

NATIONAL CENTER FOR STATE COURTS

Quarterly Report # 4

July 1, 2006 – September 30, 2006

IQC Contract No. DFD-I-00-04-00176-00

Task Order No. DFD-I-02-04-00176-00



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**UNITED STATES AGENCY FOR
INTERNATIONAL DEVELOPMENT**

National Center for State Courts

HAITI RULE OF LAW PROJECT
Quarterly Report No. 4
Reporting period: July 1 through September 30, 2006

A. PROJECT GOALS

This report outlines the activities conducted by the National Center for State Courts (NCSC) under the Haiti Judicial Strengthening and Reform Program during the fourth quarter. The purpose of this two-year project is to conduct three types of activities: 1) strengthen the administrative, management, and technical capacity of the courts and parquets through training and technical assistance to the justices of the peace, judges, prosecutors, and court personnel; 2) address pretrial detention issues by improving the flow of cases through the police stations, prisons, and courts; and 3) improve citizen links to the judiciary through increasing citizens' awareness of their rights and access to legal services.

B. HIGHLIGHTS OF THIS REPORTING PERIOD

- The new Minister of Justice presented three draft bills related to the independence of the judiciary to members of the judiciary and various stakeholders. The most significant bill modifies the Judicial Council that the transitional government established. NCSC sponsored a presentation by a specialist on findings and current trends of judicial councils in Latin American countries to provide comparative information to selected key stakeholders involved in discussions about the Council, as well as commentary on the draft legislation.
- NCSC is seeking to increase the understanding of parliamentarians and executive branch officials about principles of democratic governance in general and the importance of judicial independence in particular, by sponsoring activities on these topics for members of the justice and the security commissions of Parliament.
- From September 17 to 23, police officers, prosecutors, and investigative magistrates participated in a study tour to Costa Rica on enforcement of drug laws. The program focused on investigative techniques and preparation of cases, which have been identified as weak in Haiti. The Minister of Justice, who will establish special units to fight drug trafficking, selected the participants.
- NCSC conducted training sessions for more than 200 justices of the peace (JPs) and clerks on the new Rules of Practice for the JP courts that the transitional government adopted.
- Special hearings were conducted during the judicial summer vacation at the Port-au-Prince First Instance Court to reduce the backlog of pretrial detainees, primarily in the

National Penitentiary. Described as very successful by the local press, the hearings resulted in 81 cases heard, with 73 final decisions handed down for 117 detainees.

- NCSC is involved in a series of field trainings for prosecutors nationwide in conjunction with MINUSTAH. Prosecutors in 7 out of 15 jurisdictions have received training to date. The program focuses on three topics: 1) prosecutors' guidelines; 2) interactions between prosecutors and investigative magistrates; and 3) procedures around immediate appearance of arrestees.
- Draft Internal Rules for the Port-au-Prince (PAP) First Instance Court were completed. Once adopted, these Rules will serve as the model for all jurisdictions in the country. NCSC will support implementation of these rules nationwide.
- NCSC is engaged in a process to study and ultimately improve case flow in the courts. The current absence of a coordinated and efficient approach results in delays in case processing at all levels of the penal chain. NCSC data collectors have completed the collection of information in two of our three pilot jurisdictions, St-Marc and Petit-Goave.
- Currently, women employed as judges and prosecutors represent only 6.4% of the total number of legal professionals holding these positions. NCSC developed a set of data collection instruments to identify the causes for such low representation. Data collection was completed during this reporting period.

C. TASK-SPECIFIC ACCOMPLISHMENTS DURING THE REPORTING PERIOD

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

- **Judicial Council**

The newly elected government's Minister of Justice presented three draft bills related to the independence of the judiciary in a workshop to members of the judiciary and various stakeholders. The most significant of these bills modifies the Judicial Council that the transitional government established. This Council was vested with key administrative and budgeting functions to provide independence from the executive branch. The proposed legislation does not reserve any of these functions to the Council, leaving the Council only with oversight of traditional disciplinary matters. These proposed changes were criticized by most of the participants at the workshop, judges and members of bar associations. Following participants' recommendations, the Minister has agreed to revise the proposed bill and hold another similar consultation.

