

NATIONAL CENTER FOR STATE COURTS

Quarterly Report # 2

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**UNITED STATES AGENCY FOR
INTERNATIONAL DEVELOPMENT**

National Center for State Courts

HAITI RULE OF LAW PROJECT
Quarterly Report No. 2
Reporting period: January 1 through March 31, 2006

A. PROJECT GOALS

This report outlines the activities conducted by the National Center for State Courts (NCSC) under the Haiti Judicial Strengthening and Reform Program during the first quarter. The purpose of this two-year project is to conduct three types of activities: 1) strengthen the administrative, management, and technical capacity of the courts and prosecutors through training and technical assistance to justices of the peace, judges, prosecutors, and support personnel; 2) reduce pretrial detention by improving the flow of cases through the police, prisons, and courts; and 3) improve citizen links to the judiciary through greater citizen awareness of their rights and access to legal services.

B. HIGHLIGHTS OF THIS REPORTING PERIOD

- The Ministry of Justice (MOJ) has benefited from NCSC's direct technical assistance in preparing and drafting two new key decrees: Statute of the Members of the Judiciary, and the Superior Institute of Legal Profession (the former Magistrates School). Both decrees were presented to the government for adoption on February 10.
- On December 29, 2005, the GOH adopted a decree on Rules of Practice for Justice of the Peace Courts. NCSC is part of the combined effort involving the Magistrates School, the Justices of the Peace Association, and international organizations to introduce the rules nationwide. Training material is being prepared, and training of trainers will commence shortly, with training of judges soon to follow.
- The delegation of representatives from justice sector institutions who participated in last quarter's study tour to the US developed strategies for application of ideas gathered during the trip, and presented them to the Minister of Justice. NCSC will sponsor workshops where these themes will be introduced to a larger audience from the justice sector for feedback and acceptance.
- After receiving training from NCSC in 2000 and 2005 on court and case management, the Dean of Mirebalais organized proceedings in that jurisdiction that have resulted in the level of pretrial detainees at 50% of the total incarcerated population, compared to a national average of 94%. NCSC sponsored a workshop for the judiciary of St. Marc where the Dean and the Prosecutor shared their experience and methodology, which will be implemented in St. Marc.
- Prosecutors currently perform their duties without the benefit of any written guidelines. NCSC gathered input from prosecutors, clerks, and other key actors from

the judiciary, and engaged a senior local consultant who drafted a set of 59 dispositions based on the comments and suggestions.

- NCSC completed data collection through an exit survey of 180 closed cases from the National Penitentiary that will identify points of delay between key steps of the penal chain and assist in designing solutions to prolonged pretrial detention. The data has been entered in a spreadsheet designed by an NCSC specialist and is being analyzed.
- The case flow diagnostic tracing the Haitian penal chain began with a specialist from NCSC office and the NCSC local team meeting with key members of the judiciary and other related institutions to identify sources of information (records). Data collection instruments are being designed.

C. TASK-SPECIFIC ACCOMPLISHMENTS DURING THE REPORTING PERIOD

1. Project administration

NCSC added two experienced and qualified members to its team. In January, a respected prosecutor who recently received a master's degree in comparative criminal law in France joined the team as the pretrial detention coordinator, not long after an experienced judge and former head of the Magistrates School filled the position of training coordinator. These two important positions were difficult to fill because of the low human resources capacity within the country.

2. Strengthen the administrative, management, and technical capacity of the courts and parquet

- **Institutional Support**

The Ministry of Justice (MOJ) has benefited from NCSC's direct technical assistance in preparing and drafting two new key decrees: the Statute of the Members of the Judiciary, and a decree on the Superior Institute of Legal Profession, the former Magistrates School. The Institute has a wider mandate than the former Magistrates School, it will oversee the training of other professionals working with the judiciary such as clerks and bailiffs. The "Statute of the Members of the Judiciary" provides clear rights and obligations for each member of the judiciary.

Both new decrees were presented to the government for adoption on February 10. They will complement the decrees recently adopted regarding the new structure of the Ministry of Justice and the Judicial Council (which establishes an independent body to govern the judiciary). The MOJ is assisting in establishing the new institution. Nominations and elections for Judicial Council members are completed: three judges (one from the Supreme Court), one judge and one prosecutor from the Court of Appeal, one dean and one prosecutor from a first instance court, and one justice of the peace.

