

HAITI IN THE PURSUIT OF PEACE, JUSTICE, AND HEALING

ARTICLE

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INTRODUCTION

AS IRWIN P. STOTZKY MENTIONS IN HIS BOOK *SILENCING THE GUNS IN HAITI: the Promise of Deliberative Democracy*, “[t]he history of Haiti is a tragic tale of political corruption and military violence.” For over a century, Haitians have been victims of atrocious human rights violations. In cember 1990, for the first time in Haitian history, the Haitians democratically elected their President Jean-Bertrand Aristide. However, the democratic government was overthrown by military and paramilitary forces in September 30, 1991, and President Aristide was forced into exile in the United States. Haiti once again was governed by a military government that committed the worse human rights violations. During the coup d’etat, the United States (U.S.) and United Nations (UN) made efforts to help restore the democratic government and attempted negotiations with the regime. The United States and UN were willing to grant general amnesty and exile to the de facto regime, however, Aristide did not

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¹ IRWIN P. STOTZKY, *SILENCING THE GUNS IN HAITI: THE PROMISE OF DELIBERATIVE DEMOCRACY* 17 (1997).

wanted to grant general amnesty to the military leadership that deposed him. Nevertheless, aiming to return and reinstate a civil and democratic government, he finally bowed to U.S. and UN pressures and granted amnesty. After granting amnesty, the U.S. troops and the UN peacekeeping force began to disarm the Haitian military and paramilitary. In December 1994, however, after over a century of impunity, Aristide's government (together with international aids) announced the formation of the National Commission for Truth and Justice. By late 1996, the Haitian court began prosecuting various military and paramilitary leaders and members accused of human rights violations. While the democratically elected Haitian Presidents demonstrated a commitment to end impunity, human rights organizations and activists point out that the Haitian Government and the international community failed to provide justice and truth to the victims, and therefore, impunity remained the rule of law in Haiti.

In this article, I will examine whether the transitional justice mechanisms established in Haiti were effective for the victims of human rights violations and the political stability of the country. I will argue that although Presidents Aristide and René Préal tried to end the culture of impunity by enforcing the rule of law establishing socio-economic and reparations programs, and restructuring the government, military, and police departments, these attempts were futile. The transitional justice mechanisms put into practice failed in the long-run because Haiti's judicial, social, and economic problems were so severe that greater and effective international support, together with a better understanding of transitional justice mechanisms, and tailored socio-economic and reparations programs, were necessary.

My discussion will begin with a short background and analysis of the political and social history of Haiti. Subsequently, I will evaluate the numerous human rights violations that took place during the coup d'état and military dictatorship from September 1991 to October 1994. I will then explain Aristide's reinstatement and the international efforts to restore the Democracy in Haiti. Furthermore, I will evaluate the transitional justice mechanisms established by the Haitian Government and the international community assistance. I will explain as well what happened in Haiti after the establishment of the transitional justice mechanisms. Finally, I will judge if the Haitian government and international community should consider other transitional justice mechanisms.

I. POLITICAL AND SOCIAL HISTORY OF HAITI

In the Americas, the French colonists imported more African slaves than any other colony.² The western colonies' abuse of African slaves was epitomized in the Haitian experience. Therefore, Haitian slaves tired of maltreatments went on to rebel in 1791 and won their independence in 1804. After 1804 the Haitian elite tried to recreate the same inhuman plantation economy that the colonists

2 *Id.* at 18.

established through slavery, but former slaves refused to work under these conditions, and settled as small peasants.³ Through the use of farm machinery, the elites stole the rural peasants' labor opportunities and prospered by living off the peasants' labor by collecting taxes,⁴ becoming traders, politicians, and technocrats.⁵ Instead of trying to build a country that provided opportunities for a better life for their compatriots, the elites focused on controlling the economic, political, and social spheres of Haitian society to get richer at expense of the former Haitian slaves.⁶ These actions cast Haitians into extreme poverty, destroyed social society, and contributed to the political instability of Haiti.⁷ The Haitian elite, also lifted barriers between themselves and common folk by instituting French as Haiti's official language when approximately 90 percent of Haitians exclusively talked, and continue talking, Haitian Creole. As the educational and juridical systems were in French, the majority of the Haitian population could not participate in most state institutions.⁸

During the United States occupation of Haiti from 1915-1934, the problems worsened. Civil society became weaker and the state solidified its authority by centralizing political power in Port-au-Prince and modernizing the rural police.⁹ Also, during the United States occupation a new Haitian army was created. This force, which both Aristide and Préval will try to disarm, eventually became the bastion for supporters of coup d'états and military regimes.¹⁰ After the United States occupation, the new Haitian army overthrew several Haitian Presidents until they placed one of their own, President Paul Magloire from 1950 until 1956, and by this time "the army had become the power behind the throne, the determining factor of Haitian politics."¹¹

The Duvaliér dictatorships lasted from 1957 until 1986, when Jean-Claude Duvaliér (Baby Doc) went into exile in France. Throughout their dictatorships, human rights violations provoked an immense Diaspora to France, the United States, Dominican Republic, and Canada, among other countries.¹² These despots engaged in harsh repression of any political opposition, limited freedom of

3 *Id.*

4 According to Irwin P. Stotzky in his book *SILENCING THE GUNS IN HAITI*, "[t]axes collected by the import-export bourgeoisie at the urban markets and customhouses -paid by the peasants- provided almost the entire source of government revenue." *Id.*

5 *Id.*

6 *Id.* at 19-20.

