by a legal artifice, it then voted on a resolution confirming the election. This resolution was promulgated by the Head of the State on June 16, 2003.[29]

The procedure followed by the Senate of the Republic in this circumstance merits at least three comments:

1. The steps followed by the Senate make no sense. A Power cannot pass a resolution to confirm a vote it has itself carried out. Moreover, the Constitution does not submit the election of the Members of the Superior Court of Auditors and Administrative Disputes (CSC/CA) to any form of resolution by the Senate to confirm the vote. The Constitutional mandate had been fulfilled by the election of the ten members of the Court.

2. The resolution adopted by a Legislature is a **non-legislative act [30] related to the functioning and discipline of Parliament.**[31] Parliamentary resolutions are not submitted for approval by the Head of the State. It is this feature which distinguishes them from voted laws.

3. By adopting this procedure, the Senate of the Republic openly abdicated its constitutional prerogatives to the benefit of the Executive, which is contrary to the provisions of article 60 of the Constitution.

29 *Moniteur*, No.45, June 23, 2003

30 Pierre Avril, Jean Gicquel, Droit parlementaire [Parliamentary Law], ed Montchrestien, Paris 1998, page 130

31 Louis Favoreu, Loïc Philip, Les Grandes Décisions du Conseil Constitutionnel [Key Cases of the Constitutional Council], 5th ed, Sirey 1989, page 35

JIP.13: Conflict of Interest Rules

Partially satisfactory: Usually, implementing these procedures presents no problems. The judges, in most cases, readily accept to disqualify themselves from a case for what they describe as personal reasons. This may point to a tendency for judges to disqualify themselves excessively in practice.

Specific preventive rules have been adopted to guarantee a sound and impartial justice. For example, any judge can abstain from judging and ask to be replaced when he believes his independent judgment could be compromised. In legal jargon, it is said that the judge "disqualifies himself".

In some very specific cases, the litigants can demand that the judge handling their case be removed. The disqualification procedure can be found in articles 435, 436 and following of the Civil Procedure Code. Even the Public Prosecutor, whose indictment does not bind the court, can be disqualified, if he is a party in the lawsuit (CPC, article 439).

Lastly, a litigant can submit to all the judges of a jurisdiction a **demand for adjournment based on legitimate suspicions** (CPC, article 453).

With regard to labor disputes, the Updated Labor Code establishes procedures by which judges can be disqualified or transferred. Articles 504 and 505 establish the following:

> *"The members of Labor Courts will be forced to disqualify themselves or will be transferred, before or during the hearing of all cases in the following instances:*
>
> - *If they are parents or related to one of the parties, to the degree of first cousin inclusively;*
> - *If they have forwarded a written opinion on the case;*
> - *If they are employers or employees of the one of the parties involved;*
> - *If, during the hearing of the case, there are protests against them based on legitimate suspicions."*
>
> *"The Party that wants one of the members of the Court disqualified, must express its objection in a written statement explaining the reasons for the request. The Chief Judge or, in his absence, the most senior member of the court, will rule immediately and independently on the case."*

The golden rule on the matter of incompatible activities is that judges should not engage in other professional activities. This rule aims at protecting the judge's independence of mind and judgment. Thus, conflict of interest rules seek to avoid the judge's subordination to activities outside the judiciary which could, directly or indirectly, hamper his independence.

The Haitian Constitution forbids judges to hold any other compensated public position, except teaching positions.[32] Judges are not allowed to hold positions such as those of public prosecutor, businessman or lawyer.[33] A judge who wishes to run for an elected position or practice any of the activities stated as incompatible by the Constitution or the Law, must first resign from his position.

32 Decree of August 22, 1995, *Op. cit.*, article 10; 1987 Constitution, article 179
33 *Idem*, article 11

Regarding political activities, the most recent texts (the Decree of July 30, 1986 on Political Parties as well as the Decree of August 1995 on the Organization of the Judiciary) are silent on the issue of a judge's political affiliation. However, the Law of May 12, 1920 on the Superior Council of the Magistracy formally forbids judges from engaging in party politics. Article 3 even defines it as a disciplinary offense:

> *"All political debate is forbidden in Courts, in any form whatsoever, aside from issues that fall under their jurisdiction and are legally submitted to their judgment. In the higher interest of citizens, judges are not allowed to engage in partisan political activities. Infringing these provisions constitutes a disciplinary offense.*
>
> *The same is true of any failure of judges to comply with their duty and of any conduct inappropriate to the character and dignity of their position."*

JIP.14: Income and Asset Disclosure

Unsatisfactory: There are no income and asset disclosure rules for judges.

The principle of income and asset disclosure by judges is of great interest insofar as it could contribute efficiently to prevent or discourage corruption in the judicial system. Unfortunately, this principle does not exist under the Haitian law applicable to judges and court personnel. The obligation, under the Constitution of 1987, for all managers of public funds to declare their assets to the clerk of the First Instance Court within 30 days following their entry into service (article 238), does not apply to judges as they do not manage public funds.

Judges are required, however, to **declare their income and assets for tax purposes**, as any other citizen.

SECTION 3

JUDICIAL INTEGRITY PRINCIPLES GUARANTEEING THE FAIRNESS OF JUDICIAL PROCEEDINGS AND THE FUNDAMENTAL RIGHTS OF LITIGANTS

The right to a fair trial, the aim of true justice, requires not only the independence of the judge, but also respect for the fundamental rights of litigants, such as the rights to equality under the law, due process and the fair and effective enforcement of judgments. This Section examines the independence of the judiciary from a fairness and rights perspective. Many shortcomings and loopholes have been identified in terms of fairness and fundamental rights rendering the right to a fair trial largely illusory in practice. The judiciary is generally unable to address the many calls for justice that it receives on a daily basis.

This Section centers on the analysis of these closely-related Judicial Integrity Principles:

- JIP.1 Guarantee of Trial within a Reasonable Time (subcategory)
- JIP.1 Guarantee of Equality under the Law (subcategory)
- JIP.1 Guarantee of Access to Justice (subcategory)
- JIP.7 Fair and Effective Enforcement of Judgments

JIP.1: Guarantee of Judicial Independence, the Right to a Fair Trial, Equality under the Law and Access to Justice

I. Guarantee of the Right to a Fair Trial: the Right to Trial within a Reasonable Time

Unsatisfactory: While the law sets clear timeframes for many judicial procedures, these limits are seldom applied in practice. The excessively long delays affecting judicial processes have serious consequences for litigants, especially in criminal cases.

