

NATIONAL CENTER FOR STATE COURTS

Quarterly Report No. 12

July 1, 2008 – September 30, 2008

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UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT

HAITI RULE OF LAW PROJECT
Quarterly Report No. 12
Reporting period: July 1 through September 30, 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 fourth quarter of FY 08. The purpose of this one year project is to conduct activities aimed at three objectives: 1) Judicial authorities have increased their administrative, management, and technical capacity to provide more justice services effectively and efficiently; 2) Ratio of total prison population in pretrial detention is reduced and average length of time spent in pretrial detention for detainees in St. Marc, Petit-Goave and Port-au-Prince (PAP) is reduced; and 3) Increased reasonably equipped and trained GOH justice personnel presence in Cité Soleil working collaboratively with other judicial actors. NCSC is focusing its efforts in three jurisdictions in coordination with other donors, Port-au-Prince, St. Marc, and Petit-Goave.

B. HIGHLIGHTS OF THIS REPORTING PERIOD

- The Parliamentarian Justice Commissions completed the series of public consultations on issues concerning arrest and detention. A draft bill has been prepared and will be presented for adoption at the next parliamentary session.
- The Magistrate School, which has been closed since 2004, has reopened. Intensive training for Justices of the Peace (JPs) began on July 7, with the support of NCSC and other donors. The first class of 22 JPs completed the training program in August and a second class of 27 JPs began in September.
- Following successful Judicial Council member elections, supported by NCSC and the *Organisation Internationale Francophonie* (OIF), a thorough vetting process has begun. A Committee has been tasked to examine Council members backgrounds. NCSC is providing technical assistance to the Committee as needed.
- The Ministry of Justice and Public Security (MJSP) held a retreat on the re-organization of the Ministry. The objective is to produce draft legislation to be presented to Parliament for adoption. NCSC technical advisors are actively involved in this process.
- NCSC began pilot implementation of the standardized case management system in two of its three jurisdictions (St-Marc and Petit-Goave). The evaluations completed by the participants show a very high degree of support for the new system.

- In FY 08, successful special summer felony hearings were held in PaP. NCSC and OIF supported the legal assistants from the PAP Bar who represented the indigent accused. Similar hearings were also held in Petit-Goave and St. Marc. Working through ANAMAH, NCSC covered the costs of generator fuel for power in the courtroom and meals for the participants, which included victims, witnesses, jurors, and court staff.
- The Roving Justices of the Peace have provided access to justice to a significant number of individuals. In this quarter, 2,622 community residents attended Roving JP activities in the target jurisdictions, for a total of 8,364 since the beginning of the program in FY 07.
- The national legal assistance program continues to be active in nine jurisdictions around the country. NCSC is supporting the program in its three target jurisdictions (PAP, St. Marc, and Petit-Goave). As a result of these programs, 385 indigent accused have been represented in the three target jurisdictions, for a total of 1076 this FY.
- The NGO responsible for civic education in Cite Soleil, GRIEAL, completed its program. They conducted educational sessions for the benefit of 664 Cite Soleil residents. GRIEAL also broadcasted two radio shows on “Radio Guinea.” The 30 minute programs were aired twice a week.
- The *Kay Jistis* legal assistance program continues to be critical to access to justice for Cite Soleil residents. This reporting period, 166 individuals received assistance from the Port-au-Prince (PAP) lawyers assigned to the program. Two hundred and eighty nine (289) individuals have benefited from the legal aid program since its opening in January 08.
- The JP Follow-up Committee reports show a significant increase in activity at the JP Court in Cite Soleil during the reporting period. According to a recent poll, residents of Cite Soleil increasingly feel safer. Moreover, they have greater confidence in the police and justice system. The steady increase in the number of individuals going to court and those seeking services from *Kay Jistis* seems to confirm this trend.

C. TASK-SPECIFIC ACCOMPLISHMENTS DURING THE REPORTING PERIOD

1. *Judicial authorities have increased their administrative, management, and technical capacity to provide more justice services effectively and efficiently.*

- **Support to Parliament**

The Parliamentary Justice Commissions completed the public consultations related to arrest and detention legislation. Two consultations, supported by NCSC, were held last quarter, one in Port-au-Prince and one in Les Cayes. 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. It is the same successful process that led to the drafting and adoption of legislations on the independence of the

judiciary (Judicial Council, Magistrate School, and Statute of the Magistrates).

