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# Rule of Law in Haiti Before and After the 2010 Earthquake

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# RULE OF LAW IN HAITI

## BEFORE AND AFTER THE 2010 EARTHQUAKE

JAMES D. WILETS\* AND CAMILO ESPINOSA\*\*

### *I. Introduction*

#### *A. Scope of Article*

When discussing the myriad challenges facing Haiti in the wake of the devastating 2010 earthquake, it is difficult to prioritize the needs of a country where basic needs such as shelter and basic medical care compete for long-term needs such as education, good governance, and economic reconstruction and growth.

The current immediate and emergent needs of Haiti in the face of its national calamity have been well identified by international aid bodies and national leaders, and there has been a considerable literature on those needs.<sup>1</sup>

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<sup>1</sup> See generally S.C. Res. 1944, U.N. Doc. S/RES/1944 (Oct. 14, 2010) available at [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/RES/1944](http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1944) (2010); Ban Ki-moon, *Report of the Secretary-General on the United Nations Stabilization Mission in Haiti, delivered to the Security Council*, U.N. Doc. S/2010/446 (Sept. 1, 2010), available at [http://www.un.org/ga/search/view\\_doc.as](http://www.un.org/ga/search/view_doc.as)

What is of equal importance in the long run, however, is building a solid foundation for sustained long-term social, political and economic stability and a democracy based on rule of law. This article will argue that rule of law is, in fact, the most critical element in achieving this long-term progress. In some senses, this argument may appear circular in that the definition of rule of law, discussed immediately below, is itself a very broad and inclusive concept, and to some extent incorporates most of the elements of social and political stability for which this article argues rule of law is a prerequisite. Nevertheless, rule of law is the embodiment of the idea that it is insufficient to strive for democracy, social, political or economic stability as isolated and independent goals. For example, many U.S. organizations devoted to assisting the democratic process in other countries, such as the National Democratic Institute,<sup>2</sup>

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p?symbol=S/2010/446; Ban Ki-moon, *Renewal, Not Restoration, Should be the Goal for Haiti*, WASH. POST, Mar. 29, 2010, available at <http://www.un.org/sg/articleFullsearch.asp?TID=112&Type=Op-Ed>; AMERICAN RED CROSS, HAITI EARTHQUAKE RELIEF ONE -YEAR REPORT (2011), [http://www.redcross.org/www-files/Documents/pdf/international/Haiti/HaitiEarthquake\\_OneYearReport.pdf](http://www.redcross.org/www-files/Documents/pdf/international/Haiti/HaitiEarthquake_OneYearReport.pdf); THE HUMAN RIGHTS PROGRAM, THE RIGHT TO VOTE: A REPORT DETAILING THE HAITIAN ELECTIONS FOR NOVEMBER 28, 2010 AND MARCH, 2011 (2011), available at [http://www.lampforhaiti.org/~lampforh/sites/default/files/LAMP\\_HR\\_Program\\_Right\\_to\\_Vote\\_Rep\\_2010\\_2011\(2\).pdf](http://www.lampforhaiti.org/~lampforh/sites/default/files/LAMP_HR_Program_Right_to_Vote_Rep_2010_2011(2).pdf); Vivienne O'Connor, *The Rule of Law in Haiti After the Earthquake*, UNITED STATES INSTITUTE FOR PEACE (Apr. 15, 2010), <http://www.usip.org/files/resources/PB%2018%20Rule%20of%20Law%20in%20Haiti%20After%20the%20Earthquake.pdf>; Dmitry Titov, Assistant Secretary-General, *Peacekeepers promoting the Rule of Law*, in DEP'T OF PEACEKEEPING OPERATIONS JUSTICE UPDATE 2 (Apr. 15, 2010), available at <http://www.un.org/en/peacekeeping/publications/cljas/justice042010.pdf>; Lean William Pape, M.D., et al., *The Gheskio Refugee Camp after the Earthquake in Haiti- Dispatch 2 from Port-au-Prince*, 27 NEW ENG. J. MED. 362 (Mar. 4, 2010), available at <http://www.nejm.org/doi/full/10.1056/NEJMp1001785>; Irwin P. Stotzky, *25<sup>th</sup> Anniversary Symposium: International Law in a Time of Scarcity*, 26 CONN. J. INT'L L. 1 (2010).

<sup>2</sup> According to its website, the National Democratic Institute ("NDI") defines itself as "a nonprofit, nonpartisan, nongovernmental organization that has supported democratic institutions and practices in every region of the world for more than two decades. Since its founding in 1983, NDI and its local partners have worked to establish and strengthen political and civic organizations, safeguard elections, and promote citizen participation, openness and accountability in government." See NATIONAL DEMOCRATIC INSTITUTE, <http://www.ndi.org/whoweare> (last visited May 23, 2011).

International Republican Institute,<sup>3</sup> and various others that receive AID<sup>4</sup> money focus on the logistical process of holding elections as if elections themselves were the goal rather than a deep-rooted and sustainable democracy characterized by rule of law.

This article will explore the challenges facing Haiti in building a foundation of rule of law by exploring: (1) the particular challenges Haiti faced prior to the earthquake in establishing rule of law; (2) the particular challenges and opportunities Haiti faces in establishing rule of law subsequent to the earthquake. Before exploring these issues, however, it would be useful to begin with a definition of rule of law.

### *B. Definition of Rule of Law*

“Rule of law” has been variously defined as a society in which the following elements are present: (1) the government and its

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<sup>3</sup> According to its website, the International Republican Institute (“IRI”) defines itself as a “nonprofit, nonpartisan organization, IRI advances freedom and democracy worldwide by developing political parties, civic institutions, open elections, democratic governance and the rule of law.” See THE INTERNATIONAL REPUBLICAN INSTITUTE, <http://www.iri.org/discover-our-mission-0> (last visited May 23, 2011).

<sup>4</sup> See THE UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT (USAID), <http://www.usaid.gov> (last visited May 23, 2011). USAID’s history goes back to the Marshall Plan reconstruction of Europe after World War Two and the Truman Administration’s Point Four Program. In 1961, the Foreign Assistance Act was signed into law and USAID was created by executive order. Since that time, USAID has been the principal U.S. agency to extend assistance to countries recovering from natural disasters, trying to escape poverty, and engaging in democratic reforms. USAID is an independent federal government agency that receives overall foreign policy guidance from the Secretary of State. USAID supports long-term and equitable economic growth and advances U.S. foreign policy objectives by supporting: “economic growth, agriculture and trade; global health; and, democracy, conflict prevention and humanitarian assistance. . . . With headquarters in Washington, D.C., USAID’s strength is its field offices around the world. We work in close partnership with private voluntary organizations, indigenous organizations, universities, American businesses, international agencies, other governments, and other U.S. government agencies. USAID has working relationships with more than 3,500 American companies and over 300 U.S.-based private voluntary organizations.” *Id.*

citizens are governed, bound or ruled by prospective laws<sup>5</sup> and predictable rulings<sup>6</sup> that are accessible and clear;<sup>7</sup> (2) the supremacy of law over political, personal or pecuniary considerations (corruption); (3) efficient and predictable implementation of law, sometimes loosely referred to as “law and order;” (4) equality of persons before the law among all persons similarly situated;<sup>8</sup> (5) implementation of, and respect for, human rights<sup>9</sup> and other individual rights in a manner consistent with international standards; (6) efficient and predictable dispute resolution procedures that protect the integrity, property and contract rights of individuals, corporations and organizations; and (7) accountability of government officials for failure to follow or apply the law.<sup>10</sup>

Rule of law should not be confused with application of law in a consistent and predictable manner by authoritarian governments that do not otherwise observe the criteria of the rule of law described above. These regimes may provide some of the benefits of rule of law, such as certainty, but the manner in which law is applied is *by* the government, rather than a government *of* laws.<sup>11</sup> In this sense, the authoritarian model of predictable and consistent application of law can be termed “rule *by* law.”<sup>12</sup>

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<sup>5</sup> Kirsti Samuels, *Rules of Law Reform In Post-Conflict Countries*, 2 (The Conflict Prevention and Reconstruction Unit in the Soc. Dev. Dep’t of the Sustainable Dev. Network of the W. Bank, Working Paper No. 37, 2006).

<sup>6</sup> *Id.*

<sup>7</sup> Simon Chesterman, *An International Rule of Law?*, 56 AM. J. COMP. L. 331, 342 (2008).