The concept of "reasonable time" has never been clearly defined. However, it conveys the idea that it is abnormal for legal procedures to drag on indefinitely and that procedures carried out in a "reasonable period of time" protect the rights of citizens against excessive delays. According to the European Court of Humans Rights,[34] "**reasonable time**" takes into account three criteria: the complexity of the case, the claimant's attitude and the behavior of national authorities (in particular of the Judiciary) assessed within the political and social context. Only delays attributable to this third category will be deemed unreasonable.[35]

Under Haitian law, the amount of time required for many procedures is formally set. As regards individual freedom, the Constitution of 1987 establishes that the detainee must be brought before a judge within 48 hours (article 26). The judge in summary proceedings must submit his writ within 24 hours of hearing a case (article 757 CPC). The investigative judge has a three-month deadline to submit his closing writ, and the public prosecutor must conclude definitively within five days of the receipt of the documents (article 7 of the Law of July 26, 1979 on Criminal Appeals).

In criminal matters, article 199 of the Criminal Instruction Code specifies that:

"*24 hours at the latest, after the accused has been transferred to the house of justice, the Police chief will forward the documents of the case to the eldest member of the Criminal Court.*

If, from the opening of the preliminary inquiry, the accused is detained, the documents should be forwarded to the Chief Judge at least eight days before the opening of the trial.

The Chief Judge or one of his substitutes will question the defendant within 24 hours of the reception of the case."

However, as in many other cases, these deadlines are seldom respected in practice. Determinations in alimony cases, despite the urgency of the matter, are pronounced only two to three months after the hearing of the case.
In many cases, detainees awaiting trial are not sent to Court and remain in prison for two to three years. This is the reason why the Act of December 4, 1893 mostly known as the "Lespinasse law" is frequently applied in favor of detainees condemned to a sentence, the duration of which is less than that of the preventive detention. The following cases are examples of this reality:

1. Joel Baptiste was arrested on December 8, 2000 for burglary causing damages to Jonas Clermont. He was sentenced to one-year imprisonment on June 5, 2002.

34 European Court of Human Rights, *H.V. France*, judgment of October 24, 1989, Series A No.162-A
35 Frédéric Sudre, La Convention européenne des droits de l'homme [The European Convention of Human Rights], Que sais-je ? 5th edition 2002, page 100

2. Alfred Dorelien, arrested on August 2, 2000 for having stolen a weapon in prejudice of Gerard Laborde was sentenced to two-year imprisonment on June 18, 2003, though he had already spent three years in prison.

3. The civil liability case opposing the heirs of Dunel Redon to the Brasserie La Couronne, initiated in July 1999, was settled in 2003, not by the Court but by an amicable agreement between the parties.

4. The labor dispute between worker Odner Jean Fritzner and his ex-employer, World Harvest for Christ, represented by the Mr. Raymond L. Bideaux began in the Conciliation Service of the Ministry for Social Affairs on September 5, 2001 and led to an attachment procedure which is still pending before the First Instance Court.

II. Guarantee of Equality under the Law

Unsatisfactory: While the principle of equality under the law is explicitly recognized under the Constitution, there are significant violations of this principle in practice, especially due to discrimination toward certain categories of litigants and the lack of proportionality of sentences.

The principle of equality under the law is stated without ambiguity in article 18 of the Constitution of 1987. It demands that public services consider all citizens as equal under the law. This obligation extends to courts and tribunals handling conflicts. They must judge the opposing parties without consideration of origin, fortune, political or religious opinions, except in the cases of high-ranking officials who are tried by special courts.[36]

A. Consequences of the Principle of Equality under the Law

The enforcement of the principle of equality under the law brings up other corollary principles, in particular: the principle of contradiction, the principle of nondiscrimination against the parties engaged in a lawsuit, the principle of proportionality.

The principle of contradiction aims at guaranteeing both parties equality of arms before the judge[37] in all steps of the trial. All documents must be disclosed and discussed between the parties so that they can make all remarks, comments and conclusions considered to be necessary in the defense of their respective rights.

This principle exists under Haitian legislation[38] and does not pose, in practice, significant difficulties. Before the courts, the documents of the case are communicated and both parties defend their causes with complete freedom.

B. Violations of the Principles of Non-Discrimination and of Proportionality

Though there are no significant infringements on the principle of contradiction, the same is not true for the principles of non-discrimination and of proportionality.

- The Principle of Non-Discrimination

36 1987 Constitution, articles 185 to 190
37 European Court of Human rights, *Delcourt v. Belgium*, judgment of January 17, 1970, Series A No.11
38 Civil Procedure Code, articles 79, 80 and following; Criminal Instruction Code (CIC); Labor Code

The principle of non-discrimination means that in the course of a lawsuit, the judge must be impartial and treat both parties equally.

It has often been observed in the course of debates held in various jurisdictions that certain judges, according to their own vision, do not act in compliance with the principle of equality in judicial proceedings. Thus, in lawsuits opposing employers and employees, poor and wealthy people, certain judges openly take discriminatory positions either in favor of the weakest party or of the strongest.[39]

In both cases, the rule of non-discrimination in judicial proceedings is sacrificed to the profit of the judge's personal convictions. These convictions often derive from a combination of factors unrelated to the law, which is impersonal, general and objective.

As to infringements in political cases, the discriminatory behavior of police and judicial authorities has become commonplace. In 2002, several facts prove this:

1. The passivity of judicial authorities towards statements made by Mr. Laguerre, member of the Board of Directors of a Communal Section (CASEC) of Cap-Haitian, before political demonstrations being organized by opposition parties and the Citizen's Initiative on August 31 and September 14, 2003.

   The newspaper "*Le Nouvelliste*", in its September 12- 14, 2003 issue, reports "*that the head of a popular organization from Cap-Haitian promised, with impunity, on waves of several radio stations that there would be a massacre if opponents to Lavalas took to the street on the Sunday, and even warned diplomats accredited in the country and opposition leaders not to go to Cap-Haitian over the week-end. He also asked funeral parlors to be ready to receive corpses.*"[40]

   It should be stressed that the speaker was not summoned by the judicial and police authorities despite the extreme violence of his public statements.

