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A New Era for Justice Sector Reform in Haiti

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A New Era for Justice Sector Reform in Haiti

Christopher Stone*

I.

Could the rule of law and the administration of criminal justice be entering a new era in Haiti, even as the nation begins to recover from the disastrous earthquake of January 2010? This is, surprisingly, a reasonable hope. After many years of halting and often disappointing reform, the justice sector was showing some signs of improvement in the year before the earthquake. Systems of police accountability were coming into place including a massive program to vet all police officers; the Ministry of Justice had, in May 2009, inaugurated a first-rate training facility for judges, the *Ecole de la Magistrature*, and raised the salaries of judicial officers; and the prisons—while appallingly overcrowded—reportedly went a full year without a single violent death, from August 2008 to August 2009.¹

The earthquake decimated the seeds of reform, even before many observers noticed they were there. The devastation of the earthquake is difficult to comprehend in the most basic human and physical terms, with well over 200,000 deaths, more than a quarter million injured, more than a million made homeless, and much basic infrastructure destroyed; but the fragile beginnings of good governance and hope for a more just society were also dangerously damaged in the quake. A field visit in March 2010 in preparation of this paper found police and prisons thrown back into reliance on rough justice, the courts closed, and the new training facility commandeered to house other government functions. Senior government officials were clearly defensive, anticipating that criminal prosecution or worse could end their careers if they were blamed for one or another of the post-quake travesties, while front-line staff

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¹ Information about the vetting process and judicial reform came from interviews conducted by the author and research assistants in March 2010 in New York and Port-au-Prince. Some observers caution that improvements in the training and compensation of judges—while real—may not have improved the quality of justice before the earthquake and that the results of the vetting were mixed at best. Information about violent deaths in prisons comes from United Nations Rule of Law Indicators Project: Country Report—Haiti, draft of February 28, 2010, used by permission. According to the narrative summaries to Indicators 85 and 107 in the Appendix, the Prison Administration (*Direction de l'Administration Pénitentiaire, DAP*) prior to the earthquake annually produced an Index Card of Deaths in Custody (*Fiche Informatrice des détenus décédés*), which reports the prison in which each death occurred; the offense for which the prisoner had been confined; whether the deceased was a sentenced inmate or pretrial detainee; the cause of death; the prisoner's date of death; and the judge assigned to the case. A total of 184 deaths were recorded between January 2006 and August 2009. During the 12 months prior to August 2009, there were 57 deaths recorded, none of which was violent. Most deaths were caused by medical conditions such as tuberculosis, chest pain, diarrhea, fever, hernia, cardiac arrest, pneumonia, HIV, and epilepsy. There were three deaths from "unknown" causes, so it is possible that one or more of these deaths were violent. Staff at the Vera Institute of Justice who compiled the information for the Rule of Law Indicators Project, caution that they did not verify this government-supplied data.

were improvising or paralyzed. The police were bracing themselves amid predictions of growing civil unrest, prison officials facing recriminations over the escape of thousands of prisoners from the National Penitentiary and, since then, allegations of post-quake killings at the Les Cayes prison. As one Haitian civilian described the situation to the researchers, the two pillars of Haitian society had collapsed in the quake: the Church, with its principal cathedral destroyed, and the Government, with the White House, Ministry of Finance, Ministry of Justice, and Supreme Court leveled to the ground. Could these fundamental institutions of society reassert themselves, he was asking, even as their buildings lay in ruins?²

At the same time, the international response to the earthquake in Haiti is a source of hope, making a new era for justice reform financially conceivable and perhaps practically possible. At the donor's conference on March 31, 2010, fifty-nine nations and multilateral donors pledged more than five billion US dollars in 2010-11 for recovery, reconstruction, and development, with several of the national representatives speaking specifically about the justice and security sector.³

Can the Haitian government and civil society take advantage of the new international support to accelerate the reform process, building a credible, professional, effective, and respectful system of criminal justice? A double danger here has been widely acknowledged, not confined to the justice arena. On the one hand, the recovery process needs to avoid rebuilding institutions that were themselves poorly fitted to the Haitian context or which simply could not deliver on their promises. On the other hand, the recovery must not start from scratch. A new era for the justice sector must build on the real achievements of the last few years without rebuilding structures that themselves resisted progress. As Secretary State Hillary Clinton said at the donor's conference on 31 March 2010 when pledging more than a billion dollars of assistance over the next year, "We cannot do what we've done before." She continued:

We cannot retreat to failed strategies.... [T]his is not only a conference about what financially we pledge to Haiti. We also have to pledge our best efforts to do better ourselves – to offer our support in a smarter way, a more effective way that produces real results for the people of Haiti.

² The picture obtained during the March 2010 fieldwork is reinforced by assessments made by others. In particular, see: MINSUSTAH, *Strategic Framework for Assistance to the HNP after the Earthquake 12/01/10*, (United Nations, March 2010), hereinafter cited as "MINUSTAH, *Strategic Framework*."

