Haiti Judicial Strengthening and Stabilization Initiative

Pretrial Detention Picture:

In November 2005, USAID/Haiti financed and NCSC conducted a major study on pretrial detention in the National Penitentiary. The study used both a closed case survey and a snapshot of the prison population at the time to obtain a complete picture of the pretrial detention situation. To determine the total amount of time prisoners remained in detention, NCSC used closed cases, as only those cases can provide a definitive figure. The study showed that, among the sample of released prisoners all misdemeanants were released within three months. For felonies punishable by up to three years in prison, the overwhelming majority reached final disposition and were released within 90 days. For the most serious felonies (those carrying a sentence of 3 years to life), most were resolved and released within five months. However, while the majority of cases were processed in these timeframes, there remains a segment of the prison population who remain in detention for a significant period of time. An additional caveat should be mentioned. The mass escape in February of 2004 meant that no one in the sample had a case older than two years. With those two caveats, and looking across all three charge categories, it appeared that prompt resolution of cases was more the norm than the exception.

Three years after this study, the prison population has increased at the National Penitentiary, a predictable situation since the prisons were emptied in 2004 and then slowly filled again, particularly with massive arrest by MINIUSTAH and HNP during the period of civil unrest. As of November 2005, when the NCSC study was conducted, the total prison population at the National Penitentiary was of 1810 inmates (November 25, 2005), with 4% of the individuals convicted and the remainder in pretrial status. The population is now approximately 3900, with 8% of the detainees serving sentences. (September 25, 2008).

USAID Judicial Strengthening Project Implementer, NCSC, now uses the prison database, the primary source of detainee data used by the prison administration and the United Nations, to obtain current information on the detainee population at the National Penitentiary. There are again caveats regarding this information. As has been previously explained, there are severe shortcomings with the current database system.[1] In particular, when prisoners are transferred among the different prison facilities, they are assigned a new record in the database that maintains information only as of the date of transfer. As a result, some prisoners are counted more than once, some have been released, but still are shown as detained, and some records only show the length of detention since the prisoner's last transfer. In addition, there are frequently delays and inconsistencies in the data entry process. The Project's database specialist has attempted to address these issues before compiling the following statistics. Nonetheless, there remains an approximately 15% margin of error.

[1] Earlier this year, NCSC engaged Quest Consultants to conduct an assessment of the database and provide recommendations for needed improvements. Their findings were submitted to USAID in July 2008.

According to the database, since 2004, approximately 2,971 detainees have been released without serving a sentence. (This figure does not include individuals who were convicted and released after serving their sentence.) Of these detainees:

- 25% spent 7 days or less in detention
- 50% spent 47 days or less in detention
- 25% spent approximately 9 months or more in detention

The average time spent in pretrial detention was just under 6 months.

According to prison authorities, there are approximately 3,500 pretrial detainees in the National Penitentiary as of September 25, 2008. However, according to the database, as of September 16, there were approximately 3,900 pretrial detainees. Project implementers were not able to review all records to address issues of double counting or to ensure that all of these detainees were actually still incarcerated. Bearing in mind those limitations, the database figures show that of the detainees currently awaiting trial in the National Penitentiary:

- 25% have spent 211 days or less in detention
- 50% have spent 1.4 years in detention
- 25% have spent 2.5 years or more

The average time spent in detention is 1.6 years.

Case Flow Analysis:

These cases demonstrate the existence of systemic problems in case processing.[2] In response, NCSC conducted a first of its kind, in-depth case flow study, tracing the path of 650 criminal cases through the various stages of the penal process to identify gaps, delays, and unnecessary steps contributing to lengthy detention in preventive custody and provide recommendations to address them.

The study showed that legal deadlines are overwhelmingly not respected in the penal chain. For instance the average time a case is before the Justice of the Peace Court is 14 days for Port-au-Prince. There is a constitutional deadline of 48 hours from the time of arrest by which the JP must send the entire case file (for felony cases only) to the Parquet. At the Parquet, in circumstances in which decisions should be taken without delay, such as in dismissed cases, the Parquet in Port-au-Prince takes an average of 36 days. Likewise, the investigating judges in Port-au Prince and Petit-Gôave each take an average of nearly two months from the receipt of the file before setting forth their first act of inquiry. The law requires this act to be completed in the same day.

