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Debt and Dependence: Foreign Interference in Haiti and the Importance of Non-State Actor Accountability

Sandra Wisner

University of Toronto, wisner.sandra@gmail.com

Brian Concannon

Institute for Justice & Democracy in Haiti, brian@ijdh.org

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Cover Page Footnote

Sandra Wisner, LL.M. (Adv.), J.D., B.A. (Hons.), Director, International Human Rights Program (IHRP), University of Toronto Faculty of Law, wisner.sandra@gmail.com; Brian Concannon, Jr., Esq., Executive Director, Institute for Justice & Democracy in Haiti (IJDH), brian@IJDH.org. The authors would like to thank Margaret Satterthwaite, Special Rapporteur on the independence of judges and lawyers; Gabrielle Apollon and Ellie Happel, Co-Directors of the Haiti Justice & International Accountability Project, NYU School of Law; as well as IJDH intern Eszter Boldis and Bertha Justice Fellow Kristina Fried for their contributions to this article.

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*Sandra Wisner and Brian Concannon**

* Sandra Wisner, LL.M. (Adv.), J.D., B.A. (Hons.), Director, International Human Rights Program (IHRP), University of Toronto Faculty of Law, wisner.sandra@gmail.com; Brian Concannon, Jr., Esq., Executive Director, Institute for Justice & Democracy in Haiti (IJDH), brian@IJDH.org. The authors would like to thank Margaret Satterthwaite, Special Rapporteur on the independence of judges and lawyers; Gabrielle Apollon and Ellie Happel, Co-Directors of the Haiti Justice & International Accountability Project, NYU School of Law; as well as IJDH intern Eszter Boldis and Bertha Justice Fellow Kristina Fried for their contributions to this article.

TABLE OF CONTENTS

TABLE OF CONTENTS	186
INTRODUCTION	185
I. HAITI: A CASE STUDY	186
A. <i>Debt and Foreign Aid Dependence</i>	187
B. <i>Foreign State Interference</i>	189
C. <i>Interference by Foreign Non-State Actors</i>	194
II. IMPLICATED HUMAN RIGHTS	207
A. <i>Implicated Economic and Social Rights</i>	208
B. <i>Implicated Civil and Political Rights</i>	217
III. HUMAN RIGHTS OBLIGATIONS OF FOREIGN STATES AND NON-STATE ACTORS	219
A. <i>State Obligations</i>	220
B. <i>Non-State Actor Obligations</i>	222
IV. THE NEED TO STRENGTHEN ENFORCEMENT MECHANISMS	224
A. <i>International Judicial Mechanisms: State Accountability</i>	224
B. <i>Domestic Judicial Mechanisms: Corporate Actors and IFI Accountability</i>	226
C. <i>Institutional Complaint Mechanisms: IFI Accountability</i>	227
D. <i>Successful Application of Enforcement Mechanisms Against Corporate Actors and IFIs</i>	230
V. RECOMMENDATIONS	233
A. <i>Debt Relief and the Restoration of Haiti's Autonomy</i>	234
B. <i>Accountability and Oversight of Foreign Actors</i>	237
CONCLUSION	238

INTRODUCTION

The scope of international human rights law (IHRL) obligations and responsibilities is limited by the state-centered approach of international law and the general presumption against extraterritoriality. However, shifts toward global interdependence have led to an increased role of non-state actors (NSAs) in the day-to-day lives of populations as they undertake operations and activities across national borders. Accordingly, there is growing recognition of both states' extraterritorial obligations (ETOs) and NSAs' human rights responsibilities. To effectively protect human rights, foreign states and NSAs must recognize and abide by their responsibilities and obligations. For some NSAs, like international financial institutions (IFIs) and corporations, there are few binding legal obligations and a hesitance from states in asserting jurisdiction over these actors. Enforcing these obligations is also difficult given the lack of effective enforcement mechanisms. However, recent successes demonstrate that NSA accountability is increasingly possible.

Haiti provides a salient example of the harms that are possible in the absence of strong accountability mechanisms for foreign states and NSAs. The substantial debt Haiti agreed to pay France in exchange for recognition of its independence was a consequence of the hostility engendered amongst colonial powers following Haiti's successful slave revolt.¹ This racially discriminatory debt resulted in a cycle of foreign aid dependence that persists to this day. In turn, dependence opened the door to the imposition of adverse foreign policies, perhaps most prominently exemplified by the U.S.'s nineteen-year occupation of the country beginning in 1915 and IFIs' imposition of neoliberal policies in the latter part of the twentieth century. This dynamic served to reinforce pre-existing power structures and inequalities that imposed and then entrenched Haiti's debt and has created significant obstacles to the realization and protection of fundamental rights. The substantial role that foreign states and NSAs still play in Haiti's domestic policy prompts a necessary analysis of the human rights obligations of these actors and the applicability and availability of accountability mechanisms.

¹ Haiti was the first and only successful slave revolt in the history of the world. For an extensive history of the Haitian revolution and its impact on the Atlantic world, see LAURENT DUBOIS, *AVENGERS OF THE NEW WORLD: THE STORY OF THE HAITIAN REVOLUTION* (2004).

With Haiti as a case study, this paper analyzes the human rights impacts of foreign states and NSAs, evaluates existing obligations under international human rights law, and argues for ETOs and the expansion and application of existing IHRL duties and obligations to NSAs. Section I explains how the current human rights situation in Haiti has its roots in the country's cycle of debt and dependence and explores the way in which foreign states and NSAs have grown to play an increasingly dominant role in the country. Section II analyzes key international human rights violations by foreign states and NSAs in Haiti. Section III outlines the rights obligations of these actors. Section IV sets up the theoretical foundation of mechanisms capable of addressing these violations, including their successes in recent years, while acknowledging their challenges and limitations. Finally, Section V provides recommendations toward the restoration of Haiti's autonomy and the strengthening of foreign actor accountability.

I. HAITI: A CASE STUDY

Haiti currently struggles to protect its population's human rights, particularly economic and social rights such as an adequate standard of living, health, and education. Many of these challenges are rooted in the policies and engagement of foreign states and NSAs that have engendered dependence on external actors for funding and the provision of basic services.² Many of the policies imposed on Haiti marginalized its communities, a pattern that has since been reinforced and become cyclical. For example, in 2014 Haiti became the most disparate country in Latin America and the Caribbean in terms of wealth.³ Income inequality has a range of detrimental political and economic effects, such as slower GDP growth, reduced income mobility, increased political inequality and polarization, declining standards of health, less access to education, and higher poverty rates.⁴ Indeed, fifty-nine percent of Haitians live below the poverty line and more than twenty-four percent live in extreme poverty.⁵

² See, e.g., Jake Johnston, *Who Decides Who Runs Haiti?*, LE MONDE DIPLO (Feb. 2022), <https://mondediplo.com/2022/02/06haiti>.

³ *Living Conditions in Haiti's Capital Improve, But Rural Communities Remain Very Poor*, WORLD BANK GROUP (July 11, 2014), <https://www.worldbank.org/en/news/feature/2014/07/11/while-living-conditions-in-port-au-prince-are-improving-haiti-countryside-remains-very-poor>.

⁴ Nicholas Birdsong, *The Consequence of Economic Inequality*, SEVEN PILLARS INST. GLOB. FIN. AND ETHICS (Feb. 5, 2015), <https://sevenpillarsinstitute.org/consequences-economic-inequality/>.

⁵ Int'l Fed'n of Red Cross and Red Crescent Societies, COUNTRY ACCELERATION PLAN 2019: HAITI (2019), https://reliefweb.int/sites/reliefweb.int/files/resources/AD_2019_Haiti.pdf.

A. Debt and Foreign Aid Dependence

Since its independence from France, Haiti's racially discriminatory "independence debt" has forced it to become indebted to the international community. In 1825, to counter a commercial embargo by France and the U.S. (in retaliation for its 1804 revolution against slavery),⁶ Haiti reluctantly paid compensation to France for its lost slavery revenues.⁷ The agreement, negotiated under the threat of reinstating slavery,⁸ included recognition of Haiti's independence.⁹ The debt was more than ten times the Haitian government's annual revenue at the time.¹⁰ It took Haiti over a century (until 1947)¹¹ to repay it, even with later reductions of the principal,¹² in part because France and subsequently the U.S. imposed high interest rates.¹³ In a six-part series on Haiti's entrenched debt,¹⁴ the *New York Times* calculated the total amount that Haiti paid to France: \$560 million.¹⁵ The total economic cost to Haiti, however, was much larger—anywhere from \$21 to \$115 billion—largely because of all the additional debt that Haiti had to take on in order to pay the initial independence debt.¹⁶

⁶ See e.g., Marlene Daut, *When France Extorted Haiti – The Greatest Heist in History*, THE CONVERSATION (July 9, 2021), <https://theconversation.com/when-france-extorted-haiti-the-greatest-heist-in-history-137949>.

⁷ The debt amounted to 150 million francs. *Id.*; Rocio Cara Labrador & Diana Roy, *Haiti's Troubled Path to Development*, COUNCIL ON FOREIGN REL. (Sept. 9, 2022), <https://www.cfr.org/background/haitis-troubled-path-development>; see also Peter James Hudson, *How Wall Street Colonized the Caribbean*, BOS. REV. (June 19, 2019), <http://bostonreview.net/race/peter-james-hudson-how-wall-street-colonized-caribbean>.

⁸ *Ep. 55 ft. Gunther Handl, Does Haiti Have a Legal Right to Compensation from France?*, CLAUSES & CONTROVERSIES (Oct. 18, 2021); LAURENT DUBOIS, *HAITI: THE AFTERSHOCKS OF HISTORY* (2013). Note that in Alex Dupuy's *Rethinking the Haitian Revolution*, he explores how and why Haitian leadership chose to pay the independence debt to France.

⁹ PETER HALLWARD, *DAMMING THE FLOOD: HAITI, ARISTIDE, AND THE POLITICS OF CONTAINMENT* 12 (2007).

¹⁰ JEAN METELLUS, *DE L'ESCLAVAGE AUX ABOLITIONS* 2 (1998); Jean Métellus, *L'abolition de L'esclave, 150 Ans PlusTard: Le Renard Libre Dans le Poulailler Libre*, L'HUMANITE (Apr. 24, 1998).

¹¹ Daut, *supra* note 6.

¹² Different accounts list this initial amount as being reduced to sixty or ninety million francs in the 1830s. See *Dette de L'indépendance: 29 Milliards de Dollars à Rembourser par la France à Haïti?!*, LE NOUVELLISTE (Jan. 30, 2020), <https://lenouvelliste.com/article/211786/dette-de-lindependance-28-milliards-de-dollars-a-rembourser-par-la-france-a-haiti>; Alex von Tunzelmann, *Haiti: the Land Where Children Eat Mud*, THE SUNDAY TIMES (May 17, 2009, 1:00 AM), <https://www.thetimes.co.uk/article/haiti-the-land-where-children-eat-mud-rscvbz7t8ms>; Lazaro Gamio et al., *The Ransom: Haiti's Lost Billions*, N.Y. TIMES (May 20, 2022), <https://www.nytimes.com/interactive/2022/05/20/world/americas/enlaved-haiti-debt-timeline.html>.

¹³ HALLWARD, *supra* note 9, at 12.

¹⁴ *Haiti 'Ransom' Project*, N.Y. TIMES, <https://www.nytimes.com/spotlight/haiti> (Nov. 16, 2022).

¹⁵ Gamio, *supra* note 12.

¹⁶ *Id.*

As a result, this independence debt, in addition to being odious,¹⁷ forced the country into a cycle of aid dependence. By 1900, Haiti was spending eighty percent of its national budget on foreign debt repayment.¹⁸

To manage its international debt throughout the twentieth century, Haiti had to borrow from other nations, including the U.S.,¹⁹ Germany,²⁰ and France.²¹ More than half of the money Haiti borrowed between 1875 and 1910 went to French lending banks, which charged additional commissions, fees, and interest.²² Moreover, the severe underdevelopment that resulted from Haiti's need to prioritize debt repayments in the nineteenth and twentieth centuries, including the lack of investment in building strong institutions to protect the rule of law,²³ meant the Haitian government had to seek assistance from IFIs in the latter part of the twentieth century.²⁴ These included the International Monetary Fund (IMF), the World Bank (WB), and the Inter-American Development Bank (IDB)—IFIs that are all heavily influenced by Western European and/or U.S. interests.²⁵ Between 1970 and 2004, the country accumulated over \$1.2 billion in debt in addition to the original indemnity.²⁶

¹⁷ See Mark Schuller, *Break the Chains of Haiti's Debt*, JUBILEE USA NETWORK (May 20, 2006), <http://www.ijdh.org/pdf/headline1-11-07.pdf>.

¹⁸ Richard Kim, *The Nation: Haiti's Recovery, A Repeated Tragedy*, NPR (Jan. 18, 2010), <https://www.npr.org/templates/story/story.php?storyId=122693853>.

¹⁹ *Milestones in the History of U.S. Foreign Relations 1914-1920: U.S. Invasion and Occupation of Haiti, 1915-34*, OFF. HISTORIAN, U.S. DEP'T. STATE, <https://2001-2009.state.gov/r/pa/ho/time/wwi/88275.htm#:~:text=In%201910%20President%20William%20Howard,debt%2C%20thus%20lessening%20foreign%20influence.&text=The%20United%20States%20considered%20Germany,powerful%20advantage%20in%20the%20area> (last visited July 28, 2021); Peter James Hudson, *How Wall Street Colonized the Caribbean*, BOS. REV. (Jun. 19, 2019), <http://bostonreview.net/race/peter-james-hudson-how-wall-street-colonized-caribbean>.

²⁰ Westenley Alcenat, *The Case for Haitian Reparations*, JACOBIN (Jan. 14, 2017), <https://jacobin.com/2017/01/haiti-reparations-france-slavery-colonialism-debt/>.

²¹ Tunzelmann, *supra* note 12.

²² BRENDA GAYLE PLUMMER, HAITI AND THE GREAT POWERS, 1902-1915 145, 145 (1988).

²³ See, e.g. Tunzelmann, *supra* note 12.

²⁴ Note the economic instability resulting from Haiti's debt repayment obligations to France and engendering corruption from the start, has led much to be written on the extent to which foreign actors have a responsibility to effectively monitor, and combat, the misappropriation of funds/aid in Haiti. As such, this is beyond the scope of this paper.

²⁵ Four of the six most influential members of the WB and IMF boards are the United States, France, United Kingdom and Germany. The other two states with much voting power are Japan and Saudi Arabia. See *Executive Directors and Alternatives*, WORLD BANK GROUP (Mar. 1, 2021), <pubdocs.worldbank.org/en/241041541103873167/BankExecutiveDirectors.pdf>; The heavy influence of the U.S. in IDB lending was also revealed when it unilaterally blocked loan disbursement for Haiti in 2001. See Dan Beeton, *What the World Bank and IDB Owe Haiti*, GLOB. POL'Y FORUM (July 25, 2006), <https://archive.globalpolicy.org/opinion/2006/0724beeton.htm>; The heavy influence of the U.S. in IDB lending was also revealed when it unilaterally blocked loan disbursement for Haiti in 2001. See Dan

Instances of debt cancellation by IFIs sometimes preceded cancellations of bilateral debt from donor states,²⁷ and often only occurred when Haiti's progress toward macroeconomic stability satisfied creditors.²⁸ New loans and condition then directly followed the debt cancellation, thereby continuing a pattern of unsustainable debt and aid dependence.²⁹ This cycle of aid dependence continues today, with over twenty percent of Haiti's 2019-2020 national budget supported through foreign assistance.³⁰

B. Foreign State Interference

This cycle of aid dependence enabled foreign states to implement policies which had disastrous effects in Haiti, particularly on the country's environment.³¹ France, in particular, maintained significant influence in the country through its former occupation and imposition of an independence

Beeton, *What the World Bank and IDB Owe Haiti*, GLOB. POL'Y FORUM (July 25, 2006), <https://archive.globalpolicy.org/opinion/2006/0724beeton.htm>.

²⁶ Richard G. Wamai & Colleen Larkin, Health Development Experiences in Haiti: What Can Be Learned from the Past to Find a Way Forward?, 54 JAPANESE MED. ASS'N J. 56, 57 (2011).

²⁷ Iolanda Fresnillo, *Haiti 10 Years After the Earthquake: The Fight for Social and Economic Justice Continues*, EURODAD (Jan. 10, 2020), https://www.eurodad.org/10_years_haiti.

²⁸ See, e.g., Jim Lobe, *Haiti: U.S. Lawmakers, NGOs Call for Debt Cancellation*, INST. FOR POL'Y STUD. (Feb. 12, 2010), https://ips-dc.org/haiti_us_lawmakers_ngos_call_for_debt_cancellation/ (stating that 1.2 billion dollars of Haiti's external debt, including to the IMF, WB, and IDB, was canceled in 2009 after the government completed a three-year Heavily Indebted Poor Countries (HIPC) program).

²⁹ *Id.* (stating that more than half of the debt canceled in 2009 "had been incurred by Haiti's dictatorships, notably the Duvalier dynasty that ruled the country from 1957 to 1986. But the cancellation covered debt incurred by Haiti only through 2004. In the last five years," between 2005 and 2010, "the country has received new loans—some of them to help it recover from the floods and other hurricane damage—totaling another 1.05 billion dollars"); see *Haiti's Current Debt Situation*, THE CANADA-HAITI INFO. PROJECT (last visited July 27, 2021), <https://canada-haiti.ca/node/37> (stating that more than half of the new accumulated debt was owed to the IDB, the IMF, and the WB's International Development Association (IDA); see Labrador & Roy, *supra* note 7 (stating that Haiti's borrowing following this debt cancellation continued to rise to \$3.57 billion—including nearly \$2 billion from a subsidized oil fund known as PetroCaribe); see Jacqueline Charles, *Haiti Owes Venezuela \$2 Billion – and Much of it was Embezzled*, *Senate Report Says*, MIA. HERALD (Nov. 15, 2017), <https://www.miamiherald.com/news/nation-world/world/americas/haiti/article184740783.html> (noting that there were revelations that senior government officials across administrations embezzled billions of dollars from the PetroCaribe fund).

³⁰ See *Haiti - FLASH: Le Gouvernement Adopte un Budget de 198,7 Milliards, Tous les Détails*, HAÏTI LIBRE (June 8, 2020), <https://www.haitilibre.com/article-30976-haiti-flash-le-gouvernement-adopte-un-budget-de-198-7-milliards-tous-les-detaills.html>; Int'l Monetary Fund, *Haiti: 2019 Article IV Consultation – Press Release, Staff Report, and Statement by the Executive Director for Haiti*, Country Rep. No. 20/121 (Apr. 2020) (showing in 2019 Haiti's public debt-to-GDP ratio rose to forty-seven percent: its total public sector debt was 46.1% of GDP in 2020, having climbed yearly from 2017 to 2020, with central bank debt at 12.2% of GDP, and external public debt at 25.4% of GDP).

³¹ Keston K. Perry, *What is Really Behind the Crisis in Haiti?*, AL JAZEERA (Sept. 30, 2019), <https://www.aljazeera.com/opinions/2019/9/30/what-is-really-behind-the-crisis-in-haiti>.

debt which, for example, resulted in mass deforestation.³² Much of this deforestation occurred while Haiti was still a French colony, when France cut down trees to make room for sugar plantations.³³ Deforestation intensified in the nineteenth century as Haiti exported mahogany to France in order to pay its independence debt; “by 1842 they were sending [four] million cubic feet of it overseas every year.”³⁴ During the twentieth century, foreign states like the U.S. also played a role in the deforestation. A Haitian-American project in the 1940s and 50s destroyed millions of native or old-growth forests near Jérémie to plant rubber trees for World War II.³⁵ Relationships between the Haitian government, local elites, and the international community then shaped the acceleration of deforestation in the 1980s.³⁶ As of 2016, Haiti had less than one percent of its original old-growth forest.³⁷

In addition to the independence debt’s burden, Haiti lacked recognition by many countries—which viewed Haiti’s independence as a threat to their own slave-holding power³⁸—for more than five decades following its independence. The lack of international recognition deprived Haiti of commerce and trade opportunities, which could have offered important revenue to counteract the debt burden to France and the costs of fortifying the nation against external attack to protect its fragile independence. Throughout this time, U.S. policies in particular deprived

³² M.R. O’Connor, *One of the Most Repeated Facts About Haiti is a Lie*, VICE NEWS (Oct. 13, 2016), <https://www.vice.com/en/article/43qy9n/one-of-the-most-repeated-facts-about-deforestation-in-haiti-is-a-lie>.

³³ Laurent Dubois, *Who Will Speak for Haiti’s Trees?*, N.Y. TIMES (Oct. 17, 2016), <https://www.nytimes.com/2016/10/18/opinion/who-will-speak-for-haitis-trees.html>.

³⁴ O’Connor, *supra* note 32.

³⁵ Lucile Maertens & Adrienne Stork, *The Real Story of Haiti’s Forests*, BOOKS & IDEAS 1, 3 (2017), <https://core.ac.uk/reader/188207730>; See, e.g., Eleanor Warren-Thomas, et al., *Increasing Demand for Natural Rubber Necessitates a Robust Sustainability Initiative to Mitigate Impacts on Tropical Biodiversity*, 8 CONSERVATION LETTERS 230 (Aug. 27, 2015), <https://conbio.onlinelibrary.wiley.com/doi/epdf/10.1111/conl.12170> (rubber forests are biological deserts relative to natural forests and utilize fertilizers and pesticides that contaminate the surrounding area, leading to further environmental degradation).

³⁶ Paul F. Monaghan, *Peasants, the State, and Deforestation in Haiti’s Last Rainforest*, at 20-21 (2000) (Ph.D. dissertation, University of Florida), <https://ufdc.ufl.edu/AA00022124/00001>.

³⁷ S. Blair Hedges et al., *Haiti’s Biodiversity Threatened by Nearly Complete Loss of Primary Forest*, 115 PROC. NAT’L ACAD. SCI. 11850, 11850 (2018) (stating “primary forest cover in Haiti shrank from 4.4% in 1988 to 0.32% in 2016”).

³⁸ Catherine Porter et al., *The Ransom: The Root of Haiti’s Misery: Reparations to Enslavers*, N.Y. TIMES (May 20, 2022), <https://www.nytimes.com/2022/05/20/world/americas/haiti-history-colonized-france.html> (finding for many colonizing and slave-holding countries, Haiti’s independence “set a chilling precedent.” For example, U.S. lawmakers were concerned that recognizing Haiti’s independence would “offer enslaved people hope” and inspire further rebellion).

