

**Haiti:**  
**Rule of Law Assessment**

National Center for State Courts

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## TABLE OF CONTENTS

	<b>Page</b>
I. <b>Executive Summary</b>	6
II. <b>Summary of Recommendations</b>	10
III. <b>Introduction</b>	13
IV. <b>Assessment Scope and Methodology</b>	14
V. <b>Findings</b>	16
A. Assessments of Past Efforts	16
1. Courts	17
2. Public Prosecutors Office	21
3. Magistrates School	23
4. Prisons	26
5. Ministry of Justice	27
6. Justice System	28
B. Factors and Constraints	32
C. Ministry of Justice Capabilities to Receive USAID Assistance	40
D. Assessment of Physical Condition of the Haitian Courts	44
VI. <b>Recommendations for Future Programs</b>	49
A. Strategic Planning and Donor Coordination	49
B. Legislative Reform	52
C. Institutional Organization and Management	56
D. Legal Education and Training	58
E. Professional Career and Standards	61
F. Court Administration & Management/Security	65
G. Legal Services/Access to Justice	69
H. Civil Society	71
I. Prisons	73
<b>Appendices</b>	
A. Literature review	75

B.	Contact list	77
C.	Discussion of proposed legislative changes related to judicial careers	79

### List of Acronyms

ANAMAH	National Association of Haitian Magistrates ( <i>Association Nationale des Magistrates Haïtiens</i> )
AOJ	Administration of Justice
APENA	National Penitentiary Administration ( <i>Administration Penitentiaire Nationale</i> )
ARD	Associates in Rural Development
BUCODEP	Bureau on Preventive Detention ( <i>Bureau de Controle de la Detention Preventive</i> )
CAI	Creative Associates International
CCI	Framework for Interim International Assistance ( <i>Cadre de Coopération Intérimaire</i> )
CSM	<i>Conseil Supérieur de la Magistrature</i>
DAP	Director of Prison Administration
DRL	U.S. Department of State's Bureau of Democracy, Human Rights and Labor
EU	European Union
FADH	Armed Forces of Haiti ( <i>Forces Armees d'Haiti</i> )
GAO	General Audit Organization
GOH	Government of Haiti
HNP	Haitian National Police
ICITAP	International Criminal Investigative Training Assistance Program
IFES	International Foundation for Election Systems
INL	U.S. Department of State's Bureau for International Narcotics and Law Enforcement Affairs

JP	Justice of the Peace ( <i>Juge de Paix</i> )
MAT	<i>Équipe des Conseillers Ministeriels</i>
MICIVIH	United Nations/Organization of American States' International Civilian Mission in Haiti
MOJ	Ministry of Justice
NCSC	National Center for State Courts
NGOs	Non-governmental organizations
OAS	Organization of American States
OPDAT	U.S. Department of Justice's office for Overseas Prosecutorial Development Assistance and Training
PAP	Port-au-Prince
PASA	Participating Agency Service Agreement
UNDP	United Nations Development Program
USAID	United States Agency for International Development
USDOJ	United States Department of Justice
WHA	U.S. Department of State's Bureau of Western Hemisphere Affairs

## I. Executive Summary

The Democracy and Governance Office of USAID/Haiti contracted with the National Center for State Courts (NCSC) to evaluate the impact and accomplishments of USAID programs in the justice sector in Haiti, carried out during the 1990's. Given the many rule of law assessments conducted in recent years in Haiti, this assessment does not repeat previous reports, but rather summarizes and evaluates rule of law programs to date, and places major focus on recommendations for future mission programs. The team was composed of three rule of law and post-conflict experts, two from the international programs division of NCSC, and the third a comparative law professor with considerable previous Haiti experience. USAID identified two additional experts to work with the team on the ground. The in-country portion of the assessment was conducted from July 26 through August 5, 2004.

Support for the justice sector by the US and other donors was extensive for the period from 1994 through 2000. During this time, USAID implemented an Administration of Justice (AOJ) Program through contractors and the US Department of Justice (USDOJ). Other bilateral donors, including the Governments of Canada and France, and multilateral donors such as the United Nations Development Program (UNDP), the European Union and the Organization of American States (OAS) also provided assistance to the Haitian justice sector.

The USAID AOJ program focused efforts in the areas of legal assistance to the poor, mentoring judicial personnel at the *tribunal de paix* level (in Port-au-Prince, Jacmel, and Saint-Marc), implementation of a manual case registration system, legal education to paralegals and citizens, creation of a bureau on preventive detention, support and technical assistance to the Magistrates School, and development of a legal framework for judicial independence. At the same time USDOJ's Overseas Prosecutorial Development and Training (OPDAT) provided assistance to the *Parquets* and the Magistrates School, including refurbishing of the physical facilities, development of a manual case registration system, and training for judges and prosecutors. The AOJ and OPDAT programs were terminated at the end of 2000 when the US suspended all assistance to the Haitian judicial system. This withdrawal resulted from the inability of the US and Haitian Governments to reach an agreement on continued assistance to Haiti's justice sector, and growing concerns that the Government of Haiti lacked the political will to engage in meaningful judicial reforms. As a result, few tangible results from earlier rule of law assistance programs remain in Haiti today.

In preparation for the on-site assessment, the team collected and reviewed a broad range of reports and documents that addressed the situation of the Haitian justice system during the past 10 years, to include justice reform projects supported by USAID and other donors, reform efforts undertaken by Haitian NGOs and other groups (both with and without assistance of the GOH), and relevant legislation and other official GOH documents. Review of this documentation revealed few differences from the findings reported in past that several detailed assessments of previous US-supported programs. In addition to the document review, the assessment team interviewed more than forty individuals with expertise in the subject matter.

In addition to the documents enumerated above and detailed in Attachment A, the team conducted over 40 interviews with governmental and non-governmental officials, both in Haiti and in the US. Findings have been divided into seven program areas: 1) Courts; 2) Public Prosecutor Office; 3) Magistrate's School; 4) Prisons; 5) Ministry of Justice; and 6) the Justice System (USAID justice assistance programs). In reviewing past programs in each of these areas, the team found that while numerous programs by USAID, international, and bi-lateral donors targeted a broad range of areas within the justice sector, programs suffered from a number of shortcomings that limited their effectiveness. Principal among these was a lack of political will on the part of GOH officials to engage with donors in carrying out reforms, an inadequately defined legal framework, lack of coordination among the donors, inconsistent program design and implementation, and failure to seek and incorporate local Haitian actors and stakeholders. These issues that tended to detract from achieving positive and sustainable results are further detailed in Part IV, Section B, "factors and constraints." However, taken together, the result is that, despite the sizable financial and human efforts expended to improve the Haitian justice system, there are currently few areas where the effects of past programs can be observed, and, overall, past programs have had limited impact on the current state of the Haitian justice sector. In part, this can be attributed to limited program effectiveness at the time of implementation, but also the significant backsliding since the withdrawal of major donor assistance has contributed to the current state of affairs wherein the justice system of Haiti is best described as barely functional.

The team also conducted a preliminary assessment of the MOJ's technical, administrative and financial capabilities to receive USAID assistance and the Ministry's capacity to implement a plan of action for judicial reform. The team found that the MOJ's leadership team is comprised of very committed and highly qualified individuals. Nonetheless, lack of experienced and qualified mid- and lower-level staff to carry out most of the administrative and programmatic functions required to support reform efforts is an issue. Another issue is that the current MOJ and his management team are likely to leave at the end of the term of the Interim Government. This will result in lost capacity due to the interim nature of the current government's mandate as the primary planning focus within the MOJ is on relatively short-term interventions rather than on long-term, sustainable strategies. Overall, the MOJ has an insufficient number of well qualified staff, is under-funded, will require significant support for capacity building and in determining future directions for sustainable reform programs, and will require assistance in implementing the programs. The team recommends supporting the MOJ's implementation of the Framework for Interim International Assistance (*Cadre de Coopération Intérimaire, CCI*), while also engaging with the Ministry and other donors on the development of a higher-level comprehensive strategic plan.

The assessment team also conducted a review of the physical condition of the Haitian courts and made recommendations for the most urgent renovations. Principal among the team's findings and recommendations was the need to focus on improving the conditions of the Juge de Paix (JP) Courts. The JP Courts are generally in deplorable condition, and have almost no furniture or supplies. Since these courts handle approximately 70% of all cases, improving their physical conditions would have a major impact on how cases are handled, and on the public's view of the courts. A plan for facility improvement can be developed, based on existing assessments, taking

case volume and local needs into consideration. However, should USAID decide to underwrite physical refurbishment of JP Courts, such an effort should be tied to a facility management and maintenance plan within the MOJ to ensure that conditions do not once again deteriorate. The team recommends priority be given to the JP Courts located in buildings owned by the State. Prior to undertaking any improvement on rented facilities, a new lease should be negotiated according to which the rent cannot be raised, nor can the court be evicted by the property owner.

Upon completion of the assessment of past programs, their impact on the Haitian system Justice, and the current state of the Haitian justice sector, the team developed a series of recommendations regarding future rule of law programs. These are found in Chapter V. The recommendations cover a broad range of topics including the need for comprehensive strategic planning, legal code reform, strengthening the Ministry of Justice's administrative capacity, professionalization of the judiciary through career development and training of judges and court personnel, creating judicial accountability and oversight mechanisms, strengthening judge and bar associations, improving case management systems, supporting continued development of the Magistrate's School, support for the law faculty, improving access to justice and supporting civic education programs, and revitalizing pretrial detention efforts.

Despite the wide range of recommendations for inclusion in future rule of law programs, there are a number of themes that cross all programmatic lines that must be addressed in future programs to ensure an environment that is conducive to designing and implementing effective and sustainable rule of law programs. These include:

- Sustained political will on the part of the GOH and relevant Ministries and institutions.
- Long-term strategic planning that is holistic in nature; that clearly defines key functions that the justice system must be capable of providing, accompanied by shorter-term and detailed action plans that lay out specific activities that need to be implemented to build toward higher level goals.
- Cohesive donor coordination that provides unified support for implementation of the Haitian strategic plan for justice reform.
- A realistic length of time during which donors commit to continuing support and assistance.
- Incrementally increase the absorptive capacity within the institutions of justice so that reforms and changes to the Haitian system of justice can be sustained and perpetuated into the future.

While there are few visible impacts from previous programs, there are some notable exceptions. These include: the continued existence of the Magistrates School; continued use of the case registration system implemented in the JP Courts and Parquets by Checchi and OPDAT; and of remnants of the Bureau on Preventive Detention (*Bureau de Controle de la Detention Preventive, BUCODEP*) pretrial detention program. The team was also very encouraged to see – for the first time – a willingness of business and civil society leaders to work together and to become involved in bringing change to Haiti. This, and the relatively positive approaches to reform of the Interim Government, presents a unique window of opportunity to engage in effective rule of law reforms in Haiti. It will be incumbent upon the donor community, and the

Haitians themselves, to work together to make this a reality. It will also be essential for donors to work with the GOH and Haitian counterparts to achieve local buy-in and support for reforms, both by developing clear benchmarks, and emplacing the necessary mechanisms to monitor forward progress and make adjustments along the way.

## **II. Summary of Recommendations:**

The recommendations resulting from the assessment team's evaluation of the current situation in Haiti are presented by category. Within each category, recommendations are presented in priority order. As a general comment, the team recommends that USAID engage with other donors to support activities and reforms that are described in the recommendations. In section of the report, the reasoning behind the recommendations is presented to provide for evaluation in the specific context within which each recommendation is made.

### **Strategic Planning**

- 1) USAID (and other donors as appropriate) should adopt a dual-tracked approach to assisting the GOH/MOJ in planning for justice reform. In the near term (during the tenure of the Interim Government), assistance efforts should focus on select activities in the MOJ's Cadre de Cooperation Interimaire (CCI), then, working with the newly elected government efforts should be directed to facilitating development of a high level, long-term strategic plan encompassing all components of the justice sector.
- 2) USAID should work closely with other donors to ensure that all programs of justice assistance do not duplicate, overlap, or contradict each other. Once the above-mentioned long-term strategic plan has been developed, that plan should serve as the broad framework within which all donor assistance should take place. In addition, rather than parceling out discrete areas of institutional reform amongst donors, donors should form multi-national teams to work with Haitian counterparts in carrying out reforms.

### **Legislative Reform**

- 3) International donor support is needed to fund the creation of a comprehensive program of legislative assistance that builds the capacity of the Haitians themselves to develop legislation, and related policy and procedures to assure its implementation.
- 4) USAID (working with other donors) should provide financial and technical assistance in the creation of a project which will engage Haitians in a comprehensive review of the relevant state of the law, and the persistent lack of enforcement with regard to judicial appointment, discipline and removal so that key decisions can be made on related institutional reforms in the short-term and on legislative and constitutional reform in the long-term.

### **Institutional Organization and Management**

- 5) USAID should provide technical assistance, training and some infrastructural support to improve and institutionalize strong management and administrative capabilities within the Ministry of Justice.

- 6) USAID should work with the US Embassy and other donors supporting rule of law programs to Haiti to ensure procedural harmonization by developing standard operating procedures across the entire system of justice.
- 7) USAID or another donor should provide technical expert support for the establishment and operation of the Judicial Inspection Unit or other entity charged with providing oversight for judicial and prosecutorial personnel, and for holding them accountable to clear standards of conduct and performance.

### **Legal Education and Training**

- 8) USAID should provide technical assistance and training in furtherance of establishing the judiciary as an independent branch of the State.
- 9) USAID, together with the existing efforts undertaken by the French Government, should support a program to continue education and training at the National Magistrates School while legislative and/or constitutional reform regarding judicial training is ongoing. Support should include the following elements:
  - Development of a standardized curriculum at the School.
  - Development of practical, holistic training at the School, along with follow-up in the field following completion of classroom training.
- 10) USAID, and or other donors, should provide technical assistance and support to the State University Law School.
- 11) USAID should support the coordination of judicial placement with the MOJ or alternative institution created for that purpose.

### **Professional Career and Standards**

- 12) USAID should continue to strengthen judge and bar associations and encourage their collaborative efforts.
- 13) International donors should consider supporting a program to professionalize the judiciary and to strengthen the status of career judges and other justice sector professionals. Standard selection, promotion, and retention criteria should be developed.

### **Court Administration and Management/Court Security**

- 14) USAID should consider reinstating, modifying and expanding programs to support MOJ efforts in the areas of Case Tracking/Case Management, and Monitoring of Pre-trial Detention.

- 15) The USG should consider supporting the creation of a centralized criminal records system that is available nationwide (and ultimately automated).
- 16) The USG should support development of short- and long-term plans to provide for security at physical facilities (courts and Parquets) and, as necessary, for judges, prosecutors and other court staff.
- 17) USAID should provide funding for refurbishing JP Courts, giving priority to courts owned by the State.

#### **Legal Services/Access to Justice**

- 18) A component of USAID's ROL project should include expansion of coverage of courts (particularly JP Courts) to rural areas.
- 19) USAID (with other donor assistance) should consider development and implementation of a program to establish a nationwide system of legal services based upon coordination between the law schools and the bar associations in each jurisdiction.

#### **Civil Society**

- 20) In addition to working closely with Haitian counterparts to develop the long-range strategic plan for justice reform, USAID should foster local involvement and ownership of assistance programs over the shortest period realistic – doing so by supporting development of NGO networks.
- 21) In view of the need for Haitian citizens to learn how to be responsible members of a democratic society, USAID education and citizen awareness programs should interact with justice reform programs. To the maximum extent possible, donor programs should adopt a cross-cutting programmatic approach that involves leveraging all available resources.
- 22) International donors should support the establishment of a nation-wide program of civic education on the justice system offered in Créole specifically targeting the general population.

#### **Prisons**

- 23) The USG should revitalize the program to reduce the excessive levels pre-trial detention.

### III. Introduction

Since 1994, the United States, other donor countries and international organizations have provided extensive material and technical assistance to reform of the Haitian justice system. From 1993 through 2000, USAID implemented an Administration of Justice (AOJ) program through contractors and the US Department of Justice. Other bilateral donors, including the Governments of Canada and France, and multilateral donors such as the UNDP, the OAS, and the EU also provided assistance to the Haitian justice sector. The USAID AOJ program, implemented through Associates in Rural Development (ARD)/Checchi, focused efforts principally in the areas of legal assistance to the poor, mentoring judicial personnel at the *tribunal de paix* level, implementation of a manual case registration system, legal education to paralegals and public awareness education to citizens, creation of a bureau on preventive detention, support and technical assistance to the Magistrates School, and development of a legal framework for judicial independence. At the same time, USDOJ's OPDAT provided assistance to the *Parquets* and the Magistrates School, including some refurbishing of the physical facilities, development of a manual case registering system, and training for judges and prosecutors.

The AOJ and OPDAT programs were terminated at the end of 2000, when the US suspended all assistance to the Haitian judicial system. This withdrawal resulted from the failure of the Governments of the US and Haiti to reach agreement on continued assistance to Haiti's justice sector, as well as growing concerns that the Government of Haiti lacked the political will to engage in meaningful judicial reforms.

In 2001, USAID entered into a contract with the International Foundation for Elections systems (IFES) to implement a program to build constituencies within the justice sector, and forge coalitions to advocate for the rule of law in Haiti, consistent with GAO's recommendations that USAID reorient its assistance by working through civil society to create popular demand for reform.

At the present time, the needs of the Haitian justice system continue to be significant and the current Haitian context for justice sector reform is still very difficult and unpredictable. But the situation also provides for a number of opportunities to build upon. For example, the Interim Government has engaged with the UN in forward planning for reform; an "Interim Cooperative Framework" was developed in conjunction with the major multilateral donors at the July 2004 Donors Conference; and the MOJ is committed to working with the international donor community to implement the MOJ's reform plan with significant ownership on its part. In part, the plan was developed with participation of non-government Haitian stakeholders willing to actively contribute to the reform process. While large sectors of justice system employees and the general public are still mired in the *status quo* and waiting for things to change before they feel they can or want to contribute to the reform process, among key non-government stakeholder organizations, individuals who have demonstrated that they are ready to build alliances and actively participate (some are already engaged) in significant, long-term reform activities; take ownership; and build a democratic justice system even with limited means. Further, the international community has indicated its willingness not just for substantial, but

more importantly, long-term engagement in Haiti. International donors are seeking Haitian leadership in the reform process and are cognizant of the need to closely coordinate all reform efforts not simply with Haitian stakeholders, but, in particular between and among other donors. They are ready to develop and support reform activities building on the many lessons learned from previous engagements.

#### **IV. Assessment Scope and Methodology**

The purpose of NCSC's assessment was to analyze the results of previous USAID-funded activities supporting justice sector reform; assess the status and impact of activities to date; identify the needs and reform capacities of key justice sector institutions in Haiti; and provide recommendations for future programming.

The original scope of work (SOW) for the assessment outlined the following 8 objectives:

1. An accurate assessment of USAID's different interventions in the Haitian judicial apparatus (courts, Public Prosecutors offices, Magistrates School, prisons and Ministry of Justice). This assessment must consider the concrete impact of these interventions in the establishment of a justice system that responds to the needs of the Haitian population in terms of accessibility, fairness and respect of human rights and other rights recognized by the Haitian constitution.
2. An analysis of the factors and constraints that have affected the accomplishment of USAID's justice programs.
3. A determination of the sides effects of USAID's activities in the justice sector and how USAID can build on these side effects in the development of a ten-year intervention in the justice sector.
4. A determination of the overall impact of the AOJ program on the judicial apparatus including the Haitian Minister of Justice's capacity to implement a plan of action for judicial reform.
5. An assessment of the effectiveness of USAID's diverse interventions in the prison's systems, the Magistrates School, the Public Prosecutors Office (Parquet), the courts and tribunals and the administration of the Haitian justice system in general.
6. A preliminary assessment of the Minister of Justice's technical, administrative and financial capabilities to receive assistance from USAID.
7. An assessment of the physical condition of the Haitian courts and recommendations on the most urgent renovation actions that are needed.
8. Concrete recommendations on the development of USAID's future activities in the justice sector. These recommendations must propose a clear strategy (for a ten-year

period) that indicates specific actions for the continuation of the Agency's projects in the justice sector.

In preparation for the on-site assessment, the team<sup>1</sup> began to gather and review a broad range of reports and documents that addressed the situation of the Haitian justice system during the past 10 years, relevant legislation, justice reform projects supported by USAID and others, as well as reform plans developed by various Haitian groups with or without support of the GOH. (A complete list of the literature reviewed can be found in Appendix A).

The review of this documentation revealed that several detailed assessments of previous US-supported programs had already been conducted. It also showed that most of these assessments resulted in very similar conclusions and recommendations for future work. In recognition of the extensive assessments and diagnostics of the Haitian legal system and the past assistance efforts, USAID and NCSC agreed that, rather than duplicating previous assessment efforts, NCSC would begin with the validation and consolidation of the findings of previous assessments, then focus principally on recommendations for future interventions that were fully informed by past experiences. Central to this effort to identify and validate findings were the: 1997 Development Associates' "Haiti Justice Sector Assessment," 1998 Creative Associates' International "Evaluation of USAID's Administration of Justice and Human Rights Fund II Programs," the 2000 GAO Reports "Lack of Haitian Commitment Limited Success of the US Aid to Justice System" and "Any further Aid to Haitian Justice System Should be Linked to Performance-related Conditions", and the 2001 UNDP report "Lessons Learned Exercise undertaken by the Emergency Response Division."

The in-country portion of the NCSC assessment took place from July 26 through August 5, 2004. The team conducted individual and group interviews with relevant representatives of key Haitian government and non-government institutions, as well as representatives from relevant international donor organizations. (A complete list of all individuals interviewed is attached in Attachment B). In addition, the team conducted on-site observations of court and Parquet operations in Port-Au-Prince, Cap Haitien, Gonaives, St. Marc, and Jacmel. The team further had discussions with a number of Haitians and knowledgeable foreign experts with broad knowledge of and experience in the political and societal developments in Haiti overall and in specific regions. The team also attended a meeting at the US embassy with the police advisory team to discuss current plans, and to establish linkages with their efforts.

At the end of the field work the team conducted an exit meeting with USAID. Since returning to the US, the Washington-based members of the team have also de-briefed USAID and the Department of State (Western Hemisphere Affairs [WHA], International Narcotics and Legislative Affairs [INL], and Democracy, Rights, and Labor [DRL] bureaus).

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<sup>1</sup> The NCSC team consisted of Jan Stromsem, Executive Director of NCSC's International Program Division (IPD), Heike Gramckow, Ph.D., Deputy Director, IPD, and Louis Aucoin, J.D., Ph.D., consultant to the IPD and professor at Fletcher Law School. They were joined by Maitre Henri D'Orleans, an experienced Haitian lawyer, law professor, and Director of the Academie de Formation et Perfectionnement des Cadres (AFPEC), and Phillip Lamarche, JD, formerly an advisor to the MOJ for USAID.

