

**MANAGEMENT SYSTEMS INTERNATIONAL**

**USAID/HAITI  
ADMINISTRATION OF JUSTICE PROJECT  
521-0238**

**1999-2004 DESIGN RECOMMENDATIONS  
RULE OF LAW DESIGN**

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## Introduction

This report addresses a number of the issues involved in the redesign of USAID/Haiti=s Administration of Justice (AOJ) Project, one of the programs contributing to the realization of USAID=s Strategic Objective, *More Genuinely Inclusive Democratic Governance Attained*. The report also includes discussions of the principal activity packages, modes of action for achievement, and procurement options for Intermediate Result 4, *People Increasingly Treated According To The Rule of Law*.

The consulting team from Management Systems International (MSI) completed a round of briefings, interviews and document retrieval in Washington, D.C. before proceeding to Port-au-Prince, Haïti. After arrival in Haïti, the team participated in team planning meetings and other discussions with the relevant USAID team and carried out interviews with USAID, partner representatives, customers in the private/civil society sector and the Government of Haïti (GOH), and implementing agents who are currently working on existing AOJ and Democracy and Governance projects.

### Report Format

Beyond some limited guidelines, the USAID re-engineering precepts do not prescribe any specific content or format for results packages. This in part reflects the USAID core value of Aempowerment and accountability.@ The Agency also allows field missions considerable latitude in developing activities and modes of achievement that are linked to the approved strategic objective results framework and special needs of host country customers. Accordingly, the format for the design document derives from the above-referenced scope of work and the key elements therein that USAID/Haïti suggests should be included in its result packages design. The contractor made recommendations concerning specific items to be addressed and prepared a comprehensive outline.

USAID/Haïti, to date, has achieved a degree of success in its Administration of Justice activities. Many of the requisite conditions, facilities, trained personnel, and resource materials for follow-on activities have been established. The activities presented in the proposed design build on these accomplishments and seek to reenforce current efforts to institutionalize reform of the country=s justice sector in moving toward higher-level results to the extent feasible given the evolving political environment.

This document is organized around the following Mission-approved results:

- " Judges better equipped to apply the law;
- " Cases move through the justice system in model jurisdictions more efficiently;

- " More actions taken to protect human rights;
- " Formal complaints about police misconduct more frequently resolved.

Each of these results is discussed in concert with its associated activities and linked to an indicative set of tasks such that the activities and tasks could be adapted for inclusion in the necessary USAID/Haiti procurement actions.

### **The Role of the GOH**

The team acknowledges that despite its well-documented weaknesses, the GOH has taken several important steps to address the problems of judicial reform. Of particular relevance to the task of redesigning the AOJ intervention is the report and strategic plan drafted by the Preparatory Commission on Reform of Law and Justice (*Commission préparatoire à la réforme du droit et de la justice*), established with financial support from the Commission of the European Union. Its objectives were as follows:

- " elaborate a coherent strategy of intervention in all aspects of judicial reform;
- " identify the necessary reforms, estimate their costs, and devise a plan for implementation;
- " revise legal codes and legislation in the form of draft legislation, accompanied by action plans.

The terms of reference of the project required the Preparatory Commission to prepare and submit two documents: a general public policy statement on reform of law and justice, and a plan of action. These documents were completed and presented to the international donor community at a meeting in July 1998. The Preparatory Commission was succeeded in June/July 1998 by a Coordination and Implementation Unit (*Unité de suivi et de coordination*), again with financial support from the European Commission. Implementation planning is underway, but the continuation of the Commission's efforts is hampered by tenuous funding arrangements.

### **Positioning USAID/Haiti for the short-term**

USAID short-term efforts in the AOJ sector are seriously restricted by economic and political paralysis. The USAID/Haiti Strategic Plan FY 1999-2004 states that "Until the Presidential elections in 2000 there will not be strong political commitment to reforms and institutional strengthening within ministries." The validity of this assumption has been supported by information gathered by the redesign team. As a consequence, any activities undertaken by USAID/Haiti toward achieving the intermediate result of 'people increasingly treated according to the rule of law' will have to be implemented without substantive Ministry of Justice (MOJ) support. But it is important, all the same, that USAID/Haiti maintain the capacity to engage the MOJ in technical and policy discussions and be prepared to take advantage of opportunities as the political situation improves.

The current political impasse also calls into question the sustainability of activities funded by outside donors. While noting the importance of this issue, the design team recommends USAID support for several activities which may not be self-sustainable but which at least provide lasting inputs into the system. In addition, the design team recommends continued support for certain activities which have already been initiated and in which an increasing level of intellectual investment and concentration have been made for the short- to medium-term under the presumption that GOH political support for reform will resume.

Therefore, our recommended short-term (1999-2002) strategy is for USAID to continue existing programs with only moderate expansion, taking advantage of suggestions for refinement in prior evaluations, and emphasizing sustainability. Prevailing conditions also suggest that expectations for results should be modest.

# USAID/HAITI ADMINISTRATION OF JUSTICE DESIGN RECOMMENDATIONS

## Management Systems International

### USAID AOJ STRATEGIC OBJECTIVE:

MORE GENUINELY INCLUSIVE DEMOCRATIC GOVERNANCE ATTAINED

### USAID AOJ INTERMEDIATE RESULT (4):

PEOPLE INCREASINGLY TREATED ACCORDING TO THE RULE OF LAW

### SPECIFIC RESULT: JUDGES BETTER EQUIPPED TO APPLY THE LAW

#### Background

This specific result was originally defined as *Increasing the independence of the judiciary*. The Haitian judiciary suffers from a number of deficiencies which hamper its ability to perform its functions independently. The most glaring of these include low wages, unlawful appointment procedures, direct political control over job security, lack of physical security from attack (both from outside and within the state apparatus), lack of institutional identity and cohesiveness, lack of education and training, lack of decent, secure and sufficient facilities in which to work, and lack of basic equipment and reference materials. The most important problems cannot be addressed without the strong political will to bring about change. This includes budgetary considerations as well as legislative reforms and administrative and institutional reorganization. As such, many of these issues cannot be directly affected by USAID programs, which should focus on more limited activities which nevertheless support the ultimate goal.

Several aspects of support for judicial independence are under review by the GOH which, should these actions come to fruition, would contribute to increased professionalization of the judiciary. At the top of the hierarchy of elements one finds the Government of Haiti's own expressed intention of establishing an independent administrative and disciplinary body with control over all aspects of the judicial institution except the content of judicial decisions, the *Conseil supérieur de la magistrature*. Such a body exists on paper in Haiti as an ad hoc disciplinary unit composed of Supreme Court (*Cour de Cassation*) judges sitting in examination of complaints against sitting magistrates above the level of justice of the peace. The *Conseil supérieur de la magistrature* cannot be made operational without legislative changes both in order to establish a permanent body and to create the conditions under which it could have an impact. Such legislation has been in preparation for some time, but will not

become law for the foreseeable future. Support for a new *Conseil supérieur de la magistrature* by USAID can only be embryonic at best during this strategic period.

A second organ with potential to improve the daily functioning of the judiciary is the Judicial Inspection Unit (JIU), created by Ministerial Decree in August 1995. The JIU is a part of the MOJ and its purpose is to monitor the operational and administrative aspects of the judiciary. As such, it has the potential to have a considerable impact on the manner in which the judiciary functions. To date, it has suffered from a number of problems: inexperienced staff, lack of direction from the MOJ, lack of operational funding and support, and lack of follow-up within the MOJ on the JIU's. USAID contractors OPDAT/DOJ and Checchi Consulting have supported the JIU where possible by including it in training sessions where appropriate and through informal provision of transportation and other non-systematic operational support. Without increased budgetary support the JIU cannot contribute to the improvement of the professionalism of the judiciary. In the current climate such support must be considered unlikely to arrive in the short- to medium-term. Contractors could be encouraged to maintain informal and other links and support with the JIU in order to encourage and maintain its potential as a useful tool for increased professionalization of the judiciary in preparation of the day when domestic political support is forthcoming.

USAID contractors have also been involved in the mentoring of Haitian judicial staff using Haitian mentors. There are two such programs in operation. One, implemented by OPDAT/DOJ, is discussed below in relation to the specific result of improving the efficient throughflow of cases in the model jurisdictions. The second initiative, implemented by Checchi Consulting, concerns the utilization of highly respected retired Haitian jurists to provide substantive support to justices of the peace in three jurisdictions. While the mentors are not able to conduct high-frequency visits to all justice of the peace courts within their jurisdiction, the mentors have been able to effectively reach most justices of the peace through the mechanism of joint regional seminars. Despite the limited capacity of justices of the peace to absorb and apply the information provided by these eminent jurists, it is clear that the program provides a signal of outside support to the often isolated justices of the peace involved and improves the responsibility with which they perform their tasks, better equipping them to deal with their daily case-load.

One of the most frequently mentioned problems with the Haitian judiciary is the question of competence. USAID contractors have addressed this issue through the training provided at the *Ecole de la Magistrature*. This effort has led to brief two-week basic law courses for all existing magistrates in 1995 and 1996, and to an initial training program for 60 new magistrates in a six-month intensive course in 1997-98. The management of the school has been partly assumed by the MOJ. The sustainability of the school effort is negatively influenced by the lack of legislative and institutional frameworks for the school and its graduates. Due to these constraints, USAID should not invest in further initial training initiatives until the requisite frameworks have been provided. However, the *Ecole* should be maintained on a minimal investment level as needed to support further training and

educational materials development initiatives. Given the relatively brief duration of the initial training program, the 60 graduates of its first magistrates education program would benefit considerably from extended supervision while working. Additionally, all judiciary education programs would benefit from cross-training among judicial system actors to help break down the lines of institutional separation and suspicion that lead to serious misunderstandings, resource imbalances, and many other problems.

The quality of legal education in Haiti leaves much to be desired in the minds of most Haitian legal professionals, and a not inconsiderable amount of the shortfall is due to exclusively theoretical education without the support of a practical, case-oriented education on the application of the written law to concrete sets of facts. This is exacerbated by the lack of an organized collection and systematization effort of Haitian case law. The General Policy Statement of the Preparatory Commission supports this view. The sustainability of the judicial training efforts in the future, then, depends upon improved basic legal training materials now.