<sup>8</sup> Samuels, *supra* note 5, at 2. *See also* Chesterman, *supra* note 7, at 342.

<sup>9</sup> Samuels, *id.*

<sup>10</sup> United Nations and the Rule of Law, UN.ORG, <http://www.un.org/en/ruleoflaw/index.shtml> (last visited May 23, 2011).

<sup>11</sup> Samuels, *supra* note 5, at 2-3.

<sup>12</sup> *Id.* at 3. Using rule of law in a different context, for example, in conflict and post-conflict states, rule of law falls under two categories: (1) corrupt and dysfunctional and (2) devastated and non-functional. *Id.* at 6. There are four justifications for rule of law reform in fragile, post-conflict or underdeveloped states. (1) Infrastructure and economic development is essential for the country economic growth; (2) protection of human rights is essential in a liberal democracy; (3) poverty reduction is essential as the poor suffer the most from crime and they are less able to have access the justice system; and (4) writing

*C. Why Rule of Law is Important and its Relationship to “Civil Society”*

The rule of law is important because it recognizes that law and democracy can only function successfully when society as a whole provides sufficient internal checks and balances, on numerous levels, to insure that each aspect of government applies the law in a predictable and transparent manner.

The predictability and transparency inherent in rule of law is also an important component of economic growth. Predictability of legal rights and expectations vastly encourages both domestic and foreign investment in productive enterprises.<sup>13</sup> Although China has

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constitutions and enacting fair laws is essential for peace-building in fragile and post conflict states. *Id.* at 3.

<sup>13</sup> See Albert H.Y. Chen, *Toward a Legal Enlightenment: Discussions in Contemporary China on the Rule of Law*, 17 UCLA PAC. BASIN L.J. 125, 125-26, 129-33, 136, 154 (1999). The author explores contemporary Chinese scholars' research of rule of law from both the Chinese and Western traditions. *Id.* at 129. These scholars generally reject traditional Chinese Legalism as an instrument of authoritarian and despotic rule that was promulgated from the ruler's point of view, and respond negatively to the Chinese Confucian tradition of rule by virtue and ethics rather than law, whereby rulers were expected to be virtuous and to behave in an exemplary manner, but deprived their people of their civil rights and liberties. *Id.* at 129-30. On the other hand, most scholars look to Western tradition to find the necessary intellectual resources for their theories of the rule of law, finding much that is positive in both the legal philosophy of classical Greece and in the political thought of the Age of Enlightenment, but noting that such a philosophy “could only flourish in the social context of the democracy of the ancient Greek polis,” and that the paths of legal modernization taken by the West and China are necessarily different. *Id.* at 130-32. Chinese scholars identify the rule of law of the West as part of a dynamic historical process which changed as the West moved from the period of *laissez-faire* capitalism into the period of monopoly capitalism and welfare states, and oscillated between “a hard rule-of-law (strict legal rules with little discretion in their administration) and a soft rule-of-law (a ‘living law’ administered by the exercise of discretion in search for substantive justice).” *Id.* There is a general consensus on the intrinsic connection between democracy and the rule of law in the modern sense because of binding authority of democratically generated law on both subjects (citizens) and rulers (government), and submission to such law on the part of all members of the community. *Id.* at 133. There is also a common association between the rule of law and liberal values such as “liberty, equality, human rights, separation of powers, checks and balances and judicial independence.” *Id.* However, some Chinese scholars cite “the

been frequently posited as an example of a society with high rates of economic growth and investment without developed rule of law, there is increasing evidence that China's economic growth to date is in spite of its lack of rule of law, rather than because of it.<sup>14</sup> Moreover, there is also growing evidence that the lack of rule of law is sufficiently compromised to be negatively affecting future investment decisions, particularly by foreign entities.<sup>15</sup>

The rule of law is also essential to building peace in post-conflict states. The transition from dictatorship to democracy is a complex and fragile process. That transition is assisted, and "checked" by other aspects of society, to prevent the assumption of

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Marxist view of historical progress from 'slave society to feudalism to capitalism to socialism'" in support of the theory that "the rule of law in capitalism is superior to legal systems under feudalism, and socialist rule of law is a still higher stage of legal evolution compared to the rule of law under capitalism." *Id.* at 136. Overall, China has not effectively instituted rule of law, so the most valuable resources for the development of the Chinese legal system rest on the course of social life and economic activities. *Id.* at 154.

<sup>14</sup> *Id.* at 149, 152, 155-56 (describing the poor likelihood of contemporary China developing and promoting rule of law due to an absence of separation of powers between the judicial, legislative and the executive branches in China, and the nature of Chinese regulations that are drafted by the central government furthering the interests of the central department, whereas rule of law is based on the notion that no one is above the law, including the government).

<sup>15</sup> David Hindman, *The Effect of Intellectual Property Regimes on Foreign Investments in Developing Economies*, 23 *ARIZ. J. INT'L & COMP. L.* 467, 475 (2006) (exemplifying the difficulties developing countries in Sub-Saharan Africa and Eastern Europe have had in attracting FDI despite implementing strong IP protections, because of factors such as government regulations and costs of investment); Takatoshi Ito & Anne O. Krueger, *Why Does China Attract So Little Foreign Direct Investment?*, 9 *NBER-EASE* 239, 259 (2000) ("The regulatory burden in China may be another important impediment that discourages investors from the major source countries from investing more in China"); K.H. Zhang, *Why is U.S. Direct Investment in China so Small?*, 18 *CONTEMP. ECON. POL'Y* 82, 83, 87 (2000) (analyzing limitations on China's USDI flows, due in part to China's restrict policy toward the market-oriented FDI). *Contra* John Philip Jones, *Global Business: Oversight without Inhibiting Enterprise*, 603 *ANNALS AM. ACAD. POL. & SOC. SCI.* 325 (2006) ("Benefits: Data demonstrate the overall benefits of global business. The idea that globalization is to the exclusive benefit of rich countries is a fallacy. Firms must show themselves as good citizens in foreign countries or they lose in the long term; this benefits the locals").



too much power by any one facet of the political or social system. These “other aspects of society” are frequently referred to as “civil society.”<sup>16</sup>

“Civil society” is a term that is frequently used in conjunction with rule of law and describes the myriad of social, civic and other non-governmental organizations that themselves provide a kind of check on the untrammelled power of the state.<sup>17</sup> In the context of the United States, for example, the practice of the American Bar Association (ABA) to vet or grade judicial candidates prior to appointment or election is an example of a non-governmental organization playing a role in checking the untrammelled power of the executive or legislative bodies of the government to control the judiciary.<sup>18</sup> Thus, those individuals involved in ABA governance are not themselves government actors, but their participation in this unit of civil society serves as a “civil” check on governmental power. Indeed, the efforts by the Bush Administration in 2001 to sideline the ABA in the judicial vetting process<sup>19</sup> was arguably an effort to sideline this aspect of civil society.

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<sup>16</sup> Pham Thi Ngoc Tram, *Rule-of-Law State, Civil Society and the Issue of Civil Rights and Obligations*, CIVIL L. NETWORK, (Nguyen Thi Lan Huong, trans.,) (Jan. 27, 2010), <http://civillawnetwork.wordpress.com/2010/01/27/rule-of-law-state-civil-society-and-the-issue-of-civil-rights-and-obligations/>.

<sup>17</sup> Chen, *supra* note 15, at 142-43 (identifying civil society as the basis of the rule of law and embodiment of the spirit of private law); *Defining Civil Society*, THE WORLD BANK, <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/CSO/0,,contentMDK:20101499~menuPK:244752~pagePK:220503~piPK:220476~theSitePK:228717,00.html> (last visited May 23, 2011) (“[T]he term civil society to refer to the wide array of non-governmental and not-for-profit organizations that have a presence in public life, expressing the interests and values of their members or others, based on ethical, cultural, political, scientific, religious or philanthropic considerations”).

<sup>18</sup> *Access to Justice and Human Rights Program*, AMERICANBAR.ORG, <http://apps.americanbar.org/rol/programs/human-rights.html> (last visited May 23, 2011).

<sup>19</sup> See, e.g., Terry Carter, *Do-Over*, ABA Journal (May 1, 2009), available at <http://www.abajournal.com/magazine/article/do-over/> (“In 2001, the Bush administration, at the urging of conservative interest groups, abruptly ended the ABA’s role in vetting federal judicial nominees before they are named—something it had done since 1953, the early days of the Republican Eisenhower administration.”)

