

NATIONAL CENTER FOR STATE COURTS

HAITI RULE OF LAW PROJECT

Quarterly Report No. 5

October 1, 2006 – December 31, 2006

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**UNITED STATES AGENCY FOR
INTERNATIONAL DEVELOPMENT**



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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 of FY 07. 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) address pretrial detention issues by improving the flow of cases through the police stations, prisons, and courts; and 3) improve citizen links to the judiciary through increasing citizens' awareness of their rights and access to legal services.

B. HIGHLIGHTS OF THIS REPORTING PERIOD

- In conjunction with the MOJ, NCSC presented the results of its study on pretrial detention during a two-day symposium. More than 125 participants took part in the event. One of the most significant findings of the study was the low rate of convictions in Haiti. Symposium members worked in small groups to develop recommendations for addressing this problem. At the conclusion of the meeting, they elected a follow-up committee to oversee the implementation of the recommendations.
- At the request of the Minister of Justice (MOJ), NCSC provided a technical specialist to assist in the design of a judicial inspection unit for the judiciary: a disciplinary unit to investigate and prosecute allegations of misconduct, a performance unit to establish and monitor compliance with performance standards for individuals, and an audit unit to oversee administrative functioning of courts.
- Upon completion of the initial courses in the first masters degree program in law, NCSC organized focus groups with students and teachers to evaluate program activities and direction. Using the feedback gathered and international expertise, NCSC tasked a team of professors to modify the program design. The State Law School and NCSC recently signed a memorandum of understanding detailing the full curriculum. Classes are now underway for approximately 80 participants. The first class of students will graduate in September 2007.
- The MOJ has expressed intent to establish pretrial detention commissions in all prisons around the country. The commissions will be tasked, in part, to identify cases of lengthy pretrial detention and make recommendations to move those cases along. NCSC and other donors prepared a draft document of guidelines for the commissions

that was approved recently by the Ministry of Justice. NCSC will provide technical and material assistance to the commissions

- NCSC completed data collection for its case flow diagnostic study, which documents case processing times for each phase of the penal chain. Data collectors have collected information on approximately 700 cases. The information has been entered on a spreadsheet to produce an overview of the penal chain, identifying bottlenecks and backlogs. The results will be presented next quarter in a symposium for stakeholders in order to develop a standard case flow system to be implemented in pilot jurisdictions.
- NCSC is currently working to further enhance the UNDP/DAP computer prisoner database. New features have been added that will calculate the amount of time spent in pretrial detention per category of offense and per detainee as well as time spent in detention compared to the potential maximum sentence.
- NCSC completed the final training session for justices of the peace (JPs) and clerks on the new Rules of Practice for JP courts in all jurisdictions of the country. Approximately 82 participants received the training from NCSC this reporting period. NCSC is now supporting the follow-up groups established to oversee the implementation of the rules its pilot jurisdictions.
- In conjunction with MINUSTAH, NCSC has nearly completed a series of field trainings for prosecutors nationwide. This program focuses on: 1) prosecutors' guidelines; 2) interaction between prosecutors and investigative magistrates; and 3) the procedures for immediate appearance of arrestees and how to implement them. This quarter approximately 80 participants took part in 4 different trainings. To date, prosecutors in two-thirds of all jurisdictions have received training.
- NCSC issued an RFA seeking qualified civil society organizations to implement a court monitoring program that will report to the courts, Ministry of Justice, and the public on court performance. In addition to its oversight function, this activity will also serve to educate the public about court operations, judicial ethics, and mechanisms for holding courts accountable.
- In conjunction with the MOJ eight jurisdictions have been identified for Roving JPs to visit on market day. NCSC has designed a data collection instrument, with input from a local specialist, to measure the impact of this activity. Approximately 100 baseline questionnaires were completed in each jurisdiction. A local firm will compile and analyze the data, allowing for the establishment of meaningful indicators of success. Training for the JPs will begin soon.

C. TASK-SPECIFIC ACCOMPLISHMENTS DURING THE REPORTING PERIOD

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

- **Oversight bodies**

At the request of the Minister of Justice (MOJ), NCSC provided an international expert to assist in the design of an inspection unit for the judiciary: a disciplinary unit to investigate and prosecute allegations of misconduct, an audit unit to oversee administrative functions of courts, and a judicial performance unit to set standards for and assess individual judges' performance. The NCSC specialist visited courts and met with justice sector members, including the Minister of Justice, President of the Supreme Court, PAP Chief Prosecutor, President of the Judges Association, and representatives of international organizations. He tailored the mandate of the inspection unit in the local context, the needs of the courts, and the visions of the various actors. The specialist has developed a concept paper for the Minister to serve as a basis for the preparation of appropriate legislation.

