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Immigration and
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Commission de l'immigration
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Haiti: Types of complaints that victims may file with the police; procedure for obtaining a document certifying that a complaint was filed; description of such a document and whether it must be signed by a judge [HTI104873.FE]

Research Directorate, Immigration and Refugee Board of Canada, Ottawa

1. Filing a Complaint

According to a guide for victims of crime published on the website of the Centre for Legal Research and Information (Centre de recherche et d'information juridiques, CRIJ), a non-profit organization in Port-au-Prince that provides legal information to the Haitian population (CRIJ n.d.a), a complaint is [translation] "the action by which a person reports to the government commissioner a criminal offence of which they claim to be a victim" (CRIJ n.d.b). The Haitian Code of Criminal Procedure (*Code d'instruction criminelle*) describes the role of government commissioners as [translation] "responsible for researching and prosecuting all misdemeanours or felonies that are heard in the correctional or criminal civil courts" (Haiti 1826, Art. 13). According to the CRIJ, a person can file a complaint for the following criminal offences: petty offences, misdemeanours and felonies (n.d.b).

According to the Code, complaints can be filed with police officers or government commissioners; in addition, [translation] "in matters under the purview of the correctional police, the aggrieved party may contact the correctional court directly" (Haiti 1826, Art. 51). In correspondence sent to the Research Directorate, the Assistant Director of the western region of the Haitian National Police (Police nationale d'Haïti, PNH) states that a complaint may be filed at a substation or station, as well as at a departmental section of the judicial police (section départementale de police judiciaire, SDPJ), the Central Directorate of the Judicial Police (Direction centrale de la police judiciaire, DCPJ), or the General Inspectorate of the PNH (Inspection générale de la PNH) (Haiti 30 May 2014).

The CRIJ notes that the complainant must file the complaint within the time constraints-one year for petty offences, three years for misdemeanours and ten years for felonies (CRIJ n.d.b). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

2. Types of Complaints

According to the CRIJ, three types of complaints may be filed: an ordinary complaint, a complaint with a claim for criminal indemnification, and a private prosecution (CRIJ n.d.b).

The Haitian Code of Criminal Procedure states that

[translation]

Any person who claims to be affected by a felony or misdemeanour may file a complaint and bring a claim for criminal indemnification before the investigating judge of the location of the felony or misdemeanour, of the location of the accused's home, or of the location where they may be found (Haiti 1826, Art. 50).

The Code states that the role of the investigating judge is to [translation] "hear civil cases" (ibid., Art. 44).

The descriptions in the following paragraphs come from the CRIJ website (CRIJ n.d.b).

The complaint with a claim for criminal indemnification is used for misdemeanours and felonies. Private prosecution is used for petty offences and misdemeanours (unless the accused is less than 18 years old, in which case, a complaint with a claim for criminal indemnification must be filed). The CRIJ does not state in which circumstances an ordinary complaint may be filed.

To file an ordinary complaint or a complaint with a claim for criminal indemnification, the complainant must write a letter, accompanied by the relevant documents, in which they [translation] "state the facts" behind the complaint. Private prosecution is served by a bailiff and also includes a statement of the facts. In a complaint with a claim for criminal indemnification, the complainant must state in their letter that they are [translation] "bringing a civil action." In addition, they must [translation] "identify the offence," cite the relevant articles of the criminal code, "evaluate the harm," and seek relief. These steps are also required in private prosecution, which requires an additional step called [translation] "demand for relief," in which the complainant formulates requests that they would like to see imposed on the accused, such as a conviction or the reimbursement of legal fees.

After an ordinary complaint is filed, the government commissioner dealing with the case may reject the complaint, launch an investigation or take action immediately. Where there is a complaint with a claim for criminal indemnification, the investigating judge automatically launches a police investigation. If the government commissioner finds that there was an offence, they may support prosecution. If they do not, they may recommend that the investigating judge dismiss the case. The investigating judge may dismiss the case or refer it to a court to be heard. Private prosecution does not require investigation but rather a series of hearings, during which the court hears the two parties involved. At the end of the hearings, the court either sentences or discharges the accused.

The CRIJ reports that [translation] the government commissioner "often" does not follow up on ordinary complaints, while complaints with a claim for criminal indemnification often lead to the launch of investigations and private prosecution leads to legal prosecution. However, the organization states that these last two types of complaints involve risks: if the complainant loses their case, they may be forced to pay damages and interest to the respondent, as well as legal fees. Private prosecution involves an additional constraint: if there are mistakes in its formulation, it will be declared null.

