

NATIONAL CENTER FOR STATE COURTS

Quarterly Report # 3

April 1, 2006 – June 30, 2006

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**UNITED STATES AGENCY FOR
INTERNATIONAL DEVELOPMENT**

National Center for State Courts

HAITI RULE OF LAW PROJECT
Quarterly Report No. 3
Reporting period: April 1 through June 30, 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 third 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 parquets through training and technical assistance to the justices of the peace, judges, prosecutors, and court personnel; 2) reduce pretrial detention by improving the flow of cases through the police stations, 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

- Members of the new Judicial Council were sworn in April and received the first in a series of training workshops prepared and provided in part by NCSC.
- NCSC completed a study of pretrial detention patterns, which includes the results of an exit survey performed at the Port-au-Prince (PAP) National Penitentiary. It reveals that Haiti has an extremely low rate of both incarceration and conviction. It also shows that the overwhelming majority of prisoners in the National Penitentiary are charged with felonies or serious felonies, and their cases are resolved within six months of their admittance to the National Penitentiary.
- During the reporting period NCSC conducted training sessions for more than 100 justices of the peaces (JPs) and clerks on the new Rules of Practice for the JP courts adopted by the transitional government.
- In its continuing efforts to address pretrial detention, NCSC has commissioned a local specialist to review the laws dictating the procedures related to pretrial detention. The draft document has been presented to USAID and to the new Minister of Justice for comments and suggestions.
- NCSC completed the drafting of the first-ever written guidelines for prosecutors. Two workshops were organized to follow on the vetting sessions held in the previous quarter. A senior local consultant drafted a set of 59 dispositions based on the comments and suggestions generated at the workshops.
- NCSC recently commissioned a local consultant to prepare draft Internal Rules for the Port-au-Prince First Instance Court, to be presented in July to members of the

judiciary in PAP. Once adopted, it will serve as model for all jurisdictions in the country; NCSC will support implementation of these rules nationwide.

- NCSC is engaged in a process to study and ultimately improve case flow in the courts. The current absence of a coordinated and efficient approach results in delays in case processing at all levels of the penal chain. NCSC has designed a data collection form, and data collectors are currently gathering information in St-Marc, Petit-Goave, and Port-au-Prince.
- Currently, women employed as judges and prosecutors represent only 6.4% of the total number of legal professionals holding these positions. NCSC developed a set of data collection instruments to identify the causes for such low representation, and is working with the Women Judges Association to gather this information.

C. TASK-SPECIFIC ACCOMPLISHMENTS DURING THE REPORTING PERIOD

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

- **Judicial Council**

As previously reported, the interim government adopted a decree establishing a Judicial Council, which is tasked with administrative control of the courts. The decision was to commence its operation in stages, beginning with all disciplinary matters and adding responsibility for budget management later this year. The new Judicial Council was inaugurated on April 10, with the swearing-in of the nine Council members.

During the quarter, NCSC worked with members of the newly established Council and the MOJ to design the action plan for the Council. Trainings for Council members and staff (on issues of management, finance, discipline), development of its legal framework (internal rules), and preparation of the budget are part of this plan. Members of the Council will also need to clarify such issues as the relationship between the Council and the MOJ and the judges' nomination process. The first in a series of training sessions on budget management was held in April. NCSC contributed to the design and sponsorship of the program.

NCSC recently learned that, while the new government is supportive of judicial independence, the new Minister of Justice is reluctant to implement the Decree as currently written. Nonetheless, the Decree serves as an important starting point for discussion of this issue with the new government. NCSC intends to continue to work with the new Minister to examine the potential role of the Judicial Council.

- **Rules of Practices for JP Courts**

Following the adoption of the Rules of Practice for the JP courts by the transitional government in December 2005, the MOJ in conjunction with donors agreed to implement the Rules around the country. Several international organizations are involved in this exercise, each responsible for conducting training in specific jurisdictions. Prior to these trainings, the cooperating organizations conducted a train-the-trainer program to establish a core group of trainers with a consistent curriculum. NCSC is sponsoring training in eight jurisdictions: St-Marc, Petit-Goave, Cap-Haitian, Jacmel, Port-de Paix, Port-au-Prince and Anse-a-Veau. To date, NCSC has successfully trained more than 100 JPs and clerks. The curriculum focuses on the administrative and management aspect of the JP courts (see Section D for the results from the training evaluation). After the training, a follow-up committee of three JPs was elected to conduct court visits, monitor implementation of the rules, and provide feedback to the JPs and clerks. The committee will report monthly on its activities. The JPs have requested additional materials and training. NCSC is currently drafting a list of basic needs and will work to address them over the next quarter.

