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Final Report on the
**SUPPORT FOR THE JUSTICE SECTOR,
ADMINISTRATION OF JUSTICE
SITUATIONAL REVIEW**

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The views and opinions expressed herein are those of the evaluation team, and are not necessarily those held by Datex, Inc., nor USAID/Haiti.

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Introduction

In anticipation of a resolution of the political turmoil that has beset Haiti since the coup d'etat of September, 1991, USAID/Haiti is preparing an Administration of Justice project which is designed to improve the effectiveness, accessibility and transparency of the Haitian justice system. To assist in the implementation of this project, USAID/Haiti commissioned a three-person team to review the justice system in Haiti, and to prepare a report which would "give as complete a picture as possible of the immediate transition needs of the judicial sector [(Phase I)], with recommendations on the conditions that need to exist prior to starting [full-scale project implementation (Phase II)], including the definition of additional studies needed to complete the longer-term assistance picture".

This report, prepared in response to USAID/Haiti's instructions, is based upon information obtained by the team while in Haiti from June 13 to July 3, 1993. The authors recognize the report's shortcomings -- apart from their personal imperfections, they were not able to set foot in any ministry building or meet with any ministers of the de facto government or the future Aristide government (ministers in the latter not yet having been designated) -- but believe that it offers a realistic, achievable program. To the extent that this is so, it is attributable to the full cooperation and support offered by USAID/Haiti, and, especially, to the helpfulness of many Haitian professionals who were unfailingly gracious (even to those of us with limited French) and generous with their time to a degree that could not have been anticipated. Their cooperation was invaluable, and is greatly appreciated.

Executive Summary

I. Program

The activities proposed in this report fall generally into three categories:

Strengthening the Capability and Independence of the Judicial Branch; Strengthening the Ministry of Justice; and Increasing Public Awareness of and Access to the Judicial System

A. Strengthening the Capability and Independence of the Judicial Sector

While the Constitution speaks of three separate, independent branches of government, the judicial branch is not truly independent. It is under the administration of the Ministry of Justice, has no administrative office of its own, and has no independent budget authority. Because of limited resources, salaries of magistrates do not offer a living wage unless supplemented by other employment (not legal) or by graft. It has not been a career for the best and the brightest. Incompetence at the magistrate level, corruption and rule-of-military rather than rule-of-law have resulted in a system in which Haitians, including magistrates, have lost confidence.

It is assumed that control will be removed as part of the political resolution and that the new government will appoint honest, capable people. Nevertheless, salaries and other budgetary matters will remain an issue, as will a degree of incompetency in magistrates who have not fulfilled the training requirements mandated by law or who are the victims of the inadequate theoretical legal education offered by the University of Haiti College of Law and Economic Sciences. Perhaps most important, magistrates may be slow to realize that a new era has dawned and that they will be expected to dispense justice fairly and honestly, and be held accountable if they do not. The proposed set of activities is directed to these problems.

(1) Judicial Training

Phase I

During Phase I, a one-week, immediate impact program is directed at the justices and clerks (greffiers) in the tribunals of the peace, -- the members of the judiciary with the largest public outreach. Up to 700 officials would receive training in seven sessions, each with 50 justices and 50 clerks. Each session would be divided into two sections. The training would consist of material stressing the limits and extent of police authority, the authority of the tribunals vis-a-vis the police, and the expectation that justices will exercise this authority; reviewing judicial procedures and the substantive law (cursorily) of matters most often brought before the tribunals. Prior to the initiation of courses, didactic material would be prepared, including a manual of substantive and procedural matters which each participant would retain.

It is anticipated that the Phase I training program would be implemented by the Port-au-Prince Bar Association designated for such purpose by the Minister of Justice, utilizing one full time employee and an Advisory Council of several distinguished Haitian lawyers. USAID, pursuant to a contract with a firm executed on an accelerated basis, would provide two experts in judicial training, and would fund, through the contract, the costs of the Bar Association and all attendant costs of the training. It is estimated that the training program can be completed within seven months after approval by the Minister of Justice.

The impact program is not proposed as a solution to the longer term need for increased judicial training. To determine what the best solution to that need might be, a study should be carried out during Phase I. While a full-fledged Magistrates School, à la French mode, seems to be beyond present needs and resources, an institution similar to that proposed in 1992 by a group of distinguished Haitian lawyers offers a basis for further analysis. What is required is an institution offering some months of training in substantive and procedural matters to sitting judges, new appointees, and a select group of law school graduates contemplating judicial careers (it is desirable that future legislation limit appointees to certified graduates of this course). A program of continuing education re new laws and developments is also required.

Phase II

The report prepared by the Phase I contractor concerning long-term O&M improvements in the Ministry of Justice, and other studies and reports prepared during Phase I, when reviewed and approved by the MOJ and USAID would serve as the basis for the Phase II program. For this purpose USAID would select a contractor on the basis of full and open competition.

(2) Equipment and Materials

It is common knowledge that the tribunals at all levels are run down, in need of repair, and lacking the most basic equipment. No assistance to infrastructure is recommended, but USAID should be prepared to fund basic equipment for tribunals (desks, chairs, file cabinets, lights) once an accurate inventory has been made. The Ministry of Justice should undertake a complete inventory starting early in Phase I. USAID would start funding equipment in Phase II except that, if required for symmetry with ICITAP developments, some procurement could be initiated in the second half of Phase I.

(3) Increasing Judicial Independence

While Haitian lawyers recognize the limitations placed upon the judiciary in administrative and budgetary matters, they vary in their degree of concern, and their suggested means for overcoming these limitations. For many, an independent judiciary as known in the United States is beyond ken. In order to stir up thinking and expose the larger legal community to alternative institutional arrangements, it is proposed that a series of workshops and seminars

be held in Haiti on topics related to the concept of separation of powers, alternative structures of court systems, models and issues of court administration, etc. There would be participation of U.S. experts provided by a U.S. organization contracted by USAID during Phase II or in late Phase I. Model legislation might be drafted in connection with some workshops. These workshops and seminars should not be held on an ad hoc basis, but should be planned as part of a systematic effort.

(4) Developing the Bar as a Constituency Promoting a Strong and Independent Judiciary

Building upon the base presumably laid by the Port-au-Prince Bar Association's participation in the impact judicial training program, a new program would be initiated to increase the prestige of that Association and of bar associations in other Haitian cities, their activities (into continuing legal education for its members, for example), and to strengthen their role as a forthright defender of the independence of the judiciary, and advocate of its strengthening.

The same institution contracted with for the activities under section I.A.(3) would also be asked in Phase II, or starting in late Phase I, to develop conferences and seminars in Haiti, arrange travel to conferences abroad, with a view to exposing the bar associations and the legal community to the important, activist role played by their counterparts in other countries, and to which they should aspire.

(5) Pre-Conditions

- No work should begin until the Minister of Justice agrees to the training program.
- The training sessions (as distinct from planning efforts) under Phase I should not begin until and unless:
 - (a) the GOH has filled judicial vacancies with honest, competent people
 - (b) the GOH has announced a salary increase for magistrates at all levels (even if token)
- No Phase II activity should be undertaken unless USAID has satisfied itself that the GOH:
 - (a) has enacted all legislation necessary to reorganize the Ministry of Justice so as to implement the constitutional provision which removes the police function from the army and places it within the Ministry of Justice
 - (b) has enacted legislation establishing procedures for creating the communal and departmental assemblies whose participation in the judicial appointment process is constitutionally mandated

- (c) has appointed honest and capable people as new magistrates
- (d) has allocated a reasonable percentage of its budget to the judiciary, and
- (e) has adopted measures to assure that the list of candidates for justices of the peace and judges of the courts of first instance and appeal are of high quality (by requiring certified completion of the course offered by the new judicial training institution for any candidate on the list and/or by requiring that the Bar Association or other impartial group prepare a larger list of qualified candidates from which the assemblies' lists would be drawn).

B. Strengthening the Ministry of Justice, Particularly Its Capability to Supervise the Police and Prisons, and Provide Administrative Support to the Courts

(1) Assistance to the Ministry

The Ministry of Justice (MOJ) has an important administrative role vis-a-vis the courts; it is to be given significant new responsibilities in supervising the police and the penal system. From all accounts it is in no position to assume these functions. Its personnel is of dubious quality, it has a reputation for porousness. It is not clear to what extent incumbent hacks are protected from dismissal by various laws pertaining to the civil service. The Ministry clearly needs assistance in carrying out its tasks.

Phase I

During Phase I, the Ministry will be confronted with the need for new legislation and/or decrees, and for organizational and administrative changes in order to implement effectively its new responsibilities. The specific areas of its need are unknown but they can be expected to be of broad variety.

In order to assist the Ministry, USAID should contract with a U.S. firm for the services of three experts in court administration and judicial/prosecution systems. They would be supplemented by a number of short term consultants who would provide expertise in: developing policies and management systems to oversee police and prison administration; systems development; and local AOJ culture and policies. Short term experts may be required for other specialized needs, as well.

Specifically, consultants would help the Ministry:

- develop internal capabilities to monitor the police and prison departments and capabilities to supervise and assess the performance of prosecutors and court management personnel; create for the short term an easily implementable, simple system of data collection concerning case loads, intakes, judicial decisions etc. (developing forms, compilation, filing etc.); assess MOJ needs for basic supplies and

equipment and procure same; hold periodic meetings with MOJ personnel to inform them of changes underway

- develop a one week curriculum to train commissaires du gouvernement (prosecutors and their assistants -- for a total of approximately 80 participants) and provide this training through 3 rotations.
- conduct four studies: preliminary assessment of relationship between MOJ and independent judiciary, this in collaboration with judicial independence activities (see Section I.A.(3) above); review of the fee schedule that currently is supposed to support court expenditures, and budgetary implications of its elimination; documentation of the informal system of alternative justice, currently in use in most rural areas, to assure that in areas where it works well it is not damaged by efforts to strengthen the formal system of justice; and feasibility/options for updating the law and, if possible, providing more accurate information to the judicial and legal professions.

Team members would establish close contacts with, and be available to, the Minister of Justice and top aides for informal day to day advice, draft of policy papers, organizational charts, and suggestions on how to deal with unforeseen issues, as needed.

This team would also be asked, on the basis of its experience thus far, during the latter half of Phase I to prepare a comprehensive program of assistance, training (in-house or off-shore), equipment, observational travel, organizational development seminars, etc., a full package which the Ministry would require during Phase II to upgrade the quality and efficiency of its supervision of the police and penal system, and in such matters as information systems, personnel, inventory, procurement, budget and accounting, and payroll.

Phase II

The report prepared by the Phase I contractor concerning long-term O&M improvements in the Ministry of Justice, and other studies and reports prepared during Phase I, when reviewed and approved by the MOJ and USAID, would serve as the basis for the Phase II program. For this purpose USAID would select a contractor on the basis of full and open competition.

C. Increase the Confidence of the Populace in the Fairness of the Judicial System and Improving Its Access to Means of Resolving Disputes

The Haitian poor have had limited experience with the legal system. Such experience as they have had has often been negative. They have lacked effective legal representation, and been victimized by a judicial system that has either demonstrated its incompetence or offered justice to the highest bidder. To attempt to come to grips with this problem, two programs are recommended.

(1) Public Information and Education

It is essential to have the Haitian people begin to understand that, under the Constitution, they are guaranteed certain basic rights and charged with basic civic responsibilities; that they are entitled to see that their rights are not infringed upon; that they have legal recourse when these rights are denied them. They should also receive the benefit of legal representation, when required. Many of these concepts -- those rooted in the idea of rule-of-law -- are foreign to the great majority of Haitians, particularly the 80% illiterate living primarily in rural areas. It is to begin the informational process that this activity is directed.

Phase I

During Phase I, two informational campaigns should be launched, each lasting approximately eight weeks. The first might concentrate on explaining the basic rights guaranteed to each citizen by the 1987 Constitution. (OAS may be undertaking a similar program, but details as to content, timing, length, etc., are lacking. Coordination will be important). The second, to begin after steps have been taken to upgrade the tribunals of the peace, would concentrate on informing people on such matters as their right to access to these tribunals for certain matters, the government's commitment to assuring that all who seek access will receive fair and honest treatment, and what steps to take in order to initiate access; and advising them of their rights if brought before tribunals on criminal matters.

