



September 23, 2020

Mr. Paulo Abrão
Executive Secretary
Inter-American Commission on Human Rights
1889 F Street, N.W.,
Washington, D.C., United States of America 20006

Re: Request for a thematic hearing on impunity for serious human rights violations and the lack of judicial independence in Haiti

Distinguished Secretary Abrão:

In accordance with Article 66 of the Rules of Procedure of the Inter-American Commission on Human Rights (“**Commission**” or “**IACHR**”), we, the representatives of the undersigned human rights organizations working for justice in Haiti,¹ request a thematic hearing before the Commission at its 178th Period of Sessions, scheduled to take place December 2-12, of this year.

We would like to draw the Commission’s attention to the widespread impunity for grave human rights abuses and government corruption in Haiti, which we believe to be linked to the politicization and lack of independence of Haiti’s judiciary. The June 23 deportation to Haiti of death squad leader Emmanuel “Toto” Constant, who was responsible for thousands of deaths and countless other acts of political violence during the 1991-1994 *de facto* regime, has showcased that pervasive lack of accountability and points to the entrenchment of impunity for grave human rights violations under the current government unless it changes course. Although Mr. Constant was detained upon return based on an *in absentia* conviction for his role in the politically-motivated civilian massacre in Raboteau, there are serious concerns regarding whether any substantive proceedings will go forward, prompting the UN High Commissioner for Human Rights to issue a statement calling for justice and accountability.² Concern regarding Constant is a direct consequence of Haiti’s impunity problem and politicized justice sector. For example, one

¹ The *Bureau des Avocats Internationaux* (“**BAI**”) is Haiti’s principal human rights legal organization with a specific mission of responding to violations suffered by the impoverished majority. The Institute for Justice & Democracy in Haiti (“**IJDH**”) is the BAI’s U.S.-based sister organization with a mission of bringing Haitians’ struggles for human rights to the international stage. Together, the BAI and IJDH have a long history of documenting and seeking accountability for abuses of human rights. Notably, the BAI played a key role in supporting the prosecutions of those responsible for the Raboteau massacre in the 1990s and both organizations supported the prosecution of Jean-Claude Duvalier earlier this decade, both trials that endeavored to bring accountability for human rights abuses within Haiti’s own justice system. The BAI and IJDH likewise have a strong history of defending against and responding to political repression in Haiti, including representation of political prisoners, legal observation of demonstrations, and support of human rights defenders. We have, in turn, brought these issues to the inter-American system, in the form of successful precautionary measures requests to the IACHR, and as counsel and expert witness in the cases brought by the IACHR to the Inter-American Court, including the cases of *Yvon Neptune v. Haiti*, and *Lysias Fleur et al. v. Haiti*. Most recently, the BAI and IJDH participated in a thematic hearing before the Commission on corruption and accountability, entitled “Violence and Security in the Context of the Social Protests in Haiti,” at the Commission’s 173rd Period of Sessions.

² See *infra*, notes 19-23 and associated text.

of the men convicted alongside Constant for the Raboteau massacre, Jean-Robert Gabriel, was appointed in 2018 to a top military position by the present administration and currently walks free in a position of authority over state force in spite of his prior abuses. Other prominent examples of impunity abound, including with respect to matters on which the Commission has already engaged.

Such impunity is not only contrary to Haiti's obligations under article 25, as well as articles 8(1) and 24 of the American Convention on Human Rights ("ACHR"),³ but also, as the Commission has itself noted in its 2005 report on justice and the rule of law in Haiti, leaves victims without recourse, leaves perpetrators free and emboldened to commit further abuses, and undermines public confidence in the justice system, thus discouraging victims from coming forward.⁴ Unfortunately, this can be directly observed with respect to the current high rates of violence and insecurity that are suffocating public life for Haiti's poorest: they are directly linked to some of the individuals whom the government of Haiti has failed to hold accountable in connection with civilian massacres over the last several years.⁵ Thus, widespread impunity and its recent manifestations with respect to Mr. Constant make this topic especially crucial and timely for the Commission's consideration in a thematic hearing. Developments following the Commission's thematic hearing on corruption and accountability of September 23, 2019⁶ made some first steps towards justice, but much remains to be done. Considering the Commission's mandate to safeguard human rights in the region, we ask that the Commission continue engaging on these issues and follow up on its earlier inquiries⁷ in order to contribute to promoting justice in Haiti.

³ OEA, *Convention américaine relative aux droits de l'homme*, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123 (22 Nov. 1969), http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm.

⁴ IACHR, *Haiti: Failed Justice or the Rule of Law? Challenges Ahead for Haiti and the International Community*, paras. 179, 183 (26 Oct. 2005), <http://www.cidh.oas.org/countryrep/HAITI%20english7X10%20FINAL.pdf>.

⁵ Jacqueline Charles, *Criminal gangs for hire: Corrupt cops and the fight for votes in Haiti's next elections*, Miami Herald (26 June 2020), <https://www.miamiherald.com/news/nation-world/world/americas/haiti/article243738862.html> [hereinafter Charles, *Criminal gangs for hire*]; Ingrid Arnesen & Anthony Faiola, *In Haiti, coronavirus and a man named Barbecue test the rule of law*, Washington Post (14 Aug. 2020), https://www.washingtonpost.com/world/the-americas/haiti-moise-coronavirus-barbecue/2020/08/14/2554fce4-cf4d-11ea-8c55-61e7fa5e82ab_story.html.

