

NATIONAL CENTER FOR STATE COURTS

Quarterly Report No. 13

October 1, 2008 – December 31, 2008

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UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT

HAITI RULE OF LAW PROJECT
Quarterly Report No. 13
Reporting period: October 1 through December 31, 2008

A. PROJECT GOALS

This report outlines the activities conducted by the National Center for State Courts (NCSC) under the Haiti Judicial Strengthening and Stabilization Initiatives during the no-cost extension period (October 1 to November 21, 2008) and the cost extension period (November 21 to December 31, 2008). The purpose of the no-cost extension was to conclude activities that were disrupted due to the instability and political unrest in 2008. Specifically, training Judicial Council members; conducting workshops on the new case registry in all three target jurisdictions; assisting the Pretrial Detention Commission; and supporting legal aid through *Kay Jistis*. Activities targeted by the cost extension focus on the Magistrate School Justice of the Peace (JP) training course, *Kay Jistis* legal assistance program, and monitoring of the rules of practice in Cite Soleil through the Port-au-Prince (PaP) Follow-Up Committee.

B. HIGHLIGHTS OF THIS REPORTING PERIOD

- Following a series of public consultations on issues concerning arrest and detention, an NCSC consultant completed draft legislation. The bill has been officially introduced in the parliamentary agenda to be presented for adoption at the next parliamentary session.
- The Magistrate School completed intensive training courses for all PaP metropolitan area Justices of the Peace. Fifty four (54) JPs received trainings during this quarter for a total of 76 since the program began in July 2008.
- NCSC provided technical assistance and training to Judicial Council members on budget matters, leading to the preparation of their first budget.
- NCSC provided technical and financial assistance to the Ministry of Justice and Public Security (MJSP) to complete draft legislation on the re-organization of the Ministry. The objective is to present the draft bill to Parliament for adoption next session.
- Following the implementation of the standardized case registry/tracking system in two of its three jurisdictions (St. Marc and Petit-Goave) NCSC introduced the system in the jurisdictions of Croix des Bouquets and in the Cite Soleil JP Court. The evaluations completed by the participants show a very high degree of support for the new system.
- The *Kay Jistis* legal assistance program in Cite Soleil has provided assistance to an all time high number of 170 beneficiaries. Four hundred and sixty three (463) individuals have benefited from the legal aid program since its opening in January 08.
- Monthly civic education session provided by the *Kay Jistis* legal assistants continue to be popular. Two hundred and twelve (212) community leaders took part the civic education

program session provided by the PaP Bar, an increase of 43% over the previous quarter. Thus far, 387 community leaders have taken part in the sessions.

C. TASK-SPECIFIC ACCOMPLISHMENTS DURING THE REPORTING PERIOD

1. Institutional Support

- **Support to Parliament**

With the support of NCSC in FY08, the Parliamentary Justice Commissions held three public consultations related to arrest and detention legislation. All participants agreed that targeted legislative changes are required to modernize and/or clarify current legislation to fight prolonged pretrial detention, especially *habeas corpus* and *garde-a-vue* (48 hour detention rule). A consultant funded by NCSC presented draft legislation based on discussions from the consultations. The draft bill provides answers to the following issues: who should be the judge entitled to decide upon *habeas corpus* motions, what is the definition of *garde-a-vue*, who has the authority to put suspects in *garde-a-vue*, should the police inform the prosecutor when they put a suspect in *garde-a-vue*, what are the rights of a suspect placed in *garde-a-vue*. One of the dispositions is revolutionary, as it will allow someone held in pretrial detention for a specific period of time (1 year for felonies, 2 years for crimes) to appear in front of a judge and be released while awaiting trial.

During this reporting period the NCSC consultant refined the draft and presented the final version to the Parliamentary Justice Commissions. The bill has been officially introduced in the parliamentary agenda to be presented for adoption at the next parliamentary session.

- **Judicial Council**

Following the successful elections of the Council members, supported by NCSC and *Organisation Internationale Francophonie* (OIF), a thorough vetting process began in the previous quarter. Investigations are conducted by a team of international and local legal specialists. Three criteria are scrutinized: 1) professional background, 2) financial assets, and 3) morality. NCSC support in that field is limited to technical assistance on the investigation process and composition of the investigation teams provided by its staff during official meetings.