These should be campaigns using media and community outreach in careful coordination. Given the general illiteracy of the audience, radio would be the immediate medium of choice, though the effectiveness of supplementary devices such as foto-novellas or cassettes could be assessed. It is anticipated that community outreach would be achieved through NGOs which have had experience working with the target group in other programs.

Because of the nature of the activity, and the need for an immediate start, it is proposed that the preparation and implementation of the first campaign begin immediately upon political resolution. No formal GOH approval or involvement would be sought, although there should be informal consultation with appropriate officials. Instead, USAID would seek an independent, respected private entity that would be willing to associate its name with the first campaign. Government agreement and sponsorship would be obtained before further campaigns were undertaken.

USAID would contract with a U.S. firm with experience in mounting media campaigns designed to reach similar target groups (firms involved in birth-control campaigns, for example). This firm, through its media expert, would contact Haitian advertising agencies, assess their capabilities (perhaps by asking for sample campaigns) and select one or more with which it would sub-contract to develop and conduct the campaign, purchase media time, etc. The advertising agency would be expected to obtain necessary expert advice from experienced lawyers and Haitian NGOs. The U.S. firm would also meet and review material with the involved community outreach organizations so as to assure a coordinated effort in

the campaign. The media advisor would return from time to time to approve and/or modify proposed campaigns, assess their effectiveness, reaffirm the coordination with community outreach organizations, etc.

USAID would also contract with or make a grant to an entity which would seek proposals from NGOs that wish to provide community outreach, evaluate the proposals and make sub-grants to those selected. While it might be possible to develop such an entity, it seems more efficient, by far, to utilize one already established -- PIREDE -- assuming USAID believes that the addition of such a program would not overtax its capabilities. USAID could consider funding an addition to PIREDE's field staff for this program.

Phase II

During Phase II, there would be an extended series of civic education campaigns, using methods found to be successful in Phase I. The number, frequency, media of choice, and mix of media and community outreach would be determined in part by an evaluation of the coverage and impact achieved by the Phase I campaigns. An assessment of these factors would be made by the US firm at the conclusion of Phase I on the basis of base-line data previously obtained and post campaign sampling.

The Phase II campaigns would be more educational than those of Phase I. Each would be devoted to a particular type of legal issue that could impinge upon the typical audience member, e.g., animal trespass, land border disputes, typical misdemeanors. Each campaign would attempt to explain why such disputes arise; what the interests of the different parties may be; whether informal mediation would be appropriate; if not, then how the courts can help resolve the matter; and why it is important to abide by the decision. There should be at least three such campaigns, of eight weeks duration, during each of the first three years of Phase II.

(2) Legal Services for the Poor

Haitians are entitled to legal representation only in serious criminal proceedings. When they receive such assistance it is usually provided by novice law school graduates, and not until the trial stage. Attempts have been made to fill this vacuum. NGO programs through paralegals are still too new to evaluate their effectiveness, though initial reports are favorable. However, their sustainability is not established, and their replicability uncertain.

The question is how to make such assistance, of acceptable quality, broadly available at sustainable cost. Suggested alternatives have included government programs, NGO programs, or a combination of the two.

During Phase I, a study should be funded by USAID, to be carried out by a combined team of foreign experts in legal aid or public defender programs, and Haitian lawyers involved in

related programs. Minister of Justice representation might be included as well or, if not, the Minister should, at a minimum, endorse the idea of the study.

The study should consider the various alternatives, justify the one selected, recommend a plan of action and offer a detailed financial analysis. If the program receives the necessary approvals, USAID could fund a major share of its costs during Phase II.

D. Summary of Implementation Actions During Phase I

There are five or perhaps six procurement actions proposed during Phase I. To the extent that two or more can be combined, USAID's administrative burden would be eased.

The first contracts to be left are the two for public information activities. Given the nature of the activities under each, it does not seem appropriate to combine them into one contract. And, in view of the need for early action, it is not feasible to combine either with other Phase I activities.

The contract for workshops and seminars and for strengthening the bar should be left late in Phase I, if not in Phase II. It can not, therefore, be combined with any other Phase I contract -- all of which should be initiated earlier.

It would be theoretically possible to combine the three other contracts into one. However, factors to be considered are:

- Whether awaiting MOJ approval for all three activities will delay initiating the other(s). A delay to the short-term judicial training activity, which has a significant lead time, would be a mistake.
- This approach may not optimize the choice of consultants. If it is adopted, USAID should reserve the right to award all activities, or any separate activity, in a manner it deems most advantageous.
- If section 614 authority is not available, separate procurement actions would be preferred.

1.0 Strengthening the Capability and Independence of the Judicial Sector

1.1 The Problems

1.1.1 Present

The 1987 Constitution establishes three branches of government (legislative, executive, and judicial) that are separate and independent of the others (articles 59 and 60). In fact, judges and court personnel answer to the executive (the army) which governs the country at this time. For decades, judges and court related personnel have served at the whim of those in power. Under the current government, the principle of "inamovibilité" (non-removal - article 177 of the 1987 Constitution) designed to protect the judiciary against political interference is routinely ignored. We were told that judges often live in fear of losing their job, a frightening prospect in a country with high unemployment, few viable legal practices, and for people whose professional qualifications often are minimal. Deference to the will of the executive branch is a direct consequence. The Constitution sets forth the procedure for the appointment of judges. In fact, all judicial appointments since the September 1991 coup have been made in technical violation of the Constitution: the nomination process requires the involvement of departmental or communal assemblies which have yet to be defined by legislation.

The Constitution (Article 173) prescribes the several levels of courts in Haiti, -- the tribunals of the peace, special courts, courts of first instance, courts of appeal, and the Supreme Court (Cour de Cassation). A decree (1984) and law (1985) detail the organization of the judiciary and court related professions, and define the jurisdiction, responsibilities and number of tribunals at all levels. There are 5 courts of appeal, 15 courts of first instance and a number of special courts (e.g., 5 labor courts). There are 178 tribunals of the peace (lowest level of courts), approximately thirty of which are located in cities, (10 in larger cities, i.e., first class; 20 smaller, i.e., second class); and 148 in towns (third class) and remote areas (fourth class).

The law establishes certain minimum levels of training and/or experience required for judges and justices at each level (and for court personnel such as clerks). Thus, to be eligible for appointment as justice of the peace, first and second class, one must have passed the bar and served as an intern for at least one year. In practice, these requirements have been widely ignored. Most if not the great majority of the present justices have not met this requirement. Appointments through political favoritism explain in part the low level of judicial competence. When persons who are appointed do, in fact, meet legal requirements, they are nevertheless often ill equipped to carry out their responsibilities. The training received at law school is, by most accounts, of poor quality, highly theoretical, lacking practical content. Courses critical to those who wish to follow a magistrate's career, such as constitutional, administrative and public law, are seldom taught. The Magistrates School created by the 1987 Constitution does not exist. Court related personnel such as greffiers (clerks), huissiers (bailiffs/notice servers), or notaires (civil solicitors) often are unqualified as well.

Justices of the peace handle the majority of cases either as conciliators -- when a decision is rendered immediately and orally -- or through a public hearing -- when the decision must be rendered in writing. These procedures are followed haphazardly and with little or no monitoring. Further, the impartiality and effectiveness of justices of the peace are suspect, given the dominance of chiefs of section, particularly in rural areas. The chiefs of section (one for each of the 565 communal sections) routinely take actions beyond their law enforcement responsibilities and act as local judge/jailer/prosecutor. They are recruited and trained by the army, and report to military commanders. In many isolated areas of the countryside, they are the only government officials available and known to the local community. Their power and actions are unchecked for the most part. Thus, those justices with the competency and character to dispense justice fairly and honorably fail to do so because for years, they have been operating in a system where the orders of a military officer, rather than the provisions of a law, are the ultimate authority.

Similarly, many criminal and correctional cases that should be referred to a court at the next level (tribunal of first instance), are settled de facto by the prosecutor (commissaire du gouvernement), who functions under the umbrella of the Ministry of Justice (MOJ), through "conciliation" sessions, rather than forwarded to the judiciary. For criminal cases, this practice contravenes the law which precludes any settlement of criminal cases, even if the victim drops charges. Other examples of circumventing regular procedures abound. Delays in filing formal charges and in bringing defendants to trial are systemic; tracking/monitoring does not exist; and mandatory hearings within 48 hours after detention are not held.

The justice "system" appears to be characterized by corruption and by incompetence, delays, and in some cases absenteeism. "Courts are now run like a small business" we were told. In other words, justice is for sale. When parties (or at least one of the parties) have money, their case, whether civil or criminal, takes precedence. In the meantime, prisons are filled with pre-trial defendants (by some estimates, over 70%) who presumably were too poor to buy their way out of criminal proceedings. Oversight of judicial performance is non-existent. In theory, a disciplinary body of the judicial branch exists. It is the Conseil Supérieur de la Magistrature -- an ad hoc body appointed by the Cour de Cassation. In fact, the Conseil is seldom if ever convened, and quality control of judicial performance is nil.

The prestige and integrity of judges are undermined by low, sometimes below subsistence level, salaries. For decades, judges and court related personnel (secretaries, clerks etc.) have earned considerably less than their peers in other branches of government (executive, legislative). The message is clear: the administration of justice has been for a long time, perhaps forever, a low priority for the government. Some suggest that low salaries explain much, though not all, of the rampant corruption. It certainly helps explain why the judiciary has frequently attracted other than the most qualified.

Aside from low salaries, the scarcity of resources allotted for the administration of justice has these consequences:

- Judges must function in dilapidated buildings and overcrowded facilities. Many court houses were destroyed or damaged in the various upheavals that have affected the country over the last several years, but were never repaired. Others (such as the Palais de Justice in Port au Prince) do not have adequate facilities for the three levels of courts (first instance, appeals, and cassation) located in the building.
- Furniture, elementary equipment, source materials (such as codes) are scarce, sometimes unavailable to magistrates particularly in rural areas. Filing systems are poorly kept when they exist. Little or no data are kept that would permit research, commentaries, legal analyses or the development of statistics, and there are no funds for law journals, or management information systems (MIS).
- Expenses for maintenance, repairs, equipment and supplies are supposed to be covered by fees collected by greffiers for various justice system transactions (police reports, transcripts, official documents). Half of the fees must be returned to the government, and the balance used by the courts. This situation presents an opportunity for graft. It also reduces access to justice for the majority of the population.
- Many judicial positions (especially justices of the peace) are unfilled, thus reducing access to justice for people who reside in those communities.

1.1.2 Future

The eventual return of President Aristide and hopes for a stable government that is guided by the principles of the 1987 Constitution, spur high expectations among many. However, even with the return of the constitutional government, a number of problems will remain.

The 1987 Constitution aims at a process of judicial appointments devoid of nepotism or undue influence from the executive branch. Several observers note, however, that the final selection of all judges remains in the hands of the President. Others deplore the fact that municipal, departmental and national elected bodies will present lists of candidates for eventual selection by the President. According to them, political considerations rather than merit often will affect the development of these lists; and members of the nominating bodies will not always have the capacity or resources to assess the expertise of the candidates.

In the opinion of many, the Conseil Supérieur de la Magistrature (the judiciary's disciplinary body) is seldom used and largely ineffective, for judges are reluctant to penalize their own. Without changes in the composition and structure of the disciplinary organ, it is unlikely that judges will be held accountable. Also, routine monitoring will be an essential component of the delivery of quality justice. The task, if assigned to the executive branch (via the MOJ), may further intrude upon the independence of the judicial branch - particularly in a country where governmental entities have a tradition of confusing their mission with the political interests of those in power.