⁶ For example, after months of failing to take responsive action, just days after the Commission's September 23, 2019 thematic hearings on Haiti at its 173rd period of sessions, of the two top government officials implicated in a civilian massacre who had until that point remained in office (*see further* Section (b)(i) below), one resigned and the other was replaced. Snyder Pierre Louis, *Qui sont ces officiels de l'administration de Jovenel Moïse accusés dans les massacres de la Saline?* AyiboPost (23 Dec. 2019), <https://ayibopost.com/qui-sont-ces-officiels-de-ladministration-de-jovenel-moise-accuses-dans-les-massacres-de-la-saline/>. The hearings also appears to have prompted the resignation of the prosecutor in those cases, reportedly because he was being asked to repress those who claim their fundamental rights. Roberson Alphonse, *Paul Eronce Villard a refusé de « mater la rue »...*, Le Nouvelliste (1 Oct. 2019), <https://lenouvelliste.com/article/207375/paul-eronce-villard-a-refuse-de-mater-la-rue>.

⁷ The Commission's thematic hearing on "Reports of Impunity and Lack of Independence of the Judiciary in Haiti" at its 167th Period of Sessions and subsequent *in loco* visit in June of 2019, as well as the hearings at the Commission's 173rd Period of Sessions, December 2019 *in loco* visit, and grant of precautionary measures to the La Saline Victims Committee, are especially relevant.

a. Raboteau massacre accountability – background and recent developments

The Raboteau massacre trial, which concerned the 1994 massacre of civilians in the Raboteau neighborhood of Gonaïves executed as part of a government crackdown on political opposition by the *de facto* regime of 1991-1994, was widely evaluated by diverse observers as fair to defendants and victims alike.⁸ The trial resulted in two judgments: (i) a jury verdict convicting 16 out of the 22 individuals tried in person; and (ii) a separate decision sentencing to life imprisonment the 37 defendants tried *in absentia* because they had fled Haitian justice. The subsequent two decades have seen a backslide into impunity from this benchmark; the present moment represents perhaps the final opportunity to reverse course.⁹

In 2005, Haiti's highest court vacated the jury verdict even though none of the individuals convicted thereby were still in prison, most having escaped without facing consequences. The decision is widely regarded as incompatible with Haiti's constitution and as politically motivated.¹⁰ It remains in place in spite of those – flaws. Notably, both on its face (which lists the affected defendants) and as a matter of its reasoning (which focuses on the involvement of a jury), it affects only the jury conviction of the in-person defendants and leaves undisturbed the second, *in absentia*, judgment.¹¹

At the same time, successive governments have failed to hold accountable in accordance with all procedures required by Haitian law¹² those individuals who returned to Haiti after being convicted *in absentia*. The most egregious example concerns Colonel Jean-Robert Gabriel,¹³

⁸ See, e.g., Communiqué de presse d'Adama Dieng, United Nations Independent Expert on Haiti, *Raboteau Verdict in Haiti* “A Landmark In Fight Against Impunity,” *But Case Not Yet Finished* (2000), <http://www.ijdh.org/2000/11/archive/institute-for-justice-democracy-in-haiti-home-368/> & appended communiqué de la Mission internationale civile d'appui en Haïti de l'ONU (“MICAH”), <http://www.ijdh.org/2000/11/archive/institute-for-justice-democracy-in-haiti-home-368/>. For a description of the Raboteau massacre, the trial, and the subsequent dismantling of the accountability it delivered to the Raboteau massacre victims, voir IJDH & BAI, *Renversement de l'impunité après le procès du massacre de Raboteau: Document d'information sur vingt ans d'érosion des engagements envers la justice et la possibilité de revenir à la responsabilité en Haïti* (2020), <http://www.ijdh.org/wp-content/uploads/2020/07/IJDH-Briefing-Raboteau-in-2020-FINAL-EN.pdf> [hereinafter Raboteau Briefing Paper] (citing extensively to primary and secondary materials).

⁹ See Raboteau Briefing Paper.

¹⁰ See, e.g., Amnesty International, *Justice effacée, l'annulation du jugement de condamnation par la Cour de cassation, dans l'affaire du massacre de Raboteau, est un gigantesque pas en arrière* (26 May 2005), <https://www.amnesty.org/download/Documents/80000/amr360062005en.pdf>; see further Raboteau Briefing Paper, Section IV(a) (citing additional sources).

¹¹ See *id.* (citing additional analysis); see also Decision of the *Cour de Cassation*, 2eme Section, Appel de Castera Cènafiles, et al., 3 May 2005, available at <http://www.ijdh.org/pdf/Raboteau.pdf>.

¹² Under Haitian law, individuals convicted *in absentia* must be detained and brought to face justice upon returning to Haiti, whereupon they may accept the judgment against them or request new proceedings. See, e.g., Lettre ouverte de la BAI et le Réseau National de Défense des Droits Humains (“RNDDH”) à le Ministre de facto de la justice et de la Sécurité publique d'Haïti (16 May 2020), <http://www.ijdh.org/2020/05/projects/bai-sends-letter-to-the-haitian-ministry-of-justice-calling-on-it-to-arrest-and-bring-to-justice-any-fugitives-convicted-in-the-raboteau-massacre-trial-who-are-deported-to-or-otherwise-present-in-hait/>. The government of Haiti appears to have itself acknowledged this requirement. See, e.g., Evens Sanon, *30 deported to Haiti, but ex-strongman remains in US* (26 May 2020), <https://apnews.com/75b554ca373ab79ee0983ec16f4f626e>.