Over those sessions participants debated several provisions of the draft. Some consider that policeman should be in a position to arrest and put suspects in *garde-a vue* without informing the prosecutors. According to others, it is mandatory for police to inform the prosecutors in such situation. Participants also had divergent views on whether or not to create a new judicial position to address *habeas corpus* issues. The NCSC consultant suggested that the dean of the trial court could play this role. However considering that upcoming legislation will deal with pretrial mechanisms it may be preferable now to establish a new judicial authority instead of using the dean of the trial court.

The NCSC consultant modified the draft to incorporate the comments received during the sessions. 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 release while awaiting trial.

The revised draft was presented in a final consultation in Port-au-Prince on September 25th. According to the Presidents of the Parliamentary Commissions, the Draft bill will be presented to Parliament for adoption at the next session in January 09, or sooner if an extraordinary session is held.

- **Judicial Council**

Following successful elections of the Council members, supported by NCSC and OIF, a thorough vetting process has begun. The Committee, led by the MJSP Secretary of State to Security, is tasked to look at Council members backgrounds. Three criteria are scrutinized: 1) professional background, 2) financial assets, and 3) morality. Investigations are conducted by a team of international and local law order specialists. NCSC support in that field is limited to technical assistance provided by its staff during official meetings. According to a calendar of activities set by the investigators vetting process for Council members should be completed in October.

While waiting for the completion of the vetting process, Council members have already begun to lay the ground work for the establishment of the institution. They have planned a series of working sessions for the next quarter in which they will prepare a draft budget, internal rules of practice, organizational charts and other basic tools to set up the Council. NCSC and other partners will provide technical assistance to Council members in each step of that process.

- **Magistrate School**

On August 14th the first group of 22 Justices of the Peace successfully completed the new, intensive continuing education program at the Magistrate School. The institution has been closed since 2004. On September 1st a second group of 27 Justices of the Peace began the program. 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 nearly completed. USAID is providing classroom and other necessary equipment. MINUSTAH is also providing technical assistance.

- **Presidential Justice Commission**

At the beginning of FY 08, the Commission embarked on an extensive effort to engage the public in the justice reform process. With the support of NCSC the Commission has conducted a series of six community forums around the country, presenting the results of its work and gathering the views of local jurists and the public on judicial reform. Because of the political crisis the Commission has not been able to conduct field visits this quarter.

- **Support to the MJSP**

During the reporting period, the NCSC full time advisor seconded to the Ministry of Justice has been instrumental in several key activities at the MJSP, including donors' coordination, development of the strategic plan (DSNCRP), the establishment of a national legal assistance program, the re-opening of the Magistrate School, and the reengineering of the MJSP. The advisor's consultancy concluded at the end of this quarter.

- **Reorganization of the MJSP**

In July, the MJSP held a retreat on the re-organization of the Ministry. The objective was to produce draft legislation to be presented 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.

Twenty participants attended the event including the Minister of Justice, the Secretaries of State to Security and Justice, MJSP cabinet members, representatives of the Presidential Commission, and NCSC technical advisors. At the end of the retreat a committee was established to complete the draft legislation. At the request of the Presidential Commission, NCSC will sponsor a

workshop in which the final draft will be presented to a larger audience for comments and suggestions.

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

During this reporting period, NCSC began implementation of the model registers for JP Courts, Prosecutors Office and *Cabinet d'Instruction*. Initial training sessions were held in St-Marc and Petit-Goave. The evaluations completed by the participants show a very high degree of support for the new system. Implementation in PAP will begin in October. The first training session will be held in Cite Soleil on October 3rd.

An NCSC international specialist, along with staff from NCSC, MINUSTAH, UNDP and the MJSP developed the models for the case registry and tracking system. There was much discussion about the need for capturing critical data while at the same time not making the job of the court clerks too onerous or too cumbersome with large unwieldy registers. There were heated discussions about the flow of documents and the need to record dates for important events. The participants were conscious of the need to rigorously capture information. Their concern was about the need to have so many detailed columns with precise headings. They were informed that general columns tend to be too vague and allows for a more freestyle data entry with the consequent loss of consistency in data capture.

