



Pro Bono Practices and Opportunities in Haiti

INTRODUCTION

The Haitian legal system suffers from numerous structural problems that restrict the adoption and promotion of a pro bono culture. Since the disastrous 2010 earthquake, reforming the judiciary has been a secondary priority behind resolving the economic and structural devastation caused by the earthquake. However, an increasing number of entities, both international and domestic, are focusing on improving access to justice in respect of the prolific instances of human rights violations within Haiti.

OVERVIEW OF THE LEGAL SYSTEM

The Justice System

Constitution and Governing Laws

Haiti's constitution was adopted on March 10, 1987. It directly refers in its preamble to fundamental rights and democracy.

Haitian law has been influenced by French Law and, in particular, the French Civil Code and, as such, is a civil law system.¹

Despite the existence of democratic presidential elections since 1990, the Haitian political system remains unstable and still lacks legitimacy among the civil society. It is divided into three branches: the executive power headed by the President of the Republic, the legislative power including a Senate and a Chamber of Deputies, and the judiciary.

The Courts

Levels and relevant types

The Haitian legal system distinguishes between criminal and civil matters.

The first-level civil courts are the Peace Tribunals (*Tribunaux de Paix*) and the First-Instance Tribunals (*Tribunaux de Première Instance*). The Peace Tribunals (*Tribunaux de Paix*) have limited competence in civil matters as first-level tribunals (only covering personal and property disputes up to 5,000 gourdes), though their competence is extended when hearing a dispute as a second-level tribunal (covering personal and property disputes up to 25,000 gourdes). Peace judges are also police officers and can issue warrants of infringement and hear witnesses' statements. The First-Instance Tribunals have competence in all other civil disputes of greater seriousness.²

There are three first-level criminal courts. Firstly, the Police Tribunals (*Tribunaux de Police*) have competence in criminal disputes punishable by a fine. In addition, the Correctional Tribunals (*Tribunaux Correctionnels*) have competence in punishing criminal offences. Lastly, the Criminal Tribunals (*Tribunaux Criminels*) have competence in certain crime-related issues.³

The decisions of both civil and criminal first-level jurisdictions are subject to appeal before the Appellate Court (*Cour d'Appel*), except for the decisions of the Criminal Tribunal, which can be appealed directly before the Court of Cassation (*Cour de Cassation*). In turn, the decisions of the Appellate Court are also

¹ See the IDEF website available at <http://www.institut-idef.org/La-justice-haitienne-structure.html> (last visited on September 4, 2015).

² See the Center of Research and Legal Information available at <http://haitijustice.com/crij/systemejudiciare> (last visited on September 4, 2015).

³ See the Haitian Ministry of Justice website available at <http://www.mjsp.gouv.ht> (last visited on September 4, 2015).



subject to appeal before the Court of Cassation. Moreover, the Haitian Court of Cassation is in charge of reviewing the constitutionality of the law. This review is carried out *a posteriori* and by way of a plea.⁴

There is no clear distinction between judicial and administrative orders in the Haitian legal system. The Supreme Court of Auditors and Administrative Litigation (*Cour Supérieure des Comptes et du Contentieux Administratifs*) is the only tribunal with competence to hear administrative disputes, but its decisions are subject to appeal before the Court of Cassation.⁵

Appointed vs. Elected Judges⁶

Judges from the Court of Cassation (*Cour de Cassation*) are appointed for ten years by the President of Haiti, from a list submitted by the Senate.

Judges from the Court of Appeal (*Cour d'Appel*) are appointed for ten years by the President of Haiti from a list submitted by the Department Assembly (*Assemblée Départementale*) concerned.

Judges from the First Instance Tribunals (*Tribunaux de Première Instance*) are appointed for seven years by the President of Haiti from a list submitted by the Department Assemblies (*Assemblée Départementale*) concerned.

Finally, peace judges are appointed by the President of Haiti from a list submitted by the relevant Communal Assemblies (*Assemblées Communales*).