- **Support to the Ministry of Relations between the Executive Branch and Parliament**

NCSC has a full-time legal advisor working at the new Ministry of Relations between the Executive Branch and Parliament. Thus far his work has focused on developing a framework for this new Ministry, such as drafting its internal rules. He is also involved in a project to set up a database of all existing laws. At the moment no such compilation exists, and it is impossible to access some legislation. He is providing assistance in incorporating justice issues into the legislative agenda for Parliament, which includes the judicial fee scale and the prosecutors' guidelines, both developed with the support of NCSC.

- **Support to Parliament**

NCSC is seeking to increase parliamentarians' and executive branch officials' understanding of principles of democratic governance in general and the importance of judicial independence in particular, by sponsoring seminars on these topics for members of the justice and the security commissions of Parliament. As the result of a week-long pilot program during the last quarter, NCSC has signed a memorandum of understanding with Parliamentarians, to include assistance for visits to provincial jurisdictions, technical assistance with draft legislation affecting the justice sector, facilitation of public vetting of draft legislation, and creation of links between justice committee parliamentarians with their counterparts in other countries. To avoid any potential duplication of efforts, the memorandum of understanding was coordinated with the Chief of Party of the State University of New York (SUNY/ARD) legislative support program funded by USAID.

- **Rules of Practices for JP Courts**

Following the transitional government's adoption of the Rules of Practice for the JP courts, developed by NCSC, the MOJ agreed to implement the Rules nationwide. Several international organizations were 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. During the reporting period, NCSC completed three training sessions in the final four jurisdictions, with 82 clerks and JPs, attending in Port-au-Prince. As a result of their satisfaction with these courses, the JPs have requested training on additional topics, such as drafting of judgments and procedures.

At each 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. NCSC is currently supporting the follow-up groups in its pilot jurisdictions.

- **On-site support in pilot jurisdictions**

Now that new procedures and guidelines have been developed and adopted, NCSC recently posted two regional advisors to support the implementation of these activities and offer technical assistance in its pilot judicial jurisdictions (St-Marc and Petit-Goave). These advisors are responsible for: 1) assisting in the implementation of the Rules of Practices developed by NCSC for JP Courts, Rules of Practices for First Instance Courts, guidelines for prosecutors offices, the judicial fee scale, the case flow system, 2) developing, with members of the judiciaries, methods to address issues around pretrial detention and the rate of convictions, 3) providing on-site support to the civil society organizations that will implement the NCSC court monitoring program, 4) assisting in the implementation of the Roving JP program, 5) identifying training needs, and 7) facilitating coordination among members of the judiciary.

- **Master's Degree Program at the Law School**

During the previous reporting period, NCSC organized focus groups with students and teachers to evaluate the initial course offering and the future direction of the masters degree program. Using the feedback gathered and international expertise, NCSC tasked a team of professors to modify the program design. The State Law School and NCSC recently signed a memorandum of understanding detailing the full curriculum. Classes are underway for approximately 80 participants who have a choice of two tracks: court management, which is a new field of study, and a more traditional one related to court procedures. NCSC will provide foreign teachers to develop local expertise where none exists at present, such as in case management. The first class of students will graduate in September 2007. NCSC is also assisting the law school in developing strategies to maintain the program without further development assistance, including identifying and reaching out to international resources for student scholarship funds.

- **Training Heads of Jurisdictions**

In an effort to strengthen the administrative capacity of heads of jurisdictions (chief justices, chief prosecutors, and chiefs clerks), the Ministry of Justice requested that NCSC prepare a training program that will be an integral component of the new curriculum of the Magistrate School. The training was designed with input from an international specialist and is scheduled to take place next quarter. The goal of the training is to increase the capacity of key actors of the judiciary in court and case management and will be an important factor impacting the processing of cases awaiting trial.

Originally the MOJ had requested this training for the MOJ departmental representatives to be appointed after the local election of December 3, 2006. According to the Minister's plan, these representatives would be managing courts budget in the 10 department of the country, or the 5 jurisdictions of the Courts of Appeal. However, as this structure has not yet been put in place, the Minister suggested training the heads of jurisdictions.

- **Caseflow**

As previously reported, NCSC developed a case flow diagnostic tool, which measures the amount of time it takes cases to flow through the various phases of the penal chain from arrest to disposition. Data collectors have assembled information from nearly 700 cases in NCSC's three pilot jurisdictions; PAP, St-Marc and Petit-Goave. The information is being analyzed to produce an overview of the penal chain and identify problems areas. The results will be presented next quarter during a symposium for stakeholders in order to develop a standard case flow system to be implemented in pilot jurisdictions. The current absence of a systemic approach to case processing results in case processing delay at all levels of the penal chain.