¹³ In addition to Colonel Gabriel and now Mr. Constant, at least two other individuals convicted *in absentia* for their roles in the Raboteau massacre appear to be present in Haiti: Louis Jodel Chamblain, who acted as a deputy leader

who served as secretary of Haiti's armed forces general staff and a public spokesperson for the 1991-1994 *de facto* regime, and was convicted *in absentia* for his role in the Raboteau massacre. Although Haitian law provides that he must be detained and either accept the judgment or participate in new proceedings, the present administration instead appointed Gabriel to a top position of the recently reconstituted armed forces¹⁴ in March 2018, along with several other individuals who had been sanctioned for their involvement with the 1991-1994 *de facto* military junta.¹⁵

The appointments were made in spite of strong civil society objections,¹⁶ with the state claiming that the convicted Gabriel and other members of the reconstituted armed forces were vetted and found "clean of human rights violations."¹⁷ Appointing an individual convicted through rigorous judicial proceedings for abusing his position of authority over state-controlled force to a similar position, especially in the absence of a transparent and publicly endorsed process, is the very height of impunity and, here, also represents a risk of renewed government abuses like the Raboteau massacre. Indeed, as further described below, recent events already bear a concerning resemblance to that grave crime. Nevertheless, the Haitian government has given every indication that it does not intend to pursue justice: it explicitly announced its lack of interest in accountability for the Raboteau massacre and other abuses from the 1991-1994 period in its most recent (December 2018) submission to the Human Rights Committee, where it opined that pursuing justice would serve no purpose, claiming further that social harmony has been achieved among victims and perpetrators.¹⁸

Mr. Constant's recent deportation to Haiti after years of evading justice in the United States has served to demonstrate the falsity of this statement and the ongoing public concerns with impunity for the Raboteau massacre. While Constant was detained based on the *in absentia* conviction against him – as a consequence, in the requesters' view, of widespread public advocacy to that end – the lead prosecutor on the case has subsequently made public statements suggesting that he

of a paramilitary group under Mr. Constant, and Carl Dorélien, who had served as the assistant chief of staff for the Haitian armed forces and was responsible for discipline of military personnel during the 1991-1994 *de facto* regime.

¹⁴ The government's decision to reinstate Haiti's armed forces, which were demobilized after the 1991-1994 *de facto* regime due to, *inter alia*, their rampant human rights abuses, is problematic in its own right. See further Raboteau Briefing Paper, Section IV(c).

¹⁵ See, e.g., Jake Johnston, *Meet the New Haitian Military: It's Starting to Look a Lot like the Old One*, *Haïti Liberté* (21 Mar. 2018), <https://haitiliberte.com/meet-the-new-haitian-military/>; Jacqueline Charles, *Haiti has a new army with much of the old leadership. Some in the U.S. aren't happy*, *Miami Herald* (26 Mar. 2018), <https://www.miamiherald.com/news/nation-world/world/americas/haiti/article206915699.html>.

¹⁶ See Press Release, *The BAI Denounces the Appointment of an Ex-Torturer of the Bloody Coup d'Etat of 30 September 1991 to the So-Called High Command of the Haitian Armed Forces* (14 Mar. 2018), http://www.ijdh.org/wp-content/uploads/2018/03/BAI_IDJH_Press_Release_ENG-Version.pdf.

¹⁷ Jacqueline Charles, *Haiti has a new army with much of the old leadership. Some in the U.S. aren't happy*, *Miami Herald* (26 Mar. 2018), <https://www.miamiherald.com/news/nation-world/world/americas/haiti/article206915699.html> (quoting Haiti's Minister of Defense); Jake Johnston, *Meet the New Haitian Military*, *Haïti Liberté* (21 mars 2018), <https://haitiliberte.com/meet-the-new-haitian-military/> (quoting Minister of Defense assertions that appointees, including Gabriel, were vetted with no negative findings).

¹⁸ See HRC, *Second periodic report submitted by Haiti under article 40 of the Covenant, due in 2018*, U.N. Doc. CCPR/C/HT1/2, para. 135 (24 Apr. 2019) ("Regarding the recommendations of the Truth and Justice Commission, in view of the fact that they are linked to the Raboteau trial and that victims and perpetrators are now living side-by-side in a relatively stable situation of social harmony, the Government deemed that it would serve no purpose to stir up memories of the past by resuming the trial.").

might not be able to carry out the proceedings required by law because he lacks records regarding Mr. Constant's conviction and underlying crimes.¹⁹ These statements were made in spite of the fact that the verdict against Mr. Constant – the same one that lists the still-free Colonel Gabriel – was published in Haiti's official gazette *Le Moniteur* on November 23, 2000²⁰ and is otherwise widely available.²¹ Civil society organizations, including the BAI, have expressed concern about the state's apparent lack of will or ability to ensure that justice is carried out in accordance with the law, and have called on the state to meet its legal obligations to ensure accountability, even supplying key documents.²² This concern has been echoed by, among others, the UN High Commissioner for Human Rights, who emphasized that “[t]he perpetrators of such egregious acts must not be allowed to escape justice.”²³

The requesters are concerned that the above-described statements by the Gonaïves prosecutor indicate the government's intention to continue avoiding accountability for the Raboteau massacre as part of a broad trend for impunity, where powerful individuals credibly implicated in human rights abuses are protected or even elevated, like Colonel Gabriel. For example, though the Raboteau massacre was among the regime's most notorious crimes, it was also representative of widespread human rights abuses during the 1991-1994 period, which included thousands of extrajudicial killings, sexual and gender based violence, torture, forced disappearances, arbitrary arrests and detention, and the flight from the country of hundreds of thousands of Haitians who feared for their safety.²⁴ In spite of this, to our knowledge, Haiti has implemented few of the recommendations of the National Commission on Truth and Justice²⁵ regarding accountability for that period.