Aside from the case-law orientation, an area of improvement in judicial functioning which has not yet been fully explored is the reinforcement of the justice of the peace court's role in conciliation and mediation of disputes. Activities related to mediation training have been undertaken with magistrates by MICIVIH (OAS/UN Civilian Mission in Haiti), and on alternative dispute resolution with other groups by the Mennonite Central Conference, International Peace Brigades and the University of Florida. This area of justice of the peace competence can be usefully expanded in order to permit the justice of the peace to augment his role in the community with an increased conflict pacification focus, as opposed to adjudication. Frequently in the justice of the peace courts disputes of a civil nature escalate until they become criminal in character, needlessly encumbering the penal law and prosecution systems. Although not technically entitled to conduct conciliation or mediation sessions, the state prosecutors (*commissaires du gouvernement*) frequently exercise such functions in practice. Therefore, it would be worthwhile to extend mediation and conciliation training to this group.

Another under-explored area raised by the General Policy Statement of the Preparatory Commission is the role played by customary rules and practices in informal dispute resolution and the consequent need for new legislation and institutions to avoid creating conflicts with these already-existing rules and practices. A thorough study of customary legal solutions has never been undertaken in Haiti and could prove of lasting influence and benefit.

### **Activity 1: *Ecole de la Magistrature*/Training of Magistrates**

#### **Description of Activity**

The continuous short-term training of magistrates in Haiti on specific issues, rather than on general competencies, will require the use of a central facility, ideally the existing *Ecole de la*

*Magistrature*. While the MOJ has assumed partial responsibility for the administration of the *Ecole*, the institution will require the ongoing assistance of donors to continue operations. USAID should continue to provide necessary logistical support.

### **Scope of Work**

- C Maintain a level of logistical support to the *Ecole de la magistrature* as necessary.
- C Conduct specific topical training courses for Haitian magistrates and relevant other judicial system officials as necessary.

### **Contracting Recommendations**

The redesign team recommends that DOJ/OPDAT continue to provide logistical support to the *Ecole*.

## **Activity 2: Legal Educational Materials Development**

### **Description of Activity**

This activity proposes the development of a new tool in Haitian legal education which can be utilized in law school and judicial training environments. This tool would provide a case-law orientation linking formal law instruction with interpretation of law problems arising in the application of written law to concrete sets of facts. Manuals or textbooks should be devised in the interpretation and application of civil law, commercial law, criminal law and their respective procedures in the Haitian context, as well as international human rights law and litigation. Training textbooks should be written which combine existing text editions with detailed commentary and interpretation doctrines based both on case-law and on basic principles derived from French and other sources.

Educational materials development should combine both pedagogical and legal resources. Haitians specialists should conduct the necessary research and provide the legal drafting expertise. Coordination between US, French, Canadian and other French-speaking jurisdictions should be incorporated in the effort to support Haitian scholars and authors. The project should culminate with the publication and distribution of training textbooks. Supervision and facilitation of the project must seek to create a sustainable Haitian domestic law and case-law depository entity which can provide a continuation of the organization and publication efforts of law and case-law. The *Ecole de la Magistrature* and its library should be prime candidates for this function.

Synergies should be explored and exploited with prior Haitian efforts in the law schools and

among legal training organizations (such as the training manuals prepared by *Amicale des Juristes*, Checchi Consulting training manuals for attorneys and *fondé de pouvoirs*, ODEPA *fondé de pouvoirs* training materials, *Réseau des Citoyens (RCN)* legal assistance training manuals, and other materials prepared for the *Ecole de la Magistrature*).

The activity could be made more manageable by packaging it as a pilot effort aimed at creating the educational tools described for the penal law only. Such an approach would provide minimal support and reinforcement to other aspects of the USAID-AOJ program, which primarily address penal law concerns. In that case, the *Ecole de la magistrature* and its library could be used as the institutional element. The activity could follow the methodology developed at the Haitian National Police Academy. Following the successful completion of the pilot project an evaluation of the effort could lead to the extension of the *Ecole*-based materials development model to other areas of law, such as civil law, commercial law and human rights law.

### **Scope of Work**

If the activity is implemented as a complete program:

- C Establishment of contacts with legal education specialists in US, Haiti and French speaking world.
- C Establishment of multi-national multi-disciplinary team in Haiti which can conceptualize, draft and supervise drafting of legal educational materials in four program areas: civil law, commercial law and criminal law with their respective procedures, and international human rights law and litigation.
- C Compile drafting work plan for the phased creation of educational tool documents.
- C Select private or public law faculty for pilot experience in utilization of new materials.
- C Implement pilot experience as and when materials become available.
- C Adjust materials and/or utilization methods in the light of pilot experiences.
- C Negotiate with relevant MOJ and MENJS officials on the introduction of materials into national legal education curriculum.
- C Organize and prepare the educational tools for publication and distribution through national channels.
- C Arrange the deposit of publications in sufficient quantities in libraries throughout Haiti.

If the activity is implemented as a pilot project on penal law:

- C Solicitation of French-language expertise in the development of educational materials in legal interpretation and application based on case-law methodology.
- C Establishment of team of Haitian legal education specialists which can conceptualize, draft and supervise drafting of legal educational materials in penal law and procedure.
- C Select private or public law faculty for pilot experience in utilization of new materials.
- C Implement pilot experience as and when materials become available.

- C Organize and prepare the educational tools for publication and distribution through national channels.
- C Arrange the deposit of publications in sufficient quantities in libraries throughout Haiti.
- C Organize the utilization of the library and other space at the *Ecole de la magistrature* for the team.
- C Evaluate the effort with a view to the execution of a similar project for other areas of law.

### **Contracting Recommendations**

If the pilot project model is chosen, the redesign team suggests that DOJ/OPDAT be considered for this activity.

### **Activity 3: Case-law Digest**

#### **Description of Activity**

In support of Activity 2, an entity must be identified and supported which will gather, organize and publish Haitian case-law. Equally, an entity must be identified which will gather and organize complete editions of the *Moniteur*, Haiti's official journal. Both activities are to be integrated into the educational material development and textbook drafting program. The project must culminate in the publication and distribution of case-law digests. Supervision and facilitation of the project must seek to create a sustainable Haitian domestic law and case-law depository entity which can provide a continuation of the organization and publication efforts of law and case-law. The library at the *Ecole de la Magistrature* should be considered as depository, in conjunction with Digest creation entity.

#### **Scope of Work**

- C Establishment of contacts with legal education specialists in the US, Haiti and French-speaking worlds.
- C Establishment of a multi-national, multi-disciplinary team in Haiti which can conceptualize, draft and supervise drafting of case-law digests in three program areas: civil law, commercial law and criminal law, with their respective procedures.
- C Compile drafting work plan for the phased creation of case-law digests.
- C Integrate case-law digests into curriculum development program.
- C Negotiate with relevant MOJ and MENJS officials on the introduction of case-law digests into national legal education curriculum.
- C Organize and prepare the case-law digests for publication and distribution through national channels.

- C Arrange the deposit of publications in sufficient quantities in libraries throughout Haiti.

If the pilot project model is chosen for the educational materials development activity, the case-law digest activity could be limited to the compilation of penal case-law. In that case, this activity could also be considered for inclusion in the work of the *Ecole de la magistrature*.

#### **Activity 4: Customary Law Development Study**

##### **Description of Activity**

Undertake a feasibility study of the modalities of a country-wide research program on informal and customary systems of dispute resolution and legal relationships. Such a study should prepare the way for a research program on the existence of and attitudes towards legal relationships as defined in local community groups, within religious organizations, including voodoo, and as variations on formal law as implemented in practice by justice of the peace courts. The purpose of the research program would be to codify to the extent possible the existence of non-formal legal arrangements in the interest of rendering them of use by the existing formal system and in legal reform projects. The appropriation by the formal system of informal and customary mechanisms would permit a reduction of the tensions and potential conflicts stemming from the enforced imposition of formal legal norms on satisfactory and legitimate informal arrangements.

The feasibility study would determine the number and qualifications of the persons required to undertake the study as well as determine the time frame and other resource requirements necessary to such an undertaking. The feasibility study should take into account experiences in legal anthropology studies and other relevant studies from around the world and should include some field activity in Haiti in order to gain knowledge of conditions and attitudes on the ground. The study must investigate the participation of Haitian nationals in the execution of the study and in the collation and supervision of its results. The feasibility study will take into account the need for all field work to be conducted by persons combining knowledge of law and Creole language, as well as an attitude of intellectual curiosity towards unfamiliar cultural practices.

The results of the feasibility study shall inform a decision on the value of implementing the actual field study and shall be used in discussions with GOH on the appropriateness of said study and its possible incorporation into domestic legal reform efforts and legal education.

##### **Scope of Work**

- C Establish feasibility study team comprising legal, anthropological and other relevant

- disciplines.
- C Undertake academic and field research into subject matter and in order to gain an overview of obstacles and considerations. Field work shall include small pilot study in rural area and discussion with Haitian legal, anthropological and education specialists.
  - C Establish bibliography of pre-existing materials on the subject.
  - C Discuss findings with relevant MOJ and MENJS officials.
  - C Compile report of findings providing complete breakdown of plan of work, staffing questions, budgetary considerations and time-table for a research field project, including schedule of likely difficulties and constraints and recommendations towards the suitability of executing the study and proposals on follow-up with detailed justifications.

## **Activity 5: Mediation and Conciliation Training for Magistrates**

### **Description of Activity**

In support of the legal authority of justices of the peace to conciliate in disputes presented to them, a course of intensive training in conciliation and mediation techniques should be provided in order to reduce the justice of the peace's reliance on little understood and often irrelevant formal legal rules in favor of a more flexible approach to reducing tension and conflict potential through the mediation of mutually acceptable solutions to parties involved in a dispute. If successfully implemented, this program should lead to a decrease in local violence, particularly in rural areas, as well as improve the stature of the justice of the peace in the local community, and thereby improve public perception of the judiciary. Training should be designed to cover the entire country of Haiti. Training may be extended to cover prosecutors (*commissaires du gouvernement*) as well, if sufficient MOJ support exists.

The program to be developed and executed must take into account, in particular, the prior efforts by MICIVIH and its continuing activities in this area, both alone and in conjunction with other organizations such as *Réseau des Citoyens/Citizen's Network RCN*. The program should insert itself into existing efforts and bring about useful improvements both to approach, content, intensity and national coverage. Facilities such as the *Ecole de la magistrature* should be utilized, although field training is equally important. Lessons learned by MICIVIH and others must be incorporated. Non-judicial training in Alternative Dispute Resolution activities in Haiti should be consulted, such as Peace Brigades International, Mennonite Central Conference and the University of Florida.

