



**Written Submission by the Institute for Justice & Democracy in Haiti and the *Bureau des Avocats Internationaux* for the December 10, 2020 Thematic Hearing Before the Inter-American Commission for Human Rights on the Subject of Impunity for Serious Human Rights Violations and the Lack of Judicial Independence in Haiti**

The *Bureau des Avocats Internationaux* (“BAI”) and the Institute for Justice & Democracy in Haiti (“IJDH”) thank the Inter-American Commission on Human Rights (“Commission” or “IACHR”) for the opportunity to present on the subject of impunity for serious human rights violations and the lack of judicial independence in Haiti during its 178<sup>th</sup> Period of Sessions. Pursuant to the Commission’s instructions, we summarize below the main aspects of the envisioned presentation. We further include a list of supporting documentation, submitted herewith as Annex A, and a list of persons who will be part of our delegation, submitted herewith as Annex B. IJDH and BAI respectfully request to reserve the right to amend and supplement these submissions prior to the hearing should this become necessary.

**SUMMARY OF THE MAIN POINTS IJDH AND BAI EXPECT TO MAKE IN THEIR PRESENTATION**

BAI and IJDH intend to present on impunity and the lack of judicial independence in Haiti, which constitute violations of articles 25, as well as articles 8(1) and 24 of the American Convention on Human Rights (“ACHR”).<sup>1</sup> As described in our Request for a thematic hearing (“Request”), which we incorporate by reference and append here as Annex C, there is widespread impunity for serious human rights violations in Haiti, and its justice sector has been chronically unable to deliver accountability to the Haitian people. Haitians have been advocating and agitating for justice through public demonstrations and by participating in Haiti’s vibrant civil society, often in spite of violent suppression by the police.<sup>2</sup> In spite of this, accountability remains elusive and there is evidence of continuing interference in the judiciary by outside actors, in addition to unaddressed capacity, resource, and accessibility challenges that significantly impede judicial function.<sup>3</sup> The rising violence and insecurity in Haiti can be directly linked to this pattern of impunity and judicial dysfunction.<sup>4</sup> The Haitian government’s failure to take meaningful steps to address these concerns, to say nothing of evidence suggesting its complicity in some of the human rights violations and judicial interference at issue, violate Haiti’s constitution and laws, the ACHR, and Haiti’s other international human rights obligations.

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<sup>1</sup> OAS, *American Convention on Human Rights*, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123 (Nov. 22, 1969), [http://www.oas.org/dil/treaties\\_B-32\\_American\\_Convention\\_on\\_Human\\_Rights.htm](http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm).

<sup>2</sup> See, e.g., IJDH, *Haiti at a Crossroads: An Analysis of the Drivers Behind Haiti’s Political Crisis* (May 2019), <http://www.ijdh.org/wp-content/uploads/2019/05/IJDH-Report-Haiti-at-a-Crossroads-May-2019.pdf> (describing, *inter alia*, mass public protests to demand accountability for government corruption that shut down the country); IJDH, *Human Rights and Rule of Law in Haiti: Key Recent Developments* (Feb. 2020), <https://www.ijdh.org/2020/02/projects/human-rights-and-rule-of-law-in-haiti-key-recent-developments/> (describing impunity and justice sector dysfunction, continuing public protests, and violent government repression); IJDH, *Human Rights and Rule of Law in Haiti: Key Recent Developments – March - October* (Nov. 16, 2020), <http://www.ijdh.org/2020/11/projects/human-rights-and-rule-of-law-in-haiti-key-recent-developments-2/> (Attachment 1) [hereinafter “October Human Rights Update”] (describing a continuation of these patterns).

<sup>3</sup> See, e.g., October Human Rights Update.

<sup>4</sup> See, e.g., Request; October Human Rights Update; see also IACHR, *Haiti: Failed Justice or the Rule of Law? Challenges Ahead for Haiti and the International Community*, paras. 179, 183 (Oct. 26, 2005), <http://www.cidh.oas.org/countryrep/HAITI%20english7X10%20FINAL.pdf> (noting impacts of impunity).