2. On July 12, 2003, following political demonstrations organized by the Group of the 184 in Cité Soleil, members of this organization were verbally attacked and others physically abused by members of Lavalas popular organizations. Following these incidents, the Port-au-Prince public prosecutor, astonishingly, summoned Mr. Apaid, Coordinator of the *Group of 184,* while the members of the popular organizations were not.

- The Principle of Proportionality

Repressive judgments gradually give way to the "**principle of proportionality**", according to which criminal penalties are set taking into account the gravity of the offense, personal circumstances, and compensation levels, taking into account the financial capacity of the defendant. Unfortunately, Haitian Courts rarely take this principle into account when ruling. In many cases, the judge does not take into consideration the financial capacity of the person condemned when determining compensation.

The law has never determined the compensation level to which a condemned person may be sentenced. Therefore, the decision depends solely on the judge's own estimate of the condemned party's financial capacity. It must be stressed that when a person is ordered to pay, in compensation, sums that he does not possess, his rights to due process are seriously infringed.

39 In Haiti, the saying goes: "The big fish swallows the little".
40 Head of a popular organization. "Popular organizations" are linked to the Lavalas Party, the party in power.

III. Guarantee of Access to Justice

Unsatisfactory: Access to justice is generally not guaranteed in Haiti due to three main shortcomings of the justice sector: (i) the insufficient geographic distribution of courts; (ii) the excessive cost of justice; and (iii) the poor functioning of public services. This situation renders access to justice difficult, if not impossible, for most Haitians, thereby reinforcing impunity and making the Rule of Law illusory.

Access to justice implies that each individual can seize the courts, if need be, without distinction of rank or financial capacity. Theoretically, all citizens have access to justice in Haiti, since there is no law to the contrary. The only exception to this principle is provided in article 96 of the Civil Procedure Code which requires that foreigners suing Haitians make a security deposit called "**judicatum solvi**", if the latter demands it. Let us note that this exception aims at protecting Haitian defendants, in the event of judgments in their favor. Without the security deposit, the decision could remain without effect if the foreigner were to leave the county.

A. Insufficient Geographic Distribution of Courts

The very limited number of courts throughout the country is, without dispute, one of the greatest obstacles to every citizen's right to access to justice.

First Instance Tribunals and Appeal Courts exist in the main cities. However, even there they are inaccessible to large sectors of the population living in the communal sections, because of poor condition of roads and the high cost of transportation. The inhabitants of Asile, for example, must walk approximately eight hours to lodge their complaints before the public prosecutor located in Anse à Veau.

The situation of the inhabitants of the islands Ile à Vache, La Gônave, La Tortue, and the Cayemites is even worse. Having only one Court of Peace, these islanders are force to brave the sea on small boats to seize the First Instance jurisdictions of Cayes, Port-au-Prince, Port-de-Paix and Jérémie, respectively.

Moreover, certain types of courts are located only in the capital. The Superior Court of Auditors and Administrative Disputes, the only national administrative jurisdiction, is established in Port-au-Prince. It is the only court capable of handling the judicial review of illegal actions or cases for damages caused by public administration mismanagement.

Citizens living in remote areas are forced to go to Port-au-Prince to seize the court of their claim. Under the terms of the Law of August 8, 1926 on the distance between the communes and the capital[41], inhabitants of Tiburon[42] must travel 300 km, those of Carice[43], 360 km and those of the Mole Saint-Nicolas[44], 268 km to reach a court.

However, to reduce the difficulties caused by the country's insufficient geographic distribution of courts, the Decree of November 4, 1983 (articles 42 and 43) states that until the establishment of First Instance Courts in the areas designated by the law of September 19, 1982 (on Regionalization and Town and Country Planning), the Superior Court of Auditors and Administrative Disputes (CSC/CA) will pass judgment without appeal.

Requests coming from the different parts of the country were to be submitted to the court by the prefectures and sub-prefectures. However, the prefectures and sub-prefectures were abolished by the Constitution of 1987

Moniteur No.65, April 16, 1926
Tiburon, Commune located at the extreme end of the Southern Department
Carice, Commune located in the Department of the Northeast.
Môle Saint Nicolas, Commune located in the Department of the Northwest

and were replaced by delegations and sub-delegations. The Decree of May 17, 1990[45] on Delegations does not assign such attributions to the new representatives of the Executive. Thus, on this very precise issue, access to administrative justice is, surprisingly enough, more difficult than it was under the former legislation.

The same is true of juvenile justice. The Decree of November 20, 1961 which creates the Juvenile Court in Port-au-Prince extends the competence of this jurisdiction to the whole country until new Courts are created.[46] Offenses involving children living outside the capital are seldom transmitted to the Juvenile Court of Port-au-Prince which has specialized judges.

Therefore, most of the children living in the provinces and the communal sections are deprived of the special protection system to which they are entitled before juvenile courts. They are tried before ordinary courts, like adults, by judges who lack training in juvenile justice. This unfortunate situation remains unchanged 42 years after the entry into force of the Decree of November 20, 1961.

The insufficient geographic distribution of courts throughout the country discourages citizens in their quest for justice. This situation, of course, reinforces impunity and renders hypothetical the establishment of the Rule of Law.

Courts and Judges throughout the Country (2003)

Courts and Tribunals	Numbers	Bench judges	Public Prosecutors
Justices of the Peace	181 *	368	0
Courts of First Instance	15 **	74	43
Labor courts	1	6	6
Juvenile courts	1	2	1
Administrative courts	1	10	4 ***
Courts of Appeal	5	30	13
Supreme court	1	12	4

* The 181 Justices of the Peace are located in the 137 communes of Haiti for 2003.
** The Courts of First Instance of Miragoâne, Côteaux and Croix-de-Bouquets created by the law of April 10, 2002[47] were not functional during the judicial year 2002 - 2003.
*** The Decree of November 4, 1983 on the Superior Court of Auditors and Administrative Disputes uses the word "Auditor" to designate the members of the prosecution before this court.

A total of 573 judges operate in 205 legal jurisdictions serving a population of approximately eight million Haitians.