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

- **Expansion of UNDP/DAP computer system**

Since 1995, 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, in conjunction with UNDP to enhance the system. During the reporting period, NCSC hired a computer specialist who has:

- Reviewed the existing data and corrected errors;
- Installed a new, uniform data collection system to avoid future mistakes;
- Introduced new features, which, among others things, can calculate the time spent in pretrial detention per category of offense and per detainee, as well as time spent in detention versus the maximum sentence proscribed for the alleged offense;

- Updated the database to allow statistical reports to be produced per JP Court, including number of criminal cases pending per judge;
- Trained APENA staff with regard to best practices in using the data base; and
- In conjunction with UNDP/DAP staff conducted an assessment of the main prisons in PAP to ensure that the data base reflects the actual prison population.

Based on this progress, the Minister of Justice asked if it would be possible to gather data and statistics on the work performed at the prosecutor and investigative magistrate level. NCSC will explore this idea.

The UNDP database has proven to be very useful tool. In addition to tracking detainees, the information can be used to gauge the performance of individual jurisdictions and target them for assistance. For example, recently NCSC organized a workshop in one of its pilot jurisdictions, which the UNDP database had shown to have a poor record regarding pretrial detention. NCSC arranged for the Chief Justice and Chief Prosecutor of the most effective jurisdiction in the country, according to the database, to share with their approaches and best practices reducing time spent in pretrial detention. At the end of the workshops, the participants noted that they would follow the advice of their colleagues to improve their record. Statistics compiled by the UNDP system reveal that the level of pretrial detention has decreased by almost 20% in that jurisdiction following the workshop, despite the fact that number of inmates in the prison has increased. Greater collaboration between the Chief Prosecutor and the Chief Justice, select case management techniques, and increasing the number of hearings, among other techniques, have helped to significantly improve their practices.

- **Prosecutors Guidelines**

In conjunction with MINUSTAH, NCSC has nearly completed a series of field trainings for prosecutors nationwide. This program focuses on: 1) the new guidelines for prosecutors; 2) interaction between prosecutors and investigative magistrates; and 3) procedures for immediate appearance of arrestees and how to implement them. This quarter approximately 80 participants took part in 4 different trainings. To date, prosecutors in two-thirds of the jurisdictions have received training.

- **Establishment of the Immediate Hearings Procedures**

Besides the training described above to introduce the concept of immediate appearance, NCSC is pushing to establish procedures, particularly in PAP, that will allow the prosecutor to bring the arrestee caught in “*flagrant delit*” directly to court instead of detention centers. This procedure was established in 1927 but has not been used for many years.

The NCSC pretrial detention coordinator has made initial contact with PAP Chief Prosecutor and the Dean of the First Instance Court to discuss the options for implementing the immediate appearance procedure. He also has developed guidelines to follow in order to apply this quick procedure in most cases of “*flagrant delit*” for

felonies. Successful implementation will require the establishment of permanent procedures at the prosecutor's office and legal assistance programs, as arrestees will be brought to court as soon as they are arrested to see a judge, instead of going to jail. The main challenge will be to ensure coordination between all involved members of the penal chain.

Currently, this law only applies to "delits" felonies, and some specific offenses are excluded such as political crimes and offenses against minors. Legislative modification should be introduced to guarantee the right to an attorney. Some also suggest that it should be extended to other offenses such as "stealing energy/electricity" which is currently common.

- **Pretrial detention Commission**

The MOJ intends to establish pretrial detention commissions in all prisons around the country. The commissions will be tasked, in part, to identify cases of lengthy pretrial detention and make recommendations to move those cases along. NCSC and other donors prepared a draft document of guidelines for the commissions that was approved recently by the Ministry of Justice. NCSC will provide technical and material assistance to the commissions

- **Pretrial Detention Symposium**

In conjunction with the MOJ, NCSC presented the results of its study on pretrial detention in a two-day symposium. More than 125 participants took part in the event. Most participants were members of the judiciary, but also present were representatives from civil society and international organizations. One of the significant findings of the report is the low rate of convictions in Haiti, around 3%. Following the presentation of the report, four panelists, representing police, prosecutors, investigative magistrates, and judges briefly explained their tasks and described the difficulties they encounter in their work which contribute to the low rate of convictions. Symposium participants then worked in small groups to develop recommendations for addressing this problem.

At the conclusion of the meeting, they elected a follow-up committee to oversee the implementation of the recommendations. The committee consists of the Police Commissioner, the Chief Prosecutor of Port-au-Prince, investigative magistrates from various provinces, and representatives of the five jurisdictions of the courts of appeal. The recommendations emphasize coordination and teamwork between the agencies working in the penal chain, improved investigative techniques, better preparation of prosecutors' files, and assessing agencies' material resource needs.

The members of the committee have already met. They discussed the recommendations of the symposium, and decided to write a letter to the MOJ which includes the following: a) the main conclusions of the symposium, b) a request to the Minister for his full commitment to working on the recommendations, and c) a request to appoint two members of his cabinet to work with the follow-up committee. The objective is to give

strength and authority to the committee. The letter was sent to the MOJ. Once the MOJ provides an endorsement, the committee will tackle the first recommendation from the symposium, which was to conduct an assessment of police stations, prosecutors' offices and investigative magistrate offices.

