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Establishing Economic Independence in Haiti Through Public-Private Partnerships and Foreign Direct Investment

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Abstract:

In 1804, the Caribbean island of Haiti became the first black republic in the world after leading the only successful slave rebellion in history to result in the formation of an independent nation. Overflowing with valuable natural resources and equipped with a strategic Caribbean location, Haiti was positioned to remain one of the most prosperous territories in the world. But the price of independence was steep, and the country failed to thrive under crushing foreign intervention. But its story does not end there.

This note examines the opportunities for Haiti to establish economic independence through public-private partnerships and foreign direct investments. First, this note will recount Haiti's complicated past, from the native Taino Indians, the commencement of African slavery, to the historic slave rebellion and the fight for independence which elicited extreme backlash from the Western world. Next, this note will take an in-depth look at Brazil's recent anticorruption success and apply those lessons to Haiti. By firmly addressing its own corruption issue, Haiti can create an environment that is welcoming to foreign investors, paving the way for transformative public-private partnerships.

This note will then address the characteristics of an effective public-private partnership (P3)—a mechanism by which a government can partner with the private sector to fund and operate key infrastructures and stimulate economic development. Haiti's lack of essential structure makes it ripe with opportunities for P3s in virtually every industry—water, sanitation, electricity, internet, transportation, education, and more. Developing this infrastructure will not only stabilize daily life for Haiti's citizens but it can begin to attract foreign investors.

As such, this note will explain the role of foreign direct investments (FDIs) in strengthening and expanding Haiti's economy. In addition to injecting capital

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into the country, FDIs can also help Haiti develop its human capital by providing jobs and skill training.

This note proposes that through the development of essential infrastructure via P3s and the expansion of the economy with FDIs, Haiti can begin to establish economic independence and take its rightful place in the global economy.

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I. INTRODUCTION

A strikingly beautiful island country brimming with tropical trees, sprawling mountain ranges, and sandy beaches that blend seamlessly into the clear Caribbean Sea, the Republic of Haiti is a historic nation of endless possibilities. Troubled by centuries of international interference and debilitating infighting, Haiti is currently and most commonly known as "the poorest country in the Western Hemisphere."[1] However, once globally renowned as "[t]he Pearl of the Antilles,"[2] Haiti was never inherently impoverished. Its current economic condition was strategically and deliberately imposed through centuries of external military influence, unfavorable international trade laws and practices, and intentional government destabilization.[3]

In order to become a thriving and economically independent nation, one that is not nearly eighty percent dependent on foreign aid, Haiti will have to transform itself in a minimum of three ways. First, essential infrastructure such as roads, sanitation, electricity, and transportation must be established, ideally through public-private partnerships (P3s) to make up for the lack of internal capital. Next, regulations and laws must be created and properly enforced in order to ensure the stability and protection of both foreign and domestic investments. This includes thorough anti-corruption legislation to regulate not just international participation but domestic private companies, which have crippled key sectors through their corrupt practices.[4] Finally, with regulation and key infrastructure in place, Haiti would be ready for the third and key step to its economic development: foreign direct investments (FDIs). FDIs will build up the private sector and create jobs, in turn training Haiti's vast but untapped labor force.

Though the invitation of private investors sounds contrary to economic independence, it is the first step to stabilizing the economy to the point of independence, something the country has not seen in decades, if ever. The debilitated conditions of Haiti's domestic infrastructure and the level of foreign aid currently provided by the United States[5] create a climate that is ready for global companies to answer the country's call for private foreign investors. The steady and continuous flow of knowledge and funds typical of FDIs would help bolster Haiti's local economy while further strengthening their foothold in both the Caribbean and world economy. Haiti is open for

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1 CIA, CENTRAL AMERICA: HAITI, THE WORLD FACTBOOK, https://www.cia.gov/library/publications/the-world-factbook/geos/print_ha.html (last visited Feb. 4, 2019).

2 MICHAEL S. VANHOOK, THE PEARL OF THE ANTILLES: A HISTORY OF HAITI 4 (2019).

3 Rocio Cara Labrador, *Haiti's Troubled Path to Development*, GLOBAL TRADE (Apr. 13, 2018), http://www.globaltrademag.com/uncategorized/haitis-troubled-path-to-development.

4 MARTHA N. KELLEY, OECD, ASSESSING THE INVESTMENT CLIMATE IN HAITI: POLICY CHALLENGES, 2 (2001), http://www.oecd.org/industry/inv/investmentstatisticsandanalysis/1897610.pdf.

5 *See* CIA, *supra* note 1.

business.

The following argument will detail: 1) Haiti's political and economic history and its demonstrated need for consistent and regulated foreign investors, 2) the U.S. legislation currently upholding trade law to Haiti, 3) the opportunities for infrastructure to be developed through P3s, 4) lessons to be learned from Brazil on effective anti-corruption reform, and 5) opportunities for and benefits of FDIs in Haiti on a local, Caribbean, and global economic scale.

II. PAST AND PRESENT FOREIGN INTERFERENCE IN HAITI

A. *Haiti's Political and Economic History*

Haiti's native Taino Indians were virtually annihilated shortly after Christopher Columbus's 1492 arrival on the island of Hispaniola.[6] The brutal slavery and oppression of the Taino people led Columbus's fellow settler Bartolomé de Las Casas ("Protector of the Indians") to suggest the importation of African slaves as an alternative to enslaving the native Taino Indians[7] since Africans were believed to be stronger.[8] Some consider this to be the beginning of the transatlantic slave trade in the New World.[9]

Haiti was wealthy with natural resources, including sugarcane, organic tropical fruits, coffee, oil and natural gas, gold, copper,[10] bauxite, calcium carbonate, marble, hydropower, and arable land.[11] In order to harvest the copious resources of the island, France—the new owners of a third of Hispaniola—increased their importation and subsequent brutalization of African slaves.[12] Focusing on sugar and forestry related industries for their trade,[13] Saint Domingue—the French name for the island—soon became France's most profitable colony.[14]

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6 *See* VANHOOK, *supra* note 2, at 9.

7 *Id.* at 10.

8 Dani Anthony, *July 2015: Bartolomé de las Casas and 500 Years of Racial Injustice*, ORIGINS: CURRENT EVENTS IN HISTORICAL PERSPECTIVE, http://origins.osu.edu/milestones/july-2015-bartolom-de-las-casas-and-500-years-racial-injustice, (last visited Mar. 11, 2020).

9 Sylvia Wynter, *New Seville and the Conversion Experience of Bartolomé de Las Casas*, JAM. J., May 1984, at 25, 25, https://ufdc.ufl.edu/UF00090030/00043/27j.

10 Benjamin Elisha Sawe, *What Are The Major Natural Resources Of Haiti?*, WORLDATLAS (Jan. 17, 2019), https://www.worldatlas.com/articles/what-are-the-major-natural-resources-of-haiti.html.

11 CIA, *supra* note 1.

12 *See* VANHOOK, *supra* note 2, at 10-12.

13 CIA, *supra* note 1.

14 *Id.* ("The French colony, based on forestry and sugar-related industries, became one of the wealthiest in the Caribbean but relied heavily on the forced labor of enslaved Africans and environmentally degrading practices."); H.P. DAVIS, BLACK DEMOCRACY: THE STORY OF HAITI 23 (photo. reprint 2007) (Longmans, Green & Co 1928) ("From the middle of the eighteenth century to the French Revolution was a period of increasing and unexampled prosperity, French St.-Domingue being counted the richest colonial possession in the world.").