The process has taken much longer than expected and has been criticized by Council members. Haitians are not use to such process, resulting in some delays and frustration. However, the Secretary of State of Security maintains that the process is delicate and requires time to do it effectively and discretely.

While waiting for the completion of the vetting process, Council members began to lay the ground work for the establishment of the institution. They were tasked by the MJPS to develop a budget. Since most members don't have the necessary background to do so, they requested assistance from NCSC and OIF. NCSC hired a specialist with experience at the Ministry of Finance to provide basic training on budget matters. The consultant also participated in the preparation of the Council's first budget. The budget was submitted to the Ministry of Justice and the new prime Minister to be included in the national budget for FY 09. The Executive has

not introduced budget lines requested by Council members. NCSC anticipates that there will be a debate on this issue in the Parliament.

- **Magistrate School**

The Magistrate School reopened in July 2008, after a four year hiatus. The School is currently conducting intensive training courses for all JPs in the country. Thus far, JPs from the PaP metropolitan area (76) have completed the training, including 54 JPs trained this quarter. All remaining JPs are scheduled to undergo the same six-week program in 2009.

At the request of the Minister of Justice, an NCSC staff member designed the curricula and selected expert trainers for this intensive training. Fourteen training modules have been prepared by the trainers. NCSC helped fund the training, along with other international organizations including OIF.

The reopening of the School was a result of the adoption of a law mandating its existence. NCSC was instrumental in the drafting and passage of this law in January 2008. The School is currently being rehabilitated by the Government of Haiti. This work is lingering. USAID is providing classroom and other necessary equipment. MINUSTAH is also providing technical assistance.

- **Reorganization of the MJSP**

In FY 08 there has been a concerted effort to produce draft legislation on the re-organization of the Ministry. The objective is to present the bill to Parliament for adoption. This legislation focuses on three components: 1) re-structuring the MJSP in order to respond to new realities (i.e. information exchange with other countries/extradition), 2) re-defining the role of the Ministry in light of the adoption of the three laws on the independence of the judiciary, especially the Judicial Council, and 3) outlining the mandate and tasks of the public security component of the Ministry.

This quarter, NCSC staff provided a technical memo on the draft, and participated in numerous meetings to refine the proposed bill. On December 15, NCSC sponsored a one-day workshop to complete the draft. Twenty nine participants took part in the event including the new Minister of Justice, the Secretary of State for Justice, Director General of the MJSP, Director of Judicial Affairs at the MJPS, legal advisors at the MJPS, and representatives of int'l organizations (MINUSTAH, NCSC, USAID, OIF, UNDP). Two main recommendations came out of this exercise. Participants agreed that most tasks related to public security, with the exception of the police, should be transferred to the Ministry of Interior. The task of public security is so large that would not be well served under the MJPS. Second, the inspection function would be housed one department with two units: police and judicial. This arrangement would provide greater independence, efficiency and would be more cost effective. At the term of the workshop, a committee was established to put a last touch at the draft before it will be sent to Parliament for adoption.

- **Pretrial Detention Commission**

Minister of Justice Magloire concluded the work of the Commission shortly before the term of his mandate. No efforts to re-launch the Commission were made while the Prime Minister, Pierre Louis, acted as Minister of Justice. In November, the new Minister of Justice, Me Exumé decided to re-launch the Commission. USAID and other donors have met with his cabinet to provide the necessary assistance.

- **Implement a Standard Case Flow and Registry System**

In the previous quarter, NCSC began implementation of the model registers for JP Courts, Prosecutors Office and *Cabinet d'Instruction* in St-Marc and Petit-Goave. In October, a day-long training program was organized by NCSC with key members of the judiciary of the jurisdictions of Croix-des-Bouquets. Twenty seven participants took part in the event including the Chief prosecutors, prosecutors, JPs, clerks, representatives of international organizations and the Director of Judicial Affairs at the MJPS. The evaluations completed by the participants show a very high degree of support for the new system. Implementation of the system in PAP is scheduled for the upcoming quarter.

