EVALUATION OF USAID'S ADMINISTRATION OF JUSTICE AND HUMAN RIGHTS FUND II PROGRAMS

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USAID/Haiti

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Executive Summary

Purpose of the Study

The USAID Mission in Haiti (the Mission) contracted with Creative Associates International, Inc. (CAII) for an evaluation of Mission programs to improve the Haitian justice sector and promote human rights in the country. The Mission asked CAII to review how effectively the programs were carrying out their purposes. The Mission is now developing its strategy for the future. In light of this, the Mission also asked CAII to comment on the strategy that USAID has been following in Haiti and make suggestions to contribute to developing the new strategy.

Background and Context

USAID is supporting the development of the rule of law through an Administration of Justice Program (AOJ) and the Human Rights Fund II (HRF II). The AOJ program is being implemented for USAID by Checchi and Company Consulting, Inc. (Checchi) and the United States Department of Justice (DOJ). HRF II is being implemented by America's Development Foundation. The goal of the AOJ and HRF II projects is to create a more effective, efficient, and accountable justice system.

DOJ's activities focus on four areas: 1) assisting the Ministry of Justice (MOJ) to develop a criminal justice training program for judicial personnel; 2) assisting the Government of Haiti (GOH) to develop a judicial career; 3) assisting the MOJ to establish a sustainable judicial training center; and 4) assisting the GOH to improve case disposition, primarily in the prosecutorial stage.

Checchi focuses its efforts in four areas: (1) legal assistance to the poor, (2) on-the-job mentoring to support judicial personnel, (3) installing a case tracking system in the Justice of the Peace Courts, and (4) providing legal education programs to legal professionals and ordinary citizens.

HRF II's purpose is to provide medical care and psychological healing to victims of human rights abuse. It also provides civic education, and works to promote constructive relations between the Haitian National Police and local communities. In implementing its programs, HRF II promotes democratic principles and non-violent conflict prevention and resolution.

CAII's Analysis of the Projects Being Implemented by Checchi and Company Consulting

The Legal Assistance Program

The Legal Assistance Program provides free attorney services to the indigent who are involved with the criminal justice system. This includes people in jail as well as people who are not incarcerated but are charged or otherwise under threat of incarceration. The program is administered by Checchi while the services are provided by attorneys employed by non-governmental organizations (NGOs). These NGOs apply for and receive grants to supply the services. There are currently 15 legal assistance NGOs: five in Port-au-Prince and 10 in provincial towns.

Grantees' performance is generally good, and useful. The team observed NGO attorneys at work and they consistently showed genuine dedication to their mission. In addition, the program seems to be having an impact For example, of the criminal cases accepted during the period of January 1996 through November 1997, 5,426 cases were resolved and closed. However, the team noted deficiencies in the process of how clients are being informed about and are participating in their cases. For example:

- Without exception, the prisoners interviewed did not know what services the NGOs provide. This was true even for prisoners being actively represented by NGO attorneys.

- The team did not observe any attorneys asking for the consent of clients to proceed on their behalf or asking consent for specific actions the attorneys might take.

- Confidentiality does not seem to be a concern of NGO attorneys.

Major Recommendation on the Legal Assistance Program[1]:

- USAID should require Checchi to inform NGO attorneys concerning the need for client consent, confidentiality, etc. and train them to practice modern standards of legal ethics. These standards are a critical support to the legitimacy of the legal system.

Legal Education for Professionals

The Legal Education for Professionals Program is supposed to be carried out by Checchi staff attorneys, a law school, and four Bar Association grantees. The law school and Bar Associations are not currently providing professional education because, according to Checchi, the grantees are not yet capable of carrying out the activities. Checchi staff are developing educational materials to help the law school and Bar Associations carry out these grant-specified activities.

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[1]The Executive Summary contains the major recommendations concerning each program. See the full text for all recommendations.

The professional education services provided by Checchi staff attorneys is of high professional quality and is much appreciated by attorneys, law students, and other legal professionals. The Checchi staff attorneys also assist individual NGO attorneys to resolve technical legal questions so they can represent clients more effectively. This one-on-one coaching is helpful in resolving specific legal problems encountered by the NGO staff attorneys.

Major Recommendation on Legal Education for Professionals

- The professional education services provided by Checchi staff (two attorneys) are valuable and should be expanded if possible.

Legal Education for Citizens

The objective of the Legal Education for Citizens Program is to educate people on the law and what they should expect from the legal system. This is difficult because the segment of the population in most need of legal education is often indigent, illiterate, and fearful of the justice system. The program has used various methods to disseminate information on the law in such areas as land disputes, rental disputes, assault, theft, and illegal arrests and detentions.

The evaluation team found that while useful, education on the law is not enough. People need basic information such as what an attorney can do for them and that free legal assistance is available. Without such information, people will not be able to get the services and representation they need when they have a legal problem.

"Case Tracking" in the Justice of the Peace Courts

The system being implemented in the Justice of the Peace Courts by Checchi, known as the Case Tracking System, is actually a case registration system. That is, the system is designed to record the arrival of a case at the court. It does not monitor the progress of a case through the criminal or civil process as a true case tracking system does. This can be confusing to observers because the system is misnamed. More accurate name for the system would be "Case Registration."

The case registration is a simple manual system. Its simplicity is an important asset because it is used by court personnel who have low levels of expertise and experience. The system has been implemented in the model jurisdictions by Checchi according to, or sometimes slightly ahead of, schedule.

The training for court clerks in use of the registration form is sound. The clerks are eager to be trained. All the clerks that signed up for a class observed by the evaluation team attended despite the fact that it was held during a clerks' strike. The day-long training was practical, hands-on, and well received by the students.

The system is working well in the courts where it has been installed. There are obvious gains in efficiency and effectiveness in these courts compared to courts where the system has not been implemented.

Judicial Mentoring

The Judicial Mentoring Program is a pilot program in which senior retired judges and law professors provide guidance to sitting judges on technical, legal, and courtroom management matters. The program responds to a dearth of training and experience of most Haitian judges. There are currently four Haitian mentors and one (Canadian) Chief of the Judicial Mentoring Program who provide management support.

Judicial personnel interviewed told the evaluation team that mentors have a positive impact on the professionalism, efficiency, accountability, and transparency of the judicial sector. Judges of the first instance and justice of the peace courts in target jurisdictions took pride in their participation in the program. Mentee judges indicated a willingness to accept help from mentors to improve their performance. The MOJ has been pleased with mentoring and is eager to continue the program. However, to date, there has been no quantitative demonstration of programmatic success.

Major Recommendation on the Judicial Mentoring Program

- USAID/Checchi should consider expanding the Judicial Mentoring Program to other jurisdictions where legal assistance and information, model parquet, and case registry and tracking exists or is planned as soon as its success can be quantitatively measured.

CAII's Analysis of the Projects Being Implemented by the Department of Justice/OPDAT

The Judicial School

The Judicial School was established in 1995 to train judges and other judicial personnel. Its first class of 60 judge candidates began training in 1997 and will graduate in May 1998. The School is operating well. Students and the Director of Studies were chosen competitively. The instructors were chosen based on their qualifications. Courses are appropriate, although the curriculum lacks a course in investigative techniques. Presentations, employing various teaching techniques, are very good.

Legislation designating the Judicial School as the sole entity authorized to train and certify judges and providing the School with internal governing authority was submitted to the MOJ in 1995. This legislation had not been passed as of February 1998.

Questions regarding the MOJ's commitment to the School's independence and its future

have recently been raised. The School's independence may be compromised if some students who participated in a strike at the School are not placed in judicial positions. Regarding MOJ's commitment, it is unclear whether the Ministry will pick up its share of program costs. Another sign of shaky commitment is MOJ's lack of long-term planning for the School. There are no concrete plans for the School after May 15, 1998 when the current students graduate.

Major Recommendation Concerning The Judicial School

- USAID should carefully monitor MOJ actions in the next few months to judge the MOJ's commitment to the autonomy and operations of the School. If the MOJ does not demonstrate adequate support for the School, the USG should reconsider its future financial support for the School.

Criminal Justice Training

Criminal Justice Training was short-term training conducted between January 1995 and November 1996. The two-week training courses consisted of basic legal training for judges and prosecutors, as well as seven joint seminars for judicial personnel and the police. Courses were given in the field and at the Judicial School. In November 1996, MOJ directed DOJ's Office of Prosecutorial Development and Training (OPDAT) to discontinue short-term training until judges were evaluated and unqualified judges removed.

Evaluations of this training in July 1996 noted that the courses were of good quality and had a positive impact on performance and relationships between police and judicial personnel.

The evaluation team concurs with an earlier evaluation that training should resume rather than be delayed until formal evaluations of judicial personnel have been completed. The need for improvement is simply too great, and the cost of training some people who may lose their positions is not commensurate with the loss of progress in this area.

Major Recommendation Concerning Criminal Justice Training

- OPDAT should work with the MOJ to reinstitute short-term judicial training.

The Judicial Career

Legislation establishing procedures and criteria for the nomination of judges, including a process for evaluating their competence and character by an independent non-partisan commission, was submitted to the MOJ on March 5, 1997. However, the lack of a government meant that no action was taken on this legislation.

Model Parquet Program

OPDAT implemented a case-tracking system in seven model parquets (prosecutors' offices) to quickly determine the status of individual cases and identify bottlenecks, including unjustifiable delays, in case processing. Seven legal consultants, under the guidance of OPDAT's resident and assistant legal advisors, monitor individual cases from beginning to end using this case tracking system. They intervene, as necessary, to facilitate the disposition of cases. In addition to this role, the legal consultants act as mentors and technical assistants.

Observers such as MICIVIH (UN/OAS human rights monitors), the Judicial Inspection Unit of the MOJ, and this evaluation team noted that the program appears to have a positive effect on the operations of the parquets in the model jurisdictions. However, program impacts have not been quantifiably measured. OPDAT is working on performance indicators, but the indicators need further refinement. Another obstacle to measuring the impact of this program is that baseline data were not compiled before the program began.

Major Recommendations Concerning The Model Parquet Program

- OPDAT, with participants in all other AOJ Programs, should complete the development of performance indicators for its programs and collect and compile data to measure Model Parquet Program impact.

- OPDAT should delay expanding the Model Parquet Program until: (1) the problems and recommendations in all evaluation reports have been addressed; and (2) the success of the Program is quantitatively determined.

CAII's Analysis of the Projects Being Implemented by the Human Rights Fund II

The HRF II program provides medical and psychological rehabilitation services to victims of human rights abuses, and promotes social harmony and the development of democratic values and practices through civic education and a program for improving police/community relations.

Medical and Psychological Assistance for Victims

HRF II runs a world-class victim rehabilitation program. Among other functions, the HRFII program: (1) reaches poor and powerless victims of human rights violations; (2) treats large numbers of victims quickly; (3) uses a wide variety of appropriate medical and psychological techniques; (4) is starting to refer clients to programs to reintegrate victims into society through job training and job placement; (5) has attracted a growing group of medical practitioners to provide services; (6) is particularly well-attuned to the needs of female victims of rape and other abuse; and (7) treats family members of victims, who are often traumatized as well.

Major Recommendation Concerning Medical and Psychological Assistance for Victims

- The HRF II medical and psychological rehabilitation programs are of high quality and address a fundamental need for healing that undergirds efforts to promote human rights, democracy, and the rule of law in Haiti. USAID should expand the support for HRF II's medical and psychological rehabilitation programs.

Civic Education/Police-Community Relations Program

The HRF II civic education (CE) program has been active since the beginning of the project. The police-community relations (PCR) program is a pilot program. As such, it is newer and smaller that the medical program. At present, the CE/PCR is active in Les Cayes. HRF II CE/PCR staff successfully defused a potentially explosive conflict between the police and the community in Le Cayes and established an ongoing mechanism to promote and sustain improved relations. The team went to Les Cayes to observe the operation of the program and was favorably impressed with both the cooperation between the police and the community and the techniques put in place to maintain and improve the relationship. This program is a good example of creating "demand" for justice, which is discussed below.

Major Recommendation Concerning Civic Education/Police-Community Relations

- The CE/PCR pilot program is apparently making excellent progress in promoting non-violence, cooperation, and democratic values. USAID should consider expanding the reach of the program by increasing funding and extending the duration of the program.

Have the AOJ and HRF II Programs Met Their Objectives?

The evaluation team cannot give definitive answers to this question because of flaws in the design of the programs. In all cases, performance indicators--especially quantitative ones--were not built into the programs. In addition, baseline data was not collected before the programs started, making it difficult to judge success. Finally, in many cases, the stated objectives of the programs were too vague, broad, or inappropriate to support definitive statements. While these are significant problems, it is not too late to develop appropriate objectives, collect baseline data, and develop appropriate quantitative and qualitative performance indicators. As noted in the report, some of this activity is going on now.

While the evaluation team is not able to definitively answer this question, our analysis of the projects we examined leads us to conclude that all the programs are making positive contributions. Indeed, some are examples of excellence. The main text of the report makes clear the team's overall judgment on the quality and utility of each of the present programs.

CAII's Analysis of the Sustainability of USAID's Current Projects

At the time of this evaluation (January - February 1998) there were no sustainability plans in place for the current AOJ projects. DOJ is in the process of developing sustainability plans for its programs and is negotiating with the MOJ over sustainability issues. In the evaluation team's view, it is too early to judge whether DOJ's effort will result in a credible sustainability plan. In the opinion of Checchi and HRF II staff, their projects would not be sustainable if donor funding were not available and the funding were not assumed by the GOH. This was because the economy of Haiti would not be able to support their activities, either through fees generated by their programs or by other private sector support. One program which may be sustainable is the Judicial Mentoring Program, where evaluation team discussions with the Judges' Association revealed members' interest in assuming the mentoring function.

Because so little information on sustainability was available from the contractors and USAID, the evaluation team analyzed sustainability using two complementary approaches. One approach used a USAID analytical model to understand what types of Rule of Law programs (USAID/Haiti's AOJ program is one) are appropriate in different circumstances. The other approach used the economic theory of public goods to see if current projects are likely to be sustained.

While the two approaches do not give identical results, both suggest that most of the current programs will not be sustainable unless the GOH funds and administers them after the donors end--or substantially curtail--their support.

The evaluation team, and essentially all U.S. and Haitian observers, agree that the present GOH is not strongly committed to the rule of law. There are two implications of this conclusion for USAID's strategy for Haiti:

- The activities which Haiti needs most are those that will help build demand for justice. It is only on the foundation of this demand for justice that the necessary superstructure of law, access to the justice system, and judicial capacity can be built, and

- USAID should devote more attention to building coalitions and constituencies which will pressure the system to provide justice. In other words, USAID needs to do more on the "demand side."

CAII's Views on an Appropriate Strategy for USAID/Haiti and Suggestions for New Initiatives

During the evaluation team's initial meetings with the Mission in Haiti, we were asked to take a broad view of USAID's program because the Mission was in the process of strategic planning for future programming. The team concluded that the present program does not fully

address the need for a basic, long-term effort to establish an effective and impartial justice system. As noted above, more needs to be done on the "demand side" to build a solid foundation for institutions which can provide the justice so ardently desired by the people of Haiti.

The team believes that the most fundamental condition for justice is respect for human rights. Human rights principles are embodied in the Universal Declaration of Human Rights (UDHR), which was adopted 50 years ago. The UDHR is explicitly recognized in the Constitution of Haiti. This fact and the widespread acceptance of these principles around the world make the UDHR a foundation for the demand for justice. All Haitians are acutely aware of the abuses of their human rights which have taken place during past regimes. The universality of the UDHR and the shared experience of Haitians in the denial of their rights means that human rights is an appropriate basis for organizing and promoting the demand for justice in Haiti.

The suggested approach has three parts: (1) ambassadorial initiatives which will demonstrate the U.S. government's commitment to the human rights of Haitians; (2) a process for coming to terms with Haiti's past human rights abuses--a Truth and Reconciliation process--and; (3) a campaign of education and popularization of human rights to directly raise citizens' awareness to protect the rights.

The ambassadorial initiatives we recommend address the human rights of prisoners--children being held in prison, detainees being held without charge, and prisoners who have served their sentences but remain in jail. In fact, these categories account for a large proportion of the prisoners in Haitian jails. We suggest working with the GOH and other donors to relieve the plight of these unfortunate people.

The Truth and Reconciliation process is one which is being pursued by many societies with records of human rights violations. This is a difficult but ultimately positive experience as societies come to grips with their own tragedies. It is also a necessary process; without it the damage inflicted on society by these abuses festers and poisons national life. We suggest supporting a process that is inclusive, non-political, and Haitian-led to help the country deal with its trauma and lay the basis for a new respect for human rights.

The education/popularization program should be based on informing the people about their rights as contained in the UDHR. This program should be especially targeted to young Haitians, who like other young people, are open to human rights messages through media, music, and other programs. We suggest a range of activities which will raise consciousness of human rights and will involve Haitians to the maximum extent possible.

Chapter I

Background, Scope and Methodology

Background: The Haitian Context

Securing the rule of law in Haiti means a struggle against deep-seated tradition. That tradition is the rule of force. A Kreyòl proverb sums up the legacy that the Haitian people will have to overcome, "Konstitisyon se papye, bayonèt se fé" (A constitution is paper, a bayonet is steel). To change from the rule of force to the rule of law will involve a long-term effort. Haiti is a country that has yet to heal and become reconciled to the wrongs of the past. Healing and reconciliation are necessary steps on the road to democratic and economic development. It is the Haitian people who must make that effort. It is the role of the U.S. and other donors to help in this struggle--both in Haiti's interest and in our own.

Throughout history, Haiti's "justice system" has been an instrument the powerful few have used against the impoverished many. It has not promoted human rights or obeyed the rule of law. Instead, it has served the interests of "strongmen" Presidents and their allies. Its hallmarks have been exclusion and repression in the service of a highly stratified social order.

The 1987 Constitution provides the base for developing a modern democratic rule of law in Haiti. Its overwhelming ratification by the Haitian people was an attempt to break with the undemocratic and arbitrary practices of the past. Articles 173-190 of the 1987 Constitution mandate the separation of powers, including an independent judiciary. Articles 24-27:1 contain provisions to protect individual liberty against unlawful prosecution, arrest, and detention. The Constitution's Preamble cites both the American Declaration of Independence and the Universal Declaration of Human Rights as bases for Haitian national life.

Although sadly lacking in practice, governing by the rule of law and through the separation of powers is part of Haitian consciousness. In 1806, a Committee of nine under Alexandre Pétion drafted a Constitution that stated:

> It is an uncontestable truth...that there are principles common to every good constitution. The most essential of these principles is the separation of powers, in as much as their concentration in the same hands is what constitutes and defines despotism.

USAID is now supporting an effort in Haiti to carry out the mandate of the 1987 Constitution. That mandate is to build democratic governance disciplined by the principle of the separation of powers. An essential element in this system of governance is creating an independent and integral judiciary that protects the human rights of all Haitians.

The challenge is daunting. The Haitian National Police is a newly built force. Reform in the justice sector is taking place within traditional institutions and without significant change in personnel. Not surprisingly, the present justice system lacks credibility. A USAID survey of the Haitian citizenry illustrates that lack of confidence. For example:

- People say that justice is for sale, and officials are corrupt and not accountable;

- Most people cannot access the justice system due to its high costs (court fees, legal fees, transportation).

- Judicial personnel believe they are not protected from outside influences (e.g., pressure and violence from Executive Branch, police, and terrorist groups).

- There is a widespread perception that judicial personnel are not competent.

- Laws and court proceedings are in French, which is spoken by only 5% of Haitians, rather than in Kreyòl.[1]

- People note there are no police in rural areas. Officials comment that when they can be found, police do not aid judicial personnel in investigations.

Additionally, there is a paucity of demonstrable support for reform of the justice sector among the political class. Political will for reform within the government and the Ministry of Justice is weak. The Ministry of Justice (MOJ) has limited capacity, and is weighed down with personnel who are ill-prepared to carry out their functions effectively. There is, as of this writing, no Prime Minister. Parliament is blocked by a political impasse resulting from the disputed elections of April 6, 1997, so no legislation can be passed. Constituencies favoring reform, are dedicated, fragile, and dependent on external support. One Haitian lawyer active in providing legal aid to the poor stated the problem succinctly. "It is not easy to get democracy from one day to another."

Considering these many problems, it may be tempting to write Haiti off and leave it to its own devices. Such a course would not serve the interests of the American people or the vast majority of Haitian citizens. The American people have a concrete interest in the development of democracy and the rule of law in Haiti. Poverty, corruption, violence, and repression in Haiti have significantly affected the United States. Refugees from Haiti fleeing to the U.S. have had serious impact on our immigration and refugee policies and practices. We also have significant humanitarian interests in Haiti, where poverty and ignorance are an affront to our values and compassion. Lastly, widespread corruption and the absence of the rule of law have made Haiti

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[1]Kreyòl is recognized as Haiti's national language and has official status with French under Article 5 of the Constitution

vulnerable to the international drug cartels. These cartels are increasingly using Haiti to transship narcotics into the United States. Haiti will never progress significantly without the rule of law and human rights; traditional American values and our national interest compel us to support the development of both.

USAID's Justice Program

USAID is supporting the development of the rule of law through an Administration of Justice Program (AOJ) and the Human Rights Fund II (HRF II). The AOJ program is being implemented for USAID by Checchi and Company Consulting, Inc. (Checchi) and the United States Department of Justice (DOJ). The goal of the AOJ Project, begun in 1995, is to create a more effective, efficient, and accountable justice system.

DOJ's activities focus on four areas: 1) assisting the MOJ to develop a criminal justice training program for Justices of Peace, first instance court judges, investigating magistrates, and prosecutors; 2) assisting the Government of Haiti (GOH) to develop a judicial career; 3) assisting the MOJ to establish a sustainable judicial training center (the Ecole de la Magistrature); and 4) improving processing and disposition of cases through the Model Parquet Program.

Checchi is now focusing its efforts in four areas: (1) legal assistance; (2) on-the-job mentoring to support judicial personnel; (3) installing a case tracking system in the Justice of the Peace Courts; and (4) providing legal education programs to legal professionals and ordinary citizens.

HRF II began operations in 1996 and is currently funded through June 1998. The Fund's purpose is to redress human rights abuses and provide medical and psychological support to victims of human rights abuse. It also provides civic education and works to build constructive relations between the Haitian National Police and local communities. In implementing its programs, HRF II promotes democratic principles and non-violent conflict prevention and resolution.

Scope and Methodology

This section gives a brief overview of the scope of the evaluation as originally defined and as slightly modified by the Mission. It then discusses the general approaches the team took to address the scope of work. The section concludes with a discussion of limitations to the team's work in Haiti caused by relatively a short time period for field work authorized by the contract.

The Original Scope of Work

The scope of work as defined by USAID had general and specific objectives. The general objectives for both the AOJ project and the HRF II evaluations were to:

- assess the performance of the various program components;

- evaluate the implementing partners' (Checchi, DOJ, and HRF II) approach and strategy and suggest improvements if needed;

- recommend future programming options for the various program components; and

- examine the major constraints impeding progress in the justice sector and recommend alternative approaches.

The scope of work also laid out specific objectives for each program and program component. In summary, the objectives for the HRF II were to:

- assess the activities of the Fund;

- assess the HRF II's impact on civil society and whether the Fund's activities have decreased human rights abuses; and

- recommend options for future USAID human rights activities.

The objectives concerning case tracking were to:

- assess the current case tracking system as installed by Checchi in the Justice of the Peace (JP) Courts;

- assess the effectiveness of training provided by Checchi to JP Court staff;

- make recommendations regarding programming options for the component.