The Practice of Law

Education

To become an attorney in Haiti, one must be a Haitian national of at least 18 years old. Moreover, one must have completed a law license (equivalent to a Bachelor's) at the State University of Haiti or any foreign license recognized in Haiti as equivalent and submit a certificate of good moral conduct (*certificat de bonne vie et moeurs*).⁷

Licensure

Registration with one of the Bars of Haiti is necessary, as well as completion of a two-year internship in a Haitian Bar. Attorneys must also pass an admission exam called *Certificat d'Aptitude à la Profession d'Avocat*.⁸

The Role of Foreign Lawyers

Based on public information, it does not seem possible for non-Haitian nationals to practice as attorneys in Haiti. Article 5 of the Decree of March 29, 1979 states Haitian nationality among the required conditions, without mentioning any alternative methods for non-Haitian nationals to practice law in Haiti.⁹

Legal Regulation of Lawyers

The profession of lawyer in Haiti is regulated by the Decree of March 29, 1979.

⁴ See the Center of Research and Legal Information available at <http://haitijustice.com/crij/systemejudiciare> (last visited on September 4, 2015).

⁵ Ibid.

⁶ See Art. 175 of the Haitian Constitution.

⁷ See the Decree of March 29, 1979 available at <http://cabinetjacquesetassocies.com/new/wp-content/uploads/2015/03/decret-du-29-mars-1979-reglementant-la-profession-d-avocat.pdf> (last visited on September 4, 2015).

⁸ Ibid.

⁹ Ibid., Art 5.



LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

State-Subsidized Legal Aid

The idea of legal aid was contemplated in a law of 1864 but only implemented in the early 2000s upon the initiative of the Haitian lawyer René Magloire. A National Legal Aid System project was put in place in 2007 with the collaboration of a Swedish NGO, the International Legal Assistance Consortium (ILAC), and the United Nations' Mission in Haiti (MINUSTAH).¹⁰ The Legal Aid Bureaus were established to provide indigent people with free legal assistance, ranging from alternative dispute resolution to representation before courts. They work in collaboration with the Haitian Bar Associations that provide almost the entirety of their staff.¹¹

There are currently four Legal Aid Bureaus established in Port-au-Prince, and four new bureaus are anticipated to be established imminently.¹²

Eligibility Criteria

Financial Means

The allocation of legal aid is only based on financial means and does not take into account the likelihood of a case succeeding.¹³

Legal Issues/Case Type

The Legal Aid Bureau's activity is limited to penal matters. For criminal matters, the attorney will be directly solicited by the tribunal concerned rather than requiring the applicant to request the legal aid, as is the case for correctional matters.¹⁴ Legal aid can be given for all or part of the proceedings, from provisional detention to trials before the Court of Cassation.¹⁵ In addition, Legal Aid Bureaus provide free of charge legal consultations on all kinds of legal matters (civil law, labor law, commercial law etc.)

Applicant Type

Legal aid is available for any physical persons, either underage or adult, defendant or applicant.¹⁶

Mandatory assignments to Legal Aid Matters

Are Private Attorneys Required to Accept Matters Assigned to Them by A Court or Legal Aid Scheme, or are Assignments Voluntary?

Legal aid is provided by attorneys who are members of the Legal Aid Bureaus. They are helped by a dozen trainees whose commitment is counted as part of the mandatory internship required to become an

¹⁰ See the Barreau de Liège study available at <http://open.barreaudeliège.be/2013/06/06/laide-legale-en-haiti/2/> (last visited on September 4, 2015).

¹¹ See the MINUSTAH website available at <http://www.minustah.org/bureaux-daide-legale-la-justice-pour-les-plus-demunis/> (last visited on September 4, 2015).

¹² See the press article from the « Haiti Libre » website, available at <http://www.haitilibre.com/article-14350-haiti-justice-4-nouveaux-bureaux-d-assistance-legale.html> (last visited on September 4, 2015).

¹³ See the Barreau de Liège study available at <http://open.barreaudeliège.be/2013/06/06/laide-legale-en-haiti/2/> (last visited on September 4, 2015).

¹⁴ The Haitian penal system distinguishes between three types of penal infringements according to their level of seriousness :crime (criminal matters), délit (correctional matters),and contravention (police tribunal).

¹⁵ Ibid.

¹⁶ Ibid.



attorney.¹⁷ In view of the available information on the topic, the attorneys seem to be required to accept legal aid matters when so allocated by the Chairman of the Bar.

Are Private Attorneys Compensated, Even at A Reduced Fee, for Such Assigned Matters?

