CIGI

SECURITY SECTOR REFORM MONITOR

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INSIDE

INTRODUCTION AND BACKGROUND

Since the end of the Duvalier era in 1986, Haiti has been engaged in a lengthy and arduous political transition. The last ruler of the Duvalier dynasty, Jean-Claude Duvalier, fled the country amid an economic and political crisis spurred by a crippling recession and a massive popular movement demanding democratic change. A new constitution in 1987 launched the transition process and affirmed the Haitian state's commitment to liberal, representative and participatory democracy (Jadotte and Pierre, 2008: 89). The National Governing Council (CNG)[1] was tasked with forging new national institutions and establishing a decentralized state apparatus favouring self-governance at the local level. However, the political turmoil that became the norm in the two decades that followed the promulgation of the constitution, marked by numerous coups and counter coups, dampened popular enthusiasm and optimism for reform. Seventeen different governments[2] ruled Haiti between 1987 and 2009, a testament to the fragility and volatility of the Haitian polity.

When the new constitution came into effect in 1987, the Haitian security and justice sector was weak and fractured. The army was intent on playing an internal policing

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[1] The CNG was composed of three members: one civilian and two military.

[2] This figure refers to the number of successive administrations following the collapse of Jean-Claude Duvalier's rule. It includes provisional authorities (e.g. Ertha Pascal-Trouillot, March 1990 – February 1991; Joseph Nerette, October 1991 – July 1992; Emile Jonassaint, May – October 1994; Boniface Alexandre, February 1994 – May 2006), an acting president (e.g. Mark Bazin, June 1992 – June 1993), multiple accessions to the presidency (e.g. Jean-Bertrand Aristide, 3 times; Rene Preval, twice) and a military junta led by Raoul Cedras from September to October 1991.

ABOUT THE SSR MONITOR

The *Security Sector Reform Monitor* is a quarterly publication that tracks developments and trends in the ongoing security sector reform (SSR) processes of five countries: Afghanistan, Burundi, East Timor, Haiti and South Sudan. Every quarter, there will be separate editions for each case study country. Adopting a holistic definition of the security sector, the *Monitor* will cover a wide range of actors, topics and themes, from reforms in the rule of law institutions and armed forces to demilitarization activities and the role of non-statutory security and justice actors.

Research for the *Monitor* is field-based: a resident researcher in each case study country leads data collection and analysis, with support from desk-based analysts at The Centre for International Governance Innovation (CIGI). The same research guidelines are employed for each country. All editions of the *Monitor* are subjected to an external peer review process in addition to our rigorous internal editorial review.

STAFF

Mark Sedra	Managing Editor
Isabelle Fortin	Field Researcher, Haiti
Carla Angulo Pasel	Project Coordinator
Cesar Jaramillo	Research Assistant, Haiti
Josh Lovell	Copy Editor
Jessica Hanson	Publications Assistant
Steve Cross	Layout & Design

role, the judicial system was corrupt and ineffective, and the local and national governance institutions were incapable of asserting democratic civilian control of the sector. This adverse situation, coupled with the emergence of a wide-reaching popular movement for change, paved the way for the election of a charismatic leader with a progressive agenda in 1990. Although greeted with high hopes by many inside and outside Haiti, Jean-Bertrand Aristide's presidency was short-lived, ending nine months later at the hands of a military coup supported by the national elite. The coup leaders held on to power for three years but were never able to secure the recognition of the international community or gain broad domestic legitimacy. By 1994, they succumbed to domestic and international pressure to hand power back to Aristide, who returned to Haiti escorted by the American military.

Aristide quickly demobilized the army and created an Interim Public Force to fill the void until a new Haitian National Police (HNP) service could be developed. The most impoverished country of the Western Hemisphere, Haiti remained an international priority for the better part of the 1990s. Eight UN peacekeeping missions were deployed there between 1991 and 2004, all with similar mandates to build, consolidate and/or stabilize Haiti's nascent democratic institutions. Critical among these institutions were the HNP, the judicial system, the penitentiary administration and the office of the ombudsman.