The objectives concerning legal assistance and legal education/information were to:

- assess how well the legal assistance program is meeting the needs of its beneficiaries;

- assess the adequacy of criteria for accepting legal assistance clients, and client satisfaction with the service;

- assess whether the contractor is reaching poor, illiterate participants through the legal information program, and the impact of the information activities;

- assess the legal education services offered to legal professionals by NGOs and bar associations;

- assess the contribution of the legal assistance program toward improving the justice

system, and recommend options for improvement; and

- assess the program's long-term viability without donor assistance.

The objectives concerning judicial training were to:

- evaluate the programs carried out by the DOJ; and

- recommend options for future judicial training programs.

Thus, the objectives set out in the scope of work were numerous. While the specifics varied from program to program, it was clear that the overall mission was to evaluate the current operations of the programs and program components and to suggest future programming.

Amplification of the Original Scope of Work

The team met with the Mission Director and her staff upon arrival to refine the evaluation plan. At the meeting, the Mission Director noted that the Mission was engaged in a planning effort for the future. Since we were evaluating all AOJ activities, she requested that our team take a broad view of the justice sector, and go beyond the evaluation of the present programs to provide more general recommendations concerning USAID's strategy for the justice sector in the future. This, she said would assist the Mission in its overall strategy development.

General Methodology of the Evaluation

The overall methods the team used in evaluating the AOJ program are discussed in this section. Specific methods, organizations and individuals interviewed,[2] field observations, and others are discussed in the chapters which separately describe the evaluation of each program.

The team reviewed basic documents concerning the AOJ programs and the Haitian justice sector which were relevant to all parts of the evaluation. Besides the program documents, the team found four papers particularly useful. These were:

Aucoin, Louis, et. al., Assessment of the Justice Sector in Haiti, prepared for USAID/Haiti by Development Associates, Inc., September 15, 1997.

Blair, Harry and Gary Hansen, Weighing in on the Scales of Justice: Strategic Approaches for Donor-Supported Rule of Law Programs, USAID/CDIE, February, 1994.

Maingot, Anthony, "Sectarian Conflict in Haiti: Causes and Consequences," a paper prepared for

[2]See Appendix I for a list.

the Conceptual Model Conference of The Fund for Peace and the U.S. Army Peacekeeping Institute, December 4-5, 1997.

Trouillot, Michel-Rolph, et. al., Democracy in Haiti: A Strategic Assessment, prepared for USAID/Haiti by Development Associates, Inc., August 1997.

The team gathered much of its information through interviews with program participants and direct observation of the programs. The interviews typically included extensive meetings with USAID staff, contractor staff, subcontractor/NGO/grantee staff, and direct recipients of the services being provided by the projects. The observations were of two types: (1) accompanying contractor and NGO staff as they carried out their project activities; and (2) independent meetings and observations with program participants without the presence of contractor and NGO staff. The interviews and observations were conducted in various Port-au-Prince locations and in the provincial cities of Gonaive, St. Marc, Jacmel, Petit Goave, and Les Cayes. Details of the interviews and observational activities are given in the chapters on the specific programs.

In addition to interactions with project staff and participants, the team interviewed a number of groups and individuals who had worked on the projects previously to obtain their views on past and future project operations. We also interviewed a number of individuals and organizations who were or are critics of USAID's AOJ program to obtain alternative points of view on the programs' operations and efficacy.

The team also held discussions with a variety of Haitians with broad knowledge of and experience in the politics and social developments of the country. Many of these Haitians were personally known to team members, most often to the Area Expert member of the team. The team felt strongly that it was important to hold these discussions to gain an appreciation of the current political dynamics in Haiti, since these dynamics have strong influences on the success or failure of projects in the justice sector. These discussions were valuable and were conducted on a confidential basis to ensure frankness and to reassure the Haitians concerning issues of privacy and personal safety -- which are always considerations in Haiti.

The team was asked to consider sustainability of USAID's AOJ programs. We addressed this issue in three ways:

- We requested any plans, concept papers, or other documents concerning sustainability which had been drawn up by the Mission or its contractors, and analyzed the suitability of the plans. We also interviewed contractor personnel on the viability of their programs with reduced or eliminated USAID funding.

- We conducted a sustainability analysis using the framework contained in USAID/CDIE's Weighing in on the Scales of Justice paper. That framework relates the success of Rule of Law programs to the country's political situation and the state of the institutions in the country's justice sector.

- We conducted a brief analysis of sustainability using the economic theory of public goods. This analysis classifies AOJ activities as to their degree of "publicness" since that will largely determine whether an activity can be supported by the private sector or must be carried out by either donors or the host government.

At the end of the field work, the team conducted exit meetings with USAID, a senior MOJ official, and USAID's principal contractors (Checchi, DOJ, and HRF II) to discuss their observations, conclusions and recommendations. This technique was used to enable the interested parties to give their views on any of the findings and dispute any matters of fact or interpretation. The team also met with USAID and DOJ officials in Washington, DC. While there was some disagreement on specifics, these meetings revealed overall agreement on the analysis and conclusions.

This report was also reviewed in draft by USAID, and their comments and suggestions were incorporated as appropriate. One comment by USAID suggested that the report make additional observations on whether the AOJ programs have met their objectives. The following section outlines our approach to evaluating whether the program objectives have been achieved.

The Evaluation Team's Approach to Judging if Program Objectives have been Achieved

In the evaluation team's view, there are five possible answers to the question, "Has the program achieved its objectives?" The possible answers are:

1. Yes, based on convincing evidence.

2. No, based on convincing evidence.

3. Partly, based on convincing evidence.

4. The evidence is not sufficient to make a judgment.

5. The objective is too vague or otherwise not appropriate, so that determining whether or not it has been achieved may not be meaningful.

The key concept here is "convincing evidence." Such evidence does not need to be overwhelming to be convincing. Rather, it must be persuasive to most unbiased observers. Essentially, the distinction is similar to the ways evidence is evaluated in law. In criminal matters, guilt is only established if the case is made "beyond a reasonable doubt." In civil matters, liability (fault, responsibility) is established according to the "preponderance of the evidence." Evaluations use this latter standard. In other words, we try to establish whether there is a credible case that the program has achieved its objectives. Because the establishment of a credible case is fundamentally based on the evaluator's judgment, other observers may come to different conclusions based on the same evidence.

For an evaluator to make a definitive judgment on whether a program has achieved its objectives, four elements must be present. The first is that the objective itself must be precise enough so that a judgment is possible. For example, a precise objective for a ball team would be to win the game. A less precise objective for a ball team would be to "play well." Clearly, playing well can depend on a host of factors and is ultimately a highly subjective judgment. The second element is whether indicators have been established that would lead to a definitive judgment. The clearest indicators are usually quantitative (the score in a ball game). In fact, USAID policy calls for the establishment of quantitative indicators of success for all its programs. Qualitative indicators are usually less clear, but often as or more important than quantitative ones. Here judgment will play a greater role. The third element is that appropriate data must have been collected so that a judgment can be made. The score of a ball game is a clear indicator of who won, but if no one keeps score the winner will not be obvious. The fourth element--which is highly desirable if not always absolutely necessary--is collection of baseline (pre-project) data. The utility of baseline data for measuring the success of a program is universally appreciated. However, baseline data were not collected for any of the projects evaluated here. Lack of such data is one reason why the evaluators' conclusions cannot be more definitive.

One or another of the AOJ programs we examined fall into each of the five categories listed above. However, there is one feature all the programs have in common: none of them was designed with a set of quantitative indicators of success. Thus, of necessity, the evaluation team had to rely more on qualitative indicators (e.g., opinion, observation, data which was generated to address other questions) and their own professional judgment than they would have preferred. Indeed, the team believes that all present and prospective AOJ projects should develop quantitative indicators as early as possible in the project planning process. In two cases, the lack of quantitative measurement of success led the evaluation team to recommend that a project not be expanded until such data become available.

Each section of the report evaluates a project to address whether the project has achieved its objectives. In each case we note the degree of certainty with which we made our judgment.

Limitations of the Study

The primary constraint the team encountered in carrying out this evaluation was time. The AOJ programs are complex and numerous, and the short time allotted to the team's field work meant that the team had to spend relatively less time on certain evaluation activities. This was needed to ensure the team could cover all the programs specified in the Scope of Work. If the team had more time in Haiti, it would have: (1) visited more field locations to confirm the observations made in the places we visited, (2) done more verification of facts using such techniques as examining case files, and (3) met with more justice sector actors who are not affiliated with USAID's programs.

This being said, the team is confident that the amount of information collected, visits

made, and verifications carried out are adequate to support the conclusions and recommendations made in this study. The team's confidence is further bolstered by the excellent cooperation and responsiveness of USAID, its contractors, and their grantees in making available all the information we requested.

Chapter II

"Case Tracking" in the Justice of the Peace Courts (With a Note on Recordkeeping and Case Tracking in the Courts of First Instance)

Background/Description

Under a contract with USAID/Haiti beginning in 1996, Checchi convened a meeting of about 40 participants interested and knowledgeable about the administration of justice in Haiti. The conferees concluded that steps should be taken to gain a better understanding of the number and kinds of cases being brought before the Justice of the Peace (JP) Courts. Earlier basic research[3] produced under the aegis of the United States Military had yielded much useful information.[4] Some caseload information presented in that report is questionable,[5] highlighting the need for more detailed and reliable case registration and, eventually, reliable statistical reports.

The Checchi case registration system, which grew out of these and other efforts, took about 18 months in development and pilot implementation in seven model jurisdictions. Case registry project proponents both within the GOH and at Checchi realized that JP Court staff would need training in how to use the registration form. The case registration form has been introduced in 24 JP Courts and is expected to be implemented in another 61 of the nation's 185 JP courts in the coming year. The roll-out of the form has been accelerating and the Checchi

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[3] Justice of the Peace Courts, Republic of Haiti, Report of the Ministerial Advisory Team - Justice, US Army Civil Affairs and Psychological Operations Command, Fort Bragg, NC, [Port-au-Price, Haiti, 15 April 1995, Team Commander Major General Donald F. Campbell, USACAPOC Commander and Judge, Superior Court of New Jersey.

[4] The military team made a detailed survey of the JP Courts, including baseline data on the number and location of the courts, populations served, population per judge, caseload estimates per judge, numbers of court clerks (greffiers), staffing levels, training, financial matters, transportation and communications, equipment and supplies, and reference books available.

[5] Id. In a notable example, aggregate adjudications for the JP Courts in Port-au-Prince are shown as totaling more than 139,000 cases. It appears that a reporting error of about 100,000 investigations and adjudications was made. This over-reporting [under Tab M.3 - Page 1, but not at Tab M.2 - Page 1 re: investigations] has ramifications elsewhere in the report where the caseload in the capital city is reported as 18,475 cases per year per judge in contrast to a caseload per judge in Petit Goave (the next highest) of 4,715 and a comparable caseload in Fort-Liberte of 305. The authors recognize the apparent problem with the data by noting [at G.5], "Validity of estimates is questionable as they are disproportionate to estimates from all other sources." Despite this error, the report is quite useful for the points it makes on developing reliable case tracking and data on which to make assessments and resource allocation decisions.

project staff is probably slightly ahead of schedule.

Clarification of Terms

Although the Checchi project is generally referred to as "case tracking" the system is actually a case registration system. This is an important distinction, and it is helpful to distinguish among three levels of managing cases in courts. These are: case registration, case tracking, and case management. Case registration takes place at the earliest stage, when a complaint, petition, or other cognizable document is filed with the court. The registry is the place for noting the arrival of the file and other preliminary information. Typically, a filing is assigned a docket or control number to identify the case. Although that number is typically not used to identify the case at other court levels, it would be used by other courts to retrieve files and information from the sending court.

Case tracking is a means to oversee and monitor the movement of a case through the criminal or civil process. Usually, case tracking involves measuring the position of the case against pre-established time frames developed for different kinds of cases. For example, the time frame for processing the case of a criminal defendant in pre-trial detention should be much shorter than the time given for issues to ripen in a civil contract dispute. Each type of case should have processing times that accord with organic law and the needs of the public (not legal) community served. Tracking also involves seeing that required stages have been completed and that needed witnesses and documents are available. Continuous monitoring against time standards helps avoid undue detention, inconvenience to litigants and lawyers, conflicts in schedules, and faded memories. Tracking cases through their lives in the court means not just total time in the process, but the elapsed times between significant interim events. This level of monitoring requires attention by a single court authority, usually the judge, clerk, or administrator who is accountable for adherence to the agreed-upon standards.

When cases can be closely tracked, true case management can be brought to bear. Case management in its most advanced form builds upon the information garnered from the case tracking system and applies affirmative means to reduce delay, calendar conflicts, misuse of judicial, staff, and lawyer time, and inconvenience to litigants. Case management, for example, would enable judges to identify those cases which can be diverted to a faster track or to alternative dispute resolution, and to propose scheduling orders that would control the flow of documents so that they arrive with enough time for consideration by the court and counsel.

The system designed and implemented with the help of Checchi fulfills the case registration requirements of document reception, and will be referred to as "case registration" throughout this report.[6] Checchi's Fiscal Year 1998 Work Plan calls for work on developing the case tracking/management system. At the time of the evaluation team's visit (January 1998)

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[6]This is actually the term used by Checchi staff who implement the system.

Checchi was on track in developing the system. The system goes part way toward case tracking by capturing information about next steps. However, it is not a strict case tracking system because it lacks some key features needed for true case tracking,[7] e.g., the custodial status of a criminal defendant. Furthermore, the current form does not provide sufficiently for tracking items such as adjournments and continuances. Thus, to suggest that the registration form can be used to track cases is to oversell its potential and obscure its real contribution to orderly administration of the docket in the JP Courts.

Achieving a true case tracking system is still far off for the JP Courts in Haiti, but the present case registration system is a step in the right direction. The features and attributes which constitute the step include the following: the greffiers and judges will become accustomed to recording standard information in a format that will be retained and available for later analysis; discipline in maintaining accurate and timely records will be developed; greffiers and judges will be able to identify basic information about individual cases and, with further research and action, will be able to develop solutions; statistical reports can be developed from the registration system for further analysis; many categories of information captured in the case registration system are identical to elements needed in a case tracking system; policy makers can review basic information derived from the registration system to develop processing and analysis routines usable in a tracking system; training needs can be identified from experience in using the registration system and can be built upon both for improvements to that system and for implementation in a more sophisticated case tracking system.

Methodology

Seven JP Courts were visited during the evaluation.[8] The evaluation team observed the way the registration forms were used, and asked about ease or difficulty of use. Any deficiencies were noted concerning understanding the purpose and use of the form. The visits also were useful for gaining an appreciation of the actual case process and the conditions under which the greffiers and the justices of the peace work. In addition to on-site reviews in courts using the registration forms,[9] the team visited Delmas, which does not use the system, for comparison.

There has been much useful information gathered and analysis written about the Haitian courts, particularly the MATS volume and the "Assessment of the Justice Sector in Haiti,"

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[7]As pointed out above, a case tracking system implemented by OPDAT in seven model parquets helps "to quickly determine the status of individual cases and identify bottlenecks, including unjustifiable delays, in case processing.... legal consultants ... monitor individual cases from beginning to end using the case tracking system.... They intervene, as necessary, to facilitate the disposition of cases." These functions and attributes are consistent with a dynamic case tracking system whereas the JP system is largely limited in application to case registration as described here.

[8]Appendix II contains observations on the JP courts made by the team member evaluating the Case Tracking Program.

[9]Gonaïves (Sector Sud), St. Mark, Lavallee du Jacmel, and Port-au-Prince (Sector Nord).

(Aucoin, Exume, Lowenthal, and Rishikof). These volumes provide baseline information and useful insights for the future development of the courts.[10] The Rapport de Synthese de la Mission Française de Controle et d' Evaluation d'une Chaine Penale (Schmit and Accomando) offers some useful but very critical comments about the criminal justice process.

Analysis and Conclusions

The Case Registration Form

This section contains technical analysis of the case registration form. The team is making a number of technical recommendations for improving the form. Rather than unduly complicate the text, we refer to each one of these recommendations as "Technical Recommendation ___." The actual recommendation appear after "Conclusions" in this section.

The case registration form captures and organizes some, but far from all, information essential at the time a case is docketed. Figure 1 shows the current form. As is the case with any paper system, there are limitations imposed by the form's size, legibility of the entries, and retrievability of the data captured. Until the time, still far in the future, when data can be captured and manipulated using automated methods, the Haitian JP Courts must rely on the paper case control methods of the type designed by the Checchi team.

The registration form is reproduced in landscape format on 8 ½" x 11" paper and bound into booklets for use by the greffiers. When a volume is completed it would be retained and used as an index of earlier filed and disposed cases. Deterioration and storage of the volumes must be taken into account and detailed instructions given to the clerks about records management.

As shown in Figure 1, the form is divided into ten columns. The first column is for the sequential case number, assigned when the case is first presented to the court. The data field for the case number has four components -- "J" identifying it as within justice of the peace jurisdiction; a three digit number assigned to each of the justice of the peace courts; a variable length integer representing the numerical sequence of filings from the initiation of the registration system; and, a two-digit number for the year in which the filing was made. During field visits it became clear that some clerks have not been properly instructed on assigning numbers. In one court, the clerk was assigning numbers beginning with "1" at the start of each month, making it cumbersome to aggregate the total filings for a year.

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[10]Regular maintenance of the kind of information contained in the MATS report would be useful, and could be assigned to the judicial inspection team. Reports on progress or slippage from conditions documented in the MATS volume would be helpful for assessing progress in the Haitian courts.

Figure 1

SPECIMEN
JURIDICTION DE PORT-AU-PRINCE
TRIBUNAL DE DELMAS
REGISTRE No. J-121

No	*DATE*	*ORIGINE*	*DEMANDEUR OU PLAIGNANT*	*NATURE DES FAITS*	*DEFEN-DEUR OU PREVENU*	*JUGE SAISI*	*DECISION*	*DATE DE LA DECISION*	*DILIGENCE*
J-121-01-97	8 juin 97	Commissariat de Police de Delmas 33 (Dossier No. 97-041)	Germaine DOSEPHA	Viol (P)	Polo GARRI	J.B. AMBROISE	Info préliminaire + Déféré au Parquet de P-a-P. (TR)	10 juin 1997	Prévenu écouté + dossier reçu au Parquet le 12 juin 1997
J-121-0297	9 juin 97	Initiative du Plaignant	Alain TROCHEE	Voies de fait avec blessure (P)	Lolo TATOU	Papito	Cas déféré au Parquet		
J-121-03-97	10 juin 97	Parquet de Port-au-Prince (Dossier No. P-231-41-97)	Bruna BRUNO	Heurter un passant par négligence (P)	Tritane	Lolia			
J-121-04-97	11 juin 97	Initiative du Demandeur	Orélien DIEJUSTE	Dette Commerciale ©					
J-121-05-97	12 juin 97	Initiative du Demandeur	Jacques LOUIS	Opposition à opération d'arpentage ©					
J-121-06-97	13 juin 97	Commission roga-toire du Juge d'Ins-truction de Port-au-Prince M. Palion	Parquet	Meurtre (P)					

The form registers both civil and criminal cases. The type of case is noted as civil © or penale [criminal] (P), but its placement on the form could be improved (see Technical Recommendation 1). While a single registry for both case types may have some drawbacks related to speed of access, it may be useful if the true nature of the case is not known at the time of filing.

Columns 2, 3, and 4 of the form are for the date the case is received, the office or individual originating the action, and the name of the criminal case victim or civil action plaintiff, respectively. The columns are serviceable. The inclusion of the Parquet file number in column 3 is particularly important for cross-reference.

Column 5, as earlier noted, specifies the nature of the case with an alphabetical notation (C or P) representing a civil or criminal case. There is currently no guidance to the clerks on standard nomenclature for classifying criminal offenses and civil complaints (see Technical Recommendation 2). It may also be helpful to include references on the coding sheet to the sections of the law governing the criminal offense and the civil action.

Column 6 is headed "Défendeur ou Prevenu." The "défendeur" is the defendant in a civil case, while the "prevenu" is the criminal defendant, typically in custody. There is no place in the column for the identification of a criminal (défense or assistance judiciare) or civil (avocat civil) defense attorney. This information should be captured (see Technical Recommendation 3).

Column 7 includes the name of the judge before whom the case has been heard. While serviceable, the column makes no provision for change in the judge during subsequent proceedings (see Technical Recommendation 4). This shortcoming is indicative of the static nature of the form as will be equally evident in comments on entries in columns 8, 9, and 10.

Column 8 is intended to report the decision by the court and includes a two-letter code for the disposition and method of disposition, e.g., trial, conciliation. The clerks would be helped if they were given "shorthand" codes for the most common entries to be made in this column (see Technical Recommendation 2). It is likely that as time passes, entries in this column will become more elaborate and divergent. The help of judges and Haitian lawyers should be enlisted in formulating these "shorthand" entries on which training should be given, and these form entries should be used uniformly around the country.

The entry of the date of a decision in column 9 does not take into account that each case may have repeat appearances, whether a continuance has been granted, or later reviews must be conducted. The latter are particularly important in cases where a defendant remains in custody awaiting court action (see Technical Recommendation 5). Ascertaining exactly which date or dates are to be entered in this column is essential if elapsed times are to be computed from the filing date to a specified interim or disposition date.

Like entries made to column 8, those made in column 10, "Diligence," are apt to become

longer, more disparate among courts, and more idiosyncratic. Furthermore, because a case may require multiple entries to this column as subsequent stages are reached, the column may remain "dynamic." In the static form mandated by the paper record, little can be done to avoid cross-referencing and emendations. What should not be permitted is the stapling of notations of later steps to the registry sheets. Annotation to the form and cross reference to later proceedings are preferred. Prevention of disparity of entry notations can be achieved through the adoption of uniform "shorthand" entries and training the clerks on their use.

Notably absent from the current form are critical entries on custodial status of criminal defendants and information on fees, fines, and costs collected by the courts (see Technical Recommendation 6).

The date and place of all criminal commitments should be entered in a separate column. This information along with elapsed time since commitment should be reviewed daily by the clerk, compared with other sources of jail "inventory" information, and brought to the attention of the judge before permissible detention time limits are reached so that release can be arranged on or before rather than after that date. The clerk must be made responsible to carefully review the register to keep track of those persons held in detention in order that timely review hearings can be held. The ability of the clerk to do this is compromised by the design of the registration instrument. Even if a notation is made about the commitment date, as currently constructed and used, the registration form would require the clerk to scan many pages of entries to determine who is in jail. The form should be supplemented by a separate posting to allow the clerk to track those defendants who are in detention awaiting court action. This register should be prominently posted in the office for the scrutiny of the judge, counsel, and the public who may be interested in the status of those detained (see Technical Recommendation 7). Without the prominent display of this information and the regular attention to its contents, it is likely that unlawful and excessive pre-trial delay will continue. The law currently requires that judges visit the jails weekly to review the status of those committed under their orders and for commitment reviews to be conducted within 48 hours. That law is not followed.

Better communication is needed between the judges and clerks. Occasionally, political or other differences between them cause tension and lack of cooperation in the court. Conflicts between the judge and the clerk are now often referred to the prosecutor for resolution. The judges and the greffiers should try to resolve personal or professional differences amicably within the office structure. If they are not successful, assistance should be requested from supervisory judges or administrators. Only if less formal resolution techniques fail should the investigative and other powers of the prosecutor, who is also within the Judicial Branch, be enlisted to help resolve a conflict. Regional training programs and seminars attended by judges and clerks together should stress ethics, office procedures, records and case management, and cooperation in the workplace.