³ The Canadian Minister of Foreign Affairs (US\$ 375 million in 2010-11) spoke of building Haiti back better on foundations of "security" and "the rule of law" among others. Catherine Ashton on behalf of the European Union (US\$ 600 million in 2010-11) spoke of "a new social contract" for the most vulnerable. For Finland, Ritva Koukku-Ronde (US\$ 10 million in 2010-11) spoke of the need for "good governance to the whole country, including rule of law and respect for human rights." Peter Power, Minister for Overseas Development in Ireland (US\$ 17 million in 2010-11), described it as "vital...that justice and security is addressed." The United Kingdom statement noted that "the UK's Stabilisation Unit is advising the Haitian Ministry of Justice on a programme of prison rebuilding." United States Secretary of State Hillary Clinton (US\$ 1.2 billion in 2010-11) pledged support for the Haitian plan for "security and governance," noting that since the earthquake "security is even more tenuous. Drug trafficking is a half a billion dollar a year industry in Haiti...[and] trafficking in human beings is also rampant." Francisco Arias Cárdenas, Deputy Foreign Minister of Venezuela (US\$ 1.3 billion pledged in 2010-11) expressed concern about "excessive presence of foreign military forces."

The effort to produce real results for the people of Haiti can be greatly assisted, at least in the justice sector, through a fortunate coincidence. In the months preceding the earthquake, Haiti was one of only two countries in the world serving as a pilot site for a new system of assessing the administration of criminal justice: the police, the courts, and the prisons. The Rule of Law Indicators Project, jointly sponsored by the United Nations Department of Peacekeeping Operations and the Office of the High Commissioner for Human Rights, aims to create a standard system for measuring change in the rule of law in post-conflict societies, and its system of indicators was, in late 2009, being tested in Haiti. While the full system of indicators itself is still under development, its early test in Haiti means that there is an especially rich collection of data on the actual state of the police, courts, and prisons just before the earthquake. This paper takes advantage of that treasure trove of measurement to examine the possible future of justice reform in Haiti.⁴

The Vera Institute of Justice collected data in Haiti for the Rule of Law Indicators from August to October 2009, drawing on a wide range of sources, including the results of two rigorous surveys designed specifically for the project. The first was a public survey that interviewed 1,250 people in their own homes in three areas: Port-au-Prince, Gonaives, and Hinche.⁵ The second was an expert survey for which researchers interviewed 81 people, including Haitian government officials, members of civil society organizations, employees of MINUSTAH (the UN stabilization and peacekeeping mission in Haiti) and other United Nations agencies, and experts employed by other international organizations.⁶ In addition to the two surveys, the data included direct observations by researchers as well as administrative data supplied by MINUSTAH and several

⁴ The Rule of Law Indicators were developed and tested in Haiti and Liberia for the United Nations by the Vera Institute of Justice working with its partners in the Altus Global Alliance. This paper draws heavily on a draft report on the test in Haiti, especially the Appendix to that report which reports the results of data collection on more than a hundred indicators. That draft report was written for the UN by April Bang, Besiki Kutateladze, Jim Parsons, Monica Thornton, and Aminou Yaya. I rely on that draft report with permission from its UN sponsors and its authors at the Vera Institute. I, myself, previously served as director of the Vera Institute (1994-2004) and as chair of Altus (2003-2008), but I was not formally associated with either Vera or Altus during their work on the UN Rule of Law Indicators Project. I did serve as an advisor to DPKO and OHCHR during the development and testing of the Indicators. For more information on Vera's international indicator work see <http://www.vera.org/topics/international>.

⁵ The survey was conducted in Haitian Creole. According to the report, "All interviews were conducted within a 30 km radius of the centre of the department capital. Within each area, a number of census units (or zones) were selected randomly (for a total of 116 zones). Within each zone, one settlement was selected randomly and within each settlement, approximately 10 respondents were randomly identified and interviewed. If a respondent was not home, interviewers returned to the selected household later that day to conduct the interview.... Nearly everyone who was approached to take part in the survey agreed to participate (99.8%). The majority of respondents were men (54.7%). In terms of religion, the sample consisted of Catholic (52.6%), Protestant (34.2%), Voodooist (3.7%), and Adventist (2.3%) respondents."

⁶ The expert survey was conducted in person in French (57) and English (24). According to the report, "The majority of experts were based in Port-au-Prince and Ouest department (53) with some representation from the Nord department (13), Artibonite (7) and Sud-est (8)."

bodies within the Haitian government.⁷ In short, the data provide invaluable benchmarks against which to plan and assess post-earthquake recovery and development efforts in the police, courts, and prisons.

