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OFFICE OF INSPECTOR GENERAL

AUDIT OF USAID/HAITI'S JUSTICE PROGRAM

AUDIT REPORT NO. 1-521-07-008-P
APRIL 24, 2007

SAN SALVADOR, EL SALVADOR



April 24, 2007

MEMORANDUM

TO: USAID/Haiti Director, Paul Tuebner

FROM: RIG/San Salvador, Timothy E. Cox /s/

SUBJECT: Audit of USAID/Haiti's Justice Program (Report No. 1-521-07-008-P)

This memorandum is our report on the subject audit. In finalizing the report, we carefully considered your comments on the draft report and we have included the Mission's comments in their entirety in Appendix II.

The report includes eight recommendations for your action. Based on the information provided in the Mission's response to the draft report, management decisions have been made for Recommendation Nos. 2, 4, and 6. Management decisions for Recommendation Nos. 1, 3, 5, 7, and 8 can be recorded when the Mission has developed a firm plan of action, with timeframes, for implementing the recommendations. Determination of final action for the report recommendations will be made by the Audit Performance and Compliance Division (M/CFO/APC) upon completion of the actions planned by the Mission.

I sincerely appreciate the assistance provided to the auditors on this engagement, and I hope that this final report will be of assistance to you in designing and implementing the follow-on program.

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SUMMARY OF RESULTS

Haiti is a fragile state, and insecurity and impunity are widespread. USAID/Haiti is working through a contract with the National Center for State Courts to:

- Strengthen the administrative, management, and technical capacity of the courts and prosecutors through training and technical assistance to justices of the peace, judges, prosecutors, and court personnel.
- Reduce pre-trial detention by improving the flow of cases through the police, prisons, and court system.
- Improve citizen links to the judiciary through greater citizen awareness of their rights and access to legal services. (See page 3.)

During the audit period, \$3.7 million was obligated and \$2.5 disbursed under the contracts with NCSC. As part of its fiscal year 2007 audit plan, the Regional Inspector General/San Salvador performed this audit to determine whether USAID/Haiti's justice program activities achieved planned results and whether USAID/Haiti reported complete and accurate information to its stakeholders. (See page 4.)

While the justice program has not yet produced measurable improvements in the efficiency or effectiveness of Haiti's court system, our judgment is that USAID's contractor has helped lay a basis for future progress in these areas. We were unable to fully determine whether planned results were achieved because USAID/Haiti established baselines and targets to measure only one of its two performance indicators for its justice program activities (page 5). Some of the positive results achieved by USAID/Haiti's contractor are discussed beginning on page 5. However, the audit also identified opportunities to improve program results or improve measurement of results. Specifically, the audit report concludes that the problem of pre-trial detention is worsening (page 7), better coordination is needed among the justice sector actors (page 10), vetting of judges is needed (page 12), the Mission's Performance Management Plan needs better baseline data and targets (page 13), and the contractor's planned outputs were not adequately defined (page 15).

With respect to the second audit objective, the Mission and its partner did not report accurate and complete information on program achievements to stakeholders. (See page 16.)

The report recommends that USAID/Haiti:

- Develop activities and fund them at a level that will provide reasonable assurance of significantly reducing the time spent in pre-trial detention or seek assistance from another donor to help address this problem. (See page 10.)
- Provide assistance to civil society organizations to help them effectively advocate for a more efficient and effective justice system or seek assistance from another donor to provide such support. (See page 10.)

- In conjunction with the State Department or with other donors, support the establishment of a record keeping system that would provide information at the national level on detention in police stations. (See page 10.)
- Include coordination activities (e.g., cross training of police, prosecutor, and judges; information sharing; and provision of the means for these actors to communicate with one another) in the follow-on program to begin during FY 2008. (See page 12.)
- Help establish a system for vetting judges, or seek the participation of another donor to provide this assistance. (See page 13.)
- Revise its Performance Management Plan for its justice program to include measurable indicators with accurate baseline data and realistic targets. (See page 15.)
- Require its contractor to develop specific planned outputs along with completion dates, to facilitate management and measurement of progress toward achieving intended outputs. (See page 16.)
- Implement a system to regularly validate the quality of reported data by its implementing partners, maintain sufficient supporting documentation on reported results, and provide effective guidance to its justice program partners to ensure that they report accurate information. (See page 19.)

USAID/Haiti generally agreed with the findings and recommendations in our draft audit report. The Mission planned to implement all of the recommendations, mainly through the new follow-on program that it expects to begin implementing in FY 2008, and the Mission had made specific plans for implementing Recommendation Nos. 2, 4, and 6. The Mission's comments also provided some additional background information on the environment in which the justice program is implemented and listed some additional activities undertaken by its contractor. Finally, the Mission's comments provided clarifications and/or additional information on pre-trial detention statistics and reported program results.

We believe that USAID/Haiti's comments and planned actions are responsive to the report recommendations. We have also modified the final report to reflect several of the clarifications included in the Mission's comments. The comments in their entirety are presented in Appendix II.

BACKGROUND

Haiti, a nation of 8.4 million people, is the poorest country in the Western Hemisphere with an estimated 54 percent of Haitians living on less than \$1 per day. Life expectancy is 53 years, and the adult literacy rate is 53 percent. Frequent political crises, poor governance, economic instability, and natural disasters encourage people to focus on short-term issues rather than on the need for long-term reform efforts. It is in this context that USAID/Haiti has supported efforts to establish the rule of law in Haiti.

Reliable statistics on crime in Haiti are not available, but Haiti is considered to be a fragile state, and insecurity and impunity are widespread. The current United Nations Stabilization Mission in Haiti has an authorized strength of 8,550 uniformed soldiers and police to help keep order, but kidnappings and other violent crimes, often perpetrated by armed groups and gangs, are at crisis levels.

The justice sector in Haiti includes several important actors besides the United Nations Stabilization Mission:

- The Ministry of Justice and Public Security is responsible for supervising the police, prosecutors, prisons, and the judiciary as well as developing justice policies.
- The Haitian National Police are responsible for conducting preliminary criminal investigations, executing arrest warrants issued by courts and also have authority to arrest persons who are caught in the act of committing a crime. In practice, we were told, the police may detain people in police stations for fairly long periods – weeks or months – before releasing them or turning them over to prison authorities.
- Prosecutors assigned to all of the courts, except the justice of the peace courts, investigate crimes committed in their jurisdictions.
- The court system includes the Supreme Court, 5 appeals courts, 16 courts of first instance, 178 justice of the peace courts, and 3 specialized courts.
- The prison system is responsible for confining persons who are awaiting trial and who have been convicted of crimes and sentenced to prison.

In any country, achieving an acceptable degree of public security, while safeguarding the right to due process, requires the different actors within the justice sector to work together in a spirit of team work and close operational coordination.

While the State Department and other donors are working with other parts of the justice system, USAID/Haiti has worked with the judicial system for many years. From 1995 to 2000, USAID financed an \$11.5 million contract with Checchi and Company that focused on case registration systems, training for judges, and legal assistance for the poor. After concluding that the political will to implement significant reforms was lacking, USAID discontinued technical assistance to the Government of Haiti and instead financed a \$3.6 million contract with the International Foundation for Election Systems, from 2001 to 2004, to work with civil society organizations to help them press for reforms.

In September 2004, USAID signed a contract with the National Center for State Courts (NCSC) and a little more than a year later signed a second contract with NCSC which runs from September 2005 through September 2007. The current contract focuses on three objectives:

- Strengthening the administrative, management, and technical capacity of the courts and prosecutors through training and technical assistance to justices of the peace, judges, prosecutors, and court personnel.
- Reducing pre-trial detention by improving the flow of cases through the police, prisons, and court system.
- Improving citizen links to the judiciary through greater citizen awareness of their rights and access to legal services.

