

PROLONGED PRETRIAL
DETENTION IN HAITI

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Vera Institute of Justice
July, 2002

This report was prepared with financial support from the Open Society Institute.

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Executive summary

Haiti's prisons hold twice as many inmates today as they did in 1995, and nearly eighty percent of these detainees are awaiting disposition of their cases. Most pretrial detainees are held from several weeks to several months before release or trial. But for a significant number pretrial detention extends over years. Haitian prisons hold the presumed innocent side by side with the guilty; petty shoplifters and the falsely accused languish next to major criminals. Despite an increase in professionalism and institutionalism achieved by the penitentiary administration in recent years, cells are packed, food is insufficient, and conditions are generally unhealthy.

Prolonged pretrial detention is a stubborn problem. More than a few government commissions, international expert missions, and nongovernmental programs have engaged it without great success. The Open Society Institute, which has supported democratic change in Haiti since 1995, together with the United Nations Development Program, asked the Vera Institute of Justice to revisit the problem and related prison conditions and to identify a plan to reduce pretrial detention and improve conditions for detainees. Accordingly, an international mission of experts accompanied by select Vera staff made a thorough study of past initiatives, visited many Haitian judicial and corrections facilities, and interviewed scores of knowledgeable individuals, including two ministers of justice.

Our research shows that although four out of five prisoners nationally have not been tried, there are substantial differences between Port-au-Prince and many provincial jurisdictions. In one latter district, two-thirds of prisoners have been sentenced and prolonged pretrial detention is not a problem. Conversely, a small prison in the capital holds nothing but pretrial detainees. This gap has widened over the last three years, testifying to the gravity of the problem around the capital and to the positive effects of training, leadership, and procedural reforms in the provinces.

Our study identified several related concerns. Detention of alleged offenders in police stations is a significant problem that cannot be tabulated because police keep no useful statistics. Young delinquents reach trial even less often than adults do, frequently bypassing the juvenile courts altogether. Inadequate nutrition in the prisons results from poorly organized food purchasing and distribution as well as insufficient funding. Poor security infrastructure minimize the use of interior courtyards for exercise; few prisoners are granted the six out-of-cell hours recommended by prison regulations.

The causes of these problems are multiple and interrelated. They include a general lack of accountability within the Ministry of Justice; a judicial inspection unit that is small, frail, and ill-defined; arbitrary judicial fees and endemic corruption; poor communication among actors in the criminal process; over-formal, outdated, and unnecessary criminal justice procedures; a judiciary that is not independent; all-but absent legal assistance for most defendants; insufficient training of judges and clerks; and missing mid-level management.

This report recommends both immediate interventions and longer-range reforms. Our plan proposes sequential steps that the ministry may take without significant outside assistance to simultaneously improve treatment of detainees and build the ministry's capacities. It also proposes complementary measures for the Penitentiary Administration, the Haitian National Police, and the Office for the Protection of the Citizen.

Acknowledgements

We could not have completed this report without the support and expert knowledge of many UNDP staff in Port-au-Prince. We'd like to express our appreciation to Oscar Fernandez-Tarranco, resident representative, and Grâce d'Almeida, principal technical advisor, Support for Justice Project; Jean Paul Lupien and Jacques Dyotte, principal technical advisors, Prison Project; Sidi Zahabi, Louis Nkopipié, Denis Racicot, Masa Loayza, Charles Charlestone, and especially Bruno Lemarquis and Kristina Ulgemo for their unwavering commitment to the project.

We received terrific cooperation from Haitian government officials at every level and particularly thank Camille Leblanc and Gary Lissade, ministers of justice and public security; Jean Gérard Dubreuil, secretary of state for public security; Clifford Larose, director general, Department of Penitentiary Administration; Pierre Denizé and Jean Neslie Lucien, directors general, Haitian National Police; Jean-Fallières Bazelais, director of judicial affairs; Schiller Loudor, director of judicial police, and other police officials; Florence Elie, assistant protector, Office for the Protection of the Citizen; Willy Lubin, director of the School for Judges; from the Penitentiary Administration, Claudette Belfont, René Jean Daniel, Joseph Mary Magy Gracieux, Sergo Jean, Aly Joseph; Port-au-Prince judicial officials including Judge Lise Pierre-Pierre, Public Prosecutor Jose Pierre-Louis, Judge Josiard Agnant, Justice of the Peace Jean Gabriel Ambrolise, Judge Norah Amilcar Jean-Francois, and the chief clerk of the Court of First Instance; judicial, police, and prison officials in Mirebalais, including Judge Auguste Georges Dukerne, Public Prosecutor Jean-Edy Eugene, and Justice of the Peace Jean Smith Louis; and judicial, prison, and police officials in Cap-Haïtien and Jacmel.

We must also express our sincere appreciation to the following individuals and members of nongovernmental organizations: Raynand Pierre, Haiti Solidarité Internationale; Rigaud Duplan, Bar Association of Port-au-Prince; Henri d'Orléans, CDTH-AFPEC; Pierre Espérance, Lelenne Gilles, and Pascal Metellus, National Coalition for Haitian Rights; Jean Joseph Exumé, a former minister of justice; Michelle Karshan, Alternative Chance/Chans Alternatif; and Patrick Camille, Jean-Simon Saint-Hubert, Serge Bordenave, Pascal Metellus, Platform of Haitian Human Rights Organizations; Brian Concannon, International Lawyers Bureau; Joel César, Judge Jean-Claude Théogène and others of the BAJ in Cap-Haïtien.

Our thanks as well to the United Nations Support Mission in Haiti (MICAH), particularly Sandra Beidas, Yves Bouchard, Gilles Lacan, and Real Lalande, and advisors Regis Charron, Lizbeth Cullity, Mauro Medici, and Nancy Ndiaye Ngom; and to Guy Villeneuve, first secretary for development, Embassy of Canada, Connie Paraskeva, USAID, and Claude Sarcasse, Coopération Française.

Lastly, but no less gratefully, we thank individuals outside Haiti who generously gave their time for interviews short and very long: Michel Gauvreau, court management

expert; Maurice Geiger, Rural Justice Center; Bill O’Neill; Andrea Loi; and Mechell Jacob, Checchi and Company Consulting.

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Introduction

Police crackdowns on rising crime have boosted arrests and detentions in Haiti over the past several years. In 2001, the country's prisons held more than twice as many inmates as in 1995. Yet the proportion of inmates in pretrial detention has remained unchanged during this period, at almost four out of five, or nearly 80 percent.¹ The imbalance is most pronounced in the Port-au-Prince metropolitan area, where a single legal jurisdiction serves a third of the nation's population. Better record keeping and training in criminal justice case management have reduced pretrial detention rates in some provincial districts over the last few years, but the legal process in the capital has only grown more congested.

Pretrial detention exists in every justice system in the world. Someone accused of homicide, especially a complex case, may spend more than a year in pretrial detention in even the best-run systems. International law offers no specific guidelines on what is excessive pretrial detention. The International Covenant on Civil and Political Rights, ratified by Haiti in November 1990, says only, "Anyone arrested or detained on a criminal charge shall be brought promptly before a judge...and shall be entitled to trial within a reasonable time or to release." It adds also that the detention of persons awaiting trial "shall not be the general rule."

The Haitian legal system assigns "reasonable" periods of pretrial detention at many stages of the judicial process.² Police have 48 hours before they must remand a suspect to the courts. Once charged, defendants may be kept in preventive detention no more than four months, during which time the charges are investigated and the person is brought to trial or released. However, these goals are rarely met. In practice, the pretrial detention rate in Haiti is among the worst in the world.

This report was written by the Vera Institute of Justice (Vera) for the United Nations Development Program (UNDP) in Haiti and the Open Society Institute (OSI). It is based on the findings of a research team tasked with proposing detailed short- and medium-term plans for significantly reducing the percentage of persons in pretrial detention. Haitian Minister of Justice and Public Security Camille Leblanc and his successor Gary Lissade lent their support by providing access to previously conducted assessments and studies and clearance to both interview individuals concerned with pretrial detention and to review current and planned interventions into the administration of justice and prisons by both the Haitian government and international organizations.

¹ See tables in Appendix 1 for statistics cited throughout this report.

² Article 26 of the Haitian Constitution stipulates, "No one may be held in detention who has not appeared before a judge authorized to rule on the arrest's legality within 48 hours of the arrest and if this judge has not justified his confirmation of the detention."

Vera researchers focused their inquiry on basic management information systems, the management of the flow of new prisoners into pretrial detention, the duration of detention in the prisons, and the management of the conditions of detention. Two Vera staff members, Francis James, director for international programs, and Sarah Dadush, international programs assistant, together with consultant Anne Fuller, began the inquiry by visiting Haiti from January 14 to 19, 2001, during which time they met with Justice Ministry officials and visited several courts and detention centers. Fuller and James returned to Haiti in June 2001 with a four-member international mission that included Philippe Texier, counselor at the French Supreme Court and member of the UN Committee on Social, Economic and Cultural Rights; Michel Brosseau, expert in correctional technology with the Canadian Correctional Service; Dilia Lemaire, Haitian attorney and human rights activist; and Patrick Pierre-Louis, Haitian attorney and law professor. After a thorough review of previous national and international efforts to reduce pretrial detention rates, the mission visited four of Haiti's 15 legal jurisdictions, toured five prisons (the National Penitentiary and Fort Nationale in Port-au-Prince, as well as the

HAITI'S JUDICIAL STRUCTURES

Haiti has 15 first instance jurisdictions or districts. They are based in the nine departmental capitals (Port-au-Prince, Jacmel, Les Cayes, Jérémie, Gonaïves, Hinche, Cap-Haïtien, Fort Liberté, Port-de-Paix) and six other towns (Saint-Marc, Petit-Goâve, Anse-à-Veau, Aquin, Mirebalais, and Grand-Rivière-du-Nord). Each district has a senior judge (*doyen*) and at least one investigating judge (*juge d'instruction*). It also has a prosecutor's office (*parquet*) with a public prosecutor (*commissaire du gouvernement*) and at least one assistant prosecutor (*substitut du commissaire du gouvernement*). Each jurisdiction has at least one prison, while the metropolitan Port-au-Prince region has several, including Fort Nationale, the country's only prison for women and minors, and the National Penitentiary.

The lowest level court, and the one that has the most direct contact with ordinary citizens, is the peace court (*Tribunal de paix*). All towns, including large cities, have at least one peace court, with a justice of the peace (*juge de paix*), at least one assistant justice (*substitut*), a court clerk (*greffier*), and a bailiff or court officer (*huissier*). There are nearly 200 peace courts in the country. Metropolitan Port-au-Prince has 12.

Haiti's supreme court (*Cour de cassation*) has no administrative responsibility for the country's courts and a tradition of limited power. Just below it are five appeals courts, each receiving appeals from two to four first instance courts. These upper courts also have prosecutors, clerks, and bailiffs attached to them, but play a minor role in Haitian justice, overall.

Port-au-Prince has a juvenile court; two other jurisdictions have special land courts. The labor court and the superior court of accounts and administrative disputes have national jurisdiction.

prisons of Mirebalais, Cap-Haïtien, and Jacmel), several police stations, and numerous courts. Each prison visit included a general tour, examination of files (of both pretrial and convicted detainees), and interviews with staff members. The researchers spoke to many judges, court clerks, prison inspectors and guards, police commissioners, and persons in detention, as well as high officials of the Ministry of Justice, including the minister, the director general of the police, the secretary of state for national security, and the director of the Penitentiary Administration Service. Members of the UNDP and its International Civilian Support Mission in Haiti (*Mission internationale civile d'appui en Haïti*), MICAH, were also very forthcoming about their experience in the Haitian criminal justice system.

Identifying the Problem

The full extent of pretrial detention in Haiti is nearly impossible to measure. By some accounts, it should include not only the time inmates spend in jail on a judge's remand, but also the period spent in custody at one of Haiti's 186 police stations—time that might also be called pre-arraignment detention.

As no statistics on arrests and detentions are kept, it is difficult to say how many persons are detained in police stations beyond the statutory 48-hour limit. Some police lockups are regularly occupied by forty defendants, while others contain only one or two. However, information gathered from both detainees and justice officials suggests that detentions of several weeks are the rule, particularly in the Port-au-Prince metropolitan area and less accessible rural commissariats.³

The prisons, which fall under the Penitentiary Administration Department (*Direction de l'administration pénitentiaire*), DAP, accept only persons who have entered the court system and are remanded from a judicial authority.⁴ According to the Code of Criminal Investigation (*Code d'instruction criminelle*), these authorities are expected to complete *all* criminal procedures for a person accused of a crime within four months, technically rendering prolonged detention, any period of time beyond that, illegal. However, for minor cases the three months allotted to the investigating judge may be far more than what is fair—murders may take long to investigate, but small thefts should be resolved quickly. Practically speaking, whether pretrial detention in prisons is considered prolonged should depend on the seriousness and complexity of the offence.

