

# Democracy and Sustainability in Reconstructing Haiti: A Possibility or a Mirage?

Irwin P. Stotzky<sup>1</sup>  
& Brian Concannon, Jr.<sup>2</sup>

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## I. INTRODUCTION

Three years after the earthquake that shattered the Haitian State and society, the country remains in a fragile condition. Over 357,000 Haitians remain homeless.<sup>3</sup> Recovery continues to be stifled by land and ideological disputes, logistical and contracting problems, and staffing shortages.<sup>4</sup> Even the weather has conspired to hurt the recovery. Resources for recovery are available—and

1. Professor, University of Miami School of Law; J.D., University of Chicago (1974).

2. Director, Institute for Justice & Democracy in Haiti; J.D., Georgetown University (1989).

3. Deborah Sontag, *Rebuilding in Haiti Lags After Billions in Post-Quake Aid*, N. Y. TIMES (Dec. 23, 2012), <http://www.nytimes.com/2012/12/24/world/americas/in-aiding-quake-battered-haiti-lofty-hopes-and-hard-truths.html?ref=deborahsontag&r=0>. (“When you look at things, you say, ‘Hell, almost three years later, where is the reconstruction?’” said Michele Pierre-Louis, a former prime minister of Haiti. “If you ask what went right and what went wrong, the answer is, most everything went wrong.”)

4. *Id.*

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plentiful. But the primary problem is Haiti's lack of democratic institutions—and infrastructure—necessary to facilitate positive change for the future.<sup>5</sup>

The closing decades of the twentieth century and the dawn of the twenty-first century can rightly be characterized as the era of democracy. Indeed, in the past forty years, a firestorm of democratization spread through most of Latin America and parts of Eastern Europe.<sup>6</sup> It even touched, but just barely, the historically troubled Caribbean nation of Haiti. During the late 1970s, several southern European nations abandoned longstanding dictatorships and adopted democratic regimes. During the early 1980s, most Latin American nations repudiated their aged military dictatorships and instituted democracies. “In the 1990s, another wave of democratization swept Eastern Europe and the Soviet Union, destroying the so-called ‘Communist Empire.’”<sup>7</sup> Today, Haiti, home to a succession of former dictatorships, still struggles desperately to move away from authoritarianism and toward democracy.

The movement from authoritarian regimes to democratic ones is often described as the transition to democracy.<sup>8</sup> This terminology, however, is problematic. It hides a serious ambiguity because it often refers to several—at least two—different and distinct situations. One situation is a stage in which a nation is attempting to adjust norms or institutions so that they comport with the requirements of the democratic rule of law. In this situation, nations are in various stages of conforming to these requirements. But the stability of these institutions has clearly not been secured. In these stages of development, there are often different levels of competition between political parties with different ideologies. There are also differences in the developmental stages of a non-corrupt, independent judiciary that is capable of enforcing a bill of rights. A second situation describes the development of liberal democratic institutions, which may exist in full force, and within a

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5. Editorial, *Haiti's Long Road*, N. Y. TIMES (Jan. 1, 2013), <http://www.nytimes.com/2013/01/02/opinion/haitis-long-road.html> (“It’s not a problem of the availability of money but of the capacity to spend it,” said Rafael Ruipérez Palmero, a Spanish development official in Haiti. However, other parties disagree: “the flood of aid has slowed to a trickle; much of what was promised was never delivered or remains undisbursed, or was disbursed but not actually spent. . . . Money for long-term recovery has proved hard to spend, or slow to show results.”)

6. See generally SAMUEL P. HUNTINGTON, *THE THIRD WAVE: DEMOCRATIZATION IN THE LATE TWENTIETH CENTURY* 3 (1993).

7. Irwin Stotzky, *Suppressing the Beast*, 53 U. MIAMI L. REV. 883, 883 (1998-99).

8. *Id.* at 904.

viable infrastructure.<sup>9</sup> Again, their stability is not yet completely secured. In the second situation, political, social, economic, and cultural actions and other measures are being taken or have been taken to achieve a necessary degree of consensus and social adhesion to those institutions.<sup>10</sup>

No matter which stage of development a nation is in, however, the transition to democracy remains incomplete and incredibly difficult.<sup>11</sup> Other problems exist. The institutional structures of public life remain underdeveloped and unstable. For example, a representative legislative branch, a competent judiciary, and an executive branch that does not go beyond its constitutionally imposed boundaries, are often ineffective and unripe in securing democracy.<sup>12</sup> The underrepresented majority still lacks access to the basic necessities that ensure an opportunity for a productive life. Moreover, the rule of law—and the fundamental guarantees of due process—must become a basic, accepted requirement of public life and private social interaction.<sup>13</sup> Perhaps even more important, the corporatist political and social structures must be attacked and transformed if the vast underprivileged majority has any hope of gaining access to the basic necessities required for a dignified life.<sup>14</sup> All these factors are needed to reach a satisfactory level of economic and social development, and to protect the human rights and democratic process of a developing nation.

The key to Haiti's future success is trust by the Haitian elite and the international community in the ability of the Haitian people to effect democracy. Yet the only way to institute these formal, democratic elements is to reorient Haitian society. But this proves a challenging task. If corporatism controls all aspects of the Haitian state, then democracy cannot exist.<sup>15</sup> Instead, a small elite holds total control.<sup>16</sup> Thus, corporatism infects the electoral process, business, and the economy. The cleansing process, however, must involve institutions specifically designed to purge corporatism. At present, these institutions do not exist. This article examines how to create and maintain the institutions necessary to fortify Haiti's democratic future, beginning with a look at corpo-

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9. *Id.* at 883.

10. *Id.*

11. *Id.* at 883-84.

12. *Id.* at 884.

13. *Id.*

14. *Id.*

15. *Id.* at 887.

16. *Id.* at 888.

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ratism, followed by an analysis of the major institutions that make a system democratic. Ultimately, this article describes Haiti's current challenge of minimizing the negative effects of corporatism while maximizing the democratic process.

## II. POLITICS

The difficulties facing Haiti are four-fold: political, social, legal, and economic. Politics includes building a structure of government that is democratic, where the branches adhere to their constitutional requirements, and are not overtaken by their corporate form. For democracy, a society needs institutions designed and developed to protect the human rights of the individuals it serves. Haiti's political stability is supported by its economic viability; primarily, the challenge of incorporating Haiti into the global economy. This section addresses the political challenges Haiti must face and overcome in order to take a more prominent—and secure—place on the global stage, beginning with a discussion on the development of democracy, followed by an examination of Haiti's constitution and election, and concluding with a conversation on the role of corporatism in the political reform process.

### A. *The Constitution and Elections*

Fair, inclusive elections that reflect the will of the Haitian people and a stable, credible government are essential components to a sustainable, democratic Haitian state.<sup>17</sup> Almost every election ever held in Haiti has been controversial, and the most recent, held in November 2010 and March 2011, are no exception.

On November 28, 2010, in the midst of a cholera epidemic and continued mass displacement after the earthquake, Haiti held the first round of elections to select a president, a third of the Senate, and the entire House of Deputies.<sup>18</sup> In these elections, the Haitian people experienced political discrimination in the form of political

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17. See INSTITUTE FOR JUSTICE & DEMOCRACY IN HAITI ET AL., VIOLATIONS OF VOTING RIGHTS IN HAITI: ELECTIONS THAT DO NOT REFLECT THE WILL OF THE PEOPLE, UNIVERSAL PERIODIC REVIEW, REPUBLIC OF HAITI, SUBMISSIONS TO THE UN HUMAN RIGHTS COUNCIL (2011), available at <http://ijdh.org/wordpress/wp-content/uploads/2011/04/LERN-Compiled-UPR-Submissions1.pdf>. [hereinafter VIOLATIONS OF VOTING RIGHTS].

18. The earthquake left approximately 350,000 people dead, an estimated two million people homeless in Port-au-Prince alone, and destroyed thousands of buildings, including most of the landmark buildings in Port-au-Prince. Relief efforts have done little to help the Haitian people recover from this disaster. See generally Irwin P. Stotzky, *The Truth About Haiti*, 26 CONN. J. INT'L L. 1 (2010).

party exclusion and massive disenfranchisement due to failures in voter registry and fraud during vote tabulation.<sup>19</sup> “Despite widespread requests for new elections by [twelve] of the [nineteen] Presidential candidates, Haitian human rights groups, and civil society, the international community pressured the Haitian Government into releasing electoral results and proceeding with a second round of elections.”<sup>20</sup> Even more recent elections have not met Haiti’s commitments to conduct genuine elections that express the will of the Haitian people.<sup>21</sup> The extralegal *Conseil Electorale Provisoire’s* systematic exclusion of eligible political parties—including *Fanmi Lavalas*—in elections in April 2009, June 2009, November 2010 and March 2011, without legal justification, violated Haiti’s national and international obligations.<sup>22</sup> Voices from across the political spectrum in both Haiti and the United States, joined by human rights groups, and most importantly, Haitian voters, warned both the Haitian and U.S. governments in advance that the deeply flawed elections risked putting the country into turmoil and endangering the U.S. investment in reconstruction.<sup>23</sup> But both the U.S. and Haitian administrations refused to listen.<sup>24</sup>

The 2011 elections were one of the most important in Haitian history. Voters chose the entire House of Deputies for a four-year term, a President with a five-year term, and one-third of the Senate to serve a six-year term.<sup>25</sup> These elected officials bear the responsibility of guiding Haiti’s reconstruction for at least four years. This responsibility requires leadership and careful consideration in making many difficult, important decisions whose results and ramifications will shape the Haitian society for decades to come.

The legislative elections happened in the absence of fifteen political parties, including Haiti’s most popular party, *Fanmi*

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19. JOINT REPORT OF INDEPENDENT ELECTORAL MONITORS OF HAITI’S NOVEMBER 28, 2010 ELECTION, RECONSTRUCTING DEMOCRACY 9 (2010), available at <http://ijdh.org/wordpress/wp-content/uploads/2011/02/Haiti-Joint-Observer-Report-FINAL.pdf>.

20. VIOLATIONS OF VOTING RIGHTS, *supra* note 17, at 6.

21. *See id.*

22. INSTITUTE FOR JUSTICE & DEMOCRACY IN HAITI ET AL., HAITI’S NOVEMBER 28 ELECTIONS: TRYING TO LEGITIMIZE THE ILLEGITIMATE (Nov. 22, 2010), available at <http://ijdh.org/wordpress/wp-content/uploads/2010/11/Election-Report-11-23-2010.pdf>.

*Fanmi Lavalas* is a political party lead by President Aristide. The party, which emerged in 1991 and officially formed in 1996, seeks to promote both growth and equity, espousing social democratic principles.

23. *Id.* at 1.