Case Registration Training

Checchi team members have conducted training at several sites around the country. Early

efforts in two locations were reportedly not notably successful. However, a recent round, including a seminar observed by the team in Gonaïves, was well conceived and executed. Even though the 21 clerks invited were on strike, all attended the session. Checchi staff making the presentations were well-prepared and knowledgeable. They gave detailed, thorough, and sensible responses to the many questions directed to them. Helpful materials were distributed to aid in understanding both at the sessions and when the greffiers returned to their offices. It was clear that the presenters, who had conducted training programs on this topic in the past, had made adjustments in content and teaching method to accommodate the needs and expectations of attendees. The clerks were given ample time to air problems and to ask questions during the seminar. It was evident that the presenters had learned from past mistakes and gave helpful guidance not only on the use of the registration form but on the operations of the clerk's offices.

The clerks were well treated at the session. A light breakfast and lunch were provided and the seminar setting was conducive to frank discussion and exchange of views. At the end of the program, each clerk was given a large, heavy box of office supplies to be brought back to their courts. The absence of sufficient supplies is a persistent problem. One clerk at the seminar reported that the supplies distributed that day were the first he had received in more than 10 years. Several clerks said that they usually buy their own paper and supplies and that the police are often without paper to write notices to the court that a defendant has been placed in custody. The clerks were delighted to receive the supplies but there was no arrangement made for transporting supplies back home. Only one clerk came by car, one came by bicycle, the others walked or took public transportation. Provision should have been made to deliver the supplies rather than requiring the clerks to carry them.

Records Management and Case Processing

The Checchi project managers understand that public access to the courts is enhanced, in part, by training the clerks in records management. If files cannot be found, public confidence is eroded and frustration levels increase. There is a suspicion that files are "lost" to deprive court users of justice. Proper file numbers and complete folders will facilitate transfer of files to the parquet and timely review by the prosecutor of cases of defendants in custody. The clerks must be trained more thoroughly in basic records management techniques both to operate more efficiently and to dispel public distrust.

Records management is part of the responsibility of the clerks but has been given little attention. The evaluation team was discouraged, but not surprised, by the chaotic treatment of records in the JP Courts. While records management was not a central part of this evaluation, the evaluation team urges USAID to work with Judicial Branch leaders to formulate comprehensive steps to bring order to JP Court records. Without progress on this front, the improvement made possible by using the case register can be lost. It does little good to list the case as present before the court if the clerk is unable to find the case file. Even if records can be found, the process is often highly inefficient. For example, we asked a clerk to retrieve a file using a number randomly selected from the registry. After quite a long time, he proudly presented the proper file folder. On

examining the file jacket, we saw that the case number was not written on it. When asked about the retrieval process, the clerk responded that he had to look through all of the folders in the filing cabinet. He had either not been told or did not understand that he should write the case registry number on the jacket and place the jackets in numerical order in the cabinets.

The JP Courts need records management standards that require accurate and proper preservation of records of pending cases. A comment on American standards on records management is relevant here, "because records may affect the rights and duties of individuals for generations, their protection and preservation over time are vital .... Inaccuracy, obscurity, loss of court records, or untimely availability of such records seriously *compromises the court's integrity and subverts the judicial process.*"[11] [Emphasis added.] Citizen access will be improved and confidence built in the courts if judges and clerks are seen to be operating an orderly recordkeeping system.[12]

Conclusions

In general, the rudimentary case registration system is simple and useful. It lacks some features, as noted here, but it will provide much-needed data and controls. Some greffiers do not understand the system and will benefit from additional hands-on training at their respective offices. Design changes, more training, and hands-on assistance will also be helpful as the time for more sophisticated information processing technology draws nearer. In contrast to the progress possible with a more modern registration form, one JP court without the registration system the team visited is mired in archaic records tracking and retrieval procedures.

Several changes in the design of the form have been offered as Technical Recommendations which will make the form easier to use and facilitate extraction of useful information. It is important that the courts and policy-makers understand that this is a registration system, not a case tracking or case management system.

As noted in the Case Registration Training section, the training being offered by Checchi on the use of the registration form is sound. Issues touching on resources needed for the work in the JP Courts, records management generally, and the ethics of the jobs of judges and greffiers were prominently mentioned by the clerks at the training session. The latter two subjects should be the subjects of training in the future. Checchi and the Mission could consider helping the seminar presenters and selected greffiers, judicial inspectors, and other court officials gain a better

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[11] Trial Court Performance Standards, with Commentary, Commission on Trial Court Performance Standards, National Center for State Courts and the Bureau of Justice Assistance, United States Department of Justice, Commentary to Standard 3.6, National Center for State Courts: Williamsburg, VA, NCSC R-121, ISBN 0-89656-103-8, 1990, p.17.

[12]The team member who evaluated the Case Tracking Program has made some observations on oversight and compliance issues. See Appendix III.

understanding of records and case management by underwriting their participation in courses offered by the Institute for Court Management of the National Center for State Courts, the National Judicial College, the Rural Justice Center, or the Justice Management Institute. These courses might be offered in Haiti at a School for Greffes which is being planned by the EU. In addition, some of those involved in this process should be urged to visit or be invited to a brief study tour in a location, e.g. Martinique, using the French system and in the United States to witness operations in courts of like jurisdiction.

A long-range plan will be needed for information processing, but for now time and attention need to be concentrated on upgrading the knowledge and experience of court staff using the new registration system and extending the use of that system. This is not to say that automation planning should not go forward. The insights of court information systems consultants and specialists should be solicited; the MOJ should be prepared to coordinate information systems planners among the donors, and compatibility standards (especially between Canadian plans for the Courts of First Instance and American initiatives in the Justice of the Peace Courts) should be mandated before designers set out on divergent paths. Traditional systems development techniques including analysis, design, programming, de-bugging, evaluation, training, and modification should be rigorously followed.

The use of computers in Haitian courts will be no panacea and will be several years in the future. For now, the "nuts and bolts" and day-to-day demands of making the courts work properly require the closest attention. The absence of computer support services and even of electricity in much of the nation, combined with the still incomplete assimilation of the basic case registry system, persuade the evaluation team that talk of automating the courts is premature.

Although statistics are incomplete and unreliable, anecdotal evidence suggests that many of the cases in the JP courts are rooted in land disputes or in landlord/tenant conflicts (as many as 80 percent of the JP caseload reportedly form this category of dispute). These in turn appear to spur criminal violations including theft, battery, and homicide. Giving priority attention to these initially petty disputes may help avert more serious disputes and crimes. Using Alternative Dispute Resolution (ADR) mechanisms for these cases would be advisable.[13]

Plans are being made by Checchi for a project to measure public confidence in the courts beginning in June 1998. The plan calls for distributing questionnaires, not to the public, but to grantees who "represent the public." This approach is sound as a grantee monitoring activity but will not disclose public views about the operation of the courts. Viewed with suspicion by the public, the courts may not receive reliable comments from members of the public who would respond to questionnaires. Overall, the decision to query the grantees may be the most suitable interim means to measure perceived improvements in the administration of justice. Plans should be made in the longer term for gauging public reactions to the work of the courts directly. In addition,

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[13]See Appendix IV for some observations on ADR.

the confidence of internal court "users" (e.g., clerks, lawyers) in the case registration system should be solicited.

Sustainability of the registration system and related improvements in the administration of justice is an important end in itself but also as an end point or exit strategy for USAID. Given the long history of unreliable or abusive courts in the nation, the USAID Administration of Justice strategy of building internal capacity for improvement by providing tools and training makes sense.

As noted in the Methodology section of this report, none of the reviewed programs have developed performance indicators or collected baseline data against which to measure success. The Case Tracking project is no exception. This is particularly unfortunate because it would have been relatively easy to do so at the beginning of the project. Since no courts had such a system in place, it would have been possible to gather baseline data for each one where the registry was to be instituted. Performance indicators, particularly quantitative ones, would also have been relatively straightforward. For example, such indicators as time required to retrieve cases, percent of case files successfully located, measures of improvement in court efficiency, etc. would have been fairly easy to define and adopt. Fortunately, since many courts have not yet had the system put in place, this process case still be done for them. For those where the system has already been adopted, baseline data can be derived from comparable courts without the system, and the same performance indicators used.

Technical Recommendations on the Case Registry Form

- Technical Recommendation 1: The type of case (civil [C] or criminal [P]) should be part of the sequential case number in column 1, rather than being appended, as it is now, in column 5 to the "Nature of the Action." By making the case type code part of the docket number, sorting by field will enable reviewers to more easily calculate total filings in each category.

- Technical Recommendation 2: Checchi should produce and distribute a coding sheet showing an agreed-upon nomenclature for the most commonly encountered criminal offenses and civil complaints. Checchi should produce and distribute a coding sheet of codes for case disposition. The help of judges and Haitian lawyers should be enlisted in formulating the nomenclature and codes.

- Technical Recommendation 3: Information on attorneys in criminal (défense or assistance judiciare) or civil (avocat civil) should be captured.

- Technical Recommendation 4: Provision should be made for additional judges' names in the event a case is reassigned.

- Technical Recommendation 5: Provision should be made for additional date entries to better track the status of cases.

- Technical Recommendation 6: Provision should be made for custodial status of criminal defendants (showing date of arrest and date and location of placement in custody), information on fees, fines, and costs collected by the courts.

- Technical Recommendation 7: The form should be supplemented by a separate posting of defendants who are in detention awaiting court action. This register should be prominently posted for the scrutiny of the judge, counsel, and the public.

- Technical Recommendation 8: Checchi or MOJ under case should regularly distribute forms and office supplies to the courts and police.

Note on Recordkeeping and Case Tracking in the Courts of First Instance

Although not in the original scope of work, the evaluation team took a cursory look at records and record-keeping systems in the first instance court in Port-au-Prince. This was done because USAID/Haiti requested the team to do so and because OPDAT legal consultants use these records to track cases at the tribunal level. In its review, the team found that:

- There were separate registries for criminal and civil cases. Entries, at least in the criminal registry, were incomplete;

- The Chief Clerk was not able to find some registered cases;

- There was no alphabetical index of cases, making it difficult to locate case files without prior knowledge of the case number;

- Many cases that had not been assigned to judges had been in the clerk's office for quite some time. The evaluation team identified 15 cases that had not been assigned for four months.

- There was no central filing system. Cases are filed both in the clerk's and judges' offices and it appears that some may never be recorded in the clerk's records;

- Case files are kept in judges' offices and there is limited access to them;

- Judges refuse cases assigned to them by the Chief Clerk when they feel they have too many cases. Cases that are returned are not always re-assigned on a timely basis.

- The Chief Clerk does not consider the complexity of the case when assigning it; and

- Neither the Chief Clerk nor any other judicial official knows the pending caseloads of judges.

The poor record-keeping found in this court fosters delays in case dispositions and, therefore, unjustifiably long pretrial detentions. Additionally, the lack of controls on case files and inaccessibility of case information creates opportunities for corruption.

There has been much confusion among donors about what work will be done and who will do the work in the Courts of First Instance. Although Checchi started to work in the records area, the MOJ Advisor requested that Checchi discontinue this work. A decision was then made to have the Canadians work on the civil docket since they financed the renovations and construction of the First Instance Courts. To the team's knowledge, no one is working on the criminal docket or setting up case-tracking systems within the tribunal, although the case tracking system used in the Model Parquet Program tracks cases in this tribunal to some extent.

The team believes that this confusion and ineffectiveness can be addressed by designating one entity as responsible for both the civil and criminal areas (organization of files and records, and establishing record-keeping and case-tracking systems) in the First Instance Courts.

Recommendation

- USAID should take the initiative to collaborate with donors, the MOJ, and contractors on what work should be done and by whom in the Courts of First Instance.

Has the Case Tracking Program Met Its Objective?

The objective of the Case Tracking Program is to "strengthen judicial sector institutions." This objective also pertains to the Checchi Legal Education for Professionals and Judicial Mentoring programs. The objective is quite broad and vague, as it would have to be to apply to three such disparate projects. Like the other programs reviewed in this report, the Case Tracking Program did not collect baseline data nor set up quantitative and qualitative indicators of performance. Thus, there must of necessity be some doubt about how clearly the success of the program can be demonstrated. While this doubt could conceivably be a basis for a more critical review than this one, the evaluation team identified what it believes is good evidence for success of this program in achieving its objective. As indicated earlier, however, baseline data and performance indicators should be developed. At the same time, it would behoove USAID and Checchi to collaborate on more focused and more easily evaluated objectives for this and the other Checchi projects.

Chapter III

The Checchi and Company Consulting Programs: Legal Assistance, Professional Legal Education, Legal Education for Citizens, and Judicial Mentoring

Legal Assistance and Education

Background/Description

The USAID-funded legal assistance and education program began in August 1995 with the signing of a contract with Checchi and Company Consulting. It consists of three activities: a Legal Assistance Program of free legal representation where indigents are represented by an attorney, attorney-trainee, or paralegal under the supervision of an attorney; an education and information program for legal professionals (referred to as Education for Legal Professionals); and a mass legal outreach (referred to as Legal Education for Citizens) program aimed at the segment of the population unfamiliar with the legal system, who are usually indigent and illiterate.

Checchi has thus far made grants to 15 organizations to deliver services under this project. They are located in six geographical regions and are comprised of 10 NGOs, four bar associations, and one law school.

This program is a "first" for Haiti. For the first time in Haiti's history, free legal services --legal counseling, representation, and education– are being provided to a substantial number of poor Haitians. In 1996, these organizations reviewed over 7,000 cases; 91 percent were prisoners seeking legal representation in criminal proceedings. Over 6,000 persons who would have had to navigate through the maze of Haitian prisons and courts without guidance and assistance were accepted for representation. In that same year, nearly 5,000 persons participated in USAID-funded legal education programs. The period from January 1997 through November 1997 saw substantial activity: 8,546 cases were reviewed; 7,477 of these cases were accepted (6,859 were criminal cases); and 10,354 persons benefited from USAID-funded legal education campaigns.

Thus, Haitian justice is beginning to be more accessible and inclusive. Through legal representation, the poor in Haiti are gaining better access to justice. Because of the legal education campaigns, Haitian citizens are beginning to learn and understand their legal rights, the mechanisms that exist to protect these rights, and the proper role, duties, and limitations of the judiciary. These programs, and probably more important, the attitude that people have the right to equitable access to justice, are obviously in a very early stage. They are a good start, but Haitian society has a long way to go before reasonable access to the justice system becomes routine.

Methodology

The field work carried out to assess the legal assistance and education programs included:

- Visits to the six sites, and 13 of the 15 NGOs to interview service providers;

- Interviews with MICIVIH in Les Cayes, Port-au-Prince, and Gonaïves concerning the effect of the program on human rights;

- Visits to six prisons in five different cities to observe the delivery of representational services;

- Interviews with prisoners to obtain their views on the effectiveness of the representational services they received;

- Visits to Justice of the Peace Courts in Port-au-Prince to observe how legal aid clients are represented in court;

- Interviews with judges and lawyers independent of NGOs to receive their views on the effectiveness of the programs;

- Interviews with DOJ staff and Checchi program managers;

- Attendance at the Legal Education Program session for legal professionals and law students in Jacmel; and

- review of various project documents and assessments of the programs by Checchi and others not affiliated with the programs.

Analysis and Conclusions Concerning the Legal Assistance Program

Site Selection

The sites for the legal aid program were chosen using reasonable, common sense criteria. The first site, Gonaïves, was chosen because data and the direct experience of component managers indicated that it had one of the highest incidences of human rights violations in the country, outside of the capital. The second site, St. Marc, had experienced a sharp increase in criminal activities as a result of land disputes. Port-au-Prince was chosen third because of its central importance as the capital, and because of the need for legal assistance among the large population of poor potential clients, as evidenced by the swelling number of prisoners. The other three sites, Les Cayes, Petit Goave, and Jacmel, all located within the south or southwest regions of the country, were chosen for geographical balance.

Cap-Haitien, in the northern part of Haiti, was not selected because it is being served by an

NGO (Reseau des Citoyens) funded by a Belgian group.[14] Checchi regularly consults with the Cap-Haitien NGO.

Checchi is currently considering an association with an NGO in Hinche in the eastern part of the country.

Grantee Selection

Grantees are selected using an interactive process which combines outreach by Checchi and collaboration with candidate grantees in the grant-making process. Since there were no existing legal aid NGOs and many provincial NGOs were relatively inexperienced and undeveloped, this process was reasonable. The process begins when Checchi conducts an initial investigation to identify potential grantees. This consists of meeting and talking with local notables, e.g. priests, teachers, magistrates, lawyers, and respected community leaders. Based on information collected, Checchi contacts and meets with these potential grantees, and makes an informal pre-proposal assessment to ascertain if the grantee is likely to perform well. If the candidate grantee is deemed to be a good prospect, Checchi requests a written proposal, and helps the grantee finalize and submit it. The final proposal is submitted to Checchi and sent to USAID; if it is approved by USAID, a conditional offer is made to the grantee. If the offer is accepted, it is sent to USAID for approval. Once it is approved, Checchi and the grantee then sign the grant.[15] After the grant is signed, Checchi provides initial technical, financial, and legal training to the grantee on how to deliver services and administer the grant. Checchi also conducts monthly training to sharpen skills and improve performance (see below, "Grantee Training").

Program Impact

As noted above, the Legal Assistance Program has been involved with a large number of

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[14]Reseau des Citoyens/Citizens Network (RCN), chose to operate in a substantially different way. Unlike Checchi, RCN did not select local NGOs to carry out the program. It established an office and staffed it with a Director brought in from outside the region. Staff are taken from various local organizations and return to them after a fixed period. The goal is to have many local leaders participate in running the program. This process has advantages as well as disadvantages. It clearly encourages cooperation and conciliation among people from different local organizations. However, there is an obvious lack of continuity in staffing, and therefore less efficiency in delivering services. It would also seem that this technique will not build a solid organization that could be sustained after donor funding ends.

[15]Some observers, noting that the grantees chosen have no experience in providing legal services, imply that this process might foster opportunists who "sprout from nothing" to obtain grants. The evaluation team finds this criticism puzzling. Since there were no pre-existing legal aid NGOs, new ones must "sprout from nothing" (that is, start from scratch).

cases since its inception. Considering that the prison population at any one time in Haiti is about 3,000 persons, these numbers are impressive for a program which does not cover the entire country. The figures on closing cases are also significant.[16] Of the criminal cases accepted during the period of January 1996 through November 1997, 5,426 cases were resolved and closed. The actions taken by Legal Assistance Program attorneys resulted in the acquittal and release of 4,687 clients and a guilty verdict for 739.[17]

The team spent an entire day observing a grantee (COFAL) attorney at work. She, like all her colleagues, showed dedication and resiliency in difficult conditions. We witnessed her performance during the initial intake stage; her preliminary investigation of cases in the courts; and her subsequent meeting with other NGO attorneys to discuss the new cases. All of the other grantees follow similar intake, acceptance of cases, supervising, and closing procedures.

The team noted several deficiencies in the way clients are informed about and participate in their cases.

- Without exception, the prisoners interviewed by the team did not understand what the grantees were doing on their behalf. Most did not even know that the NGO existed. This was even true of prisoners who were currently represented by NGO attorneys. This is disturbing because it suggests that the grantees have failed to execute a basic function: establishing a "client-attorney" relationship. Furthermore, the grantee attorneys were not explaining their function as assisting the client's defense; they simply tell clients that they will look into their case. This dereliction is significant for three reasons: (1) it may lead clients to inadvertently proceed with court appearances without the presence and benefit of counsel; (2) it may prevent clients from developing the trust necessary to provide unfettered information and assist the attorney in defending or prosecuting a claim; and (3) it may cause clients to continue to perceive the justice system as not accessible or equitable.

- The team did not observe any attorneys asking for the consent of clients to proceed on their behalf or securing consent for specific actions the attorney might take. Gaining such

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[16] An open case is one that has not been resolved, and there are many reasons why this may be so at any given time. For example: (1) a grantee has not yet decided whether to accept a case; (2) the case has been accepted, but work on it has not started; (3) a hearing may not yet have been held; (4) a decision has been reached but not yet enforced [this is especially relevant for civil cases]; (5) a decision has yet to be issued; and (6) a decision is under appeal.

[17] A reviewer raised the question of verification of the numbers of cases accepted, closed, etc. by grantees. While this would have been a reasonable thing to do, it was not central to the scope of work of the evaluation and there was not sufficient time to address this question. If the Mission believes this to be needed, it would be appropriate for Checchi, as the supervisor of the grantees, to plan and carry out any verification with the advice of the Mission.

consent is important. Giving consent empowers clients and makes them an active participant in the process.

- Attorneys should, but do not, file a document informing the Court that they have been retained as counsel and requesting that the Court or prosecutor's office not proceed without the attorney's participation. During the visit to the JP Courts, the team inspected Court files, and did not see any notation that the defendant was being represented by counsel. The Team confirmed that grantees rarely notify the Court or the prosecutor's office in writing of intent to represent clients.[18]

- Confidentiality does not seem to be a concern of NGO attorneys. The team observed on numerous occasions that the initial interviews were conducted within the earshot of the prison guards and other prisoners. Moreover, attorneys held conversations with clients about their cases in the presence of other prisoners and prison guards. The effect this has on a frank attorney-client relationship cannot be positive.

- Sufficient attention may not be paid to conflict of interest. The team learned that one grantee office, the Bar Association in Les Cayes, represents both sides to a dispute. Apparently, the grantee believes that assigning two different attorneys from the office to the case is sufficient to resolve the conflict. In fact, this is not correct. The conflict lies in the ease with which information obtained in confidence may be shared by co-workers.

The sole criterion for selecting cases for representation is whether clients are "demunis." It does not appear that grantees have criteria to prioritize cases when they are accepted. In other words, all cases are given equal priority. Thus, for example, a case in Gonaïves where the accused had been detained for more than six months before trial had the same priority as cases where the accused had been imprisoned for less than two days. The evaluation team did not suggest specific criteria for prioritizing cases since this is more a project implementation issue than an evaluation one. However, Checchi and its grantees could set up such a system in collaboration with USAID if all parties agree that prioritization is practical in the Haitian context.

Grantee Training

Checchi has trained members of the Grantees adequately to ensure quality services and compliance with grant provisions. It provides technical, financial, and legal training to grantees on a monthly basis. It supplies grantees with suggested staffing plans, forms and procedures for the initial client interview, client representation, and closing of cases. At first, financial or accounting

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[18] *A reviewer of the first draft raised the question of whether this was the "practice in the French system." The evaluation team believes that this suggestion would promote a more professional practice and attitude on the part of grantee attorneys whether or not this is current practice under the French system.*

training was provided by a management firm. After grantees' accounting was established, Checchi's accountant started to regularly visit grantees' offices to discuss problems.

Checchi also provides legal training to grantees' professional staff. The training is both formal and informal (for more on professional training, see Education for Legal Professionals below). Checchi's component managers visit grantees' offices and review files and monthly reports on a monthly basis. The team witnessed a number of these reviews, and noted that they were informative and instructive. During these reviews, Checchi component managers answered questions and made suggestions about a number of issues, including how best to dispose of cases. Moreover, Checchi provides training manuals, and lectures on specific legal subjects.