After three centuries of African slavery on the island, Haiti became an independent nation in 1804 following a historic slave rebellion.[15] The young nation changed its name from Saint Domingue to its Taino name of *Ayiti* or Haiti meaning "Land of High Mountains."[16] This historic victory made Haiti the first black republic in the world.[17]

Haiti's extraordinary feat marked a shift in global politics and world affairs, almost immediately changing the course of history for one future world superpower—the United States. France's clandestine and renewed ownership of New Orleans and the potential for French interference instilled great fear in then-President Thomas Jefferson, who wrote to his U.S. Minister to France Robert Livingston, "[t]he day that France takes possession of New Orleans . . . we must marry ourselves to the British fleet and nation."[18] Jefferson then sent Livingston to negotiate the purchase of New Orleans.[19]

Under Napoleon Bonaparte, France had revived its vision of a French Empire in the New World.[20] However, Bonaparte's inability to defeat Haiti's unrelenting slave revolt left France's position severely weakened.[21] When Livingston arrived to negotiate the purchase of Louisiana, France shocked the United States by offering the entirety of the Louisiana Territory for sale.[22] The slave revolt, still one year from its completion, was formidable enough to be one of the main contributing factors of the 1803 sale of more than 828,000 square miles of land for $15 million—essentially doubling the United States' size for only three cents per acre.[23] The purchased land contained a part or whole of 15 future states, thus becoming a landmark of Jefferson's presidency and a turning point for the United States' expansion into the West.[24]

However, Haiti's multifaceted triumph and contribution to the global landscape was hardly received as such. Despite becoming an independent nation in 1804, it was not recognized as a country by the United States until nearly sixty years later in 1862.[25] During this time, France, which had been profiting significantly from its colony in Haiti, demanded that Haiti pay it

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[15] See VANHOOK, *supra* note 2, at 21.

[16] See CIA, *supra* note 2.

[17] *Id.*

[18] History.com Editors, *Louisiana Purchase*, HIST., https://www.history.com/topics/westward-expansion/louisiana-purchase (last updated June 6, 2019).

[19] *Id.*

[20] Erin Blakemore, *The Louisiana Purchase Was Driven by a Slave Rebellion*, HIST., https://www.history.com/news/louisiana-purchase-price-french-colonial-slave-rebellion (last updated Aug. 23, 2018).

[21] *Id.*

[22] *See* History.com Editors, *supra* note 18.

[23] *United States and France conclude the Louisiana Purchase*, HIST., https://www.history.com/this-day-in-history/louisiana-purchase-concluded (last updated July 17, 2019).

[24] *Id.*

[25] Kelsey Gasseling, *The Threads of Justice: Economic Liberalization and the Secondhand Clothing Trade Between the U.S. and Haiti*, 58 B.C.L. REV. 1279, 1298 (2017).

reparations for loss of income and for the slaves' freedom; otherwise France threatened to invade the new nation[26] and reinstitute slavery.[27]

In order to maintain its historic freedom, the 21-year-old nation decided in 1825 to pay France's demand of one hundred and fifty million gold francs.[28] In February 1838, France decreased the amount to ninety million gold francs.[29] Still, the damage was done. The total debt paid would eventually equal $21 billion in today's currency.[30] This astounding total includes not only the original principal but also the interest from loans that Haiti had to take from French banks to pay the debt.[31] The repayment of these reparations, or the "independence debt," created a financially devastating process that did not end until 1947, 122 years after the initial payment.[32] Over the 122 years of repayment—which encompassed fundamental economic development years—the annual payments for the debt sometimes equaled about 80% of the new country's gross domestic product, effectively constraining any significant growth.[33] Brian Concannon, Jr., founder and executive director of the Institute for Justice and Democracy in Haiti, summarized the lasting impact of the independence debt on the young nation: "For an entire century, Haiti geared its economy to paying back the French debt and missed out on industrialization, education, and development of its government and democratic institutions. It really couldn't develop."[34]

B. Haiti's Demonstrated Need: Rice Dumping and the Right to Food

The Haitian constitution protects a right to adequate food,[35] but access to food remains one of Haiti's most pressing needs[36] and violated rights. In

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26 *Id.*

27 Blakemore, *supra* note 20.

28 H.P. DAVIS, BLACK DEMOCRACY: THE STORY OF HAITI 116-17 (photo. reprint 2007) (Longmans, Green & Co 1928).

29 *Id.* at 118; *see also* Gasseling, *supra* note 25, at 1299.

30 Kim Ives, *HAITI: Independence Debt, Reparations for Slavery and Colonialism, and International "Aid"*, GLOBAL RES. (May 10, 2013), https://www.globalresearch.ca/haiti-independence-debt-reparations-for-slavery-and-colonialism-and-international-aid/5334619.

31 DAVIS, *supra* note 28, at 118.

32 Ives, *supra* note 30.

33 *Id.*

34 Labrador, *supra* note 3; *see also* Gasseling, *supra* note 25, at 1299 ("This staggering and longstanding debt encumbered Haiti's process of economic development and industrialization, thus preventing the nation from gaining a competitive foothold in the global market.") *and* Ives, *supra* note 30 ("After the debt was paid, Haitians were left with a chronically undeveloped economy, rampant poverty, and a spent land — today relatively minor environmental stresses like tropical storms cause catastrophic damage in vulnerable Haiti.").

35 *The Right to Food Around the Globe*, FAO, http://www.fao.org/right-to-food-around-the-globe/countries/hti/en/ (last visited Mar. 17, 2019).

36 *Haiti: Deteriorating Economic State Impacts Humanitarian Situation*, UNOCHA (Dec. 27, 2019), https://www.unocha.org/story/haiti-deteriorating-economic-state-impacts-humanitarian-situation [hereinafter *Haiti: Economic State*].

fact, the United Nations Office for the Coordination of Human Affairs (UNOCHA) predicts that in 2020, at least "4.6 million Haitians—about 40% of the total population—will require urgent humanitarian assistance."[37] While the Haitian government's handling of the economy is at fault[38], they were not solely responsible for this dire situation.

In his article, *Cheaper, Better, Longer-Lasting: A Rights-Based Approach to Disaster Response in Haiti*, Brian Concannon Jr. succinctly summarizes the origins of Haiti's current agricultural woes.

> In the 1980s, Haiti was a net exporter of agricultural produce. The agricultural sector collapsed, however, after the International Monetary Fund imposed structural adjustments in the 1980s and 1990s, which required Haiti to decrease subsidies on domestic rice and remove tariffs on imported staples.[39] Under pressure from the United States, Haiti also had to slash tariffs from 45-50 [%] down to 0-15 [%].[40]

In other words, the Haitian government was forced to stop providing its own farmers with economic incentives to grow rice domestically, while simultaneously slashing the taxes on imported rice that were meant to encourage consumption of the domestically grown rice.[41] Instead, local rice became expensive to produce and sell, while U.S. producers were able to flood the Haitian market with their cheaply made surplus of rice.[42] Without these protections, Haitian farmers could not compete with subsidized U.S. agricultural goods, and imports from the United States flooded the Haitian markets.[43]

The international trade practice known as dumping, thus, played out in textbook format in Haiti.

> [Dumping occurs when] a country or company exports a product at a price that is lower in the foreign importing market than the price in the exporter's domestic market. Because dumping typically involves substantial export volumes of a product, it often endangers the financial viability of the product's manufacturers or producers in the

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37 *Id.*

38 *Id; see also* Brian Concannon, Jr. & Beatrice Lindstrom, *Cheaper, Better, Longer-Lasting: A Rights-Based Approach to Disaster Response in Haiti*, 25 EMORY INT'L L. REV. 1145, 1163-1164 (2011).

39 Brian Concannon, Jr. & Beatrice Lindstrom, *Cheaper, Better, Longer-Lasting: A Rights-Based Approach to Disaster Response in Haiti*, 25 EMORY INT'L L. REV. 1145, 1163-1164 (2011) (footnote omitted).

40 *Id.*

41 *Id.*

42 *Id.*

43 *Id.*

importing nation.[44]

The Food Security Act of 1985 (the "1985 U.S. Farm Bill") was a five-year plan enacted "to extend and revise agricultural price support and related programs, to provide for agricultural export, resource conservation, farm credit, and agricultural research and related programs, to continue food assistance to low-income persons, to ensure consumers an abundance of food and fiber at reasonable prices, and for other purposes."[45] The Bill was essentially created to stimulate the stagnant farming economy in the United States, as illustrated by Title VI of the Bill which amended the Agricultural Act of 1949 and authorized "(1) specified support reductions; (2) reduced loan repayments; (3) deficiency payments; (4) acreage limitation, set-aside, and land diversion programs; and (5) export marketing certificates" for rice crops.[46]

Though the problematic policy predated his presidential term by nearly a decade, Former President Bill Clinton stated in a 2010 Senate Committee Hearing on Global Health Programs that this policy was a "mistake" that exclusively benefited farmers in the United States.

