NATIONAL CENTER FOR STATE COURTS

HAITI RULE OF LAW PROJECT

Quarterly Report No. 7

April 1, 2007 – June 30, 2007

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UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT

National Center for State Courts

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Reporting period: April 1 through June 30, 2007

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 third quarter of FY 07. The purpose of this two-year project is to conduct three types of activities: 1) strengthen the administrative, management, and technical capacity of the courts and parquets through training and technical assistance to the justices of the peace, judges, prosecutors, and court personnel; 2) address pretrial detention issues by improving the flow of cases through the police stations, prisons, and courts; and 3) improve citizen links to the judiciary through increasing citizens' awareness of their rights and access to legal services. NCSC is focusing its efforts in three jurisdictions in coordination with other donors, Port-au-Prince, St. Marc, and Petit-Goave.

B. HIGHLIGHTS OF THIS REPORTING PERIOD

- The two NCSC advisors to the Ministry of Justice (MOJ) are active in several important and on-going efforts, including the re-opening of the Magistrates' School, the preparation of the MOJ FY08 budget, and the restructuring of the MOJ.

- The NCSC-sponsored Parliamentary Justice Commissions meetings have concluded with a series of public consultations on three draft bills related to the independence of the judiciary. Assisted by an NCSC technical specialist, the Commissions have prepared these draft bills. A Justice Commission that President Preval established is harmonizing these bills and others prepared by the MOJ on the same subject.

- The Pretrial Detention Commission that the Minister of Justice established has begun its work in Port-au-Prince. The Commission collected data, verified information, visited prisons, met detainees, and met with members of the judiciary. It has identified several irregularities which are listed in a detailed report released to the media and the public in early July. NCSC is providing technical and material assistance to the Commission.

- NCSC supported special hearings in St. Marc. Of 14 persons tried, 11 were convicted, 2 were found not guilty and 1 verdict remains outstanding, most involving serious crimes. NCSC commissioned the Bar Associations in its jurisdictions to prepare a high impact legal defense program, which will provide legal defense for those defendants subject to the immediate hearings procedure, and to those defendants without counsel who have been held in pretrial detention for the longest periods.

- In conjunction with MINUSTAH, NCSC completed a series of field trainings for prosecutors in all jurisdictions. This quarter 60 court professionals were trained, for a total of 515 trained since the beginning of the program. NCSC also conducted cross-sector trainings for 56 justice personnel on pretrial investigative techniques in St. Marc and Petit-Goave.

- NCSC has launched a new effort to determine the principal causes of the low conviction rate identified in its pretrial detention study. NCSC has convened experts in focus groups and is currently conducting an analysis of about 300 dismissed cases.

- NCSC organized a workshop with stakeholders on the introduction of a standard qualifying exam for entry into the practice of law. It was agreed that NCSC will assist in the development of the process leading to the establishment of a national exam.

- Roving JPs have begun their field visits. They met with local authorities and the population in their pilot sites to lay the groundwork to begin dispute conciliation sessions.

C. TASK-SPECIFIC ACCOMPLISHMENTS DURING THE REPORTING PERIOD

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

- **Support to the MOJ**

The two NCSC advisors assigned to the Ministry of Justice (MOJ) are active in several critical endeavors. They are providing assistance in the preparations to re-open the Magistrate School. They prepared job descriptions for the proposed staff positions, and are involved in the selection process for the directors, among other tasks. The Magistrate School has not been operational since December 2004.

The advisors are also both instrumental in the efforts to restructure the MOJ. This dysfunctional institution needs to be restructured in order to serve as the main vehicle for justice reform. During the reporting period, NCSC consultants worked on new reform legislation and an organizational chart.

Finally, one of the consultants has actively participated in the preparation of the MOJ FY 08 budget.

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

Most civil servants and parliamentarians in Haiti are not familiar with the legislative process. The NCSC legal adviser detailed to the new Ministry of Relations between the

Executive Branch and Parliament presented on May 7-9 an overview of the legislative process, and conducted a presentation of the legislative policies and procedures in Haiti. Forty key members of various ministries and their legal assistants attended the sessions. Some parliamentarians also took part in the event. It received wide coverage in the media.

The NCSC legal adviser is also involved in the following activities: a review of the electoral law, developing training courses on legislative drafting for members of the executive and some parliamentarians, and the establishment of a master's degree on public law finance by the GOH to develop qualified civil servants.