To the victims of the Raboteau massacre, impunity remains a grave wrong. They staged two courageous public events this July to make clear that they continue to look for justice from the

¹⁹ See, e.g., Jacqueline Charles, *Is 'Toto' Constant on his way to being freed? Haiti prosecutor says he has no files*, Miami Herald (10 Jul. 2020), <https://www.miamiherald.com/news/nation-world/world/americas/haiti/article244129307.html>.

²⁰ *Extrait Plumitif d'Audience Criminelle du jeudi 16 novembre 2000*, Le Moniteur, No. 92 (23 Nov. 2000), available at http://www.ijdh.org/wp-content/uploads/2020/07/92_2000.pdf.

²¹ See, e.g., IJDH's Raboteau Massacre Accountability web portal, <http://www.ijdh.org/raboteau-massacre/> (sous “Other Resources”); Kim Ives, *Gonaïves Prosecutor Claims He Cannot Find the 2000 Raboteau Trial Judgment. Here It Is.*, Haiti Liberte (9 Jul. 2020), <https://haitiliberte.com/gonaives-prosecutor-reportedly-claims-he-cannot-find-the-2000-raboteau-trial-judgement-here-it-is/>.

²² See, e.g., BAI & RNDDH, *Open Letter to Commissaire du Gouvernement Pres Le Tribunal de Premiere Instance des Gonaïves, Mag Serard GASIUS, concernant le dossier du process du massacre de raboteau* (15 Jul. 2020), <http://www.ijdh.org/wp-content/uploads/2020/07/2020-07-02-BAI-Letter-to-Gonaives-Commissioner-EN.pdf>.

²³ Press Release, OHCHR, *Bachelet: Haiti 'death squad' leader must be served justice* (29 Jul. 2020), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26132&LangID=E>.

²⁴ See, e.g., Human Rights Watch, *Haiti Rights Developments* (1995), <https://www.hrw.org/reports/1995/WR95/AMERICAS-07.htm>; Beverly Bell, *Haitian Women's Stories of Survival and Resistance*, Cornell University Press (2013), available at <https://books.google.com/books?id=LWw1AAAAQBAJ&lpg=PP1&pg=PP1#v=onepage&q&f=false> (“Hundreds of thousands of others, in search of a more complete escape, chose to slip into flimsy wooden boats in the middle of the night.”).

²⁵ Final Report of Haiti's National Commission of Truth and Justice, *Si M Pa Rele* (“If I Don't Cry Out”), (5 Feb. 1996), available at <http://www.ijdh.org/2020/07/projects/si-m-pa-rele-if-i-dont-cry-out-final-report-of-haitis-national-commission-of-truth-and-justice/>.

government in the form of proceedings against individuals like Gabriel and Constant.²⁶ These victims deserve accountability. Allowing a formal judgment to be made irrelevant through evasion and procedural manipulation would also be a major blow to justice and rule of law in Haiti.²⁷

b. Broader pattern of impunity

Impunity for the Raboteau massacre is emblematic of a broader pattern in Haiti, wherein powerful actors are consistently allowed to escape accountability. We describe below additional examples of continued impunity in matters that have already appeared before the Commission.

(i) *La Saline massacre and ongoing violence*

At least 71 civilians were killed, 11 women raped, and 150 homes destroyed by armed gangs in the La Saline neighborhood of Port-au-Prince in November of 2018. Credible reports by a variety of organizations implicated high-level government officials and the police in planning and executing the massacre, reportedly to retaliate for the neighborhood's involvement in oppositional activities.²⁸ To date, in spite of civil society advocacy and the Commission's

²⁶ In spite of a dangerous security situation, Raboteau massacre victims and their representatives staged a press conference and a sit-in at the chief prosecutor's office in Gonaïves. See Jacqueline Charles, *Emmanuel 'Toto' Constant must not be allowed to escape justice, U.N. tells Haiti*, Miami Herald (30 Jul. 2020), <https://www.miamiherald.com/news/nation-world/world/americas/haiti/article244571707.html> ("Led by Fritz Désir, the Association of Victims of the Raboteau Massacre demanded justice in Constant's case and the arrest of all others who were convicted in absentia, including Jean Robert Gabriel, the current assistant chief of staff in Haitian President Jovenel Moïse's reconstituted army."); see also BAI, *Victims du Massacre de Raboteau (Sit-in 28 Jul. 2020)*, YouTube, uploaded by Wesley Gedeon (2 Aug. 2020), <https://www.youtube.com/watch?v=0TuzrbNt67o> (showing victims describing atrocities committed during the Raboteau massacre and victim representatives demanding justice pursuant to the *in absentia* convictions for Mr. Constant as well as others like Colonel Gabriel); Exalus Mergenat, *Popilasyon ki te viktim nan yon masak Mask nan vil Gonayiv mande jistis*, VOA NOUVEL (27 Jul. 2020), <https://www.voanouvel.com/a/popilasyon-ki-te-viktim-nan-yon-masak-mask-nan-vil-gonayiv-mande-jistis/5519582.html>; Radio Tele Pyramide, *Viktim masak raboto a plante pikèt yo devan pakè Gonayiv la pou mande jistis*, YouTube (29 Jul. 2020), <https://www.youtube.com/watch?v=uNq3V9CDUGg>; Exalus Mergenat, *Asosyasyon viktim masak katye raboto yo MANDE jistis*, VOA NOUVEL (1 Jul. 2020), <https://www.voanouvel.com/a/asosyasyon-viktim-masak-katye-raboto-yo-mande-jistis/5483780.html>.

