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Strengthening Rule of Law, Accountability, and Acknowledgment in Haiti

Haiti is currently confronting several challenges regarding stability, the rule of law, and corruption. The establishment of the United Nations Mission for Justice Support in Haiti (MINUJUSTH) in April 2017 is aimed at contributing to state and civil society efforts to effectively address those challenges. With its emphasis on accountability and improving the effectiveness of the rule of law, MINUJUSTH offers an opportunity to support Haiti in learning from its violent past and strengthening state institutions and rule of law, in order to address both past and present serious human rights violations.

An important challenge for MINUJUSTH will be assisting the country in confronting the massive and systematic violations of human rights committed under the Duvalier and Cédras regimes (1957–1986 and 1991–1994, respectively), as impunity for those violations affects Haiti’s ability to address current challenges, affirm human rights, the value of life, and the responsibility of state authorities under law. MINUJUSTH should have the capacity to assist those from national civil society groups and state institutions working to address the consequences of those violations and help the country to learn from its past and strengthen the independence and effectiveness of its rule-of-law institutions.

1. Challenges in Haiti

The country has achieved significant stability over the last year and is beginning to address several of the chronic political and economic problems affecting it; however, the challenges that lie ahead are still substantial. Economic stability and development are required to improve the livelihood of most of Haitians and reduce the tensions caused by socioeconomic grievances. Huge socioeconomic disparities, vulnerability caused by environmental degradation, natural disasters, lack of effective delivery of basic social services, and the prevalence of corruption make stability hard to achieve in the country. Improving good governance is essential for guaranteeing the delivery of basic services to the population and building public trust in state institutions. Strengthening the rule of law and the effectiveness and independence of the judiciary are needed to reduce crime and violence, improve human rights, and fight corruption.

The emphasis that MINUJUSTH’s mandate puts on assisting the country to strengthen security, rule of law, and human rights protections is a positive sign. MINUJUSTH can be an important resource for the Haitian government, state institutions, and others in addressing these challenges.

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2. Impunity for Past Human Rights Violations as a Contributing Factor

Efforts to address past human rights violations should constitute an important component of MINUJUSTH's mission to help strengthen rule of law, security, and human rights in Haiti. The scale and systematic nature of violations committed during the Duvalier regimes, the military dictatorship that followed the 1991 coup (which lasted until 1994), and the final period of President Jean-Bertrand Aristide second term and after his departure (2000 and 2003–2005¹) continue to have a negative impact on people's trust in state institutions today.

The lack of investigations and accountability for such massive violations sends a message to members of the police and other security agencies, civil servants, and authorities that there are no consequences for the use of torture or summary executions against suspects, abuse of detainees, and acts of corruption. In addition, the political pressure to fight crime may act as an incentive to commit such violations when no effective checks are in place. According to the latest UN Secretary-General's Report on the UN Stabilization Mission in Haiti, the number of detainees who died in prison from January to May 2017 is 115.² The recurrent use of firearms by police officers against suspects or protesters, which are not properly investigated, is a worrying sign. Frequent lynchings, reported by MINUSTAH, shows also a pervasive tendency of the public to resort to their own forms of justice due to the lack of effective formal justice measures.³ Investigations of reported cases of torture, rape and other forms of sexual- and gender-based violence are also rare.⁴

Additionally, impunity for massive violations committed in the recent past has left intact the power and political influence of those responsible for violations. Their influence can be a destabilizing factor, especially if they are tempted to resort to political violence to maintain their hold on power.

Moreover, the establishment of the planned, reconstituted Defense Force of Haiti when the memory of the violations and political intervention committed by the Armed Forces of Haiti (disbanded in 1995) is still fresh requires careful consideration of lessons learned from the past. The new Defense Force needs to have a strong commitment to respect for civilian authority and protection of human rights. Understanding and correcting what led the Armed Forces to undermine the rule of law is essential to embedding the doctrine of respect for the Constitution and human rights at the core of the new forces and guaranteeing non-repetition of violations.

Pursuing accountability for past human rights violations would certainly reaffirm the value of life and personal integrity, which has been seriously diminished by the degree of impunity afforded to past perpetrators of massive and systematic violations. It could strengthen the credibility of the judiciary and thereby encourage victims of current violations and crime to trust those institutions, while providing an important signal to those engaged in corruption, extortion, or abuse of power that they could be held accountable too.⁵

Beyond criminal accountability, official acknowledgment of past violations and fostering discussion about the past in society could also restore the value of respecting others, as recommended by MINUSTAH.⁶ *By confronting its past, Haitian society*

1 Reports by independent experts on the situation of human rights in Haiti appointed by the UN Human Rights Council (and its predecessor, the Commission on Human Rights), Gustavo Gallón (A/RCH/28/28 of 9 February 2015) and Louis Joinet (E/CN.4/2005/123 of 24 January 2005).

2 United Nations Security Council, Report of the Secretary-General on the United Nations Stabilization Mission in Haiti, 12 July 2017 (UN doc S/2017/604), para.17.

3 MINUSTAH - HCDH, "Rapport sur la situation des droits de l'homme en Haïti 1er juillet 2015 – 31 décembre 2016," July 2017, paras. 21–30.

4 Ibid., paras. 41–45.

5 Ibid., para. 120.

6 Ibid., para. 123(d).

can strengthen its commitment to the promotion of the common good and respect for human rights.

3. Status of Recent Accountability Efforts

Acknowledgement and accountability efforts undertaken in recent years have only delivered partial results, further eroding the credibility of state institutions. The Haitian National Truth and Justice Commission (Commission Nationale de Vérité et de Justice, 1994–1996) made a substantial contribution to the acknowledgment and investigation of violations committed during the 1991–1994 Cédras dictatorship by documenting human rights violations, including 333 enforced disappearances, 576 extrajudicial killings, 4,342 cases of torture, and 140 cases of rape. Despite its role in reporting on these violations, acknowledging their occurrence, and helping society to learn from the past, the commission's report can hardly be found in print or online. Some reforms recommended by the commission were implemented with the assistance of the International Civilian Mission in Haiti (MICIVIH), including the creation of the National School for the Judiciary (École Nationale de la Magistrature).