It must, of course be recognized that “civil society” is a malleable term, capable of exploitation by those with very specific ideological agendas. For example, the participation of non-government economic organizations such as chambers of commerce in political activity, as witnessed in the 2010 midterm elections in the United States can be viewed in at least three ways: (1) an effort by powerful economic interests to unduly skew the political system as a result of their particular economic interests; (2) a healthy example of active participation by non-governmental actors in checking the power of the government; or (3) simply one of many civil society actors such as unions, environmental organizations in contributing to the full airing of all issues and viewpoints in governance.<sup>20</sup>

## *II. Problems of Rule of Law in Haiti Prior to the Earthquake*

Haiti’s history has been characterized by an extraordinary lack of rule of law for much of its history from independence in 1804 to the 2010 earthquake.<sup>21</sup> It is beyond the scope of this article to provide a detailed history of pre-Haiti earthquake, but it is important to note several aspects of its political and social development that are relevant to any discussion of rule of law and civil society in the country.

First, Haiti experienced many of the problems associated with European exploitation, which were also shared by its Caribbean and Central American neighbors. Haiti, however, also suffered from being the first independent nation of freed slaves in the Western Hemisphere.<sup>22</sup> It consequently earned the enmity of extraordinarily

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<sup>20</sup> Bruce Gilley, *Civil Society, Democracy, and Elections*, AMERICA.GOV (Jan. 25, 2010), <http://www.america.gov/st/democracyhenglish/2010/January/20100126152113mlenuhret0.7919886.html>.

<sup>21</sup> O’Connor, *supra* note 1.

<sup>22</sup> See Nick Maceus, *Haiti: Past and Future From 16th-Century Colonialism to 21st-Century Globalization: A Thesis in the Field of Government*, HARVARD (June 2008), <http://nickmaceus.wordpress.com/haiti-past-and-future-from-16th-century-colonialism-to-21st-century-globalization/>. See also Dr. Jamal Benomar, *Rule of Law and Technical Assistance in Haiti: Lessons Learned*, UNROL.ORG (July 8, 2001), <http://www.unrol.org/files/Rule%20of%20Law%20Technical%20Assistance%20in%20Haiti%20lessons%20learned.pdf> (explaining the effect of

powerful enemies, among them a Southern-dominated United States fearful of a free nation of former slaves, and a vengeful French former colonial master.<sup>23</sup> In the process, colonial Haiti went from being a highly productive colony with an economy based on forestry and sugar industries, to becoming the poorest country in the Western Hemisphere in the 21st century.<sup>24</sup>

Second, its pre-2010 earthquake history has been characterized by long periods of dictatorships and despotic rule, accompanied by extraordinary high levels of corruption.<sup>25</sup> For centuries prior to the earthquake, dictators stripped the wealth and resources of the country for personal benefit to the detriment of the development of a substantial middle class.<sup>26</sup> It almost goes without saying that dictatorships, particularly corrupt ones, are the antithesis of the requirements necessary for the development of either rule of

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colonialism and interventionist policies in Haiti); CIA, THE WORLD FACTBOOK, *Haiti*, CIA.GOV (Mar. 16, 2011), <https://www.cia.gov/library/publications/the-world-factbook/geos/ha.html>.

<sup>23</sup> See Slave Resistance, *A Revolution in Haiti*, UNIVERSITY OF MIAMI DIGITAL INITIATIVES, [http://scholar.library.miami.edu/slaves/san\\_domingo\\_revolution/revolution.html](http://scholar.library.miami.edu/slaves/san_domingo_revolution/revolution.html) (last visited May 18, 2011). See also Revolution, *The U.S. in Haiti: A Century of Domination and Misery*, (Jan. 17, 2010), available at [http://revcom.us/a/189/US\\_in\\_Haiti-en.html](http://revcom.us/a/189/US_in_Haiti-en.html); Paul Farmer, *Blood, Sweat, and Baseballs: Haiti in the West Atlantic System*, 13 DIALECTICAL ANTHROPOLOGY 83-99 (1988); Karen Jenkins, *Traumatized Societies: Social Cubism and the Predatory State of Haiti*, 8 ILSA J. INT'L & COMP. L. 901 (2002).

<sup>24</sup> Nick D. Maceus, *Haiti: Past and Future From 16th Century Colonialism to 21st Century Globalization* (unpublished thesis, Harvard University) (June 2008), <http://hubpages.com/hub/Haiti-Past-and-Future>; see generally CIA WORLD FACTBOOK, *supra* note 22.

<sup>25</sup> Robert Perito & Greg Maly, *Haiti's Drug Problem*, [www.usi.org/publications/haitis-drug-problem](http://www.usi.org/publications/haitis-drug-problem) (last visited Apr. 25, 2011) (describing Haiti's extensive periods of repressions and other causes of these periods of corruption and despotism. In addition, the authors provide examples of Haitian leaders who have engaged in illegal and unethical practices. The article calls for investigation of human rights crimes and decries current problems with drug-trafficking and corruption; see generally Hans Joerg Albrecht, Louis Aucoin, & Vivienne O'Connor, *Building the Rule of Law in Haiti: News Laws for a New Era* (Aug. 2009), [www.usip.org/files/resources/haiti\\_rol.pdf](http://www.usip.org/files/resources/haiti_rol.pdf).

<sup>26</sup> See Kona L. Shen, *Failing Haiti: How Blame, Disasters and Foreign Aid Have Destroyed the Haitian Environment* 6, 39 (Apr. 2010), <http://konashen.files.wordpress.com/2010/04/kona-shen-failing-haiti-thesis.pdf>.

law or civil society. The suppression of a democratic civil society meant that effective, well-organized independent political or social institutions were repressed, and there was neither a will nor the means to provide any check on any aspect of governmental functioning.<sup>27</sup> This political turmoil did not end with the end of the Duvalier regime.<sup>28</sup> The first post-Duvalier President, Jean-Bertrand Aristide, himself suffered an initial coup, was forced into exile, resumed the presidency in 1994, and was forced again into exile in 2004.<sup>29</sup> These events demonstrate that even a formal democracy does not necessary ensure the development of rule of law unless that society also has a strong civil society. It is arguable that because of the lack of rule of law and political instability, even the recent democratic elections will not assure continued future political stability or rule of law.

The corruption that accompanied the long history of despotic rule was not only extraordinary; there is considerable skepticism that it has even abated significantly. Government officials have been implicated in illegal activities such as money laundering and drug trafficking, and largely avoided any accountability for their actions.<sup>30</sup> The complicity of governmental officials, weak legal institutions, and utter absence of rule of law made Haiti a perfect target for narcotraffickers.<sup>31</sup> The role of corruption in weakening rule of law has been so pronounced throughout all levels of Haitian society,<sup>32</sup>

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<sup>27</sup> See generally *Current Situation in Haiti*, GLOBAL SECURITY.ORG, [www.globalsecurity.org/military/library/report/1994/call-haiti-94-3\\_chp2.htm](http://www.globalsecurity.org/military/library/report/1994/call-haiti-94-3_chp2.htm) (last visited May 23, 2011) [hereinafter *Current Situation in Haiti*].

<sup>28</sup> O'Connor, *supra* note 1.

<sup>29</sup> Brian Concannon Jr., 'The Return': Aristide, Law and Democracy in Haiti, Director of the Institute for Justice and Democracy in Haiti, JURIST, <http://jurist.law.pitt.edu/forumy/2006/06/return-aristide-law-and-democracy-in.php> (last visited May 23, 2011); CIA WORLD FACTBOOK, *supra* note 22.

<sup>30</sup> Concannon Jr., *supra* note 29; CIA WORLD FACT BOOK, *supra* note 22; *Criminal gangs in Haiti refuse to disarm*, SPERO NEWS, Aug. 23, 2006, <http://www.speroforum.com/a/5082/Criminal-gangs-in-Haiti-refuse-to-disarm> (last visited Apr. 25, 2011) [hereinafter *Gangs Refuse to Disarm*].

<sup>31</sup> *Current Situation in Haiti*, *supra* note 27.

