

Establishing the Rule of Law in a Country where Justice Hardly Exists

Advocates are on a quest to improve the quality of life in Haiti through legal education.

Jessica Carew Kraft Apr 22, 2015

The president of the Haitian Bar Association, Carlos Hercule, knows that the rule of law in his country is tenuous, and that people have little faith in the justice system. “We have attorneys who [single-handedly] represent both parties in real-estate deals. We have people representing themselves as attorneys who have not been accredited. And we have judges and officials who accept bribes,” he recently explained to me in French, through a translator.

His French is impeccable, but that’s another problem. French is the official language of the courts in Haiti, but as much as 95 percent of the population speaks only Creole, so most defendants—if they can even afford to hire a lawyer—can’t fully grasp what goes on during the court proceedings. There are no public defenders, and available legal aid is extremely limited. Adding to the disparity, as experts have pointed out, is the fact that many Haitian lawyers are typically invested in their own elite social status and rarely offer direct defense to the poor, which they perceive as debasing the profession. The result is that the vast majority of the country’s 10.3 million-plus people—roughly three-quarters of whom live on less than \$2 a day—have no real access to justice.

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Alleviating these deep-rooted structural problems, however, is all but impossible in a nation that’s still struggling to recover from its colonial legacy and the aftermath of the three decades it spent controlled by a brutal dictatorship—not to mention the catastrophic earthquake that devastated the country in 2010. So while the Port-au-Prince-based bar association is working to address those issues, it has decided that a more effective solution lies in training lawyers to uphold ethical standards and encouraging them to pursue public-interest cases. For many advocates, that the initiative is even happening—despite everything that Haitian society has suffered in the past—is remarkable.

Jérémie, a town of roughly 80,000 people in Haiti’s Western Grand’Anse province, is one community where this approach is being put into action, largely thanks to the local law school’s efforts to tackle the endemic problems plaguing the justice system. Jérémie was known in the early 20th century as an artistic enclave of the educated, biracial middle class that owned charming villas overlooking the Caribbean. Decades of escalating poverty, violence, and oppression under the Duvalier dictatorships eventually ravaged the area, but now the town is slowly regaining its regional prominence, in part because it wasn’t hit by the 2010 earthquake. A new partially built national road linking it to the country’s capital and support from religious organizations have also helped bolster the town’s development.

Still, it's clear that Jérémie is situated within a developing country—one that last year received a ranking of 168 out of 187 on the United Nations' Human Development Index. The dense town center is home to cement block structures holding up corrugated tin roofs and donkeys that trudge through the dusty streets alongside motorcycles and uniformed school children; raw sewage runs through street-side channels toward the trash-covered beach. Most households get their water from wells and only receive electricity during certain hours of the day—if at all.

The Catholic archdiocese operates a hospital and several elementary schools in town, and a cathedral is rising incrementally depending on when donations come in. In 1995, the town's former bishop, Willy Romelus (who famously endured violent attacks for supporting former president Jean Bertrand Aristide), established a nursing school. That same year, he also partnered with Father Jomanas Eustache to found the *École Supérieure Catholique de Droit de Jérémie* (ESCDROJ), a law school that occupies the nursing-school property at night. Though Romelus is now retired, Eustache, who's also a lawyer, remains an active clerical figure in the community and serves as the dean and chief fundraiser for the law school, on top of teaching several courses. Similar to his seminary classmate Aristide—who was the country's first democratically elected president and recently created another law school in Port-au-Prince—Eustache is on a quest to strengthen the rule of law in Haiti through legal education. ESCDROJ is one of three or so accredited institutions conferring law degrees in the country (which is predominantly Catholic) and the first one

to focus on training public-interest lawyers.

"We're training lawyers to enter the court system, to maintain high ethical standards and advocate for the poor," Eustache told me. Citing the widely cited brain drain from Haiti of highly educated citizens, he went on to emphasize: "And we want our graduates to stay in Haiti."

In the absence of state support, priests like Eustache become enterprising, devoting their time to much more than supporting the spiritual life of their congregations. They establish schools, hospitals, and businesses, maintaining wide networks of donors to fund their institutions. Eustache, who is fluent in English (among other languages), regularly visits a number of communities in the U.S., maintaining relationships with the Haitian expats living there, as well as other Catholics supporting his mission.