After his widely contested re-election in 2000, Aristide began to display the authoritarian tendencies that characterized previous regimes. Security and justice sector institutions were increasingly politicized; numerous judges, *commissaires du gouvernement* (prosecutors) and high ranking police officers were promoted to senior positions on the basis of their loyalty to Aristide's party, the Lavalas, rather than their credentials. The opposition was increasingly repressed by politicized factions of the HNP and by irregular armed groups supportive of the government.[3]

By late 2003, a united opposition movement (*the Groupe des 184*), comprising political parties, civil society actors as well as the private sector, called for the president's resignation. Diplomatic initiatives of the Caribbean Community (CARICOM) and the Organization of American States (OAS) failed to resolve the deepening political crisis. The Aristide government sought to quell resistance by distributing small arms and ammunition to its supporters. In addition to armed uprisings by former members of the armed forces in the North and Central Plateaus and armed groups in the city of Gonaïves, thousands of average Haitians took to the streets to protest the regime's human rights abuses and the slow pace of democratic development. Violent attacks perpetrated against protestors by armed Aristide loyalists, known as *Chimères*, failed to deter protesters. The crisis reached its climax in February 2004 when the emboldened national opposition forced Aristide, now bereft of American support, into exile once more. Many Carribean and Latin American countries would subsequently question the circumstances surrounding Aristide's departure; with some, including Aristide himself, claiming it was a US-sponsored coup. One of the many enduring legacies of this crisis was the destruction of the country's security infrastructure. Following the unrest, "it was established that 125 commissariats needed to be rehabilitated and 75 needed rebuilding" (Mobekk, 2006: 12).

After the fall of the Aristide regime, the United Nations Mission for the Stabilization of Haiti (MINUSTAH) was established under Chapter 7 of the UN Charter. The UN Security Council Resolution authorizing the mission recognized that the situation in Haiti was "a threat to peace and international security in the region" (United Nations Security Council, 2008: 3). As with previous UN missions, MINUSTAH's mandate includes robust provisions for institution building and reform.

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[3] The processes of reform in the various branches of the sector date back to the late 1980s. Since then, there have been over ten heads of state that brought with them their own teams and cabinets. Revolving ministers and senior civil servants hindered the implementation of reforms (Jadotte and Pierre, 2008: 95).

CIGI SPOTLIGHT

E-Conference on The Future of Security Sector Reform

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After more than 15 years of international engagement, it is important to assess the effectiveness of international assistance to Haiti. The number of UN missions alone is a telling indicator of poor performance, even though some modest gains have been achieved (Morin, 2009: 8). However, the failure of previous UN missions can be attributed as much to the recurring political crises that have gripped Haiti, coupled with the predatory tendencies (to use Robert Fatton's description) of some Haitian political and economic elites, as to the inadequate and ineffective strategies of the international community (Pierre-Louis, 2004). One of the principal lessons learned from the past two decades of international intervention in Haiti is that early and premature withdrawals are counterproductive and can squander progress made building institutions and advancing reform (Mulet, 2007: 5).

Current security sector programs launched since the deployment of MINUSTAH in 2004 can be described as part of a second wave of SSR. The first wave began following the return of constitutional order in 1994. A Presidential Commission for the Monitoring of the Implementation of Justice Reform estimates that between 1994 and 2008, approximately US$100 million was spent in the security sector. These funds were used for, among other initiatives, human rights monitoring and the training of judges and police officers (Commission présidentielle de suivi de la réforme de la justice, 2007: 11). Despite this considerable investment, Haiti's security sector remains dysfunctional in many areas. Among the reform activities being advanced in the security sector are: the development of the HNP; the strengthening of the justice system; the development of systems to monitor and control Haitian coastlines and the porous land border with the Dominican Republic; and the advancement of a disarmament, demobilization and reintegration program. One of the overarching goals of the process, to which all these programs contribute, is the restoration of public confidence in the security sector.

WHERE THERE'S A WILL...

In 2007, the second Préval government released a national strategy for SSR in its *Growth and Poverty Reduction Strategy Paper* (DSNCRP). While the government boasted of the participatory nature of the process to create the national strategy, a number of civil society actors complained of a lack of public consultations. The government created specialized commissions at the ministerial level to engage segments of the public in SSR planning and program development. While most of the commissions completed their work, the quality and utility of their outputs has been mixed. The government drew heavily from some commission reports to inform reform planning and implementation while others have largely been marginalized or ignored (Civil Society Representative, 2009).