Haiti of capital and cemented the early roots of debt dependence. As a result of non-recognition by the U.S., the U.S. claimed Navassa Island—an island rich in wildlife and deposits of guano (the accumulated excrement of seabirds and bats, prized as fertilizer), located approximately thirty-five miles west of Haiti’s southern peninsula—under the U.S. Guano Act of 1859. The U.S. claimed Navassa before it formally recognized Haiti in 1862, even though Navassa was consecrated by Haiti’s Constitution as national territory.³⁹ The U.S. claim, which has been referred to as “a legacy of racism from 100 years ago”⁴⁰ and which has been protected by U.S. military intervention,⁴¹ resulted in a massive lost opportunity for Haiti’s economy. In the 1840s, guano was a very profitable industry around the world, including in the United States.⁴² Estimates indicate that over one million tons of guano were removed from the island between 1865 and 1901.⁴³ Today, interest in guano has resurged due to increased demand for organic foods, with ecologists claiming over \$1 billion in potential global profit.⁴⁴ The U.S. maintains its illegitimate claim on Navassa Island to this day.⁴⁵

³⁹ Yves Colon, *U.S., Haiti Squabble Over Control of Tiny Island*, MIA. HERALD (Sept. 25, 1998), <http://faculty.webster.edu/corbetre/haiti/miscopic/navassa/squabble.htm> (reporting that “[t]he U.S. Department of Interior, which manages Navassa, has threatened to use force to keep anyone away.” Emperor Faustin I of Haiti claimed that “with the French recognition of Haitian independence in 1804 the island became Haitian.” Additionally, “Haitian fishermen have been fishing for lobsters on the reefs around that island for generations.” In 1989, the former military government “planted a Haitian flag on the ground and erected a pillar asserting Haitian sovereignty.” The U.S. bears claim to Navassa because it was abandoned and derelict and passed the Guano Islands Act of 1856 authorizing American seamen “to claim any abandoned or unclaimed islands with guano on it”); *Id.*; see 48 U.S.C § 1411 (1856); see also Dylan Matthews, *This 1856 Law Makes it Legal to Seize Islands for America if They Have Lots of Bird Crap*, VOX (July 31, 2014), <https://www.vox.com/2014/7/31/5951731/bird-shit-imperialism>; OFF. HISTORIAN, U.S. DEPT. OF STATE, *The Secretary of State to the Chargé in Haiti (McGurk)*, FOREIGN RELS. U.S. DIPLOMATIC PAPERS (July 5, 1932), <https://history.state.gov/historicaldocuments/frus1932v05/d748>; see also Jones v. United States, 137 U.S. 202, 224 (1890) (holding the island was U.S. property in 1890); see also Colon, *supra* note 39 (stating “it was under the supervision of the U.S. Coast Guard until 1997, when it was assigned to the Interior Department because of the rich trove of birds, along with two species of lizards previously thought to be extinct”).

⁴⁰ Jacqueline Charles, *Did the U.S Steal an Island Covered in Bird Poop from Haiti? A Fortune is in Dispute*, MIA. HERALD (Nov. 23, 2020), <https://www.miamiherald.com/article247325844.html>.

⁴¹ *Id.*

⁴² Courtney Sexton, *Seabird Poop Is Worth More Than \$1 Billion Annually*, SMITHSONIAN MAG. (Aug. 7, 2020), <https://www.smithsonianmag.com/science-nature/seabird-poop-worth-more-1-billion-annually-180975504/>; see also Matthews, *supra* note 39; Charles, *supra* note 40.

⁴³ Charles, *supra* note 40.

⁴⁴ Sexton, *supra* note 42; see also Charles, *supra* note 40 (stating that Californian treasure hunter, Bill Warren, continues to exercise his claim to Navassa in order to mine the guano).

⁴⁵ *Navassa Island*, U.S. DEP’T OF THE INTERIOR, [https://www.doi.gov/oia/islands/navassa_\(last visited Mar. 24, 2023\)](https://www.doi.gov/oia/islands/navassa_(last%20visited%20Mar.%2024,%202023)).

After recognizing Haiti's independence, the U.S. had a particularly heavy hand over Haiti. In the 1800s, the Monroe Doctrine—which opposed European interference in the Western Hemisphere and later justified use of an “international police power” toward countries engaging in “chronic wrongdoing”—was central to U.S. foreign policy.⁴⁶ As part of the “Roosevelt corollary to the Monroe Doctrine,”⁴⁷ the U.S. eventually became a colonizer in Haiti in the 1900s as it continued to grow into its hemispheric hegemony. American banks that had consolidated and financed Haiti's debt repayments influenced the U.S. government's decision to occupy the country from 1915 to 1934. During this time, the U.S. controlled the country's finances, imposed racial segregation and a forced-labor system, and installed governments sympathetic to U.S. intervention and policies.⁴⁸ A rebel group called the “cacos” (after a bird endemic to Haiti) strongly resisted the occupation shortly after it began, but was ultimately defeated by the U.S.⁴⁹ During the occupation, the U.S. and its financial institutions effectively ruled Haiti, changing domestic policies and imposing an “austerity budget, raising taxes on Haitian citizens, reducing them for corporations and slashing trade tariffs.”⁵⁰ The occupation

⁴⁶ Gaddis Smith, *Returning to Haiti: Is it All Over for the Monroe Doctrine?*, L.A. TIMES (July 17, 1994), <https://www.latimes.com/archives/la-xpm-1994-07-17-op-16533-story.html>; *Monroe Doctrine (1823)*, NAT'L ARCHIVES, <https://www.archives.gov/milestone-documents/monroe-doctrine> (last visited July 28, 2021).

⁴⁷ Smith, *supra* note 46.

⁴⁸ For example, City Bank Vice President Roger L. Farnham, who also served as a State Department advisor, “drafted a document arguing for U.S. military intervention to stabilize the country and protect U.S. financial and commercial interests.” With the U.S. occupation in 1915, “[t]he Farnham plan, as it was dubbed, was realized,” and “[t]he occupation provided the platform for City Bank's takeover of the Banque Nationale while making City Bank's imposition of a \$30 million loan to the Haitian government almost risk free.” City Bank President Frank A. Vanderlip later described Haiti as “a small but profitable piece of business.” See Hudson, *supra* note 7; see also HANS SCHMIDT, *THE UNITED STATES OCCUPATION OF HAITI, 1915-1934* (1971); Labrador, *supra* note 7; Edwidge Danticat, *The Long Legacy of Occupation in Haiti*, THE NEW YORKER (July 28, 2015), <https://www.newyorker.com/news/news-desk/haiti-us-occupation-hundred-year-anniversary>.

⁴⁹ Avery M. Nordman, “False Promises”: The U.S. Occupation of Haiti (1915-1934) and the Dominican Republic (1916-24), at 20 (Apr. 30, 2021) (B.A. Thesis, University of Victoria), <https://www.uvic.ca/humanities/history/assets/docs/honours-thesis---avery-nordman-2021.pdf>.

⁵⁰ Vincent Joos, *Haiti's Deadly Riots Fueled by Anger over Decades of Austerity and Foreign Interference*, THE CONVERSATION (July 26, 2018), <https://theconversation.com/haitis-deadly-riots-fueled-by-anger-over-decades-of-austerity-and-foreign-interference-100209> (stating that, even after the U.S. military left Haiti in 1934, “U.S. administrators kept control over the Haitian budget until 1947 to make sure Haiti would pay back the American loans taken out after the invasion”); see also Labrador, *supra* note 7; see also Anthony Phillips, *Haiti, France and the Independence Debt of 1825* (2008) (unpublished manuscript) (available at https://canada-haiti.ca/sites/default/files/Haiti,%20France%20and%20the%20Independence%20Debt%20of%201825_0.pdf); Peter J. Hudson, *Where does Haiti Fit in Citigroup's Corporate History?*, BLOOMBERG (June 13, 2012), <https://www.bloomberg.com/opinion/>

removed revenue from the country and forced the economy into additional hardship.⁵¹

Following the end of U.S. occupation in 1934, military, political, and economic interventions continued in Haiti. These interventions favored the intervening states and their companies while harming the country's population, particularly those most marginalized. For example, following the end of U.S. occupation, the U.S. created a gendarmerie (a military force with civilian law enforcement responsibilities) to replace the Marines,⁵² and U.S. administrators maintained control over Haiti's budget until 1947 to ensure the repayment of loans taken out after the invasion.⁵³ Subsequent policies that further exerted dominance over Haiti's affairs also had devastating consequences for the country's domestic production and economy. The 1980s' campaign to eradicate the Creole pig and repopulate with foreign pigs is one such example, with disastrous environmental and economic effects that linger through the present day.⁵⁴ At the behest of the U.S., Canada, Mexico, the IDB, and others, Haiti attempted to slaughter their entire pig population to address African Swine Fever,⁵⁵ and then imported pigs from the U.S. to replace them.⁵⁶ The campaign,⁵⁷ which

articles/2012-06-13/on-citigroup-s-anniversary-don-t-forget-its-brutal-past; *Milestones in the History of U.S. Foreign Relations 1914-1920: U.S. Invasion and Occupation of Haiti, 1915-34*, *supra* note 19; ARTHUR C. MILLSPAUGH, *HAITI UNDER AMERICAN CONTROL, 1915-1930* (1931), <https://ufdc.ufl.edu/AA00001156/00001/6j>; OFF. OF THE HISTORIAN, U.S. DEP'T. STATE, *HAITI, PAPERS RELATED TO FOREIGN REL. U.S., WITH ADDRESS OF PRESIDENT TO CONG. DECEMBER 8, 1914*, Documents 487 – 599 (1922), <https://history.state.gov/historicaldocuments/frus1914/comp20/>; Treaty Between Haiti and the United States Regarding the Finances, Economic Development and Tranquility of Haiti, U.S.-Haiti Sept. 16, 1915, <https://www.jstor.org/stable/2212153> (full text of the Treaty between the United States and Haiti, signed at Port-au-Prince, September 16, 1915).

⁵¹ Gerline Christophe & Raché Manyok Bay Te-a Blanche, *Deforestation in Haiti and the Power of an Image*, at 16 (Apr. 2014) (B.A. Thesis, Wilkes Honors College of Florida Atlantic University) (on file with Florida Atlantic University).

⁵² Danticat, *supra* note 48.

⁵³ Joos, *supra* note 50; *see also* Danticat, *supra* note 48.

⁵⁴ Ralph P. Jean-Pierre, Amy D. Hagerman & Karl M. Rich, *An Analysis of African Swine Fever Consequences on Rural Economies and Smallholder Swine Producers in Haiti*, 9 *FRONTIERS IN VETERINARY SCI.* (2022), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9597192/>.

⁵⁵ Edward Cody, *To Snuff Out Swine Fever, Haiti Slaughters All Its Pigs*, *WASH. POST* (Apr. 2, 1983), <https://www.washingtonpost.com/archive/politics/1983/04/02/to-snuff-out-swine-fever-haiti-slaughters-all-its-pigs/6b9be8a9-a586-44d0-87c8-eeed94940f92/>.

⁵⁶ *Id.*; Allan Ebert, *Porkbarreling Pigs in Haiti*, 6 *MULTINATIONAL MONITOR* (1985), <https://www.multinationalmonitor.org/hyper/issues/1985/12/ebert-porkbarrel.html>

⁵⁷ PROJET D'ERADICATION DE LE PESTE PORCINE AFRICAINE ET DE DEVELOPPEMENT DE L'ELEVAGE PORCIN EN HAÏTI (PEPPADEP), 10TH COORDINATING COMMITTEE MEETING HELD AT PEPPADEP-DELMAS, 14-16 (Nov. 1983), https://books.google.ca/books?id=P90qAAAAAYAAJ&printsec=frontcover&dq=PEPPADEP&hl=en&ei=W5FQTfTmPMeatweN8Zi3AQ&sa=X&oi=book_result&ct=result&redir_esc=y#v=onepage&q&f=true.

acknowledged the challenges of repopulation that would inevitably degrade Haiti's physical environment,⁵⁸ had disastrous economic consequences for smallholder farmers. The farmers never received adequate compensation⁵⁹ and the American pigs often became sick, needed expensive feed, and yielded fewer litters.⁶⁰ On the other hand, American agribusiness firms profited substantially by selling their pig stocks to replace the slaughtered Creole pigs.⁶¹

C. *Interference by Foreign Non-State Actors*

Decades of interference by NSAs—both IFIs and corporate actors—has shaped Haiti's development and had a profound effect on the enjoyment of human rights within its borders. IFIs imposed conditional loans that had far-reaching and lasting consequences for Haiti's self-sufficiency and economic development. Corporate actors then used these reforms as an opportunity to exploit Haiti's cheap labor and resources. This Section discusses the specific ways in which these NSAs' policies and actions have affected and continue to affect human rights in Haiti.

1. *Interference by international financial institutions*

Foreign actors' influence in Haiti took on a new form in the late twentieth century. Beginning in the 1970s and accelerating in the 1980s and 1990s, the IMF imposed economic reforms known as "structural adjustment" requirements on heavily-indebted countries in return for loans.⁶² These requirements relied on austerity measures, including tax reforms, trade liberalization, and privatization of state-run services.⁶³ Later

⁵⁸ Ebert, *supra* note 56.

⁵⁹ *Id.* (explaining that pig ownership in Haiti is similar to a bank account, with pigs comprising thirty percent of peasantry's income); Cody, *supra* note 55; Michael Deibert, *The International Community's Responsibility to Haiti*, THE GUARDIAN (July 12, 2020), <https://www.theguardian.com/commentisfree/cifamerica/2010/jul/12/haiti-earthquake-redevelopment>.

⁶⁰ Paisley Dodds, *Food Imports Hurt Struggling Haitian Farmers*, NBC NEWS (Feb. 26, 2010), <https://www.nbcnews.com/id/wbna35608836>.

⁶¹ Ebert, *supra* note 56 ("The Haitian-American Meat and Products Company (HAMPCO) and the U.S. pig producers stand to gain nearly \$1 billion from AID's project. Only the HAMPCO facilities will be used by AID and the swine stock to be procured under the project will be produced and sold by U.S. swine farmers. HAMPCO is leasing its Port-au-Prince facility to IICA for nearly \$1 million.").

⁶² Carlos Lopes, *Economic Growth and Inequality: The New Post-Washington Consensus*, RCCS ANN. REV. 4 (2012), <http://journals.openedition.org/rccsar/426>.

⁶³ See JOHN WILLIAMSON, *LATIN AMERICAN ADJUSTMENT: HOW MUCH HAS HAPPENED?* (2d ed. 1990) (outlining John Williamson's ten prescriptions reflecting his interpretation of the Washington consensus in the early 1990s were: 1) Fiscal discipline, 2) Redirect public expenditure, 3) Tax reform, 4) Financial liberalization, 5) Adopt a single, competitive exchange rate, 6) Trade liberalization 7) Eliminate barriers to foreign direct investment 8) Privatize state owned enterprises 9) Deregulate market entry and competition, and 10) Ensure secure property rights).

termed the “Washington Consensus” in 1989, these policies were adopted and widely supported by IFIs and imposed on middle- and low-income countries.⁶⁴ The adoption of the Washington Consensus in Argentina, for example, included the lowering of tariffs that protected unskilled labor-intensive sectors, such as textiles. The effect was destruction of these jobs, massive unemployment, and a widening wage gap between skilled and unskilled workers.⁶⁵

The IMF imposed structural adjustment policies in Haiti through its conditional lending agreements to ensure debt repayment and economic restructuring. This practice began in 1987 with its Structural Adjustment Facility⁶⁶ and was followed by its Enhanced Structural Adjustment Facility from 1996 to 1999,⁶⁷ its Poverty Reduction and Growth Facility from 2006 to 2009, its Extended Credit Facilities from 2010 to 2019, and its Rapid Credit Facility in 2020.⁶⁸ Although these latter facilities in the twenty-first century reflected the IMF’s recognition of some of the deleterious effects of past conditional lending agreements,⁶⁹ structural reforms continued to

⁶⁴ SCIENTIFIC COUNCIL FOR GOVERNMENT POLICY, *DOING GOOD OR DOING BETTER: DEVELOPMENT POLICIES IN A GLOBALIZING WORLD*, (Monique Kremer, Peter van Lieshout & Robert Went eds., 2009), <https://library.oapen.org/bitstream/handle/20.500.12657/35310/340016.pdf?sequence=1#page=138>; Lopes, *supra* note 62.

⁶⁵ Victor A. Beker, *A Case Study on Trade Liberalization: Argentina in the 1990s* (Univ. of Belgrano, Economics Discussion Paper No. 2012-3), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1987329.

⁶⁶ U.N. Conf. on Trade and Dev., *The Least Developed Countries 2000 Report*, U.N. Doc. UNCTAD/LDC/2000, (Oct. 11, 2000), https://unctad.org/en/docs/ldc00_ch4.en.Pdf (“The SAF was a lending facility under which low-income countries were provided with highly concessional assistance from the IMF which was conditional on the implementation of an agreed three-year program of policy change, consisting of three annual programs with an agreed timetable which was monitored.”).

⁶⁷ Press Release, Int’l Monetary Fund, *IMF Approves Three-Year ESAF Loan for Haiti* (Oct. 1996), <https://www.imf.org/en/News/Articles/2015/09/14/01/49/pr9653#ftnote1>.

⁶⁸ Timeline: SAF 1986-89, ESAF 1996-99, PRGF 2006-09, ECF 2010-14, ECF 2015-18, ECF 2019, RCF 2020.

⁶⁹ JAMES M. BOUGHTON, *Chapter 13 Policies for Development: From Structural Adjustment to Poverty Reduction and Growth*, in *TEARING DOWN WALLS: THE INT’L MONETARY FUND 1990-1999* 649 (2012), <https://www.imf.org/external/pubs/ft/history/2012/pdf/c13.pdf>. In the early 1990s, there was a growing recognition that “[e]ven if [low-income countries] faithfully carried out an adjustment and reform program equal to one typically expected of a middle-income borrower, expecting them to stabilize the debt burden and escape from reliance on exceptional financing within the three-year term of a Fund-supported arrangement was not realistic.” *Id.* at 640. In 1997-1998, an external review of ESAFs determined that “the way staff was interacting with national authorities in low-income countries” played a major part in the programs’ failure to support countries in gaining financial independence and sustainable growth and “tended to undermine the domestic political process.” *Id.* at 643-44. In 2020, the IMF recognized that the growth of monetary financing of the fiscal deficit in early 2020, a condition of the March 2019 loan, led to “an acceleration of inflation” which, in combination with a year and a half of political instability, left the Haitian economy with “zero buffers to withstand the [COVID-19] crisis.” Int’l Monetary Fund, *Haiti: Request for Disbursement Under the Rapid Credit*

play a major role, and elements of austerity conditions remained embedded in the agreements.⁷⁰

The imposition of Washington Consensus policies and over-emphasis on public spending cuts impeded these countries' abilities to invest in health, education, and infrastructure to benefit their populations.⁷¹ These cuts accelerated declines in key areas of human rights, especially for the most marginalized.⁷² For example, lack of funding in Guatemala resulted in inadequate spending on the criminal justice system, leading to high murder rates, impunity for violent crimes, and impaired public safety (especially

Facility – Press Release; Staff Report; and Statement by the Executive Director for Haiti, at 13, Country Report No. 20/123 (Apr. 2020), <https://www.imf.org/-/media/Files/Publications/CR/2020/English/1HTIEA2020003.ashx>; see Int'l Monetary Fund, *Haiti: 2019 Article IV Consultation – Press Release, Staff Report, and Statement by the Executive Director for Haiti*, *supra* note 30; *infra* note 83.

⁷⁰ Although later agreements reported an increase in poverty-reducing spending and investments in education and health, the IMF continued to emphasize the need to clear arrears, reduce ministerial and other public spending, and increase privatization. See, e.g., Int'l Monetary Fund, *Haiti: Request for a Three-Year Arrangement Under the Poverty Reduction and Growth Facility- Staff Report; Staff Press Release on the Executive Board Discussion; and* <https://www.imf.org/en/Publications/CR/Issues/2016/12/31/Haiti-Request-for-a-Three-Year-Arrangement-Under-the-Poverty-Reduction-and-Growth-Facility-20182>; Int'l Monetary Fund, *Haiti: 2015 Staff Report for the Article IV Consultation and Request for a Three-Year Arrangement Under the Extended Credit Facility*, at 6, 9, 32, Country Rep. No. 15/157 (June 2015), <https://www.imf.org/en/Publications/CR/Issues/2016/12/31/Haiti-Staff-Report-for-the-2015-Article-IV-Consultation-and-Request-for-a-Three-Year-43020>; Int'l Monetary Fund, *Haiti: 2019 Article IV Consultation – Press Release, Staff Report, and Statement by the Executive Director for Haiti*, *supra* note 30, at 11-12, 20. Assessments of fiscal sustainability continued to rely on expected increases in tax collection despite the continued failure to raise the required revenue through taxes. See, e.g., Int'l Monetary Fund, *Haiti: Request for a Three-Year Arrangement Under the Poverty Reduction and Growth Facility- Staff Report; Staff Press Release on the Executive Board Discussion; and Statement by the Executive Director for Haiti*, *supra* note 53, at 11-12, 18; Int'l Monetary Fund, *Haiti: 2015 Staff Report for the Article IV Consultation and Request for a Three-Year Arrangement Under the Extended Credit Facility*, *supra* note 53, at 3, 28; Int'l Monetary Fund, *Haiti: 2019 Article IV Consultation – Press Release, Staff Report, and Statement by the Executive Director for Haiti*, *supra* note 30, at 10, 12, 18; see *infra* notes 90-92.

⁷¹ N.Y.U. INT'L ORGS. CLINIC, THE IMF AND SOCIAL PROTECTION (2018), <https://www.iilj.org/wp-content/uploads/2018/06/The-IMF-and-Social-Protection-NYU-IO-Clinic-Fall-2017.pdf>; Francиска Lucien & Joel Curtain, *Time for the World Bank and IMF to Be the Solution, Not the Problem*, INTER PRESS SERVICE (May 7, 2020), <https://www.ipsnews.net/2020/05/time-world-bank-imf-solution-not-problem/>. See also Int'l Monetary Fund, *Haiti: 2019 Article IV Consultation – Press Release, Staff Report, and Statement by the Executive Director for Haiti*, *supra* note 30, at 19 (even as the IMF acknowledged the “need to shift resources away from non-priority spending toward social programs and investment,” it emphasized the need for “tighter controls on spending . . . a resolution plan for arrears . . . [and] a medium-term budget framework anchored around a target for the [non-financial public sector] deficit.”); Int'l Monetary Fund, *Haiti: Selected Issues*, at 14, Country Rep. No. 05/205 (June 2005), <https://www.imf.org/external/pubs/ft/scr/2005/cr05205.pdf>. Note, however, the IMF concluded in 2003 that their low-income country programs on the whole did not reduce social spending. See Int'l Monetary Fund, *Fiscal Adjustment in IMF-Supported Programs*, at 8, Evaluation Rep. (2003), <https://www.imf.org/external/np/ieo/2003/fis/pdf/all.pdf>.

⁷² N.Y.U. INT'L ORGS. CLINIC, *supra* note 71.

for vulnerable members of the population).⁷³ A recent study analyzing the policies of twelve IFIs found that they harmed the lives of women, men, and sexual and gender minorities—largely due to the imposition of austere public social spending cutbacks and the privatization of services and infrastructure.⁷⁴ Washington Consensus policies affected public spending in Haiti in three key ways, through an emphasis on (1) debt servicing, (2) expenditure limitations and fiscal discipline, and (3) tax policy.