In November, the NCSC team presented the new case registry/tracking system to the new Justice Minister who showed great enthusiasm. According to him this type of recordkeeping will allow court staff to gather statistics and facilitate the work of the Ministry of Justice judicial inspection unit that he recently reestablished. In December, the Secretary of State for Justice visited the PAP Prosecutor office to take a closer look at the system. He recommended minor, cosmetic changes and promised to the NCSC and USAID representatives that he would provide his comments rapidly. NCSC has not yet received his comments and therefore cannot move forward with the implementation of the system in PaP. However, in accordance with the MJPS the system has been introduced by NCSC in October at the Cite Soleil JP Court.

An NCSC international specialist along with staff from NCSC, MINUSTAH, UNDP and the Ministry of Justice (MOJ) developed the models for the case registry and tracking system. This system will enable lawyers, registry staff, prosecutors, and judges to more effectively determine the status of a case and prepare a range of relevant statistical reports upon which to base data-guided caseload management decisions.

- **Rules of Practices**

Improving administration of justice is the top priority of the new Minister of Justice. In order to achieve this goal he intends to implement the following three set of rules of practice developed by NCSC: rules for JP Courts, Prosecutors Office and First Instance Courts. The Minister already requested that the Deans/Chief Justices of First Instance Court organize a General Assembly and provide the rules of practice by January 30, 2009.

The rules developed by NCSC consultants will serve as a basis for this work. They include 147 measures which address organization of the Court and the Clerk's office, administrative and

financial tasks of the Dean, organization of the General Assembly of the Judges, organization of court hearings, and clarification of the bailiffs' tasks.

2: USAID/HIS Cite Soleil Justice Component

- **Legal Aid Program**

The legal aid provided through *Kay Jistis* continues to be in high demand. In October, 68 individuals sought the services of *Kay Jistis* legal assistants. This amount is the highest number of beneficiaries recorded in a single month since the beginning of the project. Most cases related to the following offenses: rape, assault, and theft. For the overall quarter the program has assisted a record number of 170 beneficiaries (85 women and 85 men). Four hundred and sixty three (463) individuals have benefited from the legal aid program since its opening in January 08.

Of the 170 beneficiaries that received assistance this quarter, 113 received assistance at the Cite Soleil JP Court and 57 at the *Kay Jistis* premises. Usually individuals who seek services at the *Kay Jistis* premises are looking for legal advice or information on criminal cases regarding family members held at the National Penitentiary and other PAP detention centers. Early in the program most of the *Kay Jistis* assistance was in response to the latter type of requests. At that time MINUSTAH and PNH were conducting massive arrests operations against gangs involved in killings and kidnappings. As the security situation in this neighborhood is stabilizing, most of the assistance is now representation of clients before the Justice of the Peace Courts in cases involving less serious crimes (*i.e.* assaults, thefts). Of the 473 penal complaints recorded at the CS JP Court in this quarter only 31 concern serious crimes.

The legal assistants have proven to be more efficient in intervening at the JP Court level than at higher levels, such as the *Cabinet d'Instruction* and prosecutor's offices. Access to information and files has been difficult at those levels. The NCSC Cite Soleil field monitor and Bar representatives have met several times with the PAP Chief Prosecutor and Dean of the First Instance Court to find ways to provide information more rapidly. Although access to information has improved, delays to resolve cases are still too long. The new Minister of Justice has announced a series of concrete measures that should help in that regard, for example judges specially assigned to clear backlogs. A new Pretrial Detention Commission composed of highly experienced jurists has also been set up.

- **Civic Awareness**

Civic awareness sessions conducted by the PAP Bar legal assistants also remain popular. This reporting period, 212 community leaders took part in the sessions (173 men, 39 women), an increase of 43% over the previous quarter. Thus far, 387 community leaders have taken part in the sessions.

On October 2nd, the fourth session was held. Seventy three (73) community leaders attended this session. This session focused again on the rights and obligations of citizens, but this time using practical exercises.

In November, sixty six (66) community leaders attended a civic education event focused on legislation regarding leases. It was the most constructive session thus far. From the animated debates, it is clear that residents of Cite Soleil have a complete lack of understanding of this legislation. They rely on misconceptions and popular beliefs, which can cause conflicts that often turn violent. For example, most participants believed that at the end of a lease the tenant is entitled to one free month of rent per year stayed in the residence. According to the law, in all cases of written contracts, the lease concludes on the date stipulated in the contract. As for verbal contracts, the tenant can stay in the residence up to four more years while paying is rent. Consequently, in no circumstances can the tenant benefit from free months of rent. Evaluations completed by the participants demonstrated their satisfaction. They also asked if the Bar could prepare a guidebook on the subject. Given the success of this session, NCSC explored ways of educating a larger audience in Cite Soleil on this topic. As a result, the next session will be filmed and presented on national television.