To enrich the overall debate on the Council, NCSC provided the opinion of an international specialist on the new draft legislation. His views were shared during the workshop. To provide key stakeholders involved in discussions about the Council with

comparative views, NCSC sponsored a presentation by a specialist on findings and current trends of judicial councils in Latin American countries. Selected guests included the Head of the PAP Bar, a former Minister of Justice, the President of the Senate Judicial Commission, the Vice-President of the House of Deputies Judicial Commission, and the President of the current Judicial Council. Surprisingly the discussions did not center on the composition of the Council, but rather on the nomination of judges. Everyone except the current president agreed that the Council should include civil society representation. Regarding judicial nomination, participants did not agree on the interpretation of a Constitutional disposition that states that local elected officials should suggest names for judges to the Senate. Most participants adopt a narrow reading of this disposition, while the President of the Council believes that the disposition does not prevent the Council from providing a short list of names. He is concerned that local elected officials may not have the ability to evaluate the expertise of jurists.

- **Support to Parliament**

NCSC is seeking to increase the understanding of parliamentarians and executive branch officials about principles of democratic governance in general and the importance of judicial independence in particular, sponsoring activities that involved members of the justice and security commissions of Parliament. Participants met with several members of the judiciary, in PAP and in one province, who presented the difficulties and challenges they face in their positions. Members of the commission asked to develop a long-term technical assistance program that could include field visits in jurisdictions, publication of a newsletter, trainings, technical assistance with draft legislation that affect the legal sector, facilitation of public vetting of draft legislation, presentation of a “state of the judiciary” report to Parliament, creation of links between justice committee parliamentarians with their counterparts in other countries, and inclusion of judicial committee parliamentarians in study tours where appropriate. NCSC will work closely with the new USAID project implemented by the State University of New York.

The government requested that NCSC provide assistance in designing and implementing a justice agenda for the Parliament. NCSC has agreed, and is providing a full-time staff position to the Ministry of the Relation between Parliament and the Executive to assist in coordination of activities and drafting of legislation that affects the judicial sector, requiring special expertise.

- **Rules of Practices for JP Courts**

Following the transitional government’s adoption of the Rules of Practice for the JP courts in December 2005, the MOJ agreed to implement the Rules around the country. Several international organizations are involved in this exercise, each responsible for conducting training in specific jurisdictions. Prior to these trainings, the cooperating organizations conducted a train-the-trainer program to establish a core group of trainers with a consistent curriculum. To date 11 workshops have been held for more than 200 JPs and clerks in Mirebalais, St-Marc, Petit-Goave, Les Cayes, Aquin, Coteaux, Anse-a-veau, Jeremie, Cap-Haitien, Hinche, and Jacmel. The curriculum focuses on the administrative

and management aspects of the JP courts. At each training, a follow-up committee of three JPs was elected to conduct court visits, monitor implementation of the rules, and provide feedback to the JPs and clerks. The committee will report monthly on its activities. The JPs have requested additional materials and training. NCSC has bought 185 copies of basic codes for JPs (criminal, criminal procedures, civil procedures) that will be distributed shortly.

- **First Instance Court Rules of Practices**

At the request of the Dean of the PAP First Instance Court and the MOJ, NCSC commissioned a consultant to prepare a draft of the rules for the First Instance Court that will be presented to members of the judiciary in PAP. The Rules contain 118 dispositions that address topics including: court organizational structure, administrative tasks of the Dean, financial management of the Court, organization of general assembly of the judges and the clerk's office, organization of court hearings, and the tasks of the bailiffs. Once adopted, the document will serve as a model for all jurisdictions in the country. NCSC will support their implementation nationwide in conjunction with MINUSTAH and other donors.

- **Study Tour: Costa Rica**

From September 17 to 23, ten members from the penal system participated in a study tour to Costa Rica on enforcement of drug laws. The program focused on investigative techniques and preparation of cases, which have been identified as weak in Haiti. The Minister of Justice, who intends to establish special units to fight drug trafficking, selected police officers, prosecutors, investigative magistrates, and a representative from the Ministry of Justice to participate.

During the tour the participants met with the Costa Rican Minister of Justice, the Minister of Public Security, and the Chief Justice of the Supreme Court. They visited prisons, investigative agencies, medical-legal labs, courts, prosecutors' office, legal aid assistance facilities, and the Ministry of Justice.

Since their return, the participants have held a debriefing session and have made plans to share their experience with a large audience of colleagues. Steps towards the establishment of special drug units will be taken with the Minister of Justice in conjunction with Ministry plans. NCSC will provide technical and material assistance with related trainings.

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

During the summer vacation, NCSC and representatives from the State Law School took the opportunity to elicit feedback from the participants and the teachers on the first semester. Focus groups were held with the students, many of whom voiced the opinion that two of the three school's designated tracks do not offer them sufficient future employment perspectives, and are duplicative of currently available educational

opportunities. They also expressed concern that these options do not open doors for those who would like to become scholars. Professors echoed these concerns. It was agreed that NCSC would support a small committee of professors to review program orientation and the curriculum. A 24-page report has been produced and shared with the law school administration. Discussions are underway to refine the program design and curriculum, and these changes will be integrated into a final program before it begins again.