As of December 31, 2006, \$3.7 million had been obligated and \$2.5 million had been disbursed under the contracts with NCSC.

AUDIT OBJECTIVES

As part of its fiscal year 2007 audit plan, the Regional Inspector General/San Salvador performed this audit to answer the following questions:

- Did USAID/Haiti's justice activities achieve planned results?
- Did USAID/Haiti's reporting on its justice activities provide stakeholders with complete and accurate information on the progress of the activities and the results achieved?

Appendix I contains a discussion of the audit's scope and methodology.

AUDIT FINDINGS

Did USAID/Haiti's justice program achieve planned results?

While the justice program has not yet produced measurable improvements in the efficiency or effectiveness of Haiti's court system, our judgment is that USAID's contractor has helped lay a basis for future progress in these areas. We were unable to fully answer this audit objective because USAID/Haiti established baselines and targets to measure only one of the two performance indicators for its justice program activities. The Mission's FY 2006 Performance Management Plan (PMP) included two indicators applicable to the justice program: one dealing with the number of days spent in pre-trial detention and the second dealing with the number of people trained to improve the justice sector. With respect to the first indicator, the average time spent in pre-trial detention has been consistently increasing since 2004 rather than declining as planned.¹ With respect to the second indicator, several hundred people have been trained, but because there were no performance targets for this indicator, it was not possible to compare planned and actual results. (Beyond the performance indicators in the PMP, the contractor's work plans also did not include specific, quantified information on planned outputs or results, so the work plans could not be used to perform a comparison of planned and actual results.)

While there are no objective criteria available for comparing planned and actual results, USAID's contractor has achieved some positive results:

- The contractor prepared a study on pre-trial detention that corrected some widespread misconceptions about the nature of the problem. While it had been widely thought that many pre-trial detainees were awaiting trial on minor charges, the study showed that the great majority of pre-trial detainees were charged with serious or violent crimes. The study also provided quantified information on the low conviction rate and the low incarceration rate in Haiti, highlighting the poor performance of the justice sector as a whole in addressing the problems of criminality and impunity in Haiti.
- In 2005 and 2006, in an effort to reduce the backlog of prisoners awaiting trial, the contractor helped organize special court and prison hearing sessions during what is normally the judicial summer vacation period. As a result, 152 cases were heard leading to 101 convictions. To support these special hearings, the contractor provided financial assistance for stipends to participating legal professionals and to defense counsel, some equipment, and logistical support.
- The contractor provided technical assistance and training to the Ministry of Justice and Public Security and the courts. It helped to develop procedural rules for prosecutors and justices of the peace and trained more than 450 court employees in the application of the rules. The contractor also helped establish the first law master's degree program in court management and administration in Haiti in order to

¹ The baseline value for this indicator was significantly overstated, and neither USAID nor its contractor could provide support for the baseline value or the actual result reported for FY 2006.

develop local skills and capacity in modern case management techniques. At the end of 2006, 80 students were registered in the master's degree program.

- The contractor organized several workshops and provided technical assistance to shape three key legal decrees to 1) standardize the judicial salary scale, 2) reestablish the magistrate school, and 3) establish the judicial council (*Conseil Supérieur de la Magistrature*). However, the key features of the decree establishing the judicial council were later revoked by a new Minister of Justice.
- The contractor helped develop 82 procedural rules for justice of the peace courts which are being implemented now.
- The contractor established a monitoring committee in two of its three jurisdictions. The monitoring committees are charged with monitoring the implementation of the rules of the courts and assessing the conditions of the courts. In an effort to increase the accountability of the courts, NCSC also issued a request for proposals that solicited qualified civil society organizations to provide oversight to the courts and to educate the public about the operation of the courts. This effort has the potential to help hold judges accountable for complying with established procedures and to strengthen the capacity of the court system. This effort is in the early stages of implementation.
- The contractor conducted a case flow study to help identify bottlenecks in the justice system in order to assist in the design of a more effective management system that will help reduce pre-trial detention. The study is expected to be published in the first quarter of 2007.
- The contractor provided assistance to members of two new judiciary committees within the parliament on principles of democratic governance, the importance of judicial independence, and strengthening legal drafting skills in connection with the laws proposed by the Ministry of Justice and Public Security.
- The contractor provided technical assistance to improve and further develop a computerized national system for tracking the movements and status of detainees held in Haiti's prison system. This system was developed with the assistance of the United Nations Development Program (UNDP) and is maintained with the correctional staff. One of the functions to be added is a mechanism to alert prison officials when a detainee has been in pre-trial detention for a period longer than the maximum possible sentence that they could receive for the crime they were charged for.

Some additional activities and accomplishments are listed in USAID/Haiti's comments included in Appendix II.

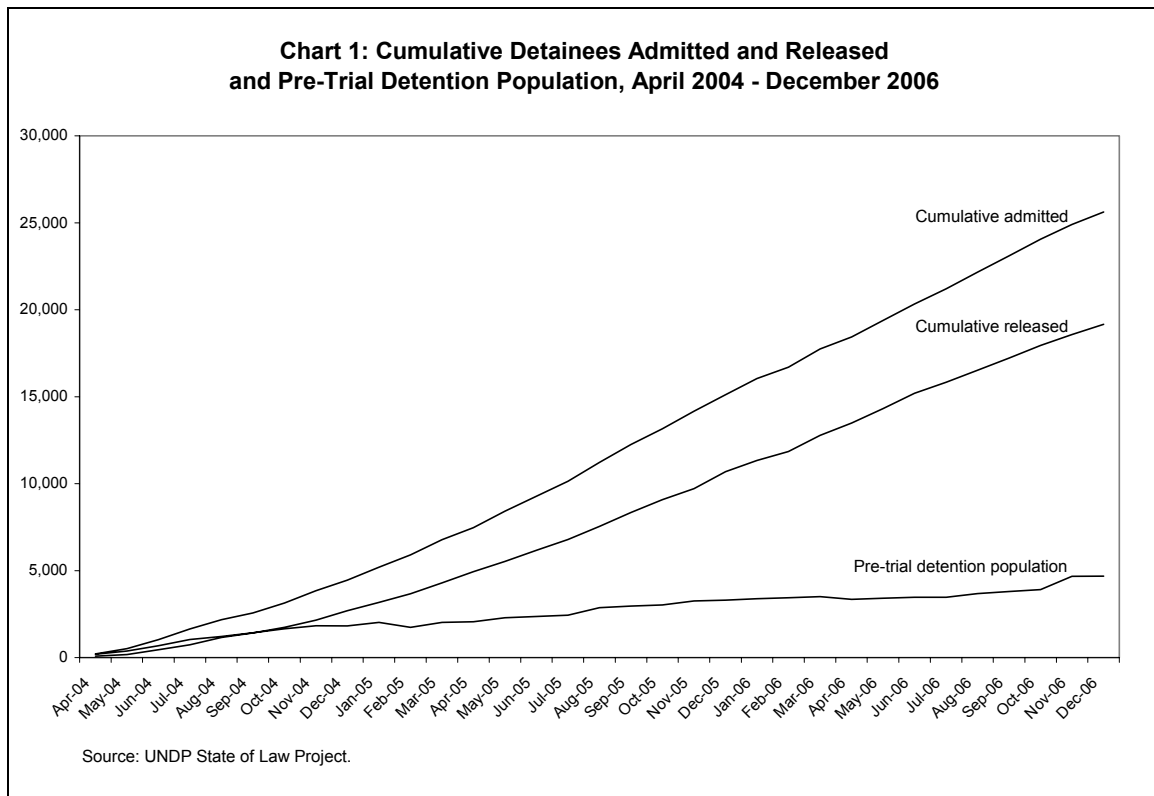
In addition to the positive results described above, our audit also identified five opportunities to strengthen program results and help improve performance measurement. These issues are discussed in the following sections.