The need to conduct this assessment within a very short timeframe limited the time the team could spend in field visits outside of Port-au-Prince. As a result, and in coordination with USAID, the number of field locations visited was restricted to the most representative locations,<sup>2</sup> and the time available to conduct on-site observations and interviews was curtailed. The still somewhat difficult security situation at the time the team visited Haiti also contributed to the relatively short amount of time spent outside of Port-au-Prince. It is also worth mentioning that many of the Parquets and courts outside of Port-au-Prince have not been operational for several months due to the difficult security situation following the events of February. The courts in Gonaives, for example, had been closed for the past nine months, and only opened again the week before the site visit. Also, review of court and prosecutor files was generally impossible since many of the buildings had been looted or burned, and the case files destroyed. The Palais de Justice in Gonaives had been completely gutted and the JP Court visited had been looted and all files either taken or destroyed. As a result, review of court files and other relevant documentation to support observations and anecdotal evidence was not possible. In a similar vein, statistical information – other than guesstimates provided by interviewees – was not available. As outlined later in the report, the lack of reliable statistics for court and prosecutor operations not only limited this assessment from obtaining more quantitative information (and limits future programming to building on only qualitative baseline information), but is an impediment for proper court and prosecution administration and management; impacts the transparency and accountability of the system; and limits the ability to justify adequate (needs-based) budget requests and allocations for the judicial sector.

Still, the team is confident that the information collected and site visits conducted are more than adequate to support the conclusions and recommendations drawn.

## **V. Findings**

The following sections address the objectives of the original SOW in a slightly adjusted order to avoid repetition and provide for succinct reading. Section A “Assessment of Past Efforts,” addresses objectives 1 and 5 of the SOW, as well as the part of objective 3 concerning “side effects” of USAID’s activities and the part of objective 4 pertaining to the “overall impact” of the AOJ program. Section B addresses objective 2 (“factors and constraints”). Section C addresses part of objective 4 (*the MOJ’s capacity to implement a plan of action*) and objective 6 (*Preliminary assessment of the MOJ’s capabilities*), and Section D focuses on objective 7 (*Physical conditions of the Haitian courts*). The recommendations requested under part of objective 3 (*how USAID can build on side effects*) and objective 8 are found in a separate Chapter V, “Recommendations for Future Programs.”

### **A. Assessment of Past Efforts**

As described in the previous section, SOW objectives 1, part of objectives 3 and 4, and objective 5, taken together ask for an assessment of the impact and the effectiveness of USAID

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<sup>2</sup> In addition to Port-au-Prince the team visited Cap Haitien, Gonaives, St. Marc, and Jacmel.

interventions in Haiti in the courts, prosecutors' offices (Parquets), magistrates' school, prisons, ministry of justice, and in the justice system generally.

This section, assessing the impact of past efforts, is broken down into seven subsections: 1/ Courts, 2/ Public Prosecutors Offices, 3/ Magistrates School, 4/ Prisons, 5/ Ministry of Justice, and 6/ the Justice system in general (USAID justice assistance programs (Checchi and OPDAT)).

## 1) Courts

Programs implemented by the Checchi and OPDAT projects between 1996 and 2000 were initially designed to impact both the justice of the peace courts (the juge de paix, or JP Courts) and the Courts of First Instance. The Checchi Project was charged with providing support to the JP Courts by assisting them in establishing a system of case tracking. The project also set up a judicial mentoring program that operated in both the JP Courts and the Courts of First Instance in seven of the model jurisdictions. In fact, the project actually operated almost exclusively in the JP Courts in Port-au-Prince because the First Instance judges in that jurisdiction were not receptive to the program. OPDAT was to provide support to the courts by offering short-term training at the Magistrate's School for court personnel that was to extend throughout the entire *chaîne pénale* (that is, the JP Courts, First Instance Courts, Parquets, police, and court clerks at all levels.)

Checchi's Programs:

### *a. Case Registration in the JP Courts*

The Checchi "case tracking" program was initiated in 24 JP Courts and was to be expanded to another 64 JP Courts throughout the country. As of 2000, when the program came to an end, the program had been implemented in 83 JP Courts. The need for information concerning the number and kinds of cases being brought before the JP Courts was highlighted in a report entitled "Justice of the Peace Courts, Republic of Haiti," prepared by Ministerial Advisory Team-Justice, US Army Civil Affairs and Psychological Operation Command, Fort Bragg, NC (MAT team report) in 1995, and this need was underscored at a conference on justice reform convened by Checchi in 1996. There is no doubt that the program had an impact, since the case registration form which was introduced in the JP Courts as part of Checchi's program is still in use in many JP Courts today. The team observed that the registration form was being used in several JP Courts outside of the capital, but noted that there was no evidence of its use in JP Courts in Port-au-Prince.

The effectiveness of the program is, however, another matter. The report of the evaluation team that conducted a mid-term evaluation of the project in 1998 contains several comments that are relevant to this subject. (See Evaluation of USAID's Administration of Justice and Human Rights Fund II Programs, prepared by Creative Associates International [CAI] on April 27, 1998). First, the report makes a key distinction by asserting that the Checchi Program as implemented at that time was a program of "case registration" and not one that could be correctly

referred to as a “case tracking system.” The following comments contained in the report are illustrative of the distinction:

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....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. 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.

The report went on to explain that the establishment of a case registration system was at least an important first step toward the collection of the kinds of data that would be useful for case tracking, and noted that the case registration form did contain at least one category of information entitled “Diligence” which was used to capture information about the next steps to be taken in the case (such as future scheduled court appearances). However, the report also noted that key information such as the custodial status of criminal defendants and the names of their attorneys was missing from the registration form.

The comments from this previous assessment report are set out here since they continue to be relevant to the issue of the effectiveness of the program, especially because the form that the current assessment team observed to be in use in the JP Courts is the very same form that was in use when the 1998 evaluation team wrote their report. This is an indication that no modifications have been made to the case registration form, and is particularly relevant in light of the comments cited above.

Therefore, the concerns about the effectiveness and the limited impact of this intervention remain. For example, since the case registration form fails to record information pertaining to the custodial status of criminal defendants, the form is of little use in addressing the problem of unjustified, prolonged, pre-trial detention, which is one of the major problems cited consistently by all the previous assessments of the justice sector. In addition, it seems quite clear that the form is not used by any of the court personnel as a tool for monitoring since whenever the assessment team raised questions in any of the JP Courts regarding the number of cases handled on a weekly or monthly basis, either aggregated by type or as a whole, court personnel were universally unable to provide precise figures, and in some cases seemed not even to understand the possible value of statistical data<sup>3</sup>.

This is also particularly regrettable in light of the requirement appearing in Article 447 of Haiti’s Code d’Instruction Criminelle (Criminal Procedure Code) that states:

Le juge de paix est tenu de visiter, au moins une fois par mois, les personnes retenues dans la maison d’arrêt de sa commune; le Doyen du tribunal, le juge d’instruction ainsi que le commissaire du gouvernement ou son substitut, au moins une fois par mois toutes les maisons de detention contenant des accusés ou des condamnés, dans la ville ou siège le tribunal civil. (The Justice of the

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<sup>3</sup> Indeed, one of the interviewees (in charge of the institution in question) remarked that statistics would serve no purpose whatsoever.

Peace is required at least once a month to visit those persons detained in police holding cells in his commune. The Chief Judge of the First Instance Court, the investigating magistrate as well as the prosecutor or his substitute [are likewise required to visit] at least once a month all detention facilities housing accused or convicted detainees in the city where the First Instance Court sits.)<sup>4</sup>

If the system established under the Checchi Program had been a case tracking system which, at a minimum, contained information pertaining to the custodial status of criminal defendants, rather than a basic case registration system, the judicial actors cited in section 447 could use this information as a tool for monitoring illegal prolonged pre-trial detention. Although Checchi originally intended to create a case tracking program, it is clear from previous assessment reports that the monitoring that would be required for case tracking and systems to collect data for use as management tools never occurred. Moreover, since the form that was introduced did not contain information pertaining to the custodial status of the defendant, it could not have been used effectively for case tracking purposes.<sup>5</sup>

Despite these shortcomings, as things currently stand, the use of the case registration system in the JP Courts has clearly had an impact since cases are still logged into the register in many of these courts. The current assessment team found the form to be in use in JP Courts in Jacmel, Gonaïves, and Cap Haïtien. This is not negligible because this system of case registration is clearly preferable to the *status quo* in the First Instance Courts where registration practices are inconsistent. The 1998 evaluation team reported that the lack of a uniform registration system in those courts often led to the loss of files, the failure to assign cases and other factors which contributed to the failure to dispose of cases in a fair and timely fashion. Although the current assessment team was not able to observe whether these problems persist, it is quite likely that they do since the interventions of the international community in the past did not address these aspects of case tracking.

Nevertheless, the effectiveness of the case registration in the JP Courts is quite limited since the form is not consistently used and its use is not associated with the kind of monitoring which occurs in connection with case tracking – and it is clearly this type of monitoring that is sorely needed in Haiti. It is significant to note in this connection that when the current assessment team visited the prisons and inquired with some of the inmates and their keepers about the visitation requirements of Section 447, mentioned above, there was universal agreement that the visitation does not occur. This was particularly surprising in Cap Haïtien where the Court of First Instance is in very close proximity to the prison.<sup>6</sup> This last observation underscores the importance of including the creation of standard operating procedures in future assistance programming and of assuring that judicial personnel are trained in the implementation of these procedures.

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<sup>4</sup> When the assessment team visited the prisons and inquired with some of the inmates (and their keepers) about this requirement, there was universal agreement that this did not happen.

<sup>5</sup> The register itself did not have a specific section to record information pertaining to the custodial status of criminal defendants; however, there was a special sheet that each clerk had to fill out listing all pretrial detainees, along with the period of detention. The sheet was placed on the wall adjacent to the clerks so that all could see it, especially the Commissaire when carrying out their visits. In fact, such a sheet was posted on the wall in the JP court in Gonaïves that the team visited.

<sup>6</sup> The team also notes the fact that the two “VIP’s” at the National Penitentiary had not been visited by officers of the court, despite the fact that they had been in prison since March.

*b. Judicial Mentoring*

The first important point to be made in assessing the impact of the judicial mentoring program is to note that it was very short-lived, and this fact contributed to the lack of sustainability of the program (in the sense that mentorees were insufficiently experienced to become mentors for others). It was begun in 1997 and was terminated by 1999. During the time of its operation, the program provided mentoring services in 23 JP Courts. In this period, four well-respected senior Haitian jurists (retired or semi-retired judges and law professors) and two expatriate technical consultants participated in the program. (See CAI Evaluation, page 35). The team learned that each mentor covered several JP Courts in the jurisdiction to which he/she was assigned, and, since they tend to be quite far apart, this too reduced the impact (especially as compared to the OPDAT program under which the mentors were assigned to a single parquet). It is not entirely clear why the program was terminated since it received a very favorable review in the mid-term evaluation. In that report, it was noted that participants had cited many benefits of the program, including the following:

- increased coordination between justice sector participants;
- distribution of codes, law, and legal documents;
- preparation of uniform internal regulations;
- development of a uniform procedures for rotation of court clerks (to avoid corruption);
- reinforcement of concepts of judicial independence; and
- increased understanding by JPs of their role. This factor was cited as significant in reducing delays in the JP Courts stemming from the transfer of files between the JP Courts and other levels of the *chaîne penale*, particularly the Parquet's offices.

However, while the fact that judicial sector actors remember the program as functioning effectively at the time, the current assessment team did not observe any lasting impact of the mentoring program in terms of improved functioning of the courts. Instead, the team was repeatedly told of the total lack (and outdated condition) of codes, laws, and legal documents. The state of judicial independence was reported to be as deplorable as ever. In addition, significant delays resulting from the lack of understanding of their role on the part of JPs were noted, and there was no evidence that the uniform internal regulations were being used (or that they even existed). Moreover, the team was told that no mentoring was provided by the Haitians after international assistance ended.

Since it has been several years since the program was terminated, it is difficult to assess why the program did not have a more lasting impact apart from noting that it was very short-lived, and this must certainly be related to its short-lived impact.

Nevertheless, if judicial mentoring were to be considered as a strategy for judicial reform in the future, lessons learned from past programs should be taken into account. (See Recommendation #11 on this point). It is unfortunate that these short-term effects all but disappeared upon termination of the program, particularly since the benefits respond directly to many of the problems in the justice sector which have been identified in previous assessments and which were cited repeatedly by interviewees in discussions with the team. When asked about the

judicial mentoring program today, several actors in the judicial sector remembered it as a good program that had a positive effect in terms of boosting the morale of judges who were mentored (morale remains low in the judiciary and many promising young judges continue to be drawn away by more rewarding career opportunities), and in terms of improving the quality of their decision making.

A few lessons learned from the implementation of the program have also been retained. The CAI evaluation noted that there had been a proposal according to which mentors would be required to work with the Judicial Inspection Unit (that is currently located within the Ministry of Justice, thus potentially serving as a means to collect information that could be used to evaluate a judge's performance). This proposal was rejected, and it is generally believed that this was the right decision. Experts in developing judicial mentoring programs elsewhere have noted that using mentors as "spies" destroys the mentor/mentee relationship and detracts from the effectiveness of the program.

In addition, it became clear early on that mentors in the Haitian context must be Haitian. After conducting initial research, those implementing the program came to realize that the Haitian mentorees were not receptive to foreign mentors.<sup>7</sup>

Finally, it was noted that the OPDAT-offered mentoring program for prosecutors was entirely separate from that administered by Checchi. It has been suggested that mentoring should be administered as one unified program available to all actors in the judicial sector and that the mentors should receive training so that the skills and behavior they are trying to reinforce are uniform and conform to pre-established (and documented) standards..

## **2) Public Prosecutors' Offices:**

The most significant USAID-funded intervention that impacted the *chaîne penale* during the course of the AOJ Project was OPDAT's model Parquet program. The program was instituted in seven model jurisdictions. Its purpose was to improve the quality of investigations in these jurisdictions, and it sought to accomplish this goal through the use of a case tracking system, and by providing program support to the prosecutors operating in these jurisdictions. Seven Haitian attorneys under contract to OPDAT (one for each of the jurisdictions) acted as legal consultants to the prosecutors. This program, in contrast with the case registration system administered by Checchi in the JP Courts was actually a case tracking system, since the legal consultants instituted a system of case registration that they used as a tool to help them identify bottlenecks and problem cases. When there were prolonged and arguably unnecessary delays in cases, they reported them to the Chief Judge of the jurisdiction who is empowered under Haitian law to take action to expedite a judge's handling of an individual case. The legal consultants also intervened in individual cases, acting as mentors and technical assistants.

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<sup>7</sup> While noting that senior-level Haitian mentors are preferred over ex-pat mentors, the team was also told that receptivity of assistance depended to a significant extent upon the personality of the mentor and how he or she approached mentoring duties. Clearly, those who approach Haitian counterparts as professional equals (albeit working in difficult circumstances) tended to have far greater success. This dynamic should be an important element of any future mentoring programs.

In addition, OPDAT organized monthly meetings of the legal consultants in PAP where they had the opportunity to brainstorm solutions to systemic and structural problems, and receive training specific to these issues. OPDAT did not, however, develop training programs in the use of the case tracking system that could have served as a valuable tool to Haitian trainers to replicate training for new employees after OPDAT's departure.

There is no doubt that the training programs had an impact while it was in operation. MICIVIH, the Haitian Judicial Inspection Unit and CAI evaluated the program while it was going on and noted specific impacts in specific jurisdictions, such as the reduction of pre-trial detention, increased speed in the process of criminal cases, and the reinstatement of jury trials in major cases (where, for example, in one jurisdiction, they had not been held for six years). Some of the impact of the program is still being felt in the prosecutors' offices today in the former model jurisdictions. In several of these, where the assessment team was able to visit Parquets (PAP, Jacmel, Cap Haitien, St. Marc and Gonaïves), the team found that some form of the registration system implemented by OPDAT as part of the model Parquet program was still in existence (however, the way in which the system was being used is now more akin to the Checchi version of registering cases, and it was clear that the registers were not being reviewed with an eye to problem identification, nor to determine issues related to pre-trial detention).

In terms of the effectiveness of the program, several problems were noted during the course of its existence, and additional problems have arisen subsequent to OPDAT's departure, further limiting its effectiveness in the long-term. Over the life of the project, evaluation reports noted problems in certain jurisdictions. In some, chief judges (doyens) never received reports of problem cases, and in other jurisdictions, chief judges received the reports but did not understand that they were expected to take action on them. In addition, there was almost no coordination between the Checchi and OPDAT programs, and this lack of coordination prevented the corrective measures taken from having more of a system-wide effect. This is particularly significant in terms of the potential it could have had for improving the performance of JP Courts. It is important to note in this connection that the JPs perform the role of judicial police in certain cases under Haitian law, and it is well-documented that significant delays are created by the fact that cases are frequently returned to the JPs by the prosecutors due to ineffective and incomplete "information preliminaire" by the former. This is a stellar example of the results from the lack of a holistic approach to reform that has been raised frequently as a criticism of the overall AOJ program. In addition, the effectiveness of the program was limited by lack of participation by the MOJ at a time when the Ministry could have assisted by coordinating with OPDAT in the implementation of the program and responding to lessons learned as the program was implemented. The OPDAT program had originally anticipated such coordination, and the lack thereof is yet another example of the absence of political will for judicial reform on the part of the GOH that led to the termination of the AOJ program. This, in turn, is a major contributing factor to the lack of long-term impact from the OPDAT program.

Finally, a few factors have served to limit the long-term effectiveness of the program. First, in some of the jurisdictions where the assessment team visited Parquet offices, (in PAP and Jacmel, in particular), officials reported that turn-over of personnel had made it difficult to maintain the

systems established under the model Parquet program. Moreover, since the legal consultants are no longer in place, there is no way to implement case tracking as it existed when the program was functioning. Consequently, what exist now are vestiges of the case tracking system implemented by the OPDAT program. When the current assessment team interviewed the prosecutor at the Parquet in PAP, for example, he explained that the form introduced by OPDAT in the past had been adapted over time in response to the lack of basic skills of the new personnel who had been hired subsequent to OPDAT's departure. In fact, when pressed on these issues during the interview in PAP, the prosecutor reported quite frankly that the register was not being reviewed with an eye to problem identification, nor to determine issues related to pre-trial detention. Consequently, it became clear to this assessment team that the way in which the system is currently being used is simply to log cases, not to create a case tracking system.

In retrospect, this assessment team believes that the OPDAT case tracking system would have had a much more effective long-term impact had OPDAT developed a program of training in the use of the system, creating operational procedures directly linked to training, and using a "train the trainers" approach so that the system could have been kept alive in the face of the inevitable turn-over of personnel in the future. (See Section F of the Recommendations).

### **3) Magistrates School**

The existence of a Magistrates' School is actually mandated under Article 176 of the Haitian Constitution of 1987. It has been in existence since 1995. In that year, the former training facility for officers of the FADH (Forces Armees d'Haiti – Haitian Armed Forces) was chosen as the site for the school, and OPDAT provided significant material support by renovating six of the seven buildings on the grounds. Although the Haitian MOJ has been providing limited resources on an annual basis, the School has relied primarily on international assistance (See the section below on the report commissioned by IFES for more background information on the School).

#### **OPDAT PROGRAMS**

OPDAT's assistance to training at the Magistrate's School consisted of two types of programs:

(1) Short-term training in the early stages of the AOJ Project included representatives from most of the institutional links in the *chaîne penale*, including the courts. The training occurred in the field and at the Magistrates' School, where seven joint seminars were held, involving judges, prosecutors, and police. These activities were conducted between January 1995 and November of 1996, but they were discontinued at the request of the MOJ which took the view that training should not proceed until all judges had undergone vetting and those deemed unqualified were removed. The program was evaluated by USAID/Washington and DOJ/Washington in 1996. At that time, it received a favorable review, and joint training of the various actors was seen as effective.

There does not appear to be much memory of this short-lived program amongst the Haitian actors in the judicial sector today, and thus it seems that whatever impact it may have had at the time was short-lived as well. The mid-term CAI evaluation called for a resumption of the

program, and noted its potential for improving police/judiciary relations. The evaluation also recommended that the program should include training on investigative techniques, which was found to be lacking at the time (and is still lacking). The early termination of this seemingly worthwhile project by the Haitian MOJ was probably, in retrospect, an early indication of the lack of political will for judicial reform on the part of the GOH. This lack became increasingly clear in the period leading up to 2000 when all international donors withdrew assistance to the GOH in this and other justice-related areas.

Nevertheless, the early existence of the short-term OPDAT training program and the positive reviews that it received merit some comment and give rise to recommendations for future programming. First, the termination of the program by the GOH explains at least in part why a more holistic approach was not taken in the implementation of the AOJ Program. (Note in this connection that the lack of a holistic approach has been cited by many as one of the factors contributing to the failures of the AOJ Project). Secondly, the short-term nature of the training should be questioned, as should the non-systemic approach that failed to link training to operational procedures, and failed to think through, with the Haitians, how the *chaîne penale* should operate to meet Haitian needs (and within the requirements of the law). While short-term training may be appropriate as part of a program of continuing legal education for all actors in the judicial sector, the training program for candidates for entry into a career in this sector should be sustained and form part of a continuing legal education (CLE) program. (See Section E of the Recommendations for discussions of the Magistrates' School).

(2) In 1997 and 1998, OPDAT provided technical and financial support to the School during the first year in which it actually graduated 60 judges. (Since 1997, the School has graduated three classes of judges). As part of this support, an OPDAT attorney was assigned to assist in the planning and preparations of the program for the first graduating class. In addition, OPDAT covered initial faculty salaries, the salary of the Director and his secretarial staff, security services and supplies, and most operational expenses. Moreover, OPDAT conducted short-term training programs, which have been described above in the section on the Courts.

It is difficult to assess the impact of OPDAT's support of the Magistrates' School separately from the support provided generally by the international community (France and the UNDP have also contributed substantially to the School throughout its existence, while all US support was terminated in 1998). Nevertheless, based upon comments and reactions of actors in the judicial sector, the assessment team was able to observe that, despite its problems and its fragility, the Magistrates' School is seen as a bright spot on the otherwise bleak landscape of the judicial sector in Haiti. Even though there is insufficient data to prove assertions empirically, it is clear from anecdotal information that the training at the School has served to improve the level of training and the competence of the judiciary. It is important to note in this connection that prior assessments have universally cited the lack of training and competence of the judges as one of the most pressing problems facing the Haitian judiciary. In addition, the Magistrates School has provided a venue where none existed previously for various trainings, lectures, and public conferences where Haitians and international donors have been able to discuss and analyze the problems in the judicial sector and plan to address them. This continues to be the case as evidenced by the fact that the assessment team was able to attend just such a conference during

the period in which the in-country portion of this assessment was conducted. The conference, which was entitled: “*Pour un nouveau depart de la Magistrature haïtienne*” (For a new beginning for the Haitian Magistracy), was organized under the direction of the School and included useful and informative lectures which took place over a two-day period.

It is likewise difficult to assess the effectiveness of OPDAT’s interventions as separate from the international support generally. However, it is relevant to note that curriculum development at the School has been criticized as being *ad hoc*, and the mid-term evaluation by CAI criticized the lack of training on investigative techniques. Given US strengths in this area, it would seem that training in this crucial area would not have been difficult for OPDAT to provide. OPDAT explained the omission as an oversight at the time, but it should be noted here that the lack of training in investigative techniques was cited by several of those interviewed in connection with this evaluation as a persistent problem in the criminal justice area.