First, IFIs insisted on debt servicing within their lending agreements, which limited the fiscal space available for spending on health, education, and infrastructure,⁷⁵ despite regularly acknowledging the need for increased spending in these areas.⁷⁶ IFI loans consistently require Haiti to prioritize

⁷³ Philip Alston (Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions), *Mission to Guatemala (21-25 August 2006)*, U.N. Doc. A/HRC/420/Add.2 (Feb. 19, 2007), https://www.hrdp.org/files/2015/08/03/Mission_to_Guatemala_2007.pdf (stating that low fiscal space (about 10 percent of GDP) in Guatemala contributes to an inability to train police officers, employ enough law enforcement personnel, and create a functioning criminal justice system).

⁷⁴ See ELAINE ZUCKERMAN & THANH MAI BERCHER, UNMET GENDER PROMISES: MAKING IFI POLICIES AND PROJECTS DELIVER ON GENDER EQUAL RIGHTS, GENDER ACTION (2020) http://genderaction.org/docs/Unmet_Gender_Promises_Report.pdf (including the IDB-financed Caracol Industrial Park project in Haiti in the study and finding that public social spending cutback policies “ultimately benefited corporations more than poor women and men whose lives IFIs claim to improve”).

⁷⁵ See Monika Kalra Varma et al., *Wòch nan soley: The denial of the right to water in Haiti*, HEALTH & HUM. RTS. J. 53 (2008), <https://www.hhrjournal.org/2013/09/woch-nan-soley-the-denial-of-the-right-to-water-in-haiti/>; Patrick Sheld, *Who Really Controls Haiti’s Destiny? An examination of Haiti’s Historical Underdevelopment, Endless Poverty, and the Role played by Non-Governmental Organizations (NGOs)* (Nov. 8, 2017) (Masters of Sci. Thesis, University of Vermont), <https://scholarworks.uvm.edu/cgi/viewcontent.cgi?article=1835&context=graddis>.

⁷⁶ The IMF’s first SAF in Haiti, from 1987-1989, acknowledged the need to increase social spending “given that Haiti is the poorest country in the Western Hemisphere” and the IMF’s 2020 country report noted that Haiti’s health and education sector spending in 2017-18 was still the lowest compared to that in other low-income countries. See Sara Kane, *Inflation Targeting Assumes Growing Importance in Monetary Policymaking*, 25 INT’L MONETARY FUND SURVEY 361, 271 (1996), <https://www.elibrary.imf.org/view/journals/023/0025/001/article-A022-en.xml>; INT’L MONETARY FUND, HAITI: SELECTED ISSUES at 6 fig. 3, Country Rep. No. 20/122 (Apr. 20, 2020), <https://www.imf.org/en/Publications/CR/Issues/2020/04/20/Haiti-Selected-Issues-49352>. See also WORLD BANK, IMPLEMENTATION COMPLETION REP.: HAITI, EMERGENCY ECON. RECOVERY CREDIT, app. B, Rep. No. 16166 (Dec. 9 1996), <https://documents1.worldbank.org/curated/pt/305941468249658497/text/multi0page.txt>; INT’L REP. ON THE EMERGENCY ECONOMIC RECOVERY PROGRAM, vol. 1, no. A1 (Apr. 3, 1995); Letter of Intent and Memorandum of Economic and Financial Policies of the Government of Haiti to the IMF (Nov. 7, 2000), <https://www.imf.org/external/np/loi/2000/hti/01/index.htm>; Int’l Monetary Fund, *Haiti: Staff Report for the 2000 Article IV Consultation and for a Staff-Monitored Program (SMP) for FY 2000/01*, at 16, Country Rep. No. 01/6 (2001), <https://www.imf.org/en/Publications/CR/Issues/2016/12/30/Haiti-Staff-Report-for-the-2000-Article-IV-Consultation-and-for-a-Staff-Monitored-Program-SMP-3873>; Letter of Intent of the Government of Haiti to the IMF (Jan. 25, 2008), <https://www.imf.org/external/np/loi/2008/hti/012508.pdf>; Letter of Intent of the Government of Haiti to the IMF (Apr. 25, 2011), <https://www.imf.org/external/np/loi/2011/hti/042511.pdf>; Letter of Intent and Memorandum of Economic and Financial Policies of the Government of Haiti to the IMF

clearing arrears (debt outstanding after the due date has passed).⁷⁷ Failure to do so can lead to the suspension of loan disbursements and the cancellation of social projects.⁷⁸ Loan conditions also prioritize the non-accumulation of arrears on public-sector foreign debt over public-sector domestic debt,⁷⁹ leaving financing to the Haitian Central Bank which then accumulates the arrears.⁸⁰

This emphasis on debt servicing requirements remains unchanged despite Haiti's struggle to meet them.⁸¹ The IMF acknowledged the devastating consequences of arrears accumulation in 2020, which were likely to involve "shortages of goods like fuel, interruptions in public services like electricity, lower growth, and erosion of confidence in fiscal

(Nov. 7, 2000), <https://www.imf.org/external/np/loi/2000/hti/01/index.htm>; Int'l Monetary Fund, *Haiti: Staff Report for the 2000 Article IV Consultation and for a Staff-Monitored Program (SMP) for FY 2000/01*, Country Rep. No. 01/6, at 16 (Jan. 5, 2001), <https://www.imf.org/en/Publications/CR/Issues/2016/12/30/Haiti-Staff-Report-for-the-2000-Article-IV-Consultation-and-for-a-Staff-Monitored-Program-SMP-3873>; Letter of Intent of the Government of Haiti to the IMF (Jan. 25, 2008), <https://www.imf.org/external/np/loi/2008/hti/012508.pdf>; Letter of Intent of the Government of Haiti to the IMF (Apr. 25, 2011), <https://www.imf.org/external/np/loi/2011/hti/042511.pdf>.

⁷⁷ See Int'l Monetary Fund, *Haiti: 2019 Article IV Consultation – Press Release, Staff Report, and Statement by the Executive Director for Haiti*, *supra* note 30 at 1; Press Release, Int'l Monetary Fund, IMF Exec. Board Approves US\$ 41.6 Million Disbursement under Rapid Credit Facility for Haiti (Nov. 18, 2016), <https://www.imf.org/en/News/Articles/2016/11/18/PR16517-Haiti-IMF-Executive-Board-Approves-Disbursement-under-RCF>; Public Information Notice, Int'l Monetary Fund, IMF Exec. Board Concludes 2005 Article IV Consultation with Haiti (June 17, 2005), <https://www.imf.org/en/News/Articles/2015/09/28/04/53/pn0578>; Int'l Monetary Fund, *Haiti: Staff Monitored Program*, Country Rep. No. 04/216, at 11 (July 2004), <https://www.imf.org/en/Publications/CR/Issues/2016/12/31/Haiti-Staff-Monitored-Program-17562>; Letter of Intent and Memorandum of Economic Policies of the government of Haiti to the IMF (June 10, 2003), <https://www.imf.org/external/np/loi/2003/hti/01/index.htm>.

⁷⁸ Int'l Monetary Fund, *Haiti: Staff Monitored Program*, Country Rep. No. 03/260, at 41 (Aug. 2003), <https://www.imf.org/en/Publications/CR/Issues/2016/12/30/Haiti-Staff-Monitored-Program-16825> ("Disbursements to the Government of Haiti were suspended in January 2001 due to the accumulation of arrears to the World Bank. A health project closed in March 2001 as scheduled, and credit balance for a total of US\$16.5 million for two remaining operations (road rehabilitation/maintenance and forest/parks protection technical assistance) were canceled in June 2001. Haiti was placed on non-accrual status in September 2001 and the two remaining operations closed on December 31, 2001.").

⁷⁹ Int'l Monetary Fund, *Haiti: Request for Disbursement under the Rapid Credit Facility – Press Release; Staff Report; and Statement by the Executive Director for Haiti*, *supra* note 69, at 28.

⁸⁰ Int'l Monetary Fund, *Haiti: Request for Disbursement under the Rapid Credit Facility – Press Release; Staff Report; and Statement by the Executive Director for Haiti*, Rep. No. 30541, at 5 (Dec. 10, 2004), <https://documents1.worldbank.org/curated/ar/881821468771271257/pdf/30541.pdf>.

⁸¹ See, e.g., Patrick Saint-Pré, *Selon Jean-Baden Dubois, Le FMI Attend Haïti pour Signer un Nouveau Programme*, LE NOUVELLISTE (Feb. 3, 2020), <https://lenouvelliste.com/article/211921/selon-jean-baden-dubois-le-fmi-attend-haiti-pour-signer-un-nouveau-programme>.

policy.”⁸² Yet, as recently as April 2020, the Haitian government secured a new IMF loan of \$111.6 million to address the COVID-19 pandemic. The IMF also approved a \$299 million loan to the Haitian government just thirteen months prior, which included further conditions on deficit reduction.⁸³ Although the conditions of the April 2020 loan limited the financing of the deficit in response to the financial costs of the COVID-19 pandemic, the IMF continued to emphasize balancing a “focus on closing the fiscal financing gap while making room for measures to counter the impact of COVID-19.”⁸⁴ In August 2021, the IMF took steps to ameliorate the issue by approving allocations of Special Drawing Rights (SDRs) of approximately \$650 billion.⁸⁵ However, Haiti was allocated only \$157 million in SDRs,⁸⁶ which was insufficient to create any meaningful change in Haiti’s debt crisis, particularly given the need for additional spending on social services in light of the pandemic.

Second, along with debt clearance, IFIs’ focus on expenditure limitations and fiscal discipline has likewise adversely affected Haiti’s population. When Washington Consensus policies were first imposed in the country, they reflected a perspective applied both in Haiti and beyond—that spending on health, education, and other social programs that helped the poor were “profligate” government spending rather than an investment in human capital and growth enhancement.⁸⁷ As such, IMF loans and staff-

⁸² Int’l Monetary Fund, *Haiti: 2019 Article IV Consultation – Press Release, Staff Report, and Statement by the Executive Director for Haiti*, *supra* note 30, at 12.

⁸³ Fresnillo, *supra* note 27; Int’l Monetary Fund, *Haiti: Request for Disbursement under the Rapid Credit Facility – Press Release; Staff Report; and Statement by the Executive Director for Haiti*, *supra* note 69, at 24.

⁸⁴ Int’l Monetary Fund, *Haiti: Request for Disbursement under the Rapid Credit Facility – Press Release; Staff Report; and Statement by the Executive Director for Haiti*, *supra* note 69, at 5. In Haiti’s Letter of Intent for the April 2020 loan, Haiti expressed a goal of “limiting public sector deficits, including the significant losses related to the energy sector” through increased domestic revenue through customs and taxes. *Id.* at 21.

⁸⁵ Int’l Monetary Fund, *IMF Managing Director Announces the US\$650 billion SDR Allocation Comes into Effect*, INT’L MONETARY FUND (Aug. 23, 2021), <https://www.imf.org/en/News/Articles/2021/08/23/pr21248-imf-managing-director-announces-the-us-650-billion-sdr-allocation-comes-into-effect> (“The SDR allocation will provide additional liquidity to the global economic system – supplementing countries’ foreign exchange reserves and reducing their reliance on more expensive domestic or external debt. Countries can use the space provided by the SDR allocation to support their economies and step up their fight against the crisis.”).

⁸⁶ *2021 General SDR Allocation*, INT’L MONETARY FUND, <https://www.imf.org/en/Topics/special-drawing-right/2021-SDR-Allocation> (last updated Aug. 23, 2021).

⁸⁷ PETER NICHOLAS, THE WORLD BANK’S LENDING FOR ADJUSTMENT: AN INTERIM REPORT, World Bank Discussion Paper No. 34 (1988). In December of 1997, IMF staff released a report reflecting on the first ten years of rolling out ESAFs and started recognizing the importance of social spending. See *The ESAF at Ten Years: Economic Adjustment and Reform in Low-income*

monitored programs⁸⁸ focused on reforming the ministerial budget and restricting discretionary ministerial spending.⁸⁹

Third, IFIs focused on tax policy as a way of bolstering fiscal space for investment in social services in Haiti despite previous failed attempts at direct taxation in the nineteenth century. This approach failed to generate enough funds,⁹⁰ in part because of the country's large informal working sector.⁹¹ The decade following the implementation of the first structural

Countries, Occasional Paper No. 156, INT'L MONETARY FUND (Dec. 1997), https://www.elibrary.imf.org/doc/IMF084/06948-9781557756930/06948-9781557756930/Other_formats/Source_PDF/06948-9781452780283.pdf.

⁸⁸ "An SMP is an informal agreement between country authorities and Fund staff, whereby the latter agree to monitor the implementation of the authorities' economic program. SMPs do not entail financial assistance or endorsement by the IMF Executive Board." Press Release, Int'l Monetary Fund, IMF Reaches Staff Level Agreement on a Staff Monitored Program with The Gambia (Mar. 8, 2019), <https://www.imf.org/en/News/Articles/2019/03/08/pr1966-imf-reaches-staff-level-agreement-on-a-staff-monitored-program-with-the-gambia>. [An SMP] is a flexible instrument for dialogue between the IMF staff and a member on its economic policies. Int'l Monetary Fund, *Letter of Intent and Memorandum of Economic Policies of the Government of Haiti to the IMF*, (June 10, 2003).

⁸⁹ Press Release, Int'l Monetary Fund IMF Approves Three-Year ESAF loan for Haiti, *supra* note 67; Int'l Monetary Fund, Letter of Intent of the Government of Haiti to the IMF (Nov. 19, 1998), <https://www.imf.org/external/np/loi/112098.HTM>; Int'l Monetary Fund, *Haiti: Staff Rep. for the 1999 Article IV Consultation*, Country Rep. No. 99/105, at 6 (Sept. 1999), <https://www.imf.org/en/Publications/CR/Issues/2016/12/30/Haiti-Staff-Report-for-the-1999-Article-IV-Consultation-3214>; Int'l Monetary Fund, *Haiti: Staff Rep. for the 2000 Article IV Consultation and for a Staff-Monitored Program (SMP) for FY 2000/01*, *supra* note 76, at 20; Int'l Monetary Fund, *Letter of Intent, Memorandum of Economic and Financial Policies, and Technical Memorandum of Understanding of the Government of Haiti to the IMF* (June 10, 2003), <https://www.imf.org/external/np/loi/2003/hti/01/index.htm>; Public Information Notice, Int'l Monetary Fund, IMF Executive Board Concludes 2005 Article IV Consultation with Haiti (June 17, 2005), <https://www.imf.org/en/News/Articles/2015/09/28/04/53/pn0578>.

⁹⁰ See Fresnillo, *supra* note 27; WORLD BANK, IMPLEMENTATION COMPLETION REP.: HAITI, EMERGENCY ECONOMIC RECOVERY CREDIT *supra* note 76. Because of low formal employment, contributory schemes do not raise enough revenue to create social safety nets. Those social programs which do exist "are characterized by limited coverage, are often ad hoc, cover small geographical areas or narrowly defined, and are scattered across numerous institutions." See Oxford Pol'y Mgmt. & World Food Programme, *Study on Shock-Responsive Social Protection in Latin America and the Caribbean: Haiti Case Study*, at 4 (Aug. 2017), <https://www.opml.co.uk/files/Publications/a1537-shock-responsive-social-protection-latin-america-caribbean-haiti-case-study.pdf?noredirect=1>.

⁹¹ Many rely on the informal economy to survive. Etant Dupain, *Covid-19/Ekonomi Enfòmèl: Desizyon Ijan Kijan pou n Limite Dega Yo*, LE NOUVELLISTE (Mar. 24, 2020), <https://lenouvelliste.com/article/213949/covid-19ekonomi-enfomel-desizyon-ijan-kijan-pou-n-limite-dega-yo>. Formal employment in Haiti "remains small (thirteen percent of the labor force) with agriculture and urban informal sectors still providing most of the employment with about forty percent and forty-seven percent of the labor market, respectively." See *Haiti: Towards a New Narrative*, xii, Systematic Country Diagnostic, WORLD BANK GROUP (May 2015), <http://documents1.worldbank.org/curated/en/319651467986293030/pdf/97341-SCD-P150705-IDA-SecM2015-0130-IFC-SecM2015-0071-MIGA-SecM2015-0046-Box391466B-OUO-9.pdf>.

adjustment policies in Haiti saw a marked deterioration in the state's ability to provide basic services due to revenue declines.⁹²

These policies have often benefited foreign states and NSAs.⁹³ Trade liberalization policies, in particular, weakened Haiti's agricultural capacity⁹⁴ by lowering tariff levels on key agricultural products including rice, implementing a free-floating exchange rate regime, and eliminating import quotas.⁹⁵ Loan conditions have directed Haiti to privatize key basic infrastructure services and, by limiting available funding for public spending, have forced the country to seek assistance from humanitarian organizations and external aid agencies.⁹⁶

Despite the domestic unpopularity of these foreign-imposed policies,⁹⁷ the Haitian government has been, and continues to be, in a disadvantaged position to negotiate the IFI loan conditions that enable this foreign control.⁹⁸ First, the country maintains an acute need for funds and is encouraged to externally finance its debt to IFIs, which perpetuates a system of external debt reliance.⁹⁹ Despite their own acknowledgment of

⁹² WORLD BANK, IMPLEMENTATION COMPLETION REP.: HAITI, EMERGENCY ECON. RECOVERY CREDIT, *supra* note 76.

⁹³ James Darbouze, *Les États-Unis d'Amérique, L'illusion Démocratique et Nous en Haïti*, ALTERPRESSE (Nov. 17, 2020), <https://www.alterpresse.org/spip.php?article26406#.X7aDYmhKg2x>.

⁹⁴ *Id.*

⁹⁵ Sandra C. Wisner, *Starved for Justice: International Complicity in Systematic Violations of the Right to Food in Haiti*, COLUM. HUM. RTS. L. REV. (May 10, 2022), <https://hrlr.law.columbia.edu/hrlr-online/starved-for-justice-international-complicity-in-systematic-violations-of-the-right-to-food-in-haiti/>.

⁹⁶ WORLD BANK, HAITI: COUNTRY ASSISTANCE EVALUATION, Rep. No. 23637 (2002), https://ieg.worldbankgroup.org/sites/default/files/Data/reports/haiti_cae.pdf; WORLD BANK, IMPLEMENTATION COMPLETION REP.: HAITI, EMERGENCY ECON. RECOVERY CREDIT, *supra* note 76; Bryant C. Freeman, *Strategy of Aristide Government for Social and Economic Reconstruction*, UNIV. KAN. INST. HAITIAN STUD. OCCASIONAL PAPERS no. 4 (Aug. 1994); Press Release, Int'l Monetary Fund, IMF Approves Three-Year ESAF Loan for Haiti, *supra* note 67.

⁹⁷ Haitian farmers protested the lowering of tariffs on rice, which allowed American rice to flood the market. See, e.g., Leah Chavla, *Has the US Rice Export Policy Condemned Haiti to Poverty?*, HUNGER NOTES (Apr. 23, 2010), <https://www.worldhunger.org/us-rice-policy-condemned-haiti-poverty/>.

⁹⁸ For an opposing view, see Irfan Nooruddin & Joel W. Simmons, *The Politics of Hard Choices: IMF Programs and Government Spending*, 60 INT'L ORG. 1001 (2006), <https://www.jstor.org/stable/3877854?seq=1> ("The conditions, rather than being an independently set list of policy reforms to achieve economic growth and external balance, are the outcome of bargaining between the IMF and the participating country.").

⁹⁹ Int'l Monetary Fund, Letter of Intent and a Memorandum of Economic Policies of the government of Haiti to the IMF (June 10, 2003), <https://www.imf.org/external/np/loi/2003/hti/01/index.htm>; Int'l Monetary Fund, Letter of Intent of the Government of Haiti to the IMF (June 16, 2004), <https://www.imf.org/external/np/loi/2003/hti/01/index.htm>; Int'l Monetary Fund, *Haiti: 2019 Article IV Consultation – Press Release, Staff Report, and Statement by the Executive Director for Haiti*, *supra* note 30, at 9.

Haiti's high risk of debt distress for decades and the need to shift resources toward social programs and investment,¹⁰⁰ IFIs nonetheless treat Haiti's debt as sustainable. Instead of pursuing debt forgiveness and providing grants, IFIs continue to provide further usurious conditional loans to the country based upon economic projections that ignore Haiti's political, social, and economic realities.¹⁰¹

Second, IFI loans are sometimes a precondition for grants and loans by bilateral donors and financing from other IFIs in low-income countries, making it essential that Haiti comply with their conditions.¹⁰² Borrowing states are also pressured to accept the proposed terms and successfully conclude a loan agreement with IFIs because the IFIs' decision to refuse loan assistance "send[s] a strong message to the markets and other potential lenders" that a country's economic policies are unsound, deterring investment.¹⁰³

Third, IFIs and the member states who control them have demonstrated a willingness to wield their power and position to ensure compliance with their policies, and have in the past withheld funds in order to impose them.¹⁰⁴ Following the 1991 coup d'état that ousted Haiti's first democratically elected President, the U.S., one of the largest IFI donors, agreed to facilitate the President's 1994 return to Haiti in exchange for sweeping economic reforms requested by IFI donor states.¹⁰⁵ These reforms included drastic policy changes such as the plummeting of tariffs,

¹⁰⁰ Int'l Monetary Fund, *Haiti: 2019 Article IV Consultation – Press Release, Staff Report, and Statement by the Executive Director for Haiti*, *supra* note 30, at 24.

¹⁰¹ *See id.* at 12, 64; *Haiti: Free From Slavery, Not Yet Free from Debt*, DEBT JUSTICE, <https://debtjustice.org.uk/countries-in-crisis/haiti-free-slavery-not-yet-free-debt> (last visited Aug. 4, 2021); Int'l Monetary Fund & Int'l Dev. Ass'n, *Haiti: Joint Bank-Fund Staff Debt Sustainability Analysis 2012*, 9, Country Rep. 12/74 (Feb. 2012), <https://www.imf.org/external/pubs/ft/dsa/pdf/2012/dsacr1274.pdf>; *see also Debt Forgiveness for Haiti*, HAITIAN CONGRESS PAC, <https://jubileedebt.org.uk/countries-in-crisis/haiti-free-slavery-not-yet-free-debt>; IMF & IDA, *Haiti: Joint Bank-Fund Staff Debt Sustainability Analysis 2012*, 9, Country Rep. 12/74 (Feb. 2012), <https://www.imf.org/external/pubs/ft/dsa/pdf/2012/dsacr1274.pdf>; *see also Debt Forgiveness for Haiti*, HAITIAN CONGRESS PAC (Aug. 4, 2021) <http://www.haitiancongresspac.org/debt-forgiveness>. <http://www.haitiancongresspac.org/debt-forgiveness>.

¹⁰² U.N. Conference on Trade and Development, *The Least Developed Countries 2000 Report*, *supra* note 66, 101-130, U.N. Doc. UNCTAD/LDC/2000.

¹⁰³ NGAIRE WOODS, *THE GLOBALIZERS: THE IMF, THE WORLD BANK, AND THEIR BORROWERS* 70 (2006).

¹⁰⁴ IFIs, such as the WB and IMF, have withheld funds from Haiti as a means to influence domestic decision-making (i.e., withholding funds due to allegations of election fraud in 2000, urging Haiti to hold new elections). *See Beeton, supra* note 25.

