

# No Reconciliation without Justice

Brian Concannon describes significant developments in Haiti's criminal justice system.

In the year 2000, the Haitian judiciary conducted two major human rights trials that showed both how far the justice system had come since Haiti's transition to democracy began in 1994, and how far it still needs to go. The trials also provide an example to the rest of the world that justice for victims of human rights abuses need not be sacrificed in a democratic transition, that tenacity by a government and by civil society can surmount substantial obstacles.

The constitutional authorities restored to power in October 1994 inherited a justice system in disarray, in one of the world's poorest countries. Never a model of fairness, the system had been ravaged by the thirty-year dictatorship of François and Jean-Claude Duvalier (1957-1986), and again during a military dictatorship (1991-1994), when a brutal regime murdered and tortured with impunity, and judicial authorities who tried to curb their abuses were attacked.

Although justice for victims of the 1991-94 military regime has since been one of the principal popular demands placed on the government, the system in 1994 was incapable of conducting a complex, high profile human rights trial. It was equally incapable of handling its load of ordinary

crimes, especially the common cases of petty theft and simple assault. Judges and prosecutors were insufficiently trained, motivated and compensated, and corruption was the rule. Courthouses lacked basic legal texts, electricity and plumbing.

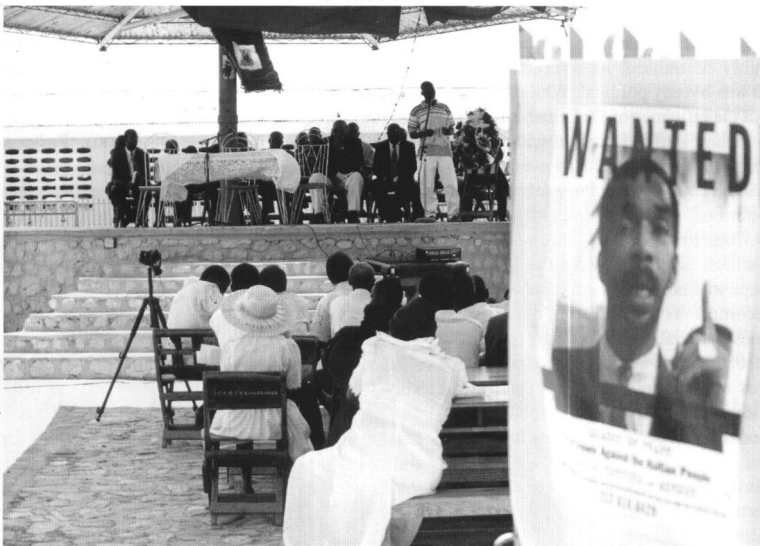
Yet, Haiti's civil society, especially grassroots, victims and human rights groups, insisted on justice for the dictatorship's victims, and on an overall improvement of the justice system. The government responded, with persistence if not always with success. NGOs adopted a spectrum of strategies, including media advocacy, periodic reports, weekly demonstrations and cooperating with government initiatives. Government efforts specific to the military regime's atrocities included a truth commission, programmes to collect testimony, legal assistance programmes, and special prosecutors, judges and police. Initiatives to improve the overall functioning of the criminal justice system include the creation of a new police force, a judicial academy (*Ecole de la Magistrature*) and a citizen protection office (*Office Protecteur du Citoyen*).

International contributions to these efforts have been uneven, and poorly implemented in some cases. Foreign assistance from the US, the UN, the EU and Canada has been most helpful in basic support for the criminal justice system, including funding the new police force and judicial academy, building and supplying courthouses, and help with the overwhelmed prison system.

The international community has been less helpful with cases from the dictatorship. The returning constitutional government was pressured to decree an amnesty for the dictatorship's crimes (it complied, but succeeded in making it so toothless that it has never been invoked). The top leaders were given refuge in the US, Panama and Honduras, and the US intervention force took 160,000 pages of

documents from military and paramilitary facilities, reportedly to hide the relationships between US intelligence operatives and the oppression experienced under the dictatorship. Promised funding for the truth commission was delayed and denied, and the judiciary has received little outside financial support for specific human rights cases.

A year ago, most observers would have called the results disappointing. There had not been any successful prosecutions of major human rights cases, the jails were bulging with pre-trial detainees, and the mechanisms to deter police misconduct were not performing adequately. However, the two trials in late



Brian Concannon photo

Commemoration speeches mark the sixth anniversary of the Raboteau massacre.



A demonstration on behalf of victims of the military regime.

prosecutors did an adequate job, the defence lawyers did better, and the trial was fundamentally fair to victims and defendants. Witnesses, victims, relatives and police (including the country's top official) presented an unusual amount of evidence, including police reports, ballistics evidence and testimony.

The Raboteau trial started soon after Carrefour Feuilles, and lasted for six weeks. The court convicted fifty-three soldiers and paramilitaries under the military regime for an April 1994 attack on unarmed civilians. Once again justice extended its reach, up to the top military and paramilitary leaders (the leaders were convicted

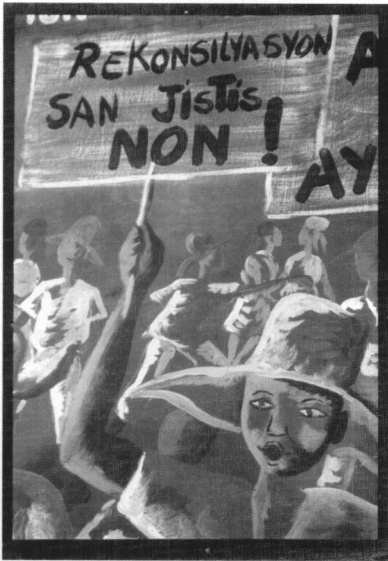
2000, each in its turn considered the best in Haiti's history, significantly changed this perception. Together they demonstrated that the system, although not completely reformed, had developed to where it could provide fair trials in complex prosecutions of high-profile defendants.