Some trials followed this initial effort, but most resulted only in convictions in absentia or with the defendants fleeing the country. The decision in the Raboteau Massacre case received significant assistance from MICIVIH and led to the conviction of several high-ranking officers, some of whom were in the custody of the state.⁷ This decision brought new hopes for the judiciary's ability to fight impunity. However, in 2005 the ruling was overturned on appeal.

Immediately after his return from exile in January 2011, Jean-Claude Duvalier was charged with financial crimes and crimes involving human rights violations. In February 20, 2014, the Appeals Court of Port-au-Prince affirmed that the country's statute of limitations did not apply to crimes against humanity for which Duvalier was accused and ordered a new investigation, including of several co-defendants. However, later that year Duvalier passed away. The case is at the investigative magistrate to determine the criminal responsibility of the co-defendants. Advancing this case based on the country's jurisprudence on crimes against humanity is an opportunity to affirm accountability for violations in the country. However, it requires supporting judicial independence and the judiciary's capacity to investigate serious crimes and bring defendants to trial.

The investigation of the murder of Haitian journalist Jean Léopold Dominique and his bodyguard Jean-Claude Louissaint on April 3, 2000, has also seen little progress. The murder in March 2015 of a key witness, Oriel Jean, who in his statement implicated former President Aristide,⁸ is an example of how impunity for past human rights violations are an obstacle to current efforts to stabilize the country.

4. Possible Avenues for Advancing Accountability

MINUJUSTH's mandate includes support for the country in learning from the past and fighting impunity. Current judicial reforms and changes to the criminal code and criminal procedure laws would be important contributions to advancing accountability for massive human rights violations and strengthening the rule of law in Haiti.

⁷ In the Raboteau massacre (April 22, 1994), military and paramilitary forces attacked citizens in the neighborhood of Raboteau Gonaïves, Haiti, who had been participating in demonstrations supporting Jean-Bertrand Aristide. At least six residents were killed, though most groups have estimated the casualties to be higher.

⁸ *Ibid.*, para. 63.

They could increase the independence and effectiveness of the judiciary and solidify recent jurisprudence about the state's obligation to investigate and try crimes against humanity.

Further, MINUJUSTH could assist in disseminating the jurisprudence of the Inter-American Court of Human Rights and promoting the use of the Inter-American System of Human Rights to help Haitian judges and lawyers to find avenues for interpreting Haitian law according to Haiti's international legal obligations as well as for adding a new source of remedies should the judiciary fail in its obligations. The influence that the Inter-American System has had in other countries (through the use of its jurisprudence in national court decisions) has been significant in the fight against impunity in the Americas. Even if litigation can take several years to achieve results once domestic remedies have been exhausted, the international exposure and the effects that the examination of considerable numbers of cases in the Inter-American System can also help to strengthen the country's commitment to accountability, as in Colombia, El Salvador, Guatemala, and Mexico.

Also of relevance may be the experience of the International Commission Against Impunity in Guatemala, a mechanism defined by an agreement between the Guatemalan government and the United Nations to strengthen judicial and prosecutorial independence and capabilities for addressing current criminality and corruption in the country. Its focus on accountability for current crimes and massive human rights violations committed in the past makes it an interesting example for Haiti.

However, litigation offers only a partial possibility of redress for victims, as the large number of violations in Haiti and their systematic nature can hardly be addressed on a case-by-case basis, even if dozens of cases were tried. The passage of time also affects the possibility of examining past violations through litigation alone, which is particularly true for the many violations committed during the first Duvalier dictatorship (1957–1971).

At a recent conference organized by the UN Office of the High Commissioner for Human Rights in Port-au-Prince, some participants were encouraged to think about the possibility of establishing a commission that could investigate patterns of violations from 1957 to 2004, after examining relevant experiences of truth commissions in other countries.⁹ Discussions about memory and remembrance pointed to the importance of examining the past for addressing the current lack of respect for life and personal integrity by state security forces and institutions as well as of state institutions that fail to deliver effective protection and promotion of human rights. MINUJUSTH should support the continuation of these discussions and help victims and civil society to come together to make effective proposals.

Finally, another important avenue that could support accountability and the responsiveness of state institutions in Haiti is public apologies by officials on behalf of the state and state institutions that failed to comply with their obligations or committed violations themselves. However, apologies on their own as a form of symbolic reparation can have little effect, as they require follow-through with concrete commitments and action. Still, they can create a climate conducive to acknowledging past violations, examining how to guarantee nonrecurrence, and signaling to all civil servants the obligations that their positions entail.

9 "Colloque sur la lutte contre l'impunité pour les crimes du passé et la justice transitionnelle," Port au Prince, September 27–29, 2017.

5. Conclusion

Despite recent progress in establishing political stability, the situation in Haiti remains precarious. The challenges the country faces are not just the result of natural disasters but also of vulnerability caused by impunity for past serious human rights violations and the lack of rights-respecting and responsive state institutions. Examining past violations importantly signals the state's ability and intention to respect human rights going forward. As in other countries that have undertaken similar processes, that examination may require a combination of judicial and nonjudicial mechanisms.

MINUJUSTH's mandate offers a chance to support Haitian society in these efforts. However, fighting impunity and acknowledging responsibility for human rights violations will face resistance, as it typically does. MINUJUSTH must be equipped to provide that support if efforts towards stabilization and establishment of rule of law are to succeed.