Pre-Trial Detention Problem is Worsening

Summary: Through its justice program, USAID/Haiti planned to reduce the time spent in pre-trial detention, but instead the trend has been steadily increasing. The causes of the pre-trial detention problem are complex, but perhaps the most important causes are the lack of a comprehensive case management system, poor coordination among the courts and other actors in the justice sector, poor working conditions for judges, a lack of resources throughout the court system, and issues dealing with political will. As a result, thousands of Haitians are held – often for long periods of time in difficult conditions – while they await trial.

According to the PMP, the program was to help reduce the average time spent in pre-trial detention from 540 days at the end of FY 2005 to 360 days by the end of FY 2006, a reduction of 33 percent.²

Chart 1 below shows that, since the prisons were emptied in February 2004 upon the departure of former president Aristide, the number of persons detained (including persons awaiting trial) has consistently exceeded the number of persons released.



² In fact, the baseline value of 540 days was significantly overstated. If a simple average is used, as USAID intended, UNDP's detainee database shows that the baseline was 225 days. (In its comments on our draft report, USAID/Haiti stated that the figure reported in the PMP for FY 2005 was an estimate intended to represent conditions prior to the emptying of the prisons in February 2004. According to the Mission, the estimate was based on interviews with personnel working in the justice sector.)

Not surprisingly, as shown in Table 1 below, the length of time in pre-trial detention and the number of persons in pre-trial detention have also consistently increased. Note that the data in Table 1 includes only persons admitted to Haiti's prison system. It does not include persons detained at police stations, sometimes for weeks or months, who are not currently recorded in any information system. The data in Table 1 is presented in two groups: the first includes persons in pre-trial detention on a single day, and the second includes persons leaving pre-trial detention during a one-year period because their case was dismissed or a verdict was rendered. Considered together, the data show that there is considerable movement into and out of pre-trial detention, but that overall the backlog of people in prison awaiting trial is increasing. The data also show that many people leave pre-trial detention fairly quickly (e.g., those who exited pre-trial detention during 2006 spent an average of 82 days awaiting trial). Nevertheless, there is a large group of people still awaiting trial who have spent very long periods in pre-trial detention (e.g., on December 31, 2006, people in pre-trial detention had been awaiting trial a median of 383 days).

Table 1: Days Spent in Pre-Trial Detention³

Based on an analysis of the pre-trial detainee population on a single day)	Average Days in Pre-Trial Detention	Median Days in Pre-Trial Detention
As of September 30, 2004	76	73
As of September 30, 2005	225	199
As of September 30, 2006	359	331
As of December 31, 2006	408	383

Based on an analysis of pre-trial detainees leaving pre-trial detention, because their cases were closed (i.e., dismissed or a verdict was rendered, during a one-year period)	Average Days in Pre-Trial Detention	Median Days in Pre-Trial Detention
Year ending December 31, 2004	34	12
Year ending December 31, 2005	67	20
Year ending December 31, 2006	82	21

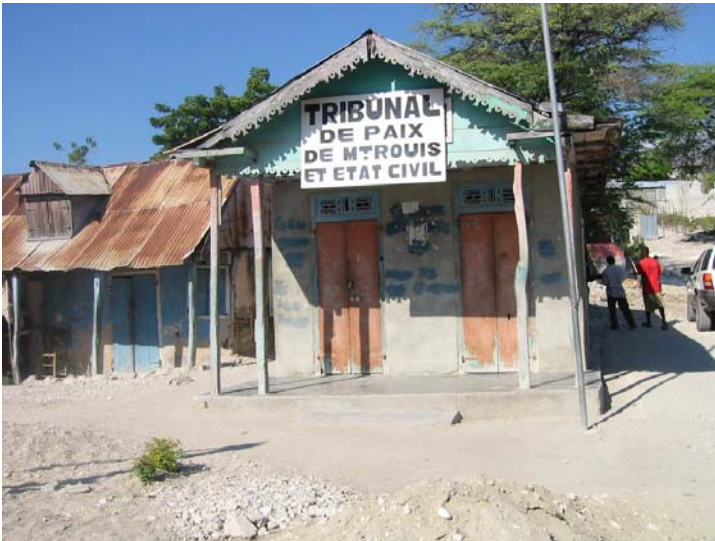
The most important factors contributing to the worsening problem of pre-trial detention include the following:

- Haiti's code of criminal procedure requires the convening of only two jury trial sessions in each of 16 jurisdictions per year, and in reality there has rarely been more than one session per jurisdiction per year. Approximately 10 cases can be heard at each session, so the total capacity of the system is about 160 to 320 jury trials per year. However, a non-governmental organization involved in justice reform issues estimated that there were 2,000 inmates in the National Penitentiary as of November 2006 awaiting jury trials.⁴

³ This table is based on data from a UNDP database on detainees and an analysis conducted jointly by a RIG/San Salvador auditor and the contractor's consultant.

⁴ International Crisis Group, "Haiti: Justice Reform and the Security Crisis," (Latin America/Caribbean Briefing No. 14), 2007.

- Judges are reluctant to use existing legal mechanisms to release defendants on bail or to address minor offenses by going to trial immediately. They fear that by releasing the accused if there is insufficient evidence, they will be accused of corruption if they grant bail.
- Poor defendants do not receive adequate legal representation. Local bar associations are responsible for providing *pro bono* representation for indigent defendants, but this obligation is not always met, and representation is most frequently provided by law students whose expertise and motivation vary. Without competent legal representation, people in pre-trial detention have no effective way to challenge their detention and have no one to press for a speedy trial.
- Poor working conditions (crowding and no electricity or telephone in many cases, and shortages of office equipment and supplies) and a lack of qualified assistants impede the work of the courts. Almost none of the opportunities to achieve efficiencies through use of modern office technology and best practices have been realized.



Justice of the Peace Court House Montrouis, St-Marc, Haiti. This one-room courthouse had no running water or electricity. Photo taken by an OIG auditor on February 13, 2007.

- Judges are poorly paid. According to a study conducted by the International Foundation for Election Systems in 2002-2003 (more recent reliable information was not available), the monthly salary of judges ranged from \$145 for a justice of the peace to \$350 for a judge in a court of first instance. According to the judges' association, salaries are not sufficient to cover basic living expenses. This, in combination with poor working conditions, must have an impact on morale and motivation. However, we were, on the whole, impressed with the level of effort we observed taking place under difficult conditions during our visits to nine justice of the peace courts. While it is easy to find inefficiencies and mistakes being made, the overall impression we received was of well-intentioned court officials soldiering on under challenging conditions.
- There is no case management system in the individual jurisdictions or at the national level to show the number of cases pending trial, the number of cases heard, and their disposition (although courts do maintain a number of manual ledgers). This

makes it hard to hold individual judges accountable for their performance or to assess the performance of the judicial system as a whole.

- Coordination among police, prosecutors, judges, and correctional officials is weak, with these groups of officials frequently mistrusting the others and blaming one another for inadequacies. (This issue is discussed in the following section.)
- Political will is difficult to assess, but several individuals we interviewed stressed the need for donors and civil society organizations to maintain pressure on policymaking officials to undertake rapid and effective justice reform efforts. So far, USAID assistance has been limited to a few civil society organizations mainly in terms of training to court personnel and holding special hearing sessions, and the contractor only signed one sub-grant because of the limited capacity of these organizations.

As a result of these difficulties, thousands of Haitians are imprisoned – often in overcrowded and unsanitary conditions – while they await trial. This problem requires urgent attention.