> Since 1981, the United States has followed a policy until the last year, when we started rethinking it, that we rich countries that produce a lot of food should sell it to poor countries and relieve them of the burden of producing their own food, so that they can leap directly into the industrial era. It has not worked. [It may have] been good for some of my farmers in Arkansas, but it has not worked.
>
> It was a mistake. It was a mistake that I was a party to. I am not pointing the finger at anybody else. I have to live every day with the consequences of the lost capacity to produce rice in Haiti [to feed those people] because of what I did.[47]

Former President Clinton acknowledged these failures in March 2010. Now, exactly a decade later, Haiti teeters on the edge of a severe food crisis and its most vulnerable populations—women and children—will bear the brunt of it.[48]

As if the economic consequences of these practices were not enough,

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[44] *Dumping*, INVESTOPEDIA, https://www.investopedia.com/terms/d/dumping.asp#ixzz5XWK1rHS2 (last visited Feb. 4, 2019).

[45] Food Security Act of 1985, H.R. 2100, 99th Cong., 99 Stat. 1354 (1985).

[46] *Summary: H.R.2100—99th Congress (1985-1986)*, CONGRESS.GOV, https://www.congress.gov/bill/99th-congress/house-bill/2100 (last visited Feb. 20, 2020).

[47] *Building on Success: New Directions in Global Health: Hearing Before the Comm. on Foreign Relations*, 111th Cong. 9-10 (2010) (statement of Hon. William Jefferson Clinton, Chairman, William J. Clinton Foundation), https://www.foreign.senate.gov/imo/media/doc/031010_Transcript_Building%20on%20Success%20New%20Directions%20in%20Global%20Health.pdf.

[48] *Haiti: Economic State*, *supra* note 36.

there was at least one other side-effect. Because of the inability to make a living in the countryside with farmland and produce, many unemployed farmers and their families moved into Haiti's cities—most notably the Haitian capital of Port-au-Prince—where they expected to find work.[49] This migration is one of the contributing factors to Port-au-Prince's severe overpopulation.[50] The overpopulation established a deadly setting for the historic January 12, 2010 earthquake that all but demolished the city.[51] Though the reports vary, the Haitian government estimated the death toll in and around the city to be more than 300,000 lives.[52] The large death toll was attributed, at least in part, to Haiti's either outdated or lack of building codes.[53]This leads to Haiti's need for the establishment of key infrastructure and regulations, which is a substantial opportunity for outside investors. According to a January 2008 memo regarding Haiti's Inter-American Development Bank loan exactly two years before the deadly earthquake, "Haiti [had been] seeking international help to spur economic development in the country. President René Préval submitted that the country's poverty, widespread unemployment, and the dilapidated state of infrastructure will be alleviated with increased international assistance."[54] However, with regard to foreign investments, Haiti still faces the challenge "to achieve a balance between the need for foreign capital and the fear of foreign economic domination."[55]

III. CARIBBEAN AND U.S. TRADE LAWS FOR HAITI

Whether or not Haiti has fallen into further foreign economic domination depends on the trade laws to which it is a subject or a party. There have been at least four separate developments over the past few decades that are currently regulating Haiti's interaction with the global markets: the Caribbean Basin Trade Partnership and its predecessor the Caribbean Basin Initiative, the HELP Act, and the HOPE Act. There is also the Caribbean Community Trade Agreement which regulates how Haiti interacts with the Caribbean markets.[56]

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[49] Carl Lindskoog, *What You're Not Hearing about Haiti (But Should Be),* COMMON DREAMS (Jan. 14, 2010), https://www.commondreams.org/views/2010/01/14/what-youre-not-hearing-about-haiti-should-be.

[50] *Id.*

[51] *Id.*

[52] Richard Pallardy, *Haiti Earthquake of 2010*, BRITANNICA, https://www.britannica.com/event/Haiti-earthquake-of-2010 (last updated Oct. 5, 2018).

[53] *Id.*

[54] *HAITI: IDB Grants US $17.8MM Loan to Promote Rural Supply Chain* (Jan. 20, 2008), TROUBLED COMPANY REPORTER (Oct. 27, 2006), https://advance.lexis.com/api/permalink/f16b46d9-c56a-490b-86d6-e406a8fb1cc9/? context=1000516.

[55] Lewis D. Soloman & David H. Mirsky, *Direct Foreign Investment in the Caribbean: A Legal and Policy Analysis*, 11 NW. J. INT'L L. & BUS. 257, 259 (1990).

[56] *Haiti - Trade Agreements*, SELECTUSA.GOV, https://www.selectusa.gov/article?id=Haiti-Trade-Agreements (last updated Aug. 3, 2019).

A. Caribbean Basin Trade Partnership Act (CBTPA)

On October 2, 2000, Haiti became a beneficiary of the Caribbean Basin Trade Partnership Act (CBTPA),[57] which was passed by Congress as part of its Trade and Development Act of 2000[58] "to authorize a new trade and investment policy for sub-Saharan Africa, expand trade benefits to the countries in the Caribbean Basin, renew the generalized system of preferences, and reauthorize the trade adjustment assistance programs."[59] As such, the CBTPA is "designed to provide greater duty-free access to U.S. market for Caribbean and Central American nations."[60] An important predecessor of the CBTPA is the Caribbean Basin Initiative (CBI). The CBI's primary goal is to "facilitate the development of stable Caribbean Basin economies by providing beneficiary countries with duty-free access to the U.S. market for most goods." [61] According to the *Haiti Commercial Guide* published by SelectUSA, an organization that facilitates business investment in the United States, "the CBTPA expands on the CBI program by allowing duty-free and quota-free treatment for imports of certain apparel from the region and by extending NAFTA-equivalent tariff treatment to a number of other products that were previously excluded from the CBI program."[62] The current CBTPA agreement is set to expire on September 30, 2020.[63]

B. The HELP and HOPE Acts

In order to help Haiti became an active member in the apparel and textile industry, Congress enacted the Haitian Hemispheric Opportunity through Partnership Encouragement (HOPE) Act of 2006, which went into effect on March 19, 2007.[64] Congress provided HOPE in addition to other trade preferences to create a holistic trade relationship; these include the Generalized System of Preferences (GSP),[65] Caribbean Basin Economic

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57 *Id.*

58 *See* Trade and Development Act of 2000, H.R. 434, 106th Cong., 114 Stat 251 (2000).

59 *Id.*

60 *Haiti - Trade Agreements*, *supra* note 56.

61 *Caribbean Basin Initiative (CBI)*, OFF. OF THE U.S. TRADE REPRESENTATIVE, https://ustr.gov/issue-areas/trade-development/preference-programs/caribbean-basin-initiative-cbi (last visited Feb. 4, 2019).

62 *Haiti - Trade Agreements*, *supra* note 56.

63 *Id.*

64 *See* Tax Relief and Health Care Act of 2006, H.R. 6111, 109th Cong., 120 Stat. 2922 (2006) (the HOPE Act is incorporated in Title V of this Act.).

65 *See* Trade Act of 1974, H.R. 10710, 93rd Cong., 88 Stat 1978 (1974); *see also* U.S. CUSTOMS & BORDER PROT., GENERALIZED SYSTEM OF PREFERENCES (GSP), https://www.cbp.gov/trade/priority-issues/trade-agreements/special-trade-legislation/generalized-system-preferences (Last updated February 26, 2020) ("The Generalized System of Preferences (GSP) provides duty-free treatment to goods of designated beneficiary countries. The program was authorized by the Trade Act of 1974 to promote economic growth in the developing countries and was implemented on January 1, 1976.").

