

Expert Mechanism on the Right to Development Call for Contributions: The Duty to Cooperate and Non-State Actors

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1. Introduction

The right to development is a fundamental human right which entitles people to participate in and contribute to the full realization of their economic, social, and cultural development.¹ In the global context, the right to development obligates States and, by most interpretations, non-state actors (NSAs)² to cooperate in overcoming obstacles to the realization of human rights.

Haiti's long history of entrenched foreign debt, manufactured aid dependence, and interference provides a salient example of how failures to cooperate by NSAs, and particularly international financial institutions (IFIs), may frustrate people's enjoyment of rights. Meaningful fulfilment of the duty to cooperate may prevent further such rights infringements and positively affect the realization of local communities' right to development.

Haiti's past as a former slave colony and the enormous debt imposed on it as a price for its independence set the stage for its continuing dependence on foreign assistance. This dependence engendered a power imbalance with foreign lenders that prevents Haiti to this day from meaningfully participating in loan agreements with IFIs. This dynamic, which has been reinforced by one-sided IFI lending processes that do not allow for genuine negotiation of terms, has eroded Haiti's ability to preside over its own development and consequently the population's right, via their right to political participation, to freely pursue their economic, social and cultural development. Indeed, structural adjustment policies that IFIs have been able to impose on Haiti through loan agreements throughout the last forty years have weakened the country's ability to invest in key areas affecting people's enjoyment of human rights, particularly those most marginalized.

Improved coordination between IFIs and the state, in a manner consistent with the duty to cooperate and its demand for a long-term approach to development, would benefit the realization of the right to development of local communities. In particular, IFIs should prioritize engagement with the state with a view toward eliminating the existing power imbalance and ensuring that their processes are equitable.

2. Legal Framework: The Duty to Cooperate in the Context of the Right to Development

The right to development is recognized in several UN General Assembly resolutions,³ most notably the Declaration on the Right to Development ("Declaration"),⁴ and the International Covenant on Economic, Social and Cultural Rights (ICESCR).⁵ The Declaration provides that the right to development is "an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development."⁶ It further clarifies that the right to development "also implies the full realization of the right of people to self-determination."⁷ The ICESCR, the only binding instrument that codifies the right to development, also frames the right as one of self-determination, by virtue of which all peoples "freely determine their political status and freely pursue their economic, social and cultural development."⁸

The duty to cooperate is subsumed within the right to development, and requires that states—and, by most interpretations, NSAs—act globally in a manner compatible with a long-

term approach to development. The Declaration provides a framework for the duties of States to cooperate within the context of the right to development,⁹ recognizing the need for “sustained action” and “effective international co-operation” in order to promote comprehensive development.¹⁰ The Declaration also specifically references obligations of cooperation relating to international aid and lending, requiring that aid and lending be “adequate, effective and transparent, administered through participatory and accountable processes, and targeted towards the most vulnerable.”¹¹

The duty to cooperate as recognized in the Declaration extends to States when acting “as members of international organizations [such as IFIs like the International Monetary Fund (IMF)] and as actors in global trade, investment, and finance.”¹² Despite the fact that the IMF does not see the advancement of human rights as part of its mandate and lacks any meaningful accountability to international human rights bodies,¹³ including the Economic and Social Council (ECOSOC),¹⁴ it has also been found to have certain direct obligations vis à vis the duty to cooperate.¹⁵ This interpretation is supported by the UN Charter, which emphasizes the duty of both Member States¹⁶ and IFIs¹⁷ to cooperate with the UN in the context of economic and social rights.¹⁸ It is further supported by observations of the Committee on Economic, Social and Cultural Rights, finding that the IMF as a UN specialized agency has human rights obligations under international law.¹⁹ Support for IFIs’ duty to cooperate may also be drawn from the Maastricht Principles, which clarify states’ ETOs and extend responsibility to “provide international assistance to contribute to the fulfilment of economic, social and cultural rights in other States”²⁰ to NSAs.²¹

3. NSAs in Haiti: Historically Entrenched Power Imbalances

Haiti is subject to persistent structural injustices, stemming from colonialism, cyclical foreign debt, and consequent reliance on foreign aid. These injustices create a persistent power imbalance between the state and foreign lenders that drives the latter’s involvement in Haiti’s economy and industry and enables the implementation of policies that adversely affect Haitians’ enjoyment of human rights.²²