³ In the latter areas, arrests may also be made by a member of the locally elected government councils (*Conseils d'administration des sections communales*), CASECS, who are empowered to detain suspects at home for at least one night. No official reckonings—statistics or records of food, lodging, sanitation, health, etc.—measure the number of these detainees at all.

⁴ The justice of the peace, the prosecutor, or the investigating judge when a court has not yet made the sentencing verdict.

Among the 19 prisons in Haiti's 15 jurisdictions there is considerable variation in the percentage of pretrial detention inmates. In the Mirebalais district, only twenty percent are in pretrial detention, with none jailed for more than a year.⁵ At the opposite extreme, in the predominantly rural district Anse-à-Veau, ninety percent of inmates are in pretrial detention. However, the problem is most severe in the region around Port-au-Prince, with five prisons including the National Penitentiary and a ninety percent pretrial population.⁶

The proportion of the overall prison population in pretrial detention—around eighty percent—has hardly changed during the six years since the creation of the penitentiary administration. Yet a closer examination of the data indicates simultaneous improvements in the provinces and deterioration around Port-au-Prince. In December 1998, 86 percent of inmates in the capital's prisons were in pretrial detention, compared to 74 percent in the provinces. By 2001, ninety percent of the Port-au-Prince prisoners were awaiting trial, versus the provinces' 63 percent.

Moreover, these figures do not reflect the fact that some sentenced prisoners are transferred to Port-au-Prince to serve their sentences at the National Penitentiary. Thus, the number of convicted prisoners does not accurately correspond to the number of sentences handed down in the Port-au-Prince jurisdiction. Subtracting out the provincial transferees reveals an even smaller proportion of sentenced prisoners.

Some of the DAP prisoners awaiting trial have been incarcerated more than four years. Our inspection of National Penitentiary registries showed that on June 15, 2001, 116 prisoners had been incarcerated since 1998 or earlier, and 183 since 1999. The individual files of 150 of these cases contained no order to produce (*ordre d'extraction*), which means that the office of the prosecution had never even begun proceedings against them. Because corresponding registers for other prisons were unavailable, an exact figure for the number of prisoners who have been waiting more than four years in other jurisdictions is elusive. It is not unreasonable to estimate, however, that nationwide as many as 400 to 500 people have been in stuck pretrial detention since 1999 or earlier.⁷

It bears mention that release from prison is as haphazard as any other stage in the judicial process. In Port-au-Prince, where few criminal trials take place, detainees are not usually released by a judicial decision on the merits of their case. Instead, most are eventually freed through the informal intervention of a legal official in response to a bribe or community or personal pressure, or after they have served the equivalent of the sentence they would have earned had they been proven guilty.

⁵ For a profile of Mirebalais see Appendix 2.

⁶ The National Penitentiary is by far the country's biggest prison, currently holding 2,092 prisoners or about 51 percent of the total prison population of 4,101, according to DAP statistics published April 30, 2001.

⁷ We base this estimate on the known figures of 299 at the National Penitentiary, 35 at Cap-Haïtien, and 0 at Mirebalais.

Background

History

For most of their history, Haitian prisons were run by the Haitian Armed Forces (*Forces armées d'Haïti*), which were created during the U.S. occupation from 1915 to 1934. Following the 1994 international intervention to restore President Jean-Bertrand Aristide, responsibility for the prisons was assumed by the Interim Public Security Force (*Force intérimaire de sécurité publique*). In 1995 President Aristide dissolved the army and established the National Penitentiary Administration (*Administration pénitentiaire nationale*), APENA. Reform of the penitentiary system began that same year.⁸ However, after some very limited debate a presidential decree dated April 24, 1997, integrated APENA into the Haitian National Police (*Police nationale d'Haïti*), PNH, as the Penitentiary Administration Department (*Direction de l'administration pénitentiaire*), DAP. This was done to comply with the 1987 Constitution, which located the penitentiary administration as a specialized unit of the police force under the umbrella of the Justice Ministry—a departure from international norms that separate police and penitentiary institutions.⁹

Under army control, Haiti's prisons—some of which date from the American occupation and, even, the French colonial period—reached a state of extreme dilapidation.¹⁰ From the advent of the Duvalier governments in 1957, if not before, illegal detention without due process became the rule for political prisoners, who were systematically locked up with no records kept. Common-law prisoners were, procedurally at least, somewhat better off. But during changes of government and coups d'état that followed the fall of the Duvaliers in 1986, the prisons were emptied several times, leaving record maintenance and the judicial checks provided for by the Code of Criminal Investigation severely compromised.

In September 1994, during the multinational intervention to reinstate President Aristide, who'd been ousted by the military in 1991, the gates of some prisons were broken open and the prisoners freed. In the shock and disorder, still others escaped by their own efforts. The multinational forces made some arrests, but few prisoners were sent to the courts. Human rights and advocacy groups called for arrests and prosecutions of individuals accused of abuses during the period of military rule and expressed dissatisfaction when multinational forces freed individuals accused of crimes and turned over to them by the population. Yet with few exceptions, most of those accused of significant offenses spent little time in jail. Similarly, there was no follow up on citizen

⁸ The army has not been constitutionally abolished.

⁹ Articles 269 and 272 of the Constitution

¹⁰ The current Fort Nationale was built upon the foundations of a fortress dating from the time of Haiti's war of independence, which ended in 1804.

complaints filed with the justice system.¹¹ The justice system's difficulty in investigating and prosecuting political crimes and misdemeanors was paralleled by its troubles in processing common crimes.

From September 1994 to February 1996, a series of short-lived interventions were undertaken under the aegis of the American armed forces to improve prison conditions. International experts visited the prisons and made recommendations to the young penitentiary authority. In 1995, with support from the UNDP, Haitian authorities began implementing measures to improve prison management, record-keeping, internal policies, and the selection and training of personnel. The most important achievements during this time were the opening of a separate prison for women and minors in Port-au-Prince, at Fort Nationale (1995), and the integration into the prison system of three detention facilities at police stations (Carrefour, Delmas, Pétionville). With the help of foreign donors, the UNDP also facilitated the construction of an additional building at the National Penitentiary and renovation of some provincial prisons. Technical assistance from the UNDP for the new administration and its permanent presence within DAP has prevented pressure from the nation's growing population from totally dissipating these improvements.

Unfortunately, there has been no parallel transformation in Haiti's courts. In 2001 the structure of the Ministry of Justice is little different from that of 1994. No new governing regulations (*loi organique*) have been voted, nor has the Superior Council of the Judiciary (*Conseil supérieur de la magistrature*), which according to civil law tradition should govern the conduct and function of judges, become a reality. The decree of August 22, 1995, concerning the judicial system did bring about a few minor modifications of legal procedures. These included an increase in the monetary level of civil cases that can be handled by the peace court, and a call for a judicial inspection service.¹² However, the most significant change affecting the legal system was the founding of the School for Judges (*École de la magistrature*) in 1996. With the current class, it will have graduated almost 100 new trained judges who bring with them a new perspective and more profound knowledge of the law.¹³

¹¹ For an account of efforts to bring to justice the perpetrators of violence between 1991 and 1994, see: *MICIVIH, Rapport sur la lutte contre l'impunité et pour la réparation en Haïti*, Septembre 1999.

¹² We are translating *tribunal de paix* as peace court and *juge de paix* as justice of the peace, using these terms as they once commonly employed in the United States: for local courts of limited jurisdiction over minor civil and criminal actions, small claims, and felony preliminaries.

¹³ In 1997, the School for Judges provided sixty judges with six months of training. In 1999, 39 received six months in the classroom and six months interning in the courts. On June 5, 2001, a new class began; of 251 applicants, 100 passed the tests and thirty were accepted. Their training will last 15 months, with six at the school for judges, six in the courts and a final three months back at the school.

Broad policy initiatives encompassing pretrial detention

The present focus on pretrial detention needs to be understood in the context of broader policy initiatives and study commissions of the last several years. These initiatives, summarized below, have analyzed the problems of the justice system and weighed the results of various reform projects.

Preparatory Commission on Legal and Justice Reform. The most extensive justice reform effort undertaken by Haitian authorities in recent years was the Preparatory Commission on Legal and Justice Reform (*Commission préparatoire à la réforme du droit et de la justice*), which convened from 1997 to 1999 and issued a report calling for major systemic reforms. While there has been little follow-up and its proposed commission on justice reform has not been established, the report is cited as a reference point by Minister of Justice Gary Lissade in his recent plan of action and it remains a broad framework from which to approach justice sector reforms.

Many of the reforms proposed by the commission are similar to programs being realized in several Latin American countries. They include:

- Transforming the role of justices of the peace by transferring their investigative duties to a reinforced judicial police or “ministry officers” and strengthening their capacity to judge, mediate, and conciliate.
- Granting the public prosecutor firm control over criminal investigations and the judicial police. Currently, responsibility for investigations is divided among the justice of the peace, the investigating judge, and the police.
- Giving investigating judges control and supervisory responsibility over public prosecutors and their investigations, making them the sole official who can order pretrial detention for a suspect when an investigation exceeds the 48-hour time limit.

Justices en Haiti. In 1999, an interdisciplinary team of Haitians and non-Haitians produced a study commissioned and published by the UNDP titled *Justices en Haiti*. Their key recommendation concerned finding a way to balance activities aimed at strengthening the supply side of the justice equation with those on the demand side. In other words, they felt reform should not focus exclusively on the judicial system internally, but also on improving its accessibility and utility for the public.

The study’s authors found that what citizens wanted most from the state in this realm was recognition of their existence—e.g. access to birth and death certificates, identity cards, etc. To provide this would require sweeping reform of the civil registry system. Other broad recommendations called for harmonizing the formal (French-speaking, urban) and the informal (Creole-speaking, rural) justice systems, and for involving all key actors in justice reform from the outset.

With these recommendations in mind, the UNDP defined five core objectives to pursue in 2001 and 2002:

- Strengthen national capacities in the justice sector;
- Support a participatory justice reform;
- Improve access to justice;
- Consolidate institutional development of key public security institutions; and
- Strengthen national capacities for human rights monitoring and promotion.

Common Country Assessment. The Common Country Assessment is a report generated by a series of discussions on justice sector reform that were held in 2000 involving 200 individuals from the Haitian government and UN agencies. It describes justice as unavailable or inoperative for 75 percent of the population, a situation that it blames for a profusion of informal, arbitrary, and sometimes violent outcomes to conflicts, as well as a perpetuation of unequal rights and privileges. The assessment noted that there had been important efforts to improve the justice system but described a decrease in justice and growth in insecurity nonetheless.

UN-Sponsored Retreat. At a November 2000 one-day retreat for UN and individual country representatives working in the justice sector in Haiti, participants concurred that donor-funded support programs for the justice and public security sectors had had mixed results. Their major recommendations called for:

- strengthening coordination at all levels;
- strengthening collaboration among the judiciary, the police, and the prison system;
- assuring that donor-funded programs and projects work within the framework of national and strategic institutional development plans;
- defining, together with Haitian counterpart institutions, realistic targets and objectives, taking into account the limited national absorption capacities;
- defining prerequisites for each program/project;
- defining and monitoring specific indicators for each program/project; and
- providing a mix of technical assistance and capital investment support.

Justice Ministry Conference on Criminal Procedure. Most recently, the Justice Ministry, with support from the UNDP, organized a two-day Seminar on Criminal Procedure (*Séminaire sur la chaîne pénale*), held in May 2001. This important event brought together 100 judges, lawyers, and government officials to analyze the weaknesses of the criminal justice system. The participants had no trouble defining the problem areas at every link in the *chaîne pénale*, the sequence that cases follow as they move through the courts. Five working groups formulated recommendations for the penitentiary

administration, the police, the justice system, the bar association of Port-au-Prince, and the Office for the Protection of the Citizen (*Office pour la protection du citoyen*), OPC.¹⁴ In early 2002, a commission to follow up on their recommendations (*Commission de suivi et de concertation de la chaîne pénale*) was nearing establishment.

Specific initiatives to reduce prolonged detention 1995-2000

As the new, more functional Haitian National Police was deployed across the nation in late 1995, pretrial detention began to emerge as one of the justice system's most pressing problems. The nation's jail and prison populations were expanding, but the courts were unable to keep up. The Ministry of Justice, human rights organizations, and lawyers groups, with support from the joint Organization of American States/UN International Civilian Mission in Haiti (MICIVIH) and some bilateral donor programs, began trying to reduce the pretrial detention population. A number of efforts emerged to address the growing problem.