B. Excessive Cost of Justice

Court expenses constitute a serious handicap for a broad sector of the Haitian population whose monthly income does not exceed 2,100 gourdes, the equivalent of 45 US dollars. Travel expenses for Justices of the Peace for reports, writs, opinions of experts, court fees, taxes, lawyer and notary fees, etc. discourage citizens from referring to courts to defend their rights.

46 Decree of November 1961, article 6, creating the Juvenile Court of Port-au-Prince, *Moniteur* No.108, November 20, 1961
47 *Moniteur* No.55, July 11, 2002

The decree of September 29, 1985[48], establishing court fees, though no longer corresponding to the current reality, has never been applied. Judicial professionals set their own fees and expenses without any legal reference. This untenable situation affects mainly the poorest.

The mere recording of an incident not far from the seat of a tribunal costs about 2,500 gourdes. Judicial Police officers claim travel expenses to certify officially the death of an individual killed in a public place.

It costs as much as 500 gourdes to draw up a writ. The price of a writ to order the liberation of a detainee varies according to the bailiff's perception of the interested party's financial capacity or social status. In any case, the minimum price is 500 gourdes.

The situation is similar at the level of the Clerk's Offices. Certain Courts of Peace clerks do not hesitate to request 2,500 gourdes for a copy of a judgment.[49] The amount increases in higher courts. Moreover, no receipt will be given to the litigant in exchange of payment.

Notaries are governed by the Decree of November 27, 1969.[50] This completely obsolete text is no longer followed as far as tariffs are concerned. Every notary sets his fees unilaterally. Those of the jurisdiction of Port-au-Prince grouped in ASNOP[51] have agreed to set a uniform rate.

Despite the clear provisions of article 58 of the Decree of March 29, 1979 regulating the legal profession,[52] certain colleagues set their fees arbitrarily. Many complaints have been addressed to the Disciplinary Board of Lawyers of Port-au-Prince on this issue.

The surveys carried out in the course of this study reveal that many people cannot defend their rights because of excessive court costs. At least two cases are worth mentioning:

1. Jean Dumond Alcine obtained an order from the Special Labor Court ordering his employer, the Lion King Security Company, to pay the sum of 20,370 gourdes, the work benefits to which he was legally entitled. The worker had to abandon the procedure because he could not pay 2,500 gourdes to the bailiff.

2. Sony Zephir was condemned to 11 months of imprisonment by the Correctional Court of Port-au-Prince on April 19, 2002, with benefit of the Lespinasse law. Upon completion of the sentence, the judgment was forwarded to the Public Prosecutor's office for appropriate legal action. Unbelievable as it may seem, approximately 12 months after the notification was sent to the Public Prosecutor's office Sony Zephir was still detained in the National Penitentiary because he could not pay 250 gourdes to a bailiff to confirm the release order to the National Penitentiary. He was finally released on July 7, 2003, thanks to the generosity of a third party.

48 *Moniteur* No.69, September 30, 1985

49 According to article 94 of the Decree of August 1995, the judgments rendered by Justices of Peace are called "**decisions**".

50 *Moniteur* Nos.113 and 114, November 27 and December 1, 1969

51 Notary Association of Port-au-Prince

52 Article 58 (The lawyer) is entitled to payment for services rendered. He can charge a fee without contravening professional ethics. Unless stated otherwise, his fees will be 20% of recovered debts and of judgments that can be monetarily evaluated. In case of an amicable settlement, before any hearing, the fees are limited to 10%. The same is true for the recovery of mortgage claims with «clause de voie parée». A lawyer may not claim fees for *pro bono* cases referred by members of the Bar Association.

C. Poor Functioning of Public Services

Insufficiencies due to the poor functioning of public services must be added to the sparse geographic distribution of courts and the excessive costs of justice. In many cases, access to justice runs up against obstacles due to the lack of collaboration between certain administrative entities and the Judiciary. In other words, it can be said that the "**public service**" of justice is, in itself, faulty.

Investigative judges of various jurisdictions of the country claim that certain files lag behind because institutions such as the public hospitals, the Public Record Office, and the Traffic Violation Office, do not comply with the orders addressed to them. This attitude is interpreted by many as a sign of contempt for public administration as it relates to justice, which is often powerless to react.

The laxity and lack of interest of judicial police officers can sometimes bring criminal proceedings to a standstill. In 2003, for example, those who have tried to open investigations into the violent deaths of relatives have been frustrated in their efforts because the very actors in the criminal justice chain have openly showed their lack of interest.

Under these circumstances, plaintiffs are eventually forced to give up their complaints, and the case is closed.

JIP.7: Fair and Effective Enforcement of Judgments

Unsatisfactory: While there are clear standards for the fair and effective enforcement of both domestic and international judgments, these standards are often set aside to the benefit of illegal practices when it comes to the enforcement of domestic judgments. Enforcement is *de facto* subordinated to the approval of the Executive through the requirement of the "blessing" of the public prosecutor. Haitian Public Prosecutors cling very jealously to this "**contra legem**" practice of conditioning the enforcement of court decisions to the exequatur. Moreover, while there are no other significant obstacles to the enforcement of civil judgments apart from monetary judgments against the State which are rarely enforced, the same is not true of criminal judgments where there are significant problems in the execution of certain decisions, especially those ordering the release of poor or political detainees.

The enforcement of decisions rendered by the judge, following a lawsuit, is not only a judicial guarantee but also a positive demonstration of State sovereignty and power.[53] In principle, Haiti is no exception to this rule. Justice is rendered "**in the name of the Republic**"[54], and judicial and constitutional provisions set out the modalities and procedures to enforce decisions of the judiciary.

Decisions rendered abroad are enforced according to special provisions established by article 502 of the Civil Procedure Code. Under the terms of this text, the enforcement of foreign decisions is subordinated to the existence of Treaties between Haiti and the States wherein these decisions were rendered.

However, the abovementioned standards are often set aside to the benefit of illegal practices. The enforcement of court decisions in all matters is subordinated to the blessing of the public prosecutor of the First Instance Court, an authority hierarchically subordinated to the Executive. This "**invaluable**" authorization is given in the form of an order wrongly called "***exequatur***", an old practice inherited from the 1915 American occupation and reinforced by an extensive and erroneous interpretation of the laws.