For almost its entire history Haiti has owed a trade debt to other nations, beginning in 1825 with France’s racially discriminatory “independence debt”—compensation for lost revenues from slavery and the price for Haiti’s independence, agreed to under threat of France’s reinstatement of slavery.²³ In order to repay the debt, which took approximately 122 years, Haiti was forced to borrow money from other countries, including France and the US, which sent it into deeper debt.²⁴ Haiti also had to forego the industrialization that other countries experienced in the 19th century and limit expenditures on infrastructure, education, and social development, instead prioritizing the production of export agriculture that earned the hard currency needed to pay off the debt.²⁵ Compounding the deleterious effects on its economy was Haiti’s lack of recognition by many states,²⁶ which negatively impacted its ability to participate in international commerce, depriving it of much-needed revenue and to freely dispose of its natural resources.²⁷

These events pushed the country into a cycle of debt and aid dependence²⁸ that persists to this day.²⁹ Indeed, by the 1980s, Haiti was forced to seek assistance from IFIs, specifically the IMF, the World Bank (WB), and the Inter-American Development Bank (IDB), institutions under heavy influence by powerful states³⁰ who imposed and then entrenched debt in Haiti from the beginning.³¹ These institutions then employ inequitable lending processes that severely limit Haiti’s ability to participate in negotiating—or even reject—loan terms.³²

The centuries of foreign indebtedness and interference and cyclical reliance on foreign assistance entrenched pre-existing power structures and inequalities that are still visible today

in Haiti's relationship with IFIs. In particular, the inherent power imbalance between the IMF and the Haitian government due to Haiti's imposed aid dependence, compounded by the aforementioned lack of equitable lending processes, has limited the government's ability to negotiate favorable loan agreements.

The IMF lending process was created as inherently uncooperative. Loan terms are set by the IMF and borrowing states have only three options: accept, reject, or amend.³³ States may not propose their own terms, which significantly reduces their ability to participate in the process. This is particularly relevant in situations where loan conditions reflect practices or models based on Western economies that may not work in other countries, such as the IMF's imposition of tax reforms in Haiti that do not take into consideration the country's large informal working sector. Furthermore, IMF loans are subject to final approval from its managing director and executive board, which incentivizes the borrowing state to accept the IMF's loan terms (including loan conditions) in order to secure the sorely-needed loan.³⁴

The IMF Articles of Agreement, which govern lending agreements between states and the IMF, lack any meaningful provision for cooperation. Article IV requires "regular (usually annual) comprehensive consultations" with Member States, wherein IMF staff visit a country to review its economic and financial policies and assess its development.³⁵ In doing so, IMF staff meet with local government and central bank representatives, and often "representatives of business, labor unions, and civil society."³⁶ The primary purpose of Article IV, however, is not to protect the development interests of the country but to allow the IMF to "[monitor] the economic and financial policies of its 189 member countries."³⁷ Practically, the IMF's recommendations based on the Article IV consultation process are almost always accepted without negotiation, further evidence of the coercive nature of the IMF lending process.³⁸

Accordingly, the Article IV process, while requiring engagement of the relevant Member State, does not necessitate genuine and equal cooperation between the two parties that respects the right to development, and is insufficient to fulfil the IMF's duty to cooperate. Furthermore, the IMF has not made adequate efforts to remedy the existing power imbalance, which would allow for cooperation in a way that meaningfully considers Haiti's right to development. Despite publicly acknowledging the need for more investment in social programs,³⁹ IFIs continue to impose loan conditions based on an understanding of Haiti's economy that does not consider its socio-economic realities.⁴⁰ Cooperation with the state to better understand those realities and determine how to incorporate them into lending agreements with a view toward long-term realization of the right to development may encourage a rights-based approach to assistance.

4. The Failure to Realize the Right to Development

These structural injustices create a continually reinforced power imbalance that allows NSAs to impose policies on Haiti that, while beneficial for lenders, negatively impact the realization of human rights in Haiti. The IMF began imposing structural adjustment policies in Haiti in the 1980s and, despite its acknowledgement of Haiti's perpetual high risk of debt distress⁴¹ and its more recent recognition of the negative impacts of its policies, continues to provide millions of dollars of loans to the country that include structural reforms and elements of austerity conditionality.⁴² The unequal balance of power between Haiti and the IMF does not allow the Haitian government to reject these conditions, which have the effect of broadly limiting Haiti's ability to invest in social services and infrastructure.

For example, the IMF imposed tax reform requirements on its \$40 million USD Emergency Economic Recovery Credit in 1994,⁴³ which was itself imposed on Haiti as a condition of US support for the return of President Jean-Bertrand Aristide, who was ousted in a coup in 1991,

to Haiti.⁴⁴ These reforms, due to the large size of the country's informal working sector,⁴⁵ resulted in revenue declines and weakened the state's ability to invest in basic social services.⁴⁶ In a more recent example, the IMF agreed to lend Haiti \$111.6 million USD and \$299 million USD in March 2019 and April 2020, respectively, both of which included conditions on arrears clearance, forcing Haiti to prioritize deficit reduction instead of spending on critical services for COVID-19 relief.⁴⁷

Policies that limit social spending hinder socio-economic development and adversely affect local communities; Haiti's social and economic landscape is in serious decline, with Haitians lacking access to healthcare,⁴⁸ food,⁴⁹ water,⁵⁰ and education.⁵¹ Constructive engagement between NSAs and the Haitian government that give Haiti a seat at the table would help to ensure local communities' meaningful participation in their development.