In retrospect, the gaps in the School’s curriculum and its *ad hoc* nature can be attributed to a few factors. One is certainly the lack of coordination amongst US agencies providing assistance, as well as between other international donors. Another factor limiting the effectiveness of the curriculum is that Haiti’s criminal procedure and penal codes are very antiquated. As a result, they form a very poor basis on which to provide training and education for judges at the School.

Finally, one of the problems related to the impact of the School on the development of the judiciary in Haiti has been the lack of coordination between the School and the GOH in the placement of matriculating magistrates. In fact, the report on the School commissioned by IFES indicates that over the course of the three classes graduated from the School, progressively fewer and fewer graduates were successfully placed.

### **The IFES Report**

IFES has commissioned a report that was published very recently, in April of 2004. The report, entitled “*Ecole de la Magistrature: Situation, perceptions et propositions d’organisation*” (Magistrates’ School: Status, perceptions and recommendations for organization.), is a very comprehensive review of the history and function of the School from its beginning. The report provides detailed information on the support that has been provided by the international community and the Haitian MOJ; it describes both the curricula for each of the three graduating classes, and the program of continuing legal education for existing judges. The report also offers data on the placement of graduating candidates (thus detailing the lack of coordination between the School and the Ministry in this regard) and provides a full discussion of several of the issues that have been raised in connection with the School’s performance. For example, it is clear that there has been a lack of consistency in the curriculum from one graduating class to another, and this observation underscores the necessity for a uniform curriculum. The report points out that this holds true not only for the substantive courses which have been offered at the School, but also for the apprenticeship programs which also differed from one year to another and were not always well supervised. (As part of that program the student magistrates sit with magistrates in JP Courts, prosecutors’ offices, First Instance Courts, and in the offices of investigating magistrates). There has also been a good deal of discussion of whether the School should be

independent from the MOJ, and the report sets out the several different proposals in connection with this issue. In addition, it laments the fact that the legal status of the School has never been established in law (although a draft law does exist) and makes the point that its current subservience to the MOJ is an informal arrangement. In this connection, it also provides analysis of existing draft legislation that would address these problems. Finally, the report sets out recommendations relating to some of these issues.

This evaluation team has reviewed the draft legislation and notes that it addresses most of the issues that have been raised in connection with the School. For example, it offers a kind of middle of the road solution to the independence question by placing the School under the “guardianship” of the MOJ while at the same time limiting the MOJ’s authority over it. This is accomplished, for example, by providing that the authority for hiring and firing of the administrative staff was to be shared by the President of the Republic, the MOJ, and the School’s administrative board. The law would also allow the School to prepare its own budget subject to the joint approval of the MOJ and the Ministry of Finance. It also would require coordination between the School and the MOJ in the placement of the graduating magistrates. Despite the existence of the draft law, it is important to note that the IFES report itself indicates that there is no consensus with regard to these issues, and this fact was clear in discussions between this assessment team and the French advisor at the School. The team therefore recommends that the proposed draft law should also be one of the subjects of the legislative assistance program recommended below. (See Section F of the Recommendations).

There has been a French advisor and a Haitian director at the School for the last three years. The last graduating class completed its promotion in 2002. Since then, the School has been used to hold seminars and symposia such as the one attended by the assessment team during their stay. Although there has been planning for another class, it is not clear if and when another graduating class will be admitted at the School.

It is really too early to evaluate the impact and effectiveness of this project apart from noting that the issues treated in the IFES report are indeed the issues which actors in the judicial sector raise in discussing the School, and which have been cited in previous assessments. However, none of the existing documentation is as comprehensive as the IFES report in setting out the issues, and it seems only logical that this document will guide future debates on the future of the School.

#### **4) Prisons**

Appalling conditions at the National Penitentiary were among the first issues to be addressed by the international community in 1994. In 1995, after initial triage by the Multi-National Force, a national prison administration was established under the Ministry of Justice with the assistance of the UNDP and MICIVIH. APENA operated the prisons and trained prison guards until prison administration was transferred to the police. The prisons currently operate under the HNP’s (Haitian National Police) Director of Prison Administration (DAP).

One of the most long-standing issues with regard to Haitian prisons has been excessive pre-trial detention. In May 1998, the BUCODEP was established in the National Penitentiary to review

records of pre-trial detainees accused of minor offences and incarcerated longer than the normal sentence for the accused crime. According to law, a juge de paix from the jurisdiction reviews the case and determines if there is sufficient cause to continue to hold the accused. Also in 1998, the UNDP project to reform Haiti's National Penitentiary for men was completed, with major improvements in infrastructure and living conditions, the creation of new services, a change in attitudes towards inmates and the beginnings of a new prison system.

Both the inspection of the National Prison by the assessment team and the results of a recent assessment of prison conditions by an INL police advisor demonstrate that the progress made due to previous assistance programs has been significantly eroded and conditions have deteriorated to an alarming degree. While remnants of the BUCODEP program can be seen and personnel are still tracking and recording mandatory court actions, such as required detention hearings, no judges are currently visiting the prisons. Detention hearings do not appear to be taking place, reviving the long-standing problem of pre-trial detention. In addition, although the prisons were emptied earlier this year, the prison population is rapidly growing and looting and other destruction has limited prison space and worsened conditions. Overcrowding and inadequate sanitation facilities are already having negative consequences for the several hundred inmates in the National Penitentiary and other prisons.<sup>8</sup>

## 5) Ministry of Justice

In the course of the AOJ Project, only one USAID intervention targeted the MOJ directly. In July 1997, USAID hired an advisor to the Minister of Justice pursuant to a Personal Services Contract. The Canadians also hired an advisor, and the Canadian and American advisors worked in the MOJ in late summer and early fall of 1997 until both of them began receiving death threats. While it was difficult to determine with certainty the source and motives of the threats, there were indications that they were related to the fact that both the Canadians and the USAID-Checchi Program were urging the Minister to downsize the staff (particularly insofar as the "ghost" employees and persons simply hanging around the Ministry). However, the Minister strongly resisted such an action. The Canadians immediately withdrew their advisor and the American advisor (who is one of the authors of this report) moved his office to USAID where he worked from outside the government on various activities promoting judicial reform in a general sense. This obviously disappointing failure was attributed at the time to the lack of political will for judicial reform on the part of the GOH, which was becoming increasingly clear.

One of the activities of the advisor after leaving the MOJ was to identify competent Haitian jurists who were genuinely interested in judicial reform and to work with them on planning activities. In this connection, the advisor worked with the Preparatory Commission on Law and Justice, composed of young Haitian jurists working under the auspices of the MOJ. That Commission spent one year developing a plan for justice reform which was formally presented to the President in July at a conference on justice reform, organized by the MOJ and held at the

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<sup>8</sup> During the visit to the National Penitentiary, the team was advised that some 780 prisoners were in residence, and in Cap Haitien, with three cells operational, there were approximately 90 prisoners. In both cases, men and adolescents are held in the same cells, but women prisoners are detained in separate facilities.

Presidential Palace. The American advisor acted throughout the year as a resource to the Commission offering comparative information and literature, and participating in related group discussions. The Report generally offers an indigenous blueprint for justice reform, but the team was informed that the current Interim Government does not look upon that particular report favorably.

In spite of repeated attempts to obtain a copy of the Report, this assessment team was able to obtain the narrative portion of the Report, but was unable to review the action plan that is considered to be the most important part of the document. This is significant since this document could be enormously useful as part of the strategic planning which the team recommends (depending, of course, on how Haitians view this particular recommendation). (See Recommendation #1). It may be that the Haitians themselves have already done much of the work outlined in the report, and that the role of the donors may be one of support and assistance in its implementation. It is thus imperative that the document be reviewed in its entirety, and that its value (or lack thereof) is determined by Haitian counterparts.

It should be noted that, despite the drawbacks in terms of emplacing advisors within the Ministry, USAID's DG activities have nevertheless had a significant, albeit indirect, impact on the MOJ. First, in 1998, the American advisor identified Bernard Gousse as one of the most competent jurists in Haiti and as a person with a vision for justice reform. Mr. Gousse was consequently hired by USAID pursuant to a Personal Services contract and worked with the USAID DG office on justice issues. In the Interim Government, Mr. Bernard Gousse is currently the Minister of Justice, and there is no doubt that his experience at USAID has helped him shape his vision for reform and has given him an international donor perspective on the subject as well. This past experience could be of use in his implementation of judicial reform during the course of his mandate.

The assessment team met with the Minister during the in-country part of the assessment and he shared his vision for justice reform. That vision is well-documented in the strategic plan document which was recently developed by the MOJ, entitled *Cadre de Coopération Intérimaire* (Framework for Interim International Assistance – referred to as CCI in the remainder of this report). This document was created with donor assistance, but this kind of strategic planning exercise is unprecedented in Haiti and may very well reflect some of the influences on the current Minister stemming from his experience in working with USAID.

In a similar vein, Jean-Philippe Vixamar, an eminent Haitian jurist, who also formerly worked as a justice advisor at USAID in 1996-1998 has been seconded by a Haitian NGO, under the auspices of the Canadian government, to act as an advisor to the current Minister. This is yet another situation where USAID DG activities in the justice arena may prove to have an indirect and positive impact on the MOJ.

Comment [p1]: See Henri Dorleans comments

## 6) Justice System

There have been several USAID-funded interventions which have not targeted particular institutional links in the chaine penale but which have addressed some of the problems which

plague the justice system, such as lack of access to justice, lack of judicial independence, and lack of knowledge of the justice system on the part of the general public. These problems were addressed by Checchi's legal assistance and legal education programs, and are now the focus of the IFES Constituency Building for Judicial Reform and Human Rights Program.

## **Checchi Programs**

### *1. Legal Assistance*

The Checchi Program on Legal Assistance began in 1995 and operated through 1998. As part of this program Checchi provided grants to 12 NGOs, four bar associations, and three law schools to provide legal representation to indigent clients in several jurisdictions, including: Gonaïves, Saint-Marc, Les Cayes, Jacmel, Petit-Goave, and Hinche. Thus, the program operated in six of the seven model jurisdictions which were the focus of the AOJ Program (it did not operate in Cap-Haïtien, the seventh model jurisdiction, because a Belgian-funded NGO, called Réseau des Citoyens funded the creation of an organization, called the Bureau d'Assistance Judiciaire, which provided this service in the north of the country and was based in Cap Haïtien). Instead, Checchi provided the service in Hinche, which was the only jurisdiction provided this service that was not also a model jurisdiction.

Under the Checchi Program, lawyers made available through participating bar associations represented indigent clients in Courts of First Instance, and law students and paralegals represented them in the JP Courts (Haitian law allows paralegals and law students with two years of education to practice in these courts). Paralegals also assisted the lawyers in their representation of clients in the First Instance Courts, primarily by conducting client interviews in various prisons. Checchi provided monthly trainings to their grantees, developed training manuals, and monitored the grantees' performance. As part of the grantee training, periodic symposia and conferences were also organized.

In terms of the program's impact, it must be noted that this appears to be the first time in recent memory that free legal services were offered to indigent clients in any systematic way, and there is no doubt that the program increased citizens' access to justice. It also increased awareness of the necessity of these kinds of services, planted the seeds for the organization of bar associations throughout the country, and got lawyers in bar associations involved in providing these kinds of services. Although there is insufficient empirical data available to assess the program's impact on pre-trial detention, it has been reported anecdotally that, in the locations where it was operating, the program did serve to reduce pre-trial detention. Now that the program has been terminated, there is no systematic provision of free legal services to indigent clients anywhere in the country; however, bar associations continue to provide these services sporadically, as do law students.

The effectiveness of the program was widely questioned while it was in existence. Anecdotal evidence has implied that Checchi was receiving USAID funds yet failed to provide the service. In fact, there is no doubt that the services were being provided (this was verified by the CAI mid-term review and by a study conducted for USAID by one of the authors of this report).

However, it is true that there were problems in the provision of the services. Frequently, clients who were represented by program staff were unaware that they had been assigned an attorney; client confidentiality was often ignored; and in many cases clients did not receive competent legal representation.<sup>9</sup>

## 2. *Civic Education*

During the course of the Checchi contract, their efforts also focused on engaging with the public. These included group discussions, role-playing, lectures, and radio and television broadcasts.

However, even at the time that these programs were being implemented, their impact was questionable. The Haitian public was, and remains, largely ignorant of even their most basic rights, including the right to an attorney. The CAI mid-term evaluation noted the ineffectiveness of this program and attributed it to a focus on the law, as opposed to practical solutions to the types of problems most frequently faced by Haitian citizens. Evidently, these efforts aimed too high and were not designed to use methodologies which would give the population the simple information that they need in order to acquire a basic understanding of the workings of the justice system and of their rights in this context.

### The IFES Program on Constituency Building and Human Rights

This program was created in 2001 and represented a new strategy for USAID in the promotion of judicial reform in Haiti. After all international donors, including USAID, withdrew their direct support to the GOH in the area of judicial assistance, USAID decided to fund activities that would reinforce demands by Haitian civil society on its government to engage in judicial reform.

As part of this program IFES has created four working groups representing four sectors of Haitian civil society—the legal, business, human rights and media sectors. The goal of these groups has been to develop strategies for the promotion of judicial reform. Also in the context of this Program, IFES has provided technical and financial assistance to the Federation of the Bar Association and the two newly created judges associations—the Women Judges Association and the National Magistrates' Association (ANAMAH).

With IFES' support, the bar and judges associations have collaborated in several activities promoting judicial reform. Two separate roundtable discussions were organized by these groups—one of these sessions was centered on the report on the Magistrates' School, commissioned by IFES and written by Dr. Montferrier Dorval, and the other on the report on the "Status of the Judiciary," also commissioned by IFES and written by Maitre Leon Saint-Louis, both of which were published in the spring of this year. In 2002, these associations collaborated in a series of lectures and other events to commemorate law week (La Semaine du Droit et la St.

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<sup>9</sup> In one egregious case studied by one of the authors of this report at the time, a defendant found in possession of counterfeit money was erroneously charged under the penal code provision dealing with manufacture and distribution of counterfeit money as opposed to the less serious charge of simple possession. The lawyer representing the defendant under the Checchi grant failed to raise this issue during the trial, and the defendant was convicted of the more serious charge which carried a penalty of life imprisonment at hard labor.

Yves) in Haiti, and the theme of the law week was judicial independence. Among the events that were part of this exercise were lectures on this topic by one of the authors of this assessment, by the current MOJ, Bernard Gousse, and former MOJ Jean Joseph Exumé. In addition, they have collaborated in holding four ten-day seminars on justice issues, have prepared several radio broadcasts on justice issues in the provinces, and have worked together on four manuals on justice reform that are currently being prepared for publication.

On August 19, these groups, acting with IFES support, organized an event to launch a new initiative, entitled “The Coalition for Justice Reform.” The President, Prime Minister and MOJ all attended this event. Once again, judicial independence was a major theme. This initiative represents a continuation of the previous efforts of the project described above, and its purpose is to broaden the base of support for judicial reform within civil society.

This assessment team was able to observe that the IFES program has clearly had positive impact in the justice sector. Perhaps the most significant example of this lies in the fact that the collaboration between the judges and the lawyers has served to reduce the disdain in which the latter have traditionally held the former, and this in turn has served to create solidarity in their joint demand for judicial reform.

In the past, there has been a very significant imbalance between lawyers and judges. The lawyers have been traditionally much wealthier and better educated than judges and for this reason, they tend to have had little regard for the judges whom they have often been able to intimidate and manipulate. This has contributed to the lowly status of judges in comparison to other legal professionals, and this in turn has made them vulnerable to corruption. All too often, judges have been dependent on lawyers in view of their superior knowledge of the law and their superior position of power and influence that sometimes results from ill-gotten gains flowing from corruption. It seems, however, that the situation is beginning to improve, as exemplified through the joint meetings and activities described above. Indeed, some of the lawyers who are active in the bar associations have demonstrated a changed attitude, characterized by a new-found respect for the judges and for the role which they must play in order for the justice system to function properly.

Even more importantly, judges and lawyers have learned to speak as one voice in the demand for judicial reform. The assessment team was able to observe this particular impact at the colloquium that was held at the Magistrates School at the end of July. On that occasion, one prominent member of the bar described the evolution in the relations between judges and lawyers. He explained that as part of previous efforts to establish judicial reform, the MOJ removed certain judges (typically older ones) whom they considered to be corrupt and incompetent, replacing them with younger graduates of the Magistrates School. He went on to explain that at first, other lawyers resented the younger magistrates (this is not difficult to imagine in light of the imbalance described in the previous paragraph), but, over time and by working in collaboration, they have learned to respect each other, and, more importantly, to speak in solidarity in demanding judicial reform. This was further reinforced by the fact that some members of the judges association also spoke at this conference. These observations

certainly bespeak of progress in this area and serve as indications of increased respect for judges. This, in turn, should contribute to a readjustment of the imbalance previously described.

However, in assessing the effectiveness of the impact of the IFES program, it is important to note that much still remains to be done. First of all, steps will need to be taken to strengthen the fledgling judges' associations that thus far are composed almost exclusively of younger judges. The current composition of the judges' association is indicative of the gap that currently exists between the older and younger judges, and this gap was underscored by several of the judicial actors interviewed by this assessment team. More senior judges will need to be integrated into the associations for them to have a real impact and to contribute positively to increasing solidarity not only between the judges and lawyers but also within the judiciary itself.

Moreover, it remains to be seen whether the increasing demand from civil society and business leaders will succeed in moving judicial reform efforts from discussion to action. This evolution should be the goal of the recently created, more broadly based coalition between the judges' and bar associations. In addition, several of the recommendations made in the final section of this report could also advance that goal. (See, for example Section B of the Recommendations related to legislative reform)

## **B. Factors and constraints that have affected the accomplishment of USAID's justice programs**

In this section of the report, the team reflects back upon what was done, by whom and how, in the programs developed and implemented by the international donor community from 1993 until the present. This section also examines certain issues pertaining to the structure of international aid, as well as the relative programmatic successes or lack thereof stemming from the manner in which assistance was approached by the internationals and interpreted by Haitians receiving the assistance.

Despite the opportunities presented to instill democratic processes of governing within Haiti, and the considerable efforts and resources expended over an approximate 10-year period, little remains from the programs carried out. For donors, and Haitians, to develop successful strategies for reform, it is essential to consider the lessons of the past, and to ensure that justice sector reform efforts this time take these lessons fully into account.

In recent years, much has been written concerning the factors limiting the effectiveness of justice assistance and reform programs in Haiti. Principal among these have included:

- Lack of GOH resources (coupled with the political determination to allocate a scant 1% of the national budget to the MOJ);
- Lack of a comprehensive strategic vision and plan to guide GOH and donor efforts, leading to piecemeal and sometimes competing approaches, and disconnected results;
- Donor approaches that at times tended to impose programs – sometimes totally

- unsuited to the Haitian context - rather than working with Haitian counterparts to develop consensus-based solutions;
- Donor programs – particularly training - that were not tailored to Haitian laws, policies, or reality;
  - GOH willingness to accept donations and assistance from the international community, but a marked lack of willingness to permit fundamental changes to take hold in the judiciary and indeed across the entire system; and
  - Lack of a sitting parliament to pass reform legislation and to serve as a check on executive authority, at least since the 2000 elections.

All of these factors have contributed to less than positive results from donor efforts between 1993 and 2000; however, two additional issues stand out as the most essential reasons why so many of the initial achievements ultimately came to naught. These are the apparent deliberate lack of political will that characterized most particularly the second Aristide Administration, and international reaction to the deteriorating situation in Haiti (especially as evidenced in increased allegations of human rights abuses), leading to their departure long before reforms could be sustained and institutionalized. Indeed, in the view of at least some Haitians and donors alike, departure of the international community was a key objective of the Aristide Government.

In 2000, the GAO reported: “...despite the achievements of [the 6 year US program of assistance] the police force has not effectively carried out its basic law enforcement responsibilities, and recent events suggest that politicization has compromised the force...The judicial sector also has serious weaknesses, including lack of independence from the executive branch, outdated legal codes, cumbersome judicial proceedings, personnel shortages, inadequate infrastructure and equipment, and an ineffective oversight organization to stem corruption.” Similarly, according to the *Intervention and Institution Building in Haiti* (Beidas, Granderson, Neild 2002), “Reform of the justice system was to be the cornerstone for the establishment of the rule of law following the return to constitutional government. But eight years on, a vision and strategy for reform have yet to be agreed and implemented. (pg. 24). Donor impatience to see rapid results led to the quick fix approach – dictating decisions, programs, and timelines not amenable to bringing about long-term changes. (pg. 25).

These critiques of past justice reform efforts point out that, despite the expenditure of millions of dollars and the plethora of programs that were developed and implemented in the justice sector, the consequences of the issues and constraints outlined above severely limited program effectiveness, rendered sustainability impossible, and led to the inevitable backsliding that currently characterizes the condition of the justice institutions in Haiti. USAID, and indeed all external donors, should take these issues into account, and develop strategies to avoid their recurrence, in developing all programs of assistance under the Interim Government.

Certainly, lack of a broad-based strategic development plan was (and remains) a critical factor that contributed to the shortcomings in donor coordination. But this is not the only, nor the most important factor leading to the current situation wherein the institutions of justice are best described as dysfunctional. The fact that donors working in Haiti’s justice sector tended to take on responsibility for discrete aspects of the justice sector led to a “stove-piping” approach to

justice assistance, rather than a unified and cohesive approach to components of the justice sector that should have developed in concert with one another. In addition, individual donor efforts frequently supported goals determined by the donor country and tended to mirror the national procedures of the donor country rather than reflecting Haitian ideas or approaches. This tendency has led to sharp criticism that international donor programs, to include USAID partner-implemented programs, were imposed on the Haitians, rather than developed in concert with Haitian counterparts. The lack of donor coordination (and, at least in some instances, their decided penchant *not* to cooperate, other than through occasional meetings to review what they were doing in their various sectors) not only allowed for overlapping and conflicting efforts, but left donors vulnerable to manipulation by the GOH. This approach also failed to take strategic advantage of the very substantial leverage that donors could have exercised with the GOH early-on to move forward reform agendas – especially had the donor community decided to act in unison.

Another donor issue described to the team was the perception – by some Haitians - that donors sometimes failed to consider how Haitian counterparts receiving assistance viewed the situation. As related to the team, many Haitian judges, prosecutors and other justice system staff demonstrate a remarkable level of pride in what they are able to accomplish, despite their meager means and the fact that they work in very difficult conditions. One individual interviewed by the team described Haitian reaction to some donor assistance as the “silent shock.” He explained that the approach adopted by some donors tended to be interpreted by Haitians as outsiders “telling them what to do” and doing so in circumstances where it should have been apparent that, given the almost non-existent physical infrastructures and other material means, it would have been difficult if not impossible to follow donor advice. In other cases, donor-offered training did not take Haitian laws, policies, and customs into account, nor did the training adequately address the daily realities and conditions in which trainees would be expected to work. This in turn led to a feeling that donors not only did not understand the situation of Haitian counterparts, but that they were unconcerned about the lives or circumstances of those on the receiving end of donor assistance. When questioned about how to improve the situation, the recommended approach was to elicit ideas and solutions from Haitian counterparts, involving them to the greatest extent possible in program development and implementation, and doing so through working groups or other fora created to address one or more aspects of the reform effort. Clearly these types of critiques were not the universal impression of donor assistance and the team heard high praise for the work carried out by certain individuals and groups. However, for future donor efforts, both the approach and the individuals selected to implement programs in Haiti should take the Haitian perspective into consideration.

