



**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)**

Haiti is at a crossroads as a growing civic movement demands an end to corruption, increased government accountability, rule of law, and systemic reform, in the midst of entrenched social and economic conditions that are acutely worsening under the current Administration.<sup>i</sup> The movement underscores what the Inter-American Commission on Human Rights (Commission) has articulated on corruption:

*“[corruption] affects human rights in their entirety – civil, political, economic, social, cultural and environmental – as well as the right to development; weakens governance and democratic institutions, promotes impunity, undermines the rule of law and exacerbates inequality.”<sup>ii</sup>*

Faced with this social movement, the response of the Administration of Haiti’s current president, Jovenel Moïse, is creating both short- and long-term negative impacts to human rights in Haiti, and risks undermining an already fragile rule of law and progress towards integral development.

**Haiti: Human Rights & Accountability**

The accountability movement began following successive reports from Haiti’s Senate (2016, 2017) revealing misappropriation of at least US\$1.7 billion in state funds from a long-term concessional oil-loan program from Venezuela (PetroCaribe), which had been intended to enable investment in infrastructure and social services.<sup>iii</sup> The reports spurred calls for the government to answer the question of what happened to the funds, particularly in light of PetroCaribe’s intended purpose of improving social conditions for the most vulnerable,<sup>iv</sup> and Haiti’s immense recovery and development needs following the 2010 earthquake and the UN-introduced cholera epidemic.<sup>v</sup>

Though PetroCaribe provided the catalyst, the movement is also responding to longer term structural drivers, the influence of corruption on these drivers, and their consequent impact on the realization of fundamental rights.

Over the past year, what started as a small-scale call for accountability, largely driven by youth through social media,<sup>vi</sup> has grown into a broad, national movement spanning rural and urban communities, religious groups, political parties, and civil society across social sectors. Tens of thousands of people have mobilized to demand not only accountability for individuals and government units implicated in corruption but also the restitution of funds, the resignation of President Moïse, who has himself been personally implicated in corruption,<sup>vii</sup> and progressive structural reform in order to curb corruption’s corrosive effects on human rights.<sup>viii</sup>

The movement is highlighting a critical point: that accountability and rule of law are essential bedrocks for stability and development. This insight has been central to the work of the *Bureau*



*des Avocats Internationaux* (BAI) and the Institute for Justice & Democracy in Haiti (IJDH) over the past 24 years to enhance access to justice for the marginalized and make systemic improvements to the justice system, rule of law, and respect for human rights.

This foregrounding of the implications of accountability and rule of law on the realization of human rights reinforces the need for action that compels Haiti to uphold the application of rule of law centered on the needs of its citizens and the advancement of integral development.<sup>ix</sup>

### **Accountability in the Current Political Context: 2017-Present**

Significant misappropriation of PetroCaribe state funds over successive administrations since 2008 was first revealed by Haitian Senate Reports in 2016 and 2017, with the latter implicating former ministers and senior officials in corruption and embezzlement.<sup>x</sup>

The Senate's revelations were followed by two additional reports (January and May 2019) from Haiti's Court of Auditors. The January 2019 report detailed numerous examples and instances of irregularities across administrations, regulatory oversight, and implementation of programs and projects funded through PetroCaribe Fund monies. It recommended investigations into the actions of relevant institutions and agencies in order to determine whether there were grounds for prosecution of the identified irregularities.<sup>xi</sup> The May 2019 report directly implicated President Moïse in the misuse of funds, in the context of double billing for a road project.<sup>xii</sup>

The Moïse Administration and other implicated state actors' response to corruption has seemingly undermined accountability efforts of public institutions and generated an impression of impunity. The current response has further created a political crisis that is eroding rule of law and institutional functionality, while aggravating the current economic downturn:<sup>xiii</sup>

#### *Accountability concerns:*

- In 2017, President Moïse fired the director of L'Unité Centrale de Renseignements Financiers (UCREF), the financial crimes unit that produced an investigative report during the 2016 elections implicating Moïse in money laundering and put in place an "interim" director, viewed as more favorable to President Moïse.<sup>xiv</sup>
- In January 2019, the Haitian Court of Auditors reported delays and lack of cooperation by state agencies with its PetroCaribe investigation.<sup>xv</sup>
- In July 2019, following his implication by the Haitian Court of Auditors' report, President Moïse denied all wrongdoing<sup>xvi</sup> while his advisors rejected the report as a "political document".<sup>xvii</sup> Moïse then publicly called for the OAS to undertake a separate audit of PetroCaribe,<sup>xviii</sup> sparking criticism that he was undermining Haitian judicial institutions.<sup>xix</sup>
- Two Prime Ministers and one Prime Minister-elect have been fired or have resigned since July 2018.<sup>xx</sup>
- President Moïse has nominated two Prime Minister(s) since February 2019 whom Parliament has failed to approve. Moïse remains unable to secure Parliamentary approval for the formation of government.

