

Occasional Paper N° 12

Bryant C. Freeman, Ph.D.
General Editor

Mari Dyevela Seza

*Refòm nan Lajistis /
Judicial Reform*



K G S
5 6 7 2
. 5 4 9
1 9 9 6

**Institute of Haitian Studies
University of Kansas
1996**

R00322 06365

University of Kansas Institute of Haitian Studies
Occasional Papers

Bryant C. Freeman, Ph.D. - General Editor

- N° 1 - **Konstitisyon Repiblik Ayiti, 29 mas 1987.** 1994. Pp. vi-106. Haitian-language version (official orthography) of the present Constitution, as translated by Paul Déjean with the collaboration of Yves Déjean. Introduction in English.
- N° 2 - **Toussaint's Constitution (1801), with Introduction.** 1994. Pp. ix-20. In French. Introduction (in English) places Constitution in its historic context and analyzes salient features.
- N° 3 - **Bryant C. Freeman, Selected Critical Bibliography of English-Language Books on Haiti.** 1995 (Updated). Pp. 21. More than 150 entries, with brief description of each; special list of "Top Ten." Introduction and text in English. Updated periodically.
- N° 4 - **Strategy of Aristide Government for Social and Economic Reconstruction (August 1994).** 1994. Pp. iv-9. Official document setting forth recovery plan for Haiti. Introduction and text in English.
- N° 5 - **Robert Earl Maguire, Bottom-Up Development in Haiti.** 1995. Pp. iv-63. Keynote: develop people rather than things, with case study as carried out in Le Borgne. Introduction and text in English.
- N° 6 - **Robert Earl Maguire, Devlopman Ki Soti nan Baz nan Peyi Dayiti.** 1995. Pp. v-71. Haitian-language version of N° 5, in Pressoir-Faublas orthography. Introduction in English.
- N° 7 - **Samuel G. Perkins, "On the Margin of Vesuvius": Sketches of St. Domingo, 1785-1793.** 1995. Pp. vi-75. First-hand account by an American merchant living in Saint-Domingue during onset of the Haitian Revolution. Introduction analyzes strong and weak points of narrative. Index of Proper Names.
- N° 8 - **Official Spelling System for the Haitian Language.** 1995. Pp. 27. Text of official Haitian government edict of 28 September 1979, in Haitian. Editor's remarks in English on subsequent contemporary usage and brief pronunciation guide. Eleven pages chosen to illustrate good usage of official system, plus brief examples of the three major preceding orthographies. Introduction traces development of the four major systems.
- N° 9 - **Organization Charts of the Haitian Judiciary and Military.** 1995. Pp. 10. Two charts of Haitian judicial system - one in French and English, other in French only. Three charts in French of Armed Forces of Haiti (1993) and one of Port-au-Prince police; officer and enlisted ranks with insignia (in French and English). Introduction in English.
- N° 10 - **Tèt Kole Ti Peyizan Ayisyen, Dosye Chèf Seksyon: Chèf Seksyon - Yon Sistèm Ki Merite Elimine.** 1995. Pp. vi-52. Detailed, scathing account of the institution of section chiefs as of March 1991, compiled by a leading Haitian peasant group. Much exact information. Introduction in English, text in Haitian (official orthography).
- N° 11 - **Sara Lechtenberg, An Overview of the Haitian Justice System.** 1996. Pp. iv-25. Based upon written sources, as well as 18 personal interviews with Haitian judges and lawyers, and foreign observers highly knowledgeable concerning the Haitian justice system.

Available through:

Mount Oread Bookshop
University of Kansas
Lawrence, Kansas 66045
Tel.: (913) 864-4431

REFÒM NAN LAJISTIS / JUDICIAL REFORM

This is the twelfth in a series of documents concerning Haiti to be made available through the University of Kansas Institute of Haitian Studies. The present paper first appeared in the Haitian-language monthly *Bon Nouvèl*, July-August 1996 (29^e ane, N° 319, pages 11-16), published in Port-au-Prince. Its author, Mari Dyevela Seza (Marie-Dieuvèla César), has been a full-time editor of *Bon Nouvèl* for a number of years, and is at present preparing an advanced Haitian law degree. Our belief is that this far-reaching analysis of the problems confronting the justice system in Haiti today deserves a wider audience outside of Haiti. It serves as a useful corollary by a highly perceptive Haitian eye-witness to the preceding analysis of justice in Haiti presented in this series by an American legal scholar who has studied in depth the country's judicial system (Sara Lechtenberg, "An Overview of the Haitian Justice System," University of Kansas Institute of Haitian Studies, Occasional Paper N° 11, 1996). We have included an English translation of the present paper for those unfamiliar with the Haitian language.