The legislation in force certainly assigns the public prosecutor a key role in the enforcement of the judgments rendered by the courts and tribunals. But this relatively limited role consists only in giving support, via the police, to enforcement operations in cases of unjustified resistance to the bailiff enforcing the judgment, according to the terms of the executable mandate established by article 284 of the Civil Procedure Code.[55]

Article 29 of the Decree of August 22, 1995 specifies, moreover, that the public prosecutors must ensure that laws and judgments are enforced.

It is obvious that under these conditions one of the public prosecutor's legal mandates is to guarantee that court decisions are respected and effectively executed. An attribution, so clearly defined, should never be confused with the concept of *exequatur* as used in diplomatic and consular law and in the case of enforcement of a foreign judgment on national territory.[56]

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53 Judicial recourses (appeals, opposition, etc.) are the only derogations to the principle of enforcement.

54 Decree of August 22, 1995, *Op. Cit.*, article 58

55 Article 284 CPC: Judgments are introduced by "*In the name of the Republic*" and will be closed by the following phrase: "*It is ordered to all bailiffs, hereby required, to execute this judgment; the Public Prosecutors before the Civil Tribunals to assist; of all Police chiefs and officers to resort to force, when legally required to. Accordingly, the minute of this judgment has been signed by judge so and so and the Court Clerk.*"

56 Charles DEBBASCH, Yves DAUDET et co, Lexique de politique Dalloz [Political Lexicon Dalloz], 1988. *Exequatur* is defined as: **1)** legal order of the accrediting State which grants a Consul his quality of Diplomatic Agent and authorizes him to carry out his functions; **2)** order by which a State organ gives executable force on its own territory to an act adopted in a foreign country.

On the other hand, the public prosecutor plays a more important role when it comes to the enforcement of arbitral awards. Under articles 972, 973 and 974 of Civil Procedure Code, arbitral awards are sent to the public prosecutor before the arbitrator's decision is sent to the Justice of the Peace or the Chief Judge of the Civil Court of the place where the award will be enforced. The public prosecutor can, in such cases, appeal the arbitrator's award or even oppose its enforcement (CPC, article 973).

In spite of what is stated above, Haitian public prosecutors cling very jealously to this "**contra legem**" practice of conditioning the enforcement of court decisions to the *exequatur*. Problems related to *exequatur* in the practice of Public Prosecutors vary according to whether the decision is rendered in a civil or penal dispute.[57]

I. Enforcement of Judgments in Civil Matters

Generally, in civil cases, *exequatur* is easily obtained. The only obstacles likely to block the enforcement of these decisions would come from the party against whom the decision was rendered. In this case, the means of execution indicate which procedures must be followed. Article 754 of the Civil Procedure Code gives judges in summary proceedings jurisdiction to rule on disputes arising from the enforcement of an executable title. This type of procedure is used, for example, in the enforcement of judgments evicting unlawful tenants or occupants.

It is interesting to note that monetary judgments against the State are rarely, and only with great difficulty, enforced[58], due to the principle of prohibition of ordinary enforcement procedures against public entities. However, our research did not identify this principle under Haitian law. On the contrary, article 181-1 of the Constitution of 1987 has enshrined the principle of the enforcement of the judgments of courts and tribunals without distinction between public entities and individuals.

II. Enforcement of Judgments in Penal Matters

The enforcement of judgments rendered in penal matters[59] faces two types of obstacles. The public prosecutor's *exequatur* may be rejected either on technical and administrative grounds or on political grounds.

A. Refusal of the *Exequatur* on Technical or Administrative Grounds

In cases of prolonged preliminary detention in which the detainee benefits from the law of December 4, 1893 known as the "Lespinasse Law", the public prosecutor refuses his *exequatur* if the judge neglects to mention expressly that the aforementioned law shall apply.

Various cases have been recorded:

1. The decision of June 5, 2002 sentencing Joel Baptiste, detained since December 8, 2000, to one-year imprisonment.

2. The Correctional Tribunal's decision of June 18, 2003, sentencing Alfred Dorelien, detained since August 2, 2000, to two-year imprisonment.

57 During judicial year 2002-2003, no obstacles to the enforcement of administrative judgments were recorded since the Court was not yet functional.
58 It is likely that some monetary judgments will be enforced based on corrupt or preferential relationships.
59 These are judgments ordering the release of detainees.

3. The Correctional Tribunal's decision of June 26, 2002 sentencing Exiles Delice, detained since February 22, 2001, to one-year imprisonment.

Another obstacle, of a technical nature, is exemplified by the decision sentencing a woman to a five-year imprisonment and a million gourdes in damages. The decision conditioned that the release of the sentenced person upon full payment of the damages. After five years, the Director of APENA blocked the public prosecutor's release order, on the ground that the civil party had not been satisfied. Because of the relevance of such a case, we will reproduce the holding:

> *"The Court, after examination, and having heard the Public Prosecutor, declares the accused, Marie Nicole SAINT-HUBERT, guilty of the crime of deprivation of the use of a limb, and condemns her to five-year imprisonment; also sentences her one-million gourdes in damages to be paid to the victim. Says that she benefits of the prerogatives of the law of December 4, 1893; also says that* ***the release of prisoner is conditional upon the full payment of damages awarded by the Court to the victim****. Appoints Mr. Monès Bonheur, Bailiff of the Court for the notification of this decision."*

Mrs. Marie Nicole Saint-Hubert has served her sentence. However, due to her inability to pay the damages, she is still detained at Fort-National prison in violation of article 7(7) of the Inter-American Convention on Human Rights[60] ratified by Haiti.[61]

B. Refusal of the *Exequatur* on Political Grounds

Aside from the purely technical or administrative difficulties mentioned above, the enforcement of judgments ordering the acquittal or the release of political personalities usually runs up against the resistance of the public prosecutor. Often, the *exequatur* is delayed or refused for unacknowledged reasons, which cannot stand up to legal analysis. Several such cases have been recorded, but the most recent is that of General Prosper Avril who had obtained a judgment from the Court of Appeals of Gonaïves, on October 22, 2002, worded as follows:

> *"For these reasons, the Court, according to supporting conclusions of the Public Prosecutor, hears the appeal on Wednesday October 2002, of the writ of Thursday September 19, 2002; all things considered, says that he has not been judged fairly and that the appeal is justified; therefore, invalidates the writ handed down by the first Judge; judging again, says and declares that this writ is not justified, that Prosper Avril, has been arbitrarily and illegally detained since April 12, 2002 in the National Penitentiary; therefore orders his immediate release to be executed at the minute of this decision, notwithstanding appeal to the Supreme Court or orders not to enforce; gives delegation to the President of the Court of Appeals of Port-au-Prince to appoint a bailiff of this Court to notify this decision."(SIC)*

The enforcement of this decision, which cannot in theory be stopped, even by an appeal in cassation, has not occurred to this day. Therefore, there is no doubt that the non-enforcement of the decision of the Court of Appeals of Gonaives is due to the fact that the beneficiary is a highly political personality.