Despite the seemingly strong government commitment to SSR as expressed in the DSNCRP, the level to which the process is domestically driven is questionable (Magloire, 2008). Haitian national actors may publicly espouse a commitment to the reform process, but have demonstrated ambivalence towards implementation. This can partly be attributed to a widely held perception that many SSR initiatives are being imposed as part of an external agenda, rather than an organic, Haitian-led reform process (Civil Society Representative, 2009a). A recent study of the police reform process highlights this ownership deficit by detailing the way in which the first plan on police reform, designed with donor assistance, was perceived by local actors, including the general director of the HNP, the local media and political elites. Many of these local stakeholders saw the plan as an attack on the sovereignty of the institution, prompting the drafting of a second plan through a more inclusive process. Despite this more inclusive approach, the government has done a poor job in disseminating the plan to rank-and-file officers (Fortin and Pierre, 2009).

Assistance for SSR is hardly balanced or uniform in Haiti. Initiatives in some areas, such as the police, are endowed with an abundance of resources provided by donors with committed local partners. Resource deficits plague other areas, the prison system chief among them, where international and national actors have been poorly coordinated. Multiplying and at times overlapping SSR projects have created waste, stretched finite resources and stressed an already weak public administration (Mulet, 2007: 3). The Haitian state, already overburdened and overwhelmed by the multitude of external actors offering unique approaches and advice, has experienced difficulty in setting priorities and asserting control over donor support. There are currently 22 coordination groups across the sectors covered by the DSNCRP. Each of those groups includes representatives from: the Haitian government, MINUSTAH, the UN country team, key donors, and local and international NGOs (Morin, 2009: 47). While the quality and effectiveness of these groups vary, the justice sector coordination group, in operation since 2005, functions particularly well, according to its members and outside stakeholders.

Haitian authorities have long complained that the ineffectiveness of donor programs in the security sector can be attributed to inadequate donor understanding of Haitian society, and a proclivity among aid providers to impose foreign solutions out of touch with local realities. Donors have acknowledged this problem in Haiti and other contexts, as the adoption of the Paris Declaration on Aid Effectiveness (2005) and the OECD Development Assistance Committee's handbook on SSR attest. While local actors continue to deplore the actions and methods of some donors, they cannot evade all responsibility for the setbacks and obstacles encountered since the launch of the first wave of reform in the late 1980s.

JUDICIAL REFORM

Haiti's judicial reform process effectively began in 1998 with the passing of a law on the reform of the judiciary. It opened all parts of the system to review and restructuring. Moreover, it called for the revision of judicial procedures, legal codes and operational guidelines. By 2000, despite codification of this process, both donors and national stakeholders deplored the politicization of the court system and the dearth of progress made to advance the reform agenda. Loyalists to the ruling party had routinely been appointed to key positions in the rule-of-law institutions, regardless of their qualifications.

Donor aid to the justice sector has focused primarily on training, equipping and strengthening administrative structures. For a short period after 2000, there was a noticeable improvement in the quality of judicial services in Haiti. This improvement could be attributed to the influx of new *Juges de Paix* (Justices of the Peace) and *Commissaires* (prosecutors) that graduated from the new school for magistrates and other donor-supported training programs (Senior Program Manager, 2008). However, many of the problems outlined in a 1997 USAID report on the justice system are as relevant today as they were more than a decade ago:

> The judicial sector…has serious weaknesses, including a lack of independence from the executive branch, outdated legal codes, cumbersome judicial proceedings, personnel shortages, inadequate infrastructure and equipment, and ineffective internal oversight (USAID, 1997: 4).

Presented to the US Congress, the report concluded that the judiciary suffers from deep-seated corruption and serves only a small portion of the population, criticisms that remain salient in contemporary Haiti (USAID, 1997: 14). Numerous other national and international studies

and reviews conducted over the past decade have reached similar conclusions, highlighting the dysfunctional nature of various aspects of the Haitian judicial system. Many reports included proposed action plans for reform. A common element of all these studies was recognition of the need for long-term structural change.