Performance Monitoring

In any decentralized system where services are being provided in various locations by different organizations, donors need mechanisms which inform them about the ongoing performance of the service delivery organizations. This means performance monitoring. Checchi has an active performance monitoring program which is effective. Checchi carries out this function by:

- Analyzing NGO monthly progress reports. These reports contain: (1) names of clients served, (2) types of cases, (3) the last court date, (4) disposition of cases, (5) whether cases are open or closed, and (6) whether cases are favorably disposed of or not;[19]

- Making unannounced visits at least once a month;

- Having monthly meetings with local observers, e.g. police/prison staff, MICIVIH, etc. who are in a position to watch NGO performance;

- Periodically inspecting case files in the Court's possession; and

- In one location, having law students visit courtrooms and/or the prosecutor's office to observe grantee lawyers and report their observations to a designated law professor. The professor then meets with NGOs to discuss and recommend ways that NGOs can

[19]While the monthly progress reports contain much useful information, several additional important items could be included based on data already in the possession of the grantees: the number of clients who had not seen a judge within 48 hours of arrest; the number of clients "illegally" arrested; the number of clients who have been in pre-trial detention for more than one month (or whatever period of time is deemed excessive); and the number of formal requests to the Court or governmental body seeking to remedy an infraction.

improve. The professor also submits a written monthly report to Checchi.

Recommendations on Program Operations

In order to effectively represent their clients and protect their clients' rights, legal assistance attorneys need to operate with high professional standards. Checchi legal assistance staff should work with NGO grantees to raise operating standards in the following ways:

- Before each interview, attorneys should identify themselves and their organization, explain the nature of the work that they will perform, and come to an understanding on when the client and attorney will communicate -- e.g. on a particular day of the week, etc.

- NGOs should make sure that clients formally consent to each step in the process. Clients should agree to a pre-representation investigation, as well as to being represented. If possible, a consent form should be devised for both the pre-presentation investigation, and the actual representation.

- Attorneys need to appreciate and strictly adhere to standards of confidentiality between clients and attorneys. In order to achieve confidentiality, USAID or Checchi could work with the MOJ and APENA to set aside a room where grantee attorneys can interview clients in the prisons. USAID should consider furnishing such rooms if necessary (the cost would be small).

- NGOs should avoid perceived conflicts of interest by not representing parties with conflicting interests in the same case, even if different attorneys are assigned to represent the conflicting parties.

An Additional Observation: The Program Being Carried Out by the Law School Grantee Should be Revised

Students in the program being operated by the Law School grantee are supposed to benefit in two ways: (1) third and fourth year law students are to gain practical, "on-the-job" experience through observing NGO lawyers at work; and (2) the students are supposed to monitor the legal activities of the grantees and advise on ways that the grantees can perform their work better. Neither of these objectives are reasonable. Law students interested in observing attorneys at work can always attend public court sessions. However, observing alone, without context and analysis, will not increase their understanding of legal process. Unfortunately, the law professor is not providing such context and analysis. The team examined the report form that the law students are asked to submit after their observation of the Courts or NGOs offices. The form is clearly inadequate and provides little guidance to students on what to look for and report on to improve

legal service delivery.[20]

While the present activities have little value, law students should be encouraged to actively participate in the judicial system. There are clearly areas where law students can contribute. They can assist in data gathering and analysis. In Gonaïves, MICIVIH publicly posts information regarding prisoners, such as number of pre-trial detainees; number of minors in detention, etc. Law students could supplement this effort be providing information on the length of time it takes cases to move from one stage of the process to another. This would be a help to all those concerned with reducing excessive and inappropriate detention.

Has the Legal Assistance Program Met Its Objective?

The objective of the Legal Assistance Program--and of the Legal Education for Citizens Program--is simply to "increase access of the population to the justice system." The comments made on the vagueness of the objective and the lack of baseline data and performance indicators observed in Case Tracking apply equally to this program. So does the comment, also made in the Case Tracking chapter, that it would be appropriate for USAID and Checchi to collaborate on more focused and more easily evaluated objectives for this program.

That being said, the statistics on the number of clients served by the program are certainly impressive. However, in the absence of an indicator of success (e.g. how many clients were expected to be served), the evaluation team cannot say that the program is unambiguously achieving its objective.

Education for Legal Professionals

The Education for Legal Professionals Program is supposed to be carried out by Checchi personnel and the Bar Association and Law School grantees. Its purpose is to inform and train legal professionals--attorneys, paralegals, and attorney-trainees--working for legal aid grantees on topics of practical interest. The Bar Association and Law School grantees have not been providing legal professional education services. According to Checchi legal education staff, this is because

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[20]Others have made similar observations. For example, the team assessing the Haitian justice sector noted: "Against the background of this information, this assessment questions the effectiveness of using law students to monitor the services of either paralegals or lawyers in apprenticeship without themselves having had any significant practical training or experience. By having law professors supervise law students in the provision of legal services, as in the United States, the amount of legal services being provided could be increased. Such a system would also develop the pedagogical skills of the law faculty in this important area. Moreover, the information and materials gained through this experience could be shared with bar associations who are providing supervision to lawyers in apprenticeship and to paralegals, as well. "Assessment of the Justice Sector in Haiti," pp. 42-43.

the Bar Association and Law School grantees do not have sufficient expertise to carry out such training at this time. In addition, it is clear that those attending the Checchi sessions include many legal professionals who are not staff of the grantees. The activities carried out by Checchi include, beside training of grantee's legal staff, development of legal manuals, and scheduling of periodic conferences, symposiums, and lectures.

Checchi's Continuing Professional Education for Grantee Legal Staff

Checchi provides training to each grantee at least once a month. The team interviewed a number of grantee staff members who had undergone the training. They unanimously agreed that the monthly sessions provided by Checchi's program component supervisors, Maitres Tabuteau and Faustin, were excellent. The team witnessed one such training session, conducted by Maitre Tabuteau, to members of the Jacmel Bar Association grantee. In addition to members of the Bar Association, approximately 60 law students and judicial officials, including the Dean of the Judges of the region's JP Courts, attended. The session, entitled "Vue Globale sur la Procedure Practique en Matiere Penale," was informative, participatory, lively, and useful. The team also observed staff training conducted on a one-to-one basis, where a specific problem encountered by a grantee staff member was discussed and resolved.

Considering the Grantees' need to develop and maintain high professional standards (discussed in the section on legal assistance above) Checchi could incorporate training in this area into its program. Topics could include: (1) how to establish a "client-attorney" relationship; (2) obtaining the client's informed consent for representation and for undertaking any important action on behalf of the client; (3) maintaining client-attorney confidentiality; (4) how to ensure that the client is satisfied with the services provided; and (5) how to conduct an "exit interview" with the client to be sure that he/she understands what was done, the meaning of the Court's decision, and any follow-up actions that are needed.

Checchi's Legal Manuals

As part of its training for legal professionals, Checchi has produced four manuals: Cours de Technique de Plaidoire: Par Devant Les Tribunaux De Paix, 1993 (in Conjunction with L'Amicale Des Juristes);[21] Guide Pratique de L'Avocat Stagiare, January 1998; Manual de Formation des Fondes de Pouvoir, Volume 1, January 1998 (covering cases involving battery, theft/larceny, illegal arrest and detention,[22] and debt); and Manual de Formation des Fondes de Pouvoir, Volume 2,

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[21]This manual was written by a Checchi staff member before he joined the Checchi organization.

[22]Illegal arrest means types of arrest expressly prohibited by the Haitian Constitution, such as arrests between prohibited hours, "proxy arrests" (i.e. clients who are arrested for the alleged misdeeds of others, etc.)

January 1998, (covering eviction proceedings, contesting judgment, vacatur of default judgment, filing of court documents in civil proceedings, perfecting/docketing judgment, and enforcement/execution of judgment). These two volumes are currently being combined into one document. The team reviewed these manuals and found them satisfactory and useful. We did not have time to solicit comments from a large number of Haitian attorneys, attorney-trainees, and paralegals who have studied or reviewed the manuals. However, the grantee attorneys with whom the team spoke believed that the manuals were valuable and practical.

Conferences, Symposiums, and Lectures

Checchi also conducts public events for legal professionals. These included:

- A three-day Symposium (from December 9-11, 1996) on Pre-Trial Detention. The team is advised that 100 people attended. In attendance were representatives of the MOJ, human rights organizations, lawyers, public prosecutors, and judges;

- A colloquium held on November 8, 1996 on the status of the judiciary and the judicial school;

- A three-day symposium (December 9-11, 1996) on illegal detentions; and

- A series of lectures (June 11-12, 1997) on Legal Assistance.

The team did not have sufficient time to interview participants about these events.

Recommendation on Program Operations

- Based on the limited observations by the evaluation team, the professional education service supplied by Checchi staff (two attorneys) seems to be valuable. USAID should consider expanding this program if possible.

Has the Education for Legal Professionals Program Achieved Its Objective?

This program has the same objective as the Case Tracking program: "Strengthen judicial sector institutions." The comments made in the analogous section on Case Tracking concerning the vagueness of the objective and the lack of baseline data and performance indicators apply equally to this program. The comment that it would be helpful for Checchi and USAID to collaborate on a more narrowly drawn and operational objective made in that section also applies.

While the team cannot say that this program has achieved its objectives for the reasons just stated, our analysis clearly shows that the team believes this is a worthwhile program and is helpful to the lawyers and law students who participate in it.

Legal Education for Citizens

The Legal Education for Citizens program is still in its infancy, having evolved into a separate entity very recently. The component manager was hired in December 1997, and did not begin work until January 1998, shortly before the evaluation team's arrival in Haiti. Nonetheless, the component manager has developed a plan that is being implemented by 12 of the 15 grantees.

The primary objective of the legal education program is to develop a system for disseminating legal information to the general public. This is difficult because the segment of the population most in need of legal education is often indigent, illiterate, and fearful of the justice system. This program and another program administered by the Human Rights Fund II discussed in Chapter V are civic education programs.

Methods Used to Reach the Public

In collaboration with and under the supervision of Checchi, the grantees have employed various strategies to engage the public. These include: lectures, panel discussions, group discussions, symposia, role-playing,[23] and critical incidents.[24] The team was not able to observe any of these strategies in practice. The team was told that grantees make use of various modes of communication to disseminate information such as radio, television, lecture halls, and churches.

Grantees base discussions on what is important and relevant to the local community. They determine this by talking to local community leaders and officials, tracking recent local trends, and asking audiences for their preferences. The grantees have noticed five recurring themes: land disputes, rental disputes, assault, theft, and illegal arrests and detentions.

Team members visited all six of the Legal Assistance and Education program sites. During each visit, the team inspected the local prisons, and randomly interviewed prisoners, visitors, and friends and family members of prisoners. Although the number of persons interviewed was too small to conclude that the views solicited were scientifically reliable, the team cannot discount a number of its observations. If these observations are indicative, and the Checchi staff also believe that they are, the Legal Education for Citizens program needs to be refocused.

The current focus is on the law. The evaluation team believes that more basic information needs to be disseminated to citizens before they can understand the law and their relationship to it. The evaluation team found that too many people are unaware of the existence of the grantees. Even in the prisons, the families waiting outside or the prisoners themselves were not aware of the free legal services to indigents. It is not enough that poor people know the law. They need to know

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[23]The dramatization of a situation or problem followed by group discussion.

[24]A participant describes a significant event in his/her life and the group then analyzes the event.

there are institutions they can approach if they get into trouble with the law. Thus, the evaluation team believes the grantees should focus on publicizing their existence. The means utilized by grantees may vary. They may include, for example, one-on-one interaction, word of mouth, references from judges, requiring or recommending that prison officials inform prisoners of free legal services offices, radio and television broadcasts, etc. The evaluation team also noted that people do not understand the need for an attorney. This is a striking lack of basic information. Too many of the prisoners interviewed by the team did not understand the correlation between having an attorney and having better access to justice. The evaluation team was struck by how uninformed people are about the role of attorneys. The team interviewed prisoners who had just been released as a result of the advocacy of a grantee-attorney. Incredibly, prisoners we interviewed did not know the attorney's name or organization, and did not see the connection between having an attorney and being acquitted and released from detention. This must be explained to and instilled into the general public. If not, the public may know of the grantees, but may not seek them out. After people know who the legal aid grantees are and what the attorneys can do for them, it would be appropriate to start explaining about substantive issues, such as rights and responsibilities in land disputes, etc.

It is possible that such an education program could raise the demand for legal services. Of course, in one sense, this is the goal and an indicator of success. On the other hand, a higher volume of work could become a problem. If this were to happen, a prioritization system such as discussed above (in the section on Program Impact) would be even more critical.

Recommendation on Program Operation

- Checchi should refocus its Legal Education for Citizens Program by adding components to inform citizens about the existence of legal assistance NGOs in their area and the importance and significance of legal representation in legal matters. After citizens have been informed on these topics, the program should concentrate on substantive legal issues.

Sustainability

There have been no sustainability plans developed by Checchi or USAID for the Legal Assistance, Education for Legal Professionals, and Legal Education for Citizens programs. Checchi staff note that token fees could be charged, but that the poverty of clients means little income would be realized. In addition, as is the case with all programs for the Haitian poor, economic conditions make it unlikely that the Haitian private sector would support this or related programs.

Has the Legal Education for Citizens Program Met Its Objective?

The objective of the Legal Education for Citizens Program is the same as that of the Legal Assistance Program: "Increase access of the population to the justice system." The comments

made on the vagueness of the objective and the lack of baseline data and performance indicators observed in Case Tracking apply equally to this program. So does the comment, also made in the Case Tracking chapter, that it would be appropriate for USAID and Checchi to collaborate on narrower and more easily evaluated objectives for this program. In addition, the newness of the program makes the whole question premature.

For all these reasons, the evaluation team cannot say that the program is unambiguously achieving its objective. On the other hand, the first-hand observations that the team made of this program point to its potential value, and this potential is reflected in the analysis of the program and the recommendation. Furthermore, this program is one of the few AOJ programs which address the "demand side" of justice creation. Later in this report the evaluation team makes the case that more needs to be done on the "demand side." If the program is refocused as recommended, and appropriate objectives and indicators developed, it could play a positive part in expanded "demand side" activities.

Judicial Mentoring Program

Background/Description

Most judicial systems require both legal education and career-long professional development for judges. The Haitian system requires neither. Judges may be appointed who have no legal training or practical legal experience. Recognizing the need to provide skills in the art of judging, a pilot mentoring program was developed and implemented in 1997. The locations (Port-au-Prince, Petit Goave, Jacmel, and St. Mark) were chosen due to the receptivity of the local judiciary. Legal assistance and case tracking programs also existed in these locations.

The pilot program mentors were four highly respected Haitians with exceptional professional experience (retired or semi-active judges and law professors). There were also two (now only one) expatriate technical consultants who provided background and organizational support.

Between May 29 and June 20, 1997, a comprehensive orientation and training session was provided to the mentors and international technical consultants. A Handbook for Mentors was provided. The mentors also developed a workplan, identified the goals of the program, and met with participants in the target areas to introduce the program and adapt it to local needs.

During the pilot, mentoring activities took place in the Courts of First Instance and Justice of the Peace Courts in all model jurisdictions except Port-au-Prince, with work focused on criminal law. Most of the work in Port-au-Prince was done in the Justice of the Peace Courts because the first instance judges were not receptive to the program.

The role of the mentor was to respond to the technical, legal, and courtroom management needs expressed by the judges assigned to them and to act as a role model for these mentee judges.

The relationship developed between the mentor and each mentee determined the type of interaction which occurred on-site before, during, and after the court sessions.

In 1998 Checchi, with the close coordination and collaboration of the MOJ, will establish the Judicial Mentoring Program in at least three of the four pilot jurisdictions, using three of the mentors from the pilot program. Mentors will spend an average of two weeks per month on site (possibly more in Port-au-Prince). They will spend about one week per month in Port-au-Prince debriefing, reporting, and evaluating mentor activities. A possible curriculum as well as a list of potential seminars, workshops, and meeting agendas have been prepared. The planners recognize, however, the importance of maintaining flexibility in order to respond to evolving needs of mentees.

Methodology

The specific activities carried out in order to analyze the Judicial Mentoring Program included:

- Visits to courts in St. Marc, Port-au-Prince, and Petit Goave to observe mentoring activities;

- Interviews at these locations with mentees, doyens, judges, investigating magistrates, prosecutors, and private attorneys;

- Interviews with the two mentors assigned to Port-au-Prince and St. Marc and the expatriate technical consultant, as well as with the MOJ Advisor; and

- Review of the literature on the Judicial Mentoring Program: Judicial Mentor Program - Pilot Project Results; Judicial Mentor Program - Handbook for Mentors; and mentoring section of Checchi's Workplan for Fiscal Year 1998.

Analysis and Conclusions

Program Impact

The pilot Judicial Mentoring Program is widely perceived to be a success although the success has not been quantitatively demonstrated. The conclusion is a consensus of mentors, mentees, contractor staff, the MOJ, and evaluation team members. The reasons for the lack of quantitative measurement are that the program was not designed with evaluation in mind, adequate baseline data were not collected, and performance indicators were not developed. Thus, this evaluation must rely on the opinions of those involved and the observations of the evaluation team.

An attempt was made to collect baseline data and develop performance indicators for this program. However, only half the data collection instruments (three of six) were administered. The

data that were generated were mostly qualitative, not quantitative. In addition, many of the responses were not helpful. This was because the respondents used the "cannot assess" response category to a considerable degree. In the opinion of the evaluation team, this effort was not adequate to generate the amount and types of quantitative data necessary to establish a baseline.

Interviews with judicial personnel attest to the important role that mentors are playing and the positive impact that the Program has had on professionalism, efficiency, accountability, and transparency of the judicial sector. Judges throughout the First Instance and JP courts in target jurisdictions exhibited pride in their participation in the Program. Furthermore, mentee judges indicated a willingness to accept help from mentors to improve their performance. Similarly, the MOJ has been pleased with the results of the mentoring effort and is anxious to continue the Program in its present format.

Participants cited a large number of beneficial results of the program. Some of the more noteworthy were:

- Increased coordination between justice sector participants;
  (Because of the age and professional stature of the mentors, they were immediately able to establish relationships of respect and trust with judges and other judicial personnel. These relationships permitted mentors to facilitate and coordinate work by sector participants.)

- Distribution of codes, laws, and legal documents;
  (Mentors directly assisted judges by distributing copies of the laws they need to carry out their judicial responsibilities which were not previously available. Distribution was immediately followed by mentoring on concepts new to the judges.)

- Preparation of uniform internal regulations;
  (Mentors began implementing a legal provision which could eventually standardize court rules throughout the nation. These would facilitate a more efficient flow of cases and a decrease in pretrial detentions.)

- Development of a uniform procedure for rotation of court clerks;
  (Through this activity, mentors were able to begin resolution of a problem which contributes to corruption in the judiciary.)

- Reinforcement of judicial independence;
  (The presence of mentors in the courtroom reinforced sitting judges' determination to make correct decisions in the face of political pressure.)

- Mentoring justices of the peace.
  (As a result of information provided by mentors, JPs better understand their role, function, and jurisdiction. This reduces repeated passage of case files between the Justice of the

Peace and First Instance courts, contributing to smoother flow of cases.)

Role of Mentors

Recently, the MOJ requested that mentors work with judicial inspectors to help the inspectors monitor and report on judicial performance to the MOJ. The evaluation team believes that this would undermine the program by eroding the trust that judicial personnel have in the mentors.

During the evaluation, USAID staff raised the possibility that mentors may have an undue influence on judges. It was thought they might "overstep" their role and influence or change judicial decisions. The team found no evidence of this [see Appendix III]. Our observations and conversations lead us to believe that the mentors clearly understand that they can only provide advice and guidance on procedural aspects of the law. Furthermore, there is no provision in Haitian law allowing a judge to change a decision (even if he is notified that the decision was incorrect). Lower court decisions can only be changed by the appeal process.

Expanding the Use of Mentors

Mentors are a valuable resource for providing concrete information and data about needs and actual practices in the courts. They work in the heart of the provincial court system and are able to provide information on problems impeding the effective administration of justice. This is a worthwhile asset that should be used to the fullest extent possible in planning and implementing all aspects of the AOJ Project. Mentors' input should be solicited in developing and implementing judicial education and model parquet programs, both of which are implemented by DOJ's Office of Prosecutorial Development and Training (OPDAT). Regular meetings between judicial mentors and prosecutorial mentors (in the Model Parquet Program) would enhance the effectiveness of both groups.

Recommendations on Program Operations

- USAID/Checchi should consider expanding the Judicial Mentoring Program to other jurisdictions where legal assistance and information, model parquet, and case registry and tracking exists or is planned, once the success of the program is quantitatively measured.

- Checchi should ensure that mentors' and judicial inspectors' functions remain separate and that there be no interrelationship between them.

- USAID and its AOJ Project implementing agencies should incorporate input from judicial mentors in all relevant aspects of the AOJ Project.

Sustainability

To date, USAID, through its contractor (Checchi), has totally financed the cost of the program. While Checchi and the MOJ have discussed the sustainability of the program, there is no formal written sustainability plan.

Preliminary informal discussion with the Judges' Association by the evaluation team revealed members' interest in assuming the mentoring function. A proposal from the Association will present options to gradually accept mentoring responsibilities. This Association is self-sustaining, self-funded, and enjoys the support of judges throughout the country.

Has the Judicial Mentoring Program Met Its Objective?

The objective for the Judicial Mentoring Program is: "Strengthen judicial sector institutions." As noted earlier, this is quite a vague objective, and the lack of quantitative performance indicators led the evaluation team to recommend that the program only be expanded to other sites once the success of the program has been demonstrated. Thus, although there is a perception of success, the evaluation team cannot say that the program has met its objective.

Chapter IV

The Department of Justice Programs: The Judicial School (Long-Term Training), Model Parquets, Judicial Career, and Judicial Short-Term Training

The Judicial School

Background/Description

Article 175 of Haiti's 1987 Constitution created an Ecole de la Magistrature (Judicial School). No action was taken until 1995 when the GOH began to implement the constitutional provision by designating the former Haitian Military Academy as its site. In early 1995, with substantial assistance from the USG, the GOH began to rehabilitate the site and, on July 3, 1995, President Aristide inaugurated the School. That same day, the first continuing legal education course began. Working in close collaboration with the MOJ, OPDAT provided short-term training to almost all Haitian judges between July 1995 and October 1996.

In April 1997, the MOJ announced a program consisting of six months of training for a class of 60 new judges. OPDAT furnished technical and financial assistance to implement the program. An OPDAT attorney was assigned to work on planning and preparations with the School's Director of Studies. The start of the program (originally scheduled for July 1, 1997) was delayed because of a lack of support and guidance from the MOJ. In August, 1997, however, admissions testing took place. Over 100 candidates were tested and 60 students were selected. It was thought that 40 of the students would be sitting justices of the peace, but only 14 sitting justices passed the exam. The other 46 students were Haitian attorneys. Of the 60 students, 7 were women and half were from the provinces.

The program commenced on October 1, 1997. It has three main components: (1) an initial phase of training at the school, (2) two months of field training, in which the students work in collaboration with sitting judges, police, and prison officials, and (3) a final three-four week session at the school. The initial phase of the training program was scheduled to end in December 1997. However, three weeks were lost due to a student strike over stipends for field training and the MOJ's closure of the School in response to the strike. The initial training phase was extended through the end of January 1998. The field training was scheduled to begin on February 4, 1998 and to terminate on April 17, 1998. The final phase was scheduled to last from April 21 to May 15, 1998.

The MOJ has committed to placing graduates in judges', magistrates' and prosecutors' positions throughout the country. Some graduates will fill current vacancies; others will occupy new positions. As a condition of joining the program, students agreed to remain in judicial positions for seven years. If they fail to fulfill this commitment, they can be required to repay the cost of their training and cannot practice law for the remainder of the seven year period.