This paper draws on these benchmarks, observations by researchers in March 2010, and various post-earthquake assessments to consider four fundamental questions:

- What is the goal of justice sector reform in Haiti and how would we know if we are achieving it?
- From whose perspective will specific reforms to the police, courts, and prisons be prioritized?
- How is the police enforcement mission changing in Haiti in the post-quake period, and what are the implications for the courts and prisons?
- Where are the immediate opportunities for signal reforms: those that can be achieved quickly and demonstrate to a wide audience the direction in which longer-term reforms are heading?

I do not answer these questions, but instead I attempt to flesh them out using pre- and post-earthquake reviews of the justice sector, framing the questions for discussion among members of Haiti's government, civil society, and international partners.

II.

What is the goal of justice sector reform in Haiti and how would we know if we are achieving it?

Efforts to improve criminal justice do not always sit comfortably with efforts to reduce poverty. In contrast to fields such as education or health where the desired outcomes for the poorest citizens (more education, less early mortality) are widely agreed and relatively easy to measure, the benefits of criminal justice reform for the poor are difficult to define and often contested. For example, a relatively low proportion of the Haitian population was incarcerated just before the earthquake (83 per 100,000 population, ranked 152nd among 217 countries worldwide).⁸ Yet the prisons in Haiti prior to the earthquake were horribly overcrowded, and the rate of incarceration had been rising rapidly over the

⁷ Government sources, according to the report, included: "the Office of Judicial Affairs at the Ministry of Justice (Direction des Affaires Judiciaires, DAJ), courts of first instance "Tribunal de Première Instance", local prosecution offices, the Haitian National Police (Direction Générale de la Police Nationale d'Haïti, Direction Centrale de l'Administration et des Services Généraux, Inspection Générale de la Police Nationale d'Haïti), the Prisons Administration Directorate (Direction de l'Administration Pénitentiaire, DAP), and individual prisons." The direct observations included, according to the report, "police stations, prisons, and courthouses in Port-au-Prince, Cap-Haitien, Gonaives, and Jacmel. The police station observations included visits to eight stations in Port-au-Prince, two in Gonaives, three in Cap-Haitien, and one in Jacmel. The stations ranged in size from the Cap-Haïtien sous-commissariat du Port, which was staffed by 10 officers, to the Pétion-Ville commissariat with a staff of 192 officers. Judicial system observations were conducted in five courts: two in Port-au-Prince, one in Cap-Haitien, one in Gonaives, and one in Jacmel. Courtroom observations included four first instance courts and one court of the peace."

⁸ International Center for Prison Studies, *World Prison Brief*, available at <http://www.kcl.ac.uk/depsta/law/research/icps/worldbrief/> (accessed for this paper on 23 May 2010).

previous fifteen years.⁹ Has the doubling of the rate of incarceration since 2003 been a good or bad result for the poor in Haiti? And would a further doubling of the prison population in the next six years (or less) be a good or bad result of reform?

In part because of the ambiguity of such outcomes, assessments of development projects in the justice sector have tended to focus more on activities (e.g., number of judges trained, number of police stations built) than on outcomes that matter to the poor. There is no Millennium Development Goal for public safety and criminal justice, and this, too, has allowed development institutions to evade measuring outcomes in this sector more easily than in others. Indeed, many development projects in the justice sector proceed as if the beneficiaries are meant to be the people working in the institutions rather than the citizens who need a higher quality of justice and a greater degree of safety. For example, consider for whose benefit new courthouses are constructed? While judges sometimes justify the construction of well appointed courthouses by asserting that the majesty of these buildings helps build respect for the law, few development programs require the resulting courthouse construction projects to demonstrate increased respect for the law among litigants in these courthouses or among the people who stand in their docks.

In Haiti today, there is an opportunity to establish a more ambitious set of goals for criminal justice reform, goals to improve the outcomes that matter to the public in addition to delivering what the government institutions say they need. Following a devastating earthquake, courthouses clearly must be rebuilt, but it will take discipline to keep the focus on the public and their confidence in justice as the beneficiaries of these building projects, rather than the bureaucracies and officials who will inhabit them.¹⁰

Or take another example. The people of Haiti appear to be quite divided in their opinions of the quality of the police service they receive. About half of the population living within 30 km of the capital centers of Port-au-Prince, Gonaives, and Hinche before the earthquake (51% of survey respondents) believed that it was possible to avoid arrest by bribing a police officer, and a similar fraction (52%) believed that the police are not concerned about the people in their communities. Should new investments in policing have the explicit goal of cutting those proportions at least in half? Similarly, only about half of the residents of the same areas (48% of survey respondents) said that the police are capable of preventing people from taking the law into their own hands. That may have fallen substantially as a result of the earthquake and widespread reports of vigilante justice in the camps that now fill much of Port-au-Prince. Should new investments be expected to bring that figure back to about 50 percent, or

⁹ The rate of incarceration per 100,000 population in Haiti has risen from 23 in 1995 to 42 in 2003, and to 71 in 2007, before reaching its pre-earthquake rate of 83 in March 2009. See World Prison Brief report for Haiti at http://www.kcl.ac.uk/depsta/law/research/icps/worldbrief/wpb_country.php?country=65 (accessed for this paper on 23 May 2010). The prison population in Haiti is more volatile than in many other countries because of the large numbers of people leaving prison on the occasions of some of the more dramatic changes in the leadership of the national government.