Complicating donor-related issues, in the 1990’s, the lack of political will on the part of the Government of Haiti manifested itself in a variety of ways, and these too are noteworthy when approaching future programming. Key vacancies were frequently not filled, or filled not simply with inexperienced staff, but by persons who were against change of the *status quo*; conversely, the team observed now (as in previous years) numerous persons present at virtually all sites visited with no apparent job or official function. During previous interventions, personnel assigned to key positions frequently created obstacles to reform rather than facilitating reform. Indeed, it appeared that certain individuals had been specifically designated into “spoiler”

positions – to ensure that substantive progress was not achieved. Despite promises to the contrary, the GOH frequently failed to provide adequate material resources to enable fragile reforms to reach sustainability, even when such resources could have been available from within the national budget. Public corruption, while recognized as a serious problem and a significant impediment to progress, was not addressed in a serious and concerted way.

With regard to the local abilities to investigate and prosecute criminal cases, in particular, politically sensitive criminal offences, there was inadequate support to the investigation of serious crime and an ongoing effort to politicize the police that contributed to public perception of impunity. There was a lack of commitment to establishing the judiciary as a professional career with professional standards applied to all personnel. The resultant absence of effective oversight mechanisms, inconsistent procedures, inadequate judicial facilities, and inefficient use of judicial personnel (short work days, failure of personnel to appear for work at all, lack of proactive commitment to case management) that began to reappear in the late 1990's are once again in clear evidence in Haiti.

In addition to these broad constraints, priorities set by both the GOH and donors also contributed to an imbalance between the resources and attention given to the police vis-à-vis the other components of the justice system (especially the judicial and prosecutorial sectors). In trying to meet the timeline driven by the "exit strategy," the balanced approach that had been adopted by the donors under the Governor's Island Accords in 1993 (to proceed along separate but parallel tracks in developing all components of the justice system, and forging developmental links between all components), gave way to a skewed scenario in 1994 when the bulk of human and material resources were focused on restoring public security and building up the HNP. This preponderance of attention on the HNP continues to this day and is evidenced among others, by the fact that only 11.5% of the MOJ budget is allocated to components *other* than the HNP.

While the lack of political will on the part of the Government of Haiti was a substantial factor in the withdrawal of support by most donors, this withdrawal took place at a very critical juncture of justice sector reform when institutions and fledgling reform efforts were most vulnerable. The departure of the international community contributed to the stagnation of the reform process and considerable backsliding in areas where progress had been made. A significant portion of the material goods provided by donors has disappeared and the GOH has had limited means and no incentive to replace them. It is clear from the current review, that in many cases, only small vestiges of major programs have survived the last four years following donor departure.

It is worth noting that under the 1993 approach, USAID assistance programs dealing with reform of the courts and the parquets were closely coordinated with those to be carried out by the Department of Justice's ICITAP (International Criminal Investigative Training Assistance Program) police program, as well as with those planned by the UN and other key donors (principally Canada and France). Initially, USAID's programs were to be developed and implemented by Checchi (at the time, called ARD/Checchi) and focused primarily on assistance at the level of the JP Courts (with Canada targeting the Courts of the First Instance). Original plans called for cross-training between the three principal components (courts, prosecutors, and police), as well as budgetary comparability. Agreements had been reached with the UN, as well

as with other donors, as to what was to be done and by whom – but the overriding consideration for donors was that all efforts should be carried out in unison. Where possible, Haitian counterparts were consulted on all key issues and their input was integrated into plans. Rather than taking the approach of allocating disparate parts of the overall task to different donors, the broad strategy called for integrated efforts across the board. Even more importantly, justice reform planning, especially with regard to the HNP, called for incremental changes to take place over a 10-year period. All of this changed when the Harlan County sailed out of the Port-au-Prince harbor in October 1993.

The programs actually implemented in the 1994 scenario differed radically from the 1993 plans. USAID's prominent position as coordinator of justice sector reform evolved to that of unique focus on the Checchi program, and later, the inclusion of the OPDAT prosecutorial development program (initially under Checchi, and ultimately through a PASA directly negotiated with the US Department of Justice). While due to the legislative prohibitions, the ICITAP police assistance program had never been under the direct authority of USAID, in 1993, plans for police assistance were coordinated closely with the other justice programs and, in fact, the ICITAP offices were housed within USAID. However, under the 1994 scenario, the program functioned out of the Embassy and reported directly to the Ambassador. Not that this, *per se*, was a bad thing, and certainly the weekly country team meetings convened by the Ambassador contributed positively to coordination of efforts amongst USG entities involved in justice sector reform. However, the rapid pace mandated for the police program, hampered the 1994 level of interaction, now seen as essential to a balanced approach to reform.

The HNP reform effort would impact upon, and be impacted by, reforms of the other institutions of justice. Failure to effectively harmonize the two development efforts negatively impacted on both. This was, at least in part, a result of the bifurcation of the two efforts when the police reform program was placed under the Embassy and judicial reform under USAID. With regard to planning, however, while some degree of planning for individual components of the justice sector was conducted, it was not holistic in scope. Rather than producing an overarching strategic plan for the integrated development of all components of the justice sector, planning tended to focus on individual components and on minor, individual tasks associated with that component. No “blueprint” or “masterplan” was developed – not within and between US implementers - and even less amongst the broader donor community. Planning also failed to take into account the crucial linkages between key institutions, such as that between the Judicial Police and the courts and parquets, and the necessity of a harmonized approach governing the conduct of criminal investigations was all but ignored. Clearly, cross-institutional development of standardized procedures and uniformity of the *chaîne penale* fell to the side, and, ultimately, the inability of the courts and Parquets not only constrained the progress of the HNP, but, in the view of many, were a contributing factor to vigilantism and summary executions alleged to have been perpetrated by the HNP in the latter half of the 1990's.<sup>10</sup>

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<sup>10</sup> A very revealing example of the coordinative void between the USAID-led justice program and the Embassy-led ICITAP police program was evidenced at the sites of the Centre de Formation of the HNP and the Ecole de la Magistrature. Both were former FAd'H training facilities (the heavy weapons battalion in the case of the former and the officers' training academy for the latter), and during the period when both facilities were

In addition to these high level factors and constraints, there were a number of operational and implementation issues that limited program effectiveness and will continue to do so if not addressed in future programming. A very significant issue is that following presidential elections, virtually all personnel within the Ministry of Justice (and other ministries) are replaced by the incoming Minister(s) – taking with them the institutional knowledge and capacity of how to run the Ministry. While similar personnel changes also take place in many countries, replacements are usually limited to the most senior level management positions, leaving in place the cadre of career manager-level staff who know the institution and how to run it. This is rarely the case in Haiti. For example, within the Ministry of Justice, only the position of Director of Judicial Affairs has remained through changes in the Administration. Clearly, long-term sustainability of capacity development within the Ministry will require a re-examination of this practice.

Low salaries paid to judges, prosecutors, and other justice sector staff is also a serious factor inhibiting long-term improvement of service delivered by justice institutions. Three significant problems arise from low salary levels. First, the most capable lawyers and other workers will not seek employment in government positions (and in Haiti this has already led to a situation in which lawyers tend to look down on judges). Second, when a worker cannot earn a salary sufficient to support a family, he or she must resort to seeking alternative means of supplementing income that, all too frequently, takes the form of accepting bribes or other types of corrupt or illegal practices. Third, the individual who is paid very little for his/her work tends to feel undervalued and this in turn tends to be reflected in the quality of work. In Haiti, the issue of low salaries paid to judges (and especially to the *juges de paix*) takes on particular importance because the police are paid significantly more. During a meeting in the Ministry of Justice, the team was informed that the government intended to raise the salaries of all civil service workers by 30%, and that some of the judges (particularly the *juges de paix*) would receive a 60% raise. This may still be the intention; however, the team was also informed that the police had already received a 60% raise – thus further complicating an already difficult situation.

With respect to some of the USAID-funded programs to assist judges and prosecutors, some additional factors and constraints should also be noted. For reasons that are not totally clear from the literature or discussions, it appears that some interventions were carried out without first fully identifying the problem(s) needing to be resolved, thus rendering the assistance less valuable than it could have been. For example, from meetings and interviews, it appears that in preparing to introduce new case registers into the courts, a needs analysis was not conducted. Instead, flow charts of existing processing were prepared, and the registers were designed to match those processes, rather than analyzing how streamlining and other procedural improvements could have been effected. In addition to the rather limited vision in terms of the design of the register system, other constraints stem from problems in training (and the absence

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undergoing refurbishment, the gate between them stood open. When the Ecole began training for magistrates, the gate was firmly locked, and remains so today.

of institutionalized follow-up training), and that standard procedures were not introduced and used within the courts and Parquets, even when procedures were in fact prepared. The fact that the data contained in the registers tended to differ from court to court, that mistakes were made in data entry, that the register was never recognized or used as a useful tool to find cases, or check up on the status of cases and defendants, or to generate statistical data, is fundamentally a training problem (and procedural problem linked to training). A clear constraint to rendering the registers useful was the fact that after some initial instruction of how to fill out the registers, never was any form of on-the-job or refresher training offered. It is very clear that in a country such as Haiti, new skills need to be reinforced in the workplace continuously, at least until such time as the skills have been institutionalized. In the final analysis, the registers developed and emplaced in courts and Parquets were interesting, but had limited impact. Certainly for future assistance programs related to case processing, there is a need to look beyond the very immediate issue of manually logging cases. Careful examination is needed of what should be tracked of and why – then the processes developed and implemented must correspond to the broader goals (for example, the need for reliable statistical data for use as management tools) – even if this requires a longer period of time to operationalize.

Another important inhibiting factor was that, in retrospect, both the Checchi and OPDAT projects seem not to have approached their task holistically – that is, trying to achieve uniformity from court to court (such as between the JP and First Instance Courts), and procedural harmonization between the various institutions of justice.<sup>11</sup> The lack of clarity over roles and responsibilities between the police, prosecutors, and the courts has had a serious deleterious effect upon the operations of all three institutions.

To the historical factors and constraints described above, some additional factors should be taken into account. At the current time, for all components of the Haitian justice system (courts, examining magistrates, prosecutors, prisons, and police), some substantial degradation (physical, infrastructural, and operational) has taken place, eroding initial gains achieved in the mid-1990's. Clearly, this situation results – at least in part – from the sustained lack of resources allocated to justice institutions. Moreover, while it must be noted that some of the physical infrastructure damage to courts, Parquets, police stations, and prisons, and the absence of case files, are due to the “evenements” of last February, a significant level of physical degradation was also observed in buildings that had not been touched during the uprising. Certain of the procedures developed and implemented by Checchi and OPDAT were in evidence (such as use of the registers in the JP Courts), and staff viewed these registers as highly important to their jobs<sup>12</sup>. However, data

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<sup>11</sup> It should be noted that although there was some degree of cross-training between the various institutional components on principles of investigations and investigative techniques, no attempt was made to try to rationalize that process amongst the players, particularly as this pertains to who is responsible for what, where the duties of one group cease and the other group picks up, etc. Essentially – as with so much of the training that took place in Haiti, this cross-training was not part of a larger, goals and objectives-driven framework, and thus only contributed somewhat to enhancing the skills of attendees. But, even here, skill enhancement was for a short period of time because when trainees return to an institution that operates differently from the training, any gain is quickly lost.

<sup>12</sup> It was indeed curious that in every court that had undergone some degree of damage, even in cases where the building was destroyed and the files burned, the register survived because the person responsible for logging cases had taken it home for safekeeping.

recorded in the registers seem to serve no real purpose (for example, cases cannot be retrieved by case number or subject name other than a physical review of all registers), and some of the greffiers seemed to lack basic skills required to properly log new cases into the registers. None of the basic equipment that had been donated (such as manual typewriters) was in evidence and, when questioned, the universal reply was that the equipment had broken down and that there were no means to provide for their repair.

Perhaps even more serious than the physical condition is the apparent apathy observed on the part of many justice system employees. Indeed, while many of those interviewed vocalized considerable interest and pride in carrying out their jobs in a professional manner, this was not borne out by a review of records, cases, logs and other materials viewed by the team. As a curious example of this apathy, the case of the Palais de Justice in Cap Haitien is cited - the building that housed the Court of the First Instance and the Parquet. The Palais was looted and damaged in the late February riots. The local Bar, together with some local citizen's groups, had managed to raise some \$40,000 to refurbish the premises and purchase new furniture - something of which the court, the Parquet, and the Bar were rightfully proud. During the visit, some court employees were in the building, and one greffier was observed to be making notations into a register. However, when staff was questioned about how many trials had taken place in the new courtroom, the response was "none" because the cases had been taken or burned. Despite the fact that five months had elapsed since the February events, and that the courthouse had been completely repaired, very little activity was observed. There seemed to be no particular concern for the fact that cases were not moving through the system, nor for the recurrence of prison overcrowding. Repeatedly, those interviewed cited lack of means, particularly vehicles for use in visiting detainees, as the explanation for the fact that new cases were not being processed. While it is certainly true that means are lacking, it is difficult to understand why new cases cannot be created to deal with the growing prison population in Cap Haitien (where, as a result of the burning and looting only three cells remain in usable condition, but these already house approximately 70 newly detained prisoners) when the prison is located almost directly across the street from the Palais de Justice. Clearly, efforts to engender a work ethic, self-starting initiative, and self-sufficiency should be important ingredients for all future programs.

At the current time, the situation of the justice system in Haiti continues to reveal a curious juxtaposition of positive and negative factors. Given the current positive attitude of the Interim Government to justice reform, at least so it would appear through public statements, some of the recent decisions and actions are troublesome. Conversely, some of the negative elements encountered in the 1990's, such as lack of political will and refusal to discuss the hard issues, would appear to be more positive - but concrete actions do not seem to be following the rhetoric. However, resources are still lacking, as does apparently, the willingness to allocate resources to the justice system, despite reports that the salary level of employees would be raised. Also present, and of concern, is the lack of ownership of the system evidenced from virtually all interviews and a very fatalistic attitude towards possibilities of taking the initiative to bring about change and reform.

Despite these detractors, clearly there is a window of opportunity for Haitian counterparts and donors to join together in developing and implementing justice reforms. The recommendations section of this report contains many specific interventions – both broad-based and highly targeted – that could be undertaken with a reasonable expectation of success. However, success in the new millennium will require that donors and Haitians alike approach new programs with a clear understanding of why programs failed in the past, coupled with a strong vision – and clear roadmap - of how to move forward. US agencies must commit to work together, donors must approach Haiti in an integrated fashion, and opportunities for obfuscation and backsliding must be confronted and corrected immediately. Hopefully, the seeds of discontent that the team noted in nearly all persons interviewed, are sufficiently grounded that Haitians will be willing to put aside individual agendas and agree to work together for the greater national good. Certainly, for the first time in the more than a decade that members of the team have worked in Haiti, there are some positive indications that Haitians are now at the point where they are so fed up with everything that is wrong with Haiti that they are finally interested in engaging in a positive manner and willing to actively contribute to the reform of the justice system.

**C. Preliminary assessment of the Ministry of Justice’s (MOJ) technical, administrative and financial capabilities to receive USAID assistance and the Haitian Minister of Justice’s capacity to implement a plan of action for judicial reform**

In the past, absence of absorptive capacity of the Haitian institutions that were targeted meant that much of the international aid which poured into following the restoration of President Aristide in 1994, was not used effectively. The capacity of the MOJ’s (and other institutions’) to absorb the significant assistance (technical and financial) needed to improve the operations of the justice system is important to designing an effective assistance program. As mentioned in the recently published UN discussion paper “Haiti: Lessons learned” (Lama Khouri-Padova 2004), developing the institutional capacities needed to carry out the reform programs will take significant time since many agencies do not have sufficiently trained personnel to effectively undertake even routine tasks. This is also a concern for the MOJ, especially if (as is so often the case) many of the current high level staff leaves following the elections.

The assessment team noted that the current staff at the Ministry of Justice, at least at the top assistant levels, appears knowledgeable, competent, and anxious to engage in justice reforms. In 1998, Bernard Gousse, the current interim Minister of Justice, was identified as one of the most competent jurists in Haiti and as a person with a vision for justice reform. Mr. Gousse was consequently also hired by USAID pursuant to a Personal Services contract and worked with the USAID DG office on justice issues. There is no doubt that his experience at USAID has helped him shape his vision for reform and has given him an international donor perspective on the subject as well. This past experience could be of use in his implementation of judicial reform during the course of his mandate. However, he capacities at the lower staff levels remain unclear, with regard to both numbers and their capabilities. The 1997 report developed by DAI concluded that the current scope of the MOJ’s authority is far too broad (see page 21 of that report), is overstaffed with untrained personnel, but lacks sufficient trained staff. While some progress seems to have been made, lack of qualified and well-trained staff still appears to be a problem. For example, from interviews with court representatives and Haitian experts, the team

learned that the judicial inspection unit within the MOJ, tasked with important review functions related to court operations, is understaffed (with well-qualified employees) and ill-equipped to carry out its responsibilities. Other divisions seem to suffer from similar conditions. This is of concern because despite the fact that the top echelon staff at the MOJ appears both competent and reform-minded, plans can still fall apart at the implementation level.

Also, the MOJ has extremely broad responsibilities, covering all components of the justice system (police, instructive judges, prosecutors, courts, and corrections). There appear to be no plans to change this situation; thus, the entire burden of justice system reform remains on the MOJ. Without the full capacity of the MOJ to implement, support, and in the long run sustain justice sector reforms, effective and lasting changes are questionable. The scope of the Ministry's responsibilities also raises concerns over a balance of power within the justice system, and conflicts with the constitutionally guaranteed independence of the judiciary.

On the other hand, a positive sign of the MOJ's capacity to receive and effectively utilize USAID assistance is the existence of the CCI plan, and the development of a plan for the Ecole de Magistrature. The MOJ should be commended for their work on the CCI, which is good evidence for technical capacity and the willingness to engage in planning exercises. Similarly, there has been a request to the Canadians for the development of a strategic plan for the police to complement those related to the courts and the Ecole.

The CCI Plan for the Justice Sector (*Axis 1. Strengthen Political Governance and Promote National Dialogue*) focuses on key priorities for the Interim Government to strengthen the justice sector. The MOJ's plan is only one piece of the CCI framework for the transition process and was designed to address the most pressing issues in a way that progress can be made within the limited timeframe of the Interim Government's tenure. The priority issues contained in the plan: improvement of the physical infrastructure, the fight against impunity, ensuring the independence of the judiciary, improving training and education of the judiciary, and promoting the participation of women in the judicial process, are laudable and important goals. However, they are only pieces – albeit important ones – of what is needed to reform the justice system to truly provide equal justice to all Haitians; and even these key issues require more long-term and additional efforts than what the MOJ currently envisions.

As a result, the team has some concerns regarding the potential effectiveness of current planning within the MOJ in delivering effective programs that lead to tangible changes and sustainable reforms. The major concern is that the plan consists of important objectives, but the activities identified to implement those principles do not appear to be adequate to achieve the stated objectives. Also, while the plan was developed with a number of key stakeholders involved, the process did not seem to have focused on first establishing broad based consensus of the overarching goals and a vision for the justice system in Haiti. The plan is ambitious, but does not detail steps necessary to reach the goals articulated in the plan.

With respect to implementation of the plan, it appears that the UN is going to support implementation, but the exact form of this support is unclear. Some parts of the plan require

legislative changes that may be difficult under the Interim Government.<sup>13</sup> All of the priority objectives contained in the plan will require significant time – more than the plan envisions. As currently written, the MOJ’s plan would likely result in a series of piecemeal interventions that are not linked to the broader justice sector goals that both the Ministry and other stakeholders appear to support, in particular broad sectors of civil society, to ensure that this plan will be sustained over time even if and when the Minister of Justice and/or the government changes. This means that while technically competent, solid strategic planning and recognition of what is really involved in developing and implementing sustainable reform activities remains a weak point within the MOJ. In the short run, the current plan needs to be more detailed and based on more information (i.e., options available, lessons learned, resources needed over time) than what the MOJ currently has available for well informed decision making and implementation. In addition, the current plan still needs to recognize and clearly establish who actually will be responsible for developing and implementing each reform stage, it needs to build in stronger accountability mechanisms, and incorporate lessons learned from other experiences. The plan also needs to include much more detailed and realistic cost and resource requirements that contain sustainability considerations.

There is also some concern that some of the activities in the plan to address the issue of impunity may focus predominately on cases that involve Aristide supporters and not on a more balanced and objective approach to addressing impunity.

In the long-run, there needs to be a more holistic – higher level, goals-oriented – planning exercise and the MOJ will need help in the development of this – to avoid the piecemeal approach and to ensure that the sorts of comprehensive reform envisioned are embraced by a broad constituency. Plans that were developed primarily by government representatives, even with some input from key stakeholders, are generally thrown out by the next government unless these plans are tied a broader vision for the justice system that is supported by a broad constituency of all justice sector components, the private sector and civil society. Considering that the current leadership of the MOJ, including all members of the Minister’s advisory team are scheduled to leave their positions when a new permanent government is chosen, the continuity of any plan is a serious concern – as is the longer-term capacity of the MOJ to carry reforms and effectively utilize foreign assistance. Capacity building below the top MOJ leadership – with a cadre of career professional employees who not leave the Ministry after the election - is therefore essential for sustained reform efforts.

A very positive sign for the MOJ’s willingness and serious intent not just to support reform, but to take a leadership role in carrying out reform activities was that the MOJ senior staff did not request equipment and other material goods – this differs substantially from past Ministries and past projects. In addition, in the past, Haitian counterparts were actively requesting the international experts to “do it for them,” but now, there appears to be a commitment for reforms

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<sup>13</sup> Although it is possible for the Interim Government to effect legislative changes through decrees, this practice can be of concern from the perspective placing too much power in the executive branch. If the Interim Government does issue decrees, language should be included that requires Parliamentary review after the new Parliament is seated.

to be carried out by Haitians, a sign of their will to take ownership. In addition, the past tendency of the GOH to emplace persons in Ministries for the purpose of running interference to ensure that little real reform takes place, has been replaced by what appears to be openness towards change. An example of this is that Jean Philippe Vixamar, a Haitian national, who worked for USAID in 1995-1996 and is currently funded by the Canadian Government, is now working within the Ministry, bringing both capability and experience, as well as local knowledge to this position, representing a major asset to the Ministry.