7 *Id.* at 20.

8 *Id.* at 21.

9 *Id.* at 24.

10 *Id.*

11 *Id.* at 24-25.

12 See HUMAN RIGHTS WATCH/AMERICAS, *HAITI THIRST FOR JUSTICE: A DECADE OF IMPUNITY IN HAITI*, REPORT 7 (1996).

speech, trade unions, and the press through multiple military and paramilitary institutions. The police became part of the military and François Duvaliér (Papa Doc) created the paramilitary Volunteers for National Security the so-called *Tontons Macoutes*¹³ which implemented political terror by murdering, torturing, raping, and arbitrarily detaining political opponents. The Duvaliér dictatorships were also soaked with corruption and political control over the judiciary and used correctional institutions to enhance the government's repression. The judiciary system and the Department of Correction collaborated with the dictatorship by means of torture, murder, and extortion. The members of the judiciary and police departments did not investigate human rights violations, and some threatened to assassinate and torture people that complained, since some of the perpetrators were police department officers or judiciary employees.

Despite the crimes against humanity committed and the economic and political corruption of the Duvaliérés, the Duvaliér family was flown by the United States in a military plane to be sent into exile in France in 1986.¹⁴ Baby Doc left a Haiti bowing to violence and corruption. His policies also produced an enormous income gap between the social and economical elite and the majority of the Haitian population.¹⁵

Throughout the Duvaliérés' dictatorship the international community, particularly the United States, knew about ongoing human rights violations in Haiti, but refrained from stopping them. After Baby Doc's exile, Haiti inherited political instability and various political regimes. These de facto governments continued to commit human rights violations and corruption. As a result, impunity continued to rule in Haiti.

In December 1990, for the first time in Haitian history, the Haitians democratically elected their President, Jean-Bertrand Aristide. The Organization of the American States (OAS) and the United Nations (UN) provided observers and security during the elections. In their judgment, the elections were successful, and voters had not been intimidated. Aristide's government tried to improve the rule of law in Haiti, announced the creation of a human rights commission, which would investigate past human rights violations, closed a known torture center, arrested a number of criminal suspects involved in human rights violations, and dissolved rural military chiefdoms.¹⁶ Nevertheless, these reforms did not last, since President Aristide was overthrown by military and paramilitary forces in September 30, 1991.

¹³ The *Tonton Macoutes* were a paramilitary group that supported the Duvaliérés' dictatorship, and, therefore, assisted Duvaliérés' regime by assassinating, torturing, raping, and disappearing Duvaliérés' political opponents.

¹⁴ See HUMAN RIGHTS WATCH/AMERICAS, *supra* note 12, at 8.

¹⁵ STOTZKY, *supra* note 1, at 26.

¹⁶ *Id.* at 28.

II. HUMAN RIGHTS VIOLATIONS FROM THE COUP D'ETAT UNTIL ARISTIDE'S REINSTATEMENT, SEPTEMBER 30, 1991 TO OCTOBER 15, 1994

Throughout the de facto regime there were severe human rights violations that breached the Haitian Constitution of 1987 and human rights treaties ratified by Haiti. These crimes were against President Aristide's supporters and their families as well as to any person or group that were against the regime. The coup d'état was led by Gen. Raoul Cedras, Lt. Col. Michel François, and Gen. Philippe Biamby. The Haitian military and allied paramilitary groups established political terror and, as before, the judicial system contributed by allowing arbitrary detentions and extortions, making impunity the rule of law. The military was led by section chiefs,¹⁷ and assisted by the so-called *attachés*,¹⁸ the Haitian police, and the paramilitary organization known as FRAPH,¹⁹ "an acronym that played on the French verb *frapper*, to hit."²⁰ Thousands of Haitians suffered murder, rape, arbitrary detention, extortion, torture, and disappearance because of their political beliefs. This, in turn, provoked an immense Diaspora.

The military eliminated opponents of the regime, appropriated their land and harvest without due process, and plundered and burned their homes. Thousands of people hid from public life and constantly moved from place to place to escape from the regime of terror in what was the *marronage*.²¹ *Marronage* forced Haitians to abandon their homes, families, and jobs. Children had to leave school to escape with their parents or became orphans and risked being raped. Among the people who suffered *marronage* were politicians, human rights advocates, religious groups, trade unions, journalists, and supporters of President Aristide.

The Haitian military and paramilitary raped women and girls who were members, activists or family of their political opponents as a method of repression. They raped and sometimes assassinated them in front of their families. The

¹⁷ The section chiefs were rural military sheriffs that reported themselves to the local sub-district commanders. Most of these section chiefs were former chiefs of *Tontons Macoutes* that were removed from the military during President Aristide's government.

