

# TOUT MOUN SE MOUN: CRITICAL LEGAL EMPOWERMENT FOR HUMAN RIGHTS IN HAITI

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*In Haiti, critical legal empowerment (CLE) offers a lens to reimagine the promise of the law in a system that has historically excluded the majority population from its protection. Beginning with the belief that tout moun se moun—all people are people—CLE requires the dismantling of doctrines and rules that create different categories of people and also demands that all-powerful actors be held accountable for rights violations under the law. In Haiti, this means that the Haitian state and, crucially, its international “partners” be made responsible to those who have been excluded not only from, but by, the law.*

*This Article traces the thread of legal oppression and resistance in Haiti, examining efforts by Haitian communities to make demands of the law and the legal system based on the insistence that all Haitians have equal rights, that tout moun se moun. These demands do not stop with equality, however. They also include affirmative claims of dignity and life-affirming autonomy from the state, spaces where subsistence farmers can protect unique Haitian lifeways. This insistence—on the protection of life, freedom from abuse, and extension of basic rights to subsistence—including land, food sovereignty, and clean water—is ongoing but also radically incomplete. Only once the law can encompass these rights as against powerful actors who deprive both individuals and collectives of their rights and dignity will the promise of the Haitian revolution finally be fulfilled.*

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## INTRODUCTION

In Haiti, critical legal empowerment (CLE) offers a lens to reimagine the promise of the law in a system that has historically excluded the majority population from its protection. Beginning with the belief that *tout moun se moun*<sup>1</sup>—all people are people—CLE requires the dismantling of doctrines and rules that create different categories of people, some with more rights than others. And CLE also demands that all powerful actors be called to account for rights violations under law. In Haiti, this means that the Haitian state—and, crucially, its international “partners”—be made responsible to those who have for too long been excluded not only *from*, but *by*, the law. Exclusion-by-law began with the conquest and genocide of the Indigenous peoples of Saint Domingue, which would become the

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<sup>1</sup> Literally translated as, “all people are people,” meaning that all people are equal (authors’ translation).

“Pearl of the Antilles,”<sup>2</sup> operating under colonial legal doctrines such as *terra nullius*.<sup>3</sup> It continued through the enslavement, dehumanization, and routine torture of African captives.<sup>4</sup> Beginning in 1791 and ending in 1804, the Haitian revolution—which birthed the first nation formed through revolt of enslaved people—was a true rupture, not demanding, but enacting an end to the worst forms of oppression and the birth of a new polity.

However, when the battles of the revolution gave way to the newly independent country of Haiti, what emerged was a state based on division. On one side there were the land-owning, ruling elites and on the other side, rural subsistence and sharecropping farmers. The state served the interests of major property and business owners, whose rights—to own land, to trade, and to compound their wealth—were protected by both law and informal practices in which they paid state representatives for services or favors.<sup>5</sup> The poor farmers were deprived of legal agency, made “legally anonymous,”<sup>6</sup> and were required by early Haitian law to work on plantations under threat of criminal punishment.<sup>7</sup>

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<sup>2</sup> The term “Antilles” referred, before colonization, to the space that later became the Caribbean islands. In the seventeenth century, Spanish and French colonists referred to the island that today comprises Haiti and Dominican Republic as “Santo Domingo” and “Saint Domingue” respectively. “Saint Domingue” refers to the French colony before Haitian independence. See LAURENT DUBOIS, *HAITI: THE AFTERSHOCKS OF HISTORY 17–18* (2012) [hereinafter DUBOIS, AFTERSHOCKS].

<sup>3</sup> JEAN CASIMIR, *THE HAITIANS: A DECOLONIAL HISTORY 1* (Laurent Dubois trans., 2020). *Terra nullius* was the idea that land uninhabited by “civilized” people was effectively “empty” and could be occupied by colonizers. This was only one of many doctrines purporting to justify colonization of lands by Europeans. See Jörn Axel Kämmerer, *Colonialism*, in MAX PLANCK ENCYCLOPEDIAS OF INTERNATIONAL LAW (2018), <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e690?prd=MPIL> [<https://perma.cc/5YCX-94EJ>] (listing various economic, philosophical, and religious justifications for colonization).