5. The Need for Constructive Engagement between IFIs and the Government of Haiti

By genuinely cooperating with Haiti and approaching foreign assistance in a way that ensures it is compatible with the advancement of people's right to development, the IMF—and other IFIs—could improve participation of local communities in development and in the fair distribution of benefits resulting therefrom. In line with this idea, the Committee on Economic, Social and Cultural Rights has encouraged the preparation of “a human rights impact statement... in connection with all major development cooperation activities.”⁵² This view is supported by Philip Alston, the UN Special Rapporteur on extreme poverty and human rights, who emphasized in a 2018 report that adequate consideration of the potential human rights impact of financial assistance is critical.⁵³ The Committee has also directed that, before deciding to impose debt adjustment programs⁵⁴ and economic sanctions,⁵⁵ foreign lenders should take full account of the need for protecting economic, social and cultural rights, especially in context of vulnerable groups.

Instead of continuing with further loans and attached conditions, IFIs should take a rights-based approach to assistance that centers the Haitian state and protects its autonomy,⁵⁶ while prioritizing open dialogue and public participation.⁵⁷ Doing so will allow the Haitian government and its constituents to participate in key decisions affecting development in Haiti promote the people's right to freely pursue their economic, social and cultural development.

6. Conclusion

NSAs have a duty to cooperate with states when taking actions that affect the right of local communities to participate in and contribute to the full realization of their economic, social, and cultural development. In Haiti, entrenched foreign debt, aid dependence, and interference have created a power imbalance that has stripped the government of its ability to meaningfully participate in assistance negotiations with IFIs. The IMF in particular has made constructive engagement even more difficult by utilizing a one-sided lending system and a consultation process that serves to protect the financial interests and policy objectives of leading IMF Member States rather than the development interests of the borrowing state. This lack of genuine cooperation has resulted in the imposition of loan conditions that have and continue to severely limit Haiti's ability to spend on social programs, and that consequently frustrate the people's right to actively, freely, and meaningfully participate in development.

¹ The right is enshrined in several international instruments, most notably the Declaration on the Right to Development and the International Covenant on Economic, Social and Cultural Rights. G.A. Res. 128,

Declaration on the Right to Development (Dec. 4, 1986), available at: <https://www.ohchr.org/en/professionalinterest/pages/righttodevelopment.aspx>; International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3 [ICESCR], available at: <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>.

² As per the Expert Mechanism on the Right to Development's call for inputs to its study on The Duty to Cooperate and Non-State Actors, NSAs include international financial institutions, foreign investors, intergovernmental organizations, and grassroots organizations.

³ G.A. Res. 151/26, Rio Declaration on Environment and Development, at Principle 3 (Aug. 12, 1992), available at:

https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration.pdf ("The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations); G.A. Res. 157/23, *Vienna Declaration and Programme of Action*, at art. 10 (July 12, 1993), available at:

<https://www.ohchr.org/en/professionalinterest/pages/vienna.aspx> ("The World Conference on Human Rights reaffirms the "right to development", as established in the Declaration on the Right to Development, as a universal and inalienable right and an integral part of fundamental human rights. As stated in the Declaration on the Right to Development, the human person is the central subject of development. While development facilitates the enjoyment of all human rights, the lack of development may not be invoked to justify the abridgement of internationally recognized human rights. States should cooperate with each other in ensuring development and eliminating obstacles to development. The international community should promote an effective international cooperation for the realization of the right to development and the elimination of obstacles to development. Lasting progress towards the implementation of the right to development requires effective development policies at the national level, as well as equitable economic relations and a favorable economic environment at the international level.").

⁴ Declaration on the Right to Development, *supra* note 1.

⁵ ICESCR, *supra* note 1.

⁶ Declaration on the Right to Development, *supra* note 1, at art. 1(1).

⁷ *Id.* at art. 1(2).

⁸ ICESCR, *supra* note 1, at art. 1(1).

⁹ Declaration on the Right to Development, *supra* note 1, at art. 3(3).

¹⁰ *Id.* at art. 4(2).

¹¹ U.N. Human Rights Office of the High Commissioner, *The Right to Development and International Cooperation: Global Challenges Require Global Solutions*, available at:

https://www.ohchr.org/Documents/Issues/RtD/RTD_InternationalCooperation.pdf (last accessed Nov. 22, 2021).