<sup>32</sup> Nancy Roc, *Haiti: the bitter grapes of corruption*, FRIDE.ORG (Mar. 23, 2009), <http://www.fride.org/publication/583/haiti:-the-sour-grapes-of-corruption>.

that Haiti is ranked eleven in the index of failed states in which governmental corruption has been a relevant factor in the absence of mechanisms of control to make governmental officials accountable to their citizens.<sup>33</sup>

Transparency International defines corruption as the “abuse of entrusted power for private gain.”<sup>34</sup> In a scale from one to ten, Haiti in 2010 had a score of 2.2 placing the country at the bottom of the table of the world’s most corrupt countries.<sup>35</sup>

Third, Haiti’s constitutional history has contributed in part to the continued political crises that the country faced before the 2010 earthquake. The last Haitian Constitution was enacted in 1987. It stated “In no case may the House of Deputies or the Senate be dissolved or adjourned,” and it clearly expressed the limitation of the presidential powers in contrast with the supremacy of the Parliament. However, without a civil society and rule of law, the written words of the Constitution have been trumped by political practice.<sup>36</sup>

Thus, even though the Haitian Constitution provides substantial parliamentary power with respect to the Executive Branch, in practice the Executive Branch has violated the rule of law by derogating from the Constitution. For instance in 1987, the Constitution was suspended for over three years, and its provisions were utterly derogated when General Raoul Cédras took power in a military coup.<sup>37</sup>

Furthermore, in 1999, Ex-President René Préval cut all budgetary and administrative support of Parliament.<sup>38</sup> In addition, some commentators have argued that there was a grave constitutional violation when Ex-President Préval’s policies escalated a

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<sup>33</sup> *Id.*; *The Failed State Index 2010*, FOREIGN POLICY, available at [http://www.foreignpolicy.com/articles/2010/06/21/2010\\_failed\\_states\\_index\\_interactive\\_map\\_and\\_rankings](http://www.foreignpolicy.com/articles/2010/06/21/2010_failed_states_index_interactive_map_and_rankings) (last visited May 23, 2011).

<sup>34</sup> *Policy and Research*, TRANSPARENCY INT’L, [http://www.transparency.org/policy\\_research/surveys\\_indices/cpi/2010/in\\_detail#3](http://www.transparency.org/policy_research/surveys_indices/cpi/2010/in_detail#3) (last visited May 23, 2011).

<sup>35</sup> *Id.*

<sup>36</sup> Louis Aucoin, *Haiti’s Constitutional Crisis*, 17 B.U. INT’L L.J. 115 (1999).

<sup>37</sup> *Id.* at 24-69.

<sup>38</sup> *Id.*

constitutional crisis that ended in a political deadlock between two government branches.<sup>39</sup> It has been argued that Préval's actions were unconstitutional in light of two constitutional provisions.<sup>40</sup> First, the House of Deputies or the Senate cannot be dissolved or adjourned by the President.<sup>41</sup> Second, the 1987 Constitution promotes the supremacy of Parliament over the executive branch.<sup>42</sup> However, Préval argued that his actions were constitutional<sup>43</sup> under the authority of a 1995 "Electoral Law."<sup>44</sup> The rule of law aims to promote and preserve a constitutional order within a country, and the failure to follow constitutional provisions in Haiti has caused unnecessary political uncertainty.

Fourth, because the dictatorships that ruled Haiti for much of its existence relied on brute force to maintain power, the army and armed gangs loyal to the dictatorships held disproportionate power, and continue to hold disproportionate power even as many of the formal obstacles to democracy have been removed.<sup>45</sup> Between 1991 and 1994, the number of political assassinations by the military junta was estimated to be over 5,000.<sup>46</sup> The military dictatorship was catastrophic for the country.<sup>47</sup> In addition to killing thousands of

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<sup>39</sup> *Id.*

<sup>40</sup> *Id.* at 126.

<sup>41</sup> *Id.* at 116-17.

<sup>42</sup> *Id.*

<sup>43</sup> The other side of the argument is that Ex-President Préval faced with the impossibility to comply with the 1987 Constitution because the PEC was not yet established. Therefore, he looked for a political solution for the electoral process, which was to adopt the "Electoral Law" of 1995. It is noteworthy that even if the adoption of the "Electoral Law" by the President was an encroachment on parliamentary power, the "Electoral Law" has never been challenged on this basis. *See id.*

<sup>44</sup> The Electoral Law purpose was to establish the election procedure as required by the 1987 Constitution. *See id.* at 115.

<sup>45</sup> Timothy Donais, *Back to Square One: The Politics of Police Reform in Haiti*, CANADIAN POLITICAL SCIENCE ASSOCIATION (2005), available at <http://www.cp sa-acsp.ca/papers-2005/Donais.pdf>.

<sup>46</sup> Brian Concannon, Jr., *Beyond Complementarity: The International Criminal Court and National Prosecutions, A View From Haiti*, 32 COLUM. HUM. RTS. L. REV. 201, 203 (2000).

<sup>47</sup> *Id.*

people, hundreds of people were tortured while others were suppressed by the dictatorship regime, or forced to flee, converting Haiti into a country that lacked the most basic civil rights for its people.<sup>48</sup> During that period of time, Haiti was not considered to be a democracy under the Security Council resolution 917 regarding Haiti.<sup>49</sup> In addition, the Security Council<sup>50</sup> considered Haiti as a government that constituted a threat to peace and security in the region because of the overthrow of ex-President Aristide.<sup>51</sup>

Fifth, religion has played an important role in Haiti's political system and a full separation between Church and state does not exist.<sup>52</sup> The Catholic Church has played two major roles in Haiti.

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<sup>48</sup> *Id.*

<sup>49</sup> Lois E. Fielding, *Taking the Next Step in the Development of New Human Rights: The Emerging Right of Humanitarian Assistance to Restore Democracy*, 5 DUKE J. COMP. & INT'L L. 329, 337 (1995) ("The Resolution 917 declared that the obstruction of the restoration of democracy in Haiti constituted a threat to peace and it authorized a military intervention to restore a democratic order in Haiti").

<sup>50</sup> Previously, the 940 Resolution authorized a multinational force to enter Haiti to eject the military dictatorship from power. When the dictatorship was ejected, the multinational force allowed Jean-Bertrand Aristide's government to return to power. *Id.* at 329.

<sup>51</sup> *Id.* at 366 (explaining that the Security Council acted in Haiti because Haiti overthrew a legitimate government, however, that was not the only factor that was considered). See generally S.C. Res. 917, U.N. SCOR, 49th Sess., 3376th mtg., U.N. Doc. S/RES/917 (1994) (indicating that the Security Council may consider the following factors in finding a government to constitute a threat to peace and security in the region: (a) any government that is not a democracy and is violent repressive; (b) any government that is not a democracy and came to power by violent overthrow of a legitimate democracy (c) any government that is not a democracy and stubbornly resists the UN; (d) any government that is not a democracy and violates its legal obligations under a settlement agreement; (e) any government that is not a democracy, came to power by overthrowing a legitimate democracy, and is actively opposed on that basis by nations and organizations in the region; (f) or any government that is not a democracy and threatens the security of other nations, whether by direct or indirect external effects such as massive refugee flow).

<sup>52</sup> Religion has historically had a strong influence in Haitian politics. Because of Haiti's continuing violent history, sometimes the masses have depended on religion for help and political groups have taken advantage of religion to help influence electoral decisions. François Duvalier, however, "opposed the church more than any other Haitian president. He expelled the archbishop of Port-au-

On one hand, the country has extensive poverty and most of the population is illiterate, and the masses have depended on religious leaders to meet many of their most basic and emergent needs.<sup>53</sup> For example, the Catholic Church or Catholic Agencies has sponsored educational programs to increase literacy; they have provided agricultural assistance and supported health care programs throughout the country; and they have created mechanisms to respond to natural disasters.<sup>54</sup> Other Catholic organizations such as Caritas Haiti have also done substantial work in the country.<sup>55</sup> This organization has offices in Haiti and it has developed diverse programs designed to provide food support and care for the poor in Haiti.<sup>56</sup>

On the other hand, the Church, or at least a number of its members, has frequently played sometimes contradictory political roles<sup>57</sup> and religion has frequently been manipulated by political

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Prince, the Jesuit order, and numerous priests between 1959 and 1961. In response to these moves, the Vatican excommunicated Duvalier. When relations with the church were restored in 1966, Duvalier prevailed. A Haitian archbishop was named for the first time, and the president gained the right to nominate bishops." *Haiti*, MONGABAY.COM, [http://www.mongabay.com/reference/country\\_studies/haiti/all.html](http://www.mongabay.com/reference/country_studies/haiti/all.html) (last visited June 18, 2011). In the mid-1980s, a fundamental change occurred on the part of the Church followed Pope John Paul II's statement, during a 1983 visit to the country, that "Things must change here." "Galvanized by the Vatican's concern, Roman Catholic clergy and lay workers called for improved human rights" and developed a "peasant-community movement." *Id.*

<sup>53</sup> *Current Situation in Haiti*, *supra* note 27.