The Consultative Commission to Reduce Criminal Justice Delays. The Consultative Commission to Reduce Criminal Justice Delays was created by presidential decree on November 8, 1996, to make recommendations on cases of detained persons awaiting trial on minor felony and misdemeanor charges (*affaires correctionnelles et de simple police*). Its members included high officials of the Ministry of Justice, the prison administration, and the police, as well as international consultants, assistant prosecutors, and legal assistants.

According to the commission's January 15, 1997, final report, commission staff studied a list prepared by the prison clerk's office of 226 persons in detention at the National Penitentiary and Fort Nationale. They also conducted research as needed with different judicial authorities and heard from a good number of detainees. The findings were transmitted to the full commission for evaluation and recommendations.¹⁵

The report pointed to a number of problems, not least of which was the fact that the public and even some judges do not understand the presumption of innocence.¹⁶ It also

¹⁴ The OPC is a constitutionally mandated independent institution charged with protecting citizens against abuses by public sector institutions. It is similar to what is known in many countries as the Ombudsman's Office, and may also be likened to a state-run human rights commission.

¹⁵ The commission made recommendations in 109 cases, including that 20 individuals be liberated (13 in pretrial detention and seven for whom orders of liberation had already been issued). Of these, 11 were freed. Forty-two others were also freed after the commission team drew attention to their cases (a justice of the peace freed 14 detainees under his jurisdiction, the prosecution freed 22, and six more were freed by other "competent authorities"). Seventy more cases were under study.

¹⁶ Among these was the disorganization of clerks' offices, especially those of the prosecution; absenteeism among some judges; cases of inmates kept in detention despite release orders; and instances of prolonged pretrial detention of more than one year where no case files could be located. The report also noted illegal use of collective warrants and poor coordination between both the court of first instance and the prosecution and between judicial and prison

made a number of “short- and medium-term” recommendations that remain pertinent; many were repeated five years later at the Seminar on Criminal Procedure.¹⁷

Although its recommendations were valid, the commission was structurally cumbersome and relatively inefficient in actually releasing people from prison. It appears to have collapsed after becoming publicly associated with the liberation of a man accused of major bank fraud who proved to be a close relative of a team member.

BUCODEP. One of the most significant initiatives was the Office to Control Preventive Detention (*Bureau de control de la détention préventive*), BUCODEP, set up at the National Penitentiary in 1998 by the Justice Ministry with support from Checchi and Company Consulting, Inc., a private consulting firm specializing in international development and the principal USAID justice subcontractor. BUCODEP’s goal was to significantly reduce prolonged pretrial detention. Staffed by a director, a secretary, and rotating assistant prosecutors, judges, and judicial inspectors, and assisted by legal assistants from the DAP, its great innovation was its location on site at the National Penitentiary. Bringing the judges to the prison eliminated a considerable transport obstacle and simplified coordination between the penitentiary administration and the judicial system. The penitentiary administrations’ legal assistant unit, created in 1998 to assist the justice system in keeping track of long-term detainees, was essential to BUCODEP’s functioning.

BUCODEP gave priority attention to the oldest cases of pretrial detention by accelerating the judges’ and prosecutors’ examination of these cases—particularly those that were “lost.” The result of this examination was supposed to be either a trial or the individual’s release, provisional or definitive.¹⁸ BUCODEP eventually fell into disuse,

authorities. It also noted a lack of supervision and controls over judges and other court personnel, and a general failure to observe the time limits established by the law for the processing of cases. Other observations included the prosecution’s failure to follow up on judicial decisions; “abusively long” inquiries by investigating offices that were attributed to lack of training, poor organization, and insufficient funds.

¹⁷ “Set up a project to organize the clerks’ offices (*greffes*), particularly at the Prosecution Office. It will be particularly good to extend, as quickly as possible, the case management procedures (*chaîne pénale*) put into place in the six pilot Prosecution Offices; supervision of the number of hours worked by judges, prosecutors and employees; respect for periodic activity reports to the ministry; establishment of a system of communications to facilitate relations between the Prosecution office and the First Instance Court; increase in the number of judges at the Investigation Office. . . .; promote the use of the law of 1927 on the procedures to follow in correctional courts for cases where the culprit is apprehended while committing the offense (*flagrant delit*); modernization of texts, including the Code of Criminal Investigation, particularly in regard to measures relating to preventive detention.”

¹⁸ According to the office’s 1998 annual report, 477 detainees were freed through its efforts—a “substantial reduction of the backlog of pretrial detention cases at the National Penitentiary under the jurisdiction of the peace courts in Port-au-Prince.” However, a review by MICIVIH in July 1999 was more critical. Researchers were unable to locate most of the office’s daily and monthly reports or to tell whether planned-for visits had actually been made. They identified only 91 releases for 1998. BUCODEP had been unable to deal with many of the oldest cases of prolonged detention, they said, and instead often handled recent ones. The office was frequented mostly by justices of the peace from the North

but Minister of Justice Gary Lissade all but revived the office with his June 2001 appointment of six judges and prosecutors to work exclusively at the National Penitentiary.

MICAH—Assistance to the Office of the Prosecution. The most recent UN mission in Haiti, the International Civilian Mission for Support in Haiti (*Mission internationale civile d'appui en Haïti*), MICAH, initiated a project called Support to the Port-au-Prince Prosecutors Office for the Improvement of Handling of Cases of Pretrial Detention (*Appui au parquet de Port-au-Prince pour l'amélioration du traitement des dossiers de détention provisoire*). Its objective was to improve how the criminal justice system functioned “by assuring priority treatment for the cases of persons in preventive detention and by reinforcing the control of the courts over the judicial police.”

Working at both the penitentiary and the prosecutor’s office, MICAH staff compiled chronological lists of persons in pretrial detention at the National Penitentiary under the authority of the prosecution: those charged with serious offenses and, separately, those accused of misdemeanors. Despite the support of the prosecution’s chief clerk during the project, it proved impossible to locate case files for most of the persons in pretrial detention since the years 1995, 1996, and 1997. The public prosecutor then put together a small committee consisting of two assistants to focus on misdemeanor cases dating from 1995 to 1997. Further research indicated that some of those listed had already been released. Before it closed in January 2001, the project helped to identify 40 long-term detainees meriting swift release based on the length of their detention, the gravity of the charges, or serious illness. Many of these were then freed by presidential pardon.

Case tracking and management: the chaîne pénale. An important portion of international assistance for justice reform in the late 1990s sought to improve the flow of criminal cases through the chaîne pénale. Central to these efforts were attempts to revise the system of registers used by the various components of the judicial system. The main international partner, again, was Checchi and Company.

One of the first projects was to develop new case tracking systems at the prosecution offices in six so-called “model” jurisdictions: Cap-Haïtien, Gonaïves, Saint-Marc, Petit-Gôave, Jacmel, and Les Cayes. Responsibility for this effort shifted early on from Checchi to the office of Overseas Prosecutorial Development, Assistance and Training (OPDAT), a program of the U.S. Department of Justice. In January 1997, Port-au-Prince was added to the project along somewhat different lines, although this was less successful than the subsequent extensions to Mirebalais, Aquin, and Grande-Rivière-du-Nord in August 1998.

and South sections of Port-au-Prince, irregularly by some assistant public prosecutors, and not at all by judges from Pétienville, Carrefour, and Delmas, or by most investigating judges.

The system used in the model prosecution offices was developed in collaboration with French case management experts and other international donors, and employed a number of Haitian lawyers for its implementation. It is based on two separate registers. A chronological register records basic case data: arrival date in the prosecutor's office, origin (police, justice of the peace, etc.), nature of the facts, name of defendant, and major decisions taken. An alphabetical register records the names of the defendant, victim, civil party—if any, and the number of the case. The system allows easy cross-referencing and enables clerks to provide information on the status of a case using the name of the defendant, the victim, or the civil party. Our mission saw the system apparently in good use in some of the jurisdictions we visited.

Checchi next worked, briefly, on criminal justice case management at the court of first instance of Port-au-Prince, creating a committee to develop plans for five registers (criminal, civil, business, land-conflict, and other affairs).¹⁹ However, before this program was implemented, Checchi was asked to shift its efforts to the peace courts, bringing work on criminal justice procedure at the first instance courts to an end. Meanwhile, a Haitian-Canadian consortium with Canadian government funds began developing case management for civil affairs (*chaîne civile*) at courts of first instance.

Over a couple of years, Checchi adapted and extended criminal case management tools and training to 83 peace courts in seven of 15 jurisdictions (Port-au-Prince, Petit-Gôave, Saint-Marc, Gonaïves, Jacmel, Les Cayes, and Hinche). Unfortunately, the Justice Ministry moved slowly to claim ownership of the systems and the improvements were never installed in every peace court, court of first instance, or prosecutor's office. In 2001 some courts continue to use *chaîne pénale* registers and processes. Others have never adopted them.²⁰

Before leaving Haiti in 2000, OPDAT reported that it took steps to harmonize case registration methods across the system. A July 2000 plan it presented with the Canadians to the Justice Ministry took note of new registers that left room for recording police and peace court case numbers, and recommended coordinating case registration methods between the prosecutors' offices and the trial courts. In the summary of its work, OPDAT remarked that the number of jury trial sessions held in jurisdictions with model prosecution offices had increased. For the judicial year 1998-99 every model jurisdiction but Port-au-Prince held the required two sessions, and one jurisdiction, Aquin, held three.

¹⁹ Committee members included the doyen, the chief clerk of the court, an investigating judge, a leading attorney, and the director of judicial affairs.

²⁰ One of the goals of the case registering and tracking systems was to introduce transparency in court files and thereby make it easier to find information. It also tended to reduce the power of court clerks and their ability to obtain fees for locating documents.

Legal assistance. Another focus for reducing pretrial detention has been the development of legal assistance programs. The government did not attempt to create its own legal assistance program. Instead, nongovernmental organizations set up a variety of programs with support from international donors.

The largest of these was undertaken by Checchi, which eventually made grants to 19 organizations in Port-au-Prince, Gonaïves, Les Cayes, Jacmel, Saint-Marc, Hinche, and Petit-Gôave.²¹ Checchi reported that these groups reviewed 18,000 pretrial detention cases over several years, and that they accepted 83 percent for legal representation, resulting in the release of more than 11,000 people. The lawyers for most programs worked primarily with persons already detained in prisons.²²

The Belgian nongovernmental organization Citizens' Network (*Réseau des citoyens*), RCN, consulted with the Justice Ministry in 1996 and 1997 prior to developing a proposal for a national legal assistance program that was not implemented. RCN also established a legal assistance program in Cap-Haïtien in 1997, later extending it to Hinche and Ft. Liberté. This program, the Office of Legal Assistance (*Bureau d'assistance juridique*), BAJ, evolved into a Haitian-run program that continued to offer limited services even after the withdrawal of European Union funding. The Vera mission met with its representatives in Cap-Haïtien and was impressed by their efforts.

BAJ approaches legal assistance by recruiting young law school graduates based on tests and interviews and providing those they accept with a modest salary to work full time representing the poor, who are screened for need. The recruits work on all sorts of cases (criminal, civil, etc.) and are supervised and supported by one or more experienced lawyers who guide their legal assistance, provide weekly training sessions, and help them write the thesis that is required to become a practicing lawyer. The BAJ office ideally becomes a center for legal education and ethics extending beyond the legal assistants themselves. RCN proposed that on a national level such a structure would not only improve the equity and functionality of the justice system but also contribute toward building a stronger and more socially committed legal profession. The organization proposed that a year's contribution to national legal assistance be made part of the requirement for being accepted to the bar.

Haïti solidarité internationale, a nongovernmental human rights organization, developed the third major legal assistance effort in 1997 and 1998 in the West

²¹ These organizations included bar associations in Gonaïves, Les Cayes, Saint-Marc, and Jacmel, law schools in Gonaïves, Saint-Marc, and Les Cayes, established legal nongovernmental agencies like *Amicale des juristes*, and the *Académie de formation et de perfectionnement des cadres* (AFPEC), the *Cabinet de consultation, de formation et d'assistance légale* (COFAL), as well as groups new to legal concerns such as the *Mission évangélique Eben-Ezer des Gonaïves*.

²² Other observers and participants in the Haitian justice system have questioned these figures, speculating that some nongovernmental organizations took credit for releases they hadn't handled. It can be said that there was little difference in the pretrial detention proportions in cities with nongovernmental organization legal assistance programs.

Department.²³ Its legal assistants were available to poor persons primarily at the peace courts rather than at the prisons. This program also provided experienced attorneys to guide and support young lawyers. In its first stage (it was renewed in 2001) Haïti Solidarité Internationale aided some 8,000 indigent clients, according to its records.

There is insufficient objective data on any of these programs to indicate what effect they had on overall pretrial detention rates. But it is sufficiently clear that legal assistance alone is not the solution to prolonged pretrial detention.