The establishment of the Council is an important step toward the independence of the judiciary, but it already faces criticism. Some say that although consultations were conducted with members of the judiciary and civil society representatives, their specific recommendations were not incorporated in the decree. These recommendations had been incorporated in the Ministry's prepared draft decree, but were deleted by the government prior to passage. Civil society organizations, including Bar associations and others, wanted representation on the Council. Others have raised concerns over whether the executive branch could have too much influence over the Council through appointment of members, defeating its ultimate goal as an institution out of executive branch reach, particularly the Ministry of Justice. Four of the Council's nine members are MOJ employees who can be dismissed at any time by the MOJ. As a result, some see a threat to the independence of this new body from the presence of these four members in the Council.

- **Judicial Council**

The swearing-in ceremony for Council members will be followed by two-week training for Council members and staff. NCSC staff has contributed to the design of the training, and will participate in the training session, which will include a thorough review of the new decrees as well as basic administrative and management principles. According to the decree, the Council's disciplinary function is operational as soon as it is officially launched, but the management of the judiciary will remain under the authority of the MOJ until October 2006. During that period Council staff undergo in-depth management and finance trainings. Two donors have so far expressed interest in assisting with these trainings, NCSC and the Francophonie. Before providing time, money, and energy to this effort, however, both organizations will first gauge the commitment of the next government to this new institution.

- **JP Courts**

On December 29, 2005, the GOH adopted a decree on Rules of Practice for Justice of the Peace Courts. NCSC developed the Rules by using a local consultant to create a draft, then vetting it with members of the judiciary through workshops around the country. This set of Rules focuses on court and case management including financial procedures. The objective is to increase accessibility, efficiency, and transparency through streamlined and publicly known procedures, at the level of courts that handle more than 80% of the litigation in the country. A group of international organizations, including NCSC, along with the Magistrate School and the Justices of the Peace Association, is currently preparing a program to implement the rules around the country. Training material is being prepared, and training of trainers will commence shortly. Training of judges will begin in April.

- **Continuity with new government**

To encourage continuity of efforts from the next government, NCSC staff is compiling for the new Minister of Justice all the efforts and accomplishments of the MOJ during the

interim government's rule. This is a crucial bridge, as in the past new Ministers in Haiti are not informed of what has been done by their predecessors, and previous efforts are not continued; thus, new Ministers are reinventing the wheel unnecessarily.

- **Law School**

NCSC has continued to support the Master Degree program with the law faculty launched during the previous quarter. One hundred participants from around the country are taking part in the first semester of this program, including judges, lawyers, and MOJ staff. Based on lessons learned so far, NCSC is working in conjunction with the program Director and the Dean to reinforce its program design and curriculum, develop needs-based budgets, and facilitate its sustainability.

- **Magistrates School**

A group of international organizations (French Cooperation, NCSC, Francophonie, and MINUSTAH) has met with the new head of the school to discuss its future. At the moment the physical facility is in poor condition following two years of inactivity and the occupation by the former military. The buildings and the program design are both in need of rehabilitation. NCSC will sponsor a workshop to facilitate planning for the future of the school, with the intended outcome the design of a new program.

3. Reduce pretrial detention

- **Sharing successful methodology**

Following training from NCSC on court and case management and with support of the Ministry of Justice, the Dean of Mirebalais organized the management of criminal cases in that jurisdiction such that the level of pretrial detainees compared to those convicted has been steady at approximately 50% for months, against a national average of 94%. With the MOJ's approval, it was decided to share the Mirebalais management techniques in two pilot jurisdictions, St. Marc and Jacmel. Through NCSC support, the Dean and the Prosecutor of Mirebalais, along with the Director of Judicial Affairs of the MOJ, visited members of the judiciary of these two jurisdictions to elicit their willingness to implement the Mirebalais management techniques.

The presentation by the Mirebalais Dean and Chief Prosecutor to 50 participants of St. Marc (police, clerks, bailiffs, JPs, investigative magistrates, prison officials, and Bar association representatives) was well received. They focused on the following principles:

- Team work between the various actors of the penal chain
- A steady and good faith effort to move forward
- A commitment to stem corruption
- Courage (they often received threats)
- Being proactive.

Applying these principles, they devised a plan with clear objectives to reduce pretrial detention and improve the overall operation of the chain. They organized meetings with all relevant actors from their jurisdiction (clerks, bailiffs, judges, and police) to ensure interagency cooperation. They instituted a strict system to control files, and could at any time identify how many cases per category of offense were outstanding. Court calendars are well defined and respected. The Dean considers himself a manager who oversees all operations and ultimately responsible for the details that make a court functional, such as having staff in place on time.