¹² *Id.*

¹³ The IMF is insulated from the UN system, as its Relationship Agreement with the UN protects its budgetary independence and shields it "from full oversight from ECOSOC, providing for complete independence in [its] lending operations." Heloise Daste, *The Role of the Bretton Woods Institutions in Development Cooperation*, 2016 BLR 62, 76 (2016).

¹⁴ ECOSOC is the UN agency tasked with the coordination and direction of economic, social, and cultural activities carried out by the UN. *About Us*, U.N. (last accessed Nov. 16, 2021), <https://www.un.org/ecosoc/en/about-us>.

¹⁵ Obligations arise because IFIs have a direct impact on human rights, a direct link to the UN in many cases, and are composed of states with international human rights obligations. Roisin Hennessy, *Defining States' International Legal Obligations to Cooperate for the Achievement of Human Development: One Aspect of Operationalising a Human Rights-Based Approach to Development*, 2002 HUM. RTS. DEV. Y.B. 71, 89-90 (2002).

¹⁶ U.N. Charter art. 56.

¹⁷ *Id.* at art. 57.

¹⁸ Daste, *supra* note 13, at 76.

¹⁹ Comm. on Econ., Soc. and Cultural Rights (CESCR), *Public Debt, austerity measures and the International Covenant on Economic, Social and Cultural Rights*, U.N. Doc. E/C.12/2016/1 (July 22, 2016); *see also* CESCR, *General Comment No. 2: International technical assistance measures (Art. 22 of the Covenant)*, E/1990/23 (Feb. 2, 1990), available at: <https://www.refworld.org/docid/47a7079f0.html> ("international measures to deal with the debt crisis should take full account of the need to protect economic, social and cultural rights through, inter alia, international cooperation."); CESCR, *General Comment No. 8: The relationship between economic sanctions and respect for economic, social and cultural rights*, E/C.12/1997/8 (Dec. 12, 1997), available at: <https://www.escr-net.org/resources/general-comment-8>.

²⁰ Int'l Comm'n of Jurists, *Maastricht Guidelines on Violations of Economic, Social and Cultural Rights*, January 26, 1997, Principle 33, available at: <https://www.ciel.org/project-update/extra-territorial-obligations-etos/#:~:text=The%20Maastricht%20Principles%20do%20not,outside%20of%20their%20own%20territories>.

²¹ *Id.* at Principle 35(b).

²² See Letter from Daniel Foote to Secretary of State Antony Blinken (Sept. 22, 2021), available at: <https://www.newsamericasnow.com/caribbean-news-now-haiti-news-the-full-resignation-letter-of-us-special-envoy-to-haiti/> (“This cycle of international political interventions in Haiti has consistently produced catastrophic results.”).

²³ Approximately 150 million francs, the modern-day equivalent of \$22 billion. Marlene Daut, *When France extorted Haiti – the greatest heist in history*, CONVERSATION (July 9, 2021, 2:30 PM) <https://theconversation.com/when-france-extorted-haiti-the-greatest-heist-in-history-137949>. See also LAURENT DUBOIS, *HAITI: THE AFTERSHOCKS OF HISTORY* (2013) (discussing Haitian leadership’s reasons for agreeing to pay the debt); PETER HALLWARD, *DAMMING THE FLOOD: HAITI, ARISTIDE, AND THE POLITICS OF CONTAINMENT* 12 (2007).

²⁴ HALLWARD, *supra* note 23, at 12.

²⁵ Rocio Cara Labrador, *Haiti’s Troubled Path to Development*, GLOBAL TRADE (Apr. 13, 2018), <http://www.globaltrademag.com/uncategorized/haitis-troubled-path-to-development>.

²⁶ Ann Crawford-Roberts, *A History of United States Policy Towards Haiti*, MOD. LATIN AM., <https://library.brown.edu/create/modernlatinamerica/chapters/chapter-14-the-united-states-and-latin-america/moments-in-u-s-latin-american-relations/a-history-of-united-states-policy-towards-haiti/> (last accessed Nov. 16, 2021); Rachel Bunning, *5 factors that have led to Haiti’s current political state*, ARIZ. STATE UNIV. (July 21, 2021), <https://news.asu.edu/20210721-5-factors-have-led-haitis-current-political-state>.