In short, it is undeniable that by granting *exequatur* to the judgments ordered by the Courts, the public prosecutor usurped a right to which he is not entitled by law. However, it is admitted that, within the framework of the fight against "**judgments fabricated or falsified**" which are quite frequent, the authenticity of court decisions must be verified before their enforcement. It is a gap in the system that the legislature will have to fill by naming the legal authority entitled to carry out this validation.

60 *Op. cit.*
61 *Moniteur* No.77 of October 1, 1979

SECTION 4

JUDICIAL INTEGRITY PRINCIPLES GUARANTEEING EXPRESSION AND INFORMATION RIGHTS

It would not be possible to paint the picture of the State of the Haitian judiciary without an examination of the level of access to information available to the public and to judges. Our analysis leads us to conclude that there is virtually no access to reliable legal and judicial information either for the public or for judges. The situation is nonetheless improving with the multiplication of seminars and debates, primarily in Port-au-Prince, on legal and judicial issues.

This Section centers on the analysis of two closely-related Judicial Integrity Principles:

- JIP.17 Judicial Access to Legal and Judicial Information

- JIP.18 Public Access to Legal and Judicial Information

JIP.17: Judicial Access to Legal and Judicial Information

Unsatisfactory (improving): Judges have very limited access to legal and judicial information. Courts are not even receiving the *Moniteur* (the Haitian official journal) and their archives are in a dismal state. There is no widespread computer and internet access. There are however some signs of improvement in Port-au-Prince with the existence of a number of specialized legal libraries and the multiplication of conferences, debates and seminars on legal and judicial reform issues.

In addition to his academic training, the judge needs to be constantly informed on the evolution of the law, of related sciences, as well as of the decisions of other judges.

Haitian judges have, for some time now, managed to keep themselves informed on the latest legal developments. It is worth stressing that international organizations, the Ministry of Justice and some human rights associations have multiplied the number of conferences, debates and seminars.

In addition, there are several libraries specializing in law, such as the libraries of the Faculty of Law and Economic Sciences of Port-au-Prince, the EMA and the National Library of Haiti, as well at the library of the French Institute of Haiti. Several private organizations also have documentation centers: the Toussaint Louverture Center for Human Rights, the Platform of Humans Right Defense Organizations (PODH), etc. The public in general and judges in particular have access to these various research and documentation centers.

Within the framework of UNDP's justice project, particular emphasis was put on legal documentation for judges in three pilot jurisdictions throughout the country. In 2003, UNDP distributed 485 legal textbooks to Fort-Liberté (in the Northeast), 483 to Jacmel (in the Southeast) and 535 to Port-de-Paix (in the Northwest).

Similarly, this year UNICEF has also edited a book, compiling several international instruments on the rights of children. This international organization sponsored several seminars at the EMA, as well as in hotel conference rooms in the capital, to help promote the rights of children. UNICEF experts also held several training sessions for judges and the personnel of the Juvenile Court of Port-au-Prince.

It is unfortunate, however, that the libraries, resource centers and public debates on legal issues exist only in Port-au-Prince and a small number of cities outside the capital. Judges living in remote areas have no access to the legal information referred to above.

Courts still lack computers and therefore have no access to the Internet. This, today, is a severe shortcoming in terms of access to information.

Finally, it can easily be inferred from the above that one of the main problems remains the lack of legal documentation available within the various tribunals which do not even have a subscription to the "***Moniteur***",

the only official publication of decrees, laws and international treaties affecting the country.

JIP.18: Public Access to Legal and Judicial Information

Unsatisfactory (improving): While free access to judicial and legal information is guaranteed in principle, access in practice is extremely difficult, if not impossible, due to poor management and dismal storage and classification systems. There have been some marginal improvements for the public with the UNDP project and the multiplication of conferences and debates, but these are only noticeable in Port-au-Prince. This leads to the emergence of non-uniform informal law throughout the country.

To effectively enjoy their right to a fair trial, citizens need to be informed of legal procedures, of the organization of judicial personnel and even on Rule of Law issues in general. Being informed on what is being done within the judiciary is a fundamental requirement of democracy, intended to guarantee "**the public's right to know**". Public judicial debates have frequently been organized to that effect.

There is limited public access to judicial and legal information in Haiti, mainly through one-time official press publication. Citizens have never been barred from obtaining information related to the functioning of the judiciary or on the work of the legislature. The Constitution of 1987 (article 40) establishes that the State must **publicize in the press, in Creole and French, all laws, orders, decrees, and international treaties** in force in the country.

Court proceedings are public, and the Constitution establishes the principle of public judicial hearings.[62].

Court hearings and the clerk's Public Records Office are preferred sources of judicial information always open to the public. Nevertheless, it is extremely difficult to access documents held in the clerk's offices because of poor management, storage and classification system, which are far from meeting modern standards. There are no ordinary files and, of course, no electronic ones. The lack of equipment and basic legal materials, as well as adequate methods for recording proceedings, severely affects access to information.

On the other hand, the UNDP/Ministry of Justice Project is making some headway in solving this problem at the level of the clerk's office. A technical training program for court clerks at the EMA has begun. The huge task of classifying the documents of the First Instance Tribunal of Port-au-Prince is also underway.

Information on various legal issues has become increasingly available to the public during the past seven years, thanks to the substantial growth of law schools throughout the country (Port-au-Prince, Cap-Haitian, Gonaïves, Jacmel, etc).