Many questions remain relative to the local absorption capacity. Can the MOJ absorb on-going maintenance of physical rehabilitation of courts and equipment? Such efforts must include both a routine schedule of maintenance and planning for supplies. The MOJ also needs the capacity to put together a needs-based budget (as would the courts should they achieve financial independence), and the ability to monitor and report upon allocations and expenditures in an open and transparent manner – both areas in which the Ministry may need external assistance. The currently very low budget for the MOJ is a serious concern for any justice sector reform efforts. The Minister indicated to the team that the total budget for the MOJ is just equivalent to 1% of the entire GOH budget. Of this budget the majority is spent on police. The courts only receive approximately 11.5% of the MOJ's budget. While percentages *per se* reveal relatively little about what an agency actually needs in relation to what it gets, it is clear that such a minimal amount is insufficient to carry out and sustain even basic justice system improvement efforts – not to mention significant reform activities without the continued financial support from the international donor community. Assistance to the MOJ (and the courts) for developing a strong-needs based budget, effectively presenting it and lobbying for it would be an important element of building the MOJs capacity to absorb and sustain reform efforts.

Any support provided to the MOJ and other parts of the justice sector needs to take into consideration the actual capacities the counterparts have and what responsibilities they can and will take on. Assistance to be provided should be (or become) part of the MOJ's plans, developed and agreed upon with the MOJ, other donors, and other impacted stakeholders. Not only should the activities be specified, but each proposed planning and implementation step, as well as the responsibilities and resource needs (including training and technical assistance for the Haitian implementers), need to be defined, and this definition must be based on an appraisal of the specific problem targeted for resolution. As an example, court staff needs to assume responsibilities for some administrative tasks, i.e., to track cases. There may also be a need for staff in place to carry out new and additional tasks – but at present, particularly those working in rural areas, are often lacking very basic skills, sometimes this may include improving solid reading and writing skills. As a result, assistance may have to build in provision of such basic skills in order to implement changes.

Also, in the past there was no follow-through by the GOH, and this aggravated the lack of sustainability. Moreover, no oversight capabilities were developed to provide for monitoring systems – a lesson learned that must be part of any future assistance provided.

Sustainability must be a key consideration for all aspects of assistance, including ensuring that agency staff is given adequate responsibility for carrying out the new functions and activities.

Not only do the planning and development process need to be Haitianized – the implementation and institutionalization process must ensure that positive reform efforts contain and remain even when international donor support eventually ends. This also means that activities or programs cannot be imposed on Haitian counterparts. The assistance to be provided needs to be understood, accepted, and wanted, and programs need to be built incrementally depending on what the capacities of the Haitian counterparts can absorb. This may also require that some aspects of the reform process proceed at a somewhat slower pace than ideal to assure that the conditions to carry out and sustain the reforms are met. For example, the current plan for improving judicial independence provides for financial independence for the Cour de Cassation. The very competent directeur d'administration of the Cour de Cassation admitted that the court was not prepared to take on this responsibility. He was currently working with the Ministry of Finance to develop appropriate financial management structures; however, many questions are still open. Even the fundamental issue of who should decide how the budget should be allocated – the chief judge or the directeur d'administration – was a matter of debate between the chief judge and the directeur d'administration during an interview with both.

Since financial independence is such an important reform step for the courts, their ability to demonstrate that they can plan for, manage and allocate money in an open, transparent, and responsible manner is essential for improving their credibility and for broader and continuous support for judicial independence in Haiti. In the long run it is desirable that all courts gain financial independence and assistance should be provided to explore the possibilities for incrementally providing more financial independence to all courts. If the financial management structures at the Cour de Cassation are insufficient, accusations of financial mismanagement tend to be made by those who do not support the independence of the judicial sector. Such developments could be a major setback for all the courts in Haiti.

Still, in all reform efforts, donors and the Haitian counterparts should expect and be prepared for some setbacks and use these as a learning tool instead of looking at them as failures. Assistance needs to be designed to be flexible and allow for learning – even from failures. It is important for any assistance program to provide for an environment that supports and encourages change. This should involve assistance to key stakeholders to better understand change dynamics and how to manage change as well as creating structures to capture and analyze the lessons that have been and are being learned in the different agencies and locations throughout Haiti. This also needs to include sufficient opportunities for local stakeholders to share information and discuss approaches so they can learn from each other.

**D. Assessment of the physical condition of the Haitian courts and recommendations on the most urgent renovation actions that are needed**

The Canadian Government is committed to renovating the First Instance Courts, parts of the Palais de Justice (including the registry), and the MOJ, and has taken the initiative to survey their condition. The Canadian report is almost completed. Prior to the Canadian report, at least two comprehensive assessments of the physical conditions and needs of the JP Courts were conducted. One was carried out by MAT (material assistance to ministries) in 1995. At that time a group of 18 Haitian judges and lawyers, as well as members of the Civil Affairs Unit of

the US Army, conducted a detailed assessment of the physical conditions of all of the 176 JP Courts in Haiti (that existed at that time).

Under the program implemented by Checchi, a detailed assessment of the physical needs of the JP Courts, including an assessment of their workload and accessibility, was also conducted. The latter resulted in a map that shows the location of all JP Courts relative to the population size. This map clearly indicated which JP Courts were overburdened, which ones had low caseloads, and where the population had insufficient access to JP Courts due to distance and lacking infrastructures to reach the courts.<sup>14</sup> Such detailed review of each facility is clearly beyond the scope of this assessment. However, Haitian counterparts and foreign experts interviewed unanimously stated that no improvements to the JP Courts have been made since the mid-1990's and their conditions have only deteriorated. The visits to the JP Courts in Port-au-Prince, Cap Haitien, Gonaives, St. Marc, and Jacmel confirmed this statement. The physical condition of all JP buildings visited, the courtrooms themselves, and the furniture and equipment, if available at all, are abysmal. In general, most JP and many of the First Instance Courts are in very poor condition – inadequate space in the buildings; the space between the judge and parties is also inadequate; physical barriers to protect judicial personnel in hearing rooms is virtually non-existent; and offices are very run down and have little or no supplies. Frequently, there is poor electricity, lighting, and no telephone connections. Particularly in the provinces, the courts are housed in substandard facilities – even by Haitian standards. Some of the data collected by the MAT review, showing the conditions of the courts are attached to this assessment.

Of further concern is the fact that there is no security for judges, court staff and those appearing in the JP Courts. The security situation in the First Instance Courts or the Palais de Justice visited in Port-au Prince is not much different. This is particularly disconcerting when it comes to high profile cases, such as those related to the recent massacres, politically linked crimes, as well as major drug cases. The location and structural limitations of the First Instance Court buildings outside of PAP seem to prohibit installing sufficient security upgrades to support high profile cases. It may be advisable to concentrate all such cases at one location with enhanced security measures in Port-au Prince. Another key element to holding sensitive trials relates to the physical security of those involved in the presenting and hearing the case. The Ministry may require immediate assistance for providing adequate security for high profile trials. In fact the MOJ and the courts may need some quick assistance in how to prepare for and handle high profile trials, including how to handle and respond to the media.

At the Palais de Justice in Port-au-Prince, the facilities of the Cour de Cassation are probably the best, but even they are fairly inadequate, cramped and not well organized. The fact that this court is supported by a very competent chef d'administration is visible by the way he runs the court. The rooms are relatively clean and everything appears to be quite orderly. There are some books and basic furniture, equipment, and supplies. However, the judges have no privacy for their deliberations since anyone can just walk through the room in which they are deliberating to use the (very inadequate) bathroom. There is no security (other than guard with

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<sup>14</sup> While the map resulting from this assessment is displayed at the USAID/Haiti mission and the MOJ, the actual report was not available and could not be located by the time this reports was written.

an old machine gun at the entrance to the building), and virtually anyone can simply walk into the judges' chambers and deliberation rooms. Some refurbishing and minor interior and external improvements could make a difference.<sup>15</sup> In addition, the court lacks adequate equipment and supplies, not to speak of access to a decent law library. At the same time, the Cour de Cassation may be one of the few courts in Haiti that could currently implement and actually use limited automation to develop some of the much-needed information databases and to assist in financial management.<sup>16</sup>

The facilities of the Appellate Court of Port-au-Prince, located just on the other side of the building, are in worse condition. This court is not supported by a chef d'administration and this absence is very apparent. The resources of this court are also visibly less than those of the Cour de Cassation. There is almost no furniture and no real equipment; there are no books, nor tangible administrative management support. The greffier responsible for the Palais de Justice only takes care of the building itself, not the courts.

A visit to the registry at the Palais de Justice revealed information about the assistance it receives from the UN for archiving, leading ultimately to automation. The Government of Canada has provided shelving, and the registry will also receive furniture and equipment from the UN. The greffier is head of security and is responsible for the building as well as the registry. There have been several efforts in the past to improve the registry and archiving process. The team notes that the law seems to require that files be retained eternally, instead of allowing disposal of files according to a schedule of importance and need for retention. As a result, with few exceptions, all files have been retained. In 1985 a new Minister, Theodore Achille, ordered that the files be reviewed for purging unessential information. Apparently this was done only to a limited extent since the Minister was removed relatively quickly after this order was given. Checchi later began to reorganize documents, beginning with files dating from 1974. Due to space limitations at the Palais de Justice, older files were sent to the national archives. The registry is still using the logs developed as part of the Checchi project. It is notable that this court retains the same case file numbers assigned by the Parquets, but also assigns its own log number. It is unclear if and how this information is tracked further, but it appears that there is no real link to the actual case record or archive. Case tracking is not envisioned and even file retrieval of any but the most current cases is still difficult.<sup>17</sup> Currently, the UN is providing assistance to archiving files by placing case file folders in boxes that are color coded by case type and separated by year. The archive/registry is later to be automated, but it is unclear if this process will involve the development of a system that would actually link the registry to the archive and if it will provide

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<sup>15</sup> After our visit Maitre D'Orleans recommended that simple dividers were placed into the deliberation room to create a separate corridor to provide access to the bathroom and at the same time give the judges privacy needed for the deliberations. This simple adjustment was made and shows that with a little creativity and the will to take charge improvements can be made even with limited means.

<sup>16</sup> Simple databases that could be created and could be helpful to all courts in the long run would be: database of decisions of the Cour de Cassation, a collection of laws, and the beginning of court statistics.

<sup>17</sup> The same had been observed by the team that assessed the Checchi program in 1998 and recommendations to address these crucial issues had been made but none seem to have been implemented or if they were attempted they did not continue.

for some file and/or case tracking mechanisms. At present the computer equipment available to the registry is used for word processing only.<sup>18</sup>

The physical structures of the JP Courts visited all require improvements – as do the operational processes observed. The JP court in the south region of Port-au-Prince is centrally located, but in a very run down building with insufficient, basic furniture. Electricity seemed to be absent, as were telephones. The court staff had some manual typewriters, but it was almost impossible to discern who had responsibility for what by just observing the court. Similarly, the courtroom was filled with people, making it difficult to determine who was there for what purpose, whether they were working there, on official business, or simply watching. The team members had to work their way through those assembled to find the one judge that happened to be present in the court at the time of our visit. He was sitting in a dark corner, almost under a stairway, surrounded by about 15 people. Police officers were “hanging out,” ostensibly waiting to assist in some court business, but the presence of a huissier to keep some order was not visible. This court is clearly busy, but in bad repair, lacking furniture and supplies, and is very disorderly.

The JP court in Gonaives was not in operation when the team arrived, but the huissier was there keeping an eye on things. This did not include keeping people from coming, going and assembling in the hearing room just to watch what was going on. This court is in a simple building, a typical structure in downtown Gonaives. Vendors congregate all around the court and on the sidewalk. The building is in terrible condition, with mold on the walls, and what is left of the furniture is falling apart. The court was looted and all files are gone. What is left – as in almost every place visited - is the case registry logbook that the staff safeguarded<sup>19</sup>. However, when reviewed, the last entry in the criminal log was made on September 9, 2003. The court had reopened just the week before the visit (the end of July) and had heard a few cases since. But there must have been no misdemeanor crimes, since there is no record of them. Since there is generally no recording of civil cases other than on loose-leaf pages (the Checchi program only focused on criminal cases – a shortcoming since the majority of the caseload of the JP Courts are civil matters). Currently, this court just has one judge instead of three, two greffiers and a huissier. The JP court in Jacmel was closed when the team visited, but we were able to observe its condition. As many other JP Courts, it is housed in an old building downtown, in need of repair, with limited furniture and generally very limited storage capacity to keep files – if there are any files remaining in the court.

Comment [p2]: i

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<sup>18</sup> Based on our not insubstantial experience with court automation, NCSC strongly recommends that any automation efforts commence with a detailed requirements and functional analysis of needs – and not simply the needs within the courts to locate cases and to generate statistical data. One of the most basic premises upon which automation should be based is a solid manual system, uniformly applied and used in all courts. In addition, the team perceived a need to establish connections between the various justice institutions around the country. All component parts of the Haitian justice system require some form of case tracking and management, and the potential ability to inter-link these components (and with other parts of the government, such as for example, with driver’s license records) will also be crucial.

<sup>19</sup> It was curious that the staff in every court visited had safeguarded the register book during the events of February. This can be a very positive sign that court staff value having a tool to keep track of case information.

The situation of the Parquet in PAP is not very different.<sup>20</sup> OPDAT's program seemed to have planned some improvements of the physical structures of the Parquet. However, if these plans were actually carried out, the results were no longer visible. The team visited the Parquet in downtown Port-au-Prince. The location is relatively easily accessible, but typically, it is housed in a deteriorated building. Lighting is limited, there is nobody to direct the public on where they need to go, and it is noisy, with little room. The Parquet has a few non-networked computers that are used for word processing only. They also have a scanner and a small copier that cannot handle what needs to be copied; they are lacking basic supplies. File folders are kept, but based on what the team observed, they appear somewhat disorganized. The staff is still keeping the logbooks to register cases "because it has proven successful," but the data contained in the logbooks are not used for the purposes of file retrieval, nor for gathering statistics - data that were characterized as "useless".

While the conditions of the majority of the courts and Parquets visited are pretty dismal, there are some exceptions. In Cap Haitien, the Palais de Justice houses both the First Instance Court and the Parquet, and offers adequate facilities for both. The Palais de Justice had been looted and burned, as had other justice buildings, during the February events. However, the first floor of this building had been renovated in an extraordinary effort with funding from the local Bar Association and local civil society organizations. Consideration is being given to mounting a similar refurbishment effort for the second floor. Those assigned to the Palais de Justice, and the local Bar Association, are clearly very proud of these efforts; but, as described further under Section B, disappointingly little activity was observed inside the facilities. The two JP Courts visited in Cap Haitien, however, were in deplorable condition. One was housed in a rented building, the other on the first floor of a building that once served as barracks for the FADH. Both were very run down, with wooden floors full of cracks and holes, with imminent possibility of total collapse.

Similar to Cap Haitien, the Palais de Justice visited in St. Marc and in Jacmel were in relatively good condition and order. But their quarters are quite cramped which, as mentioned above, is a particular problem if higher profile cases are to be handled. The Palais de Justice, and especially the JP buildings, were not constructed with functions of the courts and Parquets in mind. For example, adequate and secure storage for files is almost never available, and the same is true of separate and secure evidence rooms. Those that were viewed by the team contained items of evidence simply piled on the floor in the corner of an office, designated for evidence<sup>21</sup> (and there is no system to ensuring evidence is not tampered with and can be tracked).

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<sup>20</sup> Outside of PAP they are generally collocated with the first instance courts at the regional Palais de Justice which will be the focus of the UNs improvement efforts.

<sup>21</sup> The court in St. Marc has set aside one room to keep evidence – but there is no system to keeping or tracking evidence.

## **VI. Recommendations for Future Programs:**

Despite the deterioration of improvements effected during previous assistance efforts, and backsliding that has taken place in a number of key areas, there are two very positive impacts of these previous efforts that provide room for some optimism for future programs. First are the physical facilities and items that remain from the previous programs, such as the Magistrate's School, the case registration logs, and the remnants of the BUCODEP pretrial detention program in the National Penitentiary. While it would be an overstatement to say that these legacies from previous efforts provide a substantial foundation for future programs, they do provide positive points of departure for expanded development of critical justice sector reforms. Second, earlier efforts to develop a strategic framework for reform have clearly born fruit. The diagnostic reports and proposals for substantive legal and institutional reform, that were produced by the GOH in the late 1990's, and more recently as a result of the 2004 Donor's Conference, attest to the broad acceptance by the GOH and donors of the need for a strategic view to reform.

Based on the assessment team's meetings with governmental officials, particularly those with the Ministry staff, there appear to be some positive elements that, with careful, targeted, and consistent support, could serve to effect real reform of the justice system in Haiti. However, while some positive and encouraging elements are present – and there is a definite window of opportunity – care must be taken to ensure that political will is maintained. Even these positive elements remain quite tenuous and there needs to be a substantial amount of support and tenacity on the part of the donors and Haitians to assure that reforms move forward to tangible and enduring change to the quality of life in Haiti. Sustaining GOH's will to engage in reform, and improving its planning processes, particularly with regard to expanding stakeholder input, will continue to be a challenge.

The final objective of the Scope of Work was to provide concrete recommendations on the development of USAID's future activities in the justice sector. In this section, NCSC provides such recommendations and addresses a number of issues related to what it will take to achieve positive results from donor interventions this time. As described throughout this report, development of effective programs for the future will require a clear understanding of why things failed the last time. Success will also require concerted efforts by the USG and other donors to band together with reform-minded Haitians and move forward as a strong and united front.

Although the Scope of Work requested recommendations related to future USAID interventions, the team, in consultation with USAID, is presenting the broad perspective of justice reform activities that are needed in Haiti – regardless of which donor might ultimately have responsibility for implementation. Areas recommended for USAID involvement are also clearly identified.

### **A. Strategic Planning and Donor Coordination**

**Recommendation No. 1: USAID (and other donors as appropriate) should adopt a dual-tracked approach to assisting the GOH/MOJ in planning for justice reform. In the near term (during the tenure of the Interim Government), assistance efforts should focus**

**on select activities in the MOJ's Cadre de Cooperation Interimaire (CCI), then, working with the newly elected government efforts should be directed to facilitating development of a high level, long-term strategic plan encompassing all components of the justice sector.**

As described throughout this document, for the past decade, various donors have engaged in programmatic assistance to reform the justice system of Haiti that have had led to less than positive results. Dozens of diagnostics and assessments have been conducted, all containing some very practical and constructive recommendations for reform and assistance programs. However, implementation results have fallen far short of expectations. In part at least, these failures can be attributed to a piecemeal approach to programming, and the fact that there has never been a unified, comprehensive, and consensus-based, strategic framework, developed with and by Haitians, that clearly lays out goals and objectives, along with specific activities that will lead, incrementally, to achieving those goals and objectives.

There are encouraging efforts that have already been carried out by various groups of Haitian to develop a framework for forward planning. Two notable examples include the March 1998 report of the Preparatory Commission on legal and justice reform<sup>22</sup>, and the Ministry of Justice's contribution to the Cadre de Cooperation Interimaire (CCI). With regard to the latter document, the team had a very constructive meeting with some of its authors within the Ministry, felt that the priority objectives identified were both appropriate and needed, and recommends that USAID (and hopefully other donors) supports certain of the activities outlined under key objectives and as described in the footnote below.<sup>23</sup>

The GOH's and the Ministry's efforts to produce the CCI is a very positive step, and the document is excellent in terms of identifying the key issues and goals for the judiciary, and laying out the most immediate types of activities that should be undertaken during the Interim Government's tenure. However, its focus on activities that can be carried out within the 18 month mandate of the current Interim Government limits the scope of the document and what can be accomplished. The plan is also somewhat weak in tying all of the various activities into a well-conceived, holistic plan that builds incrementally towards establishment of a judiciary that can in fact provide the functions critically needed by the Haitian population (efficiency, fairness, impartiality, etc.) Indeed, the team noted that even if all activities enumerated in the CCI were to be carried out successfully, the overall results would not achieve the goals. And, with a new administration and new Ministry staff in place following the election, the team fears that progress made during the interim period might be lost, with the very real possibility of having to

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<sup>22</sup> It should be noted that some Haitian scholars are reluctant to endorse the work of this particular Commission, for various reasons, including that some members were very young jurists, and that the Commission recommended introducing into the Haitian legal system external concepts (drawn largely from Latin America) that are irrelevant to the Haitian context.

<sup>23</sup> Under objective 1.1: physical rehabilitation, the team identifies Activity 2 (refurbishment of the JP Courts) as the highest priority; objective 1.2: fight against impunity, Activities 2, 3, and 8 (reinforcement of capacities and the "chaîne penale" in courts and Parquets, and modernization of criminal procedures; objective 1.3: Judicial Independence, Activity 2 (reinforcement of management systems); and objective 1.4: Training and information, Activities 2, 3, and 6 (standardization of judicial training curricula, training for judicial staff, and improvement in production and dissemination of judicial information).

start over again on at least some elements. Clearly this is not a situation desired by Haitians or donors, and to avoid this circumstance, the team recommends development of a companion-piece to the CCI – a higher level vision and long-term strategic plan that will, over time, serve as a roadmap to achieve the very laudable goals identified as priority objectives for the justice sector by the Interim Government.

To address both the short- and long-term planning needs of the justice sector, the team recommends a two-pronged approach to the justice assistance program. First, engaging with the Ministry to provide assistance to implement the CCI, doing so in the areas enumerated in footnote #24. Secondly, to facilitate a broadly participatory process within Haiti, that includes both government and non-government actors, and to guide them in developing a high level strategic plan.<sup>24</sup> Such a plan should outline the critical functions that the Haitian justice system must be capable of performing, so that the appropriate types of organizational, administrative, managerial structures and infrastructures needed to support these functions can be developed and implemented in a structured and cohesive way. In circumstances wherein the strategic planning method has been used most successfully, development of the plan itself is followed by a second exercise that involves assisting Haitian counterparts to develop a series of action plans, outlining the highest priorities and logical starting points for the 12-18 months of activities (which, for the most part will comport with the activities already contained in the CCI). The high level plan contains broad goals and objectives that will require years to fully achieve, while the action plans (one for each component of the justice system) lay out specific activities that need to be carried out in order to produce forward movement towards the higher goals. Similar to the CCI, action plans are laid out in chart format, with time lines and specific activities, but also identify parties responsible, approximate costs, and benchmarks towards higher goals.

In addition to articulating clearly the priority goals for justice reform, the strategic plan and action plans present the full scope of what needs to happen over a specific period of time, along with the human and material resources, level of effort, etc, thus making it very clear what needs to be done and how long it will take. Perhaps even more importantly for Haiti, the plan can also serve as a "roadmap" according to which Haitians and international donor assistance would all work. In so doing, it is possible to eliminate much of the duplication, overlapping, or competing approaches that characterized past assistance efforts, while also developing Haitian buy-in and ownership of a clearly articulated plan.

The planning processes need not be lengthy, but they do tend to be arduous in terms of having to think through the various steps necessary. However, from past experience, the results are well worth the efforts expended.

The team recommend that, ultimately, an action plan should be prepared for each of the topical areas covered in this section of the report, e.g., the MOJ and component units, the Magistrates School, the Law School, etc.

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<sup>24</sup> The team encourages participation of other donors in the strategic planning process, in particular to avoid the perception that the plan is the result of US imposition of a process or model.