- **Support to Parliament**

During the reporting period the Parliamentary Justice Commissions have completed their series of public consultations (sponsored by NCSC) on three draft bills related to the independence of the judiciary. At the end of the second workshop on the status of members of the judiciary there was consensus that JPs and other magistrates in the judicial system deserve better career security and clearer regulations on their professions. That workshop was followed by two workshops on the Magistrate School bill. Attending these events were the President of the Supreme Court, representatives of the Minister of Justice, parliamentarians, former Ministers of Justice, members of the judiciary, and representatives of civil society and international organizations.

With the assistance of NCSC, the Justice Commissions representatives also conducted a field visit to Cap-Haitian to get the views of members of the judiciary and civil society on the bills.

Efforts to promulgate these two bills are crucial to the establishment of an independent judiciary in Haiti. For example, since the opening of the Magistrate School in 1995, no legislation has been passed to govern its function. Equally important, in the absence of a statute for members of the judiciary, the executive has significantly and repeatedly intervened in judicial matters.

The MOJ and the Parliamentary Justice Commissions (with the assistance of an NCSC specialist), have prepared parallel bills on these topics. All bills are being studied by a special Justice Commission established by the President. This Commission has been tasked to harmonize the two positions.

- **Rules of Practices for JP Courts**

In the last quarter, NCSC completed the final training session for justices of the peace and clerks on the new Rules of Practice for JP courts in all jurisdictions of the country. A total of 154 court professionals received training since the beginning of the program. NCSC is now supporting follow-up groups established to oversee the implementation of the rules in its pilot jurisdictions. This process marks the first time that various statistics including total case numbers, convictions, and referrals to the prosecutor's office will be

regularly compiled. The follow-up program is currently being expanded to all jurisdictions.

- **First Instance Rules of Practices**

Deans of the First Instance Courts in the three NCSC pilot jurisdictions have expressed interest in developing new internal rules of court. NCSC is supporting this reform by commissioning a consultant that has prepared the following: a draft of the rules of court, 154 dispositions which address organization of the Court and the Clerk's office, the administrative and financial tasks of the Dean, the organization of General Assembly of the Judges, the organization of court hearings, and clarification of the bailiffs' tasks. These rules were presented by NCSC consultants to members of the judiciary in St. Marc and Petit-Goave and to the Dean of the PAP Court of First Instance. In this quarter the Dean of the St. Marc court organized a general assembly of judges to adopt the Rules. Only slight changes were made to the documents offered by the consultants. NCSC expects the rules to be adopted in the next quarter in the remaining pilot jurisdictions of Port-au-Prince and Petit-Goave. NCSC will support the nationwide implementation of the rules of court using the same model that has proved successful with the prosecutors' guidelines and the JP rules of practices.

- **Code of Ethics for Court Staff**

A previously unaddressed area of concern is a code of ethics for court clerks and staff. Because court staff manages the movement of cases through the system, opportunities exist for payoffs resulting in lost files, documents, or evidence, or, in cases being moved up on the calendar. NCSC is currently assisting the National Clerk Association in the development of a code of conduct for court employees. Once such a code is adopted, a cadre of trainers will be developed to facilitate training for all court employees and to promote public awareness.

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

During the reporting period a new program director was appointed. He was previously responsible for recruiting foreign teachers to provide classes for the program. On a related note, the former head of the Magistrate School, currently a prosecutor in France, will teach courses on comparative criminal justice and criminal evidence from July 1st to 30th as an NCSC consultant.

Eighty students are presently enrolled in five classes, namely, Ethics in Judicial Administration, Organizational Behaviors, Administrative Law, and Judicial Methodology. An NCSC consultant continues to teach classes on international law.

NCSC purchased material (computer, printer, desk, chairs) for the program. They will be delivered early next quarter.

The first class of students is schedule to graduate in September 2007.

- **National Qualifying Exam for Lawyers**

The first meeting with the National Bar Federation association was held in Cap-Haitian on May 13th and 14th. Twenty-seven people attended the meeting, among them were 14 of the 16 Presidents of the Bar Associations in the country.

Several law schools are operating in Haiti, however, without an accreditation process, the quality of education varies widely. Most of the meeting participants favored a national bar exam, but others prefer to start a Bar school in each jurisdiction to upgrade the level of lawyers.