¹⁸ According to *Human Rights Watch/Americas, Haiti Thirst for Justice*, *attachés* were armed "civilians used by the military to intimidate and extort." HUMAN RIGHTS WATCH/AMERICAS, *supra* note 12, at 14.

¹⁹ The FRAPH is *Front pour l'Avancement et le Progrès Haitien*, which in English means Front for the Advancement and Progress of Haiti. The FRAPH was a paramilitary group armed by the Haitian military to establish terror against Aristide's followers.

²⁰ HUMAN RIGHT WATCH/AMERICAS, *supra* note 12, at 14.

²¹ See INTER-AM. C.H.R., INFORME SOBRE LA SITUACIÓN DE LOS DERECHOS HUMANOS EN HAITÍ 37 (OEA rev. vol. 1995).

international community considers rape a type of torture, and, therefore, a severe human rights violation.²²

Furthermore, the de facto regime violated the right to life by executing all their political opponents, and the judiciary did not prosecute any of these murders. Haitians lived frightened because the military and paramilitary also kidnapped their “enemies”, and, most of the time, asked for ransoms, tortured or assassinated them.²³ The de facto government was responsible for the Raboteau Massacre,²⁴ in which the military and paramilitary plundered the neighborhood, beat its residents, and assassinated all the people that tried to escape the terror. Freedom of speech, press, and association were denied. The regime of terror censured the media and assassinated several journalists causing most of them to flee the country.²⁵

The repression provoked thousands of Haitians to flee their country by boat to the Bahamas, Cuba, Jamaica, United States, Trinidad and Tobago, Venezuela, Belize, and Honduras, and by land to Dominican Republic.²⁶ A large number of Haitians died in the high seas, others were intercepted by the U.S. Coast Guard, which returned the majority of them to Haiti, some were granted asylum, and others arrived and remained illegally. Most nearby countries did not grant Haitians political asylum, but some, for example the United States, built refugee camps.²⁷ These camps did not have the infrastructure or the proper living conditions for all the people. Therefore, these camps infringed human rights, and the international community failed to counter it.²⁸

The Haitian Constitution of 1987 provides for the rights of freedom of expression,²⁹ right to life,³⁰ right of individual liberty,³¹ freedom of conscience,³² freedom of assembly and association,³³ right to an education,³⁴ freedom to

22 *See id.* at 43-46.

23 *See id.* at 52-53.

24 Raboteau was a poor neighborhood in the northeast coast of Haiti. Most Raboteau residents were Aristide's supporters. The harsh political repression caused that some Raboteau residents slept near their boats so they can escape from the constant assaults. *See id.* at 52.

25 *See id.* at 62-63.

26 *See id.* at 69.

27 *See* HUMAN RIGHTS WATCH/AMERICAS, *supra* note 12, at 14-15.

28 *See* INTER-AM. C.H.R., *supra* note 21, at 69-77.

29 *See id.* art. 28.

30 *See id.* art. 19.

31 *See id.* art. 24.

32 *See id.* art. 30.

33 *See id.* art. 31.

34 *See id.* art. 32.

work,³⁵ property rights,³⁶ right to access to the courts,³⁷ right to be free of search and seizures without due process,³⁸ and the State has the duty to protect family and children.³⁹ All these rights were violated by the de facto regime.

On the other hand, according to the article 276-2 of the Haitian Constitution of 1987 “[o]nce international treaties or agreements are approved and ratified in the manner stipulated by the Constitution, they become part of the legislation of the country and abrogate any laws in conflict with them.”⁴⁰ Haiti ratified the International Covenant on Civil and Political Rights and the American Convention on Human Rights. By virtue of articles 276-2, these treaties constitute part of the Haitian legislation and should be respected. Nevertheless, the regime violated the international human rights to be free from discrimination due to political beliefs,⁴¹ to be subject to humane treatment,⁴² to have personal liberty,⁴³ life,⁴⁴ fair trial,⁴⁵ privacy,⁴⁶ freedom of conscience and religion,⁴⁷ freedom of thought and expression,⁴⁸ assembly,⁴⁹ freedom of association,⁵⁰ rights of children,⁵¹ property,⁵² freedom of movement,⁵³ equal protection,⁵⁴ and judiciary protection.⁵⁵

35 See 1987 CONSTITUTION OF THE REPUBLIC OF HAITI art. 35.

36 See *id.* art. 36.

37 See *id.* art. 42.

38 See *id.* art. 43.

39 See *id.* art. 259-262.

40 *Id.* art. 276, §2.

41 See United Nations, International Covenant on Civil and Political Rights art. 2, Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR]; see also Organization of American States, American Convention on Human Rights art. 1, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123 [hereinafter ACHR].