The curriculum and training style must be local language and with limited theoretical classroom discussion. The use of translators in training is not effective. Training staff must speak at least French, and preferably Creole. Learning of techniques such as active listening, empathy, summarizing of parties' statements, leading of parties to voice their own recommendations must be emphasized. This requires a change in mental attitude on the part

of Haitian judges. Such change can only be brought about through repetition and active participation. Role-play and illustrative exercises must be stressed. Intensity of the program should be based on frequency of participation by each individual in the exercises. Training staff must have hands-on experience of professional mediation activities in practical circumstances.

Training should be followed up at regular intervals by meetings at which the participating judges can express their experience and criticism of the use of mediation and conciliation techniques. This should be understood as an information sharing experience wherein insights can be mutually gained from trainers and colleague judges. Constructive feedback must be provided by the training staff. At least once per jurisdictional region during the contract period a field study should be undertaken by the contractor to assess the impact of mediation skills training on public perception and gauge public experience with the practice of mediation and/or conciliation by justices of the peace. Public perceptions and criticism should be incorporated into the training program and follow-up meetings.

Regular contact shall be maintained throughout the activity period with the MOJ, the *Ecole de la Magistrature*, law faculties and other interested parties on the progress of the program and modifications incorporated where necessary. The contractor may, if solicited to do so, engage in mediation/conciliation training with other groups where this does not conflict with its primary engagement.

### **Scope of Work**

- C Gather information on other similar programs in Haiti, specifically MICIVIH.
- C Gather information on similar activities in civil jurisdiction countries.
- C Prepare curriculum on mediation and conciliation training for justices of the peace and prosecutors, taking into account their legal roles, the relationship between civil and penal disputes and prior experiences in this field.
- C Maintain contacts with MOJ and *Ecole de la Magistrature* and other relevant parties.
- C Conduct training at field level and/or in Port-au-Prince with all justices of the peace in Haiti (and with prosecutors if so requested).
- C Conduct follow-up meetings with all trained persons to evaluate effectiveness and to promote exchange of experiences as educational tools.
- C Conduct field studies to evaluate impact on the population and to incorporate information in curriculum design.
- C Identify Haitian depository organization for deposit of curriculum and other training materials. Suggested depository: *Ecole de la Magistrature* library.
- C Provide detailed report to USAID/Haiti and MOJ on implementation of training and impact assessment following field evaluations and follow-up. Give recommendations for continuation and future utilization of program.

## **Activity 6: Judicial Mentoring**

### **Description of Activity**

In support of the case registration, filing and tracking project in the model jurisdictions, and to improve the professional quality of judicial decision making, a judicial mentoring project in the justice of the peace courts within the model jurisdictions should be undertaken. The mentoring project will provide direct supervision and substantive support to justices of the peace in the workplace. The activity will be a continuation and expansion of the activity as implemented by Checchi Consulting during 1998-1999. The activity will be implemented in all seven model jurisdictions.

Logistical, political, and other problems in connection with overcrowding and other apparent sensitivities have made mentoring in the justice of the peace courts in Port-au-Prince and environs virtually impossible. The inaccessibility of justices of the peace in the workplace places a considerable strain on the mentoring design objectives. For these reasons, the redesign team recommends that mentoring be temporarily discontinued in Port-au-Prince. The contractor shall seek to design innovative solutions to these obstacles in order to facilitate the re-implementation of the mentoring program in the jurisdictions of greater Port-au-Prince, with a view to improving its potential impact in line with the general objectives of the mentoring activity.

The activity will bring together eminent Haitian jurists who will consult with justices of the peace in the courtrooms of the model jurisdictions and provide advice and suggestions towards improving the efficiency of the court and the quality of decisions, with a particular focus on registration and recording. Based on field experiences, collective issues may be discussed by mentors at seminars organized by the contractor on behalf of the justices of the peace concerned. The mentors will facilitate the distribution of legal and other relevant materials to justices of the peace as required, and in response to MOJ and partner requests.

Mentors shall be provided with training in the needs of the AOJ program. Mentors shall meet with the contractor to discuss and evaluate the program at regular intervals, to harmonize approaches throughout the model jurisdictions and to make adjustments as required. Mentors shall be provided with transportation and other material support. The contractor shall consult with other contractors and partners on issues relating to the justice of the peace courts, and implement adjustments to the mentor program as required.

Following one year of implementation the contractor shall provide a detailed report outlining the impact of the program and making recommendations for expansion. In particular recommendations must address the prospect of partnering the mentors with less experienced Haitian jurists. Any proposed territorial extensions of the program must be designed to coincide with the extension of other model jurisdiction activities in order to maximize multiplier effects of coordinated programs.

In the interest of continuity, the existing three mentors in the Checchi program should be maintained.

### **Scope of Work**

- C Identify and hire seven eminent Haitian jurists with court and/or prosecution experience.
- C Provide training on the case registration filing and tracking systems.
- C Provide materials in support of the training.
- C Provide logistical support to mentor field visits.
- C Organize regular meetings with all mentors.
- C Organize regional seminars with justices of the peace as required.
- C Conduct regular surveys among population and professionals to evaluate impact of the program.
- C Provide yearly report on development of the program and scope for expansion or contraction.
- C Consult with other contractors, MOJ and partners on developments affecting justice of the peace courts in model jurisdictions.

### **SPECIFIC RESULT: CASES MOVE THROUGH THE JUSTICE SYSTEM IN MODEL JURISDICTIONS MORE EFFICIENTLY**

#### **Background**

Any truly long-term solution to the problem of inefficiency in the disposal of cases through the Haitian judicial system, particularly in the greater Port-au-Prince area, must address the most glaring shortcoming of the Haitian judicial system, namely the lack of staff and office and courtroom space. Compounding the problem are the very low salary scales and the multiple tasks which prosecution and judicial staff are required by law to undertake, which limit the time spent focusing on prosecution and adjudication functions, respectively. Any improvements in these areas must await legislative and/or budgetary modifications by the GOH. Staffing constraints could possibly be alleviated through the use of unpaid law clerks, if Haitian law students could be induced or otherwise persuaded to offer their services, and if confidentiality rules could be applied. These are unlikely without active MOJ support. As a result of this situation, virtually the only area in which USAID can operate is in the realm of efficiency improvement. The only other option would be to work outside the system on alternatives to the formal judicial system.

Efficiency improvements should most usefully be combined to approach the problems from a multi-faceted perspective, bringing together case handling tools and skills, with case development skills, supported by intense supervision of implementation with topical training

programs, both in the field and centrally. This approach is also supported by efforts aimed at improving adjudication skills of justices of the peace through mentoring and mediation training in order to keep misdemeanor and other irrelevant cases out of the prosecution system. Any improvements brought about by one activity can then be compounded by other activities in order to achieve a multiplier effect. This would permit some increase in the very modest expectations for improvement one may have in the present context. When, in the longer-term, the GOH may begin to address the more structural problems of the system, the efficiency improvements made today and in the short- to medium-term may be expected to produce significant improvements in case throughput. Efficiency improvements could be further compounded by well supervised legal assistance programs.

This specific result was originally defined as "Reducing pre-trial detention". As such, a number of programs had been designed and implemented to attack the inefficiencies from that angle. USAID contractors have been active in providing case registration systems in justice of the peace courts and in the prosecution offices (*Parquet*) and offices of examining magistrates (*Cabinet d'Instruction*) in seven model jurisdictions. Through their assistance in the model jurisdictions significant numbers of pre-trial detainees were released and an increase in the number of correctional and criminal trials conducted disposed of more cases of long-term pre-trial detention. At the same time legal assistance was being provided in a large number of jurisdictions aimed at the prison population.

A further attempt to ease the case burden of pre-trial detainees occurred in June 1998 with the establishment of BUCODEP (*Bureau de contrôle de la détention prolongée*), an office in the National Penitentiary (which followed on from an earlier initiative conducted in the National Penitentiary during December 1996) designed to release persons detained beyond the duration of their possible maximum sentence and those no longer lawfully detained. The BUCODEP initiative achieved a significant reduction in the number of untried detainees. However, questions remain about the manner in which this was achieved. In particular, it is unclear whether it was entirely in accordance with Haitian law. As a general rule, such initiatives appear to be unsustainable without outside intervention, and serve to provide one-time relief only to the pressing detention and prison overcrowding problem in Port-au-Prince.

Where improvements to the efficient use of resources are concerned, a body of experience has already been gained over the past four years by USAID contractors. The experience has primarily been gained in the area of case registration and tracking. By building on this experience and expanding its focus towards the achievement of case management, it may create the type of impact which will allow it to become self-sustainable in the medium term, assuming that a minimum of political support remains available for it. In the particular field of prosecution of suspected criminals any efficiency improvements have a positive impact on both improving the protection of human rights and improving the professionalism of the judiciary. In this respect, the focus of efficiency improvement work could usefully be expanded from registration and filing questions towards the effective gathering and handling of basic evidence via all parties to the prosecution chain of activities (*la chaîne pénale*). The

keys to imbedding any efficiency improvements into daily practice consist of repetition, (re-)training, intense supervision and the introduction of motivational factors where possible.

In this regard, the intensive supervision of the implementation of case registration and tracking initiatives to date has been approached through the mechanism of what may be termed prosecution mentoring. This program as implemented by DOJ/OPDAT to date provides young supervisory staff to the prosecution offices in the model jurisdictions, which staff are themselves closely monitored by the contractor. The mentors' primary task is the supervision of the implementation of case registration, filing and tracking systems. Their tasks could be usefully expanded in line with extensions in the prosecution function activities. As the mentors are not asked to instruct, but primarily to supervise, they do not need to have extensive prior experience beyond their legal education. This program, in particular, could provide a sound basis for understanding the role of the Judicial Inspection Unit, once its operationality becomes a realistic prospect.

An area of efficiency improvement which has not yet been addressed in a cohesive manner is the improved utilization of all the resources at the disposal of the criminal justice system. The preparation of prosecution cases requires the participation of a chain of actors beginning with the ordinary police officer, via the justice of the peace and the prosecutor to the examining magistrate. The initial stages of the preparation of a case are surprisingly important in daily practice. To date the role of the ordinary police officer in the preparation of a prosecution case has been neglected (we are not referring to the specially trained judicial police, but to the ordinary police officer in the police station). The tying together of all participants in the development of a case should allow for significant improvements in efficiency. It should be understood, however, that we are not advocating the taking on of investigation functions by the ordinary police. Instead we are referring to improvement of their observation, questioning and report writing skills, in short everything related to the handling of evidence at the initial stages of an arrest when the evidence is fresh. This improvement of the technology of prosecution could have a significant impact on the speed with which a prosecution file proceeds to trial.