A follow-up meeting was organized by the National Bar Federation to discuss the issue with Deans of the schools of law. All finally agreed on the necessity to establish a national bar exam. It was agreed that the representative of the Federation would meet with officials of the Ministry of Justice and the Ministry of Education to discuss the idea.

NCSC will assist in the development of the exam, and most of the likely implementation steps, including: drafting of the authorizing legislation, development of procedures, development of the training curricula, recruitment and training the trainers, identifying and establishing training facilities, development of qualifying exam material, and administration and grading of the exam.

- **Training on pretrial investigative techniques**

Following a request from the Ministry of Justice, NCSC conducted trainings on pretrial investigative techniques with various members of the judiciary and police in St. Marc and Petit-Goave. Fifty-six court and law enforcement personnel were trained (22 in Petit-Goave and 34 in St. Marc). A booklet prepared by the French Cooperation and UNDP serves as a basis for the training.

Debates thus far center on the efficiency and timing of judicial/police investigations. The tardiness and even negligence of JP investigatory actions, lack of collaboration between the various actors in the penal chain, and the absence of effective prosecutorial oversight were cited as obstacles to the successful completion of pre-trial investigations.

Given this state of affairs, participants have agreed to meet every month to discuss specific cases and problems affecting the investigatory process as a whole. Because relationships between police and judges are often difficult, monthly meetings represent a significant step toward working collaboratively.

- **Case flow Study**

The final analysis of the data collected is being conducted now. NCSC local and international staff, along with a judge from the Supreme Court and a member of the board of the PAP Bar, is involved in the process. The analysis centered around four main

issues: 1) absence of clear interpretations of legal dispositions regarding time period in the system, 2) lack of coordination between penal chain actors, 3) corruption, 4) control and supervision (internal and external). The results will be presented in an upcoming symposium for stakeholders to promote development of a standard case flow system to be implemented in pilot jurisdictions, including reasonable time frames for processing at each step that comply with the law.

- **Distribution of equipment**

NCSC has begun distribution of office supplies and equipment to all of the Justice of the Peace and First Instance Courts. In a press conference with the Minister of Justice, NCSC provided four motorbikes for the pilot Roving JP programs. During the same event, 404 criminal and procedural codes were provided for distribution in all courts around the country. Copies of the Civil Code and Civil Procedure Code have also been purchased and will be distributed around the country. During the trainings on the JP Rules of Practice, many judges pointed out that they had no access to legal codes and books.

NCSC is currently in the process of distributing materials (files cabinets, book shelves, office supplies,) to all Justice of the Peace (JP) and First Instance Courts. To date materials have been distributed to 48 courts.

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

- **Pretrial Detention Symposium – Follow Up**

An NCSC study on pretrial detention in 2006 revealed a very low conviction rate, only 3%, nationally. NCSC has focused efforts to find out why the conviction rate is so low and how to improve it. As part of its research, NCSC conducted four expert focus groups, three in this reporting period, and numerous key informant interviews. For the next phase of the research project, NCSC will determine how the principal, justice system related causes of the low conviction rate discussed in the expert work groups are reflected in closed files and non-guilty verdicts. Through this case file research, NCSC will verify if the most commonly cited reasons for the low conviction rate in the focus groups, namely, lack of victim/witness participation, lack of evidence – i.e. forensic, medical, scientific, - poor file preparation, and lack of defense counsel, are in fact the reasons why cases are closed and non-guilty verdicts issued.

A total of roughly 300 closed case files from 2005-2007, for the jurisdictions of Port-au-Prince, St. Marc, and Petit-Goave, (100 closed files in each jurisdiction) will be examined at the following levels: Cabinet d Ínstruction, Parquet/Commisaire du Gouvernement, and Tribunal. NCSC will also convene additional justice system expert focus groups in Port-au-Prince. In September NCSC intends to report the results of the study and offer solutions to improve the problem.

- **Pretrial Detention Commission**

On June 14 the Commission on Pretrial Detention began its work. The Commission is tasked, in part, to identify cases of lengthy pretrial detention and make recommendations to expedite those cases. It is composed of two members from the MOJ, a representative of the Penitentiary Administration (DAP), the President of the PAP Bar Association, and a representative of the Office of the Ombudsman. To date, the Commission has collected data, verified prison and court information, visited prisons in Port-au-Prince, met with detainees, and consulted members of the judiciary. According to the information gathered through May 31, there are currently 18 individuals in detention despite a release order already issued, 50 in detention longer than the maximum allowable sentence by law, 86 convicted in court but not yet administratively processed by prison authorities, and 69 whose cases have not been identified with an investigative magistrate. The Commission will produce a detailed report with recommendations in early July. The report will be sent to the MOJ, Judicial Council, and local authorities.