OPDAT will monitor the MOJ placement process to help ensure that the school's placement recommendations are implemented. At the end of the pilot program, the school will evaluate the program.

The Judicial School is financed by international donors, with minimal contributions from the MOJ. The USG contributed approximately $600,000 to renovate most school buildings. Canada also funded some rehabilitation work and has taken the lead in creating a library and research center at the school. The French trained the core faculty for the pilot program at their judicial school in Bordeaux, France. The French also assigned a magistrate to work at the school to assist with planning and policy development. The French will finance the field training and will pay the faculty salaries during the last period of study at the school.

The remaining costs of the pilot program have been borne by DOJ. These include initial faculty salaries, the salary of the Director of Studies and his secretarial staff, security services and supplies, and most operational expenses. OPDAT estimated these costs at $115,000 for the first three months of the pilot program.

Methodology

Specific methods used to evaluate the Judicial School program consisted of extensive observations of classes, interviews with school staff, students, OPDAT personnel, and the MOJ Advisor (Florence Elie.)

Analysis and Conclusions

School Operations

The School is operating well. Students and the Director of Studies were chosen competitively. The ten instructors (nearly all are Haitian, two are women) were chosen based on their qualifications. Courses are appropriate, although a course in investigative techniques was not included in the curriculum.[25] OPDAT indicated that this course was inadvertently omitted. Presentations, which employ various teaching techniques--including lecture, role-playing, and simulations--are very good.

THE MOJ has expressed its satisfaction with the program and students are pleased with the instructors and courses. The students have asked for a course in investigative techniques since investigations are a primary responsibility of most positions the students will occupy.

Independence of the School/Commitment by the MOJ

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[25]See Appendix V for a list of courses.

Legislation, establishing the Judicial School as the sole Haitian entity authorized to train and certify judges and providing for school governance, was submitted to the MOJ in 1997. This legislation provided for limited autonomy whereby the school could select its candidates and certify its graduates according to its own standards, and could conduct many of its internal operations independently. This legislation, however, has not been a priority of the MOJ and, even if it were, it unlikely to be passed by Parliament until there is a government in place.

Questions regarding the extent of the school's independence from political influence and the MOJ's commitment to the program have recently been raised. There have been reports that some students who participated in the November strike at the school may not be placed in judicial positions. Also, there are indications that the contract of the non-political Director will not be renewed.[26] There could be serious implications for the school's independence from politics if a replacement is chosen for political rather than professional qualifications. The MOJ has not yet assumed its share of the costs of implementing the program, but this may be because no budget could be adopted for the current year due to the government crisis. The MOJ prepared a budget ($1.2M US equivalent), and the figure was incorporated into the overall MOJ budget; however, it is not clear if the funds were ever used for this purpose. The MOJ's commitment to the school will be clearer once the political situation changes and the Ministry's budget is presented to Parliament.

MOJ commitment is also in question because it has not prepared a long-term plan for the School. This is critical because the current class will graduate in mid-May and the program will not be able to go forward without some type of plan. There have been discussions of possible three-week training sessions for court clerks, three-four month training sessions for justices of the peace, and a twelve-month program like the pilot program. However, no concrete proposals or decisions have been made as of this writing.

The MOJ commitment to the program and its independence over the next few months should be carefully monitored to determine whether continuing support for training at the School is justified.

Program Impact

OPDAT is currently in the process of developing indicators to measure the impact of the judicial training program. Presently, OPDAT plans to measure impact using four indicators:

1. Comparing the number of students who enroll in the program with the number who assume judicial positions after graduation;

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[26]Since the evaluation team's visit in January 1998, OPDAT and the MOJ have agreed to share the Director's salary for an additional five months. Thus, the present Director will be continuing in office for at least that long.

2. Evaluating teachers and courses by responses on student questionnaires;

3. Evaluating the field training by responses on student and supervising judges' questionnaires; and

4. Evaluating the quality of decisions rendered by the new judges by the length of time taken to reach decisions, the proportion of decisions sustained by higher courts, and increasing public confidence in the judiciary.

The first proposed indicator is not an impact indicator. It measures the commitment of the student to completing the program and the MOJ's commitment to place students. The second and third indicators are not quantitative but could be re-written to make them so. For example, the second indicator could be "90 percent (or some other target) of students are satisfied with the quality of teachers and their presentations."

The fourth indicator is reasonable, although it could be supplemented with a measure of the quality of decision-making which is not fully demonstrated in the length of time it takes to reach a decision. Also, OPDAT may wish to utilize public opinion polls to measure public confidence in the judiciary.[27]

As in other cases noted below, OPDAT has not collected baseline data which is needed to compare against the situation after the program (in this case the placing of the new judges) is implemented. Collecting baseline data should be done before the new graduates take up their posts.

OPDAT is also developing indicators for other program areas. Generally, it is good practice to look for opportunities to define indicators which are common to as many programs as possible. For example, an indicator based on reducing case disposition time might be useful in several programs.

Continuing Support for Graduates

After students graduate in May, they will enter a substandard working environment of low salaries, widespread criticism of the judiciary, and insufficient resources to adequately carry out their responsibilities. OPDAT is considering a follow-up program for graduates deployed in the field. The program may include special conferences and seminars at the school, a newsletter describing school activities, provision of limited supplies, material, and equipment, and the creation of an alumni association.

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[27]The evaluation team provided OPDAT with a list of additional indicators it may wish to consider.

Recommendations on Program Operations

- OPDAT should encourage MOJ to include a course in investigative techniques in any future long-term training program.

- USAID should monitor MOJ actions in the next few months to determine the MOJ's degree of support for the autonomy of the School and the Ministry's commitment to its programs. If adequate support is not demonstrated, USAID should reconsider its financial support for the school.

- OPDAT should develop baseline data and quantitative performance indicators so that they measure impact quantitatively.

- OPDAT should implement its follow-up plan to provide support for newly trained judges once they are placed in judicial positions.

Sustainability

OPDAT has drawn up a plan for the MOJ to assume the costs of running the School. Some of the less significant costs will be assumed by the MOJ immediately, and negotiations are underway concerning more costly items. At present, the MOJ has assumed only some of the costs it promised to pay. Those it has not yet assumed include provision of security, distribution of school and maintenance supplies, garbage collection fees, salary payments for maintenance personnel, and a 24-hour on-call nursing service.

Has DOJ's Program on the Judicial School Met Its Objective?

The objective for the Judical School set out in the PASA is: "Assist the MOJ in the development of a sustainable judicial training center, Ecole de la Magistrature." The evaluation team's analysis has shown that the Ecole was established and is presently functioning well. Also clear from our analysis is that the sustainability of the Ecole is questionable. This is due to the uncertain commitment of the MOJ to the independence and non-partisan nature of this professional training institution.

As with other programs, there were no indicators for measuring success built into the design of the Judicial School initiative. While it would have been preferable to have done so at the beginning of the program, it can still be done reasonably easily. This is because each class of students starts from scratch so that their characteristics can become baseline data and indicators (e.g. graduation rates, quality of training, measurement of how well learned skills are applied on the job) can be defined to measure program success.

The Model Parquet Program

Background/Description

Beginning in 1995, OPDAT began a program to improve the quality of investigations in six "model" jurisdictions. These were Cap Haitien, Les Cayes,Gonaïves, Jacmel, Petit Goave, and St. Marc. In January 1997, OPDAT added Port-au-Prince as the seventh model jurisdiction. Later that year, it financed a substantial physical renovation of the Port-au-Prince's prosecutor's office (termed the "parquet"). In June 1997, six Haitian attorneys began consulting work for OPDAT in six of the seven model jurisdictions. A seventh Haitian lawyer had previously been hired as a consultant for OPDAT in Port-au-Prince. MOJ has asked OPDAT to expand the Model Parquet Program to all fifteen Haitian jurisdictions.

OPDAT implemented a case-tracking system in the model jurisdictions to quickly determine the status of individual cases and identify bottlenecks, including unjustifiable delays, in case processing. The system makes it possible for officials to monitor and take appropriate action to expedite the progress of cases. The seven legal consultants, under the guidance of OPDAT's Resident and Assistant Legal Advisors, monitor individual cases from beginning to end using the case tracking system. They intervene, as necessary, to facilitate the disposition of cases. In addition to this role, the legal consultants act as mentors and technical assistants.

To facilitate and better coordinate its work, OPDAT began to host monthly meetings of all seven legal consultants in Port-au-Prince. These sessions, led by OPDAT staff, typically include lectures and discussions ranging from technical matters (such as how a legal consultant can help reduce the number of prolonged pretrial detentions within a given jurisdiction), to more structural concerns (such as how bottlenecks in the prosecution of criminal matters can be eliminated).[28]

OPDAT plans to expand the Model Parquet Program to other jurisdictions in the near future.

Methodology

Field work on the Model Parquet Program included:

- Visits to courts in St. Marc, Port-au-Prince, and Petit Goave to observe interactions

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[28]For example, beginning with the July 1997 meeting of the legal consultants, OPDAT implemented a mechanism in each model jurisdiction to control the number of pretrial detentions. The key features of this mechanism require the legal consultant to take the following steps: (1) identify the cases of prolonged pretrial detention; (2) encourage prosecutors to make regular visits to the local prison, as prescribed by law, so that they will have first-hand knowledge of each case, and (3) notify the Chief Prosecutor, Chief Judge, and the MOJ (through OPDAT) of any irregularities. Complementing these efforts, OPDAT has instructed each legal consultant to target particularly egregious cases of prolonged pretrial detentions in their jurisdictions.

between the legal consultants and judicial personnel, to interview legal consultants, judicial personnel, and private attorneys regarding the Program, and to review case-tracking systems used by the legal consultants;

- Interviews with all staff in the Judicial Inspection Unit;

- Interviews with USAID and OPDAT personnel; and

- Review of the Evaluation done by MICIVIH of the Model Parquet Program entitled "Mission de Controle et d'Evaluation d'une Chaine Penale," December 1997.

Caveat Concerning Time Constraints in Review of this Program

Time constraints did not allow for a comprehensive evaluation of the Model Parquet Program. The evaluation team was unable to observe the interactions between OPDAT legal consultants and judicial personnel except in St. Marc, which reportedly is the second most effective case tracking/monitoring jurisdiction (Les Cayes being the first). It was also unable to audit OPDAT's legal consultants' work by randomly selecting pending cases and "tracking" these cases through the system, identifying "blockages," what interventions the consultants made to "move" the cases, and the success of these interventions. There was not time to verify the problems identified in two other evaluations of the Model Parquet Program and to determine if OPDAT has taken corrective actions.

In spite of these limitations, the evaluation team believes that its review of the Model Parquet Program (which is sometimes based on impressions) is useful, although a comprehensive audit would have produced more definitive findings on the effectiveness of the Program, its problems, and possible solutions. The team feels such an evaluation should be done before expanding the Program to other jurisdictions.

Analysis and Conclusions

Previous Evaluations of the Model Parquet Program/Deficiencies Identified by this Evaluation Team

In November 1997, the Model Parquet Program was evaluated by MICIVIH. The inspectors were two French magistrates who were involved in the initial development of the case-tracking system used by OPDAT's legal consultants. These evaluators pointed out many positive aspects of the Program, but also identified numerous problems and offered recommendations to make the system more effective. This December 1997 evaluation report is entitled "Mission de Controle et d'Evaluation d'une Chaine Penal."

The evaluation team was given only a summary of the MICIVIH evaluation. Therefore, it is not able to comment comprehensively on the product. It appears that the MICIVH evaluation

did not include an audit of randomly selected cases. As noted above, this would be the best method for quantitatively determining the effect of the program. Such an audit would mean tracking the selected cases in the Model Parquets. The audit would be able to determine the time taken in the Parquet and why any observed delays occurred. It would also note what actions OPDAT legal advisors, doyens, MOJ personnel or others took and what the effects of those actions were. If the audit included non-pilot jurisdictions, it would provide the type of baseline data necessary to measure project success.

During the evaluation team's interview with the staff of the Judicial Inspection Unit, the team found that the judicial inspectors had also conducted an audit of the Model Parquet Program's use of the case registries. A copy of the written report was not provided to the team by the inspectors; nor had the unit provided a copy to OPDAT. In an interview, the inspectors summarized their basic finding: that the case tracking system was applied well in Les Cayes and St. Marc, but there were problems in its application in the other jurisdictions. This finding coincides with the French magistrates' conclusions as well as statements made by OPDAT staff.

The evaluation team's review of parquet operations noted the following problems:

- While the Chief Judges in St. Marc and Petit Goave receive a list of cases which are not progressing satisfactorily from OPDAT legal consultants, the Chief Judge in Port-au-Prince said that he does not receive such a report. He stated that he would appreciate receiving this report so that he could take action to expedite case disposition. Such action could include talking to the prosecutor, investigating magistrate, or judge assigned to the case to ascertain and possibly eliminate problems that preclude case progress. The Chief Judge also has the authority to dispose of a case himself in certain circumstances; however, this is rarely done.

- As noted above, the Chief Judge in Petit Goave received the report of "problem" cases, but indicated that he had not used the report and appeared not to understand that he was to take action on such cases.

- The evaluation team identified several pending cases in Petit Goave that involved prolonged detentions. The legal consultant knew the status of cases which he had "targeted for action" in his list of 30 most egregious cases submitted to OPDAT. However, he did not know the status of cases which were not on that case list but which involved detentions of more than three months.

- The legal consultant in Petit Goave indicated that he is contacting NGOs to arrange for legal representation for detainees and to discuss problems of representation in those cases already assigned. In other words, he is doing the work that prosecutors routinely should do. This "extra" work may preclude him from adequately performing the "supervisory" work that he is specifically charged to do.

- OPDAT's legal consultants spend a considerable amount of time manually completing forms in order to track cases.[29] The standardized cover sheet on case files in the prosecutors' offices captures some of the information needed by the legal consultants to perform their case tracking functions, but not in a way that is easily followed. It is also necessary for legal consultants to take otherwise unnecessary time to obtain the additional information they need in order to monitor the progress of cases.

In summary, the reports by MICIVIH, the Judicial Inspection Unit, and this evaluation team indicate that, while the program appears to have had some positive effect on the administration of justice (this is discussed in the following section), problems continue to exist in the model jurisdictions.

Program Impact

Some observers have commented that OPDAT activities have improved model parquet operations. The MICIVIH report implies this as well. However, program impacts have not been quantifiably measured. Although OPDAT is working on performance indicators, they need further refinement. Some of the "draft" indicators for the Model Parquet Program do not address all aspects of the Program, are not quantitative, and are not sufficiently comprehensive. For example, the second of the four indicators (cases coming into the parquet are assigned on a more equitable basis) is not quantitative without specifying what "more equitable" means. The third indicator (Increasing the percentage of decisions rendered by the parquet within a given period of time) clearly needs a standard of what the desirable time should be. There is no indicator specified concerning improving records management in the parquets, which is one of the areas included in the program. Another problem of measuring the impact of this program is that baseline data were not systematically collected before the program began. Now that the program has started, one way to obtain this type of data would be to collect it at a non-pilot jurisdiction.

Monthly reports sent to OPDAT by its legal consultants contain information that suggests that the Model Parquet Program has had positive impact in some jurisdictions. Unfortunately, these reports are not comparable due to the lack of standardized data. The indications of positive impact included

In Les Cayes:

- Moderate increases in number of cases handled by criminal trials from 1996 to 1997;

In St. Marc:

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[29]Laptop computers would reduce the time spent on administrative work so that more substantive work could be done; however, the team understands USAID's reluctance to supply "temporary employees" with this equipment.

- Decrease in the number of pretrial detainees from 121 in June 1997 (when the legal consultant arrived) to 96 in December 1997;

- Significant increases in the number of criminal trials and sentences in 1997; and

- Reduction in the amount of time after arrest that prisoners spend in jail before being seen by a judge.

In Petit Goave:

- Increase in the number of cases handled by criminal jury trials from **two** in 1996 to 28 in 1997 by instituting a second criminal session.

In Gonaïves:

- Completion of the first jury trial held in **six** years due to radio broadcasts by the legal consultant stressing the importance of jury duty.

Program Support by the MOJ

The MOJ requested the Model Parquet Program and participated in planning and initial implementation. However, since that time the MOJ has not been an active participant in the program nor has it acted on information generated by the program. For example, when reports of unjustifiably-delayed cases are brought to the attention of the MOJ, it has rarely taken action. The MOJ recently hired a staff member to follow up on reports of unjustifiably-delayed cases. Whether this is a significant event remains to be seen. The judicial inspectors, who would carry out investigations based on such reports, were not aware that this person had been hired. Similarly, the MOJ recently hired a parquet administrator to oversee the administration and clerical staff in the parquet, including the management of supplies, equipment, and ministerial forms. However, the administrator has not yet received authority to carry out these functions. He has not even been given a specific job description.

Cooperation/Collaboration Between OPDAT and Checchi Concerning the Model Parquets

Although, prior to October 1997, there were weekly Checchi/OPDAT meetings to discuss AOJ issues, none have taken place since then. As a result of the lack of communication between OPDAT and Checchi, OPDAT representatives did not attend many Checchi-sponsored meetings that involve and affect OPDAT's model parquet activities and the activities' ultimate success. These meetings have included:

- An orientation for judicial mentors in which UNDP, judicial inspectors, APENA (prison administration), and others participated to discuss what data and tools were available to help judicial mentors do their jobs. It is these same data and tools that OPDAT's legal

consultants must use to perform their case tracking/monitoring functions effectively;

- A recent meeting of 42 judicial officials (justices of the peace, prosecutors, and judicial police), as well as UNDP and Checchi representatives to discuss deficiencies in investigations by justices of the peace and prosecutors' expectations regarding these investigations. During the team's interviews, legal consultants indicated that case delays are often caused by investigating magistrates returning cases to justices of the peace because investigations have not been properly conducted or are incomplete; and

- Monthly meetings between prosecutors and justices of the peace in Port-au-Prince to talk about issues raised in the meeting cited above.

Poor communications between OPDAT and Checchi have led to other problems, namely:

- A new file folder was to be introduced in the parquets which includes both the case number from the lower court and the new parquet number to aid in case tracking. Reportedly, OPDAT thought this was a good idea and was to meet with Checchi to further develop the concept; however, this meeting never occurred; and

- Checchi staff have heard that OPDAT plans to expand the Model Parquet Program to other jurisdictions but is unaware of what specific additional jurisdictions would be included in the program. Since there are significant interactions between the justice of the peace and parquet levels, expansion of the Model Parquet Program needs to be coordinated with Checchi and other program implementers before it is implemented.

The Director of the OPDAT program in Haiti indicated that he was not aware of the problems noted. However, he stated that he will resume regular meetings with Checchi and resolve any pending issues that remain.

Recommendations on Program Operations

- OPDAT should complete development of performance indicators for its programs and collect and compile baseline and operating data to measure Model Parquet Program impact.

- OPDAT should delay expanding the Model Parquet Program until: (1) the problems and recommendations in all evaluation reports have been addressed; and (2) the success of the Program is quantitatively determined.

- Any expansion of the Model Parquet Program should be coordinated with participants of all other programs to maximize the chances for success of all programs being conducted in the same location.

- OPDAT should develop a Handbook of Standard Operating Procedures for legal consultants.

Sustainability

OPDAT is developing a sustainability plan, and indicates that negotiations with the MOJ are underway to:

- Provide the Judicial Inspection Unit (which has responsibility for reviewing parquet operations) with the necessary tools to do its work effectively;

- Ensure necessary follow-up by the MOJ to take appropriate action regarding identified deficiencies; and

- Develop budget items to provide financial support for the MOJ-requested expansion of the Model Parquet Program and the evaluation of the program.

Once agreement is reached, OPDAT intends to formalize the results in writing with the MOJ.

One aspect of the program has not been addressed in the sustainability plan; who should assume the monitoring/case tracking function now performed by OPDAT legal consultants. Currently, no one is being trained to take this responsibility. This deficiency in the sustainability plan was brought to the attention of OPDAT, which stated that staff will address the issue soon.

Has DOJ's Model Parquet Program Met Its Objective?

The objective for the Model Parquet Program set in the Participating Agency Service Agreement (PASA) is: "Assist the GOH in strengthening its prosecutorial function through the expansion/broadening of the Model Parquet Project." As noted in the methodology section of this report, one of the possible answers to the question of whether a program has achieved its objective is that the objective itself is inappropriate. When this happens, the question of achieving the objective is not meaningful. This is the case with the Model Parquet Program objective. The problem is that the objective assumes the desired result, namely, that expansion of the project will strengthen the prosecutorial function. Evaluation practice--and common sense--dictate that one only expands a program when it has been shown that expansion is called for by evidence of positive impact. As noted in the analysis above, positive impact has not been quantitatively demonstrated. This is the basis for the recommendation that the program not be expanded until that happens.

Criminal Justice Training

Background/Description

Criminal Justice Training was conducted between January 1995 and November 1996. The MOJ then directed OPDAT to discontinue short-term training until judges were evaluated and those who were not performing adequately removed. The courses consisted of legal training for judges and prosecutors both in the field and at the Judicial School and seven joint seminars for judicial personnel and the police.

This training was evaluated by USAID/Washington and DOJ/Washington in July 1996. The evaluation report noted that the training was of good quality and that mixing judicial personnel and police was an effective way of improving relationships between the two groups. The evaluation also made specific recommendations to improve the program.

Methodology

The fieldwork to evaluate short-term training included:

- Visits to courts in St. Marc, Port-au-Prince, and Petit Goave to interview judicial personnel involved in the training;

- Interviews with OPDAT and ICITAP personnel, the Advisor to the Minister of Justice, and two judicial mentors; and

- Review of the documents concerned with Criminal Justice Training (PASA between USAID and USDOJ) and the assessment of the PASA by USAID/Washington and DOJ/Washington.

Analysis and Conclusions

The evaluation team did not repeat the evaluation previously done by USAID and DOJ since there has been no formal short-term training since shortly after this evaluation.

We spoke with both American and Haitian observers of the Haitian justice system who agreed that relations between judicial personnel and the police are strained. Judicial personnel resent the disproportionate share of resources given to the police. Approximately 80 percent of the MOJ budget is allocated to the police, and 20 percent is allocated to the judiciary. The police, on the other hand, are frustrated by a weak judicial system that is unable to process cases effectively.

While OPDAT has fostered good relations between police and judicial personnel in its activities, there has been no effort made to improve judicial/police relations outside of OPDAT activities since the joint seminars cited above were conducted. Joint seminars and the formation of investigative teams comprised of judges, prosecutors, and police have been included in OPDAT's

workplan.[30]

The evaluation team concurs with the earlier evaluation team that to delay training until formal evaluations of judicial personnel have been completed is not advisable. That would preclude any improvement in the existing situation. The likelihood that some trainees will not remain on the bench, while unfortunate, is a modest price to pay for improving competence overall.

Recommendations on Program Operations

- OPDAT should work with the MOJ to reinstitute short-term training of judicial personnel.

- OPDAT should include courses on investigative techniques and joint judicial/police seminars in future training sessions.

Has DOJ's Program on Criminal Justice Training Met Its Objective?

The objective for this program as found in the PASA reads: "Assist the GOH in development of a criminal justice training program for Justices of the Peace, First Instance Court Judges, investigating magistrates and prosecutors." As noted above, this program has been inactive, due to MOJ decision, since November 1996. Because of this, not much progress has--or could have--been made toward achieving the program's objective.

Since OPDAT would like to reinstitute this program if possible, it should develop indicators (both quantitative and qualitative) and baseline data so that the effectiveness of future criminal justice training can be definitively evaluated.