## **Activity 7: Case Registration, Tracking and Management**

### **Description of Activity**

Continue to pursue the implementation of case registration, filing and tracking systems throughout the penal chain (*la chaîne pénale*). This implies the maintenance of the existing system as designed and implemented through DOJ/OPDAT in the prosecution offices (*parquets*) and its expansion to the investigating judges offices (*cabinets d'instruction*), as well as reinforcing its use in the justice of the peace courts within the model jurisdictions (in line with the existing Checchi Consulting program). This activity could logically be conducted by one contractor. In particular, it would be logical for this to concern the contractor engaged

in the mentoring and training in evidence gathering and prosecution case preparation activities outlined below.

The activity is as described and previously implemented during 1996 - 1999. The initial goal of case registration, as subsequently expanded to include filing and tracking systems, should be sustained and reinforced with a view to the elaboration and implementation of true case management systems. The development of workable case management systems within the constraints of the existing offices, such as staffing and space problems, and including their evolving competence level, should be an element of the program.

An outside evaluation of the effectiveness and compliance should be conducted every two years by the French registry consultants who assisted in the design of the system and who conducted an evaluation in December 1997 at the behest of MICIVIH. Their evaluation tasks will be expanded to include recommendations on the introduction of case management systems.

The proper implementation of the system requires further training activities which would bring together the prosecutors and their clerks (*greffiers*), as well as the investigating judges and their clerks. Consultation should be maintained with MOJ and other relevant officials to monitor the potential for expansion of the program to other jurisdictions, extension to management issues, or to reach the conclusion based on considerations of sustainability that further investment in the program was not appropriate.

### **Scope of Work**

Everything below applies to all courts in the model jurisdictions only:

- C Retrain prosecutors and clerks on implementation standards of case registration, filing and tracking.
- C Train investigating judges and clerks in case tracking system.
- C Provide registers to prosecution offices and investigating judge chambers.
- C Monitor implementation of case registration in justice of the peace courts.
- C Provide registration forms to justice of the peace courts where necessary.
- C Make recommendations to USAID/Haiti for alterations to the program where necessary.
- C Organize and implement outside evaluation of the program by French registry consultants.
- C Periodically evaluate the potential for expansion of the program to other jurisdictions.
- C Periodically evaluate modalities of extension of program to case management activities.

### **Contracting recommendations**

The redesign team recommends that this activity be undertaken by DOJ/OPDAT.

## **Activity 8: Prosecution Case Preparation**

### **Description of Activity**

To improve the ability of the Haitian judicial system to prosecute cases, the entire chain of actors in the prosecution/investigation process must be mobilized to improve their performance in the preparation of prosecution cases (*la chaîne pénale*). To this end, a training program in the field must be designed and implemented which both brings together all the actors in the penal chain and explains to them their role and connections, but also to provide training within elements of the chain (police officer, justice of the peace, prosecutor, investigating judge) as to the prime use of their abilities as prosecution case preparation resource. In particular, such training must target the ordinary police officer with training in the basic steps of observing, questioning witnesses and reporting on a crime scene or arrest event, which information is crucial to the subsequent prosecutorial and investigative activities. At the same time, improvement of police reporting will allow the justice of the peace to better justify her/his decision to confirm an accused in detention (following Article 26 of the Haitian Constitution). Therefore, this activity may have a beneficial effect on improving the protection of human rights in Haiti.

Best practice guides for use during training should be devised, drafted and distributed to all relevant personnel during training sessions. This activity should be combined with the other activities recommended in the model jurisdictions under this specific result.

For reasons of organization of responsibilities, this project must be undertaken in consultation with ICITAP. Negotiations on the details of the relationship between ICITAP and USAID/Haiti and/or the contractor are outside the scope of this redesign exercise.

### **Scope of Work**

Design a curriculum for the training of police officers, justices of the peace, prosecutors and investigating judges in best practice in preparing prosecution cases.

- C Prepare publication and distribution of best practice guides.
- C Provide field training to police, justices of the peace, prosecutors, investigating judges in best practice.
- C Organize periodic, high frequency field meetings bringing together all actors in the penal chain.
- C Provide central training to police, justices of the peace, prosecutors, investigating judges and bench judges on prosecution case development issues.

### **Contracting recommendations**

The redesign team recommends that this activity be undertaken by DOJ/OPDAT.

## **Activity 9: Prosecution Mentoring**

### **Description of Activity**

In support of the case registration, filing and tracking activity and the best practice training activity, the model jurisdictions should continue to benefit from the presence of mentors to encourage on a daily basis the continued implementation of registration, filing, best practice and other initiatives. This activity concerns the use of junior Haitian jurists to monitor and facilitate in the prosecution offices and investigating judge offices in the implementation of the mechanical aspects of case handling. As such, this activity is intended to supervise and reinforce practices taught to the relevant professionals, rather than to fulfil a teaching function. In the longer term, this activity may provide valuable lessons to the creation and elaboration of a functioning Judicial Inspection Unit within Haitian government structures. This view must be borne in mind by the contractor when expanding the activity and in consultations with relevant MOJ officials.

Mentors of Haitian nationality must receive continuous training in all fields under their supervision, and must themselves receive regular supervision and support from the contractor. This program can grow out of the existing DOJ/OPDAT program, and could probably be usefully expanded to include more than one mentor per jurisdiction. Mentors must also receive best practice training in line with the best practice activity outlined above. Mentors must also benefit from regular evaluation and feedback sessions in order for obstacles and comments from the field to be incorporated in the program design on a continual basis.

### **Scope of Work**

- C Continue mentoring activity as during previous contract period.
- C Increase number of mentors in line with expansion of model jurisdiction activities.
- C Provide mentors with regular training in case registration, filing, tracking and best practice.
- C Provide mentors with evaluation and feedback sessions to assess impacts of programs and to revise them as necessary.
- C Supervise activities of mentors in the model jurisdictions through high frequency visits and consultations.

### **Contracting Recommendations**

The redesign team recommends that this activity be undertaken by DOJ/OPDAT.

## **Activity 10: Commercial Arbitration Tribunal**

### **Description of Activity**

In the context of seeking to speed up the disposal of cases in the civil courts in Port-au-Prince, and in order to enhance the quality of commercial dispute resolution available to the business community operating in Haiti, a feasibility study should be conducted into the modalities and potential impact of the creation in Port-au-Prince of a commercial and civil contract arbitration tribunal. The study would address the question from the viewpoint of the business and commercial law community in Haiti, and would focus on the establishment of a commercially operated tribunal, with the training and supervision of the necessary specialized staff. The initiative must be designed to operate effectively and to be self-sustaining once any creation and establishment subsidies have been exhausted. In particular, it must be able to operate without any GOH support or interference. Questions relating to the enforcement of arbitral awards and the reception of awards by the Haitian legal system must be addressed.

The feasibility study shall conclude with a report which may provide the basis for a decision by USAID/Haiti on the merits of supporting the creation of an arbitral commercial tribunal in Port-au-Prince, with where possible projected figures on case-load and impact on the civil law judiciary in Port-au-Prince. Particularly, the realistic potential of such a tribunal to decrease the case-load burden on existing civil jurisdictions must be made clear, as well as the correlation between any projected decrease in commercial cases and a corresponding increase in opportunity for civil jurisdictions to devote attention to other civil law cases. The report shall also provide a reasoned assessment of the prospective improvement in the quality of dispute resolution which the arbitral tribunal may provide.

The study will provide detailed comments on the substantive issues involved, including technical support and education needs, and provide a schedule of initial subsidy costs and technical assistance needs and costs, as well as an implementation time-table. The report will also provide detailed recommendations on Haitian individuals and organizations who can be approached and/or mobilized in the effort to create the tribunal. The study will also inform USAID on the potential reception the creation of a commercially operated arbitral tribunal would receive from the GOH and the business community operating in Haiti.

The contractor shall have direct experience of the establishment, organization and regulation of arbitral tribunals. The contractor shall also have demonstrable knowledge of the integration into civil code jurisdictions of enforcement and other legal reception issues relative to arbitral tribunal awards.

### **Scope of Work**

- C Establish feasibility study team combining both arbitration, tribunal administration and civil law jurisdiction expertise.

- C Identify Haitian legal expertise counterpart(s).
- C Conduct field study with foreign and domestic business community in operating in Haiti, and with commercial and contract law attorneys and specialists in Haiti.
- C Discuss findings and proposals with MOJ and other relevant GOH personnel.
- C Submit detailed report of findings and ultimate recommendation to USAID/Haiti on the subject of the establishment and technical assistance to a commercial arbitral tribunal in Port-au-Prince.
- C Provide recommendations as to potential contractors/organizations which could execute such a program, both US and Haitian.

## **SPECIFIC RESULT: MORE ACTIONS TAKEN TO PROTECT HUMAN RIGHTS**

### **Background**

The degree to which human rights are promoted and protected by the state is a fundamental indicator of the degree to which people are treated according to the rule of law. Therefore an increase in actions to protect human rights should lead to a greater government commitment to follow established legal norms in the way it treats its citizens. These actions may arise from three related, but distinct sources in Haiti: activities which enhance the capability of (1) government institutions to protect human rights (in particular the police, the courts, the prison system and the ombudsman=s office); (2) lawyers, bar associations, judges associations and law schools to defend the human rights of all Haitian citizens, particularly those without resources to pay for legal assistance; and (3) non-governmental organizations (NGOs) and other civil society associations to identify and report on human rights violations and undertake legal and advocacy efforts to correct the source of the violations and provide just recourse for victims. A further condition for the effective realization of these activities is the understanding by Haitian citizens of the fundamental rights and obligations they have as citizens and the role of the legal system and civil society in protecting these rights. This understanding must be developed through educational activities which, due to their nature, contribute indirectly to the realization of the specific and intermediate results and whose effects will generally be visible only over the longer term.

USAID has supported activities in a number of these areas. First, USAID has contributed to efforts to improve the human rights performance of the Haitian National Police (HNP) through the police training work carried out by ICITAP. These activities have been complemented by the work of other donors such as MICIVIH, the United Nations Development Program (UNDP) and the UN Civilian Police (CIVPOL). These donors continue to work with the HNP on police training, monitoring, investigation and discipline activities aimed at reducing police abuses and impunity for human rights violations. Since these issues are primarily related to the development of the HNP as a self-policing institution and ICITAP, UNDP and CIVPOL are currently working on these issues, USAID should not pursue additional activities in this area.