The NCSC pretrial detention coordinator is providing technical guidance to the Commission. NCSC is also supplying material assistance to the Commission (i.e., a vehicle, computers, printer, and other office materials)

- **Special Hearings**

The Dean of Court in St. Marc requested assistance to organize special hearings in order to process a number of felony cases. Of the15 cases submitted for court review between March 26 and April 4, 13 had been in pretrial detention for more than 2 years, while the other 2 were in detention less than 1 year. NCSC supported the cost of transportation and meals to court and law enforcement staff. This allowed bailiffs/sheriffs to collect witnesses and victims, and for police, court staff, and defendants to receive food and water to continue lengthy trials that sometimes lasted overnight. (Note: As part of the NCSC study to understand the low rate of conviction in Haiti, around 3%, the absence of witness and victims appear to be important factors in hampering prosecutors' ability to obtain a conviction).

In the end, 14 of the 15 persons accused were tried, 11 were convicted, 2 were found not guilty and 1 verdict remains outstanding. Most of the cases involved serious crimes including attempted assassination, criminal conspiracy, unlawful restraint, arson, armed robbery, carjacking, and theft. Six were sentenced to life in prison, 2 to 15 years in prison, 2 others to 3 years in prison, and 1 to 9 years in prison. Given that hearings could proceed without even further delay and that the witnesses were transported directly to trial, these cases sent a powerful message that impunity would not be tolerated in St. Marc.

Similar hearings will be held in Port-au-Prince, Petit-Goave, and again in St. Marc this summer to help reduce the backlog of pretrial detainees.

- **Legal Assistance**

To address pretrial detention in its identified jurisdictions, NCSC commissioned the Bar Associations in St. Marc and Petit-Goave to prepare a high-impact legal defense program. There are two main components to this program. The first is to provide legal defense for those defendants subject to the immediate hearings procedure prescribed in law. This procedure allows the prosecutor to bring the arrestee caught in "*flagrant delit*" directly to court instead of detention. The second is to identify and provide legal assistance to those defendants who have been in pretrial detention the longest without legal counsel. Taken together, these programs should address pretrial detention in both jurisdictions.

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

Several meetings were held between organizations interested in the development of a more efficient and accurate UNDP/DAP data base. The NCSC computer specialist detailed to UNDP/DAP explained that the problem with the current data base is not one of software capacity, but rather of structure. The current system uses the "numerou d'ecrou" instead of a unique code for each detainee. As a result, if a detainee is transferred from one detention center to another, a new "numero d'ecrou" is established. These changing numbers makes it very difficult to track detainees. The system should be focused around one single code number.

The program permits only one charged offense per entry. For instance a detainee charged with several counts appears for each count on the data banks instead of once with all counts. This also creates "doubles" and contributes to system inaccuracies.

It was agreed that a clear "cahier de charge" should be prepared including all operations to be requested on the data bank. The NCSC computer specialist will translate those requests into computer language and prepare a RFP.

A team composed of representatives from MINUSTAH, UNDP, NCSC UNDP, MOJ, and APENA began to work on the "cahier de charge."

- **Prosecutors Guidelines**

In conjunction with MINUSTAH, NCSC has completed a series of field trainings for prosecutors in all jurisdictions. This quarter trainings were held in St. Marc and PAP. Sixty court professionals attended the trainings, for a total of 515 participants in FY 07. This program focuses on: 1) the new guidelines for prosecutors; 2) interaction between prosecutors and investigative magistrates; and 3) procedures for immediate appearance of arrestees and how to implement them (the latter training occurs on the second day of each session).

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

- **Roving Justices of the Peace (JPs)**

During this reporting period a press conference was organized with the Minister of Justice to launch the program. Shortly thereafter Roving JPs began their field visits in the following designated areas: St Marc (Goayavier, Brocozèlle), Verettes (Bastien 5ème Section, Terre Nette 6ème Section), Petite Rivière de l'Artibonite (Pérodin, Médor), and Petit-Goave Léogane (Marché Campan, Fondoua).