## I. Widespread impunity for serious human rights violations

BAI and IJDH will illustrate to the Commission the gravity and extent of impunity for human rights violations in Haiti by discussing several representative accountability failures that demonstrate the gravity and extent of impunity in Haiti: the Raboteau massacre; the 2018 La Saline massacre and similar ongoing violence; and Duvalier-era crimes.<sup>5</sup> In each of these cases the government of Haiti has failed to take meaningful steps towards accountability, in violation of its obligations under the ACHR. As our Request details each of these topics, we provide only brief statements and updates below and include a copy of the Request as Annex C for the Commission's review.

### (i) *Impunity of individuals convicted in absentia for the Raboteau massacre*

As described in our Request, the Raboteau massacre trial resulted in two separate judgments. The first, a jury verdict sentencing 16 of the 22 individuals who were tried in person, was vacated in a decision by Haiti's highest court that is widely regarded as political and improper.<sup>6</sup> The vacatur decision, both on its face and as a clear application of its logic and pertinent laws, has no relevance to the second Raboteau judgment, which imposed life sentences for murder on 37 defendants tried *in absentia*.<sup>7</sup> In other words, none of the individuals convicted *in absentia* can rely on the vacatur judgment. In spite of this, some of these defendants are currently present in Haiti but have not been subject to meaningful proceedings in accordance with the *in absentia* convictions against them arising from the Raboteau massacre trial.

Most concerning and emblematic of this impunity problem is Colonel Jean-Robert Gabriel, who has been installed into a top position in Haiti's reconstituted armed forces in spite of being convicted for abusing exactly that type of access to state use of force with respect to the Raboteau massacre. The BAI, IJDH, and others have repeatedly raised this concern, but the government of Haiti appears to have no intention of engaging in a meaningful public discussion or process. For example, in spite of specific questions about Gabriel from the United Nations Human Rights Committee in connection with Haiti's reporting obligations under the International Convention on Civil and Political Rights,<sup>8</sup> the government of Haiti offered no response in its most recent submission,<sup>9</sup> and Gabriel remains in his post without a public accounting. Indeed, the government of Haiti has continued to signal that it does not regard criminal convictions where innocence was not subsequently established through meaningful judicial proceedings as a bar to high public office: it recently installed an individual convicted *in absentia* for murder and other violent crimes as an interim executive agent (a position similar to a mayor) in Desdunes.<sup>10</sup>

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<sup>5</sup> Although we discuss the PetroCaribe corruption scandal in our Request, given constraints of time and our previous extensive presentation to the Commission on this topic, we do not intend to focus on the lack of accountability for government corruption in our presentation. We note, however, that impunity prevails. *See, e.g.*, October Human Rights Update.

<sup>6</sup> *See, e.g.*, IJDH & BAI, Reversing Post-Raboteau Massacre Trial Impunity: Briefing Paper on Twenty Years of Eroding Commitments to Justice and the Opportunity to Return to Accountability in Haiti (July 2020) [hereinafter "**Raboteau Briefing Paper**"], Section IV(a), <http://www.ijdh.org/wp-content/uploads/2020/07/IJDH-Briefing-Raboteau-in-2020-FINAL-EN.pdf> (citing extensively).

<sup>7</sup> *Id.*

<sup>8</sup> *See* HRC, *List of issues in relation to the second periodic report of Haiti*, U.N. Doc. CCPR/C/HTII/Q/2, para. 4 (May 6, 2020), [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fHTI%2fQ%2f2&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fHTI%2fQ%2f2&Lang=en).

<sup>9</sup> *See* HRC, *Réponses d'Haïti à la liste de points concernant son deuxième rapport périodique*, U.N. Doc. CCPR/C/HTI/RQ/2 (Sept. 30, 2020), [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fHTI%2fRQ%2f2&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fHTI%2fRQ%2f2&Lang=en).