<sup>4</sup> We use the terms “kidnapped Africans” and “African captives” after the practice of Jean Casimir, who draws attention to the fact that most enslaved people in Haiti had, in fact, been kidnapped in their lifetime and trafficked to the island of Saint Domingue, where they were held in captivity. See CASIMIR, *supra* note 3, at 8–9. See *infra* Section I.A and note 17.

<sup>5</sup> Louis Naud Pierre, *La juridicisation de la vie sociopolitique et économique en Haïti. Enjeux et limites*, 65 DROIT ET SOCIÉTÉ 123, 132 (2007).

<sup>6</sup> Franklin Midy, *Les paysans: ‘tout moun se moun.’* RELATIONS (Feb. 2, 2011), <https://cjf.qc.ca/revue-relations/publication/article/les-paysans-tout-moun-se-moun> [<https://perma.cc/K2L9-N6ZW>] (quoting PAUL MORAL, *LE PAYSAN HAÏTIEN* (Éditions Fardin 1961)) (commenting on the “legal anonymity” of Haitian peasant farmers, who existed on the margins of the Haitian state, deprived of services like water, sanitation, and healthcare, and deprived of recognition as full citizens).

<sup>7</sup> See CASIMIR, *supra* note 3, at 143–48 (summarizing rural police codes that required the arrest of people who lived in rural areas and could not prove that they were performing agricultural work).

Ironically, even the re-institution of European-style hierarchies and focus on production for export did not buy Haiti recognition as an independent country by the world's powerful nations, as the elites had hoped. Instead, Haiti was made a pariah—a symbol of the danger of equality and freedom from white supremacy—until its elites capitulated decades after independence to France's demands that they compensate France for the colonists' "losses" during the revolution.

Meanwhile, the rural masses who had freed themselves from slavery did not initially fix their sights on recognition by the state of their lifeways. Expecting nothing good from a state that sought to subject them anew to an exploitative system, they "organized a welcoming society in which customary law managed a collection of relationships of reciprocal solidarity" outside the confines of officialdom.<sup>8</sup> As Jean Casimir explains, these ties of solidarity have looked after the basic subsistence needs of the *moun andeyò*<sup>9</sup> (the outside people) ever since the revolution.<sup>10</sup>

In this divided society, and for most of Haiti's history, the legal system was instrumentalized by the elites and eluded by the mass population. With the emergence of popular movements in recent Haitian history, peasant organizers have insisted that the government change a legal order that was designed to keep them outside the protection of the law.<sup>11</sup> These movements helped usher in revisions to Haiti's constitutional order and system of legal recognition, such as equal birth registration for all.<sup>12</sup> Going further, these popular movements have called for transformation of systems of law that do not recognize their claims.<sup>13</sup> Specifically, peasant and local communities affected by major global economic forces including extractive activities have called for the recognition of their rights to land, water, and a healthy environment, by powerful actors that have historically treated them as illegible.<sup>14</sup>

This Article will trace the thread of legal oppression in Haiti and examine efforts by Haitian communities to make demands of the law and the legal system based in the insistence that all Haitians have equal rights, that *tout moun se moun*. The demands of the *moun*

<sup>8</sup> CASIMIR, *supra* note 3, at 186.

<sup>9</sup> Kreyòl for "les gens du en-dehors," literally, "the people from outside" or, more metaphorically, the "outside people" (authors' translation). This term, which carries the valence of people who are outside the urban centers and even outside the law, is commonly used to describe rural Haitian subsistence farmers or peasants.

<sup>10</sup> CASIMIR, *supra* note 3, at 186.

<sup>11</sup> See *infra* Section III.B.

<sup>12</sup> See *infra* Section II.A.

<sup>13</sup> See *infra* Section III.B.

<sup>14</sup> *Id.*

*andeyò* do not stop with equality, however. They also include affirmative demands for dignity and life-affirming autonomy from the state, spaces where subsistence farmers can protect unique Haitian lifeways. This insistence—on protection of life, freedom from abuse, and extension of basic rights to subsistence—including land, food sovereignty, and clean water—is ongoing but also radically incomplete. Only once the law can encompass these rights as against powerful actors who deprive both individuals and collectives of their rights and dignity will the promise of the Haitian revolution finally be fulfilled.