¹⁰⁵ Naomi Klein, *Aristide in Exile*, THE NATION (July 14, 2015), <https://www.thenation.com/article/archive/aristide-exile/>.

privatizing various industries, and significantly cutting the country's civil service.¹⁰⁶

Finally, there is a power imbalance built into IFI lending processes, which enables institutions to ensure that the Haitian government agrees to their loan conditions. For example, IFIs prepare the loan terms, while borrowing countries only have the option to accept, reject, or amend these terms, and not to propose their own, making the drafting process coercive by nature.¹⁰⁷ Furthermore, the loan needs final approval from the IFIs' executive boards.¹⁰⁸ Coupled with the borrowing country's reliance on IFI funds, this creates a disproportionate incentive for borrowing states like Haiti to accept conditions as initially proposed by the IFI, in the hopes that the loan will be successfully approved and disbursed. That this incentive is real is evidenced by the parallels between IFI recommendations and the Haitian government's commitments in subsequent letters of intent, which summarize the outcome of negotiations between the IFI and the borrowing state.¹⁰⁹ The two tend to be very similar, demonstrating the degree of coercive influence IFI "recommendations" have on Haiti.¹¹⁰ Coercion of

¹⁰⁶ The economic conditions that were requested of the Aristide administration upon return can be found at Freeman, *supra* note 96; Meeting records from the Paris donor conference can be found at Int'l Bank for Reconstruction & Dev. [IBRD], *Meeting of the Consultative Group for Haiti, Paris, France, January 30-31, 1995, Report of the Proceedings by the Chairman* (May 3, 1995), <http://documents1.worldbank.org/curated/en/548201468273711115/pdf/819750BR0A9RD80Box0379855B00PUBLIC0.pdf>.

¹⁰⁷ IMF staff unilaterally prepares the initial draft of the loan agreement, including its conditions, in the form of a briefing paper (once initiation for a loan is made either through IMF's own staff or a member state, the IMF's area department staff will draft a "briefing paper," which becomes the basis for the negotiation with the borrowing state and "represents the Fund's concept of the program the recipient ought to undertake in order to qualify" for the assistance). This document is eventually negotiated with the borrowing state, Haiti, but Haiti can only accept, reject, or amend what has been proposed, instead of preparing and proposing conditions on its own. *See* KENDALL W. STILES, *NEGOTIATING DEBT: THE IMF LENDING PROCESS* (1991); *see also* Michael Mussa & Miguel Savastano, *The IMF Approach to Economic Stabilization*, *INT'L MONETARY FUND* 79, 87 (1999), <https://www.journals.uchicago.edu/doi/pdfplus/10.1086/654380>.

¹⁰⁸ For the loan to be finalized, the letter of intent—which captures agreed loan conditions following the negotiations between IMF and Haiti—must be approved by the IMF managing director and the executive board. Mussa & Savastano, *supra* note 107, at 87-88 ("the [IMF] mission makes it clear to the authorities that negotiations will be conducted ad referendum, and that no agreement is final until the program is cleared by IMF management and approved by the IMF's Executive Board"). This approval structure also applies to WB loans (which also require executive board approval as their final step). *See* Jonathan Cahn, *Challenging the New Imperial Authority: The World Bank and the Democratization of Development*, 6 *HARV. HUM. RTS. J.* 159, 169 (1993).

¹⁰⁹ Int'l Monetary Fund, *Country's Policy Intentions Document: Letters of Intent – Memoranda of Economic Policies*, <https://www.imf.org/en/Publications/CPID/Letters-of-Intent-Memoranda-of-Economic-Policies> (last visited Dec. 12, 2022).

¹¹⁰ Mussa & Savastano, *supra* note 107, at 89. Scholars have noted that IFIs like the WB or IMF "can exert leverage merely by signaling its interest in certain policy changes to the borrowing country."

borrowing states is also evident in the WB and IMF joint lending processes involving structural adjustment. Countries in dire economic situations, such as Haiti in 1994, can request “debt rescheduling”—known as a Paris Club—from the French Treasury.¹¹¹ Because this Paris Club is convened when countries are at risk of “imminent default” and are willing to accept wide-ranging conditionalities, and because IFIs take on a quasi-trustee role in the process, borrowing states have very little bargaining power in shaping loan terms.¹¹²

2. *Corporate Abuses*

Corporations have not only benefitted greatly from IFI-imposed economic reforms and state policies,¹¹³ they have also caused harm at their

Cahn, *supra* note 108, at 169. For example, at the 2001 Art. IV consultations, the IMF recommended (among many other things) that Haiti widen its tax base through strengthening customs regulations, maintain a floating exchange rate, and implement an automatic price adjustment for petroleum. Int’l Monetary Fund, *Haiti: Staff Report for the 2001 Article IV Consultation*, Country Report No. 02/17 (Feb. 2002), <https://www.imf.org/en/Publications/CR/Issues/2016/12/30/Haiti-Staff-Report-for-the-2001-Article-IV-Consultation-15639>. Each of these recommendations appeared as commitments of the Haitian government in the 2003 letter of intent. Int’l Monetary Fund, *Haiti—Letter of Intent, Memorandum of Economic and Financial Policies, and Technical Memorandum of Understanding*, (June 2003). Furthermore, two months after the IMF recommended improving property rights, enhancing infrastructure (particularly in relation to electricity), and modernizing the tax system to create a more investment-friendly environment in Haiti in 2015, the government of Haiti sent a letter of intent to the IMF pledging (among other things) to implement these reforms. Int’l Monetary Funds, *Haiti: Staff Report for the 2015 Article IV Consultation and Request for a Three-Year Arrangement Under the Extended Credit Facility*, Country Rep. 15/57 (June 2015), <https://www.imf.org/en/Publications/CR/Issues/2016/12/31/Haiti-Staff-Report-for-the-2015-Article-IV-Consultation-and-Request-for-a-Three-Year-43020>; Int’l Monetary Fund, *Haiti: Letter of Intent, Memorandum of Economic and Financial Policies, and Technical Memorandum of Understanding of the Government of Haiti to the IMF* (May 4, 2015), <https://www.imf.org/external/np/loi/2015/hti/050415.pdf>.

¹¹¹ “The Paris Club is a process intended to give a debtor country relief from current payments of official debt,” and “usually involves three elements: (1) the granting of partial relief from current obligations through rescheduling of selected debt payments; (2) additional lending by the International Monetary Fund (“IMF”) and World Bank to underwrite the “gap” between anticipated debt relief and those obligations which the creditors will not reschedule; and (3) policy reforms imposed upon the developing country requiring that a greater proportion of national income be dedicated to debt repayment.” Cahn, *supra* note 108, at 171-72.

¹¹² Scholars note that in the Paris Club process, “the IMF and World Bank take on a governance role that may best be likened to that of a trustee in bankruptcy,” though not accountable as a trustee. *Id.*

¹¹³ For example, during the U.S. occupation of Haiti in the early 20th century, the U.S. and its financial institutions virtually “ruled” Haiti, changing domestic policies and imposing an “austerity budget, raising taxes on Haitian citizens, reducing them for corporations and slashing trade tariffs.” This greatly benefitted corporations, even as it impeded Haitians’ enjoyment of their economic rights. Vincent Joos, *Haiti’s Deadly Riots Fueled by Anger Over Decades of Austerity and Foreign Interference*, THE CONVERSATION (July 26, 2018), <https://theconversation.com/haitis-deadly-riots-fueled-by-anger-over-decades-of-austerity-and-foreign-interference-100209>. See also Rocio Cara Labrador & Diana Roy, *Haiti’s Troubled Path to Development*, CENTER ON FOREIGN RELATIONS (Sept. 17, 2021), <https://www.cfr.org/backgrounder/haitis-troubled-path-development>.

own discretion that has resulted in widespread violations of Haitians' human rights. The mining and garment industries provide particularly salient examples.

The Haitian government, heavily encouraged by IFIs (like the WB) who provide technical assistance for mining sector development, has opened the door to foreign mining corporations to operate in Haiti. Although no mines have yet been built, American and Canadian mining corporations have already been accused of using their exploration permits to enter into land access agreements with Haitian landowners without informed consent and without proper compensation, exploiting Haitians and impacting their livelihoods.¹¹⁴ The WB has also been working toward passing a new mining law in Haiti (which has been delayed due to the ongoing political crisis), which would allow mining corporations to commence mining operations.¹¹⁵ Advocates have heavily criticized the WB's efforts for lacking both community consultation and adequate social and environmental protections.¹¹⁶ Advocates are also concerned that once this law is passed, mining operations—which use vast amounts of water and produce chemicals that are discharged into the environment, contaminating water sources and eroding topsoil—will result in violations of the rights to water and a clean, healthy environment.¹¹⁷

The IFI-imposed trade liberalization policies described above that destroyed Haiti's agricultural sector facilitated its replacement with the

¹¹⁴ *On the Occasion of Newmont's Annual General Meeting, Communities in Haiti Say NO to Gold Mining*, CENTER FOR HUMAN RIGHTS & GLOBAL JUSTICE (Apr. 21, 2020), https://chrgj.org/wp-content/uploads/2020/04/Declaration-from-NW-Haiti-Rejecting-Mining_ENGLISH_200421.pdf; Global Justice Clinic & Haiti Justice Initiative, *Byen Konte, Mal Kalkile? Human Rights and Environmental Risks of Gold Mining in Haiti*, CENTER FOR HUMAN RIGHTS & GLOBAL JUSTICE (Dec. 2015), https://chrgj.org/wp-content/uploads/2016/09/byen_konte_mal_kalkile_human_rights_and_environmental_risks_of_gold_mining_in_haiti.pdf.

¹¹⁵ Global Justice Clinic & Haiti Justice Initiative, *supra* note 114, at 40.

¹¹⁶ See e.g., *Haiti Justice and International Accountability*, CENTER FOR HUMAN RIGHTS & GLOBAL JUSTICE (last visited Sept. 2, 2022), <https://chrgj.org/focus-areas/climate-and-environment/haiti-mining-justice-and-international-accountability/>; CENTER FOR HUMAN RIGHTS & GLOBAL JUSTICE, *supra* note 114.

¹¹⁷ “To say that we are going to develop the mining sector in the country is to say that we have chosen to live in a place where water will not be available, while the little water that there is will be, will be contaminated,” warns the Haitian Mining Justice Collective, which advocates on behalf of those impacted by mining operations in Haiti. *Plusieurs Organisations Sociales Alertent Sur Une Crise de L'eau en Haïti*, ALTERPRESSE (Mar. 22, 2022); GJC & Haiti Justice Initiative, *Byen Konte, Mal Kalkile?* (Dec. 2015), https://chrgj.org/wp-content/uploads/2016/09/byen_konte_mal_kalkile_human_rights_and_environmental_risks_of_gold_mining_in_haiti.pdf; Global Justice Clinic & Haiti Justice Initiative, *supra* note 114, at 82.

garment industry.¹¹⁸ U.S. trade incentive programs¹¹⁹ made it incredibly cheap for foreign companies to import clothing manufactured in Haiti using raw materials exported from the U.S. or other partner countries.¹²⁰ As a result, foreign clothing companies now dominate Haiti's garment industry and are directly responsible for widespread labor and human rights violations, including wage and benefits theft, workplace sexual harassment and assault, and illegal firing of union workers.¹²¹ This is also an important example of how Haitians do not have control over their own economy. The foreign-controlled garment industry accounts for ninety-one percent of all Haiti's exports¹²² and Haitians' livelihoods are at the whims of foreign corporate actors.¹²³

Haiti's need for foreign countries and IFIs to externally finance its large independence debt opened the door for foreign influence and occupation. The U.S. occupation preceded policies that further exerted foreign dominance over Haiti's affairs as well as structural adjustment policies that demanded neoliberal economic reforms in the country. These policies in turn provided an opportunity for corporations to take advantage of cheap labor and trade incentive programs to exploit Haiti's people and resources, leading to additional rights violations. Throughout this time, the effects of foreign interference influenced the emigration of Haitians, who sought exile and refuge in other countries, including the Dominican Republic, the U.S., and Canada.¹²⁴ Due to the diaspora's ties to their

¹¹⁸ Sandra Wisner & Kristina Fried, *Unfolding Haiti's Garment Industry: Decades of Unaccountable Foreign Interference*, OPINIO JURIS (Apr. 12, 2022); Isabel Macdonald, *10 Years Ago, We Pledged to Help Haiti Rebuild. Then What Happened?*, IN THESE TIMES (Jan. 12, 2020), https://inthesetimes.com/features/haiti_earthquake_recovery_us_aid_anniversay_military_waste.html.

¹¹⁹ *Haiti – Trade Agreements*, EXPORT (Aug. 3, 2019), <https://www.export.gov/apex/article2?id=Haiti-Trade-Agreements>.

¹²⁰ Ransford F. Edwards Jr., *Cut from the Same Cloth: The US Textile and Apparel Industry and Post-Disaster Designs for Haiti*, 3 CLASS, RACE AND CORPORATE POWER, 2015; Doug Palmer, *U.S. Urges Clothing Companies to Buy Haiti Apparel*, REUTERS (Feb. 16, 2010), <https://www.reuters.com/article/usa-trade-haiti-idCNN1623944920100216>; *Haiti – Trade Agreements*, EXPORT (Aug. 3, 2019), <https://www.export.gov/apex/article2?id=Haiti-Trade-Agreements>; EXPORT, *supra* note 119.

¹²¹ Sandra Wisner & Kristina Fried, *supra* note 118.

¹²² *Haiti – Country Commercial Guide*, INT'L TRADE ADMIN. (Aug. 3, 2022), <https://www.trade.gov/country-commercial-guides/haiti-market-overview> (last visited Sept. 2, 2022); Rocio Cara Labrador & Diana Roy, *Haiti's Troubled Path to Development*, CENTER ON FOREIGN RELATIONS (Sept. 17, 2021), <https://www.cfr.org/backgrounder/haitis-troubled-path-development>.

¹²³ Press Release, Bureau Des Avocats Internationaux and Institute for Justice & Democracy in Haiti, *Haiti's Economy at the Mercy of the International Community* (Sept. 8, 2022), http://www.ijdh.org/press_release/haitis-economy-at-the-mercy-of-the-international-community/.

¹²⁴ Manuel Orozco, *Understanding the Remittance Economy in Haiti* (World Bank, Final Draft, 2006), <https://citeseerx.ist.psu.edu/document?repid=rep1&type=pdf&doi=f23c364bf3598da20614ccad96cbc01ff501df49>

families back home, remittances to the country have increasingly become the engine of the Haitian economy, further perpetuating Haiti's reliance on outside actors. As discussed in Section II, this system of dependence and entrenched unequal power structures has created significant obstacles to the realization and protection of fundamental human rights in Haiti.

II. IMPLICATED HUMAN RIGHTS

The cumulative impact from the decades of acts and policies imposed by foreign actors since Haiti's independence have resulted in violations of the population's economic and social rights, including an adequate standard of living,¹²⁵ health,¹²⁶ work,¹²⁷ and education.¹²⁸ Haiti's desperate attempts to generate the required revenue to repay its independence debt have included the wholesale restructuring of the rural tax base, a direct independence debt tax on Haitians,¹²⁹ over-production and taxation of cash crops, and deforestation.¹³⁰ These measures rendered economic and agricultural diversification impossible, made food imports necessary, and left the population's basic needs unmet.¹³¹ The continued material burden of slavery and colonization manifested in the form of an independence debt,¹³²

¹²⁵ International Covenant on Economic, Social, and Cultural Rights [ICESCR] art. 11, Dec. 16, 1966, 993 U.N.T.S. 3; G.A. Res. 217(III) A, Universal Declaration of Human Rights art. 25 (Dec. 10, 1948).

¹²⁶ ICESCR, *supra* note 125, at art. 12; G.A. Res. 217(III), *supra* note 125, at art. 25.

¹²⁷ ICESCR, *supra* note 125, at art. 6; G.A. Res. 217(III), *supra* note 125, at art. 23.

¹²⁸ ICESCR, *supra* note 125, at art. 13; G.A. Res. 217(III), *supra* note 125, at art. 26.

¹²⁹ Phillips, *supra* note 50, at 5.

¹³⁰ *See, e.g.*, Maerterns & Stork, *supra* note 35.

¹³¹ Phillips, *supra* note 50.

¹³² Note that France has consistently dismissed calls for restitution for Haiti despite calls to repay the debt it unjustly gained from Haiti from academics, politicians, artists, and public figures. *See* Robert Marquand, *France Dismisses Petition for it to Pay \$17 billion in Haiti Reparations*, CHRISTIAN SCI. MONITOR (Aug. 17, 2010), <https://www.csmonitor.com/World/Europe/2010/0817/France-dismisses-petition-for-it-to-pay-17-billion-in-Haiti-reparations>; *see also* M. Sarkozy, *Rendez à Haïti Son Argent Extorqué*, LIBÉRATION (Aug. 16, 2010), https://www.liberation.fr/planete/2010/08/16/m-sarkozy-rendez-a-haiti-son-argent-extorque_672275/; *An Open Letter to French President Nicolas Sarkozy (English and French)*, INST. JUST. & DEMOCRACY HAITI (Aug. 16, 2010), <https://upsidedownworld.org/news-briefs/news-briefs-news-briefs/open-letter-to-french-president-nicolas-sarkozy/>. In January 2020, Thomas Piketty, a French economist, recognized that France should repay at least U.S. \$28 billion to Haiti to correct its past wrongs, *see* Thomas Lalime, *Au Minimum, La France Devrait Rembourser Plus de 28 Milliards de Dollars Américains à Haïti Aujourd'hui, Soutient le Célèbre Économiste Français Thomas Piketty*, LE NOUVELLISTE (Jan. 19, 2020), <https://lenouvelliste.com/article/211316/au-minimum-la-france-devrait-rembourser-plus-de-28-milliards-de-dollars-americains-a-haiti-aujourd'hui-soutient-le-celebre-economiste-francais-thomas-piketty>; *see also* Lazaro Gamio et al., *The Ransom: Haiti's Lost Billions*, N.Y. TIMES (May 20, 2022), <https://www.nytimes.com/interactive/2022/05/20/world/americas/enslaved-haiti-debt-timeline.html>. Former Haitian President Jean-Bertrand Aristide had demanded formal recompense in 2002 based on legal claims that were prepared by attorney Ira Kurzban

which—alongside subsequent conditioned loans and other foreign interference—distorted the development of Haiti’s economy, government, and democratic institutions.¹³³ This set the stage for centuries of poverty and political instability.¹³⁴ The resulting human rights violations were particularly impactful due to their interconnectedness—violations of the right to water or the right to social security, for example, led to violations of a host of other fundamental rights.

A. *Implicated Economic and Social Rights*

Foreign-imposed policies have particularly impeded Haitians’ rights to water, a healthy environment, an adequate standard of living, social security, education, and health. They have also shifted the provision of critical social services away from the government and toward the private sector, making populations who depend on those services vulnerable to changes in external financing.

1. *Right to Water*

Because a large portion of Haiti’s national spending has been allocated toward paying off debt, the government has lacked the funds necessary to invest in the development of crucial infrastructure such as roads,¹³⁵ telephone networks,¹³⁶ and, importantly, pipelines and water sanitation facilities.¹³⁷ Haitians thus not only lack access to adequate

on behalf of the Haitian people, but that effort ended in 2004, when the elected Haitian government was deposed by a military coup implicating Canada, the U.S. and France. See Jacqueline Charles, *Aristide Pushes for Restitution from France*, MIA. HERALD (Dec. 18, 2003), <http://www.latinamericanstudies.org/haiti/haiti-restitution.htm>; Phillips, *supra* note 50; Constant Méheut et al., *Demanding Reparations, and Ending up in Exile*, N.Y. TIMES (May 26, 2022), <https://www.nytimes.com/2022/05/20/world/americas/haiti-aristide-reparations-france.html>.

¹³³ Daut, *supra* note 6; Labrador & Roy, *supra* note 7; HALLWARD, *supra* note 9, at 12.

¹³⁴ Scheld, *supra* note 75; DUBOIS, *supra* note 8; Phillips, *supra* note 50; see also Tunzelmann, *supra* note 12; Hudson, *supra* note 7; *Country Profile: Haiti*, at 10, LIBR. CONG. (May 2006), <https://www.refworld.org/docid/46f91344d.html>; Anthony Phillips & Brian Concannon Jr., *Economic Justice in Haiti Requires Debt Restitution*, AMERICAS PROGRAM INT’L REL. CTR. (Sept. 7, 2006), <https://www.teachingforchange.org/wp-content/uploads/2017/06/haitis-debt.pdf>.

¹³⁵ Oscar A. Mitnik et al., *Bright Investments: Measuring the Impact of Transport Infrastructure Using Luminosity Data in Haiti*, INTER-AMERICAN DEV. BANK (2018), https://publications.iadb.org/publications/english/document/2018DEC12_Bright_investments.pdf; see also *Haiti Invests Heavily in Building Roads*, INTER-AMERICAN DEV. BANK (Apr. 13, 2009), <https://www.iadb.org/en/news/webstories/2009-04-13/haiti-invests-heavily-in-rebuilding-roads%2C5339.html>.

¹³⁶ As of 2019, Haiti ranks 204th in the world for the number of fixed landlines. See *Haiti*, U.S. CENT. INTEL. AGENCY (July 28, 2021), <https://www.cia.gov/the-world-factbook/countries/haiti/#communications>.

¹³⁷ See Sarah Fraser, *Current and Future Effort: The Need to Improve Infrastructure in Haiti*, BORGEM MAG. (Nov. 25, 2017), <https://www.borgenmagazine.com/the-need-to-improve-infrastructure-in-haiti/>.

amounts of water but also access to clean water,¹³⁸ which violates both their right to water, as set out in Article 11 of the International Covenant on Economic, Social, and Cultural Rights (ICESCR),¹³⁹ and their right to health, as set out in Article 12 of the ICESCR.¹⁴⁰ These violations amplified the impact of the introduction of cholera to Haiti by the United Nations (UN) in 2010, which killed nearly 10,000 and infected more than 800,000 people, according to official UN numbers.¹⁴¹ Mining activities risk further exacerbating the lack of access to clean water, as mine construction can contaminate waterways and mining operations—although not yet underway—will likely result in both chemical contamination and water quality reduction.¹⁴²

2. Right to a Healthy Environment

The damage that deforestation does to the environment may have long-lasting effects on human rights in Haiti. Although the right to a healthy environment is not covered by the ICESCR or any other global human rights treaty, both the UN Human Rights Council¹⁴³ and the General Assembly¹⁴⁴ have adopted non-binding resolutions explicitly recognizing the right to a clean, healthy, and sustainable environment as a universal human right. In addition, it is implicitly recognized as a precondition to other rights, including the right to life, food, health, and an adequate

¹³⁸ Richard Gelting et al., *Water, Sanitation and Hygiene in Haiti: Past, Present, and Future*, 89 AM. J. TROPICAL MED. & HYGIENE 665 (Oct. 9, 2013), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3795096/>.

¹³⁹ ICESCR, *supra* note 125, at art. 11. Haiti ratified the ICESCR on October 8, 2013. *Chapter IV. Human Rights. 3. International Covenant on Economic, Social and Cultural Rights*, United Nations Treaty Collection, https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-3&chapter=4&clang=_en (last visited Aug. 30, 2022).

¹⁴⁰ ICESCR, *supra* note 125, at art. 12.