The question of judicial reform, at all levels, is one of the most burning issues in Haitian society today. The problem of a corrupt, inept Haitian judiciary, subject to the whims and demands of an ever-changing executive branch, has long been a semi-dormant concern of the Haitian people. However especially since the outrages of the 1991-94 de facto regime of Raoul Cédras, Philippe Biamby and Michel François, together with their puppet presidents and prime ministers, just retribution has become an issue hardly less important in the Haitian mind than personal safety, inflation, and privatization. The United Nations Mission in Haiti (UNMIH) has attacked, and its successors are attacking, the problem, but an immense effort is still required. The question of retribution, or vengeance, involves the far larger question of basic reform of the entire Haitian justice system. "Without rule by law, no nation can long prosper."

Bryant C. Freeman

REFÒM NAN LAJISTIS

Ki maladi sistèm nan soufri? 2
 Pa gen ase tribinal 2
 Kòripsyon jij yo 2
 Jij yo manke fòmasyon 2
 Lajistis ap mache kon tòti 3
Kisa ki anpeche jij yo fè travay yo byen? 3
Sou kisa refòm lajistis la dwe chita? 4
Poukisa refòm administratif la enpòtan? 5
Poukisa dwe gen chanjman nan tèks lwa yo? 5
Kèk lide pou yon bon refòm nan aparèy lajistis la 6
Kisa ki fèt deja nan koze refòm jidisyè a? 8
Konklizyon 9

JUDICIAL REFORM

What are the basic ills of the judicial system? 11
 There are not enough tribunals 11
 Judicial corruption 11
 Untrained judges 11
 Justice proceeds at a snail's pace 12
What prevents judges from performing well? 12
What must be the basis of judicial reform? 14
Why is administrative reform important? 14
Why must there be changes in the legal texts? 15
Several ideas for an effective reform of the justice system 16
What has already been accomplished in judicial reform? 17
Conclusion 18

REFÒM NAN LAJISTIS

Youn nan bagay ki pi enpòtan pèp ayisyen an ap reklame depi 1986, se jistis. Nan kaye revandikasyon pèp la, jistis la klase pami sa ki pi ijan yo, sitou apre 3 zan koudeta a. Kè pèp la cho, depi lontan y ap di l tann. Jodi a li refize kontinye tann paske li deja tann jis li tounen pwa tann. Li vle jistis la tousuit. Jistis kont gwo palto ki vòlò ti moso tè ki se sèl sous lavi li menm ak fanmi li. Jistis kont kriminèl ki asasinan fanmi li. Jistis kont kadejakè ki te vyole devan de grenn je l, pitit fi l, sè l, madanm li. Krim fè kenken nan tout rakwen peyi a. Kriminèl yo ap mache fè egzaksyon gwo jounen, san kè yo pa kase. Alòske anyen pa fèt pou pase kòd lajistis nan kou yo. Se enpinite ki alamòd. Sa fè, fanmi viktim yo blije swa met kò yo nan yon kwen pou tann jistis Bondye, swa manche ponyèt yo pou fè tèt yo jistis, paske moun ki swadizan la pou rann jistis yo pa fè travay yo kòm sadwa. Kit se prezidan, minis oubyen senp sitwayen, tout ap di yon sèl pawòl: sa pa ka kontinye konsa, kidonk fòk gen yon refòm jidisyè ki fèt.

Pawòl refòm sa a se yon koze ki long, ki mande yon gwo bwase lide ki pa ka fèt nan de twa paj. Men jan li enpòtan pou pèp la jounen jodi a, nou kwè li enpòtan pou nou pran yon ti espas, piti kou l ye, pou nou fè yon ti reflechi sou kokennchenn koze sa a.