²⁷ It is noteworthy that this is part of a pattern wherein the government of Haiti not only fails to prosecute serious human rights violations, but also declines to enforce judicial rulings on human rights issues, in violation of article 25(2)(c) of the ACHR. As the Commission is aware, the government has also failed to comply with and repeatedly questioned a judgment of the Inter-American Court of Human Rights in *Yvon Neptune v. Haiti*. Voir. *Yvon Neptune c. Haïti, Supervision d'exécution d'arrêt, Ordonnance de la Cour interaméricaine des Droits de l'Homme*, Cour IDH (20 Nov. 2015), https://www.corteidh.or.cr/docs/supervisiones/yvon_20_11_15_eng.pdf.

²⁸ See, e.g., MINUJUSTH & OHCHR, *Report on the violent events of 13 and 14 November in La Saline (Port-au-Prince, 21 June 2019)*, https://minujsth.unmissions.org/sites/default/files/minujsth_hcdh_rapport_la_saline_1.pdf; RNDH, *The Events in La Saline: From Power Struggle between Armed Gangs to State-Sanctioned Massacre*, paras. 39, 74, 76 (1 Dec. 2018), <https://web.rnddh.org/wp-content/uploads/2018/12/10-Rap-La-Saline-1Dec2018-Ang1.pdf>; Judith Mirkinson, National Lawyers Guild & Seth Donnelly, Haiti Action Committee, *The Lasalin Massacre and the Human Rights Crisis in Haiti*, p. 2 (8 Jul. 2019), <https://www.nlg.org/wp-content/uploads/2019/07/The-Lasalin-Massacre-ONLINE-7-11-19-Nat-NLG.pdf>; Jacqueline Charles, *Dozens Brutally Killed, Raped in Haiti Massacre, Police Say. 'Even Young Children Were Not Spared'*, Miami Herald (15 May 2019), <https://www.miamiherald.com/news/nationworld/world/americas/haiti/article230380739.html>; see also BAI & IIDH, Precautionary measures request for Petitioners [redacted] of La Saline, in the name of their

engagement²⁹ (for example, emphasizing that “[t]he State has the obligation investigate and respond to serious human rights violations, and to protect the lives, integrity, and dignity of its people”),³⁰ little tangible accountability has been delivered by the government.³¹ Most suspects remain free and neither of the high-level government officials implicated in planning the massacre have been arrested or prosecuted, although after the Commission’s thematic hearing during the 173rd session, they were at least removed from their positions.³² Several Haitian law firms, including the BAI, jointly represent victims of La Saline in criminal proceedings initiated in the Port-au-Prince court in December 2018, but the judicial system has made little progress in advancing the case.³³ Notably, one of the police officers involved in the massacre, Jimmy “Barbeque” Chérizier, though dismissed from the force and subject to arrest, remains at large and has become a powerful gang leader who is playing a key role in the escalation of violence and insecurity in Haiti to catastrophic levels.³⁴ Nevertheless, police officers whose presence was documented at events attended by Chérizier since a warrant was issued for his arrest have received no sanctions for failing to detain him.³⁵

The La Saline massacre is not unique. According to human rights reports, the similarly notorious November 2019 Bel-Air massacre, which resulted in at least 24 deaths in addition to other harms, was perpetrated by the same gang leaders responsible for La Saline (including Chérizier) and likewise implicated state police and senior government officials acting for political purposes.³⁶ As with the La Saline massacre, the state has failed to pursue meaningful

community (8 Aug. 2019), <http://www.ijdh.org/wp-content/uploads/2019/08/IACHR-Precautionary-Measures-Request-Haiti-La-Saline-August-9-2019.pdf>.

²⁹ The requesters remain appreciative of the Commission’s engagement on this topic as part of the thematic hearings on Haiti at the Commission’s 173rd Period of Sessions. Requesters further note the Commission’s *in loco* visit and granting of precautionary measures to the La Saline Victims Committee.

³⁰ Press Release No. 305/19, IACHR, *A Year After La Saline Massacre, the IACHR Remains Concerned about the Ongoing Political and Institutional Crisis in Haiti* (22 Nov. 2019), https://www.oas.org/en/iachr/media_center/PReleases/2019/305.asp.

³¹ See, e.g., U.N. Secretary General, *Report on United Nations Integrated Office in Haiti*, U.N. Doc. S/2020/537, para. 56 (15 Jun. 2020), <https://undocs.org/en/S/2020/537> (finding that La Saline perpetrators continue to elude justice).

³² See note 6, *supra*.

³³ Woovins St Phard, *Massacre de La Saline : le juge d’instruction récusé par Fednel Monchéry et Pierre Richard Duplan*, Le National (20 Aug. 2019), http://www.lenational.org/post_free.php?elif=1_CONTENTUE/actualitees&rebmun=5680; see also BINUH & OHCHR, *Rapport sur les allégations de violations et abus des droits de l’homme lors des attaques dans le quartier de Bel-Air, à Port-au-Prince, du 4 au 6 novembre 2019*, para. 33 (Feb. 2020), https://www.ohchr.org/Documents/Countries/HT/Haiti_Rapport_Bel_Air.pdf.