42 See ICCPR art. 7; see also ACHR art. 5. .

43 See ICCPR art. 9; see also ACHR art. 7.

44 See ICCPR art. 6; see also ACHR art. 4.

45 See ICCPR art. 9, 14; see also ACHR art. 8.

46 See ICCPR art. 17; see also ACHR art. 11.

47 See ICCPR art. 18; see also ACHR art. 12.

48 See ICCPR art. 18-19; see also ACHR art. 13.

49 See ICCPR art. 21; see also ACHR art. 15.

50 See ICCPR art. 22; see also ACHR art. 16.

51 See ICCPR art. 24; see also ACHR art. 19.

52 See ACHR art. 21.

53 See ICCPR art. 12; see also ACHR art. 22.

54 See ICCPR art. 26; see also ACHR art. 24.

55 See ICCPR art. 14; see also ACHR art. 25.

These Haitian atrocities also constituted crimes against humanity under customary international law.⁵⁶ Although some of the human rights violations in Haiti were considered torture, especially rape, Haiti is not a party of the Torture Convention nor is it a party of the Inter-American Convention to Prevent and Punish Torture.

III. ARISTIDE'S REINSTATEMENT AND THE INTERNATIONAL EFFORTS TO RESTORE THE DEMOCRACY IN HAITI

After President Aristide was forced into exile in the United States, the UN as well as the U.S. government made efforts to help restore the democratic government. The international community's attempted negotiations with the regime failed. In response, the members of the OAS responded by freezing Haiti's foreign assets and imposing a trade embargo. Immediately afterwards, the Haitian military regime opened to negotiations, which lasted almost three years. Among the most important compromises achieved were the Governor Island Agreement and the Carter Negotiations.

During the Governor Island Agreement, President Aristide was pressured by the United States and the UN to accept the general amnesty requested by the Haitian coup government. President Aristide was willing to give de facto Haitian regime amnesty for political crimes, but refused to extend amnesty to human rights violations under the Haitian Constitution.⁵⁷ Nevertheless, United States and UN negotiators believed that full amnesty to the coup leaders was necessary to reinstate Aristide's government. Against his will, finally Aristide gave way to full amnesty, which gave coup leaders the opportunity to retire from their jobs and exile. The Governor Island Agreement also permitted that other coup participants remain in the military, posted outside Haiti. Finally, the international community would create an international aid program for Haiti that would be instituted over five years, and provide international cooperation in matters of financial, security, governmental administrative, and judicial reform.⁵⁸ Although

⁵⁶ According to the jurisprudence of the Nuremberg Tribunal and codified in the Statutes of the International Criminal Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda, the Special Court for Sierra Leone, and the Rome Statute for the International Criminal Court, crimes against humanity are defined as:

[A]ny of the following acts when committed as part of a widespread or systematic attack against any civilian population, with knowledge of the attack: (a) Murder . . . (g) Rape . . . (h) Persecutions against any identifiable group or collectivity on political . . . grounds that are universally recognized as impermissible under international law"

Michael P. Scharf, *From the eXile Files: An Essay on Trading Justice for Peace*, 63 WASH & LEE L. REV. 339, 359 (2006).

⁵⁷ Article 147 of the Haitian Constitution of 1987 allows only political amnesty. Nevertheless, if the Haitian Parliament defines human rights violations as political violations, there can be a general amnesty.

⁵⁸ STOTZKY, *supra* note 1, at 33.

Aristide, the Haitian Parliament, and the international community took the first step and followed the agreement, the de facto regime severely breached the Governor Island Agreement, which is now recognized generally as having failed its objectives.

Following these events, the UN imposed a new embargo on oil and arms shipments. The allied warships encircled Haiti and the U.S. government froze all U.S. assets owned by Haitians residing in their homeland.⁵⁹ These sanctions did not affect the regime, however, as they had an “almost free flow of contraband goods, especially gasoline, across the Dominican Republic border.”⁶⁰ The international community continued trying to negotiate with the military government, but they refused and therefore the UN approved a total ban on commercial flights to and from Haiti. The UN also approved a military invasion, if the sanctions failed to remove the de facto regime. Before invading Haiti, President Clinton asked former President Jimmy Carter, Senator Sam Nunn, and General Colin Powell to negotiate a peaceful departure with the regime. The Carter Agreement was a success. On September 18, 1994 the de facto regime and the international community agreed that the U.S. forces would enter Haiti and the Haitian military and police would cooperate. The High Ranking military officers would retire upon ratification of general amnesty by the Haitian parliament; nevertheless, the parliament did not approved general amnesty, but political amnesty. The Carter Agreement stopped international sanctions against Haiti, and, finally, restored President Aristide’s government on October 15, 1994.⁶¹ The General Cédras, General Philippe Biamby, and Port-au-Prince Police Chief Colonel Michel François retired and departed with U.S. troops into exile in Panama. Although these leaders committed several national and international human rights violations, they were not prosecuted.

IV. EVALUATION OF THE TRANSITIONAL JUSTICE MECHANISMS ESTABLISHED BY THE HAITIAN GOVERNMENT AND THE INTERNATIONAL COMMUNITY ASSISTANCE

During President Aristide’s reinstatement speech, he expressed that his goal was to create a “peaceful democratic society through what he called the ‘twin themes’ of reconciliation and justice.”⁶² President Aristide worked to improve the country’s infrastructure, fix a dysfunctional justice system, and assist the country’s severely poor, abused and neglected citizens.⁶³ In the beginning of the reinstatement of democracy and administration of the transitional justice mechan-

59 *Id.* at 33-34.