Recovery Act (CBERA),[66] and CBTPA.[67] According to the *SelectUSA Haiti Commercial Guide*, "eligibility criteria for the HOPE Act includes progress toward achieving a market-based economy, increasing employment, enhancing the rule of law, eliminating barriers to U.S. trade, combating corruption, and protecting internationally recognized human and worker rights."[68] More recently, after the January 12, 2010 earthquake, imports of apparel articles from Haiti to the United States in 2010 decreased by forty-three percent in comparison to 2009 according to estimates by the Department of Commerce.[69] As a result, the U.S. Congress passed the Haiti Economic Lift Program (HELP) Act.[70] The bill extends the CBTPA and the HOPE Act through September 30, 2025.[71]

The *SelectUSA Haiti Commercial Guide* concludes that the unique "trade preferences available under the HOPE and HELP Act are specifically designed for Haiti and are conditioned on both the Haitian government and individual producers meeting certain core labor standards and Haitian labor laws."[72]

IV. BALANCING FOREIGN PARTICIPATION WITH DOMESTIC INDEPENDENCE

Foreign direct investments (FDIs) are one of Haiti's options for bolstering its infrastructure beyond its current state and for helping the country engage with the global community on a more substantial level. FDIs allow an investor to invest in another country while maintaining significant control of the management and even operations of said investment.[73]

> The IMF's Balance of Payments Manual, fifth edition (BPM5) defines FDI as a category of international investment that reflects the objective of a resident in one economy (the direct investor) obtaining a lasting interest in an enterprise resident in another economy (the

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[66] *See* Caribbean Basin Economic Recovery Act of 1983, H.R. 2973, 98th Cong., 97 Stat. 385 (1983); *see also* U.S. CUSTOMS & BORDER PROT., CARIBBEAN BASIN ECONOMIC RECOVERY ACT (CBERA), https://www.cbp.gov/trade/priority-issues/trade-agreements/special-trade-legislation/caribbean-basin-initiative/cbera (Last modified: February 21, 2017) ("The Caribbean Basin Economic Recovery Act (CBERA) was implemented on January 1, 1984, and has no set expiration date. CBERA generally provides for duty-free entry of goods into the United States from designated beneficiary countries.").

[67] Trade and Development Act of 2000, *supra* note 58.

[68] *Haiti - Trade Agreements*, *supra* note 56.

[69] *Id.*

[70] *See* Haiti Economic Lift Program Act of 2010, H.R. 5160, 111th Cong., 114 Stat 1194 (2010).

[71] *Haiti - Trade Agreements*, *supra* note 56.

[72] *Id.*

[73] Foreign Direct Investment (FDI), CORPORATE FINANCIAL INSTITUTE, (Last visited: April 17, 2020), https://corporatefinanceinstitute.com/resources/knowledge/economics/foreign-direct-investment-fdi/.

> direct investment enterprise). The lasting interest implies the existence of a long-term relationship between the direct investor and the direct investment enterprise, and a significant degree of influence by the investor on the management of the enterprise. A direct investment relationship is established when the direct investor has acquired 10 percent or more of the ordinary shares or voting power of an enterprise abroad.[74]

According to *Direct Foreign Investment in the Caribbean: A Legal and Policy Analysis,* there are, at minimum, three considerations for countries when deciding to introduce FDIs:

> 1) how to attract foreign investment while keeping foreign ownership of domestic resources to a minimum; 2) how to alleviate foreign investors' concerns with respect to their legal rights to repatriate capital and profits without incurring a damaging drain of domestic foreign exchange resources; and 3) how to design their respective tax systems in such a way as to simultaneously foster economic growth and attract foreign investment while concurrently raising enough revenue to meet the budgetary requirements of the central government.[75]

When Haiti attempts to create a domestic-foreign balance, it is checked by the global community. In a July 2018 World Trade Organization (WTO) meeting, the Dominican Republic and the United States questioned Haiti's decision to "modify tariff concessions and apply tariffs higher than the bound levels in its WTO schedule of commitments."[76] This decision was preceded by Haiti's accession to the Caribbean Community Trade Agreement (CARICOM).[77] The Dominican Republic claimed that Haiti had "not notified the WTO of the decision to impose a ban on the importation of twenty-three products—mainly food and construction products."[78] The Dominican Republic also posed that as a result global exports to Haiti had decreased by forty-three percent since October 2015.[79] Haiti acknowledged the proposed problem, saying that "discussions on harmonizing its custom tariff regime continue with the goal of fully engaging in intra-CARICOM trade while also ensuring that its schedule of concessions is in full conformity with WTO rules."[80]

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[74] INTERNATIONAL MONETARY FUND, FOREIGN DIRECT INVESTMENT TRENDS AND STATISTICS: A SUMMARY, (2003), n.1, https://www.imf.org/External/np/sta/fdi/eng/2003/102803s1.pdf.

[75] Lewis D. Solomon & David H. Mirsky, *Article: Direct Foreign Investment in the Caribbean: A Legal and Policy Analysis*, 11 NW. J. IN'T L. & BUS. 257, 259 (1990).

[76] *Members Raise Concerns Over US Section 232 Investigation on Automobiles and Automotive Parts*, WTO (July 3 & 4, 2018), https://www. https://www.wto.org/english/news_e/news18_e/good_03jul18_e.htm.

[77] *Id.*

[78] *Id.*

[79] *Id.*

[80] *Id.*

V. DEVELOPING ESSENTIAL INFRASTRUCTURE THROUGH PUBLIC-PRIVATE PARTNERSHIPS

Before venturing any further into international trade, Haiti has massive internal opportunities for development. P3s can potentially open the door to FDIs. While FDIs will help enhance the private sector and those engaged in it, the P3s would allow private investors, both foreign and domestic, to partner on the construction of essential infrastructure, including Haiti's notoriously underdeveloped roads.[81]

Haiti has exhibited a need for consistent and regulated foreign investors. This need is not just for finances but to bring in knowledge and to remedy, at least in part, the human capital flight, or "brain drain" of the country.[82] According to a 2010 report by the U.S. Census Bureau, Haitians as an ancestry group in the United States have increased from "290,000 people . . . (0.1% of the total population) in 1990 to 548,000 (0.2%) in 2000. By 2009, an estimated [number of] 830,000 people . . . were living in the United States, or 0.3% of the total U.S. population."[83] According to a 2006 report by the Organisation for Economic Co-operation and Development (OECD), ". . . [an] estimated 80[%] of the college-educated Haitians now live outside the country."[84] Besides Haitians fleeing during the Duvalier family dictatorship of the 1960s and 1970s, brain drain is another external force that is drawing talented and educated Haitians out of their country and its workforce.

> A different form of brain drain has been the rather intense poaching of Haitian talents by organizations and agencies of the international community, including the United Nations where the issue of the difference in salary scales between national institutions and foreign agencies is a well-known world-wide phenomenon that has never been addressed effectively.[85]

P3s can start to develop the infrastructure that foreign direct investors will use to build up the workforce and that the country can then use to retain and develop their talent. P3s between a government agency and a private-sector company can be used to finance, build, and operate projects, allowing

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[81] David Lick & Roger E. Hamlin, *Public-Private Partnerships for Promotion of Cross-Border Trade and Transportation*, 37 CAN.-U.S. L.J. 171, 171 (2012).

[82] Whitney Joseph, *The Effects of Brain Drain on Hait*i, U. MARYLAND MCNAIR SCHOLARS UNDERGRADUATE RES. J. no. 3, 2011, at 145, 145, https://drum.lib.umd.edu/bitstream/handle/1903/12464/Joseph.pdf;jsessionid=F0A11B212C1B3E288BB09E1696BD8224?sequence=1.

[83] ANGELA B. BUCHANAN, NORA G. ALBERT & DANIEL BEAULIEU, U.S. CENSUS BUREAU, THE POPULATION WITH HAITIAN ANCESTRY IN THE UNITED STATES: 2009 (Oct. 2010), https://www.census.gov/library/publications/2010/ acs/acsbr09-18.html.

[84] CAROL FAUBERT, UNDP EVALUATION OFF., EVALUATION OF UNDP ASSISTANCE TO CONFLICT-AFFLICTED COUNTRIES | CASE STUDY: HAITI (2006), https://www.oecd.org/countries/haiti/44826404.pdf.