- **Law School**

During this quarter, the law school offered the initial sessions of the masters degree program. All 100 students enrolled in the program have now taken these basic required courses consisting of Penal Law, Justice Organization, Justice History and Concepts, and Philosophy of Law. The Director drafted a comprehensive outline for the program, but it has not been accepted or implemented (see Section F).

- **Caseflow**

NCSC is conducting a study of case flow in the courts. The current absence of a systemic approach to case processing results in delay in case processing at all levels of the penal chain. NCSC has developed a caseflow diagnostic tool, customized to the Haitian system, and teams of data collectors are currently gathering information in St-Marc, Petit-Goave, and Port-au-Prince. Once collected, the data will be analyzed to identify issues, and the results will be presented in a symposium to stakeholders. The goal of this symposium will be to create a standard caseflow system that will be implemented in pilot jurisdictions.

2. Reduce pretrial detention by improving the flow of cases through the police, prisons, and courts

- **Identifying maximum potential sentences**

Since 1995, the UNDP has maintained a database on prisoners around the country. It contains valuable information, including the numbers of pretrial detainees compared to the number of those convicted. NCSC is currently working to further develop the system

in conjunction with the UNDP. One of the main functions to be added will be a mechanism giving administrators the ability to identify prisoners that have been in pretrial detention for longer than their maximum sentence were they to be convicted. To introduce this function, NCSC is preparing an exhaustive list of maximum sentences for the most common offenses. Since no such compilation currently exists in Haiti, NCSC will publish and distribute this information to members of the judiciary.

- **Jurisdiction Exchange Program**

As previously reported, the Dean of the jurisdiction of Mirebalais has been very successful in organizing the court there such that the percentage of detainees in pretrial status has remained at approximately 50% in that jurisdiction, compared to a national average of 94%. Last quarter, NCSC held a pretrial detention workshop in St-Marc, in which the Dean from Mirebalais presented the methods employed there. In April, NCSC held a similar workshop in Petit-Goave. Thirty-one individuals attended, including the Dean, the Chief Prosecutor, all three prosecutors, one investigative magistrate, eleven JPs, six clerks, one bailiff, and one policeman.

As they did in St-Marc, the Dean and Prosecutor of Mirebalais explained the management techniques that have led to such a low level of pretrial detention. Although the conditions in Petit-Goave are particularly challenging, the workshop served to expose the court staff to the underlying principles of court management and motivate them to explore the types of techniques that could be effective in their jurisdiction. NCSC is continuing to assist them in this effort.

- **Prosecutors Guidelines**

In April, NCSC conducted the second workshop to develop guidelines for prosecutors. Thirty-one prosecutors, including six women, participated in the program. In addition, representatives of the MOJ, MINUSTAH, UNDP, and USAID attended the event. The draft guidelines cover, among other things, overall management of the prosecutors' office, structure and operation of the clerk's office, fiscal issues, jurisdiction, and the relationship between the prosecutors and other actors in the judicial system, including the MOJ, justices of the peace, and investigative magistrates. NCSC obtained input from an international expert in advance of the workshop, which was also reviewed by the participants. The debate among the participants centered on the following topics: 1) relationship between prosecutors and the MOJ; 2) salary penalties for unjustified absence; and 3) legal capacity of prosecutors to issue some warrants. Due to the high level of the attendees' participation, the group was unable to review the entire document, necessitating a third workshop. After the final workshop, held in May, the draft was modified to incorporate the participants' recommendations.

The completed draft will be submitted to the new Minister of Justice for approval. The new Minister has show great interest in this initiative. Once approved, NCSC will conduct a series of training workshops around the country to introduce the guidelines, similar to what has been done for the JP Rules of Practice. The French Cooperation and

UNDP, which took part in the workshops, have been engaged in complementary work with the prosecutors. As a result, they have agreed to cooperate with NCSC in organizing these trainings sessions.