<sup>10</sup> *Un criminel condamné par contumace nommé agent exécutif intérimaire à Desdunes*, Le Nouvelliste (Nov. 6, 2020), <https://lenouvelliste.com/article/222894/un-criminel-condamne-par-contumace-nomme-agent-executif-interimaire-a-desdunes>.

Further, although Haiti's courts reopened from recess in October, there has been no progress in proceedings involving Emmanuel "Toto" Constant, who was likewise convicted *in absentia* and has been detained since his June deportation to Haiti.<sup>11</sup> The prosecutor on the case, who had previously signaled that he might not be able to carry out proceedings against Constant, recently made radio statements suggesting that he planned to commence hearings, but then evaded meeting with the representatives of Raboteau massacre victims, who remain civil parties to the case<sup>12</sup> and has not served formal notice on either the victims or their attorneys as is required by law.

The victims of the Raboteau massacre continue to demand justice,<sup>13</sup> even as the government has claimed they are living in "social harmony" with the perpetrators.<sup>14</sup> Notwithstanding victims' demands and repeated letters from the BAI and other human rights organizations,<sup>15</sup> Haiti's justice system has failed to address the *in absentia* convictions of Jean-Robert Gabriel and others in a manner that is public, thorough, and fully comports with the law, and – in the case of Gabriel – the government has ignored his conviction to put him in a position of public trust. Further, the government has not materially engaged with other human rights violations that took place under the 1991-1994 *de facto* regime, in spite of extensive findings and recommendations by Haiti's National Commission on Truth and Justice.<sup>16</sup> Because at least some of the human rights violations from that period undoubtedly rise to the level of crimes against humanity, which are not subject to prescription periods under Haitian law,<sup>17</sup> this, too, is a violation of the government's obligations under the ACHR to ensure accountability.

(ii) *Impunity for La Saline massacre and similar ongoing violence*

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<sup>11</sup> See, e.g., U.N. Secretary-General, *Report of the Secretary General United Nations Integrated Office in Haiti*, U.N. Doc. S/2020/944, para. 33 (Sept. 25, 2020), <http://www.undocs.org/en/S/2020/944>.

<sup>12</sup> *Procès Emmanuel »Toto » Constant : le commissaire Gasius fait faux bond aux organisations des droits humains*, Rezo Nòdwès (Oct. 30, 2020), <https://rezonodwes.com/2020/10/30/proces-emmanuel-toto-constant-le-commissaire-gasius-fait-faux-bond-aux-organisations-des-droits-humains/>; see also Jacqueline Charles, *Emmanuel 'Toto' Constant must not be allowed to escape justice, UN tells Haiti*, Miami Herald (July 29, 2020), <https://www.miamiherald.com/news/nation-world/world/americas/haiti/article244571707.html>; Request.

<sup>13</sup> Videos from events staged by Raboteau massacre victims in spite of serious risks of violence clearly demonstrate their demands that those who were convicted *in absentia*, including Jean-Robert Gabriel, be brought to justice. See BAI, *Victims du Massacre de Raboteau (Sit-in 28 Jul. 2020)*, YOUTUBE, uploaded by Wesly Gedeon (Aug. 2, 2020), <https://www.youtube.com/watch?v=0TuzrbNt67o> (showing victims of the Raboteau massacre demanding justice and describing the massacre); Exalus Mergenat, *Popilasyon ki te viktim nan yon masak Mask nan vil Gonayiv mande jistis*, VOA NOUVEL (July 27, 2020), <https://www.voanouvel.com/a/popilasyon-ki-te-viktim-nan-yon-masak-mask-nan-vil-gonayiv-mande-jistis/5519582.html>; Radio Tele Pyramide, *Viktim masak raboto a plante pikèt yo devan pakè Gonayiv la pou mande jistis*, YOUTUBE (July, 29 2020), <https://www.youtube.com/watch?v=uNq3V9CDUGg>; Exalus Mergenat, *Asosyasyon viktim masak katye raboto yo MANDE jistis*, VOA NOUVEL (July 1, 2020), <https://www.voanouvel.com/a/asosyasyon-viktim-masak-katye-raboto-yo-mande-jistis/5483780.html>; see also Jacqueline Charles, *Emmanuel 'Toto' Constant must not be allowed to escape justice, U.N. tells Haiti*, Miami Herald (July 30, 2020), <https://www.miamiherald.com/news/nation-world/world/americas/haiti/article244571707.html>.