A group of experienced lawyers and jurists analyzed the results of the study and offered recommendations. Their analysis stresses the lack of oversight, the absence of performance evaluation, the need for a legal assistance program, and the establishment of a case management system as well as the development of legislation establishing procedures to reduce pretrial detention. As discussed below, the Project is working to address each of the identified issues.

Project Efforts:

As recommended in the case flow report, it is necessary to address pretrial detention on two fronts. Short-term measures are needed to provide immediate relief and reduce case backlogs.

[2] *Pretrial Detention in Haiti*, National Center for State Courts, May 2006.

However, to significantly reduce prolonged pretrial detection in Haiti long-term engagement is required. The Government of Haiti and donors have shown, especially over the past two years, their commitment to this task, by establishing the foundations necessary to combat this problem.

Immediate Impact

Special Hearings 2005-2008: Special hearings were conducted at the Port-au-Prince First Instance Court from 2005-2008. The USAID project via NCSC provided technical and material assistance, including stipends for participating judges, prosecutors, clerks, bailiffs, and legal assistants, who worked together during the judicial vacations to reduce the backlog of pretrial detainees, primarily in the National Penitentiary. Described as very successful by the local press, the hearings produced the following results: 284 cases were heard, 163 individuals were released and 54 were convicted. Other cases were postponed for various reasons, such as absence of victims and key evidence.

In FY 08, the Ministry of Justice agreed to finance all costs related to the hearings. The Project supported only the related legal assistance program. This decision demonstrates the commitment from the Haitian government to fight prolonged pretrial detention.

Similar support was provided for special hearings held in Petit-Goave and St-Marc in 2007 and 2008. As a result of these hearings 63 individuals were convicted and 20 were released.

Pretrial Detention Commission: The Pretrial Detention Commission was formed by the Minister of Justice in June 2007 to identify cases of lengthy pretrial detention and make recommendations to expedite those cases. As a result of recommendations made by the Commission, a total of 914 inmates have been released. Project staff supported the work of the Commission, providing technical guidance on legal issues related to cases under review by the Commission as well as logistical support, such as transportation and phone cards.

Long-term Reforms

Oversight:

A) Judicial Council: In addition to strengthening the independence of the judiciary, the Judicial Council will play two important roles that should over time dramatically impact prolonged pretrial detention. According to the new law, the Council will act as the disciplinary body for judges and monitor their performance. As identified in the NCSC studies, there is a lack of consistent planning and control over the day-to-day functioning of the court. For instance, some hearings are not held as scheduled due to the absence of prosecutor, the judge, or court staff. Also, there is currently no body effectively overseeing case load and performance of judges. The Council through its Inspection Unit will be tasked with monitoring court performance and levying appropriate sanctions.

To promote passage of this much needed legislation, Project Implementer NCSC supported the Parliamentary Justice Commissions in convening six public consultative sessions concerning three proposed bills from the Ministry of Justice. For the first time in Haiti, the Commissions gathered around the same table to discuss the independence of the judiciary with members of the judicial community, government representatives, civil society, and the international community. The objective was to collect the opinions, advice, and suggestions of stakeholders from different sectors in order to write laws better reflecting the will, choice and interests of the nation on the question of the independence of the judiciary and of justice itself. The Project also provided a technical specialist to the commissions and to the MOJ to draft the bills. These activities led to

the adoption of the three bills and creation of the buy-in necessary for their effective implementation.

Along with the *Organisation Internationale Francophonie* (OIF), the Project sponsored the election of the Council members. Project Implementer NCSC is now providing technical support for the vetting process. Once the vetting is completed, the Council's members will be sworn in. NCSC will provide relevant training to this new body.