**Recommendation No. 2: USAID should work closely with other donors to ensure that all programs of justice assistance do not duplicate, overlap, or contradict each other. Once the above-mentioned long-term strategic plan has been developed, that plan should serve as the broad framework within which all donor assistance should take place. In addition, rather than parceling out discrete areas of institutional reform amongst donors, donors should form multi-national teams to work with Haitian counterparts in carrying out reforms.**

The many lessons related to donor coordination and cooperation -- that have been highlighted throughout this document -- must be both learned and applied by the donor community in preparation for future rule of law programming in Haiti. This means tailoring all training and technical assistance to the Haitian context; this also means staffing projects with individuals who understand (or who can come to understand) how to work in the difficult environment currently presented in Haiti.

With regard to the strategic plan and planning processes described in Recommendation #1, for implementation to take place in a cohesive and coordinated fashion, all donors must agree to work within the broad framework of that plan (and the subordinate action plans).

The assessment team met with all major donors during the in-country portion of the assignment. Donor representatives understood very well problems of the past interventions and voiced considerable interest in working to see that the same sorts of problems do not recur. Of specific interest in this regard was the unanimous desire to avoid the piecemeal approaches that tended to characterize past programs under which specific pieces of the overall programs were assigned to specific donors. As a means of avoidance of this particular problem, NCSC recommends working in teams comprised of international representatives. When such a model was proposed to international counterparts in Haiti, it was received with considerable interest and the team strongly recommends that this approach be adopted for future programming.

## **B. Legislative Reform**

**Recommendation No. 3: International donor support is needed to fund the creation of a comprehensive program of legislative assistance that builds the capacity of the Haitians themselves to develop legislation, and related policy and procedures to assure its implementation.**

In many of the areas discussed above, existing statutory law will need to be reformed. In some cases this will require amendment of existing law, and in other cases, this will require creation of statutory law where none has existed before (for example, in the case of the laws relating to the Magistrates' School and the status of the judiciary). In addition, some reforms, such as those pertaining to the role, functioning and composition of the *Conseil Supérieur de la Magistrature* may entail constitutional reform. In the latter case, since under the Constitution, Articles 282-284-4, all constitutional reform must begin in the legislature, proposed constitutional reform

could appropriately be the subject of a - program of legislative assistance along with the reform of the statutory law.

A considerable amount of work has been done already in the area of statutory development. As noted above, both Checchi and OPDAT worked on essential proposed legislation on judicial reform, and UNDP worked in this area as well. In the year 2000, the UN agency MICAH followed up on the work of the Preparatory Commission on the Reform of Law and Justice of 1998 and, in coordination with the MOJ, prepared several key pieces of draft legislation. They are all listed on page 10 of the Report on the Status of the Judiciary, which was commissioned by IFES, drafted by Maitre Leon Saint-Louis and published this last spring. They are:

- The draft bill on the status of the Magistracy
- The draft bill on the status of the CSM
- The draft bill on the status of the Magistrates' School
- The draft bill on the Magistrate's Code of Ethics
- The basic text on the philosophy of penal reform

However, the problem with these efforts that have been undertaken to date has been that they have been largely driven by foreign experts and have failed to focus on the capacity building of the Haitians themselves in this area. In addition, these efforts have mainly been aimed at drafting texts rather than engaging in an analytical, problem-solving process that takes into consideration the related problem of implementation and policy development that are necessary to actually change behavior.

Given the approach that is recommended here, it is not premature to launch such a project even though there is currently no legislature. This is so because, as noted in several instances above where these key pieces of draft legislation have been referenced, in many cases important issues still need to be resolved in connection with this legislation and consensus on the resolution of these issues needs to be built. Consequently, a program could be developed which focuses on problem-solving, consensus-building, and finally on drafting. The program should be designed to build the capacity of selected Haitians who participated in the past program.

The problem with programs of legislative assistance in other countries has been that all too often they concentrate almost exclusively on the drafting of legislation. While it is true that drafting is a skill to be acquired, in some respects it is the easiest part of the process and should only come at the end of an analytical, problem-solving exercise which questions the necessity of the legislation and considers the essential issue of implementation. At the same time, the results of the research which will need to be conducted as part of this process can be used in consensus-building in order to assure passage of the particular piece of legislation. This kind of exercise must be conducted by Haitians themselves so that they develop the necessary skills in shepherding legislation through the process and so that Haitians acquire a sense of ownership of the end result.

As an example of a holistic legal drafting process, Professors Robert and Ann Seidman of Boston University direct this kind of program of legislative assistance at the university's law school. The

Program has two components. On the one hand, the Seidmans frequently travel to other countries where they assist in the development of programs of legislative assistance designed to meet the goals described above, and on the other hand, they bring key players from these countries to their program in Boston where they study the methodology and create strategies for the development and adoption of key legislation in their home country. This work always entails significant focus on the issue of implementation.

Such a program in Haiti should focus in the short-term on executive officials since there is currently no Parliament. This is nevertheless appropriate since under Article 111-1 of the Constitution, the executive branch shares the power of legislative initiative (as well as the power to initiate constitutional amendment in the legislature—Article 282) with the legislative branch. Consequently, the program could involve key actors in the MOJ and key players in the judicial sector who will be essential to the consensus-building aspect of the exercise. They could work to revisit some of the basic questions that remain in connection with some of the draft legislation that has been prepared; they can also work on their resolution in preparation for the election of a Parliament.

In the long-term, a legal reform program should be expanded to include selected members of Parliament. This kind of effort would be ground-breaking in Haiti since parliaments in the past have been notoriously weak, and this is one of the factors that has contributed to the several constitutional crises which they country has known. (See Aucoin, “Haiti’s Constitutional Crisis.” *Boston University International Law Journal*. Summer 1999).

Finally, the uniform policies and procedures to operationalize new and/or modified legislation, recommended throughout this report should also be developed as part of this program. A very high priority for this type of assistance would be to work with key actors in the Presidency, Ministry of Justice, Bureau du Premier Ministre and in the judicial sector, helping them to develop uniform policies and procedures for use throughout the *chaîne pénale*. This would serve several purposes. The process would require clear definition of roles and responsibilities between and among the principal institutions (courts, examining magistrates, prosecutors, and police); thereby rationalizing and harmonizing the conduct of criminal investigations. Such a project can also serve to provide for implementation of the key pieces of legislation which will be developed or finalized, as well as providing for consistency and uniformity in the training programs recommended below under Section D.

**Recommendation No. 4: USAID (working with other donors) should provide financial and technical assistance in the creation of a project which will engage Haitians in a comprehensive review of the relevant state of the law, and the persistent lack of enforcement with regard to judicial appointment, discipline and removal so that key decisions can be made on related institutional reforms in the short-term and on legislative and constitutional reform in the long-term.**

Presently, there are several issues that significantly impact judicial independence in Haiti. If these issues remain unresolved, it will be impossible to recruit highly qualified lawyers to work

for the courts and to increase public support for the courts in Haiti. The two issues that require particular attention are the process of appointing judges to the bench and procedural mechanisms for removing judges (as well as constitutional guarantees protecting judges during such removal procedures). The judicial profession in Haiti suffers from the same problems that are present in many countries with similar economical, political and social environments: judges are not respected, salaries tend to be inadequate, the quality of lawyers appointed to the bench is low, there are no transparent and reliable criteria that can be applied during the selection and appointment processes, as well as during the dismissal procedures. (Note: details regarding possible legislative changes to codify these changes and improvements are included in Attachment C).

*Judicial appointment.* The most important issue that is apparent from the very beginning is that there must be a selection mechanism in place that defines the criteria that ought to be followed during the selection process for judges. At the very minimum, persons who are appointed to the bench must have a law degree, and have gone completed additional training that focuses on judicial responsibilities and duties. Ideally, the team recommends that potential candidates should complete the course of study at the Magistrate's School before they are appointed. Even though the Constitution mandates in Article 176 that there must be laws establishing the qualifications for the appointments of judges at the various levels of the judicial hierarchy and that a Magistrates School be created, to date, this has not been completed (although, as mentioned previously, there is a draft law on the Magistrate's School).

Presently, there are four laws that regulate judicial appointments and that need some major redrafting in order to address the issues discussed in this report - the Constitution of 1987, the law on the *Conseil Supérieure de la Magistrature*, the law of 1985 dealing with the organization of the Courts, and the 1995 decree of August 24 modifying that law. These documents describe in general terms the process of appointing judges to the *Cour de Cassation*, the Court of Appeals, courts of first instance, and the justices of the peace.

In the current Constitution there is no provision that describes the current *Conseil Supérieur de la Magistrature*, and the law dates back to the early twentieth century. At present, the *Conseil* consists of the judges of the *Cour de Cassation* sitting *en banc*. In the past, the *Conseil* was vested with the authority to discipline judges; however, it no longer fulfills that function. Nevertheless, the functions of the *Conseil* could be expanded and it could become a major player in the judicial selection process. The *Conseil* could serve as a judicial council if it is determined by Haitians that they want to have a judicial council that exercises disciplinary, appointment and promotion functions. The *Conseil* could act in all of these capacities. It is well known that judicial councils exercise these functions in other countries as a means of preventing executive interference that can occur when these functions are exercised directly by the MOJ or the President. If the *Conseil* takes over the three responsibilities discussed above, the current role of the executive branch in the appointment process will be greatly diminished.

The *Conseil Supérieure de la Magistrature* could fulfill the function of disciplining judges. The *Conseil* does not exercise this function right now, but was doing this in the past under the 1920 law. At the present moment, the *Cour de Cassation* acts like a judicial council and from views

expressed to the assessment team in interviews that Haitians are not happy with the current composition since the *Cour de Cassation* has failed almost entirely to function in this capacity. It is apparent that some other solution must be found.  
(See Attachment C)

*Judicial Discipline* - Under the present Constitution (Article 177), judges are not removable unless there are exceptional circumstances that are carefully outlined in the law and the formal procedures are applied. (discussed in more detail in Attachment C)

For example, judges can be removed through formal disciplinary proceedings following an accusation of violation of the disciplinary rules, which must be established by a written law. Judges can also be removed when they are found to be physically or mentally unsuited in a proper proceeding. When it comes to the members of the highest court, *e.g.*, the *Cour de Cassation*, judges can only be removed through an impeachment-like procedure conducted under the auspices of the Senate which sits as a special “*Haute Cour de Justice*.” This is the same impeachment procedure which would apply in the case of the President, the Prime Minister, other ministers, members of the Electoral Council, or of the ombudsman in the *Office du Protecteur du Citoyen*. (The *Haute Cour de Justice* and its procedures are set out in Title V of the Constitution.) Furthermore, according to the law, judges are not to be even transferred or promoted without first giving their consent.

In view of all of the issues discussed in this section, it is recommended that current legislation be changed (as described in detail in Attachment C).

### **C. Institutional Organization and Management**

#### **Recommendation No. 5: USAID should provide technical assistance, training and some infrastructural support to improve and institutionalize strong management and administrative capabilities within the Ministry of Justice.**

A key component of the strategic plan discussed in Recommendation #1 must relate to a strategy for building up the administrative and managerial capacities of the MOJ, doing so in such a way that improvements are sustainable over the long-term. In the near-term, the MOJ must be able to orchestrate the many donor programs focused on rule of law reform (and the existence of a unified strategic plan will greatly facilitate this task), while at the same time supporting on-going operations of the various institutions that fall under the authority of the Ministry. As discussed in the body of the report, the MOJ itself has already taken some important steps to move in this direction by preparing the CCI, raising salaries, and engaging with donors to discuss needs for external support.

In order for capacity enhancements to be sustainable, some organizational changes within the MOJ will be needed. Principal among these is the need to establish a permanent cadre of professional and support staff within the Ministry who will remain in place after elections, thus providing much-needed continuity when a new Minister and top executive staff assumes responsibility in the new Administration. Within this context, it will be important to examine

resource needs and allocations to the MOJ. Current salary levels for MOJ staff are inadequate to attract talented and experienced lawyers and managers. To develop an efficient and effective Ministry, the GOH will need to plan for realistic remuneration packages. The donor community can provide assistance in compiling realistic, needs-based budgets, however, the GOH must decide to invest in talented, dedicated, and competent personnel for any real reforms to take root.

Depending upon the degree of forward movement in justice sector reforms, USAID should consider modest material and other infrastructural support to the Ministry. USAID should also consider providing assistance in budget formulation and presentation, as well as how to set up transparent systems to track expenditures.

**Recommendation No. 6: USAID should work with the US Embassy and other donors supporting rule of law programs to Haiti to ensure procedural harmonization by developing standard operating procedures across the entire system of justice.**

Largely because they were developed and implemented separately, often by several different donors, both training and standard operating procedures used by judges, prosecutors, and police are at times inconsistent or even contradictory. Frequently, special skills and other types of training do not take into account Haitian laws or existing operational procedures. Aggravating this situation, the team was informed repeatedly that there is a lack of clarity regarding the roles, responsibilities, and scope of authority between judges, prosecutors, and the police. Even within the police, there is confusion concerning the role and function Judicial Police vis-a-vis other divisions. Creation of multi-national donor teams mentioned in Recommendation #2 will partially alleviate these problems, as will working with Haitian counterparts to reach consensus on core functions and responsibilities of each justice institution. However, in carrying out assistance programs, the US and other donors should ensure that operational procedures across the entire justice system are harmonized, and that the procedures are fully consistent with training.

**Recommendation No. 7: USAID or another donor should provide technical expert support for the establishment and operation of the Judicial Inspection Unit or other entity charged with providing oversight for judicial and prosecutorial personnel, and for holding them accountable to clear standards of conduct and performance.**

There appears to be broad agreement that the Judicial Inspection Unit is not adequately fulfilling the functions of providing evaluation and oversight of the judiciary. Whether or not the JIU should remain within the MOJ, be attached to the Conseil Supérieur, or become an ad hoc entity, it is clear that as currently organized and staffed, it is unable to carry out routine inspections, nor to conduct investigations into allegations or wrongdoing or inappropriate behavior on the part of a member of the judiciary.

Regardless of what the entity is called (the function that oversees the HNP carries the title of Inspector General), a neutral and objective body is required to ensure that the responsibilities of both judges and prosecutors are carried out in compliance with law and standard operating

procedures. The specific organizational and managerial structure(s) required to provide this type of oversight should be the subject of deliberation in preparing the strategic plan; however, the resultant office or offices (depending upon whether separate entities are established to oversee judges and prosecutors), transparent oversight and accountability mechanisms must be essential parts of an overall reform effort, especially to enhance credibility of the judiciary in the eyes of Haitian citizens.

As was the case in developing the OIG for the HNP, the team recommends that an experienced advisor work with the MOJ and the person charged to head the office(s) to develop selection criteria, procedures, and training required for staffing the office(s); documented procedures for carrying out inspections and receiving and processing complaints; conducting investigations; and developing realistic and objectively applied sanctions. Establishment of such functions implies the existence of clear policy and procedural rules for judges, prosecutors, and their staff; these in turn, must correlate directly to course content and training materials.<sup>25</sup>

#### **D. Legal Education and Training**

#### **Recommendation No. 8: USAID should provide technical assistance and training in furtherance of establishing the judiciary as an independent branch of the State.**

Haiti's Constitution recognizes the independence of the judicial branch. The structures that enable the judiciary to act independently are, however, not in place and the full meaning of judicial independence in the Haitian context remains to be clearly defined. Today the judiciary is organizationally under the control of the Ministry of Justice. This in itself is an impediment to judicial independence, but is not unusual in traditional civil law countries. More importantly, the structures that not only allow the judiciary to ultimately act as an independent branch but make the judiciary function in an efficient, transparent, and accountable fashion are not in place. The governance and administration of the judiciary and the courts in Haiti exist only in rudimentary form. None of the assistance provided in the past addressed developing a functioning and sustainable governance and administrative structure for the courts. While lack of political will is often the reason why assistance does not focus on this aspect of reform, it is almost impossible for courts to efficiently function without such structures and any assistance provided to the courts has only limited chance to be sustained in the long run without these structures. Such governance structures require a policy setting body – preferably within the judiciary - that outlines how the courts should operate. Decisions are made by this body that never interfere in individual case decisions, but provide guidance and set standards for hiring, continuing professional education, professional responsibilities, ethics, performance, review and disciplinary processes, promotions and demotions for judges and court staff, public education about the courts and public outreach, and planning for reform. Also, this body would set standards and provide guidance for operating and managing the courts, including financial

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<sup>25</sup> While outside the purview of this assessment, given the allegations of corruption against past government officials, the team strongly recommends that every Ministry of the GOH establish an Office of Inspector General or Office of Professional Responsibility to hold staff accountable to standards of conduct.

management, in a way that ensures professionalism, efficiency, access, transparency and accountability.

Currently two entities are tasked with some of these responsibilities, the Conseil Supérieure de la Magistrature at the Cour de Cassation and the Judicial Inspection Unit (JIU) at the MOJ. The MOJ also has the general responsibility for the administration of the courts. The law clearly defines the responsibilities of above entities but neither is in the position of fulfilling their mandated roles, for a range of reasons including, but not limited to lack of means. Nor do both entities currently have all the policy setting and governance functions needed to truly govern the courts in an efficient and democratic manner. What is missing is an entity responsible for planning and setting standards and policies for all court levels in Haiti. Ideally, this entity would be part of the Cour de Cassation or an independent judicial body. It could also be housed within the MOJ (or partially within the MOJ and partially under the Cour de Cassation). The new entity could also engage with the other branches of government to ensure appropriate funding levels for the courts, and provide input for new legislation from the perspective of the judiciary and that take impact on the courts into consideration. To be fully effective and efficient, such an entity would need to be supported by a strong administrative office that ensures that the policies and standards are implemented within the courts. Again, where such an office is hierarchically located is an important aspect of judicial independence, but in the short run, it is more important that an administrative office for the courts exist and that it be able to provide them with the information and means needed to operate properly.

Since the current budget of the MOJ in general and for the courts in particular is so limited, the goal of providing all appropriate means the courts need, including salaries for judges and court staff at a living wage level (at least on a par with other justice sector employees), may be a very long-term goal. However, the fact that it will be a lengthy process does not mean that at least basic administrative support and functions cannot be established rather quickly. A first step would be to review with the MOJ and the Conseil Supérieur their respective responsibilities, how they complement each other and what functions need to be added to provide the courts with a sufficient level of administrative support. Also, plans should address priority needs in the short-run, while determining what should be put in place for more comprehensive support in the long run. Based on this dialogue, a realistic administrative structure for the courts can be developed that addresses personnel issues, as well as improving the infrastructure, management and administration of the courts. Assisting in making the resulting structure a sustainable reality should be the focus of assistance to the GOH and part of capacity building efforts for the MOJ and the courts.

The team recommends a multi-donor team approach to implementing this recommendation.

**Recommendation No. 9: USAID, together with the existing efforts undertaken by the French Government, should support a program to continue education and training at the National Magistrates School while legislative and/or constitutional reform regarding judicial training is ongoing.**

As noted in the text of the report the Magistrates School has been seen as a bright spot on the horizon of the judicial sector in Haiti. Most of the problems that have been associated with the Magistrates School relate to the fact that, while the School is mandated generally by the Constitution, there has been no legislation governing the school or the role it should play in the judicial system. Due at least in part to this lack of legal status, the program at the school has been *ad hoc*, and the curriculum has changed from one graduating class to the other. Moreover, there has been no consistent plan for placing graduates of the School in positions throughout the country.

The need for legislation should be addressed as part of a comprehensive program of legislative assistance (See the Legislative Assistance Section), and certainly the proposed legislation described above in connection with the IFES report on the School should be taken into consideration. All of the issues that were identified in that report will need to be resolved in the long-term as part of the legislative assistance program. However, in the meanwhile, given the positive impact that education and training at the School has provided, education and training at the School should continue in the interim while legislative and/or constitutional reform is considered. It is clear from the assessment team's interviews of Haitian actors in the justice sector, that there is broad consensus on this point.

Assistance should also support the following elements:

- **Development of a standardized curriculum at the School.**

The IFES Report, described above, provides considerable detail on how both the long-term training and the continuing legal education at the School have been inconsistent from one year to another. This was undoubtedly the result of inadequate planning and donor coordination that also resulted in certain significant gaps in both programs such as the failure to provide training in investigative techniques. It also resulted in a situation whereby there was considerable difference in the capacity of judges in the different graduating classes.

Consequently, donors should coordinate in the reinstatement of both the long-term training at the Magistrates' School for judicial candidates and the program of continuing legal education for existing judges. Donor assistance should focus on the development of a consistent curriculum in both of these programs.

- **Development of practical, holistic training at the School, along with follow-up in the field following completion of classroom training.**

One of the problems associated with the training that has occurred so far at the School is that it has failed to train judicial actors in the various links of the *chaine pénale* to function together. As noted above, delays often occur because the actors do not clearly understand their role, nor the scope of their authority. This occurs, for example, when JPs inappropriately refer cases to prosecutors' offices requiring the prosecutors to return the cases to them once they have had an opportunity to review them. Similar problems have been noted in connection with the interaction between the investigating magistrates and other judicial actors as well, and, importantly, the

police frequently fail to comprehend their role vis-à-vis the courts and often are not sufficiently trained to conduct investigations properly.

The most effective way to address this problem is to provide solid, practical training at the School to all potential actors in the system at the same time. Supplementing the process of harmonizing investigative procedures, the training should be done through the use of simulated moot court exercises in which police, prosecutors, student magistrates, sitting magistrates and clerks perform their roles under the supervision of qualified trainers at the school. These kinds of exercises are used for judges training at the Magistrates School in France, and similar methods are used to teach law students to practice law in law schools in the United States. This type of holistic training would serve to create and elevated standard of practice for all of the actors in the judicial sector, allow them to consider difficult ethical and legal issues that they are likely to encounter in the real world, and to avoid the failure to understand their roles that currently plagues the current system.

It will be essential for this training to reflect clearly the uniform practices and procedures which should be developed at all levels of the *chaîne pénale*. These practices and procedures should also be used in the mentoring program. (See Recommendation #11). The internal rules that were developed by Checchi in the JP Courts and by OPDAT for the Courts of First Instance can serve as foundational documents to facilitate this process. As noted above, these uniform policies and procedures could be developed as part of the legislative assistance program. (See Recommendation #3).

Although OPDAT did provide some joint training as part of its program of short-term training, it had little lasting impact since the training was short and tended to be *ad hoc*. This kind of holistic practical training should be built into the School's permanent curriculum so that all of the actors in the judicial sector can have their skills and their understanding of their respective roles constantly reinforced through training. In addition, all candidates graduating from the School should have a clear understanding of the various judicial roles played by prosecutors, JPs, First Instance judges, investigating magistrates, and judicial police. This understanding should come at least in part from their performance in a series of these kinds of practical, simulated exercises at the School. The skills and understanding should also be reinforced by their apprenticeship and through mentoring, assuming that a mentoring program is reinstated.