While many point to the overall low quality of the magistrature, few among the Haitian legal community advocate the wholesale removal of judges now in place. It is interesting to note that in interviews, the most extreme position, --"replace everybody"-- was held by a non-Haitian lawyer. The most moderate position -- stressing the need to comply with the Constitution, evaluating the performance of judges in the post-revolution climate to determine who should be removed eventually or retained -- was put forth by a socially conscious Haitian lawyer. Yet the issue will be difficult to address and one of great political and constitutional/legal sensitivity. Interpretations differ on the meaning of Article 295 which permits the first president elected under the 1987 Constitution to "carry out any reforms deemed necessary... in the judiciary" during the first 6 months of his term. Some say that President Aristide will no longer be able to invoke the article to remove judges -- even those appointed in violation of constitutional and legal provisions. Others argue that unless he does, and given the principle of inamovibilité (non removal of the judiciary, with the exception of justices of the peace, during their term, Article 177), too much time will pass before new judges can be appointed in accordance with the Constitution (Article 175).

Better salaries for judges and court personnel, on par with those of other branches of government, may help attract a better quality of lawyer than is the case now (assuming that the State will have the resources necessary for such salary upgrades). Yet, this measure alone may be insufficient. Applicable laws that govern the organization of the system of justice do not provide for rewards or promotion for good performance.

1.2 Proposed Program

1.2.1 Judicial Training

A program designed to offer training to judges, justices of the peace, and other court personnel is of critical importance if the judiciary is to be strengthened and its competence increased.

1.2.1.1 Phase I --- Immediate Assistance

It is not possible in the short term to give to all court personnel the training they require. It is possible, however, and important, to provide some limited training to those personnel with the greatest public outreach, and to convey to such people (and their clients among the citizenry) the idea that a new era of rule-of-law is starting in which they will be expected to carry out their responsibilities fairly and honestly and assert their independence and authority vis-a-vis the police and other justice officials, and that they will be held accountable for their performance. During Phase I, therefore, the recommended program would be directed only at justices of the peace, and clerks (greffiers) at the tribunals of the peace. Two justice and two clerk positions are established at each tribunal, for a total of 356 each. A one-week training seminar is recommended for all of these officials utilizing the model set forth below.

A. Seminars

Fifty justices and fifty clerks would be invited to each seminar, but would be divided into two groups so that there would be no more than 50 in each class. For some subjects, each group could contain a mixture of justices and clerks; for others, the groups would be separated by position.

The seminars would deal with several matters of immediate concern, such as:

- The authority of the tribunal of the peace vis-a-vis the police and the public prosecutor. For years the justices of the peace have been under the control of the army. They must be made to understand that, with the placement of the police function within the Ministry of Justice, they will be expected to exercise the authority granted to them by law. The extent and limits of the police authority should be stressed.
- A review of the procedures to be followed by the justices in carrying out their function. This could include such matters as desired time frames for taking certain actions; a step-by-step description of how to obtain information and act in typical cases, e.g., land disputes, animal trespassing.
- For the justices, a review of the substance of criminal and civil law in a few selected areas which form the bulk of the cases coming before the tribunals.
- For the clerks, procedures for filling out forms, including new ones to be developed which would record such matters as the numbers and types of cases coming before the tribunal, and the time required to take intermediate actions and to make final disposition of cases.

The seminars should involve lectures and an exchange of views among participants. The subject matter should be contained in a manual to be prepared for the courses which would be distributed to and retained by each official receiving training. The manuals should contain such information as the procedural steps to be followed by the justices and clerks; selected sections of the criminal and/or civil codes; significant recent legislation in pertinent areas; a clearly written narrative of the law, currently in effect, with respect to certain subjects; examples of new forms to be completed by clerks which would form the initial basis for a management information system; and a detailed description of steps to be taken to report, to an appropriate office in the Ministry of Justice, any abuses of power by police or other officials with which the justices are not able to deal. Many of the trainees will probably read only Creole. Therefore, except where translation from the French might be very difficult, as perhaps with sections of the codes, the manuals should be prepared in Creole as well as in French.

Stages

The training program would be carried out in two stages: Preparation and Action

A three months preparation stage would be utilized to draft the manuals, forms, and other training materials (which should include audiovisual training elements demonstrating incorrect and then correct procedure); identify and select faculty; select a training site; develop a detailed work plan. From a programmatic point of view, it would be desirable to have this stage begin as soon as possible, immediately after political resolution has been achieved. However, because of the nature of this program,-- the training of governmental personnel who are under the administrative supervision of the Ministry of Justice, -- it should not be undertaken without the agreement of the Ministry. (As part of such agreement, it would be important to have the Ministry commit itself to complete, within three months, a detailed inventory of the physical condition of each tribunal throughout the country, as well as the material and equipment at each tribunal.)

The second stage, the actual training sessions, could begin when the first stage actions were completed. It would not seem appropriate to do so, however, unless the government had, by that time taken the following actions:

- appointed honest and competent people in filling any judicial vacancies
- announced an increase in salary for magistrates at all levels
 - It is not clear what an acceptable salary level might be, though it should certainly be one on which a magistrate can live without the need for supplementary funds obtained from other employment or from graft. It would be irresponsible to suggest a sizeable, across-the-board increase without further analysis of the general economic and budgetary situation. However, some increase, even in token form, would be of symbolic importance. It would indicate the government's recognition of the importance of the judiciary and its determination to upgrade its quality.

Implementation

It is unlikely that the Ministry will be in a position to run such a program in the immediate aftermath of the political resolution. Thus, it would be critical that, in its agreement with USAID establishing the program, the Ministry designate an implementing entity to act on its behalf. The Port-au-Prince Bar Association would be an appropriate candidate. The Bar Association could probably be persuaded to undertake such a responsibility, particularly if USAID would fund the costs of personnel and of certain equipment and material which would assist the Bar Association to carry out the activity, e.g., a P.C. and printer and legal reference material for its library.

By participating in this activity, the Bar Association would upgrade its physical inventory and its stature among the legal community. The development of a more active, concerned bar

could be a valuable side benefit. Furthermore, the Association's involvement with a training activity, however briefly, might serve as a first step towards encouraging it to develop programs of continuing legal education for its members.

The Port au Prince Bar Association leadership, however, is not universally admired by its members. It would be important, therefore, to guard against any politicization or cronyism by insisting that the Association create an advisory committee for this activity composed of four or five distinguished Haitian lawyers. These lawyers would agree to draft the manuals and other didactic material prepared for the course, or they would select others to perform this function, reviewing and approving the product. They would participate as teachers in the seminars and/or would select other lawyers and judges for this task. The Association would have to hire someone who would have full time responsibility for the training program, under the oversight of the advisory committee. This person would not have to be a lawyer; rather, he/she would be someone who can operate the many aspects of a complex program and knows how to get things done on a timely basis.

USAID would provide the services of a consulting firm, or other entity, which would supply necessary technical assistance, contract for such items as the preparation of didactic material, faculty and training space, make necessary logistic arrangements, e.g., travel and per diem for seminar participants, and do such procurement of materials as might be necessary. To carry out these tasks, the contractor would probably require two consultants with experience in legal training programs, at least one of whom would have French speaking ability. One would concentrate on training methodology; the other, on implementation and logistical needs. Both would be required in Haiti for almost all of Phase I although, if necessary, the latter might be able to perform his/her responsibilities in several trips of several weeks each.

The need for initiating action for Phase I activities quickly would preclude the option of awarding this contract on the basis of full and open competition. There seem to be three possible options:

- Select a contractor certified by the Small Business Administration as an 8 (a) firm.
-- it is understood that a direct selection would be permitted for contracts of less than \$3 million.
- Contract on the basis of limited competition as permitted for local procurement of \$250,000 or less.
-- the time required would be little more than that required to draft the contract itself.
- Contract through direct selection or limited competition, as permitted pursuant to the terms of a determination under Section 614 of the Foreign Assistance Act.

The third alternative is clearly the best, if it is available. It offers a broader field from which to select than does the option limited to 8 (a) contractors; and, unlike the second option, it avoids serious problems if costs were to rise above \$ 250,000. Whichever option

is selected, it is assumed that a preliminary sounding out of potential contractors could begin upon political resolution. Limited competitive procurement could also begin upon political resolution (contract signature awaiting USAID -- Ministry of Justice agreement) if USAID determined that this was an acceptable political risk.

Program Costs

Almost all costs of the program would have to be borne by USAID. These would include:

- the contract with the consulting firm providing technical assistance, procurement services, and all program-related local expenses such as preparation of training materials, faculty salaries, logistical arrangements, and rental of training space. (In this regard, possible sites could include the original Union School, a former normal school building behind the Palace of Justice which is on land owned by the Palace, and several hotels with large meeting rooms).
- the costs of the Bar Association, including the salary of the person hired to work full time, the services of the advisory commission (if they were not donated), equipment such as a P.C. and printer, legal codes, and other books for the library.

The Ministry of Justice would provide the costs of undertaking the inventory, as well as any time contributed by members of the Bar Association.

Schedule

The various steps in the implementation of this activity would be as follows:

- | | |
|----------------|--|
| <u>Day 1</u> | -- Agreement between Ministry of Justice and USAID |
| <u>Day 30</u> | -- USAID has signed contract for technical assistance, and two-person team has arrived.
-- Ministry of Justice and Bar Association have concluded implementing arrangement; Bar Association has hired full-time person, and appointed advisory panel.
-- Ministry has initiated inventory of tribunals. |
| <u>Day 50</u> | -- Contracts and other arrangements for didactic material and faculty have been made.
-- Bar Association has received necessary material, including PC and printer
-- Arrangements for renting training site have been concluded
-- Logistical arrangements (e.g. schedule for training all personnel, transportation arrangements, stipends, etc.) have been determined. |
| <u>Day 110</u> | -- Didactic material has been completed
-- First group of 100 trainees (50 justices and 50 clerks) initiates training.
-- Inventory of tribunals is completed. |

<u>Day 124</u>	-- Second group initiates training
<u>Day 138</u>	-- Third group initiates training
<u>Day 152</u>	-- Fourth group initiates training
<u>Day 166</u>	-- Fifth group initiates training
<u>Day 180</u>	-- Sixth group initiates training
<u>Day 194</u>	-- Seventh group initiates training
<u>Day 210</u>	-- Activity is completed; final report prepared by contractor.

B. Studies

The training program during Phase I will barely begin to deal with the training needs of the judiciary. It is a one-time effort of short duration; it deals only at the tribunals of peace level; it provides no training for magistrates appointed after Phase I; it offers nothing in the way of a continuing education program; it creates no base for the establishment of a permanent program.

There is a need for extensive training in a variety of substantive and procedural matters to those who have been chosen to serve as magistrates and are about to assume their posts, and to those magistrates already serving. There is also a need for a continuing series of short-term training seminars on new developments/issues/problems in the law and its administration. And finally, training should be offered to a limited number of highly qualified law school graduates who hope to be selected as magistrates in the future. Some Haitian lawyers have recommended that the government, by legislation or otherwise, mandate that in the process of appointing magistrates pursuant to Article 175 of the Constitution, the lists of candidates submitted by departmental or communal assemblies include only persons certified as having successfully completed the training program for magistrates.

The Constitution of 1987 establishes a Magistrates School as the means to meet long-term training needs. Since 1987, a number of proposals have been made to implement this provision. At the present time, considering the state of legal institutions in Haiti, the number of people to be trained, and the availability of resources, the creation of a full-fledged magistrates school modeled on that of France, offering a one or two-year post-law school training program does not seem warranted. Rather, an effort of the magnitude suggested in 1992 by a number of distinguished Haitian lawyers in a "Projet d'Intervention d'Urgence", might be appropriate,-- recognizing that that project did not include a continuing education element. It is possible that such an effort would suffice for the indefinite future or, if not, could develop over time into a more structured magistrates school.