³⁴ See, e.g., RNDDH, *Attacks on deprived neighborhoods: The RNDDH demands the end of the protection of armed gangs by the authorities in power*, paras. 95, 98 (23 Jun. 2020), <https://web.rnddh.org/wp-content/uploads/2020/06/7-Rap-Attaque-Quartiers-Defavorise-Version-Anglaise-23Jun2020-2.pdf> [hereinafter RNDDH, *Attacks on deprived neighborhoods*]; La Fondasyon Je Klere (“FJKL”), *Terreur dans les quartiers populaires / Pont Rouge au cœur d’une stratégie électorale macabre : La Fondasyon Je Klere (FJKL) tire la sonnette d’alarme*, paras. 6, 37, 38 (22 Jun. 2020) https://fjkl.org.ht/images/doc/FJKL_Situation_de_terreur_au_pont_rouge.pdf; Charles, *Criminal gangs for hire*; Ingrid Arnesen & Anthony Faiola, *In Haiti, coronavirus and a man named Barbecue test the rule of law*, Washington Post (14 Aug. 2020), https://www.washingtonpost.com/world/the_americas/haiti-moise-coronavirus-barbecue/2020/08/14/2554fce4-cf4d-11ea-8c55-61e7fa5e82ab_story.html.

³⁵ See, e.g., RNDDH, *Attacks on deprived neighborhood*, paras. 99, 100.

³⁶ See, e.g., RNDDH, *Massacre au Bel-Air : Banalisation du droit à la vie par les autorités étatiques* (17 Dec. 2019), <https://web.rnddh.org/wp-content/uploads/2019/12/6-Rap-Massacre-Bel-Air-17Dec2019.pdf>; Patrick Saint-

accountability. For example, neither of the high-level government officials alleged to have been implicated in the massacre has been arrested or brought to justice.³⁷ Police officers and state officials have also been implicated in numerous subsequent attacks against civilians, and human rights observers report that gang violence is being deployed as a tool of political repression, including at the behest of the current government.³⁸ Chérizier is frequently involved and was implicated in another massacre as recently as August 31 of this year.³⁹ This pattern of abuse is linked to impunity, as the government's failure to hold to account those responsible has at minimum left free and emboldened the perpetrators.

(ii) *Duvalier era human rights abuses*

The Commission also has a history of strong engagement on accountability for Duvalier-era crimes.⁴⁰ However, since the celebrated 2014 judgment finding that crimes against humanity were not subject to prescription periods under Haitian law,⁴¹ efforts to bring to justice those responsible for the gross human rights violations of the Duvalier era have stalled.⁴² The fact that

Pré, *Policiers impliqués, passivité de la PNH, torpeur de la justice, l'ONU publie son rapport sur le massacre de Bel-Air*, Le Nouvelliste (18 Feb. 2020), <https://lenouvelliste.com/article/212512/policiers-impliques-passivite-de-la-pnh-torpeur-de-la-justice-lonu-publie-son-rapport-sur-le-massacre-de-bel-air>.

³⁷ See Evens Regis, *Trois massacres d'État au couer d'une discussion entre la représentante des États-Unis et un officiel du gouvernement haïtien*, Le National (5 Aug. 2019), http://lenational.org/post_free.php?elif=1_CONTENTUE/actualitees&rebmun=6933; see also U.N. Secretary General, *Report on the United Nations Integrated Office in Haiti*, U.N. Doc. S/2020/537, para. 56 (15 Jun. 2020), <https://undocs.org/en/S/2020/537> (finding that La Saline perpetrators continue to elude justice). Indeed, one of those officials, Pierre Josué Agénor Cadet, still holds a ministerial position. See Jacqueline Charles, *COVID: School has reopened in Haiti. But students, teachers are protesting on the streets*, Miami Herald (26 Aug. 2020), <https://www.miamiherald.com/news/nation-world/world/americas/haiti/article245245130.html>.

³⁸ FJKL, *Terreur dans les quartiers populaires / Pont Rouge au cœur d'une stratégie électorale macabre : La Fondasyon Je Klere (FJKL) tire la sonnette d'alarme*, paras. 36, 37, 40, 42, 43 (22 Jun. 2020) https://fjkl.org.ht/images/doc/FJKL_Situation_de_terreur_au_pont_rouge.pdf; Press Release, FJKL, *Violence aveugle en Haïti n'épargnant pas des bébés et des femmes enceintes : La FJKL condamne la banalisation du droit à la vie et l'installation d'une culture d'impunité dans le pays* (7 août 2020), <https://www.fjkl.org.ht/note-de-presse/violence-aveugle-en-haiti-n-epargnant-pas-des-bebes-et-des-femmes-enceintes-la-fjkl-condamne-la-banalisation-du-droit-a-la-vie-et-l-installation-d-une-culture-d-impunite-dans-le-pays>; RNDDH, *Attacks on deprived neighborhoods*, para. 98; RNDDH, *Assassinations, Ambushes, Hostage-Taking, Rape, Fires, Raids: The Authorities in Power Have Installed Terror in Cité Soleil*, paras. 107, 108, 110 (23 Jun. 2020), <https://web.rnddh.org/wp-content/uploads/2020/08/Rap-Cit%C3%A9-Soleil-082020.pdf>; *Intervention de Me Jacques LETANG devant la Conseil de Sécurité, Le Bureau des Droits Humains en Haïti* (19 Jun. 2020), <https://bdhhaiti.org/archives/489>; see also Charles, *Criminal gangs for hire*.

³⁹ See, e.g., *Haïti - Justice : L'OPC exige l'arrestation des individus impliqués dans les affrontements de Bel-Air et de bas Delmas*, HaitiLibre (3 Sept. 2020), <https://www.haitilibre.com/article-31706-haiti-justice-l-opc-exige-l-arrestation-des-individus-impliques-dans-les-affrontements-de-bel-air-et-de-bas-delmas.html>.