- **Roving Justices of the Peace**

The Roving Justices of the Peace have again provided a significant number of individuals access to justice. The ten Roving JPs supported by NCSC continued to regularly visit target zones on market day and provide mediation and civic awareness sessions to a great number of citizens. In this quarter alone, 2,622 community residents attended Roving JP activities in the target jurisdictions, for a total of 8,364 since the beginning of the program in FY 07.

- **Rules of Practice for JP Courts**

The Follow-up Committees visit JP courts on a monthly basis in the three target jurisdictions (PAP, St. Marc and Petit-Goave) to monitor implementation of the JP Rules of Practice. Over the past quarter, the Committees visited each target court at least once a month. Twenty-two visits were conducted, for a total of 118 since the beginning of FY 08. This reporting period, the numerous hurricanes hampered the ability of the Committees to visit the courts in accordance with the usual schedule.

This quarter, JPs and clerks from the pilot jurisdictions of St. Marc and Petit-Goave completed evaluation forms prepared by NCSC. According to them: 1) the internal rules are very useful, 2) their relationship with the Committee is very good, 3) the work performed by the Committee is very good, and 4) the monthly visit prompts the court staff to perform better.

- **Distribution of Equipment**

During FY 08, NCSC distributed equipment in its three pilot jurisdictions. NCSC procured and distributed office equipment (desk, chairs, files cabinets, benches, and typewriters) to all courts in its target jurisdictions of St. Marc (12 JP Courts, 1 First Instance Court and 1 Parquet) and Petit-Goave (5 JP Courts, 1 First Instance Court and 1 Parquet). At the request of the Dean of PAP, NCSC also provided 3 computers and 3 copiers. In September, NCSC delivered to the PAP Parquet an intercom communication system to improve the permanency put in place this year. These items will help the Courts and Parquet function more efficiently and effectively. NCSC has also distributed books and codes in all JP Courts around the country (175).

- **Customary Justice**

The final report approved by USAID was distributed to selected stakeholders including the MJSP, the National Law School, MINUSTAH, and UNDP.

- **Gender Study**

The final report approved by USAID was distributed to selected stakeholders including the MJSP, *Ministère de la Condition Féminine*, MINUSTAH, Organization of American States, URAMEL, and several women's associations.

2. *Ratio of total prison population in pretrial detention is reduced and average length of time spent in pretrial detention for detainees in St. Marc, Petit-Goave, and Port-au-Prince reduced.*

- **Legal Assistance**

In July, the MJSP held a press conference to officially launch the national legal assistance program (SYNAL). The MJSP intends to include legal assistance program costs in its budgets on an annual accelerated basis over the next three years. The program is currently operational in nine of the eighteen jurisdictions. NCSC finances four key staff positions in each of the St. Marc and Petit-Goave programs and five apprentice attorney positions in the Port-au-Prince program. MINUSTAH, OIF and the International Legal Assistance Consortium (ILAC), provide logistical support and funding for other staff positions.

A committee of donors was established last quarter to ensure appropriate follow-up. The committee ensures that each legal assistance office is equipped with uniform reporting forms, is actually providing services to indigent clients, and that donors' activities are coordinated.

Senior members of the PAP Bar Association, supported by PADF, provided a three-day training program for attorneys and attorney apprentices in St. Marc and Petit-Goave. The majority of the attendees were staff of the legal assistance program in St. Marc. The training focused on human rights issues.

During the reporting period, a total of 385 indigent accused were represented in the three target jurisdictions, 1076 since the beginning of the FY.

- **Special hearings**

In 2005, 2006, and 2007 special felony hearings were held in Port-au-Prince during the judicial summer vacation to reduce the backlog of pretrial detainees, primarily in the National Penitentiary. NCSC provided technical and financial assistance. Described as very successful by the local press, the hearings produced significant results. Several cases were heard and many judgments handed down. In FY 08, the Ministry of Justice decided to finance all costs related to the hearings this summer. This decision reaffirms the achievement of past assistance but moreover it demonstrates the commitment from the Haitian government to fight prolonged pretrial detention. NCSC and OIF supported the legal assistants from the PAP Bar who represented the indigent accused. The quality of the services provided by the legal assistants has been acknowledged by the Dean and other key actors from the system. One hundred and fifteen (115) cases were heard regarding 174 individuals, of whom 102 were convicted and 40 released. Other cases were postponed.