- **First Instance Court Rules of Practices**

Earlier this year, NCSC met with the new Dean of the PAP First Instance Court, who expressed interest in drafting new internal rules for that court. The purpose of the new rules would be: 1) to provide for an increase in the number of weekly criminal hearings from ten to twenty five; 2) establish new procedures for the clerk's office and provide related trainings; and 3) establish a system to ensure that judges and prosecutors visit prisons at least once a month as prescribed by law, to monitor pretrial detention. With the arrival of the new Minister, NCSC has pursued this project, commissioning a consultant to prepare a draft of the rules that will be presented to members of the judiciary in PAP. Once adopted, the document will serve as a model for all jurisdictions in the country. NCSC will support their implementation nationwide in conjunction with MINUSTAH.

- **Special Hearings**

Despite verbal agreement, the new Dean of the PAP First Instance Court was reluctant to follow through and hold further special hearings. However, the arrival of the new Minister led to a request to NCSC for assistance to fund a special summer program similar to that conducted last year. Sixty cases are now ready for those hearings, including 15 cases for jury trial. NCSC's pretrial detention coordinator has been working with the Dean and the PAP Chief Prosecutor to ensure that the maximum number of cases will be presented at the hearings. Several meetings were organized with members of the PAP judiciary to plan the hearings. Last year, according to UNDP statistics, a significant number of cases were disposed of during the NCSC-supported special hearing period (August to November 05), up to 3 times more than the yearly average (59.5% vs.12.7%).

- **Pretrial Detention Legislative Review**

NCSC commissioned a consultant to review the laws governing the procedures related to pretrial detention. A copy of this review has been submitted to USAID and the new MOJ for comments and suggestions. The first part of the study outlines the history of various solutions proposed to address problems related to pretrial detention going back to 1893. The second section provides a review of dispositions in the various Constitutions and the statutes since 1889 with regard to fundamental rights linked to detention. The review also explores the institutional reality members of the judiciary face in conducting daily operations. The final section proposes solutions, which include limitations on JPs issuance of detention warrants, pretrial release mechanisms, establishment of Judges of the "libertes," and establishment of a permanent commission to oversee detention centers around the country.

NCSC will elicit feedback on the proposed amendments and incorporate comments as needed into draft legislation before submitting the final versions to the MOJ. Once the legislation is adopted, NCSC will hold workshops to educate all involved parties on the new laws.

- **Legal Assistance**

In April, NCSC and MINUSTAH co-sponsored a workshop on legal assistance. Representatives from the MOJ's new legal assistance division, the PAP and Cap-Haitian Bars, civil society organizations, and other international organizations attended the event. The ultimate objective was to examine the feasibility of establishing an efficient and sustainable legal assistance system in Haiti. One of the main points discussed was the state's role in such program. The position of the head of the PAP Bar was that this initiative should be undertaken solely through the Bar Associations, a position agreed to by all. The new Minister appears also to be in agreement with this approach. One of the other issues raised was the presence of legal assistants at each step of the penal chain, including during detention in police station, rather than limiting the assistance to the defendants' court appearances.

- **Exit Survey**

NCSC completed a study of pretrial detention patterns in Haiti, which included an exit survey of 100 closed cases from the National Penitentiary as well as a snapshot of the prison population as of November, 2005. The study findings are summarized below.

-As of November 2005, there were 3540 adults in all detention facilities throughout Haiti. This includes both sentenced inmates and pretrial defendants. With the population of the country estimated at 8.3 million, this translates to an incarceration rate of 42 per 100,000 inhabitants. As a point of reference, the incarceration rate in the United States, including state and federal sentenced prisoners is 476 per 100,000 residents. When persons awaiting trial in the U.S. are included, as they are in Haiti, the rate climbs to 701 per 100,000.

-The conviction rate for prisoners in Haiti appears to be very low. Among a sample of 100 released prisoners from the National Penitentiary, only three (3%) were convicted. Among all prisoners in the same facility in November 2005, 4% were listed as convicted. As a point of reference, in the United States, the conviction rates for defendants charged with murder is 80%; for motor vehicle theft, 68%, for burglary 66%, and for drug trafficking, 64%.

-The time from admission to disposition varies by charge severity. Among the sample of released prisoners, all misdemeanants (*contravention*) were released within 3 months. For felonies punishable by up to 3 years in prison (*délit*), the overwhelming majority reached final disposition and were released within 90 days. For the most serious felonies (*crime*), most were resolved and released within 5 months. As a point of reference, among the 75 largest felony courts in the United States, while the overall median time from arrest to adjudication was 92 days, it was about twice this long for rape defendants (187 days), and was more than a year for murder defendants.