- In September 2019, revelations emerged that Haitian senators had been offered bribes of \$100,000 USD to confirm the current nominee for Prime Minister Fritz William Michel.<sup>xxi</sup>
- Due to the lack of a ratified government, some international donors have put a hold on development aid.<sup>xxii</sup>
- In consequence of the political stalemate, the government has been unable to pass a 2018 budget and has failed to present a national budget for 2019, or pass key legislation, including an electoral law.<sup>xxiii</sup>
- The Senate Speaker stated in March 2019 that it would be logistically impossible to hold Parliamentary elections on the scheduled October 2019 timeline<sup>xxiv</sup> and the President of the Provisional Electoral Council outlined these logistical challenges in July 2019.<sup>xxv</sup>
- Delayed elections into early 2020 will leave Haiti with no lower house of Parliament and only one third of the Senate, rendering Parliament non-functional.<sup>xxvi</sup>

### **Human Rights Impacts of the Crisis**

PetroCaribe corruption and the Administration’s response to the growing social movement have far reaching consequences on human rights, across economic, social, cultural, civil and political dimensions.

Of urgent concern, government actors and agencies have been implicated in violence and increasing repression against those calling for accountability. The response of the Administration and its apparent lack of measures taken to counter repressive force implicate violations of the rights to freedom of association and assembly (articles 15, 16), expression (article 13), personal liberty and security (article 7), and life (article 4) under the American Convention on Human Rights (ACHR).<sup>xxvii</sup>

#### *Violence against protestors:*

- October-November 2018, at least nine deaths by police were reported during protests.<sup>xxviii</sup>
- November 2018, Amnesty International called on the Haitian National Police (HNP) to avoid excessive force against protestors.<sup>xxix</sup>
- February 2019, 34 protestors were killed in encounters with police.<sup>xxx</sup>
- February 2019, the Commission called on the Haitian Government to respect protestors’ rights to life, liberty, personal integrity, free assembly and free expression.<sup>xxxi</sup>

#### *Government implication in civilian massacre in La Saline:*

- November 2018, at least 71 civilians were massacred by armed gangs in the Port-au-Prince neighborhood of La Saline. Investigations, including from the UN (MINUJUSTH, OHCHR), Réseau National de Défense des Droits Humains (RNDDH), Haitian Central Directorate of Judicial Police (DCPJ) and independent journalists, uncovered evidence of state actor complicity.<sup>xxxii</sup>
  - Witnesses saw attackers arriving in police vehicles, wearing police uniforms.<sup>xxxiii</sup>
  - National police did not intervene to stop the 13-hour long massacre, despite being less than 1 km away, as set out in the UN report.<sup>xxxiv</sup>

- April 2019, the DCPJ investigation report into La Saline directly implicated two senior government officials in the massacre, Government Delegate for the West Region Joseph Pierre Richard Duplan, and Director General of the Ministry of Interior Fednel Monchery.<sup>xxxv</sup>
- As of September 2019, neither Duplan nor Monchery had been arrested or suspended from their posts.

*Attacks on the press:*

- June 2019, threats and attacks occurred against journalists reporting on corruption and the popular movement, from both police and protestors.<sup>xxxvi</sup> At least three journalists were shot after covering corruption issues between June and September 2019,<sup>xxxvii</sup> including Rospide Pétion, who was assassinated by a group of shooters in June 2019.<sup>xxxviii</sup>
- June 2019, three attacks were carried out on radio stations.<sup>xxxix</sup>
- As of September 2019, the government had failed to hold anyone responsible and has not taken any positive steps to protect journalists.<sup>xl</sup>

The political crisis engendered by the Administration’s response to the PetroCaribe revelations also appears to be reinforcing pre-existing and growing disillusionment in the protection of rule of law through the democratic electoral process.<sup>xli</sup>