Human rights associations, the Bar of Port-au-Prince, as well as international organizations have also held a series of training seminars, conferences and debates, in the past few years. In 2003, the public has attended the following debates:

1. A two-day scientific workshop on the Constitution of 1987 organized by the Center of Public Law directed by Professor Monferrier Dorval, on March 27 – 28, 2003;

2. A week of debates held at the Port-au-Prince Palace of Justice, coordinated by the Lawyer's Council in commemoration of Saint Yves in May 2003;

3. Information sessions of CARICOM delegates on the Caribbean Court of Justice, in May 2003;

62 Constitution of 1987, article 180

4. Information sessions on procedures to be followed before the Inter-American Commission on Humans Rights, at the initiative of the OAS in April 2003;

5. The conference on the laws applicable to the judiciary submitted to Parliament, organized by IFES on August 21, 2003;

6. The fourth session of the annual seminar on humans rights organized by the National Litigation Academy (ACNAP) in September 2003; and

7. Various meetings held by the Toussaint Louverture Center for Human Rights throughout the year.

However, the impact of these meetings and conferences is quite limited as most of them are held only in Port-au-Prince and in a few large cities. The majority of the population, living in remote areas, has no access to these activities. Therefore, the communal sections which are far away from cities having First Instance Tribunals are completely deprived of the judicial or legal information structures. The Law which is practiced in urban environments is not accessible to inhabitants of these Communal Sections who continue to refer to what Joseph Montalvo Despeignes calls "**Haitian informal law**"[63], mainly referring to traditional, customary rules. According to the author, a legal country and a real country coexist. This study, which goes back to 1976, is still valid.

On the other hand, the broadcasting of radio programs on legal issues in the past few years could have significant impact if encouraged and carried out on a larger scale. In Port-au-Prince, two programs stand out: one on radio Ginen (Thursdays at 5:30 pm) and the other on radio Vision 2000 (Fridays at 3:00 pm).

With a view to expanding legal knowledge throughout the country, the American Embassy in Haiti, through USAID, has distributed 47,000 books on democracy, justice and civic education between 2001 and 2003. The books have been distributed as follows:

- Ministry of Education 3,000
- High Schools 19,200
- National Democratic Institute (NDI) 23,800

NDI has redistributed the books to non-governmental organizations, community schools, high schools and

63 J. Montalvo DESPEIGNES, Le droit informel haïtien [Haitian Informal Law], Presses Universitaires de France, Paris 1976

groups active in civic education.

CHAPTER 4

KEY RECOMMENDATIONS, SUGGESTED REFORMS AND DEVELOPMENT PLANS

Taking into account the political environment which is fundamentally hostile to the emergence of an independent and impartial judiciary, these recommendations are aimed at establishing effective judicial independence, on the one hand, and, on the other, implementing judicial integrity principles for all citizens.

I. Recommendations Aimed at Establishing Effective Judicial Independence

A. Short-Term Reforms

- Restoring the facilities of the Courts of the Republic;
- Increasing the salaries of judicial personnel;
- Introducing training programs on ethics and judicial accountability for all judicial personnel;
- Providing Courts with furniture, equipment and basic office supplies necessary to the proper functioning of the judiciary; and
- Reinforcing and encouraging the National Association of Haitian Magistrates (ANAMAH).

B. Medium-Term Reforms

- Reforming the Decree of August 22, 1995 on the organization of the judiciary by harmonizing it with the Constitution of 1987 and reinforcing the criteria for entry into the judiciary;
- Reforming the Superior Council of the Magistracy so that the new institution would deal with all issues regarding judges and public prosecutors, from recruitment to retirement, including promotions, transfers, discipline, invalidity;
- Drafting and adopting the organic law of the Magistrates' school (EMA) by clarifying the criteria of recruitment of candidates and trainers and expanding training activities to clerks and bailiffs; and
- Drafting and adopting a Judicial Ethics Code.

C. Long-Term Reforms

- Guaranteeing tenure to the Justices of the Peace; and
- Reforming the function of prosecutor to make them fully independent from the Executive and attached to the Superior Council of the Magistracy.

II. Recommendations Aiming at Implementing Judicial Integrity Principles for All Citizens

A. Short-Term Reforms

- Reinforcing and implementing legislation on legal assistance;
- Updating the Decree of September 27, 1985 on legal fees;
- Reforming the Decree of November 27, 1969 on notaries to set notary fees in Haiti;

- Encouraging the use of the alternative dispute resolution (ADR) mechanisms such as Conciliation, Transaction and Arbitration to reduce the caseload of State judicial institutions;
- Establishing a judicial education program for the general public; and
- Organizing training seminars for Public Prosecutors, Judges in summary proceedings, bailiffs and police officers on the enforcement of judgments.

B. Medium-Term Reforms

- Reforming the legal profession by setting up new conditions to enter the profession and an examination for admission to the Bar;
- Abrogating the law of June 6, 1919, modified by laws of June 29, 1942 and of July 14, 1952 regulating Proxies and Law School Graduates;
- Creating pretrial judges [juge de la mise en état] to fight non procedural time limits;
- Creating execution of sentence judges to bridge the gaps of the Decree on APENA;
- Reforming procedures to settle administrative disputes in order to facilitate access to administrative justice and set the procedure of appeals to the Supreme Court in administrative and financial matters; and
- Reforming the Court of Cassation and the Courts of Appeals, by organizing them in Chambers or specialized sections.

C. Long-Term Reforms

- Increasing the geographic distribution of courts throughout the country;
- Reforming the civil registry to facilitate the determination of the identity of citizens before the courts;
- Modernizing legal procedures in civil, penal, commercial and administrative matters; and
- Reorganizing the judicial system either as a dualist system (separate courts of general jurisdiction and administrative courts) or as a unified system (no separate administrative courts).