Ki maladi sistèm nan soufri?

Pa gen ase tribinal. Pou tout peyi a, gen 180 tribinal depè, 15 tribinal sivil, 5 kou dapèl, 1 tribinal travay, 1 tribinal timoun, 1 tribinal teryen ak yon kou Kasasyon ki se ba ki pi wo nan nechèl lajistis la. Nan anpil zòn, yon moun blije fè yon jounen ap mache pou al regle yon senp bagay devan yon tribinal depè. Kanta pou lòt nivo yo menm, se pa pale. Se nan kèk gwo vil ase oubyen nan Pòtoprens sèl ki genyen yo. Sa fè tout ti resous peyizan an fin pase nan gwo deplasman. Alafen li blije abandone swa akòz dekourajman oubyen mank lajan. E lè sa a, yo rann jijman an kont li. Li pèdi pwosè a menm si l te gen rezon.

Kòripsyon jij yo. Anpil jij, se lajan ki bousòl yo. Lè y ap fè yon jijman, balans la toujou panche bò kote moun ki gen lajan an. Desizyon yo se lajan ak moun pa ki motive yo.

Jij yo manke fòmasyon. Yo la pou aplike lalwa, men souvan yo pa menm byen konn lwa yo. Pafwa jij la konn aplike yon ansyen lwa, alòske gen yon lòt ki pi nouvo ki anfavè moun nan. Lè jij yo pa konpetan konsa, avoka yo vire lòlòj yo jan yo vle ak gwo franse, yon pil atik lalwa lanvè landrèt, pou fè yo rann jijman an anfavè kliyan pa yo a.

Lajistis ap mache kon tòti. Pwosedri yo twò long, yo pran twòp tan. Sa lakoz yon pakèt monte desann, depanse lajan pou granmèsi. Sa fè anpil moun ap kanni nan prizon pou yon ti tenten san enpòtans. Anpil fwa jij yo fè espri tou pou trennen ak yon ka, dekwa pou paran prizonye a blije grese pat yo pou ka lage l.

Nou konstate ankò, gen anpil moun ki nan prizon pou dèt alòske lalwa defann sa. Anplis tout lòt pwoblèm ki genyen nou pa site la, youn nan rezon ki fè lajistis pa ka mache byen se paske chak jij se mèt e senyè kote li ye a. Li met moun nan prizon, kondane, lage, san pa gen pèsonn ki pou voye je sou sa l ap fè.

Kisa ki anpeche jij yo fè travay yo byen?

Zafè kòripsyon an se pi gwo repwòch popilasyon an genyen kont jij yo. Men se pa yon bagay ki senp konsa. Fòk yo chache rasin li si yo vle fini ak li. Move kondisyon travay jij yo se youn nan koz ki fè yo konn tonbe nan kòripsyon. Pandan jij la ap jije gwo zafè lajan, gwo zafè dwòg, anpil fwa li pa gen kòb pou l manje lakay li. Se sa moun yo konnen ki fè yo souvan ofri yo kòb anba. Yon polisye touche pi byen pase yon jijdepè. Anplis, ti chèk la pa janm vini alè. Pafwa se anba yon vye kay y ap fonksyone, san yon fèy papye ak yon plim pou ekri yon pwosevèbal. Sa konn rive tou, leta pa peye lwaye a, mèt kay la mete yo deyò, epi tribinal la blije kanpe sou aktivite l. Gen yon ka konsa ki te rive nan Monwi, an desanm 95.

Pafwa jij yo pè travay yo tou paske yo pa santi yo an sekirite. Pifò tribinal yo, sitou an pwovens, ap fonksyone san yon polisye pou ba yo sekirite. Jij la pa gen gad di kò. Li pa gen machin. L ap mache de bra balan, tann taksi nan nenpòt kwen lari. Nenpòt moun li te rann yon jijman kont li kapab atake l, touye l, epi al fè wout li.

