

Success Story/Lessons Learned

Operating Unit: USAID/Haiti

Headline: **Major Steps toward Judicial Independence in Haiti**

The Haitian constitution, passed in 1987, was considered one of the most progressive in the democratic world. Then and today, Haitians are especially proud of the document and the vision it enshrines. The constitution contains the democratic principles of separation of powers and the rule of law for all Haitian people, including the principle of judicial independence. However, since the constitution was passed, the Haitian justice system in practice has followed neither the letter nor spirit of the constitution and has never lived up to international legal or political obligations. Rather, the justice system has almost always been effectively subject to the administrative, budgetary and personal whims of an overly dominant executive. The consequences of this dependence are felt throughout Haitian society. The lack of judicial independence and the inconsistent application of the rule of law discourage those who seek investment security, contractual enforcement, property protection and fundamental human rights.

Twenty years after the adoption of the Haitian constitution that established the Judicial Council and the School of Magistrates, there was still no implementing legislation to clearly define the role and functioning of these entities. Because of USAID assistance in 2007-2008, and for the first time in Haiti, the Justice and Public Security Commissions of the two Parliamentary chambers gathered around the same table to discuss the judiciary's independence with members of the judicial community, government representatives, civil society, and the international community. The objective of these forums was to collect the opinions, advice and suggestions of stakeholders from different sectors in order to write laws better reflecting the will, choice, and interest of the nation regarding the independence of the judiciary. Organized by USAID, these discussions took place during a series of groundbreaking sessions in the capital, Port-au-Prince, and in other cities around the country.

The Parliamentary commissions held six public consultative sessions concerning three proposed bills from the Ministry of Justice (MOJ). These bills related to the establishment of a judicial council to better manage the administration of justice and discipline of judicial authorities, the statute governing all magistrates and judicial personnel generally, and the School of Magistrates. Due in large part to financial and technical assistance from USAID delivered to both the MOJ and the Parliament Justice Committees, Parliament achieved a milestone with the adoption of these three key bills in January 2008, an accomplishment recognized by donors, the United Nations, international monitoring organizations, and most importantly, the Haitian public.

Since the adoption of the three laws, the GOH and the international community have worked hand in hand to establish the related institutions. Through a dynamic and transparent process, supported in part by USAID, the election of Judicial Council members has been completed in accordance with the timetable established by the MOJ for formation of the Council. Two

committees (vetting and election) have been formed and are actively conducting their assigned tasks. The vetting processes for Council members should be completed soon.

With USAID assistance the School of Magistrates, closed since 2004, re-opened its doors in July 2008. More than 60 Justices of the Peace have already successfully completed the new intensive continuing education program at the School of Magistrates. At the request of the Minister of Justice, USAID supported the design of the curricula and the selection of expert trainers for this intensive training. Fourteen training modules, financed by USAID and other international partners, have been prepared by the trainers.

The assistance provided by USAID to the Parliamentary Justice Commissions in support of the three laws on the judiciary's independence was so fruitful USAID supported a new round of public consultations for the Commissions. This series brought key stakeholders together to discuss issues related to arrest and detention, such as *garde-a-vue*, *habeas corpus*, and pretrial release mechanisms. Four sessions were held to seek the views of representatives of the government, the judiciary, and the international community. The Commissions tasked a USAID-supported consultant to gather the views expressed during the session and prepare draft legislation. As a result of this effort, a draft law on *habeas corpus* was recently submitted to Parliament's Justice Committees by the MOJ. The Committees are scheduled to present the bill to Parliament in January 2009, which will significantly reduce prolonged pretrial detention.

Pullout Quote (Optional):

Per the Interim President of Haiti's Supreme Court: "Those laws will provide a guarantee of the professionalism of judges, limit the risk of dependence of the judiciary regarding the executive and legislative authorities, and contribute to significantly reduce corruption."

Background Information:

This story relates to the implementation of the USAID/Haiti program "Judicial Strengthening and Stabilization Initiatives" FY07-08 Result 1: Judicial authorities have increased their administrative, management, and technical capacity to provide more justice services effectively and efficiency. It is financed under the Governing Justly and Democratically Objective, Program Area Rule of Law and Human Rights, Program Element Justice System.

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Photographs (optional, but recommended): The picture was taken by a USAID / National Center for State Court staff during one of the USAID-sponsored Parliamentary Justice Commission public consultation at the Parliament.