- **Caseflow**

NCSC is conducting a study of case flow in the courts. The current absence of a systemic approach to case processing results in case processing delay at all levels of the penal chain. NCSC developed a case flow diagnostic tool customized to the Haitian system. Over this quarter, data collectors completed the collection of information in two out of our three pilot jurisdictions, St-Marc and Petit-Goave (see table below).

Port-au-Prince has turned out to be much more challenging. For example, only 14 file folders for cases closed after trial can be located to date. Data collectors could not determine the total number of cases, and none of the authorities could provide answers or indications on where these files are located or why they are unavailable.

Once data collection is completed, the data will be analyzed to identify issues, and the results will be presented in a symposium to stakeholders. The goal of this symposium will be to create a standard case flow system that will be implemented in pilot jurisdictions before being rolled out nationwide.

Petit Goave	2004-2005 Number of cases inventoried	2004-2005 Number of file folders found	2004-2005 Number of Filled questionnaires	2005-2006 Number of cases inventoried	2005-2006 Number of file folders found	2005-2006 Number of filled questionnaires
Petit Goave						
Delit convictions	30	4	4	37	7	7
Crime convictions	0	0	0	7	7	7
Dismissed by Prosecutor	124	59	59	120	83	83
Dismissed by investigate Magistrates	0	0	0	4	4	4
St Marc						
Délit convictions	23	13	13	31	23	23
Crime convictions	12	12	12	7	7	7
Dismissed by Prosecutor	140	96	96	136	41	41

Dismissed by investigate Magistrates	5	5	5	7	7	7
Port-au-Prince						
Delit convictions					14	14
Crime convictions						
Dismissed by Prosecutor	224	103	35	217	155	51
Dismissed by investigate Magistrates	92	82	27	115	94	31

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

- **Special Hearings**

From July 24th to September 14th, special hearings were conducted at the PAP First Instance Court. NCSC provided technical and material assistance, including stipends for participating judges, prosecutors, clerks, bailiffs, and legal assistants, who all worked together during the judicial summer vacation to reduce the backlog of pretrial detainees, primarily from the National Penitentiary. Described as very successful by the local press, the hearings resulted in 81 cases heard, with 73 final decisions handed down for 117 detainees. Of these cases, 72 individuals were convicted and 45 acquitted. In addition, seven jury trials were organized in which one individual was acquitted while six others will need new trials. Last year, according to UNDP statistics, a significant number of cases were disposed of during the NCSC-supported special hearings period (August to November), up to 3 times more than the yearly average (59.5% vs.12.7%).

Encouraged by the success of the special hearings, the Dean of the PAP First Instance Court has publicly stated that he will now organize up to 45 sessions per week, as opposed to the past average of 15, and it will be done without external financial assistance. For these sessions, NCSC will support only legal assistance through the PAP Bar.

The Dean also announced the organization another session of jury trials for December. This represents significant progress not just in the recognition of the problem but in affirmative action to address the issue; usually only one session of jury trials is held per year. This should contribute to a decrease in the average length of time that pretrial detainees charged with crimes requiring jury trials are held. NCSC will provide funds for legal assistance. Training for JPs around organizing jury sessions will be scheduled, as some difficulties were encountered this summer in jury recruitment procedures.

- **Prosecutors Guidelines**

To ensure nationwide uniform implementation of new procedures develop by NCSC for courts, and maximize their impact, NCSC and the MINUSTAH Rule of Law Division agreed to organize workshops for prosecutors. Training material was developed and training of trainers conducted. The program will be conducted in conjunction with the Magistrate School and the MOJ to provide for the sustainability of these trainings. In this reporting period, prosecutors and other members of the judiciary in 7 out of 15 jurisdictions have received training. The program focuses on three topics: 1) prosecutors' guidelines; 2) interactions between prosecutors and investigative magistrates; and 3) procedures around the immediate appearance of arrestees. Discussions on the last topic have been particularly welcomed. According to the participants in the trainings, the application of this measure could have a significant impact on pretrial detention practices. This procedure allows the prosecutor to bring the arrestee caught in "flagrant delit" directly to court instead of holding the arrestee in detention, and thus could avoid unnecessary pretrial detention. Most arrestees are taken directly to prisons, and usually it takes several weeks if not months before they appear in court. This procedure has been lawful since 1927 but not used for many years. For the maximum effect, it will require established and accepted procedures both at the prosecutors' office and at the First Instance Court.