<sup>14</sup> See HRC, *Second periodic report submitted by Haiti under article 40 of the Covenant, due in 2018*, U.N. Doc. CCPR/C/HT1/2, para. 135 (Apr. 24, 2019), <https://undocs.org/en/CCPR/C/HTI/2>.

<sup>15</sup> See, e.g., Letter of the BAI & the National Network for the Defense of Human Rights (*le Réseau National de Défense des Droits Humains*, "RNDDH") to the Haitian Ministry of Justice and Public Security (May 16, 2020), available at <http://www.ijdh.org/wp-content/uploads/2020/05/Letter-of-BAI-and-RNDDH-to-the-Moj-05.16.20.pdf>.

<sup>16</sup> Final Report of Haiti's National Commission of Truth and Justice, *Si M Pa Rele* ("If I Don't Cry Out"), (Feb. 5 1996), available at <http://www.ijdh.org/2020/07/projects/si-m-pa-rele-if-i-dont-cry-out-final-report-of-haitis-national-commission-of-truth-and-justice/>.

<sup>17</sup> See, e.g., *In Landmark Ruling, Haitian Court Opens Investigation into Jean-Claude Duvalier for Crimes Against Humanity*, International Justice Resource Center (Feb. 25, 2014), <https://ijrcenter.org/2014/02/25/in-landmark-ruling-haitian-court-opens-investigation-into-jean-claude-duvalier-for-crimes-against-humanity/>.

As described in our Request, there has been little progress towards accountability for the 2018 La Saline massacre,<sup>18</sup> which echoes elements of the Raboteau massacre given credible reports, including by the police itself,<sup>19</sup> of state actor involvement for political purposes in a deadly gang attack.<sup>20</sup> Proceedings have been stalled since July 2019 over a request for the recusal of the presiding judge even though the court has an obligation to render a decision and advance the case.<sup>21</sup> Impunity likewise continues for the similar Bel-Air massacre.<sup>22</sup> In the meantime, gang attacks on civilians that have resulted in deaths, rapes, injuries, and destruction of homes and property and which are credibly alleged to implicate government actors, possibly for political reasons, continue to take place.<sup>23</sup> The link between impunity for these human rights violations

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<sup>18</sup> See Request; see also *Massacre de La Saline : deux ans après les lignes n'ont pas bougé*, *Haïti Info Pro* (Nov. 14, 2020), [https://haitiinfospro.com/massacre-de-la-saline-deux-ans-apres-les-lignes-nont-pas-bouge/?fbclid=IwAR32ASt1S9PM5lh7vVilp--NuJZpnVu1mltQuRGF-YJulpJzmNRJGOdyo\\_4](https://haitiinfospro.com/massacre-de-la-saline-deux-ans-apres-les-lignes-nont-pas-bouge/?fbclid=IwAR32ASt1S9PM5lh7vVilp--NuJZpnVu1mltQuRGF-YJulpJzmNRJGOdyo_4) (reporting sense among activists that lack of progress in the case is amounting to a “denial of justice”); Robenson Geffrard, *Massacre de La Saline deux ans après : toujours pas de justice pour les victimes*, *le Nouvelliste* (Nov. 13, 2020), <https://lenouvelliste.com/article/223181/massacre-de-la-saline-deux-ans-apres-toujours-pas-de-justice-pour-les-victimes> (describing ongoing impunity for the massacre and linking it to continuing attacks against civilians in La Saline and other disadvantaged neighborhoods); Worlgenson Noël, *Deux ans après le massacre à la Saline, toujours pas de justice pour les victimes...*, *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 government officials implicated in the massacre still retain their posts); U.N. Secretary-General, *Report of the Secretary General United Nations Integrated Office in Haiti*, U.N. Doc. S/2020/944, para. 31 (Sept. 25, 2020), <http://www.undocs.org/en/S/2020/944>; October Human Rights Update.