What is required is a thorough study of needs and alternatives, leading to a practical, well-thought out proposal. Such a study could be initiated during Phase I by the Minister of Justice, appointing several Haitian lawyers and educators for this task, and welcoming the assistance of foreign experts who could share their own experience with programs of judicial training. If such a study were approved, USAID could fund it during the first part of Phase I. The study should determine the nature of the institution required, considering the extent

of the needs, the status of other legal institutions in Haiti, and the likely budgetary impact. It should consider the following questions, among others:

- types of judicial personnel to be trained
- most important training needs for judiciary personnel
- the types of courses that should be offered, and length of courses
- how frequently courses should be offered
- the appropriate teaching methodology, e.g., lecture, seminar, discussions, etc.
- whether such training should be offered at one centralized location or, particularly in the case of continuing education, at several sites located throughout the country
- whether a permanent training site or sites should be acquired
- what type of faculty should be sought (full-time or part-time; would some visiting faculty from other countries be required, at least at the start)
- whether a training-of-trainers approach should be adopted for some of the training, e.g., for continuing education
- whether such an institution should be created under the aegis of the Ministry of Education, the Ministry of Justice, or some other entity
- what might be the magnitude of the start-up and operating costs
- which costs would be appropriate for GOH funding, and which for international donors.

To provide the assistance of foreign experts, USAID should contract with a firm, using the same accelerated contracting procedure described above for Phase I training. There might be a team of three, expert in different aspects of judicial training, e.g., curriculum, methodology, management. It is assumed that, under this contract, USAID would fund all of the costs of the study, including the salaries of the Haitian lawyers appointed by the Minister of Justice. Given the magnitude of the task, a two-month effort would seem appropriate. The end product would include a complete needs analysis, a discussion of alternative solutions and a justification for the one proposed, a detailed plan of action for starting-up and operating the institution, and a financial plan.

1.2.1.2 Phase II -- Long Term Assistance

The report prepared for the Minister of Justice during Phase I concerning the institution required to meet the long term training needs of the judiciary should be shared with USAID and other potential donors. If the Government of Haiti were to approve the proposal, and USAID alone or in concert with other donors were to find the proposal worthy of support, then during Phase II, USAID would provide such long term assistance as general core support, technical assistance, training, and equipment as necessary.

1.2.2 Equipment and Materials for Tribunals

It is proposed that, in its agreement approving the Phase I training program, the Ministry of Justice commit itself to complete within three months an inventory of the physical condition

of each tribunal, at all levels, throughout the country, also listing the material and equipment available at each tribunal together with an assessment of its condition. On the basis of the final inventory, during the latter part of Phase I USAID should have its Phase I Ministry of Justice contractor (Section 2.0, see below) prepare a list of equipment that is lacking and should be procured (limited to such basic items as desks, chairs, lamps, filing cabinets), and specifications and cost estimates for such equipment. Procurement would be undertaken during Phase II by the contractor providing services to the Ministry of Justice at that time, except that, if required for symmetry with ICITAP developments, some procurement could be undertaken during the latter part of Phase I by the Phase I ministry of justice contractor. The quantity of material to be procured by USAID would be dependent upon the magnitude of the needs, the costs involved, available funds, and interest of other donors in sharing the costs.

It does not seem advisable that USAID consider funding any construction or repair of facilities. Nor does it appear that any other donor is interested in funding such costs. One possibility for meeting this real need would be to use counterpart funds generated from any balance of payments assistance given Haiti. Perhaps a significant sum could be set aside as a capital fund for this purpose.

1.2.3 Increasing Judicial Independence

While the constitution provides for three branches of government,-- legislative, executive, judicial,-- and states that it embodies the principle of separation and independence of the three branches, the independence of the judicial branch is, in fact, circumscribed. The courts are placed within the Ministry of Justice, which provides administrative support and supervision. There is no separate court organization with its own administrative office. More important, the courts do not develop their own budget. That is handled by the Ministries of Justice and Finance. It is not unreasonable to assume that this organizational arrangement is a contributing cause of the consistent under-funding of the judiciary.

Some Haitian lawyers do not see this as a problem. Others--younger, and particularly those with some training in the United States-- believe the system should be changed, though their remedies often differ. Apparently, the budgetary issue was raised late in the deliberations of the Constituent Assembly which drafted the 1987 Constitution. It was not pursued because others thought there was no chance of favorable consideration at that point. Nevertheless, it is an issue worth vetting among Haitian officials and the Haitian bar, whatever the outcome. It will be particularly relevant if the judiciary, once again, receives an inadequate share of budgetary resources. Therefore, during Phase II, or starting in the latter stages of Phase I, a U.S. organization should be selected to develop a series of workshops and seminars in Haiti, with the participation of U.S. legal experts, on topics related to the concept of separation of power, alternative structures of court systems including that of the United States, models and issues of court administration, etc. Model legislation might be drafted in connection with some workshops. These workshops and seminars should not be developed on an ad hoc basis, but should be a planned and systematic effort. Depending upon how matters develop

in Haiti these exchanges may serve as a seed for future legislative or constitutional reform in an effort to strengthen the judiciary. The costs of these workshops and seminars would be funded by USAID, pursuant to a contract with the U. S. institution.

1.2.4 Developing the Bar as a Constituency Promoting a Strong and Independent Judiciary

At present, the Port-au-Prince Bar Association is not an activist organization. Its programs are few, and its membership support weak. Its headquarters is a crowded room in the Palace of Justice, which serves as a combination office with almost no equipment, and library with almost no books. Its most significant recent achievement may have been to resume publishing a brochure with the names of members of the bar and court officials in the Port-au-Prince area. Several years ago, the Association sought USAID funding for a public defenders program, but nothing came of it.

The Phase I judicial training program proposes to involve the Association as implementing agent. With luck, a successful program can increase the Association's prestige and cause it to give consideration to additional programs in the future, such as initiating a continuing legal education program for its members.

More importantly, a strengthened, more active Association might take the lead in campaigns to strengthen and protect the independence of the judiciary when it is under attack. It might enhance its prestige to the point that the executive branch would seek its views as to the quality of prospective appointees to magistrate positions. This would be desirable not only for the Port-au-Prince Bar Association, but for bar associations in other cities as well. Such a development, if it takes place, will be a long term process. It will probably not begin, however, without an outside catalyst -- some respected institution from the U.S. (or from other foreign countries) developing conferences and seminars in-country, arranging travel abroad to appropriate conferences, etc. In short, the organization could awake key members of the bar associations and legal community in Haiti to the important roles played by their counterparts in other countries, and to which they should aspire. Such activities would be undertaken during Phase II or started during the latter stages of Phase I, pursuant to a contract made by USAID with a U.S. institution. For ease of administration, it would be useful to combine this program as well as that described in section 1.2.3, above, in one contract.

1.3 Preconditions

As stated above, no work should begin until the Ministry of Justice has agreed to the Phase I training program. The training sessions themselves (as distinct from planning efforts) under Phase I should not begin unless:

- the Government of Haiti (GOH) has filled judicial vacancies with honest, competent people; and

- the GOH has announced a salary increase (even if token) for magistrates at all levels.

The activities suggested for Phase II could involve expenditures of a significant amount of money. It would be inappropriate to undertake these programs, therefore, unless the GOH continues to demonstrate its commitment to a rule of law under the 1987 Constitution, and to a strong and independent judiciary. Therefore, the following should be preconditions to any activity under Phase II:

- The GOH has enacted all legislation or regulations necessary to reorganize the Ministry of Justice so as to implement the constitutional provision which removes the police function from the army and places it within the Ministry.
- The GOH has enacted legislation establishing the procedures for creating communal and departmental assemblies.
 - Pursuant to Article 175 of the Constitution, justices of the peace are to be appointed from a list drawn up by communal assemblies. Until a law is enacted which enables the implementation of this provision, no new justices of the peace may be legally appointed. There is a similar provision (and problem) with respect to the appointment of judges of courts of appeal and courts of first instance, and departmental assemblies.
- In appointing new magistrates, the Government has appointed honest and capable people.
- In preparing its annual budget, the Government has allocated a reasonable percentage for the judiciary.
- The Government has adopted measures to assure that the lists of candidates for justices of peace and judges of courts of first instance and of appeal are of high quality.
 - While the Constitution requires that persons appointed to magistrate positions, below that of the Supreme Court, be selected from lists submitted by departmental assemblies or communal assemblies, there is no quality control and nothing to prevent the legislative bodies concerned from developing lists filled with candidates of dubious worth. One way to guard against such an abuse would be to require that only certified graduates of the judicial training institution could be on the list; or to have some respected independent body -- be it bar association or other -- prepare an initial, larger list of persons considered qualified, from which the legislative body would select its smaller list of candidates. Other alternatives might be suggested. However, if the independence and competency of the judiciary is to be secured, the initiation of Phase II activities should be conditioned upon the adoption by the GOH of some such measure.

2.0 Strengthening the Ministry of Justice, Particularly its Capability to Supervise the Police and Prisons and Provide Administrative Support to the Courts

2.1 The Problems

2.1.1 Present

The Ministry of Justice (MOJ) has oversight of the police force and prisons, the Parquet (prosecutors), and court administration personnel (greffiers, huissiers). Two commissions are under its umbrella: the Commission de Refonte des Codes (Law Reform - currently inactive), and Commission Presidentielle Agraire Permanente (which apparently has been abolished). Its principal functions include drafting legislation related to its mission and advising on legislative reforms in other areas; developing policies and procedures and collecting information and statistics on the administration of justice; monitoring court related professions (attorneys, notaires [civil solicitors], surveyors); providing logistical support, preparing budgets and supervising financial accountability of its departments.

Under the de facto government, the MOJ is considered as one of the most porous (corrupt) among ministries. It is part of a system of justice which - at all levels - is controlled by the Armed Forces, now in power, and characterized by capriciousness and arbitrariness. Provisions of the 1987 Constitution that directly affect the Ministry, such as the oversight of a civilian police force and prison system, are not in effect.

Governing laws (1984 decree and 1985 legislation adopted during the last year of Jean Claude Duvalier's presidency) are inconsistent with the 1987 Constitution which calls for an independent judicial branch. They stipulate that the Minister technically exercises "surveillance" (oversight) of magistrates (Chapter II, Article 3 of 1984 decree). Regardless, all reports indicate that the Ministry defers to orders of the military in such matters as cases that should be strictly under the jurisdictions of the courts, or appointments and supervision of prosecutors and court administration personnel. These officials routinely ignore and abuse applicable procedures and laws, particularly in rural areas where 80% of the population resides. Among many examples are typical violations of Articles 24-1 and 24-2 (1987 Constitution) that govern arrest, detention and prosecution and their procedures, Articles 25-1 and 24-3 which provide for legal counsel during interrogation, or Article 26 which requires a hearing within 48 hours after detention. Another vivid illustration is the apparent impunity of the army, regardless of the level of misconduct, a clear abuse of Article 42-1,2 and 3 of the 1987 Constitution.

Other responsibilities are not carried out either. For instance, in theory the MOJ should provide administrative support to the courts. In practice, to quote one Haitian contact, "the MOJ could not care less." Similarly, the MOJ cannot provide statistical and analytical reports on civil, commercial and criminal courts (Chapter II, Article 3 in 1984 decree) since no data are collected in most courts; nor is the MOJ guiding the work of the Commission de

Refonte des Codes Haitians (commission to update Haitian substantive and procedural legislation - Chapter II, Article 6 in 1984 decree), since the Commission is dormant.

The lack of resources available to the Ministry contributes also to its dysfunction: ".. is it possible that a ministry of such importance -- at least in theory -- only has three electric typewriters; (..) only one telephone for long distance calls and calls to foreign countries; that this ministry has NEVER had a computer nor a fax!! (..) That the shelves of the supply room at the ministry are empty: no office and no cleaning supplies.." (Jean Claude Roy, "Sur les Realites du Service de la Justice", 1993)

In summary, as many have said, "Things have never been as bad as they are now".

2.1.2 Future

Upon its return, the Constitutional Government must confront several thorny issues concerning the administration of justice. Foremost in the mind of many will be an orderly separation of police and army functions (per Article 63 of the 1987 Constitution). A proposal prepared by the International Criminal Investigative Training Assistance Program (ICITAP) covers principally the operational aspects of police/army separation and that issue is not discussed here.

Other problem areas exist such as: addressing the organizational structure and responsibilities that fall under the Ministry; dealing with a largely unqualified personnel which reports directly to the Ministry; exercising effective oversight of the police; overseeing the creation of an entirely new system of civilian prisons; obtaining the financial resources necessary to implement with success a profound institutional re-organization and to provide equal access to justice.