The Mirebalais Dean and Chief Prosecutor explained that their plan was not limited to court operations but also to material resources. From the money gathered in court and kept in a bank account (with two signatures to prevent unlawful use), they have kept the court and related buildings in good condition, and have even automated the court with the assistance of MINUSTAH.

A lively discussion followed the presentation. The Dean of St. Marc acknowledged that the techniques were a good lesson, and expressed his willingness to create a plan incorporating the techniques and implement it in that jurisdiction. The plan includes a “Penal Chain Committee” which has been formed and begun meeting. NCSC staff are providing follow-up support. A similar workshop is scheduled for Jacmel in the next quarter.

- **Prosecutors Guidelines**

Presently prosecutors have no written guidelines to follow as they carry out their duties; this lack of clarity results in disorganization and is one factor responsible for unnecessary delay in pretrial detention. NCSC held a general meeting to gather input related to overall functioning of the office from prosecutors, clerks, and other key actors from the judiciary, and engaged a senior local consultant who drafted a set of 59 dispositions based on the comments and suggestions generated at the workshop. The draft guidelines include, among other things, dispositions on overall management of the Prosecutors’ Office, structure and operation of the clerk’s office, fiscal issues, jurisdiction, and the relationship between offices that the prosecutors regularly interact with, including the MOJ, justices of the peace, and investigative magistrates. Input and comments on the draft will be elicited from the prosecutors and judges in another workshop and all feedback incorporated into a final draft. That final version will be submitted to the MOJ, and following formal adoption of the guidelines, NCSC will develop materials and provide training on the new guidelines.

- **Exit Survey**

In order to identify unjustified delay between key steps of the penal chain and eventually find solutions to prolonged pretrial detention, NCSC has gathered data through an exit survey of 180 closed cases from the National Penitentiary. A team of law students supervised by NCSC staff collected data from all relevant institutions: prisons, justice of the peace courts, first instance courts, the prosecutors’ office, and the investigative

magistrates' office, to ensure completeness of information related to each case. The data has been entered in a spreadsheet designed by an NCSC specialist. The next step will be to analyze the data and disseminate the findings. To do so, NCSC will team up with two highly respected Haitian jurists who will work with the team. The analysis and findings will then be presented to a larger audience. Members of the justice sector and civil society will be invited to comment on the findings, discuss the results shown on the spreadsheet, identify bottlenecks, and propose solutions.

Data collection was challenging because information is not available on computers, or even gathered in a file that accompanies a defendant through the system. Data collectors therefore had to visit all the various points in the penal chain to get information: police stations, justice of the peace courts, prosecutors' offices, investigative magistrates' offices, and the clerk and Dean's offices at first instance courts. Only APENA (the prison) has a computerized system, which was developed in conjunction with the UNDP, but even that system did not have complete information related to the criminal process.

In some instances, data collectors had to go through several records in the same institution to find information on one case; for instance, twelve different registers are used at the Prosecutors' Office. Even then, many registers were incomplete. In other instances, there was no record or filing system at all. In those cases, information could only be obtained by discussion with the officials, judges, clerk, and on occasion the detainee. Finally, data collectors sometimes encountered resistance from members of the judiciary, especially the investigative magistrates.

Although the final report is not yet complete, preliminary findings reveal:

- 1) Most cases are resolved through dismissal; there is a very low conviction rate.
- 2) A significant number of individuals are charged with the offense of "Association de malfaiteur."
- 3) There is no policy with regard to detention and release of deportees, who are incarcerated upon return to Haiti from serving a sentence in another country.
- 4) In some cases, the accused had quick and numerous appearances in front of judicial authority, primarily when there was representation by counsel, especially private lawyers rather than legal assistants.
- 5) Convicted inmates are often transferred from the National Penitentiary to other detention centers.
- 6) Prosecutors often are sending cases to investigative magistrates, even those that appear to be appropriate for sending directly to the first instance court. This results in a large caseload for the investigative magistrates, creates a backlog, and slows down the process.

- 7) Under the law, time served in pretrial detention should automatically be subtracted from the sentence, but this is not always done.
- 8) Files that the Dean's office receives from the prosecutors' office are not timely distributed to the investigative judges, and there is no criteria for distribution.
- 9) There are no rules or guidelines as to how investigative judges should manage their caseload.
- 10) Often prosecutors' decisions do not appear in the registers of cases in the prosecutor's office, making it difficult to monitor the status of a case.
- 11) There is an absence of prosecutors' office guidelines, no systematic way of managing operations.
- 12) Although no legislation exists authorizing plea bargaining, the prosecutors engage in the practice. The defendant does not appear in front of a judge, and no criminal record of the offense is created.