¹⁰ Haiti hosts examples of new courthouses that do appear to respond to the needs and desires of ordinary citizens, such as a rural courthouse that, according to one of the members of the Vera Institute team that compiled the draft report, makes space available for community meetings.

even raise it to 70 or 80 percent?¹¹ These would be examples of outcomes that make a difference to people in poverty.

A parallel set of outcomes that matter to most Haitians could be expected of court reform projects. For example, just before the earthquake, the vast majority of residents of Port-au-Prince, Gonaives, and Hinche (86% of survey respondents) believed that judges would treat two individuals charged with the same crime differently based on their social, religious, or ethnic background.¹² What are the consequences of this high level of cynicism about the possibilities of equal justice? Should demonstrating some progress in breaking this near consensus be a goal for court reform in the post-earthquake era?

Investments in prisons could also be judged by their results. Consider, for example, the question of escapes, a matter receiving great attention since the earthquake. There is no question that new investments in the prisons should aim to prevent escapes, but what number of escapes would represent an improvement? In 2008, there were five recorded escape incidents across all the prisons of the country. At the very least, this provides a plausible baseline against which results in 2011 might be judged, avoiding too harsh a judgment if the number of escape incidents that year turns out to be two or three.¹³

This is not to suggest that public opinion and media reports should be the exclusive basis for judging the success of justice sector reform. Reform projects could also usefully aim to increase the accountability of the police, courts, and prisons. For example, a 1994 law requires the Inspector General's Office to investigate complaints against police or prison officials and send the results of those investigations to the Minister of Justice and the Director of the Haitian National Police. Immediately before the earthquake, the Rule of Law Indicators Project found that this Inspector General does, in fact, produce public accounts of the numbers of these complaints, the abuses complained about, and their resolution, suggesting that a basic level of accountability was in place.¹⁴ The data raised concerns, however, about how accessible the Inspector General's procedures are to most Haitians, and the expert survey results suggested that most Haitians had greater confidence in (or at least easier access to) various human

¹¹ Data from before the earthquake are reported in the narrative summaries to Indicators 23 and 24 in the Appendix to *United Nations Rule of Law Indicators Project: Country Report—Haiti*, draft of February 28, 2010. Henceforth in this report, these narrative summaries in the Appendix are cited as UNRLIP narrative summaries by indicator number.

¹² UNRLIP narrative summary for Indicator 76.

¹³ The numbers of escape incidents recorded by the *Administration Pénitentiaire, DAP*, were 21 in 2004, 6 in 2005, 17 in 2006, and 5 in both 2007 and 2008. See UNRLIP narrative summary for Indicator 106.

¹⁴ The report on the Rule of Law Indicators for Haiti includes the following information: "According to the 2008 annual report of the HNP, there were 758 public complaints received by the public complaints department 'Section Plainte' of the Inspector General's office, among which 366 were made in person, 376 were sent by mail, and 16 were internally initiated or 'saisine d'office.' The type of violations includes attempted bribery, bribery, attempted murder, homicide, persistent non-support, violence against individual, rape, theft and extortion. The report also states the disposition of the cases following investigations: 59 were forwarded to the national headquarters of the police 'Direction Générale de la Police Nationale d'Haïti, DGPNH' for follow-up, 267 were disciplined, 24 were forwarded to the prosecutors offices and the judiciary police (DCPJ), and others were either dismissed or under investigation at the time of the report."

rights groups to which they were more likely to take complaints. Moreover, the Inspector General's Office does not use its authority to produce public accounts of deaths in police custody or deaths that result from police action. No such accounts were produced routinely by the police or the Inspector General prior to the earthquake.

In the immediate aftermath of the earthquake, the Inspector General's Office was called upon to investigate the conduct of prison authorities in relation to various prison escapes and attempted escapes. One of the attempts was at the prison at Les Cayes, where police reportedly shot and killed a number of unarmed prisoners after the prison was retaken. The Inspector General reportedly concluded that the head of the prison had lied about the deaths of the prisoners and that the prisoners had actually been killed by the police. The Inspector General's report apparently recommended the demotion of the prison commander but it did not raise any concerns about the police killings.¹⁵

Together, these insights into the functioning of the Inspector General's Office suggest that the office can potentially play a meaningful role in assuring the accountability and integrity of the police and prisons, and that it had achieved some degree of operational capacity before the earthquake, but even then it operated with several deficits. What should be expected of this office in the new era? Is it strong enough to survive with a reputation for integrity? Whatever else these data suggest, they underscore the importance of going beyond measures of whether the Inspector General's quarters are rebuilt, and its bureaucratic processes resumed. Some goals for accessibility, independence, and quality would seem necessary as well.