60 *Id.* at 35.

61 *See id.* at 39-41.

62 *Id.* at 42.

63 *See id.* at 42.

isms “[t]here were clear signs that Haiti’s infrastructure was beginning to improve, and Haitian civilians, of course, began to enjoy exponentially greater social and economic freedoms than they had under the de facto government.”⁶⁴ Nevertheless, Haiti’s judicial, social, and economic problems were so severe, that greater international support, together with a better understanding of transitional justice mechanisms, and a tailored socio-economic program, was necessary for a long-run success.

The first transitional justice mechanism established in Haiti was, as I mentioned before, political amnesty and exile for the military leaders of the regime. This transitional justice option was, in a way, successful, since it gave peace to the country without bloodshed, however it prolonged the Haitian culture of impunity.

Immediately after the democratic government was reinstated, President Aristide and the little international aid established other transitional justice mechanisms and a social-economic plan, which Aristide’s successor, René Préval, would also embrace.⁶⁵

First, the UN peacekeeping forces, the U.S. troops, and Aristide’s government disarmed the Haitian military and paramilitary, and eliminated the military. Although the military disarmament was successful, only 30% of the paramilitary was disarmed.⁶⁶ By the time disarmament began, paramilitary agents had already blended into the civilian population. Furthermore, the U.S. troops and UN peacekeeping forces did not fully commit to disarming the paramilitary. These former agents continued committing crimes, and were never prosecuted.⁶⁷ Nevertheless, although paramilitary disarmament was not a total success, Haiti’s security, peace, and human rights record certainly improved in short-run.

Second, President Aristide, with U.S. help, created a professional police force under the authority of the Ministry of Justice instead of the Military Department. The U.S. troops and UN peacekeeping forces helped President Aristide to keep the peace. The Haitian government recruited and trained hundreds of police officers through Haitian and international officials. This training pursued the eradication of the customary aggressive, corrupt, and arbitrary behavior of the police. Although these efforts improved some police behavior, citizens continued suffering from police abuse and corruption.

Third, the democratic government appointed a National Commission for Truth and Justice (NCTJ). Their duty was to investigate and document the brutal human rights abuses committed during the coup, and write a public report with recommendations regarding reparations, rehabilitation of victims, and legal and

64 *Id.* at 42.

65 *See id.* at 106.

66 *See id.* at 44.

67 *Id.*

administrative measures to prevent these violations.⁶⁸ The NCTJ had the responsibility to identify the perpetrators by name, although the commission's mandate prohibited it to initiate prosecution. Haitian sociologist Françoise Boucard was the manager of NCTJ, and he named three Haitian and three international commissioners. The report was finished at the end of Aristide's Presidency, but it was a failure. The government did not have the resources to publish and print the complete report, therefore, it only published the commission's recommendations. The lack of adequate resources, little international support, and shortage of staff and materials further jeopardized the researchers' work. As a result, these victims received no reparations.

Fourth, the Haitian government restructured the justice system to protect fundamental rights. The U.S. Department of Justice collaborated in a program for training Haitian judges. A Special Investigation Unit (SIU) was created to investigate, together with international support, politically motivated and human rights crimes committed during and after the coup d'état of 1991.⁶⁹ During the investigations of SIU, the Haitian government requested the U.S. government to return the FRAPH and Haitian military documents⁷⁰ and to surrender one of Haiti's most notorious human rights violators, Emmanuel Constant;⁷¹ however, the United States never returned the documents neither surrender Emmanuel Constant. Nevertheless the failure to return these materials and surrender Constant, the democratic government used the investigations of the SIU to employ the transitional justice mechanism of prosecution. Although serious difficulties pressed on, the judiciary successfully prosecuted some military leaders. For example, Gérard Gustave (a.k.a. Zimbabwe), a mid-level FRAPH official, was prosecuted for the assassination of Antoine Izméry, a prominent supporter of President Aristide.

However, the prosecution of Jean-Ronique Antoine, an army corporal, and Robert Lecorps, a civilian, for the murder of the former Minister of Justice, Guy Malary, lends another perspective. The trial breached international as well as national standards of due process and impartiality. Two of the jury members were friends of the defendants, one of the jury members was an anchorman from the de facto television news, the prosecutor was poorly prepared, and, at one point, the jury yelled at a witness accusing him of perjury. This case, in contrast

⁶⁸ See HUMAN RIGHTS WATCH/AMERICAS, *supra* note 12, at 18.

⁶⁹ See *id.* at 22.

⁷⁰ The FRAPH and Haitian military documents were "documents and other materials from FRAPH and Haitian military headquarters in the fall of 1994, including videotapes, photographs of 'trophy' torture victims, and membership applications for FRAPH, passports, identification cards, and business records." *Id.* at 24.