USAID, through its contractor, has implemented several activities aimed at reducing the time spent in pre-trial detention, including conducting special court hearings, providing assistance to enhance the capabilities of the UNDP’s detainee database, and conducting a case flow study to identify bottlenecks in the justice system. USAID-supported activities have been constructive but were not of sufficient magnitude to have a significant impact on the pre-trial detention problem.

Recommendation No.1: We recommend that USAID/Haiti develop activities and fund them at a level that will provide reasonable assurance of significantly reducing the time spent in pre-trial detention, or seek assistance from another donor to help address this problem.

Recommendation No. 2: We recommend that USAID/Haiti provide assistance to civil society organizations to help them effectively advocate for a more efficient and effective justice system or seek assistance from another donor to provide such support.

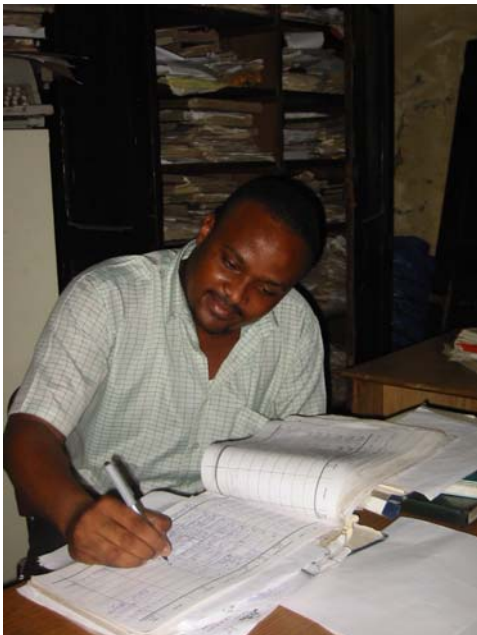
Recommendation No. 3: We recommend that USAID/Haiti, in conjunction with the State Department or with other donors, support the establishment of a recordkeeping system that would provide information at the national level on detentions in police stations.

Better Coordination Among Justice Sector Actors Is Needed

Summary: A well-functioning justice sector requires a high degree of operational coordination between police, prosecutors, judges, and correctional officials. In Haiti, these actors have difficulties working and communicating with one another, at least partly because the means for coordination (resources and information systems) are lacking. These coordination problems contribute to problems with the performance of the justice sector, such as the worsening problem of pre-trial detention.

Moving toward a more efficient and effective justice sector in Haiti will require close coordination and teamwork between police, prosecutors, judges, and prison officials. Each of these components of the justice system plays a critical role in apprehending, trying, and confining criminals, and weakness in any component can cause the other components to be ineffective as well. This conventional wisdom has a great deal of specific support in Haiti from individuals in the justice sector that we interviewed (USAID officials, its contractor, police and court officials, and other donors) as well as from other organizations working on justice reform or human rights efforts in Haiti.⁵

The current situation, in which there is widespread impunity while people suspected of crimes are denied due process, is at least in part a symptom of the failure of the different actors in the justice sector to work together. We were told by USAID's contractor that the police keep suspects in custody at police stations because they do not trust the courts to convict and confine criminals. At the same time, court officers complain that, when they determine that a crime has occurred and issue arrest warrants, the police frequently will not execute the warrant. The police often lack resources (e.g., gasoline), and because there is no civil registry system or even a system to find addresses, it is difficult for the police to find suspects. This is particularly true where criminals use aliases. Corruption and intimidation of police may also play a part in some cases where police fail to execute arrest warrants. Court officials lament the poor quality of police reports, and say that many cases must be dismissed because of their poor quality. Also, many people held in pre-trial detention are unable to appear for trial because of a lack of coordination between the court and prison officials to have the detainees brought to court at the correct time when the court is prepared to hear their cases.



Photograph of a clerk entering information into the court case register by hand at the Justice of the Peace Court, Section *Sud* Port au Prince, Haiti, taken by an OIG auditor, February 12, 2007.

⁵ See, for example, ActionAid, "MINUSTAH: DDR and Police, Judicial and Correctional Reform in Haiti: Recommendations for Change," 2006; International Crisis Group, "Haiti: Justice Reform and the Security Crisis," (Latin America/Caribbean Briefing No. 14), 2007; and International Legal Assistance Consortium, "ILAC Report: Haiti, January 2005," 2005; and Organization of American States, "Haiti: Failed Justice or the Rule of Law? Challenges Ahead for Haiti and the International Community," 2006.

There are many reasons for poor coordination and a lack of trust within the justice system. Coordination is not something that occurs naturally between organizations; it must deliberately be encouraged. Yet, the means for coordination are lacking, in terms of resources and systems. There is insufficient money for cross training of police and judges, developing case management systems that work together, telephones and fax machines, or face-to-face meetings. Also, current information systems are not adequate to track the performance of the police, prosecutors, or judges, so it is difficult to fix accountability for poor performance. For example, there is no system that will show the number of arrests made by a police officer and the disposition of each case (i.e., dismissal, acquittal, or conviction). Similarly, there is no system to show how many cases are brought by each prosecutor and the result of each case by prosecutor. As a third example, there is no system to monitor judicial efficiency or quality. The way the donors have divided up the task of assisting the justice sector helps prevent duplication of effort but may reinforce the other factors above that tend to discourage coordination and cooperation within the justice sector (the State Department and the United Nations Stabilization Mission in Haiti help the police, USAID and other donors help the courts, and the UNDP assists the prisons.)

As a result of weak coordination within the justice sector, the problems of insecurity, widespread criminality, lengthy pre-trial detention, and low conviction rates persist and in some cases have worsened. Political will on the part of the Government of Haiti and sustained efforts from donors will be needed to make progress toward resolving some of these problems.

Recommendation No. 4: We recommend that USAID/Haiti include coordination activities (e.g., cross training of police, prosecutors, and judges; information sharing; and provision of the means for these actors to communicate with one another) in the follow-on program to begin during FY 2008.

Vetting of Judges Is Needed

Summary: Judges occupy positions of trust, and their competence and character strongly shape public perceptions of the legitimacy of the judicial system. However, corruption is a serious problem in Haiti, and questions have been raised about the competence of some sitting judges. A vetting process for judges would be highly desirable, but we found no indication that any organization existed which could perform this vetting function, although the judicial council or a non-governmental organization like the Judges Association of Haiti might be able to vet judges with assistance from USAID or another donor. The lack of vetting of judges probably contributes to the perception among Haitians that the courts are ineffectual and corrupt.

Given the trust placed in judges, and the discretion they exercise, it is important that they be well qualified, honest, and impartial. Vetting of judges – that is, a structured examination of their character and qualifications by an organization that is not involved in judicial appointments – is an important safeguard against the appointment of corrupt or unqualified judges. Vetting processes help ensure a minimum standard of integrity in public service and are widely recognized as an important institutional reform measure in post-conflict settings.

In the most recent corruption perceptions index published by Transparency International, Haiti was ranked last (most corrupt) of all 163 countries covered by the survey. The Organization of American States and several non-governmental organizations involved in justice reform and human rights in Haiti believe that corruption in the judiciary is a serious problem, as is judicial competence. According to the Organization of American States, "... the level of training for the judiciary is seriously deficient, particularly among the examining magistrates and the justices of the peace, many of whom are not required to have a legal license and grapple with basic levels of competency and literacy."⁶ In addition, the constitutional process in Haiti for judicial appointments has never been followed. According to Haiti's Constitution, the President is to appoint first instance court judges and justices of the peace from lists of three names submitted by territorial assemblies at the departmental and communal levels, respectively. However, these departmental-level institutions have never been established, so there has never been compliance with the mandated appointment procedures. This serves to further delegitimize the judicial system. The mandated appointment process, when followed, should help curb undue executive influence over judges, but it will not guarantee the appointment of competent judges.