⁴⁰ See, e.g., IACHR, *Statement on the Duty of the Haitian State to Investigate the Gross Violations of Human rights Committed during the Regime of Jean-Claude Duvalier* (17 May 2011), <http://www.oas.org/en/iachr/docs/other/Haiti2011.asp>; Press Release No. 48/14, CIDH, *IACHR Calls on Member States to Open their Archives on the Human Rights Violations Committed under the Regime of Jean-Claude Duvalier* (5 May 2014), https://www.oas.org/en/iachr/media_center/PReleases/2014/048.asp.

⁴¹ See, e.g., *In Landmark Ruling, Haitian Court Opens Investigation into Jean-Claude Duvalier for Crimes Against Humanity*, International Justice Resource Center (25 Feb. 2014), <https://ijrcenter.org/2014/02/25/in-landmark-ruling-haitian-court-opens-investigation-into-jean-claude-duvalier-for-crimes-against-humanity/>.

⁴² Indeed, impunity for Duvalier era crimes was an important focus of the Commission's thematic hearing on reports of impunity and lack of independence of the judiciary in Haiti at its 167th Period of Sessions.

the government has not actively pursued justice in this context is contrary to its obligations under the ACHR and is especially concerning since both witnesses and perpetrators are aging. According to a 2018 civil society report,⁴³ of the 18 people originally indicted (Duvalier among them), 11 have died. However, as the report further points out, in addition to those remaining seven, there are other individuals who abused their power to commit human rights abuses during the period but have yet to be subject to indictments. The many victims of the Duvalier era deserve justice and accountability.

(iii) PetroCaribe corruption

Since the requesters presented on the subject of corruption, especially in the context of the PetroCaribe scandal, at the Commission's 173rd Period of Sessions last year,⁴⁴ Haiti's Court of Auditors issued a third report on the subject, which confirmed previous findings.⁴⁵ In spite of such overwhelming evidence and enormous public concern, there have been no criminal indictments, freezing of assets, or other interim measures.⁴⁶ Instead, it appears that the current government is continuing to exert pressure on the judiciary to avoid accountability.⁴⁷ For example, just this month, President Moïse announced his intention to modify the decree governing the function of the Court of Auditors, a change that would risk the independence and effectiveness of this public accountability body.⁴⁸

⁴³ FIDH, RNDDH & CEDH, *Affaire Jean-Claude Duvalier et consorts : « En Haïti, on poursuit l'enquête, pas les criminels »*, p. 28 (Mar. 2018), <https://www.fidh.org/fr/regions/ameriques/haiti/les-complices-de-jean-claude-duvalier-doivent-enfin-repondre-de-leurs>.

⁴⁴ The requesters' Submission to the Commission offers a brief summary of the key factual issues as of the time of the hearing. See IJDH & BAI, *IJDH & BAI, IACHR Thematic Hearing: Violence and Security in the Context of the Social Protests in Haiti, A Submission of the Institute of Justice & Democracy in Haiti (IJDH) and Bureau des Avocats Internationaux (BAI)* (23 Sept. 2019), available at http://www.ijdh.org/wp-content/uploads/2019/09/IJDH-BAI-Declaration-IACHR-Thematic-Hearing-September-2019_final.pdf.

⁴⁵ Jacqueline Charles, *Haiti corruption scandal: Billions wasted in Venezuelan PetroCaribe aid, new report shows*, Miami Herald (19 Aug. 2020), <https://www.miamiherald.com/news/nation-world/world/americas/haiti/article245045015.html>.

⁴⁶ See, e.g., AFP, *PetroCaribe scandal: Haiti court accuses officials of mismanaging \$2 bln in aid*, France 24 (18 août 2020), <https://www.france24.com/en/20200817-petrocaribe-scandal-haiti-court-accuses-officials-of-mismanaging-2-bln-in-aid?ref=tw> (“Despite recommendations from the High Court of Auditors and popular protests organized since 2018, no prosecution has been brought against the dozens of former ministers and high-ranking officials involved in the PetroCaribe scandal.”).

⁴⁷ See, e.g., U.N. Secretary General, *Report on United Nations Integrated Office in Haiti*, U.N. Doc. S/2020/123, paras. 10, 29 (13 Feb. 2020), <https://undocs.org/en/S/2020/123>; see also IJDH & BAI, *IACHR Thematic Hearing: Violence and Security in the Context of the Social Protests in Haiti, A Submission of the Institute of Justice & Democracy in Haiti (IJDH) and Bureau des Avocats Internationaux (BAI)*, pp. 12-13 (23 Sept. 2019), available at http://www.ijdh.org/wp-content/uploads/2019/09/IJDH-BAI-Declaration-IACHR-Thematic-Hearing-September-2019_final.pdf.

⁴⁸ See, e.g., Pierre Lunick Revange, *Projet de modification du décret portant organisation de la CSC/CA: ECC dénonce le pouvoir*, Juno7 (8 Sept. 2020), <https://www.juno7.ht/projet-modification-decret-portant-csc-ca-ecc-denonce/>; see also Robenson Geffrard, *Jovenel Moïse veut modifier le décret de 2005 sur la Cour des comptes*, Le Nouvelliste (7 Sept. 2020), <https://lenouvelliste.com/article/220655/jovenel-moise-veut-modifier-le-decret-de-2005-sur-la-cour-des-comptes> (reporting the President's statements).

c. Indications that Haiti's judiciary lacks independence

The Commission's 2005 report documented a large number of weaknesses in Haiti's justice sector.⁴⁹ These have persisted or even deteriorated. Recent human rights reports point to interference by the executive and legislative branches, fears by judges to rule against powerful interests due to concerns for their personal security, corruption, and lack of oversight.⁵⁰ There is a sense among civil society that the current government pressures the justice system in cases that involve its priorities.⁵¹ As can be seen from the discussion above, Haiti's pervasive impunity appears to benefit the powerful, which is consistent with findings of politicization and interference in the judiciary. In addition, Haiti's justice system has ground to a near-complete stop due to vacancies, strikes, insecurity, and other capacity challenges.⁵² Court closures and the lack of staff prevent the judicial actions necessary for delivering justice to Haitian people.