Special summer hearings were also held in Petit-Goave and St. Marc. Working through ANAMAH, NCSC covered the costs of generator fuel for power in the courtroom and meals for the participants, which included victims, witnesses, jurors, and court staff. In Petit-Goave, 16 cases involving 33 individuals were heard, resulting in 24 convictions, 7 acquittals, and 2 cases postponed to the next session. In St. Marc, 19 cases were heard, 14 were convicted, 3 released, and two postponed to the next session. NCSC provided the cost of gas for the generators and meals for court and law enforcement staff, witnesses, and victims.

- **Addressing the Low Conviction Rate**

To help solidify the system-wide conclusions and recommendations in its final report, NCSC engaged three local, experienced legal consultants to review the report. The specialists presented their comments in July. Despite this effort, NCSC still believes that the report needs to be enhanced. The NCSC technical advisors and senior legal advisor will conduct a final analysis of the findings. It is anticipated that the revised text will be translated into English and submitted to USAID during the next reporting period.

- **Expansion of UNDP/DAP Computer System**

The final report approved by USAID was distributed to selected stakeholders including the MJSP, UNDP, OIF, MINUSTAH and DAP.

The NCSC computer specialist performed the following tasks during the reporting period: 1) produced prison statistics for UNDP and the DAP, 2) developed the DAP website, 3) established the networking of three prisons with the DAP central office, 4) completed computer database background checks for new PNH recruits. The computer specialist's consultancy concluded at the end of this quarter. In the previous quarter, he trained prison staff in maintaining the database to promote the sustainability of these activities.

Result 3: Increased reasonably equipped and trained GOH justice personnel presence in Cite Soleil working collaboratively with the Haitian National Police.

- **Legal Aid Program**

During the reporting period, the number of individuals seeking legal advice from *Kay Jistis* significantly increased compared to the previous monthly average of approximately 20 individuals. In September, 52 individuals benefited from the support of PAP legal assistants, 52 in August as well, and 62 in July. Two hundred and eighty nine (289) individuals have benefited from the legal aid program since its opening in January 08.

Civic awareness sessions conducted by the PAP Bar legal assistance remain popular. In August, 65 community leaders attended the session, and 56 in July, including ASEC and CASEC representatives. These sessions focused on the rights and obligations of citizens. So far 175 individuals have taken part in the PAP Bar sessions.

- **Civic Awareness**

This reporting period, GRIEAL completed their program. In August, 240 beneficiaries participated in two sessions led by the 20 trainers trained by GRIEAL. The first session “Structure of the State and Active Citizenship” aimed to sensitize citizens to their role in the establishment of a democratic society. Distribution of documentation, group discussions, and practical exercises were all used during this session. The second training focused on “Justice and Society.” The objective of this module is to demystify and increase the community’s familiarity and comfort with the justice system. The objective of the third session “Justice in Cite Soleil” was to present basic information on the composition and role of the JP Court in Cite Soleil. Finally the fourth session, “the Citizen and Justice in Cite Soleil” was closely tied to the second one. It described the various warrants that can be issued by JPs, types of complaints, and the jury system, among other topics. A total of 664 individuals received training through the program since its inception in January.

GRIEAL encountered obstacles in concluding contracts with the radio stations, forcing the number and length of the radio programs to be reduced. However, in August, GRIEAL broadcast two radio shows on “Radio Guinea.” The 30 minute programs were aired twice a week, on Tuesdays and Thursdays. NCSC will provide copies of them to USAID/HSI. Topics presented were the same as in the training described above.

- **Support of Victims’ Program**

This activity was successfully completed in the third quarter. Sixty four (64) participants described the program as beneficial, positive, and inclusive of many different perspectives.