24. *Id.*

25. *Id.*

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*Lavalas*.<sup>26</sup> Fifteen Presidential candidates were also denied participation, and some parties, including *Fanmi Lavalas*, refused to even register a Presidential candidate because of the election's flaws.<sup>27</sup> *Fanmi Lavalas'* participation was particularly important—the party is by far Haiti's most popular, and its absence obviated the questionable legitimacy of the election's results.<sup>28</sup> *Fanmi Lavalas* has won every election it has contested, including ninety percent of the seats in the 2000 parliamentary elections.<sup>29</sup> This disenfranchisement and denial of party participation threatens Haiti's electoral legitimacy; simply put, every party that fulfills the requirements of Haiti's Constitution and its electoral laws should be allowed to participate.

Haiti's Provisional Electoral Council ("CEP") never issued a comprehensive explanation for the exclusions. The exclusion of presidential candidate and singer Wyclef Jean appeared justified: the Constitution has a five-year residency requirement in Haiti, and most documents list Mr. Jean as a resident of Saddle Ridge, New Jersey.<sup>30</sup> But Mr. Jean claims that he did, in fact, file documents proving his Haitian residency.<sup>31</sup> Without a public explanation of the CEP decision, it is hard to dismiss his claims.

In the case of *Fanmi Lavalas*, the CEP provided a series of informal explanations for the party's exclusion—all regarding a mandate sent by the party's exiled leader, former President Jean-Bertrand Aristide—from South Africa last November.<sup>32</sup> In fact, *Fanmi Lavalas* presented an original mandate, authenticated by a Haitian notary in compliance with Haitian law.<sup>33</sup> President Aristide sent a fax of the mandate directly to the CEP, and confirmed

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26. *Id.*

27. See INSTITUTE FOR JUSTICE & DEMOCRACY IN HAITI, *supra* note 22, at 2.

28. *Id.*

29. *Id.* at 8.

30. Gkay, *Bergen County Map of the Stars-Saddle River*, THE BC-EVERYTHING YOU WANT TO KNOW ABOUT BERGEN COUNTY (Aug. 23, 2008, 7:43 PM), <http://bergencounty.wordpress.com/2008/08/23/bergen-county-map-of-the-stars-saddle-river/>.

31. Damien Cave, *Haiti Calm After Jean is Rejected*, N. Y. TIMES (Aug. 21, 2010), [http://www.nytimes.com/2010/08/22/world/americas/22haiti.html?n=top%2fReference%2fTimes%20Topics%2fPeople%2fJ%2fJean%2c%20Wyclef&\\_r=0](http://www.nytimes.com/2010/08/22/world/americas/22haiti.html?n=top%2fReference%2fTimes%20Topics%2fPeople%2fJ%2fJean%2c%20Wyclef&_r=0).

32. The CEP not only lacked a good reason for excluding many candidates and parties, but also lacked the constitutional legitimacy to do so. The Council was a Provisional Council hand-picked by Haiti's President, René Préval, not the independent Permanent Council required by Haiti's 1987 Constitution.

33. Brian Concannon, Jr., *Haiti's Flawed Elections: They Told Us So*, BOSTON HAITIAN REPORTER (Nov. 10, 2010), <http://ijdh.org/wordpress/wp-content/uploads/2013/02/They-Told-Us-So.pdf>.

its authenticity in a radio interview.<sup>34</sup>

In October 2010, 45 members of the U.S. Congress, most of them Democrats, wrote then-Secretary of State Hillary Clinton, warning her that support of flawed elections would “come back to haunt the international community” by generating unrest and threatening the implementation of earthquake reconstruction projects.<sup>35</sup> In July 2010, Republican Senator Richard Lugar was even more direct, warning that “[the] absence of democratically elected successors could potentially plunge the country into chaos.”<sup>36</sup> In September 2010, over two dozen US-based human rights, religious, development, and solidarity organizations urged Secretary Clinton to withhold all aid until a new CEP had been formed and demonstrated a commitment to fair elections.<sup>37</sup>

Haitians fought the unfair elections in the streets, in the press, and at political meetings.<sup>38</sup> Political organizations from across the spectrum—many of whom had agreed on little else for decades—condemned the CEP’s exclusions.<sup>39</sup> Haitian voters had seen enough electoral charades to recognize one when they saw it, and interest in the elections was dangerously as low as the elections’ stakes were dangerously high.<sup>40</sup>

The previous CEP—with most of the same members as the 2010–11 Council—disqualified *Fanmi Lavalas* and other parties from Senate elections held in April and June 2009.<sup>41</sup> When the disqualifications were first announced, the United States, the United Nations, and the Organization of American States disqualified the sanctions as undemocratic.<sup>42</sup> The U.S. government issued a warning that an exclusion of *Fanmi Lavalas* would certainly and “inevitably” raise questions about the credibility of the electoral process.<sup>43</sup> The CEP, however, did not buckle under the international community’s criticism and barred the excluded parties from

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34. *Id.*

35. Brian Concannon, Jr. & Jeena Shah, *US Will Pay for Haitian Vote Fraud*, BOSTON GLOBE (Dec. 15, 2010), [http://www.boston.com/bostonglobe/editorial\\_opinion/oped/articles/2010/12/15/us\\_will\\_pay\\_for\\_haitian\\_vote\\_fraud/](http://www.boston.com/bostonglobe/editorial_opinion/oped/articles/2010/12/15/us_will_pay_for_haitian_vote_fraud/); see also HAITI: NO LEADERSHIP—NO ELECTIONS, S. Rep. No. 111-50 (2010).

36. *Elections Were Marred Long Before November 28*, CENTER FOR ECONOMIC AND POLICY RESEARCH, <http://www.cepr.net/index.php/blogs/relief-and-reconstruction-watch/elections-were-marred-long-before-november-28> (last visited Apr. 8, 2013).

37. INSTITUTE FOR JUSTICE & DEMOCRACY IN HAITI, *supra* note 22, at 1.

38. *Id.* at 9.

39. *Id.*

40. *Id.* at 3-4.

41. *Id.* at 2.

42. *Id.* at 8.

43. *Id.*

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the election.<sup>44</sup> The international community blinked by not only accepting the flawed elections, but by paying for them, too: international donors supplied \$12.5 million, or 72 percent of the election's cost.<sup>45</sup> Haitian voters, all too familiar with fraud, boycotted the results.<sup>46</sup> While the CEP's official participation rate of eleven percent for the April elections was low enough, most observers put the real participation figure at three to five percent.<sup>47</sup>

The difficulties in effecting electoral reform are mirrored by Haiti's physical, post-quake condition. In order to carry out reconstruction, the current Haitian government will need to ask its citizens to make sacrifices. People will have to relocate their homes and businesses, go without water, government services, and food, and tolerate many inconveniences as the damaged cities are rebuilt.<sup>48</sup> Generally, a government obtains these kinds of sacrifices in two ways: it develops trust or it uses force. A government elected by a small fraction of the voters who could choose only those parties approved by the outgoing government will be hard-pressed to develop trust.<sup>49</sup>

If the new Haitian government cannot induce trust, it will have to obtain its citizens' cooperation through force. Forcing large numbers of people to do anything is difficult;<sup>50</sup> forcing people who have nothing to lose and have already suffered as much as they can bear, will be next to impossible.<sup>51</sup> Complicating this impending chaos is the inefficacy of Haiti's small and inexperienced police force.<sup>52</sup> Thus, enforcing cooperation through force risks igniting the chaos discussed by Senator Lugar.<sup>53</sup> Neither the Haitian nor United States governments heeded any of these warnings.<sup>54</sup> The United States sent \$15 million to support the elections—about half their cost—while the State Department

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44. *Id.* at 3.

45. Brian Concannon Jr., *Let Voters, Not Bureaucrats, Decide Elections*, BOSTON HAITIAN REPORTER (Jan. 11, 2010), <http://www.bostonhaitian.com/columns/2010/let-voters-not-bureaucrats-decide-elections>.

46. INSTITUTE FOR JUSTICE & DEMOCRACY IN HAITI, *supra* note 22, at 1.

47. *Id.* at 4.

48. *Id.* at 10.

49. *Id.*

50. There are 500,000 residents of Internally Displaced Persons camps, for example. Jason Beaubien, *Ordinary Life Resurrected, Slowly, In Haiti*, NPR (April 2, 2013, 1:37 PM), <http://www.npr.org/2012/01/12/145104854/ordinary-life-resurrected-slowly-in-haiti>.

51. *Id.*

52. *Id.*

53. *Id.*

54. *Id.*

simultaneously dodged questions about the elections' flaws at press conferences.<sup>55</sup> The Haitian government closed any discussion of allowing excluded candidates, while the government's candidates ran an apparently well-financed campaign; there seemed to be more posters for President Préval's INITE coalition than all other Port-au-Prince parties combined.<sup>56</sup>

The running of deeply flawed elections conducted with international support, as exemplified by those held in 2010 and 2011, has a long history of financial backing from the United States.<sup>57</sup> American aid was critical to Haiti's first free and fair elections in 1990, and to several successful elections since 1994.<sup>58</sup> The development of an opposition is an essential component of Haiti's democracy. Yet, rather than supporting democratic development, much of U.S. support for both elections and opposition parties has been tied to influencing the policies of Haitian officials.<sup>59</sup> The support for elections and for political parties has been closely tied to the candidates' willingness to comply with American policy dictates.<sup>60</sup> As a result, U.S. electoral support has become divorced from the effective development of democracy.<sup>61</sup>

The most obvious form of unhelpful election policy by the U.S. has been the support of brutal dictatorial regimes that ran sham elections, such as the *Conseil National de Gouvernement* in the 1980s, the Francois and Jean-Claude Duvalier dictatorships, and promoting political candidates who are known human rights violators like Emmanuel Constant and Prosper Avril. The U.S. has undermined and co-opted people who do support democracy, but are not viewed as sufficiently supportive of perceived American interests. So, the U.S. claims to support democracy while undermining it in both obvious and subtle ways. The primary example is the attempt to isolate and undermine the majority party in Haiti—the *Lavalas* party. The U.S. has organized coalitions of political actors, some of whom possess democratic pasts, and

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55. *Id.*

56. *Id.*

57. Brian Concannon, Jr., *Lave Men, Siye Ate: Taking Human Rights Seriously*, in *LET HAITI LIVE: UNJUST U.S. POLICIES TOWARDS ITS OLDEST NEIGHBOR 89-90* (Melinda Miles & Eugenia Charles eds., 2004) [hereinafter *Lave Men, Siye At*].

58. *Id.* at 90.

