Republic of Haiti

Submission to the United Nations Human Rights Council

Universal Period Review
40th Session of the UPR Working Group
(February 2022)

Justice Sector Challenges in Haiti

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Project Blueprint (https://blueprint389096451.wpcomstaging.com/)
**Bureau des Avocats Internationaux (BAI):** Founded in 1995, BAI is a Haiti-based constitutional and human rights law office that advances the Haitian people’s struggle for justice and democracy. BAI has helped victims prosecute human rights cases, trained Haitian lawyers, and spoken out on justice issues. BAI works with its U.S.-based solidarity partner, the Institute for Justice and Democracy in Haiti, to advocate, litigate, build constituencies, and nurture networks to create systemic pathways to justice for marginalized Haitians and to hold international human rights violators accountable.


**Alternative Chance / Chans Altenativ:** Founded in 1996, Alternative Chance (Chans Altenativ) is a self-help, peer counseling, reentry program for criminal deportees in Haiti that also advocates on behalf of their legal and human rights.

**Réseau National de Défense des Droits Humains (RNDDH) / National Human Rights Defense Network:** The *Réseau National de Défense des Droits Humains* (RNDDH), a Haitian non-profit civil society organization, was created in 1982 under the name of the National Coalition for Haitian Refugees. The overall objective of RNDDH is to contribute to the emergence of the rule of law in Haiti, where all Haitians know their rights and duties, and where their rights and duties are respected by all. RNDDH is a member of the Platform of Haitian Organizations for Human Rights (POHDH), the Humanitarian Accountability Partnership (HAP) and the Assembly Against Corruption (ECC). It is also affiliated with the International Federation for Human Rights (FIDH), the Citizenship Program engaged in Haiti-PCEH.
Justice Sector Challenges in Haiti

I. Executive Summary

1. This report, submitted on behalf of the Bureau des Avocats Internationaux (BAI), the Institute for Justice & Democracy in Haiti (IJDH), Alternative Chance, and the Réseau National de Défense des Droits Humains (RNDDH), provides an overview of Haiti’s ongoing challenges in complying with its human rights obligations relating to judicial remedies and accountability. It focuses on chronic impunity and the lack of an independent justice sector, resulting in systematic violations of the rights to prompt and effective remedies, fair adjudication within the time frame allotted in the law, and to equal protection under the law, as guaranteed by, inter alia, the International Covenant on Civil and Political Rights (CCPR),¹ the Universal Declaration of Human Rights (UDHR),² and the American Convention on Human Rights (ACHR).³ Under Haiti’s constitution, all such international treaty obligations are incorporated into domestic law and supersede any conflicting provisions.⁴

2. Since Haiti’s last universal periodic review (UPR) in 2016, Haiti has regressed with respect to these obligations. Impunity for human rights abuses has deepened and is contributing to Haiti’s current state of catastrophic insecurity. The judiciary remains in a state of chronic dysfunction, including due to increased political interference, threats against judicial actors, lack of resources, and persistent failures to orient itself towards and make itself accessible to Haiti’s poorest and most vulnerable. Corruption is rampant and there are clear indications of the judiciary acting to vindicate political and other ends, rather than those of justice. Further, including as a consequence of these failures, Haiti most of Haiti’s prison population is being confined without process in pretrial detention, in conditions that are inhumane and often life-threatening.

3. These challenges are taking place against an acute crisis for human rights and democracy in Haiti.⁵ No elections have been held since 2017⁶ and the Haitian parliament was dissolved in January 2020 as the mandates of all but ten parliamentarians expired.⁷ President Jovenel Moïse was assassinated on July 7, further deepening the democratic and security crisis.⁸ Mr. Moïse’s mandate had been disputed since February 7, 2021.⁹ He had been governing by decree since the dissolution of Parliament and taking increasingly authoritarian actions.¹⁰ The results have been escalating protests and a political deadlock over the presidential mandate; elections – which most in Haiti’s society do not believe could have been credibly held under the Moïse administration¹¹ or in the aftermath of his assassination;¹² and a proposed referendum on the constitution, which is expressly prohibited by the constitution currently in force.¹³ Haiti is also in a state of devastating insecurity,¹⁴ further exacerbated by the Moïse assassination.¹⁵ There have been at least 20 massacres of civilians since Haiti’s last UPR review, with hundreds of resulting casualties and over 1.5 million directly affected by the crisis.¹⁶ Several of the massacres directly implicate state actors and may amount to crimes against humanity.¹⁷ Massive demonstrations have been held across the country in protest of ongoing human rights abuses and the conditions of Haiti’s political and human rights crisis.¹⁸

II. Failures of Implementation: Significant Violations of Rights to Justice and Accountability
4. Haiti has faced serious and long-standing problems of impunity for human rights violations as well as weaknesses and dysfunction in its justice sector, all violations of its human rights obligations. These have become worse since the last UPR review, with conduct by the executive undermining judicial function and, in some cases, potentially amounting to crimes against humanity. Key observations in line with the expertise of the submitting organization are presented below; they are not intended to be exhaustive.

A. Pervasive Impunity

5. Chronic impunity, including for grave violations of human rights, has persisted in Haiti, in violation of its obligations to provide prompt and effective remedies, and its acceptance of corresponding recommendations during the last UPR cycle. Individuals are unable to obtain remedies for violations of their rights and perpetrators are rarely brought to justice. The most recent report of the United Nations Integrated Office in Haiti (BINUH) emphasized that the Haitian government has exhibited a “chronic lack of commitment to effectively addressing underlying and structural human rights violations.” Accountability is particularly scarce with respect to alleged government misconduct, which may in some cases constitute crimes against humanity. Between July 2018 and May 2021, BINUH documented approximately 175 deaths, 375 injuries, and at least 740 human rights violations at the hands of law enforcement officers, including during anti-government protests. Even as reports of such abuses have increased, investigations and judicial action remain rare.

6. Such widespread impunity for human rights violations has had extensive consequences across Haitian society. Not only has it emboldened perpetrators and enabled further recent violence, impunity has also fostered pervasive public distrust in government institutions and exacerbated the dysfunction of the judiciary. Notable examples follow.

a. Staggering atrocities and human rights abuses were committed under the Duvalier dictatorships from 1957 to 1986. In response to complaints by survivors against Jean-Claude Duvalier for the systematic human rights violations committed under his regime, the Port-au-Prince Court of Appeals ruled in February of 2014 that crimes against humanity are not subject to prescription periods. However, proceedings stalled following the death of Duvalier in October 2014. No progress has been made in bringing to account the individuals responsible, including several who have been indicted for crimes against humanity already. The window to do so is closing as perpetrators age.