¹⁴¹ U.N. Off. Coordination Humanitarian Affs. [OCHA], *Haiti: Cholera Figures (As of 31 January 2019)* (Jan. 31, 2019), https://reliefweb.int/sites/reliefweb.int/files/resources/ocha-hti-cholera-figures-20190131_en.pdf; Harv. L. Sch. Int'l Hum. Rts. Clinic [HLSIHRC], IJDH, & Bureau des Avocats Internationaux [BAI], *Violations of the Right to Effective Remedy: The UN's Responsibility for Cholera in Haiti, Joint Submission to the UN Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence* (2020), <http://www.ijdh.org/wp-content/uploads/2020/02/FINAL-HLS-IHRC-IJDH-BAI-Submission-to-Special-Procedures-Cholera-2-6-2020.pdf> (“Cholera is a disease of inequity. It is generally preventable and treatable with access to clean water, adequate sanitation, and basic medical care. But in Haiti, where many people lack these basic rights, the disease “ravaged” the population and diverted scarce resources.”).

¹⁴² The Global Justice Clinic & The Haiti Justice Initiative, *Byen Konte, Mal Kalkile? Human Rights and Environmental Risks of Gold Mining in Haiti* at 81-82 (Dec. 2015), https://chrjg.org/wp-content/uploads/2016/09/byen_konte_mal_kalkile_human_rights_and_environmental_risks_of_gold_mining_in_haiti.pdf.

¹⁴³ G.A. Res. 48/23 (Oct. 5, 2021).

¹⁴⁴ G.A. Res. 76/300 (Jul. 26, 2022).

standard of living.¹⁴⁵ In the context of Latin America and the Caribbean, the right to live in a healthy environment for both present and future generations is enshrined in the Escazú Agreement.¹⁴⁶ The Agreement also seeks to protect the right to sustainable development through guaranteeing implementation of “the rights of access to environmental information, public participation in the environmental decision-making process and access to justice in environmental matters, and the creation and strengthening of capacities and cooperation.”¹⁴⁷

Researchers warn that if the current rate of deforestation continues, Haiti could lose all its forests in the next two decades.¹⁴⁸ In 2018, a court in Colombia found that deforestation in and of itself constitutes a violation of the right to a healthy environment.¹⁴⁹ Further, deforestation leads to subsequent harms such as worsening the impact of climate change, natural disasters,¹⁵⁰ and topsoil erosion that depletes nutrient rich soil and can result in complete desertification.¹⁵¹ These consequences of deforestation equally violate the right to a healthy environment, and, in this way, deforestation also contributes to violations of the right to water,¹⁵² the right to food,¹⁵³ and

¹⁴⁵ Dinah Shelton, *Human Rights, Health and Environmental Protection: Linkages in Law and Practice, A Background Paper for the WHO* (Health and Human Rights Working Paper Series No. 1, 2002).

¹⁴⁶ *Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean*, OBSERVATORY ON PRINCIPLE 10 IN LAT. AM. AND CARIBBEAN, <https://observatoriop10.cepal.org/en/treaties/regional-agreement-access-information-public-participation-and-justice-environmental> (last visited Oct. 19, 2021); Inger Anderson, Under-Sec’y-Gen. of the UNEP, *The Escazú Agreement: Towards Environmental Justice for All* (Apr. 22, 2022).

¹⁴⁷ *Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean* (Escazú Agreement) art. 1, Sept. 27, 2018, No. 56654.

¹⁴⁸ Carinya Sharples & Morgan Erickson-Davis, *If Current Deforestation Rates Continue, Haiti May Lose Its Forest Within Two Decades*, PAC. STANDARD (Nov. 9, 2018), <https://psmag.com/environment/haiti-is-set-to-lose-its-forests-in-twenty-years>.

¹⁴⁹ See Tribunal Superior del Distrito Judicial de Bogotá [T. Sup.] [Appellate Court], Sala. Civ. enero 29, 2018, STC4360-2018 No. 11001-22-03-000-2018-00319-01 (Colom.), <https://www.dejusticia.org/wp-content/uploads/2018/01/TutelaCambioClim%C3%A1tico.pdf?x54537&x54537&x54537&x54537>.

¹⁵⁰ Sam Jones, *Why is Haiti Vulnerable to Natural Hazards and Disasters?*, GUARDIAN (Oct. 4, 2016), <https://www.theguardian.com/world/2016/oct/04/why-is-haiti-vulnerable-to-natural-hazards-and-disasters>.

¹⁵¹ See, e.g., Nathan C. McClintock, *Agroforestry and Sustainable Resource Conservation: A Case Study* (Apr. 19, 2003) (unpublished manuscript), https://www.academia.edu/1226072/Agroforestry_and_sustainable_resource_conservation_in_Haiti_a_case_study.

¹⁵² ICESCR, *supra* note 125, at art. 11; Comm. on Econ., Soc. & Cultural Rts., General Comment No. 15, *The right to Water* (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights), U.N. Doc. E/C.12/2002/11 (Jan. 20, 2003).

the right to housing.¹⁵⁴ Many of the consequences of deforestation are also potential consequences of mining. Both mine construction and actual mining operations can lead to soil erosion and water and air pollution,¹⁵⁵ which would violate Haitians' right to a clean and healthy environment.

3. *Right to an Adequate Standard of Living*

The imposition of fiscal austerity conditions, which prioritized debt servicing, fiscal discipline, privatization, and trade liberalization, has destabilized Haiti's ability to invest in its population and accelerated declines in key human rights areas.¹⁵⁶ Trade liberalization introduced cheap food imports,¹⁵⁷ put farmers out of business,¹⁵⁸ impeded Haiti's ability to provide its own food supply, and increased rates of malnutrition and food insecurity.¹⁵⁹ The high rate of food insecurity among low income Haitian households, a violation of Haitians' right to an adequate standard of living as set out in Article 11 of the ICESCR, has led to a host of other related harms. These include the deterioration of health due to malnutrition,¹⁶⁰

¹⁵³ ICESCR, *supra* note 125, at art. 11.

¹⁵⁴ *Id.*

¹⁵⁵ Global Justice Clinic & Haiti Justice Initiative, *Byen Konte, Mal Kalkile? Human Rights and Environmental Risks of Gold Mining in Haiti* at 81-82, 89 (Dec. 2015), https://chrj.org/wp-content/uploads/2016/09/byen_konte_mal_kalkile_human_rights_and_environmental_risks_of_gold_mining_in_haiti.pdf.

¹⁵⁶ *See, e.g.*, N.Y.U. INT'L ORGS. CLINIC, *supra* note 71.

¹⁵⁷ "According to the Environmental Working Group, Arkansas farmers received more than \$2 billion in direct payments from the federal government between 1995 and 2011, half of which was for rice production. Riceland Foods and Producers Rice Mill, the first- and second-largest recipients of federal subsidies in the state, received over \$868 million in subsidies during the same period . . . [f]or years, organizations . . . have harshly criticized American rice subsidies for enabling the United States to dump its product in developing countries at depressed prices." Maura R. O'Connor, *Subsidizing Starvation*, FOREIGN POL'Y (Jan. 11, 2013, 11:55 PM), <https://foreignpolicy.com/2013/01/11/subsidizing-starvation/>.

¹⁵⁸ *See* Jean-Germain Gros, *Indigestible Recipe: Rice, Chicken Wings, and International Financial Institutions: Or Hunger Politics in Haiti*, 40 J. BLACK STUD. 974, 981-83 (2010).

¹⁵⁹ In 2008, when global prices of basic foodstuffs, such as rice, oil, and chicken soared, the majority of Haitians could not afford daily food and, as a result, widely protested in the streets. *Inside Haiti's food riots*, AL JAZEERA (Apr. 16, 2008), <https://www.aljazeera.com/news/2008/4/16/inside-haitis-food-riots>; *see also* Sandra C. Wisner, *Starved for Justice: International Complicity in Systematic Violations of the Right to Food in Haiti*, COLUMBIA HUM. RTS. L. REV. (May 10, 2022), <https://hrlr.law.columbia.edu/hrlr-online/starved-for-justice-international-complicity-in-systematic-violations-of-the-right-to-food-in-haiti/>.

¹⁶⁰ Since the tariff reduction, "rice-growing areas now have some of the highest concentrations of malnutrition and poverty . . . [r]ice farmers have responded to the lower prices by cutting down on their household costs, such as health and education, and the women among them have taken on additional work as rural labourers." *Kicking Down the Door: How Upcoming WTO Talks Threaten Farmers in Poor Countries*, OXFAM INT'L at 26-27 (Apr. 2005), <https://oxfamilibrary.openrepository.com/bitstream/handle/10546/114531/bp72-kicking-down-door-110405-en.pdf?sequence=1&isAllowed=y>.

lower enrollment in education,¹⁶¹ and exploitation in manufacturing industries, where many Haitians who lost their livelihoods from agriculture sought employment.¹⁶² Tax cuts for corporations have encouraged corporate actors to outsource manufacturing to Haiti.¹⁶³ These corporate actors have been accused of egregious labor rights violations and contribute to the previously mentioned human rights violations associated with poverty.¹⁶⁴

¹⁶¹ School enrollment has consistently been lower in rural areas hard-hit by agricultural liberalization policies: “while three of four children in urban areas start in primary school, only around half of the children in the rural areas are given this opportunity.” Henriette Lunde, *Youth and Education in Haiti: Disincentives, Vulnerabilities and Constraints*, FAFO (2008), https://www.fafo.no/media/com_netsukii/10070.pdf. Educational attainment for rural children is closely linked to income, and researchers have found that “even when the farmers are able to sell their crops before the start of the school year, the surplus is often not enough to set aside money for school fee[s]” because “other expenses must be covered first, like paying workers who have assisted during the harvest and buying fertilizer.” *Id.* at 28. Overall, “there is good reason to believe that the high increase in costs of fertilizing, in combination with the increase in prices of food and fuel, have forced rural children out of school in Haiti, or prevented them from starting.” *Id.*

¹⁶² “The collapse of the Haitian agricultural sector, beginning in the late 1980’s, has perpetuated an exodus from rural areas to more crowded urban centers. However, few prospects, in terms of jobs, were available at the time these migrants moved to the cities . . . As a byproduct of economic liberalization, some foreign investment managed to trickle into Haiti,” including “American clothing companies [that] set up sweatshops in trade zones in Haiti where workers were paid an average wage of \$.30 per hour.” In January 2004, “a 110-pound sack of American rice sold for \$22.50, which would require 75 hours of labor, yet by May 2004, the price went up to \$45, meaning that a Haitian sweatshop worker would have to work 150 hours just to acquire one sack of rice.” *Bill Clinton’s Heavy Hand on Haiti’s Vulnerable Agricultural Economy: The American Rice Scandal*, COUNCIL HEMISPHERIC AFFS. (Apr. 13, 2010), <https://www.coha.org/haiti-research-file-neoliberalism%E2%80%99s-heavy-hand-on-haiti%E2%80%99s-vulnerable-agricultural-economy-the-american-rice-scandal/>. For more on the impact of trade liberalization policies on Haitians’ right to education, see *infra* Section II.A.5.

¹⁶³ *Haiti – Country Commercial Guide*, INTERNATIONAL TRADE ADMINISTRATION (Aug. 3, 2022), <https://www.trade.gov/country-commercial-guides/haiti-market-overview>; *Haiti – Trade Agreements*, EXPORT.GOV (Aug. 3, 2019), <https://www.export.gov/apex/article2?id=Haiti-Trade-Agreements>.

¹⁶⁴ “The daily minimum wage for export apparel workers is 420 gourdes (about \$5.07), more than four times less than the estimated cost of living.” *The High Cost of Low Wages in Haiti: A Living Wage Estimate for Garment Workers in Port-au-Prince*, SOLIDARITY CTR. (Apr. 2019), <https://www.solidaritycenter.org/wp-content/uploads/2019/05/Haiti.High-Cost-of-Wages-2019-Report.English.4.19.pdf>; Jeff Abbott, *Thousands of Haitian Workers Are on Strike Against Foreign-Owned Sweatshops*, IN THESE TIMES (June 22, 2017), <https://inthesetimes.com/article/haiti-strike-sweatshops-working-conditions-low-wages-workers>; Sandra Wisner & Kristina Fried, *Unfolding Haiti’s Garment Industry: Decades of Unaccountable Foreign Interference*, OPINIO JURIS (Apr. 12, 2022), <http://opiniojuris.org/2022/04/12/unfolding-haitis-garment-industry-decades-of-unaccountable-foreign-interference/>; *Guatemala New Low Minimum Wage “Setback on Sustainable Development” – UN Rights Experts*, OFF. HIGH COMM’R HUM. RTS. (Feb. 17, 2015), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15575&LangID=E> (stating that Guatemala has similar differentiated minimum wages for different sectors, which has raised concerns from the Economic and Social Council as well as the United Nations Special Rapporteurs on extreme poverty, Philip Alston, and on the right to food, Hilal Elver).

4. *Right to Social Security*

The focus on taxation policy to bolster fiscal space for investment in social services and the foreign provision of such services following the imposition of Washington Consensus measures reduced social safety nets for the working class, especially those working within Haiti's informal sector. Formal employment in Haiti "remains small (thirteen percent of the labor force) with agriculture and urban informal sectors still providing most of the employment with about forty percent and forty-seven percent of the labor market, respectively."¹⁶⁵ Because of low formal employment, contributory schemes do not raise enough revenue to create social safety nets. This leads to a violation of the right to social security as set out in Article 9 and General Comment 19 of the ICESCR.¹⁶⁶ Those social programs which do exist "are characterized by limited coverage, are often ad hoc, cover small geographical areas or [are] narrowly defined, and are scattered across numerous institutions."¹⁶⁷ Corporate actors have also contributed to the reduction in social safety nets—in 2022, every garment factory operating in Haiti under U.S. trade incentive programs was found to have violated international and Haitian labor standards with respect to the provision of social security and other benefits.¹⁶⁸ There is no evidence that garment factories operating under U.S. trade incentive programs have ever lost trade benefits as a result of these violations.¹⁶⁹

5. *Right to Education*

The limitations on social services spending have further led to Haiti falling short in another key area of development: education. Article 13 of the ICESCR guarantees the right to an education including compulsory, free, and available primary education and different forms of secondary education, which "shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive

¹⁶⁵ WBG, *supra* note 91, at xii.

¹⁶⁶ ICESCR, *supra* note 125, at art. 9; Comm. On Econ., Soc. & Cultural Rts., General Comment No. 19, The Right to Social Security (art. 9), U.N. Doc. E/C.12/GC/19 (Feb. 4, 2008).

¹⁶⁷ Oxford Pol'y Mgmt. & World Food Programme, *supra* note 90 at ii.

¹⁶⁸ Better Work Haiti, a program that works with all garment factories in Haiti exporting to the U.S. to identify areas of noncompliance with core labor standards and help bring them into compliance, reported limited remediation efforts in factories. *24th Compliance Synthesis Report Under the Hope Legislation: Haiti*, BETTER WORK HAITI (May 2021-June 2022), https://betterwork.org/wp-content/uploads/2022/08/BWH_24th_Compliance_SR_HOPE-II_English.pdf.

¹⁶⁹ Sandra Wisner & Kristina Fried, *Unfolding Haiti's Garment Industry: Decades of Unaccountable Foreign Interference*, OPINIO JURIS (Apr. 12, 2022), <http://opiniojuris.org/2022/04/12/unfolding-haitis-garment-industry-decades-of-unaccountable-foreign-interference/>.

introduction of free education.”¹⁷⁰ Haitians have limited access to education as a consequence of inadequate investment in education and the emphasis on humanitarian organizations, external aid agencies, and the private sector providing these services. The vast majority of educational institutions are fee-charging private schools.¹⁷¹ In a country with such high rates of extreme poverty and food insecurity, these fees are prohibitively expensive, making education unattainable to a large sector of the population. Nearly 180,000 school-aged children are not in primary or secondary school¹⁷² and the adult literacy rate is a dismal 61.7%.¹⁷³ The severely limited availability of free public education in Haiti is clearly a violation of the right to education, which requires that states provide free education to all at the primary level and “take concrete steps toward achieving free secondary and higher education.”¹⁷⁴

6. *Right to Health*

Inadequate spending on healthcare due to the imposition of structural adjustment policies has left Haitians vulnerable to death from preventable disease. Haiti’s public spending on health is a mere \$13 per capita a year, which is below the average for low-income countries and far below the regional average.¹⁷⁵ From 2010 to 2016, health spending in Haiti was between 7.7% and 9.1% of the GDP, but less than 10% of that amount was government spending—the rest came from external (non-Haitian) financiers, private households, and businesses.¹⁷⁶ Due to a shortage of

¹⁷⁰ ICESCR, *supra* note 125, at art. 13.

¹⁷¹ WBG, *Social Resilience and State Fragility in Haiti: A Country Social Analysis*, at 44 (Apr. 27, 2006), <http://documents1.worldbank.org/curated/en/533491468257084108/pdf/360690HT.pdf>

¹⁷² *Haiti Humanitarian Needs Overview 2019*, UNICEF at 3 (Feb. 2019), https://reliefweb.int/sites/reliefweb.int/files/resources/HNO-Haiti_2019-Summary-EN.pdf.

¹⁷³ *Human Development Reports: Literacy Rate, Adult (% ages 15 and older)*, U.N. DEV. PROGRAMME (2019), <https://data.worldbank.org/indicator/SE.ADT.LITR.ZS?locations=HT>.

¹⁷⁴ Comm. on Econ., Soc. & Cultural Rts., General Comment No. 13, The Right to Education (Art. 13 of the Covenant), U.N. Doc. E/C.12/1999/10 at 4 (Dec. 8, 1999).

¹⁷⁵ “[The] government health expenditure per capita in Haiti is \$13 dollars, which is lower than the low-income country average of \$15 dollars. This indicator is much lower than the average for neighboring countries like the Dominican Republic (\$180 dollars) or Cuba (\$781 dollars) and the Latin American and Caribbean region, which has a public expenditure of \$336 dollars per capita.” *Better Spending Better Care: A Look at Haiti’s Health Financing*, WBG at 9 (Jun. 1, 2017), <https://www.worldbank.org/en/country/haiti/publication/better-spending-better-care-a-look-at-haitis-health-financing>.

¹⁷⁶ MINISTERE DE LA SANTE PUBLIQUE ET DE LA POPULATION (MSPP), REPUBLIQUE D’HAITI, RAPPORT DES COMPTES NATIONAUX DE SANTE 2010-2011 (June 2013), <https://mspp.gouv.ht/site/downloads/Comptes%20Nationaux%20de%20Sant%C3%A9-version%20web.pdf>; MSPP, REPUBLIQUE D’HAITI, RAPPORT DES COMPTES NATIONAUX DE SANTE 2011-2012 (June 2014), <https://mspp.gouv.ht/site/downloads/Rapport%20des%20CNS%202011%202012%20version%20web.pdf>; MSPP,

healthcare workers¹⁷⁷ and the unequal clustering of health care services in metropolitan areas,¹⁷⁸ access to primary and preventive health care, particularly for the poor, is low. The lack of adequate healthcare also disproportionately affects women and children—infant and maternal mortality rates are still five and three times higher than the regional average, respectively.¹⁷⁹ Because the right to health, as outlined in Article 12 of the ICESCR, encompasses healthcare that is available in sufficient quantities and accessible to all,¹⁸⁰ the shortage of healthcare workers and the lack of accessibility of healthcare facilities for Haitians living in rural areas violates Haitians' right to health.

7. *Foreign Administration of Social Services*

With direct budget support from foreign actors accounting for 20.5% of Haiti's 2019-2020 budget, and the majority of national spending on health and education within the past decades coming from external financiers, private households, and businesses rather than the government itself, the funding of critical social programs in Haiti and the resulting fulfilment of human rights remains volatile. Indeed, reliance on external assistance for servicing the population's fundamental rights has led to further harms when the external assistance was unexpectedly decreased, stalled, or canceled.¹⁸¹

REPUBLIQUE D'HAÏTI, RAPPORT DES COMPTES NATIONAUX DE SANTE 2012-2013 (Aug. 2015), <http://mspp.gouv.ht/site/downloads/Rapport%20des%20CNS%202012-2013%20compressed.pdf>; MSPP, REPUBLIQUE D'HAÏTI, RAPPORT DES COMPTES NATIONAUX DE SANTE 2013-2014 (Nov. 2017), <https://mspp.gouv.ht/site/downloads/Rapport%20CNS%202013-2014.pdf>; MSPP, REPUBLIQUE D'HAÏTI, RAPPORT DES COMPTES NATIONAUX DE SANTE 2014-2015/2015-2016 (Dec. 2019), <https://mspp.gouv.ht/site/downloads/CNS%202014%202015%20et%202015%202016%20version%20web.pdf>.

¹⁷⁷ *Haiti Health Workforce Data Audit Leads to Human Resources for Health Improvements*, U.S. AGENCY INT'L. DEV., <https://www.hfgproject.org/health-workforce-data-audits-lead-improvements-human-resources-health-haiti/> (last visited Aug. 5, 2021).

¹⁷⁸ Wenjuan Wang et al., *Limited Service Availability, Readiness, and Use of Facility-Based Delivery Care in Haiti: A Study Linking Health Facility Data and Population Data*, 5 GLOB. HEALTH SCI. & PRAC. 244, 244 (2017), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5487087/>.

¹⁷⁹ WBG, *Better Spending Better Care*, *supra* note 175, at 2; *see also Child Survival and the SDGs*, U.N. CHILD'S EMERGENCY FUND [UNICEF] (Sept. 2020), <https://data.unicef.org/topic/child-survival/child-survival-sdgs/>; WBG, *Mortality Rate, Neonatal (per 1,000 live births) – Haiti*, <https://data.worldbank.org/indicator/SH.DYN.NMRT?locations=HT> (last visited Aug. 6, 2021).

¹⁸⁰ Comm. on Econ., Soc. & Cultural Rts., General Comment No. 14, The Right to the Highest Attainable Standard of Health (Art. 12 of ICESCR), U.N. Doc. E/C.12/2000/4 (Aug. 11, 2000).

¹⁸¹ Int'l Monetary Fund, *Haiti: Selected Issues*, Country Report No. 01/4 (Jan. 2001), <https://www.imf.org/en/Publications/CR/Issues/2016/12/30/Haiti-Selected-Issues-3883>; WBG, *Haiti: Country Assistance Evaluation*, *supra* note 96, at 9.

The failure of the IDB-funded water project in Haiti, first promised in 1998, demonstrates the harmful effects of aid reliance.¹⁸² Despite the severity of the water crisis in Haiti, the U.S. purposefully used its influence to delay the disbursement of IDB loans due to political considerations—even though the IDB’s Articles of Agreement explicitly prohibit taking political considerations into account.¹⁸³ This delay then led Haiti to default on its loans, triggering the IDB policy that prevents the Bank from releasing the loans.¹⁸⁴ As a precondition to release the blocked loans, Haiti had to agree to a Staff Monitored Program (SMP) by the IMF, which required severe economic reforms.¹⁸⁵

Making matters worse, the delayed water project did not significantly improve access to water and sanitation¹⁸⁶ and even made water more expensive by requiring a tariff which would then be put toward the repayment of loans.¹⁸⁷ The ongoing lack of access to clean water exposes the population to water-borne illnesses; for example, it significantly contributed to the nearly decade-long cholera epidemic that began in 2010¹⁸⁸ and the 2022 resurgence of the deadly disease,¹⁸⁹ claiming the lives of many.¹⁹⁰ This specific example demonstrates how the actions of IFIs and their Member States stand in the way of Haitians’ ability to exercise their right to water.¹⁹¹ This interference culminates in violations of other rights dependent on the right to water, including the right to an adequate standard

¹⁸² See Beeton, *supra* note 25.