59. *Id.*

60. *Id.*

61. See 09PORTAUPRINCE169, CORE GROUP REPS MEET WITH PREVIAL ON SENATE, WIKILEAKS.ORG, (APRIL 2, 2013, 4:31 PM), 169, CORE GROUP REPS MEET WITH PREVIAL ON SENATE, <http://wikileaks.org/cable/2009/02/09PORTAUPRINCE169.html> (US Embassy evaluation of President Preval).

others of whom possess dictatorial pasts. The mere association with former dictators was itself enough to erode most of the democratic members' electoral support.<sup>62</sup> But, under U.S. patronage, the coalitions took increasingly unpopular stands, including support for the return of the hated army, and class-based attacks against *Lavalas* supporters.<sup>63</sup>

In the 1990s, United States-supported opposition took form in the *Convergence Democratique*, or CD. CD parties won a plurality in the legislature in the 1995 elections, which allowed them to name the Prime Minister and form the Government. They also did well at the local level, winning a majority of mayor's offices, and a plurality of local councils. The most successful of these parties, *Organisation Politique Lavalas* (OPL) ran on a platform of eliminating the army and progressive economic and social programs. The OPL government accepted and adopted the neo-liberal economic policies favored by the U.S. and the international community. Such an approach, however, was very unpopular in Haiti. These policies included lowering tariffs on agricultural goods (now among the lowest in the world) and privatizing state-owned enterprises.<sup>64</sup> Those hurt by the policies exercised their newfound democratic right to protest, and by June 1997, the protests had become so widespread that the Government resigned.<sup>65</sup>

The U.S. International Republican Institute helped create the Haitian Conference of Political Parties ("CHPP"), a politically diverse group including former communists, a convicted dictator, and ultra right-wing Duvalierists. This conference gave birth to the CD.<sup>66</sup> The CHPP included three candidates who had run in the CNG's January 1988 elections after the dictatorship had massacred voters two months before.<sup>67</sup>

The CHPP evolved over the next eighteen months into the CD, which included the once-dominant OPL (since renamed *Organisation du Peuple en Lutte*).<sup>68</sup> Neither of these coalitions propounded a coherent political platform. As Eugenia Charles,

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62. *Lave Men, Siye Ate*, *supra* note 57, at 90.

63. *Id.*

64. *Id.*

65. *Id.*

66. *Id.* at 90-91.

67. The three candidates were Leslie Manigat of the RNDP, who "won" those elections, Duvalierist Hubert de Ronceray of the MDN, and Gregoire Eugene of PSCH. See Robert Debs Heinl, Jr. & Nancy Gordon Heinl, *WRITTEN IN BLOOD: THE STORY OF THE HAITIAN PEOPLE 1492-1995* 721 (1996).

68. *Lave Men, Siye Ate*, *supra* note 57, at 91.

former Prime Minister of Dominica (and staunch supporter of the U.S. when it invaded Grenada) and the Caribbean Community's ("CARICOM") Representative to the joint CARICOM/OAS Mission to Haiti stated, "I had to ask them why they called themselves 'Convergence.' They were not converging on anything. They were not agreeing on anything. They cannot get together to form a plan."<sup>69</sup>

The CD did, however, agree on a three-part consensus: first, the return of the army; second, the purging of the popular *Lavalas* party; and third, a renewed commitment to the international community's assistance to the Haitian government. The Haitian majority took an opposing stance on these same issues: hatred of the army, support of *Lavalas*, and removing the embargo. The public believed that the aid embargo was aggravating the severe poverty of Haiti's majority and crippling the government's ability to develop democratic institutions.<sup>70</sup>

Support for the CD plummeted as its policies diverged from the views held by electorate.<sup>71</sup> The ruling parties of 1997 garnered about twelve percent in the 2000 May legislative elections.<sup>72</sup> A U.S.-commissioned Gallup Poll taken after the elections found a 4% credibility rating for the CD leadership, and also that President Aristide had by far the highest credibility rating of any politician.<sup>73</sup> Sixty percent of those polled named Aristide the leader they trusted most and no one else received more than 4% support.<sup>74</sup> Only 8% named Convergence as the party with whom they most sympathized.<sup>75</sup>

Generally, politicians who advocate unpalatable or undemocratic policies simply lose the support of the electorate. Paradoxically, however, as the CD's electoral support plummeted, its international support skyrocketed.<sup>76</sup> In 1995, the U.S. sought to delegitimize the victory of current CD member OPL. After the party left the *Lavalas* movement, the U.S. stepped up its financial backing.<sup>77</sup> Parties in the CD have received increasing funds from the U.S.: the International Republican Institute alone received \$3

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69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.*

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million per year, primarily to oppose the *Lavalas* party.<sup>78</sup> In 2001, when the CD refused to participate in an OAS-brokered broad-based initiative to resolve the electoral crisis, the U.S. converted the 12% electoral support into a veto by declaring that any solution to the electoral crisis required CD approval.<sup>79</sup> One prominent Haitian economist and government critic opined that the “official” opposition “would be a joke if it were not so serious with its U.S. backers.”<sup>80</sup>

This kind of foreign interference obviously infuriates Haitian voters. Imagine how American voters would feel if the same action occurred on United States soil.<sup>81</sup> The anger is more justified in Haiti, however, because of the consequences suffered by the vast majority of the population. From the lavish financial contributions to the brutal and corrupt Duvaliers, to military training during the 1991–1994 dictatorship, those who have terrorized ordinary Haitians often did so with help from the international community.<sup>82</sup> Haitians also know that foreign support means less accountability to domestic voters.<sup>83</sup> They doubt that the CD, if it succeeds in gaining power through undemocratic means, will exercise it in a democratic way.<sup>84</sup>

The CD has compounded this distrust by refusing to participate in any initiatives that risk leading to a test of electoral strength, and by associating with those trying to overthrow the government by unconstitutional means.<sup>85</sup> The CD has systematically sabotaged every attempt by the Haitian government, OAS, and CARICOM to negotiate an end to Haiti’s political crisis.<sup>86</sup> It also supplies more than tacit support to those seeking the violent overthrow of the elected government. In November, 2002, former Haitian army Colonel Himmler Rebu, who led an unsuccessful attempted *coup d’etat* in the 1980s, called for a popular uprising against the government at a rally attended by CD leaders. He later became a visible member of the CD leadership. The CD representative in the Dominican Republic was arrested by Dominican authorities in a border town for plotting an armed attack against

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78. *Id.*

79. *Id.*

80. *Id.*

81. *Id.* at 92.

82. *Id.* at 91.

83. *Id.*

84. *Id.*

85. *Id.* at 92-93.

86. *Id.* at 93.

the government. CD leaders voiced support for escaped convict and convicted killer Jean Tatoune's violent anti-government movement in Gonaives.<sup>87</sup>

The CD eventually collapsed after it achieved its goal: the ouster of the *Lavalas* government in the February 29, 2004 *coup d'état*. Leading up to the *coup*, the U.S. government, frustrated with the CD's limitations, began supporting other, more aggressive and better-organized organizations, especially the Group of 184.<sup>88</sup>

Haiti's 1987 Constitution established the *Assemblés des Sections Communales* ("ASECs"),<sup>89</sup> a radically democratic pyramid structure based on four to six-person local assemblies designed to decentralize political power and ensure grassroots participation at the highest levels of government.<sup>90</sup> A broad spectrum of Haitian governments and members of the International Community—including the United Nations, the Organization of American States, and the United States—have ignored this foundation of Haiti's constitutional system for twenty-five years despite its effectiveness in fostering stability.<sup>91</sup> Since 1987, Haiti has had ten election cycles, resulting in six Presidents and several legislatures.<sup>92</sup> ASECs have been on the ballot less than half the time, and the system has not been fully implemented once.<sup>93</sup>

The ASEC system is comprised of numerous tiers and elections rooted in the local community.<sup>94</sup> ASEC candidates run as a slate, from a political party or group of independents, and are chosen by voters in each communal section. Haiti is divided into ten Departments. Each Department is divided into municipalities, or communes, and each municipality is split into communal sections.<sup>95</sup> A dense urban communal section could have more than 100,000 voters. However, a remote rural section might contain just a few hundred. ASEC members are the heart and soul of the constitutional system, even though they wield little direct power

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87. *Id.*

88. See Michel Chossudovsky, *US Sponsored Coup d'Etat: The Destabilization of Haiti*, GLOBAL RESEARCH (Feb. 29, 2004), <http://www.globalresearch.ca/us-sponsored-coup-detat-the-destabilization-of-haiti/5323726>.

89. 1987 CONSTITUTION DE LA REPUBLIQUE D'HAÏTI.

90. See Brian Concannon, Jr., *Haiti's Stealth Elections: What's At Stake?*, HAITIACTION.NET (Dec. 2, 2006), [http://haitiaction.net/News/BC/12\\_2\\_6/12\\_2\\_6.html](http://haitiaction.net/News/BC/12_2_6/12_2_6.html).

91. *Id.*

92. *Id.*

93. *Id.*

94. *Id.*

95. *Id.*

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themselves.<sup>96</sup> These voters serve an oversight function in acting as the system's "conscience."<sup>97</sup> Additionally, the voters enforce an element of fairness into the system by directly selecting accountable agents such as judges and electoral council members.<sup>98</sup>

At the local level, each communal section is administered by a Sectional Council, which is, in turn, supervised by the ASECs. At the municipal level, the Municipal Assembly, comprised of delegates from each ASEC, serves similar watchdog and advisory functions. The Assembly hears reports from the mayor on the use of municipal resources, must approve any sale of state lands, and provides a candidate pool for local justices of the peace.<sup>99</sup>

Each Municipal Assembly sends a representative to the Departmental Assembly.<sup>100</sup> The Departmental Assembly chooses the members of the Departmental Council, which administers the Department.<sup>101</sup> The Departmental Council reports to the Departmental Assembly.<sup>102</sup> The Departmental Assembly also composes a list of nominees for trial and appellate judgeships in the Department. Each Departmental Assembly nominates three people to serve on the national Permanent Electoral Council ("CEP"), creating a list of 30 nominees. The Supreme Court, the executive, and the legislature each pick three names from that list for the CEP. Further, each Departmental Assembly sends a representative to the Interdepartmental Assembly.<sup>103</sup> The Interdepartmental Assembly assists the executive branch in policy planning.<sup>104</sup> The Interdepartmental Assembly is entitled to attend and vote at Ministerial Council meetings that deal with issues within its domain.<sup>105</sup>

The ASEC system, in principle, ensures that non-professional politicians, elected by their neighbors, have a say at every level of Haitian government. The system is insulated from centralized money and other forces because it is very difficult to predict which ASEC candidates are likely to make it to the Departmental Assemblies, where power starts to accumulate. For example, in

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96. *Id.*

97. *Id.*

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.*

102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.*

the Third Section of Croix-des-Bouquets, outside Haiti's capitol, there are seven ASEC slates of six candidates each. If a candidate's slate prevails, he has a one-in-six chance of being chosen for the Croix-des-Bouquets Municipal Assembly. That Assembly has ten members, one of which is chosen for the Departmental Assembly for the West Department. So, any one ASEC candidate has a 1-in-420 chance of reaching the Departmental Assembly, and a 1-in-4,200 chance of reaching the Interdepartmental Assembly.<sup>106</sup>

Implementing the ASEC system would bring desperately needed stability to future elections, namely by establishing a Permanent Electoral Council.<sup>107</sup> The 1987 Constitution created a formula for choosing a Provisional Council that would run a single election to establish the first ASEC structure.<sup>108</sup> The ASEC system was supposed to choose a Permanent Electoral Council after those first elections, which would then run subsequent elections.<sup>109</sup> The 1987 elections ended when paramilitary *Tonton Macoutes*, with support from the military government, hacked and shot hundreds of voters at polling stations.<sup>110</sup> As a result, the ASEC system was never fully implemented.<sup>111</sup> Without a full ASEC structure in place, each of Haiti's elections over the last twenty-five years has been run by a Provisional Council.<sup>112</sup> All but the first of those Councils was chosen through a formula not recognized by the Constitution. And all but the first of the elections they ran was contested by the losing parties, who challenged—with good reason—the Provisional Council's legitimacy.<sup>113</sup>

Implementing the ASEC system would also encourage judicial accountability. Most of Haiti's current judges were nominated through a process not recognized by the Constitution, led by the Executive Branch.<sup>114</sup> In some cases, the government tried to approximate the Constitutional system, by consulting with the legislature on appointments. In other cases, such as Prime Minister Latortue's replacement of five Supreme Court justices in 2005, the executive branch simply installed its henchmen. In all cases, the judges know that they primarily owe their jobs to the Execu-

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106. *Id.*

107. *Id.*

108. *Id.*

109. *Id.*

110. *Id.*

111. *Id.*

112. *Id.*

113. *Id.*

114. *Id.*

tive Branch. The ASEC system ensures that judges are chosen, in part, by the communities they are intended to serve. Systematically, then, they are encouraged to be more responsive to the community, and to ensure that their acts are perceived as fair—not just inside the Ministry of Justice, but on the dusty streets outside their courtroom too.