At ESCDROJ, 165 or so students pursue an undergraduate degree in law while also working to support themselves and, often, their families. To accommodate these needs, the law school holds classes during the evenings; students typically pull up on motorcycles around 6 p.m., arriving to Haitian *konpa* music blaring out of the open-air cement classroom. Still in their work clothes, the students sidle into wooden tablet desk chairs facing a laptop projector and speaker system—which like the rest of the facility's electric-powered equipment have to rely on power from a generator in the evenings. The school's library consists of a single, small room housing textbooks and a few computers with insufficient Internet. The heat remains even as the sun goes down, everyone visibly perspiring and clutching sodas or bottles of water. Mosquitoes start to hover.

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Over eight semesters total, the law students work through a curriculum determined by Haiti’s Ministry of Justice. The curriculum has no elective courses, meaning that students’ exposure to topics like human rights and social justice depends on guest lectures—often from academics visiting from outside the country. Throughout the years, for example, the school has maintained partnerships with several American law schools: The Columbus School of Law at Catholic University, Seton Hall University’s School of Law, and the University of California Hastings College of the Law regularly fundraise and bring students and faculty to Jérémie to provide trainings in special topics. (I work for UC Hastings and heard about the Haiti initiative through the university; however, I traveled for and conducted my reporting independently, receiving no compensation or editorial direction from the institution.)

Curriculum aside, poor post-graduation outcomes present another problem. Though most ESCDROJ students graduate from the program, according to officials, the vast majority of graduates never become licensed attorneys because of significant obstacles at the last levels of training, often working instead as jurists (those who study and analyze the law but don’t necessarily practice it). First, students must author an 80-page, originally researched dissertation, or *mémoire*. This is a challenging task for many students, not least because Haiti’s education system and general culture prioritizes oratory skills. Plus, given that only

half of all Haitians 15 or older are literate, Haitians are used to getting their information by word of mouth. And access to technology is scarce: Judith L’Amour, an administrator at ESCDROJ, guessed that at least half of the school’s students lack access to computers apart from those that they get on campus or at work, while half of Jérémie’s residents, according to estimates, don’t have regular electricity at home. It’s common to see students of all ages studying outside at night using the light from municipal street lamps.

Meanwhile, the *mémoire* imposes a financial burden on students on top of the school’s \$500 annual tuition. (Aside from a few scholarships, students have to pay tuition out of pocket because student loans aren’t available). Researching and writing the dissertation can detract as much as a year’s time from paid jobs, and students are expected to arrange for and pay a lawyer to advise them.

Then, after the *mémoire*, students are required to work for two years, again under the supervision of a practicing attorney, in order to become licensed. Most of the time, these positions are uncompensated—even in the public sector; in fact, students often have to pay for any training received from senior lawyers in private practice, according to officials.

And though exact data isn’t available, it’s undeniable that attorneys in general are very rare in Haiti. Each year fewer than 20 lawyers are admitted to practice in the Haitian bar despite the hundreds of students who are estimated to graduate from law school annually. Lori Nessel, a law professor at Seton Hall who has close ties with ESCDROJ, explained that the overly rigorous requirements create a paradox of

human resources: “In order to become a lawyer in Haiti, you have to have a lawyer supervise you,” she said. “In a country with a shortage of lawyers, it is very difficult to grow new ones.”

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Eustache, noting that Haitian legal education focuses on classroom—rather than experiential learning—says he’s making it a priority to solve the serious lack of client advocacy experience for ESCDROJ students. And those efforts are starting to come to fruition. In 2008, Roxane Edmond-Dimanche, an ESCDROJ graduate, decided to organize a coalition of American and Haitian lawyers to establish Haiti’s first criminal-justice clinic as inspired by American clinical programs. After all, similar projects funded by private foundations and governments to create legal clinical programs at law schools in South Africa, Poland, and Chile have been cited as successful exports of this American educational model.

After years of fundraising and development, much of which was spearheaded by foreign law schools, the ESCDROJ clinic is scheduled to open this summer in a building designed by the American architect Tom Zook, made of repurposed shipping containers and sitting on a parcel of Eustache’s property. Edmond-Dimanche and Gabrielle Paul, another ESCDROJ alumna, will codirect and supervise the clinic, which is also aimed at providing practical experience to all interested third- and fourth-year students. Several days a week, students are slated to offer legal counsel to indigent clients from all over the Grand’Anse

region, specializing in representing victims in cases of sexual violence.