#### **E. Professional Career and Standards**

#### **Recommendation No. 10: USAID, and or other donors, should provide technical assistance and support to the State University Law School.**

USAID should continue to strengthen both the bar and judges' associations and encourage them to work together. As noted above in connection with the assessment of the IFES program on Constituency Building for Judicial Reform and Human Rights, both the bar associations and judges associations have been strengthened. In addition, IFES has supported several activities which have involved their working together. These efforts have served to improve the status of judges. This is true because in the past, there was an enormous gap between the status accorded

to lawyers and that accorded to the judiciary. In general, the lawyers have traditionally been much better trained and much better paid, and, as a result, they benefited from a superior status. This aberrant imbalance has contributed to weak and ineffectual performance by the judiciary due to the fact that they have often been intimidated by the lawyers and have traditionally fallen prey to corruption. Training at the Magistrates' School has served to some degree to address this problem, and the MOJ has taken some steps to raise judges' salaries. It has also been very useful for judges and lawyers to form associations and to work together. In this way, they have come to a better understanding of the role which each of them plays in the judiciary and have come to speak as one voice in demanding judicial reform. This kind of progress has served already to improve the status of the judges to some degree at least in the eyes of the lawyers who have come to understand them better as a result of these efforts.

However, more work clearly needs to be done in this area. For example, currently, the judges associations are composed almost exclusively of younger judges. One of the principal problems in this area is that the older judges are not yet participating in the judges' association. This fact certainly reduces the impact of their demand on the government for judicial reform. Consequently, efforts will need to be made to recruit the older judges into the judges' associations and encourage them to work with the bar associations. If and when this occurs, the judges associations can also serve as a source of solidarity for the judiciary and bolster their independence as it has in other countries where judges associations are more developed. It would seem only logical that the status of the judges in the eyes of society will increase along with their increased strength and independence, again as it has been in other countries, particularly in countries of the civil law tradition, where the status of judges has often been problematic. (The development of judges associations has had this effect in France, for example, where the status of judges has clearly improved at least in part due to the solidarity that judges have found in their associations).

One thing that could be done to accomplish this goal would be to organize the kinds of roundtable discussions and seminars that have been held by this project in the past while featuring the older judges as the primary participants. They should be invited to lecture on topics related to judicial reform in which they have expertise. In this way, they can come to know some of the benefits of this kind of collaboration and solidarity.

In the short-term, these associations should continue to receive financial and technical assistance. In this way, they can continue to build their membership as recommended and can begin to prepare to take on some of the training and mentoring responsibilities which have been recommended above so that they can assume these responsibilities in the long-term, once donor assistance is no longer available.

**Recommendation No. 11: USAID should support the coordination of judicial placement with the MOJ or alternative institution created for that purpose.**

A key element of the professionalization process should be the establishment of an official career status for judges through legislation will need to be addressed. There is already a draft law on this topic, and it should be included as a part of the legislative assistance program, as recommended above.

A second element recommended relates to regularly scheduled colloquia or symposia to focus on judicial issues, to be carried out around the country, with donor and/or local bar association support. Over time, such types of gatherings could form the nucleus of a continuing legal education program.

In addition, and in order to building on the classroom skills enhancement training provided through the Magistrate's School, the MOJ (with donor assistance until such time as the function can be sustained within the Ministry or appropriate entity) should also consider reinstating a mentoring program. The mentoring program administered by Checchi as part of the AOJ Program was reported to provide benefit in addressing some of the problems plaguing the judiciary in Haiti, as described throughout this document. Those involved in the mentoring program confirmed that during the period when it existed, the program was a useful tool that served generally to bolster judicial independence, and was noted for improving the quality of judicial decisions, while also boosting the morale of judges. However, the assessment team found little evidence of lasting impact of the program in Haiti today. This may have been because the program was so short-lived, but Haitians and international donors need to give further consideration to the question of the long-term impact, particularly in light of the significant expense of such a program. The question of local sustainability of a mentoring program must also be considered (with more senior and/or retired judges mentoring recently appointed judges). It may be that one of the other donors might be particularly interested in funding such a program, so this is one of the elements that needs to be examined as part of donor coordination.

While it is recommended that the mentoring program extend to all newly appointed judges, if the program is reinstated, it will be of particular importance with respect to the integrity of the *chaîne pénale* that it be implemented as a single program available at all levels of the process (judges, prosecutors, and judicial police).<sup>26</sup> In this way, the program will be implemented in such a manner as to support the holistic training that has been recommended as part of the training program offered at the Magistrates' School.

The mentoring program should be administered and coordinated as part of the program of the Magistrates' School. Mentors should receive training at the Magistrates' School in uniform practices and procedures that should be applicable throughout the *chaîne pénale*, and, as appropriate to assignments of trainees, mentors should also receive training in standard procedures for processing civil and/or commercial cases. The mentors should then use these uniform practices and procedures in their provision of mentoring services. This will once again serve to reinforce a holistic approach to training. These practices and procedures should also be used in the other programs at the School as well.

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<sup>26</sup> The team is not suggesting that a single mentor work with judges, prosecutors, and the judicial police, but rather that the process should be coordinated between the three institutions so that all operational procedures, training, and mentoring are fully consistent.

Mentors must be experienced Haitian judges or law professors or those who have participated in a mentoring program as a mentee. (It should be noted here that the use of mentoring in this way may also serve to close the gap which currently exists between older and younger judges).

It should also be noted that two active judges' associations (ANAMAH and the Women's Judges' Association) have been formed recently. These judges' associations should be consulted by those responsible for implementation of the program at the Magistrates' School. In the long-term, once the judges' associations adequately represent both older and younger judges, it may be that they, acting in concert with the Magistrates' School, may assume responsibility for administration of the program. This arrangement could prove to be a more sustainable option.

Finally, as mentioned under Recommendation #3, an essential aspect of a successful professionalization program must include supervision and control of judges and other judicial personnel, and adequate sanctions for misconduct, the severity of which correlates directly with the nature of the behavior (see Recommendation #7).

**Recommendation No. 12: USAID should continue to strengthen judge and bar associations and encourage their collaborative efforts.**

As a part of the overall strategic planning process, the role of the State University Law School should be examined, with a view to assuring that the program of instruction meets the skills and capacity needs of both the GOH and the private bar. It will also be important to assure consistency between curricula and course materials taught at the Law School and those used at the Magistrates School to train judges, prosecutors and their staff. Recommended areas of assistance to the Law School could include review of the existing curricula and course materials with a view to introducing modern methods of instruction and practical exercises, ensuring that any changes to Haitian laws are correctly reflected in curricula, and updating course materials.

**Recommendation No. 13: International donors should consider supporting a program to professionalize the judiciary and to strengthen the status of career judges and other justice sector professionals. Standard selection, promotion, and retention criteria should be developed.**

The IFES Report demonstrated that with each of the three graduating classes, fewer graduating magistrates were placed each year. If this were to continue to be the case, confidence in the School would be undermined, and it would fail to serve the purpose of improving the problems related to the competence of the judiciary.

As noted in connection with Recommendation #11, it may be wise to create an interim Presidential Commission or other body that deals with placement, while legislation relating to the establishment of a judicial council is considered. In the meanwhile, it will be necessary to engage with the MOJ to address placement of graduating candidates before future promotions are initiated at the Magistrate's School.

## F. Court Administration and Management/Court Security

### **Recommendation No. 14: USAID should consider reinstating, modifying and expanding programs to support MOJ efforts in the areas of Case Tracking/Case Management, and Monitoring of Pre-trial Detention.**

Case tracking and case monitoring are critical elements in judicial and justice sector case management. Case management system is critical not only to the efficiency and effectiveness of court administration, but is critical to protecting the rights of both the accused and alleged victim. This was the rationale for making case registration one of the basic priorities of earlier court administration programs. However, there is a need for a much more robust and integrated program over the next several years to achieve the results that will assure that the Haitian people are served and protected by transparent case management processes.

The handling of these two related areas as part of the AOJ Program that was conducted in Haiti between 1995 and 2000, constitutes some of the best examples of the way in which the AOJ Program was administered in a way which was not holistic. The Checchi Program implemented a project in the JP Courts that was essentially a system of case registration, not case tracking. The OPDAT Program implemented a case tracking system, which was comprised of a different case registration form, and concentrated almost exclusively on the prosecutors' offices; the results from these interventions were inconsistent and changes were not institutionalized throughout the system. The BUCODEP Program monitored pre-trial detention in the National Penitentiary, focusing on JP Courts and using yet another system of registration. None of the programs administered by USAID addressed holding cell detention in the police stations.

In view of difficulties arising from lack of uniformity in past programs, USAID should consider funding a uniform, nation-wide system of case tracking. The program should begin by a thorough functional and needs analysis of case processing by all elements of the justice system (courts, instructive judges, prosecutors, police, and prisons). Among the objectives of this new program for standardized administration of case tracking would be to alleviate a number of shortcomings of earlier programs. These include: 1) standardization of case tracking among the various courts to make the system uniform from the first point of entry throughout the justice system; 2) the creation of unique numerical identifiers for each case, assigned from the point of first entry into the system, and that remain with the case file throughout its passage through the system; 3) registers and tracking vehicles that would enable the greffiers to locate files; 4) simplification and streamlining the registration process; 5) introducing statistical elements that render the data gathered more useful (in terms of statistics, follow-up, location of cases, etc.); and 6) expansion of the system to include civil and commercial as well as criminal cases.

A program of this nature could be created and introduced as a pilot program in the same seven model jurisdictions that previously served as models. The program should be staffed, as the OPDAT program was, with one Haitian attorney in each of the jurisdictions, who could be assisted by two legal assistants. The legal assistants currently working on the BUCODEP Program at the National Penitentiary should be integrated into the program. As part of the

program, one uniform registration form should be used throughout all levels of the *chaîne pénale*, including the police stations and the prison. Each criminal file should be assigned a unique number at the point of first entry into the justice system (whether at the level of courts, Parquets, or police). The case file should retain this same number throughout its passage through the system. In addition to personal identifier data and a summary of the case (and charges, if any), the registration form should identify the accused's legal representative, his or her custodial status (updated as necessary), the name of the judge currently assigned to the case, and include information providing the time and date for the next procedural event which is to occur in the case. This registration form should accompany the accused at all levels of the *chaîne pénale* and should be readily available for inspection at all the institutional links in that chain—police station, JP Courts, Prosecutors' Offices, Courts of First Instance, prisons, and Courts of Appeal.

The staff of the program in each of the model jurisdictions should use the standard form to monitor pre-trial detention in all of the police stations and prisons in the jurisdiction. They should visit these locations on a monthly basis and prepare a report that lists all of the problem cases. That list should be forwarded on a monthly basis to the JP Courts, the Chief Judge of the First Instance Court, the prosecutor's office, the investigating magistrates, the police station and the prison within that jurisdiction. It should also submit a copy of this report to the MOJ, and to the Judicial Inspection Unit. The report should contain figures indicating the number of cases being handled by each institutional link in the *chaîne pénale* and should provide figures on the numbers of accused being held in pre-trial detention. The staff should visit the JP Courts, the Prosecutor's office, and the doyen of the First Instance Court requesting action in the problem cases that have been identified. These reports and the uniform registration form should be used by the JP judges, the prosecutors, the doyens of First Instance Courts, and the investigating magistrates in their monthly monitoring as required under Section 447 of the Code d'Instruction Criminelle.

This Program should be implemented in the seven model jurisdictions in the short-term, with donor assistance (for at least a three year period) and responsibility for administering the program throughout the entire country should be gradually (over the course of the following three year period) transferred to the prosecutors and the doyens of the First Instance Courts in all 14 jurisdictions. Training in the administration and monitoring of the program should also be part of the curriculum at the Magistrates' School. In this way, the monitoring which is currently implicit in Section 447 of the Code d'Instruction Criminelle can become an effective reality in the long-term.

The new case management system must be designed as a manual system, but with an eye on the future automation, capable of capturing data that will be the basis for the creation of a criminal record database, accessible by all justice sector institutions. As mentioned above, and based on our not insubstantial experience with court automation, the team strongly recommends that any automation efforts commence with a detailed requirements and functional analysis of needs – and not simply the needs within the courts to locate cases and to generate statistical data. One of the most basic premises upon which automation should be based is a solid manual system, uniformly applied and used in all courts, including civil and commercial courts. In addition, the team perceived a need to establish connections between the various justice institutions around

the country. All component parts of the Haitian justice system require some form of case tracking and management (and ultimately, automation of these records), and the potential ability to inter-link these components (and with other parts of the government, such as for example, with driver's license, taxation, or banking records) will be crucial. In approaching automation, both Haitians and donors should endeavor to standardize data and software so that systems can be interconnected easily in the future. Not only will this approach lower the costs of system development, but this will also facilitate use and maintenance of the systems.

The team learned from UN representatives in Haiti that UNDP is considering supporting a program to assist courts in automating case information. The team recommends that the USAID implementing partner in Haiti work very closely with the UN in this endeavor to ensure that the types of issues listed above are taken into consideration in developing this, or any, automated system within the Haitian justice system.

**Recommendation No. 15: The USG should consider supporting the creation of a centralized criminal records system that is available nationwide (and ultimately automated).**

During the visit to Jacmel another aspect of case tracking and management was discussed and leads to a recommendation for creation, uniform use, and ultimate automation of a national criminal information system. At the current time, there is no effective centralized repository for data pertaining to persons arrested in Haiti on criminal charges, meaning that it is difficult, if not impossible, to link a person (or group of persons) arrested in one part of the country with similar crimes committed elsewhere in Haiti. Both prosecutors and judges in Jacmel confirmed that if a person with a lengthy record of criminal offenses were to be arrested in their jurisdiction, they would have no way of knowing whether they were dealing with a first-time offender or a serious recidivist, nor if the sorts of crimes taking place in Jacmel might be linked to criminal activities perpetrated in other regions of the country. While recognizing that development and implementation of a central repository for criminal information will require considerable time, effort, and funds, the team nevertheless recommends support of developing just such a system. Ultimately the system should expand to provide access and use by all courts, Parquets, police, and prisons in the country. Obviously such a system will require development of written operating procedures, with built-in safeguards to assure its integrity and appropriate use. In addition, training and oversight modules and procedures will also need to be put in place, and uniformly applied in all jurisdictions.

Although practical considerations likely dictate initial development of a manual system, given the strategic placement of Haiti in the north/south corridor between North and South America, the system should be automated nationwide over the shortest term possible, and should be linked with other criminal databases already in place in Haiti (such as the USG's JICC or INTERPOL's database of international offenders).

**Recommendation No. 16: The USG should support development of short- and long-term plans to provide for security at physical facilities (courts and Parquets) and, as necessary, for judges, prosecutors and other court staff.**

At the current time, no system of security exists within the courts in Haiti. During visits, at most sites, there was no visible sign that a security system was in place, with the public allowed free access into most courts. In the First Instance Court in Port-au-Prince, one police officer was observed; however, he did nothing to check persons entering the premises, nor did he prevent members of the public from crowding around judges and other court staff.

Especially with respect to high-profile or politically sensitive cases, security within courts and Parquets is not merely desirable, but a necessity. Under the organic law describing the role and function of the HNP, police are not charged with responsibility for protecting either the physical premises of courts or Parquets, nor with personal protection of judges, prosecutors, or other court staff. While the team does not recommend that over the long-term responsibility for court security should be given to the HNP, in the short run, consideration should be given to having police provide protection for certain types of cases and trials. Concurrently, the GOH (hopefully with donor support) should address the on-going need to secure both the physical facilities of courts and Parquets, and the staff assigned to work in these locations.

**Recommendation No. 17: USAID should provide funding for refurbishing JP Courts, giving priority to courts owned by the State**

Overall, significant support is needed to improve virtually all courts in Haiti, but most particularly the JP Court facilities. Not only because they are in terrible condition, or, at times the facility is lacking altogether,<sup>27</sup> but also because these courts handle about 70% of the caseload in Haiti. Improvements at this level will have the largest impact and visibility for the Haitian public. It is the understanding of the team that the Government of Canada has again agreed to renovate the First Instance courts. Insofar as the JP Courts are concerned, the CCI plan envisions renovating 9 JP Courts by 2005, an additional 9 by 2006, and 25 more after that. In developing a priority list for courts to target, two suggestions are highlighted. First, priority should be given to courts with a higher volume of cases, i.e., mainly in Port-au-Prince and other urban centers. Secondly, it is recommended that only facilities owned by the State should be refurbished, unless it can be negotiated with owners that rent will not be raised on facilities refurbished, and that the lease will continue unchanged for at least a five-year period. In planning for renovations of JP Courts activities currently under way at the Ministry of Interior to build municipal centers in some areas that would also house the JP Courts should be reviewed.

In determining the general conditions of court buildings, the report developed under the Checchi program should still provide valid guidance in determining which courts are carrying the highest caseloads. Recommendations contained in this report should also prove valuable in determining the need to establish additional JP Courts and/or closing or merging some of the existing facilities.

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<sup>27</sup> Apparently the JP in the President's home village currently operates just under a tree.

All of JP Courts require some basic renovations (paint, new doors and window shutters, repairs to the floors, electricity and improved lighting, telephones, fans, arrangements to provide access to lavatories). In planning for refurbishment, thought should also be given to improving the practical functionality of the courts by designing and building areas for storage of files and evidence. In some instances, it may be helpful to reconsider the functions of the court, along with who needs access to the court, and how this should take place.

All courts require new furniture and equipment – as well as regular provision of standard supplies. The latter is beyond what can and should be provided by international donors. It is a responsibility of the MOJ. This again, leads to the question of the MOJ capabilities to handle and absorb international donor assistance. It also leads to the question of Haitian ownership in this process. In general, in order to enhance the MOJ's and courts' ability to take control over administration and maintenance of JP Courts (and other courts), the current systems for inventory control and ensuring regular maintenance should be reviewed. Having such systems in place and operating successfully should be considered as a pre-condition for assistance to improving the court infrastructure. Also, taking the example from Cap Haitien into account, there may be other opportunities for the courts to work with the community to raise local resources for use to enhance their conditions. Finally, the staff assigned to the courts also needs to engage in the process of improving their working conditions. During a meeting with staff from the First Instance court in Cap Haitien, the team recommended that the president of the court develop a basic and objective needs-based budget for presentation to the MOJ, clearly demonstrating what it needed and why. Of course, physical refurbishment of courts, Parquets and other justice facilities, must go hand in hand with efforts to improve the quality and quantity of work produced by the staff assigned to these locations, and a recommendation to this effect is included in the final section of this report.

#### **G. Legal Services/Access to Justice**

**Recommendation No. 18: A component of USAID's ROL project should include expansion of coverage of courts (particularly JP Courts) to rural areas.**

Access to justice in Haiti as elsewhere entails geographic proximity, affordability, and the ability for the public to understand and participate in the processes. Access to the courts in Haiti is particularly limited in rural areas. The distance to the nearest JP Courts can be significant and with lack of roads and transportation, it is sometimes necessary to walk extensive distances to reach a court. Also, since the official language in the courts is French, the majority of the population does not understand what is happening in court – literally, not just because they are unfamiliar with the proceedings. For most, hiring an attorney is needed for the purpose of representation, as well as to explain and guide them through the process, however this is beyond the means of most. All of this, combined with a general lack of understanding on how the courts operate, what their rights are, how the courts should protect their rights, and a general mistrust of the government means that most people in rural areas will not seek the assistance of the justice system and the courts to resolve conflicts. Rather they will go to the local priest, minister, or

respected local elder; or they will simply take matters in their own hands, frequently resolving to violence.

While it will take some time, and a range of interventions, including educating the rural population of their rights and responsibilities and democratic processes, and identifying viable settlement alternatives using respected local representatives in some structured way is an important step to increasing access to justice. In some areas, consideration should be given to establishing some form of local truth and reconciliation process to overcome long-standing conflicts that are a continuing source of violence. Increasing access must also involve finding better and creative ways to bring the courts to the people. Some Haitian experts have suggested setting up a form of “circuits riding” through which JPs assigned in rural areas could travel (provided they have the necessary transportation and other means) to localities in his/her jurisdiction on market days, where they would be available to hear cases from the local population coming to the marketplace. The Minister of the Interior has sought assistance in establishing municipal centers that would house the tribunaux de paix. It was also suggested that consideration should be given to holding hearings, at least on the JP Court level, only in Creole.

Access to justice in rural areas is an important step, not merely in the democratization process, but also to provide for justice and reduce conflict situations. Many violent situations evolve from disputed civil matters and for this reason, the potential role of the JP Courts in reducing violence should not be underestimated. Working closely with Haitians knowledgeable of differing local situations, a series of possible options should be compiled on how to improve access to the courts in rural areas, especially programs that would bring the judges to the people, increased reliance on mediation to resolve conflicts, and use of Creole in the proceedings. Various options could be tested, then if and as successful, the concepts could be implemented in other rural areas.

**Recommendation No. 19: USAID (with other donor assistance) should consider development and implementation of a program to establish a nationwide system of legal services based upon coordination between the law schools and the bar associations in each jurisdiction**

Legal Assistance was provided under the AOJ Program through grants that were made by Checchi to NGO's, bar associations, and one law school. The Checchi program was plagued by many problems. Client confidentiality was not respected, clients often did not realize they were being represented, and legal representation was not always competent. Although Checchi did provide training, mostly focused on relevant legal issues, specific skills training was not provided. The NGOs used paralegals with three years of law school to provide the training and students at the law school were inappropriately used in a monitoring role.

The decree of 1989 dealing with the provision of legal services nationwide should be implemented. Ideally, a GOH-sponsored public defender program should be included within the long-term strategic plan. However, this is a long-term goal that cannot resolve the immediate issues. As an interim strategy, a nation-level system of legal services should be based upon

coordination between the law schools and the bar associations in each jurisdiction. USAID should consider funding the creation of a pilot program that would provide for such a system in the short-term and assist the Haitians in the creation of the system in the long-term.

In the short-term, legal services offices could be established in each of the jurisdictions, and the role of these offices could be to provide grants to area law schools to initiate clinical legal education programs and to assure coordination between the law schools and the bar associations in the provision of legal services to indigent clients in criminal cases. As a condition of the grants the law schools could be required to hire experienced attorneys to administer the program and teach within it. The clinical program at the law school would ideally include training in client interviewing and counseling, legal research, trial advocacy skills, and legal ethics. The office of legal services in each of the jurisdictions could also be required to take action to organize bar associations in those areas where there are none and to arrange for representation of indigent clients by neighboring bar associations in the meanwhile. It could also be the responsibility of the legal services office to fund the creation of continuing legal education programs, organized by the bar associations, in which practicing members of the bar providing legal services to indigent clients can receive training specific to that role.

Ideally, the legal services offices should be staffed by two attorneys and four legal assistants. This staff should also be responsible on a monthly basis for monitoring the legal services provided by the law schools and the bar associations. In this way, competent representation by law students with skill appropriate training, acting under the supervision of clinical instructors, can be provided in the JP Courts. Competent representation in the First Instance Courts by members of the bar could be assured by appropriate monitoring and training as described.

There should also be a central office of legal services, based in PAP. The entire program should be funded with donor assistance over a five-year period. During this period, it should be the responsibility of the central office to work with law schools and bar associations to develop a plan for transferring responsibility for the administration of free legal services to indigent clients in criminal cases to the bar associations and the law schools in every jurisdiction of the country over the course of a five year program which will begin after the third year of the USAID funded program. The plan should also draw on resources to be provided by the MOJ, the Ministry of Education, and the bar associations themselves, with a view to establishing a permanent public defender program.