b. Insecurity and violence directed at civilians have reached catastrophic proportions. Since November 2018, there have been at least 18 civilian massacres with a combined death toll of at least 515 and over 1.5 million people displaced or trapped in conflict zones. There has been persistent reporting by local human rights organizations that the government of Haiti has failed to protect vulnerable communities, and to the contrary, has been complicit in some attacks and massacres that may amount to crimes against humanity, like the November 13, 2018 La Saline massacre. Police authorities never intervened to stop the attack. There is evidence that the massacre was politically motivated and that at least two then-government officials, Fednel Monchery and Joseph Pierre Richard Duplan, planned it with then-police officer and gang leader Jimmy Chérizier, to whom they also supplied weapons, police vehicles, and uniforms.
Chérizier and the two officials have been sanctioned by the U.S. government and denounced by the UN for their involvement. La Saline victims brought 74 formal complaints in April 2019 against these three and 95 others implicated in UN, police, and civil society reports. But only 16 arrests have been made—none involving the sanctioned three, in spite of an outstanding arrest warrant for Chérizier. Neither Chérizier nor any of the government officials implicated have been tried. Administratively, one of the sanctioned officials resigned and the other was removed from his post, both only after months of sustained advocacy. Judicial proceedings have been stalled since July 2019 over a recusal request and there is little chance that the perpetrators will be held accountable in the near future, as the mandate of the investigating was not renewed in January 2021 and the case has not been reassigned. In a recent report, the Haitian Observatory for Crimes Against Humanity and the Harvard Law School International Human Rights Clinic analyzed the La Saline massacre along with two others to conclude that they likely amount to crimes against humanity implicating top government officials. In addition to violating rights to prompt and effective remedies, the continuing impunity for such massacres has been directly linked to fueling subsequent attacks and the current catastrophic levels of violence and insecurity. A ready illustration is that Chérizier has been identified as responsible for at least six subsequent attacks. It is also noteworthy that an emblematic step towards securing accountability for a civilian massacre in 1994—the 2000 Raboteau massacre trial and convictions—has been largely dismantled in the intervening years. Indeed, an individual convicted in absentia for the massacre, Jean-Robert Gabriel, was appointed to a top position in Haiti’s recently reconstituted army, without any material public process or accounting. The government of Haiti recently asserted to the UN Human Rights Committee that it would “serve no purpose” to pursue accountability for the Raboteau massacre in spite of continued calls for justice by victims.

c. Impunity likewise persists for corruption. Transparency International listed Haiti as 170th out of 180 on its 2020 corruption perception index due to lack of corresponding accountability. Allegations of extensive mismanagement and embezzlement of over $2 billion USD from the PetroCaribe fund, a low-interest fuel loan program meant to finance socioeconomic development in Haiti, prompted national demonstrations for accountability that shut down Haiti for three months at their height. Multiple high-level government officials from recent administrations, including the late President Moïse, are implicated in the misuse of funds. Yet, there have been no material steps towards accountability. An investigation was initiated in March 2019; civil parties to the case requested the judge’s recusal due to his inaction, after which he ordered seven high-level officials to appear. Many complied only after several months’ delay. The prosecutor resigned due to political pressure from the Executive and the judge removed all 75 civil parties from the case. The only serious prosecution targeted the Sogener company. The prosecution is widely regarded as the “instrumentalization of the judiciary for political purposes” because the company’s leadership are supporters of the political opposition. Following almost two years of inaction, the judge ordered a suspension of the investigation into the corruption in June 2021, sparking protests and condemnation across civil society.
d. The August 2020 assassination of Monferrier Dorval, president of the Port-au-Prince Bar Association, constitutional scholar, and a prominent critic of the Moïse administration, has drawn particular attention. The crime is widely seen as a political assassination, including because the killing occurred just outside Dorval’s home close to the presidential residence. Notably, just hours before his death, Dorval had denounced government mismanagement, a series of decrees, the constitutional reform project, and the subordination of elections thereto in a radio interview. Dorval had also previously joined a statement denouncing more than two dozen presidential decrees and served as a lawyer for the defense on the political Sogener case. His murder thus raises added concerns regarding threats to judicial independence through intimidation and violence, in addition to broader concerns with impunity. Other aspects of the case suggest the same: evidence was stolen from the crime scene despite it being secured by the police and from the courthouse a month later; the investigating judge has been continually threatened and attacked; the investigation has been stopped due to failures to provide an armored car and the police’s disarmament of the judge’s security; and many witnesses have refused to appear, naming concerns of gang activity near the courthouse. As of June 2021, four individuals, one with apparent ties to the Moïse administration, have been arrested. The prosecutor on the case refused to enforce judicial orders that eight witnesses, including the wife of Moïse, appear before the court and one witness has been heard. This has been the sole extent of progress towards accountability in the year since the assassination, in spite of persistent pressure from local civil society and international community alike.

B. Lack of Competent, Independent, and Effective Tribunals

7. Since the last UPR review, Haiti’s chronic lack of judicial independence, politicization, and dysfunction have become more pronounced. Haiti has also failed to implement several recommendations from the last UPR cycle that it supported. Examples follow.

a. Interference with Judicial Independence

8. Haiti’s constitution designates an independent body, the Superior Council on Judicial Power (CSPJ), to govern the administration and discipline of judges for the purpose of protecting judicial independence and integrity. However, even with the CSPJ, the judicial sector in Haiti both structurally and functionally lacks independence. The presidency has exercised its power over judicial appointments and renewals to select sympathetic candidates and exert pressure on sitting judges in politically sensitive cases. For example, Moïse recently ignored CSPJ recommendations for mandate renewals of three sitting judges involved in cases regarded as politically sensitive for his administration, as they relate to the La Saline massacre and the PetroCaribe corruption scandal. The Professional Association of Magistrates criticized Moïse’s act as interfering with the judiciary. The resulting judicial vacancies mean that no progress is being made in seeking accountability for the significant underlying crimes.

9. Similarly, in a decision widely regarded as political, Moïse unilaterally removed three justices of Haiti’s Cour de cassation (supreme court) in February 2021, in spite of constitutional provisions rendering justices irremovable absent a determination of abuse of authority by the Senate. The administration then appointed new justices outside of established constitutional
rules. The supreme court refused to swear in the replacements. The Office of the High Commissioner for Human Rights (OHCHR) described Moïse’s actions as “attacks against judicial independence” that “have further eroded the separation of powers in Haiti.”

10. The political replacements took place alongside the administration’s arrest of 18 individuals, including supreme court justice Yvickel Dabrésil, on allegations of plotting a coup. The arrests are widely considered arbitrary and were later deemed improper by a Haitian court. The administration also fired judicial clerk Christophe Lespérance for participating in the habeas corpus hearing for justice Dabrésil. He was later reinstated following widespread protests.

11. Further, executive manipulation of judicial appointments has been resulting in vacancies that hamper effective judicial function. The Moïse administration has failed to renew the mandates of CSPJ-endorsed judges; the vacancies – which currently stand at 60 – impair courts’ ability to function. More mandates are due to expire in the coming months which will render vacant a total of 60 percent of all judicial seats. Haiti’s supreme court currently lacks quorum to hear certain types of cases, including on constitutionality. The court was similarly impaired between 2015 and 2019. Three more mandates are due to expire in 2022, which would render the court non-functional if positions are not filled constitutionally. Both the supreme court and the CSPJ lacked leadership at the time of writing, due to the death of their president. And, on July 3, the CSPJ lost the quorum to function.

12. Other conduct by the Executive has further undermined judicial independence and the judiciary’s ability to function as an effective agent of accountability. For example, the Moïse administration restricted the authorities of the Superior Court of Accounts and Administrative Disputes (CSCCA) by decree in November 2020. The CSCCA, whose functions include government procurement oversight, had implicated multiple current and former government officials in the corrupt use of PetroCaribe funds. The changes weaken the CSCCA’s ability to serve as a check on executive action. According to its president, they also violate constitutional provisions regarding CSCCA’s authorities.