Jérémie’s overcrowded jail, with its squalid, tiny cells, is another rationale for the clinic. According to an investigation by Edmond-Dimanche and Paul, 90 percent of the nearly 200 prisoners in the facility have never been arraigned, which is technically required within 48 hours of arrest, because Haiti lacks a bail system. And, because of the lack of resources, many prisoners serve years without ever seeing a judge—often much longer than they might have been officially sentenced, the two found. “We believe that the public defense offered by the legal clinic will help the problem of severe overcrowding of the jail in Jérémie,” said Paul, who clarified that the clinic’s public-defense services will only be available in non-sexual violence cases to avoid situations in which they’d have to represent both an alleged rapist and the victim.

By offering legal assistance to victims of sexual violence, Paul said, the clinic will raise the status and legitimacy of these cases, which officially have only been prosecutable in Haiti for the past decade. “Victims, families, and communities have become desensitized to violence against women, and judicial impunity is the norm,” said Nicole Phillips, an American lawyer with one of Haiti’s only public-interest law firms, the Bureau des Avocats Internationaux (BAI). Phillips, who recently guest lectured at ESCDROJ as the leader of a delegation from UC Hastings, pointed out that rape wasn’t established as a crime in the Haitian legal code in 2005.

The BAI has filed dozens of criminal complaints on behalf of rape victims under the recent code update; 18 have gone to

trial, of which 14 have been successful and two are currently on appeal. And the legal clinic aims to bring more perpetrators to justice. “These prosecutions demonstrate hope in the broken system—police, prosecutors, judges and Haitian lawyers are taking these cases seriously and bringing justice to poor Haitian women and girls,” she said.

Phillips is also optimistic about the community-education efforts that the clinic plans to implement. She said that the BAI, which is based in Port-au-Prince, receives most of its cases from grassroots women’s organizations whose leaders are themselves victims of violence. Phillips said that the cases help build the capacity of the organizations and restore their faith in the justice system. The same can be done in the Grand’Anse region, which encompasses 400,000 people spread over 738 square miles. “The 80 percent poor majority also need to be trained about their human rights and the legal system to change the system,” she said.

The clinic might also help shift attitudes among ESCDROJ students, which are still somewhat patriarchal, Paul said, despite the school’s progressive leadership. An exercise during one recent class provided instruction in various countries’ definitions of consent for sexual intercourse—a linchpin for convicting rapists. (Haiti lacks a law on consent, and police usually require the victim to produce a certificate from the state hospital documenting any injuries to open a case.) During the class I observed students were instructed to debate this question: If the wife doesn’t consent, has the husband committed rape?

“If my wife refuses me and she is not sick,

then she has committed an offense against me,” one male student stated in front of the class, which was 20 percent female at the time of my visit. Paul immediately jumped up to powerfully rebut his argument: “Are you claiming that your wife is your property? Because slavery is illegal!” she shouted, poignantly referencing the history of slave rebellion in Haiti and winning applause from the crowd. (Haiti gained independence from France in 1804, making it the only nation to be founded by slaves.)

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Paul, who brought her American born 17-month-old daughter with her to class, is particularly passionate about fighting sexism. Paul said that the attitudes and behaviors of men govern her approach to parenting: No one but the most trusted family members are allowed to take care of her daughter. “I’ve seen rape victims who are babies who are 4 years old,” she said.

While Paul is excited to codirect the legal clinic, she knows that its opening may be delayed, possibly for months. The fundraising isn’t complete, and the agencies tasked with managing supplies for the clinic have been slow to deliver. The three shipping containers that will make up the structure are awaiting placement on the foundation, blocked by trees that need to be removed before the forklift can drive through. Paul is also aware that the clinic’s location, far from the center of Jérémie, may present big transportation challenges to potential clients scattered across the large region. “We were supposed to get a vehicle so we can provide transport for victims, but I’m not sure we are getting it now,” she said.

Nevertheless, the partners supporting the clinic say that any delays are only temporary, and it's possible for students to offer counsel in other locations if necessary.

Even without the clinic, ESCDROJ's record of promoting public-interest law is inspiring other Haitian law schools. The aforementioned Aristide Foundation's law school in Port-au-Prince, which opened in 2011, is similarly promoting human rights and the rule of law in its curriculum and bringing in international collaborators to provide clinical training. ESCDROJ has demonstrated that this kind of training can significantly improve the legal culture in just a few years.

"I was struck on my last visit to see how many of the legal professionals in Jérémie were trained at ESCDROJ. Judges and prosecutors, the clerk of the court, the chief of police, and law professors are their graduates," Nessel said. "The school is fulfilling its initial mission to create lawyers educated with a real sense of justice and rule of law who will go on to change the system there."

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