<sup>19</sup> Jacqueline Charles, *Dozens Brutally Killed, Raped in Haiti Massacre, Police Say. ‘Even Young Children Were not Spared.’* *Miami Herald* (May 15, 2019), <https://www.miamiherald.com/news/nation-world/world/americas/haiti/article230380739.html>.

<sup>20</sup> See, e.g., BAI & IJDH, *Precautionary measures request for Petitioners [redacted] of La Saline, in the name of their community* (Aug. 9, 2019), available at [http://www.ijdh.org/wp-content/uploads/2019/08/IACHR-Precautionary-Measures-Request\\_Haiti\\_La-Saline\\_August-9-2019.pdf](http://www.ijdh.org/wp-content/uploads/2019/08/IACHR-Precautionary-Measures-Request_Haiti_La-Saline_August-9-2019.pdf) (citing numerous sources); see also Raboteau Briefing Paper, Section II (describing the Raboteau massacre as involving paramilitary actors alongside Haiti’s military, acting for purposes of violent political repression).

<sup>21</sup> See Woovins St Phard, *Massacre de La Saline: le juge d’instruction récusé par Fednel Monchéry et Pierre Richard Duplan*, *Le National* (Aug. 20, 2019), [http://www.lenational.org/post\\_free.php?elif=1\\_CONTENUE/actualitees&rebmun=5680](http://www.lenational.org/post_free.php?elif=1_CONTENUE/actualitees&rebmun=5680); BINUH & OCHCR, *Rapport sur les allégations de violations et abus des droits de l’homme lors des attaques dans le quartier de Bel-Air, à Port-au-Prince, du 4 au 6 novembre 2019*, para. 33 (Feb. 2020), [https://www.ohchr.org/Documents/Countries/HT/Haiti\\_Rapport\\_Bel\\_Air.pdf](https://www.ohchr.org/Documents/Countries/HT/Haiti_Rapport_Bel_Air.pdf).

<sup>22</sup> See Request; see also U.N. Secretary-General, *Report of the Secretary General United Nations Integrated Office in Haiti*, U.N. Doc. S/2020/944, para. 31 (Sept. 25, 2020), <http://www.undocs.org/en/S/2020/944>; October Human Rights Update. The following reports offer good overviews of the Bel-Air massacre and subsequent impunity: BINUH & OCHCR, *Rapport sur les allégations de violations et abus des droits de l’homme lors des attaques dans le quartier de Bel-Air, à Port-au-Prince, du 4 au 6 novembre 2019* (Feb. 2020), [https://www.ohchr.org/Documents/Countries/HT/Haiti\\_Rapport\\_Bel\\_Air.pdf](https://www.ohchr.org/Documents/Countries/HT/Haiti_Rapport_Bel_Air.pdf); RNDDH, *Massacre au Bel-Air : Banalisation du droit à la vie par les autorités étatiques* (Dec. 2019), <https://web.rnddh.org/wp-content/uploads/2019/12/6-Rap-Massacre-Bel-Air-17Dec2019.pdf>.