Anplis ensekirite sa a, yo pa gen okenn garanti nan djòb la. Nan ane 1995 la, pou sèl zòn Pòtoprens la, te gen 16 jij ki te resevwa lèt revokasyon yo. Nan Ansavo (nan Grandans), sou 23 jij ki genyen, yo te revoke 13 ladan yo, pami yo 11 jijdepè. Sitiyasyon jijdepè yo ak komisè gouvènman yo pi frajil toujou. Yo menm yo pa gen yon manda fiks. Yo ka pèdi djòb la nenpòt ki lè si gouvènman an pa satisfè pou travay yo. Sa lakoz jij yo pè angaje tèt yo twò fon, pou yo pa kreye lènmi ki ka nui yo lè yo pa nan djòb la ankò.

Sou kisa refòm lajistis la dwe chita?

Travay pou geri aparèy jistis la dwe gen 2 gwo moso ladan. Premye pati chanjman an dwe koumanse fèt bò kote jij yo ak tout moun k ap travay pou sistèm nan fonksyone. Sa se refòm administratif la. Dezyèm nan se chanjman ki dwe fèt nan tèks lalwa yo.

Poukisa refòm administratif la enpòtan?

Nan refòm administratif la, yo dwe bay nominasyon jij ak travayè lajistis yo anpil enpòtans. Lalwa di kouman ak ki kondisyon ki dwe ranpli pou yo nonmen yon moun jij. Pifò magouy ak iregilarite k ap fèt nan lajistis la mare ak yon kesyon lajan. Jij ki pa onèt. Salè ki twò piti. Jij ki pa konpetan. Materyèl ki pa genyen. Refòm administratif la nesèsè pou regle tout kesyon sa yo. Fòk yo mete bon jan regleman pou fòse jij yo respekte sa lalwa di, ni nan lang y ap sèvi pou fè jijman yo, ni nan fason y ap delivre manda yo, ni nan delè yo dwe respekte pou jije yon moun ak pou kenbe l nan prizon.

Lòt bagay ankò, lajistis bezwen fòs pou l fè travay li. Fòs sa a se lapolis jidisyè a, ki gen pou travay men nan men ak lajistis. Anpil tribinal nan peyi a pa gen polisye ki atache ak yo pou al arete moun, lè sa nesèsè, ni yo pa gen okenn kote pou kenbe yo nan prizon.

Poukisa dwe gen chanjman nan tèks lwa yo?

Ayiti ap fonksyone sou yon sistèm jiridik ki rele "*Sistèm womano-jèmanik*." Nan sistèm sa a, tèks lalwa yo gen yon kokennchenn enpòtans. Ou pa ka fè anyen si pa gen yon tèks lalwa ki pale sou sa. Nou konstate, gen yon pakèt kesyon ki pa gen okenn lwa sou yo. Lè yon ka konsa prezante, menm si yo te arete yon moun kòm sispèk, yo blije lage l. Se sa ki pase chak fwa lajistis gen pou jije yon zafè sou lougawou. Popilasyon

an ki konn sa, li pa fè ni de ni twa, depi li jwenn yon ka konsa, li tou touye moun yo sispèk la.

Anpil nan tèks lwa ki egziste yo merite yon gwo pase men, paske yo pa konfòm ak Manman Lwa peyi a. Gen lòt ki twò ansyen. Yo pa konfòm ak reyalite moun ap viv jounen jodi a. Nou konstate sa, sitou nan pinisyon ak amann yo prevwa lè yon moun fè yon move zak. Anpil fwa, amann nan se 10 a 50 goud, alòske sa pa reprezante anyen nan tan n ap viv la. Nan sans sa a, Kòd Penal la ak Kòd Enstriksyon Kriminèl la merite pou yo ta refonn yo nèt. Fòk tèks lwa yo ekri nan yon langaj ki pi senp, retire pil "atandike" yo k ap anbouye lespri moun, ki lakoz pifò moun pa ka konprann anyen nan tèks lalwa yo.

Kèk lide pou yon bon refòm nan aparèy lajistis la

Endepandans pouvwa jidisyè a se yon kondisyon endispansab pou jij yo fè travay yo byen. Poutan nan reyalite a, "pouvwa jidisyè a" pa yon "pouvwa" vre. Li depann de pouvwa ekzekitif la kit se sou plan administratif, kit se pou kesyon lajan, kit se pou sekirite l. Se prezidan larepublik ki nonmen jij ak komisè yo. Se ekzekitif la ki peye yo. Pafwa lè yon jij fin fè 2 - 3 mwa san touche, li blije al kontakte minis entèl oubyen tèl direktè jeneral pou fè demach pou wè si y a fè l jwenn ti chèk la. Sa fè, jij yo ka fasil sibi enfliyans gouvènman an.