In a related police activity, though, USAID has supported a pilot project undertaken by the Human Rights Fund II designed to intervene in communities where police and citizen relations are tense to attempt to diffuse conflict and generate greater understanding and cooperation between police agents and the citizens they are supposed to serve. These interventions may be useful for reducing the daily police abuses, arbitrary conduct and refusal to fulfill police obligations that lead to more serious human right violations. The pilot project has suggested that such interventions can be beneficial when they are properly structured and follow-up mechanisms to ensure continued communication and cooperation between police and community are developed. Since this activity does not depend upon GOH assistance

(other than local police cooperation) or significant investment in infrastructure for its efficacy while supporting much-needed capacity-building in the NGO sector, it is an appropriate human rights activity for USAID support in the 1999-2004 period.

Support for GOH institutional human rights mechanisms within the justice sector or the *Bureau du Protecteur du Citoyen* (where the Canadian government is already providing assistance) would greatly depend upon the budgetary and administrative support of the GOH. Since the GOH has provided no indication that such support would be forthcoming in the short to medium term, USAID technical assistance and training would have little impact or sustainability. Therefore activities should not be considered for these areas now.

One USAID-supported activity which appears to have generated positive actions reducing human rights abuses over the last two years is a legal assistance program for Haitians unable to afford legal counsel in criminal proceedings. Legal assistance contributes to the protection of human rights in two ways: it permits citizens to challenge the legality of their arrest and the duration of pre-trial detention and enhances the probability of a fairer trial, and provides much-needed legal training and practical experience in human rights law for para-legals, law students and young lawyers, knowledge and skills they cannot obtain elsewhere and which they can build upon as they pursue careers within the Haitian justice sector. The USAID contractor has managed legal assistance through grants to approximately 16 NGOs, bar associations and law schools in seven jurisdictions around the country. These grantees have reported reviewing nearly 19,000 cases. About 15,000 of which involve detainees in prisons since the program's initiation in 1996 (although the actual effectiveness of these reviews and subsequent legal aid is not clear). The program also provides legal education for the prison and other targeted populations. The European Union is also financing a legal assistance project through a Belgian NGO, *Reseau des Citoyens/Citizen's Network* (RCN).

The Haitian Constitution guarantees access to legal assistance and a May 8, 1998 Judicial Reform Law calls for the institutionalization of legal aid for all poor Haitians in both civil and criminal matters. The GOH body charged with developing a national judicial reform strategy, the Preparatory Commission, has emphasized the importance of access to justice for all Haitians in its General Statement and asked RCN to develop a proposal for a national program. RCN recommended the establishment of a MOJ-managed system in which indigent civil and criminal defendants and plaintiffs are provided free legal representation, but did not specify whether the MOJ or NGOs would carry out the work nor identify a funding source. No formal government action has been taken on the RCN recommendations; nor does it appear that any action will be forthcoming soon.

Legal assistance as presently constituted is, therefore, not sustainable -- it relies entirely on international donors for structure, implementation and financing. The European Union has apparently decided to terminate RCN project funding in the year 2000 for these reasons.

Notwithstanding the program impact and sustainability questions, however, USAID should

continue to support this activity for the next three fiscal years, until a new government is installed after the scheduled 2000 presidential election. When legal assistance interventions are effective, they represent human rights actions *par excellence*: helping poor clients to secure the due process protections to which they are entitled under Haitian and international law, principally avoiding or ending prolonged pre-trial detention. Thus, the program offers the most visible and sustained present opportunity to increase the number of actions taken to protect human rights.

However, the program should not be expanded to new jurisdictions or grantees until the GOH adopts and institutionalizes a national legal assistance plan and the funding issue is addressed. Rather, the program should seek to consolidate its current operations (including reducing the number of grantees in a jurisdiction), focus on improving the depth and quality of training for and ongoing supervision of legal personnel, explore extending services to non-prison detention facilities (local police stations) and intervening at earlier stages (when, for example, a detainee is brought before a justice of the peace to confirm arrest). The program should explore sustainability issues by providing grants to study the feasibility of bar association institutional development as a prelude to bar assumption of legal assistance and training responsibilities, the development of clinical legal assistance programs in law schools, and a pilot project in one jurisdiction in which one or more legal assistance grantees develop data on the program and training requirements of an expansion or shift of legal aid to civil matters. Legal education programs for prisoners and other target populations should be discontinued, as they have not proven very effective. Finally, USAID should undertake a thorough independent assessment of legal assistance programs (including the RCN model) which could serve as the basis for a redesign of the program in accordance with a GOH-designed and supported national plan.

The third source of actions to protect human rights is Haiti's civil society. While Haitian human rights organizations have been active in identifying government abuses and advocating for change, they suffer from an often-crippling lack of the resources, organization, trained administrative and program personnel, coherent advocacy strategies and dependable funding sources needed for sustained work, and many have become highly politicized. Thus, Haitian NGOs have not been overly effective in monitoring and reporting on government human rights performance and advocating and pressuring the government for changes. Monitoring and reporting work has depended greatly upon MICIVIH and international human rights groups. And while MICIVIH's mandate has been extended on several occasions, it is reasonable to assume that its role in Haiti will end in the short term. No Haitian NGO or group of NGOs are currently capable of replacing its monitoring, reporting and advocacy work. Therefore activities to strengthen the capacity of Haitian NGOs to carry out human rights advocacy on a sustainable basis would be an important contribution to the long-term struggle to institutionalize the rule of law, the strategic objective at which this specific result activity aims.

USAID should also encourage and support business and other civil society associations with a

strong interest--or potentially strong interest--in judicial reform to develop advocacy efforts aimed at persuading legislators, ministers, political parties and other social, economic and cultural groups.

Once again, however, the strategic context raises discouraging challenges to USAID-supported activity in this area. The most daunting are the endemic lack of responsiveness of the GOH to public pressure; the already-mentioned lack of organization and capacity among, and the politicization of NGOs; and the intense reluctance of NGOs to accept USAID assistance--whether direct grants or assistance from USAID-funded organizations--for political reasons. Therefore, USAID efforts in this area should be modest and focused on facilitating access to education, organizational support and long-term funding.

Similarly, while numerous international and domestic organizations, including MICIVIH, have engaged in human rights civic education efforts, including programs to assist Haitian NGOs to carry on education activities, few efforts have demonstrated a significant impact or have been sustained over time. Mass education programs tend to founder on methodological problems related to the targeted population, more than 80% of which is illiterate, and the institutional incapacity of Haitian NGOs to carry out broad education initiatives on a sustainable basis. Broad campaigns also suffer from the problem that they cannot build on a prior understanding of the role of the rule of law, the enforcement of civil rights and the judiciary in a democratic society, nor can they develop that understanding. Thus, these campaigns--often involving cultural events or built around celebrations of human rights-related events--generate publicity for human rights broadly understood but provide little basis for increasing the demand for justice or a rights-respecting government. One activity that seems appropriate for USAID efforts and promises a longer-term impact is to support the development of a human rights teaching curriculum for Haiti's primary and secondary educational institutions in order to equip the next generation of Haitian citizens with a deeper understanding of the relationship between respect for human rights and the rule of law.

Finally, a particular mechanism with potential to influence the future course of judicial activity in Haiti which has not yet been exploited is the inter-American system of protection of human rights. Haiti has recently recognized the compulsory jurisdiction of the Inter-American Court of Human Rights. In particular, it should be noted that Haiti is in constant violation of the provisions of the American Convention on Human Rights which stipulate that member states must provide effective judicial remedies for violations of the rights contained in the Convention (see article 25 American Convention). The American Convention is an integral part of Haitian law. As such Haitian law in its present condition could provide for such effective remedies if its judiciary could be made to understand how this operates. The most effective way to enforce such an understanding is to confront the judiciary with cases prepared by Haitian attorneys and advocacy groups which make claims to effective recourse provisions of the Convention. In particular, the due process provisions of the Convention could motivate Haitian establishment attorneys to pursue claims through the Haitian courts in order to achieve outside condemnation of Haitian judicial deficiencies from the Inter-

American Court of Human Rights. The potentially strong motivational force of shame could have a lasting impact on Haitian judicial reform. It is true that these international procedures are slow and may take up to several years to reach fruition, but a beginning can be made in training and supervision of the mechanisms in order to achieve a critical mass of cases before the international bodies which can begin to have an impact.

## **Activity 11: Legal Assistance and Education**

### **Description of Activity.**

The legal assistance activity is designed to provide free legal services to indigent Haitians in the seven AOJ Project model jurisdictions (Jacmel, St. Marc, Petit-Goave, Les Cayes, Gonaives) and Port-au-Prince. These services are to be provided to individuals who meet the project's income requirements who need legal assistance with both criminal and civil matters, with initial priority given to those arrested and detained at all levels of the justice sector, from local police detention centers to regional and national prisons. The program will also develop education and training programs for the legal professionals involved in legal assistance activities.

### **Scope of Work.**

The contractor shall propose a legal assistance and education project for the seven USAID AOJ Project model jurisdictions (Jacmel, St. Marc, Petit-Goave, Les Cayes, Gonaives) and the capital, Port-au-Prince, taking into account and developed upon the basis of the experiences of existing USAID-supported legal assistance activity and the European Union's legal assistance project in Haiti. In this regard, the contractor should review existing contracts with USAID legal assistance grantees, focusing on management, training, supervision and reporting practices and the performance and documentation of legal assistance services. The contractor shall assure, to the greatest extent practicable, the continuity of USAID-supported legal assistance services during the transition period from the FY 99 to the FY 00 contract.

The contractor shall establish legal assistance programs in each of the seven USAID AOJ Project model jurisdictions (Jacmel, St. Marc, Petit-Goave, Les Cayes, Gonaives) and the capital, Port-au-Prince, through contracts with one or more NGOs, bar associations, or law schools located in each of the target jurisdictions. The contractor shall establish the criteria for the selection of legal assistance grantees, particularly the administration and financial management and reporting experience required for the activity in accordance with USAID regulations, and prior experience with the delivery of legal assistance activities. The contractor shall select grantees in each jurisdiction after administrative and performance reviews and wide consultation with USAID, local and national NGOs, members of the legal profession, international donors and MICIVH and shall establish legal assistance delivery

standards and indicators, supervision and training requirements, and service documentation and reporting procedures with each grantee.

Legal services are to be provided by experienced lawyers and/or new lawyers, law students and para-legals working under the close supervision of experienced lawyers. The education, training and supervision of law students and new lawyers in human rights law and practice in penal cases is a principal objective of the legal assistance activity; therefore, the contractor shall establish and supervise intensive legal education and training programs for grantee legal staff. The contractor shall provide for and support a new legal service delivery and training component in which law students work for grantees while receiving supervision and assistance with the publication of the required law school thesis.