<sup>23</sup> See RNDDH, *Attacks on deprived neighborhoods: The RNDDH demands the end of the protection of armed gangs by the authorities in power*, para. 98 (June 23, 2020), <https://web.rnddh.org/wp-content/uploads/2020/06/7-Rap-Attaque-Quartiers-Defavorise-Version-Anglaise-23Jun2020-2.pdf>; RNDDH, *Assassinations, Ambushes, Hostage-taking, Rape, Fires, Raids: The authorities in power have installed terror in Cité Soleil*, paras. 107, 110 (Aug. 13, 2020), <https://web.rnddh.org/wp-content/uploads/2020/08/Version-Anglaise-Rap-Cit%C3%A9-Soleil-082020.pdf>; La Fondasyon Je Klere (“FJKL”), *Terreur dans les quartiers populaires / Pont Rouge au cœur d’une stratégie électorale macabre : La Fondasyon Je Klere (FJKL) tire la sonnette d’alarme*, paras. 36, 37, 40, 42, 43 (June 22, 2020) [https://fjkl.org.ht/images/doc/FJKL\\_Situation\\_de\\_terreur\\_au\\_pont\\_rouge.pdf](https://fjkl.org.ht/images/doc/FJKL_Situation_de_terreur_au_pont_rouge.pdf); Press Release, FJKL, *Violence aveugle en Haïti n’épargnant pas des bébés et des femmes enceintes : La FJKL condamne la banalisation du droit à la vie et l’installation d’une culture d’impunité dans le pays* (Aug. 7, 2020), <https://www.fjkl.org.ht/note-de-presse/violence-aveugle-en-haiti-n-epargnant-pas-des-bebes-et-des-femmes-enceintes-la-fjkl-condamne-la-banalisation-du-droit-a-la-vie-et-l-installation-d-une-culture-d-impunite-dans-le-pays>; see also October Human Rights Update.



and ongoing deadly violence has been recognized by the UN Secretary-General, who has repeatedly observed that impunity for, *inter alia*, the La Saline and Bel-Air massacres is “creating an enabling environment for further violence.”<sup>24</sup>

(iii) *Impunity for Duvalier-era human rights violations*

Finally, the government has not made any progress in prosecuting those responsible for grave human rights violations that took place under the dictatorship of Jean-Claude Duvalier since his death. We incorporate in full our summation of the issue in the Request and further emphasize that many of the relevant crimes, like all crimes against humanity, are not subject to prescription. The government of Haiti thus continues to be responsible for bringing justice to the victims.

## II. Lack of judicial independence and competence

Haiti’s judicial branch is failing to deliver justice to its citizens. BAI and IJDH will present to the Commission on evidence that the judicial branch lacks sufficient independence, suffers from serious and chronic capacity challenges, and has failed to orient towards prioritizing the needs of Haiti’s impoverished majority, rather than those with the power or wealth to manipulate the system.

*First*, as noted in our Request, human rights observers consistently report on the lack of independence in Haiti’s judicial branch,<sup>25</sup> echoing this Commission’s own 2005 findings.<sup>26</sup> For example, Haiti’s Minister of Public Works reportedly attempted to intimidate Haiti’s Superior Court of Auditors and Administrative Disputes (“CSCCA”), which has been deeply involved in investigating corruption allegations against the government and is central to reviewing government contracts.<sup>27</sup> The executive’s control of judicial appointments is a further tool for influencing judges or installing ones with preferred perspectives; meantime, the vacancies resulting from such maneuvers hamper judicial function.<sup>28</sup> In addition, violence and threats directed at justice sector actors in circumstances suggesting political agendas further promote a sense in Haiti that the judiciary lacks independence. These include, for example, the recent assassination of Port-au-Prince Bar Association President, lawyer, and constitutional law scholar Monferrier Dorval, who had spoken out for reforms and criticized the government’s current rule by decree,<sup>29</sup> and death threats against magistrate judge Wendell Coq.<sup>30</sup> There is also a sense that witnesses in cases against the politically

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<sup>24</sup> U.N. Secretary-General, *Report of the Secretary General United Nations Integrated Office in Haiti*, U.N. Doc. S/2020/944, para. 31 (Sept. 25, 2020), <http://www.undocs.org/en/S/2020/944>; U.N. Secretary General, *Report of the Secretary-General on the United Nations Integrated Office in Haiti*, U.N. Doc. S/2020/537, para. 56 (Jun. 15, 2020), <https://undocs.org/en/S/2020/537>.

<sup>25</sup> See, e.g., U.S. Dep’t Of State, Bureau of Democracy, Human Rights, and Labor, *Country Reports on Human Rights Practices for 2019: Haiti* (2020), Section 1(e), <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/haiti/> (finding that “senior officials in the executive and legislative branches exerted significant influence on the judicial branch and enforcement”).

