

Jimmy Verne

Planning Economist, Assistant Unit Manager
Pre-Investment Analysis Section, Public Investment Unit,
Ministry of Planning and External Cooperation

Benefit-Cost Analysis

Strengthening the Justice System: Establishing a National Legal Aid System



Design by Erika Propper - identity@siggnal.com



STRENGTHENING THE JUSTICE SYSTEM: ESTABLISHING A NATIONAL LEGAL AID SYSTEM

Haiti Priorise

Jimmy Verne

Planning Economist, Assistant Unit Manager

Pre-Investment Analysis Section, Public Investment Unit, Ministry of Planning and External Cooperation

Working paper as of April 11, 2017.

Translated from French by Steffaney Zohrabyan, professional translator.

© 2017 Copenhagen Consensus Center

info@copenhagenconsensus.com

www.copenhagenconsensus.com

This work has been produced as a part of the Haiti Priorise project.

This project is undertaken with the financial support of the Government of Canada. The opinions and interpretations in this publication are those of the author and do not necessarily reflect those of the Government of Canada.

Canada

Some rights reserved



This work is available under the Creative Commons Attribution 4.0 International license ([CC BY 4.0](https://creativecommons.org/licenses/by/4.0/)). Under the Creative Commons Attribution license, you are free to copy, distribute, transmit, and adapt this work, including for commercial purposes, under the following conditions:

Attribution

Please cite the work as follows: #AUTHOR NAME#, #PAPER TITLE#, Haiti Priorise, Copenhagen Consensus Center, 2017. License: Creative Commons Attribution CC BY 4.0.

Third-party content

Copenhagen Consensus Center does not necessarily own each component of the content contained within the work. If you wish to re-use a component of the work, it is your responsibility to determine whether permission is needed for that re-use and to obtain permission from the copyright owner. Examples of components can include, but are not limited to, tables, figures, or images.

Academic Summary

All international legal documents recognize universal access to a set of rights closely linked to the human person. However, in practice, the enjoyment of these rights does not come with the same ease depending on the social environment where an individual is located. In Haiti, despite the fact that the law defines the maximum length of time an individual must spend in pre-trial detention, the majority of those in prison are subject to prolonged pre-trial detention. In 2015 the prolonged pretrial detention rate was at 72%¹.

This high rate of prolonged pretrial holding is the result of a combination of factors, one of which is the difficulty experienced by some litigants in paying for the legal services to represent them. With the deteriorating economic situation, this demographic is less and less able to afford legal services.

For the past few years, there has been a legal assistance program in place, but it is limited and only affects five (5) first instance courts out of the eighteen (18) that exist in the country.

This document presents the costs and benefits of expanding this program by establishing a national legal assistance system. The various calculations made show that the resulting benefits of such an intervention will account for almost three (3) times the amount necessary for the implementation of the intervention.

¹ <http://lenouvelliste.com/lenouvelliste/article/156876/La-detention-preventive-prolongee-reste-un-probleme-majeur-en-Haiti>

Policy Summary

Overview

The problem of preventive pretrial detention in Haiti is a very serious problem, not less than 72% held experience this situation. According to projections, if the intervention does not take place we should have about 9,261 people across the country in this situation.

Since there are many other factors contributing to the observed problem, it is assumed that the intervention will reduce the number of cases of preventive pretrial detention by 30% which wouldn't be otherwise possible without the intervention. This percentage corresponds to 2,778 cases.

Factors relating to the implementation

The implementation cost of a BAL is estimated at 10,744.671 gourdes². Considering that the intervention aims to implement 13 LAOs, this makes it a total cost 139, 680.723 gourdes, which will be commissioned.

The monitoring indicators will be the number of judgments held with the presence of lawyers in the program and the average time spent in prolonged pretrial holding. These figures will be updated monthly.

The partners will be the Ministry of Justice and Public Security (MJSP) and the Federation of Bar Associations of Haiti.

Some factors may still affect the expected results, including those related to other causes responsible for the preventive pretrial detention.

Justification for the intervention

The issue of preventive pretrial detention is a major problem. With a prison population of 10,646 in 2015 with a preventive pretrial detention rate of 72%. We see that there are no less than 7,665 individuals in this situation. Considering the deplorable conditions of detention in Haiti, we understand the frustration these people endure when justice is slow to decide their fate.