Currently, there is no Haitian government body capable of vetting judges. The Judicial Council could play a key role in a vetting process as well as monitor the performance of sitting judges, discipline them, and remove them, but it is currently inactive. A non-governmental organization, such as the Judges Association of Haiti, might also be able to perform this function, but would likely require assistance to do so.

The current situation undermines confidence in the judicial system and likely contributes to inefficiencies such as those discussed in the preceding sections of this report.

Recommendation No. 5: We recommend that USAID/Haiti help establish a system for vetting judges, or seek the participation of another donor to provide this assistance.

Performance Management Plan Needs Better Indicators, Baseline Data, and Targets

Summary: According to USAID's Automated Directives System (ADS) guidance, the PMP should include precisely defined performance indicators, baseline data, and performance targets. However, the performance indicators for the justice program were not properly defined, baseline data were inaccurate or not presented at all, and performance targets were not included in the PMP. USAID/Haiti did not have a monitoring and evaluation officer for six years prior to our audit, and the many challenges associated with operating an assistance program in Haiti distracted the attention of Mission officials from performance management issues. As a result, the Mission was not in a position to compare planned and actual results for its justice reform program.

ADS 203.3.2 requires missions to develop and maintain a PMP to measure progress

⁶ Organization of American States, "Haiti: Failed Justice or the Rule of Law? Challenges Ahead for Haiti and the International Community," 2006, p. 62.

towards intended results. ADS 203.3.3.1 states that, to be considered complete, PMP performance indicators must include baseline levels and targets. ADS 203.3.4.2.b requires that performance indicators be precisely defined in the PMP. Moreover, ADS 203.3.7.1 requires that operating units conduct annual portfolio reviews to assess, among other things, the adequacy of performance indicators to ensure that they meet management needs. Furthermore, according to ADS 596.3.1, during the FMFIA review, mission managers are required to assess their indicators and certify that they are adequate. This process should be documented and communicated to management.

USAID/Haiti included two indicators in its 2006 PMP related to its justice program:

1. Number of people trained to improve the justice sector - this indicator was of limited usefulness since no baseline or performance targets were defined. According to USAID/Haiti, this indicator was defined by USAID/Washington and the Mission was required to report on the indicator.
2. Length of time in pre-trial detention - The usefulness of this indicator was also limited since it was not clearly defined. The number of days spent in pre-trial detention can be calculated as the simple average, as the median, or as the mode (i.e., the most frequently occurring value, which is the measure advocated by USAID/Haiti's contractor). In addition, the number of days in pre-trial detention can be calculated for people in pre-trial detention on a specific date or for people exiting pre-trial detention during a given period. These different methods give significantly different results as shown in Table 1 on page 8. In addition, the baseline level of performance for this indicator reported in the PMP – 540 days – was significantly overstated: if a simple average is used, as it appears USAID/Haiti intended, UNDP's detainee database shows that the baseline value was 225 days. Finally, the Mission portfolio review conducted in November 2006 reported that the average time spent in pre-trial detention in FY 2006 was 309 days; however, the Mission had no support for this figure.

Moreover, the FY 2006 PMP omitted a third performance indicator in USAID/Haiti's strategy that measured the level of user satisfaction with the courts. The strategy defined both baseline and targets for this indicator, but the PMP did not include this performance indicator, and there was no supporting documentation on why this indicator was deleted.⁷

USAID/Haiti had no monitoring and evaluation officer for six years prior to our audit. Also, civil unrest, which forced evacuations of Mission staff in 2004 and 2005, caused programming uncertainties and made it hard for Mission staff to focus on performance measurement issues.

Because indicators and targets were not clearly defined, USAID/Haiti could not compare planned and actual results or ensure that intended results were achieved.

⁷ The FY 2005 PMP included two additional indicators to measure progress under the judicial reform program: (1) percent of appeals from targeted jurisdictions which are upheld in higher courts and (2) percentage of indigent pre-trial detainees in targeted jurisdictions who are represented by legal counsel. However, no targets were established for these two indicators.

Recommendation No. 6: We recommend that USAID/Haiti revise its Performance Management Plan for its justice program to include measurable indicators with accurate baseline data and realistic targets.

Contractor's Planned Outputs Were Not Adequately Defined

Summary: ADS guidance states that, in order to monitor the quality and timeliness of outputs produced by implementing partners, outputs should be specific. In addition, the contract with USAID/Haiti's contractor required the contractor to prepare a detailed work plan including benchmarks and targets for each intervention. However, based on a review of the contracts between USAID and its contractor and the associated work plans, planned outputs were only broadly defined. The outputs of work plans and contracts were purposely left broad in order to permit flexibility in responding to changing circumstances in Haiti and to avoid what was perceived as a lengthy USAID approval process. As a result, ADS requirements were not complied with, and neither the contracts nor the contractor's work plans could be used to compare planned and actual outputs.

ADS 200.3.2.1 states that performance outputs need to be explicit in order to manage for results. ADS 202.3.6 requires implementing partners' outputs to be specific in order for USAID to monitor the quality and timeliness of outputs and states that outputs are critical to achieving results. The contract with USAID states that the contractor will provide USAID a detailed work plan and schedule for pre-approved activities, including benchmarks and targets for each intervention and how they will be monitored.

Based on a review of the contracts and work plans, the contractor had not developed specific planned output levels, timeframes, or details on planned activities that would allow USAID to measure progress of activities and the overall achievements of the justice program nor had USAID required such specific results. Several examples follow:

- The number, type of participants, subject matter and locations for training activities were not defined.
- The contract/work plan had no specific goal to reduce the percentage of detainees held in pre-trial detention.
- No targets or specific measures were established for the reduction of average time between prison admission and final case disposition.
- No targets were developed for the number of police stations using new procedures and registration forms to speed up the investigative process.
- No targets were developed for the percent of detainees represented by an attorney at initial court hearings

According to Mission and contractor officials, the outputs in the work plans and contracts were purposely left broad in order to permit flexibility in responding to changing circumstances in Haiti (e.g., political instability and high turnover at the Ministry of

Justice and Security), and also to avoid what was perceived as a lengthy USAID approval process.

As a result, ADS requirements were not complied with, and neither the contracts nor the contractor's work plans could be used to compare planned and actual outputs.

Recommendation No. 7: We recommend that USAID/Haiti require its justice program contractor to develop specific planned outputs along with completion dates to facilitate management and measurement of progress toward achieving intended outputs.

Did USAID/Haiti's reporting on its justice program provide stakeholders with complete and accurate information on the progress of activities and the results achieved?

USAID/Haiti's reporting on its justice program did not provide stakeholders with complete and accurate information on the progress and results achieved. For example, the Mission's FY 2006 Annual Report, covering FY 2005 results, left the impression that the program had already impacted positively on the professionalism and impartiality of the courts in Haiti, which is not accurate, although we do believe that USAID and its contractor have established a basis for future progress in these areas. The reporting issues disclosed by our audit are discussed below.

Program Reporting Should Be Improved

Summary: According to ADS guidance, performance data should be accurate and reliable, and the Mission should take steps to ensure that submitted data is adequately supported and documented. It also states that it is vitally important that the Annual Reports and Congressional Budget Justifications present complete and accurate information. The Mission's reporting on its justice program was extremely brief and included inaccurate information in three of five cases tested. Also, outputs reported by USAID's contractor were inaccurate in 6 of 13 cases tested. These problems occurred because USAID/Haiti did not have a monitoring and evaluation officer and lacked clear guidance regarding CTO responsibilities to systematically verify performance data and to document the results of these efforts. Consequently, the Mission could not make programmatic or funding decisions based on accurate data, and it would be difficult for stakeholders to assess the impact of the justice program in Haiti.