<sup>54</sup> Catholic Relief Services is a worldwide organization that began work in Haiti in 1954. The agency specializes in implementing numerous emergency response and development programs to help Haitians. *See Haiti*, CATHOLIC RELIEF SERVICES, <http://crs.org/countries/haiti> (last visited May 18, 2011).

<sup>55</sup> *Caritas Haiti*, CARITAS.ORG, [http://www.caritas.org/worldmap/latin\\_america/haiti.html](http://www.caritas.org/worldmap/latin_america/haiti.html) (last visited May 18, 2011).

<sup>56</sup> Caritas supports development programs that contribute to: (1) community development; (2) promotion of women participation and women's rights; (3) agricultural development programs; (4) micro-financial development programs; (5) development of health facilities; and (6) development of emergency response systems. *See id.*

<sup>57</sup> Irwin P. Stotzky, *Essay: Establishing Deliberative Democracy: Moving from Misery to Poverty with Dignity*, 21 U. ARK. LITTLE ROCK L. REV. 79, 94 (1998).



leaders.<sup>58</sup> It is noteworthy that the Vatican was the only nation that recognized the political legitimacy of the military coup and members of the Catholic Church ironically opposed the first democratic government established in Haiti by Jean-Bertrand Aristide, a former priest.<sup>59</sup> Vodun or “voodoo” has also played a central role in the life and history of Haiti. As a consequence, a struggle between the two religions has developed through the years. Both religions have divided Haitians culturally.<sup>60</sup> Haitian elites have emphasized their Christian belief, and Haitian governments have persecuted Haitians who practiced Voodoo.<sup>61</sup> Conversely, Voodoo has also played a political role. For example, during the Duvalier regime, the government extended the control over the country using Voodoo priests to influence local communities.<sup>62</sup> These Voodoo priests have been used as a form to attract the masses for upcoming elections due to the fact that these priests had traditionally played an important role in local communities.<sup>63</sup>

Sixth, as is frequently the case with dictatorships, Haiti lacked strong government institutions and qualified personnel to tend to the problems that are necessary to strengthen the rule of law in the country.<sup>64</sup> However, in contrast to dictatorships or authoritarian governments that exhibited a “rule by law,” as mentioned previously, the *application* of law was much more arbitrary than even in many other dictatorships or authoritarian regimes.<sup>65</sup> For example, in many authoritarian regimes, there may not be democracy or human rights, but individuals can predict the consequences of their economic or

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<sup>58</sup> See Jenkins, *supra* note 23, at 918.

<sup>59</sup> Stotzky, *supra* note 57.

<sup>60</sup> Jenkins, *supra* note 23, at 917.

<sup>61</sup> Jenkins, *id.* (“The elites proclaim their adherence to Christianity. Publicly, the elites associate folk religion with evil, and successive Haitian governments have persecuted many individuals who openly practice Vodun. Yet there is widespread evidence that many of the elites themselves consistently practice aspects of it behind closed doors”).

<sup>62</sup> *Id.* at 918.

<sup>63</sup> *Id.*

<sup>64</sup> See Benomar, *supra* note 22.

<sup>65</sup> *Id.*

other actions.<sup>66</sup> In this sense, some authoritarian societies characterized by rule by law, such as Singapore, has experienced rapid economic growth even as democracy, human rights and the broader concepts of rule of law were not followed.<sup>67</sup>

Seventh, Haiti has had critical problems fighting criminal gangs within the country.<sup>68</sup> Many of these criminal gangs are descended from the brutal armed gangs used by the Duvalier regime to enforce its rule.<sup>69</sup> Even before the earthquake, violent gang acts occurred daily throughout the major cities and criminal gangs<sup>70</sup> prevented international organizations from assisting in establishing order within the country.<sup>71</sup>

Eighth, in addition to the political and social crises mentioned above, Haiti's prison conditions are miserable and overcrowded<sup>72</sup>

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<sup>66</sup> See *Rule of Law: Essential Principles*, DEMOCRACY WEB: COMPARATIVE STUDIES IN FREEDOM, <http://www.democracyweb.org/rule/principles.php> (last visited May 18, 2011).

<sup>67</sup> *Rule of Law: Country Studies-Singapore*, DEMOCRACY WEB: COMPARATIVE STUDIES IN FREEDOM <http://www.democracyweb.org/rule/singapore.php> (last visited May 18, 2011).

<sup>68</sup> See generally DAVID NICHOLLS, *FROM DESSALINES TO DUVALIER: RACE, COLOUR AND NATIONAL INDEPENDENCE IN HAITI*, 14-20 (Rutgers University Press rev. ed. 1996) (1979) (discussing the history of Haiti). El Salvador is another country that has significant problems dealing with and fighting criminal gangs. See generally *No Place to Hide: Gang, State, and Clandestine Violence in El Salvador*, 2007 INT'L. HUM. RTS. CLINIC, HUM. RTS. PROGRAM, HARV. LAW SCH. REP., at iii-ii, [http://www.law.harvard.edu/programs/hrp/documents/FinalElSalvadorReport\(3-6-07\).pdf](http://www.law.harvard.edu/programs/hrp/documents/FinalElSalvadorReport(3-6-07).pdf). El Salvador has a weak judicial and law enforcement system that have contributed to the escalation of violence and insecurity in the country. *Id.* at 7. As a result, the persistence of criminal violence in El Salvador has undermined rule of law. *Id.* at 24.

<sup>69</sup> Concannon, Jr., *supra* note 46, at 209-10; Nicholls, *supra* note 68.

<sup>70</sup> Irwin P. Stotzky, *Constitutionalism and Democracy: An Essay in Honor of Stanley N. Katz*, 63 U. MIAMI L. REV. 83, 98 (2008).

<sup>71</sup> *Gangs Refuse to Disarm*, *supra* note 30.

<sup>72</sup> See Taylor Healy, *Issues in the Third Circuit, Return to Sender, Intent Unknown: The Effects of the Third Circuit's Interpretation of the Convention Against Torture's Intent Requirement on Haitian Criminal Deportees*, 54 VILL. L. REV. 777, 781 (2009). First, the prisons do not have sanitation facilities and the prisons are poorly maintained. *Id.* at 781-82. Second, the prisons are overcrowded with lack of food, water and medical treatment. *Id.* at 781. Third, it is argued that

and the country lacks medical assistance, including care for those who are HIV-positive.<sup>73</sup>

Ninth, Haiti suffers from the worst socio-economic indicators in the Western hemisphere, exacerbated by an extraordinary strife of devastator hurricanes and, of course, the catastrophic 2010 earthquake.<sup>74</sup>

It is notable that some progress to promote the rule of law<sup>75</sup> was made before the 2010 earthquake.<sup>76</sup> The United Nations effort

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security guards abuse prisoners by beating them with sticks or torturing them with electric shock. *Id.* at 782.

<sup>73</sup> Serena P. Koenig, Fernet Leandre & Paul E. Farmer, *Scaling-up HIV treatment programs in resource-limited settings: the rural Haiti experience*, 18 AIDS Suppl. 3, 21 (2004); O'Connor, *supra* note 1.; *Current Situation in Haiti*, *supra* note 28.

<sup>74</sup> Chris Logan, *Three Keys for Rehabilitating and Stabilizing Haiti*, 9 SUSTAINABLE DEV. L. & POL'Y 50 (2008-2009) (describing Haiti's socio-economic conditions, Haiti's current natural disasters, and the current food crisis that Haiti faces).

<sup>75</sup> See generally Organization of American States, *Report of the Secretary General on the OAS Mission and the Joint OAS/Caricom Mission to Haiti*, AG/INF.264/01 (June 3, 2001), available at [http://www.oas.org/xxxiiga/english/docs\\_en/report4\\_haiti.htm](http://www.oas.org/xxxiiga/english/docs_en/report4_haiti.htm) (last visited May 18, 2011) (explaining that the international community, despite significant challenges, has made efforts to implement rule of law in Haiti. During the 2000 legislative and municipal elections in Haiti, the international community suspended the delivery of hundreds of millions of dollars due to the flawed methodology that was used for the election process in Haiti. The international community, however, was aware of the consequences that the suspension could cause and it tried to facilitate and promote a climate of dialogue with the Haitian government; the crisis was resolved and the Permanent Council supported an establishment of a special OAS commission on Haiti, there was significant pressure by the international community to correct serious flaws in Haitian electoral process; the international community was concerned that the primary victims were the Haitians themselves who were being affected by the lack of international aid).