Perhaps the most significant recent development in terms of reforming and strengthening the judicial sector in Haiti was the passage of three laws by the Haitian parliament in November 2007 which created the Superior Judicial Council; mandated the new body to devise rules for training, recruiting and disciplining magistrates; and regulated the magistrates school. Taken together, these three pieces of legislation created the legal and institutional foundation for reform of the judiciary.

Reflecting the deep problems of the justice sector, President Préval has yet to appoint a new president of the supreme court, a position that has been vacant since 2004. Civil society organizations have been unsparing in their criticism of the president for his inaction on this issue (Civil Society Representative, 2009b). A new justice minister, Jean-Joseph Exumé, was appointed to office in November 2008, a post he held during Préval's first term as president in 1998. Encouragingly, during his first days in office, he convened all the stakeholders in the sector to devise better mechanisms for coordination and collaboration (Senior Program Manager, 2008).

PENITENTIARY REFORM

The Penitentiary Administration – the first civilian prison system in Haiti's history – was created in 1995. In June 1997, a presidential decree established it as a directorate under the auspices of the HNP. Between 1995 and 2003, general conditions in the country's prisons improved and rudimentary training was provided for penitentiary personnel. Twenty-one prisons, holding 3,640 inmates, were

operating in 2004. During the upheaval that led to Aristide's departure in 2004, the bulk of the prison population escaped and prison facilities were either looted or destroyed. Despite the rehabilitation of 17 detention centers between 2004 and 2008, prison infrastructure remains poor (UNDP, 2008). This can largely be attributed to a lack of donor interest in underwriting the overhaul of the system.

Overcrowding, poor health and sanitation conditions, and extended pre-trial detention periods are the most pronounced problems facing the prison system. According to a report of the OAS, many inmates are "detained for periods longer than the possible sentences for the crimes of which they are accused" (OAS, 2007). Haitian prisoners are not granted a timely trial, either; "the current median stay for pre-trial detainees is 20 months" (Institute for Health and Democracy in Haiti, 2008: 5).

POLICE REFORM

Most Haitians consider policing and punishment to be linked. The crisis of confidence in the justice system has led many Haitians to expect and even to advocate for a punitive as well as a protective role for the police, overriding both the courts and the judiciary police. Under previous regimes, the judiciary was subordinate to the military and security forces and, at times, justice officials were implicated in abuses perpetrated against the population (MICIVIH, 1996). The founding of the Haitian National Police (HNP) in 1995 – a new police service independent of the army and imbued with a mandate to serve and protect the population – created an opportunity to restore public confidence in the police and to forge a new constructive relationship between the police and the judiciary (Article 30, Law for the Creation, Organization and Functioning of the National Police).

National and international support for the HNP diminished substantially during Aristide's second term as president, when he sought to bring the institution under his control

OVERVIEW OF HAITI'S SECURITY ENVIRONMENT

Haiti continues to face high levels of violence and insecurity, primarily criminal in nature. Much of this violence has been concentrated in urban areas, most notably Port-au-Prince, Gonaïves, Cayes and Cap Haitien. Criminal gangs represent one of the foremost threats to public order and are engaged in a range of activities from theft and vandalism to drug trafficking and kidnapping.

Kidnapping has become an industry in Haiti. In the five years since MINUSTAH deployed in 2004, kidnapping "has been transformed from a quickly executed, crude source of finance for gangs into a more sophisticated operation involving improved communications and skilful deception of authorities" (ICG, 2008: 3).