13. The administration has also shown a general disregard for judicial findings where the latter exercised its authorities to act as a check on executive power. With respect to the judicial replacements described above, the administration has to date ignored the rigorous demands from members of Haiti’s judiciary, OHCHR, and Human Rights Watch that the justices unlawfully removed be reinstated. Similarly, when the Moïse administration installed a provisional electoral council outside of the prescribed process, Haiti’s supreme court refused to swear them in. The administration has nevertheless persisted with its council, all over rigorous objections.

b. Threats Against Judicial Actors

14. Judicial independence and function are being acutely eroded in Haiti by threats, violence, and harassment directed at judicial actors – including by Haitian state officials. Acts of intimidation and corresponding fears of retaliation interfere with the ability of judges to make impartial decisions and with the ability of counsel to advocate in sensitive cases. Witnesses have also faced threats. Examples include the assassination of Monferrier Dorval; death threats issued against former justice Wendelle Coq Thélot, founding member of the National Association
of Haitian Magistrates and one of the justices unlawfully replaced by Moïse in February 2021, after she declined to swear in the provisional electoral council unlawfully installed by the administration; and the flight of Judge Dieunel Lumerant from Haiti after gunshots were fired into his home and vehicle in November 2018, while he was presiding over an arms-trafficking case implicating several former and current high ranking officials. Haiti’s Minister of Public Works appears to have attempted to intimidate the CSCCA in September 2020, shortly after the CSCCA released its final report on the PetroCaribe scandal and vetoed a government contract for failing to comply with applicable rules.

15. At minimum, the government is failing to adequately protect judicial actors and spaces, especially in light of the catastrophic insecurity currently gripping Haiti. Insufficient security measures have forced court closures and leave lawyers, judges, and other courthouse staff at risk or unable to advance their cases, especially in Port-au-Prince, where gangs operate in areas near courthouses. Staff and witnesses have been unable or unwilling to go to the courts, further impeding judicial function. Examples of killing, kidnapping, and other harms abound. The Port-au-Prince Court of Appeal insisted on relocating due to insecurity, but became paralyzed for several months because the Ministry of Justice prohibited prosecutors from trying cases in the new location, an inexcusable example of executive interference in the judiciary that prevented 40 cases from advancing. The trial court remains in a dangerous area in spite of staff pleas to move.

c. Indications of Political Targeting by the Judiciary

16. Especially in light of the above, there are serious concerns regarding whether Haiti’s judiciary acts in the service of improper motives. In addition to the impunity of political actors for serious wrongdoing and human rights violations, there are also examples of the judiciary affirmatively using its powers for political ends by prosecuting or deciding cases based on political motives. The February 7, 2021 arrests, the controversial suspension of the PetroCaribe corruption investigation, and the related political prosecution of the Sogener Company described above are salient examples.

17. There are also reports that politically sensitive cases or ones that implicate individuals close to power were assigned to judges with political ties. Similarly, certain cases were prioritized and proceeded quickly, while other cases were frozen or not properly investigated.

d. Under-Resourcing Impedes Effective Judicial Function

18. Judicial function in Haiti is significantly impaired by inadequate resources. In addition to its audit and disciplinary roles, the CSPJ is responsible for judicial salaries and resources (such as vehicles necessary for investigations). In spite of these responsibilities, at the time of writing, the CSPJ’s funding was only 1.3 percent of the national budget. The Director of Judicial Inspection at the CSPJ has opined that “the budget allocated . . . does not allow [the CSPJ] to cover its operating costs, ensure the maintenance of the courts and tribunals of the Republic and provide the Judicial Inspectorate with human and material resources enabling it to support the CSPJ in its mission to cleanse the justice system.” He went on to explain that the limited budget drives the widespread corruption of judges. It is also linked to the security deficiencies described above.
19. Budgetary issues, including failures to pay the salaries of judges, clerks, and other judicial workers, have provoked frequent and extended strikes that cause long-term closures of courts.\textsuperscript{147} Most recently, strikes have also served to protest unconstitutional actions by the Moïse administration and to demand better COVID-19 measures.\textsuperscript{148} Judges, clerks, prosecutors, or bar associations have been on strike for at least 28 out of the 56 months since Haiti’s last UPR.\textsuperscript{149} There were more than seven months of strikes in 2020\textsuperscript{150} and over three months of strikes in 2021 to date, with the judiciary largely at a standstill both years.\textsuperscript{151} Strikes and other judicial conflict with the Executive often leave both civil and criminal hearings largely suspended, sometimes even after a specific strike has ended, and impedes progress in investigating and otherwise processing victim complaints and other matters.\textsuperscript{152} They also exacerbate the shockingly high levels of pretrial detentions.\textsuperscript{153}

20. Buildings of courthouses across the country have insufficient or inadequate facilities or are damaged, leading to additional court closures and impeded or delayed proceedings.\textsuperscript{154} The judiciary has only about 200 vehicles, many of which are more than ten years old and require maintenance.\textsuperscript{155} In the south of the country, even when warrants are issued, there are no cars to execute them.\textsuperscript{156}

21. The insufficient resourcing of the judiciary contributes its susceptibility to corruption through bribery and political influence.\textsuperscript{157} Police commonly request bribes to investigate reports or to make arrests, and judges and clerks arbitrarily charge fees to begin proceedings, behaviors driven and enabled by low salaries and widespread impunity for corruption.\textsuperscript{158} Attorneys and defendants pay bribes to expedite their cases.\textsuperscript{159} Defendants who cannot afford bribes languish given large backlogs.\textsuperscript{160}

c. Weak Training and Limited Capacity Among Judicial Actors

22. Some of the weaknesses and capacity gaps in judicial functions in Haiti are driven by insufficient resources, political interference, and other issues described above. In addition, poor training, weak administration, and inadequate procedures are an independent and compounding violation of Haiti’s human rights obligations\textsuperscript{161} that seriously impede the delivery of justice. Investigations and proceedings are often hindered by the failures of prosecutors and law enforcement to execute the orders of judges, including arrest warrants.\textsuperscript{162} Prosecutors claim to lose track of paperwork and files.\textsuperscript{163} There is a dearth of forensic and investigative skills (as well as corresponding storage facilities).\textsuperscript{164} Evidentiary theft is common,\textsuperscript{165} including in high profile cases like the Dorval assassination.\textsuperscript{166} Security personnel rarely maintained order during judicial proceedings, and oftentimes court reporters were not present.\textsuperscript{167}

23. There are also systematic failures to investigate and prosecute certain types of allegations, like excessive use of force by law enforcement officials\textsuperscript{168} and gender-based violence.\textsuperscript{169} BINUH reported that in one jurisdiction, only 36 percent of complaints of gender-based violence in 2020 had been assigned to an investigating judge and none had gone to trial.\textsuperscript{170} Similar dynamics could be found across the country\textsuperscript{171} and for other marginalized groups.\textsuperscript{172} This suggests that there are persistent biases against supporting certain types of victims or pursuing investigations against particular types of actors.
24. Better training and implementation protocols are needed to ensure fair and effective delivery of justice for all Haitians.\textsuperscript{173} Related recommendations from Haiti’s last UPR appear not to have been met.\textsuperscript{174}

f. Failure of Haiti’s Judiciary to Orient Itself Towards Serving Haiti’s Poor and Marginalized Communities

25. Haiti’s judicial system both structurally and practically denies access to justice to the majority of Haitians, and especially to those who are poor or reside in rural areas.\textsuperscript{175} Widespread corruption is just one cause.\textsuperscript{176} Rules and fees are also often structured in a way that impedes meaningful recourse. For example, Haitian law requires victims of crimes who are awarded damages to pay an advance fee to the courts in order to attempt to collect their awarded restitution from the defendants. This can act to preclude victims without means from receiving their just remedy.