These questions are not merely about measurement and demonstrating results; they are first and foremost about the specification and design of recovery projects. If the projects to rebuild and support the criminal justice system and the rule of law are to aim at improving the public's confidence that police care about the communities they serve, or reducing the proportion of people who believe that they can bribe a police officer to evade arrest, this will suggest that certain projects be prioritized over others.

III.

From whose perspective will specific reforms to the police, courts, and prisons be prioritized?

Consider the immediate need for police training and equipment. Police everywhere must learn to operate in two contrasting modes: sometimes working in small groups or individually when patrolling neighborhoods, and other times working in large formations under the command senior officers on the scene. When in small groups or alone, police are typically "on patrol," investigating recent crimes or suspicious activity, looking for wanted criminals, helping to resolve disputes among citizens, or just waiting for something to happen. When in large formations, police are typically controlling crowds and confronting rioters or massive disorder. Both require skills, but different skills. The patrol, investigation, and community policing function requires communication, initiative, analytic abilities, and judgment;

¹⁵ Deborah Sontag and Walt Bogdanich, "Signs of a Cover-Up After Killings in a Haitian Prison" in *The New York Times*, May 23, 2010, page A1.

the crowd control function, in contrast, requires discipline, courage, restraint, and team work. The first is conducted out of sight of supervisors; the second takes place under paramilitary command and in the glare of the media. Not only must police be trained and equipped for both of these different roles, but they must also be able to switch between them on a moment's notice.

The two modes of work also have different constituencies. In Haiti, the government, local elites, and the international community are particularly concerned about massive disorder and predictions that dire living conditions, contentious politics, and bad weather could combine to cause civil unrest. These concerns suggest a high priority on training and equipping the police for crowd control and paramilitary policing. At the same time, masses of Haitian citizens, especially the poor, are facing a resurgence of gang activity in the aftermath of the earthquake and a sharp increase in individual disputes over property and shelter, inevitable when hundreds of thousands die suddenly and a million or more are displaced. These concerns suggest a high priority on training and equipping the police for neighborhood patrol, dispute resolution, and other elements of community policing. Two pilot satellite police stations set up in two camps, Cité Soleil and Pétienville Club, have been initially staffed with UN police and female officers from the Haitian National Police specifically to deal with sexual assault cases, but these experiments in policing close to communities could be broadened to explore a post-earthquake brand of community policing. The task here is not to choose one over another, but to maintain a clear focus on both, not allowing either to push out the other.

The indicators gathered before the earthquake can help make these two priorities concrete.

In order to implement community policing effectively, patrolling neighborhoods individually or in small teams, police need to be in communication with their home base. Yet even before the earthquake, communication equipment supporting this kind of community policing was rare. The Rule of Law Indicators reported that there were only 70 working radios to support the 737 police officers in the test sites.¹⁶ If community policing were to be a priority in the post-earthquake era, equipping each police officer with a radio or government-supplied cell phone would not itself achieve the goal, but it would be an indicator that this mode of police work was being supported. When a riot threatens, such individual communication is less practical or desirable, with hundreds of police facing thousands of citizens, and commanders calculating how to respond to the key messages they receive. Communication equipment for mass disorder works in the other direction, with police commanders relying on communication technology to make announcements and give commands to the crowd.

The same choice of perspective will shape priorities for the courts. Proceedings in the courts are conducted in French, yet most Haitians speak and understand only Creole. Prior to the earthquake, the courts usually provided interpreters for foreign criminal defendants who spoke Spanish or English, but the expert survey conducted for the Rule of Law Indicators suggests that the courts did not provide interpreters for Haitians who did not understand French, instead relying on their legal representatives or

¹⁶ UNRLIP narrative summary for Indicator 11.

others present in the court to hurriedly summarize the proceedings for them.¹⁷ From the perspective of Haitians in poverty, language access might be a high priority in the courts in this new era.

There were certainly other needs in the courts before the earthquake, and officials within the Ministry of Justice could reasonably have other priorities now. The destruction of the relatively new court building in Port-au-Prince dispirited many working within the justice sector. The country's only juvenile court, located in Port-au-Prince and even then inadequate for the national population, was also destroyed.¹⁸ The question is not whether or not to rebuild these courthouses, but where the priorities will be within the design and equipment for the courts and the training that will accompany the rebuilding. The Rule of Law Indicators found that only some court administrators kept regular track of their pending and completed cases.¹⁹ Judges, including Justices of the Peace, are required by law to hold a law degree, equivalent to the French bachelor's degree in law (*Licence en droit*), yet in 2009 the Office of Judicial Affairs (*Direction des Affaires Judiciaires, DAJ*) estimated that only 25 percent of Justices of the Peace (135 out of 537) held such a qualification.²⁰ There will be choices to be made between prioritizing training for administrators and judicial officers, or prioritizing language access. The latter could be achieved either by recruiting and training a cadre of French-Creole interpreters or holding court hearings in Creole.