¹⁸³ See Agreement Establishing the Inter-American Development Bank art. VIII, §5(f), Apr. 8, 1959, O.A.S.T.S. No. 14.

¹⁸⁴ See Beeton, *supra* note 25.

¹⁸⁵ *Id.*

¹⁸⁶ Varma et al., *supra* note 75.

¹⁸⁷ *Id.*

¹⁸⁸ Daniele Lantagne et al., *The Cholera Outbreak in Haiti: Where and how did it begin?*, in CURRENT TOPICS IN MICROBIOLOGY AND IMMUNOLOGY (2013), http://ijdh.org/wp-content/uploads/2013/07/The-Cholera-Outbreak-in-Haiti_Where-and-How-it-Begin.pdf; *10-Year Anniversary of Cholera Introduction in Haiti*, INSTITUTE FOR JUSTICE AND DEMOCRACY IN HAITI (Oct. 31, 2020), <https://www.ijdh.org/2020/10/accountability/10-year-anniversary-of-cholera-introduction-in-haiti/>.

¹⁸⁹ *Haiti: Urgently Address Cholera Outbreak*, HUMAN RIGHTS WATCH (Oct. 18, 2022), <https://www.hrw.org/news/2022/10/18/haiti-urgently-address-cholera-outbreak>.

¹⁹⁰ *Cholera in Hispaniola – Risk assessment*, PAN AMERICAN HEALTH ORGANIZATION (Dec. 2, 2022), <https://www.paho.org/en/documents/cholera-hispaniola-island-risk-asesment> (reporting at least 230 deaths since October 1, 2022); *Cholera – Haiti*, WORLD HEALTH ORGANIZATION (Oct. 12, 2022), <https://www.who.int/emergencies/disease-outbreak-news/item/2022-DON415> (reporting that the cholera epidemic from 2010-2019 killed at least 9,792).

¹⁹¹ ICESCR, *supra* note 125, at art. 11; G.A. Res. 217(III), *supra* note 125, at art. 25; see Comm. on Econ., Soc. & Cultural Rts., General Comment No. 15, The right to water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights), U.N. Doc. E/C.12/2002/11 (Jan. 20, 2003).

of living,¹⁹² the right to health,¹⁹³ the right to adequate housing,¹⁹⁴ the right to education,¹⁹⁵ and the right to food.¹⁹⁶

Consequently, the imposition of Washington Consensus policies encouraged Haiti to privatize key, basic infrastructure services and to seek assistance from humanitarian organizations and external aid agencies due to budgetary concerns.¹⁹⁷ A lack of government services left gaps that private organizations have subsequently tried to fill, creating cycles of dependence and harm to the population's rights.¹⁹⁸

B. Implicated Civil and Political Rights

The negative effects not only extend to the above-discussed economic and social rights but also to civil and political rights, particularly the right to political participation. The right to participate in public affairs is included in Article 21 of the Universal Declaration of Human Rights (UDHR), Article 25 of the International Covenant on Civil and Political Rights (ICCPR), as well as in other international treaties¹⁹⁹ such as the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW),²⁰⁰ the International Convention on the Elimination of all forms of Racial Discrimination (ICERD),²⁰¹ and the Convention on the Rights of Persons with Disabilities (CRPD).²⁰² The right to participate in public affairs is broadly interpreted and includes political participation—either directly, such as by voting on referenda, or through freely chosen

¹⁹² ICESCR, *supra* note 125, at art. 11; G.A. Res. 217(III), *supra* note 125, at art. 25.

¹⁹³ ICESCR, *supra* note 125, at art. 11; G.A. Res. 217(III), *supra* note 125, at art. 25.

¹⁹⁴ ICESCR, *supra* note 125, at art. 11; G.A. Res. 217(III), *supra* note 125, at art. 25.

¹⁹⁵ ICESCR, *supra* note 125, at art. 11; G.A. Res. 217(III), *supra* note 125, at art. 26.

¹⁹⁶ ICESCR, *supra* note 125, at art. 11; G.A. Res. 217(III), *supra* note 125, at art. 25.

¹⁹⁷ WBG, *Haiti: Country Assistance Evaluation*, *supra* note 96; WBG, *Implementation Completion Report: Haiti, Emergency Economic Recovery Credit*, *supra* note 76; Press Release, IMF, IMF Approves Three-Year ESAF Loan for Haiti, *supra* note 67.

¹⁹⁸ WBG, *Haiti: Country Assistance Evaluation*, *supra* note 96.

¹⁹⁹ Haiti is a state party to each treaty listed here. *Ratification Status for Haiti*, UN TREATY BODY DATABASE, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=74&Lang=EN (last visited Dec. 13, 2022).

²⁰⁰ Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) art. 7, Dec. 18, 1979, 1249 U.N.T.S. 13.

²⁰¹ International Convention on the Elimination of all forms of Racial Discrimination (ICERD) art. 5, Mar. 7, 1966, 660 U.N.T.S. 195.

²⁰² Convention on the Rights of Persons with Disabilities (CRPD) art. 29, Dec. 13, 2006, 2515 U.N.T.S. 3.

representatives that are elected according to international election obligations and standards.²⁰³

Haiti's foreign-imposed cycle of aid dependence and foreign control has hindered its ability to exercise democratic control. In the age of globalization, global actors have a powerful influence which can undermine the direct power of democratically elected local government systems.²⁰⁴ In a highly aid-dependent country like Haiti, external aid agreements shape a substantial part of its domestic policy, and this executive-led process therefore violates the people's right to political participation. The lack of effective checks and balances between different branches results in an increasingly centralized executive that is in control of external aid agreements, while the legislature is reduced to a performative rather than substantive role in ratifying the treaty.²⁰⁵ This system limits the ability for political participation in negotiating international aid agreements in Haiti and opens the door to corruption and patronage.

Furthermore, the right to political participation under the ICCPR requires that "[elected] representatives do in fact exercise governmental power and that they are accountable through the electoral process for their exercise of that power."²⁰⁶ The scope of political participation is meant to cover "all aspects of public administration, and the formulation and implementation of policy at *international*, national, regional and local levels."²⁰⁷ Haitians' rights to political participation are violated because not only do elected officials lack the real governmental influence and power required by the right to political participation, as explained above, but those entities that influence Haitian policies, such as IFIs, other states, and corporate actors, are neither elected by, nor accountable to, the people of Haiti. Directing foreign aid to humanitarian organizations instead of the government and privatizing key basic infrastructure services further removes power and control from the hands of elected officials in crucial areas like education and healthcare. This consequently reduces the Haitian

²⁰³ Hum. Rts. Comm., Gen. Comment No. 25, at ¶ 6-7, U.N. Doc. CCPR/C/21/Rev.1/Add.7 (Aug. 26, 1996).

²⁰⁴ See, e.g., Ana Garcia & Fabrina Furtado, *International Financial Institutions and the Elites of the Global South: Perspectives from Brazil*, BRETTON WOODS (2019), <https://www.brettonwoodsproject.org/wp-content/uploads/2019/10/Ana-Garcia-and-Fabrina-Furtado.pdf>; Thomas Stubbs & Alexander Kentikelenis, *International Financial Institutions and Human Rights: Implications for Public Health*, 38 PUBLIC HEALTH REVIEWS (2017), <https://publichealthreviews.biomedcentral.com/articles/10.1186/s40985-017-0074-3>.

²⁰⁵ La Constitution De La Republique D'Haïti arts. 98-3, 139 (1987), https://www.constituteproject.org/constitution/Haiti_2012.pdf?lang=en (last visited Aug. 6, 2021).

²⁰⁶ General Comment No. 25, *supra* note 203, at ¶ 7.

²⁰⁷ *Id.* at ¶ 5.

people's ability to meaningfully participate in those areas through their elected officials.²⁰⁸

III. HUMAN RIGHTS OBLIGATIONS OF FOREIGN STATES AND NON-STATE ACTORS

Actions and policies imposed by foreign states and NSAs have adversely impacted Haitians' enjoyment of their human rights and the state's ability to advance such rights. The right to water discussed above is just one example of the harmful effects of aid reliance caused by these foreign actions and policies²⁰⁹ and the importance of accountability of foreign states and NSAs. Their responsibility in Haiti is two-fold: not only do their actions have a direct, negative effect on the human rights of Haitians, but they also impede the Haitian state's ability to advance human rights.²¹⁰

Both states and NSAs have responsibilities under international human rights law. State obligations, including as Member States of IFIs, stem from binding international legal conventions and their extraterritorial application.²¹¹ NSAs, such as foreign corporations and IFIs, have certain responsibilities to respect human rights based in soft-law instruments and initiatives.²¹²

²⁰⁸ Philip Alston explored the effect of inadequate funding and the problematic role of NGOs in his 2007 Report on Extrajudicial Killings: "Foreign donors are playing a complex, and in some ways problematic, role: rather than funding projects that the State cannot afford, they are funding projects that the State has simply opted not to be able to afford. Insofar as these projects benefit those with the least power over the legislative agenda, such foreign assistance is commendable. Moreover, foreign assistance makes up a relatively small proportion of the Government's budget, and its withdrawal would not necessarily stimulate more responsible fiscal policies. Nevertheless, the donor community should carefully consider whether its assistance is doing as much as possible to push the State to assume its own responsibilities." Alston, *supra* note 73, at 25.

²⁰⁹ Varma et al., *supra* note 75.

²¹⁰ The rights of future generations are beyond the scope of this paper.

²¹¹ *International Human Rights Law*, OHCHR, <https://www.ohchr.org/en/instruments-and-mechanisms/international-human-rights-law#:~:text=By%20becoming%20parties%20to%20international,the%20enjoyment%20of%20human%20rights.> (last visited Dec. 13, 2022); *Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights* [Maastricht Principles], Principle 9, EXTRATERRITORIAL OBLIGATIONS CONSORTIUM, (Jan. 2013), https://www.etoconsortium.org/nc/en/main-navigation/library/maastricht-principles/?tx_drblob_pi1%5BdownloadUid%5D=23.

²¹² See, e.g., CESCR, Public Debt, Austerity Measures and the International Covenant on Economic, Social and Cultural Rights, U.N. Doc. E/C.12/2016/1, July 22, 2016, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f2016%2f1&Lang=en; U.N. Hum. Rts., Off. Of High Comm'r [OHCHR], Guiding Principles of Business and Human Rights, U.N. Doc. HR/PUB/11/04 (2011), https://www.ohchr.org/documents/publications/guiding-principlesbusinesshr_en.pdf.

A. *State Obligations*

There is an emerging consensus that states have extraterritorial obligations (ETOs) relating to their acts and omissions that have effects on the enjoyment of human rights beyond their borders.²¹³ States also have obligations of a global character to take “joint and separate” action to promote and respect human rights, even if they do not have sufficient “control” over a specific body or process.²¹⁴ These global obligations are set out in the UN Charter,²¹⁵ which binds all UN Member States,²¹⁶ and human

²¹³ *Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights* [Maastricht Principles], Principle 9, EXTRATERRITORIAL OBLIGATIONS CONSORTIUM, (Jan. 2013), https://www.etoconsortium.org/nc/en/main-navigation/library/maastricht-principles/?tx_drblob_pi1%5BdownloadUid%5D=23 (“A State has obligations to respect, protect and fulfil economic, social and cultural rights in any of the following: a) situations over which it exercises authority or effective control, whether or not such control is exercised in accordance with international law; b) situations over which State acts or omissions bring about foreseeable effects on the enjoyment of economic, social and cultural rights, whether within or outside its territory; c) situations in which the State, acting separately or jointly, whether through its executive, legislative or judicial branches, is in a position to exercise decisive influence or to take measures to realize economic, social, and cultural rights extraterritorially, in accordance with international law.”). For a critique, see Ralph Wilde, *Dilemmas in Promoting Global Economic Justice through Human Rights Law in THE FRONTIERS OF HUMAN RIGHTS* (Nehal Bhuta ed., 2016); For relevant cases regarding control and authority, see Press Release, European Ct. Hum. Rts., Extra-territorial Jurisdiction of States Parties to the European Convention on Human Rights (July 2018), https://www.echr.coe.int/documents/fs_extra-territorial_jurisdiction_eng.pdf; The Environment and Human Rights (Interpretation and Scope of Art. 4(1) and 5(1) in Relation to Art. 1(1) and 2 of the American Convention on Human Rights), Advisory Opinion OC-23/17, Inter-Am Ct. H.R., ¶ 72-82, (Nov. 15, 2017), <https://elaw.org/system/files/attachments/publicresource/English%20version%20of%20AdvOp%20OC-23.pdf>. Recent domestic cases have applied human rights obligations of the same extent as in the Maastricht Principles to cases involving the application of obligations under the European Convention to air pollution. See HR 20 December 2019 (State of the Netherlands/Urgenda Foundation) (Neth.), http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/non-us-case-documents/2020/20200113_2015-HAZA-C0900456689_judgment.pdf; TA Montreuil, June 25, 2019, 1802202 (Fr.), <http://montreuil.tribunal-administratif.fr/content/download/163605/1653338/version/2/file/1802202.pdf>. For relevant cases regarding control and authority, see Press Release, European Ct. Hum. Rts., Extra-territorial Jurisdiction of States Parties to the European Convention on Human Rights (July 2018), https://www.echr.coe.int/documents/fs_extra-territorial_jurisdiction_eng.pdf; The Environment and Human Rights (Interpretation and Scope of Art. 4(1) and 5(1) in Relation to Art. 1(1) and 2 of the American Convention on Human Rights), Advisory Opinion OC-23/17, Inter-Am Ct. H.R., ¶ 72-82, (Nov. 15, 2017), <https://elaw.org/system/files/attachments/publicresource/English%20version%20of%20AdvOp%20OC-23.pdf>.

²¹⁴ *Maastricht Principles*, *supra* note 211, at Principle 8(b). This is opposed to the traditional understanding of State exercise of jurisdiction abroad through either effective control over territory or physical authority over an individual. See Human Rights Committee, General Comment No. 31[80]. The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc. CCPR/C/21/Rev.1/Add.13 (May 26, 2004).

²¹⁵ U.N. Charter, arts. 55, 56.

²¹⁶ U.N. Charter, UN, <https://www.un.org/en/about-us/un-charter> (last visited Dec. 13, 2022).

rights instruments,²¹⁷ which bind States parties to the instruments. The Maastricht Principles, which clarify states' ETOs under existing international law, delineate states' responsibilities for actions or omissions "that create a real risk of nullifying or impairing the enjoyment of economic, social and cultural rights extraterritorially . . . where such nullification or impairment is a foreseeable result of their conduct."²¹⁸ Under this principle, states are in violation of their ETOs "even if other, intervening causes, also played a role in the violation."²¹⁹

States' ETOs are also triggered in situations where they are "in a position to exercise decisive influence or to take measures to realize economic, social and cultural rights extraterritorially."²²⁰ This principle is particularly relevant in the context of state responsibility for actions of NSAs, such as IFIs and corporations, as states often exert substantial influence over these actors' activities abroad.²²¹ Importantly, ETOs flow from obligations in human rights conventions, such as the ICESCR and ICCPR. For instance, Member States of the UN or IFIs (like the IMF or the WB) who are parties or signatories²²² to those conventions are in violation of their ETOs under either principle if they vote for an action over which they exercised decisive influence and which has foreseeably negative consequences on the enjoyment of human rights in *any* country.²²³ However, "[even] in the absence of any [such] particular link between a State and the denial of human rights in [other] States [there may be] obligation[s] of a global character."²²⁴ Situations where deprivation of individuals' socio-economic rights cannot be attributed to a particular actor or a particular obligation—as may be the case for states that are not parties

²¹⁷ See, e.g., ICESCR, *supra* note 125, at art. 2(1); Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), Dec. 18, 1979, 1249 U.N.T.S. 13.

²¹⁸ *Maastricht Principles*, *supra* note 211, at Principle 13; see also *id.* at Principle 9(b) ("A state has obligations to respect, protect and fulfil economic, social and cultural rights in any of the following: (b) situations over which State acts or omissions bring about foreseeable effects on the enjoyment of economic, social and cultural rights, whether within or outside its territory.").

²¹⁹ Olivier De Schutter et al., *Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights*, 34 HUM. RTS. Q. 1084, 1114 (2012), http://www.ciel.org/Publications/Maastricht_Nov2012.pdf.

²²⁰ *Maastricht Principles*, *supra* note 211, at Principle 9(c).

²²¹ Hum. Rts. Council, Written Statement Submitted by Center for International Environmental Law (CIEL), a Non-Governmental Organization with Special Consultative Status, UN Doc. A/HRC/WG.16/1/NGO/3 (July 2, 2015).

²²² Signatory states to international conventions, while not bound by all the provisions of the convention, are nevertheless obligated to refrain from acts that would defeat the object and purpose of those conventions.

²²³ Hum. Rts. Council *supra* note 221.

²²⁴ Olivier De Schutter et al., *supra* note 219, at 1102.

to the relevant human rights conventions—give rise to such global human rights obligations.²²⁵

B. *Non-State Actor Obligations*

IFIs' obligations are largely defined by their Member States' obligations, however they also have human rights obligations under the UN Charter and the Universal Declaration of Human Rights.²²⁶ The Committee on Economic, Social and Cultural Rights (CESCR) has accordingly called on IFIs to consider impacted communities' economic, social and cultural rights prior to implementing lending activities, for example, through the preparation of human rights impact statements and by taking measures to protect critical human rights.²²⁷ Furthermore, the Human Rights Council has recognized that IFIs have an independent obligation to respect human rights. This includes avoiding “causing adverse human rights impacts”²²⁸ and addressing such impacts when they occur.²²⁹

Corporations are increasingly understood to have independent responsibilities to protect and respect human rights in the context of business activities and to ensure access to an effective remedy for individuals and groups affected by such activities.²³⁰ These human rights responsibilities are recognized both by the international community in

²²⁵ Elena Pribytkova, *What Global Human Rights Obligations Do We Have?*, 20 CHI. J. INT'L L. 384, 425 (2020), <https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1774&context=cjil>.

²²⁶ CESCR, Public Debt, Austerity Measures and the International Covenant on Economic, Social and Cultural Rights, UN Doc. E/C.12/2016/1, Jul. 22, 2016, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f2016%2f1&Lang=en.

²²⁷ OHCHR, International Technical Assistance Measures (Art. 22): 02/02/90. CESCR General comment 2. UN Doc. E/1990/23, Feb. 2, 1990, <https://www.refworld.org/docid/47a7079f0.html>. These rights include, for example, the right to health, right to water, and right to work. OHCHR, CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12), UN Doc. E/C.12/2000/4, Aug. 11, 2000, <https://www.refworld.org/pdfid/4538838d0.pdf>; CESCR, The Right to Work, General Comment No. 18, UN Doc. E/C.12/GC/18, Nov. 24, 2005, <https://www.refworld.org/docid/4415453b4.html>.

²²⁸ U.N. Office of the High Commissioner for Human Rights, Guiding Principles on Extreme Poverty and Human Rights, https://www.ohchr.org/sites/default/files/Documents/Publications/OHCHR_ExtremePovertyandHumanRights_EN.pdf (last visited Mar. 7, 2023).

²²⁹ U.N. Office of the High Commissioner for Human Rights, Guiding Principles on Business and Human Rights (2011), https://www.ohchr.org/sites/default/files/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.

²³⁰ *Id.*; OECD Guidelines for Multinational Enterprises, ORG. ECON. COOP. & DEV. (2011), <https://mneguidelines.oecd.org/guidelines/>; see The Ten Principles of the UN Global Compact, U.N. GLOB. COMPACT, <https://www.unglobalcompact.org/what-is-gc/mission/principles> (last visited Mar. 7, 2023); Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, INT'L LABOR ORG. (2017), https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/--multi/documents/publication/wcms_094386.pdf.

instruments such as the UN Guiding Principles (UNGPs) on Business and Human Rights, as well as by corporate actors themselves when they sign onto specific principles like the Equator Principles, which serve as a risk management framework for financial institutions.²³¹ Many U.S. companies have signed onto these voluntary initiatives; for example, 998 U.S.-based corporations have signed onto the UN Global Compact.²³² However, without an effective enforcement and monitoring mechanism, the UN Global Compact and similar non-binding instruments fail to hold companies accountable. Recognizing the growing need for binding human rights obligations for businesses, in 2014 the UN Human Rights Council started drafting a legally binding treaty on business and human rights.²³³

At the domestic level, the Supreme Court of Canada has held that breaches of customary international law may apply to Canadian corporations acting abroad.²³⁴ Other courts allow similar duty of care theories to proceed based on representations that the corporation has adopted corporate social responsibility (CSR) standards like the UNGPs.²³⁵

²³¹ “The EPs is a risk management framework, adopted by financial institutions, for determining, assessing and managing environmental and social risk in projects and is primarily intended to provide a minimum standard for due diligence and monitoring to support responsible risk decision-making.” *Equator Principles*, CIBEG (May 20, 2021), <https://www.cibeg.com/en/learning-center/our-memberships/equator-principles>; See *Towards Human Rights-Based Fiscal Policies: Principles and Guidelines for Latin America and the Caribbean*, CTR. ECON. & SOC. RTS. (Dec. 20, 2018), <https://www.cesr.org/towards-human-rights-based-fiscal-policies-principles-and-guidelines-latin-america-and-caribbean> (stating the CESR Draft Principles and Guidelines “provid[es] guidance on how to design, implement and monitor fiscal policies according to human rights standards undermines efforts carried out by a broad range of stakeholders to urge local and national governments, international financial institutions and other private and public economic actors to meet the obligation to mobilize resources to fulfill human rights (and economic, social, cultural and environmental rights in particular).”); *The Equator Principles*, EQUATOR PRINCIPLES ASSOC., (July 2020), <https://equator-principles.com/wp-content/uploads/2020/05/The-Equator-Principles-July-2020-v2.pdf>.

²³² See *Who’s Involved*, U.N. GLOB. COMPACT, https://www.unglobalcompact.org/what-is-gc/participants/search?utf8=%E2%9C%93&search%5Bkeywords%5D=&search%5Bcountries%5D%5B%5D=209&search%5Bper_page%5D=10&search%5Bsort_field%5D=&search%5Bsort_direction%5D=asc (last visited Apr. 4, 2023).

²³³ For the latest draft of this treaty, see LEGALLY BINDING INSTRUMENT TO REGULATE, IN INTERNATIONAL HUMAN RIGHTS LAW, THE ACTIVITIES OF TRANSNATIONAL CORPORATIONS AND OTHER BUSINESS ENTERPRISES (July 16, 2019), https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/OEIGWG_RevisedDraft_LBI.pdf.

²³⁴ See *Nevsun Res. Ltd. v. Araya*, [2020] S.C.C. 5 (Can.) https://media.business-humanrights.org/media/documents/files/documents/Nevsun-en_0.pdf.