## I

### HISTORY OF DIVISION

#### A. *The Code Noir: French Law as a Tool of Enslavement*

The enslavement of Africans by Europeans was built upon the exclusion of some human beings from the realm of personhood, and their reduction—through conquest and brutality backed by law—to the status of chattel property. Although the fight to end the enslavement of Africans by Europeans has been told as a story of the emergence of enlightened legal norms,<sup>15</sup> the law was also a crucial tool for European enslavers. In 1685, Louis XIV promulgated the Code Noir, which provided his subjects in the French colonies with laws and regulations purporting to recognize their right to own the African people who they had caused to be kidnapped, made captive, and sold as property along chattel slavery's supply chain of terror and death.<sup>16</sup>

In the territory that would become modern-day Haiti, the brutality of the enslavers was without peer. Laurent Dubois explains that in French Saint Domingue, half of the enslaved Africans who survived the middle passage died within a few years of arrival.<sup>17</sup> Not all deaths were the result of torture, but physical abuse and grotesque forms of “punishment” were meted out regularly, and the whole system of slavery was built on violence, with specific forms of “punishment” set out in the Code Noir.<sup>18</sup> The violence used by plantation owners was matched by a cold calculation that it was most efficient to “work[] their slaves to death, and replace[] them by purchasing new ones” instead of ensuring enslaved people had adequate food, sleep, and

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<sup>15</sup> See, e.g., Jenny S. Martinez, *Britain and the Slave Trade: The Rise of Abolitionism*, in *THE SLAVE TRADE AND THE ORIGINS OF INTERNATIONAL HUMAN RIGHTS LAW* 16, 16 (2012).

<sup>16</sup> CASIMIR, *supra* note 3, at 27–28.

<sup>17</sup> LAURENT DUBOIS, *AVENGERS OF THE NEW WORLD: THE STORY OF THE HAITIAN REVOLUTION* 40 (2004) [hereinafter DUBOIS, *AVENGERS*].

<sup>18</sup> *Id.* at 39, 50.

medical care to survive from one generation to the next.<sup>19</sup> The severity of the violence used by enslavers exceeded what was set out in the Code Noir, the sparse “humane” provisions of which were seen as “absurd” by many white colonizers; these provisions—concerning matters such as hours of labor, requirements for clothing, and forms of punishment—were ignored and later revised to reflect the preferences of plantation owners.<sup>20</sup>

While later regulations and rules legalized even severe abuse of enslaved people, the core provisions of the Code Noir remained constant: Enslaved people could not own property and were considered devoid of legal personhood.<sup>21</sup> Small allowances were made for enslaved people: Under the Code Noir, they were allowed to work one day for themselves,<sup>22</sup> and many plantation owners allowed enslaved people to work small plots of land to grow their own food to eat.<sup>23</sup> The plantation owners were happy to spend less on food for enslaved people,<sup>24</sup> and they did not see these gardens as the property of enslaved people.<sup>25</sup> Jean Casimir underscores the importance of these garden plots as “a foyer of subversion” that “had the unexpected function of enabling the reconstruction of the private lives of the workers and the creation of a set of social links that lay outside the dominant system.”<sup>26</sup>

As Jean Casimir makes clear, Europeans used brutality in an effort to make captive Africans submit to their “fate”—enslavement.<sup>27</sup> Their rejection of this submission was met with legalized violence. For the enslaved people of Saint Domingue,

[w]hat animated the victims of illegitimate colonial power was the quest for autonomy, sovereignty, and the appropriation of one’s own responsibilities. What they sought was empowerment. It is their power that explains the promulgation of the Code Noir and the abusive regulations derived from it. The underside of this vile text that

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<sup>19</sup> *Id.* at 40.

<sup>20</sup> *Id.* at 29–31 (noting that the logic of slavery—violence against those deemed to be not fully human—was legalized in later versions of the relevant rules and regulations).

<sup>21</sup> Code Noir [Black Code] art. 28. (Fr.).

<sup>22</sup> *Id.* art. 24.

<sup>23</sup> See CASIMIR, *supra* note 3, at 329 (describing the purpose and utility of the garden plots to the plantation owners and captives).

<sup>24</sup> *Id.*

<sup>25</sup> See, e.g., Nicole Atwill, *Slavery in the French Colonies: Le Code Noir (the Black Code) of 1685*, LIBR. OF CONG.: IN CUSTODIA LEGIS: LAW LIBRS. OF CONG. BLOG (Jan. 13, 2011), <https://blogs.loc.gov/law/2011/01/slavery-in-the-french-colonies> [<https://perma.cc/9JWA-EDFW>].