² <http://www.haitilibre.com/article-11129-haiti-justice-lancement-de-la-phase-ii-d-assistance-legale-gratuite.html>

Setting up such a program will allow 2,778 of these detainees to be tried for the crimes they are charged of. While it is true that the preventive pretrial detention will still exist after the intervention, it has the possibility of making a significant reduction in the preventive pretrial detention rate.

Table of costs and benefits

Summary table

Intervention	Benefit	Cost	Benefit-Cost Ratio	Data Quality
Establishment of a national legal assistance system	388,776,239	139,680,723	2.78	Average

Notes: All figures are based on a discount rate of 5%

1. INTRODUCTION	1
2. DOCUMENTATION ANALYSIS	3
3. THEORY	3
3.1 PRO BONO PUBLICO: LAWYER'S RESPONSIBILITY IN TERMS OF LEGAL AID.....	4
3.2 UTILITARIANISM AS JUSTIFICATION FOR LEGAL AID	4
3.3 THE RIGHT TO LEGAL AID.....	4
3.3.1. <i>The fundamentally undemocratic nature of the judicial system</i>	5
3.3.2. <i>The recognition of the right to legal aid in international declarations</i>	5
3.3.3 <i>The right to a fair trial</i>	5
4. COST-BENEFIT CALCULATIONS	5
4.1. COSTS	6
4.2. BENEFITS	6
4.2.1 <i>Gain of economic productivity</i>	6
4.2.2 <i>Cost of detention savings</i>	7
5. CONCLUSION	8
6. REFERENCES	9

1. Introduction

The access of everyone to enjoy these rights is a principle universally recognized through the 1948 Universal Declaration of Human Rights. The first article stipulates that all human beings are born free and equal in dignity and rights. Articles 7 and 8 of the document reinforces this idea by making the following clarifications.

Article 7. All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration, and against any incitement to such discrimination.

Article 8. Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

The Haitian Constitution of 1987 was inspired by this principle and its Article 18 by stipulating that all Haitians are equal before the law.

To enjoy this principle of equality before the law on which these legal instruments insist, they must be implemented to provide justice for those to whom justice is due. Hence the importance of the judicial system in accordance with the principle of "no one can provide justice unto himself," including judicial institutions, court workers and judicial officers.

However, the reality is quite different from what is provided in the texts. Access to the enjoyment of rights is not the same depending on social class they fall into.

A set of elements form the basis of this situation. One element is the lack of sitting judges and trial judges. During the 2014-2015 judicial year, the Haitian justice system had only 63 trial judges for 8,046 people awaiting trial³. Added to the fact that there is a lack of resources to properly operate the judicial and the prison systems. Also, the phenomenon of corruption is to

³ <http://rnddh.org/content/uploads/2015/10/7-Rapport-Justice-9-oct-2015.pdf>

be considered which, according to the testimonies and are often expressed in public opinion, affects all levels of the judicial system.

Also, one must consider that fact that many litigants need to be legally represented. Being able to afford the services of a legal professional is nearly impossible for people from the poorest social categories. According to the 2012 household survey by the Haitian Institute of Statistics and Information (IHSI), 58.5% of the Haitian population lives below the poverty line on less than 2.25 US dollars and of which 23.8% are in a situation extreme poverty with only 1.25 US dollars. In such a situation, 60% of the Haitian population is facing serious difficulties when it comes to being represented by a legal professional, be it in a matter of private law, or public law.

This situation leads to many consequences for society. The most obvious is preventive pretrial detention. A study conducted by RNDDH in October 2010 revealed that 75% of inmates were in pretrial detention. This causes a gross injustice for certain individuals because in certain circumstances people who would have been sentenced to six months in prison if they had been tried for the offenses they had committed, have already spent two or three years in a cell awaiting judgment. Five years later, in 2015, the preventive pretrial detention rate had decreased very little (72.19%) according to the ratio of the Section of Human Rights (SDH) by the MINUSTAH.

Regarding the issue of legal representation, the establishment of a national legal aid system is then presented as a public service of justice *par excellence* to meet this requirement.

In recent years, MINUSTAH has undertaken a series of legal assistance initiatives. With this support, we proceeded in 2008 towards the creation of the first Legal Assistance Office (LAO). Officially launched in 2012, the legal assistance program was in its third phase in 2015. At this third stage there were nine (9) Legal Assistance Offices of which five (5) were found in the metropolitan area. The nine (9) bureaus are spread out over five (5) of the eighteen (18) of the country's First instance courts.

The document is an assessment of what it will represent as cost to implement a LAO in thirteen (13) jurisdictions that do not yet have and the resulting benefits of this initiative.