In December, following a request from USAID/HSI representatives, NCSC organized, in conjunction with the PaP Bar, a civic education session to increase public participation in fights against criminality. Every month JPs issue hundreds of summonses to individuals suspected of committing a crime. However, those individuals cannot be arrested without written complaints from the individual reporting the crime. Public awareness of this process needs to be raised to ensure that the appropriate documents are filed. Seventy three (73) community leaders attended this education session. Evaluations completed by the participants demonstrated their high level of satisfaction.

- **Develop Recordkeeping and Caseload Management Systems**

(See section on “Case Registry” above)

- **Monitoring Rules of Practice**

The PaP JP Follow-up Committee has visited the CS JP Courts at least once a month since the beginning of the HSI program. The number of criminal complaints has been steady over the past months: 158 in September, 178 in October, 143 in November, and 152 in December.

During the reporting period, the Court issued 456 warrants; however, only 74 were executed. This situation has been a concern since the beginning of the project. The various factors explaining this situation have been listed in previous reports. Police and CS JP Court Chief Justice meet at least once a week as part of the CS coordination initiative and are seeking ways to improve the situation. The NCSC field monitor and HSI representative play an active role in these meetings.

- **Training JPs in Cite Soleil**

(See section on “Magistrate School” above)

- **Equipment**

NCSC purchased a generator for the CS JP Courts but does not have the necessary funds for the construction of a cage to secure the generator. Recently, the Chief Justice of the CS JP Court sought assistance from the MJSP. He received positive feedback from the Head of the Supply Department (Service d'Approvisionnement), Me Dufresne. The NCSC COP met with Me Dufresne to explain the situation and the importance of taking quick action. NCSC does not yet know definitively if the MJPS will pay for the needed construction, and if so, how long the process will take. If the MJPS does not proceed before the end of the NCSC project on February 21st, NCSC will transfer the documentation related to the generator to USAID/HSI for appropriate follow-up.

D. INDICATORS FOR THIS QUARTER

During the reporting period, the following results were achieved for the Rule of Law and Human Rights Indicators related to NCSC's current activities.

2.1.3 Number of days in pretrial detention: N/A

2.1.3.1 Ratio of new case filings to case dispositions in courts assisted by USG in the area of case management (N/A)

2.1.3.2 Number of people visiting the USG supported legal service centers serving low income and marginalized communities (170)

2.1.3.3 Number of Courts operating in areas of low-income population with USG assistance (N/A)

2.1.3.4 Number of USG assisted courts with improved case management/low income (10)

2.1.3.5 Total number of justice sector personnel that received USG training (54)

2.1.3.6 Number of legal aid groups and law clinics assisted by USG (1)

2.1.3.7 Number of institutions and associations assisted by USG (4)

E. DONOR COORDINATION

For the first time since NCSC program began activities in 2004, bi-weekly coordination meeting are regularly held by the MJSP with implementers, donors, and GOH officials. The new Minister established this practice as soon as he took office in November 2008. In his first meeting the Minister laid out his priorities: 1) improve the administration of justice, 2) reduce pretrial detention, 3) develop an appropriate budget for the MJSP and all related institution for FY 09, and 4) establish a reliable civil registry system.

F. DIFFICULTIES ENCOUNTERED AND ACTIONS TAKEN TO RESOLVE TO THEM

Since the beginning of its activities in 2004 NCSC has worked with five different Ministers of Justice, including two this quarter. Each Minister has their own set of priorities. This lack of continuity hindered the efforts to establish a coherent and sustainable the justice reform. Over the years NCSC has developed a strategy to minimize the impact of this lack of continuity. NCSC's strategy to support the Ministry of Justice as well as a wide range of institutions (*i.e.*, Parliamentary Justice Commissions, Presidential Justice Commission) has provided a measure of continuity of efforts.