- **Study Tour**

In December a delegation of seven representatives from justice sector institutions in Haiti traveled to the US for a study tour. They received instruction from NCSC's Institute for Court Management experts on court and case management. On their return, the group engaged in strategizing sessions to identify areas where the US experience could be applied, and developed selected themes, including two that aim at reducing pretrial detention: formalization and expansion of plea bargaining, and creation of pretrial release measures. These concepts were presented to the Minister of Justice, who supported NCSC sponsorship of a workshop in which these themes will be introduced to a larger audience from the justice sector to get feedback and acceptance.

- **Case flow**

An NCSC specialist and the local office team began design of a case flow diagnostic tool, meeting first with key members of the judiciary and other institutions throughout the penal chain. They identified the records and other sources of information that exist. An NCSC expert has identified the key elements needed for analysis of case flow in Haiti's courts, and is working with the staff to prepare a data collection tool customized for Haiti's system. Data will be collected in Port-au-Prince and two selected provinces, analyzed, and the findings presented in a symposium with the objective to identify problems and find solutions to improve case flow. NCSC will support the implementation of the solutions as well as the related trainings.

4. Citizen access to Justice

- **Roving JPs**

To increase access to justice in remote areas, NCSC began developing guidelines for a pilot project where justices of the peace will visit outlying villages on market day for provision of services to citizens gathered there. The guidelines takes into consideration programmatic and practical aspects such as who is responsible for maintenance and repairs, limits of liability, subject matter limitations, and dissemination of information about the program to the recipients.

- **Public defender office**

The Decree on the re-engineering of the Ministry of Justice adopted on December 29, 2005 by the transitional government includes a legal assistance division. NCSC met with the four lawyers assigned so far to that new branch. They are poorly equipped, have no real plan of action, no clear scope of work, and no training in legal assistance. NCSC will meet with the MOJ Cabinet to address these issues and ascertain how to best help at this stage.

- **Women Judges Association**

According to information provided by the Women Judges Association, there are currently 45 women judges or prosecutors at various levels in the judiciary out of a total number of 700 nationwide, representing only 6.4% of the work force. NCSC began developing a questionnaire to identify the underlying causes for such a low representation. Once the causes are clearly identified, NCSC will develop a program to address the issues in conjunction with the Association.

D. DONOR COORDINATION

At the close of this quarter, the Minister of Justice organized the first “Cadre de cooperation” (CCI) meeting in many months. According to the political agreement that governed the transition, these meetings were mandatory to allow government and international organizations to coordinate activities. Unfortunately, the lengthy delay in holding such a meeting created frustration among internationals, and decreased their willingness to offer support for MOJ initiatives.

Representatives from international organizations have created their own coordination groups. Donors decided to work in defined geographical territories to avoid overlap; NCSC will work in St. Marc and Petit Goave. The group agreed to maximize resources and present uniform programs by splitting costs and responsibility for implementation of activities. For example, the Rules of Practices for JP Courts will be implemented through a common plan of action, including program design and training. Various donors will

sponsor the trainings in their designated territories, but the training of trainers will be done at one time, to ensure that each territory receives the same information and materials. NCSC has sponsored several coordination meetings, including meetings on the future of the Magistrate School, and establishment of a national legal assistance program.

E. DIFFICULTIES ENCOUNTERED AND ACTIONS TAKEN TO RESOLVE THEM

1. Social instability

During this quarter, project activities have been seriously disrupted. Significant social unrest and violence surrounding the election forced the closing of the office for several days. The situation was closely monitored, and assessed on a daily basis with NCSC main office and our international security consultants. Incidences of kidnapping remained high. All recommendations that the security consultant made were implemented and have been rigorously followed.

The judges' strike that began in December continued until the end of January. The strike was launched following a decision of the government to retire five Supreme Court judges over allegations of corruption. Various planned and proposed meetings and activities were postponed or cancelled due to the lack of operation of the judiciary and out of concern for safety.

2. Political instability

Since February 7, the day of the election, the transitional government has had no legal authority to adopt new legislation. Since the election, officials in the MOJ as well as the judiciary have lost momentum for change, and are simply waiting for the next government to take its place. Many now employed there do not know if they will be retained. Consequently, working has been and will be difficult until the new government assumes power. NCSC is focusing on activities out of the capital, as there is less influence there and less likelihood of significant personnel change, and thus more motivation and energy for implementation of activities.