Sekirite jij yo se yon pwen ki enpòtan. Jij la pa dwe nan paspouki. Li dwe mete rezon an kote li ye a. Men pou li pa febli devan presyon k ap soti kit se nan gouvènman an, kit nan men otorite nan zòn nan oubyen nan men popilasyon an, fòk li gen mwayen pou pwoteje tèt li.

Jij yo dwe gen yon bon salè ak bon kondisyon travay pou yo pa blije tonbe nan kòripsyon.

Fòk moun k ap rann lajistis yo se moun ki konpetan, ki onèt, moun yo pa ka kòwonpi ni ak lajan, ni ak presyon. Moun ki pa pè pran responsablite yo.

Lè gen yon vid akòz yon jij yo revoke oubyen nenpòt lòt rezon, leta dwe bouche l byen vit pou absans sa a pa paralize lajistis nan zòn nan.

Fòk gen yon pwogram asistans legal pou pèmèt akize ki pa gen mwayen jwenn èd yon bon avoka gratis pou defann kòz li.

Fòk gen kontwòl sou fason yo kenbe moun yo nan prizon, ak kijan yo òganize entèwogatwa yo.

Kisa ki fèt deja nan koze refòm jidisyè a?

Jan Konstitisyon an mande sa, gen yon "Lekòl Majistrati" k ap fonksyone depi kèk tan pou bay bon jan fòmasyon pou moun ki vle etidye pou vin jij nan peyi a. Lekòl Majistrati a chita nan Frè, bò Petyonvil. Li deja òganize plizyè seminè pou jij ak komisè gouvènman ki soti nan tout peyi a. Gouvènman Aristid la te pran yon dekrè, jou 22 out 1995 la, sou jan pou lajistis òganize nan peyi Dayiti, pou l ka konfòm ak egzijans refòm jidisyè a.

Depi novanm 94, Ministè Lajistis, gen yon "Sekretèri deta pou refòm nan lajistis" pou okipe espesyalman kesyon refòm jidisyè a. Anfen, depi an desanm 94, APENA (Administrasyon Penitansyè Nasyonal) ki se òganis ki reskonsab pou jere prizon yo nan peyi a, ap fè anpil efò pou amelyore kondisyon lavi prizonnye yo, nan tout sans.

Polis Nasyonal la bò kote pa l tou, ap fè ti jefò pou l kapab ranpli wòl li kòm oksilyè lajistis.

Refòm lajistis la se yon kokennchenn travay ki mande tan, ki mande lajan. Pandan tout moun ap di refòm jidisyè a se yon nesesite, pa gen gwo kòb nan bidjè a pou li. Pifò nan kòb ki vini pou lajistis la, konsakre pou Polis Nasyonal la. Menm lè koze lajan an se yon pwoblèm reyèl, li vin tounen yon pretès pou pa gen anyen ki fèt. Anpil moun bliye si refòm nan se pa yon pwoblèm kòb sèlman, men yon kesyon volonte tou. Si gen volonte vre, Leta ap debouye l ak ti sa l genyen an pou pèp la santi yon ti chanjman anvan lontan. Tabli yon jistis ki konpetan, onèt, san paspouki, e ki respekte dwa fondamantal tout moun, se yon gwo defi Leta sa a dwe leve jounen jodi a. Se sèl kondisyon pou pèp la reprann konfyans nan enstitisyon jidisyè a.

Mari Dyevela Seza

JUDICIAL REFORM

One of the most important matters for which the Haitian people have been calling since 1986 is justice. In the people's list of demands, justice is classified as the most urgent, especially after the three years of the coup d'état. The mood of the people is heated. They have long been told to wait, but today they refuse to continue waiting because already the wait has seemed endless. They wish for immediate justice. Justice against the power-mongers who steal the small parcel of land constituting the only resource they and their family have on which to live. Justice against the criminals who murder their family. Justice against rapists who, directly in front of their eyes, have violated their daughters, their sisters, their wife. Crimes abound in every corner of the land. In broad daylight criminals heartlessly commit violent acts, while absolutely nothing is done to raise the hand of justice against them. Impunity is the style. Thus the victims' families are obliged either meekly to stand aside and wait for justice from all-mighty God, or to roll up their sleeves and take justice into their own hands - because those who are supposedly there to render justice do not perform their assigned task. Whether it be the president, ministers, or private citizens, all join in a common cry: the situation can no longer be tolerated. There must be judicial reform.