There is no consensus on how to re-organize the Ministry of Justice. Some believe that the existing laws (1984 decree and 1985 legislation) are adequate and should be maintained. Others think that the entire system should be overhauled. At a minimum, existing organic (organizational) legislation must be amended to include police forces under the tutelle (oversight) of the Ministry.

Also, a rigorous examination of existing procedures (spelled out in the 1984/1985 documents cited above) will be necessary to simplify and clarify contradictory and complex provisions. These two examples among several: the commissaires du gouvernement (prosecutors for the state who report technically to the MOJ) are supposed to supervise financial accounts of tribunals in their jurisdictions and report on same to the MOJ (Article 36, 1985 legislation); but greffiers (clerks) who keep these accounts are disciplined by the tribunal or court where they are assigned (Article 56). Or, commissaires must ensure that tribunals execute laws and judicial decisions properly and can require that a special hearing of the matter be held (Article 38); yet the judiciary is, in principle, an independent branch of government.

The new Minister of Justice will find that a large number of its personnel such as greffiers, huissiers (a combination of bailiffs and process servers), and commissaires du gouvernement do not meet the professional requirements stipulated by law. Civil service protection probably will present obstacles to the necessary weeding out of unqualified or corrupt personnel. A wholesale replacement of current personnel is not realistic either: over the last several years and for a number of reasons, law schools have not been able to produce the desirable number of well-qualified graduates and the best among graduates are unlikely to be attracted by positions that are poorly remunerated and offer no rewards or promotions for good performance.

The creation of a civilian prison system will present problems similar to those of establishing a civilian police force. Even though MOJ responsibilities include the supervision of prisons (1984 decree), the army (FAD'H) controls in fact all detention facilities whether official or unofficial, and has done so since 1918. Further, differing opinions exist on how prison security should be handled. Some argue that a special police corps will be charged with this responsibility (Article 272 of the 1987 Constitution). Others note that "there exists a direct conflict with a single entity responsible for arrest and incarceration" (ICITAP, "Republic of Haiti Police Development Project", revised draft of June 3, 1993, page 10). Resolution of this issue will be important to the development of a professional, well managed system of prisons.

Finally, questions of resources will be paramount. For example, there is no budget at this time for the maintenance of prison facilities or for the feeding and care of detainees and prisoners. Tribunals receive no financial support from the MOJ for equipment, facilities maintenance and supplies. Rather, greffiers in each tribunal must collect fees for a variety of court related transactions (Articles 46, 47 and 48 - 1985 legislation) according to an antiquated fee schedule (9/27/85 decree), return half of these revenues to the government, and draw on the balance for necessary expenditures other than salaries. This practice reduces access to justice for the majority of Haitians, 80% of whom live at or below subsistence level.

2.2 Proposed Program

2.2.1 Phase I -- Immediate Assistance

This brief period (6-9 months) begins on the day when political resolution has been achieved. One can assume that it will be a difficult one, when everything must be done at once but cannot. For these reasons, USAID supported actions in Phase I should be relatively simple to implement, and offer a reasonable likelihood of impact in the short term. Also, the period offers the opportunity to gather information and study the desirability of specific programs/actions in Phase II.

The principal activity should be to provide quickly the MOJ and its Minister with effective methods to monitor and supervise departments under its umbrella -- particularly in new areas

(police and prisons). Two other important Phase I activities are a brief education program for commissaires du gouvernement, and a set of studies/reports.

A. Ministry of Justice

The Ministry will be confronted with the need for new legislation and/or decrees, and for organizational and administrative changes in order to implement effectively its new responsibilities. The specific areas of its needs cannot be determined completely at this time, but they can be expected to be of broad variety.

Police and prisons: as a priority, the Ministry will need to define, organize and hold accountable the newly formed police department and prison administration. This will require new organic legislation, policies and procedures that address: mission, jurisdiction and institutional accountability; administrative and personnel structures (minimal qualifications, performance criteria, career ladder); and budget.

Further, the Ministry will need an internal systems capability, independent of ICITAP, to manage and monitor the prison/police department and hold it accountable. One alternative would be to recommend the appointment of a Secrétaire d'Etat (deputy)¹ in charge of the department, and a team of field inspectors charged with periodic reviews/assessment.

Prosecutors and court personnel: legislation, policies and procedures exist to govern these professionals. But the ministry may need to draft new organic legislation and develop new policies to clarify their functions. Further, the Ministry will have to re-assess the budget needed for these departments, and develop a monitoring capability similar to that for police/prisons (perhaps through a Secrétaire d'Etat in charge of the Parquet and Court Administration, if approved by the GOH, and field inspectors).

Information: as a corollary to the above, the Ministry will need data to monitor and measure progress. At first, a simple system of reporting basic information will suffice, enabling the Ministry to provide relatively accurate information on the administration of justice, probably for the first time in the country's history. For example, data should be collected on such matters as case loads, intakes, judicial decisions, etc.

Equipment: as noted, the Ministry lacks basic necessities, including simple equipment to conduct its mission in an effective way. Modest upgrading (such as additional long distance phone lines, fax and copying machines, a few Pcs) should be considered during this initial period.

¹Secrétares d'Etat are not mentioned in the MOJ organic legislation. But Ministers of Justice have the prerogative to recommend to the Ministers' Council (Conseil du Gouvernement) the appointment of Secrétares to oversee major or new activities.

B. Parquet (prosecutors)

There are 21 commissaires du gouvernement. They are appointed to serve with tribunals of first instance (15), courts of appeal (5) and the supreme court (1). They are assisted by 50-60 substitutes (assistants) and 40-50 commis (clerks) nationwide. The actual number of aides and administrative staff may be lower given the current number of vacancies throughout the system. Commissaires' functions are in part administrative on behalf of the Ministry and include, in theory, supervision of "police judiciaire" (criminal justice police) in their jurisdiction (Article 8 et seq. of Criminal Procedures Code), political (carrying out policies of the MOJ and the executive branch) and magisterial (as conciliators for civil cases, and prosecutors on behalf of the state).

Phase I of the judicial training activity (section 1.2.1, above) envisions a brief program of professional education for a large portion of the judiciary and court personnel. At that time also, ICITAP is supposed to implement an accelerated training program to police and prison personnel. These efforts will be undermined if the commissaires - a critical component of the justice system - are not involved in similar activities, and receive no information on the changes underway.

Program activities: A one week seminar would be provided to all 21 commissaires and their 60 (or so) associates. Through 3 rotations with 7 commissaires and 20 associates in each (fewer than 30 participants per seminar), the program would offer courses, information on new legislation and structures, and opportunities for discussion and reflection.

The curriculum would include such matters as:

- Mission of the commissaire's office, and principles of legal and ethical duties; for example, during trials commissaires are to use their judgment and act independently from the executive -- a major change from the practice they have been exposed to particularly in recent years.
- Synopsis of civil and criminal substantive law and procedures that guide their functions; review of routine procedures that have, in the past, been conducted in contravention of the code.
- Information on and discussion of new procedures and responsibilities (such as oversight of police judiciaire); inter-action with an independent judiciary; and any legislative changes that will have an impact on their functions (new organizational structures for instance).
- Curriculum on administration, budget, and relations with the public for commissaires; on case management and other procedures for associates.

expert would be charged with specific areas of responsibilities, and participate in joint activities with the other two. The team should be housed separately from the Ministry, but have easy access for consultations with high level officials in the Ministry.

The team will need to be assisted by a number of short term consultants (1-2 months) who would provide specialized expertise, such as:

- 2 consultants expert in prison and police management and policies
- 1 consultant (preferably Haitian - such as an experienced/retired commissaire du gouvernement) to assist in developing a training curriculum for the Parquet
- 1 consultant (preferably Haitian - such as an experienced/retired court administrator) to assist in court administration related activities
- 1 consultant expert in systems design
- 1-2 consultants (preferably Haitian) to conduct two of the proposed studies (feasibility of legislative update system; documentation of rural systems of dispute resolution)

The team will need also secretarial and logistical support, and possibly additional consultants if unforeseen issues arise.

One team member should work as soon as the project begins with short term consultants on issues of police and prisons, drawing on their knowledge to assess progress of the ICITAP project, and advising the Minister and Secrétaire d'Etat (if appointed). At the Minister's request, s/he would assist in the drafting of new legislation, procedures etc. in coordination with ICITAP, and in developing guidelines for field inspections. It will be important for the Minister and Ministry personnel to receive advice and information that are independent of the ICITAP project so that, in the long term, the Ministry will have the necessary capability to monitor the police department and management of prisons. If time permits, planning for prison programs (health, education, training) to be staffed by civilians (e.g. other than prison guards) should begin.

One team member, in collaboration with a consultant on court management, should assist the Secrétaire d'Etat for Court Administration and Parquet, (if appointed), by reviewing existing legislation and procedures, and developing proposals for legislative and procedural reforms, and guidelines for the monitoring of performance. Early in the program, this person should also assess, make recommendations on and procure basic equipment and supplies that are needed by the Ministry. The contractor would undertake these procurement activities, as well as any procurement for the courts (see section 1.2.2, above).

One team member, in consultation with an experienced (perhaps retired) commissaire du gouvernement, should be charged with the seminars for commissaires du gouvernement and

their substitutes (curriculum and materials development, organization of the seminars). This person should help select and might be part of the faculty (that might include also the Haitian consultant and members of the Haitian bar), select a training site, develop a rotation schedule for participants, and oversee logistics. Upon completion of the seminars, this team member would draft a report to summarize responses to questionnaires and make recommendations for the future (for example, desirability and feasibility of a continuing education program for commissaires).

Together, team members would

- conduct a review of court fees, and make recommendations
- recruit and oversee the work of two consultants, probably local, charged with 1) a feasibility study of systems to update codes and legislation, and 2) a documentation and analysis of informal systems of alternative justice
- help develop a simple reporting system for the MOJ, perhaps with the assistance of a systems expert - local or foreign
- be on call for advice to the Ministry as new, unforeseen issues develop, and
- develop a report proposing long term organizational and management improvements in the MOJ. The report would also set forth the assistance required from foreign donors, and include a scope of work for such assistance.

A small advisory commission (4-5 people) might be appointed by the Minister. Its purpose would be to provide a sounding board to the team of experts and to the Ministry on tasks such as legislation, policies and priorities. Members could include representatives of the judiciary and the bar, and leaders in the business, civic and grassroots communities. Its composition should not be limited to lawyers. If created, it should develop contacts with the Advisory Committee envisioned in the ICITAP proposal.

2.2.2 Phase II -- Long Term Assistance

The report developed by the Phase I contractor concerning long term organizational and management improvements, and other studies and reports carried out during Phase I, when reviewed and approved by the MOJ, would serve as the basis for the Phase II program. While such a program cannot be detailed at this point, if only because so much of it will be determined by developments during Phase I, its thrust presumably would be to re-enforce and institutionalize ad hoc reforms begun in Phase I.

people know of their right to access these tribunals for certain matters, informing them what steps to take in order to initiate access, advising them of their rights if brought before tribunals on criminal matters, and stressing that, unlike in the past, the government is committed to a fair and honest process for all -- the poor as well as the rich.

There are a number of factors to consider in designing these campaigns. The Haitian population is largely rural and not literate. Peasants in rural communities may live close to their land, but far from everything else. Most rural communities have no roads, electricity, or telephones. Because most people do not own or use donkeys or mules for personal use, they must travel on foot. It can take half a day to walk to the nearest marketplace, often through rugged mountains, and a day to the nearest small town.

Radio is seen by many to be the most effective means of conducting a public information and education campaign. However, although some aver that every third house in a rural community has a radio, others say that this may not be the case. The most remote rural areas may not be able to receive national or international broadcasts on an AM or FM frequency. It is questionable how many and to what extent regional radio stations are functioning at this time. Many regional radio stations are private and would probably charge to broadcast public education messages.

Haitians living in rural communities are geographically but not socially isolated. Interdependence within the family, extended family, and community is a means of survival in both the field and the household. People rely on their families and neighbors for information about the larger community and for entertainment. One interviewee explained that the most common form of entertainment among rural communities is to "bay odians", which means to gather in a household to talk, and tell jokes and stories.