Figure 1: Kidnapping Cases Reported to UNPOL
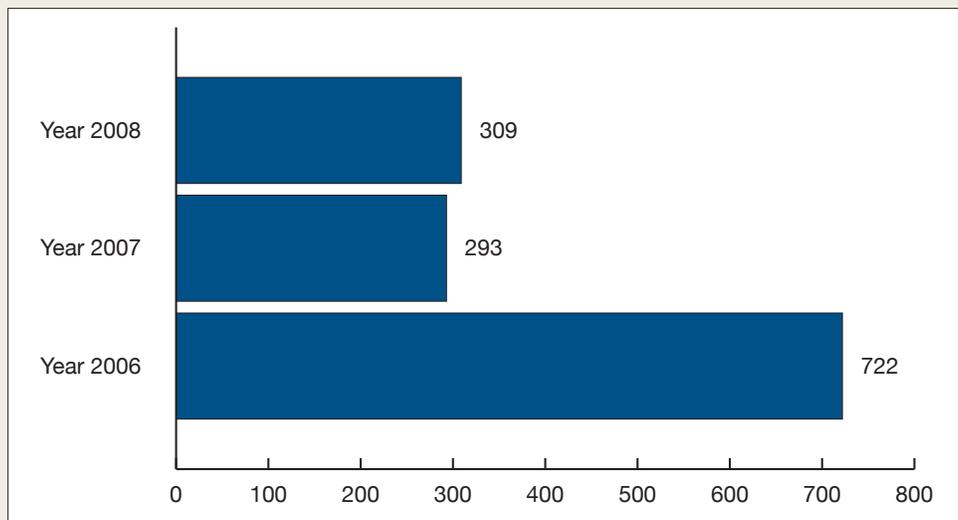
Source: UNPOL Reporting Unit, MINUSTAH, 2008

Spoilers in Haiti, defined as actors or groups engaged in criminality and anti-state activity, include: street gangs, drug traffickers, organized crime, former members of the disbanded Haitian Armed Forces and deportees (most of whom were repatriated from the United States and Canada). The latter have aroused considerable controversy; the deportee label often carries a social stigma, as many deportees to Haiti were forced out of their previous countries' of residence as a result of criminal activity. In 2007, over 100 deportees arrived in Haiti every month from the US alone (Bracken, 2007). The Haitian government lacks the resources to accommodate the returnees, many of whom experience great difficulty re-integrating into Haitian society. According to a September 2008 report of the International Crisis Group (ICG), deportees "have few, if any, relatives in Haiti and often do not speak Creole" (ICG, 2008: 5). The absence of robust government or international assistance to facilitate the reintegration of returnees, coupled with their weak roots and tenuous status in Haitian society, has prompted many deportees to resort to criminal activities.

through a string of politically motivated appointments. Between 1995 and 2000, the bulk of international assistance to the HNP came from the United States and Canada. While significant progress was made to build the capacity of the body during this period, it continued to face a host of problems ranging from equipment and human capacity shortfalls to administrative weakness. The

A new reform plan for the HNP was introduced in 2006. Like previous plans, it emphasized police training, the provision of equipment and the rehabilitation of vital infrastructure. The HNP is expected to grow rapidly, reaching a personnel ceiling of 14,000 by 2011. Nine thousand officers were in uniform and on duty by the end of 2008, but it is unclear whether the HNP will be able to meet its force target.

Haitian police rescue a woman from gangsters June 27, 2005 in the Bel-Air slum of Port-au-Prince. UN troops backed up by Haitian police have increased the number of raids in areas of Port-au-Prince amid a trend of violence and kidnappings in the Haitian capital, partially blamed on supporters of former president Jean Bertrand Aristide, who fled the country amid a popular uprising in February 2004.
Photo © THONY BELIZAIRE/AFP/Getty Images

deficiencies of the HNP were starkly revealed during the tumultuous overthrow and exile of Aristide in early 2004, when numerous police stations were looted or destroyed and many police officers deserted their posts. The HNP was proven wholly incapable of fulfilling its mandate.

The reinvigorated *Inspection Generale*, or Internal Affairs branch, is spearheading a vetting process throughout the HNP. Preliminary results have yet to be published, despite the subjection of up to half of the force to the process. According to the International Crisis Group (ICG), "the

vetting of the approximately 9,000 active-duty HNP officers has been much too slow and insufficiently transparent to address concerns that individuals responsible for human rights violations and corruption remain in the force" (ICG, 2008: i). Perhaps more troubling than the slow pace or lack of transparency of the process is the government's failure to enunciate its intentions for officers found unfit for service.