Although twenty-five years may seem too attenuated to lay the Constitution's cornerstones, the importance of their existence outweighs their late arrival. There must be diligent implementation of the entire ASEC system. By doing so, President Martelly could help end the incessant series of electoral crises in Haiti, which keep spiraling into political instability and twice have led to the overthrow of the Constitutional government.

### *B. Corporatism*

In addition to these challenges,<sup>115</sup> Haiti faces other obstacles in the transition to democracy. Another prominent feature of the consolidation process is the failure to fulfill the requirements of the rule of law in both the formal and informal aspects of public and private life. This failure manifests itself in the concentration of power solely in the executive branch of government, leading to massive human rights abuses, and a total disregard for the functions of other branches of government, corruption in public and private economic activities, non-observance of efficient economic norms, and non-compliance with the most basic rules of social life, such as elementary traffic regulations.<sup>116</sup> The failure to follow the rule of law also leads to the stunting of economic and social development. These features adversely affect the opportunities for democratic changes.

One of the other main obstacles nations face in the transition process when attempting to create, solidify, and consolidate democratic institutions is corporatism.<sup>117</sup> “Indeed, for the transition pro-

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115. Haiti faces other seemingly insurmountable obstacles. In Haiti, like Latin America, the process of democratization has often taken place during the worst economic, social, and political crises in the history of these various nations. In general, these crises include the commission of massive human rights violations (murder, torture, rape), enormous external debts, hyperinflation, epidemics, the collapse of entire systems of social welfare, and extremely high rates of unemployment.

116. For more information on the relation between the rule of law and Due Process in Haiti, see generally Irwin P. Stotzky, *The Truth About Haiti*, 26 CONN. J. INT'L L. 1 (2010).

117. Stotzky, *supra* note 7, at 885. Parts of this essay dealing with corporatism and

cess to succeed, the people must dissolve the network of de facto power relationships, which, in some nations, corporations create and jealously protect by taking advantage of the power vacuum left by representatives of popular sovereignty.<sup>118</sup> In other nations, such as Haiti, where there has never been a democratic system of governance until very recently, these corporative power relationships have developed for a variety of peculiar historical and cultural reasons.<sup>119</sup> Under the umbrella of authoritarian rule, a number of social groups representing particular interests sculpt a place for themselves after a bargaining process that includes their support for the present regime. Such groups include the military, religious organizations, coalitions of entrepreneurs, trade unions, and sometimes even the so-called independent press. Once democratic rule is established, of course, these groups stubbornly resist relinquishing their power to the representatives of the people.<sup>120</sup>

The concept of corporatism has been the source of much confusion and specious theoretical differences. The problem arises from two distinct meanings attributed to the word, one more traditional and the other more technical. In the more traditional sense, corporatism refers to the control exercised by the state over organizations and interest groups. A prime example is the control that prevailed in Hitler's Germany. The more technical meaning, and the one commonly used in the political arena, attempts to describe the supposedly opposite phenomenon: where these same organizations and interest groups acquire considerable influence over and exert persistent pressure against government decision makers. While defining the concept explicitly in this way tends to lead to more emphasis on one meaning to the exclusion of the other, the term actually encompasses both meanings when applied to most nations undergoing the transition process, including Haiti.<sup>121</sup>

That is not the whole of the matter. Haitian corporatism does not rise to the level of the fascist institutional structure of legally sanctioned exclusive organizations or interest groups.<sup>122</sup> But

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democracy are based on previous writings by Irwin Stotzky, including *Suppressing the Beast, The Truth About Haiti*, and many others.

118. Irwin P. Stotzky, *Democracy and International Military Intervention: The Case of Haiti*, in *DEMOCRACY AND HUMAN RIGHTS IN LATIN AMERICA* 125, 152 (Richard S. Hillman et al. eds., 2001) [hereinafter *DEMOCRACY AND HUMAN RIGHTS IN LATIN AMERICA*].

119. Stotzky, *supra* note 7, at 885.

120. *Id.*

121. *Id.* at 885-86.

122. *Id.* at 885.

neither does it reduce itself to the pressures that interest groups apply on political entities in every pluralistic society, for example, when these groups lobby for or against legislative acts that may affect them.<sup>123</sup> The Haitian reality is considerably more complex.<sup>124</sup> It includes, among others, both features mentioned above: there is some control by the State over interest groups and organizations, and there are a variety of official and unofficial mechanisms that are used to alter their operation. Simultaneously, however, those organizations exert enormous pressure upon government actors and agencies. This pressure allows the corporative forces to obtain favored treatment of various kinds.<sup>125</sup>

Some of these privileges even amount to a legal monopoly of the interests represented in a way that approaches the fascist scheme.<sup>126</sup> In many circumstances, however, the monopoly power of the corporative interests is unaccompanied by any significant influence of the State over these interest groups and organizations. In other situations, alternative legal or even constitutional privileges short of monopoly may be granted that shield the organization from the raw competitive forces of popular expression, such as a “free market.” In addition, there are informal ways that governments may grant favors that in some cases amount to illegal, indeed, corrupt actions.<sup>127</sup>

### C. *Deliberative Democracy*

The best means for countering this corporative power is to create a polity governed by universal and impersonal principles where individual citizens, who are not identified with any particular interests but preserve the capacity of adopting different ones, make choices in a process of public justification and dialogue. In practical terms, this requires broad popular participation in governmental decision making and its consequent actions led by strong participative and ideologically committed political parties and parliamentary bodies. These parties and parliaments must themselves, of course, be internally democratic, open, and disciplined.<sup>128</sup>

These conclusions are based on a particular vision of democ-

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123. *Id.*

124. *Id.*

125. Stotzky, *supra* note 7, at 886.

126. *Id.*

127. *Id.*

128. *Id.* at 890.

racy and upon the utmost respect for the autonomy of each individual. In this view, autonomy consists of the exercise of self-governing capacities, such as the capacities of understanding, imagining, reasoning, valuing, and desiring.<sup>129</sup> Free persons have, and are recognized as having such capacities. In a political order dedicated to serving the conditions of free deliberation for its members, those members can legitimately expect of that order that it not only permit, but also encourage the exercise of such capacities—that it permit and encourage autonomy. Indeed, one of the hallmarks of liberal democracy is the notion of the citizen, who is not identified with any interest, but is free to choose and has an equal voice in expressing his choice.<sup>130</sup>

This ideal of the autonomous individual as a paradigm for democracy is based on a theory that rejects the view that democracy is simply a conglomeration of interested individuals and groups working in conjunction with the economy or merely a mechanism for replacing elites. Democracy has elsewhere been explained as a regimented mode of the practice of moral discourse by which we try to solve conflicts in the light of universal, general, and public principles that would be accepted in ideal conditions of impartiality, rationality, and knowledge.<sup>131</sup> This, the argument goes, makes democracy morally superior to other systems of government. Democracy substitutes simple majoritarian decision for the requirement of a unanimous consensus in the common and non-regimented practice of moral discourse. But this is not completely sufficient. This substitution weakens the force of the prescription that the result of the procedure is morally valid because it would have been accepted under ideal conditions (given the functional equivalence between unanimity and impartiality). Nevertheless, democracy preserves some epistemological value because the need to justify one's decision to others and to get as much support as possible for one's position generates a tendency toward impartiality which makes it more reliable than other decision processes, such as individual reflection.<sup>132</sup>

This epistemic view of democracy presupposes that individuals, who are basically moral persons, are its natural agents and that the freedom and equality of their intervention in the democratic process should be preserved and expanded. This is, of

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129. DEMOCRACY AND HUMAN RIGHTS IN LATIN AMERICA, *supra* note 118, at 115.

130. Stotzky, *supra* note 7, at 890.

131. *See generally* Stotzky, *supra* note 7.

132. *Id.* at 891.

course, not the case when corporations control the polity and assume the role of intermediaries. Moreover, this conception of democracy as a substitute for moral discourse presupposes that the primary objects of decision in the democratic process are not crude interests, but principles that legitimize a certain balance of interests from an impartial point of view. While it is possible that discourse may have its genesis in crude interests, for those interests to garner majority agreement, advocates must win support and justify their positions. Thus, the dialogue requires participants to reach for principals beyond their crude interests—they must reach for principles from an impartial point of view. In addition, dialogue respects and fosters autonomy. It follows, therefore, that corporations that agglutinate people around common interests and not around moral values about how to deal with common interests cannot be protagonists of the democratic process.<sup>133</sup>

Corporative entities in transitional societies maintain and even increase their power whenever democracy departs substantially from the strictures of the original practice of moral discourse. When this occurs, public debate becomes restricted and debased, the power of participants actually to influence people becomes too unequal, and participation of interested people becomes narrower and weaker. Thus, in order to strengthen the democratic power of common citizens against that of corporations, it is crucial to broaden and deepen popular participation in discussion and decision-making.

Furthermore, the mechanisms of representation, necessary in large and complex societies, are prone to be subverted by corporative power. This subversion can be caused by several factors. There is the possibility of corruption of the representatives, their indifference or even antipathy toward the people they represent when opposed by corporations, and the apathy of the people represented. For those reasons, it is essential to broaden the avenues of direct participation by the people whose interests are at issue. This is, of course, a difficult task. Nevertheless, it is possible to do this through general procedures like referenda or popular consultations or through decentralized decisions that allow the concerned people to participate directly.