At a larger community level or in smaller towns, information may also be distributed through grassroots church and peasant organizations. It would be difficult to determine the veracity or reliability of information shared within these informal and community level networks. Haiti often seems to be a country where every level of society is inundated with and sometimes controlled by rumors.

The social situation within urban poor neighborhoods differs in that there is not as much familial or regional affinity. There is more access to information through radio, T.V., billboards, and newspapers.

Given these conditions, the information campaigns should use the tools of media and community networks in careful coordination with each other. In view of the widespread illiteracy, radio would seem to be the medium of choice, though the effectiveness of supplementary devices, such as distributing foto-novelas in the marketplaces, utilizing cassettes, initiating radio school programs in Creole, should be the subject of research and pilot testing so that their utility in future campaigns could be assessed.

Implementation

Because of the nature of the activity, and the need for an immediate start, the preparation of the first campaign should begin immediately upon political resolution. No formal GOH approval or involvement would be sought, although there should be informed consultation with appropriate officials. USAID should seek an independent, respected private entity that would be willing to associate its name with the first media campaign. Government agreement and sponsorship would be obtained before further campaigns were undertaken.

USAID, using permitted accelerated contracting procedures, would select a U.S. firm with experience in mounting media campaigns designed to reach similar target groups (firms involved in birth-control campaigns, for example). The contract would cover Phase I and Phase II activities. This firm, through its media expert, would contact Haitian advertising agencies, assess their capabilities (perhaps by asking for sample campaigns) and select one or more with which it would sub-contract to develop and conduct the campaign, purchase media time, etc. The advertising agency would be expected to obtain necessary expert advice from experienced lawyers and NGOs.

The U.S. firm would also meet and review material with the involved community outreach organizations (see below) to assure a coordinated effort in the campaign. Its media advisor would return from time to time to approve and/or modify proposed campaigns, assess their effectiveness, and reaffirm the coordination with community outreach organizations. From time to time during Phase I, it would conduct pilot testing of other media devices, using initial base-line data and post-campaign sampling.

Because the effectiveness of a widespread media campaign may be limited given its impersonal delivery and the complexity of the issues, it is imperative that the campaign be supported and expanded by a program to seek out and implement the best way to involve community groups in outreach and education. To achieve this, USAID should contract with or make a grant to an entity such as PIREA, which would seek proposals from Haitian NGOs involved in education who wish to expand their community outreach in civic education. The contract or grant would include both Phase I and Phase II activities. Utilizing an already established entity such as PIREA would appear to be the most efficient alternative -- assuming USAID believes that the addition of such a program would not overtax its capabilities. USAID could consider funding an addition to PIREA's field staff for this program. Whichever entity is selected, it would seek proposals, evaluate them and make subcontracts to selected recipients. It would encourage applications from community based organizations - such as grassroots church and peasant groups - which have the interest and capability to participate in a public education campaign on basic constitutional rights, concepts of democracy, justice and the rule of law, and access to the government and legal systems. The entity would work closely with the agencies involved in the media campaign in developing material that could be used by the community-based organizations.

The contracts would require both contractors to prepare final reports at the conclusion of Phase I stating results achieved and recommendations, and would stipulate that, before any Phase II activities were to start, both contractors would participate with USAID and the MOJ in a detailed review of these reports.

Program Costs

Under its contract with the U.S. firm, USAID would pay for its technical assistance, for the charges of the advertising agencies, and for purchasing media time. The grant or contract with the PIREG-like organization would pay its costs, including those of all sub-grants or sub-contracts.

3.2.2 Phase II -- Long-Term Assistance

During Phase II, there would be an extended series of civic education campaigns, using methods found to be successful in Phase I. The number, frequency, media of choice, and mix of media and outreach would be determined in part by an evaluation of the coverage and impact achieved by the Phase I campaigns.

The Phase II campaigns would be more educational than those of Phase I. Each would be devoted to a particular type of legal issue that could impinge upon the typical audience member, e.g., animal trespass, land border disputes, typical misdemeanors. Each campaign would attempt to explain why such disputes arise; what the interests of the different parties may be; whether informal mediation would be appropriate; if not, then how the courts can help resolve the matter; and why it is important that the parties abide by the decision. Three such campaigns, of eight weeks duration, during each of the first three years of Phase II would be contemplated.

Implementation

The contracts and/or grants made by USAID with the media firm and the umbrella organization for Phase I activities would also include a general description of Phase II activities. Thus, no new contracting would be required for Phase II although certain elements of the scope of work might be sharpened on the basis of Phase I experience.

3.3 Legal Services for the Poor

Attempts to remedy the poor's lack of legal representation have been initiated in the past. In 1979, USAID authorized assistance to the Bar Association of Port-au-Prince for a Legal Assistance to the Poor project. It was never implemented. In recent years some NGOs have developed programs involving the training of paralegals, recognized by justices of the peace, who offer their services to the poor in rural areas. Such programs are comparatively new, and their effectiveness unproven. More to the point, their area of coverage is limited, the

likelihood of their long-term sustainability is uncertain, and their potential for significant replication is questionable.

There is no doubt as to the need for the disadvantaged to be able to obtain legal (or para-legal) assistance when they become involved in criminal or civil disputes. When such is lacking, the idea of rule of law and justice for all is mocked. The question is how to make such assistance, of acceptable quality, broadly available at sustainable cost. Should it be a government program, with the potential disadvantages that suggests? Should the private sector, alone, be looked to, with the pervasive questions of sustainability and replicability? Should there be a combination of both? Should the beneficiaries contribute modestly to the programs costs?

During Phase I, USAID should fund a study which would examine the needs, consider the alternatives, and recommend a program. For convenience of administration, this study could be included as part of the scope of work of the contractor which will be assisting with the study of a long-term training institution for the judiciary (see section 1.2.1.1, above).

This study should be carried out by a combined team of foreign experts, experienced in legal aid or public defender programs, together with Haitian lawyers who have been involved in related programs. If a Ministry of Justice representative does not participate as well, the Ministry should, at a minimum, endorse the idea of such a study before it is undertaken. The study should recommend a plan of action, and offer a detailed financial analysis.

During Phase II, if the recommended program receives the necessary approvals, USAID should provide support which could include technical assistance, equipment and materials and even core financial support, e.g., salaries, for a limited period of time.

4.0 Summary of Implementation Actions During Phase I

A series of procurement activities has been proposed for Phase I. These include:

- Contracting with an organization to assist in providing short term training to justices and clerks of the tribunals of peace.
- Contracting with an organization to assist in studying alternatives and making recommendations for an approach to meet the training needs of the judiciary over the long term, and to study alternatives and make recommendations for providing legal services for the poor.
- Contracting with an organization to provide assistance to the Ministry of Justice.
- Contracting with an organization to develop a series of media campaigns.
- Contracting with an organization to make a number of subcontracts or grants to community outreach organizations.
- Perhaps (this might take place in Phase II) contracting with an organization to develop a series of workshops and seminars on "separation of powers" and other related subjects, and to assist in developing the bar as a strong support for an independent judiciary.

This would constitute five or perhaps six procurement activities and separate contractors to monitor -- a not inconsiderable burden for an understaffed mission. If certain of these programs could be combined into one procurement activity, and one contract, the burden might be alleviated somewhat.

The first contracts to be let are in connection with public information activities -- for the media campaign and for the community outreach program. It is recommended that these be let immediately upon political resolution. Since other Phase I activities are to be contracted for only after agreement with the Ministry of Justice, combining any of these later actions with the first two contracts does not seem feasible. Nor, given the distinct nature of the media campaigns and community outreach activities, and the suggestion that an institution already operating in Haiti be utilized for the latter, does it seem feasible to combine these two activities in one contract.

Since the contract for workshops and seminars and strengthening the bar should be let late in Phase I, if not in Phase II, it cannot readily be combined with any other Phase I contract, all of which should be initiated earlier. In any event, this contract seems appropriate for separate procurement.

That leaves the contracts for short term judicial training, for studies and reports on meeting long term judicial training and legal assistance needs, and for assistance to the Ministry of Justice. All of these contracts should be made as soon as possible after agreement is reached with the Ministry of Justice. It would be theoretically possible to combine all three activities into one procurement, selecting one contractor (or consortium) for the several tasks. While such an approach could reduce the number of procurement actions, as well as the consequent monitoring burden for USAID, there are other factors that must be considered:

- The Minister of Justice might be prepared to approve one or two of the activities immediately, but require more time for negotiations before approving all three. It would be a mistake to delay the initiation of the short term judicial training activity, or the assistance to the Ministry, because agreement on the long term judicial training and legal assistance studies had not been reached. This is particularly true with respect to the short term judicial training activity which requires a significant lead time.
- Combining two or three activities in one contract may not optimize the choice of consultants. When the activities are combined, one contractor might offer consultants which, as a group, are preferable to those offered by any other contractor, and thus be selected. However, the consultants proposed by one of the other contractors for one particular activity may be preferable to those proposed for that activity by the successful contractor. Therefore, if this alternative is considered by USAID, it would be useful to reserve the right to award a contract for all of the activities, or for any separate activity, to any one contractor for what USAID deems to be its best interests.
- If Sector 614 authority is not available, and so recourse must be made to the authority to contract for less than \$250,000 or by utilizing an 8(a) contractor, then separate procurement actions would be preferable.

In the final analysis, USAID will have to make its decision considering the trade-offs of administrative ease, program demands, and quality of personnel.

APPENDIX A: Persons Interviewed

AMERICAN BAR ASSOCIATION (ABA)

Mark S. Ellis, Executive Director of the Central and East European Law Initiative
R. William Ide III, President Elect, ABA
Andrew Joshua Markus, attorney

CANADIAN EMBASSY

Anne Tremblay, Program Officer, Cooperation/Development Program

FRENCH EMBASSY

Jean Michel Redon, Head of Mission, Cooperation/Cultural Action Program

HAITIAN GOVERNMENT

Wilson Ciceron, Public Prosecutor, Port-Au-Prince
Gerard Dalvius, Attorney, Secretary of State under Aristide Government
Levelt Dorcile, Public Prosecutor, Mirebalais
Serge Francois, Assistant Judge, Court of Conciliation, Petion-ville
Erick Jean-Paul, Chief Clerk, Court of Conciliation, Petion-ville
Samuel Madistin, Deputy, Head of the Justice Commission
Jean Robert Martinez, Senator, Head of Human Rights Commission

HAITIAN INTEREST GROUPS AND NON-GOVERNMENTAL ORGANIZATIONS

Amicale des Juristes

Rene Julien, Director
Camille LeBlanc, Coordinator

Haitian Association of Volunteer Agencies (HAVA)

Frank Desir, Director of the Legal Aid Section

Haitian International Institute for Research and Development (IHRED)

Leopold Berlangier, Director

Port-Au-Prince Bar Association

Louis Gary Lissade, President

MARTIN LUTHER KING CENTER, ATLANTA

Captain Charles Alphin, Senior Consultant
Bernard Lafayette, Senior Consultant, President of American Baptist College
Harold Sims, Senior Consultant, Team Leader

INTERNATIONAL CRIMINAL INVESTIGATIVE TRAINING ASSISTANCE PROGRAM (ICITAP), WASHINGTON D.C.