[85] *Id.*

a project to be completed sooner or making it a possibility in the first place. The partnership is, of course, mutually beneficial: the city receives the funding for the project, as well as the completed infrastructure, while the private company may decide to receive the operating profits once the project is complete.[86]

One of the most important pieces of infrastructure that could use investment and development is Haiti's transportation system, particularly its roads. The country is fortunately making progress in this area. The World Bank and Haitian government collaborated to develop the country's Nord (North) region and as a result, opened up a new road in February 2018 at the request of the government.[87] The eight-kilometer ride from the village of Labadie to downtown Cap Haïtien used to take ninety minutes; now, this new road shortens the journey by a third of that time.[88] The road, a modern and beautiful touch of needed urban efficiency, lays smoothly along the coast between the unspoken beauty of Haiti's picturesque beaches and forested mountain ranges.[89] Merline Pierre, a student from Labadee, attends school in Cap Haïtien. Her journey consists of a walk from her home—a boat—where she takes a ferry ride across clear blue waters to Cap Haïtien, and then takes a tap tap to school.[90] The road, she says, used to be bad, filled with rocks, and people would often get sick on the route.[91] Now it takes her just twenty to twenty-five minutes.[92] Jean Oril, tap tap driver and President of the Labadee Transport Union, states that prior to the constructed road, there would never be any rides after four in the afternoon, which was extremely inefficient and highly dangerous in the case of medical emergencies.[93] Previously, they were only able to transport at a maximum fifteen people for a daily total of three trips.[94] The total amount of rides per day has since increased 167%.[95] "This is a great asset for the North," Oril says, "it will help develop the area a lot."[96] Fritz Caillot, Haitian Minister of Public Works, Transports, Communication and Energy, agrees. He states that the road is very important for development and that by development, he also means tourism, but for that to happen, they still require fundamental infrastructure such as water, energy, and more

86 *Public-Private Partnerships*, INVESTOPEDIA, https://www.investopedia.com/terms/p/public-private-partnerships. asp (last visited Feb. 20, 2020).

87 *It All Starts With a Road: The Key to Mobility in Haiti*, THE WORLD BANK, https://www.worldbank.org/en/news/feature/2018/02/28/tout-commence-par-une-route-la-cle-de-la-mobilite-en-haiti (last Updated Aug. 22, 2018).

88 *Id.*

89 *Id.*

90 *Id.*

91 *Id.*

92 *Id.*

93 *Id.*

94 *Id.*

95 *Id.*

96 *Id.*

roads.[97] Additionally, the residents in the communities along the road have shared that since construction commenced, they no longer feel threatened by rain, which often led to flooding.[98] Channels and drainage works have been undertaken and retaining walls have been constructed to prevent landslides.[99]

A. Mechanisms of A Meaningful Public-Private Partnership

Isabel Marques de Sá, Chief Investment Officer of International Finance Corporation at the World Bank Group, states that P3s ideally "bring private sector competencies, efficiencies, and capital to improving public assets or services when governments lack the upfront cash."[100] P3s can be monumental in helping develop key infrastructure—power, ports, airports, water and waste treatment and more—and can encompass three stages of implementation: investment, operation, and maintenance. As such, P3s are also beneficial in stimulating economic development.

The strength of P3s, however, can also be their weakness as the total expenditure can actually exceed that of direct public procurement since P3s may appeal to investors only if the public pays for the actual cost of the project as well as a profit for the private partners. While the practice of P3s has been traced back to fifteenth century Italian city-states, the current model "is effective for high-cost, high-visibility projects that involve social and technical complexities, with the potential to build in synergies, develop competencies, and create an effective framework for alliances and cooperation, especially when community stakeholders and experts are involved from the start."[101]

P3s are typically complex long-term projects that can span anywhere from fifteen to twenty years, and potentially even more. In that time, many factors can change, including, without limitation, politics, technology, the environment, and demographics. Therefore, the contract establishing the partnership needs to be artfully and thoughtfully structured to account for any potential changes. This includes having both incentives and penalties to encourage compliance throughout the duration of the contract.[102]

P3s are also highly political because they are agreements between the government and the private sector. However, while private entities' leadership and goals will likely remain relatively stable for a long period of time, governments will experience regular (and sometimes not-so-regular)

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[97] *Id.*

[98] *Id.*

[99] *Id.*

[100] Isabel Marques de Sá, *How Do You Build Effective Public-Private Partnerships?*, YALE INSIGHTS (May 16, 2017), https://insights.som.yale.edu/insights/how-do-you-build-effective-public-private-partnerships.

[101] *Id.*

[102] *Id.*

changes in leadership and the policies they seek to advance. This type of unpredictable change, especially in countries that are seen as politically unstable, causes private companies to require more assurances that the deal—and more importantly, the payment—will be ensured regardless of the political landscape. As such, "[i]nvestors seek protection against such risks through guarantees, sometimes backed by a multilateral, international arbitration for dispute resolution and higher returns on equity."[103] On the other hand, the public sector also requires protection from the private sector.[104] This protection can come in the form of performance guarantees that may either be unlimited or capped.[105]

Overall, as the saying goes, "you can catch more flies with honey than with vinegar." It is better to have the contract primarily governed by incentives than penalties so both parties are encouraged to see it to completion.[106]

B. Navigating the Complexities of Public-Private Partnership

There are a number of potential pitfalls to be cautious of when designing a P3. Marques de Sá warns that P3s are quite complex and that around fifty percent of proposed projects fail. "That is the nature of the business,"[107] she writes. Because P3s are such complex structures, they touch upon many fields of expertise–accounting, taxes, economics, engineering, environment, finance, law–and often require the input of professionals in those fields. The projects usually move forwards slowly at first, being introduced in stages. Usually, engineering and economics are established first, then financial and legal achievability, and finally the political aspects and integration with the desires of the private sector.[108]

One of the major challenges of the successful completion of a P3 comes from managing the requests of main stakeholders.[109] Much negotiation and consensus are required on both sides throughout the duration of the planning, though private sector considerations are typically brought in during the later stages, which is when they are invited to comment on the draft agreements. Projects can fail when there are unresolvable differences, such as the government refusing to provide certain guarantees or an unacceptable allocation of risk. These can be deal breakers because the primary point is that P3s need to be financed so bankability is critical. In order to have that, the agreement must allocate risks properly. The financial tools that are

[103] *Id.*
[104] *Id.*
[105] *Id.*
[106] *Id.*
[107] *Id.*
[108] *Id.*
[109] *Id.*

available for financing are ever developing, though Marques de Sá says that project bonds for middle-income markets are gaining traction, while regions that have a lot of liquidity have the active participation of local banks. In some developing countries, the local private banks are not able to provide long-term financing, so they may rely on leveraging or utilizing organizations, such as the World Bank's International Financial Corporation or other similar entities.[110]

In addition to the considerations of the public and private sectors, certain projects also require intense and thorough consideration of the region's population.[111] Some groups may be displaced or temporarily adversely impacted by a project.[112] It is important for the government in particular to be transparent and clearly communicate early and often about the goals of the project and the realities of its implementation, otherwise there can be serious social and political effects.[113]

The affordability to users and the government is another key consideration that organizers do not always understand. Governments tend to build these structures based on population sizes or a usability rate that will not manifest anytime soon. While the governments are planning ahead, the costs are immediate. As such, special attention must be given to demand analysis and costing to give the project the best shot at viability.[114]

There is currently no universal manner of implementing P3s because every project involves a different government, sector, and set of private partners, among other variables. There are so many variables that, while there are standard best practices for the legal clauses, everything else is specific to the situation at hand. The feasibility of a P3 depends on the parties involved and what terms are reasonable to them. As previously stated, every market and country have their own risks and considerations. The risks may not always be worth the cost. That is up to the stakeholders to decide. Some environments may require more creative financing, drafting and implementation. A P3 can also be done in stages or address a sub issue instead. Marques de Sá shares the example of how Liberia's electric system had been destroyed following their civil war, which ended in 2003. Instead of taking on the colossal risk of rebuilding the entire system, private institutions decided to instead commit to training electricity technicians and rehabilitating one of their electric plants with one entering into a management contract.[115] Part of this was made possible by the creation of the Rural Renewable Energy Agency and the passage of Liberia Electricity Law, both in 2015, which created an avenue to allow private sector involvement for the

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[110] *Id.*
[111] *Id.*
[112] *Id.*
[113] *Id.*
[114] *Id.*
[115] *Id.*

first time.[116] This highlights the overall principle that P3s need a government champion in order to have enough power to survive negotiations.