Request under article 66 of the Commission's rules of procedure for a thematic hearing on impunity for serious human rights violations and the lack of judicial independence in Haiti

Under the ACHR and other established human rights principles, states are obligated to effectuate the right to effective legal remedies and to enforce those remedies, even where the perpetrators are state actors. The pervasive impunity for human rights abuses in Haiti violates those obligations and leaves victims without recourse and restitution, even as it emboldens perpetrators. As described above, the rising and politicized violence in Haiti can also be directly linked to such accountability lapses, as is the apparent politicization and dysfunction of Haiti's judiciary. The inter-American human rights system has deep expertise in identifying and addressing impunity concerns and judicial sector challenges that can serve as a guide to Haiti, and the Commission's engagement appears to have prompted steps towards accountability in the past. A thematic hearing before the Commission at this time would help to advance the fight against impunity by (i) enabling a thoughtful discussion with the government of Haiti regarding

⁴⁹ IACHR, *Haiti: Failed Justice or the Rule of Law? Challenges Ahead for Haiti and the International Community*, paras. 1, 4 (26 Oct. 2005) <http://www.cidh.oas.org/countryrep/HAITI%20ENGLISH7X10%20FINAL.pdf>.

⁵⁰ See, e.g., U.S. Dept. of State, *Haiti 2019 Human Rights Report-Revised*, pp. 9, 11 (2020), <https://www.state.gov/wp-content/uploads/2020/03/HAITI-2019-HUMAN-RIGHTS-REPORT-REVISED-3.13.2020.pdf>; Freedom House, *Haiti: Freedom in the World 2020*, Section FI (2020), <https://freedomhouse.org/country/haiti/freedom-world/2020>.

⁵¹ See, e.g., Kim Ives, *Illegally Ousted Anti-Corruption Chief: "The President Had to Find Someone Who Was More Obedient,"* HaitiLiberte (19 Jul. 2017), <https://haitiliberte.com/illegally-ousted-anti-corruption-chief-the-president-had-to-find-someone-who-was-more-obedient/> (reporting on current president firing the head of Haiti's financial crimes unit after it implicated him in money laundering); Bernard Fils-Aimé, *President Jovenel Moïse moves to trample the Haitian justice system*, Miami Herald (7 Dec. 2019), <https://www.miamiherald.com/opinion/op-ed/article238138714.html>; Jude Fabre Bretous, *La justice élève une nation*, Le Nouvelliste (11 Dec. 2019), <https://lenouvelliste.com/article/210022/la-justice-eleve-une-nation>; Jacqueline Charles, *Haiti wants to reform its energy sector. So police showed up to arrest power providers*, Miami Herald (15 Dec. 2019), <https://www.miamiherald.com/news/nation-world/world/americas/haiti/article238406248.html>.

⁵² See, e.g., U.N. Secretary General, *Report on United Nations Integrated Office in Haiti*, U.N. Doc. S/2020/537, paras. 19 (15 Jun. 2020), <https://undocs.org/en/S/2020/537>; *Haiti-Justice : Le Rnddh souhaite la reprise des activités à la Cour d'appel de Port-au-Prince*, AlterPresse (29 Apr. 2020), <https://www.alterpresse.org/spip.php?article25556#.X2kRumhKiM->; Caleb Lefèvre, « *D'ici trois mois, des tribunaux fonctionneront avec un seul juge* », Le Nouvelliste (2 Jun. 2020), <https://lenouvelliste.com/article/216832/dici-trois-mois-des-tribunaux-fonctionneront-avec-un-seul-juge>.

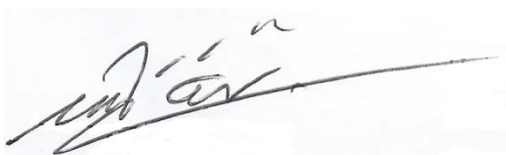
the imperative for accountability and the government's obligations to ensure it; (ii) identifying technical and other support that the Commission and other members of the international community might be able to provide to the government of Haiti in order to address some of the accountability concerns and related capacity challenges of the justice sector; and (iii) building a shared understanding regarding victims' desire for justice and the harms of impunity. A hearing would also draw international attention and pressure to promote accountability for and forestall political interference in cases that require urgent action, like the ones highlighted here.

If this request is granted, we anticipate that we will require approximately one hour for the hearing. We propose to supplement the above with written submissions at the time of the hearing, which will address these issues in greater detail. In addition, requesters will provide expert testimony from representatives of our organizations and/or partners regarding an overview of the situation, with as up-to-date information as possible. We also anticipate the possibility of testimony by victims.

The requesters also respectfully ask that, should this hearing request be granted, the Commission invite the Government of Haiti to attend the hearing and to address the Commission. We propose the following government representatives and urge their participation in the hearing: the Minister of Justice and Public Security, the Minister of Defense, and a representative from the Office of the Protection of the Citizen.

Should the Commission desire additional information on matters raised throughout the hearing, we will gladly provide it upon request. We would like to thank you for considering our request and to offer our appreciation, in advance, for the opportunity to assist the Commission in addressing this issue at this critical and challenging time for human rights in Haiti.

Respectfully,



Mario Joseph, Av.
Director, BAI



Alexandra V. Filippova
Senior Staff Attorney, IJDH