⁷¹ Emmanuel Constant was the founder and leader of FRAPH. He has "stated repeatedly that he received payments from the CIA from 1992 until 1994 of U.S. \$500/month and that he collaborated with the Defense Intelligence Agency (DIA) during the time." *Id.* at 25.

with Zimbabwe, “hurt rather than helped the administration of justice in Haiti,”⁷² and demonstrated that Haitian democracy was not yet adequately developed. Improving the nation’s judiciary was a huge challenge for Aristide, since Haiti

[N]ot only needs to develop institutions, it must also train a large number of people to run them. But what is even more ominous for the success of any possible transition to democracy in Haiti is the fact that its institutional structure . . . is less developed than that of virtually any nation that has attempted this precarious transformation.⁷³

The judicial system in Haiti had little progress in bringing to justice those responsible for fundamental rights violations during the coup. Most of the criminal cases against the human rights violators of the 1991 coup d’état were dismissed, did not reach a verdict, or were obstructed.⁷⁴ Victims of these violations were traumatized and frustrated over this impunity; UN and the United States did nothing to prosecute symbolic cases. Most of the criminal complaints and investigations that led to trial procedures failed to reach international standards. The judiciary was inconsistent in applying the law, lacked competent professionals and proper resources, and other professionals were afraid to apply the law.

Fifth, the Haitian democratic governments, those of Presidents Aristide and Préval, tried to implement an economic plan in order to develop democracy and improve the nation’s extreme poverty. Nevertheless, the democratic administrations failed to develop effective economic and anti-poverty programs. Because of the government’s focus on the participation and interests of the elite, the country’s economic crisis persisted, and the vast majority starved to death. The economic plan took little notice of the peasants, artisans, and small urban entrepreneurs.⁷⁵

Finally, Aristide’s government also created a social and reparations program that failed in the long-run to assist the victims with their basic needs and provide them with medical and psychological attention. Some Haitians and international human rights advocates created organizations to pursue truth and justice.⁷⁶ These organizations addressed medical and psychological needs, legal assistance, and created popular education programs. Nevertheless, these organizations had limited resources and left many victims helpless. A social and reparations program is extremely important, because it achieves the transitional justice objective of healing. However, “healing must take a holistic approach . . . to

⁷² See STOTZKY, *supra* note 1, at 135.

⁷³ *Id.* at 81.

⁷⁴ See INTERNATIONAL CRISIS GROUP, CONSOLIDATING STABILITY IN HAITI, LATIN AMERICA/CARIBBEAN REPORT N°21-18 at 12 (July 2007).

⁷⁵ See STOTZKY, *supra* note 1, at 109-113.

⁷⁶ See HUMAN RIGHTS WATCH/AMERICA, *supra* note 12, at 27.

rebuild the whole or complete person.⁷⁷ Social and reparations program as well as an economic plan should help victims overcome psychological traumas as well as alleviate hunger, “not only to help individuals rebuild their lives, but also to protect entire societies from descending into further conflict. Healing therefore is integral to achieving positive peace and ultimately reconciliation.”⁷⁸

V. WHAT HAPPENED IN HAITI AFTER THE ESTABLISHMENT OF THE TRANSITIONAL JUSTICE MECHANISMS?

Since January 1999 the Haitian parliament was not working, as a consequence, President Préval basically ruled by decree throughout 1999.⁷⁹ In 1999 criminality and corruption began to increase, and the justice system remained largely dysfunctional. This time the insecurity and human rights violations in Haiti were not because of the Haitian military and paramilitary actions, but of criminal gangs and drug trafficking.⁸⁰ Since the 1994 economic plan failed to alleviate hunger in the vast majority of the Haitian population, many young males joined gangs to earn money. Therefore, most of the violence came from gangs whose members were trying to survive poverty. The international community, specifically European nations and the United States, suspended their assistances to Haiti after the OAS observers reported irregularities in the general elections in 2000. In 2004 President Aristide, who was reelected in 2000, went into exile. After President Aristide’s exile in 2004, the UN and United States dedicated much more assistance to social, political, educational, economic, and security programs than in 1994. This time their focus was on human security instead of only state security.⁸¹ Nevertheless, the improvements in the first two years of Aristide’s 1994 presidency were much more noticeable than in the 2004 restoration. The United Nations Stabilization Mission in Haiti (MINUSTAH) and the Haitian National Police (HNP) were supposed to bring peace and security to Haitians, however, hunger, general insecurity, and violence intensified at the end of 2006.⁸² On the other hand, the Haitian presidency election in 2006 was successful, as the reelected President, René Préval, enjoyed national and international support. As in 1994, Haitians continued not trusting the police department, and the Haitian government and MINUSTAH have failed to disarm the

⁷⁷ Phil Clark, *Establishing a Conceptual Framework: Six Key Transitional Justice Themes*, in *AFTER GENOCIDE: TRANSITIONAL JUSTICE, POST-CONFLICT RECONSTRUCTION, AND RECONCILIATION IN RWANDA AND BEYOND* 200 (Phil Clark & Zachary D. Kaufman eds., 2009).

⁷⁸ *Id.* at 201.

⁷⁹ See AMNESTY INTERNATIONAL USA, 2000 ANNUAL REPORT FOR HAITI 3-4 (2000).

⁸⁰ See INTERNATIONAL CRISIS GROUP, *supra* note 74.