²³⁵ See *Choc v. Huiday Mins. Inc.*, [2013] 116 O.R. 3d 674 (Can. Ont.); *Okpabi v. Royal Dutch Shell Plc* [2021] UKSC 3, [2021] 1 WLR 1294; *Vedanta Res. Plc v. Lungowes* [2019] UKSC 20, [2020] AC 1045; see also Chantal Carriere, *Mind the Gap: Domestic Liability for Corporate Human Rights Violations in the US and Abroad*, 1 STATE BAR OF TEXAS INT’L L. SECTION INT’L NEWS10 (2019). Some domestic courts even allow criminal sanctions for corporations involved in international crimes. The Malabo Protocol, though not yet in effect, would allow for similar corporate criminal liability at the

At the same time, and as discussed further in Section IV, some other domestic courts have questioned whether there is corporate liability under customary international law and have declined to hold corporations liable for human rights violations, making it difficult to enforce these obligations.²³⁶

IV. THE NEED TO STRENGTHEN ENFORCEMENT MECHANISMS

Effective grievance mechanisms are essential to preventing and ensuring accountability for harmful foreign policies and loan conditions, as well as providing for the right to a remedy for resulting human rights violations. Several IFIs have formal grievance mechanisms, but these do not function to address harms like the ones described herein. While, currently, there is a lack of effective international, domestic, and administrative mechanisms, successes in recent years point to promising developments, particularly within certain spheres like domestic litigation.

The following is a general analysis of the enforcement mechanisms available to address human rights accountability for foreign states and NSAs, such as corporate actors and IFIs. It addresses domestic and international judicial mechanisms as well as institutional complaint mechanisms. Due to restrictions in the reach of these measures, not all of them are applicable to the specific context of Haiti.

A. International Judicial Mechanisms: State Accountability

Legal accountability for state human rights violations, jointly or individually, may be pursued through international courts and treaty bodies.²³⁷ Although global obligations have not been litigated in or recognized by international courts, the International Court of Justice (ICJ) is able to address violations of a state's ETOs,²³⁸ and therefore, theoretically, states may bring a case against the responsible state(s) at the

international level. PROTOCOL ON AMENDS. TO THE PROTOCOL ON THE STATUTE OF THE AFRICAN CT. OF JUST. & HUM. RTS., (adopted by the African Union on June 27, 2014, not yet entered into force).

²³⁶ See, e.g., *Jesner v. Arab Bank, PLC*, 138 S. Ct. 1386 (2018), *Kiobel v. Royal Dutch Petroleum Co.*, 569 U.S. 108 (2013), *Doe I v. Cisco Systems, Inc.*, 66 F. Supp. 3d 1239 (N.D. Cal. 2014).

²³⁷ A detailed discussion is beyond the scope of this paper. These are standard human rights recourses that are extensively explained elsewhere, see, e.g., Office of the High Commissioner for Human Rights, MAKING HUMAN RIGHTS A REALITY: THE HUMAN RIGHTS MECHANISMS, https://www.ohchr.org/sites/default/files/Documents/AboutUs/IK_HR_mechanisms_En.pdf; see also GEIR ULFSTEIN, THE OXFORD HANDBOOK OF INTERNATIONAL ENVIRONMENTAL LAW (Daniel Bodansky, Jutte Brunnée & Ellen Hey eds., 1st ed. 2008).

²³⁸ GLOBAL JUSTICE, STATE DUTIES: THE EXTRATERRITORIAL SCOPE OF ECONOMIC, SOCIAL, AND CULTURAL RIGHTS IN INTERNATIONAL LAW 403 (2013), (Malcolm Langford et al. eds., 2013).

ICJ for violating articles 55 and 56 of the UN Charter.²³⁹ The ICJ, however, presents two major obstacles: it requires some form of state consent for jurisdiction,²⁴⁰ and only allows for complaints submitted by states, not individuals.²⁴¹ Even if the violating state consented to jurisdiction, the Haitian government would have to be ready and willing to bring a complaint on behalf of its people—an unlikely prospect given the power imbalance between Haiti and IFI Member States and Haiti’s foreign-imposed aid reliance.²⁴²

Alternatively, impacted individuals could sue the responsible state(s) at a regional human rights tribunal or file a communication with the relevant treaty body. For example, individuals may bring complaints against states responsible for extraterritorial violations before the CESCR,²⁴³ the United Nations Human Rights Committee,²⁴⁴ or the European Court of Human Rights.²⁴⁵ These mechanisms are not without weaknesses: all three require some form of state consent for jurisdiction,²⁴⁶ and while the decisions of the ICJ and human rights tribunals are binding,

²³⁹ U.N. Charter, arts. 55, 56. (requiring under Article 55 that UN Member States promote “(1) higher standards of living, full employment, and conditions of economic and social progress and development; (2) solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and (3) universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion. Article 56 requires Member States to “take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55.”).

²⁴⁰ Treaty provisions may grant the ICJ jurisdiction over disputes surrounding a specific treaty or a special agreement between parties may grant the ICJ jurisdiction over a specific case. Statute of the International Court of Justice art. 36(1), Oct. 24, 1945, T.S. No. 993.

²⁴¹ *How the Court Works*, INT’L CT. OF JUST., <https://www.icj-cij.org/en/how-the-court-works> (last visited Mar. 7, 2023).

²⁴² Sandra C. Wisner, *Starved for Justice: International Complicity in Systematic Violations of the Right to Food in Haiti*, COLUM. HUM. RTS. L. REV. ONLINE (May 10, 2022), <https://hrlr.law.columbia.edu/hrlr-online/starved-for-justice-international-complicity-in-systematic-violations-of-the-right-to-food-in-haiti/>.

²⁴³ The CESCR monitors the ICESCR. The ICESCR has the competence to receive communications regarding countries that have signed the Optional Protocol. G.A. Res. 63/117, annex (Dec. 10, 2008).

²⁴⁴ *See e.g.*, Ibrahim Gueye et al. v. France, Comm’n No. 196/1985, ¶¶ 9.3–9.5 (Hum. Rts. Comm. Nov. 5, 1987), U.N. Doc. CCPR/C/35/D/196/1985 (1989).

²⁴⁵ *Al-Saadoon v. United Kingdom*, 2010-II, Eur. Ct. H. R. 61, 127 (2010).

²⁴⁶ Treaty bodies require ratification of the Optional Protocol to the treaty. Human rights tribunals require states to be parties to both the relevant convention which grants the court jurisdiction and the convention granting the rights which have allegedly been violated. *E.g.* Convention for the Protection of Human Rights and Fundamental Freedoms art. 32, Sept. 3, 1953, 213 U.N.T.S. 222, https://www.echr.coe.int/documents/convention_eng.pdf; *Individual Communications: Human Rights Treaty Bodies*, OHCHR, <https://www.ohchr.org/en/treaty-bodies/individual-communications#againstwhom> (last visited Mar. 7, 2023).

the decisions of treaty bodies are not.²⁴⁷ Furthermore, although they remain a viable option in theory, these mechanisms have yet to address states' ETOs in the context of economic, social, and cultural rights.²⁴⁸

*B. Domestic Judicial Mechanisms: Corporate Actors and IFI
Accountability*

Domestic judicial mechanisms may be effective for holding IFIs and corporate actors accountable. Host states have agreements with international organizations, including IFIs, outlining the privileges and immunities of the organization, which largely preclude jurisdiction of domestic judicial mechanisms over the organization.²⁴⁹ However, immunities are usually given only to the extent required for the international organizations to function. While international organizations with a broad range of functions, like the UN, have a wide range of immunities, the extent of immunities is more limited for economic and specialized organizations like the WB or the IMF. This makes domestic judicial remedies against IFIs a viable, if fraught, option.²⁵⁰

Domestic judicial mechanisms are increasingly available against corporate actors in the host as well as home states. In Haiti, these actions in the host state may be seen as largely unavailable due to the power imbalance perpetuated through foreign policies that has hindered the functionality of the justice system.²⁵¹ Meanwhile, home state litigation may

²⁴⁷ Alonso Gurmendi, *Binding Nature of UN Treaty Body Decisions Rejected by Brazil's Electoral Court*, OPINIO JURIS (Sept. 14, 2018), <http://opiniojuris.org/2018/09/14/binding-nature-of-un-treaty-body-decisions-rejected-by-brazils-electoral-court/>. Compare Koldo Casla, *Supreme Court of Spain: UN Treaty Body Individual Decisions are Legally Binding*, EJIL: TALK! (Aug. 1, 2018), <https://www.ejiltalk.org/supreme-court-of-spain-un-treaty-body-individual-decisions-are-legally-binding/>.

²⁴⁸ See Ralph Wilde, *Human Rights Beyond Borders at the World Court: The Significance of the International Court of Justice's Jurisprudence on the Extraterritorial Application of International Human Rights Law Treaties*, 12 CHINESE J. INT'L L. 639, 661 (2013).

²⁴⁹ HENRY G. SCHERMERS & NIELS M. BLOKKER, INTERNATIONAL INSTITUTIONAL LAW: UNITY WITHIN DIVERSITY 1032-1033, (Kluwer L. Int'l, 3rd rev. ed. 2011). For some organizations, including organizations belonging to the World Bank group and most regional development banks, immunities are already restricted according to their constituent instruments. See e.g., Agreement Establishing the Inter-American Development Bank, *supra* note 183, at art. XI, §3.

²⁵⁰ See Carson Young, *The Limits of International Organization Immunity: An Argument for a Restrictive Theory of Immunity Under the IOIA*, 95 TEXAS L. REV. 889, 909-11 (2017). See also *infra* Section IV.D.

²⁵¹ See Organization of American States, Inter-American Commission on Human Rights, *Haiti: Failed Justice or The Rule Of Law? Challenges Ahead for Haiti and The International*, doc.6 rev 1 (Oct. 26, 2005). Ongoing challenges in Haiti's judicial sector are an additional practical concern. See Bureau des Avocats Internationaux et al, Submission to the United Nations Human Rights Council: Justice Sector Challenges in Haiti, (40th Session of Universal Periodic Review Working Group Jan.-

be available. In the U.S., the Alien Tort Statute (ATS) has allowed universal jurisdiction over violations of international law, including jurisdiction in cases against corporations that have aided and abetted violations of human rights abroad.²⁵² However, the focus on corporate actors has also led to focused litigation against these mechanisms which by now, at least in the U.S., has effectively hollowed them. In more recent years, the scope of the ATS was substantially limited through the Supreme Court's decisions in *Kiobel v. Dutch Petroleum*²⁵³ and *Jesner v. Arab Bank*.²⁵⁴ Now there is a presumption against extraterritorial application of the statute and a hesitance to apply it to corporate actors for fear of foreign-relations issues. Similar civil actions against corporate actors are still available in the Netherlands,²⁵⁵ the U.K.,²⁵⁶ and Canada.²⁵⁷

C. Institutional Complaint Mechanisms: IFI Accountability

Accountability for IFI misconduct is available through complaint mechanisms internal to each organization's rules that aim to be impartial, though these mechanisms are limited. The currently available mechanisms are the Compliance Advisor Ombudsman (CAO) dispute resolution process for IFC/MIGA projects;²⁵⁸ the Independent Consultation and Investigation Mechanism (MICI) for Inter-American Development Bank projects;²⁵⁹ and

Feb. 2022), http://www.ijdh.org/wp-content/uploads/2021/12/Updated-Justice-Sector-Challenges-in-Haiti_UPR-Submission_EN-1.pdf.

²⁵² Alien's Action for Tort, 28 U.S.C. § 1350; *See* *Filartiga v. Pena-Irala*, 630 F.2d 876 (2d Cir. 1980); *Sosa v. Alvarez-Machain*, 542 U.S. 692 (2004); *Karadzic v. Kadic*, 70 F.3d 232 (2d Cir. 1995).

²⁵³ The Supreme Court limited the ATS to conduct occurring within the U.S. or on the high seas. *Kiobel v. Royal Dutch Petroleum Co.*, 569 U.S. 108, 1667–69 (2013).

²⁵⁴ The Supreme Court held that only U.S. corporations may be sued under the ATS. *Jesner v. Arab Bank, PLC*, 138 S. Ct. 1386, 1390 (2018).

²⁵⁵ *Rechtbank Den Haag* [Court of Justice The Hague] 1 mei 2019, (*Kiobel/Shell*) (Neth.).

²⁵⁶ *UK Companies Responsible for Business and Human Rights Violations Overseas*, MORRISON & FOERSTER LLP (June 8, 2020), <https://www.mofo.com/resources/insights/200608-uk-human-rights-violations.html>.

²⁵⁷ *Nevsun Resources Ltd. v. Araya*, [2020] S.C.R. 108 (Can.); *Kimberly A.F. Cura & Jacob R. W. Damstra, Canadian Corporations May Be Held Liable for Breaches of Public International Law*, LERNX (Mar. 3, 2020), <https://www.lerners.ca/lernx/nevsun-resources-ltd-v-araya/>.

²⁵⁸ Based on an ADR process, the CAO mechanism “works with the stakeholders to develop a jointly agreed process of assisted negotiation, mediation or other collaborative strategy for addressing issues raised in the complaint.” Office of the Compliance Officer Ombudsman, *CAO Operational Guidelines*, WORLD BANK (2013), <https://documents.worldbank.org/curated/en/137211476348756904/pdf/108859-WP-ENGLISH-CAO-Operational-Guidelines-2013-PUBLIC.pdf>.

²⁵⁹ The Inter-American Development Bank's Independent Consultation and Investigation Mechanism (MICI) reviews allegations that the complainants “have suffered or may suffer harm due to the failure of the IDB Group to comply with one or more of its Relevant Operational Policies within the context of an operation financed by one of the institutions that are part of the Group.” The complaint

the Grievance Redress Service (GRS)²⁶⁰ and Inspection Panel²⁶¹ for WB projects. Except for the more collaborative CAO Complaint mechanism, the accountability measures that exist are designed to hold IFIs accountable to a set of principles that these organizations created themselves, not to the people directly impacted and whose human rights are violated.²⁶² As such, some of these mechanisms cannot function precisely because they internalize all these organizations' problematic theories and fail to see their conditionality as harmful or to recognize a rights-based approach to aid.

In 2015, Haitian communities tried to utilize the WB's mechanism to express concerns over the lack of public consultation and the social and environmental impacts of a Bank-funded project to develop Haiti's mining sector.²⁶³ Even though the Bank acknowledged that the complaint raised "serious and legitimate" concerns, it denied the complaint on the narrow and technical ground that the Bank's social responsibility policies do not

then proceeds to the Consultation Phase or the Compliance Review Phase, or both, depending on the complaint's request. The Consultation Phase involves the negotiation of an agreement to address the issue based on a dialogue between the parties. The Compliance Phase entails an investigation into the IDBs failure to comply with its Relevant Operational Policies. Independent Consultation and Investigation Mechanism, *Policy of the Independent Consultation and Investigation Mechanism*, INTER-AMERICAN DEVELOPMENT BANK (Dec. 16, 2015), <http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=40792853>.

²⁶⁰ The World Bank has a limited complaint mechanism, called the Grievance Redress Service (GRS) which is only available for individual cases of adverse impacts regarding specific loan agreements. But to make use of the GRS, the project must be currently active. Following the filing of a complaint, a designated committee comes up with a proposal of measures to address the issue. If accepted by the complainants, then the measures are implemented. If not, the complaint is closed. *Bank Procedure: Bank Grievance Redress Service (GRS)*, WORLD BANK (Mar. 1, 2017), <https://ppfdocuments.azureedge.net/4929ca56-1362-449e-87c0-4d75585648d4.pdf>.

²⁶¹ INSPECTION PANEL, <https://www.inspectionpanel.org/> (last visited Dec. 16, 2021).

²⁶² Inter-American Development Bank, *Policy of the Independent Consultation and Investigation Mechanism of the IDB*, 5 (2021), <https://www.iadb.org/en/mici/idb-public-registry-chronological> (MICI objectives include "[p]rovid[ing] a mechanism and process independent of Management in order to investigate allegations by Requesters of Harm produced by the Bank's failure to comply with its Relevant Operational Policies in Bank-Financed Operations"); World Bank, *Annual Report FY21: Grievance Redress Service 3* (2022), <https://documents.worldbank.org/curated/en/099806503312237621/pdf/IDU056aaa19b0cd7a0414209cb707c3af2af116c.pdf> ("The GRS carefully reviews each complaint it receives and evaluates it based on clear admissibility criteria outlined in the GRS Bank Procedure. This evaluation may include information-gathering, examination of the merits of the complaint and early identification of possible solutions based on prior GRS experience."); INSPECTION PANEL, *Mandate and Procedures*, <https://www.inspectionpanel.org/about-us/panel-mandate-and-procedures> (last visited Dec. 13, 2022) ("In response to complaints from affected people, formally known as Requests for Inspection, the Panel has the power to carry out independent investigations of Bank-financed projects to determine whether the Bank is in compliance with its operational policies and procedures, and to make related findings of harm.")

²⁶³ Press Release, Ctr. for Hum. Rts. & Global Just., Haitian Communities File Complaint about World Bank-Supported Mining Law (Jan. 7, 2015), <https://chrgj.org/2015/01/07/haitian-communities-file-complaint-about-world-bank-supported-mining-law-2/>.

apply to a “Bank-Executed Trust Fund”—the specific lending arrangement for the mining project in question.²⁶⁴ The Bank’s refusal to address the issues in the complaint demonstrates how these complaint mechanisms can fail at a fundamental level. Beyond these underlying concerns, there exist many practical barriers to accessing remedies, including language barriers, lack of information, and lack of access to resources and technology to submit complaints.²⁶⁵

There is no analogous accountability mechanism through which people negatively affected by aid could file a complaint at the IMF. The IMF has also had limited engagement with civil society organizations (CSOs), though in recent years, there have been more efforts in this area. The original 2003 Guidelines on Staff Engagement with CSOs were reformulated in 2015 through a consultation process where CSOs could submit comments.²⁶⁶ Furthermore, the IMF, in conjunction with the WB, holds an annual civil society policy forum.²⁶⁷ However, this engagement is limited to CSOs at the international level, and IFIs have been criticized for their lack of engagement with CSOs on the ground.²⁶⁸

Currently, international courts and treaty bodies do not have jurisdiction over IFIs or corporations for human rights claims.²⁶⁹ The Malabo Protocol, a treaty which would establish the African Court of Justice and Human and Peoples’ Rights, gives the new court jurisdiction

²⁶⁴ Press Release, Ctr. for Hum. Rts. & Global Just., World Bank Refuses to Consider Haitian Communities’ Complaint about New Mining Law (Feb. 17, 2015), <https://chrj.org/2015/02/17/world-bank-refuses-to-consider-haitian-communities-complaint-about-new-mining-law/>.

²⁶⁵ See, e.g., INT’L HUM. RTS. LAW CLINIC U.C. BERKELEY, SCHOOL OF LAW, ACCOUNTABILITY & INTERNATIONAL FINANCIAL INSTITUTIONS (Mar. 2017), <https://www.law.berkeley.edu/wp-content/uploads/2015/04/Accountability-International-Financial-Institutions.pdf>.

²⁶⁶ 2015 *Guidelines on the IMF Staff Engagement with Civil Society Organizations*, INTERNATIONAL MONETARY FUND (2015), <https://www.imf.org/external/np/exr/cs/pdf/CSOGuidelinesMarch2016.pdf>.

²⁶⁷ For a summary of the 2019 annual meeting, see WBG-IMF ANNUAL MEETINGS, CIVIL SOCIETY POLICY FORUM: SUMMARY OF CSO REGISTRATION & FEEDBACK SURVEY RESULTS (2019), <http://pubdocs.worldbank.org/en/909151574698815087/19AM-CSPF-Registration-Data-and-Survey-Results.pdf>.

²⁶⁸ HUMAN RIGHTS WATCH, HUMAN RIGHTS WATCH SUBMISSION RE INTERNATIONAL FINANCIAL INSTITUTIONS AND HUMAN RIGHTS (2017), <https://www.hrw.org/news/2017/04/25/human-rights-watch-submission-re-international-financial-institutions-and-human#>.

²⁶⁹ These bodies may only bring cases against States. *E.g.*, Statute of the International Court of Justice art. 36(1), *supra* note 240, at art. 34(1); *Complaining about human rights violations*, OFFICE OF THE HIGH COMMISSIONER OF HUMAN RIGHTS, <https://www.ohchr.org/en/treaty-bodies/complaints-about-human-rights-violations> (last visited Dec. 19, 2022); *The ECHR in 50 Questions*, EUROPEAN COURT OF HUMAN RIGHTS, https://echr.coe.int/Documents/50Questions_ENG.pdf; *Individual Communications*, OFFICE OF THE HIGH COMMISSIONER OF HUMAN RIGHTS, <https://www.ohchr.org/en/treaty-bodies/ccpr/individual-communications> (last visited Dec. 19, 2022).

over corporations.²⁷⁰ Unfortunately, the Malabo Protocol has not yet reached the fifteen state ratifications needed to enter into force.²⁷¹

D. Successful Application of Enforcement Mechanisms Against Corporate Actors and IFIs

While the above-mentioned mechanisms have their weaknesses, NSA accountability is a growing area of human rights law under which some of these mechanisms have been used successfully in advocacy campaigns and beyond. Recent successes in the application of enforcement mechanisms demonstrate that holding corporate actors and IFIs accountable is increasingly possible through internal complaint mechanisms and domestic courts.

In 2017, Haitian farmers filed a complaint through the IDB's MICI to obtain redress for their farmland, taken by the Haitian government as part of the IDB-funded construction of the Caracol Industrial Park (CIP) in 2011.²⁷² The consequent 2018 agreement, which was negotiated between the Haitian government, the IDB, the farmers, and their representatives, aimed to address and improve management of social and environmental problems at the CIP and provide affected households with several options for redress.²⁷³ Although some of those households have received what was promised to them, as of June 2022, many are still waiting to reap the

²⁷⁰ *Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights*, AFRICAN UNION, <https://au.int/en/treaties/protocol-amendments-protocol-statute-african-court-justice-and-human-rights> (last visited Dec. 12, 2022).

²⁷¹ Maram Mhadi, *Africa's International Crimes Court is Still a Pipe Dream*, INST. FOR SEC. STUD. (Oct. 15, 2019), https://issafrica.org/iss-today/africas-international-crimes-court-is-still-a-pipe-dream?utm_source=BenchmarkEmail&utm_campaign=ISS_Today&utm_medium=email.

²⁷² Kolektif Peyizan Viktim Tè Chabè, *Letter to Victoria Márquez Mees, Director, Independent Consultation and Investigation Mechanism*, INTER-AMERICAN DEVELOPMENT BANK (Jan. 12, 2017), <https://www.accountabilitycounsel.org/wp-content/uploads/2017/08/1.12.17-Caracol-Industrial-Park-MICI-complaint-1.pdf>.