26. Most Haitians cannot afford an attorney or court fees,\textsuperscript{177} and are further excluded by the common practice of bribes.\textsuperscript{178} Legal aid offices were established with UN support to provide free legal assistance to those in pre-trial detention,\textsuperscript{179} but they have done little to meet the immense needs. In 2018, a law mandating legal assistance was enacted,\textsuperscript{180} but the slow establishment of the National Legal Assistance Council delayed execution. The Council was finally formed in May 2021\textsuperscript{181} and two legal aid offices under the 2018 law opened in June.\textsuperscript{182} In practice, however, access to legal aid remains highly limited and few indigent individuals receive assistance.\textsuperscript{183}

27. Almost half of all Haitians live in rural areas that are far from courts, and thus face additional challenges to accessing justice.\textsuperscript{184} Courts of first instance and appellate courts are generally only located in major cities\textsuperscript{185} and public officials fail to invest in rural communities.\textsuperscript{186} Although justices of the peace are located in each municipality, they can only hear limited types of cases and tend to be especially under-resourced.\textsuperscript{187} The lack of safe and affordable transportation prevents rural Haitians from travelling to major cities to reach courthouses, further exacerbating accessibility challenges.\textsuperscript{188} Insecurity, which the government has failed to control, acts as a further barrier.

28. Finally, information about human rights is poorly disseminated to the Haitian public.\textsuperscript{189} French is the language of judicial proceedings and formal documents, even though most Haitians do not speak it, raising the possibility of discriminatory intent. There is a general failure to accommodate illiterate or Creole-speaking Haitians, further hindering their ability to know and advocate for their rights.\textsuperscript{190} Further, even when individuals know of their rights, the above-described challenges and patterns of mistreatment by the justice system discourage victims from pursuing justice.\textsuperscript{191}

C. Escalating Pretrial Detention and Poor Prison Conditions

29. Haiti’s prison conditions remain inhumane and deadly, and its pretrial prisoner population has continued to balloon as Haiti fails to timely process accused individuals, including due to some of the dysfunction and corruption described above. These are blatant violations of Haiti’s obligations to ensure speedy proceedings and minimum prison standards,\textsuperscript{192} which persist in spite of convening dozens of costly meetings and commissions.
30. Haiti remains noncompliant with the 2008 Inter-American Court of Human Rights (IACtHR) judgment in Yvon Neptune v. Haiti, which required Haiti to bring its prisons into compliance with international minimum standards by 2010. Haiti’s Constitution and laws further mandate an initial hearing within 48 hours of a detainee’s arrest and establishes the right to free counsel throughout prosecution for indigent persons. Despite these provisions and the IACtHR’s judgment, Haiti’s pretrial detention scheme is still cited as one of the worst in the world and is fundamentally fueling its prison system failure.

31. As described in Section III.B, Haiti’s justice system is dysfunctional and has particularly deteriorated with respect to processing pretrial cases in a timely manner, if at all. As of May 2021, Haiti’s prison population was approximately 11,580. Only 2,071 of the prisoners had been sentenced; the pretrial detention rate is thus a shocking 82.12 percent. Judicial closures and dysfunction described above are partly responsible, as the likelihood of judicial hearings is low. The government is taking no meaningful action to remedy the situation. Indeed, Haiti’s Office for the Protection of Citizens (OPC) whose mandate is to protect individuals against abuses by the government has acknowledged the government’s fault to the Human Rights Council, concluding that excessive pretrial detention “is largely the result of laxity and nonchalance on the part of the magistrates, added to the phenomenon of an institutionalized system of corruption, not to mention the lack of a real mechanism of control and judicial oversight.” Exacerbating the overcrowding and judicial backlog, police often round up large numbers of people and dump them in the National Penitentiary or leave them to languish in makeshift, unofficial detention centers. In some cases, detainees are never formally processed and remain in limbo, often with their families not informed of their whereabouts. As of May 31, 2021, Haiti’s prisons had reached an occupancy rate of 339 percent. Given the deadly conditions in Haiti’s prisons and detention centers described below, Haiti’s failures to respect its human rights obligations towards detained persons are particularly egregious.

32. The OPC has acknowledged that “[t]he conditions of detention are alarming and do not respect the UN minimum rules for the treatment of detainees. These conditions are treated as cruel, inhuman and degrading treatment, leading in some prisoners to blindness, paralysis and psychiatric or psychic disorders.” This 2018 statement followed a year in which approximately 100 prisoners in Haiti died from malnutrition-related ailments, followed by a tuberculosis epidemic in the National Penitentiary. In May 2021, health care workers at the Penitentiary once again observed many emaciated prisoners and a rising mortality rate.

33. In addition to food, prisoners are also denied basic medical care. Doctors employed by the prison authority are often absent from work and lack necessary medications, including for long-term serious conditions like diabetes. Doctors thus prescribe medications that must be filled at outside pharmacies, which most detainees cannot afford or do not have family nearby to help fill. Detainees who are seriously ill often cannot be transferred to hospitals because the latter will not accept them or the detention facility lacks available vehicles.

34. Haitians deported to Haiti from the U.S. due to criminal convictions face particular health-related lapses in human rights protections. Approximately one-fourth have chronic medical or mental health conditions and are deported with a limited supply of medicines provided by the U.S. Haiti routinely withholds deportees’ medical files it receives from the U.S. and recently, while
quarantining arriving deportees for COVID-19, withheld medications provided for two persons with serious pre-existing conditions who were also recovering from COVID-19.\textsuperscript{206}

35. Haiti also fails to keep detainees safe. From a series of gun battles inside Haiti’s prisons over the last few years, it is clear that prisoners often have weapons, as well as assistance from gangs and correction officers. Prisons often suffer shortages of correction officers on duty or at their post.\textsuperscript{207} These elements put both prisoners and other staff in danger as there is already very limited surveillance of the prisons and their surroundings.\textsuperscript{208} Women are detained near men without adequate security; at least nine women and a 15-year-old girl, most in pretrial detention, were gang-raped during a prison mutiny in November of 2019.\textsuperscript{209}

36. In addition to the above-described poor conditions there are reports of serious abuse directed at detainees, including allegations of cruel, inhuman, and degrading treatment in prisons and makeshift detention centers.\textsuperscript{210} Correction officers use excessive and sometimes deadly force in responding to attempted prison escapes,\textsuperscript{211} maintaining order, and silencing complaints.\textsuperscript{212}

37. Unsurprisingly, complaints are few, and impunity is pervasive. The UN’s June 2021 report on Haiti’s prisons\textsuperscript{213} found that prisoners cannot meaningfully exercise their right to file complaints, including because of fear of reprisals and skepticism that doing so will bring change. As a result, detainees have few means of challenging life-threatening conditions or mistreatment, some of which may amount to torture or cruel, inhuman or degrading treatment or punishment.\textsuperscript{214} Related government policies contribute to reinforcing the \textit{de facto} impunity for any violations suffered. Indeed, the UN report found that, “the majority of the existing internal and external oversight mechanisms are only partially functional.”\textsuperscript{215}

\textbf{III. Recommendations}

The Government of Haiti should:

1) Take necessary measures, including by allocating resources and holding trainings, to enable the judicial system to timely pursue accountability and confront impunity. This must include accountability for past and ongoing human rights abuses, including corruption and other matters where the government itself is alleged to be complicit.