Training programs. Many programs involved training for court clerks and judges. The judicial affairs department and Checchi developed an effective program of in-service training for 23 peace courts in three jurisdictions (Port-au-Prince, Jacmel, and Saint-Marc). Called “judicial mentoring,” it brought some of Haiti’s most experienced lawyers and former judges to the courts, where they offered support and suggestions to judges. The mentors developed a series of internal regulations for the peace courts, the juvenile court, and the court of first instance at Port-au-Prince, covering court hours, calendars, fees, default judgments, courtroom practices, judges’ rotation schedules, prison visits, pretrial detention, and penalties for non-observance. Checchi provided training on the regulations to 120 judges participating in the continuing education program of the school for judges. The extent to which these rules are still in use is unclear, however. Checchi also held training sessions for court personnel on case registration and records management, both on site and at regional seminars. Consultants made numerous follow-up training visits to peace courts, occasionally accompanied by judicial inspectors. OPDAT provided training to judges, prosecutors, and investigating judges as well.

Habeas corpus. The legal profession and human rights organizations have devoted considerable attention to habeas corpus, the legal action that may be used to protest the illegality of an arrest. The Constitution of 1987 affirms this principle in Section B, articles 24 to 27 on individual freedom. But we do not know whether it has actually been applied in the courts. The Ministry of Justice, in collaboration with French foreign assistance and Haïti Solidarité Internationale, held a two-day colloquium on habeas corpus in December 1999. In the published proceedings, the jurists agreed that habeas corpus may be exercised without a lawyer; that the burden of proof lies with the prosecution; and that the doyen may order the release of the detainee, as per article 26-2 of the Constitution.

Debates and discussions. An exhaustive accounting of endeavors to address and reduce pretrial detention would include a variety of projects by the UN/OAS International

²³ Haiti is divided into nine regional departments.

Civilian Mission in Haiti (MICIVIH). Among other things, MICIVIH helped organize debates on the question of prolonged detention in several jurisdictions, including Port-au-Prince.

An important conference on pretrial detention titled the Symposium on the Problems of Pretrial Detention in Haiti (*Symposium sur les problèmes de la détention préventive en Haïti*) took place in Port-au-Prince in December 1996, organized by two Haitian nongovernmental organizations—the Academy for Leadership Training and Finishing (*Académie de formation et de perfectionnement des cadres*), AFPEC, and the Association of Lawyers (*Amicale des Juristes*)—and Checchi. Participants reported lively discussions and engagements for follow up. They also formed an ad hoc committee that included the doyen of the first instance court of Port-au-Prince, the public prosecutor, an investigating judge, and representatives of MICIVIH, Checchi, AFPEC, Amicale des Juristes, and the Port-au-Prince Bar Association. The committee held several meetings, but interest eventually declined and no practical measures are known to have been taken.

Specific initiatives to improve prison conditions 1995-2000

In contrast to the many initiatives aimed at pretrial detention, technical support for prison reform and improved prison conditions has come primarily from a single organization, the UNDP. Its project Assistance to Penitentiary Reform (*Assistance a la reforme pénitentiaire*) began in 1995 and continues in 2001, with staff permanently located in penitentiary administration headquarters. With a bare minimum of international experts, the UNDP has helped DAP modernize and codify procedures and regulations, improve its management, establish and operate training courses for personnel, modernize its record-keeping, including computerization of important elements, and improve physical facilities. The UNDP supported the creation of the legal assistant, a new position within the penitentiary administration that is charged with investigating and clarifying the detainees' legal situation.

An important secondary role was played by MICIVIH through its monitoring of prisons from 1995 to 2000, its human rights promotion and training activities with staff and, occasionally, with detainees, and its technical assistance in the prison administration's early years. MICIVIH also worked with Haitian nongovernmental organizations to build their capacity for monitoring prison conditions.

The mission's findings and observations

We began our research by reviewing the earlier studies and proposals regarding pretrial detention and prison management and interviewing experts who had worked on these issues. During our more than three weeks on mission, we also interviewed many government officials and people from nongovernmental groups; we visited four legal jurisdictions and five prisons seeking to understand both the underlying bases of how the justice system functions and the needs of the government and people of Haiti. With two

experienced Haitian attorneys as part of our group, we were already generally knowledgeable, but we pressed ourselves to observe institutions and systems with fresh eyes and to question previous assumptions about problems and processes.

Inadequate resources

Our investigations revealed a justice system suffering from a severe lack of resources. Facilities such as older peace courts often have leaking roofs, broken furniture, and no electricity or telephone, even where these are available nearby. Employees we spoke with pointed to thick case files, ill-equipped offices, and lack of transportation as key obstacles to accomplishing their tasks.

The effect of these conditions on the quality of justice is substantial. Tiny, overcrowded offices make the rational organization of work difficult. The poor working environment, when combined with muted support from a remote Justice Ministry, encourages a noteworthy indifference to the problems of detainees and extended pretrial detention. This indifference, exacerbated by a scarcity of secure transportation to convey detainees between the police station, peace courts, and the offices of the prosecution, results in chronic case processing delays.

In Port-au-Prince, the prosecution office is beyond repair. At this busiest of all prosecutors' offices, the dark stairwell is filled with crowds all day long—lawyers, clerks, defendants' family members, witnesses, and the idle. Seventeen assistant prosecutors share barren offices frequently without electricity, not to mention telephones, faxes, or computers. They must sometimes carry their files with them, contributing to the too frequent disappearance of case files. The chief prosecutor himself often has to cede part of his office for meetings or interviews. During our meeting with him, it was so noisy that we requested a second interview off site.

The lack of human resources throughout the system is almost as striking, with court staff often overwhelmed by the volume of work, particularly in major jurisdictions like Port-au-Prince or Cap-Haïtien. Nevertheless, because of the physical conditions, an increase in the number of judges, prosecutors, or administrative personnel, while necessary—especially for the Port-au-Prince jurisdiction—is not the sole solution. Moreover, the judges' financial position (low salaries, lack of professional advantages, etc.) may be yet another factor in their lack of enthusiasm for the judicial work assigned to them. It remains to be seen whether the substantial raise in salaries recently budgeted by the authorities will have any positive effect.

Prison conditions

Some of the reforms introduced over the last six years have improved prison conditions as they ameliorated the handling of pretrial cases. New record keeping systems for prisoners have had a decisive effect in ensuring that individuals are detained only subject to court orders, thus reducing the phenomenon of prisoners being forgotten in prison. All

the prisons we visited had well-maintained registers (an entry book, an exit book, and a release book, as well as individual case files containing commitment orders) and wall charts showing release dates of convicted prisoners. We also found penitentiary personnel who exhibited considerable professionalism. Some of this can be credited to a new training center where 88 percent of personnel have now received supplementary training and a ten-week module of basic training for new recruits. Although they are located only in the Port-au-Prince prisons, the new legal assistants, who interview detainees and consult judicial authorities and registers in an attempt to clarify the status of cases, have enabled a considerable number of prolonged detention cases to move forward towards trial or release. Finally, a code of regulations and general discipline has been developed that closely conforms to national and international law.

However, such positive developments are far from sufficient. Since the total Haitian prison population is constantly growing and prison capacity has not increased proportionally, prison conditions are becoming more and more precarious.²⁴ According to international standards for minimum space per prisoner, Haiti's prisons taken together should hold only about 1,260 prisoners. However, we know that there are now more than 4,100 persons incarcerated there, indicating a space deficit for more than 2,800 individuals.

Eighty-three percent of the Ministry of Justice and Public Security's budgeted costs go to the police and prisons.²⁵ Sixteen percent of the government's entire budget goes to the justice sector. Nevertheless, Haiti's prisons are conspicuously underfunded. And statistics show that the situation is becoming worse. The government has not increased its budget for DAP foodstuffs since 1996, even though the Nutrition and Development Bureau, a Dutch nongovernmental organization, canceled its annual funding of 33,600,000 gourdes (US\$1,400,000) in 1999.²⁶ As a result, the available daily food budget per prisoner has gone from 64.10 gourdes (US\$2.67) in 1996 to 9.62 gourdes (US\$.40) in 2001. The consequent high levels of malnutrition among inmates contributes to serious health problems in all of Haiti's prisons and detention centers. A few humanitarian organizations (Caritas, Food for the Poor, and the International Committee of the Red Cross) provide assistance to the penitentiary administration, but it was not possible to quantify this aid.

In visiting prisons in Port-au-Prince and the provinces, we noted a general state of dilapidation in spite of improvements made over the last few years. The communal cells—no Haitian prison is equipped with cells for individuals—are generally poorly

²⁴ The most important addition is the construction of a unit commonly called the "Titanic", for 300 additional prisoners, at the National Penitentiary.

²⁵ United Nations Development Program, Office for Latin America and the Caribbean, Regional Justice Project, *Justices en Haiti*, Port-au-Prince, 1999.

²⁶ The gourde has been depreciating in value for several years. In mid-2001, one US dollar was equal to 24 gourdes.

ventilated and ill-lit. Overpopulation and lack of privacy are serious problems, with cells frequently loaded with individuals of every category: convicted prisoners are incarcerated alongside those awaiting trial, low-level offenders share space with serious criminals; the overtly aggressive abide with the comparatively peaceful. While the genders are effectively separated, older boys often share space with men; girls and women are almost always together.

An insufficient number of beds forces many prisoners to sleep on the floor or in shifts. The toilets (latrines outside the cells) emit nauseating smells, and toilet paper is more often the exception than the rule. Water supplies are all too often inadequate, making the possibility of washing in the interior courtyards a matter of pure chance.

Since 1999, regulations have stipulated that “to the extent that the installations and equipment of the establishment permit, the prisoner shall be allowed a minimum of six hours outside his or her cell...”²⁷ However, shortcomings in the security infrastructure such as too few correctional officers or no solid walls surrounding the prisons almost systematically rule out using courtyards for exercise, thus denying the prisoners’ right to activities outside their cells.

This situation almost certainly contributes to many prisoners’ poor health. Sunshine is important for the absorption of vitamin D, which in turn is needed for accumulating and absorbing calcium, and for treating skin diseases. During our visits, we noted a large number of incarcerated persons suffering from various infections, dermatitis, tuberculosis, and malnutrition. For sick prisoners such as these, the conditions are especially troubling. Fort Nationale has by far the best facilities, with a five-bed infirmary and four consulting doctors, of whom two are gynecologists. But at Mirebalais, the ill are not separated from the other prisoners at all. At Jacmel, and Cap-Haïtien, they live in separate cells from healthy inmates but receive little care—gunshot victims in Cap-Haïtien were housed with prisoners having contagious diseases. It is all too common for Haitian prisons to have too few beds for the sick; sometimes, as at Jacmel, they have none at all.

The infirmary at the National Penitentiary has 22 beds, but on the day of our visit it had 34 resident invalids. Only two doctors and two nurses tend to the more than 2,000 inmates held at the prison. In January 2001, the UN’s Independent Expert reported 14 deaths at the facility from October to November 2000.²⁸ The causes were identified as anemia in six cases, tuberculosis and dysentery in four others, AIDS accounted for three more, and the last was unidentified. The report noted that malnutrition is very often a determining factor and that it is encountered in every detention center. The independent expert observed that were it not for the food aid provided by the International Committee of the Red Cross—which, we were told, sometimes spends up to 8,000 gourdes

²⁷ The Code of Internal Regulations of Penitentiary Establishments, article 42.

²⁸ The National Penitentiary records show four deaths in April 2001.

(US\$333.33) per day to meet these needs on an emergency basis—the situation would have been more tragic.

We cannot emphasize enough how serious the problem of diet is.²⁹ According to the Red Cross, a healthy adult needs 2,000 calories per day. In Haiti, where the prison population currently receives only one daily meal, the caloric intake falls far short, ranging from 600 to 1,200 calories each day. Given the continued growth in the prison population and the shrinking of nutritional resources, Haitian prison conditions can only be expected to deteriorate further.

Police

Two questions guided our exploration of the role of police in pretrial detention: How significant is detention in police cells beyond the period allotted by law? and, How do police perform in their investigations of crimes?

The 1987 Constitution gives police 48 hours to hold a suspect before they must bring him or her before a justice of the peace who evaluates the charges, rules on the legality of the arrest, decides on the appropriate action with regard to both the case and the detainee, and, if necessary, confirms the detention in an explanatory decision. Former members of the MICAH mission told us, however, that as recently as early 2001 detention beyond 48 hours was the rule rather than the exception. The problem is particularly serious in remote rural areas, and in Port-au-Prince.

At rural police stations far from major thoroughfares (such as Savanette in the Centre department, or Anse-d'Hainault in the Grand Anse), alleged offenders can wait several weeks and even months before being transferred to the office of the prosecution or court of first instance. In these cases, defendants may have seen the justice of the peace, but even if that official wants to remand them, lack of adequate transportation leaves no choice but to return them to police custody.