2. Documentation Analysis

The completion of this assessment involved the consultation of a set of documents (reports, books, newspaper articles) to access a set of relevant information that allowed us to do this work.

We were initially required to consult several articles from the daily newspapers *Le Nouvelliste* and the review *Haiti-Libre* to see what already existed in terms of Haitian legal aid.

Then we consulted reports by experts and human rights defense organizations, particularly from the National Human Rights Defense Network (NHRDN), which enjoys a high degree of recognition in Haiti in this sector.

Theoretical books that describe the institutions and the functioning of the judicial system in Haiti were also very useful for the realization of this work. The constitution of 1987 amended in 2011, as the mother law of the Republic of Haiti, also served as a guide.

Consultation of these various works has allowed us to become aware of what is most important in the field of legal assistance in Haiti.

3. Theory

Several theoretical approaches were considered to justify legal aid. If for some, it is the responsibility of lawyers to provide legal services to the poor, for others it is the responsibility of the State to play this role. Among these latter, some call upon utilitarianism to justify the state agenda, while others want legal aid to be a fundamental right in a democratic society.

3.1 Pro Bono publico: Lawyer's responsibility in terms of legal aid

According to this theoretical approach, legal aid is a result of legal responsibility. In exchange for the monopoly in practicing law, the bar has taken some social responsibility to defend certain cases as a service to the community for free. This practice is especially common in the US⁴.

The major fault of pro bono is its paternalistic aspect in the definition of well-founded cases. Representatives of the critical rights movement exposed the fact that the law is a system that benefits the ruling class and which does not take account of disadvantaged groups⁵. The criticism goes on to say that imposing social responsibility to defend the disadvantaged without a system of legal aid lawyers seems as unreasonable and unjust as abolishing health insurance and forcing doctors to provide free health care to people unable to pay their fees⁶.

3.2 Utilitarianism as justification for legal aid

According to this theory, legal aid is necessary to promote the dignity of the most disadvantaged. In the case of scarce resources, priorities should be established based on what will bring the greatest benefit to the greatest number of citizens. For this purpose, legal aid simply restores the balance between the rich and the poor, allowing them access to the courts⁷.

3.3 The right to legal aid

Several arguments are made for legal aid to be considered as a right and not only as a merely utilitarian measure in the political context. Among these arguments, we could cite the fundamentally undemocratic nature of the judicial system, the recognition of the right to legal aid in international declarations and the right to legal aid under the rule of law that the person is entitled to a fair trial.

⁴ Bradley V. Odsen, "The Need for Pro Bono Programs in Alberta" (1987) 2 J.L & Social Policy à 93-96, cited by Poirier, Donald. "Right to Legal Aid by People Faced with a Guardianship Request for Children or the Elderly." *Journal of Law and Social Policy* 5. (1989): 61-88.

⁵ Alan Hunt, "The Critique of Law : What is Critical about Critical Legat Theory?" dans P. Fritzpatrick & A. Hunt, ed. *Critical Legal Studies*, (Oxford: Basil Blackwell Inc, 1987) 5-21; cited by Poirier, Donald. "Right to Legal Aid by People Faced with a Guardianship Request for Children or the Elderly." *Journal of Law and Social Policy* 5. (1989): 61-88.

⁶ Poirier, Donald. "Right to Legal Aid by People Faced with a Guardianship Request for Children or the Elderly." *Journal of Law and Social Policy* 5. (1989): 61-88.

⁷ Poirier, Donald. "Right to Legal Aid by People Faced with a Guardianship Request for Children or the Elderly." *Journal of Law and Social Policy* 5. (1989): 61-88.

3.3.1. The fundamentally undemocratic nature of the judicial system

With the advent of the welfare state, law has gradually been established as the means *par excellence* of social regulation. As the judicial system has become more effective as a means of social regulation, access has become more expensive, so as to discourage court appeals except for those who have the financial means to do so, or for those whose interest in court appeals has exceeded the costs incurred by the prosecution.

From this observation, it becomes imperative that everyone has the same right of access to the courts if democracy wants to assert its superiority over other types of governance. As a result, the institution of the right to legal aid is ideal to ensure this right of access to all.

3.3.2. The recognition of the right to legal aid in international declarations

The first generation of the rights recognized by the United Nations Organization is formed by individual rights, called fundamental. In the mid 1960s, the United Nations developed a second generation of rights, called economic and social rights. It includes the rights without which a person cannot achieve his full potential as an individual and as a citizen in a community.