Such a reform will be long and arduous, and requires much more discussion than possible in only these few pages. But given its importance for the people at the present

time, we feel it essential, if only in a limited space, to reflect upon such a crucial matter.

What are the Basic Ills of the Judicial System?

There are not enough tribunals. For the entire country, there are 180 courts of justice of the peace, 15 civil tribunals, 5 appellate courts, one labor relations court, one juvenile court, one land-claims court, and, at the highest level, one Supreme Court of Appeals. In many areas, a person is obliged to travel a whole day to settle some simple matter before a justice of the peace. As for more complicated matters, it is beyond words. It is only in some large town or Port-au-Prince that they can be handled. The result is that the peasant's very limited resources are spent for travel. The end result is that he is obliged to give up, either through discouragement or lack of funds, with the court case decided against him - even if his cause was just.

Judicial corruption. For many judges, money is the only guide. When they decide a case, the scales of justice are always weighed in favor of those with money. Their decision is based upon bribes and favoritism.

Untrained judges. They are there to apply the law, but often they are ill-informed concerning the law. At times judges apply outdated laws, while a more recent law may be favorable to the defendant. When judges are incompetent in this way,

lawyers sway them in their favor using eloquent French, along with an assorted array of legal quotations, to win their client's case.

Justice proceeds at a snail's pace. Cases are too long and drawn out, resulting in much needless time and effort, as well as wasted money. And for some small offense, many are obliged to rot in prison. Often judges draw out legal proceedings on purpose to force the prisoners' families to resort to bribery in order to secure release.

We observe also that many are in prison for debt, in spite of the fact that this is expressly forbidden by law. In addition to numerous other problems not cited, one reason which explains why the justice system cannot function properly is because each judge is lord and master in his particular domain. He condemns, imprisons, and sets free totally independently of any outside supervision.

What Prevents Judges from Performing Well?

Widespread corruption is the greatest reproach which the population has against judges. But it is not as simple as that. Its roots must be examined in order to bring about change. Bad working conditions constitute one cause for judicial corruption. While the judge is dealing with questions involving large sums of money or major drug deals, many times he does not even have enough money for food for his own household. People know this, and for this reason offer bribes. A policeman is paid

more than a justice of the peace, and in addition his salary never arrives on time. Sometimes his chambers are in a ramshackle building, without a sheet of paper or a pen to write out summonses. What also often occurs is that the government does not pay the rent, the owner of the building then takes possession, and the court is obliged to suspend its activities. Such a case occurred in Montrouis in December 1995.

Sometimes judges are also afraid to perform their tasks because they do not feel safe. Most courts, especially in the provinces, operate without police security. The judge has no bodyguard. He has no car. He simply walks along, waiting for a taxi at the first street corner. Any person against whom he has rendered a judgement can attack him, kill him, and go on his way.

In addition to the problem of personal safety, there is absolutely no job security. In 1995, in Port-au-Prince alone, there were 16 judges who received letters of dismissal. In Anse-à-Veau (in the Department of the Grand'Anse), out of 23 judges, there were 13 who were dismissed, including 11 justices of the peace. The status of justices of the peace and prosecuting attorneys is always delicate. They have no fixed term of office. They can lose their position at any time if the government is not satisfied with their performance. This is why judges fear to go too deeply into certain matters, in order not to create enemies who could harm them when they are no longer in office.

What Must Be the Basis of Judicial Reform?

The job of reforming the justice system must be twofold. The first part of the change must begin with judges and all those who work within the justice system. This is administrative reform. The second is changes in legal texts.

Why is Administrative Reform Important?