Legal assistance services shall include, first, the offer of legal representation, assistance and/or counseling to individuals who (1) have been detained or arrested in relation to criminal matters and (2) meet the activity income requirements. This service has been carried out under existing activities through grantee visits to prisons, where new prisoners are interviewed and offered legal representation. The contractor should develop a program (which could initially be a pilot program with one or more grantees) during the second year of the contract to extend the penal representation to other entry points in the justice system, such as local police detention centers and at initial appearances before magistrates, where the early review of charges and/or conciliation efforts should reduce the number of inappropriate incarcerations.

Existing USAID-supported legal assistance activities have been limited to penal cases in the model jurisdictions. The contractor shall develop pilot projects in one or more jurisdictions during the second and third year of the contract to develop a model for extending legal assistance services to poor individuals who need legal advice and/or representation concerning civil matters such as landlord, family or land disputes.

In consultation with USAID and other international donors to the justice sector, the contractor may be asked to undertake studies of the efficacy and structure of institutional development grants to bar associations as possible downstream regulators of legal profession and providers of legal training, ethics, discipline and organizers of legal assistance. The bar has a legal role to certify practicing lawyers but there is no formal bar exam and they can treat each individual applicant arbitrarily. Free legal advice and education are part of their statutes but most have not organized any programs in this area.

## **Activity 12: Legal Assistance Development Studies**

### **Description of Activity.**

USAID- and other donor-supported free legal assistance activities for the poor in Haiti are not

sustainable as presently constituted due to the lack of a Government of Haiti (GOH) legal assistance framework and a national funding mechanism. The two principle legal aid donors in Haiti, USAID and the European Union, are fully financing significantly different legal assistance models in different regions of the country. The European Union has indicated that it will not continue its funding in this area beyond the year 2000 for sustainability reasons. The GOH has taken steps to develop a national plan to fulfill the Haitian constitutional guarantee of access to legal assistance for the poor for criminal and civil matters, including the adoption of a May 8, 1998 Law on Judicial Reform which includes a general call for the institutionalization of legal aid. The GOH body charged with developing a national judicial reform strategy, the *Commission Preparatoire*, asked a Belgian NGO, Réseau de Citoyen Network (RCN), to develop a proposal for a national legal assistance program. RCN recommended the establishment of a MOJ-managed system in which indigent civil and criminal defendants and plaintiffs are provided free legal representation, but did not identify a funding source. No formal government action has been taken on the RCN recommendations and it does not appear that any action is expected in the short term. Therefore, USAID's Administration of Justice Program in Haiti will undertake three related studies on sustainability-related issues.

### **Scope of work.**

The contractor(s) will

- (1) undertake a study to evaluate the efficacy of institutional development grants to bar associations which would permit the organizations to establish bar entry requirements, professional ethical standards, complaint reporting and disciplinary procedures and education and practical training programs for legal professionals; serve as regional libraries and legal depositories; and serve as a principle provider of free legal assistance under a national or other system;
- (2) administer a grant for a pilot project addressing law school curriculum revisions facilitating the development of legal assistance clinics for third- and fourth-year students, in which students would receive theoretical and practical training in legal assistance work, and provide legal aid through the clinic program or an outside legal assistance organization;
- (3) undertake a project for the development of legal education methodologies and program design for a poor population with low literacy level. The legal information segments of existing activities, which have included mass media (television and radio) and small discussion efforts, have not worked well;
- (4) conduct a comprehensive evaluation of the legal assistance activity at the end of the second year of the contract. The study should produce a comparative assessment of the effectiveness of the three legal assistance delivery models (NGOs, law schools and bar associations) and the contractor-managed model developed by RCN. It should evaluate legal

staff training and supervision programs (including any related legal education and training programs offered by law schools and bar associations). It should include an assessment of the expansion of legal assistance to civil matters. Finally, it should prepare a detailed set of recommendations for the structure, management and funding of a national legal aid program based on the experiences of the USAID-supported activities in this area and related studies for presentation to the GOH entities responsible for judicial reform design and implementation.

### **Activity 13: Civil Society Judicial Reform Advocacy Assistance**

#### **Description of Activity.**

The activity is designed to provide support for the efforts of civil society groups to organize and implement judicial reform advocacy campaigns, focusing on both the business and the human rights sectors. It addresses the need for organizations across the civil society spectrum to focus well-designed advocacy strategies on the Haitian parliament, presidency, ministries and political parties over the next two years calling for support for specific reform measures. Since improvements in the functioning of the Haitian judiciary are essential for the protection of human rights in Haiti, advocacy activities aimed at overcoming the current paralysis in Government of Haiti reform programs will contribute toward the achievement of the specific result and the institutionalization of the rule of law.

#### **Scope of work.**

The contractor(s) will design a two-year advocacy strategy targeting the member organizations of one or more specific civil society professional, cultural, educational, humanitarian or human rights sectors. The strategy will identify the target sector, outline its members' specific interests in judicial reform, describe the methodology it will use to organize the sector and to target and influence political actors, identify the specific judicial reform measures the advocacy campaign will support, develop a timetable with specific achievement benchmarks, and propose a methodology for evaluating the strategy's effectiveness.

#### **Contracting recommendations.**

This activity could be through a cooperative agreement with one or more Haitian professional organizations representing specific Haitian economic or social sectors.

### **Activity 14: Human Rights Organizational Development Assistance**

## **Description of activity.**

Human rights organizations are important civil society sources of efforts to promote and protect human rights, and their role becomes critical when governmental institutions designed for this purpose do not function well. The effectiveness of the Haitian human rights sector is limited, however, because all organizations in this area lack essential management, education, training, organization and fund-raising and donor development skills. The training seminars and related activities sponsored by international donors have not been able to address these problems in any consistent, organization-focused way. This activity is designed to facilitate a wide range of direct assistance to organizations willing and capable of undertaking a multi-year development effort. By strengthening human rights groups in this way, the activity increases their ability to expand the number and range of actions they can take to protect human rights and contributes directly to the long-term stability of this sector and its role in defending the rule of law once the international actors leave.

## **Scope of work.**

During the first year of the activity, the contractor will carry out a survey of human rights organizations in Haiti, building on research conducted by USAID, other donors, MICIVIH and the World Bank, identifying each organization, its management, staffing, budget and funding sources. Simultaneously, the contractor will prepare a survey of existing funders/donors and identify organizations outside of Haiti which provide NGO development services.

After the survey of NGO needs and available resources is completed, the contractor will develop a set of organization, management and program development services and will plan and negotiate multi-year development services packages with NGOs who are interested in the services and meet a minimum set of organizational and financial management requirements.

In addition, in the second year of the activity, the contractor will, on the basis of the information developed in the first phase and in consultation with USAID and international public and private donors, explore the possibilities of (1) forming an NGO donor consortium (governments, foundations and private donors to Haitian NGOs) that would establish minimum standards for organizational structure, transparency, grant proposals and accounting/reporting systems and offer longer-term funding assurance and a set of pooled resources (in addition to each donor's own grants) as incentives for organizational training and development; (2) providing grants for intermediate donor organizations that support NGO organizational development; (3) establishing an educational fund for masters programs and specialized NGO training programs outside of Haiti as well as a resource/information center on such programs and funding sources to support them; (4) establishing support and training linkages with international NGOs and human rights bodies at the United Nations (the Human Rights Commission and the Office of High Commissioner for Human Rights) and the Organization of American States (Inter-American Commission on Human Rights and the

Inter-American Institute for Human Rights).

**Contracting recommendations:** Because of the reluctance of Haitian organizations in certain sectors to receive USAID funding or direct technical assistance, the selection of this contractor is particularly important. It should be a known international human rights or humanitarian agency with extensive management experience in the areas identified in the scope of work. This activity might also be managed by two contractors, one a Haitian group with the capacity to put together a set of management technical assistance resources (business consultants or professional groups, for example) and the second an international humanitarian or human rights group with the relevant experience.

### **Activity 15: Human Rights Education Curriculum**

#### **Description of Activity.**

Human rights education is a long-term proposition requiring the integration of human rights concepts into an understanding of the role of civil rights and the judicial system in a democratic society. Most Haitian adults have not received formal education in this area and generally hold a limited understanding of the way human rights and the justice system should function therefore are less responsive to demands for reform in the judiciary and other mechanisms for the enforcement of the fundamental rights of citizens. Thus, it becomes important to begin human rights education with formal education of Haitian youth and continue that education throughout primary and secondary school. This activity then requires the development of appropriate pedagogical methodologies and teaching materials for each education level.

#### **Scope of work.**

The contractor will develop, in conjunction with the Ministry of Education, teacher training colleges and human rights specialists, a curriculum for human rights education to be integrated into the national curricula for primary and secondary schools. The contractor shall also develop and provide human rights teacher-training seminars for educators and develop a series of human rights education courses for education students at Haiti=s teacher training colleges. The contractor shall then develop and carry out a one-year pilot project in a representative set of primary and secondary schools to test the effectiveness of the curriculum. After conducting an evaluation at the end of the pilot project, the contractor shall make all recommended adjustments to the curriculum and teaching methodologies and develop and provide education materials such as course books and ancillary teaching materials.

### **Activity 16: International Human Rights Litigation**

## **Description of activity**

Develop a curriculum designed to be used in the instruction of practicing attorneys, human rights organizations with a legal aid component and victim aid organizations, in the use of Haitian law as effective judicial remedy against the violation of human rights standards, particularly regarding due process rights, individual liberty rights, physical integrity rights and property rights under the American Convention on Human Rights. Curriculum to include instruction on formal and substantive rules of admissibility to the Inter-American system of protection of human rights, the development of legal human rights argument before both domestic and international jurisdictions. The curriculum will focus on the development of specific domestic provisions into effective remedies and on the development of general provisions of civil delict tort) and administrative compensation, as well as remedies against individual officials (prise à partie), into effective judicial remedies. Curriculum will also address test-case concept and requirements. Curriculum will be case-law oriented both in its domestic law approach and in its international law component. Prepare curriculum for publication and distribution in the local market.

## **Scope of Work**

- C Develop human rights litigation curriculum within six months.
- C Develop contacts with law faculties, the bar associations, attorneys and relevant NGOs during first six months and prepare them for training.
- C Implement training activity throughout second six month period. Provide training to Haitian magistrates and relevant judicial personnel through existing mechanisms.
- C Continue to establish links and provide training throughout contract period.
- C Establish Haitian human rights litigation facilitation and depository organization within one year.
- C Supervise, facilitate and monitor or otherwise promote introduction of human rights cases in domestic courts. Encourage and facilitate expedition of cases through domestic procedures to international bodies.