We can therefore agree that the right to legal aid is implicitly contained in various economic and social rights.

3.3.3 The right to a fair trial

The right to a fair trial is guaranteed by article 6 of the European Convention on Human Rights. It concerns both civil and criminal matters. The essential principle is the right of everyone to a fair and public trial within a reasonable time, by an independent and impartial jury, established by the law.

4. Cost-Benefit Calculations

As mentioned above, the intervention "Establishment of a national system of legal assistance" will concretely consist of the operation of thirteen (13) legal assistance offices (LAO). Once these thirteen LAOs are in service, we will be in a situation where all first instance courts will each have at least one LAO.

Putting these LAOs in service will bring huge benefits for economically disadvantaged citizens and more broadly for the country in terms of social justice. However, implementing this will come at a significant financial cost.

4.1. Costs

To create a Legal Assistance offices there are a series of cost to bear, among the most obvious we must mention:

- Office space rental
- Office equipment and other types of materials
- Office supplies
- Remuneration of staff assigned to the program

Phase II of the ongoing legal assistance project, the average annual cost of operating an LAO is \$161,514⁸. Applied at the rate of exchange used in the model, this is equivalent to 10,744,671 gourdes. In short, to create the 13 LAOs that the "Establishing a national legal assistance system" intervention foresees, a total budget of 139,680,723 gourdes is required.

4.2. Benefits

The benefits of implementing these 13 LAOs are twofold: economic productivity of prisoners and savings made at the level of the cost of detention by the Government.

4.2.1 Gain of economic productivity

When, thanks to the intervention an individual is released, either because he was not guilty of what he was accused of, of because he has already served the sentence for the offence committed, gives him the opportunity to engage in an economically profitable activity. Hence the economic productivity gain expected with his release.

⁸ <http://www.haitilibre.com/article-11129-haiti-justice-lancement-de-la-phase-ii-d-assistance-legale-gratuite.html>

Given that with liberation through this intervention, there may be two (2) cases of figures, to calculate the economic productivity gain separately (those of the guilty and innocent) and then add them.

The productivity gain of the innocent represents what they can gain in terms of income if the intervention provides them the opportunity to receive their judgment quickly and avoid the loss of time in prison. It is determined by multiplying the number of innocent released by the minimum wage by the number of months of detention avoided on average (24) for those deemed innocent by the intervention. This calculation has given us an amount of 94,316,554 gourdes in 2017 and a similar amount in 2018.

The productivity gain for the guilty is based on what has been identified as the number of months on average (12) for a sentence. This productivity gain is calculated for a single year and amounts to 103,800,901 gourdes in 2017.

In total, we obtained the amounts of 198,117,455 gourdes in 2017 and 94,316,554 gourdes in 2018 in terms of increased productivity as a result of the reduction of the period of detention arising from the implementation of the intervention.

4.2.2 Cost of detention savings

Detainees are the responsibility of the State. Therefore, each person detained unjustly, in addition to the fact that he suffers this injustice, the State makes an expenditure in vain. As a result, when the State arranges for individuals to not remain in jail unjustly, the avoided expenditure represents a savings for the State and society.

As part of the "establishment of the of legal assistance program", the total savings expected in terms of costs of detention is of the order of 82,752,712 gourdes in 2017 and 39,395,573 gourdes for 2018.

These two added advantages gave us a total of 280,870,167 gourdes in 2017 and 133,712,127 gourdes in 2018. At a discount rate of 5%, this adds up to a total benefit of 388,776,239 gourdes and a benefit-cost ratio (BCR) of 2.78 for the intervention.

5. Conclusion

The cost-benefit analysis of this intervention, the "establishment of the national legal assistance program," demonstrates that the intervention will be beneficial to society, as the expected benefits will be higher than the gourdes being invested.

The intervention intends to contribute to the liberation of nearly three thousand people in preventive pretrial detention, half of whom are expected to be found not guilty. This is of great importance in a country like Haiti, where detention conditions fall far below the relevant standards. The release of these individuals will then allow them to find work to care for their families, and it will also free up resources that can be assigned to other State programs.

More generally, society as a whole will benefit from such an intervention, because the more people move in a space where they feel that efforts are being made to preserve a minimum of social justice, the more they will be confident and motivated to work for the well-being of the community.