<sup>76</sup> See generally U.N. Dep't of Public Information, *The Crisis in Haiti: Finding a Political Solution*, U.N. Doc. DPI1402-5M (Aug. 1993), available at <http://www.un.org/rights/micivih/rapports/crisis.htm> (last visited Apr. 25, 2011) (explaining that the OAS has also contributed to promote rule of law in Haiti to observe Haiti's human rights situation; the organization Micivih's purpose is to promote human rights and to create institution development in Haiti; for example, members interact and provide medical support in a daily basis to victims that

to address serious matters in the country was vital for some of the projects that were running in 2001 and 2007.<sup>77</sup> The government created and implemented laws to promote separation of powers between the judicial branch and the other government branches.<sup>78</sup> In addition, requirements for judges and magistrates were established so they require continued education that should enhance the occurrence of better judgments. The Haitian government also took the significant step of adopting a five-year plan targeted at, among other entities, the National Police.<sup>79</sup> The plan was aimed to overcome three problems: (1) educational training, (2) improving working conditions, and (3) infrastructure investment.<sup>80</sup> It was not only that the judiciary and the national police were under reform; there were also efforts to improve the prison conditions, legislation to punish money laundering, partial reformation of Haiti's crime laws, and coordination with international organizations to create long-term plans to promote some of the principles of the rule of law in Haiti.<sup>81</sup>

However, even if there was a steady progress in promoting the rule of law before the 2010 earthquake, they were incomplete and inadequate.<sup>82</sup> Before 2010, Haiti still was facing complex challenges

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suffered human rights violations).

<sup>77</sup> See generally *Europe Aid Development and Cooperation*, EUROPEAN COMMISSION, [http://ec.europa.eu/europeaid/work/index\\_en.htm#](http://ec.europa.eu/europeaid/work/index_en.htm#) (last visited May 18, 2011) (demonstrating that the European community also has made substantial efforts to promote rule of law in Haiti); *République d'Haiti - Communauté Européenne, Document de Stratégie Pays et Programme Indicatif National Pour la Période 2008-2013* (May 12, 2008), available at [http://ec.europa.eu/development/center/repository/scanned\\_ht\\_csp10\\_fr.pdf](http://ec.europa.eu/development/center/repository/scanned_ht_csp10_fr.pdf) (explaining that the European Union identified a cooperation strategy between the European Commission and Haiti; for example, the European community identified key issues that had to be restored in Haiti: (1) infrastructure development, (2) a governance plan, (3) macro & micro economic reforms, and (4) development of local program between the Dominican Republic and Haiti borders; it is important that the total funds under the European Development fund for 2008-2013 in Haiti amounted to 291 million Euros).

<sup>78</sup> O'Connor, *supra* note 1; Titov, *supra* note 1.

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*; Titov, *supra* note 1.

<sup>81</sup> O'Connor, *supra* note 1.

<sup>82</sup> *Gangs Refuse to Disarm*, *supra* note 30.

that were still far from being resolved even before the earthquake.<sup>83</sup> Even with substantial international aid provided by the United States, the United Nations, and other international institutions that advocated the importance of the rule of law, Haiti did not enjoy most of the criteria of rule of law or effective civil society.<sup>84</sup>

### *III. Current Problems regarding Rule of Law in Haiti as Result of the 2010 Earthquake*

On January 12, 2010, the devastating earthquake that is the focus of this symposium struck approximately ten miles from Port-au Prince, destroying the city and leaving a death toll of more than 210,000 people, as well as 300,000<sup>85</sup> injured (including 4,000 to 5,000 amputees), and about 1.6 million homeless.<sup>86</sup> According to a study by the Inter-American Development Bank, the total cost of the natural disaster was between \$7.2 to \$13.2 billion dollars.<sup>87</sup>

In addition to thousands of casualties, injuries, and displacements, the earthquake's other consequences were devastating. The natural disaster left the country in complete destruction and chaos. Specifically, the United Nations estimated that 105,000 homes were destroyed and another 208,000 were damaged.<sup>88</sup> Additionally, the United Nations lost 102 staff members

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<sup>83</sup> O'Connor, *supra* note 1; see generally *Western Hemisphere, Supporting Human Rights and Democracy: The US record 2003-2004*, U.S. DEPARTMENT OF STATE, (Apr. 2004), available at <http://www.state.gov/g/drl/rls/shrd/2003/31024.htm>.

<sup>84</sup> *Supporting Human Rights and Democracy, supra* note 83.

<sup>85</sup> Amnesty Int'l, *Haiti: After the Earthquake*, A1 Index AMR 36/004/2010, Mar. 25, 2010, <http://www.amnesty.org/en/library/asset/AMR36/004/2010/en/d12e3cdc-2103-40b8-af57-1412dcf3d413/amr360042010en.pdf>.

<sup>86</sup> Human Rights Watch, *World Report 2011: Haiti*, Jan. 2011, <http://www.hrw.org/en/world-report-2011/haiti>.

<sup>87</sup> *Haiti reconstruction cost may near \$14 billion, IDB study shows*, INTER-AMERICAN DEV. BANK (Feb. 16, 2010), <http://www.iadb.org/en/news/webstories/2010-02-16/haiti-earthquake-reconstruction-could-hit-14-billion-idb,6528.html>.

<sup>88</sup> *Billions pledged to Haiti for rebuilding, will poverty end too?*, DIGITAL JOURNAL, Mar. 31, 2010, at A1.

and the government lost 40% of its civil servants.<sup>89</sup> The country faced a serious lack of personnel and institutional facilities. Although, as discussed above, Haiti had very serious problems with rule of law prior to the earthquake, the country was making some progress. Nevertheless, the earthquake destroyed the very infrastructure necessary to implement even the most basic elements of rule of law. The earthquake left the country without a central government or legal institutions to enforce rule of law. Many ministers and public officials were either severely injured or killed.<sup>90</sup>

The justice and prison systems, as well as the police stations were destroyed or severely damaged. Haiti's weak infrastructure collapsed leaving government buildings, foreign aid offices, schools, hospitals, and others entities in ruins.<sup>91</sup> Crime and violence rose from already high levels as prisoners escape during the earthquake.<sup>92</sup> New armed criminal groups have emerged and older ones have regrouped. These criminal enterprises have taken advantage of upcoming elections and they have lined up with political forces disrupting the electoral process. As a result, it has been argued that public confidence in the government has been shaken. Although it is vital for the present government to concentrate on fighting criminal violence in local communities,<sup>93</sup> most of the resources simply don't exist.

Hundreds of millions of dollars were delivered to Haiti through NGOs, but the logistical problems created as a result of the

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<sup>89</sup> U.N. Press Conference Department of Public Information, New York, U.S., Jan. 10, 2011, *Press Conference on Haiti's Reconstruction, One Year after Earthquake*, 1.

<sup>90</sup> See generally Human Rights Watch, *supra* note 86.

<sup>91</sup> *Id.*

<sup>92</sup> Clint Van Zandt, *Thousands of Prisoners escape Haitian jails after earthquake strikes*, NEWSVINE, Jan. 14, 2010, [http://clintvanzandt.newsvine.com/\\_news/2010/01/14/3757620-thousands-of-prisoners-escape-haitian-jails-after-earthquake-strikes](http://clintvanzandt.newsvine.com/_news/2010/01/14/3757620-thousands-of-prisoners-escape-haitian-jails-after-earthquake-strikes).