## **Contracting Recommendations**

The redesign team recommends that the contractor for this activity be an international organization such as the Inter-American Institute for Human Rights or the Inter-American Commission rather than a United States based NGO. The contractor must have access to proven international and domestic human rights litigation experience, preferably using the American Convention system. Comparative knowledge of European and United Nations systems would be an advantage.

## **Activity 17: Community-Police Relations**

### **Description of activity.**

Continued efforts should be made to improve relations between police and the communities in which they serve. To this end, an activity must be designed and implemented which will bring members of the police and community together to discuss concerns on an on-going basis. The contractor will create an activity which will intervene to identify conflict, establish a dialogue between sectors, and focus on resolving points of conflict by encouraging open communication and mutual understanding as a way of diffusing tense situations. The activity should be structured to facilitate regular meetings and follow-up sessions with the contractor. The activity will also provide instruction to the police and community members as to their respective roles and responsibilities. Greater cooperation between the police and community will improve the crime fighting capabilities of the police and reduce the number of abuses committed by the police.

### **Scope of Work:**

The contractor will develop an activity designed to address and diffuse points of conflict between the police and community. In creating the program the contractor will collaborate with representatives of the judiciary, the HNP, and relevant NGOs to identify the most problematic areas of conflict between the police and community and devise a framework within which to discuss and resolve the conflict. The contractor shall also develop and implement an educational component designed to instruct the police and members of the community about their respective roles and responsibilities. The program should be structured to institutionalize community-police conflict-reduction meetings and practices on a regular basis with ongoing contractor support.

### **SPECIFIC RESULT: FORMAL COMPLAINTS ABOUT POLICE MISCONDUCT MORE FREQUENTLY RESOLVED**

The United States Department of Justice International Criminal Investigation Training Assistance Program (ICITAP) is in the fourth year of a five-year plan designed to provide management, organizational, and technical assistance to the HNP. USAID has a number of sources available for analyzing and reporting to USAID/Washington on the progress of ICITAP's activities. One is the bi-annual report released by the HNP's Office of Inspector General outlining the nature and volume of cases opened and resolved against HNP agents accused of crimes and human rights violations. USAID should identify a set of HNP indicators which serve as proxies for the areas in which ICITAP is providing training (including the resolution of formal complaints against the police), establish baselines, and then measure changes in the indicators over a year period to determine if -- and to what extent --

ICITAP's presence is having an effect on the professionalization of the HNP. USAID can also utilize the information provided in reports compiled by MICIVIH and human rights organizations such as the National Coalition for Haitian Rights and Amnesty International, both of which NGOs have published police studies in the last year.

USAID/Haiti should also request regular updates from ICITAP concerning the training program of the HNP Academy. Such information should assist USAID/Haiti in evaluating and reporting on the role of training as a tool to reduce the number of formal complaints filed against the HNP. It would also provide a forum for ICITAP -- USAID discussions to focus on changes in training methods or programs to further reduce the number of complaints filed against the police.

## Appendix I

### Individuals and Organizations Contacted by the Design Team

Carl Alexandre	DOJ/OPDAT
John Anderson	ICITAP
Sandra Bastien	ICITAP
Gary Bennett	ICITAP
Sofia Clark d=Escoto	OAS/UN Civilian Mission in Haiti (MICIVIH)
Lizbeth Cullity	MICIVIH
Necker Dessables	Human Rights Fund II (HRFII)
Prof. Henri Dorleans	AFPEC
Marceau Edouard	DOJ/OPDAT
Florence Elie	CPRDJ
Pierre Esperance	National Coalition for Haitian Rights (NCHR)
Gerde Francis	CIVPOL
Michel Gauvreau	Checchi and Co., Consulting
Colin Granderson	MICIVIH
George Henry Sr.	Mentor, OPDAT
Mechell Jacob	Checchi Consulting
Karl Jean-Louis	DOJ/OPDAT
Tomas Jonson	Lutheran World Federation
Mathieu Jules	Juge d=Instruction, Mirebalais
Salimata Kane	MICIVIH
JoAnn Klein	University of Florida
Phillippe Lamarche	Checchi and Co., Consulting
Alfred Largange	International Peace Brigades
Dilia Lemaire	Haiti Solidarité International
Thelusca Louis	NCHR
Andrea Loi	MICIVIH
Ira Lowenthal	ADF
Robert Manuel	Secretary of State for Public Security
Gaston Nady	Juge de Paix, Mirebalais
Belmond Ndengue	HRFII
Tom Noirfalisie	DOJ/OPDAT
Nadine Perrault	COFAL
Alphonse Piard	Mentor, DOJ/OPDAT
Menan Pierre-Louis	Checchi and Co., Consulting
Patrick Pierre-Louis	CPRDJ
Rodolfo Mattarollo	MICIVIH
Axel Piers	Réseau des Citoyens/Citizens' Network

Hervé Razafimbahiny	HRFII
Pierre St. Hilaire	DOJ/OPDAT
Jean Gardy Théodare	HRFII
Chris Thomas	MICIVIH
Dr. Louis Roy	Office of Citizen Protection
Kely Tabuteau	Checchi and Co., Consulting
Claude Théodat	Commissaire du Gouvernement, Mirebalais
Jean-Frédéric Salès	The Bar Association of Port-au-Prince
Lionel Delatour	CLED, Port-au-Prince
Wilfrid Faustin	Checchi and Co., Consulting
Mechell Jacob	Checchi and Co., Consulting
Lisa Mbele-Mbong	National Democratic Institute, Port-au-Prince
Stanley Lucas	International Republican Institute, Port-au-Prince
Douglas Chiroboga	AID/W/Haïti Task Force
Michèle Schimpp	USAID/Haïti, HRD/DG
John Schneider	AID/W/Haïti Task Force

## Appendix II

### Contracting Recommendations

#### Request for Applications (RFA)

##### 1. Justification for RFA:

Based on the work to be accomplished/performed under the Mission's Strategic Objective, Democracy and Governance, it is recommended that USAID/Haiti issue a competitive Request for Applications that results in the awarding of a cooperative agreement.

Although an argument can be made for awarding a procurement contract, the team suggests that the degree of latitude afforded by this option will allow the responding organizations to follow the general program description contained in the published RFA, while demonstrating their ability and creativity in preparing a proposal that fully describe their program and what/how they propose to implement the Administration of Justice program in Haiti.

USAID/Haiti would be involved to the extent of approvals of work plans, key personnel, monitoring and evaluation plans, and, where needed, agency/recipient collaboration as set forth in ADS 303.5.11A.

The Federal Grants and Cooperative Agreement Act of 1977 (Section 4---Use of Contracts of PL 95-224) states that, "Each executive agency shall use a type of procurement contract as the legal instrument reflecting a relationship between the federal Government whenever the principal purpose of the instrument is the acquisition, by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal government." The principal purpose of this project does not directly benefit USAID, but its customer in Haiti..

Section 6 of the Act concerning the use of cooperative agreements states (1) the principal purpose of the relationship is the transfer of money, property, services or anything of value to the recipient to accomplish a public purpose of support, or stimulation authorized by federal statute, rather than acquisition, by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal Government; and (2) *substantial involvement* is anticipated between the executive agency, acting for the Federal Government, and or other recipient during performance of the contemplated activity. "Substantial involvement", is defined in USAID's Contract Information Bulletin 95-18, dated July 10, 1995.

As indicated above, USAID will describe the program objectives in very general terms in the Request for Applications and all applicants will have the opportunity to propose their own program describing how that program will be implemented to attain the relevant intermediate result. Each respondent to this will be required to submit an implementation and monitoring plan

as an integral component of the proposal. These will be used by USAID/Haïti to monitor progress and performance of the successful respondent.

USAID expects to receive several different proposals as a result of the Request for Applications. The evaluation of the proposals will be based upon the criteria set forth in the RFA. A cooperative agreement will be awarded to the organization whose proposal is most responsive to the needs of USAID and the Government of Haïti in the areas described in Intermediate Result #4.

## **2. Purpose of Request for Applications**

The purpose of this Request for Applications is for USAID/Haïti to select a grantee to design and implement a program of activities that contribute to achieving Intermediate Result #4. The grantee will enlist sub-grantees as implementing partners from the U.S., the Caribbean region and Haïti; these partners will be responsible carrying out the tasks specified in the several components of the successful proposal. The grantee, however, will serve as the primary implementing/managing agent for the entire proposal.

The prime implementing grantee will be responsible for setting-up a stand alone office that will also house sub-grantees and will take the lead in managing, integrating and achieving results. Because of the wide range of results called for under the strategic objective framework, it is expected that several sub-grantees will be required.

## **3. Grantee/Cooperative Agreement Type**

This will be results-oriented, cost plus overhead cooperative agreement. The proposers are to include an implementation plan that includes: 1) their approach to achieving results, 2) how they would carry their proposed activities, 3) when they would employ specialized sub-grantees, 4) staffing for chief of party and leadership of sub-grantees, 5) nomination of key personnel, 5) an indicative 5-year phased schedule for implementation, and 6) monitoring and evaluation plans.

## **4. Background of Activity Packages**

The activity packages were designed to assist USAID/Haïti to attain the intermediate result of Apeople increasingly treated according to the rule of law.@ Applicants under the RFA are free to propose their own activities and methodologies for achieving the intermediate result.

The institutionalization of democracy in Haïti faces a number of obstacles, some unique, associated with the nature of Haitian society, the brief experience of the nation with the transition from authoritarian to democratic values, the developing a system of legal principles and judicial ethics, and the need for broader participation in political and economic decision-making. There are also critical assumptions related to constitutional reform, devolution of authority, compensation for public sector workers, and emigration that must be constantly measured for

their detrimental or ameliorating impact on achieving results. A set of 4 principal intermediate results have been identified as being necessary to achieving the intermediate result:

1. More actions taken to protect human rights;
2. Judges better equipped to apply the law;
3. Cases move through the justice system in model jurisdictions more efficiently;
4. Formal complaints about police misconduct more frequently resolved.

The process for developing strategic and intermediate results was guided by USAID reengineering core values, which place emphasis on results, teamwork, customer focus and partnership. It is expected that the grantee undertaking these activities will place equal emphasis on pursuing an open, participatory and transparent implementation process, and will constantly be looking for ways to strengthen ethnic/racial relationships, regional interaction, and public/private partnerships. The grantee should expect to fully participate in teams with customers, partners and USAID staff and strive for focus on results rather than inputs/outputs alone. The grantees should be encouraged to proffer suggestions for modification of the results, and shifting emphasis or timing as the changeable circumstances in Haïti might dictate.