Judicial Career

Background/Description

Legislation establishing procedures and criteria for nominating present and future judges, including a process for the evaluation of their competence and character by an independent non-

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[30]Two small, but possibly significant areas of cooperation between the Haitian police and judiciary which the evaluation team noticed were in judicial security and judicial inspection. The police has a small cadre of judicial security officers that is not currently functioning. Since security is a major issue to judges, empowering this unit to carry out its task could be an area of collaboration. Similarly, it is difficult for judicial inspectors to carry out their task because they do not have cars and cannot travel to courts outside Port-au-Prince. If the judicial inspectors were to travel with the police's Inspector General unit, these inspectors could carry out their task better and the resulting gains in court efficiency could expedite cases and reduce police frustration with the court system.

partisan commission, was submitted to the MOJ on March 5, 1997. The Parliament did not enact the legislation in a timely fashion, and no legislative action has been taken since the resignation of the Prime Minister in June 1997.

Methodology

Field work concerning the judicial career included visits to courts in St. Marc, Port-au-Prince, and Petit Goave to discuss judicial career issues with judicial personnel, and interviews with USAID and OPDAT staff, as well as Florence Elie, Advisor to the Minister of Justice.

Analysis and Conclusions

This legislation is particularly important for judicial reform. Without legislation in place to set standards and criteria for judicial nominations, there is no guarantee and little likelihood that nominees will be more competent or have more integrity than the current judges. Moreover, without legislation addressing the status of current members of the judiciary, there is likely to be serious confusion in determining whether and to what extent these judges retain their judicial mandate.

The Advisor to the Minister of Justice advised the evaluation team that Parliament will begin working on this legislation in February.

Recommendation on Program Operations

- The USG should continue to promote adoption of legislation establishing a Judicial Career.

Has DOJ's Program on the Judicial Career Met Its Objective?

The objective for this program as set forth in the PASA reads "Assist the GOH in the development and institutionalization of the Judicial Career." Due to the absence of legislation, this objective obviously has not been met. Of course, this is not because of any action on the part of DOJ. DOJ provided assistance in drafting the proposed law, but no "development and institutionalization" can take place until it is passed.

If the legislation is passed and DOJ begins to assist in development and institutionalization, it will need to have indicators in place so its progress can be monitored and the results of its actions definitively evaluated. These indicators should be both quantitative (e.g., number of judges appointed, their progress in the career, etc.) and qualitative (e.g., adequacy of the evaluation of judges, equity between the system for judges and that for other judicial personnel, etc.) Both types of indicators are needed because the qualitative and quantitative aspects of a judicial career are both important. In addition, OPDAT should gather baseline data before any new program starts so that the effects of a new program can be unambiguously observed.

A Note on Coordination/Collaboration Between OPDAT and USAID

Both USAID and OPDAT staff have stated that the relationship between USAID and OPDAT has significantly improved recently. However, more improvement in terms of coordination and collaboration is needed if USAID and OPDAT are to become true "partners" in achieving their common goal: the improved administration of justice. For example, during the team's visit, OPDAT's Director invited USAID staff to meet to discuss performance indicators and OPDAT's sustainability plan. He also invited USAID staff to travel with OPDAT staff to model jurisdictions to observe the activities there. These are positive initiatives. In this spirit, OPDAT may wish to share its quarterly report with USAID as called for in the OPDAT/USAID PASA agreement.

Chapter V

The Human Rights Fund

Background/Description

HRF II, a project of America's Development Foundation, began operations in July 1996, assisting victims of human rights abuses whose violation occurred after January 1, 1995. The original Human Rights Fund and HRF II have the same objective: increasing human rights awareness and protecting citizens against abuses of their human rights. HRF II emphasizes physical and psychological rehabilitation for abuse victims. It also provides programing on civic education and police-community relations. HRF II programs promote democratic principles and processes undergirded by a commitment to non-violence. In March 1997, USAID extended funding for HRF II until June 1998.

Post-Trauma Rehabilitation

Victim assistance is conducted in collaboration with several Haitian human rights organizations. The human rights organizations screen and provide a documented recommendation for victims of abuse to HRF II for physical and psychological treatment. Among the organizations collaborating with HRF II are the Haitian Platform for Human Rights, CEPRODH, MICIVIH, SADDMOSS, MAP, VIV, KAY FANM, Mouvman Peyizan Papay, Komite Tet Ansanm, and Amicale des Juristes. The HRF Rehabilitation Program caseload has risen to over 500 cases since April 1997. HRF II believes it could treat 1200 - 1800 clients with greater funding.

HRF II carries out its medical treatment program through a network of 35 health professionals. This network has grown from two medical professionals in April 1997 to the 35 it has recruited as of this writing. This network of professionals and their clients, along with the staff and participants in the police/community relations and civic education programs can be a nucleus of a revitalized human rights community in Haiti.

HRF II's work in providing psychological assistance to victims of human rights abuse represents a new departure. Psychotherapy, especially carried out in groups, has not been widely practiced in Haiti. Haitian culture does not encourage people, especially women, to give voice to their problems and pain. HRF II believes that all entering clients require psychological services with 50 percent requiring long-term assistance. HRF II also involves the families of victims in the treatment.

The psychological treatment provided by HRF II combines two basic approaches to therapy. The first approach involves classical cross-cultural psychiatry, as normally practiced in North America. The second approach is based on insights from the field of ethno-psychiatry. This involves direct ethnographic observation, intended to identify culturally appropriate therapies that

may be applicable in the rehabilitation effort. Through this combined approach, the victims of organized violence are treated with the most effective combination of therapies, combining both Haitian and classical models as appropriate.

The approach utilizes two main elements:

- HRF II introduces a symbolic dimension that recognizes the victims and their suffering as symbolic of, and contributive to Haiti's struggle for democracy and human rights. Rehabilitation and reintegration are a necessary step toward meaningful reparation and justice.

- HRF II recognizes most victims were poor before the abuse and they became even poorer and less able to earn a living because of their physical and psychological traumas. This was particularly the case for the victims of the 1991 coup violence that disproportionally targeted the poor. Recognizing this factor, HRF II has explored the possibilities of expanding the program to include reintegration of victims into productive economic activity.

Recently HRF II has held discussions with USAID's Program for the Recovery of the Economy in Transition (PRET) to provide victims with income generating opportunities. Once this link is fully in place, HRF II patients would have access to training programs in handicrafts, recycling industry, mango processing, and tailoring. HRF II clients also would have access to PRET's micro-lending program in accord with the criteria used by participating lenders. The first 15 patients were referred to the PRET in January 1998. Additionally, HRF II is currently holding discussions with eight other organizations to develop income generation opportunities. HRF II hopes to refer 15 more patients: 10 with an organization called "Fonkoze" and five to a development project, Volontariat pour le Developpement D'Haiti. The effort by HRF II to transition patients from treatment to reintegration into economic opportunity is a unique and positive initiative in the human rights community.

Additionally HRF II is expanding their services outside Port-au-Prince. Now it operates in Les Cayes and Gonaïves. It hopes to have a center in each Department and plans to have affiliates in Hinche, Cap Haïtien, St. Marc, and Jeremie.

Civic Education/Training

HRF II has carried out civic education through seminars organized by eight Haitian human rights groups. The Universal Declaration of Human Rights and the Haitian Constitution of 1987 formed the basis of these training seminars. The eight groups organizing the training are Mouvman Kominote Sanai (Sanai, Grande Anse); SOS Solidarite(P-au-P); COSACAP (Arcahaie); FAVILEK(P-au-P); Konbit Moun Lakay(P-au-P); COMA (Les Anglais); Soleil Justice (Cité Soleil), and COPOD (Delmas). So far, seven of eight seminars have been held. Only the Soleil Justice seminar has yet to be held. The seminars have reached 1200 beneficiaries.

Police/Community Relations

HRF II launched its pilot police/community relations project in difficult circumstances. The civilian populace and the new Haitian National Police (HNP) are, in many sections of Haiti, mistrust and misunderstand each other. The HRF II effort in police/community relations is designed to address this lack of trust and build a relationship between the people and the police based on communication, negotiation, and reconciliation. In November 1997, HRF II made initial contacts in communities that had experienced serious incidents and tension between the local population and the HNP. Programming to build police/community cooperation is new to Haiti. The Haitian population had always feared the now disbanded Haitian Armed Forces and its police unit as lawless exploiters. At present, the police/community relations activity is active in Les Cayes where it successfully prevented violence during a recent conflict between the Haitian National Police and that community. It also set up an on-going mechanism to promote and sustain improved relations between the community and the police. While this activity would not be especially notable in the U.S., the historic mistrust between the police and the population in Haiti makes it a new and exciting departure.

The evaluation team attended a police/community meeting in Les Cayes. Participants included 14 members of the HNP, officers and non-officers. A United Nations Police Advisor also participated. The meeting, which lasted five hours, featured a panel discussion comprised of the Chief of the HNP in Les Cayes, a journalist, and a local prosecutor. HRF II had expected 40 participants. More than 80 people from the community attended this meeting. Following the panel discussion, the large group broke into smaller discussion groups and had lunch together. In the evening, HRF II staff engaged in small group sessions with local populace on rights and responsibilities under the law. The meeting was well-organized and demonstrated both the organizational and logistical capacity of HRF II.

HRF II comes under the Democracy Enhancement Project, which provides funding and management oversight through the Civil Society Cooperative Agreement with America's Development Foundation (ADF). Funding for HRF II is presently $700,000.

Methodology

In carrying out the evaluation, the team was mindful that examination of human rights activities is relatively qualitative by its nature due to difficulties in measuring the impact of each human rights enhancement activity. To fully appreciate the qualitative aspects of human rights in their Haitian context, the team members evaluating HRF II were selected for their thorough knowledge of Haitian realities and first-hand familiarity with human rights theories and worldwide practice. The team visited Haiti from January 11 to February 1, 1998 to conduct a field research on HRF II activities.

The team used the following methods to collect data:

- Visits to nine prisons accompanied by Haitian NGO staff providing legal assistance, independently observing conditions and practices and the methods NGOs use to protect prisoners' human rights;

- Meetings with four Port-au-Prince NGOs involved in protecting human and legal rights;

- Meeting with the former head of the Truth and Justice Commission;

- Meetings with USAID staff concerning the interplay between the DEP and AOJ projects;

- Meetings with Checchi staff involved in the AOJ program concerning those programs and the Checchi Chief of Party who has extensive experience with Haitian human rights issues outside his present role;

- Meetings with HRF II, twice with all staff and twice with the Chief of Party alone, and once with the ADF Chief of Party to fully understand the programs and to collect relevant data;

- Structured interviews with randomly selected independent health care providers who supply medical and psychological services under the HRF II contract;[31]

- A trip to Les Cayes to observe the civic education/police-community relations program;

- Observation of an HRF II group psychotherapy session;

- Observation of HRF II planning and staff meetings; and

- Attendance at an HRF II roundtable for human rights groups to develop knowledge concerning the current human rights situation in Haiti.

Conclusions and Analysis

Physical and Psychological Rehabilitation Programs

HRF II carries out a world-class rehabilitation program in Haiti. Among the team's findings are the following:

- HRF II programs reach poor and powerless victims of human rights abuse. All candidates for the program are referred through a documented recommendation by human rights organizations that certify indigence and also provide independent cofirmation of the

[31]The interview questions are in Appendix VI.

human rights violation. The team observed a group therapy session involving economically disadvantaged victims. The team also conducted interviews with health practitioners participating in the programs. These health practitioners spoke in detail concerning the specific needs of patients who are economically poor;

- HRF II uses a combination of appropriate medical and psychological techniques to address the physical and psychological trauma of the human rights victims. The program uses contemporary professional approaches to the rehabilitation of victims of organized violence. The first approach is applied in the host countries of North America and Western Europe that receive the refugees of political violence. This approach proceeds on the basis of classical biomedical and psychological models developed in these countries' context. The second approach insists on a more culturally specific confrontation addressing those particular and underlying political and societal conditions which engender and perpetuate organized violence. The second approach looks to developing effective care and rehabilitation in Haiti where victims have little or no access to modern medical services;

- HRF II provides follow-up in its treatment activities providing well-documented referrals to programs and organizations that can reintegrate patients into society through job training and income generation opportunities. HRF II is attempting to address the economic needs of its patients in very difficult circumstances. Haiti has a unemployment rate approaching 60 percent. The challenge and importance of meeting victim needs for income generation was highlighted by health professionals participating in the HRF II program. HRF II is setting up links with a USAID project, Program for the Recovery of the Economy in Transition (PRET) and other organizations to provide opportunities in micro-enterprises and handicrafts for its clientele;

- HRF II has attracted a growing group of medical professionals to provide services, growing from two in April 1997 to over 35 at present;

- HRF II is particularly sensitive and well-attuned to the needs of female victims of rape and other abuses. HRF II includes many women among its clientele. The coordinator of the post-trauma rehabilitation services is Dr. Cecile Marotte. The team witnessed a psychotherapy session carried out by Dr. Marotte with female patients in which she demonstrated considerable skill and sensitivity;

- HRF II treats the family members of victims who otherwise may be ignored but often suffer trauma of their own. The long-term effects of organized violence are often hard to detect. The more obvious physical and psycho-social distress suffered by the direct victims themselves also extends to their relatives, especially children; their friends and collaborators; and, in many cases, their neighbors and their entire communities. These indirect victims also exhibit signs of trauma in the wake of egregious violations. The repercussions of widespread organized violence, therefore, affect whole communities and

the entire society. In effect, the enduring medical consequences of organized violence represent a major public health concern. Medical practitioners associated with HRF II and interviewed by the team spoke to the importance of treating family and other indirect victims;

- HRF II's program is well-connected with the victim-treatment network world-wide to assure that they keep their methods up-to-date and to call on support if threatened. HRF II has extensive contact with human rights groups in Haiti and abroad. It also participates in a network with health professionals, especially mental health specialists and academics in Haiti and abroad. Groups participating in this network include the Canadian Center for Victims of Torture, the Center for Victims of Torture in Minneapolis, International Rehabilitation Center for Torture Victims in Copenhagen, Denmark, FASIC in Santiago, Chile, Physicians for Human Rights and the Medical Group at Amnesty International in London;

- HRF II has begun to provide services outside Port-au-Prince in three provincial towns and is planning for two more; and

- HRF II is effectively promoting psychotherapy in Haiti which has a limited tradition of modern psychological treatment, especially for the poor.

Civic Education/Police-Community Relations (CE/PCR)

- HRF II's police/communty relations program is a pilot program. Civic education seminars have been an activity of HRF II since its inception;

- HRF II successfully defused a potentially explosive police/community conflict in Les Cayes and established an on-going mechanism to promote and sustain improved relations. During its visit to Les Cayes the team was able to assess the techniques and the impact of the HRF II program on the prevention of conflict and the promotion of problem-solving and dialogue as tools to resolve conflict;

- HRF II's civic education and police/community relations programs emphasize political tolerance, pluralism, democratic processes, and non-violence; all much needed in Haiti. The team discussed the elements of the civic education program with Mr. Necker Dessables, Coordinator of the civic education and police/community relations program, and Mr. Gouraige Rene who supervises HRF II's civic education seminars. The team also witnessed the civic education, police/community relations seminar in Les Cayes.

- The evaluation team went to Les Cayes to observe the operation of the program and was very favorably impressed with the results of the HRF II in promoting cooperation between the police and the community. The team also saw the effectiveness of the techniques used to maintain and improve the relationship between the community and the

police.

Recommendations on Program Operations

Physical and Psychological Rehabilitation Programs

- The HRF II medical and psychological rehabilitation programs are of high quality and address a fundamental need for healing that undergirds efforts to promote human rights, democracy, and the rule of law in Haiti. USAID should expand the support for HRF II's medical and psychological rehabilitation programs.[32]

Civic Education/Police-Community Relations (CE/PCR)

- The CE/PCR pilot program is apparently making excellent progress in promoting non-violence, cooperation, and democratic values in the areas where the pilot civic education/police-community relations program is in place. USAID should consider expanding the geographic reach of the program by increasing funding and the program.

Sustainability

No plans have been developed concerning sustainability of the HRF II programs. Since the clients of HRF II are all poor, charging any more than token fees for service is not practical.

While the program cannot be self-supporting, there is a possibility that the medical/psychological assistance for victims parts of the program could be legitimate objects for Haitian and international charitable giving. There are many international medical assistance programs (Project Hope, Save the Children, Doctors Without Borders, etc.), and it may be possible to attract such funding for the victim assistance aspects of HRF II.

Have the HRF II's Programs Met Their Objectives?

The first objective of the HRF II program is to "assist the victims of politically-motivated violence and human rights abuse, and their families, by providing medical and trauma rehabilitation and lawyer referral services." Like the other programs reviewed in this report, the HRF II program did not collect baseline data nor set up quantitative and qualitative performance

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[32]The team found that Haiti's need for non-violence and social reconciliation is promoted by the HRF II programs, thus this recommendation. However, the team believes that HRF II's programs and other efforts to promote human rights need to be considerably expanded. Chapter VII outlines a suggestion for a new departure that could help achieve justice and social reconciliation in Haiti through a set of programs based on some of the services now being provided by HRF II but which go considerably beyond the services HRF II presently provides.

indicators early on. Thus, there must of necessity be some doubt about how clearly the success of the program can be demonstrated. This being said, however, the evidence for success of this program and achieving this objective is very strong. The positive evidence of success was reviewed above. In addition, the team did not find dissenters from the consensus that the HRF II program has met this objective.

The second and third objectives are to: (A) "Help prevent the recurrence of human rights abuses by the newly-deployed HNP" and (B) "Strengthen civil society institutions and initiatives, particularly in the areas of human right monitoring, legal assistance, training and citizen involvement with the police in order to encourage a broad societal commitment to nonviolence and the rule of law and to create the local capacity required to realize such a commitment." In the view of the evaluation team, the first of these objectives is encompassed by the second. That is, achievement of the second implies that the first has been achieved (you cannot have nonviolence and the rule of law if the police are significant human rights abusers). The objective is exceedingly broad, and this makes it very difficult to construct appropriate indicators of success. In addition, the PCR program is so new and so small that it is not possible to come to a definitive judgment on whether the objective has been achieved. At this early stage, the indications are that this is a good program which is achieving positive results. We must, however, emphasize that this is a highly preliminary judgment.

At this juncture, the evaluation team would make three points:

- The objective should be narrowed or subdivided into more manageable objectives.

- There should be separate, clear objectives for the police/community relations and civic education/training programs.

- Performance indicators, especially quantitative ones where possible, and baseline data should be developed to measure program success.

Chapter VI

Sustainability: What Kinds of Programs are Likely to Work In Haiti?

Introduction

The sustainability planning being done by USAID, DOJ, and the contractors has been discussed in the chapters which dealt with the specific programs. This chapter takes a broader view of sustainability. It goes beyond the specifics of each program's sustainability plan (or lack of one) to consider two broader questions. These questions are: (1) Even if carried out perfectly, is each AOJ program likely to be sustainable in the Haitian political/economic context?; and (2) Given that political/economic context, what types of programs are likely to succeed and what types are likely to fail?

This analysis extends the traditional examination of programmatic sustainability beyond the current and alternative operations of the specific programs. The idea is to assist the Mission in its broader strategic planning, which was one of the requests the Mission made of the evaluation team.

In order to carry out this analysis, the team used two complementary frameworks. The first is articulated in USAID/CDIE's Weighing in on the Scales of Justice (Weighing...). This paper examines Rule of Law (ROL) programs in six countries. It uses a model[33] that relates different strategies and programs to the political and legal conditions found in countries which are candidates for ROL programs. The second framework uses the economic theory of public goods. This theory is used by economists to analyze the appropriate amount of government intervention in providing goods or service. It is based on the idea that some goods must be provided by government because the benefits of providing the goods go to society as a whole and not just to individuals.[34] The classic example is national defense, where the amount of defense is the same for everyone in the society regardless of how much defense each individual might buy if it were a private good for sale in the market. The ROL model and the public goods model are explained in more detail below.

Analyzing Current Programs using CDIE's ROL Model

As expounded in Weighing..., the ROL Model sets out the conditions needed for ROL program success. Certain conditions need to be present before various ROL programs are likely to be successful. Furthermore, the conditions themselves are sequential. The conditions, in order are:

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[33]The report calls it "An Analytical Tree for Supporting Rule of Law Development." The model is explained in Chapter 4 and Appendix A of the report.

[34]In slightly more technical terms, the consumption of the good or service by one individual does not affect the amount consumed by other individuals.

- A political leadership supportive of ROL;

- An adequate legal structure;

- Full and adequate access to that structure; and

- Adequate judicial capacity and performance.

If a condition is met, the programs necessary to achieve it can be skipped and the programs which support developing the next condition can be implemented. This can be most easily seen in the report's "Analytical Tree" (what we are calling the model) which is reproduced on the following page.[35] The authors of the report note that, in reality, conditions are rarely completely fulfilled or completely absent. Thus, it may be that more than one strategy can be used at a time. However, the sequence cannot be violated with impunity. The less a condition is present, the less likely that programs dependent on the subsequent condition(s) will be successful.

Where does Haiti fit into this model? In the opinion of evaluation team, none of the conditions specified in the ROL model are present in Haiti. The Haitian political leadership is not supportive of ROL, an adequate legal structure does not exist, there is not adequate access to the structure that does exist, and judicial capacity and performance are inadequate.

The evaluation team's view on the state of Haiti's readiness to support ROL programs is not unique. In fact, the authors of the Assessment of the Justice Sector in Haiti used the ROL model in Weighing.. and came to the same conclusion based on field work done in late 1996. To quote from that report,

> "The team concluded that the answer to all four questions listed above [in our terms, the conditions cited above] is "no." Political leadership for judicial reform in Haiti is weak and fragmented. Legal system structures are not adequately in place. The legal system is inaccessible and inequitable. There is insufficient institutional capacity within the Haitian Government to deliver the justice that people so desire."[36]

The situation today is, if anything, less favorable than it was when the assessment team's conclusion was made. As of this writing, there is no Prime Minister and no functioning government. Furthermore, the government crisis started eight months ago and shows no signs of resolution. Even if a government is put in place, most observers believe that it will not be able to take significant action, and any action will have to wait until the next presidential election in 2000.