²⁷ An example of this is Navassa island, an island 35 miles off the coast of mainland Haiti and legally owned by Haiti, which the US lay claim to in 1857, before it recognized Haiti’s state-hood, on the basis that the island was unclaimed. Despite formally recognizing Haiti just five years later, the US maintains that the Guano Islands Act of 1856 allows its ownership of the island. In doing so, the US deprived Haiti of over one million tons of guano on the island in the 19th century when guano was a very profitable industry. Yves Colon, U.S., *Haiti Squabble Over Control of Tiny Island*, MIA. HERALD (Sept. 25, 1998), <http://faculty.webster.edu/corbetre/haiti/miscopic/navassa/squabble.htm>; see 48 U.S. Code § 1411. Guano districts, available at: <https://www.law.cornell.edu/uscode/text/48/1411>; see also Dylan Matthews, *This 1856 law makes it legal to seize islands for America if they have lots of bird crap*, VOX (July 31, 2014), <https://www.vox.com/2014/7/31/5951731/bird-shit-imperialism>; Jacqueline Charles, *Did the U.S steal an island covered in bird poop from Haiti? A fortune is in dispute*, MIA. HERALD (Nov. 23, 2020), <https://www.miamiherald.com/article247325844.html>.

²⁸ Richard Kim, *The Nation: Haiti’s Recovery, A Repeated Tragedy*, NPR (Jan. 18, 2010, 6:14 AM), <https://www.npr.org/templates/story/story.php?storyId=122693853> (“By 1900, it [Haiti] was spending 80 percent of its national budget on [debt] repayments.”); Richard G. Wamai & Colleen Larkin, *Health Development Experiences in Haiti: What can be learned from the past to find a way forward?*, 54 JAPAN MED. ASS’N J. 56, 57 (2011). (“During 1970–2004, Haiti had accumulated an excess of \$1.2 billion in debt.”).

²⁹ In 2019-2020, foreign assistance supported 20.5 percent of Haiti’s national budget. See *Haiti - FLASH : Le Gouvernement adopte un budget de 198,7 milliards, tous les details*, HAÏTI LIBRE (June 8, 2020), <https://www.haitilibre.com/article-30976-haiti-flash-le-gouvernement-adopte-un-budget-de-198-7-milliards-tous-les-details.html>.

³⁰ A salient example of this influence is the IDB’s withholding of social sector loans intended to improve water and sanitation services from 2000 to 2004 because the US expressed political concerns unrelated “to the actual loans or the capacity to implement them.” Despite the explicit prohibition in the IDB Articles of Agreement of taking into account such political considerations, “the U.S. government demonstrated every intention of using its power within the IDB to tie the release of the loans to its definition of political progress.” CENTER FOR HUMAN RIGHTS AND GLOBAL JUSTICE ET AL., *WÒCH NAN SOLEY: THE DENIAL OF THE RIGHT TO WATER IN HAITI* 11-12 (2008).

³¹ The IMF and WB further indebted Haiti through a series of loans made to the dictators of the Duvalier regimes in the 1970s and 1980s, in part “as a bulwark against Latin American Communism.” *Id.* at n. 16. The Duvaliers misappropriated the funds and used them to repress the people. Despite these thefts being widely reported, IFIs continued to lend money to the Duvaliers, and subsequent democratic governments were then forced to pay it back. Mark Schuller, *Break the Chains of Haiti’s Debt*, JUBILEE USA NETWORK (May 20, 2006), available at: <http://www.ijdh.org/pdf/headline1-11-07.pdf>; *Hearings Before the Subcomm. on Int’l Monetary Pol’y and Trade of the Comm. on Financial Services*, U.S. House of Representatives (2010) (testimony of Melinda St. Louis), available at: <https://www.govinfo.gov/content/pkg/CHRG-111hhrg56769/html/CHRG-111hhrg56769.htm>; Letter from Congress to Dr. Rodrigo de Rato, Managing Director, IMF (Dec. 8, 2006) (on file with author).

³² See KENDALL W. STILES, *NEGOTIATING DEBT: THE IMF LENDING PROCESS* (1991).

³³ *Id.*; see also Michael Mussa & Miguel Savastano, *The IMF Approach to Economic Stabilization*, 14 NBER MACROECONOMICS ANN. 79, 87 (1999), available at: <https://www.journals.uchicago.edu/doi/pdfplus/10.1086/654380>.

³⁴ Mussa & Savastano, *supra* note 34, at 87-88. Coercion is also evident in joint lending processes between the IMF and the World Bank involving structural adjustment, utilized “to give a debtor country relief from current payments of official debt” through the imposition of policy reforms “requiring that a greater proportion of national income be dedicated to debt repayment.” States that go through this process are often forced to accept conditions requiring policy reforms because they are already at imminent risk of default. Jonathan Cahn, *Challenging the New Imperial Authority: The World Bank and the Democratization of Development*, 6 HARV. HUM. RTS. J. 159, 171-72 (1993).

³⁵ *Surveillance*, IMF, available at: <http://www.imf.org/external/about/econsurv.htm> (last accessed Nov. 23, 2021).