## **5. Managing for Results**

The results have been constructed according to the guidelines of USAID=s current reengineering approach. This makes it incumbent on the grantees to undertake whatever actions are deemed necessary to accomplish the results recorded in the SO results framework. These results will be managed by a prime implementing grantee with sub-grantees to share expertise and implementation management. However, within this structure, there is to be maximum flexibility and creativity to accomplish results. Many of the detailed implementation decisions required have not been defined in this paper, but will be determined by the implementing grantees. Details generally have been left to the implementing agents to provide the latitude to propose and undertake the approaches they believe provide the best prospects for achieving the results. In particular, flexibility will be required in the following areas:

1. The selection and complexity of required policy initiatives,
2. Managing and programming resources, and scheduling activities,
3. Selection of activity sites, models and customers,
4. Identification of collaborators and partners and coordinating parallel activities, and
5. Persuading and motivating team members to support methodologies and content of activities chosen by the grantees.

## **6. Implementation and Start-up**

The principal grantee should propose a plan for start-up, a first year draft implementation plan and an indicative 3 year phased schedule of implementation. The plans should include information on the grantee=s methods for teamwork, integrating results achievement, and managing a complex mix of short and long-term technical assistance, training and group visits and session.

It will be required that the grantee set-up an office in Haïti; the location of the office may be proposed by offerors. The proposed start-up plan should detail the grantee=s process for establishing the office, the equipment that will needed to be purchased, a procurement plan, and the hiring of foreign national staff.

It is expected that, initially, the office will be staffed by a chief of party, local staff, and short term consultants required to plan and launch activities. At a later date, it is expected that permanent staff and related consultants of other sub-contractor/grantees also will occupy space in the office.

## **7. Reporting Requirements**

The following reporting will be required of the prime grantee, who will in turn solicit the necessary input from sub-grantees, as required:

1. Quarterly financial reports,
2. Submission and approval of annual work plans,
3. Approval of key personnel
4. Approval of monitoring and evaluation plans. USAID wishes to be involved in monitoring progress toward achievement of strategic and intermediate results during the course of the cooperative agreement.

## **8. Evaluation Criteria**

Applicants' proposals will be reviewed, evaluated and rank ordered based on the following criteria and the accumulated value of points assigned for each criterion:

1. Knowledge of Administration of Justice issues as they relate to judicial reform in developing countries and countries in transition to democracy, and demonstrated in the applicant's proposal and implementation plan for achieving the strategic objective and results described in section \_\_\_\_\_ of the Request for Application. 30 Points.

2. Performance monitoring plan that defines indicators and methodology to measure progress in attaining the intermediate result specified earlier in the Request for Applications. 15 Points
3. Respondent's experience in the U.S. and/or overseas in implementing technical assistance and training programs in democracy and governance projects. 15 Points.
4. Practical experience, knowledge and capability of proposed personnel in managing and implementing democracy and governance programs both in the U.S. and in countries in which USAID has promoted and funded such programs; demonstrated knowledge of politics, language and culture. 20 Points
5. Organization's management structure and staffing established for project implementation, including its relationship to subcontracting/subgranting entities. 10 Points
6. Approaches to addressing the problems and issues inherent in the program objective and results in section\_\_\_ of the Request for Applications. 10 Points
7. Organization's past performance record in implementing democracy and governance programs in countries in which USAID has promoted and funded such programs. 20 Points

(Note: To correspond with each of the above areas of institutional capabilities, applicants should present past performance references that provide a description of a total, among all consortia, of up to 10 similar programs that have been performed over the past 5 years. The descriptions should not exceed one page in length, should include names and phone numbers of technical and contract officers, and should describe the results achieved. In addition to the Apast performance annex, the applicants technical proposal should provide a discussion of relevant experience and how the experience can be applied to the management of these results packages.)

## **Alternative Procurement Method**

### **Request for Proposals (RFP)**

#### **1. Purpose of Request for Proposals**

The purpose of this Request for Proposals is for USAID/Haiti to select a contractor to manage the Intermediate Result Package #4 under its approved Strategic Objective. The selected contractor will serve as the prime implementing and integrating agent for the contracted activities. Because of the broad range of activities required by the specific results comprising IR #4, USAID anticipates that the contractor will be assisted by one or more sub-contractors from the U.S., Haiti and the Caribbean region.

The prime implementing agent will be responsible for establishing an office that will also serve

the needs of the sub-contractors for office space.

The prime contractor will have the principal responsibility for the management, integration and achievement of the specific results, as follows:

1. More actions taken to protect human rights;
2. Judges better equipped to apply the law;
3. Cases move through the justice system in model jurisdictions more efficiently;
4. Formal complaints about police misconduct more frequently resolved.

Because of the wide range of activities called for under this result packages and the specificity of some of the tasks, several sub-contractors may be required.

## **2. Sub-contract/Cooperative Agreement Type**

This will be performance(results)-oriented, cost-plus-fixed fee contract. All proposers are to include an implementation plan that includes: 1) their approach to achieving results given the number and composition of results packages, 2) how they would carry out activities, 3) when they would employ specialized sub-contractors/grantee, 4) staffing for chief of party and leadership of sub-contractors/ grantees, 5) nomination of key personnel, and 5) an indicative 3-year phased schedule for implementation.

## **3. Background of Results Package #4**

The results packages were designed to assist USAID/Haiti to achieve its strategic objective of Amore responsive and participatory governance and rule of law.@ The consolidation of democracy in Haiti faces many challenges, some unique, associated with class and status, transition from authoritative to democratic values, establishing an effective system of judicial principles and ethics based upon the precepts of the rule of law. A set of 4 specific results have been identified as being necessary and to achieving Intermediate Result #4, Apeople increasingly treated according to the rule of law@.

1. More actions taken to protect human rights;
2. Judges better equipped/prepared to apply the law;
3. Cases move through the justice system in model jurisdictions more efficiently;
4. Formal complaints about police misconduct more frequently resolved.

The process for developing the result packages was guided by USAID reengineering core values, which place emphasis on results, teamwork, customer focus and partnership. It is expected that the contractor/grantee undertaking these activities will place equal emphasis on pursuing an open, participatory and transparent implementation process, and will constantly be looking for ways to

strengthen ethnic/racial relationships, regional interaction, and public/private partnerships. The contractor/grantee should expect to fully participate in teams with customers, partners and USAID staff and strive for focus on results rather than inputs/outputs alone. The implementing agents should be encouraged to proffer suggestions for modification of the result packages, adding or deleting activities, and shifting emphasis or timing as the changeable circumstances in Haïti might dictate.

#### **4. Managing for Results**

The results packages have been constructed according to the guidelines of USAID=s current reengineering approach. This makes it incumbent on the contractors/grantees to undertake whatever actions are deemed necessary to accomplish the results recorded in the SO results framework. These results packages will be managed by a prime implementing contractor/grantee with sub-contractors/grantees to share expertise and implementation management. However, within this structure, there is to be maximum flexibility and creativity to accomplish results. Many of the detailed implementation decisions required have not been defined in this paper, but will be determined by USAID result package teams, the implementing agents. Details generally have been left to the implementing agents to provide the latitude to propose and undertake the approaches they believe provide the best prospects for achieving the RPs= results. In particular, flexibility will be required in the following areas:

1. The selection and complexity of required policy initiatives,
2. Managing and programming resources, and scheduling activities,
3. Selection of activity sites, models and customers,
4. Identification of RP collaborators and partners and coordinating parallel activities, and
5. Persuading and motivating RP team members to support methodologies and content of activities.

#### **5. Implementation and Start-up**

The contractor should propose a plan for start-up, a first year draft implementation plan and an indicative 3 year phased schedule of result package/activity implementation. The plans should include information on the contractor/grantee=s methods for teamwork, integrating activities, and managing a complex mix of short and long-term technical assistance, training and group visits and session.

It will be required that the contractor/grantee establish an office in Haïti; the location of the office may be proposed by offerors. The proposed start-up plan should detail the contractor/grantee=s process for establishing the office, the equipment that will needed to be purchased, a procurement plan, and the hiring of foreign national staff.

It is expected that, initially, the office will be staffed by a chief of party, local staff, and short

term consultants required to plan and launch activities. At a later date, it is expected that permanent staff and related consultants of other sub-contractor/grantees also will occupy space in the office.

## **6. Reporting Requirements**

The following reporting will be required of the prime contractor/grantee, who will in turn solicit the necessary input from sub-contractors/grantees, as required:

1. Quarterly financial reports,
2. Submission and approval of annual work plans,
3. Activity summary reports, to be submitted quarterly,
4. Semi-annual development results reports (i.e. intermediate results from results framework),
5. Annual report which coincides and subsumes quarter and semi-annual reports that reports on activity outcomes, progress towards development results and targets, status of critical assumptions, operating problems, financial status, and outstanding issues. The annual report should be submitted in time for USAID to incorporate the information into the R4.

## **7. Award Criteria**

The technical proposal, use of sub-contractors/grantees, and personnel sections will constitute 75% of total award consideration. The remaining 25% will be awarded based on the proposers' understanding, explicitly and implicitly expressed, of the Haiti political, ethnic/racial, economic and socio-cultural milieu and their understanding of the numerous challenges that will be faced. Factors to be considered will include:

1. Understanding of the results framework and results packages within the context of Haiti,
2. Institutional capability to implement results packages:
  - a. Experience in managing similar types of overseas activities, including specific experience with democracy and governance results, ethnic/ racially divided societies, and with underdeveloped civil societies,
  - b. Experience in managing similarly complex, multiple package endeavors with USAID or other donor institutions, including managing within a consortium of partners and customers,

- c. Experience managing a mix of long term and short term technical assistance, in-country and off-shore training and leading observation visits, and,
- d. Experience in conducting policy reform activities in developing countries.

(Note: To correspond with each of the above areas of institutional capabilities, proposers should present past performance references that provide a description of a total, among all consortia, of up to 10 similar activities that have been performed over the past 5 years. The descriptions should not exceed one page in length, should include names and phone numbers of technical and contract officers, and should describe the results achieved. In addition to the A past performance annex, the proposers technical proposal should provide a discussion of relevant experience and how the experience can be applied to the management of these results packages.)

- 3. The soundness of the proposed first year work plan,
- 4. The capability and experience of the chief of party, and a roster of consultants with bio-data that could serve as consultants to various results packages,
- 5. The proposers use of capable and specialized sub-contractors/grantee in implementing the results packages.

Resumes for chief of party candidates and lead persons for sub-contracts/grantees should be provided as an annex, and include chronological work history, educational background, experience, if any, in Haïti or the French-speaking Caribbean, and candidates= relationship to the proposing institution(s).