2) Rigorously and urgently investigate and prosecute human rights violations, including recent civilian massacres, which may rise to the level of crimes against humanity, as well as the PetroCaribe corruption scandal and the assassinations of President Moïse and Monferrier Dorval. Take appropriate measures to protect civilians from ongoing insecurity.

3) Implement rigorous measures, including training of law enforcement and members of the judiciary, to ensure the investigation and prosecution of all matters brought before the judiciary, paying particular attention to matters brought by vulnerable or marginalized individuals; allegations of state misconduct or excessive use of force by police; and violence directed against human rights defenders.

4) Review and revise judicial rules and practices with a view to making judicial proceedings more accessible to all Haitians, including by removing or waiving fees,
simplifying rules, and ensuring that all judicial proceedings and documents are accessible in Creole.

5) Increase access to justice in rural communities, including by opening additional local courthouses, providing transportation, and exploring innovative mechanisms like mobile courts and community paralegals.

6) Ensure that all individuals who cannot afford a lawyer are provided free legal assistance.

7) Comply with all judgements issued against Haiti by international courts.

8) Ratify the Rome Statute.

9) Ensure that the CSPJ is equipped to fulfil its mandate of protecting the independence of the judiciary by appointing its next council without delay and otherwise strengthening its mandate and independence.

10) Ensure the independence of judges and magistrates from the Executive; promptly investigate and address, prosecuting where appropriate, allegations of political pressure on judicial actors at all levels.

11) Rescind the November 6, 2020 decree restricting CSCCA powers.\textsuperscript{216}

12) Condemn and investigate all acts of intimidation and violence directed at members of the judiciary and the legal profession, especially where they are linked to public officials. Prosecute those responsible.

13) Ensure that judicial vacancies are promptly filled and mandates are renewed in conformity with legal requirements and corresponding CSPJ assessments. Reinstate the three supreme court justices illegally removed in February 2021.

14) Promptly investigate and prosecute allegations of judicial corruption, including improper fees and bribes, or inappropriate political targeting by the judiciary. Address any resource constraints that drive the imposition of unlawful fees.

15) Ensure judicial actors are adequately paid, resourced, and kept secure by increasing judicial budgets, including that of the CSPJ.

16) Improve the public dissemination of rights and improve public trust in the judiciary by promptly addressing instances of mistreatment by the justice sector.

17) Urgently address the large number of Haitians being held in pretrial detention without a hearing by holding expedited proceedings and reducing unnecessary incarcerations.

18) Detain women and children prisoners in separate areas at a sufficient distance from male prisoners and implement meaningful other safeguards. Women prisoners should be overseen by women correction officers.
19) Create a safe and effective process for prisoners to make human rights complaints.

20) Ensure that all detainees, regardless of detention facility, are provided with two meals per day that meet UN standards on nutrition.

21) Train all correction officers and prison staff on compliance with human rights standards and provide accompanying resources. Meet the benchmarks set by the UNMission for Justice Support in Haiti (MINUJUSTH) and implement the recommendations of the UN’s June 2021 report on Haitian prison conditions.

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1 International Covenant on Civil and Political Rights (CCPR), arts. 2(1, 3), 14, 26 (Dec. 16, 1966) (acceded to by Haiti on Feb. 6, 1991). See also Human Rights Committee, General Comment No. 31, The Nature of the General Legal Obligation on States Parties to the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004), ¶¶ 6-7, 10 (noting that the CCPR requires states to both refrain from violating rights recognized by the Covenant and adopt appropriate measures to ensure the enjoyment of these rights by all individuals under their jurisdiction); id. ¶ 18 (“As with failure to investigate, failure to bring to justice perpetrators of such violations could in and of itself give rise to a separate breach of the Covenant.”); id. ¶ 19; Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, U.N. Doc. CCPR/C/GC/32 (2004), ¶ 9 [hereinafter “Human Rights Committee, General Comment No. 32”] (“A situation in which an individual’s attempts to access the competent courts or tribunals are systematically frustrated de jure or de facto runs counter to the guarantee of article 14, paragraph 1, first sentence.”)

2 Universal Declaration of Human Rights (UDHR), arts. 2, 7-8, 10 (Dec. 10, 1948).


Further emblematic of Haiti’s broad pattern of impunity is the government’s failure to comply with two judgments.

See infra notes 33-34 (calculating that there have been at least 18 massacres in Haiti since November 2018); U.N. Secretary-General, BINUH, U.N. Doc. S/2020/537, ¶ 24 (June 15, 2020), [hereinafter “BINUH June 2020 Report”] (reporting that 2 massacres occurred in 2017).

See infra notes 35-41, 50.


14 See CCPR, art. 2(3); ACHR, art. 25; see also Human Rights Committee, General Comment No. 31, The Nature of the General Legal Obligation on States Parties to the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004), ¶¶ 18-19.

15 See Human Rights Council (HRC), Report of the Working Group on the Universal Periodic Review (2016), U.N. Doc. A/HRC/34/14 [hereinafter “HRC, 2016 UPR Report”], recommendation 115.123 (“Take the necessary measures to allow the judicial system to effectively fight against impunity, including through judicial processes that are carried out within reasonable deadlines (Switzerland)” (supported by Haiti); id. 115.125 (“Ensure accountability for human rights abuses, to strengthen the rule of law and break the pervasive cycle of impunity that hinders reconciliation and limits Haiti’s economic development (United States of America)” (supported by Haiti); id. 115.126 (“Continue its national efforts to combat corruption and impunity (Egypt)”) (supported by Haiti); id. 115.127 (“Strengthen institutional capacities to investigate and prosecute all allegations of corruption and mismanagement of funds (Maldives)) (supported by Haiti).

16 See OCHA, Haiti: Displacements due to gang violence in Port-au-Prince: Situation Report No. 3 (June 23, 2021), https://reliefweb.int/sites/reliefweb.int/files/resources/Haiti%20-%20Situation%20Report%20Nr.%203%20Displacements%20Port-au-Prince%20final%20ENG.pdf (reporting that 1.5 million people have been affected by the ongoing crisis since June 1, 2021). See further infra notes 33-34 (calculating that there have been at least 18 massacres in Haiti since November 2018); U.N. Secretary-General, BINUH, U.N. Doc. S/2020/537, ¶ 24 (June 15, 2020), [hereinafter “BINUH June 2020 Report”] (reporting that 2 massacres occurred in 2017).