³⁶ *Id.*; IMF, *Articles of Agreement* (1944), available at: <https://www.elibrary.imf.org/view/books/013/25022-9781513521244-en/25022-9781513521244-en-book.xml>; *IMF Releases Report on 2021 Article IV Consultation with Saudi Arabia*, U.S.-SAUDI BUSINESS COUNCIL (July 14, 2021), <https://ussaudi.org/imf-releases-report-on-2021-article-iv-consultation-with-saudi-arabia/>.

³⁷ *IMF Surveillance*, IMF (March 1, 2021), <https://www.imf.org/en/About/Factsheets/IMF-Surveillance>.

³⁸ Mussa & Savastano, *supra* note 34, at 89; *see also* IMF, *Haiti : Staff Report for the 2001 Article IV Consultation*, IMF Country Report No. 02/17 (Feb. 2002), <https://www.imf.org/en/Publications/CR/Issues/2016/12/30/Haiti-Staff-Report-for-the-2001-Article-IV-Consultation-15639> and Letter of Intent and a Memorandum of Economic and Financial Policies of the government of Haiti to the IMF (June 10, 2003), <https://www.imf.org/external/np/loi/2003/hti/01/index.htm> (in 2001, the IMF recommended, based on Article IV consultations, that Haiti widen its tax base by strengthening customs regulations, maintain a floating exchange rate, and implement an automatic price adjustment for petroleum. The government of Haiti subsequently sent a letter of intent to the IMF in 2003 pledging to implement each of these recommendations in its 2003); *see also* IMF, *Haiti: Staff Report for the 2015 Article IV Consultation and Request for a Three-Year Arrangement Under the Extended Credit Facility*, IMF Country Report 15/57 (June 2015), <https://www.imf.org/en/Publications/CR/Issues/2016/12/31/Haiti-Staff-Report-for-the-2015-Article-IV-Consultation-and-Request-for-a-Three-Year-43020> and *Haiti: Letter of Intent, Memorandum of Economic and Financial Policies, and Technical Memorandum of Understanding of the government of Haiti to the IMF* (May 4, 2015), <https://www.imf.org/external/np/loi/2015/hti/050415.pdf> (in 2015, the IMF recommended that Haiti improve property rights, enhance infrastructure, and modernize the tax system to create a more investment-friendly environment. The government of Haiti then committed to implementing these reforms in its letter of intent to the IMF).

³⁹ IMF, *Haiti: 2019 Article IV Consultation – Press Release, Staff Report, and Statement by the Executive Director for Haiti*, at 24, IMF Country Report No. 20/121 (Apr. 2020), <https://www.imf.org/en/Publications/CR/Issues/2020/04/20/Haiti-2019-Article-IV-Consultation-Staff-Report-and-Statement-by-the-Executive-Director-for-49351>; IMF, *Haiti: Selected Issues*, at 14, IMF Country Report No. 05/205 (June 2005), <https://www.imf.org/external/pubs/ft/scr/2005/cr05205.pdf>.

⁴⁰ *See* IMF, *Haiti: 2019 Article IV Consultation – Press Release, Staff Report, and Statement by the Executive Director for Haiti*, at 12, IMF Country Report No. 20/121 (Apr. 2020), <https://www.imf.org/en/Publications/CR/Issues/2020/04/20/Haiti-2019-Article-IV-Consultation-Staff-Report-and-Statement-by-the-Executive-Director-for-49351>.

⁴¹ *See, e.g.* IMF, *Haiti: 2019 Article IV Consultation – Press Release, Staff Report, and Statement by the Executive Director for Haiti*, at 12, IMF Country Report No. 20/121 (Apr. 2020), <https://www.imf.org/en/Publications/CR/Issues/2020/04/20/Haiti-2019-Article-IV-Consultation-Staff-Report-and-Statement-by-the-Executive-Director-for-49351>; *Haiti: Free From Slavery, Not Yet Free from Debt*, Jubilee Debt Campaign, <https://jubileedebt.org.uk/countries-in-crisis/haiti-free-slavery-not-yet-free-debt> (last visited Aug. 4, 2021); IMF, *Haiti: Request for Disbursement Under the Rapid Credit Facility—debt Sustainability Analysis*, Feb. 6, 2017, available at <https://www.elibrary.imf.org/view/journals/002/2017/038/article-A002-en.xml>; IMF & Int’l Dev. Ass’n [IDA], *Haiti: Joint Bank-Fund Staff Debt Sustainability Analysis 2012*, at 9, IMF Country Report 12/74, (Feb. 2012), <https://www.imf.org/external/pubs/ft/dsa/pdf/2012/dsacr1274.pdf>.