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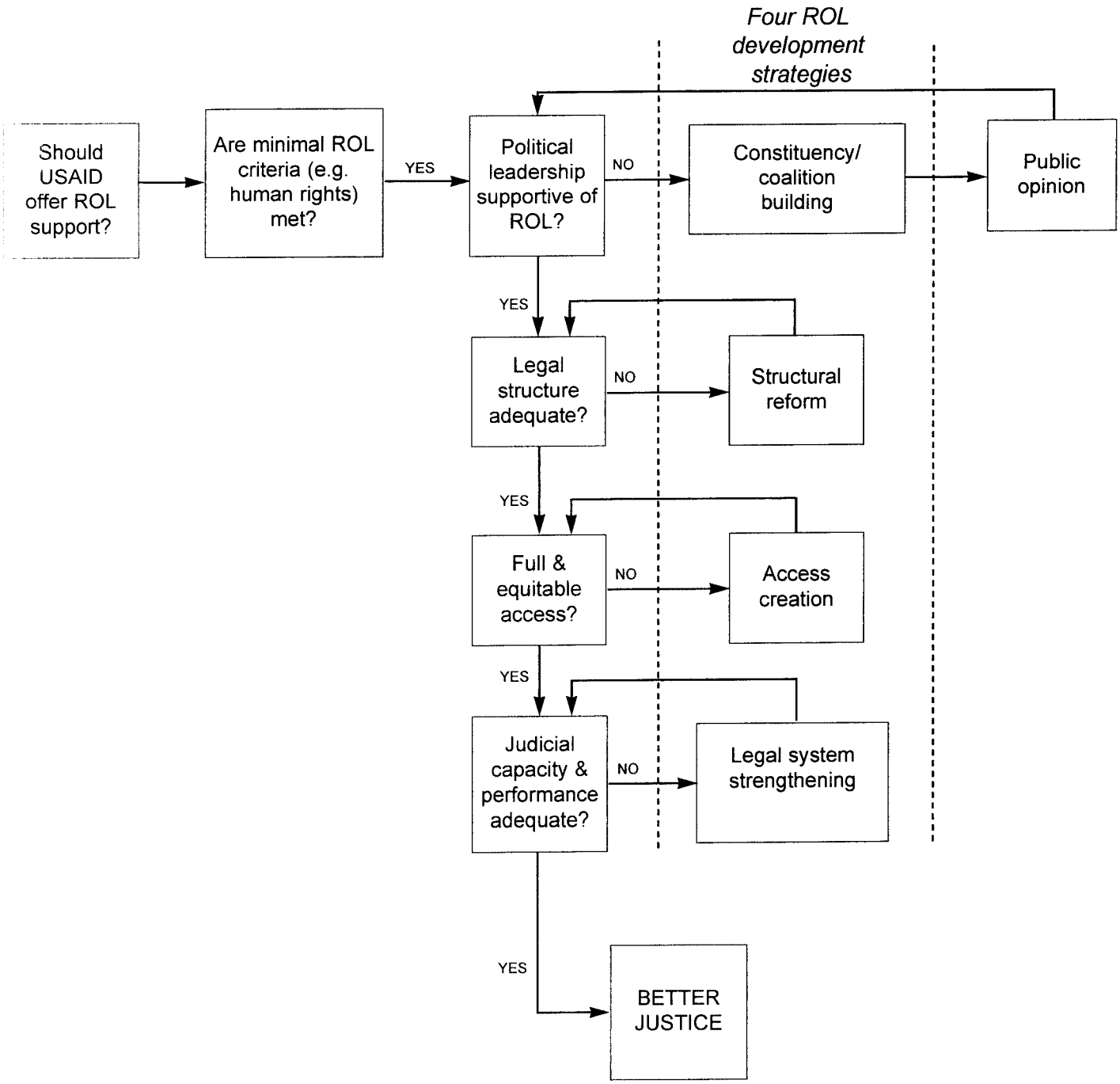
[35]This analytical tree is the simplified version found in the main text of the CDIE report. The model actually used in the analysis, which is more complicated but also more analytically useful, can be found in Appendix A, p. A-4 of the report.

[36]See Assessment..., Executive Summary, p.1

An Analytical Tree for Supporting Rule of Law Development



The model lists four strategies[37] which correspond to the four conditions. These are

- (I) Constituency/coalition building: including coalition building among elites for change, support for the media to educate the public to expect justice, support for NGOs seeking justice, etc. These are "demand side" programs designed to create pressure for justice.

- (II) Structural reform: new judicial processes, new and updated legislation, constitutional reform, establishing judicial budget and career autonomy, etc. These are "supply side" programs designed to improve the legal basis for justice.

- (III) Access creation: legal assistance, paralegal training, legal literacy, NGO advocacy for the disadvantaged, ADR, etc. This is a "demand side" strategy.

- (IV) Legal system strengthening: professionalization of police and judicial personnel, court modernization, training in legal ethics and rights, reform of law curricula, etc. This is a "supply side" strategy.

Fitting Current Programs into the ROL Model

Using this brief description of the ROL model, the USAID's AOJ programs can be placed in a grid combining the conditions and strategies. This is done in the following table.

[37]See Weighing..., Table 2, p.14 for details.

Fitting Current Haiti AOJ Programs into the CDIE Rule of Law Model		
Condition (if lacking or weak, use corresponding strategy)	Strategy (use if corresponding condition is lacking or weak)	Current AOJ Programs
Political leadership supportive of ROL	Constituency/coalition building (Demand side)	Legal education for citizens Human rights victim assistance Civic education/Police-community relations
Adequate legal structure	Structural reform (Supply side)	Judicial career establishment
Full and adequate access to legal structure	Access creation (Demand side)	Legal assistance
Adequate judicial capacity and performance	Legal system strengthening (Supply side)	Case tracking (JP Courts & Parquets) Judicial mentoring Legal professional education Judicial training Parquet reform

While different observers might make a case that one or another of the AOJ programs would fit better in another category (condition), this is the team's view of where the current programs fit in the CDIE model. What stands out about the results is USAID's emphasis on programs which attempt to remedy inadequate judicial capacity and performance. While no one would maintain that Haiti's judicial system is performing adequately, the CDIE analytical model would consider this an over-emphasis. That is because when the previous conditions are not fulfilled, as is the case in Haiti, programs to improve judicial capacity and performance are not likely to succeed. This is the case because the foundation of political will, legal structure, and equitable access are too weak to support a properly functioning judiciary.

As long as donors are willing to fund and direct judicial capacity improvement programs, they will function and possibly even function well. This is, for example, the current situation at the Ecole de la Magistrature. However, without a more solid political/legal/access foundation, such programs are probably not sustainable without such donor support. Even with long-term donor support it is not likely that a well-functioning judiciary will ever be built on such weak foundations.

Analyzing Current Programs Using the Public Goods Model

As noted above, an alternative way to address sustainability is through the economic notion of public goods. The thought here is simple: If a good or service currently being provided by international donors is a public good, the only way it can be sustainably provided without donor support is by the local public authority -- the GOH. If it is a private good, the Haitian private sector may be able to sustain it. If, as is often the case, the good or service has both public and private aspects, it would have to be sustained by the GOH or by the GOH and the private sector acting together.

As also noted above, the nature of a public good is that everyone in society uses it without having to pay for the amount that he/she "consumes." In the case of national defense, Person A may value national defense highly. Nonetheless Person A gets no more national defense than Person B who may not value it nearly so highly. Contrast this with, say, clothes. In that case, Person A (the sharp dresser) consumes more clothes than Person B (the jeans-and-tee shirt type).[38] In other words, clothes are a private good, the amount one get depends on how much one is willing to pay for.

Many goods have both public and private aspects. Education is a one example. An investment in education benefits both society (the public aspect) and the individual (who gets higher income, the private aspect). In this case, we see a mixed result. In most countries there is both a public school system and private schools. All may attend public schools and so receive what society perceives as a "reasonable" education. In essence, society has made a decision that everyone needs a certain amount of education to be a good citizen and provides that through public funding. Anyone desiring alternative education (say for religious reasons) is free to get that alternative using their own funds. Thus, in the education field there are elements of both private and public goods and there are mechanisms to supply both aspects (public and private schools).

How does justice fit into this? Clearly, justice is mostly a public good. The police should protect everyone equally, the courts are there to try all criminals and adjudicate all private legal disputes fairly. There are however, aspects of private goods in the justice system. These are obviously mostly on the civil side which deals with property, torts, etc. This is why it is the state (public prosecutor) who brings criminal charges; and either the state or private individuals can bring civil disputes into the system.

This notion can be reduced to model analogous to the ROL model. The following graphic shows the relationships:

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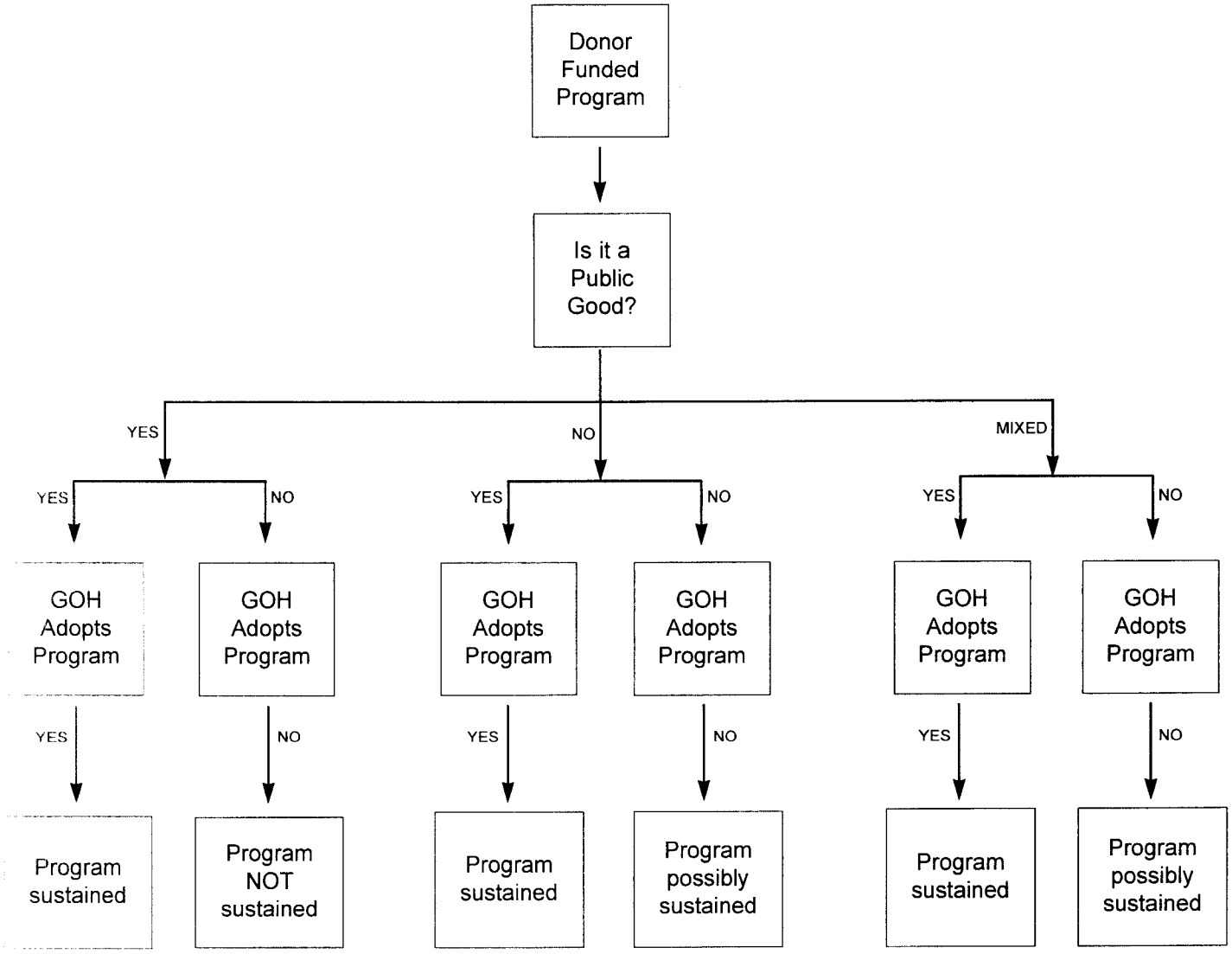
[38]This assumes equal incomes for simplicity's sake. The formal theory is fully generalized.

A Public Goods Model of Sustainability



The model starts with the donor-funded program and asks the question: Is it a public good? The model then branches into three paths depending if the answer is yes, no, or mixed. At this point in the model, the donor reduces or eliminates the support. At this point, the GOH either chooses to continue supplying the good or service or not. That, in turn, determines whether the program (good or service) is sustainably provided or not. A clear example of this is legal aid. Following the model, we see that legal aid is a public good (it is free to the poor and so will not be supplied by private legal market). Because legal aid is a public good, it must be supplied by a donor or the GOH to be sustained. The table below classifies the current AOJ programs according to whether they are private, public, or mixed "goods."

Program	**Public, Private, or Mixed?**	**Sustainable without donor or GOH support?**
Legal Aid	Public	No
Legal Education for Citizens	Public	No
Parquet Reform	Public	No
Case Tracking	Public	No
Judicial Training	Public	No
Judicial Career Reform	Public	No
Civic Education/Police-community Relations	Public	No
Criminal Justice Training	Public	No
Judicial Mentoring	Mixed	Maybe, but only with at least some outside support[39]
Legal Professional Education	Mixed	Maybe, but only with at least some outside support[40]
Human rights victim assistance	Mixed	Maybe, but only with at least some outside support[41]

Using the public goods analysis, the table shows that the programs currently being pursued by USAID are not likely to be sustained without commitment from the GOH.

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[39]Possibly by judges' or other associations. At present these are not equipped to do so.
[40]Possibly by bar or other associations. At present these are not equipped to do so.
[41]Possibly with church or charitable support combined with fees based on ability-to-pay.

Conclusions from the Sustainability Analyses

The three analyses carried out by the evaluation team (looking at the [lack of] plans and opinions of the program implementors, the USAID/CDIE ROL model and the public goods model) all point to the same conclusion. The current set of AOJ programs being pursued by USAID are not likely to be sustained without the support of the GOH. Furthermore, we, and essentially all U.S. and Haitian observers agree that the GOH is not fully committed to the rule of law. There are two implications of this conclusion for USAID's strategy for Haiti:

- The activities that Haiti needs most are ones that will help build demand for justice. It is only on the foundation of this demand for justice that the superstructure of law, access to the justice system, and reasonable judicial capacity can be built, and

- USAID needs to devote more attention to building coalitions and constituencies that will pressure the system to provide adequate justice. In other words, USAID needs to do more on the "demand side."

This is not an argument for throwing out all supply-side programs. Indeed, all the supply side programs evaluated were making good, and sometimes very good, contributions to building justice in Haiti. However, this analysis shows that the supply side is over-emphasized currently. Whether demand side activities can be increased significantly without decreasing supply side ones goes well beyond the scope of this study. This is properly the responsibility of USAID and other decision-makers who make resource commitments. What the evaluation team is saying in this chapter is that the current set of programs is not balanced and should be refocussed.

The following chapter contains suggestions for a refocussed program which would help create the demand for justice based on expanded USAID (and hopefully other donor) support for promoting human rights in Haiti.

Chapter VII

USAID Strategy in Haiti: Suggestion for a New Departure

Introduction

The evaluation team, besides examining the USAID's justice sector program, has an observation that will come as no surprise to anyone familiar with Haiti: the country is in terrible shape. To say that past policies have failed is obvious to the point of being trite. To say that present conditions--political, economic, social, environmental--offer much hope for immediate substantial improvement is unrealistic. There are two realities about Haiti that are inescapable: (1) Marginal changes in the existing dysfunctional system will not succeed, and (2) Change has to be basic and will take a long time. These facts have a corollary for U.S. policymakers: policies need to focus on the long-term and deal with fundamental matters. While it is beyond the scope of this study to make conclusions about policies outside the justice sector, applying these fundamentals to USAID programs leads to an uncomfortable conclusion. Despite the many worthwhile things that are being done by USAID and its contractors in Haiti--and this evaluation has pointed out many examples--the present programs do not fully reflect the fundamental reality. In other words, the programs, as they stand today, do not fully address the basic injustice of the Haitian "justice system."

The chapter on sustainability came to the same conclusion by another route. It examined the present programs and concluded that they were not sustainable because the foundation on which they would have to stand is too weak. If, as that analysis concluded, the foundation is too weak to support the types of reforms that are now being implemented, how can USAID strengthen that foundation so justice sector reform will "take?" This chapter proposes a greater emphasis on the most fundamental of all conditions for justice: Human Rights. It attempts to show that a human rights-focussed program has the potential to strengthen the foundations on which an effective justice system can be built, and it suggests a program which, by strengthening human rights, will create a demand for justice by Haitians which cannot be denied.

Why Focus on Human Rights?

There are a number of reasons why a focus on human rights is appropriate for Haiti. Probably the most important stems from the need for a set of principles which undergird any demand for justice. As pointed out previously, the Universal Declaration of Human Rights is cited in the Haitian Constitution. This fact, and the widespread acceptance of these principles, make the UDHE a fulcrum on which the lever to push for justice can rest.

Many commentators on Haiti have pointed out that it is a deeply divided society with little commonality or communication among class, social, and political groups. These divisions play themselves out in many negative ways, among them is a pervasive attitude that "we" (a person's class, social, or political peer group) have little in common with "them." Most "Haiti hands" agree this is a serious problem and lament the lack of common experience which leads to empathy among

groups. Actually, however, there is something that Haitians of all classes and groups have in common - denial of their human rights at some time in the recent past.

Under the Duvalier and successive regimes, human rights abuse was wide-spread and affected all strata of Haitian society. Almost from the beginning, François Duvalier employed torture, murder, imprisonment, and exile to eliminate opposition, particularly from upper class elites. For these elites, Duvalierism was a catastrophe. Many in the elite were sent into exile and many were lost to torture and execution. Today, as Patrick Bellegarde-Smith states, "the elite desire reform, not revolution, but all classes desire guarantees against the return of Duvalierism."[42]

The coup of 1991 against President Aristide largely targeted the poor and dispossessed. It was the neighborhoods of the poor that were terrorized by FRAPH and the warlords within the military structure.

Thus, almost all Haitians, either personally or through family members, have been victims of political violence and human rights abuse. During the coup period, Micha Gaillard, a prominent human rights activist, spoke to the common victimhood of Haitians. He asked those who were better-off to remember the abuses they and their friends and family experienced during the Duvalier era and to identify with the suffering of their poorer brethren.

While this is a sad history, one should not underestimate the power of such a history to unite a people. The genocides against the Armenians during the First World War, the Jews during the Second World War, and paradoxically, the diaspora of Palestinians after 1948 have given rise to powerful national movements and reinforced group identity.

Another reason why a focus on human rights could be effective is that human rights is one of the most powerful movements in the world today. One need only look at the experiences in this hemisphere (to say nothing of the role of the human rights movement in the fall of Communism) to see its power to shape societies and governments. There is no reason why Haiti cannot tap into this power and gain worldwide support for a revitalized human rights movement in the country.

A human rights approach that is inclusive, seeking to join all Haitians around defense and promotion of their human rights, offers the possibility for the healing, communication, and reconciliation required if Haiti is to progress beyond its current malaise.

Need for Truth and Reconciliation in Haiti

Many countries have recognized the need for confronting the abuses in their recent past. Argentina and Chile after the return of the military to the barracks. Guatemala and El Salvador

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[42] Bellegarde-Smith, Patrick, Haiti, The Breached Citadel, Boulder, Colorado: Westview Press, 1990.

once peace negotiations began. They have found that past human rights abuses keep getting in the way of the future, even when amnesty was granted. When a country wants to move on, each nation with a brutal past has discovered that it must reach back and deal with that past. There are different ways to do this: the Truth and Reconciliation Commission in South Africa, apologies by the U.S. government for its treatment of Japanese-Americans in internment camps in California; by Tony Blair for the "Bloody Sunday Massacre" in Northern Ireland; and the truth commission on communist abuses in the former East Germany. All of these processes have moved nations forward and freed up the energies of their citizens because the shame and pain of the past begins to heal. Otherwise, past human rights abuses become a cancer that stays in the body politic. This process is never easy. Nor is it ever comfortable. But the need to stress non-violent reconciliation and and to do it thoroughly means that these nations have dealt with the past with little or no bloodshed. Dialogue and discussion displaced the gun. And the more it was done by the citizens in a broad, democratic and national scope, the better the result. The same can be done in Haiti. All sectors of the nation need to participate: lawyers, youth, businesspeople, police, farmers, city people, religious, NGOs, women's groups, and so on can and would constitute a new citizen process that guarantees fairness, objectivity and balance. If done this way, the future may provide Haiti a new beginning that it deserves. And there is really no choice. Not doing it means the past will be repeated.

A Suggestion for a Human Rights Program to Create a Demand for Justice

The evaluation team discussed the following elements with a wide variety of Haitians, U.S. government officials, and other donors active in Haiti. The ideas were well, even enthusiastically, received. However, it is a long way from conceptual discussion to practical plans and their implementation. Thus, the suggested program is offered as a general framework which would have to be more finely developed through collaboration of Haitians and U.S. and other donor government officials.

While this program will touch all parts of Haitian society, it is particularly targeted on the youth. The emphasis is rooted in demographic reality; most Haitians are under 16. They are reachable and teachable, both in schools and through the media. And, international experience has shown that awareness of human rights can be rapidly increased by focussing on the young. Also, the youth are relatively uncommitted to the exclusivist politics and social relations of their elders. Lastly, this great wave of young people will soon begin to dominate Haiti as it moves into the workforce, politics, and society at large.

The program suggested here has three components: a set of Ambassadorial Initiatives to draw attention to the U.S. commitment to human rights, a Truth and Reconciliation process, and a Human Rights Education/Popularization program.

Ambassadorial Initiatives

The evaluation team visited many prisons while in Haiti. The physical conditions of

Haitian prisons are appalling, although it must be said that they are no longer the abuse and torture centers they were in the past. While visiting the prisons and interviewing prisoners and prison administrators, it became clear that many prisoners are being held illegally. There are 3 large groups: children, persons detained without charge, and prisoners being kept in prison after completing their sentence. These prisoners are generally not political prisoners in the classic sense. They are people caught in an inefficient and uncaring system. They are less "Prisoners of Conscience" than "Prisoners of Confusion."

All prisoners of confusion are victims; their human and constitutional rights are being abused. While those being held without charge and those being held beyond their sentences are obvious victims, so are all child-prisoners because the Haitian Constitution forbids incarcerating children. At any given time, there are somewhere in the neighborhood of 140 to 180 boys and girls in prison. The Constitution mandates a separate institution, a combination detention center and school, for children. Unfortunately, such a center does not presently exist, so children are kept in the women's prison in terrible conditions. Every knowledgeable Haitian we spoke with, prison administrators, MOJ officials, legal aid attorneys, and human rights advocates, deplores this situation and appealed to us to help set up a center as contemplated by the Constitution.

The evaluation team believes that these abuses cry out for redress, and they present an opportunity for the U.S. to take concrete action to support the human and constitutional rights of some of the most oppressed of Haitians. In this vein, we recommend that the U.S. Ambassador:

- Obtain up-to-date information on the number of young people who are being held in the jails of Haiti, and work with the GOH to establish a new institution to house and educate these children as provided for in the Haitian Constitution.

- Request the Minister of Justice to free those prisoners who have served their time and have not been released.

- Request the Minister of Justice to free prisoners who have been held for over a year without charge.

Truth and Reconciliation

While the exact nature of the truth and reconciliation process must be worked out by the Haitians themselves, experience in other countries teaches some common lessons:

- The process takes time, but should not go on interminably. Generally, it will be clear if it is making the hoped-for contribution in two-three years;

- It is best to be inclusive, and take the time necessary so that there is the widest possible participation of representatives of social, regional, class, professional, and other groups;

- Objective and non-partisan facilitators who are natives of the country are usually very helpful; and

- Outside advisors, in this case distinguished members of the international human rights community, can help keep the process on track.

Human Rights Education and Popularization

Human rights education and popularization works.[43] As with Truth and Reconciliation, human rights education/popularization is a key to creating demand for justice. Many activities have been carried out around the world to educate people about their rights. We mention the most prominent here. We do not recommend which ones should be used in Haiti, because those decisions should be made by Haitians and donors together. However, there are some important things to remember in implementing any of the following programs: (1) education/popularization activities should be directed by Haitians to the maximum extent possible to help ensure that they are appropriate to the Haitian reality; (2) those involved in creating and disseminating the materials, videos, etc. must be clearly nonpartisan. There will be a natural tendency for political partisans to use such an effort for their political purposes. If that happens, the effort will lose all legitimacy; (3) Haiti is a dangerous place and those who work with this program should have appropriate security; (4) all materials be produced in Kreyòl; and (5) that the U. S. Government seek to make this a multi-donor effort.