How high a priority should language access be in the post-earthquake era? From the perspective of the professionals in the court, other features of court construction and support would make more of a difference in their own ability to handle cases, but from the perspective of the poor users of the courts, language access might be a higher priority. Reformers might insist that they are pursuing both goals equally, but here is where continued measurement can help, keeping track of whether one or the other of these goals begins to take precedence.

The same problem of competing priorities can be seen in the decision that must be taken about how to rebuild the prisons. In any state's planning, there is a choice to be made between keeping prisoners near their homes and families on the one hand, and maximizing the utilization of total prison space on the other. Keeping prisoners near their homes helps maintain family ties and provides easier access to the courts; but moving prisoners where space or specialized services are available allows for more efficient use of available space and allows prisoners requiring certain services to be concentrated in a single prison where those are made available.

In the case of Haiti, however, there is at least one additional consideration: food. The Rule of Law Indicators suggest that the prison administration supplies prisoners with only about two-thirds of the minimum caloric content that the World Food Program recommends.²¹ Prisoners survive instead on

¹⁷ UNRLIP narrative summary for Indicator 77.

¹⁸ UNRLIP narrative summary for Indicator 54.

¹⁹ UNRLIP narrative summaries for Indicators 44 and 53.

²⁰ UNRLIP narrative summary for Indicator 56.

²¹ The World Food Program recommends a minimum daily intake of 2,240 calories. Researchers testing the Rule of Law Indicators in Haiti conducted direct observation of the food served to inmates at the National Penitentiary and calculated the caloric content per prisoner. See UNRLIP narrative summary for Indicator 109.

food brought to them by relatives or shared with them by prison staff. As one of the experts surveyed for the Rule of Law Indicators explained, “Families provide the bulk of the food consumed by inmates.”²² Any plan for the prisons, therefore, must either prioritize keeping prisoners near their relatives who can supplement their diet, or must be certain to greatly increase the quantity and quality of food served by the administration to prisoners.

These three choices—between public-order policing and community policing, between language access in the courts and improvements in the administrative efficiency, and between housing prisoners near their homes or efficiently using prison space on a national basis—are not necessarily the most important or the most difficult choices facing justice sector reformers, but they are representative of the kinds of choices that must be made as reconstruction and recovery proceeds. They remind us not only of the different perspectives that inform these decisions and the importance of measuring the results of reform from multiple perspectives, but also of the importance of keeping sight of the results that will matter most to the people of Haiti.

IV.

How is the police enforcement mission changing in Haiti in the post-quake period, and what are the implications for the reputation of the police as well as for the nation’s courts and prisons?

These questions arise for two reasons. First and most obviously, the resources of the Haitian National Police are about to expand substantially as international aid increases.²³ Second, there is growing concern in some quarters about the possibilities for civil disorder. In any society, policing is not something that you can simply scale-up by adding resources: you have to decide what a larger or better equipped police force is going to do. In Haiti, what the police decide to do with their increased resources will have substantial effects on the rest of the justice system as well as on the reputation of the police themselves.²⁴

Consider, for example, the spectrum of intrusive enforcement tactics. In even a brief period of field work, researchers for this paper observed the operation of police check points and aggressive patrols that are reportedly become more frequent, and researchers listened to discussions among police officials about the need to increase searches for, and confiscations of, guns that have reappeared with neighborhood gangs since the earthquake. A small, well targeted number of enforcement operations can, in the right hands and in the right circumstances, allow police to seize large numbers of weapons,

²² UNRLIP narrative summary for Indicator 110.

²³ Just before the earthquake in December 2009, the Haitian National Police numbered 9,409. The pre-earthquake reform plan contemplated a substantial expansion of the HNP to 14,000 by the end of 2011. See: MINUSTAH, *Strategic Framework*, p.6.

²⁴ The reform plan of the Haitian National Police and the associated budgets for international assistance in the post-earthquake period are intended to do more than replace damaged facilities and provide equipment. As the MINUSTAH assessment puts the matter, “the opportunity will be seized to reduce the development deficits of the HNP and not to simply replace damages and losses.” *Strategic Framework*, p. 14. Nevertheless, despite some references to “professionalizing” the HNP, there is little discussion of the professional skills, strategies, and tactics for which the HNP is to be trained and equipped.

execute outstanding warrants, and arrest many fugitives. Yet, these tactics inevitably inconvenience, and sometimes injure, a larger number of innocent people who are raided, searched, or taken to a police station in the process. Especially when these innocent people are treated badly, resentment against the police grows, sometimes overshadowing the benefits of having seized contraband and making good arrests. When police resources expand, commanders may use their increased personnel and equipment to conduct more raids, establish more checkpoints, and arrest more people; yet merely conducting a larger number of intrusive enforcement actions should not be the goal. Any additional intrusion should be off-set by substantial additional discoveries of weapons, fugitives, and offenders, and even then, the value of the seizures and arrests should be weighed against the experience of innocent people inconvenienced or mistreated.²⁵

In Haiti, the Rule of Law Indicators Project reports that among residents living within 30 kilometers of the capital centers of Port-au-Prince, Gonaives, and Hinche, about five percent had been subject to a police search in the year before the earthquake, and among those with no cash income, the proportion was about seven percent.²⁶ Those are already substantial proportions, and the somewhat greater percentage among the poor is a warning. If increased resources lead to increases in the use of these intrusive enforcement tactics, officials should be sure that they yield additional seizures and that the experience of the innocent people searched does not further alienate the population from its police.