⁸¹ See Robert Muggah & Keith Krause, *A True Measure of Success? The Discourse and the Practice of Human Security in Haiti*, 57 *WHITEHEAD J. OF DIPL. AND INT’L REL.* 129-41 (2006).

⁸² In November-December 2006 general insecurity and indiscriminate kidnapping intensified. See INTERNATIONAL CRISIS GROUP, *supra* note 7, 4 at 1-2.

criminal gangs. Although in July 2007 the security in Haiti improved, poverty as well as urban violence continued to be a serious problem.

In Fall 2009, Hédi Annabi, the head on the MINUSTAH, reported that due to the hard work of the Haitian authorities and the strong support of the international community, there have been great improvements in security, State authority, governmental institutions, the protection of human rights, and in the socio-economic development of Haiti.⁸³ In the report, Annabi stated that although socio-economic development “is not the core business of peacekeeping operations . . . there is a strong linkage between security, stability and development”⁸⁴ in Haiti. If the conditions of Haitians’ daily lives do not improve, stabilization cannot succeed.⁸⁵ To conclude, Annabi admitted that there is much to be done in Haiti and that while stability is achieved slowly, if Haitian leaders and the international community continue working together, Haiti will stabilize.⁸⁶

VI. SHOULD THE HAITIAN GOVERNMENT HAVE CONSIDERED OTHER MECHANISMS?

Haiti needed greater and more effective international support, together with a tailored socio-economic program, to achieve a long-run success in its transitional justice mechanisms. Furthermore, it also needed a better understanding of transitional justice mechanisms, and to delimit its little resources to the most important transitional mechanisms that achieve its transitional justice objectives. Therefore, before placing any transitional justice mechanisms it is necessary to delineate the objectives of the transitional government and its capability.⁸⁷ This will help focus the little resources that the country has to end human rights violations, improve the psychological and material situation of the victims, establish democracy, and end impunity.⁸⁸ As Phil Clark mentions, there are “six key transitional justice terms -reconciliation, peace, justice, healing, forgiveness and truth- which constitute important post-conflict objectives, from which transitional societies must decide which aims to pursue.”⁸⁹ It is necessary to choose the transitional justice mechanisms that will successfully achieve these objectives. Before placing any transitional justice objectives it is essential to know and understand the nation’s history and the heart of the matter. The most important

⁸³ See Hédi Annabi, *The Stabilization Process in Haiti: A Work in Progress*, AMBASSADORS REV. 1 (Fall 2009), <http://www.americanambassadors.org/index.cfm?fuseaction=Publications.article&articleid=179>

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ See Phil Clark, *supra* note 77, at 191-205.

⁸⁸ See *id.*

⁸⁹ *Id.* at 193.

objectives in Haiti, after restatement of President Aristide in 1994, were peace, justice, and healing.

The first two transitional justice mechanisms established by President Aristide and the international community were exile and amnesty to the main leaders of the de facto regime. The objective of these two transitional justice mechanisms was to achieve peace. However, amnesty and exile, as well as military intervention, must be one of the last options in transitional justice. These mechanisms were necessary and successful, since Haiti achieved the re-establishment of democracy without further bloodshed. Nevertheless, failure by the international community to act rapidly and aggressively in terms of sanctions after the coup, abetted further human rights violations.

During the negotiations between the international community and de facto regime, general amnesty, which includes human rights violations, should not have been an option unless it was conditioned on truthful testimony. If the international community allows impunity it will lose credibility and breach international treaties like the Torture Convention and the Genocide Convention that require countries to prosecute these crimes.⁹⁰ In Haiti's case, the international community, the United States and United Nations, gave general amnesty to the leaders of the de facto regime, although the Haitian Constitution did not allow it. Nevertheless, Haiti has not ratified neither the Torture Convention nor the Inter-American Convention to Prevent and Punish Torture which make it a duty to prosecute violators. Although Haiti ratified the Geneva Convention that requires prosecution of violators, this convention did not apply as the coup and the military regime installed after are not considered an international armed conflict under the Convention.⁹¹ The ICCPR and ACHR, both ratified by the Haitian government, do not explicitly require state parties to prosecute violators.⁹² However, the action of the United Nations and United States in granting general amnesty to Haitian human rights violators "is likely to serve as a beacon of hope for those accused of some of history's most shocking atrocities"⁹³

Another important transitional justice mechanism that should have been successfully established in Haiti was prosecution. This mechanism was necessary to end the culture of impunity, deter future human rights violations, establish

⁹⁰ See Zachary D. Kaufman, *The Future of Transitional Justice*, 1 ST. ANTONY'S INT'L REV. 58, 69-71 (2005); see also Michael P. Scharf, *Swapping Amnesty for Peace: Was There a Duty to Prosecute International Crimes in Haiti?*, 31 TEX. INT'L L.J. 1 (1996).

⁹¹ See Scharf, *Swapping Amnesty for Peace*, *supra* note 90, at 20-21.

⁹² *Id.* See also Diane F. Orentlicher, *Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime*, in TRANSNATIONAL JUSTICE 375-416 (Neil J. Kritz ed., 1995) (condensed version of Diane F. Orentlicher, *Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime* 100 YALE L.J. 2537 (1990)).