Without the financial and technical support of the international community and a new conception of political

ANNEX 1

LIST OF ACRONYMS

ACNAP	: Académie Nationale de la Plaidoirie
ADR	: Alternative Dispute Resolution
ANAMAH	: Association Nationale des Magistrats Haïtiens
APENA	: Administration Pénitenciaire Nationale
ASNOP	: Association des Notaires de Port-au-Prince
CASEC	: Conseil d'Administration de la Section Communale
CSC/CA	: Cour Supérieure des Comptes et du Contentieux Administratif
EMA	: Ecole de la Magistrature
IACHR	: Inter-American Convention on Human Rights
ISC	: Initiative de la Société Civile
JIP	: Judicial Integrity Principles
MICAH	: Mission Civile d'Appui à Haïti
NDI	: National Democratic Institute
OAS	: Organisation of American States
UN	: United Nations
UNDP	: United Nations Development Program
PODH	: Plate Forme des Organisations de Défense des Droits de l'Homme
UNICEF	: United Nations Children's Fund
USAID	: US Agency for International Development

ANNEX 2

TABLES

TABLE 1
CRIMINAL CASE STATISTICS IN THE FIFTEEN (15) FIRST INSTANCE JURISDICTIONS, 2002-2003

Jurisdiction	Hearing Sessions	Cases Docketed	Cases Heard	Acquittals	Sentences	Cases Referred
Aquin	1	7	5	3	2	2
Anse-a-veau	1	5	5	2	3	--
Cap-Haïtien	1	6	6	2	4	--
Cayes	1	11	11	9	6	--
Fort-liberté	--	--	--	--	--	--
Gonaïves	1	7	5	3	2	2
Gde Riv. Du N	--	--	--	--	--	--
Hinche	1	9	6	2	4	3
Jacmel	1	3	3	2	1	--
Jérémie	--	--	--	--	--	--
Mirebalais	1	10	10	4	6	--
Port-au-Prince	1	20	15	9	8	5
Port-de-Paix	1	7	6	2	4	1
Petit-Goaves	1	1	1	1	1	--
St-Marc	1	6	2	1	1	4

NB: "--" no criminal hearing session for year 2002-2003

TABLE 2
CIVIL CASE STATISTICS IN THE FIFTEEN (15) FIRST INSTANCE JURISDICTIONS, 2002-2003

Jurisdictions	Cases Docketed	Cases Heard	Decisions Rendered	Cases Pending
Aquin	59	59	21	38
Anse-A-Veau	17	17	17	0
Cap-Haïtien	104	104	84	20
Cayes	69	69	69	0
Fort-liberté	--	--	--	--
Gonaïves	--	--	--	--
G. Riv. du Nord	39	39	6	33
Hinche	120	--	52	68
Jacmel	34	34	34	0
Jérémie	--	--	--	--
Mirebalais	--	--	--	--
Port-au-Prince	--	--	--	--
Port-de-Paix	81	61	26	55
Petit Goave	86	65	50	36
Saint-Marc	268	475	236	239

TABLE 3
ADMINISTRATIVE AND FINANCIAL CASE STATISTICS IN THE ACCOUNTS AND ADMINISTRATIVE DISPUTES SUPERIOR COURT, 2002-2003

Administrative Cases	Financial Cases	Cases Heard	Decisions Rendered	Cases Pending
59	3	0	0	62

NB: The Accounts and Administrative Disputes Superior Court has not been operational since January 2002. The ten-year tenure of the judges of the Court, since 1991, expired in December 2001. The appointment of new judges to the Accounts and Administrative Disputes Superior Court occurred only in June 2003, at the end of the judicial year.

TABLE 4
LABOR CASE STATISTICS IN THE SPECIAL LABOR TRIBUNAL, 2002-2003

Cases Docketed	Cases Heard	Decisions Rendered	Cases Pending
175	12	6	169

NB: It should be noted that the Special Labor Tribunal has ceased all activities since January 29, 2003 following the attempted murder of Judge Jacques H. Constant as he entered the courtroom. The other judges of the Tribunal have, since then, decided to stop their activities until the safety of the Tribunal can be guaranteed by the relevant authorities. This demand of the Judges had not been met at the end of the judicial year 2002-2003.

TABLE 5
STATISTICS OF THE CASES IN THE JUVENILE COURT OF PORT-AU-PRINCE, 2002-2003

Cases Investigated	Cases Referred to Court	Cases Dismissed
26	20	6

NB: Of the 20 decisions of referral, six cases will be tried before the Juvenile Criminal Court with jury and the remaining 14 in hearing at the Juvenile Tribunal. Given the lack of Juvenile Judges, no case has been heard during the judicial year 2002-2003. The 20 cases are therefore still pending.

TABLE 6
(CRIMINAL AND CIVIL) CASE STATISTICS IN THE FIVE (5) COURTS OF APPEALS, 2002-2003

Court of Appeals	Cases Appealed	Cases Heard	Judgments Rendered	Cases Pending
Cap-Haïtien	--	--	--	--
Cayes	27	12	6	21
Gonaïves	--	--	--	--
Hinche	40	24	17	23
Port-au-Prince	184	137	127	57

NB: During the course of this research, we were unable to contact successfully the Courts of Appeals of Cap-Haïtien and Gonaïves.

TABLE 7
STATISTICS REGARDING APPEALS TO THE COURT OF CASSATION, 2002-2003

Appeals in Cassation	Judgments Rendered	Cases Pending
116	80	36

NB: The data above includes all matters (civil, criminal, commercial, and labor).

ANNEX 3

ANALYTICAL EVALUATION OF THE LEVEL OF COMPLIANCE WITH THE JIP IN HAITI

JIP	SCOPE OF THE JIP (NAME OF THE PRINCIPLE)	COMPLIANCE*
1	Constitutional guarantee of judicial independence	
	Guarantee of the right to a fair trial	
	Guarantee of equality under the law	
	Guarantee of access to justice	
2	Institutional independence of the judiciary	
	Personal/decisional independence of judges	
3	Clear and effective jurisdiction of ordinary courts	
	Clear and effective judicial review powers	
4	Adequate judicial resources and salaries	
5	Adequate training and continuing legal education	
6	Security of tenure	
7	Fair and effective enforcement of court judgments	
8	Judicial freedom of expression and association	
9	Adequate qualification	
	Objective and transparent selection and appointment process	
10	Objective and transparent judicial career processes	
11	Objective, transparent, fair and effective disciplinary process	
12	Limited immunity from civil and criminal suit	
13	Conflict of interest rules	
14	Income and asset disclosure	
15	High standards of judicial conduct	
	Rules of judicial ethics	
16	Objective and transparent court administration	
	Objective and transparent judicial processes	
17	Judicial access to legal and judicial information	—
18	Public access to legal and judicial information	—

* The level of compliance with each Judicial Integrity Principle (JIP) or each subcategory of a JIP is coded as follows: light gray corresponds to "satisfactory"; dark gray to "partially satisfactory"; black to "unsatisfactory"; and white to "not analyzed". There is an additional nuance in the assessment of the level of compliance as arrows pointed upwards or downwards indicate, respectively, improvement or regression within one category.