Naturally, the intervention will not eradicate the problem of preventive pretrial detention, moreover it does not claim to. It also isn't possible to eradicate the problem, since it only concerns the aspect of legal assistance to litigants with limited economic means, while the problem of preventive pretrial detention has several other causes besides the issues of legal representation. However it affects a fairly crucial aspect. If other causes are likewise treated with this intervention, and all stakeholders take their work to heart, we will be able to solve the problem of preventive pretrial detention and guarantee Haitian justice at a minimum no matter what their economic origin.

Summary table

Intervention	Discount rate	Benefit	Cost	Benefit-Cost Ratio	Data Quality
Establishment of a national system of legal assistance	3%	398,725,987	139,680,723	2.85	Average
	5%	388,776,239	139,680,723	2.78	
	12%	357,371,425	139,680,723	2.56	

6. References

1. Anne Fuller, Philippe Texier, Michel Brosseau, Dilia Lemaire, and Patrick Pierre-Louis. Preventive pretrial detention in Haiti, The Vera Institute, July 2002
2. Poirier, Donald. "Right to Legal Aid by People Faced with a Guardianship Request for Children or the Elderly." *Journal of Law and Social Policy* 5. (1989): 61-88.
<http://digitalcommons.osgoode.yorku.ca/jlsp/vol5/iss1/4>
3. 1948 Universal Declaration of Human Rights
4. <http://lenouvelliste.com/lenouvelliste/article/156876/La-detention-preventive-prolongee-reste-un-probleme-majeur-en-Haiti>
5. <http://www.haitilibre.com/article11129haitijusticelancementdelaphaseiidassistancelegalegratuite.html>
6. <http://reliefweb.int/report/haiti/ha%C3%Aftilebalunservicepublicdejustice>
7. Bank of the republic of haiti: http://www.brh.net/documents/note_inflat1016.pdf
8. <http://rnddh.org/content/uploads/2015/10/7-Rapport-Justice-9-oct-2015.pdf>
9. <http://lenouvelliste.com/lenouvelliste/article/42826/Combien-co%C3%ABte-un-detenu-a-la-Republique>
10. <http://www.haitilibre.com/article13254haitijustice89desdetenusdupenitenciernationalendetentionpreventiveprolongee.html>
11. <http://www.haitilibre.com/article14350haitijustice4nouveauxbureauxdassistancelegale.html>
12. <http://www.haitilibre.com/article2703haitijusticedetentionunefaibleamelioration.html>
13. <http://www.hpnhaiti.com/site/index.php/nouvelles/38justiceasecurite/16832haitijusticeunbureaudassistancelegaleinaugureacarrefour>
14. <http://lenouvelliste.com/lenouvelliste/article/161412/DetentionpreventiveprolongeeenHaitiundefipourlesautoritesjudiciaires>
15. <http://lenouvelliste.com/lenouvelliste/article/122712/EntreresponsabiliteetcompliciteLesacteursdelachaine penaleetledramedeladetentionpreventive>

Haiti faces some of the most acute social and economic development challenges in the world. Despite an influx of aid in the aftermath of the 2010 earthquake, growth and progress continue to be minimal, at best. With so many actors and the wide breadth of challenges from food security and clean water access to health, education, environmental degradation, and infrastructure, what should the top priorities be for policy makers, international donors, NGOs and businesses? With limited resources and time, it is crucial that focus is informed by what will do the most good for each gourde spent. The *Haiti Priorise* project will work with stakeholders across the country to find, analyze, rank and disseminate the best solutions for the country. We engage Haitians from all parts of society, through readers of newspapers, along with NGOs, decision makers, sector experts and businesses to propose the best solutions. We have commissioned some of the best economists from Haiti and the world to calculate the social, environmental and economic costs and benefits of these proposals. This research will help set priorities for the country through a nationwide conversation about what the smart - and not-so-smart - solutions are for Haiti's future.



Haiti Priorise

Un plan de **développement** alternatif

For more information visit www.HaitiPriorise.com

C O P E N H A G E N C O N S E N S U S C E N T E R

Copenhagen Consensus Center is a think tank that investigates and publishes the best policies and investment opportunities based on social good (measured in dollars, but also incorporating e.g. welfare, health and environmental protection) for every dollar spent. The Copenhagen Consensus was conceived to address a fundamental, but overlooked topic in international development: In a world with limited budgets and attention spans, we need to find effective ways to do the most good for the most people. The Copenhagen Consensus works with 300+ of the world's top economists including 7 Nobel Laureates to prioritize solutions to the world's biggest problems, on the basis of data and cost-benefit analysis.