## H. Civil Society

**Recommendation No. 20: In addition to working closely with Haitian counterparts to develop the long-range strategic plan for justice reform, USAID should foster local involvement and ownership of assistance programs over the shortest period realistic, and should support citizen participation in and knowledge of justice sector reforms by supporting development of NGO networks**

The assessment team has noted throughout this document the existence of several NOG's working in the justice sector, e.g., the Association Nationale des Magistrates Haitiens, the

Federation des Barreaux d'Haiti, la Coalition Haitienne pour la Reformed u Droit et de la Justice, and others.

On the one hand, past donor efforts have at times been hampered by the perceptions of Haitians that international experts are well-remunerated, but bring little more substantive knowledge to reform efforts than their Haitian counterparts. While not commenting on whether or not this is a correct perception, nevertheless, to achieve sustainability of reforms, local acceptance and ownership is essential. This means working closely with interested counterparts (within and outside the GOH) in developing and implementing plans, and, passing responsibilities to the local cadre as soon as possible

In addition, given the growing number of local NGOs focused on justice reform issues, facilitating formation of networks would strengthen their abilities to stimulate change in the justice system, as well as to oversee sustainability of reforms. Donor support in bringing together the various NGOs working in the justice sector to develop common, consensus-based agendas, would help to sustain momentum for change both within the current Interim Government and future elected governments.

**Recommendation No. 21: In view of the need for Haitian citizens to learn how to be responsible members of a democratic society, USAID education, citizen awareness, economic support, and other programs should interact with justice reform programs. To the maximum extent possible, donor program should adopt a cross-cutting programmatic approach that involves leveraging all available resources.**

Given the magnitude of the reform efforts needed in Haiti, USAID (and other donors) should leverage all possible programmatic resources, and provide linkages across programs. For example, the team was told repeatedly that many Haitian citizens are unaware of even the most basic principles of democracy, the rights accorded to them, and the responsibilities expected from them. Civic education should be an essential element of all school curricula, beginning from primary school. Public education and awareness programs should also include information pertaining to civic rights and duties of citizens in a democracy. While recognizing that it may require a full generation to achieve the level of change needed to render current reforms fully sustainable, this process can be expedited by incorporating civic educational elements into all donor programs.

**Recommendation No. 22: International donors should support the establishment of a nation-wide program of civic education on the justice system offered in Créole specifically targeting the general population.**

Previous assessments have consistently emphasized the fact that the Haitian population has a very poor understanding of the formal justice system. They have a very limited knowledge of the law and equally limited understanding of the roles of the players of the justice system. This lack has contributed, in part at least, to the cynicism and mistrust of the justice system amongst the population. This is yet another factor which detracts from the respect in which judges are held

and is a challenge to the effective exercise of their authority. Even prison officials reported to this assessment team that the population did not understand their role, and they felt that this ignorance was a factor contributing to the lack of respect that they sometimes experience in dealing with prisoners and their families. In addition, although legal services have been provided to indigent clients in the past, and continues to be provided on a sporadic basis, citizens have been poorly informed of these services and fail to understand their necessity.

Efforts to improve this situation have been undertaken in the past, primarily as part of Checchi's program as described above. However, the civic education were not appropriately targeted for the Créole-speaking, illiterate population. Although there were some radio broadcasts in Créole, most of the efforts involved analysis of the law and exposés of the proposals for judicial reform, which often occurred in French and were more accessible to the society's elite than to the common man. These kinds of exercises aimed too high and failed to foster in the general population a basic understanding of the justice system that might serve to address the problems identified above. Finally, they were offered in a desultory fashion and only in discrete locations.

At present, a much more comprehensive program of civic education is needed and should form an integral part of the new efforts at justice reform. The civic education program should be conducted nationwide and should be aimed at the general population. In this regard, it is important to note that a great deal can be learned from similar types of programs that have been conducted in other countries where illiterate populations have been involved in participatory democratic exercises. They have entailed, for example, theatrical presentations and role-plays, often conducted as part of widely accessible radio broadcasts. These types of exercises in Haiti will need to be conducted in Creole and should be designed to provide citizens with basic information about the nature and purpose of the justice system, and the role of the judges, prosecutors and other justice system employees with whom citizens may come in contact. In addition, they should provide citizens with indications of how and when they need to access the justice system, and information about the availability of legal services widely accessible to the general population should be circulated and discussed as a part of the exercises described above.

In the short-term, public information services should be developed and provided by the MOJ (preferably by the agency(ies) providing legal services). These efforts will require international donor support for their initial establishment and operation, especially in the creation of appropriate educational materials. In the long-term, public education and citizen awareness programs should become a permanent part of the services offered by the bar associations and law schools which provide legal services to indigent clients.

## **I. Prisons**

### **Recommendation No. 23: Revitalize the program to reduce the excessive levels pre-trial detention**

Excessive pre-trial detention has been a long-standing issue and, despite the fact that the prisons were emptied during the February events, the population is building up again at an alarming rate.

In recent years, prisoners in pre-trial detention generally accounted for 80-85% of the prison population. Historically, there has been a lack of representation and excessive pre-trial detention, with individuals held for years before being afforded their legal due process. The UNDP project to reform Haiti's National Penitentiary for men was completed in 1998, with major improvements in infrastructure and living conditions, the creation of new services, and a change in attitude towards inmates (in terms of improved treatment). In May 1998, the BUCODEP was established in the National Penitentiary to review records of pre-trial detainees accused of minor offences and incarcerated longer than the normal sentence for the accused crime. A juge de paix from the jurisdiction was assigned to review the cases and determine whether there was sufficient cause to continue to hold the accused. As noted in this assessment, while clerks continue to maintain records at the National Penitentiary, the system of judicial visits and review has broken down.

It is recommended that the previous program be re-initiated with the following components: 1) review and revision of policies and procedures for handling detainee records; 2) training of prison officials, judges and other court personnel in the legal requirements related to pretrial detention; 3) integration of pretrial detention program objectives and instruments with the case management system of the courts; and 4) developing effective oversight and accountability mechanisms to assure that pretrial detention policies and procedures are applied.

In designing and implementing this program, a number of issues must be addressed that either were not addressed in past programs or have not survived from past prison management efforts. Among these are: 1) correction of the form to record the custodial status of the defendant, the judge assigned to the case, and the date of the next expected event; 2) a requirement for adoption of the same form that will be developed for use by all courts handling criminal cases throughout the country, and for procedures to be developed requiring its use in a uniform fashion; and 3) requirements for JPs, judges of the First Instance Courts, prosecutors and investigating magistrates to report monthly on all cases of pre-trial detention. Monthly data should be collected by the staff registering the cases and submitted to all of those providing free legal assistance to criminal defendants, to the Chief Judges of the First Instance Courts, to the Ministry of Justice, to the Judicial Council, and to the Prison Administration. In keeping with Recommendations # 13 and 14, the uniform case numbering system, as well as the other case management and criminal record requirements should also be used in the prisons.

It is important to note that there is an impending crisis in Haiti's prison system that requires immediate action by the international community. Both the assessment team's visit to the National Penitentiary and the recent INL police advisor assessment of the current state of the prison system indicate that broad institutional problems have reemerged in regard to overcrowding, sanitation, medical facilities, commingling of juvenile and adult prisoners, and security. The UNDP has provided a technical advisor and INL is currently funding limited improvements in the security area. While it is not recommended that USAID's program in this area expand beyond the issue of pretrial detention, it should maintain close ties to these other programs and other efforts to address prison conditions since they are fundamental to the issue of the basic human rights of those in detention.

## APPENDIX A

### Literature Review

- 1) Actes du Symposium sur L'Assistance Légale en Haïti 1995 – 1999. Port – au – Prince, 1999.
- 2) Any further Aid to Haitian Justice System should be linked to Performance-related Conditions. GAO Report, 2000.
- 3) Aucoin, Prof. Louis M. The Challenge Of Judicial Independence In Haiti: Theory And Practice. Haiti: USAID/Port-au-Prince, 2000.
- 4) Baptist, Jacob. Jean. La Cour de Cassation . Route de Croix-des-Bouquets : Les Ateliers Mitspa, 2003.
- 5) Code de Deontologie de la Magistrature Haïtienne. Pétiön – Ville : Association Nationale des Magistrats Haïtiens, 2004.
- 6) Dorleans, Henri. L'Education Civique sur le bout des Doigts. Nos responsabilités et nos droits.. Port –au - Prince : Imprensa, 2002.
- 7) Dorleans, Henri M. La Communauté Internationale et les Droits de l'homme dans les petits pays : L'Expérience de la Mission Civile Internationale OEA/ONU en Haïti . Port–au–Prince : CTDH/AFPEC, 1999.
- 8) Dorleans, Henri. Une Société Civile pour Changer l'Etat. Port–au–Prince: AFPEC/CTDH, 2001.
- 9) Dorval, Dr. Monferrier. L'Ecole de la Magistrature. Port–au–Prince : IFES, 2004.
- 10) Evaluation of USAID's Administration of Justice and Human Rights Fund II Programs. Creative Associates International, 1998.
- 11) "GOH Plan of Action". Journal ( 1999)
- 12) Haiti Justice Sector Assessment. Development Associates, 1997.
- 13) IFES Rule of Law State of the Judiciary Report Series. Haiti, 2003.
- 14) Justice of the Peace Courts, Republic of Haiti. Fort Bragg, 1995.
- 15) Le Moniteur, Lundi 17 août, 1998.
- 16) Le Moniteur, Lundi 24 août, 1995.
- 17) Lack of Haitian Commitment Limited Success of the US Aid to Justice System. GAO Report, 2000.
- 18) Lessons Learned Exercise undertaken by the Emergency Response Division. UNDP report, 2001.
- 19) "Law on reform of the justice system". Journal (1998)
- 20) "Ministry of Justice and Public Security plan". Journal (1999)
- 21) Pour un nouveau départ de la Magistrature haïtienne. Port-au-Prince , 2004.
- 22) Plan Haïtien d'Action pour la Réforme Judiciaire et la Mise en Application de la Constitution.
- 23) Rapport d'Etude Tribunaux de Paix. Port- au – Prince, 1995.
- 24) Task Order for USAID/ Haiti Rule of Law Services. Arlington: National Center for State Courts, 2004.
- 25) Textes de base de l'exercice de la profession d'Avocat en Haïti. Port- au – Prince, 2003.
- 26) Whelden, Richard. "Request to Amend USAID/ Haiti's Special Objective, SpO 521 – 006, Streamlined Government " memo., 2004.



**APPENDIX B – Contact list**

<b>Name</b>	<b>Organization</b>
Audigé, Armand	Juge and Juge d'Instruction
Adhémar, Henri-Claude	Juge d'Instruction
Bastien, Daniel Joseph	Police National D'Haïti
Bonhomme, Françoise B.	Cabinet de Consultation, de Formation et d'Assistance Légal ( COFAL)
Cadet, Rock	Dean of the Tribunal de Premiere Instance
Casimir, Phel	Commissaire du Gouvernement
Callen, Pamela	USAID
Charles, Gervais	Fédération des Barreaux d'Haïti
Cisse-Gouro, Mahamane	Nations Unies
Collot, Gelin I.	Faculté de Droit et des Science Economique (FDSE) de l'Université d'état d'Haïti
Deumeni, Louis Nkopipie	Programme des Nations Unies pour le Développement
Dorval, Monferrier	Centre de Droit Public
Duchemin, Daniel	Ambassade de France
Dorleans, Henry	Académie de Formation et de Perfectionnement des Cadres (AFPEC)
Esperance, Pierre	National Coalition for Haitian Right
Gaston, Stanley	Union des Jeunes Avocat Haïtien
Hedouville, Renan	Comite des Avocats pour le Respect des Libertés Individuelles
Hercule, Carlos	Centre Toussaint Louverture pour le Droit de l'Homme, La Démocratie et le Développement (CTDH)
Fucien, Alix	Juge d'Instruction
Fortuné, Heidi	Substitut du Commissaire du gvt.
Guillaume, Me Ramon	Doyen du Tribunal Civil de Saint-Marc
Gilles, Me. Adler Jean	Avocat
Gruenberg, Stéphane	Ambassade de France
Jannini, Nettie	USAID
Jean Baptiste, Jacob	Juriste, Directeur Administratif de la Cour de la Cour de Cassation et Publicitaire des Arrêts de ladite Cour
Jean François, Norah	Association Haïtienne des Femmes Juge

	(AHFJ)
Jeudy, Jaures	Substituts du Commissaire
Jeune, Moline Louis	Substituts du Commissaire
Joseph, Maneste Louis	Substituts du Commissaire
Mervil, Wilson	President of the bar ass.
Mivrose, Justin	Judge and Dean a.i.
Morency, Joseph	Ministère de la Justice
Maxime, Jean Miguelite	Inspecteur Général, Directeur DEFP/PNH
Mecklembourg, Albert	Haïti Télécommunications Internationales S.A.
Mamet, Regis	Programme des Nations Unies pour le Développement
Paul, Jean-Peres	Association Nationale des Magistrats Haïtiens (ANAMAH)
SIME, Rejeanne	Avocat – Programme des Nations Unies pour le Développement
Rochon, Claude	Canadian Police Experts Overseas
Sanon, Jacques Miguel Av	IFES
Sanchez, Harry	Secretary general of the bar ass.

### **APPENDIX C – Legislative changes needed to support Recommendation #3 (judicial career and training)**

There are many factors that contribute to making the judiciary a not very attractive career choice. Judges' salaries are low, and the population widely views judges as corrupt and frequently incompetent. In addition, lack of judicial independence continues to be an intractable problem. Some of the institutional factors related to these problems are that judges are currently being appointed and promoted directly by the Ministry of Justice, and disciplinary action, particularly that of removal from the bench, is also being conducted by the MOJ. The MOJ appoints and promotes judges since under the 1987 Constitution; the territorial assemblies which are responsible for nominating candidates for appointment by the President have never been created. In the case of discipline, that function has clearly been assigned by a 1920 law to the Cour de Cassation, which is supposed to act as the Conseil Supérieur de la Magistrature in exercising this function. In fact, the Cour de Cassation, is required under Haitian law to act as a constitutional court, a court of last resort, and a judicial council. The court has not been successful at exercising all of these functions. Given its reticence, the MOJ fills the gap, and acts without legal authority in exercising this function.

Although these problems have been frequently cited in previous assessments, their resolution presents a particular dilemma since the solutions to the problem will require legislation and perhaps even constitutional reform. These issues will therefore need to be addressed as part of a program of legislative assistance. (See recommendation XX, below.) The following sections provide some specific recommendations regarding issues which the Haitians will have to consider in deciding whether to draft legislation or engage in constitutional reforms relating to these issues.

However, before these issues are addressed, it is necessary to consider the current state of the law relating to this subject. There are essentially four legal texts which deal with the judicial career—the Constitution of 1987, the law on the Conseil Supérieure de la Magistrature, the law of 1985 dealing with the organization of the Courts, and the 1995 decree of August 24 modifying that law.

Article 175 of the Constitution provides that the justices of the *Cour de Cassation* are to be appointed by the President of the Republic from a list of three names for each judicial post submitted by the Senate. The judges of the Court of Appeals and First Instance Courts are appointed by the President from lists provided by the Departmental Assemblies, and the justices of the peace are appointed by him from lists submitted by the communal assemblies. Article 177 provides that all judges are “*inamovible*.” This term means that as a general rule, judges are not removable (this does not apply to judges of peace). They can, however, be removed in exceptional circumstances through the application of formal procedures. For example, they can be removed through formal disciplinary proceedings following an accusation of violation of the disciplinary rules, which, according to Article 184-1 must be established by a written law, or they can be removed when they are found in a proper proceeding, to be physically or mentally incapable. In the case of members of the highest court, the Cour de Cassation, judges can only be removed through an impeachment-like procedure conducted under the auspices of the Senate

which sits as a special “*Haute Cour de Justice*.” This is the same impeachment procedure which would apply in the case of the President, the Prime Minister, other ministers, members of the Electoral Council, or of the ombudsman in the *Office du Protecteur du Citoyen*. (The *Haute Cour de Justice* and its procedures are set out in Title V of the Constitution.) In addition, Article 177 provides, as is the case in France that judges are not to be transferred or even promoted without their consent. Article 176 simply requires laws establishing the qualifications for the appointments of judges at the various levels of the judicial hierarchy and also requires that a Magistrates School be created.

The Constitution does not mention the *Conseil Supérieur de la Magistrature*, but that institution was created by three laws which date from 1920 and 1925. It was first created in the law of May 12, 1920 (No. 39 of the *Moniteur* and page 530 of the *Code des lois usuelles*.), and was modified by the law of January 12, 1925 and the law of June 28, 1925 (pages 532 and 533). Under these laws, the *Conseil Supérieur de la Magistrature* is composed of all of the judges of the *Cour de Cassation* sitting *en banc*. It is empowered by the 1920 law to impose a punishment of censure, censure with reprimand, or suspension of up to six months. When a judge is suspended for the second time, the law authorizes the *Conseil* to remove him or her from office. The law also authorizes the *Conseil* to refer the judge to the criminal courts in those cases where the complaint alleges the commission of criminal infractions.

As noted above, neither the constitutional provisions just described nor the law on the CSM has ever been implemented. In 1995, the above mentioned decree was adopted in order to provide an interim solution to the appointment problem in the absence of the assemblies required under the Constitution. It purported to amend the 1985 law on the organization of the courts. In so doing it set the minimum requirements for appointment to the various judicial posts, and established a bare bones procedure for the appointment of judges in the absence of the required institutions. According to the decree, judges of the *Cour de Cassation* are to be appointed by presidential decree, and all other judges are to be appointed by a Presidential Commission.

It is important to note that in adopting the decree, the executive branch exercised authority which was clearly assigned by the Constitution to the legislative branch. It establishes the qualifications for appointment even though, as mentioned above, Article 176 of the Constitution requires that those qualifications be established by statute. Since it exercised this authority and as noted above, it purported to amend a pre-existing statute, it is perhaps not surprising that this decree was challenged as being unconstitutional. However, the decree in its preamble derives its authority from Article 136 of the Constitution which states: “The President of the Republic, who is the Head of State...shall see to the respect for and enforcement of the Constitution and the stability of the institutions. He shall ensure the regular operations of the public authorities and the continuity of the State.” The Court of Cassation ruled that the decree was constitutional.

Nevertheless, the decree has never been implemented either, and the practices of the past continue in the present with the MOJ exercising both powers of appointment and discipline, including removal.

USAID should provide financial and technical assistance in the creation of a project which will engage Haitians in a comprehensive review of the relevant state of the law and the persistent lack of enforcement. The problem with the work which has been done in this area in the past is that, once again, it is piecemeal, and the overall approach to dealing with the creation and supervision of the judicial career has not been holistic. Instead, donors and locals associations have drafted proposed legislation which deals with discrete aspects of the judicial career without taking a broader view of the problems in this area.

The new project should be coordinated with the program of legislative assistance, discussed above. However, at the same time, it must seek answers to the basic question as to why the constitutional provisions and relevant law in this area have never been implemented. Once informed with answers to that question, the project should then undertake to answer the other basic questions which arise in this area.

Many basic questions also arise in connection with the determination of the role and function of the CSM. One of the basic questions to be answered is whether Haitians want to have a judicial council which exercises disciplinary, appointment and promotion functions. In most other civil law countries, judicial councils exercise these functions so as to prevent the executive interference which can occur when these functions are exercised directly by the MOJ or the President. If Haiti decides that it wants the CSM to exercise this function, then the basic question arises as to whether it will be necessary to amend the Constitution. As described above, under the Constitution, all judges are to be appointed directly by the President from lists provided by the Senate, in the case of the Cour de Cassation, and by the territorial assemblies in all other cases. In other countries of the civil law tradition, judges are appointed by the executive from lists provided by judicial councils.

In Haiti, there are a few different ways in which reform in this area could proceed. For example, the Constitution could be amended to give the CSM a role in vetting the candidates proposed by the assemblies or it could be amended so as to assign these functions to the judicial council exclusively thus supplanting the assemblies entirely. On the other hand, it is at least conceivable that the President could delegate his appointment authority to the judicial council. This solution would probably not require amendment of the Constitution and could probably be accomplished by decree. The choice of these alternatives should depend, at least in part, on the answers to the question as to why there has never been any implementation of these articles of the Constitution.

Since the promotion function is not addressed in the Constitution, the assignment of this function can be dealt with by statute without constitutional amendment. The question remains as to whether Haitians want this function to remain with the MOJ or whether they would prefer to see it assigned to the judicial council.

There is also the question of the composition of the judicial council. As noted, currently the CSM is composed of the Cour de Cassation sitting as a judicial council which is only authorized to exercise the disciplinary function. In general, it is clear from previous assessments and from views expressed to the assessment team in interviews that Haitians are not happy with the current composition since, as described above, the Cour de Cassation has failed almost entirely to

function in this capacity. Since the CSM is not mentioned by the Constitution, its composition could be changed through legislation as opposed to constitutional amendment. However, the question may be of such importance that the Project should answer the question as to whether the composition of the CSM should be addressed in the Constitution or whether it should be dealt with in statutory law.

In addition, the project will need to assist Haitians in deciding how these functions should be exercised while these other questions are being answered. Here the most basic question arises as to whether the *status quo* is acceptable. It would seem, based upon all of the assessments that have been conducted in the judicial sector that it is clear at this point in time that Haitians are not happy with the *status quo*, since they consider generally that there currently exists too much interference with and control of the judiciary by the executive. This view was expressed to the assessment team in many of the interviews conducted. Assuming, therefore, that this question can be easily answered, the project would need to move rapidly to the exploration of alternative solutions to the *status quo* in the short-term.

Certain considerations are relevant to analysis of this question. First, the question arises as to whether the 1995 decree can and should be implemented. Were this to be the case, a Presidential Commission would exercise the appointment function for appointment of all judges outside of the Cour de Cassation. This alternative might be appealing since it would allow for an experiment with a body which will function essentially as a judicial council. This short-term solution might offer the opportunity to have a pilot program which might help answer some of the questions raised above in connection with the establishment of long-term solutions.

It is important to point out that the 1995 decree, even if implemented, does not provide for even a short-term solution of the problems related to the promotion and discipline functions, nor does it provide for appointment of the Cour de Cassation in the absence of the Senate. However, it does offer a significant precedent which could guide Haitians in the creation of short-term solutions to these problems. Since the decree has been upheld as a constitutional exercise of executive rule making, then once again the executive could act by decree under the authority of Article 136 of the Constitution, as described above, also assigning those functions to a Presidential Commission. It would seem only logical that the functions should be assigned to the same commission which exercises the appointment function, since in that way the Commission would constitute an experiment with the kind of judicial council which exists in other civil law countries where judicial councils exercise all of these functions. However, given the precedent of the Cour de Cassation, it would seem that other approaches could be considered given the breadth of the decree-making authority which Article 136 appears to convey to the President.

A caveat is nevertheless in order here. It is appropriate to remember that in a civil law country such as Haiti, the Cour de Cassation will not in theory be bound by its decision upholding the constitutionality of the 1995 decree and could rule differently on the constitutionality of other decrees. At the same time, it is important to note that even though previous Supreme Court rulings do not in theory have the formal status of precedent in civil law countries, they increasingly function as a practical equivalent. This observation suggests that the Cour de

Cassation would be likely to uphold the constitutionality of these short-term measures taken by decree.