<sup>93</sup> *Crime, Politics and Violence in Post-Earthquake Haiti*, PEACE BRIEF 58 (United States Institute of Peace, Washington, D.C.), Sept. 28, 2010, available at <http://www.usip.org/files/resources/PB%2058%20-%20Crime%20Politics%20and%20Violence%20in%20Post-Earthquake%20Haiti.pdf>.

earthquake greatly impeded the delivery of the foreign aid.<sup>94</sup> A wave of panic, chaos, and confusion swept the country, leaving thousands of civilians in a state of uncertainty and frequently with no means of subsistence.<sup>95</sup>

Women and children have suffered the most from the natural disaster.<sup>96</sup> According to the Institute for Justice and Democracy in Haiti (IJDH) women and girls in displacement camps are vulnerable to gender-based violence including rape.<sup>97</sup> Sexual violence cases are a constant in Haiti and there are different factors that have contributed to the increase of sexual assaults: (1) the overcrowding in settlements has increased the risk for women and children of being raped; (2) displacement camps usually lack hygiene facilities so women and children do not have their own privacy; (3) women and children do not report sexual abuse incidents because of fear of persecution and lack of trust in the police and judicial authorities.<sup>98</sup>

Haiti's president, René Préval, stated that re-establishing the rule of law was a priority for the government.<sup>99</sup> However, there has been widespread skepticism due to the country's prior political

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<sup>94</sup> 10,000 U.S. troops, 150 military personnel from the Dominican Republic and 800 Canadian soldiers were deployed in Haiti to provide security for the distribution of aid. See *Haiti's Human Rights Challenge*, AMNESTY INT'L (Jan. 29, 2010), <http://www.amnesty.org/en/news-and-updates/haitis-human-rights-challenge-20100129>.

<sup>95</sup> *Id.*

<sup>96</sup> However, sexual violence has been a dilemma even before 2010. Prior to the earthquake, the Pan American Development Foundation stated that 225,000 children worked as household slaves and others were subject to sexual assault or other forms of sexual violence. Under the current situation, it is vital that local and international organizations cooperate with civilians to be able to restore order and to protect children and women from physical abuse. See *Haiti, Child Slavery, Human Rights, and the Rule of Law*, LEXISNEXIS, Jan. 19, 2010, <http://law.lexisnexis.com/webcenters/RuleofLawResourceCenter/Issues-Spotlight/Haiti-Child-Slavery-Human-Rights-and-the-Rule-of-Law>.

<sup>97</sup> Kinal M. Patel, *After Earthquake, Violence Against Haitian Women Rises*, 63 VA. L. WKLY. 6. (2010) available at [http://www.lawweekly.org/?module=displaystory&story\\_id=3035&edition\\_id=159&format=html](http://www.lawweekly.org/?module=displaystory&story_id=3035&edition_id=159&format=html).

<sup>98</sup> Amnesty Int'l, *supra* note 85.

<sup>99</sup> Bill Clinton & Jean-Max Bellerive, *Finishing Haiti's Unfinished Work*, N.Y. TIMES, July 12, 2010, at A19; *Haiti*, *supra* note 86.

history.

Haiti also suffered from a leadership crisis that has affected basic rebuilding efforts in addition to impeding establishment of rule of law. First, foreign nations and organizations sent hundreds of millions of dollars and humanitarian assistance, but the government was weak and incapable of handling the logistic operations, and was not able to deliver the aid to the neediest.<sup>100</sup> Second, parliamentary elections were postponed leaving a feeling of insecurity and uncertainty among the civilian population.<sup>101</sup> Third, Haiti still needed infrastructure investment. After the earthquake, the shaky infrastructure submerged the capital city leaving it in complete chaos. In addition, due to the disorder and lack of equipment, officials and volunteers were having extreme difficulties in removing debris and identifying safe relocation sites within the city. The government's response to the crises has led some to believe that President Preval was, and is incapable of controlling and stabilizing the country, not necessarily because of any incompetence or personal corruption on his part, but because of the widespread societal and political corruption<sup>102</sup> and lack of rule of law.<sup>103</sup> Adding to the

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<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> For example, some analysts have determined that one of the biggest obstacles to Haiti's reconstruction is corruption. They further claim that is only matter of time that massive aid could simply result in another massive Haitian failure due to the country's legacy of corruption. Therefore, it is important to appreciate the legacy of corruption and anticipate the challenges of reconstruction. See ROBERT KLITGAARD, *ADDRESSING CORRUPTION IN HAITI* 3 (2010).

<sup>103</sup> The Haitian government has requested international aid to coordinate response efforts. However, the government is having difficulties restoring institutions and addressing current development planning after the earthquake. It is noteworthy that some observers have questioned whether historical and current allegations of corruption in the Haitian government may affect the recovery efforts. See generally Senator Loren Legarda, *Commentary: Earthquake Devastation Linked to Corruption*, PHILIPPINE DAILY INQUIRER (Jan. 25, 2010), available at [http://services.inquirer.net/print/print.php?article\\_id=20100125-249305](http://services.inquirer.net/print/print.php?article_id=20100125-249305); *Industry Corruption, Shoddy Construction Likely Contributed to Haiti Quake Devastation*, E SCIENCE NEWS (Jan. 14, 2010), available at <http://esciencenews.com/articles/2010/01/14/industry.corruption.shoddy.construction.likely.contributed.haiti.quake.devastation>; Patricia Zengerle, *Will Endemic Corruption Suck Away Aid to Haitians?*, REUTERS, (Jan. 26, 2010), available at <http://www.reuters.com/>



turmoil, several complaints emerged claiming that political leaders or the elites were benefiting the most from the reconstruction work and thus further weakening the political situation.<sup>104</sup> For example, it has been argued that the elites continue to have an elevated standard of living and some might have been profiting from the country's tragedy. Many of them have control to rental cars, trucks, housing, local supplies, and sometimes the aid agencies have to buy the equipment from them.<sup>105</sup>

In addition to the critical challenges facing the population, the natural disaster devastated one of the most important pillars of the rule of law, which is the judicial system.<sup>106</sup> The justice palace, the ministry of justice, public security, and other courts were completely destroyed.<sup>107</sup> Furthermore, the judicial system is suffering as cases back up and sensitive files relating to past criminal investigations were lost during and after the earthquake.<sup>108</sup> Because police stations and the National Assembly collapsed, the government had to use other governmental building as provisional venues for legislative institutions.<sup>109</sup>

Nevertheless, there are signs of opportunities for positive change, however tentative, with respect to realizing effective rule of law in post-earthquake Haiti. The United States and the United Nations have begun establishing conditions to promote and create the rule of law in Haiti.<sup>110</sup> The United Nations has been working

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article/2010/01/26/us-quake-haiti-corruption-idUSTRE60 P3HN 20100126.

<sup>104</sup> Amnesty Int'l, *supra* note 85.

<sup>105</sup> Even if the Haitian government has cooperated with the international community after the earthquake, it seems that the situation is lapsing into its classic pattern of corruption and inefficiency. Some of the country's policies, instead of resolving concurrent problems, have weakened previous initiatives. For example, at a recent United Nations meeting, one international organization reported that it had forty-five vehicles waiting to enter Haiti but their access has been denied. Other organizations have been having trouble importing goods because of local restrictions. *See Stotzky, supra* note 1.

<sup>106</sup> Titov, *supra* note 1.

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> Amnesty Int'l, *supra* note 85.

<sup>110</sup> U.N. Secretary-General, *Second Annual Report: Strengthening and Coor-*

directly with Haitian citizens in reorganizing the country's policies and combating impunity for human rights abuse.<sup>111</sup> For example, the United Nations Stabilization Mission in Haiti (MINISTAH) has emphasized the need to develop a national strategy to promote rule of law. After the earthquake, MINISTAH immediately began working with the Haitian government to help with an assessment of the urgent needs and prioritized reconstruction goals. One of the main goals of MINISTAH was the consolidation of the judicial system.<sup>112</sup> After the earthquake, MINUSTAH worked closely with some governmental agencies and helped to develop a more dynamic judicial system in Haiti.<sup>113</sup>

Despite the tragic loss of United Nations and government personnel, there has been a substantial response from other sources in addition to the United Nations. For example, 1.5 million people had been provided with shelter and medical assistance, and food was regularly distributed to 4.3 million people.<sup>114</sup> In addition, 11,000 latrines were built, and clean drinking water was made available to 1.7 million Haitians.<sup>115</sup>

Other international organizations, non-governmental organizations (NGOs), and countries have also assisted with emergency aid, and have contributed to development of at least the basic fundamentals of rule of law.<sup>116</sup> The European Union (EU) has

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*inating United Nations Rule of Law Activities*, ¶ 5, U.N. Doc. A/65/318 (Aug. 20, 2010).

<sup>111</sup> CURRENT SITUATION IN HAITI, *supra* note 27; US DEPARTMENT OF STATE, *supra* note 83.

<sup>112</sup> Titov, *supra* note 1.