The first trial, in August, was for the Carrefour Feuilles Massacre – the May 1999 execution of eleven people, some alleged criminals, by the current police force. The case proceeded with unprecedented speed, from crime to sentencing in fifteen months. It also reached higher than the arm of justice had ever previously gone: among the four convicted of murder were the police chief of the capitol, Port-au-Prince. The trial was broadcast live on national television and radio, and monitored closely by civil society and international observers. It was conducted mostly in Creole, which all Haitians speak, rather than the traditional French, spoken only by an elite minority. The

in absentia, but extradition requests are being prepared). As with Carrefour Feuilles, the Raboteau trial was conducted mostly in Creole, was broadcast nationally, was monitored by victims and human rights groups, and was fundamentally fair.

Unlike its predecessor, the Raboteau case took five years to get to trial, which allowed a better result. Although many of the delays were frustrating, they gave the prosecution time to develop both the evidence and the skills of those who presented the evidence. Despite the intervening passage of time, the victims' testimony was consistent, both with each other and with their declarations in 1994 (most victims could not read, and had not been exposed to their prior statements since they made them). Dozens of eyewitnesses testified, backed by unprecedented documentary evidence, including military documents and reports and testimony from experts in forensic anthropology, genetics and military organisation. The victims of the massacre played a significant role throughout the preparation and trial, by their own political activity and through the Bureau des Avocats Internationaux (BAI), a group of lawyers funded by the government. BAI lawyers, under the Haitian (and French) *partie civile* procedure, represented the victims' civil interests at all phases of the case, from the original complaints through to the trial.

Although the two cases benefited from special initiatives, they also reflected underlying improvements in the justice system. The United Nations Support Mission to Haiti recognised this progress in declaring that the trials "prove that the Haitian justice system is capable of effectively prosecuting" human rights cases, "while respecting



'No reconciliation without justice'. A mural by the National Palace.

the guarantees of the 1987 Constitution and international treaties to which Haiti is a party" (UN Support Mission 2000). The area where improvement was most needed, and most made, was in the individual capacity of judicial personnel. Both the trial judge and the chief prosecutor in the Raboteau case had profited from post-transition training programmes to move far up the judicial ranks. The Raboteau judge had graduated at the top of the first class of Haiti's *Ecole de la Magistrature*. Two assistant prosecutors made their mark in the Carrefour Feuilles trial, and brought this experience to the Raboteau trial. One had recently returned from a year



The wanted poster is for death squad leader and suspected CIA agent Emmanuel Constant, wanted in Haiti, sheltered in the US.

Brian Concannon photo

at France's *Ecole de la Magistrature*, and was named academic director of Haiti's *Ecole*. After his performance in the Raboteau case he was named chief prosecutor in Port-au-Prince.

Despite their overall success, both cases illustrated continuing problems with the system. Both trials were disorganised and unruly. Raboteau's five years of preparation was too long. The Carrefour Feuilles judge imposed an extraordinarily light sentence (three years) for the murder convictions. Other problems continue to defy broader reform efforts, including prison overcrowding (because of judicial lethargy, 70-80 per cent of prisoners are pretrial detainees), widespread corruption and inadequate material resources.

Three upcoming trials pose the next challenges to the system. Jean Dominique, Haiti's most respected radio personality, and a beloved advocate for democracy in Haiti, was assassinated in April 2000. Six suspects have been apprehended in the case, and it is expected that more, including a senator from the majority party, will be named when the investigating judge issues the formal charges in July. In May, Haitian police arrested former General Prosper Avril for the torture of political opponents during his dictatorship (1998-90). Avril is believed to have substantial financial resources, as well as strong support among demobilised soldiers and in the international community. A third challenge on the horizon is the trial of Carl Dorelien, a member of the military high command convicted in absentia in the Raboteau case, who was arrested by Florida immigration authorities in late June of this year and held for deportation.

The troubled system that took centuries to install cannot be overhauled in a few years. Some changes will be generational, as police, judicial officials and lawyers educated under democracy gradually replace those vested in the old ways. Others will require massive investments in training and material support, and improvements in management structures. All will require experience, sincere efforts to provide justice, and learning from mistakes.

Pressure on the system, by individuals and civil society, will be even more important in the challenges ahead. This insistence on justice by the Haitian people and government is a lesson to the rest of the world, which almost always has more resources and almost always gets less justice. Efforts by Chile to prosecute Pinochet are laudable, but come twenty-eight years after his crimes. The resources committed for the International Criminal Tribunal for Former Yugoslavia are impressive, but have produced half the convictions of the Raboteau trial. The key to Haiti's relative success, and its lesson to the rest of the world, is the government's acting on what the victims of Haiti, and of Chile and the Balkans, have always known: there is no reconciliation, there is no democracy, without justice.

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