-The overwhelming number of prisoners in the National Penitentiary are charged with felonies (*délit*) or serious felonies (*crime*). On the date of the sample, only 2% of pretrial defendants were charged with minor offense (*contravention*). Among the "exit" sample, only 8% had been charged with minor offenses or misdemeanors.

-The study attempted to quantify the widespread perception of prolonged pretrial detention in police holding facilities. Haiti's constitution requires a prompt appearance before a judicial officer within 48 hours of arrest. Relying on inmate-reported data compiled at booking at the National Penitentiary, the average number of days from arrest to booking for all cases was 36.9 days. The median (half of the cases more; half of the cases less) was 10 days. The time in police detention varied by the severity of the charge, with the average for the most serious felonies being 43 days, and the median time from arrest to booking being 20 days.

From these findings it is clear that while Haiti continues to experience chronic problems associated with pretrial detention, the problems are not those described in press reports and by international human rights organizations. That is, Haiti's prisons are not jammed with petty offenders, awaiting trial for periods longer than the maximum permitted sentence. “

Rather, our preliminary look at the extent and nature of pretrial detention in Port-au-Prince raises different questions which will require further analysis by justice system actors. Why is the conviction rate so low? What does the large percentage of serious felonies say about charging practices by the prosecutors? What kinds of sustainable interventions might prove effective in expediting the processing of criminal cases? How many people are being held in police holding facilities without judicial review? These questions are among the challenges for the new government as Haiti struggles to build institutions that serve its citizens.

The complete report has been presented to USAID for approval before release. Once the report is approved, it will be translated into French and the findings and issues that the report raises will be presented at a symposium of all stakeholders and donors.

- **Focus Group**

As reported above, the pretrial detention study showed a very low rate of conviction. To further explore this issue, NCSC conducted a focus group that included members of various judicial offices. The group identified weak police reports as a significant problem. Another problem is a lack of equipment and resources for investigative magistrates, which prevents them from conducting complete investigations. In addition, the sheer quantity of cases prevents investigative magistrates from devoting the time needed to properly handle each case. Also, the investigative magistrates are brought into the process too late to conduct meaningful review of a crime scene. Another issue pertains to the prosecutors' lack of preparation in court, for example, lacking evidence and witnesses essential to the case. As a result of this activity, NCSC has identified a number of useful training topics, such as investigative techniques, report drafting, case preparation, examination/interrogation techniques, and improving collaboration between penal chain actors. Currently, NCSC is assisting the Police Academy and the Magistrate School in planning cross-training for members of the judiciary and the police. The training program will be held in conjunction with MINUSTAH.

- **Study Tour**

The participants in the US study tour last December conducted a follow-up workshop to introduce and obtain feedback on their proposed solutions for addressing pretrial

detention. The 40 participants at the workshop included the President and Vice President of the Supreme Court, the Chief-Prosecutor, the President of the Judges Association (ANAMAH), the President of the Women Judges Association, and representatives of civil society organizations.

The two highest priority topics that were debated were the formalization of “plea bargaining” and creation of new pretrial release mechanisms. Despite the fact that current legislation does not allow plea bargaining, such practices exist informally at the prosecutors’ level. Under this practice, the parties are not brought before a judge, and the offense is not noted in the criminal record. According to the workshop participants, formalizing this practice could greatly contribute to the efficiency of the judicial system. Participants also discussed the expansion of pretrial release mechanisms. The provisions in Haitian law that allow release of the accused before trial are too limited and do not reflect Haitian reality. Since many people in Haiti do not have an identifiable address or means of paying bail, the legislature must come up with more creative mechanisms. The participants determined that the next step should be the creation of a committee to further explore the issue and submit recommendations to the new Minister.

NCSC is currently preparing another study tour, to be held in September in Costa Rica, in support of the new MOJ objective to establish a special unit composed of police, prosecutors, and investigative magistrates to handle drug cases. Through a series of meetings with local members of the judiciary, NCSC staff has determined that problems with drug cases occur mainly in the pretrial investigatory phase, rather than during trial, and the tour will explore how these issues have been addressed in Costa Rica. Costa Rica was chosen because drug cases there are now being successfully prosecuted, but such was not the case 10 to 15 years ago. They faced similar issues in Costa Rica that the Haitians face, and as a relatively poor country, instituted measures that are not beyond the reach of Haiti to achieve.