- **Develop Recordkeeping and Caseload Management Systems**

(See section on “Case Registry” above)

- **Monitoring Rules of Practice**

The Port-au-Prince JP Follow-up Committee continues to make their monthly visit to the Cite Soleil JP Court. After a drop in August, the number of criminal cases recorded at the JP Courts is back to average in September. Fifty-eight cases were heard in August compared to 128 in September, 132 in June and 147 in July. There was an increase in the percentage of warrants executed (30) vs. issued in September (111). Almost 30% of the warrants issued were executed, up from 11% previously. According to a recent poll, residents of Cite Soleil increasingly feel safer. Moreover, they have greater confidence in the police and justice system. The steady increase in the number of individuals going to court and those seeking services from *Kay Jistis* seems to confirm this trend.

The Follow-up Committee also continued its monitoring of the JP Court compliance with the Rules of Practice. The Cite Soleil JP Court generally scores well above other courts in NCSC's three target jurisdictions in terms of compliance with the Rules.

- **Training JPs in Cite Soleil**

The second group of JPs to be trained at the Magistrate School is scheduled to complete the session on October 3rd. Two JPs from Cite Soleil participated in this class of 25. On August 14th, the first group of 22 JPs, including 1 JP from Cite Soleil successfully completed the new intensive continuing education program at the Magistrate School, which had been closed since 2004. At the request of the Minister of Justice, an NCSC staff member designed the curricula and selected expert trainers for this program. NCSC helped fund the training, together with other international organizations.

- **Promote Understanding and Cooperation.**

The series of four workshops held under the auspices of the PAP Chief Prosecutor was completed in the third quarter. Ninety justice system actors took part in the two-day sessions, and the evaluations revealed the need to expand coordination efforts.

In July and August, NCSC organized the monthly *Kay Jistis* coordination meetings. They were held at the Port-au-Prince Bar Association office. Participants included the PAP prosecutor assigned to Cite Soleil, *Kay Jistis* legal assistants, and MINUSTAH and NCSC representatives. Discussions centered on prolonged pretrial detention. The Port-au-Prince legal assistants have encountered difficulties in obtaining information on the status of cases, particularly at the prosecutors office. The Prosecutor agreed to facilitate the work of the legal assistants by providing strict guidance to the clerks at the prosecutors' office. In September, hurricanes, threats of civil unrest, and the judicial summer vacations hampered the organization of the monthly coordination meeting. The NCSC Cite Soleil field monitor instead met individually with each partner to ensure basic coordination.

D. INDICATORS FOR THIS QUARTER

During the reporting period the following results were achieved relating to NCSC targets (for more details see Indicators Table, 3rd Quarter 08).

2.1.3 Number of days in pretrial detention: (193)

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 (3,173)

2.1.3.3 Number of Courts operating in areas of low-income population with USG assistance (90)

2.1.3.4 Number of USG assisted courts with improved case management/low income (25)

2.1.3.5 Total number of justice sector personnel that received USG training (49)

2.1.3.6 Number of legal aid groups and law clinics assisted by USG (4)

2.1.3.7 List institutions and associations assisted by USG (10)

E. DONOR COORDINATION

Coordination between the MJSP and the main donors (MINUSTAH, OIF, UNDP) once again centered around the key reforms: Judicial Council, Magistrate School, reorganization of the MJSP, case registry/tracking system and legal assistance (SYNAL). This coordination is informal and would benefit from a more formal framework. Some donors or implementers are often not informed of key meetings and/or activities relevant to their portfolio.

NCSC has also continued to developed linkages with other USAID projects to help enhance program objectives and results. These efforts include: 1) a public awareness campaign with ARD/SUNY on the three laws on the independence of the judiciary, 2) working with PACT to help reinforce the organizational capacity of ANAMAH, as well as expanding the purview of the legal assistance sites in NCSC target jurisdictions to provide legal services to female victims and minors, and, 3) collaboration with PADF to conduct human rights legal training for attorneys and apprentices working in NCSC projects.

F. DIFFICULTIES ENCOUNTERED AND ACTIONS TAKEN TO RESOLVE TO THEM

Hurricanes, threats of civil unrest, judicial summer vacations and the political crisis forced NCSC to slightly postpone some activities. The NCSC's strategy to support the Ministry of Justice and Public Security as well as a wide range of institutions (*i.e.*, Parliamentary Justice Commissions, Presidential Justice Commission) has provided a measure of continuity of efforts despite all of the hurdles listed above, particularly during the political crisis.