<sup>26</sup> See IACHR, *Haiti: Justice en déroute ou l’état de droit ? Défis pour Haïti et la communauté internationale* (26 Oct. 2005), paras. 145-163, <http://www.cidh.oas.org/countryrep/HAITI%20FRENCH7X10%20FINAL.pdf>.

<sup>27</sup> See Jacqueline Charles and Pierre Taylor, *Haiti’s public works minister is accused of intimidating the country’s watchdog agency*, Miami Herald (Sept. 23, 2020), <https://www.miamiherald.com/news/nation-world/world/americas/haiti/article245959635.html>; see also October Human Rights Update.

<sup>28</sup> See Caleb Lefèvre, « D’ici trois mois, des tribunaux fonctionneront avec un seul juge », *Le Nouvelliste* (June 2, 2020), <https://lenouvelliste.com/article/216832/dici-trois-mois-des-tribunaux-fonctionneront-avec-un-seul-juge>.

<sup>29</sup> See, e.g., October Human Rights Update (citing sources); Appolinaire Fotso & Pascal Paradis, *Letter to President Moïse, Avocats Sans Frontières Canada* (Oct. 16, 2020), [https://www.asfcanada.ca/site/assets/files/7254/2020\\_10-16\\_haiti\\_lettre-ouverte-president-jovenel-moise.pdf](https://www.asfcanada.ca/site/assets/files/7254/2020_10-16_haiti_lettre-ouverte-president-jovenel-moise.pdf).

<sup>30</sup> See, e.g., Robenson Geffrard, *L’ANAMAH dénonce des menaces de mort contre Wendelle Coq, juge à la Cour de cassation*, *Le Nouvelliste* (Sept. 28, 2020), <https://lenouvelliste.com/article/221406/lanamah-denonce-des-menaces-de-mort-contre-wendelle-coq-juge-a-la-cour-de-cassation>.

powerful are not safe, which has led individuals to hesitate to participate in proceedings.<sup>31</sup> Further, the government's failure to respect decisions by Haiti's courts that contradict its preferences, for example, by installing a new provisional electoral council even though Haiti's highest court declined to swear in the nominated members,<sup>32</sup> undercut the ability of the judicial branch to act as an independent and empowered branch of government. Similarly, actions by the government that, at minimum, have the appearance of seeking to reduce the independence and effectiveness of oversight bodies, like President Moïse's recent decree purporting to modify the oversight authorities of the CSCCA,<sup>33</sup> undermine the rule of law and disrupt the ability of the judiciary to act independently and effectively.

*Second*, compounding the challenges of political interference are the chronic capacity and competence gaps in Haiti's justice sector. For example, Haiti's courts have been largely unable to function for much of this year due to strikes, which are, in turn, caused by budget shortfalls, poor working conditions, and insecurity.<sup>34</sup> In addition, the government's failure to control widespread insecurity in Haiti impedes the ability of judicial branch actors and the public to participate in judicial proceedings.

*Third*, Haiti's judicial branch has historically marginalized and excluded Haiti's poorest, including through its failures to extend services beyond Haiti's capital and large urban areas or to make more of its functions available in Haitian Creole; it must reorient towards serving all Haitians in order to deliver effective justice.<sup>35</sup>

In combination, these factors have left the people of Haiti without meaningful recourse for human rights violations. Serious investment in transparency, capacity-building, and public accessibility are needed for Haiti's judicial branch to serve its core function. The government of Haiti has an obligation under the ACHR to take material steps towards accomplishing these goals as well as confronting the specific human rights violations described above.

## CONCLUSION

IJDH and BAI look forward to presenting to the Commission on the topics outlined above and to a rigorous discussion with the Commission and the representatives of the government of Haiti invited to the thematic hearing. We hope that this discussion will include identifying concrete next steps for the government of Haiti in addressing the specific instances of impunity outlined above and improving the independence and

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<sup>31</sup> For example, according to their counsel, several witnesses in the *Boniface v. Viliena* case are no longer willing to come forward over fears of retaliation, in spite of precautionary measures granted by this Commission. Similarly, counsel for Raboteau massacre victims, who are civil parties to any additional proceedings, have been told by many of the victims that they are afraid to participate in any proceedings or even to participate in public events. *See also*, e.g., *Haiti: Football Sex Abuse Case Witnesses Threatened* (Aug. 14, 2020), <https://www.hrw.org/news/2020/08/14/haiti-football-sex-abuse-case-witnesses-threatened#>.