Serious attention has been devoted to ensuring that the HNP respects fundamental human rights, a key to earning the trust and respect of the Haitian people. All members of the HNP receive nine hours of human rights training and a 16-hour course on human dignity (Police Nationale d'Haiti, 2007). Moreover, HNP policy stipulates "all police officers shall receive a copy of the rules and procedures, as well as the disciplinary and ethical codes related to the respect of the Human Rights of individuals" (Police Nationale d'Haiti, 2007). One of the most significant steps taken to embed human rights principles in the security sector has been the strengthening of the *Inspection Generale*, mandated to provide oversight of the HNP. However, "the HNP continues to face serious internal problems, including accusations of brutality and complicity in crimes, particularly related to drug trafficking and kidnapping. Files sent to the courts are ill-prepared, while stations in the departmental capitals and rural areas are often understaffed and lack equipment" (ICG, 2008: 8).

The Haitian security environment has shown signs of improvement over the past year, due in large part to the gradually increasing number of trained and equipped police officers patrolling the streets. Ironically, the recent successes of the HNP and MINUSTAH (2007-2008) in curbing urban criminality, which led to increased arrest and detention rates, have clogged the already dysfunctional courts and added pressure on the weak penitentiary system.

Although the performance of the police has undoubtedly improved, the bulk of policing and security operations are still carried out by MINUSTAH and its police units, proving that the Haitian security forces are still not capable, despite their increasing numbers and professionalism, of asserting a monopoly over the use of force (Morin, 2009: 67). The 2,053 UN police deployed to Haiti as part of the MINUSTAH mission will continue to provide a critical buffer for the HNP until it reaches full capability (MINUSTAH, 2009).

The presidential commission tasked with pressing forward on public security resumed its work in September 2008, issuing recommendations to continue professionalizing the HNP, reinforcing the judiciary police and developing closer links between the police and judiciary (Senior Haitian Government Official, 2009). It also called for the establishment of a special police unit trained to carry out sensitive and tactically demanding assignments.

CONCLUDING OBSERVATIONS

One of the overriding issues confronting the Haitian SSR process, likely dictating its outcome, is the dilemma of national ownership. The degree to which the Haitian government and society has owned and led the process has been limited at times. Although Haitian political leaders have consistently expressed their support for the process, the broad consensus among domestic actors remains that the reform agenda is being imposed from outside (Senior Program Manager, 2008; Civil Society Representatives, 2009). Until this ingrained suspicion can be reversed and genuine political will for reform nurtured, SSR policy makers will be hard-pressed to succeed.

Two languages are recognized in the Haitian constitution: French and Creole. The majority of the population speaks only Creole while justice is served solely in French. The failure of the security and justice institutions to embrace the linguistic and educational dualities in Haitian society means that only one constituency, a minority at that, has

full access to justice. Considering that a significant portion of the population already lacks access to justice due to the absence of *commissariats* and *tribunals* (police stations and courts) in many communities, this language problem is all the more dire and potentially explosive.

Many Haitians perceive justice as a business rather than a service. The men and women that work in this sector often lack the morale or motivation to alter this perception and improve the effectiveness of a system that lacks the necessary incentive structures and *espirit de corps* to stimulate lasting change. Corruption, cronyism and incompetence are rampant, further undermining the state's ability to earn the trust of the population.

A week does not go by without the press reporting on political tensions between the institutions engaged in the security sector: the executive, parliament, the judiciary and the police. For instance, the three laws that constitute the legal framework for the justice reform process were presented to parliament for ratification in 2007, only to be met by opposing legislation tabled by parliamentarians. Only after contentious negotiations between the executive and legislative branches did the law pass. The episode revealed a fundamental disconnect on security and justice policy within the Haitian state and the lack of a unifying vision for the future of the security sector. Drafting a national security policy, currently lacking in Haiti, through a broadly consultative process could achieve the unity of vision and purpose needed in the security sector.

The SSR process has gained some momentum over the past two years. This progress can be attributed to the widely held perception in Haitian society that the status quo – marked by high levels of violence, criminality and a culture of impunity – is unsustainable and can only be addressed through institutional transformation. No class or constituency in Haiti has been spared from the insecurity that has engulfed the country in recent years. The threat of kidnapping for ransom, for example, looms over all Haitians: small scale businessmen, the *petite marchande* and the wealthy elite. As a result of this common experience, a critical mass of willing and pro-active national stakeholders is emerging. It is critical that SSR policy makers seize this window of opportunity for reform.

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57 Erb Street West, Waterloo, Ontario N2L 6C2, Canada
tel +1 519 885 2444   fax +1 519 885 5450
www.cigionline.org