As stated in ADS 202.3.6.1, assessing performance refers to whether the outputs produced by the contractor or grantee are of acceptable quality. According to ADS 203.3.5.1 and USAID TIPS 12 (supplemental guidance referenced by the ADS), performance data should be accurate and reliable, and missions should take steps to ensure that submitted data is adequately supported. The USAID Cognizant Technical Officers (CTOs) Guidebook on USAID Acquisition and Assistance states that CTOs are charged with the responsibility of ensuring that data reported by implementing partners are accurate and supported.

ADS 203.3.8.1 states that "the Annual Report is the Agency's principal tool for assessing program performance on an annual basis and communicating performance information to higher management levels and external audiences such as Congress and the Office

of Management and Budget (OMB).” Since Annual Reports and Congressional Budget Justifications may be used to make decisions about the success of USAID’s programs and the level of resources needed to implement the programs, it is vitally important to present complete and accurate information in these documents. ADS 203.3.8.4 states that for each Strategic Objective, the Operating Unit must designate a few (typically three to five) performance indicators from the Performance Management Plan that will be used in the Annual Report to report on the performance of the program for that year.

USAID/Haiti’s remarks on its justice program in the FY 2006 Annual Report and FY 2007 Congressional Budget Justification were very brief. For example, USAID/Haiti only formally reported on one performance indicator for its entire democracy and governance strategic objective in the FY 2006 Annual Report, rather than the three to five suggested by the ADS, and that indicator did not deal with the justice program. The narrative portions of these documents contained a few sentences on the justice program, which included five verifiable statements describing results of the justice program. As indicated in Table 2 below, three of the statements were not accurate and two of the statements were accurate.

Table 2: Results Reported by USAID/Haiti and Documented Results

Results Reported by USAID/Haiti	Documented Result	Percent Over (Under) Reported
1. USAID’s contractor provided introductory courses for court and case management to over 100 students, lawyers, and judges from the law faculty in the first-ever master’s degree program for Haitian law schools. (FY 2006 Annual Report)	A total of 119 individuals attended the introductory courses.	(16%)
2. USAID’s contractor implemented a pilot program of special prison and court hearings ... close to 100 cases were heard during the special pilot project. (FY 2006 Annual Report)	A total of 71 cases involving 94 detainees were heard.	41%
3. The program designed a set of 82 rules of practice for justices of the peace and introduced these rules throughout the country. (FY 2006 Annual Report)	The program designed a set of 82 rules of practice for justices of the peace and introduced these rules in 5 of the 16 jurisdictions.	None
4. “USAID assistance is demonstrably improving the lives of Haitians ... judges, prosecutors, and justice officials are applying the law more professionally, impartially and consistently throughout the country.” (FY 2006 Annual Report)	No evidence exists to show that judges, prosecutors, and justice officials are applying the law more professionally, impartially and consistently.	-
5. As part of a pilot project, of 1,400 detainees incarcerated in the National Penitentiary, close to 100 had their cases heard in special prison and court hearings. (FY 2007 Congressional Budget Justification)	Cases involving 94 detainees were heard.	None

We also reviewed the accuracy of reporting from USAID’s contractor to USAID/Haiti. To

confirm the accuracy and reliability of data reported by the contractor during FY 2005 and FY 2006, we reviewed 13 reported outputs. As indicated in Table 3 below, seven of the reported outputs were accurate and six were not accurate.

Table 3: Outputs Reported by USAID’s Contractor and Documented Results

Contractor’s Outputs	Reported Result	Documented Result	Percent Over (Under) Reported
1. Number of jurisdictions where justice of the peace workshops were conducted	8	6 ⁸	33%
2. Number of justice of the peace personnel trained in 2006	382	154	148%
3. Number of people that received prosecutor's related training in 2006	111	256	(57%)
4. Follow up committee established to monitor implementation of rules	8	8 ⁹	None
5. Curriculum for master 's degree program at law school	Completed	Completed	None
6. Number of students enrolled in the master's degree program	80	80	None
7. Number of cases included in the case flow study	Nearly 700 cases	665 cases	None
8. Number of cases heard during the special court hearing sessions in 2005	100 cases	71 cases	41%
9. Pre-trial detention survey	Completed	Completed	None
10. Reduction in the percentage of pre-trial detainees in St-Marc	- 20%	-20%	None
11. Judicial fee scale	Completed	Completed	None
12. Number of newly appointed justices of the peace trained in 2005	40	30	33%
13. Written guidelines for prosecutors developed in 2006	Completed	Completed	None

USAID/Haiti and its contractor did not report complete and accurate information because this was not a high priority for the Mission. The Mission’s FY 2005 internal control self-assessment pursuant to the Federal Manager’s Financial Integrity Act acknowledged that staff monitoring of the quality and timeliness of outputs produced by contractors and grantees was weak, causing the Mission to assess the risk level of its programming activities as “high,” but the problem has not been corrected. Also, the contractor was negatively impacted by a lack of effective guidance from USAID/Haiti and by the fact that Mission staff did not measure the validity of the reported results.

Inaccurate information on program accomplishments made it hard for USAID/Haiti to determine if its contractor was achieving planned outputs, and could lead decision

⁸ The contractor paid for training in five jurisdictions and provided one of two trainers for the sixth jurisdiction.

⁹ The contractor supported the election of eight follow-up committees. The contractor is supporting the functioning of two committees in Petit-Goave and St. Marc and expects to support three committees in Port-au-Prince; however the committees for Port-au-Prince are not active yet.

makers to erroneous conclusions regarding program results.

Recommendation No. 8: We recommend that USAID/Haiti (a) implement a system to regularly validate the quality of reported data by its implementing partners; (b) implement a system to maintain sufficient supporting documentation on reported results; and, (c) provide effective guidance to its justice program partners to ensure that they report accurate information.

EVALUATION OF MANAGEMENT COMMENTS

USAID/Haiti generally agreed with the findings and recommendations in our draft audit report. The Mission planned to implement all of the recommendations, mainly through the new follow-on program that it expects to begin implementing in FY 2008. While some of the Mission's plans at this stage are of a more general nature, the Mission had made specific plans for implementing Recommendation Nos. 2, 4, and 6. The Mission also provided some additional background information on the environment in which the justice program is implemented and listed some additional activities undertaken by its contractor. Finally, the Mission provided clarifications and/or additional information on pre-trial detention statistics and reported program results.

We believe that USAID/Haiti's comments and planned actions are responsive to the report recommendations. Based on the information provided in the Mission's comments, management decisions have been made for Recommendation Nos. 2, 4, and 6. Management decisions for Recommendation Nos. 1, 3, 5, 7, and 8 can be recorded when the Mission has developed a firm plan of action, with timeframes, for implementing the recommendations.

We have also modified the final report to reflect several of the clarifications included in the Mission's comments. The comments in their entirety are presented in Appendix II.

SCOPE AND METHODOLOGY

Scope

The Regional Inspector General/San Salvador conducted this audit in accordance with generally accepted government auditing standards. Fieldwork for this audit was performed from February 5 to February 15, 2007, at USAID/Haiti, the office of the USAID contractor working in the justice sector (the National Center for State Courts, or NCSC) and at courts in three jurisdictions of Haiti where the contractor was implementing activities.

As part of the fiscal year 2007 audit plan for the Regional Inspector General/San Salvador, this audit covered USAID/Haiti's justice program and was planned to answer two audit objectives: 1) determine whether the justice program achieved planned results, and 2) determine if the Mission reported complete and accurate information to stakeholders.