Or consider the volume of arrests. As resources increase, so too will the *ability* of the police to make arrests, and any increase in the actual numbers of people arrested will have profound implications for the courts and prisons. There were, for example, only 109 prosecutors and assistant prosecutors in Haiti in the year prior to the earthquake.²⁷ Moreover these prosecutors were already proving inadequate to the volume of criminal cases before the courts. The same is true of the prisons. As the Rule of Law Indicators Project documented, all of Haiti's prisons were overcrowded prior to the earthquake. According to the report prior to the earthquake: "[T]he least crowded prison, in Les Coteaux, is at 230% of official capacity and the most crowded facility (Hinche) holds more than ten times the number it was designed to hold."

It makes little sense to restore prosecutorial resources or expand prison capacity to meet the demands of pre-earthquake policing. Instead, plans for prosecution, defense, magistrates, and prisons need to anticipate the decisions being made now about how the police will use their increased resources, especially the use of their arrest powers. For the ability to make more arrests does not necessarily mean that there will be more arrests. Any actual change in arrest volumes will be the result of policy decisions,

²⁵ In nearby Jamaica, the Jamaica Constabulary Force has begun to assess increases in the number of searches it conducts in relation to increases in the contraband seized and offenders arrested, discouraging growth in intrusive enforcement that does not produce proportional benefits in such seizures. The data supporting this effort are unpublished at this writing, but are on file with the Program in Criminal Justice Policy & Management at the Harvard Kennedy School.

²⁶ UN ROLIP Haiti Indicator 7. Comparisons are difficult to come by, but to put these proportions in some perspective, about 9 percent of U.S. residents were stopped by the police while driving in 2005, but less than one percent were subject to a police search. See: Matthew R. Durose, Erica L. Smith and Patrick A. Langan

²⁷ UNRLIP narrative summary for Indicator 66, data as of April 2009.

not merely increased resources, and this is especially true about policies relating to the policing of disorder. Police commanders exercise far more discretion about the use of arrest powers in the face of civil disorder than they do in response to the investigation of individual criminal offenses. Public disorder can be met with police tactics that produce few if any arrests, or, at the other extreme, with mass arrests. The point here, again, is that the choice has implications far beyond the police themselves.

If the police do choose to make greater use of arrest as a tactic, there are still choices to be made that affect other parts of the justice system. For example, increased arrests need not require increased prison space if action is taken to implement a liberal system of pretrial release and non-custodial sentencing. Prior to the earthquake, the penal law allowed judges to impose non-custodial sentences, but in practice, according to the report of the Rule of Law Indicators Project, there was no institutionalized system of probation or parole, and there was no system of supervised pretrial release.²⁸

V.

Where are the immediate opportunities for signal reforms: those that can be achieved quickly and demonstrate to a wide audience the direction in which longer-term reforms are heading?

Sustained reform of the justice sector requires signs of success along the way. Even long-term plans must realize short-term gains. Fortunately, there are several opportunities for such short-term gains in Haiti. I consider three here: completion of the vetting of the police, establishment of a public defender office and convening of the judicial oversight body, and universal training of prison supervisors and staff in the appropriate use of force. In all three of these cases, success is possible because the initiatives were well advanced before the earthquake but were facing substantial obstacles. If the new era can begin with the removal of those obstacles, visible progress could be swift.

The initiation of the vetting of the Haitian National Police in 2006 and its acceleration in 2009 held great promise for improvements in police and strengthening of public confidence in the police as those who had committed crimes or human rights violations were removed. The process began at the top of the organizations and was beginning to work its way through the ranks when the earthquake brought it to a temporary halt. By the end of 2009, more than 3,500 investigative files had been completed by a team drawn from UNPOL and the HNP, and had been handed over to the Inspector General for completion of the certification process, with an equal number under active investigation.²⁹ All of the paper records appear to have been destroyed in the earthquake, but digital copies of most of the information were maintained by MINUSTAH, making it possible now for the work to resume if resources are available and the task is given priority.

The expert survey conducted for the Rule of Law Indicators Project revealed several weaknesses in the vetting process that could be addressed immediately. Of the 36 experts interviewed who had knowledge of the vetting process, half believed it was proceeding effectively. They described a two-part process, one part vetting new recruits and another vetting serving officers. In each case, subjects are investigated

²⁸ UNRLIP narrative summary for Indicator 99.