Corruption and repeated distortion and interference in elections by both national and international actors have hampered the electoral process in Haiti since the transition to representative government in 1991.<sup>xlii</sup> Against this background, there is growing disillusionment with elections amongst the population,<sup>xliii</sup> with only 11% of those surveyed in 2016 expressing confidence that elections would be “free and fair”,<sup>xliv</sup> and only 20% voter turnout in the election that brought President Moïse to power.<sup>xlv</sup> Haiti’s current social movement appears to have limited faith in the electoral process as a vehicle for systemic change, protection of rule of law and accountability.<sup>xlvi</sup> This impression is only likely to be strengthened given the current political impasse,<sup>xlvii</sup> which presents a significant risk that Parliament will be non-functional as of 2020, as outlined above at page 4,<sup>xlviii</sup> and by revelations in September 2019 that senators had been offered significant bribes to confirm the nominee for Prime Minister Fritz William Michel, as also outlined above at page 4.<sup>xlix</sup>

More broadly, the Moïse administration’s response to the population’s civic push for accountability is seemingly undermining the justice system and other state institutions addressing corruption, and enabling the impunity that entrenches and allows corruption to flourish, while aggravating an economic downturn that prevents incremental realization of social and economic rights, and risks undermining Haiti’s fragile progress towards sustainable and integral development.<sup>1</sup>

**a) Impacts on Economic, Social, and Cultural Rights**

The Commission’s resolution 1/17 underscores the impact of corruption on the economic, social, and cultural rights insofar as it:

*“jeopardizes the capacity of governments to comply with their social rights obligations, including health, education, water, transportation or sanitation, which are essential for the realization of economic, social, cultural and environmental rights and in particular, of the most vulnerable populations and groups,”<sup>li</sup> including by “profoundly affect[ing] the national treasury.”<sup>lii</sup>*

In Haiti, both the corruption exemplified by the PetroCaribe scandal and the absence to date of demonstrated accountability for that corruption, are exacerbating challenges in access and equity of public goods and undermining the functionality and capacity of institutions to confer services to the population.<sup>liii</sup> These failures risk undermining social and economic rights and reversing hard won gains in integral development.<sup>liv</sup>

The misappropriation of US\$1.7billion in PetroCaribe funds represents a significant missed opportunity for investment in social services and infrastructure, undermining the progressive realization of socio-economic rights, to which Haiti is obligated to promote and protect under the ACHR, and countering its commitments to integral development within the framework of the Charter of the Organization of American States (OAS).

This is especially problematic against a background of extreme challenges to the realization of fundamental economic and social rights: approximately 59% of the population lives below the national poverty line;<sup>lv</sup> the literacy rate remains below the regional average;<sup>lvi</sup> and 1 in 12 children are expected to not reach the age of five.<sup>lvii</sup>

Failure to effectively invest PetroCaribe funds not only impedes the progressive realization of socio-economic rights as guaranteed under the ACHR,<sup>lviii</sup> but has also spurred a worsening economic situation that has sharply deteriorated since 2017.<sup>lix</sup>

The termination of the PetroCaribe accord created significant and sudden budget pressures which Haiti had not prepared to adapt to, and which have contributed to a surging budget deficit over the past two years as it became necessary to buy fuel on the open market.<sup>lx</sup> The Administration’s current response is aggravating both the economic situation as well as social frustrations due to its unaccountable, opaque, and ineffective, economic policy making. The most marginalized are paying the highest price:<sup>lxi</sup>

- Food insecurity has doubled in the last year and now affects 2.6 million Haitians. Between February 2018 and 2019 the price of the food basket increased 26%. As of June 2019, the nominal price of the food basket – which represents just the six most basic commodities commonly consumed by poor households – was 6,920 gourdes (\$72 dollars) for the average household per month.<sup>lxii</sup> With a national poverty line of US\$2.41 per day, or US\$75 dollars per month,<sup>lxiii</sup> which 59% of the population lives below, adequate access to even the most basic foods is beyond the reach of the majority of the population.<sup>lxiv</sup>