<sup>113</sup> *Id.*

<sup>114</sup> Press Release, Press Conference by the Haiti Humanitarian Coordinator, Nigel Fisher, Port-au-Prince (Jan. 11, 2011), *available at* <http://www.haitispecialenvoy.org/press-and-media/press-releases/one-year-anniversary-statement/>.

<sup>115</sup> *Id.*

<sup>116</sup> After the 2010 earthquake, the United States Institute of Peace ("USIP") released a report based on Haiti's current situation. The report emphasized five major points: 1) training and budget support for the Haitian government should be provided; 2) post earthquake, many jobs were discontinued, therefore job creation is a fundamental task in order to bring order in Haiti; 3) building up the capacity and credibility of the Haitian National Policy and the judicial system is vital

been an important source of aid for Haiti before and after the 2010 earthquake. In response to the devastating earthquake, the EU mobilized personnel and provided humanitarian assistance and development aid for the needed. For example, by the end of 2010, the EU has made disbursements for over 331.9 million Euros.<sup>117</sup> Many EU members and institutions contributed to the aid progress, including the European Commission, eighteen EU members, and the EU investment bank.<sup>118</sup> One of the goals of the EU is to help rebuild Haiti and it is noteworthy that the EU is the biggest global donor after the 2010 earthquake.<sup>119</sup>

The Organization of American States (OAS) also has contributed to the victims of the 2010 earthquake and it has made substantial efforts to promote rule of law in the nation. The OAS and its affiliate, Pan American Development Foundation (PADF), have delivered financial aid, disaster assistance and humanitarian relief to Haiti.<sup>120</sup> The idea of both organizations is to work closely on diverse

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because they lack credibility among the population; 4) a mechanism to respond to natural disasters must be created by the Haitian government; 5) cultural development must be promoted by the Haitian government by recognizing the importance of gender sensitive recovery activities. See Bryan Schaaf, *Haiti After the Earthquake*, U.S. INST. OF PEACE REPORT (2010), available at <http://www.haitiinnovation.org/en/2010/01/31/usip-report-haiti-after-earthquake>.

<sup>117</sup> *Factsheet: Haiti One Year On, Europe's action in Haiti 4*, EUROPEAN COMMISSION (Jan. 2011), [http://europa.eu/press\\_room/pdf/factsheet\\_haiti\\_en.pdf](http://europa.eu/press_room/pdf/factsheet_haiti_en.pdf).

<sup>118</sup> The following is a detailed list of European countries that have significantly contributed to Haiti after the 2010 Earthquake. Spain has focused on water and sanitation facilities in the capital, including other small cities. In addition, Spain has also collaborated to increase agricultural and rural development in Haiti. France is also providing funds to rebuild hospitals and to increase access to qualify education. France has helped Haiti with debt relief and it has created a budget support for the Haitian government. Germany has made a significant effort as well. It has financed the construction of a hydropower plant to produce energy and it has provided to the Haitian government economic plans to support reconstruction projects. Other countries such as Netherlands, Finland, Luxembourg, the United Kingdom, Estonia, Finland, Ireland, Latvia, and Sweden have focused on providing housing, raising funds, promoting education plans, financing construction projects for the children, supporting disaster risk reduction programs, and debt cancelation. *Id.* at 3-5.

<sup>119</sup> *Id.*

<sup>120</sup> Press Release, *OAS Begins Channeling Aid to Haiti*, Jan. 13, 2010, availa-

projects related to community development, protection of human rights, and to create mechanisms to react to natural disasters.<sup>121</sup> In addition, the OAS has taken a leading role in Haiti's recovery and has called on the international community to provide real and effective aid to the nation. For example, when international authorities and OAS members met in Washington on January 12, 2010, the OAS emphasized the importance of cooperation and coordination between international institutions and OAS member's states in order to restore security in Haiti.<sup>122</sup>

The United Nations has continued to play a significant role in Haiti and it has helped thousands of people to recover from the tragedy. More than 300,000 people have been employed in labor projects, 1.05 million internally displaced people were registered in camps, more than 274 schools that were damaged by the earthquake have been fixed, and 1.1 million children across the country are receiving a daily meal thanks to the National School Meals Programs.<sup>123</sup>

The United States has played a significant role as well in promoting rule of law in Haiti, and the U.S. has provided the means so that international organizations can conduct seminars advocating rule of law, and reinforcing fundamental principles of governance.<sup>124</sup> Yet, Haiti has huge challenges for the upcoming years and given the scale of some of them, it is important that the international community continue to support educational, social and health programs well into the future, particularly for such long-term goals such as building the foundations of rule of law.<sup>125</sup>

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ble at [http://www.oas.org/en/media\\_center/press\\_release.asp?sCodigo=E-007/10](http://www.oas.org/en/media_center/press_release.asp?sCodigo=E-007/10).

<sup>121</sup> *Id.*

<sup>122</sup> Press Release, *OAS, International Authorities Meet at OAS to Discuss Cadastre Project in Haiti*, June 18, 2010, available at [http://www.oas.org/en/media\\_center/press\\_release.asp?sCodigo=E-245/10](http://www.oas.org/en/media_center/press_release.asp?sCodigo=E-245/10).

<sup>123</sup> *Report of the United Nations in Haiti 2010: Situation, Challenges and Outlook*, UNITED NATIONS 12 (Jan. 2011), available at [http://www.un.org/en/peace\\_keeping/missions/minustah/documents/un\\_report\\_haiti\\_2010\\_en.pdf](http://www.un.org/en/peace_keeping/missions/minustah/documents/un_report_haiti_2010_en.pdf).

<sup>124</sup> *Current Situation in Haiti*, *supra* note 27; US DEPARTMENT OF STATE, *supra* note 85.

<sup>125</sup> UNITED NATIONS, *supra* note 123, at 10.

The earthquake weakened the capability of the Haitian Police to confront high levels of violence and crime. Absence of personnel, equipment, and training in conjunction with the natural tragedy itself contributed to overwhelming insecurity in Haiti.<sup>126</sup> The rule of law in Haiti has been weakened from an already very weak level, and even the basic infrastructure to enforce the most rudimentary aspects of rule of law have been destroyed.<sup>127</sup>

Despite the devastation to the judicial infrastructure and institutions, some operations related to rule of law have resumed despite the loss of personnel and infrastructure.<sup>128</sup> Within days of the earthquake, plans to reactivate the justice and correctional system were developed.<sup>129</sup> Even though some judicial buildings were in ruins, some of the members of the justice sector played a critical role in facilitating and protecting the recovery of important judicial records.<sup>130</sup> This shows that at least one of the principles of rule of law, accountability to the law and legal certainty, was followed to some extent by judicial authorities in Haiti.

The Haitian government has identified short- and long-term priorities to re-establish rule of law in the country. In the short term, the judicial infrastructure must be re-built from scratch, including court houses, prisons, and police stations.<sup>131</sup> The Haitian government has emphasized that, in addition to rebuilding damaged infrastructure, there are other key priorities that need immediate assistance such as: (1) implementation of laws to secure judicial independency; (2) restructuring the ministry of justice and implementing new reforms and other laws related to juvenile justice, prosecutors and courts; (3) establishing a national legal system of defense, including improving court procedures and court management; and (4) strengthening the judicial system by training

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<sup>126</sup> Human Rights Watch, *supra* note 86.

<sup>127</sup> Titov, *supra* note 1.

<sup>128</sup> *Id.* at 49.

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

<sup>131</sup> O'Connor, *supra* note 1; UNITED NATIONS, *supra* note 123, at 49.

judges, prosecutors, and judicial personnel.<sup>132</sup> The Haitian government is aware that restoring rule of law in Haiti will take time, resources, and compromise. As a consequence, whatever government is ultimately elected will have to work in conjunction with local municipalities and the international community to systematically accomplish the necessary prerequisites for building a foundation for rule of law in the country.<sup>133</sup>

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<sup>132</sup> O'Connor, *id.*

<sup>133</sup> The international community wants to make Haiti more self-sufficient by focusing on building roadways and creating agricultural and other development strategies to boost Haiti's economy. As a consequence, the Haitian government has agreed to post financial documents online and to be committed to transparency. See Jessica Desvarieux, *In Haiti, Deep Skepticism About a U.N. Rescue Plan*, TIME, Apr. 3, 2010, available at <http://www.time.com/time/printout/0,8816,1977287,00.html#>.