²⁹ See: MINUSTAH, *Strategic Framework*, p. 6.

jointly by the Haitian National Police and the United Nations Police with names being passed along to nongovernmental human rights organizations for their assistance as well. According to one expert, “the vetting process is quite effective and as of October 2009, 9.7% of serving officers were fired, and 0.3% of applications from prospective officers rejected based on past crimes, including human rights abuses.”³⁰ But the experts who doubted the effectiveness of the vetting raised concerns that the information provided by human rights organizations was ignored, that judges and magistrates issued certificates of moral probity (*Certificat de Bonne Vie et Moeurs*) for officers without any investigation, and that many of those with criminal or abusive pasts are not removed from the police but merely transferred to remote posts. Notoriously abusive officers are removed, but many evade the vetting through corruption or slack procedures.³¹

The results of the expert survey suggest that a resumption of the vetting process might be accompanied by a more thorough communications effort and an independent auditing of the process itself, making the vetting process more transparent and accountable. The audit should reveal weaknesses and strengths. The communications strategy might target criminal justice experts in the first instance, aiming to persuade all those involved in the administration of criminal justice that the vetting is, as a result of the audits, increasingly rigorous and effective.

Under Haitian law, the government must provide legal representation to criminal defendants charged with crimes that are heard in the *Cour d’Assises*, but there is no public defender or government institution providing criminal legal aid. Instead, most accused persons are represented by novice lawyers, fulfilling their apprenticeships with the Bar Association. This system, described by several experts as inadequate or worse, is financed by an array of international donors. Before the earthquake, the Ministry of Justice had pledged to establish and fund a system of public defense by 2015.³²

Accelerating the creation of a public defender could accompany implementation of more institutional oversight of the judiciary. In 2007, Haiti established in law a judicial oversight council (*Conseil Supérieur du Pouvoir Judiciaire*) but for want of a president it had not yet been convened at the time of the earthquake. As with police vetting, establishing an institutional system of public defense and convening the *Conseil Supérieur du Pouvoir Judiciaire* would build on commitments already in place.

Finally, in the prisons, a short-term victory could be claimed if all prison officers and their supervisors were trained annually in the appropriate use of force. Prior to the earthquake, just under a quarter of the officers had received training in the appropriate use of force in the previous twelve months, yet that suggests there is the capacity to deliver a substantial amount of training to this group. Expanding this existing training to the point where all officers are trained annually, like the other possibilities reviewed here, could be achieved with the resources now available.³³ Training alone, of course, does not produce

³⁰ Quoted in UNROLIP narrative summary to Indicator 22.

³¹ UNROLIP narrative summary to Indicator 22.

³² UNROLIP narrative summaries to Indicators 70 and 78.

³³ Only 165 out of 688 prison officers (24%) had received training in the previous 12 months. UNROLIP narrative summary to Indicator 104. It is unclear from the report if there is any in-service training, in contrast to the training provided to new recruits.

improvement, but if the training is designed in support of supervision, and if supervisors are trained in tandem with those in the ranks, and if the inspectorate follows up by reporting on where and when the training is well implemented, real progress could be highly visible.

Which, if any, of these possibilities should the government pursue with its international partners? The answer to that question is beyond the scope of this discussion paper. What is clear, however, is that the reform of Haiti's justice system will require a blend of long-term and short-term strategies, and short-term success will be necessary to maintain the momentum for longer term efforts. In the immediate-term, the best bets will be those that build on political commitments already in place.

VI.

Meaningful improvements to the administration of justice are hard won. They require legal craftsmanship, cultural perspicacity, and political acumen; but they also depend on disciplined leadership and management and these, in turn, require that we measure the quality of the justice we deliver. Measuring the quality of justice is neither the beginning nor the end of reform, but it is an essential step in any serious process. It doesn't tell us what to do, but it does tell us something about how we're doing.

The measures of justice described in this paper cannot supply a vision for justice in Haiti nor settle disputes about priority or resources, but they can discipline discussion of these means and ends, for they tell us what Haitians think of the justice they have today, what the people working in the institutions of justice are doing, and where the delivery of justice still falls short of its legal commitments. Fortunately, the process of justice reform in Haiti has already seen some success, so these assessments—before and since the earthquake—can illuminate a continuing set of efforts.

Can this be the beginning of a new era for justice sector reform in Haiti? Yes; but not because of the resources now available. No amount of financial assistance can make enough of a difference without a willingness to face difficult questions about what justice means for the majority of Haitians, about how priorities for reform will be established, and about how progress will be measured and assessed. A new era will not be free from failure, from scandal, or even from injustice, but it can be marked by a new rigor in the pursuit of safety and justice, a sober seriousness of purpose that honors the tragedy of this year as well as the ambitions of the nation.