<sup>26</sup> *Id.*

<sup>27</sup> See CASIMIR, *supra* note 3, at 28 (describing how enslavers “converted” African captives to slaves through “continual coercion”).

sought to strip the slaves naked, to make them ugly, reveals all the beauty and potential of the captives.<sup>28</sup>

This beauty and potential came to fruition in the enslaved Africans' successful rebellion, culminating in the creation of the Haitian state in 1804, a triumph of enslaved people's empowerment through resistance to dehumanization and colonialism.<sup>29</sup>

### B. *Gran Nèg se Leta*<sup>30</sup>: *The Birth of the Exclusionary State*

The Haitian revolution has been written about extensively, and its history will not be summarized again here. What is most relevant to this Article is that Haiti's successful Black revolution<sup>31</sup> was led by enslaved people who rose up to reject their subjugation, abolish slavery through force, destroy white supremacy, and "create a more egalitarian society of independent and landowning farmers."<sup>32</sup> The 1801 constitution declared the end of slavery in Saint Domingue, affirmed the freedom of all, and established the principle of equal protection of the law.<sup>33</sup> United with free Blacks, enslaved people led this revolution and were successful in part due to the clarity of united purpose that the brutality of the French colonists engendered among non-white people.<sup>34</sup>

The newly free state of Haiti sought to share its newfound freedom with others outside the country who had been kidnapped or enslaved, as well as those who were the targets of genocide. Around the time of independence, Haiti's leaders made clear that the country welcomed and would offer asylum to those escaping enslavement.<sup>35</sup> Its 1816 constitution included this passage:

All Africans and Indians, and the descendants of their blood, born in the colonies or in foreign countries, who come to reside in the

<sup>28</sup> CASIMIR, *supra* note 3, at 32.

<sup>29</sup> See generally Ada Ferrer, *Haiti, Free Soil, and Antislavery in the Revolutionary Atlantic*, 117 AM. HIST. REV. 40 (2012) (noting that the Haitian constitution implicitly offered asylum to fugitive slaves).

<sup>30</sup> "The state is boss." (authors' translation).

<sup>31</sup> DUBOIS, AVENGERS, *supra* note 17, at 6.

<sup>32</sup> ALEX DUPUY, *RETHINKING THE HAITIAN REVOLUTION: SLAVERY, INDEPENDENCE, AND THE STRUGGLE FOR RECOGNITION* xix (2019) [hereinafter DUPUY, *RETHINKING*].

<sup>33</sup> Salim Lamrani, *Toussaint Louverture, In the Name of Dignity. A Look at the Trajectory of the Precursor of Independence of Haiti*, ÉTUDES CARIBÉENNES [ONLINE], Apr. 2021, ¶ 22, <https://journals.openedition.org/etudescaribeennes/22675> [<https://perma.cc/XN4R-U26T>] ("There can be no slaves in this territory, servitude is abolished forever. All men are born there, live and die free . . . The law is the same for everyone, whether it punishes or it protects.") (quoting SAINT-DOMINGUE CONSTITUTION OF 1801 July 8, 1801 arts. 3, 5)).

<sup>34</sup> DUPUY, *RETHINKING*, *supra* note 32, at 36.

<sup>35</sup> See generally Ferrer, *supra* note 29, at 40–66 (describing how asylum for captured slaves was guaranteed and incorporated into the Haitian constitution).

Republic will be recognized as Haitians, but will enjoy the right of citizenship only after one year of residence.<sup>36</sup>

Thus, as Ada Ferrer notes, it was Haiti—not France or the United States—that realized the promise of equality for all included in the French *Déclaration des Droits de l'Homme et du Citoyen* and the U.S. Declaration of Independence.<sup>37</sup> The Haitian example of human rights and empowerment was therefore a real threat to racial capitalism, and European and American powers were determined to isolate and punish the new state, excluding them from the global economic order. As Jean Casimir explains, “the modern, racist, capitalist, and Christian world could never accept the Haitian state”—the country was excluded from this “exclusively Western club” that continuously rejected and looked down upon Haitian leaders’ attempts to gain entrance.<sup>38</sup>