The attorney members of the Legal Aid Bureaus are remunerated by the State, and earn around US\$300 per month.¹⁸

Unmet Needs and Access Analysis

The legal aid system in Haiti is an innovative solution to Haitian society's lack of access to justice. However, considering the tremendous volume of work that needs to be done, the system is not sufficient to cope with all the demands of indigent people. According to public sources, the members of the Legal Aid Bureaus are overwhelmed as non-member attorneys are not permitted to provide legal aid.¹⁹

Furthermore, the Haitian legal aid system is an unstable solution as it is completely dependent on international aid for funding. Although the National Legal Aid System project has no official legal existence, the Haitian Ministry of Justice has been associated with the project from its creation, and is meant to gradually take over the financing of the legal aid system. However, when the ILAC and the UNASUR, the two main contributors, stopped funding the National Legal Aid System in 2012, all the bureaus located outside Port-au-Prince shut down.²⁰

Alternative Dispute Resolution

Mediation, Arbitration, Etc.

The Chamber of Conciliation and Arbitration of Haiti (*Chambre de Conciliation et d'Arbitrage d'Haïti (CCAH)*) was created on October 29, 2007 by the Chamber of Commerce and Industry (*Chambre de Commerce et d'Industrie*), through a partnership with the European Union and the Inter-American Development Bank. It aims to promote alternative dispute resolution.²¹

A mediation procedure is carried out if the contract from which the dispute arises contains a mediation clause, or if the parties commonly agree to proceed to mediation before any legal action within the courts. The mediation procedure can also be proposed to the parties by the CCAH upon a request for arbitration. The mediator is selected by the Designation and Ratification Commission of the CCAH, and his/her fees are set according to a tariff grid and are borne by the parties. The duration of the mediation procedure cannot exceed two months.²²

In arbitrations, arbitrators are selected by the Designation and Ratification Commission of the CCAH on a proposal from the parties. The number of arbitrators is decided by either the parties or the Designation and Ratification Commission of the CCAH. Awards are expected to be rendered within

¹⁷ Ibid.

¹⁸ See the UNDP report available at http://www.undp.org/content/dam/haiti/docs/emancipation_des_femmes/UNDP_HT_Haiti%20Report%20-Assistance%20legale-Avril2013.pdf (last visited on September 4, 2015).

¹⁹ See the Barreau de Liège study available at <http://open.barreauliege.be/2013/06/06/laide-legale-en-haiti/2/> (last visited on September 4, 2015).

²⁰ Ibid.

²¹ See the Chamber of Commerce and Industry website available at <http://www.ccih.org.ht/home/presentation-de-la-ccih/la-chambre-darbitrage/> (last visited on September 4, 2015).

²² See the Alternative Dispute Resolutions Regulation regarding mediation available at http://adresources.com/docs/adr/3-0-902/2007_haiti_ccah_mediation_rules_fr.pdf (last visited on September 4, 2015).



six months and may be appealed except in the case of internal arbitration where both parties are Haitian nationals.²³

Ombudsman

The Haitian Ombudsman, established in 1987, is called the *Protecteur du citoyen et de la citoyenne*. The Ombudsman is selected by the President of Haiti, the President of the Senate and the President of the Chamber of Deputies, for a term of seven years. The role is to ensure that the State keeps its international commitments regarding human rights, as well as to protect citizens against all forms of abuses from the public administration. In this regard, the Ombudsman can conduct investigations if they believe a citizen was aggrieved by the public administration, or if a complaint has been submitted. In addition, they can make a recommendation to fix the damage done to the citizen, and propose any reform which might improve the functioning of the public administration.²⁴

PRO BONO ASSISTANCE

Pro bono Opportunities

Private Attorneys

Pro bono initiatives are usually carried out individually by lawyers who have received specific training in human rights, either in Haiti or abroad. There are very few restrictions imposed on the legal profession, in particularly regarding advertisement. This allows for proactive work in defending vulnerable people who would not otherwise have access to a lawyer.