<sup>32</sup> Jacqueline Charles, *Haiti finally has an elections commission, but controversy over constitution role brews*, Miami Herald (Sept. 21, 2020), <https://www.miamiherald.com/news/nation-world/world/americas/haiti/article245897040.html>.

<sup>33</sup> *See* October Human Rights Update (citing sources); Jake Johnston & Kira Paulemon, *At Odds with Presidency, a Government Watchdog is Weakened by Executive Decree*, Center for Economic and Policy Research (Nov. 12, 2020), <https://cepr.net/at-odds-with-presidency-a-government-watchdog-is-weakened-by-executive-decree/>.

<sup>34</sup> *See* October Human Rights Update (citing sources); *see also* *Budget Moïse-Jouthe – La ligne de crédit budgétaire du pouvoir Judiciaire est moins élevée que celle du parlement caduc*, Rezo Nòdwès (June 10, 2020), <https://rezonodwes.com/2020/06/10/budget-moise-jouthe-la-ligne-de-credit-budgetaire-du-pouvoir-judiciaire-est-moins-elevee-que-celle-du-parlement-caduc/> (noting that Haiti's judiciary is allocated one third the budgetary allocations made to its currently defunct Parliament).

<sup>35</sup> Mario Joseph & Nicole Phillips, *Judicial Corruption in Haiti: The Need for Discipline and Civil Society Participation*, 39 *Hastings Int'l & Comp. L. Rev.* 183, 187 (2016), [https://repository.uchastings.edu/hastings\\_international\\_comparative\\_law\\_review/vol39/iss1/10](https://repository.uchastings.edu/hastings_international_comparative_law_review/vol39/iss1/10); *see also* Raboteau Briefing Paper, Section III(b).

capacity of the judicial branch. We likewise hope that it will lead to constructive engagement by the Commission to promote such steps, alongside promoting justice and accountability in Haiti more broadly. Specifically, we hope that the Commission will consider, *inter alia*: (i) including Haiti in Chapter IV.B of its Annual Report,<sup>36</sup> (ii) including Haiti and the issues described herein among the working topics for the expected new Special Rapporteurship on judicial independence (if one is created); (iii) conducting a country visit on the topics presented herein and issuing a focused report with recommendations; (iv) requesting that the government of Haiti submit a written report outlining a concrete plan of action for addressing the concerns raised herein; and (v) providing to the government of Haiti with technical and material support for strengthening the independence and capacity of Haiti's judicial system.

Submitted on November 16, 2020 by:



Mario Joseph, Av.  
Direct0r, BAI



Alexandra V. Filippova  
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<sup>36</sup> In our view, the situation in Haiti meets several criteria for inclusion in Chapter IV.B of the Commission's Annual Report, including especially those under Articles 59(6)(d)(ii) and (d)(iii), as well as Articles 59(6)(a)(i), (a)(ii), (c), and (d)(i) of the IACHR's Rules of Procedure.

## ANNEX A

### SUPPORTING DOCUMENTATION

In accordance with your instructions, we include several supporting documents that we think may be helpful to the Commission in the context of the hearing, as follows:

1. Copy of our Request for a thematic hearing on impunity for serious human rights violations and the lack of judicial independence in Haiti (“**Request**”), appended herewith as Annex C and incorporated by reference
2. Copy of the IJDH, *Human Rights and Rule of Law in Haiti: Key Recent Developments – March - October* (Nov. 16, 2020) , accompanying this document as **Attachment 1** and available at [link] (English only)

We note that the materials cited in our submissions are publicly available through the links supplied in our citations. Should the Commission experience any challenges in accessing these materials, we would be happy to provide copies upon request.



## ANNEX C

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