Cary Hoover
Janice Stromsen

PRIVATE ATTORNEYS AND OTHERS

Jean-Baptiste Brown, Attorney
Arnold Charles, Former Chief Judge of the Court of First Instance, Port-Au-Prince
Roger Dunwell, American Attorney living in Haiti
Chantal Hudicourt Ewald, Attorney, Member of Drafting Committee of 1987

Constitution

Dr. Micha Gaillard, Member of Presidential Commission
Pierre Gonzalez, Attorney, Former Minister of Justice
Pierre Labissiere, Attorney, Former Minister of Justice
Francois-Guy Mallary, Attorney
Serge-Henri Vieux, Attorney, Professor at Quisqueya University
Jean-Claude William, Attorney, Director of the Center for Research on Local Government in the Caribbean, Martinique

UMBRELLA MANAGEMENT UNIT (UMU)/PIRED

Karen Djop, Director of Institutional Development
Ira Lowenthal, Chief of Party
Jean Paul Poirier, Financial Management Specialist

UNITED NATIONS DEVELOPMENT PROGRAM (UNDP)

M. Juan Luis Larrabure, Resident Representative
Josiane R. Marcelin, Program Assistant
Odile Sorgho-Moulinier, Assistant Resident Representative
Clemencia Munoz, Resident Representative Assistant

UNITED NATIONS/ORGANIZATION OF AMERICAN STATES CIVIL MISSION (UN/OAS)

Colin Granderson, Head of Mission
William O'Neill, Deputy Director, Legal Department

UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT (USAID)

Olivier Cardunet, LAC/DR - Washington
David Cohen, Director - Haiti
Gerry Bowers, Deputy Director - Haiti
Elizabeth Conrad, DEP Coordinator - Haiti
Ed Dragon, Regional Legal Advisor - Jamaica
Allen Eisenberg, Regional Contracting Officer - Barbados
Debra McFarland, LAC/DI - Washington
Jane Nandy, Democracy Project Officer - Haiti
Karen Poe, Chief of General Development Office - Haiti

UNITED STATES EMBASSY

Ellen Cosgrove, Political Officer

**UNIVERSITY OF HAITI, PORT-AU-PRINCE, COLLEGE OF LAW AND
ECONOMIC SCIENCES**

Blanchard Jean Baptist, Assistant Secretary-General

Justin Castel, Dean, College of Law

Dr. Julio D. Fievre, Assistant Dean, Department of Economic Sciences

Fritz Jean Louis, Assistant Dean, College of Law

Dorval E. Nicolas, Secretary-General

APPENDIX B: Documents Reviewed

STRATEGY

Cosgrove, Ellen

Haitian Justice - Analysis of Failings and Blueprint for change, June 1993

USAID

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USAID

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CEDH

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CENJP

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USAID

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APPENDIX C: SCOPE OF WORK

HAITI: SUPPORT FOR THE JUSTICE SECTOR STATEMENT OF WORK FOR A SITUATIONAL REVIEW

1. BACKGROUND:

a. The political environment: After centuries of centralized authoritarian rule, the eight months of the Aristide presidency represents a short-lived experience with the notion that power must be shared -- among the executive, the legislature, and the judiciary, among the central government and the governments of the departments and rural sections, and among the range of political parties and other independent sector interest groups. This experience abruptly ended in the wake of the September 1991 *coup d'état*.

b. The policy environment: The recent UN/OAS accord, which effected the dispatch of a civil mission ("the mission") to Haiti, is a first step toward a comprehensive political solution to the 18-month old Haitian crisis. The mission will initially focus on monitoring and helping to guarantee the respect of human rights. The mission provides a framework within which the international community can address long-standing policy interests to support judicial reform while restoring rule of law.

c. Haitian Needs: Haiti's institutions and processes for administering justice are extremely weak, and fail to generate much confidence in the general populace. The country's numerous regimes have generally been governments of men, not rules. Popular expectations of the masses in terms of administration of justice are low-to-nil, and the application of the justice system is often haphazard and/or corrupt. Lawyers and judges who have tried to pursue an independent justice system have generally been intimidated, co-opted, exiled, or killed.

The legislative basis for justice in Haiti derives from the Napoleonic Code. Several specific codes written in 1825-1835 are still applied, virtually unchanged, today. In addition to this occasionally out-dated legal framework, constraints to improved administration of justice include corruption and inefficiency within the Ministry of Justice and the court system, poor training of court personnel, unavailability of legal forms (warrants, birth and death certificates, etc.), and historical structural conflicts due to army command over rural police functions.

The 1987 Constitution includes a number of significant provisions which will have a strong impact on administration of justice when and if they can be effectively implemented. These include, *inter alia*: a Constitutionally-mandated bill of rights, with specific provision for individual rights, freedom of expression, freedom of conscience, freedom of association, the right to private property, the right to information, and the right to individual security,

clear

separation of powers between the executive, legislative, and judicial branches of government;

the creation of an independent Office of the Protection of the Citizen, established to help ensure individual liberties; and separation of the police and army functions, with a number of clauses specifically limiting military action. At the time of the *coup d'état*, the Ministry of Justice was in the process of drafting new organizational laws for the courts system and itself, including provision for oversight of an autonomous national police force.

Although these provisions of the Constitution are sound and generally supportive of democratic principles, it will take political resolution and a great deal of political will to make sure they are actually implemented. For example, the right to individual liberty, which according to the Constitution includes the requirement for written warrants of arrest, is not respected, with numerous persons "arrested" and detained without charge, arraignment, or trial for long periods of time. As of late September 1991, less than 100 of the approximately 1000 persons in the national penitentiary had been tried, and some had been there more than six months. Also, the April, 1991 decree establishing an autonomous separate Police Force under the oversight of the Ministry of Justice has never been implemented. "Justice" is still arbitrarily meted out by former Rural (military) Section Chiefs. The level and extent of political will, and priorities, for enforcement of these numerous new Constitutional provisions remain unclear.

d. **U.S. Experience to Date:** The U.S. has had only minimal experience with Haitian judicial systems. A USAID/Haiti Project Paper was prepared during FY 78 for "Legal Assistance to the Poor" (521-0120) through the Port-au-Prince Bar Association, but the project was never implemented due to resistance from the Duvalier regime. In September 1986, the Haitian Ministry of Justice submitted to USAID a \$42 million Judicial Reform Plan for financing; based on a review by an AID/Washington consultant from the Office of Administration of Justice and Democratic Development, the only response possible at the time (given the political situation) was provision of approximately \$ 200,000 local currency equivalent to the Ministry of Justice, for necessary materials (forms, files, etc.) for the civil registry. In FY 1988, experts from the University of Wisconsin's Land Tenure Center undertook a review of land, tree, and water legislation and administration, with a resultant proposal to work closely with the Special Land Tribunal in St. Marc, near the rich farmlands of the Artibonite Valley. The proposal was never funded due to the difficult political environment of the time, and the Special Land Tribunal has been closed for some years.

In FY 90-91, the USAID Elections Management Assistance Project (521-0232) provided computers and technical assistance to support the creation of an electoral registry, which was established but not adequately linked to the civil registry due to pressures to

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undertake the elections. In FY 90-91, under the Development of Democracy Project (521-0591), grant funding was provided to non-governmental organizations (NGOs) for work in human rights education and monitoring (CHADEL and the Haitian Lawyers Committee), paralegal training (Amicale des Juristes), and a pilot project to train rural judicial personnel (IHRED). Amicale des Juristes currently receives USAID support under the Democracy Project (DEP).

e. ICITAP role: In July 1991, the American Embassy and USAID supported the visit of representatives from the International Criminal Investigative Training Assistance Program (ICITAP) of the U.S. Department of Justice, which proposed a one-year program to develop basic criminal investigative capacities in the justice system. ICITAP has recently completed a comprehensive five-year police development plan to effect the separation of the police from the military and provide transitional, basic skills and criminal investigations training. A separate document, outlining the details of the first six months of activity, has also been prepared by ICITAP. ICITAP has also re-visited Haiti twice between March/April 1993 with the objective of designing immediate assistance steps for the Constitutionally-mandated separation of the police from the military upon political resolution. It is important to coordinate ICITAP assistance in the development of the police and criminal investigative systems with assistance to the judicial system so that the expertise of both systems can be developed at a compatible pace.

II. OBJECTIVE:

a. Goal: The goal of the Administration of Justice (AOJ) project to which this assessment will contribute is to promote more effective and enduring democratic institutions that respond to the needs of the Haitian people, reinforce the rule of law and foster respect for human rights.

b. Purpose: The purpose of the AOJ project is to improve the effectiveness, accessibility and transparency of the Haitian justice system.

c. Setting of the Review: The project is being designed to provide the U.S. with a quick and flexible response capacity to begin strengthening the justice sector immediately after political settlement. It will be implemented in two phases. Phase I will start upon political resolution and will last six-nine months. The primary objective of this initial phase is to facilitate the separation of the police from the military, and to enable the Ministry of Justice to undertake its new responsibilities. The primary role for AID during this initial phase will be to:

- assist in forming the legislative/legal/administrative basis for the separation of the police from the military; and
- establish a critical interface with activities (many of which will be supported

by ICITAP) undertaken to ensure the separation and professionalization of the police from the military.

USAID expects to play this role during Phase I by providing essential assistance including:

- technical assistance as needed by the Ministry of Justice;
- short-term, low-cost inputs (eg, equipment and training) to help the justice system meet its new responsibilities;
- needs assessments required to identify more focussed Phase II project activities and requirements;
- policy dialogue with the constitutional Government of Haiti to establish Phase II priorities; and
- close coordination with other donors to clarify their AOJ interests and inputs.

d. **Full-scale project implementation:** This will take place during Phase II, with USAID assistance focussed on three main areas of concentration:

- the court system;
- administrative assistance to the Ministry of Justice; and
- the legal system

Specific assistance requirements and the means for providing such assistance will be resolved during Phase I.

e. **Purpose of the Review:** The team will conduct a review of the justice system, particularly focussing on the first six - nine months following a negotiated settlement. The review will carry out five tasks:

- Provide detailed recommendations on how AID could assist the Ministry of Justice's efforts to reorganize in order to supervise the police, prison and court systems.
- Define immediate actionable steps for AID assistance to the justice system in the first six - nine months (Phase I of the project) following a political settlement, including suggested institutional arrangements, including issues of symmetrical training assistance with that being proposed by ICITAP for the police and establishing a constituency for reform within the restored government.
- Define what conditions should exist to mark the beginning of full-scale project implementation (phase II of the project), describing what measures the GOH should have undertaken to indicate sufficient political will to justify further USG investments in this area and including what areas should receive USG focus in Phase II.

- Identify areas of other donor assistance, including recommending specific areas where multilateral donors may have a greater comparative advantage to provide assistance than the U.S. Government.
- identify areas for further study, including writing scope of work, in order to define longer-term assistance steps following the first six - nine months.

The justice system review will be conducted by a three-person team for a three-week period with one team member designated as team leader.

III. Scope of Work:

a. **General:** The review discussed herein should give as complete a picture as possible of the immediate transition needs of the judicial sector, with recommendations on the conditions that need to exist prior to starting phase II of the project, including the definition of additional studies needed to complete the longer-term assistance picture.

b. **Specific tasks:** The Review Team will examine the following facets of the justice sector in Haiti:

1. **Needs and means for facilitating the separation of the police from the military and strengthening MOJ capability to undertake its new responsibilities**

1.2 **Police and the Prison system:** Haiti's constitution of 1987 mandates the separation of the police from the military. In 1989 a Presidential decree transferred the prison system from military control to the Ministry of Justice. Both were done as a means of ending the long-standing corruption and abuse suffered by the people at the hands of the armed forces. The satisfactory removal of the police from the military is included as an element of the agreement reached between Haiti's *de facto* authorities and the UN/OAS. Civilian control of the prison system is another important aspect, and is particularly relevant to correcting long-standing human rights abuses. The main objective of this section will be to formulate a plan for AID transition assistance to Ministry of Justice efforts to reorganize in order to supervise and bring under civilian control the police and the prison system. The team will:

- Review and recommend immediate and longer-term steps for implementing the organic law on placing the police under MOJ supervision. In collaboration with ICITAP's plans, identify how AID can assist this process, including suggested institutional arrangements. Identify areas in which new laws pertaining to MOJ supervision of policing functions are required and recommend how to coordinate/encourage their development.

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c. **Haitian Needs:** Haiti's institutions and processes for administering justice are extremely weak, and fail to generate much confidence in the general populace. The country's numerous regimes have generally been governments of men, not rules. Popular expectations of the masses in terms of administration of justice are low-to-nil, and the application of the justice system is often haphazard and/or corrupt. Lawyers and judges who have tried to pursue an independent justice system have generally been intimidated, co-opted, exiled, or killed.

The legislative basis for justice in Haiti derives from the Napoleonic Code. Several specific codes written in 1825-1835 are still applied, virtually unchanged, today. In addition to this occasionally out-dated legal framework, constraints to improved administration of justice include corruption and inefficiency within the Ministry of Justice and the court system, poor training of court personnel, unavailability of legal forms (warrants, birth and death certificates, etc.), and historical structural conflicts due to army command over rural police functions.