Moreover, the vision of democracy as a dialogic process concerned with moral principles to regulate conflicts allows us to qualify the liberal rejection of any intermediary between the indi-

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133. *Id.*

vidual and the State. Indeed, in a large, complex society, some institutions must protect the individual against the awesome power of corporatism. The most likely candidates are political parties, but only when they are the standard for or represent the basis of fundamental principles of political morality. They are indispensable in a modern and large society, not only because they nurture those principles in professional politicians, who purport to put them into practice if duly elected, but also because they exempt individuals from justifying their votes before each other on the basis of principles. In this view, it is sufficient to vote for a party which organizes its programs on the basis of public, general, and impartial principles. The deterioration of the role of political parties in favor of corporations occurs when the significance of Parliament, the national arena for these parties, is severely eroded. Unfortunately, the integrity of Parliament is often diminished by corporative forces in the transition process. Corporations prefer to exert pressures and achieve agreements in the private offices of government rather than in the contentious, pluralistic, and more public parliamentary corridors. In addition, there is the tendency of administrations to preserve some of the practices inherited from previous authoritarian governments.

Strengthening political parties and the parliamentary institutions in order to protect the democratic system against corporative power, however, will work only to the extent that these institutions do not become transformed into corporations themselves. Unfortunately, this often occurs, particularly when parties weaken their ideological commitment, do not promote debates on essential questions of public morality, block channels of participation, operate through methods of patronage and clientelism, or resort to personalism and caudillism. If this happens, these parties and parliaments tend to develop elites with distinctive interests who are likely to become aligned with members of traditional corporative groups in a manner inimical to democratic principles. This also causes other dangerous distortions. When parties become corporations, parliament becomes weakened by the lack of views held by different representatives, by a discourse that is both ideologically vacuous and detached from the experiences and interests of the people represented, and by a general appearance of opacity and self-service.

To alleviate or even avoid this danger, political parties and Parliament must be substantially strengthened. This can be achieved by opening the parties to broad popular participation,

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promoting permanent political debates within them, perfecting internal democratic mechanisms for selecting party leaders and candidates, and giving a public accounting of the reasons for significant actions, such as how funds are to be managed. It is also important that the electoral system combine the need for promoting party cohesion and ideological identity with the need for the voter to identify with individual representatives, rather than voting for the party slate. A mixed electoral system incorporating proportional representation with individual candidate selection may satisfy both needs. This concept can be extended to parliamentary procedures, which should combine party discipline with a degree of autonomy for individual representatives.

## III. SOCIETY

Haiti provides an excellent illustration of the problems that corporative power poses to nations attempting to move from authoritarianism to democracy. It is clear that there is a long, hard distance still to be traveled by the Haitian people in order to fulfill the underlying conditions of the epistemic value of democracy and to overcome corporatism. Under the dictatorships, the levels of material satisfaction were so low, the opportunities for informed debate so debased, the institutional structure so dysfunctional to democratic values, human rights violations so ubiquitous, and the problems of the consolidation of democracy so intense, that any hope of creating the conditions for a deliberative democracy appeared to be impossible. Stated otherwise, the distance between the ideal model and the reality of Haitian life seemed to suggest that democracy could never become a reality in Haiti. But there are other serious problems that confront the creation of a viable democracy in Haiti.

Haiti's instability and outsize vulnerability to natural and human disasters may cause one to lament Mother Nature's seeming obsession with inflicting suffering on the Haitian people. In 2008, four tropical cyclones slammed Haiti, dumping heavy rains that led to severe flooding. In January 2010, Haiti was rocked by an earthquake deemed "the largest urban natural catastrophe in recorded history."<sup>134</sup> Then, while the country was still reeling from the damage caused by the earthquake, cholera broke out north of Port-au-Prince in late 2010. Placing the blame on Mother Nature,

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134. *Haiti: Six Months After*, UN OFFICE FOR THE COORDINATION OF HUMANITARIAN AFFAIRS [OCHA] (July 12, 2010), <http://ochaonline.un.org/tabid/6412/language/en-US/Default.aspx>.

however, obscures the fact that while the events themselves might be natural, the devastating damage resulting from the disasters are anything but. These three disasters are discussed below to illustrate how a failure to develop basic government capacity has made Haiti disproportionately vulnerable. Developing Haitian government capacity should be prioritized to ensure a long-term reduction in vulnerability.<sup>135</sup>

### A. *Storms, Flooding and Socioeconomic Rights*

Haiti has a recent history of deadly storms and flooding that have led to widespread loss of life and costly damage. In 2004, tropical storm Jeanne swept over Haiti, causing major flooding and 2,500 deaths. Jeanne hit Puerto Rico, the Dominican Republic, Barbados and the United States as a full hurricane, killing thirty-four people in all those places combined. When Jeanne struck Haiti, she was only a tropical storm; yet, she killed over 200 people.<sup>136</sup> In 2008, Haiti was again battered—in one season alone, four hurricane-strength storms killed 793 people, left 310 missing, and another 593 injured.<sup>137</sup> The hurricanes destroyed 22,702 homes and damaged another 84,625.<sup>138</sup> About 800,000 people were affected.<sup>139</sup> The floods wiped out 70 percent of Haiti's crops, resulting in dozens of deaths of children due to malnutrition in the months following the storms. Damage was estimated at over \$1 billion, amounting to over 5% of the country's GDP.<sup>140</sup>

The recent devastation suffered from hurricanes is not a result of Haiti's location in a particularly unfortunate storm path;<sup>141</sup> surprisingly, only six major Category 3 and stronger hur-

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135. Brian Concannon Jr. & Beatrice Lindstrom, *Cheaper, Better, Longer-Lasting: A Rights Based Approach to Disaster Response in Haiti*, 25 EMORY INT'L L. REV. 1146, 1159-60 (2011) [hereinafter *Cheaper, Better, Longer-Lasting*].

136. Annie Dell & Brian Concannon, *Haiti's Unnatural Disasters*, INSTITUTE FOR JUSTICE & DEMOCRACY IN HAITI (March 28, 2013, 9:17 AM), <http://ijdh.org/archives/15306>.

137. HAITI – STORM FACT SHEET #5 (FY) 2009, US Agency for International Development, available at <http://reliefweb.int/report/haiti/haiti-storms-fact-sheet-5-fy-2009>.

138. Jeffrey Masters, *Hurricanes and Haiti: A Tragic History*, WEATHER UNDERGROUND (March 28, 2013, 10:15 AM), <http://www.wunderground.com/hurricane/haiti.asp> [hereinafter *Hurricanes and Haiti*].

139. *Id.*

140. *Id.*

141. *Id.* In fact, Haiti has a relatively protected location. Caribbean cyclones generally move from east to west, and Haiti is the western one third of the island of Hispaniola. The mass of the Dominican Republic, especially its high mountains, weakens storms before they reach Haiti.

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ricanes have struck Haiti since 1851.<sup>142</sup> Rather, it is a result of government inadequacies and human-made rights violations that make Haiti disproportionately vulnerable to flooding and damage resulting thereof.<sup>143</sup> Deforestation has over time reduced Haiti's ability to withstand heavy rains, making it extremely vulnerable to flooding.<sup>144</sup> Deforestation is in turn a result of the inability of Haiti's poor to enforce basic economic and social rights. A majority of Haitians depend on wood and charcoal as their primary fuel source, as the high cost of oil and other alternative fuel sources are prohibitive.<sup>145</sup> In addition to serving cooking needs, cutting down and selling trees provides an alternative source of income for mountain farmers to buy food and other basic necessities. But heavy deforestation has denuded mountain slopes, allowing rainwater to wash down unimpeded. The farmers know better than the experts what happens when rain hits a deforested slope, because it rushes away with the topsoil that is needed for next year's crop and is many farmers' only legacy for their children.<sup>146</sup> However, legacies and next year's crop mean nothing when the children are dying today, so the farmer cuts and sells the tree to buy today's medicine and food.<sup>147</sup>

In 1980, Haiti still had 25 percent of its forests, allowing the nation to withstand events bringing heavy rainfall, like 1979's Category Three Hurricane David, without loss of life.<sup>148</sup> But as of 2004, only 1.4 percent of Haiti's forests remained, making Haiti one of the most deforested countries in the world.<sup>149</sup> Storms Jeanne and Gordon were merely strong tropical storms when they struck Haiti, but the almost total lack of tree cover contributed to the devastating floods that killed thousands. A storm need not even meet the tropical storm threshold to devastate the nation: in May, 2004, three days of heavy rains from a tropical disturbance delivered more than eighteen inches of rain in the mountains, triggering floods that killed over 2,600 people.<sup>150</sup>

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142. *Id.*

143. INSTITUTE FOR JUSTICE & DEMOCRACY IN HAITI ET AL., ENVIRONMENTAL JUSTICE 6 (Oct. 13, 2011), *available at* [http://ijdh.org/wordpress/wp-content/uploads/2011/03/Final\\_UPR-Environment\\_English.pdf](http://ijdh.org/wordpress/wp-content/uploads/2011/03/Final_UPR-Environment_English.pdf).

144. *Id.* at 7.

145. Brian Concannon, *Another Unnatural Disaster*, BOSTON HAITIAN REPORTER (Oct. 2008).

146. *Cheaper, Better, Longer-Lasting*, *supra* note 135, at 1161.

147. *Id.*

148. *Id.*

149. *Id.*

150. *Id.*

The failure of the Haitian Government to protect even the most fundamental rights necessary for survival is thus directly connected with the problem of relying on non-existent forests to help meet economic needs and the resulting vulnerability to flooding. Under international law, the Government of Haiti is under legal obligation to respect, protect, and fulfill the right to food, and to ensure that it is economically accessible.<sup>151</sup> Article 25 of the Universal Declaration of Human Rights guarantees a human being's right to food and freedom from hunger.<sup>152</sup> The right is also articulated in CEDAW<sup>153</sup> and the CRC,<sup>154</sup> to which Haiti is a party. Furthermore, Article 12 of the Protocol of San Salvador and Article 11 of the American Declaration both recognize the right to food.<sup>155</sup> The right was subsequently codified in Article 11 of the ICESCR.<sup>156</sup> Haiti has signed, but not ratified this treaty, and has therefore agreed not to take actions that defeat the "object and purpose" of the ICESCR.<sup>157</sup> Nevertheless, the ESCR Committee has established that a minimum core of economic, social, and cultural rights are customary international law and are thus binding on all States, regardless of whether they have signed or ratified treaties protecting those rights.<sup>158</sup>

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151. SUBSTANTIVE ISSUES ARISING IN THE IMPLEMENT OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS: GENERAL COMMENT 12, ¶ 7, (1999), *available at* <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G99/420/12/PDF/G9942012.pdf?OpenElement>.

152. UNIVERSAL DECLARATION OF HUMAN RIGHTS (1948), art. 25, *available at* <http://www1.umn.edu/humanrts/instree/b1udhr.htm>.

153. CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (1979), art. 12(2), *available at* [www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article12](http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article12).

154. CONVENTION ON THE RIGHTS OF THE CHILD (1990), art. 24(2)(c), *available at* <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>.