C. Public-Private Partnerships in Action

P3s have been created at the state level in the United States, with the Pennsylvania Rapid Bridge Replacement Project being one of the more ambitious undertakings in the past few years. The Pennsylvania Department of Transportation (PennDOT) enacted a P3 to replace 558 of the state's aging or structurally deficient bridges, "a first-of-its-kind bundling of the work for multiple bridges into one massive project under a single procurement."[117] The National Council for Public-Private Partnerships boasts that this Pennsylvania project had already set many precedents before it even began: it is Pennsylvania's first transportation P3, the nation's first multi-asset availability payment concession, and the first project in which the developer won approval through the Federal Highway Administration's Special Experimental Project program to conduct the environmental process.[118] According to John Schmidt, a partner and leading P3 attorney with Mayer Brown LLP, Pennsylvania's "innovative use of P3 structure for multiple bridges has potential value as precedent in other areas."[119] As of April 18, 2018, PennDOT has completed 400 of the 558 bridges. It attributes the speed and efficiency of the repairs to its unique relationship with Plenary Bridge Keystone Partners, which is receiving $889 million to replace the bridges and maintain them for twenty-five years. Previous contracting methods would have taken PennDOT up to twelve years to complete all the bridges,[120] which speaks to the efficiency benefit of P3s.

The type of investors that a country draws can depend on how the country's market is classified. Market classification systems typically vary between indexers and benchmarks and change based on the indicators that are used by the governing body issuing the status. However, there are sweeping generalizations that may assist with basic categorization. The World Bank considers a country's economy, particularly its relative wealth per capita.[121] Thus, countries with the highest relative wealth per capita are

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[116] *Power Africa in Liberia*, USAID (last updated Nov. 8, 2018), https://www.usaid.gov/powerafrica/liberia.

[117] Linda Chiem, *5 Projects Reshaping the P3 Landscape*, LAW360 (Mar. 23, 2016), https://www.law360.com/ articles/721194/5-projects-reshaping-the-p3-landscape

[118] *Id.*

[119] *Id.*

[120] David Wenner, *Pa. Rapid Bridge Replacement Fast but 'Distinctly Different' from Method Used in Deadly Fla. Collapse*, PENN LIVE (Apr. 18, 2018), https://www.pennlive.com/news/2018/04/pa_rapid_bridge_replacement_ fa.html.

[121] Emma Wall, *The Difference between an Emerging and Frontier Market*, MORNINGSTAR (June 13, 2018), https://www.morningstar.in/posts/47141/difference-emerging-frontier-market.aspx.

classified as developed countries. A few examples of developed countries are the United States, the United Kingdom, Germany, and Japan.

From there, countries with low, middle, and upper-middle incomes per capita, relative to incomes in other countries around the globe, are classified as developing or emerging. The Modern Index Strategy, or MSCI, is an indexing system that allows investors to make informed decisions through their analysis of world markets and the full equity opportunity set.[122] MSCI examines each country's economic development, liquidity, size and market accessibility in determining the market classification.[123] Therefore, when the MSCI grants a country the "emerging market" label it signals to active and passive funds that use the MSCI Emerging Markets index as a benchmark that they can invest in companies listed in that country, potentially resulting in significant foreign investment.[124] According to the MSCI, there were twenty-four emerging markets as of June 2018, including Brazil, Chile, Colombia, Egypt, Greece, Russia, and the United Arab Emirates.[125]

Countries with even lower levels of income per capita are categorized as frontier markets. Frontier markets tend to have stock markets that are more volatile and less diverse, and the companies have poorer levels of corporate governance. Because of politics, development, demographics, and liquidity, frontier markets may be seen as less mature than emerging markets and thus more of an investment risk. As of the June 2018 MSCI Index, twenty-nine counties were frontier markets, including Argentina, Croatia, Jordan, Kenya, Nigeria, and Vietnam.[126]

In 2013, Haiti's then Minister of Finance and Economy Marie Carmelle Jean Marie announced that Haiti sought to grow from a frontier market to an emerging market by 2030. Its goals, she stated, were to "restore public finances and attract investment, including from foreign companies."[127] P3s were lauded as key in achieving the new status as they would bring in knowledge and money to implement essential infrastructures. However, Jean Marie acknowledged Haiti's personal responsibility in creating a country and economic system that would attract investors. "We have to convince investors that we can manage our own domestic resources with efficacy and transparency,"[128] she stated. This lack of accountability caused Canada to

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[122] *Index Solutions*, MSCI, https://www.msci.com/index-solutions (last visited Nov. 22, 2018).

[123] *Market Classification,* MSCI, https://www.msci.com/market-classification (last visited Mar. 13, 2020).

[124] *Id.*

[125] MSCI Emerging Markets Index, MSCI, https://www.msci.com/emerging-markets (last visited Mar. 13, 2020).

[126] *Id.*

[127] Thierry Ogier, *Haiti Aims for Emerging Market Status by 2030*, GLOBAL CAPITAL (Mar. 17, 2013), https://www.globalcapital.com/article/yvxr64qxrljt/haiti-aims-for-emerging-market-status-by-2030.

[128] *Id.*

freeze its official aid to Haiti for a period of time in 2013, citing a lack of accountability.[129] When paired with accountability, efficacy and transparency, P3s can be an effective tool in a government's quest to economic freedom.

VI. ANTI-CORRUPTION MEASURES AS AN ASSURANCE FOR INVESTORS

Corruption is by far Haiti's largest problem, and it will have to be meaningfully addressed in order for investors to seriously and comfortably consider it as a viable investment option. Substantially reforming a corrupt government is possible; just look to Brazil. For several decades, the largest country in South America has been the setting for some of the most pervasive corruption on the continent. Ready to usher in a new era of accountability, security, and stability, Brazil drastically changed its landscape when it passed the Clean Company Act 2014.

> Brazil's Clean Company Act 2014 (Law No. 12,846) holds companies responsible for the corrupt acts of their employees and introduces strict liability for those offences, meaning a company can be liable without a finding of fault. The Act provides strict civil and administrative penalties but no criminal penalties for companies. However, the Criminal Code establishes domestic criminal offences. Prohibited conduct includes financing, paying or subsidizing the performance of a prohibited act; bid rigging and fraud in public procurement; and direct/indirect acts of bribery/attempted bribery of Brazilian public officials/foreign public officials. Penalties for companies under the Act include fines of up to 20% of a company's gross revenue from the previous year or suspension or dissolution of a company. Importantly, prosecutors are not required to prove a company's representatives acted with criminal or corrupt intent, and companies are not afforded a legal defense for implementing 'adequate procedures' to prevent corrupt acts.[130]

According to *Transparency International*'s report, about one in three people who use public services in certain Latin American and Caribbean countries paid a bribe during the past year.[131] An estimated ninety million people are expected to have paid bribes across twenty countries, which included Brazil, Colombia, the Dominican Republic, Jamaica, Mexico, Venezuela, and others.[132] Of those that had paid bribes, men and women

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129 *Id.*

130 *Brazilian Clean Company Act,* BUSINESS ANTI-CORRUPTION PORTAL, https://www.business-anti-corruption.com/anti-corruption-legislation/brazil/ (last updated Nov. 2015).