35 See supra note 37; BINUH June 2021 Report ¶ 37; see also, e.g., RNDDH, Terror in Cité Soleil ¶ 58.


44 See BINUH June 2021 Report ¶ 36; BINUH Sept. 2020 Report ¶ 32; Christmas Worlgenson, Deux ans après le massacre à la Saline, toujours pas de justice pour les victimes..., Le Nouvelliste (Nov. 12, 2020),
30 September 1991 to the
Commitments to Justice and the
Opportun-

Massacres à Bel
1941
independence in Haiti

Rights Report 2020
State Department, Haiti

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bin independence in Haiti

See BINUH June 2021 Report ¶ 36; BINUH Sept. 2020 Report ¶ 32; Christmas Worlgenson, Deux ans après le massacre à La Saline, Fednel Monchéry arrêté puis libéré par la police, Le Nouvelliste (Nov. 12, 2020), https://lenouvelliste.com/article/223112/deux-ans-apres-le-massacre-a-la-saline-toujours-pas-de-justice-pour-les-victimes (noting that the officials implicated in the La Saline massacre have never been held to account); Robenson Geffrard, Indexé dans le cadre du massacre de La Saline, Fednel Monchéry arrêté puis libéré par la police, Le Nouvelliste (Feb. 18, 2021), https://lenouvelliste.com/article/226377/indexe-dans-le-cadre-du-massacre-de-la-saline-fednel-monchery-arrete- puis-libere-par-la-police (reporting that Monchéry was briefly arrested for driving with illegal license plates and quickly released); see also IJDH & BAI, IACHR Hearing Submission, p. 4 (Annex 7); BAI & IJDH, Precautionary measures request ¶ 28-31 (detailing the lack of state action taken to hold perpetrators of the La Saline massacre accountable).


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See supra note 27; see also BINUH Feb. 2021 Report ¶ 33 (“The lack of protection by the State, including the lack of accountability for human rights abuses committed by prominent gang members, especially those who were already the subject of national police warrants, such as Jimmy ‘Barbecue’ Cherizier, fueled the recurring cycle of violence.”)

See, e.g., RNDDH, Massacre in Bel-Air ¶ 50; RNDDH, Attack on deprived neighborhoods ¶ 41-43; RNDDH, Massacres à Bel-Air et à Cité Soleil ¶ 20-26.


78 See further Section III.B.b.


83 See HRC, 2016 UPR Report, recommendation 115.116 (“Ensure that the Judiciary, including the Supreme Council of the Judiciary, has adequate resources and can function without political interferences (Uruguay)”)(supported by Haiti); id. 115.117 (“Ensure sufficient human resources in the judicial system, including the Supreme Court of the Judiciary, to enable it to operate independently, to decrease the number of persons in preventive custody and to guarantee the right to a fair trial (Germany)”)(supported by Haiti); id. 115.118 (“Ensure the judiciary, including the Supreme Council of the Judiciary (CSPJ) is provided with adequate resources and able to operate free from political interference (Australia)”)(supported by Haiti); id. 115.119 (“Strengthen the independence and professionalism of the judiciary and adopt a system of transparent appointment and removal of judges (Czechia)”)(supported by Haiti); id. 115.21 (“Ensure the rule of law, in particular through proper management of judicial structures and systems (Japan)”)(supported by Haiti); id. 115.123 (“Take the necessary measures to allow the judicial system to effectively fight against impunity, including through judicial processes that are carried out within reasonable deadlines (Switzerland)”)(supported by Haiti); id. 115.124 (“Increase the number of magistrates to alleviate court proceedings, and take
measures regarding their election to ensure their independence (Costa Rica)” (supported by Haiti); id. 115.39 (“Strengthen its work to promote a human rights culture throughout the country and ensure rule of law and equal treatment before the law (Norway)” (supported by Haiti).

84 Conseil supérieur du pouvoir judiciaire.

83 See Haiti Constitution (1987), art. 184-2; see also Loi creant le conseil supérieur du pouvoir, preamble, Le Moniteur (Dec. 20, 2007), available at http://www.oas.org/juridico/PDFs/mesicic4_hti_conseil.pdf (“Considering that it is appropriate to set up within the Judicial Branch a body able to ensure its independence”); id. at art. 1.


81 Haiti Constitution (1987), art. 175 (“Supreme Court justices are appointed by the President of the Republic form a list submitted by the Senate of three (3) persons per court seat. Judges of the Courts of Appeal and Courts of First Instance are appointed from a list submitted by the Departmental Assembly concerned; Justices of the Peace are appointed from a list draw up by the Communal Assemblies.”); id. at art. 184-2; Loi creant le conseil supérieur du pouvoir (2007), art. 1; see Jean Pharès Jérôme, L’infantilisation du pouvoir judiciaire, Le Nouvelliste (Nov. 12, 2020), https://lenouvelliste.com/article/223117/linfantilisation-du-pouvoir-judiciaire.

80 See Lionel Constant Bourgoin, former prosecutor and former Director General of Haiti’s Anti-Corruption Unit, Statement at the IACHR Public Hearing on Impunity for Human Rights Violations and Lack of Judicial Independence in Haiti: Rapport entre l’impunité généralisée et le manque d’indépendance du pouvoir judiciaire en Haïti (Dec. 10, 2020), available at http://www.ijdh.org/wp-content/uploads/2021/01/DE-L%C2%B9IMPUUNIT%C3%89-HA%C3%8ETI-Bourgoin-FINAL.pdf; IJDH & BAI, IACHR Hearing Submission, pp. 5 (Annex 7); Jean Pharès Jérôme, L’infantilisation du pouvoir judiciaire, Le Nouvelliste (Nov. 12, 2020), https://lenouvelliste.com/article/223117/linfantilisation-du-pouvoir-judiciaire; Samuel Celiné, La Justice n’est pas indépendante, malgré l’existence du CSPJ, Ayibopost (Nov. 19, 2020), https://ayibopost.com/la-justice-nest-pas-independante-malgre-l.existence-du-cspj/ (updated Jan. 29, 2021); see also Human Rights Committee, General Comment No. 32, ¶ 19 (“The requirement of independence refers to... the actual independence of the judiciary from political interference by the executive branch and legislature... A situation where... [the executive] is able to control or direct the [judiciary] is incompatible with the notion of an independent tribunal. It is necessary to protect judges against conflicts of interest and intimidation.”).

89 See supra note 48.

90 See Samuel Celiné, Jovenel Moïse écarte 3 juges. Depuis, les dossiers impliquant ses proches sont à l’arrêt, Ayibo Post (May 11, 2021), https://ayibopost.com/jovenel-moise-ecarte-3-juges-depues-les-dossiers-impliquant-ses-proches-sont-a-larret/ (reporting that out of the three judges whose mandates were not renewed, one judge was investigating the La Saline massacre implicating two former government officials of the Moïse administration, one judge was investigating fraud by a company implicated in the PetroCaribe scandal, and another judge was investigating the armed attack during a 2018 Senate debate on the embezzlement of PetroCaribe funds); Haití-Justice: L’Association professionnelle des Magistrats déplore le non renouvellement des mandats de certains juges, Vant Bèf Info (Jan. 27, 2021), https://vantbefinfo.com/2021/01/haiti-justice-lassociation-professionnelle-des-magistrats-deplore-le-non-renouvellement-des-mandats-de-certains-juges/; Winnie Hugot Gabriel Duvil, L’executif ne renouvelle pas le mandat de trois juges travaillant sur des dossiers impliquant des proches du pouvoir, Le Nouvelliste (Jan. 28, 2021), https://lenouvelliste.com/article/225766/lexecutif-ne-renouvelle-pas-le-mandat-de-trois-juges-travaillant-sur-des-dossiers-impliquant-des-proches-du-pouvoir; see also supra note 63 (discussing the lack of accountability for the fraudulent use of PetroCaribe funds).