The specific programs which could be carried out include:

- Videos and radio shows based on the Universal Declaration of Human Rights (UDHR). Radio shows could and should be broadcast on a regular basis. They should be given freely to all the stations in Haiti (roughly 16 stations). The videos could focus on both the history of human rights in Haiti and current human rights problems from a strictly nonpartisan perspective;

- Music composed and performed by Haitian musicians to move the message, supplemented by posters, billboards, concerts, etc.;

- A human rights curriculum for all levels of schools in Haiti;

- Development of sermons for churches based on the UDHR, especially for December 10, Human Rights Day;

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[43]One member of the team, a former head of Amnesty International (USA), noted that Amnesty International was able to triple their membership and develop hundreds of school-based human rights groups through a series of human rights concerts given by popular musicians during the 1980s.

- Contests which award prizes for the best speeches, plays, posters, art, and design;

- Each child be given a tee-shirt with the UDHR to wear on December 10, Human Rights Day;

- An international speakers program using people such as Desmond Tutu to discuss human rights in other countries and why they are important in Haiti; and

- A training program for the HNP to familiarize all units with the UDHR.

Who Should Carry Out the Program?

The team has given some thought to the type of organization that would be most likely to be successful in coordinating and guiding this effort. Such an organization would have to be clearly non-political and be perceived as such by most Haitians. It should have a record of dealing with a broad range of groups. It would be helpful if the group has its own network of respected people active in human rights to call on for assistance and to participate in the process. It should have worked on the "firing line" of human rights; that is, it should have practical experience in delivering human rights-related services. Among the groups that the evaluation team observed and interacted with while in Haiti, we found that the Human Rights Fund II organization most clearly possessed these characteristics. Of course, there may be other organizations in Haiti that have the needed skills and experience, and it would be up to the Mission to canvass the country to identify other possible program implementors.

A Final Thought

In the struggle for civil rights in the USA, Dr. Martin Luther King, Jr. used the U.S. Constitution, the Bill of Rights, and nonviolence as levers to help the American people see the need for change and to move forward. Haiti was the first mission of Peter Beneson, the founder of Amnesty International and one of the great names in the human rights movement. To begin the discussion of human rights among the youth of Haiti using the UDHR would be another first, and a particularly worthwhile one, for Haiti.

Appendix I

List of Positions and Organizations of Interviewees

Chapter II: Case Tracking	
Location/Organization	
Port-au-Prince (Section Nord)	Two judges, the greffier and several clerks
St. Marc	The assistant judge and a clerk
Liancourt	Two judges, the greffier, a clerk
Verrettes	Two judges and greffier
Gonaïves (Sud)	One judge and two clerks
Lavallee du Jacmel	The judge and clerk
Ennery	The greffier
Delmas	Two clerks
MOJ	Director of Judicial Affairs
Checchi	All the program staff
DOJ	AOJ staff
MICIVIH (Gonaïves)	Regional Director (staff)
Port-au-Prince (private attorney)	Checchi & Canadian goverment personnel (Re: Automation Development)
USAID	AOJ program staff and other mission personnel

Chapter III: Checchi & Company Programs	
Location/Organization	
Checchi	All program staff
COFAL	Director
	Assistant Director
BAJ	Director
Amicales des Juristes	Director & two staff attorneys
Amicales des St. Marçois Reunis	Director
IRD	Director
CEDD	Director
Bar Association (Jacmel)	Director
Law School (Gonaïves)	Director
	Students (Approx.7-10)
Bar Association (Les Cayes)	Director
	One Lawyer
	One Lawyer-in-training
MICIVIH (Port-au-Prince)	Two staff
MICIVIH (Les Cayes)	Regional Director
MICIVIH (Gonaïves)	Regional Director
Reseau des Citoyens	Director
NCR	Director
Jails visited	Prisoners
Jails visited	Clients of Grantees
USAID	AOJ program staff
DOJ	AOJ program staff

Chapter IV: DOJ Program	
Location/Organization	
Washington, D.C.	
USAID	Staff/LAC & Global Bureaus
ICITAP	Director
OPDAT	All staff concerned with Haiti programs
Checchi	AOJ Program Coordinator
Haiti	
USAID	AOJ staff
OPDAT	All AOJ staff
ICITAP	Director
Checchi	Chief of Party & AOJ staff
UAPC (Canadian Embassy)	AOJ Consultant
St. Marc	Mentor, also local attorney
Petit-Goave	Mentor
Port-au-Prince	Mentor
OPDAT (St. Marc)	Legal Advisor
OPDAT (Petit-Goave)	Legal Advisor
OPDAT (Port-au-Prince)	Legal Advisor
St. Marc	Doyen
Petit-Goave	Doyen
Port-au-Prince	Doyen
St. Marc	Correctional Judge
Judges Association (St. Marc)	President
St. Marc	Chief Prosecutor & staff

Chapter IV - Continued	
Port-au-Prince	Chief Prosecutor
Port-au-Prince	Chief Clerk
Port-au-Prince	Parquet Records Clerk
Judicial Inspection Unit	All inspectors
MOJ	Advisor
Judicial School	Director
	Director of Studies
	Administrative Director
	Consultant (French Magistrate)
	Students (approx. 40)

Chapter V: Human Rights Fund II	
Six Business persons	Specific information withheld due to pledge of confidentiality and anonymity.
Two Development Experts	
Three Human Rights Experts	
Three International Civil Servants/Diplomat	
One GOH Attorney	
One International Law Enforcement Official	
Five Haitian Women Professionals	

Location/Organization	
Port-au-Prince	10 Haitian medicial professional delivering trauma rehabilitation services
HRF II	HRF II professional staff
America's Development Foundation	Director
National Penitentiary	Warden
National Penitentiary	Prisoners
Womens' Prison	Warden
Womens' Prison	Prisoners
Port-au-Prince	Human Rights Round Table
Truth and Justice Commission	Director
Les Cayes	2 UN Police Advisors
Les Cayes	5 local HNP officers
Les Cayes	3 parish priests

Appendix II

Observations on Haitian JP Courts

By Samuel Conti, Esq.

Port-au-Prince -- Section Nord

The Justice of the Peace court in Port au Prince (Section Nord) is housed on a busy commercial street which is crowded with vendors. Access to the single courtroom is gained from the street. Alongside the courtroom at the front of the building is a registration office for the transaction of non-judicial government business. Direct access to the courtroom is also gained from the single room occupied by the judges of the court and the clerks. The court and the greffier's office do not have sufficient office supplies. Litigants may be expected to bring their own paper on which court actions can be written. The courtroom is dark and antiquated with no amenities such as counsel tables. There is little equipment. Inside the clerks office only two typewriters and several filing cabinets are available along with fewer desks than are needed by court personnel seen in the office. Male and female prisoners awaiting transfer or release sit quietly in a segregated section of the courtroom under guard.

Members of the public seeking to file criminal and civil cases are directed down a side alley to the clerks' office. The Checchi project has recently introduced an innovation in which laminated numbered cards are given to litigants to reduce waiting time and the general disorder on the alley-queue. On the day of the visit the cards were not being used. Checchi has also provided benches in a rear courtyard for those awaiting court action.

According to the greffier and the judges, the case registry is easy to use, enabling court staff to look up cases far more quickly than had been possible in the past. About 30 criminal and 15 civil cases are filed in the court each day. According to the clerk, 10-12 civil cases are heard by a single judge each Tuesday and 8-10 criminal cases are calendared each day before each of three judges. Although reliable statistics are not available, if the information about the number of filings and cases heard is accurate, the court will not clear the civil calendar and will fall into a growing backlog. The number of civil trials is low because the judges use conciliation as the preferred method of disposition, especially in the many landlord/tenant cases filed. The conciliation sessions are held in the single room that serves as the office, meeting place, and file room by the three judges and the clerks.

On the day of the visit, the clerk had still not posted to the case register matters filed four days earlier. The clerk complains that he cannot keep up with the entries and must bring the register home with him each day to make the postings. For a program that has been in place less than two weeks to have developed a backlog of four days in posting to the register is

unacceptable. The greffier should be instructed that court records should not be removed from the court facility and that diligent efforts must be made to post all filings to the register on the day they are received.

Documents are not date-stamped on receipt and await entry onto the register until the judge has first reviewed the filing. To prevent loss of filed documents and timely entry to the register, entries should be made on the day of receipt. The original version of filed papers are eventually dated and sealed and returned to the police. Although the instruction sheet and example distributed as part of the case registration materials show a code for distinguishing penal (P) and civil (C) cases in the column for nature of the case [Nature des Faits], the register in this court does not contain these code entries. The clerk is maintaining separate registers for civil and criminal cases contrary to instructions in the training session. When asked why a separate list is being kept the clerk responded that there are too many criminal cases.

Much of the greffier's time is consumed by the practice of transcribing dictated language for civil complaints given by attorneys, typically in the courtroom. At the time civil action judgments are made the judge usually dictates the decision and provisions to the clerk who enters the judgment into the civil ledger book. Thereafter, the greffier types the decision and order and makes copies for both the plaintiff and defendant. The practice of having the greffier serve as a stenographer for counsel by writing the language of civil complaints should be abandoned. Counsel should be expected to bring to court legible versions of all filings for placement in the court file. The prosecutor prepares another form of judgment on which execution can be made and without which the order cannot be effectuated. The role of the prosecutor in preparing forms needed to effectuate court orders in civil cases should be examined and abandoned, if possible.

Each court has been provided with a separate register for an alphabetical listing of names of parties to criminal and civil litigation but the greffier in this court has not yet begun to use that register. Dates of court proceedings and events are entered in the separate civil ledger book but are not set out boldly making searches for information by date time-consuming. Some greffiers leave a blank column on the ledger page for additions that may be requested by the judge or counsel. Training should be offered on the organization of civil ledger books so that dates of court events can be highlighted for easy retrieval of information. Litigants should not be expected to provide their own paper and supplies to get copies of official court documents in their cases.

The judges and clerks also complain that they must often bring their own paper and other office supplies to the court. The main office used by the entire court staff is open to the public and many conversations are conducted through the open windows at desk-side. The lavatory does not work in the building and the courtroom is dark and poorly maintained.

The court does not have transportation for the daytime and evening business trips (4-5 each week) that must be made. Security provisions at the court are inadequate. There is no holding cell and prisoners are kept under loose guard in a corner of the courtroom. Judges note

that police work between 8 am and 2 pm and that the court is usually in session after the police have left. Unlike some courts (see Gonaives, Sector Sud, below), the court has no daily calendar by case type and hears cases as they come in. Continuances are common in civil matters and, although there are no statistics kept on their incidence, court personnel report that it is not uncommon for cases to be continued for a year while counsel gather needed information.

St. Marc

The Justice of the Peace Court in St. Marc has a staff of five with two judges. The court is open daily from 8AM to 4PM. Most of the caseload are criminal cases. One judge usually hears two civil cases each Tuesday and Thursday. The assistant judge, who only sits on Friday, hears civil matters that day.

Civil and criminal cases are entered on the single registration form in proper numerical sequence before the case is submitted to the judge. The clerk also maintains the alphabetical index of cases for cross-reference. The clerk is confused about the assignment of numbers in the register and the need to place the docket number on the file folder. Because of this confusion, the clerk establishes a separate and unnecessary number different than the docket number on the case registration form. Training and on-site instruction should end this improper practice.

The practice in this court, unlike some others, is for lawyers to write their own complaints rather than dictating them to the clerk. The judge prepares the notices to parties. As the decision of the court is announced, the clerk transcribes the order in a ledger book which is signed by both the judge and the clerk. The judge may also produce a copy of the decision which is stapled into the ledger book. This practice should be abandoned; the judge's minute notation of the decision should be placed in the file. Later, using a typewriter available in the Land Court Division of the Court of First Instance which is housed upstairs from the JP court, the greffier types the order (expedition), signs it, and gives it to the parties.

As in several other courts, the clerk often asks the litigants to bring their own paper to the court for copies of orders and other court documents. In another potentially disruptive practice, this court has been given and uses both legal and letter size paper, file folders, and filing cabinets. A single standard for all court filings should be adopted not only for each court but for all courts at every level.

Liancourt

This small court is temporarily housed in a police station and has not yet identified a new location. The clerk commented, "we will be out on the street". The space is small and crowded, but is neat and functional.

The two clerks who assist the two judges of the court are using the case registration system properly. They are able to report accurately that about four criminal cases and seven civil

cases are filed each week. In a two week period about 50% (15) of the civil cases (most relating to landlord/tenant complaints) filed proceeded by conciliation. The caseload is small and the registration system shows its worth as a means to enroll cases and to compile meaningful statistics. The judges and clerks have not yet been instructed on the case tracking and case management implications of having these data from the register available to them. Given their success and interest, the staff of this court would benefit from further help from members of the Checchi team and the judicial inspectors.

Verrettes

The judges and clerks in this small community had been using the case registration system for several weeks at the time of the visit. The staff was able to see quickly that over those few weeks 48 criminal cases and 40 civil cases were filed with the court. They agreed that the system works well. One judge, foreseeing uses of the data commented, "this is a way to knowing more. It is much better."

Gonaives (Sud)

Like many other courts during the visits, the judges and clerks were on strike but nonetheless available and interested in talking to team members. The court is housed in a simple three-sided cinder block structure. Under the shelter of the roof, three desks are clustered at one side and a clutch of chairs near another desk served as the "courtroom." Court staff are clearly distressed by their lack of adequate facilities. There was no evidence of any files but it is likely that they are kept in a storage shed across a parking lot outside the court building.

The judge and clerk produced the case registration instrument which is being used. In an innovation not seen in other courts visited, this court has posted on a bulletin board a weekly calendar in which case types are given blocks of time for hearing. The elements of that schedule which is a case management method are as follows:

Monday	Tuesday	Wednesday	Thursday	Friday
Conciliation	Landlord/tenant	Advice	Minor criminal	Extra-judicial
	Small claims	Guardianship (over 18)	Landlord/tenant	Notary services
	Land conflicts under study	Guardianship (under 18)	Civil	Family counseling
	Conflicts at work	Conciliation	Minor criminal	Conciliation

Lavallee du Jacmel

The judge and clerk in this small court offered interesting and refreshing insights into the use of the registration form and the operation of a more rural Justice of the Peace court. Typically 2-3 cases are filed with the court each day. According to the judge, the registration form has "facilitated the work of the court." Unlike many other courts, landlord/tenant matters do not dominate the civil calendar. More civil cases involve debt and "moving land boundaries." Like the court in Gonaives (Sud), the court in Lavallee du Jacmel has adopted a progressive system of scheduling cases by type on fixed days of the week. Few of the litigants are represented by counsel in the court. Both the judge and the clerk are serious and committed to their duties and have prominently displayed in the courtroom/office a letter from the MOJ about hours of court operation.

The clerk enters the notice of complaint in a notebook and prepares the subpoenas for the hearings, most of which are conciliation sessions. At the end of the case the clerk, who is now without secretarial assistance, types the order of the court or the conciliation document. A defendant who fails to pay as agreed is summoned again and a judgment is dictated by the judge and typed by the greffier.

The court operates one the first floor of the municipal building; the mayor provides storage space for the court. Court sessions are held in the single room used also by the judge and clerk as their office. The greffier has not been provided with a desk; the judge and the greffier share a desk the judge brought from his home. The court is equipped with a typewriter and a filing cabinet.

Ennery

A visit to this court was frustrated by its being closed, presumably because of the strike. The clerk did, however, attend the training seminar on the following day. He was articulate, asked questions, made suggestions, and was interested in the benefits which will flow from the introduction of the case registration form.

Delmas

This court is not one of the sites using the case registration form. Of all the courts visited it seems most like a thriving metropolitan court with lawyers and litigants conferring in corridors and the general activity of a busy court. The clerks are stationed in a large room at conference tables rather than desks. Lawyers approach bringing documents for filing and processing. It was plain from the stacks of paper and the ledgers that the court has a high volume and should benefit from the simplified record-keeping possible with the case registration form. Retrieval of information about cases is difficult and unwieldy, they are filed by the name of the judge to whom the case has been assigned rather than in a central system. The clerks are comfortable with the ledger-based system they now use but were hesitant when asked about categories of

cases and the number of pending or disposed cases. These gaps of information should be filled and easier retrieval of basic case information made possible with the introduction of the new system.

Appendix III

Oversight and Compliance Issues Seen During the Case Tracking Evaluation

By Samuel Conti, Esq.

One solution to detention delays would be for a judge to be stationed at or near each jail to review commitments and detentions and to order release of those improperly committed or held beyond the permissible limits for pre-trial detention. This oversight duty could be assigned to the eight judicial inspectors in the MOJ dispatched from Port-au-Prince. Since August 1995, those appointed as inspectors have been licensed lawyers. While these staff members may be able and committed -- and they are certainly working under a Director of Judicial Affairs who is -- the discharge of their responsibilities from the capital is frustrated by the lack of transportation and funds for travel. The inspectors should be guided in their duties by an Inspector General rather than reporting directly to the Director of Judicial Affairs who already has significant and demanding duties. An impasse exists and should be broken quickly in the Ministry of Justice over the appointment of an Inspector General.

Among the duties assigned to the inspectors but evidently not performed by them for lack of transportation and travel funds are such key administrative oversight functions as reviewing endemic absenteeism in the justice of the peace courts, monitoring payroll lists, examining facilities, analyzing case registers, orders, and judgments for accuracy and timeliness, and reviewing prisoner detention information. Jail lists are provided to the MOJ (with the assistance of Checchi) by MICIVIH 2-3 times each month. The Director of Judicial Affairs is not confident that the lists are reviewed in a timely fashion by prosecutors or clerks of court to comply with the 48-hour detention review and release provisions of the law. It appears that there is a divided responsibility between the prosecutor and the clerks for moving the cases of prisoners held beyond 48 hours. Failure to do so is common and pre-trial detention often far exceeds the sentence to which the defendant could be exposed in the event of conviction. The persistence of pre-trial detention and delay is tragic and must be corrected. One step is mandatory daily monitoring of all held in custody and speedy hearings on release. Although there are provisions for bail, there is no evidence that prisoners are released under bail conditions.

The inspectors do not routinely review court performance statistics; that function has been assigned to a statistical services unit in the MOJ. Although the inspectors do not examine customer service in the courts, Checchi is now training those in the MOJ who are to monitor these services. Reposing this review responsibility in the hands of local judges, under the principle of subsidiarity, with oversight by the inspectors, may yield more immediate results. Accusations have been directed at the judicial inspectors as trying to influence judicial decision-making. There was no evidence of such pernicious conduct during this evaluation. In fact, little evidence was found of the inspectors having any meaningful presence in the field owing to

inadequate funding for travel or per diem expenses. The name for the judicial inspectors should be changed to judicial technical assistants. It is possible that this staff with more training and successful field experience could form a cadre of court administrators who could be deployed around the country to assist in the modernization of court management, including case, financial, records, human resources, facilities, and supplies and equipment.

Employing principles of control, monies flowing into (e.g., fees, fines, and costs) and through (e.g., restitution) the courts must be strictly accounted for. A column should be created on the registration form showing the amounts required to be paid and when and how much is tendered to the court. Amounts shown on the registry should then be reconciled by internal court auditors against amounts distributed to the national treasury or to private parties.

Although it is beyond the scope of the case tracking segment of the evaluation, some comments on future directions and positive steps for the Judiciary in Haiti may help. During visits and conversations in the courts it became clear that the court system needs the following: (1) a clearly defined judiciary as a separate and co-equal branch of government operating under the leadership of the highest judicial body of the nation, (2) assistance, but not intrusion, from the Ministry of Justice until the time the courts are able to manage their own internal affairs without the involvement of an executive branch agency, (3) formation of an administrative leadership corps within the judiciary to help implement changes in the courts, (4) immediate activation of the Conseil Supérieur de la Magistrature to oversee the development of a truly independent judiciary, separated to the greatest extent possible from control by the Ministry of Justice, (5) a body of rules governing practice, procedure, and administration of the courts and court-related offices at all levels, (6) a cadre of independent, well-trained, and honest judges, clerks, and other court employees, who are fairly compensated and respected, (7) a statement of ethical standards and rules that are strictly followed and rigorously enforced, (8) appointment, training, and funding a group of judicial inspectors, renamed judicial technical assistants, who can be stationed around the country or dispatched as needed to courts to help train, answer questions, and solve day to day problems, (9) a strategic plan formulated to guide the long-term development of the judiciary, and (10) a commitment by the national government and donor nations to provide for suitable training, supplies, equipment, and facilities for in the courts.

Each of these needs, and several more, could be the subject of intensive analysis, program design, and technical assistance. Until these are achieved, the incremental steps being taken in the courts with the help of donor nations and organizations like Checchi should be supported and monitored carefully to insure that talents and monies are used wisely and well, and most important, that the people are faithfully served. The help of outside agencies and donor nations alone will not be sufficient; political will exercised by the national government is a necessary pre-condition to the improvements in the judiciary recommended in this evaluation. The building of a strong and independent Judiciary must be given high priority by the President and the national government. Absent that leadership and engagement, demand for justice from local organizations and a committed Bar are the best hope for an improved court system built from the ground up. A public education campaign to stimulate confidence and knowledge about the

proper role and functions of the courts will build demand for the kinds of court services the people are entitled to.

In a famous 1949 comment on the improvement of courts, Arthur T. Vanderbilt, a Chief Justice of New Jersey and a leader of modern state court administration in the United States said, "Manifestly judicial reform is no sport for the shortwinded or for lawyers who are afraid of temporary defeat." The Haitian justice of the peace courts, indeed all of the courts of the nation, must enlist in this endeavor. But the judges and clerks and other court employees cannot make the needed improvements alone. The upper courts must guide and encourage, lawyers must give of their time and talent, the national government must be attentive to the needs of the courts, the Ministry of Justice must play its part, the people of the country must be given reason to be confident in their courts, and the donor nations must continue giving financial and expertise to this venture. It may take a generation but the prize is the health of the nation reflected in the sound and fair administration of justice.

Appendix IV

Alternative Dispute Resolution (ADR): A Possible New Activity Within the AOJ Project

USAID has not included ADR activities in its AOJ Project; however, other donors have done so. In late 1996 and early 1997, USIS and the University of Florida organized a conference on ADR in Port-au-Prince and St. Marc for NGOs. Several NGO members were also selected to go to Florida to attend ADR conferences. MICIVIH recently completed a two-day intensive seminar on alternative dispute resolution as part of the pilot program at the Judicial School and did extensive field training on the subject last Fall working with the justices of the peace.

ADR is a potentially effective way to reduce congestion in the courts. It is currently practiced informally and formally at many levels of Haitian society. Donor assistance, thus far, has focused on instruction at the formal level without field follow-up to ensure that concepts and practices taught during training have, in fact, been implemented.

Recommendation

- That USAID consider incorporating ADR activities at both the formal and informal level into the AOJ Project to include training and field work to ensure that concepts and practices taught are, in fact, implemented.

Appendix V

Courses Given at the Judicial School

Courses in the pilot program at the Judicial School are divided into functions and substance ones. They are as follows:

Courses on functions of:

Justices of the Peace
Prosecutors
First Instance Judges
Juvenile Judges

Substantive courses:

Alternative Dispute Resolution
Civil Law
Commercial Law
Comparative Law
Criminal Law
Diplomatic Privileges and Immunities
Execution of Judgments by Courts Marshal
Human Rights
Intellectual Property Law
Judicial Ethics
Labor Law
Law and Medicine
Legal Methodology
Narcotics
Rural Property Law
Surveying