Rural detentions can begin even before the police station. In especially remote areas where there is no police presence (a common situation, given that there are some 3,000 officers for the entire country), members of local elected councils (*Conseils d'Administration des Sections Communales*), CASECS, may make arrests and keep the arrested individual tied up in their home for at least one night.³⁰ Officials in Mirebalais told us that CASECS sometimes receive summonses and de facto arrest warrants to serve from peace court judges and police.

At police stations in the Port-au-Prince metropolitan area, several weeks' detention before arraignment or release is common. At the time of our visit to one large city station

²⁹ The daily caloric allowance represented 82 percent of requirements in 1998, compared with 94 percent in 1990 according to the *Rapport annuel du coordonateur résident, 1999, Système opérationnel pour les activités de développement des Nations Unies en Haïti*.

³⁰ Estimates for the total number of officers range from 2,500 to 4,000.

house, more than 25 men had, by their own account, spent at least a month in jail. Most were not listed in the detention register, so their status was impossible to verify.

A former member of MICAH described to us officers at the same Port-au-Prince police station holding and releasing detainees without following any judicial process at all. Arrests of individuals “under investigation” but not accused of a specific crime also appeared to be common there. He noted, too, that detention is sometimes used as a de facto punishment for low-level offenders: after living for several weeks under miserable conditions, without state-supplied meals or access to bathing or toilets, the delinquents are let go, chastened, police hope, by the experience.

Further complicating pretrial detention is the fact that, throughout the country, families of some detainees may urge police not to send the accused on to the peace court because they hope to see the issue resolved at the police station, gaining the release through a bribe.

The other area where police have an impact on pretrial detention—and the second focus in this portion of our inquiry—is in the investigation of crimes. The creation in 1995 of the Haitian National Police, and within it the judicial police, should have made the preparatory phase of the justice process more efficient; investigating judges and prosecutors were to direct judicial police officers in carrying out investigations, and new capacities were to be developed in a scientific-technical department. These changes were expected to encourage both justice founded on proof rather than confessions and respect for procedural time limits.

However, of the entire PNH force, there are only 136 judicial police officers.³¹ A small number of these comprise the decentralized judicial police branch (*Service déconcentré de la police judiciaire*) in Cap-Haïtien and Jacmel. The rest are concentrated in the capital. A police official who asked not to be identified admitted that such limited numbers meant that only cases involving important people become the subject of a judicial police investigation.

The judicial police are further handicapped by an organizational quirk that deprives its members of the status of Officer of the Judicial Police (*officier de police judiciaire*), which would allow them to operate autonomously. As it stands, they must have a judge accompany them during investigations. Even when a criminal is caught in the act, the official report must be prepared in the presence of a justice of the peace.

The fact that the courts are open only during the week is another problem, although judicial police may contact a judge on weekends informally.

The creation of the judicial police promised to be an important step toward curtailing prolonged pretrial detention: considerable effort was spent to configure the judicial police as a functional unit within the PNH with its own leaders and a plan for progressive

³¹ Dr. Schiller Loudior, interview by authors, 9 June 2001. Dr. Loudior, director of the *Police judiciaire*, told us he expected to have thirty other officers assigned to him in short order.

decentralization; a scientific or technical police was created in embryo; and a substantial investment went into training. But as is evidenced by the fact that officers trained as judicial police are often appointed to posts in the administrative police without regard to their valuable training, these capacities and trained personnel are not being used efficiently.

The courts

Obsolete rules & procedures. Many of the factors associated with lengthy pretrial detention in Haiti may appear to be departures from accepted legal policy. In fact, they are largely consistent with Haiti's Code of Criminal Investigation, which derives from the inquisitorial method that inspired the Napoleonic Code. Established in 1835, Haitian criminal procedure code appoints an investigating judge with sovereign powers to take actions necessary to uncover the truth and to decide whether to hold the accused before trial. Defendants possess few rights against this exceptionally powerful official, so it is not unreasonable to suggest that any abuse is possible.

Given that a remand is automatic for criminal matters and optional for misdemeanors, provisional detention is the rule in Haiti and release the exception. It is the investigating judges' job to decide all disputes concerning detention before trial. Their decisions are subject to the judicial norms, of course. But legislative safeguards such as bail and provisional release (*main levée d'écrou*, or cancellation of incarceration order) do not necessarily stop them from resorting to excessive use of pretrial detention, given that these same judges are also charged with assessing whether this detention has been appropriately applied

The status of the judicial actors themselves also affects the administration of the courts and is another reason the process is so slow. The Haitian judicial system requires double duty from many of its participants—the justice of the peace is a judicial police officer, investigating judge, and detention judge. But it is with the doyen of the court of first instance, most conspicuously, that simultaneous responsibility for administrative and judicial functions slows things down. The doyen is at once the administrator of the court and responsible for its functioning, the judge in chambers, the conciliator (in divorce matters), a signatory (in civil status matters), and supervisor of the progress of cases filed in penitentiary centers. As for the prosecutors, they are also charged with the supervision of the peace courts by the decree of August 22, 1995.

Unnecessary formalities also weigh down the procedure. The number and inefficiency of actors in the criminal justice process produces a chain of delays. Thus, a justice of the peace must write official reports when an officer of the judicial police would be perfectly capable of doing so. The justice often submits incomplete preliminary inquiries, forcing prosecutors to call for additional information. The public prosecutor will submit the matter to the investigating judge instead of closing the case or referring it directly to the correctional court. And the prosecutor will habitually ask clerks of the

court to draw up a formal request for an inquiry, thereby binding investigating judges to rule on it.

In its register of fundamental norms, the criminal code suffers as well from a collection of outdated provisions. Notably, these include provisions concerning vagrancy, unlawful conspiracy (*association des malfaiteurs*, used against gang members), and minor offenses. For example, registers frequently cite unlawful conspiracy as the sole grounds for imprisoning an individual. Meanwhile, the majority of defendants are accused of committing minor offenses. Such practices expose a system that is unable to deal with major crimes but excessively severe on petty offenses.

Administration. Administrative problems are a major factor in prolonged pretrial detention. The Code of Criminal Investigation provides a timetable for all cases that come before the justice system. In practice, however, the time spent at different stages of criminal procedure is far longer than the code's prescriptions—a discrepancy the mission witnessed to some degree everywhere, but especially in Port-au-Prince.

Fundamental to this problem is the disorder and lack of discipline that pervade the justice system. In spite of disciplinary measures that exist on paper, administrative control is in fact nonexistent. When punishment or promotions are applied, it is usually for political or personal reasons rather than administrative ones. In one particularly dysfunctional case, an investigating judge in a northern jurisdiction whose work was deemed unsatisfactory was promoted to the appeals court by way of punishment! Similar deviations from traditional notions of accountability can be found throughout the system and are a major contributor to dysfunction within criminal procedure and, by extension, prolonged pretrial detention.

Moreover, none of the jurisdictions we visited use direct referrals (*citations directes*) as much as they could for less important charges (*délits*). By referring defendants directly to the trial court in cases where they believe them responsible as charged, bypassing the investigating judge, a public prosecutor can allow the appearance date before the correctional court judge to be set directly. This cuts out days spent dancing back and forth between the investigating office and the prosecution. Were they used more often, direct referrals would reduce pretrial detention for offenses that do not threaten social stability, without infringing on the pursuit of justice.

The Peace Court. Some of the blame for prolonged detention has been leveled at the peace court. But this seems to be less true today than in the past. Few of the detainees we saw in prisons were there on orders from justices of the peace, and justice minister Leblanc said he believed that peace courts in Port-au-Prince, at least, had improved in efficiency.

Problems remain, however. Justices of the peace, we understand, frequently order arrests based on complaints that have not been investigated, usually ordering a remand

(*mandat de dépôt*) after a person has been brought in on a summons. In such cases, police may not follow up with an investigation, and the arrested person may remain in detention even though his case file contains no substantiating evidence.

Additionally, many arrests described as made in *flagrant delit*, or during the commission of an offense, are actually based on public outcry (*clameur publique*), which is admitted in Haitian law as a basis for arrest. Flagrant delit is interpreted expansively: the Code of Criminal Investigation allows a crime to be flagrant up to 24 hours after its commission, and many judges interpret the notion even more broadly. Public outcry can be based on nothing more than unsubstantiated rumor and still result in arrests and detentions. In the absence of real controls by judicial authorities, this practice, which unfortunately enjoys broad public support, can lead to arbitrary arrests and lingering detentions.

Because the peace courts live in closer contact with the population than any other tribunal, their judges are peculiarly vulnerable to pressure from local elites and political groups, especially if there is little or no police protection. Local pressure can make justices of the peace reluctant to rule in sensitive cases. Even if an offense falls within their statutory sphere, they may choose to pass an unpopular defendant on to a higher court, inviting another detention extension.

The Office of the Prosecution. Transferring a defendant from the justice of the peace's authority to that of the public prosecutor is supposed to take no more than three days. But even in Port-au-Prince, where neither distance nor road condition is a factor, lawyers told us that the three-day interval is rarely observed. Further afield, the transfer can take weeks, depending on whether the justice of the peace is located near the prosecutor's office or has access to a vehicle.

Additional delays can occur if case files are incomplete, obliging the prosecution to return them to the justice of the peace for supplementary information. One justice of the peace admitted to having the same defendant appear a second time before him, two years later, because he had never received the prosecutor's request for more information.

If the prosecutor finds the charge on a case he has received to be justified, he or she should forward it immediately to the investigating judge without remanding the detainee, because remanding is solely within the investigating judge's ambit. However, prosecutors routinely issue arrest warrants and remand orders, and free and arrest people upon individual complaints. When the offense is a misdemeanor, the prosecutor is permitted to send the accused directly to the correctional court; but this is rarely done. Instead, the prosecutor will receive a case and without actually hearing or seeing the defendant, write on the margin of the justice of the peace's report, "Forwarded to the prosecution" (*"Transmis au parquet"*).

According to the report of the Preparatory Commission on Legal and Justice Reform, the public prosecutor "lacks the means to conduct inquiries, much less to supervise the

judicial police. Consequently the prosecutor may reach conclusions based upon police statements alone, especially in cases of requests for remand. Add to this the fact that there is no official mechanism for cooperation between the office of the prosecutions and the police, which renders impossible any planning and any application of a criminal policy.”

When a case reaches the office of the prosecution, the clerk records it in a notebook. But the chief prosecutor does not necessarily allocate it right away to an assistant prosecutor. Instead, new cases may be collectively allocated every two or three days, or weekly, depending on how many enter the office. If a lawyer represents the defendant, he may try to have an assistant assigned to examine the case, to draft the information for an inquiry and the indictment. But in Port-au-Prince, where 15 assistants work in rotation, the hand-over of cases is unreliable. It is not unheard of for case files to be lost, especially when register entries for the various stages of the process are not re-transcribed into a single general register that would follow the entire process from date of arrest to date of trial.

Still more delays are likely as cases move from the prosecution to the investigating office. These delays may be reduced where the prosecution and first instance court are lodged in the same building, as is the case in 12 of the country’s jurisdictions thanks to new courts built in the late 1990s with Canadian funds. Joining these two offices together does not solve all the problems, however: one investigating judge told us that his doyen often took three months to assign a case to an investigating judge even though they work in the same building.

In examining the registers we found that prosecutors systematically issue remands in direct contradiction of the letter of the law, particularly in Port-au-Prince. Too many cases, poor transportation, and the distance between the court and the office of the prosecution have fostered a habit among prosecutors of replacing the appearance before the investigating judge with a simple order. Worse, these same prosecutors also habitually issue collective warrants or warrants for unlawful conspiracy (*association des malfaiteurs*). Such improvised judicial practices increase the number of defendants in pretrial detention and make managing the penitentiary administration more difficult.

The Investigating Judge. According to the Code of Criminal Investigation, the investigating judge is the key person in the criminal justice process, with responsibility for both the investigation and the incarceration or provisional release of the accused. For investigating judges, as for most of the other actors in the judicial system, there is a significant shortage of resources, including the number of judges and court clerks. Many judicial actors told us that in Port-au-Prince each investigating judge is responsible for more than 500 active cases. The exceptions were one investigating judge specifically responsible for drug trafficking cases and another in charge of the case of Jean Dominique, the well-known journalist and radio producer assassinated in April 2000. Since Port-au-Prince has only six investigating judges, the other four must handle all the

remaining cases from the twenty peace courts that serve the region's more than 2 million inhabitants.

In practice, at least in Port-au-Prince, the decision to assign a particular investigating judge to a particular type of crime seems to have slipped out of the judiciary's hands. In cases with strong political implications, the Justice Ministry becomes involved directly in the choice of investigating judge. While this may be acceptable for prosecutors who are explicitly political appointees, this prerogative of the executive vis-à-vis the investigating judge draws attention to the ambiguity connected to the status of a presiding judge who is also an investigating judge with a three-year term granted by the President of the Republic.