JPs met with local authorities and residents in their pilot sites to lay the groundwork for their tasks. A specialist provided them trainings on two civic education topics (civil registry, and citizens' justice) that they will replicate during their field visits. Another series of trainings is being prepared on land conflict and domestic violence. JPs will provide civic education and conciliation sessions in these remote areas on market day.

A second batch of six motorbikes has been purchased, training of other JPs is underway, and the activity will soon be expanded.

- **Customary Justice**

There is an absence of written information on customary practices that citizens use for dispute resolution in lieu of the formal justice system. Yet such a system surely exists, as many citizens are prevented from accessing the formal system due to finances, geography, language, education, or mistrust. NCSC is engaged in a review of customary law practices in Haiti with the goal of better integrating the formal legal system with these customs where possible, and strengthening customary practices where appropriate. An NCSC local specialist is presently preparing a review of all the literature on the subject matter. He will present his report in early August.

- **Gender Study**

NCSC continues to explore the reasons for the low percentage of women holding public legal positions**.** Data collected at the national law school and the MOJ demonstrates that the percentage of women who graduate law school is similar by percentage to those holding positions in the judiciary. This implies that there is no question of gender discrimination in hiring at the MOJ. The data also showed that there is no significant difference between the percent of women who applied to law school and were accepted as compared to the same ratio for men. Data has been collected and is being analyzed of graduating high school girls to help pinpoint the reasons why young female grads do not embrace the legal profession or study law in higher proportions.

D. Indicators for this Quarter

During the reporting period the following results were achieved relating to NCSC targets (for more details see Indicators Table, 3rd quarter 07).

2.1.3 Number of days in pretrial detention: 174.16 days

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

2.1.3.2 Number of people visiting the USG supported legal service centers serving low income and marginalized communities (0)

2.1.3.3 Number of Courts operating in areas of low-income population with USG assistance (48)

2.1.3.4 Number of USG assisted courts with improved case Management/Low Income (11)

2.1.3.5 Total number of Justice Sector personnel that received USG training (214)

2.1.3.7- List Institutions and Associations Assisted by USG (7) (N.B. Includes the following: MOJ, Parliamentarians Justice Commissions, Ministry of Relations between the Executive Branch and Parliament, State Law school, National Clerk Association, Prison Administration (DAP), National Federation of Bar Association.

E. DONOR COORDINATION

Lack of leadership, lack of concrete action, and inconsistent coordination with donors have characterized the past year of interactions at the Ministry of Justice. The situation has only recently started to improve. In early 2007, President Preval established a Justice Commission composed of stakeholders from civil society, the international community and parliamentarians. The Commission was given two tasks: 1) review of justice reforms efforts over the past several years, and 2) develop a list of urgent actions.

On June 13 the Commission presented the results of its work. It was well received by stakeholders and the public alike.

Among the Commission's short term recommendations are the following: establishment of immediate hearings procedures, a judicial inspection unit, a pretrial detention commission, a temporary detention facility during construction of a new prison, specialty courts (i.e. money laundering), revamping of the legal fee scale, the re-establishment of the Magistrate School, draft legislation to restructure the MOJ, and the establishment of a national legal aid program.

Most of these related activities are already part of the NCSC workplan. Following the Commission's report momentum is growing, including better coordination with international organizations.

F. DIFFICULTIES ENCOUNTERED AND ACTIONS TAKEN TO RESOLVE THEM

As mentioned above, since the inauguration of the Presidential Justice Commission Report, there is a new dynamic at the MOJ. Activities long anticipated are being addressed with surprising rapidity and efficiency. Such is the case with the Pretrial Detention Commission, the opening of the Magistrate School and the restructuring of the MOJ. Without these actions it is impossible to achieve tangible qualitative and quantitative measures in the field of justice.

Numerous errors in the UNDP database at the National Penitentiary have been uncovered. An NCSC technician has remedied those that he can, but it is clear that some convicted inmates were either held and convicted in other jurisdictions and then admitted to the National Penitentiary, or were held in a police station, taken to a JP court where they were convicted, and then brought to the National Penitentiary. With these groups of inmates, it is impossible to ascertain how long they were awaiting trial. Thus, the numbers reflecting "days spent in pretrial detention" cannot be determined with complete accuracy. The design of a new database is underway.