- **Exit Survey**

Following the completion last quarter of a study of pretrial detention patterns in Haiti, which included an exit survey of closed cases from the National Penitentiary as well as a snapshot of the prison population as of November, 2005, NCSC prepared the organization of the symposium to be held on October 19-20. Findings and issues that the report raises will be presented at a symposium to an audience of stakeholders and donors; more than 125 people have been invited. After presentation of the study, NCSC will elicit feedback from participants through work sessions, focusing on the most disturbing finding of the study, the extremely low rate of convictions, which is currently around 3%. NCSC will assist in implementation of the recommendations emanating from the symposium.

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

- **Roving JPs**

One of the new Minister's top priorities is promoting accessibility to courts for citizens who live in remote areas. As a result, the Minister and his team are supporting the effort to establish a roving JP program. The program as originally envisioned by NCSC and the previous administration was modified slightly at the request of the MOJ. Among a list of 136 zones where recently elected parliamentarians have expressed the wish to see the establishment of new Justice of Peace Courts, the Minister has identified 4 areas where pilot programs can begin. Judges will travel by motorbikes to outlying areas on market

day to provide civic education and conciliation sessions. After the test period in these zones, the government will open permanent Justice of Peace courts in these zones. NCSC has designed baseline data collection instruments with input from a local specialist to measure the impact of this activity, and data collection will begin soon.

- **Women Judges Association**

Information provided by the Haiti Women Judges Association indicates that there are currently only 45 women working as judges and prosecutors at various levels in the judiciary, out of a total number of 700 judges and prosecutors nationwide, representing only 6.4% of these professionals. NCSC developed a series of data collection instruments to identify the causes for such low representation. During this reporting period NCSC, the Women Judges Association, and 15 data collectors have completed the data collection under the supervision of a local specialist, a professor of law and anthropology. Three hundred individuals have participated in the study: 150 students from 3 law schools (PAP, Gonaives, and Quisqueya, a private institution), 50 individuals close to the students (such as parents), 50 individuals from selected legal institutions such as MOJ and ANAMAH, and 50 individuals from various fields.

This coming quarter, representatives of the Women Judges Association, with the assistance of the specialist, will analyze the results of the study. Once the problems are identified, NCSC will work with the Association to develop activities to address the issues.

D. DONOR COORDINATION

The Minister of Justice recently held a first meeting with all international organizations involved in the field of justice sector development. The participants agreed to establish seven sub-committees to move the Minister's plan of action forward in the most efficient way,: 1) Training (i.e., Magistrate School), 2) Access to Justice (i.e., roving JPs, fee scale), 3) Legal Assistance, 4) Pretrial Detention, 5) Justice Institutional Reform (i.e., Judicial Council, MOJ, legislative reform), 6) Civil Registry, and 7) Prisons. This approach will avoid duplication of efforts and maximize results. Regular meetings will be held for each sub-group and a calendar of activities prepared. This structure will also be used to implement the five-year strategic plan that the Minister will present in the near future. At the request of the MOJ, NCSC will provide one full-time local consultant to coordinate donors and one consultant to work on the design and implementation of the five year strategy.

Because NCSC's proposed activities in its new workplan complement the Minister's plan of action, he has shown great interest in providing support to NCSC's current and proposed activities. It is significant that there is continuity with the work begun under the previous government. For example, the Minister is prepared to move forward the fee scale NCSC prepared, the JP rules of practices, the prosecutor guidelines, and the roving

JP program. He has specifically requested our support for the reopening of the Magistrate School and the establishment of the judicial inspection unit.

E. DIFFICULTIES ENCOUNTERED AND ACTIONS TAKEN TO RESOLVE THEM

To date NCSC conducted many activities which led to the adoption of various documents designed to improve efficiency in the justice system in general and courts in particular. Related trainings have been performed in almost all jurisdictions around the country. Sustainable follow-up structures need to be put in place to ensure that the work done will reach the ultimate goal: more accessible and efficient courts. NCSC intends to achieve this goal through several means. First, in conjunction with other international organizations and the MOJ, NCSC will establish a functional judicial inspection unit that will be tasked with oversight of the financial and administrative functioning of courts, notably the enforcement of the various rules previously outlined. NCSC and other donors have agreed to support follow-up groups that members of the judiciary in the jurisdictions establish, which experience here has showed is an effective means of reinforcing new rules. In the next quarter, NCSC will launch a court monitoring program, whereby civil society groups will monitor the conditions and operations of courts. Finally, NCSC will reinforce new procedures and practices through staff working on-site to support court personnel in all of its pilot jurisdictions. These measures will complement each other and provide the support necessary to assure sustainability of project activities.