91 L’Association professionnelle des magistrats (APM).

See BINUH June 2021 Report ¶ 41 (noting that no appointment was made to replace Judge Etienne on the La Saline case); Samuel Celiné, Jovenel Moïse écoute 3 juges. Depuis, les dossiers impliquant ses proches sont à l’arrêt, Ayibo Post (May 11, 2021), https://ayibo.post/jovenel-moise-ecoute-3-juges-depuis-les-dossiers-impliquant-ses-proches-sont-a-l-larre/; see further Section III.A.


Haiti Constitution (1987), art. 177 (“Judges of the Supreme Court, the Courts of Appeal and the Courts of First Instance are appointed for life. They may be removed from office only because of a legally determined absence of authority or be suspended following and indictment leveled against them. They may not be reassigned, without their consent, even in the case of a promotion. Their service may be terminated during their term of office only in the event of a duly determined permanent physical or mental incapacity.”); id., art. 184-1 (stating that whether a supreme court justice abused their authority is determined by the High Court of Justice); id., art. 185 (“The Senate may constitute itself as a High Court of Justice.”); id., art. 186 (“The Chamber of Deputies, by a majority of two-thirds (2/3) of its members, shall indict…. d. Supreme Court justices and officer of the Public Prosecutor’s Office before the Court for abuse of authority.”). See also CCPR, art. 14(1); ACHR, art. 8(1); Human Rights Committee, General Comment No. 32, ¶ 20 (“Judges may be dismissed only on serious grounds of misconduct or incompetence, in accordance with fair procedures ensuring objectivity and impartiality set out in the constitution or the law. The dismissal of judges by the executive, e.g. before the expiry of the term for which they have been appointed, without any specific reasons given to them and without effective judicial protection being available to contest the dismissal is incompatible with the independence of the judiciary.”).

Haiti Constitution (1987), art. 175 (“Supreme Court justices are appointed by the President of the Republic form a list submitted by the Senate of three (3) persons per court seat.”); Loi portant statut de la magistrature, Le Moniteur (Dec. 20, 2007), art. 28, available at https://www.oas.org/juridico/PDFs/mesici4_hiti_loi_magis.pdf; see BINUH June 2021 Report ¶ 28; HRW, Haiti: Attacks on Judicial Independence.


100 See, e.g., OHCHR, Feb. 2021 Press Briefing Notes; HRW, Haiti: Attacks on Judicial Independence; U.S. Human Rights Clinics, Joint Statement on the Constitutional and Human Rights Crisis in Haiti; RNDDH, State of siege and systematic violation of the civil and political rights of the population: RNDDH demands compliance with the Haitian Constitution (Feb. 9, 2021), https://web.rnddh.org/wp-content/uploads/2021/02/4-CP-Etat-de-s%C3%A9%C3%A9rie-
9Feb2021-ENG.pdf.


106 See Décret relatif à l’organisation judiciaire (Aug. 22, 1995), art. 132, available at https://web.oas.org/mla/en/Countries_Intro/Haiti_intro_text_fra_4.pdf (“In formal hearings of the combined sections, the court shall sit with all its members, unless legitimately prevented from doing so, provided that the number of magistrates is not less than seven. The same shall apply to the sessions of the Superior Assembly of Judges and the Superior Council of the Judiciary. Nevertheless, it may only rule upon the exception of unconstitutionality with a composition of at least nine (9) judges.’’); id. at art. 141 (“Article 141.- The sections, meeting in formal session, shall consider: 1) Appeals in second instance, 2) Applications for review of criminal trials in the cases foreseen in the Code of Criminal Investigation. 3) Requests for unconstitutionality of laws”).


109 Id.; Loi créant le conseil supérieur du pouvoir (2007), art. 4 (requiring that the president of the supreme court serve as the president of the CSPJ).


111 Cour Supérieure des Comptes and du contentieux Administratif.


119 See, e.g., U.S. DOS, Haiti Human Rights Report Revised 2019, p. 9 (“[J]udges often feared ruling against powerful interests due to concerns for their personal security”); RNDDH, Report on Haitian judicial system 2019-2020, pp. 5-7 (Annex 8) (noting that members of the judiciary are often killed and listing several incidents of attacks on judicial staff in 2019-2020); supra notes 70-74 (discussing the assassination of lawyer and constitutional scholar Monferrier Dorval); supra notes 77-78 (describing how the investigation into Dorval’s assassination has been stopped due to continued attacks on the judge and insufficient security).


122 See supra notes 70-74.


128 See also supra notes 61-62.


132 See, e.g., BINUH Feb. 2020 Report ¶ 20 (reporting that the National Association of Magistrates called upon its members to stop hearing cases due to security concerns); RNDDH Report on Haitian judicial system 2019-2020, p. 26 (Annex 8) (reporting that a judge has refused to continue the investigation of the 2019 murder of a journalist due to security concerns); id. at pp. 5-7 (discussing a number of attacks on members of the judiciary during the 2019-2020 judicial year); supra note 78 (discussing that the investigation into the assassination of Dorval has been stopped due to insufficient security for the judge).


The lack of progress in the investigation of the August 2020 assassination of Monferrier Dorval and the lack of accountability for individuals suspected of having directly participated in human rights violations and abuses, such as Jimmy Cherizier, are disconcerting.

IACHR, Report on The Right of Women in Haiti to be Free from Violence and Discrimination ¶ 110 - 120 (noting that most cases of violence against women are not properly investigated and prosecuted).


145 See id.


27


See BINUH June 2021 Report ¶ 29. See further Section III.C.


See id.; Mario Joseph & Nicole Phillips, Judicial Corruption in Haiti, pp. 183, 187-188 (Annex 10); see also Human Rights Committee, General Comment No. 32, ¶ 11 (“[T]he imposition of fees on the parties to proceedings that would de facto prevent their access to justice might give rise to issues under article 14, paragraph 1.”).


See, e.g., CCPR, arts. 2(2), 3, 14(1); ACHR, arts. 2, 8, 25.


165 See generally RNDDH, Theft at the courthouse of Port-au-Prince.

166 See supra note 76 and associated text.


168 See, e.g., BINUH Sept. 2020 Report ¶ 34; BINUH & OHCHR, Manifestations en Haïti, p. 3.


170 BINUH June 2021 Report ¶ 42.


174 See HRC, 2016 UPR Report, recommendation 115.94 (“Ensure that the police and judiciary are trained to deal impartially with women reporting gender based violence, and that all such complaints are fully investigated and prosecuted (United Kingdom of Great Britain and Northern Ireland)” (supported by Haiti); id. 115.61 (“Tackle negative attitudes related to gender and discrimination against women through human rights training of law enforcement and judicial bodies’ agents (Colombia)” (supported by Haiti); id. 115.45 (“Strengthen the human rights education training program and expand it to other governmental departments (Morocco)” (supported by Haiti).

175 See Mario Joseph & Nicole Phillips, Judicial Corruption in Haiti, pp. 186-187 (Annex 10); see also Human Rights Committee, General Comment No. 32 ¶ 9 (“A situation in which an individual’s attempts to access the competent courts or tribunals are systematically frustrated by jure or de facto runs counter to the guarantee of article 14, paragraph 1, first sentence.”).

176 See Mario Joseph & Nicole Phillips, Judicial Corruption in Haiti, pp. 186-187 (Annex 10); see also supra notes 157-160.