In administrative reform the appointing of judges and officers of the court must be given great importance. Statutes define the precise conditions to be fulfilled in naming a judge. Most underhanded dealings and irregularities in the justice system are tied to questions of money. Judges are dishonest. Salaries are too small. Judges are incompetent. Material resources are lacking. Administrative reform is necessary to regulate all these questions. Proper rules must be established to force judges to respect the dictates of the law, in the language used in rendering judgments, in the way subpoenas are delivered, as well as in time limits that must be respected in judging and incarcerating a prisoner.

Yet another consideration is that justice requires force to carry out its mandates. That force is the judicial police which must work hand in hand with the court. Many tribunals in the country have no police assigned them to make necessary arrests, nor any place to contain prisoners.

Why Must There Be Changes in the Legal Texts?

Haiti operates according to a judicial system called the "Romano-Germanic System." In that system, legal texts have enormous importance. One cannot be guilty of an act if it is not covered by law. We note that there are numerous questions left unanswered by law. In such cases, even if a person is arrested as a suspect, he is obliged to be released. This occurs, for example, each time a question of witchcraft is brought before the law. The people are aware of that fact, and in such cases, without hesitation, the suspect is simply killed.

Many existing legal texts are in need of major revision, because they are not in conformity with the country's Constitution. Others are outdated. They are not in keeping with today's reality. This is especially evident concerning fines levied in misdemeanor cases. Often the fine is from 10 to 50 gourdes, which is meaningless at the present time. In this sense the Penal Code and the Criminal Investigation Code need to be completely overhauled. The legal texts must be written in straightforward language, taking out the numerous and confusing "whereas" which are the reason most people are totally perplexed by legal texts.

Several Ideas for an Effective Reform of the Justice System

Independence of judicial authority is an indispensable condition for proper judicial performance. However in reality "judicial authority" is not truly an authority. It is dependent upon executive authority, either at the administrative level, at the economic level, or at the personal security level. It is the president of the Republic who names judges and prosecuting attorneys. It is the executive who pays them. At times when a judge has gone two or three months without receiving a check, he is obliged to contact minister so-and-so or some director-general to take steps for him to receive his check. The result is that judges can easily be subject to governmental pressure.

A judge's personal safety is an important point. A judge cannot be involved in personal favoritism. He must decide the case justly. But for him not to give way to pressure from the government, or from local authorities, or from the public, he must have the means for self-protection.

Judges must have a decent salary as well as good working conditions, to avoid giving in to corruption.

Those rendering justice must be competent, honest, incorruptible either through money or pressure. They must be persons unafraid of accepting responsibility.

Whenever there is a judicial vacancy for whatever reason, the State must fill the position rapidly in order to avoid a breakdown of justice proceedings in the district.

There must be a public defender program to enable indigent defendants to obtain adequate legal representation without cost.

There must be proper supervision concerning prison conditions as well as interrogation procedures.

What has Already Been Accomplished in Judicial Reform?

As specified by the Constitution, there is a "Judges' School" which has been operating for some time to give proper instruction for those wishing to become judges. The "Judges' School" is situated in Frères, near Pétion-Ville. It has already organized several seminars for judges and prosecuting attorneys from all around the country. The Aristide government published a decree on 22 August 1995 concerning judicial organization in Haiti, in order to bring it into line with requirements for judicial reform.

In November 1994 the Ministry of Justice established a State Secretariat for Judicial Reform. Lastly, since December 1994, APENA (the National Penitentiary Administration), which is the organization responsible for managing the country's prisons, has been exerting great effort to improve all aspects of prisoners' lives.

The National Police for its part is also making some effort to be able to fulfill its role as an auxiliary to the justice system.

Judicial reform is an enormous job requiring both time and money. While everyone is saying judicial reform is a necessity, there is not a great deal earmarked for it in the budget. Most of the money set aside for justice is reserved for the National Police. Even though the question of money is a real problem, it becomes a pretext for doing nothing. Many people forget that reform is not just a question of money, but also a question of will. If there is really the will for change, the State will find the means within its limited resources so that the people will observe some change before too long. Establishing a competent and honest judiciary, without favoritism, and respecting the fundamental rights of all, is a major challenge which the State must meet today. It is the fundamental condition necessary for the people to regain confidence in the institution of justice.

(Translation by Bryant C. Freeman)

Mari Dyevela Seza