155. ADDITIONAL PROTOCOL TO THE AMERICAN CONVENTION ON HUMAN RIGHTS IN THE AREA OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS "PROTOCOL OF SAN SALVADOR" (1988), art. 12, *available at* [www.cidh.oas.org/Basicos/English/basic5.Prot.SnSalv.htm](http://www.cidh.oas.org/Basicos/English/basic5.Prot.SnSalv.htm).

156. This encompasses two separate but related norms: the right to adequate food and the right to be free from hunger, *see* INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL (1966), art. 11, *available at* [www.un-documents.net/icescr.htm](http://www.un-documents.net/icescr.htm)

157. With respect to donor states' obligations, many of the donors operating in Haiti have signed and ratified the ICESCR, and thus are bound by the obligations contained therein.

158. CENTER FOR HUMAN RIGHTS AND GLOBAL JUSTICE, NYU SCHOOL OF LAW ET AL., RIGHT TO FOOD, WATER AND SANITATION, UNIVERSAL PERIODIC REVIEW, REPUBLIC OF HAITI 71 (2011) *available at* <http://ijdh.org/wordpress/wp-content/uploads/2011/04/LERN-Compiled-UPR-Submissions1.pdf> [hereinafter RIGHT TO FOOD] (citing ESCR Committee, Concluding Comments (Israel), E/C.12/1/Add.90 (May 23, 2003), ¶ 31 ("basic economic, social and cultural rights, as part of the minimum standards of human rights, are guaranteed under customary international law"); CTR. FOR HUMAN

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Violations of the right to food are not the responsibility of the Haitian Government alone, however. In the 1980s, Haiti's agricultural sector fully met the food needs of its population and produced national income from exporting agricultural produce.<sup>159</sup> The agricultural sector collapsed, however, after the International Monetary Fund required Haiti to decrease subsidies on domestic rice and remove tariffs on imported rice and other staples.<sup>160</sup> In 1995, the United States pressured Haiti to drastically reduce tariffs on agricultural imports and slashed tariffs that had previously been between forty-five to fifty percent to between zero to fifteen percent.<sup>161</sup> Former President Bill Clinton later stated that this was a mistake that only benefited farmers in the U.S.<sup>162</sup> Without protection for Haitian products, subsidized U.S. agricultural imports flooded Haitian markets, and Haitian farmers could not compete. Today, Haiti suffers from a food deficit and is highly dependent on foreign sources such as imports and aid to meet its food needs.<sup>163</sup> Difficulties in meeting basic food needs have contributed to and compounded hardships stemming from the deforestation problem.

International trade policies have thus contributed to Haiti's vulnerability, in violation of countries' "extranational obligations" to respect, protect, and facilitate the right to food.<sup>164</sup> International

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RTS & GLOBAL JUSTICE ET AL., WOCH NAN SOLEY: THE DENIAL OF THE RIGHT TO WATER 27 (2008) available at [http://www.law.nyu.edu/ecm\\_dlv2/groups/public/@nyu\\_law\\_website\\_\\_alumni/documents/documents/ecm\\_pro\\_067267.pdf](http://www.law.nyu.edu/ecm_dlv2/groups/public/@nyu_law_website__alumni/documents/documents/ecm_pro_067267.pdf) [hereinafter WOCH NAN SOLEY].

159. Beverly Bell, *Miami Rice: The Business of Disaster in Haiti*, HUFFINGTON POST, (Dec. 9, 2010, 3:56 PM), [http://www.huffingtonpost.com/beverly-bell/miami-rice-the-business-o\\_b\\_794504.html](http://www.huffingtonpost.com/beverly-bell/miami-rice-the-business-o_b_794504.html).

160. Bill Quigley, *The US Role in Haiti's Food Crisis*, [http://www.counterpunch.org/Quigley\\_04212008.html](http://www.counterpunch.org/Quigley_04212008.html).

161. *Id.* at 11-12; Nathaniel Gronewold, *Post-Quake Revitalization Plans Collide in Haiti's Breadbasket*, GREENWIRE, Mar. 8, 2010, available at <http://www.nytimes.com/gwire/2010/03/08/08greenwire-post-quake-revitalization-plans-collide-in-hai-15994.html>.

162. Bill Clinton, Statement to the US Foreign Relations Committee, March 10, 2010; see also Center for Economic and Policy Research, *Bill Clinton Apologizes for Past Rice Policies*, Mar. 22, 2010, <http://www.cepr.net/index.php/relief-and-reconstruction-watch/bill-clinton-apologizes-for-past-rice-policies/>.

163. *WFP Director appeals for more aid to Haiti on his visit to the country*, WORLD FOOD PROGRAMME, <http://www.wfp.org/news/news-release/wfp-director-appeals-more-aid-haiti-his-visit-country>.

164. COSOC, UN CHR, Report Submitted by the Special Rapporteur on the Right to Food in Accordance with Commission on Human Rights Resolution 2002/25, 59th Sess., U.N. Doc. E/CN.4/2003/54 ¶ 35 (Jan. 10, 2003) (prepared by Jean Zielger), available at [http://www.unhchr.ch/huridocda/huridoca.nsf/554221922d46153bc1256991004a440b/b005b3e26d66059cc1256cda00512541/\\$FILE/G0311070.pdf](http://www.unhchr.ch/huridocda/huridoca.nsf/554221922d46153bc1256991004a440b/b005b3e26d66059cc1256cda00512541/$FILE/G0311070.pdf); see

aid has also been a culprit for destabilizing Haiti's food market ultimately hindering long-term access to food. A 2010 report by the Robert F. Kennedy Center for Justice & Human Rights focusing on the impact of U.S. food aid on access to food in Haiti found that food aid can be harmful to the sustainability and availability of local food for purchase, interfering with the realization of Haitians' human rights and long-term economic stability. In particular, when foreign-grown food is either distributed for free or sold at a subsidized price, such aid may make it difficult for local food producers to compete with the imported food.<sup>165</sup> At times, it has also led farmers to abandon agricultural production because it is no longer lucrative. Former UN chief humanitarian officer John Holmes stressed that "[a] combination of food aid [and] cheap imports have . . . resulted in a lack of investment in Haitian farming, and that has to be reversed."<sup>166</sup> International cooperation in Haiti must seek to address violations of the right to food in order to deal with the root causes of flooding disasters.

### *B. The January 12 Earthquake and the Right to Housing*

While the tremors that crumbled much of Haiti's central infrastructure on January 12, 2010 were a natural phenomenon, the disproportionate consequences of the earthquake were also a direct result of policy choices and a failure to enforce the law. In the aftermath of the earthquake, the Haitian Government noted that the toll did not result from the tremor alone, but from "an excessively dense population, a lack of adequate building standards, the disastrous state of the environment, disorganized land use, and an unbalanced division of economic activity."<sup>167</sup> Decades of national and international policies and the weakness of the rule of law created a vulnerability of Haitians that resulted in astronomical displacement and death tolls that far exceed the mortality

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also Smita Narula, *The Right to Food: Holding Global Actors Accountable Under International Law*, 44 COLUM. J. TRANSNAT'L L. 691, 725 (2006).

165. See generally TIMOTHY T. SCHWARTZ, *TRAVESTY IN HAITI: A TRUE ACCOUNT OF CHRISTIAN MISSIONS, ORPHANAGES, FRAUD, FOOD AID AND DRUG TRAFFICKING* (2008).

166. *With cheap food imports, Haiti can't feed itself*, NBCNEWS.COM (March 21, 2010, 7:41 AM), [http://www.msnbc.msn.com/id/35967561/ns/world\\_news-americas/](http://www.msnbc.msn.com/id/35967561/ns/world_news-americas/), (quoting Under Secretary General for Humanitarian Affairs and Emergency Relief Coordinator John Holmes in an interview with the Associated Press).

167. GOVERNMENT OF THE REPUBLIC OF HAITI, *ACTION PLAN FOR NATIONAL RECOVERY AND DEVELOPMENT OF HAITI 5* (March 2010), available at <http://www.interaction.org/sites/default/files/Haiti%20Action%20Plan%20%28English%20version%29.pdf> [hereinafter HAITI ACTION PLAN].

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in earthquakes of comparable scale in other countries.<sup>168</sup>

A majority of Haitians live in overpopulated urban centers, shantytowns, or under-developed villages that fail to meet minimum standards of habitability and security.<sup>169</sup> Housing conditions in Haiti are directly linked to the conditions of extreme poverty.<sup>170</sup> Before the earthquake, an estimated eighty percent of the population was formally unemployed, and most people eked out a meager living as manual laborers or service providers in the underground economy.<sup>171</sup> Few Haitians could afford to own a home, so the majority lived in structurally unsound rental units or informal settlements on open land.<sup>172</sup>

After the agricultural sector collapsed in the 1980s, overpopulation exacerbated an urban housing shortage. Farmers who lost their livelihoods after U.S. agricultural goods flooded Haitian markets migrated to Port-au-Prince in search of employment.<sup>173</sup> Concentration in cities was also an explicit USAID policy to promote assembly manufacture. The city, once home to 250,000 people, grew to 3 million.<sup>174</sup> Construction proceeded without regard for building codes or safety standards, and poor urban planning resulted in neighborhoods being established in areas prone to flooding and other natural hazards, including steep hillsides that collapsed in the earthquake. Following an assessment in 2009, UN officials concluded that the Haitian government had lost the capacity to manage metropolitan Port-au-Prince.<sup>175</sup>

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168. See e.g. WALTER KALIN, REPRESENTATIVE OF THE SECRETARY-GENERAL ON THE HUMAN RIGHTS OF INTERNALLY DISPLACED PERSONS, HUMAN RIGHTS OF INTERNALLY DISPLACED PERSONS IN HAITI: MEMORANDUM BASED ON A WORKING VISIT TO PORT-AU-PRINCE ¶ 7 (12–16 October 2010), available at <http://ijdh.org/wordpress/wp-content/uploads/2010/11/Kalin-Statement-2010-Haiti-English.pdf> (Not least due to urban planning deficiencies, the earthquake wreaked such enormous destruction).

169. CAMP BENEDICTION ET AL., REPUBLIC OF HAITI, SUBMISSION TO THE UNITED NATIONS, UNIVERSAL PERIODIC REVIEW 1 (2011), available at <http://lib.ohchr.org/HRBodies/UPR/Documents/session12/HT/JS7-JointSubmission7-eng.pdf>.

170. *Cheaper, Better, Longer-Lasting*, *supra* note 135, at 1161-65.

171. KALIN, *supra* note 168, at 1–3.

172. *Cheaper, Better, Longer-Lasting*, *supra* note 135, at 1161-65.

173. INTERNATIONAL COMMITTEE OF NATIONAL LAWYERS GUILD ET AL., SUBMISSION TO THE UNITED NATIONS PERIODIC REVIEW OF THE UNITED STATES OF AMERICA: THE NEGATIVE IMPACT OF US FOREIGN POLICY ON HUMAN RIGHTS IN COLUMBIA, HAITI AND PUERTO RICO 6 (Nov. 3–Dec. 22, 2010), available at [http://www.ushrnetwork.org/sites/default/files/foreign\\_policy\\_joint\\_report\\_usa\\_0.pdf](http://www.ushrnetwork.org/sites/default/files/foreign_policy_joint_report_usa_0.pdf); [http://www.ushrnetwork.org/sites/default/files/declaration-treaty/Foreign\\_Policy\\_Joint\\_Report\\_USA.pdf](http://www.ushrnetwork.org/sites/default/files/declaration-treaty/Foreign_Policy_Joint_Report_USA.pdf); Kaelin, *supra* note 168, at 6.