U.S. DOS, Haiti Human Rights Report Revised 2019, p. 11; BINUH Feb. 2021 Report ¶ 29. See also CCPR, art. 14(3) (“In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:... (d) ... to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it.”).


See, e.g., id. p. 187; IACHR, Report on The Right of Women in Haiti to be Free from Violence and Discrimination ¶ 126.

See, e.g., BINUH June 2021 Report ¶ 42; Mario Joseph & Nicole Phillips, Judicial Corruption in Haiti, p. 197 (Annex 10) (“Victims already face potential social stigmatization and retribution for reporting the crime and can easily be convinced to drop complaints because they are led to believe that their complaint will not succeed without money to bribe the system”); IACHR, Report on The Right of Women in Haiti to be Free from Violence and Discrimination ¶¶ 108, 123-124 (“The Commission is particularly troubled by the fact that female victims of discrimination and violence are disinclined to turn to the justice system. Victims and their families are often mistreated when attempting to avail themselves of judicial remedies, and have no confidence in the ability of the justice system to right the wrongs committed.”).

See CCPR, arts. 9-10, 14; ACHR, arts. 5, 7-8; Convention on the Rights of the Child, arts. 37, 40 (Nov. 20, 1989) (ratified by Haiti on Jun. 8, 1995); UDHR, arts. 3, 9. See also U.N. General Assembly, United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), U.N. Doc. A/RES/70/175 (2016); U.N. General Assembly, United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), U.N. Doc. A/RES/65/229 (2010); Yvon Neptune v. Haiti, Judgement, Inter-Am. Ct. H.R. (May 6, 2008), https://www.corteidh.or.cr/docs/casos/articulos/serie_c_180_ing.pdf; Haiti Constitution (1987), arts. 24–26-2, 44-44-1; Code Pénal (1835), https://web.oas.org/mla/en/Countries_Intro/Haiti_intro_text_fra_2.pdf. Haiti also has not complied with corresponding recommendations which Haiti supported from the last UPR. See HRC, 2016 UPR Report, recommendation 115.72 (“Implement measures to combat prison overcrowding (Angola)”) (supported by Haiti); id. 115.73 (“Improve detention conditions of detainees, in particular minors (Algeria)”) (supported by Haiti); id. 115.74 (“Reduce significantly the periods of pre-trial detention and ensure that minors have separate spaces in the detention centres and prisons (Spain)”) (supported by Haiti); id. 115.75 (“Allocate additional resources to increase case processing and reduce the number of pre-trial detainees (United States of America)”) (supported by Haiti); id. 115.76 (“Effectively address the situation of persons who have been in prolonged pre-trial detention in full accordance with the principle of proportionality (Republic of Korea)”) (supported by Haiti); id. 115.78 (“Improve the incarceration conditions of prisoners, particularly by reducing overcrowding, malnutrition and the shortage of adequate medical care (Belgium)”) (supported by Haiti); id. 115.79 (“Redouble efforts to improve the conditions of persons deprived of
their liberty, in particular by reducing periods of pre-trial detention, facilitating access to justice, and improving the facilities of detention centres (Mexico)" (supported by Haiti); id. 115.80 (“Develop and put in place a strategy to improve, as soon as possible, detention conditions of minors separated from adults, and reduce the duration of police custody and pre-trial detention (Canada)” (supported by Haiti); id. 115.81 (“Take urgent measures to counter overcrowding, in particular by focusing on alternative measures to detention, and to guarantee the access of prisoners to basic health care and an adequate diet (Switzerland”) (supported by Haiti).


194 See Haiti Constitution (1987), art. 24-3 (“For such an order to be carried out, the following requirements must be met: . . . c) The accused must be notified of his right to be assisted by counsel at all phases of the investigation of the case up to the final judgment”); id. at art. 26 (“No one may be kept under arrest more than forty-eight (48) hours unless he has appeared before a judge asked to rule on the legality of the arrest and the judge has confirmed the arrest by a well-founded decision.”); Loi sur l’assistance légale, Le Moniteur (Oct. 26, 2018), https://web.archive.org/web/20190828064516/http://www.sgcm.gouv.ht:80/wp-content/uploads/2017/03/Moniteur-26-octobre-2018.pdf.

195 See, e.g., BINUH June 2021 Report ¶ 29. Haiti claims that the penal code it enacted by decree will enable positive change. See Projet de loi portant nouveau code penal, available at https://www.haitilibre.com/docs/projet-de-loi-portant-code-de-procedure-penale.pdf; see also Elco Saint Amand, Billet de la rédaction – Le Décret du 24 juin 2020 sur le Code Pénal, une ineptie juridique et politique!, Rezo Nôdwès (Jul. 9, 2020) https://rezonodwes.com/2020/07/09/billet-de-la-reddaction-le-decret-du-24-juin-2020-sur-le-code-penal-une-ineptie-juridique-et-politique/ (noting concerns about the balance of government powers, democratic integrity, and rule of law raised by revising the Penal Code via decree). However, it has yet to start restructuring the justice system or training its departments and staff for the proposed changes and new roles, which are to include alternatives to incarceration and other measures to reduce the pretrial prison population.

196 Data collected during prison monitoring work by RNDDH.

197 Office de la Protection du Citoyen

198 See Haiti Constitution (1987), art. 207 (“An office known as the OFFICE OF CITIZEN PROTECTION is established to protect all individuals against any form of abuse by the government.”).


201 BINUH June 2021 Report ¶ 29. As of May 31, 2021, the breakdown is as follows: 10,801 men (81% in pretrial detention), 436 women (92% in pretrial detention), 240 boys (94% in pretrial detention) and 23 girls (96% in pretrial detention). BINUH & OHCHR, “N ap mouri e Karshan, meetings with the government of Haiti;
Michelle Karshan, meetings with United States government about the transport of medical files and medications for persons being deported; Michelle Karshan, several telephone conversations with the two men described herein while in government of Haiti quarantine and after release.


210 See id. at pp. 4, 6, 8, 16-17, 24-25; see BINUH June 2021 Report ¶ 34.


212 As recently as March 7 and 8 of 2021, five correction officers - including an inspector - beat 25 women prisoners, including two minors, at the prison in Jacmel when they started complaining about their prolonged detentions. Some of the women were injured and three started bleeding vaginally, but officers refused to obtain medical care for them, claiming their superiors forbade it. Laura Louis, The prisons in Haiti are horrible. For women, it’s hell, AyiboPost (Apr. 29, 2021), https://ayibopost.com/the-prisons-in-haiti-are-horrible-for-women-its-hell/.


214 Id. at p. 16 (“The SDH documented that the use of cruel, inhuman and degrading treatment as disciplinary measures is a widespread phenomenon in all the prisons visited. Cases of torture have also been documented by the SDH. Indeed, 72.4% of persons deprived of their liberty with whom the SDH spoke testified to having been victims or witnesses of ill-treatment instigated by prison officers or by other detainees with the acquiescence of the officers. Although prohibited by national and international standards, the prohibition of ill-treatment as a disciplinary measure is part of the routine of the establishments visited. This ill-treatment mainly consists of punches, kicks or sticks. Punishments are generally imposed by the officers, but also by an inmate who has been delegated a disciplinary role within the cell (the majors). Mandela Rule 40 provides that prisoners should never be delegated disciplinary duties.”).


216 See supra note 112 and associated text.