131 CORALIE PRING, TRANSPARENCY INT'L, PEOPLE AND CORRUPTION: LATIN AMERICA AND THE CARIBBEAN 20-21 (Oct. 2017).

132 *Id.*

responded in almost equal numbers, as did the wealthy and the poor.[133] However, because impoverished people have fewer disposable resources, paying bribes creates more of a strain on them.[134] In Brazil, bribes were paid relatively equally across the board for all services: schools, hospitals, identification documents, utilities, police, and courts.[135]

Despite these disappointing numbers across the region, seventy-four percent of Brazilians believe that it is socially acceptable to report a case of corruption;[136] still, only about nine percent of all Caribbean citizens surveyed have actually reported corruption.[137] For many, it appears that the benefits of holding corrupt officials accountable do not outweigh the risks of doing so. Twenty-eight percent of those who reported corruption experienced retaliation,[138] which is understandable as nearly half of all respondents said that most or all police and politicians were corrupt.[139] As a result of the study and their work, *Transparency Internationa*l made clear recommendations and goals for countries seeking true justice and freedom from corruption:

> This is why we are calling on governments in this region to reduce corruption in the police force and strengthen judicial systems, so that investigations can be conducted to the highest standards, judges made independent and professional, and the courts system adequately resourced to deal with corruption complaints. Whistleblower protection laws must be strictly enforced, and safe reporting mechanisms need to be created so that people who make a complaint are not at risk. Only then will citizens have the confidence to report an incident of corruption, safe in the knowledge that the perpetrator will face justice.[140]

A. Brazil as a Model for Wide-Spread Corruption Reform

Brazil's corruption reform is multipronged: its reach goes beyond the federal level and its successful enforcement is more than just effective legislation. The Clean Company Act gives authorities and agencies at the local, state, and federal level the power to independently interpret and enforce the law.[141] Proper enforcement of this powerful act requires buy-in and cooperation from every level of the government. This new cohesion has been displayed best in the investigation and prosecution of what has become the

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133 *Id.*
134 *Id.*
135 *Id.* at 18.
136 *Id.* at 24.
137 *Id.* at 25.
138 *Id.*
139 *Id.* at 6.
140 *Id.* at 5.
141 Luiz Santiago & Andy Spalding, *Surprise: Federal, State, and Local Agencies Enforce Brazil's Anti-corruption Law,* THE FCPA BLOG (Nov. 13, 2018), http://www.fcpablog.com/blog/2018/11/13/surprise-federal-state-and-local-agencies-enforce-brazils-an.html.

largest corruption scandal not only in Brazil, but in the world. Codenamed "Operation Car Wash," this corruption investigation launched in March 2014 with an inspection into agents known as *doleiros*—also known as black market money dealers—who deceptively utilized petrol stations, car washes, and an assortment of other small businesses to "launder the profits of crime."[142] As far as corruption investigations go, Operation Car Wash started innocuously enough, but a law that was meant to hold regular businesses accountable ended up taking law enforcement much higher than they could have imagined, right to the door of one of the largest companies in the world: Petrobras.[143]

A portmanteau of Petroleum and Brazil, Petrobras is Brazil's national oil company and became the window into a previously unseen level of corruption.

> Petrobras was no ordinary company. As well as having the highest market valuation (and the largest debts) of any corporation in Latin America, it was a flagship for an emerging economy that was trying to tap the biggest oil discovery of the 21st century – huge new oil fields in deep waters off the coast of Rio de Janeiro. Petrobras accounted for more than an eighth of all investments in Brazil, providing hundreds of thousands of jobs in construction firms, shipyards and refineries, and forming business ties with international suppliers including Rolls-Royce and Samsung Heavy Industries.[144]

Operation Car Wash found that the *doleiros* were essentially illicit intermediaries for a Petrobras executive and that the company was overpaying on contracts to certain companies where agreements had been formed to assure that their contractors were "guaranteed business on excessively lucrative terms if they agreed to channel a share of between 1% and 5% of every deal into secret slush funds. After diverting millions of dollars into those funds, Petrobras directors then used them to funnel money to the politicians who had appointed them in the first place, and to the political parties they represented."[145] Every person connected to the deals received bribes in forms that were not limited to cash, including luxury items like wine, yachts, and helicopters. Petrobras as a company was so central to the Brazilian economy and intertwined with this scandal that "as the Car Wash investigation was to prove, if you could unravel the secrets of this company, you would unravel the secrets of the state."[146]

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[142] Jonathan Watts, *Operation Car Wash: Is This the Biggest Corruption Scandal in History?,* THE GUARDIAN (June 1, 2017), https://www.theguardian.com/world/2017/jun/01/brazil-operation-car-wash-is-this-the-biggest-corruption-scandal-in-history.

[143] *Petrobras*, FORBES (May 15, 2019), https://www.forbes.com/companies/petrobras/#5801519d2dea.

[144] *Id.*

[145] *Id.*

[146] *Id.*

However, it is widely known that this level of prosecution—which now includes even former Presidents—would be virtually impossible were it not for legislative changes that Brazil made only a few years prior. Dilma Rousseff succeeded Luiz Inácio Lula da Silva as leader of the Brazil's Workers' Party and advanced to become president of the country's coalition government following the 2010 election.[147] In the midst of 2013's nationwide anti-corruption demonstrations, Rousseff quickly attempted to regain peace by fast-tracking laws aimed at eradicating systemic fraud.[148] The new measures included allowing plea bargaining: prosecutors could now make deals with suspects, reducing their sentences in return for information that could lead to the arrest of more important figures—a first in Brazil's history.[149] This change became crucial in cultivating the cooperation of key suspects, leading to the discovery of the high-level corruption scheme and the prosecution of those suspects for their wrongdoings.[150]

B. Applying Brazil's Lessons to Haiti

Brazil can be a case study for Haiti on how to curb corruption and positively influence the national attitude on it. Brazil has not hesitated to bring charges against even its President, showing that no one is above the law. This operation and its success have also served as a signal to investors that their deals and investments will be both honored and secured. For these reasons, Haiti must take steps to follow Brazil's example and overthrow its culture of corruption if it hopes to cultivate an environment of stability and security that will attract investors.

Haiti, whose Corruptions Perceptions Index score placed it near the bottom of the list in a four-way tie with Burundi, Uzbekistan and Zimbabwe,[151] is making progress.

> In 2012, La Fondation Héritage pour Haïti (LFHH), the Haiti chapter of Transparency International (TI), in partnership with the Office of the Inspector General (OIG) of USAID, launched a new anti-corruption Hotline to prevent fraudulent and corrupt practices within the programs and projects funded by the United States Agency for International Development (USAID) in Haiti.[152]

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[147] *Id.*
[148] *Id.*
[149] *Id.*
[150] *Id.*
[151] *Corruption Perceptions Index 2017,* TRANSPARENCY INT'L (Feb. 21, 2018), https://www.transparency.org/news/ feature/corruption_perceptions_index_2017.
[152] *La Foundation Heritage Pour Haiti (LFHH), Haiti Chapter of Transparency International (TI), Announces the Launch of Its New "Anti-Corruption Hotline" Initiative for the Programes and Projects Funded by USAID in Haiti*, TRANSPARENCY INT'L (Dec. 19, 2012), https://www.transparency.org/news/pressrelease/20121219_la_fondation_ heritage_ pour_haiti_lfhh_haiti.

The hotline is to allow victims or witnesses of corruption within these projects to report said crimes and initiate an investigation by the OIG of USAID. Additionally, in October 2018, Roger Richard Boncy, an American businessman of dual U.S. and Haitian citizenship, was charged with "one count of conspiracy to violate the Foreign Corrupt Practices Act and the Travel Act, one count of violating the Travel Act, and one count of conspiracy to commit money laundering."[153] His co-conspirator, a retired U.S. Army colonel, was also charged with the same crimes.[154] They were both arrested and indicted for a plan to bribe a high-level foreign official in connection with a proposed $84 million port development project in Haiti.[155] The plan also included money laundering, as the accused told undercover agents posing as potential investors that they would funnel the payments through a non-profit organization that Boncy owned and managed. The duo also discussed getting a high-ranking official's aide a job on the project in exchange for the official's help in getting the project approved. This case is truly international in nature: the project is based in Haiti, the corporation through which the money was to be laundered was based in Maryland, and the communications which orchestrated the plan took place in a hotel in Boston, while one of the defendants lives in Spain.[156] Though this matter is being prosecuted by the United States, Haiti's cooperation in the resolution displays a desire to increase transparency in international and domestic business dealings.