Over time, a number of platforms have been created that facilitate pro bono work by private attorneys. An example is the International Attorneys Bureau (*Bureau des Avocats Internationaux* (BAI)),²⁵ based in Port-au-Prince. It was created in 1995 and works closely with the Institute for Justice and Democracy in Haiti (IJDH). It aims to provide legal assistance to victims of human rights violations, mainly by helping them engage with judicial authorities and representing them before international courts. The BAI's most prominent case was the Raboteau Massacre trial, during which 57 defendants were convicted. In addition, the BAI also provides assistance to NGOs, mainly in the form of legal analysis and training. Finally, the BAI has been very involved in training Haitian human rights lawyers to defend vulnerable people in Haiti efficiently.

The Lawyers' Earthquake Response Network is a humanitarian project consisting of international attorneys working in Haiti. They aim to provide assistance to victims of the 2010 earthquake, mainly orphans and women, who live under the constant threat of sexual abuses in displacement camps.

Lastly, the *Défenseur des Opprimés* (the Advocate of the Oppressed) is a Haitian organization based in Port-au-Prince, consisting of Haitian lawyers who provide legal assistance to people in need.

Law Firm Pro bono Programs

Based on public information, law firms do not generally have established pro bono programs. Considering the very small number of domestic law firms and the absence of international law firms in the territory, pro bono initiatives are mostly carried out by private attorneys as noted above.

²³ See the Alternative Dispute Resolutions Regulation regarding arbitration available at http://adresources.com/docs/adr/3-0-905/2007_haiti_ccah_arbitration_rules_fr.pdf (last visited on September 4, 2015).

²⁴ See the Bureau of the Protection of Citizens website available at http://www.protectioncitoyenhaiti.org/index.php?option=com_content&view=article&id=53&Itemid=64 (last visited on September 4, 2015).

²⁵ See the Institute for Justice and Democracy in Haiti website available at <http://www.ijdh.org/about/> (last visited on September 4, 2015).



Legal Department Pro bono Programs

Based on public information, legal departments of companies do not generally have pro bono programs.

Non-Governmental Organizations (NGOs)

Although pro bono has not yet integrated within law firms and companies' practices, many international NGOs get involved in pro bono and humanitarian actions in Haiti, particularly following the 2010 earthquake. Lawyers Without Borders Canada, in association with the Haitian Ministry for Women Rights together with local NGOs, such as SOFA and Kay Famn, have opened legal centres in Port-au-Prince. These have Haitian attorneys who provide legal assistance in both criminal and civil matters.²⁶

Furthermore, local NGOs have also been involved in defending human rights in Haiti and advocating immediate change to remediate the shortfalls of the Haitian legal system. The civil society has particularly been involved in defending women's rights. For instance, the KOFVIV (*Komisyon Fanm Viktim Pou Viktim* - the Commission of Women Victims for Victims) is focused on gender-based violence in Haiti and, in March 2011, it participated in the hearing before the Inter-American Commission on Human Rights in Washington, DC regarding the crisis of sexual violence in Haiti.²⁷ Kay Famn, Famm Deside and SOFA are among the most dynamic organizations and are coordinated by the National Coordination for the Women rights' Advocacy (*Coordination Nationale pour le Plaidoyer pour les droits des Femmes* (CONAP)). These NGOs often provide women with multidisciplinary services such as psychological support, medical care and legal assistance, even though most of the volunteers do not have any legal qualifications.²⁸

Bar Association Pro bono Programs

As mentioned, the Haitian Bar Associations are highly involved in the State-subsidized legal aid system; however, their activities do not, based on public information, seem to extend to pro bono programs.

Historic Development and Current State of Pro bono

In Haiti, pro bono is still at an early stage of development. As such, there is insufficient evidence from which to draw accurate conclusions regarding its historic development.

Current State of Pro bono

Laws and Regulations Impacting Pro bono

Statutorily Mandated Minimum Legal Fee Schedule

According to Article 58 of the Decree of March 29, 1979, lawyers are remunerated on the basis of the recovered debt or financial penalty imposed, if any. The decree sets the legal percentage that has to be applied by attorneys when calculating their fees, if not already set in the contract signed by the lawyer and their client. The law authorizes them to claim 20% of the amount allocated to their client. If the dispute was dealt with prior to any proceedings, through mediation for instance, the lawyer is entitled to claim 10% of the amount of money received by the client.²⁹ Therefore, an attorney may claim less than the percentage introduced in this decree. In addition, the decree does not mention any prohibition on free legal services.