B) Restructuring the Ministry of Justice: The Project has assisted the Ministry of Justice (MOJ) in drafting legislation to be presented to Parliament for adoption. This legislation includes provisions regarding establishment of an inspection unit. One of the unit's key roles will be to oversee the performance of prosecutors. Members of the Parquet will not be governed by the judicial council. They instead remain under the authority of the MOJ. Once again strict oversight of judicial actors will contribute to better delivery of justice, and thus significantly impact prolonged pretrial detention.

C) Magistrate School: The Magistrates School, which has been closed since 2004, has reopened. Continuing education training for Justices of the Peace (JP) began at the Magistrate School on July 7, with the support of the USAID Project and other donors. The first class of 22 JPs from Port-au-Prince completed the training program in August. A strict evaluation of the participants' performance was conducted. Based on the results, the director provided a list to the MOJ of JPs who should receive a promotion and those whose mandate should not be renewed. A second class of 26 JPs began the training program in September. High quality training, combined with performance evaluations, will lead to more responsible and efficient judges.

Legal Assistance:

A) SYNAL: A considerable number of criminal defendants remain in prolonged pretrial detention because they do not have the financial means to obtain a lawyer to advance their case. The Project is providing technical and financial support for a national legal assistance program launched by the GOH this year. So far the program has opened offices in 9 of the 18 judicial jurisdictions in the country. Project Implementer NCSC is particularly active in its 3 target jurisdictions (Port-au-Prince, St. Marc, and Petit-Goave). As a result of this program, approximately 816 indigent accused have been represented thus far in FY 08 in these three jurisdictions.

B) Kay Jistis (House of Justice): Similarly, *Kay Jistis* was launched in Cite Soleil to provide access to legal aid and the Ombudsman for residents of that community. The Project is supporting the legal assistance component. A total of 237 individuals have sought legal aid from *Kay Jistis* to date.

Case Tracking: In the course of gathering data for the case flow analysis, the lack of a system for maintaining and archiving case files became immediately apparent. Relatively few case files could be located, and many of those located were incomplete. There is no uniform case registry in courts and no management system in place that allows for tracking a case throughout the penal chain. The current registry system is inconsistently maintained, and many clerks charged with the responsibility of maintaining the registers have little or no understanding of the role the registers play, and thus little incentive to keep accurate records. This situation contributes to prolonged pretrial detention and facilitates corruption. Project Implementer NCSC engaged an international specialist to work with in-country staff, MINUSTAH and MOJ representatives on the case registry and tracking system. Model registers covering six distinct links in the penal chain have been prepared and will be implemented in several pilot courts and parquets.

Legislation on Garde a vue *and* Habeas Corpus*:* Following the successful collaboration between NCSC and the Parliamentary Justice Commissions in support of the three laws on the independence of the judiciary, the Project is now supporting a new round of public consultations for the Commissions. This series brings judicial stakeholders together to discuss issues related to arrest and detention. All participants agree that targeted legislative changes are required to modernize and/or clarify current legislation to fight prolonged pretrial detention.

In June, the Parliamentary Justice Commissions held a second workshop on pretrial release mechanisms, *garde a vue* (48 hour detention rule), and *habeas corpus*. An NCSC consultant presented draft legislation based on discussions held during the first session. Participants debated several provisions of the draft. The Commissions then conducted a third Project sponsored session in Les Cayes. The objective was to present the draft legislation and gather views of stakeholders in the field. Participants expressed great satisfaction that the Commissions expanded the debate to include jurisdictions outside Port-au-Prince. The participants unanimously supported the draft bill. A last public consultation was organized in Port-au-Prince on September 25th. According to the Presidents of the Justice Commissions, the bill will be presented at the next session of the Assembly scheduled for January, or sooner if an extraordinary session is held.

Immediate Appearance Procedures: The Project has assisted in establishing procedures that allow the prosecutor to bring arrestees caught in *flagrant delit* directly to court instead of detention. This procedure is provided for in existing legislation, but has fallen into disuse. NCSC supported the establishment of procedures for the prosecutors office and the First Instance Courts and provided training nationwide on these procedures to members of the judiciary and prosecutors. As a result, of these trainings the number of immediate appearance hearings has increased in the Project's target jurisdictions.