174. Jane Moyo, *Building for the Future: Homes and Security in Haiti*, ACTIONAID 6 (2011), available at [http://www.actionaid.it/sites/files/actionaid/haiti\\_-\\_building\\_for\\_the\\_future.pdf](http://www.actionaid.it/sites/files/actionaid/haiti_-_building_for_the_future.pdf).

175. See generally UNITED NATIONS HUMAN SETTLEMENTS PROGRAMME (UN-HABITAT), STRATEGIC CITYWIDE SPATIAL PLANNING: A SITUATIONAL ANALYSIS OF

The earthquake struck less than one year later, killing up to 350,000 people. It displaced an additional two million, few of whom had the resources to secure alternative housing outside the affected area.<sup>176</sup> Most of these people were killed when crushed by crumbling buildings, a result of decades of building with poor materials and non-enforcement of building codes. The quake disproportionately impacted the poor by destroying buildings in lower middle class neighborhoods and poor neighborhoods constructed in ravine areas.<sup>177</sup> The impact of poverty and unsafe housing on death tolls is magnified when Haiti's mortality is compared to that of other countries shaken by quakes of a similar or greater scale. In comparison, prosperous Chile was struck by an earthquake in February 2010 that was about 500 times more powerful than the 7.0 magnitude convulsion in Haiti, but claimed less than 600 lives.<sup>178</sup> Japan's 2011 earthquake registered a 9.0 magnitude exponentially stronger than even Chile's, but relatively few people seem to have perished from the tremor itself, thanks to Japan's famed emergency preparedness and construction standards.<sup>179</sup> By heightening building quality and code compliance, Haiti can protect both the longevity of its physical infrastructure and the safety of its citizens.

### C. *The Cholera Epidemic and the Right to Water*<sup>180</sup>

Ten months after the earthquake left over a million people to survive in precarious sanitation situations, cholera broke out in central Haiti.<sup>181</sup> For cholera, a disease that is waterborne and kills by dehydration, access to clean water is imperative to both prevention and treatment. Cholera represents a grave and continuing threat to the hundreds of thousands of displaced persons still living in camps that often lack access to clean water and toilets and to the majority of Haitians that live in rural areas far from water

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METROPOLITAN PORT-AU-PRINCE, Haiti (2010) (prepared by Åsa Forsman), available at <http://www.unhabitat.org/pmss/listItemDetails.aspx?publicationID=3021>.

176. Moyo, *supra* note 174, at 3.

177. Kaelin, *supra* note 168, at 7.

178. Cheaper, *Better, Longer-Lasting*, *supra* note 135, at 1167.

179. *Id.* at 1166-67.

180. Parts of this essay appear, in somewhat different form and with the permission of the author, in Brian Concannon, *Cheaper, Better, Longer-Lasting*, *supra* note 135.

181. See generally Dr. Alejandro Cravioto et al., FINAL REPORT OF THE INDEPENDENT PANEL OF EXPERTS ON THE CHOLERA OUTBREAK IN HAITI, UN.ORG 18 (2011), available at <http://www.un.org/News/dh/infocus/haiti/UN-cholera-report-final.pdf>.

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infrastructure, hospitals and clinics.<sup>182</sup>

The source of the epidemic has been traced back to the Artibonite River, a critical water source for much of central Haiti.<sup>183</sup> Residents of the region rely on the river for bathing, washing, drinking, and irrigation.<sup>184</sup> The river was contaminated by fecal matter introduced from a UN peacekeeping base seated at a tributary to the Artibonite River.<sup>185</sup> By February 2012, over 7,000 people had died from cholera and 500,000 cases had been recorded.<sup>186</sup> The cholera outbreak is only the most recent and urgent symptom of a larger and ongoing violation of the right to water in Haiti. Despite rigorous public awareness campaigns seeking to educate people on the need to drink treated water, cholera spread largely because of a lack of access to treated or potable water.<sup>187</sup> “Studies conducted in 2006 found that only 55.2 percent of the population has access to an improved water source, while close to 70 percent does not have direct access to potable water.”<sup>188</sup>

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182. Associated Press, *Cholera Surge in Haiti is Feared*, N.Y. TIMES, May 4, 2011, <http://www.nytimes.com/2011/05/05/world/americas/05haiti.html?src=UN&feedurl=http%3A%2F%2Fjson8.nytimes.com%2Fpages%2Fworld%2Famericas%2Findex.jsonp> (reporting concerns that the cholera outbreak was surging again, after a slowing down of new cases in January 2011).

183. Cravioto et al., *supra* note 181.

184. *Cheaper, Better, Longer-Lasting*, *supra* note 135, at 1167-68.

185. In May 2011, a UN-commissioned panel of experts released the results of an independent investigation, which found that the evidence “overwhelmingly supports the conclusion that the source of the Haiti cholera outbreak was due to contamination of the Meye Tributary of the Artibonite River with a pathogenic strain of current South Asian type *Vibrio cholerae* as a result of human activity.” Cravioto et al., *supra* note 181, at 4.

186. See *Haiti Cholera Situation Report #35*, UN OFFICE FOR THE COORDINATION OF HUMANITARIAN AFFAIRS (Feb. 4, 2010), [http://reliefweb.int/sites/reliefweb.int/files/resources/9731123E8EA209C28525782D0056B8D6-Full\\_report.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/9731123E8EA209C28525782D0056B8D6-Full_report.pdf).

187. See Molly Hennessy-Fiske, *Q&A: Dr. Paul Farmer and Ophelia Dahl on Recovery Efforts in Haiti*, L.A. TIMES (Jan. 29, 2011, 8:35 AM), <http://latimesblogs.latimes.com/lanow/2011/01/haiti-cholera-earthquake-dr-paul-farmer-ophelia-dahl.html> (“You can spend half your resources telling people to wash their hands or drink clean water, but if they don’t have access to clean water, it’s a peculiarly noxious way of approaching the problem . . . .”); see also Beatrice Lindstrom, *Law in the Time of Cholera: Violations of the Right to Water in Haiti*, THE HUFFINGTON POST (Jan. 21, 2011, 11:42 AM), [http://www.huffingtonpost.com/beatrice-lindstrom/law-in-the-time-of-choler\\_b\\_812170.html](http://www.huffingtonpost.com/beatrice-lindstrom/law-in-the-time-of-choler_b_812170.html).

188. RIGHT TO FOOD, *supra* note 158, at 71 (citing World Bank, *Project Appraisal Document on a Proposed Grant In the Amount of SDR 3.4 Million (US\$5 Million Equivalent) to the Republic of Haiti for a Rural Water and Sanitation Project*, World Bank Report No: 38080, 28, available at [http://www.wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2007/01/05/000020953\\_20070105093521/Rendered/PDF/38080.pdf](http://www.wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2007/01/05/000020953_20070105093521/Rendered/PDF/38080.pdf); La vulnérabilité en Haïti: Chémin inévitable vers la pauvreté? Rapport national sur le développement humain – Haïti 74 (2004) (DHS study)).

These figures almost definitely overstate access to improved water sources because public systems are highly dysfunctional and in some communities rarely available year round.<sup>189</sup> As the World Bank has reported, “[i]n almost all urban areas water supply is intermittent,”<sup>190</sup> and in rural areas, water is very difficult to access during the dry season.<sup>191</sup>

As with food, however, the responsibility for the failure to respect the right to clean water does not lie with the Haitian Government alone. “In 1998, the Haitian government had the opportunity and commitment to make drastic improvements to its water supply system when the Inter-American Development Bank (“IDB”) approved a \$54 million loan aimed to improve potable water and sanitation services.”<sup>192</sup> The IDB estimated that the loan would decrease water costs for the poor by up to ninety percent. On the eve of its dispersal, however, the United States blocked the loan. Internal communications obtained under the US Freedom of Information Act revealed that the interference was motivated by a policy designed to limit support for Haiti’s democratically elected president Jean-Bertrand Aristide because of his left-wing policies that were seen as contrary to US interests in the region. Such political considerations are in direct violation of the IDB’s Articles of Agreement, but with significant voting power, the United States succeeded in stopping the loan dispersal, significantly undermining the opportunity for the Haitian government to develop the water infrastructure.<sup>193</sup>

The cholera outbreak itself is also evidence of the need of the international community to adhere to human rights in their assistance and interventions in Haiti. A report issued by a UN-commissioned panel of experts found that the cholera pathogen was introduced in fecal matter that likely leaked from a UN base with a negligently maintained sanitation system with broken pipes carrying “significant risk for . . . contamination.”<sup>194</sup> The report found

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189. RIGHT TO FOOD, *supra* note 158, at 77.

190. World Bank, *Project Appraisal Document on a Proposed Grant In the Amount of SDR 3.4 Million (US\$5 Million Equivalent) to the Republic of Haiti for a Rural Water and Sanitation Project*, WORLD BANK REPORT NO: 38080, 28 [hereinafter World Bank Appraisal], available at [http://www.wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2007/01/05/000020953\\_20070105093521/Rendered/PDF/38080.pdf](http://www.wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2007/01/05/000020953_20070105093521/Rendered/PDF/38080.pdf)

191. RIGHT TO FOOD, *supra* note 158, at 77; *Cheaper, Better, Longer-Lasting*, *supra* note 135, at 168-69.

192. *Cheaper, Better, Longer-Lasting*, *supra* note 135, at 169.

193. WOCH NAN SOLEY, *supra* note 158, at 13.

194. Cravioto et al., *supra* note 181, at 21.

that “the sanitation conditions at the Mirebalais MINUSTAH camp were not sufficient to prevent contamination of the Meye Tributary System with human fecal waste. It is clear that . . . there was potential for feces to enter into and flow from the drainage canal running through the camp directly into the southwestern branch of the Meye Tributary System.”<sup>195</sup> The UN’s negligent waste management in an environment already vulnerable to waterborne disease has led to an arbitrary deprivation of life for thousands of Haitians, and amounts to a gross violation of human rights in itself.<sup>196</sup>

#### IV. THE COLLECTIVE SENSE OF HUMAN RIGHTS

Weaknesses in Haiti’s justice system are both a cause of the destruction of the 2010 earthquake, and a significant obstacle to Haiti’s recovery.<sup>197</sup> Haiti’s zoning regulations are inadequate, but had they been enforced, the majority of people who died in the earthquake would not have perished inside their homes in slums perched on steep hillsides.<sup>198</sup> Had Haiti’s weak building codes been enforced, many of the houses that fell would have stayed standing. Yet this physical illustration is only the surface of the problem—Haiti’s legal system is problematic to its core. This section reveals the systematic and practical problems with Haiti’s legal system, and recommends reforms to ensure its future viability and ability to produce quality administrators of justice.