In planning and performing the audit, we obtained an understanding of and assessed the Mission's controls related to the management of its justice program. The management controls identified included performance management plans; the Mission's annual self-assessment of management controls through its annual Federal Managers Financial Integrity Act; cognizant technical officers' field visits; reviews of progress reports; and regular contact with the contractor.

USAID/Haiti's contractor was working in 3 of the 16 judicial jurisdictions within Haiti – Petit Goave, St. Marc, and Port-au-Prince. We visited 13 courts in all three jurisdictions where the contractor was implementing activities and judgmentally selected 9 of 38 justice of the peace courts, 3 of 3 first instance courts (including the associated prosecutors), and the Supreme Court. We also conducted 28 interviews with USAID officials, contractor's representatives and assisted organizations including court monitoring committees, regional advisors and civil society organizations.

During the period covered by our audit, October 1, 2004 through December 31, 2006, USAID/Haiti obligated \$3.7 million and expended \$2.5 million for its justice program through its contracts with NCSC.

Methodology

To answer the audit objectives, we visited and conducted interviews at the offices of USAID/Haiti and the contractor. We also visited courthouses, justice of the peace courts, Ministry of Justice and Public Security offices, and the Supreme Court. At these facilities, we interviewed judges, court clerks, prosecutors, and parliament members. We also interviewed all four civil society organizations assisted by the contractor and the law faculty of the Port au Prince University which received technical assistance and financial support from the contractor. We also interviewed other donors involved in the justice sector. We collected and analyzed data on prisoners held for pre-trial detention and examined court records of cases, case transfers between courts, and the disposition of each case (if any). We reviewed documentation produced by USAID/Haiti and its

contractor including work plans, progress reports, studies, records and documents supporting reported results (e.g., lists of participants in contractor-initiated training sessions).

To validate performance results we reviewed court house case registers and the United Nations Development Program's detainee database for correctional facilities throughout the country, and analyzed the data on the number of detainees, the number of cases reported, the status or outcome of the cases (i.e., released, convicted, dismissed, transferred to another court or prosecutors' office, etc.), and the time spent in pre-trial detention, and compared the information among the various registers.

In judging the significance of our observations, we considered errors or variances of five percent or more to be significant and reportable.

MANAGEMENT COMMENTS

To: Timothy Cox, RIG/ San Salvador

From: Paul Tuebner, Mission Director

Date: April 11, 2007

Subject: Mission Response to the Draft Audit Report of USAID/ Haiti's Justice Program (Audit Report No.1-521-07-00XP)

Following is USAID/Haiti's formal response to the draft audit report, which you transmitted to us on March 16, 2007. Overall, we believe that the findings and recommendations are positive, constructive, and will be relevant for our new strategy.

Allow me to compliment the auditors who participated in the process for their objectivity and understanding of the many parameters that affect Justice Program implementation in Haiti's extremely challenging environment. We particularly appreciate their sincere efforts to go above and beyond their scope of work, in order to look at the justice sector as a whole. They used the audit process to identify opportunities to improve our future program results and performance measurement. As a result of this effort, the audit recommendations provide specific, actionable steps to strengthen upcoming activities. Given that our follow-on program was in the design stage during the auditors' visit, it comes as no surprise that many of the opportunities RIG identified are included in the follow-on design for the Justice Sector program. The coincidence of timing between the program design and the audit was fortuitous and strengthens the Mission's resolve to continue to support Justice Sector reform even more effectively.

With this in mind, we would like to provide several comments and reactions for your consideration and for incorporation into the final report.

Recommendation No.1: We recommend that USAID/Haiti develop activities and fund them at a level that will provide reasonable assurance of significantly reducing the time spent in pre-trial detention, or seek assistance from another donor to help address this problem.

Pre-trial detention in Haiti is a systemic problem and USAID/Haiti is committed to continue to help identify and address its causes and its effects. Therefore, the mission acknowledges the recommendation as the Scope of Work of the Justice follow-on program is finalized. USAID/Haiti will revise its justice program to include activities aimed at improving system functioning, and decreasing the percentage of pre-trial detainees among the total prison population. USAID/Haiti believes that justice sector change is a long-term, multi-faceted endeavor and that results may not be tangible under a short term process. Consequently under the new strategy, the mission will launch a five-year program that will seek to improve justice service delivery, increase the extremely low conviction rate to better reflect the growing crime rate that grips the nation, improve the capacities of system actors and institutions to respond to the challenging problems of pretrial detention, increase access to justice, and provide more sustainable, systemic

protection for detainees.

Recommendation No.2: We recommend that USAID/Haiti provide additional assistance to civil society organizations to help them effectively advocate for a more efficient and effective justice system.

USAID/Haiti acknowledges the recommendation and will award in FY07, a “Civil Society Advocacy for Improved Justice program” that will support civil society organizations (CSO), including the Haiti Bar and Judges’ Associations, student groups, universities, community organizations, human rights organizations, and alliances of business people, in promoting an improved Haitian justice sector by strengthening constituencies for legal and judicial reform. The program will help build coalitions for legal and judicial reform; increase public awareness and legal literacy; improve access to legal services; increase research and analysis capacities for judicial and legal reform; monitor the fair application of justice and foster broader awareness and support for an effective, independent and transparent judiciary.

Recommendation No. 3: We recommend that USAID/Haiti, in conjunction with the State Department or with other donors, support the establishment of a recordkeeping system that would provide information at the national level on detentions in police stations.

Prisons and Police stations in Haiti are managed by the Haitian National Police (HNP). Currently USAID/Haiti does not have a program that directly supports the HNP. Nevertheless, as mentioned in the draft report, the mission recently contributed to the expansion of the existing National Prison Administration (APENA) case tracking system. The mission’s contractor hired a computer specialist who strengthened the uniform data collection system at APENA. The updated system enabled the APENA database to avoid mistakes and issue reports and calculations that were unavailable until a few months ago. USAID/Haiti understands that there is enough space within the updated database system to envision the expansion of APENA’s database to the police station level. The mission will work with the Bureau for International Narcotics and Law Enforcement Affairs (INL), the United Nation’s Development Program (UNDP) and other donors to ramp up support to the HNP/APENA and identify ways to improve the current recordkeeping system so it can be extended to other branches of the penal chain at the national level.

Recommendation No. 4: We recommend that USAID/Haiti include coordination activities (e.g., cross training of police, prosecutor, and judges; information sharing; and provision of the means for these actors to communicate with one another) in the follow-on program to begin during FY 2007.

USAID/Haiti agrees with the recommendation. Conflicts between the police and judicial authorities are long-standing and difficult at best to break down. In FY05-FY06, the mission supported the realization of several training events, including a study tour in Costa Rica to help improve coordination among the police and judicial actors. In its follow-on program the mission will develop more activities that will help improve police-prosecutorial cooperation. Activities to be implemented will include workshops and trainings and coordination meetings for police, prosecutors, and investigative judges to improve criminal investigations and selection and development of cases to take forward to trial. USAID interventions will also seek to develop groups of police, prosecutors, investigative and trial judges to work with high-profile crimes as well as minor felonies

and provide them with special training, equipment, mentoring, protection, and other assistance to enhance their work. This approach will also help address some aspects of the pre-trial detention problem.

Recommendation No. 5: We recommend that USAID/Haiti help establish a system for vetting judges, or seek the participation of another donor to provide this assistance.

USAID/Haiti recognizes that establishing a system for vetting judges is imperative in the Haitian context. In the upcoming justice program, the mission will provide technical assistance and support to the Ministry of Justice's Judicial Inspection Unit as well as support for the development and functioning of the judicial council or any other oversight institution created by the GOH. In addition, because of the sensitive nature of such issues the mission will include the "vetting of all sitting judges and prosecutors," into the policy dialogues and discussions on justice issues that need to be initiated by USG officials at the highest levels of the Haiti executive branch, Parliament, and private sector.