Trial and Sentencing. Depending on the severity of the crime, trials may take place in peace courts, correctional courts, or the highest criminal courts, assize courts. The correctional courts, which handle misdemeanors, show signs of congestion in most of the country. Assize court sessions are supposed to be held at least twice a year in each jurisdiction. However, for large jurisdictions such as Port-au-Prince this is too infrequent. In other departments, such as Cap-Haïtien, the mission noted that the minimum is not always attained, with obvious consequences for pretrial detention. Once again, insufficient material resources are a factor, though not always the most important. Planning at the national level is also partly to blame. Yet it is the responsibility of each public prosecutor and each doyen to hold regular assize sessions.

The final stage of the judicial process involves sentencing, which in most cases means imprisonment. While the total number of prisoners has grown over the past several years, the percentage who have been convicted of an offense has remained stable, at about 20 percent. This does indicate that the number of convictions has grown, however—probably due to improvements in criminal procedure in several provincial jurisdictions.

Finally, a noteworthy though not terribly widespread problem concerning the serving of sentences requires mention: delays—in some cases up to several months—can occur in drafting the judge's decision leaving prisoners in a state of judicial uncertainty and possibly even depriving them of their right of appeal. Even though they have been technically sentenced, these prisoners may still be included in the figures for pretrial detention.

Clerks & Record Keeping. Clerks' offices, especially at the prosecution, have been described by some observers as a prominent entry point for corruption in the judicial system. Poor record-keeping obscures the situation of persons in custody. The power of the clerks as the guardians of precious information is substantial and a disincentive to rationalized record-keeping procedures.

The registers we examined in court offices were maintained in a variety of ways. Some were more detailed or better kept than others, with clerks more or less concerned

about the problem of pretrial detention depending on the judges and prosecutors to whom they were attached. As there is no effective supervisory mechanism to ensure the proper use of these registers (or, for that matter, of the work of the justices and clerks themselves), if a judge or prosecutor appears negligent or less than strict, the clerk is likely to follow suit.

In most clerks' offices, there is no simple way to find out whether a particular case file has moved on. At the prosecution and the investigating judge's offices, one may need to question several clerks and secretaries and examine several registers to learn whether a certain defendant had been forwarded to the next stage of the procedure.

One judge we spoke with said that the times allotted by the code to various procedures did not take into account the time that cases spent with clerks at the prosecution, the court of first instance, and the investigating judge. The number of clerks is limited, and they are not always working full time for any single judge. They may be called away to take notes at a correctional hearing, to issue authenticated copies of deeds, etc. Cases may not be forwarded on the day they are received, but rather when the clerk has time to do so. All these factors are a source of delays and inaccuracies and the result, in many cases, is that the legal time limit of three months for the investigating judge to finish the inquiry is exceeded.

Difficulties with the drafting of summonses and warrants can also affect a case's progress. In Port-au-Prince, judges sometimes issue collective warrants for several persons charged with the same offense; alternatively, one warrant may mention several persons summoned by the same judge but charged with different offenses. Neither warrant is sanctioned by the legal code. Moreover, when judges remand a group of persons to custody, they sometimes draw up just one order. When it reaches the National Penitentiary, this order is placed in the case file of the first person named, making it difficult if not impossible to know the reasons for the others' detention. When a group contains a female along with males, the situation is even more serious. Because the woman may be held in another location, the clerk's office in that prison will have no document indicating the crime she stands accused of, the date of appearance, or even the judge investigating her offense.

Some investigating judges have also complained about their inability to grant provisional release or even cancellation (*main levée*) of detention due to generalized problems with records of legal residence that make it impossible to keep track of defendants.

Justice as transaction

The impact of various fees should be mentioned among the difficulties that confront the poor in getting their cases dealt with.³² Alongside lawyers' charges are fees for services essential to the functioning of the judicial apparatus. These may be separated into three broad categories:

- Bailiffs' fees (e.g. notification of summonses and judgments, execution of verdicts);
- Clerks' office fees (e.g. drafting deeds, registering complaints, delivering papers); and
- Fees for expert and official reports (e.g. land surveying, site visits).

But the problem with fees is not just that they are too high for poor defendants. It is complicated by several factors:

- Fees are part of the salaries of those authorized to collect them, giving these persons a direct, personal interest in the collection and incentive for excessive increases. (Not surprisingly, the judicial fee scale is unanimously agreed to be inappropriate.)
- The judicial fee scale as regulated by the decree of September 18, 1995, has not kept pace with the cost of living. The fees are too small to cover judicial expenses, leading fee collectors to raise them anarchically and unofficially.
- The judicial fee scale is bafflingly unclear and cannot readily be applied by authorized officials, who commonly lack adequate training.

Fee collection consequently proceeds with little reference to the legal tariff. Instead, it is almost always determined by negotiation between those concerned (or a lawyer) and the authorized collector.

It is a short step from irregular and excessive fees to actual corruption. An international consultant wrote in 1998 after visiting courts around the country, "corruption is the dominant driving force in the movement of criminal cases." The condition, the memo continued, "will persist until it is acknowledged and confronted directly." Impunity for corruption has a demoralizing effect on all court employees; where judges and clerks are not sanctioned, there is little encouragement for lower level employees to be diligent.

Communication & coordination

Many people told us that problems of communication and coordination between the different actors in the justice system have a great impact on extended detention. For example, prisoners frequently do not get to court because an order to produce (*ordre*

³² This section is based largely on a document of RCN, "*Etude du programme national d'assistance juridique*," 1977.

d'extraction), is issued the same day it is needed and cannot be delivered in time. Or there is no vehicle to transport them. An order not executed on the prescribed day cannot be used the next business day unless the judge specifies that it should be. Justices of the peace and investigating judges told us they had occasionally issued three or four orders to produce for one defendant before the person finally appeared.

Poor coordination between judicial police officers and judges is a crucial factor. By law, investigations must be carried out under the guidance of the prosecution or an investigating judge, ensuring their management and control over how the elements of proof are collected. However, some judges admitted that neither investigating judges nor prosecutors manage the investigation, nor do they control the legality of the actions of the police. Instead, they limit their efforts to interviewing the parties concerned. On the other hand, case files compiled by the police are often empty, which is why many judges no longer resort to rogatory commissions that are not always executed.³³ We also found situations where solid elements of proof have been gathered using scientific methods, yet the prosecutors' indictment doesn't use them.

We were also told of cases where the police commander or the investigating judge was away on vacation or at a training course for several months while case files piled up in their offices. It is apparently equally common for weeks, even months, to pass before dismissed judges are replaced—if, indeed, they are replaced. In such situations, the accumulated backlog of cases is eventually redistributed among the active justices, adding to their already overburdened caseload.

Control & oversight—judicial inspection

Most of our informants considered a functioning inspection service essential to the health of the justice system and key to reducing the toll of pretrial detention. The existing inspection mechanism does not fulfill this role, however.

The decree of August 22, 1995, revived the judicial inspection service but did not delineate its responsibilities and mode of functioning. There is no chief of the service; the inspectors report, instead, to the director of judicial affairs, who has many other responsibilities.

Inspectors we spoke with described very material limitations to their work. For example, the service does not have its own vehicles and there is no procedure for renting cars or reimbursing inspectors for use of personal vehicles. The inspectors rejected the idea of using public transportation to visit courts in the metropolitan area.

Meanwhile, traditional methods of monitoring and controlling pretrial detention go underutilized. Registers of provisional detention, tables of prisoners' names that allow immediate checks on numbers and dates of incarceration according to the investigating

³³ A rogatory commission (*commission rogatoire*) allows judges to delegate another court, usually a lower court chosen for geographic reasons, to undertake any judicial acts; also applied to police in Haiti.

judge responsible, and registers that track cases as they progress through the system are practically nonexistent. Judges and police commanders rarely have personal registers. They go to the court clerk for information on cases sent to them.

The treatment of minors

In recent years juvenile delinquency has become a scourge in Haiti. There are between 6,000 and 8,000 children currently living on the streets in Port-au-Prince and some of the larger provincial towns. Given these conditions, the situation of minors in detention is particularly worrisome. Haitian law and the International Convention on Children's Rights, ratified by Haiti in 1995, prohibit imprisoning children between ages 13 and 16. Instead, they are to be confined in a re-education center. However, no such center exists in Haiti, so juvenile offenders are often housed in private institutions.

Penitentiary authorities in Port-au-Prince have tried to separate children from adults by segregating boys in a large, separate cell in Fort Nationale. Building configuration and space limitations make this harder to do in provincial penitentiary institutions, however.

Since 1961, when a separate court for children was legally mandated, through about 1986, Haiti has intermittently tried minors apart from adults.³⁴ In 1997 the juvenile court in Port-au-Prince was built with support from the Canadian government, and a presiding judge, prosecutor, investigating judge, and other staff were designated. Yet from November 1997 to mid-June 2001, the court's registers show it handled only 73 cases, including very few if any cases of minors jailed at the Fort Nationale.

Nevertheless, the juvenile court is perhaps the best-equipped court in Haiti. It contains offices for judges and court clerks, a large hearing room, and three rooms for consultations between children and volunteer experts or experts from the Ministry of Social Affairs—psychologists, psychiatrists, gynecologists, and forensic specialists.

Once minors enter the court's jurisdiction they are supposed to receive a medical and psychological evaluation and treatment as needed, and be sent to a re-education center in lieu of prison. But as has already been mentioned, no such facility exists, so the court usually places them in a shelter or with a family instead. The juvenile court judge has done admirable work in establishing a relationship with the *Foyer Lakay*, an open reception center for 15 minors, and in supporting the construction of a second center.

According to the juvenile court judge, when youths are arrested, police and justices of the peace often deal with them as though they were adults, rarely directing their cases to the juvenile court. Their cases go to the office of the prosecution (where one assistant prosecutor actually specializes in children's cases) and are assigned randomly. Moreover, their cases are sometimes heard in a regular court, even though they committed the

³⁴ The juvenile court was established by the Law of September 7, 1961 (*Loi du 7 septembre 1961 instituant des tribunaux spéciaux pour enfants*).

crimes as minors. There are no legal provisions to solve this problem when it arises; only the judge can decide if the case will be heard or not.

Recommendations

As part of this study, our mission was asked to propose a plan to reduce significantly the pretrial detention population and improve prison conditions. Hoping to avoid the fate of previous plans that, while initially successful, proved unsustainable after the outside technical assistance had run its course, we resolved to limit our proposals to initiatives that could be realized by drawing upon the existing strengths of the Haitian system.

For the former goal there has been no shortage of sober recommendations, plans, and projects. The Justice Ministry has solicited or received proposals for reducing pretrial detention from several national commissions, nongovernmental organizations, and foreign assistance programs. Moving from ideas to implementation, however, has proven difficult. After completing our readings, visits, and interviews, our mission was divided over the best way to proceed. Some of us believe the numerous problems of dysfunctional criminal procedure are so intimately connected that to successfully repair any one link in the chaîne pénale, the preceding and subsequent links need also be put right. In this view, the failure of earlier efforts can be attributed to their piecemeal approach. Others of us were convinced that interventions can be devised to successfully reconnect broken links and benefit the whole system.

The problems of Haiti's prisons are somewhat different. Here we saw steady, if uneven and inadequate, progress and fundamentally sound statutory underpinnings.

It should be noted that we are the first to recognize that many of our recommendations have already been formulated by previous reform efforts. Some are even in the process of being introduced. However, the majority are not. Having taken into account the slow progress of past judicial reform efforts in Haiti, it is our opinion that until such proposals that we feel could be valuable are fully realized, they are worth citing here, if only to lend worthy projects the additional support of our voice.

Priorities in a program of fundamental judicial reforms

In crafting its response, the Vera mission was guided by the following priorities:

Far-reaching reforms can be most effectively carried out by an independent judiciary and professionally competent judges, clerks, police, and penitentiary employees. From this perspective, two consequences flow:

- Considerable investment in education and training would be useful. With full backing from the state and international donors the School for Judges could provide training for judges, court clerks, and all judicial personnel. Likewise, facilities for technical and ethical training of police and corrections agents might be strengthened.

- Judicial independence could be fortified and guaranteed. The School for Judges should continue recruiting on the basis of objective criteria, including exams, and providing continuing professional education as well as initial training. Laws could be enacted to protect the independence of the judiciary—particularly guarding against outside pressure and unjustified dismissals. The Superior Council of the Judiciary could be allowed to assume its full role as guarantor of this independence.