The 1987 Constitution includes a number of significant provisions which will have a strong impact on administration of justice when and if they can be effectively implemented. These include, *inter alia*: a Constitutionally-mandated bill of rights, with specific provision for individual rights, freedom of expression, freedom of conscience, freedom of association, the right to private property, the right to information, and the right to individual security;

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separation of powers between the executive, legislative, and judicial branches of government;

the creation of an independent Office of the Protection of the Citizen, established to help ensure individual liberties; and separation of the police and army functions, with a number of clauses specifically limiting military action. At the time of the *coup d'état*, the Ministry of Justice was in the process of drafting new organizational laws for the courts system and itself, including provision for oversight of an autonomous national police force.

Although these provisions of the Constitution are sound and generally supportive of democratic principles, it will take political resolution and a great deal of political will to make sure they are actually implemented. For example, the right to individual liberty, which according to the Constitution includes the requirement for written warrants of arrest, is not respected, with numerous persons "arrested" and detained without charge, arraignment, or trial for long periods of time. As of late September 1991, less than 100 of the approximately 1000 persons in the national penitentiary had been tried, and some had been there more than six months. Also, the April, 1991 decree establishing an autonomous separate Police Force under the oversight of the Ministry of Justice has never been implemented. "Justice" is still arbitrarily meted out by former Rural (military) Section Chiefs. The level and extent of political will, and priorities, for enforcement of these numerous new Constitutional provisions remain unclear.

d. **U.S. Experience to Date:** The U.S. has had only minimal experience with Haitian judicial systems. A USAID/Haiti Project Paper was prepared during FY 78 for "Legal Assistance to the Poor" (521-0120) through the Port-au-Prince Bar Association, but the project was never implemented due to resistance from the Duvalier regime. In September 1986, the Haitian Ministry of Justice submitted to USAID a \$42 million Judicial Reform Plan for financing; based on a review by an AID/Washington consultant from the Office of Administration of Justice and Democratic Development, the only response possible at the time (given the political situation) was provision of approximately \$ 200,000 local currency equivalent to the Ministry of Justice, for necessary materials (forms, files, etc.) for the civil registry. In FY 1988, experts from the University of Wisconsin's Land Tenure Center undertook a review of land, tree, and water legislation and administration, with a resultant proposal to work closely with the Special Land Tribunal in St. Marc, near the rich farmlands of the Artibonite Valley. The proposal was never funded due to the difficult political environment of the time, and the Special Land Tribunal has been closed for some years.

In FY 90-91, the USAID Elections Management Assistance Project (521-0232) provided computers and technical assistance to support the creation of an electoral registry, which was established but not adequately linked to the civil registry due to pressures to undertake the elections. In FY 90-91, under the Development of Democracy Project (521-0591), grant funding was provided to non-governmental organizations (NGOs) for work in human rights education and monitoring (CHADEL and the Haitian Lawyers Committee),

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paralegal training (Amicale des Juristes), and a pilot project to train rural judicial personnel (IHRED). Amicale des Juristes currently receives USAID support under the Democracy Project (DEP).

e. **ICITAP role:** In July 1991, the American Embassy and USAID supported the visit of representatives from the International Criminal Investigative Training Assistance Program (ICITAP) of the U.S. Department of Justice, which proposed a one-year program to develop basic criminal investigative capacities in the justice system. ICITAP has recently completed a comprehensive five-year police development plan to effect the separation of the police from the military and provide transitional, basic skills and criminal investigations training. A separate document, outlining the details of the first six months of activity, has also been prepared by ICITAP. ICITAP has also re-visited Haiti twice between March/April 1993 with the objective of designing immediate assistance steps for the Constitutionally-mandated separation of the police from the military upon political resolution. It is important to coordinate ICITAP assistance in the development of the police and criminal investigative systems with assistance to the judicial system so that the expertise of both systems can be developed at a compatible pace.

II. **OBJECTIVE:**

a. **Purpose:** The purpose of this scope of work is to conduct a situational review of the justice system, particularly focussing on the first 180 days following a negotiated settlement. The review will carry out four tasks:

- provide detailed recommendations on how AID could assist the Ministry of Justice's efforts to reorganize in order to supervise the police and the prison system.
- define immediate actionable steps for AID assistance to the justice system in the first 180 days following a political settlement, including suggested institutional arrangements, particularly focussing on the issues of symmetrical training assistance with that being proposed by ICITAP for the police and establishing a constituency for reform within the restored government.
 - identify areas of other donor assistance, including recommending specific areas where multilateral donors may have a greater comparative advantage to provide assistance than the U.S. Government.
 - identify areas for further study, including writing scope of work, in order to define longer-term assistance steps following the first 180 days.

The justice system review will be conducted by a three-person team for a three-week period with one team member designated as team leader.

III. **Scope of Work:**

a. **General:** The situational review discussed herein should give as complete a picture as possible of the immediate transition needs of the judicial sector, with recommendations on additional studies needed to complete the longer-term assistance picture.

b. **Specific tasks:** The Review Team will examine the following facets of the justice sector in Haiti:

1. Detailed analysis for creating an independent policing capability under MOJ supervision

1.2 **Police Force and "Judicial Police" and the Prison system:** Haiti's constitution of 1987 mandates the separation of the police from the military. In 1989 a Presidential decree transferred the prison system from military control to the Ministry of Justice. Both were done as a means of ending the long-standing corruption and abuse suffered by the people at the hands of the armed forces. The satisfactory removal of the police from the military is included as an element of the agreement reached between Haiti's *de facto* authorities and the UN/OAS. Civilian control of the prison system is another important aspect, and is particularly relevant to correcting long-standing human rights abuses. The main objective of this section will be to formulate a plan for AID assistance to Ministry of Justice efforts to reorganize to supervise the police and the prison system. The team will:

- Review and recommend immediate and longer-term steps for implementing the organic law on placing the police under MOJ supervision. Identify how AID can assist this process, including suggested institutional arrangements. Identify areas in which new laws pertaining to MOJ supervision of policing functions are required and recommend how to coordinate/encourage their development.
- Propose a structure/modus operandi for police - court cooperation. Identify how AID might assist this process, including institutional arrangements.
- Establish targets or benchmarks to evaluate the Government of Haiti's progress in implementing judicial reform and establishing the political will necessary for police supervision.

The team will be mindful that if assistance to either the justice or police systems outpaces or lags substantially behind the other, the overall administration of justice in the country will suffer.

1.3 **Justice Training Academy:** The constitution requires the establishment of a judge's school (*École de la Magistrature*). Within the framework of an action plan of assistance, the team will:

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- Provide an assessment of the immediate justice training needs, including a site survey, logistics and language requirements. Prioritize the delivery of this assistance, including establishing a time-line for deliverables. What should the training priorities be for the first 180 days and what is AID's role in assisting those priorities?
- Identify practical interventions/actions, key actors or initiators and nature of resource requirements.
- Identify MOJ transition training requirements in order to immediately effect MOJ supervision of the police and the prison system.
- Identify immediate training requirements of the justices of peace who are at the front lines of the justice system in Haiti. Define AID's role.

2. A six-month action plan of immediate AID assistance

2.2 **Next steps:** Within the framework of answering 1.2 and 1.3 above, the team will define and develop an immediate action plan of assistance for AID/Haiti for the first 180 days following a negotiated settlement. The focus is on effecting MOJ supervision of the police and the prison system and identifying the immediate transition needs of the justice system. The team will:

- Define a role for AID in effecting MOJ supervision of the police and the prison system and the immediate transition needs of the justice system. Define how AID can assist the establishment of a justice training academy. Define specific training areas other donors may have a greater comparative advantage in providing. Training is an important component of a larger effort to establish civilian control of an independent police force, and to reinforce MOJ supervision of that force. Training will introduce, however, significant changes in the way people perform their jobs. Recommend priority and immediate GOH support measures/resources that will be required in order for the training to be effectively used.
- Define the problems and concisely propose immediate steps ("how to's") and structures for addressing them. State which assistance steps depend on the passage of enabling and/or parallel reform legislation. Define assistance needed by the National Assembly to develop the necessary legislation and how technical assistance might be provided to assist this process (whether USG or from another donor).
- Recommend how to create a Government of Haiti constituency for change among those who will be responsible for sustaining any reforms to the justice and police sectors.
- Define other priority areas of justice assistance the team believes are important, including suggesting institutional arrangements, for supporting a negotiated settlement in the first 180 days.

3. The Multilateral Role

3.2 **Donor assistance:** The review will describe current donor plans or programs for reform or improvement in the sector, and the likelihood of such plans or programs being implemented in the medium term. Prior to the 1991 coup, France and the UNDP were engaged in discussions with the Ministry of Justice on judicial reforms, with the French interested in police and magistrate training, and the UNDP in penal reform and magistrate training. The team will obtain as much information as possible on continuing plans for such assistance. The team will further recommend which areas of assistance to the justice system may be more appropriate for a multilateral donor or where donors need to work in concert with each other.

4. Medium and Longer-term Design Studies

4.2 The proposed strategy of the under-design Administration of Justice Project is to provide a framework for a collaborative, facilitative and flexible process to identify judicial reform priorities, define the elements of specific reforms and develop response mechanisms over time. Accordingly, the project will be designed in two phases: assistance needs for the first 180 days of the transition phase immediately after a political settlement and the medium and longer-term assistance needs that are not immediately tied to a political settlement and will require more time. The team should therefore identify a priority "menu" of reform topics for further study over the medium and longer-term, including drafting suggested scopes of work.

IV. **Briefings and Deliverables:**

a. **Briefing:** In addition to informal discussions with USAID during the conduct of the review, the team will be responsible for conducting an Inter-agency exit debriefing, summarizing the relevant findings and conclusions of the situational review.

b. **Deliverables:** The report will be organized to include: 1) table of contents; 2) executive summary; 3) body of the report; 4) appendices; and 5) list of documents reviewed and people interviewed. The report will be organized to include:

- For each topic listed under specific tasks, 1) summarize the problems facing the justice system; 2) discuss potential measures supportive of system reform; 3) identify, as appropriate, key assumptions for successful implementation of the reform measures; and 4) identify additional studies needed for each topic, including draft scopes of work.
- Identify 1) immediate, actionable steps for AID assistance to MOJ efforts to reorganize to supervise the police and the prison system, 2) differentiate between what assistance can be provided immediately in the context of USG resource availability and counterpart commitment and assistance activities which require other a long-term, sustained focus. Identify assistance activities

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more appropriate for a multilateral donor or where the AID should work in tandem with one or more donors.

- The situational review should identify impediments to improvements in the system, both of a practical nature and those which result from a lack of political will to bring about change. As time permits, the team should identify circumstances where groups or individuals benefit from the current dysfunctions of the system and what can be done to overcome the opposition of these groups and individuals.

An additional 5 days is provided in the budget for the team leader to assist in finalizing the report.

V. Methodology:

a. **Technical direction:** The team will work under the direction of the Deputy Chief, USAID/GDO. USAID will review the team's draft report and provide comments on the accuracy of findings and feasibility of recommendations being undertaken.

b. **Interviews:** The team will conduct structured and unstructured interviews with government officials, private practitioners, academics, concerned non-governmental groups, and private individuals in Port-au-Prince. One deliverable under the contract, an annex to the report, will be a listing of persons interviewed, and an identification of those who might participate in further development of the AOJ project.

VI. Personnel Required:

The review will be undertaken by a three-person team for a three-week period beginning with agreement on a political settlement. One team member will function as Team Leader. The contractor is requested to provide members of the team as follows:

- Three Specialists in Constitutional and Criminal Law, with academic background and extensive experience in Napoleonic Code judicial systems, particularly in the criminal area, preferably a judge and/or prosecutor.

Ideally team members should have a FSI 3/3 in French. The team members will produce their final report in English, with funds available to produce a French translation. The possibility of a one-day consultation in AID/Washington with I.AC/DI, STATE/ARA and ICITAP prior to travelling to Haiti will be determined.

DRAFT May 24, 1993