²⁶ See the Lawyers Without Borders Canada website available at <http://www.asfcanada.ca/fr/asf-en-action/programmes/15/haiti> (last visited on September 4, 2015).

²⁷ See the press article from the « CommonDreams » website available at <http://www.commondreams.org/newswire/2011/03/23/international-human-rights-hearing-rape-epidemic-haiti> (last visited on September 4, 2015).

²⁸ See the UNDP report available at http://www.undp.org/content/dam/haiti/docs/emancipation_des_femmes/UNDP_HT_Haiti%20Report%20-Assistance%20legale-Avril2013.pdf (last visited on September 4, 2015).

²⁹ See the Art. 58 of the Decree of March 29, 1979.



However, if assigned by the State to a legal aid matter, the lawyer is not allowed to claim any fees from their client.

Rules Directly Governing Pro bono Practice

Publicly available information does not seem to indicate any legal restriction directly governing pro bono work in Haiti. The Decree of March 29, 1979, which regulates the attorney profession, does not mention any prohibition regarding advertisement.

Regulations Imposing Practice Limitations on In-House Counsel

Publicly available information does not seem to indicate any regulation imposing practice limitations on in-house counsels.

Socio-Cultural Barriers to Pro bono or Participation in the Formal Legal System

The inefficient legal system in Haiti is arguably a key barrier to pro bono development. The Haitian justice system suffers from a lack of proper training; most of Haitian attorneys have no knowledge about human rights infringements or gender-related abuses and most of the members of the Legal Aid Bureaus, representing indigent people before trials, are law students or only have a Bachelor's of Law degree.³⁰ In addition, the legal codes upon which the legal system relies have not been updated since they entered into force, and they do not necessarily reflect current needs. The main reason of this dysfunction, though, is the serious lack of public trust in the judiciary. Alleged corruption, executive control over the judiciary, and systemic inefficiencies has led to a gap between the Haitian legal system and a society reluctant to resort to law. In 2011, 80% of prisoners were held in provisional detention, and one third of them were detained for more than a year, whereas the law clearly states that provisional detention cannot exceed 48 hours.³¹ In addition, according to a study led by the United Nations Development Program (UNDP), only 53% of the respondents think that the Haitian tribunals are just and impartial, while 35.7% believe that anyone can escape being sentenced by bribing the magistrates.³²

Pro bono Resources

Useful information on legal aid and pro bono opportunities in Haiti can be found on the following websites, mostly in French:

- Ministry of Justice: <http://www.mjsp.gouv.ht/presentation.htm> (last visited on September 4, 2015)
- Chamber of Commerce and Industry: <http://www.ccih.org.ht/home/> (last visited on September 4, 2015)
- MINUSTAH: <http://www.minustah.org/> (last visited on September 4, 2015)
- The Institute for Justice and Democracy in Haiti: <http://www.ijdh.org/about/> (last visited on September 4, 2015)

CONCLUSION

Given Haiti's inefficient legal system and economic difficulties, especially following the devastating earthquake of 2010, a pro bono practice has not fully integrated into the Haitian legal culture. The mistrust of Haitian people in the administration of their own justice does not provide incentives for pro bono initiatives. Moreover, international NGOs tend to focus more on financial and humanitarian support rather than on law development projects. However, there is some optimism in relation to potential future development of pro bono, as the civil society itself is becoming more aware of the positive impact that law could have on Haitian society. An increasing number of local NGOs are granting more Haitians access to justice, especially with regards to women's rights. Reforming the Haitian legal system and improving

³⁰ See the Barreau de Liège study available at <http://open.barreaudeliège.be/2013/06/06/laide-legale-en-haiti/2/> (last visited on September 4, 2015).

³¹ See http://www.memoireonline.com/09/11/4806/m_Le-systeme-judiciaire-en-Haiti-et-les-obstacles-qui-paralysent-son-developpement8.html (last visited on September 4, 2015).

³² See the UNDP report available at http://www.undp.org/content/dam/haiti/docs/emancipation_des_femmes/UNDP_HT_Haiti%20Report%20-Assistance%20legale-Avril2013.pdf (last visited on September 4, 2015).



lawyers' training seem to be essential conditions to allow further development of pro bono practice in Haiti.

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