⁴² In 1987, the IMF imposed its first Structural Adjustment Facility (SAF) in Haiti. UNCTAD, *The Least Developed Countries 2000 Report*, https://unctad.org/system/files/official-document/ldc00_ch4.en.pdf. This was followed by its Enhanced Structural Adjustment Facility (ESAF) from 1996 to 1999. Press Release, IMF, *IMF Approves Three-Year ESAF Loan for Haiti* (Oct. 18, 1996), <https://www.imf.org/en/News/Articles/2015/09/14/01/49/pr9653#ftnote1>. From 2006 to 2009, it implemented its Poverty Reduction and Growth Facility (PRGF). IMF, *Application of IMF Social Expenditures Mandate*, available at: [https://www.treasury.gov/resource-center/international/int-monetary-fund/Documents/\(2009-07-17\)%20Social%20expenditure%20mandate%20decisions%20for%20Senator%20Brown%20final.pdf](https://www.treasury.gov/resource-center/international/int-monetary-fund/Documents/(2009-07-17)%20Social%20expenditure%20mandate%20decisions%20for%20Senator%20Brown%20final.pdf) (last accessed Nov. 29, 2021). From 2010, to 2019, it implemented its Extended Credit Facilities (ECF) from 2010 to 2019. IMF, *Haiti: Fourth Review Under the Extended Credit Facility*, Aug. 3, 2012, available at: <https://www.elibrary.imf.org/view/journals/002/2012/220/article-A001-en.xml>. Finally, it implemented its Rapid

Credit Facility (RCF) in 2020. IMF, *IMF Staff Country Reports*, April 20, 2020, <https://www.imf.org/en/Publications/CR/Issues/2020/04/20/Haiti-Request-for-Disbursement-Under-the-Rapid-Credit-Facility-Press-Release-Staff-Report-49353>.

⁴³ World Bank, *Implementation Completion Report: Haiti, Emergency Economic Recovery Credit*, app. B, Report No. 16166 (Dec. 9 1996),

<https://documents1.worldbank.org/curated/pt/305941468249658497/text/multi0page.txt>.

⁴⁴ The United States sought to return democratically-elected Aristide to power through an agreement between the United States, Aristide, and the coup leaders. Part of this agreement was an “economic-assistance plan,” which included the Emergency Economic Recovery Credit, and the implementation of which was a condition for “political and economic support for the Aristide government.” Lisa McGowan, *Democracy Undermined, Economic Justice Denied: Structural Adjustment and the Aid Juggernaut in Haiti*, DEV. GROUP FOR ALT. POL’YS (Jan. 1997), available at:

http://www.developmentgap.org/uploads/2/1/3/7/21375820/democracy_undermined.pdf; World Bank, *Implementation Completion Report: Haiti, Emergency Economic Recovery Credit*, *supra* note 44.

⁴⁵ Etant Dupain, *Covid-19/Ekonomi enfòmèl : desizyon ijan kijan pou n limite dega yo*, LE NOUVELLISTE (Mar. 24, 2020), <https://lenouvelliste.com/article/213949/covid-19ekonomi-enfomel-desizyon-ijan-kijan-pou-n-limite-dega-yo>.

⁴⁶ Tax reform schemes such as this one do not raise sufficient revenue to create a social safety net, and “are characterized by limited coverage, are often ad hoc, cover small geographical areas or narrowly defined, and are scattered across numerous institutions.” Oxford Pol’y Mgmt. & World Food Programme, *Study on Shock-Responsive Social Protection in Latin America and the Caribbean: Haiti Case Study*, at 4 (Aug. 2017), <https://www.opml.co.uk/files/Publications/a1537-shock-responsive-social-protection-latin-america-caribbean/haiti-case-study.pdf?noredirect=1>; World Bank, *Implementation Completion Report: Haiti, Emergency Economic Recovery Credit*, *supra* note 44.

⁴⁷ Iolanda Fresnillo, *Haiti 10 Years After the Earthquake: The Fight for Social and Economic Justice Continues*, EURODAD (Jan. 10, 2020), https://www.eurodad.org/10_years_haiti; IMF, *Haiti: Request for Disbursement Under the Rapid Credit Facility – Press Release; Staff Report; and Statement by the Executive Director for Haiti*, at 8, 24, IMF Country Report No. 20/123 (Apr. 2020), <https://www.imf.org/-/media/Files/Publications/CR/2020/English/1HTIEA2020003.ashx>; IMF, *Haiti: 2019 Article IV Consultation – Press Release, Staff Report, and Statement by the Executive Director for Haiti*, at 15, IMF Country Report No. 20/121 (Apr. 2020), <https://www.imf.org/en/Publications/CR/Issues/2020/04/20/Haiti-2019-Article-IV-Consultation-Staff-Report-and-Statement-by-the-Executive-Director-for-49351>.