##### A. *A System Plagued with Problems*

Most of Haiti’s governments have been dictatorships, and the justice system evolved to suit the governments.<sup>199</sup> Everything about the system, from the way that judges are paid, the language spoken, the keeping of case files and the training of lawyers, has evolved to serve the people holding both guns and money. The sys-

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195. *Id.* at 23.

196. *Cheaper, Better, Longer-Lasting*, *supra* note 135, at 1169-70.

197. See Henri E. Cauvin, *Haitian Earthquake Upends Country’s Criminal Justice System*, WASH. POST (Feb. 7, 2010), <http://www.washingtonpost.com/wp-dyn/content/article/2010/02/06/AR2010020602047.html>.

198. See Tom Watkins, *Problems With Haiti building standards outlined*, CNN.COM (Jan. 13, 2010, 10:23 PM), [http://www.cnn.com/2010/WORLD/americas/01/13/haiti.construction/index.html?\\_s=PM:WORLD](http://www.cnn.com/2010/WORLD/americas/01/13/haiti.construction/index.html?_s=PM:WORLD).

199. See e.g., Kwesi Sansculotte & Matayo Moshi, *The Haitian Timeline: A History of Military Dictatorship and Civil Rule (Revised and Expanded)*, COUNCIL ON HEMISPHERIC AFFAIRS (Feb. 9, 2010), <http://www.coha.org/military-dictatorship-in-haiti/>.

tem prevents the majority of Haitians who are poor from vindicating their rights through the formal justice system, which reinforces their exclusion from the formal economy and the political system.

Haiti's justice system is to a large extent privatized. Judges are paid a small salary each year, lesser officials much less, and many courts lack basic legal materials like law books and paper.<sup>200</sup> Courts compensate for public disinvestment by charging high court fees for almost every legal action, and by the frequent bribes to judges, prosecutors and court officials. Legal proceedings are theatrical and formalistic, with little attention paid to the presentation or analysis of facts. They are conducted in French, which most Haitians, especially the poor, do not understand. Because many cases are decided for reasons other than their factual or legal merits, rigorous preparation is not deemed important. Formalism and shoddy practice also serve to obscure the true bases for decisions.

The legal system's historical exclusion of Haiti's majority and its deep technical deficiencies make it incapable of functioning under a democracy without a fundamental overhaul. Change needs to be made in practices, but also in people and structures. Personnel throughout the system need to be trained to perform at a higher level than before, and to perform in a way that respects the rights and interests of the majority of Haitians who are poor.

### *B. A Legal Training Process in Need of Reform*

The Haitian justice system's exclusion of the poor is guaranteed by the exclusion from the legal profession of lawyers willing and able to work with Haiti's poor. Many students enter law school intending to use the law to force fundamental reforms in the legal system and society at large. But the vast majority of students who complete their law school coursework—some estimate up to eighty percent—never become members of the bar because they are unable to complete the two post-graduation requirements, preparation of a “*mémoire de sortie*,” or master's thesis, and a two-year apprenticeship, or “*stage*” with a licensed lawyer.<sup>201</sup>

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200. See Alex Braden et al., *The Independence of the Judiciary in Haiti under the Interim Government* (unpublished manuscript) (on file with the Center for International Legal Education, University of Pittsburgh School of Law), available at <http://www.ijdh.org/pdf/humanrightsreport6-19-06.pdf>.

201. Marisol Floren Romero, *Update: Researching Haitian Law*, GLOBALEX (Feb. 2012), available at <http://www.nyulawglobal.org/globalex/Haiti1.htm>.

Both the *stage* and the *mémoire* serve as numerical and ideological filters, preventing progressive students from becoming progressive lawyers. Both also miss opportunities to properly train law school graduates. Law school in Haiti is theoretical, with no practice classes or clinics.<sup>202</sup> So the *mémoire* and *stage*, in principle, afford an opportunity for practical experience and the development of expertise in the chosen area.<sup>203</sup> But in practice they serve merely to produce lawyers who practice like the lawyers who trained them.<sup>204</sup>

The *mémoire* is a substantial paper—often over 100 pages long—and support for its completion is not integrated into the law school curriculum. The Haitian education system, shackled by low public investment and political upheaval, is by far the worst in the Americas.<sup>205</sup> As a result, even bright, hard-working students graduate from law school without learning the basic writing skills that the *mémoire* requires. Further, the graduate must find the time to research and write the thesis. By the time most students finish law school, they are in their mid-to-late twenties, have a family and need to work full time. Few can afford a computer, and most have only intermittent electricity at their home.

A law graduate must find a lawyer willing to act as “*parrain*” or “godfather,” someone who advises on research, writing, and thesis defense, and must usually pay for this service.<sup>206</sup> Law graduates who do manage to find the time, the resources and a godfather are usually steered to subjects that the godfather considers important, and in which he or she is an expert. Those paths almost never involve challenging the existing legal or social structures supporting both the unequal system and its lawyers. As a result, less than 25% of graduates ever clear the *mémoire* hurdle.

The *stage* is the largest squandered opportunity to prepare public interest lawyers. Practical training replicates the habits of the practitioner, which in Haiti means someone neither ideologically nor professionally qualified to prepare high-quality human rights cases challenging structural injustice. As lawyers in Haiti have always sided with those able to pay or intimidate them, there

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202. Brian Concannon, Jr., *The Bureau des Avocats Internationaux, a Victim-Centered Approach*, in EFFECTIVE STRATEGIES FOR PROTECTING HUMAN RIGHTS (David Barnhizer ed., 2001) [hereinafter *Bureau des Avocats*].

203. *Id.*

204. *Id.*

205. *Education Program*, HOPEFORHAITI.COM, <http://hopeforhaiti.com/Education.html> (last visited Mar. 29, 2013).

206. *Bureau des Avocats*, *supra* note 202.

are few people who can—and will—train young lawyers to cross the line to assert the rights of the poor or powerless. The experienced lawyers' own emphasis on procedure and theater at the expense of the presentation and analysis of facts precludes them from being able to train a *stagiaire* (apprentice) in the rigorous preparation of a case.<sup>207</sup>

## V. REFORMS

While Haiti, Eastern European, and Latin American nations strive toward democracy, it is clear that experimentation is in order, particularly in the political and economic spheres. The overriding characteristic of the political and economic life in developing nations is the desire to avoid either a national-populist or a neo-liberal project. In today's economy, neither approach seems promising.

The import-substituting, protectionist style of industrialization and the pseudo-Keynesian public finance of a nationalist-populist approach seem unable to deal effectively with the huge problems facing these nations. Neoliberalism is unable to service the real conditions of sustained economic growth. Neoliberalism's rise to the status of religious doctrine is due in part to the influence of the United States.<sup>208</sup> The Reagan Administration pushed pro-business austerity programs and set the tone for a worldwide reduction of government's role.<sup>209</sup> But neoliberalism is also a response to the failure of a national-populist approach. Indeed, Haiti still faces the problems of possible economic stagnation created by the monopolization of basic industries by the elite, by the international community, and by a somewhat closed economy.<sup>210</sup>

What is needed now, however, is to fix neoliberalism's major flaw—chiefly that it does not help the vast, poor majority live a dignified life. Instead, corporative power creates wealth for a small minority, while almost enslaving the majority. Indeed, if governments do not spread the benefits of globalization, countries will remain divided between a very small group of ultra-rich businessmen and a large group of marginalized people.

Unlike neoliberalism's claim that government should play a

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207. *Id.*

208. David M. Kotz, *Globalization and Neoliberalism*, in 12 *RETHINKING MARXISM* 1 (2002), available at [http://people.umass.edu/dmkotz/Glob\\_and\\_NL\\_02.pdf](http://people.umass.edu/dmkotz/Glob_and_NL_02.pdf).

209. Stotzky, *supra* note 7, at 903.

210. *Haiti: Economy*, GLOBALEDGE (last visited Mar. 29, 2013), <https://globaledge.msu.edu/countries/haiti/economy>.

minor role in the economy,<sup>211</sup> real democratic change requires government to play an important role. At a minimum, Haiti must pursue locally-designed policies to draw the poor into the global economy. To do this, these governments must pursue a rather different vision of a political economy than the one traditionally accepted.

To begin with, Haiti must approach macro-economic stabilization seriously. The government must impose taxes upon the privileged to allow for public investment in people and infrastructure. One possibility would be to impose a direct, consumption-based tax, taxing the difference between income and savings, as a way to finance the state and promote capital formation and productive investment.

There must be a major push to train the poor majority in a variety of skills needed in the global economy. Education is central to reform. This approach would also suggest attempting joint public-private ownership of enterprises and encouraging decentralized capital allocation and management. If the breakdown of corporative control of the economy is to succeed, however, the strict requirements of capitalism must be imposed. Thus, the private sector must actually be privatized, allowing for real competition. This requires laws opening the market so that everyone can compete on a level playing field. In addition, it is necessary to develop publically-held companies and impose upon them the requirements of competition and independent financial responsibility. Parliament must pass laws which encourage such activity.

On the political front, there must be an ability to counter the threat of oligarchic control of political power. There must be a facility for the rapid resolution of major political impasses through granting priority to programmatic legislation, liberal resort to plebiscites and referenda, and perhaps the vesting of power in the executive and legislative branches to call for new elections in the face of serious disagreements over the direction the country should take.

This is not all. Measures must be taken to broaden the scope and heighten the level of political mobilization in society. As discussed above, this requires strengthening the role of political parties, public financing of campaigns, increased free access to radio and television, and the breakup of the broadcasting cartel. Political organizing, at all levels, must be encouraged through specific

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211. Kotz, *supra* note 208, at 7.

government programs. Direct democracy must be systematically organized and planned.

## VI. CONCLUSION

Regarding corporatism, the formal creation or reestablishment of democratic rule is not sufficient to destroy the corporative power relationships built up during the dictatorship periods. Indeed, these citadels of power are insidious.<sup>212</sup>

Incorporating the formerly excluded majority into the decision-making process will start to strengthen the workings of democracy against the corporative power that has crippled Haiti's past. Direct popular participation is key to creating and implementing effective government action. To create a true democracy, mechanisms of representation must be perfected. Further, political parties must be strengthened and internally democratic and open, disciplined, and ideologically defined.<sup>213</sup> Furthermore, a viable and vigorous justice system legitimate enough to prosecute and punish those who have committed massive human rights violations is essential to democratic reform. These reforms, however, still face substantial obstacles.

Political reform alone is not sufficient to foster the blooming of democracy. Creative attempts at economic and social reform are also necessary, and must work concurrently with the necessary political reform. Direct popular participation must reach all aspects of public and private life. Because old methods have not transformed Haitian society to allow individual citizens the freedom and dignity due to each human being, experimentation is called for and essential to the creation of a viable democratic future.<sup>214</sup>

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212. Stotzky, *supra* note 7, at 905.

213. *Id.*

214. *Id.*