However, Haiti's recent stance against corruption has resulted in one of the largest and most violent protest movements in its history. The streets of the island country erupted in protest during the summer of 2018 upon the revelation that the Haitian government had misappropriated more than $3.8 billion from the PetroCaribe oil alliance.

> PetroCaribe is an agreement initiated by the government of Venezuela to provide preferential payment arrangement for petroleum and petroleum products to select Caribbean and Latin American countries. Venezuela offers oil agreements to member countries, which must pay 60 percent of the bill within 90 days. The remaining 40 percent can be financed over 25 years at 1 percent interest, should oil prices stay above $40 per barrel. Financing takes into account the current cost of oil, allowing for more favorable terms when the cost of oil is higher. Countries may also offer goods and services to pay off oil shipments,

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[153] *Retired U.S. Army Colonel Indicted for Conspiring to Bribe Senior Government Officials of the Republic of Haiti*, U.S. DEP'T OF JUSTICE (Oct. 4, 2017), https://www.justice.gov/opa/pr/retired-us-army-colonel-indicted-conspiring-bribe-senior-government-officials-republic-haiti.

[154] *Id*.

[155] *Id.*

[156] Harry Cassin, *American Charged in Haiti Port Project Bribe Scheme*, The FCPA Blog (Oct. 30, 2018, 10:08 PM), http://www.fcpablog.com/blog/2018/10/30/american-charged-in-haiti-port-project-bribe-scheme.html.

ranging from food such as beans and sugar to human capital such as doctors.[157]

The money resulting from the PetroCaribe agreement was to be used "for infrastructure and social and economic projects."[158] Several audits have shown that it is either unclear where the PetroCaribe funds went or the money was mismanaged.[159] Haitian President Jovenel Moise pledged to open an investigation into the use of the funds and promised to bring those responsible for any wrongdoing to justice,[160] though the people are simultaneously calling for his resignation. The largest protests with that cry ironically occurred on November 18, a national holiday celebrating the 215th anniversary of the battle of Vertieres: "a major victory for Haiti's slaves in the war for independence against the French army."[161] These protests even took on a different tone as some people flew the black and red version of the Haitian flag, which was replaced with the official blue and red flag following the forced departure of dictator Jean Claude Duvalier.[162] During these protests, the cries of the people and those of Transparency are the same: "We want justice!"[163]

VII. CURRENT FOREIGN DIRECT INVESTMENTS IN HAITI

Haiti already has at least one example of a successful FDI. People may be surprised to learn that global beer brand Heineken has a majority ownership in the Haitian brewery Brasserie Nationale d'Haiti (BRANA) and, in the spirit of responsible corporate partnership, is "committed to being a partner for growth for the nation."[164] Heineken had been a minority owner since the 1970s but increased its stake to nearly 100% after the January 2010 earthquake, which knocked the plant offline for two months.[165] Heineken was impressed by Haiti's popular lager beer Prestige and carbonated malt

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157 *What is PetroCaribe?,* THE VINCENTIAN (June 22, 2018), http://thevincentian.com/what-is-petrocaribe-p15557-1.htm.

158 Sandra Lemaire, Matiado Vilme & Renan Toussaint, *Haiti's President Launches PetroCaribe Investigation*, VOA NEWS (Oct. 19, 2018, 4:43 AM), https://www.voanews.com/americas/haitis-president-launches-petrocaribe-investigation.

159 *Id*.

160 *Id*.

161 Sandra Lemaire, Matiado Vilme & Renan Toussaint, *Haiti Protesters Demand President's Ouster*, VOA NEWS (Nov. 19, 2018, 4:20 AM), https://www.voanews.com/a/Haiti-protests/4664464.html.

162 *Id*.

163 *Id*.

164 *Investing in Small-Scale Haitian Farmers and Making a Big Impact*, HEINEKEN (July 28, 2014), https://www.theheinekencompany.com/Media/Media-Releases/Media-releases/2014/07/Investing-in-Small-Scale-Haitian-Farmers-and-Making-a-Big-Impact.

165 *Haiti: Open For Business?*, BLOOMBERG (Jan. 12, 2015, 9:05 PM), https://www.bloomberg.com/news/videos/ 2015-01-13/haiti-open-for-business.

beverage Malta H. The beer maker engaged in an expansion project that has benefits for both the company, its workers, and the Haitian economy.[166] Seeing the opportunity for development, they embarked on a $100 million renovation. The investment allows Heineken to significantly increase their local production capacity, enabling a forty percent rise in the volume of beer they produce in Haiti. The expansion program has included the addition of four 3,000-hectoliter fermenters and a Maische Filter, which is a particularly relevant addition, as it will allow them to use more locally sourced sorghum to brew their beers.[167] Their strategy in the country also includes two more prongs.

> [T]he investment doesn't stop here. At the heart of our 'Brewing a Better Future' initiative is our commitment to empower the communities in which we operate, with much focus on local sourcing – we believe that this will benefit not only our business, but also the livelihoods of Haiti's agricultural workers. As part of this project, we have publicly stated our goal to locally source at least 20% of all raw materials for our brewed products from the region. Partnerships such as these are key to the success of our sustainability initiatives.
>
> Together with USAID, we work to coordinate local sourcing with local Haitian farmers through the Smallholder Farmers Alliance for Sorghum in Haiti (SMASH) project and other farming cooperatives. Addressing issues such as poor soil quality, effective seed germination and efficient harvest yields, SMASH was created to provide smallholder farmers with training in modern agricultural techniques and guarantee buyers for its produce. As a result, farmers have effectively doubled their crop yields for sorghum, a grain widely harvested in Haiti and particularly important in the production of Malta H. This represents a promising step forward not only for our business, but also for the region's local economy.[168]

In a 2015 Bloomberg News Special, farmers stated that their crops have developed more in the past year as a result of them using the more efficient farming techniques taught to them by Heineken.[169] Heineken buys the sorghums directly from the farmers and transports the sorghum to the brewery in city for the farmers, reducing their travel time and giving them more time to farm and better their practices.[170] "It's all pieces of one big puzzle. Ultimately, we need to get this economy going. Farmers who earn more money will be consumers on the other side," said then Heineken CFO René Hooft Graafland in the special.[171] "[They will] not only drink more

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[166] Ogier, *supra* note 127.
[167] *Haitian Farmers, supra* note 164.
[168] *Id.*
[169] *Haiti: Open for Business?*, *supra* note 165.
[170] *Id.*
[171] *Id.*

beer, [but] buy more soap [and] they will buy more soup. They will buy stuff. So, this will be a bigger market as the economy gets better."[172]

VIII. CONCLUSION

In conclusion, Haiti's natural resources, gorgeous island scenery and climate, large workforce, and ability to navigate the Caribbean and world markets makes it a prime candidate for the support of foreign investors. The country admittedly has much work to do with respect to its anti-corruption laws and regulations. By making such improvements, companies may feel more comfortable entering the market in public-private partnerships, which will allow for the development of key infrastructure, the lack of which is keeping the country in a perpetual state of poverty. Once key infrastructures such as roads, transportation systems, electricity, internet, and water are developed, foreign investors can come in to stimulate the private sector through foreign direct investments. These partnerships have the ability to transform that landscape of Haiti and allow it to be the leader in areas where it currently lacks such as medical services, technology, and education.

One of the largest sources of wealth for Haiti is its people. Creative, resilient, hardworking, and plentiful, the vast numbers of citizens are waiting to be more and to do more, which can be a major allure for companies. However, the Haitian government must try something new and actually protect their citizens with actively enforced labor laws and an increased minimum wage that does not keep people hovering just above the poverty line with the potential to slip back under it at any point in time, goals which are furthered by the HOPE and HELP Acts. The enforcement of these laws and others will allow healthy competition, encourage innovation among the untapped and currently suppressed population, and ensure Haiti's glory days are not behind it; they are ahead of it. Haiti is open for business and you are invited to join.

[172] Ogier, *supra* note 127.