- There has been an almost 40% depreciation in the national currency over the past year and inflation is at approximately 19%.<sup>lxxv</sup>
- The worsening security situation and increased activity of armed gangs, particularly in the poorest neighborhoods of Port-au-Prince, have forced school and health facility closures.
  - During 2019, Haiti’s general hospital has faced personnel strikes and temporary closures following attacks on the premises.<sup>lxxvi</sup>
  - As a result of insecurity and violence, the schools in the marginalized Tokyo and La Saline neighborhoods have been forced to close indefinitely, depriving children in those areas of education.<sup>lxxvii</sup>
- In July 2018, the government announced an overnight fuel price hike that would have increased prices between 38 and 51%, significantly raising the cost of living.<sup>lxxviii</sup> The price hikes, which the International Monetary Fund required as a condition of its bailout of the Haitian Government,<sup>lxxix</sup> were later retracted in the face of widespread protest.<sup>lxxx</sup>
- Throughout 2019, the government has been periodically unable to meet prices of oil on the global market.<sup>lxxxi</sup> Power outages were common in Haiti in 2019 due to fuel shortages – Haiti is dependent on fuel imports and the national grid is small and inefficient.<sup>lxxxii</sup> In August and September of this year, gas stations closed for several weeks due to a shortage of petroleum products.<sup>lxxxiii</sup>

As further noted by the Commission’s Special Rapporteur in Haiti:

*“the rapid socioeconomic and political deterioration [has led to] lack of electricity, fuel, oxygen and medical supplies necessary to provide essential services of water supply, food products and health services. This undermines the capacity of the state to guarantee the right to life, personal integrity and security, and directly affect living conditions.”<sup>lxxxiv</sup>*

In sum, beyond the fact of PetroCaribe corruption, the Moïse administration’s response to that corruption is severely undermining the protection and realization of social and economic rights against a pre-existing background of extreme vulnerability.

#### **b) Impacts on access to justice and rule of law**

The wide scale misuse of PetroCaribe funds has been enabled by underlying deficiencies in the justice system. Corruption,<sup>lxxv</sup> politicization of appointments and court cases,<sup>lxxvi</sup> insufficient resources,<sup>lxxvii</sup> conflicts of interest,<sup>lxxviii</sup> and a generally overburdened justice system<sup>lxxix</sup> have long impeded access to justice for the most vulnerable, while reinforcing inequality and enabling impunity for the powerful.<sup>lxxx</sup> These deficiencies have also weakened the population’s faith in judicial processes as a reliable vehicle to deliver accountability and restitution for corruption, rendering citizens less likely to even attempt to avail themselves of the protection of law.<sup>lxxxii</sup>

While the Anti-Corruption and Ethics Commission of the Senate and the Haitian Court of Auditors have made important efforts towards accountability in the wake of PetroCaribe revelations as referenced above (p. 2), the justice system has been seemingly unable to advance accountability:

- Private citizens have filed at least 60 complaints relating to PetroCaribe, and the Prosecutor has formally requested the opening of an investigation.<sup>lxxxii</sup> To date, however, no criminal indictments have been issued, assets frozen, or other interim measures ordered.
- The investigating judge has been sharply criticized by human rights advocates and lawyers on the case for failing to take fuller and more prompt investigative steps; lawyers have filed an application for his recusal.<sup>lxxxiii</sup>
- After significant delays, the judge did begin to issue some invitations to former government ministers to appear in court to answer questions in July and August 2019. However, four of the seven former government ministers invited initially did not appear; and two of the seven had still not appeared at the time of writing.<sup>lxxxiv</sup>

Haitian legal experts have also underlined that the judiciary’s lack of technical training and the absence of resources to support a complex transnational financial crimes case present significant obstacles to effective PetroCaribe prosecutions.<sup>lxxxv</sup>

**Additionally, the Moïse Administration’s response to calls for civic accountability risks further undermining the independence, effectiveness, and legitimacy of already fragile justice institutions.**

- As noted above at page 3, President Moïse fired the head of UCREF in 2017, the financial crimes unit that implicated him in money laundering in 2016.<sup>lxxxvi</sup>
- Since assuming office, President Moïse has “replaced the chief prosecutors in all 18 judicial jurisdictions.<sup>lxxxvii</sup> Judges have commented: “this created a new venue for executive influence on judicial decisions because executive appointees can prevent cases from being investigated or brought before a judge altogether”<sup>lxxxviii</sup>”.
- President Moïse failed to renew the mandate of Judge Wilner Morin,<sup>lxxxix</sup> who was investigating a corruption case against one of the members of Haiti’s Provisional Electoral Council, Yolette Marie Mengual, related to her actions during the elections that brought Jovenel Moïse to power.<sup>xc</sup>
- As noted above at p. 3, after the Court of Auditors personally implicated President Moïse in corruption, he and his advisors dismissed the Court’s inquiry as politically motivated and called on the OAS to undertake a parallel PetroCaribe audit.<sup>xc1</sup>

The past months have also seen attacks on judges attempting to take on cases involving corruption and political malfeasance.