Fundamental reform will require important revisions to the penal code and the code of criminal investigation. Among the most pertinent changes could be the following:

- eliminating automatic imprisonment as a sentence for many lesser crimes and misdemeanors;
- developing alternatives to incarceration;
- removing offenses such as vagrancy and begging as code violations;
- eliminating gender discriminatory punishments, such as imprisonment for adultery; and
- emphasizing the justice of the peace’s role as arbiter and adjudicator, and transferring its investigative functions to the police and prosecution.³⁵

Key principles of current Haitian law could be demonstrated and reinforced through training courses at the School for Judges, public education campaigns, and other means. These principles include:

- the presumption of innocence;
- the proper, limited place of preventive detention;
- the authority in Haitian law of measures in treaties ratified by Haiti that protect individual freedom.³⁶

An increase of material and human resources may be necessary to significantly reduce congestion in the courts, particularly the correctional courts. However, procedural changes could also be effective. If three months is insufficient time to investigate important affairs, the code of criminal procedure could be modified so that investigating judges handle only complex cases; defendants in simple cases could more frequently go

³⁵ Article 408 of the penal code classes simple thefts as 7th class violations in the presence of aggravating circumstances, thus requiring six months imprisonment for thefts of goods valued at more than 300 gourdes (US\$12.5). The penalty seems disproportionate and a variety of alternatives suggest themselves: suspended sentences (*emprisonnement d’en sursis*); a simple fine, or shorter term of imprisonment.

³⁶ Article 276-2 of the constitution states that ratified treaties are automatically admissible as Haitian law, but this principle is not widely acknowledged.

directly to correctional court (*citation direct à la correctionnelle*). Also, as the investigation is the essential element in the justice process, police inquiries could start from the moment a crime is discovered, under the control of the prosecution or, as the case may be, the investigating judge. Judicial police, therefore, could be granted the status of *officier de police judiciaire* (OPJ), giving them greater latitude of action—but only if this is linked to adequate training (technical and ethical) and supervision by judicial authorities.

The long-term integrity and organization of the justice system demands a functioning judicial inspection service to both gather data and uphold regulations. Improved statistics would also greatly enhance the ministry's capacity for analysis and planning. One useful basis for the development of such a service was submitted in 1998 to the Ministry of Justice by Checchi and Company. Under a 2001 draft series of new or governing regulations, the Justice Ministry would incorporate a General Inspection unit. (It should be noted, however, that some legal experts we spoke with were wary of creating a strong inspection, fearing that it could be used to limit judges' independence. If not purely administrative, said one, such a unit could be incompatible with the independence of the judiciary.)

To avoid systematic discrimination against poor defendants, legal assistance will need to be made available at first instance courts throughout the country. The past six years have produced a number of experiences and proposals that would be helpful to planners of such a program. One possible structure would be managed by the bar associations and use trainee lawyers (*stagiaires*), or even, initially, final year law students. Another proposal would have the bar association require its members to donate one day per month to indigent defendants. This is sometimes called duty counsel (*avocat en devoir or avocat de service*).

Finally, there are many other elements that are part of a well-functioning criminal justice system that also warrant enactment:

- To enable frequent and well-organized criminal assize court sessions, and thus reduce the length of pretrial detention after the investigation has been completed, the doyen, the investigating judge, and the prosecutor could establish regular, ongoing communication with one another about the status of cases. They could also maintain their own record books tracking the movement of all cases.
- A permanent and official communication and coordination structure could link each jurisdiction's prosecutors, judges, police commanders, and prison officials.
- The Ministry of Justice could limit the number of cases handled by each investigating judge—in most circumstances to somewhere between 60 and 100. Eventually, the number of judges could be linked to a jurisdiction's case load.

Recommendations to the police

Even if PNH enforcement of the 48-hour rule improves, police stations will continue to hold alleged offenders longer in some circumstances. Police authorities could codify booking procedures and safeguards and provide guidelines for treating detainees—how to accommodate them, feed them, give them an opportunity to keep themselves clean and let their families know where they are, etc.

The numbers and distribution of judicial police—and their training and supervision—could usefully be strengthened, while their responsibility for conducting investigations under the direction of judicial authorities is clarified and reinforced.

Recommendations for the penitentiary system

Civilian prison support personnel (medical staff, social workers, legal assistants, etc.) could be better integrated into the prison's daily routine, receiving situation reports and, in turn, submitting regular reports of their own. Health workers could establish a file for each prisoner upon admittance, and health policies could place a priority on prevention.

Prison security needs to be improved if prisoners are to be able to spend at least some time outside their cells each day. One of the least expensive and most useful measures would be the erection of high perimeter fences enclosing prison courtyards; in the longer run, the ratio of trained prison personnel to detainees could be increased.

By studying the nature of the offenses for which defendants are imprisoned, authorities would have a better understanding of detention cases and be better able to improve their management of the population.

Penitentiary establishments could be asked to produce periodic (at least monthly) reports about the prison population movement (new arrivals, departures, the sick, the recovered, those under punishment, etc.); the movements of corrections officers and other personnel; and the status of the various stores of food and sanitary and medical supplies.

Wherever possible, DAP could place detainees in cells with those in similar situations, separating convicted prisoners from accused, violent felons from nonviolent offenders, etc.

Recommendations to other institutions

Judicial officials in the capital, in concert with the Ministry of Justice, might usefully examine the Port-au-Prince juvenile court and recommend ways to improve its performance. The public prosecutor could point out to police and peace courts that all youths under age 17 who are arrested in the Port-au-Prince jurisdiction should be referred to the assistant prosecutor for juvenile court.

The Office for the Protection of the Citizen could play an important role in all committees of oversight and supervision for case tracking, pretrial detention, and prison conditions.

It would be useful for the Haitian government to commission a study of criminal deportees. Sampling could be used to understand the nature of offenses committed: how many were violent and how many nonviolent, how many involved drugs, what is the level of education of the deportees, etc. The information would serve purposes ranging from advocacy with sending governments to estimating and better coping with the danger the deportees may represent to Haitian society.

Building on existing capacities—a plan of action

As already noted, international cooperation programs in justice have too often supplied their own expertise and rigorous approach when the Haitian public sector's administrative capabilities and management staff were found lacking. This has led to some early successes that could not be maintained after the funding and technical assistance came to an end.

We are proposing a measured and deliberate implementation of a small number of reforms that build upon the existing capacities and strengths of Haitian institutions. This approach, we believe, could yield short-term improvements in the system's performance even as it invigorates the Ministry of Justice to undertake progressively more ambitious steps. Concurrently, we recommend timely measures to enable the prison administration to ameliorate its most urgent humanitarian problem: malnutrition among detainees. Finally, our plan suggests that the police and the OPC address overlong detention in poor conditions at police stations.

The Justice Ministry would enjoy an enormous boost in confidence if it could demonstrate an ability to accomplish reforms. Fortunately, despite a dearth of mid-level leaders who can launch and manage projects, at the highest level the Ministry of Justice, the penitentiary administration, and many other institutions can boast dynamic leadership.

Our plan emphasizes building strong systems of communication, reporting, and controls and reinforcing systems that may be too slight to bear the weight of significant change. Haiti's judicial inspection service, for example, which we identified as essential for supervising and controlling reform projects, could gradually be built up. With this in mind, we have sketched a timeline of reforms that could be carried out by ministry staff and advisors (cabinet members), with the minister himself scrutinizing progress and the director of judicial affairs exercising direct supervision.

If ministry officials turn recommendations into reality one project at a time—by necessity without significant international assistance—they will gain confidence in their own ability to effect change. As their work gradually improves the functioning of the justice system, it can simultaneously reinforce the ministry's capacities. With time, the ministry should be able to take on more ambitious reform programs to improve the penitentiary system with the support, it is hoped, of international cooperation.

Along with recommendations to the Justice Ministry, we also suggest actions to the Penitentiary Administration Office and the Haitian National Police, institutions under the

ministry's jurisdiction but which operate with considerable autonomy, as well as to the completely independent Office for the Protection of the Citizen.

Ministry of Justice

The following steps are offered as a sequential series, with implementation times for each step cited in parentheses:

- Make fully functional the special office of six judges and prosecutors appointed in 2001 to deal with the crisis of prolonged pretrial detention.³⁷ (four months)
- Instate a schedule chart (*tableau de bord*) in the office of every investigating judge and prosecutor in the country's 15 districts. This would require specifying what type of schedule chart should be used, issuing a directive (*circulaire*) on its use, providing an implementation schedule, and providing training and follow-up that could include sanctions for not using it. (six months)
- Revitalize the jurisdictions' practice of providing regular administrative reports to the Ministry of Justice. The ministry could reinforce and modify the unit that receives and reviews these monthly reports. It could issue a directive explaining the importance of reports, how and when they are to be transmitted, and sanctions for failing to do so. (seven months)

These steps could be part of a broader effort to nurture a sense of responsibility for persons in pretrial detention among officials (judges, police, heads of detention centers and prisons, court clerks, etc.). While positive reinforcement should play a vital role in this effort, those who disregard procedural deadlines should face the real possibility of being penalized.

Additional steps to be considered as funds become available include the following:

³⁷ This office was set up at the national penitentiary after our mission and we do not know to what extent it is currently functioning. We suggest that it include a workroom with the case files of all persons originally detained between 1995 and 2000. Its first task would be to verify that persons identified in case files or registers are still in detention. During a similar exercise in 2000, MICAH advisors discovered that some of these people had already been released and that the data did not always correspond with reality. This requires close coordination with the DAP's legal assistants. The judges will have to meet all detainees to verify their information.

Then the latest procedural elements would be traced so that the court can address a person's case as swiftly as possible. This will make it possible to extricate the judges now responsible for these older cases, allowing them to devote themselves more actively to new cases handled with more dispatch than in the past. Depending on the case, they will prepare the final investigation report, the order, the indictment and the subpoena and turn over these manuscripts to the secretary at the prosecutor's office or the clerks of the court of first instance, for follow-through. It will be necessary to have a team with clearly defined tasks to type up these documents, turn them over to the bailiffs for the delivery of a writ, and hold to a precise calendar of the necessary final steps so that trials can be held as soon as possible. Throughout this process, biased treatment must be reduced as much as possible by respecting the procedure and the will of the legislator that the trial of any accused individual be carried out by a regularly constituted court and in a public place.

- Extend the inspection and control unit (which is receiving the monthly reports) into a fully functional judicial inspection. (four months)
- Extend the chaîne pénale reforms (new registers, systems for case tracking, and applicable training) to all the country's courts. (12 months)
- Develop national policies and programs on Legal Assistance. (12 months)
- Restore or build new reception or re-education centers for young offenders so that sentences handed down under the law might actually be applied.
- Establish an integrated prosecution office/first instance court (*Parquet/Tribunal Civil*) in a single building for a new, experimental jurisdiction in a portion of the current Port-au-Prince jurisdiction, perhaps in a fast-growing suburb to the north or south of the capital. The project would allow testing of new approaches in an urban environment where the need is greatest, while also reducing the numbers of people handled by the Port-au-Prince courts.

Penitentiary Administration

Reorganize the requisition and management of food stocks as a first step toward realizing the daily caloric minimum stipulated by the International Committee of the Red Cross. This could involve taking on a trained and, if possible, experienced foodstuffs and warehouse manager to be given considerable authority. DAP will also need to review its overall budget, paying particular attention to the funds allocated for food purchases.

Haitian National Police

PNH leadership could move decisively to restore respect within the corps for the constitutionally mandated 48-hour limit on the holding of detainees. Compliance controls, including sanctions and rewards, could be instated and enforced. Study of the problem, and guidelines for reducing it, might usefully address the problems of isolated rural commissariats and high-crime Port-au-Prince districts.

Office for the Protection of the Citizen

The OPC could begin visiting all the police stations in metropolitan Port-au-Prince and making reports and recommendations to judicial and police authorities based on its findings. (Monthly surprise visits might be effective.) This work would be useful, too, as a basis for developing the citizens' committee on criminal procedure recommended by the Seminar on Criminal Procedure.³⁸

³⁸ One of the recommendations of the May 2001 Seminar on Criminal Procedure was "that a follow-up committee be set up, with members chosen among individuals outside the chain of criminal procedure; that this committee be coordinated by the Office for the Protection of the Citizen and be tasked with supporting efforts concerning criminal procedure in order to find solutions to problems like those posed in the seminar."

Final thoughts

In the year since we began working on this project, political crisis has persisted in Haiti, and bilateral donors continue to remain distant from government projects. As ever, there is much to be done in the justice area. Some of it cannot be accomplished without substantial outside resources, of course. But the importance of building capacity in government structures like the Justice Ministry, and developing stores of confidence, knowledge, and experience is undiminished. We are convinced that excessive pretrial detention is an issue that Haitians can tackle and can affect. We hope that this report and these recommendations will prove useful to this effort.