Information to corroborate the information provided by the CRIJ could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

3. Complaint Filing Process

In correspondence sent to the Research Directorate, the Director of the CRIJ states that the Police Station and Substation Investigation Service (Service des investigations des commissariats et des sous-commissariats de police) handles the complaints (CRIJ 2 June 2014). The same source provided the information on the complaint filing process in the following paragraph.

In flagrant cases or when the complainant is a minor, the police officer launches the legal proceeding in compliance with the Code of Criminal Procedure. In the opposite case, the complainant may make a verbal statement if they do not want to press charges, in which case the police officer records the complainant's statement in a registry and does not issue them a certificate; or they may press charges, in which case they must prepare a letter of complaint, and the police officer will question them, record their statement in a [translation] "special registry" and issue them a certificate. The police officer

[translation]

must send the complaint...to the justice of the peace.... In that context, a serious complaint filed with the police does not go unanswered. It can be traced to the commune's peace tribunal and even to the jurisdiction's first action tribunal floor (ibid.).

The statement of a complainant who does not want to press charges, as indicated by the police officer, [translation] "may be consulted by the competent judicial authorities, such as the government commissioner, the justice of the peace or the investigating judge" (ibid.).

Information to corroborate the information provided by the Director of the CRIJ could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

4. Procedure for Obtaining a Document Certifying that a Complaint Was Filed with the Police

According to the Assistant Director of the PNH, to obtain a certificate, a complainant must contact the police service where they filed their complaint and provide the filing date (Haiti 30 May 2014). The Director of the CRIJ stated that the complainant and the accused may obtain a certificate or copy of the complaint from the government commissioner of their jurisdiction or the justice of the peace of their commune, who have the authority to order the police to issue certificates indicating that a complaint was filed (CRIJ 2 June 2014). He added that [translation] "sometimes the police commissioner, station chief, issues a certificate of a complaint to the interested party" (ibid.). For a person who does not live in Haiti, the Director of the CRIJ stated that they must go to a consular service to contact a relative who could obtain on their behalf, in Haiti, a certificate of a complaint (ibid.). Corroborating information could not be found among the sources consulted by Research Directorate within the time constraints of this Response.

The Assistant Director of the PNH stated that the procedure to follow is the same throughout Haiti (Haiti 30 May 2014). The Director of the CRIJ, however, stated the following:

[translation]

In some stations in the metropolitan area, such as Delmas, after the complaint is filed and before the certificate is issued, the complainant is asked to go to the mayor of Delmas, who verifies whether that person actually lives in the commune; if such is the case, upon payment of fees, they are issued a certificate to pass on to the station. Then, the police will issue the certificate of a complaint (CRIJ 2 June 2014).

According to the Assistant Director of the PNH, there is no standard format for a certificate of complaint in Haiti (Haiti 30 May 2014). Corroborating information could not be found among the sources consulted by Research Directorate within the time constraints of this Response.

The Director of the CRIJ and the Assistant Director of the PNH both stated that this type of certificate is issued free of charge and that a judge's signature is not required (ibid.; CRIJ 2 June 2014). However, the Director of the CRIJ added that in rare cases, [translation] "you might see such a document...countersigned by a person appointed justice of the peace, but who has not met the necessary conditions to carry out such a duty" (ibid.).

The Assistant Director of the PNH stated that the certificate had to be signed by an individual in charge at the police station involved (Haiti 30 May 2014).

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

References

Centre de recherche et d'information juridiques (CRIJ). 2 June 2014. Correspondence sent to the Research Directorate by the Director.

_____. N.d.a. "À propos du CRIJ." <<http://haitijustice.com/crij/apropos>> [Accessed 28 May 2014]

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Additional Sources Consulted

Oral sources: The following individuals were unable to provide information within the time constraints of the Response: instructor at the Université de Montréal; official of the United Nations Development Programme in Haiti.

Internet sites, including: Ecolnet; Interpol; Organization of American States – Information Exchange Network for Mutual Assistance in Criminal Matters and Extradition; Radio-Canada; Réseau national de défense des droits humains; United Nations – United Nations Stabilization Mission in Haïti (MINUSTAH), Refworld; United States – Country Reciprocity Schedule.