⁴⁸ Hospitals across Haiti have been forced to operate at severely reduced capacity or close entirely, as a result of gang violence, destruction caused by natural disasters, and the fuel shortage. *Haiti: Violence puts patients, staff, and medical activities at risk*, MEDECINS SANS FRONTIERES (Jun. 11, 2021), <https://www.doctorswithoutborders.org/what-we-do/news-stories/news/haiti-violence-puts-patients-staff-and-medical-activities-risk>; Jacqueline Charles, *Haiti’s ongoing gang violence causes closure of charity-run emergency center*, MIA. HERALD (Aug. 2, 2021), <https://www.miamiherald.com/news/nation-world/world/americas/haiti/article253192428.html>; *Affrontement entre gangs armés, le centre Covid-19 de Delmas 2 en grande difficulté*, LE NOUVELLISTE (Jun. 21, 2021), <https://lenouvelliste.com/article/229928/affrontement-entre-gangs-armes-le-centre-covid-19-de-delmas-2-en-grande-difficulte>; *Haiti: Insecurity-triggered fuel shortage threatens newborns’ lives in hospitals*, UNICEF (Oct. 25, 2021), <https://reliefweb.int/report/haiti/haiti-insecurity-triggered-fuel-shortage-threatens-newborns-lives-hospitals>; UN Office for the Coordination of Humanitarian Affairs (OCHA), *Haiti: Earthquake, Situation Report No. 6* (Sept. 23, 2021), available at: https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/2021-09-23_haiti_earthquake_sitrep_no.6_en.pdf.

⁴⁹ 4.3 million Haitians are food insecure. *Haiti: Acute Food Insecurity Situation September 2021 - February 2022 and Projection for March - June 2022*, Integrated Food Security Phase Classification, <http://www.ipcinfo.org/ipc-country-analysis/details-map/en/c/1155096/?iso3=HTI> (last accessed Nov. 24, 2021).

⁵⁰ Over 200,000 people are in need of clean drinking water as a result of the August earthquake, and this number may increase due to disruptions in the water supply as a result of the fuel shortage. OCHA, *Haiti: Earthquake, Situation Report No. 6*, *supra* note 49; *Haiti - FLASH : Drinking water may be lacking in several municipalities as of this week...*, HAÏTI LIBRE (Aug. 11, 2021), <https://www.haitilibre.com/en/news-35189-haiti-flash-drinking-water-may-be-lacking-in-several-municipalities-as-of-this-week.html>.

⁵¹ Access to education is complicated as a result of extortion by gangs and the destruction of numerous schools in the August earthquake. *UNICEF: Gangs in Haiti are targeting schools and students*, AP NEWS (Nov. 2, 2021), <https://apnews.com/article/religion-united-nations-port-au-prince-haiti-d91f2a76ce6e3f5f51d8ed29aa9bace2>; *Haïti-Éducation/Criminalité : Au moins sept écoles de Port-au-Prince contraintes de payer les gangs en échange de leur sécurité, déplore l’Unicef*, ALTERPRESSE (Nov. 3, 2021), <http://www.alterpresse.org/spip.php?article27633>; Jacqueline Charles, *Half of Haiti’s earthquake victims still*

have not received assistance, U.N. says, MIA. HERALD (Sept. 16, 2021), <https://www.miamiherald.com/news/nation-world/world/americas/haiti/article254291798.html>; *Séisme : La Pohdh demande à l'État de pallier au défi de la réouverture des classes 2021-2022, dans le grand Sud d'Haïti*, ALTERPRESSE (Oct. 19, 2021), <https://www.alterpresse.org/spip.php?article27574>.

⁵² CESCR, *General Comment No. 2*, *supra* note 19.

⁵³ *Report of the Special Rapporteur on extreme poverty and human rights*, ¶¶ 14-15, 18-20, UN Doc. A/73/396 (Sept. 26, 2018), available at: https://srpovertyorg.files.wordpress.com/2018/10/a_73_396-sr-on-extreme-poverty-privatization.pdf.

⁵⁴ *Id.*

⁵⁵ CESCR, *General Comment No. 8*, *supra* note 19.

⁵⁶ CTR. FOR ECON. AND SOC. RIGHTS, PRINCIPLES FOR HUMAN RIGHTS AND FISCAL POLICY (May 2021), available in Spanish at <https://www.cesr.org/principles-human-rights-fiscal-policy>.

⁵⁷ GABRIELA SANCHEZ GUTIERREZ & RANDOLPH GILBERT, COOPERATION INTERNATIONALE EN HAÏTI: TENSIONS ET LEÇONS (2019).