Recommendation No. 6: We recommend that USAID/Haiti revise its Performance Management Plan for its justice program to include measurable indicators with accurate baseline data and realistic targets.

In line with its new FY07 - FY09 strategy statement, a new Performance Management Plan (PMP) will be in place for the justice program by the end of this current fiscal year. This new PMP will comply with ADS 203.3.3 including the Performance Indicator Reference Sheet (PIRS), which includes clear definitions, baseline values and targets for each performance indicator. The indicators will be developed and updated annually to ensure that planned results are monitored and achieved.

Recommendation No. 7: We recommend that USAID/Haiti require its contractor to develop specific planned outputs along with completion dates to facilitate management and measurement of progress toward achieving intended outputs.

The Mission will ensure that its new contractor develop, in line with the intended results defined in the Performance Management Plan, a comprehensive annual workplan which will include clear and specific outputs. Those outputs will be monitored on a regular basis through the contractor's quarterly reports, site visits, and meetings with the implementers and/or other reporting methods.

Recommendation No. 8: We recommend that USAID/Haiti (a) implement a system to regularly validate the quality of reported data by its implementing partners; (b) implement a system to maintain sufficient supporting documentation on reported results; and, (c) provide effective guidance to its justice program partners to ensure that they report accurate information.

The Mission agrees to set up a system for on-going data quality assessment to ensure that reported performance information is of reasonable quality and accurate, and that adequate documentation for all reported indicators is available.

Notes and Clarifications

1 - Clarification on setting:

Building a fair, transparent and effective justice system that honors requirements of the Haitian Constitution and international human rights obligations, is understood to be a long-term process that will require strengthening formal structures, weeding out corruption, and engendering a rule of law culture. During the last two and a half years of the project's implementation, an interim government presided for over half of the period; planned elections were scheduled for November 2005 were delayed, also delaying all planned activities in the justice sector under not only the USAID program but the programs of other donors. Elections were held in February 2006 and the new government was installed and began functioning in May 2006. These circumstances constrained the contractor and the mission from formalizing a performance tracking plan. Additionally, during the same period and largely due to the insecurity of the country many internal mission personnel changes were made. In fact, during the first contract and the first nine (9) months of the second contract, the mission had no Monitoring and Evaluation Officer. The CTO in charge of the Justice project had just been recruited in July 2005, almost at the end of the first contract during a time period where the mission was under mandatory evacuation. The mission acknowledges the auditors excellent description of the situation with regards to the nonfunctioning justice system in Haiti, the lack of resources devoted to strengthening the justice sector and the various challenges faced by the system's actors and institutions. The mission welcomes the recommendations proposed by the RIG and many, if not all, will be considered in implementing the mission's new strategy.

In pages 5 and 6 of the draft report, some of the contractor's positive accomplishments are stated. The mission would like to highlight some additional achievements that have proven to be significant to the Ministry of Justice in their on-going efforts:

- Study tour to Costa Rica for some members of the penal chain to learn about prosecution of drug traffickers.
- Training and technical assistance for Judicial Council members.
- Drafting of internal rules for the Judicial Council.
- Training in mediation to prepare justices of the peace to provide services in remote areas on market days. Study of beliefs and attitudes about the justice system in areas where an institutional justice system is not accessible.
- Procedural rules for first instance courts.
- Study on gender equity in the Haitian Justice System.
- Workshops featuring members of a jurisdiction that has the lowest rates of pre-trial detention in the country, to share best practices.
- Technical assistance for the design of the judicial inspection unit that will handle judicial selection, promotion, discipline, and investigation of unethical conduct.

- Small grants to the National Judges' Association to help reinforce their management capacities.

2 - Clarification on pretrial detention statistics:

- In 2006, approximately 10,500 people were admitted into detention facilities nationwide. Approximately 8,465 detainees were released¹⁰. For those released from the National Penitentiary, the time from admission to release varies by charge severity. Misdemeanants (contravention) were released within three months. For felonies punishable by up to 3 years in prison (delit), the overwhelming majority reached final disposition and were released within 90 days. For the most serious felonies (crime), most were resolved and released within five months¹¹. As a point of reference, among the 75 largest felony courts in the United States, while the overall median time from arrest to adjudication was 92 days, it was about twice this long for rape defendants (187 days), and was more than a year for murder defendants¹². At the end of 2006, more than 3,000 detainees have been held for more than one year. These detainees had at least an initial appearance before a judge, but had not yet had their cases decided.

- USAID/Haiti recognizes that the complex problem of pretrial detention, when taken as a whole has many factors and components that are often beyond USAID's manageable interest and appear to be more complicated than usually depicted. Also, reducing pretrial detention, in and of itself, is not useful if it means dangerous criminals are simply turned back out into society faster. USAID/Haiti interventions will help address the issues of pre-trial detention and will also consider the need for the country to realize adequate measures of security and stability by obtaining convictions of violent criminals that are currently destabilizing Haitian society and rendering the government of Haiti ineffective. USAID/Haiti programs will help increase the conviction rates as well as the citizens' confidence in the system to sanction crime. The success of our programs will be contingent on GOH commitment to advance certain system-wide changes.

3 - Clarification of indicators:

- The footnotes in page 2 of the draft report indicate the following: *"The baseline value for this indicator was significantly overstated and neither USAID nor its contractor could provide support for the baseline value or the actual result reported for FY 2006"*. In fact, the baseline value for the indicator related to the time spent in pre-trial detention was based on pre-February 2004 figures, as this would more accurately reflect a norm for detainees, rather than a figure derived relatively soon after the February 2004 release of all prisoners. The value was gathered by interviewing experienced justice sector personnel since reliable data was not kept at that time.

- In page 14, the draft report stated the following: *"Number of people trained to*

¹⁰ Data from the UNDP/DAP « Cahier Statistique de L'Administration Pénitentiaire Admissions, Extractions, Libération Condamnés et Prévenus Janvier 2006 à Décembre 2006 »

¹¹ On a cautionary note, the sample of released defendants was drawn during the time the Minister of Justice had instituted "special hearings" to expedite the handling of pretrial detainees.

¹² "Felony Defendants in Large Urban Counties, 2000" Bureau of Justice Statistics, U.S. Department of Justice, found at <http://www.ojp.usdoj.gov/bjs/pub/pdf/fdluc00.pdf>.

improve the justice sector - this indicator was of limited usefulness since no baseline or performance targets were defined". This indicator is part of the common indicators list predefined by Washington and for which the mission was obligated to report. Since it was not a part of the 2006 Monitoring and Performance Management plan, there were no baseline values and targets.

- Table 3: Outputs Reported by USAID's Contractor and Documented Results

Contractor's Outputs	Reported Result	Documented Result	Percent Difference
1. Number of jurisdictions where justice of the peace workshops were conducted.	8	*5	*60%

*The exact number is six (6) St. Marc, Petit Goave, Cap Haitien, Port-au-Prince, Anse-à-Veau, and Mirebalais. The contractor paid for the trainings in the first five, and provided the training in Mirebalais.

Contractor's Outputs	Reported Result	Documented Result	Percent Difference
4. Follow up committee established to monitor implementation of rules	8	*2	*300%

*Eight follow-up committees (St. Marc, Petit-Goave, Mirebalais, Anse-à-Veau, Cap Haitien, and three in Port-au-Prince) were established through the contractor's trainings. The contractor supported continued activities of these committees in two (2) jurisdictions, but the claim of eight (8) established is correct.

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