²⁷³ Options for redress include land (limited availability), modern agricultural equipment and training, support for micro-enterprise, or vocational training scholarships, as well as the opportunity to be employed at the CIP. Accountability Counsel, AREDE & ActionAid Haiti, *Haitian Farmers Reach Historic Agreement with Development Bank and Government to Address Harm from Post-Earthquake Project*, ACCOUNTABILITY COUNS. (Dec. 9, 2018), <https://www.accountabilitycounsel.org/2018/12/haitian-farmers-reach-historic-agreement-with-development-bank-and-government-to-address-harm-from-post-earthquake-project/>; for a summary of the agreement, see *Summary of the Agreement between Stakeholders in the Case MICI-IDB-HA-2017-0114: "Productive Infrastructure Program" (HA-L1055 and others)*, ACCOUNTABILITY COUNS (Dec. 19, 2018), <https://www.accountabilitycounsel.org/wp-content/uploads/2018/12/agreement-summary-pic-mici-bid-ute-kol-december-19-2018-final-eng.pdf>.

benefits of this historic agreement.²⁷⁴ Meanwhile, the U.S. Supreme Court has opened the door to holding IFIs responsible in U.S. courts, at least in theory. In *Jam v. International Finance Corporation*, the U.S. Supreme Court narrowed the immunities applicable to international organizations, thereby opening the courts for future litigation against IFIs.²⁷⁵ The Court noted that the immunity granted to international organizations under the U.S. International Organizations Immunities Act (IOIA) was the same “restrictive immunity” granted to states under the Foreign Sovereign Immunities Act (FSIA),²⁷⁶ which denies immunity for claims “based upon a commercial activity carried on in the United States by the foreign state.”²⁷⁷

There have been similar successes in suing corporate actors in domestic courts. In recent cases in Canadian courts, plaintiffs have sued corporations for their extraterritorial conduct, garnering some benefit for future litigation.²⁷⁸ Indigenous Guatemalan women sued Canadian mineral mining corporation Hudbay Minerals in Canadian court for rape and sexual assault committed by a subsidiary’s security guards as part of the eviction process from indigenous lands.²⁷⁹ The Ontario provincial court determined that the Canadian parent mining company could be tried in Canada for the

²⁷⁴ Karla Zabłudovsky, *These Haitians Were Children When A US-Funded Project Evicted Them from Their Land. They Can’t Afford College.*, BUZZFEED NEWS (Jun. 15, 2022), <https://www.buzzfeednews.com/article/karlazabłudovsky/haiti-industrial-park-caracol>; see also Sam Bojarski, *Haitian Farmers Displaced by Caracol Project Still Await Compensation*, ACCOUNTABILITY COUNS. (Feb. 25, 2022), <https://www.accountabilitycounsel.org/2022/02/haitian-farmers-displaced-by-caracol-project-still-await-compensation/>.

²⁷⁵ *Jam v. Int’l Fin. Corp.*, 139 S. Ct. 759, 759 (2019).

²⁷⁶ *Id.*

²⁷⁷ 28 U.S.C. § 1605 (1976).

²⁷⁸ One explanation for why Canada is a particularly attractive jurisdiction for these types of cases may be that many corporations have physical or asset-based ties to Canada, making it easier for plaintiffs to establish a nexus between the harmful activity occurring extraterritorially and the country of litigation. H. Scott Fairley & Anastasija Sumakova, *Canada: Tort Liability At Home For Alleged Wrongs Abroad: The Common Law Goes Extraterritorial?*, WEIRFOULDS LLP (Dec. 2, 2014), <https://www.mondaq.com/canada/international-trade-investment/357576/tort-liability-at-home-for-alleged-wrongs-abroad-the-common-law-goes-extraterritorial>. Another possible explanation is that Canada uses a monist approach to incorporating customary international law, which means that customary international law is automatically part of Canada’s domestic law. See Elisabeth Eid, *Interaction between International and Domestic Human Rights Law: A Canadian Perspective* (2019), <https://icclr.org/wp-content/uploads/2019/06/E-Eid.pdf?x96127>.

²⁷⁹ The case, brought in 2011, remains ongoing. Statement of Claim, *Caal v. Hudbay Minerals Inc. and HMI Nickel Inc.* (Mar. 28, 2011), <https://www.chocversushudbay.com/wp-content/uploads/2010/10/Statement-of-Claim-Caal-v.-HudBay.pdf>; *Hudbay Minerals Lawsuit (re Rape & Sexual Assault in Guatemala, filed in Canada)*, BUSINESS & HUM. RTS. RESOURCE CTR., <https://www.business-humanrights.org/en/latest-news/hudbay-minerals-lawsuit-re-rape-sexual-assault-in-guatemala-filed-in-canada/> (last visited Dec. 19, 2022).

human rights violations perpetrated by its subsidiary abroad.²⁸⁰ This concept has the potential to expand access to justice for victims of abuses linked to corporate actors, in particular where remedies in host states may be limited.²⁸¹

In another Canadian case, Eritrean plaintiffs filed a civil suit against Canadian corporation Nevsun Resources alleging that the company was complicit in local subcontractors' use of forced labor.²⁸² In February 2020, the Canadian Supreme Court dismissed Nevsun's appeal, holding that "since the customary international law norms raised by the Eritrean workers form part of the Canadian common law, and since Nevsun is a company bound by Canadian law, the claims of the Eritrean workers for breaches of customary international law should be allowed to proceed."²⁸³ This case was the first time an appellate court in Canada permitted a mass tort claim for modern slavery and, like *Hudbay*, it also set precedent for allowing tort suits against Canadian corporations for extraterritorial human rights violations of their subsidiaries.²⁸⁴

Similarly, the Supreme Court of the U.K. has "affirmed that a parent company that sufficiently intervenes, controls or advises the relevant operations of its subsidiary may bear liability for the breach of its duty of care toward the people affected by those operations."²⁸⁵

Despite the availability of certain international, domestic, and institutional accountability mechanisms, enforcement of states and NSAs'

²⁸⁰ Andrea Bolaños Vargas & Andrea Suárez Trueba, *The Case of "Lote Ocho": Indigenous Women Hold Corporations Accountable for Violence*, OPENGLOBALRIGHTS (July 8, 2020), <https://www.openglobalrights.org/lote-ochu-indigenous-women-corporate-accountability-guatemala-canada/>.

²⁸¹ Cory Wanless & Murray Klippenstein, *Mayan Q'eqchi' Plaintiffs Successfully Resist Hudbay Minerals' Latest Attack on Precedent-Setting Corporate Accountability Lawsuit*, RIGHTS ACTION (Jan. 28, 2020), <http://us9.forward-to-friend.com/forward/show?u=ea011209a243050dfb66dff59&id=62eeb749f0>.

²⁸² *Canada Mining Firm Accused of Slavery Abroad Can be Sued at Home, Supreme Court Rules*, THE GUARDIAN (Feb. 28, 2020), <https://www.theguardian.com/world/2020/feb/28/canada-nevsun-eritrea-lawsuit-human-rights-slavery>.

²⁸³ *Nevsun Resources Ltd. v. Araya*, CAN 2020 SCC 5, https://media.business-humanrights.org/media/documents/files/documents/Nevsun-en_0.pdf; *Canadian Supreme Court Opens Door to Corporate Liability for Human Rights Abuses Abroad*, DEBEVOIS & PLIMPTON (Mar. 19, 2020), <https://www.debevoise.com/-/media/files/insights/publications/2020/03/20200319-nevsun-final-19-march-2020.pdf>.

²⁸⁴ *Nevsun Resources Ltd.*, SISKINDS, <https://www.siskinds.com/class-action/nevsun-resources/> (last visited Dec. 16, 2021).

²⁸⁵ *See International Commission of Jurists, ICJ and CORE Welcome Landmark UK Supreme Court Decision – Nigerian Claimants Can Pursue Environmental Devastation Allegations against Shell in UK Courts*, INT'L COMM'N JURISTS (Feb. 12, 2021), <https://www.icj.org/icj-and-core-welcome-landmark-uk-supreme-court-decision-nigerian-claimants-can-pursue-environmental-devastation-allegations-against-shell-in-uk-courts/>.

obligations remains difficult. While opportunities for redress in both international and domestic courts exist, they have significant gaps in terms of viability. International mechanisms—many of which may issue only non-binding recommendations—require state consent for jurisdiction, and domestic courts are inconsistent in their willingness to hold IFIs and corporate actors accountable. Meanwhile, institutional mechanisms, although perhaps the most accessible to victims, inherently lack impartiality.

V. RECOMMENDATIONS

This paper used Haiti to illustrate the potential wide-ranging effects that foreign states and NSAs can have on human rights and the broader need, and emerging efforts, to strengthen accountability of these actors. This is particularly relevant within today's context of global interdependence and the increased role of NSAs globally.

In this context and given the growing recognition of states' ETOs and NSAs' human rights responsibilities, the availability of effective redress and accountability mechanisms is essential to hold these actors accountable for human rights harms created by their past and present practices. In addition, there is a need to reform current assistance policies and loan structures that negatively impact human rights through the adoption of existing and emerging principles and guidelines in international human rights law.

Attempts to address accountability in more recent years demonstrate a recognition that this is a persistent issue. In 2012, the UN Human Rights Council endorsed the Guiding Principles on Foreign Debt and Human Rights, which recommended the creation of an international debt workout mechanism to restructure unsustainable debts and resolve debt disputes.²⁸⁶ Furthermore, former Independent Expert on Foreign Debt and Human Rights Juan Pablo Bohoslavsky supported the 2014 adoption of a General Assembly resolution establishing a multilateral legal framework to regulate the sovereign debt restructuring process, which would “help to fill the current legal void and reduce uncertainty related to debt restructuring

²⁸⁶ Rep. of the Independent Expert on the Effects of Foreign Debt and Other International Financial Obligations of States on the Full Enjoyment of all Human Rights, Particularly Economic, Social, and Cultural Rights [hereinafter Rep. on Foreign Debt], U.N. Doc. A/HRC/20/23 (Apr. 10, 2011), <https://www.ohchr.org/en/issues/development/iedebt/pages/guidingprinciples.aspx>.

processes.”²⁸⁷ The General Assembly passed another draft resolution in 2015 establishing guiding principles for sovereign debt restructuring processes intended to “increase the stability and fairness of the international financial system.”²⁸⁸ In his 2018 report, the UN Special Rapporteur on extreme poverty and human rights, Philip Alston, criticized the WB, the IMF, and the UN for promoting privatization through neoliberal policies without adequately addressing the potential human rights impact.²⁸⁹ Similarly, the 2021 Principles for Human Rights in Fiscal Policy, the product of the CESR-led Initiative for Human Rights Principles in Fiscal Policy, recommend that IFIs and states take a human rights-based approach to debt and privatization to ensure that neither impairs the enjoyment of human rights.²⁹⁰

A. *Debt Relief and the Restoration of Haiti’s Autonomy*

The right to an effective remedy, which has been advocated for in the context of the UN-introduced cholera epidemic in Haiti,²⁹¹ includes restitution for harms stemming from the actions of foreign states and NSAs. It also includes systemic change that guarantees non-repetition by putting countries in a position where they have equal bargaining power and by limiting the influence of IFIs. While international aid agreements shape a substantial part of Haiti’s domestic policy, the ability of the Haitian people to participate in negotiating these agreements is small, not only because elected officials lack real governmental influence and power, but because the government itself continues to be in a disadvantaged position when negotiating the loan conditions that enable this foreign control. Those entities that influence Haitian policies, such as IFIs, foreign states, and corporate actors, are neither elected by, nor accountable to, the people of Haiti. Directing foreign aid to humanitarian organizations instead of the government and privatizing key basic infrastructure services further

²⁸⁷ *UN Rights Expert Welcomes Decision to Establish a Multilateral Legal Framework for Debt Restructuring*, OHCHR (Sept. 10, 2014), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15009>; G.A. Res. 68/304 (Sept. 17, 2014).

²⁸⁸ Bhumika Muchhala, *U.N. Adopts Landmark Debt Resolution on Principles for Sovereign Debt Restructuring*, South Centre (2015), <https://www.southcentre.int/question/un-adopts-landmark-debt-resolution-on-principles-for-sovereign-debt-restructuring/>; G.A. Res. 69/319, *Basic Principles on Sovereign Debt Restructuring Processes* (Sept. 10, 2015).

²⁸⁹ *Rep. of the Special Rapporteur on Extreme Poverty and Hum. Rts.*, at ¶¶ 14-15, 18-20, U.N. Doc. A/73/396 (Sept. 26, 2018), https://srpoverty.org.files.wordpress.com/2018/10/a_73_396-sr-on-extreme-poverty-privatization.pdf.

²⁹⁰ Principles for Human Rights in Fiscal Policy, CTR. FOR ECON. SOC. RTS. (May 2021), <https://www.cesr.org/principles-human-rights-fiscal-policy>.

²⁹¹ See generally, HLSIHC, IJDH & BAI, *supra* note 141.

removes power and control from the hands of elected officials and, consequently, the people as ultimate rights holders.

Any future engagement from foreign actors in Haiti should abide by international human rights law and be centered on human rights, respect for democracy, and the country's self-determination. The international community needs to reimagine and reform aid practices to shift from an approach that reinforces pre-existing power structures to one that measurably promotes meaningful and sustainable development in practice.²⁹² In the context of the 2020 COVID-19 pandemic, an initial effort by the UN Independent Expert on debt and human rights called for an immediate moratorium on sovereign debt repayment for the poorest and most debt-distressed countries.²⁹³ This call does not appear to have been fulfilled, with IFIs instead establishing piecemeal solutions to lessen the burden of debt amid the COVID-19 pandemic.²⁹⁴ But more importantly, while initiatives like these are helpful, they are also temporary in nature and do not solve the unequal power relations created by unsustainable debt. Only meaningful debt relief, such as a cancellation of all debt owed by Haiti to multi-development banks, implemented alongside the other recommendations in this Section, would help ensure that Haiti can become an equal partner at the table. Such relief would finally allow the country to take the lead in policy decision-making and to put funds toward social services spending for the population.

In addition, international aid actors should move away from policies that displace the Haitian state, and instead toward those that reinforce

²⁹² See *A Rights Based Economic: Putting People and the Planet First*, CHRISTIAN AID & CENTER FOR ECONOMIC AND SOCIAL RIGHTS 28 (Oct. 2020), <https://www.cesr.org/sites/default/files/Rights%20Based%20Economy%20briefing.pdf>; *The Audacity to Disrupt: an Introduction to Feminist Macro-Level Economics*, AFRICAN WOMEN'S DEVELOPMENT AND COMMUNICATION NETWORK (FEMNET) & GENDER & DEVELOPMENT NETWORK (GADN) (2020), <https://static1.squarespace.com/static/536c4ee8e4b0b60bc6ca7c74/t/5f2940b2adaadd409fa60345/1596539086311/AFMA+resource+pack+-+The+audacity+to+disrupt+2020.pdf>.

²⁹³ *Responses to COVID-19 Crisis: UN Expert Urges More Government Spending Targeting Inequality, Not Big Business*, OHCHR (Apr. 15, 2020), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25793&LangID=E>.

²⁹⁴ On April 17, 2020, the IMF approved Haiti for the "Rapid Credit Facility" relief program, which made available \$111.6 million in emergency financing. See Press Release, IMF, IMF Exec. Bd. Approves US\$111.6 Million Disbursement to Haiti to Address the COVID-19 Pandemic (Apr. 17, 2020), <https://www.imf.org/en/News/Articles/2020/04/17/pr20171-haiti-imf-executive-board-approves-us-111-6m-disbursement-address-covid19-pandemic>. In August 2021, \$157 million of the 650 billion IMF Special Drawing Rights was allocated to Haiti; see *2021 General SDR Allocation*, INT'L MONETARY FUND, *supra* note 86. Haiti has not opted into the WB's Debt Service Suspension Initiative (DSSI); see Debt Service Suspension Initiative, WORLD BANK (Nov. 5, 2021), <https://www.worldbank.org/en/topic/debt/brief/covid-19-debt-service-suspension-initiative>.

public capacity to confer and protect basic rights and help to support the Haitian people in their fight to build autonomous leadership. These actors should coordinate and cooperate with Haiti by respecting government priorities and supporting government capacity, instead of making unilateral decisions that undercut the Haitian government and public participation therein.²⁹⁵ Unilateral decisions keep the elected Haitian Government, and by extension the people that it represents, out of key choices affecting the country—without this input, aid could fail to have a positive impact and can actually make a situation worse.²⁹⁶ Decolonizing decision-making at the international level, as rightly proposed by civil society organizations active in the global debt movement,²⁹⁷ requires that global governance take into account the legacies of colonialism and differing levels of resources and that IFIs loosen their grip on countries' macro-economic policies.²⁹⁸ This is essential given that these actors are themselves undemocratic in their decision-making structures, with middle and low-income countries, which constitute approximately eighty-five percent of the world's population, only accounting for approximately forty percent of the vote.²⁹⁹

There are a number of concrete measures that states and IFIs should take to address the significant harms their policies have inflicted on Haiti. First, states and IFIs should ensure the restructuring or total cancellation of foreign debts owed by Haiti. Past debt relief initiatives have included conditions that—just like the loan conditions discussed throughout this article—limited the government's ability to spend on critical social services and ultimately led to re-accumulated debt.³⁰⁰ Debt restructuring or cancellation should be unconditional in order to allow Haiti to rebuild autonomous leadership and restore its self-sufficiency. Effective debt relief can also be an important tool for helping Haiti respond to urgent crises—like natural and climate-related disasters and the COVID-19 pandemic—and can assist in combatting the historical imposition and entrenchment of debt in Haiti.

²⁹⁵ Gabriela Sánchez Gutiérrez & Randolph Gilbert, *Coopération Internationale en Haïti: Tensions et Leçons* (2019), https://repositorio.cepal.org/bitstream/handle/11362/45031/1/S1901196_fr.pdf.

²⁹⁶ See, e.g., Varma et al., *supra* note 75.

²⁹⁷ See e.g., FEMNET & GADN, *supra* note 292.

²⁹⁸ See, e.g., CHRISTIAN AID & CENTER FOR ECONOMIC AND SOCIAL RIGHTS, *supra* note 292; FEMNET & GADN, *supra* note 292.

²⁹⁹ Lucien & Curtain, *supra* note 71.

³⁰⁰ For example, the International Monetary Fund's Highly Indebted Poor Country initiative. Int'l Monetary Fund, *Haiti: Enhanced Initiative for Heavily Indebted Poor Countries: Preliminary Document*, Country Rep. (Sept. 25, 2006), <https://www.imf.org/en/Publications/CR/Issues/2016/12/31/Haiti-Enhanced-Initiative-for-Heavily-Indebted-Poor-Countries-Preliminary-Documents-19907>.

Second, powerful IFI Member States, like the U.S., should approve adequate allocation of Special Drawing Rights (SDRs), the IMF's reserve currency. This is a preliminary, but important, step toward debt relief, as SDRs allow countries that are struggling financially to invest in critical services and infrastructure. Adequate allocation also requires that states and the IMF have a thorough and honest understanding of Haiti's financial needs, otherwise SDRs will serve only as a band-aid rather than a lifeline.

Third, states and IFIs should stop promoting expenditure limitations and fiscal discipline in conditional loans to Haiti, which already suffers from low levels of spending, so that it can invest much needed funds in social services. Better yet, foreign aid should be provided in the form of grants to end the cycle of aid dependence and promote long-term self-sufficiency.

Finally, foreign donors should direct aid to the government rather than encouraging the use of humanitarian organizations and external aid agencies to deliver aid and essential services. They should also work to ensure that key infrastructure services remain publicly held in an effort to keep states, IFIs, and corporate actors accountable to individuals. This is particularly salient in the Haitian context where over-reliance on private and external aid organizations has made accessing essential services, such as health and education, extremely difficult and precarious.

B. Accountability and Oversight of Foreign Actors

As noted, internal IFI complaint mechanisms are limited and designed to hold IFIs accountable for particular projects based upon a set of principles that do not correspond well with the experiences of individuals whose human rights have been violated. Independent international and domestic accountability mechanisms, meanwhile, present significant procedural hurdles and have been inconsistent in their willingness to hold corporate actors accountable. Unsurprisingly, these mechanisms have produced limited gains in vindicating victims' rights across the globe. As such, foreign actors should take the following accountability and oversight measures specific to them to ensure systemic change.

First, NSAs should be required to provide reparations for past harms. Furthermore, given some of the previously highlighted promising developments in domestic litigation for redressing harms caused by foreign NSAs, at least in some countries, states should ensure that impacted individuals are able to pursue reparation claims for human rights violations in domestic courts. Both states and NSAs—in this case, banks—should also provide reparations in the form of redress for historical wrongs such as

slavery and colonialism, which were instrumental in indebting Haiti in the first place and starting the vicious cycle of aid dependence.

Second, major state contributors to extraterritorial actors such as global financial institutions, private corporations, and multilateral organizations should exercise democratic control and oversight of these bodies. Such oversight, which should be conducted through a human rights-focused lens, is critical for accountability.

Third, states, IFIs, and corporate actors should adopt recommendations to carry out a thorough human rights impact assessment prior to investing in development projects and providing loans, and should establish an effective monitoring mechanism to assess the impact of their policies.³⁰¹ In the same vein, they should consult and utilize the UN Human Rights Council's Guiding Principles on Human Rights Impact Assessment of Economic Reforms³⁰² and Guiding Principles on Foreign Debt and Human Rights³⁰³ as general frameworks in approaching structural adjustment policies, economic reforms, and the foreign debt burden.

Finally, foreign actors should develop independent and accessible accountability mechanisms through which communities can report rights violations with respect to policy decisions regarding foreign aid made at the highest levels. This would provide an alternative to the current IFI-created and -controlled mechanisms, which largely fail to hold IFIs accountable.

CONCLUSION

Haiti's dependence on aid and the ensuing foreign dominance over its affairs is a direct result of colonialist policies and lending practices by foreign states and NSAs, which have led to serious and widespread violations of individuals' fundamental human rights. These actors are held to several standards under international law regarding the economic, social, cultural and political rights of individuals. They also have ETOs to respect and protect human rights beyond their borders. However, without effective accountability mechanisms, states, IFIs, and corporate actors have not been

³⁰¹ Comm. on Econ., Soc. and Cultural Rts., Concluding Observations on the Sixth Periodic Report of Germany, ¶ 17, U.N. Doc E/C.12/DEU/CO/6 (Nov. 27, 2018).² In its periodic review of the U.K., the Committee called on the U.K. government to implement mechanisms to "undertake a systematic and independent human rights assessment prior to its decision-making on development cooperation projects" and to establish "an effective monitoring mechanism to establish the impact of their policies," with special attention paid to economic, social, and cultural rights. *Id.* at ¶ 15.

³⁰² Rep. of the Independent Expert on the Effects of Foreign Debt and Other International Financial Obligations of States on the Full Enjoyment of all Human Rights, Particularly Economic, Social, and Cultural Rights, UN Doc. A/HRC/40/57 (Dec. 19, 2018), <https://undocs.org/A/HRC/40/57>.

³⁰³ Rep. on Foreign Debt, *supra* note 286.

held liable for the harms caused by their policies and practices. Nor have they had to decolonize or otherwise reframe their approach to aid to reflect a more human rights-based outlook that promotes sustainable development. Reforming and strengthening accountability and oversight measures is critical to both providing redress for past harms and ensuring that future involvement from states and NSAs in Haiti aligns with international legal obligations regarding human rights and Haiti's autonomy.