Appendix 1

Table 1

Population of Haitian prisons April 30, 2001

Prisons	Pretrial men	Sentenced men	Pretrial women	Sentenced women	Pretrial girls	Sentenced girls	Pretrial boys	Sentenced boys
Anse-à-Veau	26	2	3	1	1	0	0	0
Aquin	45	15	4	0	0	0	0	1
Cap-Haïtien	154	51	10	1	0	0	2	0
Carrefour	28	14	2	2	0	1	12	0
Les Cayes	31	38	4	3	0	0	1	0
Delmas	38	0	4	0	0	0	2	0
Fort Liberté	59	35	5	0	0	0	3	0
Fort National	0	0	88	7	3	0	40	0
Gonaïves	97	113	7	1	0	0	3	0
Grande-Riv.- du-Nord	44	9	4	0	0	0	0	0
Hinche	105	38	5	2	1	0	4	0
Jacmel	107	62	8	1	0	0	3	0
Jérémie	87	41	2	1	2	0	1	0
Mirebalais	31	111	2	1	0	0	0	0
National	1,878	214	0	0	0	0	0	0
Penitentiary								
Pétionville	74	12	6	0	0	0	1	1
Petit-Goâve	57	42	4	1	2	0	0	0
Port-de-Paix	57	25	4	0	0	0	0	0
Saint-Marc	61	23	5	0	1	0	2	2
	2,979	845	167	21	10	1	74	4
<i>Total men</i>	<i>3,824</i>	<i>Total women</i>	<i>188</i>	<i>Total girls</i>	<i>11</i>	<i>Total boys</i>	<i>78</i>	
TOTAL	4,101							

Data source: DAP

Table 2**Available cell space per detainee in Haitian prisons¹**

Prison	Total surface of cells (in sq. meters)	Capacity by international norms²	Current population	Available space per detainee	Number of cells
Anse-à-Veau	35.44	8	33	1.07	3
Aquin	41.79	14	65	0.64	4
Cap-Haïtien	418.28	92	218	1.92	6
Carrefour	200.00	44	59	3.39	4
Les Cayes	154.34	34	77	2.00	9
Delmas	29.96	6	44	0.68	3
Fort Liberté	164.72	36	102	1.61	8
Fort National	506.00	112	138	3.67	3
Gonaïves	438.15	97	221	1.98	13
Grande-Riv.-du-Nord	58.57	13	57	1.03	
Hinche	207.76	46	155	1.34	7
Jacmel	480.00	106	181	2.65	
Jérémie	221.69	49	134	1.65	8
Mirebalais	130.20	28	145	0.90	4
Pénitencier National	1945.44	432	2092	0.93	70
Pétionville	158.45	35	94	1.69	17
Petit-Goâve	159.57	39	106	1.51	7
Port-de-Paix	102.29	22	86	1.19	4
Saint-Marc	200.93	44	94	2.14	8
		1257	4101	1.68	

1. Data 4/30/2001

2. International norm: 4.5 sq. meters per detainee in sleeping and living areas.

Data: DAP

Table 3**Ratio of corrections officers to detainees¹**

	Detainees	Officers ²	Number of officers/detainees
Fort Nationale	160	27	1 officer/ 6 detainees
Pénitencier National	2238	140	1 officer/16 detainees
Les Cayes	95	11	1 officer/ 8 detainees
Cap-Haïtien	150	16	1 officer/ 9 detainees
Grande Rivière du Nord	40	6	1 officer/ 6 detainees
Gonaïves	240	36	1 officer/ 6 detainees
Jacmel	176	9	1 officer/20 detainees
Jérémie	98	10	1 officer/10 detainees
Fort Liberté	100	12	1 officer/ 9 detainees
Port de Paix	90	10	1 officer/ 9 detainees
Saint-Marc	90	12	1 officer/ 7 detainees

1. Data: Report of the National Coalition for Haitian Rights (NCHR), *Situation générale de la prison en Haïti, Juin à Septembre 2000*.
2. These figures represent the number of corrections officers available and not the number of officers present during each work shift. The ratio of officers to detainees is actually much weaker.

Table 4**Budget and prison population, Direction de l'administration pénitentiaire**

Financing	1996	1997	1998	1999	2000	2001 ²
Haitian state (30%)	18,600,00 0	18,600,00 0	13,428,100 0	14,400,00 0	14,400,00 0	14,400,00 0
BND ¹ (70%)	33,600,00 0	33,600,00 0	33,600,00 0	33,600,00 0		
Total financing	52,200,00 0	52,200,00 0	47,028,100	48,000,00 0	14,400,00 0	14,400,00 0
Prison population	2,231	3,328	3,494	3,658	4,373	4,101
Real daily spending per detainee	64.10	42.97	36.88	35.95	9.02	9.62
Growth of the population		+ 49%	+ 5%	+ 5%	+ 19%	- 6.2%

1. *Bureau de Nutrition et de Développement*. BND's funding ended in 2000.
2. Data from 4/30/2001 Data source: DAP

Table 5**Detainees at the National Penitentiary (excluding 2000 and 2001)**

Year	# of detainees admitted	No charges but seen by prosecutor	No charges and never seen by prosecutor²	Charged but never seen by prosecutor
1995	6			2
1996	21	2		6
1997	14	1	2	6
1998	75	6	6	33
1999	183	2	13	103
TOTAL	299	11	21	150

1. According to the DAP registers, each of these detainees was seen at least once by the prosecutors' office.
2. According to the DAP registers, the prosecutor's office has never requested to see these detainees.

Data for 6/15/2001

Data source: DAP

Table 6**Admissions and releases for the National Penitentiary, year 2000**

	Admissions	Releases
January	207	194
February	251	188
March	261	124
April	190	166
May	230	178
June	277	175
July	323	198
August	241	160
September	147	182
October	255	220
November	177	144
December	190	328
TOTAL	2,749	2,257
Difference	+ 492	+ 22 %

Data from the DAP registers

Table 7
Detainees at Fort National

Year	# of detainees admitted	No charges but seen by prosecutor ¹	No charges and never seen by prosecutor ²	Sentenced	Released	Admissions
2000-12-08	106	6	23			
2001-02-21	111	1	8		24	26
2001-06-11	88	5	12	2	24	28

1. According to DAP registers, each of these detainees was seen at least once by the prosecutors' office.
2. According to DAP registers, the prosecutor's office has never requested to see these detainees.
3. The figures for Sentenced, Released and Admitted were established by comparing the three lists studied

Table 8
Population of Fort National

	8/12/2000	6/11/2001
# pretrial women	106	88
# sentenced women	9	10
# pretrial girls	10	3
# sentenced girls	0	0
# pretrial boys	42	32
# sentenced boys	2	2
TOTAL	169	135

Data taken from DAP lists

Table 9**Status of criminal procedure for pretrial detainees at Fort Nationale**

Procedure	1997¹	1998	1999	2000	2001
Prosecutor's office			2	12	18
Investigating judge	1	5	20	18	3
Court				1	4
Correctionnel court			1	1	1
Appeal		1			
Total	1	6	23	32	26

1. Date of entry

Data taken from DAP lists

Table 10**Status of criminal procedure for pretrial minors at Fort National**

Procedure	1997¹	1998	1999	2000	2001
Prosecutor's office			2	2 - 5	5
Investigating judge		<i>f</i>		2	
Court/ <u>Juvenile court</u>	<u>1</u>			4 + <u>4</u>	6 + <u>2</u>
Information missing				1	
Total	1	1	2	18	13

1. Date of entry

2. Girls in bold face/italics

Data source: DAP

Table 11**Nutritional status of detainees in five prisons: Body Mass Index (BMI) results from several prisons, December 2001 and January 2001**

	BMI GONAIVES¹	BMI JACMEL²	BMI HINCHE²	BMI MIREBALAIS²	BMI NATIONAL PENITENTIARY²
Total # detainees present	247	173	163	143	2300
# of detainees measured	238	167	152	140	2056
Moderate malnutrition	19.8%	25.7%	24.3%	25.7%	17.5%
Advanced malnutrition	12.2%	18.6%	19.7%	30.7%	18.6%
Severe malnutrition	0.4%	1.2%	5.3%	3.5%	1.8%
Total cases of malnutrition	32.4%	45.5%	49.3%	60.0%	37.9%
Total cases MA + MS	12.6%	19.8%	25.0%	34.3%	20.4%

1. January 2001
2. December 2000

Data source: ICRC

Table 12

Comparison of pretrial detainee population for Port-au-Prince and provincial prisons, 1998 and 2001

Prison	Total population Dec. 1998	Pretrial population Dec. 1998	% in pretrial detention Dec. 1998	Total population April 2001	Pretrial population April 2001	% in pretrial detention April 2001	Change in pretrial proportion 1998-2001
Carrefour	92	74	80%	59	42	71%	-
Delmas	38	37	97%	44	44	100%	+
Fort National	132	117	89%	138	131	95%	+
Pénitencier National	1673	1438	86%	2092	1878	90%	+
Pétionville	188	156	83%	94	81	86%	+
TOTAL P- AU-P	2123	1822	86%	2427	2176	90%	
Anse-à-Veau	35	26	74%	33	30	91%	+
Aquin	42	38	90%	65	49	75%	-
Cap-Haïtien	210	141	67%	218	166	76%	+
Les Cayes	103	67	65%	77	36	47%	-
Fort Liberté	75	69	92%	102	67	66%	-
Gonaïves	292	245	84%	221	107	48%	-
Grande- Rivière-du- Nord	48	36	75%	57	48	84%	+
Hinche	122	79	65%	155	115	74%	+
Jacmel	122	77	63%	181	118	65%	-
Jérémie	133	97	73%	134	92	69%	-
Mirebalais	75	35	47%	145	33	23%	-
Petit-Goâve	112	93	83%	106	63	59%	-
Port-de-Paix	115	93	81%	86	61	71%	-
Saint-Marc	114	89	78%	94	69	73%	-
TOTAL PROVINCE	1598	1185	74%	1674	1054	63%	
TOTAL	3721	3007	81%	4101	3230	79%	

Appendix 2

Mirebalais

The legal district of Mirebalais is generally conceded to be the best functioning jurisdiction in Haiti. Its proportion of detainees in pretrial detention is usually close to the inverse of the national average. In June 2001, 20 percent of the Mirebalais prison population had yet to be tried, while nationally the figure was 79 percent.

We made two visits to Mirebalais to try to understand what is different there. These gave us some ideas, although they left many questions unanswered.

Some 10,000 people live in the urban center of Mirebalais. The town is the unofficial capital of the lower Central Plateau or Center region, with six towns and seven peace courts. Hinche, 30 miles to the north, is the departmental capital and seat of an appeals court that covers the two jurisdictions. Although Mirebalais is but 40 miles northeast of Port-au-Prince, the drive from the capital takes two to three hours due to long, rough, and unpaved portions of the route. However, it has perhaps the best access to electricity, running water, and phone service of any outlying area, largely because it is the closest large town to the Peligre hydroelectric plant. Otherwise, it is not very different from other small, secondary urban and commercial centers, and it has had its share of violent conflict in recent years.

The center of legal affairs in Mirebalais is one of 12 combined first instance court and prosecution offices in Haiti built in the late 1990s with Canadian funds. This central building, along with the peace court, the police station, and the prison are located alongside each other, making a vehicle to transport detainees unnecessary. However, some of the six outlying peace courts in the same district are far away, along the border with the Dominican Republic, and present transportation difficulties.

Mirebalais was in the second group of jurisdictions chosen to be part of the “model” prosecution office effort supported by USAID. The U.S. Justice Department’s Overseas Prosecutorial Development, Assistance and Training program (OPDAT) administered the project, installing case tracking chaîne pénale systems and staff trained to use them. They also provided ongoing technical support and training, including a resident judicial advisor (*conseiller judiciaire*). These systems are functioning well in Mirebalais today, as they are not everywhere.

The leadership of the Mirebalais doyen would seem to be an important factor. A native of the town, he was previously an investigating judge and prosecutor, so he understands these different roles. He tries to keep the investigating judges on schedule and organizes regular meetings of all the judicial officials. According to the prosecutor, who is a graduate of the School for Judges, they keep a check on one another, update their cases, and discuss ideas for improving the system. The prosecutor also meets frequently with the investigating judges and has held motivational sessions with the district’s justices of the peace to encourage their help in assembling juries.

The court has institutionalized use of the 1927 law encouraging speedy trials for minor offenses where the alleged culprit was arrested in the act. These may take place as early as the same day as the arrest. Mirebalais has no bar association and its lawyers are relatively expensive, so people usually end up defending themselves or finding someone who can speak French to assist them.

The court receives about 55 new cases a month and has, in addition to the doyen, one other judge, two investigating judges, five clerks, two secretaries, one guard, and one bailiff. (The prosecutor here and elsewhere is not under the doyen's direct authority, and is the supervisor of the jurisdiction's justices of the peace.)