- Several judges of the Haitian Court of Auditors investigating PetroCaribe corruption have received death threats.<sup>xcii</sup> The threats are “affecting the normal functioning of the court” and have led to at least two of these judges being forced to flee Haiti.<sup>xciii</sup>
- In November 2018, there was an assassination attempt against Juge d’instruction Dieunel Lumérant of the town of St Marc while he was hearing a case concerning illegal weapons importations, in which he had implicated an ex Minister of Interior and an ex Director General of the HNP.<sup>xciv</sup>



Finally, the deteriorating security situation engendered by the growing political and economic crisis, corruption, and links between the HNP and gangs, combined with the absence of a weak judiciary, is leaving Haitians living in poor neighborhoods particularly vulnerable to increasing gang violence.<sup>xcv</sup>

Residents of neighborhoods heavily affected by gang violence have stated that the HNP is unwilling or unable to protect them, and the UN has noted that the HNP's structural deficiencies undermine its ability to effectively respond to resurging gang activity.<sup>xcvi</sup>

As detailed in the Precautionary Measures request dated August 9, 2019 (Ref. MC-780-19) and as referenced above (at p. 5), there is worrying evidence of police complicity in the November 2018 La Saline massacre in which 71 civilians were killed by armed gangs and victims were displaced into conditions of extreme vulnerability.<sup>xcvii</sup>

### **Outlook: A critical need to protect human rights**

The current political situation in Haiti poses serious short- and long-term risks to human rights in Haiti. The Administration's unaccountable response has:

- included state implication in violence and a failure to curb repressive force, violating the rights to life, personal integrity and free expression of protestors and others calling for accountability;
- further undermined fragile justice institutions and rule of law;
- driven a political crisis and sharp economic deterioration that is rendering elections impossible and having a devastating effect on the social and economic rights of the population, and in particular the most marginalized.

This failed response is reversing hard won development progress in Haiti, undermining the functionality of state institutions and creating further degradations of the rule of law.

Haiti's civic movement for accountability lays bare a clear desire from Haiti's citizens for stronger accountability, restitution of misappropriated funds, rule of law, and structural reform towards a state that confers and upholds the human rights of its population.

At this critical juncture, the engagement of the Commission is vital to ensuring that the Haitian government is held accountable to its human rights obligations and is encouraged to adopt a response that effectively addresses the legitimate demands and well-being of Haiti's population, and supports integral development at the intersection of human rights, good governance, and accountability.

In this context, we respectfully request the Commission to:

1. Conduct an *in loco* visit to Haiti to assess Haiti's compliance with its obligations under the ACHR and Inter-American legal framework;
2. Work with the Haitian government to ensure the state upholds its obligations to:

- Hold both state and private entities accountable for the PetroCaribe corruption;
- Create an environment free from intimidation for the exercise of freedom of expression by protestors and others who investigate, report, and denounce acts of corruption; and
- Prevent, investigate, and punish attacks and harassment against leaders and other individuals who report acts of corruption.

We further reiterate our request of August 9, 2019 to the Commission to issue urgent precautionary measures to protect survivors of the November 2018 La Saline massacre by compelling the Haitian government to provide urgent humanitarian assistance to survivors displaced by the massacre, improve security in La Saline and the surrounding neighbors where survivors have fled through increased police presence, and address delays that have hampered access to justice for victims.

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<sup>i</sup> Enomy Germain, *2018 : l'Année la Plus Dévastatrice pour la Gourde Depuis 15 Ans*, Le Nouvelliste (Dec. 20, 2018),

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<sup>ii</sup> Inter-American Commission on Human Rights Resolution 1/18, Corruption and Human Rights (2018), at 1,

<https://www.oas.org/en/iachr/decisions/pdf/Resolution-1-18-en.pdf>.

<sup>iii</sup> Thomas Lalime, *PetroCaribe : une Excellente Opportunité Ratée par Haïti*, Le Nouvelliste (Jun. 17, 2019),

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<sup>iv</sup> Roberson Alphonse, *PetroCaribe : la CSC/CA Déshabille « Ede Pep », le Programme Social-Phare de l'Ere*

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<https://www.nytimes.com/2016/08/18/world/americas/united-nations-haiti-cholera.html>.

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