3. Improve citizen links to the judiciary through greater citizen awareness of their rights and access to legal services.

- **Roving JPs**

Haiti’s judicial jurisdictions cover a large geographic area with relatively few courts and other judicial facilities. As a result, it is difficult for citizens, particularly in rural areas, to access the judicial system. To address this problem, NCSC is working to establish a roving JP program. During this quarter, NCSC designed guidelines for a pilot program to be launched in conjunction with the Justice of the Peace Association and the Ministry of Justice. Judges will travel by motorbikes to outlying areas on market day to provide civic education and conciliation sessions. The cooperating organizations recently decided to initiate contact with local citizens through civic education, in order for the JPs and the local population to become accustomed to the program and increase the likelihood of acceptance of their authority.

- **Women Judges Association**

Information provided by the Haiti Women Judges Association indicates that there are currently only 45 women working as judges and prosecutors at various levels in the judiciary, out of a total number of 700 judges and prosecutors nationwide, representing only 6.4% of these professionals. NCSC developed a series of data collection instruments to identify the causes for such low representation. NCSC and the Women Judges Association have begun data collection by distributing a questionnaire to students from one public and one private law school in PAP, and one law school in the provinces. In addition to the questionnaire, NCSC is collecting information through focus groups with students at these universities. In July, a similar questionnaire and further focus group meetings will be held for members of the judiciary. The Association, with the assistance of a specialist, will analyze the results of the study. Once the problems are identified, NCSC will work with the Association to develop activities to address the issues.

D. DONOR COORDINATION

Following the installation of the new government, international organizations and donors agreed to request that the new Minister of Justice design a strategic justice sector development plan that includes benchmarks and performance measures. Partners will support selected activities within the context of that plan, holding the GOH accountable to meeting its benchmarks. This roadmap is a necessity as the current plan, “Cadre de Cooperation Interimaire (CCI)” was established only for the transitional period, and there is a need for a more holistic – higher level, goal-oriented – plan than the CCI. The MOJ will need assistance in the development of this strategic plan, to avoid the piecemeal approach of the CCI and to ensure that the comprehensive reforms envisioned are embraced by a broad constituency. NCSC launched the initiative for strategic planning and will provide any necessary assistance for its realization.

E. DIFFICULTIES ENCOUNTERED AND ACTIONS TAKEN TO RESOLVE THEM

- **Political Instability**

Contrary to the past two quarters NCSC activities were not disrupted by social instability and violence. However, since the election, members of the MOJ and the judiciary lost some motivation, waiting for the next government to be installed and announce its agenda. Some expressed concern for their jobs. Consequently, engaging them was difficult. One example is the inability of the Minister of Justice to transfer 27 MOJ staff to the Judicial Council as previously planned.

As a result, NCSC focused on activities in the provinces, as officials in these sites seemed less affected by politics. In addition, NCSC has concentrated on conducting diagnostic studies, and generating documents (prosecutors guidelines, First Instance internal rules), for presentation to the new Minister.

To promote continuity in the transition to the new government, NCSC completed a compilation of all programs, decrees, and accomplishments of the MOJ under the transitional government. This information has been provided to the new Minister to promote the continuation of these activities.

- **The Masters Program at the Law School**

The participating students are very dynamic and proud to be taking part in the first masters degree in law in Haitian history. However, law school has not managed the program to NCSC's satisfaction. Specifically, the program requirements were not clearly stated and the curriculum design beyond the basic core courses lacked sufficient detail and substance. Students and professors have also expressed concerned over the management of the program. Internal conflicts between the Dean and the Director of the program have complicated development, implementation, and oversight of the program to the point that NCSC has informed the faculty that there will be no funding for future sessions unless steps are taken to remedy the situation. NCSC submitted a letter to the Dean outlining the issues and a series of steps to be taken, and offered to provide consultant assistance to meet the requirements. Deadlines were established for these steps but they have not been respected. NCSC hopes to resolve the issues and has brought in additional stakeholders, such as the Vice-Dean, who can exert pressure to move the program forward. However, if the law school remains unresponsive, NCSC cannot continue to provide funding for the program.