⁹³ Scharf, *Swapping Amnesty for Peace*, *supra* note 90, at 19.

democracy, help rebuild the country, and rehabilitate criminals.⁹⁴ Prosecution looks to achieve long-term peace, forgiveness, truth, healing, and justice.⁹⁵ As I mentioned before, under President Aristide only a few cases were successful. “Haiti’s legal culture and traditions maintain[ed] a system that [was] slow, formalistic, and geared to serve the interest of economic, military, and political powers.”⁹⁶ In order to achieve effective prosecution, Haiti needed international assistance, legal materials, infrastructure, and highly-trained professionals. Furthermore, the Haitian judiciary needed to limit the prosecutions of human rights violators to the most atrocious cases and the high and mid level military and paramilitary commanders.⁹⁷ As Diane F. Orentlicher mentions “nations emerging from dictatorship face formidable challenges as they seek to establish or restore the rule of law.”⁹⁸

Therefore, these criminals should be prosecuted by a Hybrid Domestic-International Court (Hybrid Court). This court is:

[H]ybrid because both the institutional apparatus and the applicable law consist of a blend of the inter-national and the domestic. Foreign judges sit alongside their domestic counterparts to try cases prosecuted and defended by teams of local lawyers working with those from other countries. The judges apply domestic law that has been reformed to accord with international standards.⁹⁹

Due to the incapacity of Haitian judiciary to investigate and prosecute, a Hybrid Court “offers advantages in the arena of capacity-building . . . [t]he side-by-side working arrangements allow for on-the-job training that is likely to be more effective than abstract classroom discussion of formal legal rules and principles. And the teamwork can allow for sharing of experiences and knowledge in both directions.”¹⁰⁰ Moreover, a Hybrid Court in Haiti could contribute to a “broader dissemination (and adaptation) of the norms and processes of international human rights law,”¹⁰¹ and would “offer an opportunity to do much more through a relatively modest further investment-by leaving an institutional legacy in the

94 See Zachary D. Kaufman & Pierre-Richard St. Hilaire, *The Competing Values of Retribution and Forgiveness, in RWANDA AND SOUTH AFRICA IN DIALOGUE: ADDRESSING THE LEGACIES OF GENOCIDE AND A CRIME AGAINST HUMANITY* 43 (Charles Villa-Vicencio & Tyrone Savage eds., 2001).

95 See Phil Clark, *supra* note 77.

96 Brian Concannon, Jr., *Beyond Complementarity: The International Criminal Court and National Prosecutions, A View from Haiti*, 32 COLUM. HUMAN RIGHTS L. REV. 201, 211 (2000).

97 See Diane F. Orentlicher, *supra* note 92, at 405-409.

98 *Id.* at 375.

99 Laura Dickinson, *The Promise of Hybrid Courts*, 97 AM. J. INT’L L. 295, 307 (2003).

100 *Id.* at 307.

101 *Id.* at 310.

domestic justice system, law schools, and other institutions.”¹⁰² International assistance “could mitigate the effect of insecurity on... prosecutions by protecting key witnesses”¹⁰³ and prevent corruption and intimidation in the judiciary. In sum, “a Hybrid Court is not a panacea, of course,”¹⁰⁴ but it could help Haiti achieve, finally, justice.

As a result of its serious economic problems, Haiti’s transitional justice mechanisms should be limited to those that can accomplish its transitional justice objective. Haiti’s objectives could be accomplished through amnesty, exile, prosecution, and socio-economic and reparations programs. President Aristide’s truth commission was a failure and it was not necessary. If the Haitian government had not established a truth commission, it could have saved resources for prosecution and social-economic and reparations programs for the victims of the regime, which had priority.

CONCLUSION

As Irwin P. Stotzky points out in the book, *Silencing the Guns in Haiti*, “any government attempting to make the transition from dictatorship to democracy must design a dual human rights policy, which deals simultaneously with the future and the past.”¹⁰⁵ Since the beginning of the nation, Haiti has suffered from serious social, political, economical, and juridical problems that provoked a culture of impunity, injustice, poverty, and suffering. After the coup d’état of 1991, the poorest nation in the Americas has struggled to achieve a peaceful democratic country that can provide to its citizens justice. Nevertheless, Haiti has been far from achieving its goals in the long-run.

Haiti would not achieve peace, justice, and healing until the international community together with a trustworthy democratic Haitian government work to end its serious problems through the necessary transitional justice mechanisms. Furthermore, for a long-run success of the transitional justice mechanisms, it is also necessary to end famine, which has provoked criminal gangs, drug trafficking, and corruption in Haiti. The international assistance and monitoring will help Haiti’s political, social, economical and judicial stability and, hopefully, will bring peace and justice for the first time in Haitian history.

¹⁰² William A. Schabas, *The Relationship Between Truth Commissions and International Courts: The Case of Sierra Leone*, 25 HUM. RTS. Q. 1035, 1066 (2003).

¹⁰³ Concannon, *supra* note 96, at 247.

¹⁰⁴ Dickinson, *supra* note 99, at 310.

¹⁰⁵ STOTZKY, *supra* note 1, at 114.