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

- **Court Monitoring**

NCSC issued an RFA seeking qualified civil society organizations for developing monitoring and feedback mechanisms to identify and report to the courts, the Ministry of Justice, and the public areas on court performance. This activity will also serve to educate the public about court operations, judicial ethics, and mechanisms for holding courts accountable. NCSC will assist in developing an environment for the CSOs and the courts to understand and appreciate each other's efforts.

The grantee organizations will receive assistance in selecting and training individuals to monitor the courts. The established processes will be tested for a month, and the initial observations shared with the courts for feedback. The grantee organizations will be required to issue regular reports, listing and explaining their findings and to share that report, prior to release, with the Chief Judge of the court(s) monitored and with NCSC. NCSC will facilitate meetings between the leadership of the observed courts and of the relevant CSO to discuss the findings and highlight any ambiguities, errors, or misunderstandings.

Information sessions for organizations interested in the RFA were organized in each of our pilot jurisdictions, Port-au-Prince, Petit-Goave and St-Marc. Related documentation and forms were distributed. Once NCSC receives approval for the selected organizations from USAID, one organization per jurisdiction will receive a grant of \$20,000 to implement the program.

- **Roving JPs**

In conjunction with the Ministry of Justice and the Justice of the Peace Association, NCSC is launching a pilot program in which selected JPs will travel by motorbike to remote areas of their jurisdictions on market day to provide conciliation services and civic education. Eight zones in St-Marc and Petit-Goave areas have been selected. NCSC also designed a data collection instrument to measure the impact of this activity. A total of 800 questionnaires have been completed and the results are being analyzed to allow the project to target issues of greatest need and monitor the results. The first two motorbikes for this pilot program were approved during the reporting period and have now been purchased. NCSC is currently developing policies and procedures, and planning TOT training and driving lessons for selected JPs.

- **Women Judges Association**

As previously reported, NCSC developed a series of data collection instruments to identify the causes for the low representation of women in public legal positions. Over the previous reporting period NCSC, the Women Judges Association, and 15 data collectors completed the data collection under the supervision of a local specialist, a professor of law and anthropology. Three hundred individuals participated in the study: 150 students from 3 law schools, 50 individuals close to the students (such as parents), 50 individuals from selected legal institutions such as MOJ and ANAMAH, and 50 individuals from various fields. This quarter, representatives of the Women Judges Association have compiled the draft and submitted a preliminary analysis with the assistance of the specialist. NCSC will submit the data to a specialized firm for more in-depth study.

D. DONOR COORDINATION

The seven coordination sub-groups established with the MOJ in the previous reporting period are not meeting as regularly as the minister and his team has been primarily meeting with donors separately. The more active organizations in the field (OIF, UNDP, NCSC, MINUSTAH) are meeting together informally when necessary. They also continue to follow the successful model of cooperation used for developing the JP Rules of Practice and the prosecutor guidelines. Under this model, the cooperating organizations conducted a train-the-trainer program to establish a core group of trainers with a consistent curriculum. Each organization was then responsible for conducting training in their specific jurisdictions. This approach ensured a consistent delivery of curriculum throughout the country.

As organizations are more and more active in the field, close coordination is essential. Some of activities NCSC organized in conjunction with the MOJ had to be postponed at the last minute because during the same time period other organizations were conducting activities with the same members of the judiciary. To increase the MOJ's role in donor coordination, NCSC is now providing one full-time local consultant to coordinate donor activities and one consultant to work on the design and implementation of the five-year strategy.

E. DIFFICULTIES ENCOUNTERED AND ACTIONS TAKEN TO RESOLVE THEM

Tensions between members of the judiciary and the police are affecting the judicial system and, by extension, NCSC activities. Relations between the police and the judiciary, which have always been problematic in Haiti, appear to be increasingly tense. In light of frequent allegations of corruption in both institutions, there is an adversarial attitude. A conflict between one Investigative Judge in Port-a-Prince and the head of the

investigative police captured national attention in the media for several weeks, in addition to several disturbing judicial activities in PAP during that period.

More recently, activities were cancelled due to a judges' strike, following a speech by the head of the police during the graduation of the new police recruits in which he attributed the insecurity problem to members of the judiciary. As a result of the strike, many courts are closed and the jury trial schedule to begin in December in PAP is postponed.

NCSC is pushing to conduct cross-trainings in order to break barriers between the judiciaries and police. Police officers participated in several trainings offered by NCSC for members of the judiciary this year, among others, in the prosecutors' guidelines workshops provided around the country. This practice should be mandatory when the Magistrate School re-opens.