In an effort to consolidate the Haitian state and win recognition of its sovereignty by the society of nations, Haitian elites worked externally to extol the importance of human equality and internally to build a state in which they controlled the territory of colonial Saint Domingue and built on the military success of the revolution.<sup>39</sup> The leaders of the new state of Haiti appropriated land once held by white plantation owners and redistributed it to military leaders and wealthy planters committed to re-establishing the system of export-oriented plantation farming.<sup>40</sup> In addition, a new Black bourgeoisie emerged and joined the ruling class. As Dupuy explains, this bourgeoisie was formed through “the instruments of state power and corruption” when new Haitian leaders confiscated land from French plantation and mulatto property owners and redistributed it, creating a new elite that depended on corruption while recognizing its need to maintain alliances with the preexisting economic elites.<sup>41</sup>

Led by these heterogeneous Haitian elites, the new state’s legal system sought to transform the rural mass of formerly enslaved people into “cultivators.”<sup>42</sup> Haiti’s early leaders adopted a key facet of the Code Noir, transforming its division of humanity—between slaves and masters—into a division between cultivators and land owners through a variety of rules and regulations culminating in the Code Rural, first

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<sup>36</sup> *Id.* at 43.

<sup>37</sup> *Id.* at 50–52.

<sup>38</sup> CASIMIR, *supra* note 3, at 22.

<sup>39</sup> *See id.* at 93–94 (describing the army’s role within nation-building and society).

<sup>40</sup> *Id.* at 35–38.

<sup>41</sup> ALEX DUPUY, *THE PROPHET AND POWER: JEAN-BERTRAND ARISTIDE, THE INTERNATIONAL COMMUNITY, AND HAITI* 39 (2006) [hereinafter DUPUY, *THE PROPHET*].

<sup>42</sup> “Cultivator” was the Haitian term for the rural Black masses who had been enslaved before freeing themselves through revolution. *See* CASIMIR, *supra* note 3, at 26, 36–39.



promulgated in 1826.<sup>43</sup> The Code required cultivators to contract themselves as sharecroppers or wage-laborers to landowners, and punished “vagabondage”—the refusal to enter into such work—and unauthorized travel away from the plantations as crimes.<sup>44</sup> The Code Rural also introduced the *corvée* system, through which rural residents were required to work on road repairs without wages if asked to do so by local officials.<sup>45</sup> In early years, the military “conducted scorched-earth campaigns against runaway workers” and rounded up those living in the “bush,” forcing them to labor on sugar plantations.<sup>46</sup>

These efforts were never fully successful, however. As Johnhenry Gonzalez explains:

Successive groups of rulers demanded that the former slaves continue to intensively cultivate sugar and coffee for export, but the masses refused to accept legal confinement and forced labor. Thousands fled into the countryside, where they created new communities and took up food production. Haiti’s early farmers succeeded in growing bumper crops of corn, beans, rice, millet, bananas, sweet potatoes, manioc, and yams. A land whose people had suffered years of hunger during periods of slavery and war had been turned into a kind of immense tropical kitchen garden that produced rich surpluses of food in exchange for relatively moderate outputs of labor.<sup>47</sup>

A crucial reason behind the legal system’s requirement that former slaves work as farmworkers was the enormous “indemnity” debt the state took on in 1825, which it planned to help repay through exporting key commodities.<sup>48</sup> This debt, “intended to compensate the former colonial proprietors [of France,] who demand[ed] to be indemnified” for the loss of their land through the revolution, was demanded by Charles X of France.<sup>49</sup> Under the intense immediate threat of a naval blockade and the ongoing economic threat of remaining a pariah among nations if it did not agree to the indemnity,

<sup>43</sup> DUPUY, *RETHINKING*, *supra* note 32, at 102; *see* CASIMIR, *supra* note 3, at 119, 127.

<sup>44</sup> CASIMIR, *supra* note 3, at 143.

<sup>45</sup> DUBOIS, *AFTERSHOCKS*, *supra* note 2, at 105.

<sup>46</sup> Miranda Frances Spieler, *Peasant Resistance in Post-Revolutionary Haiti*, 49 *REVS. AM. HIST.* 413, 415 (2021).

<sup>47</sup> JOHNHENRY GONZALEZ, *MAROON NATION: A HISTORY OF REVOLUTIONARY HAITI* 4 (2019).

<sup>48</sup> CASIMIR, *supra* note 3, at 171 (“Elaborated less than a year after France had accepted Pétion’s proposition of paying an indemnity in exchange for the landed property of the former colonists, the Rural Code was meant to help pay this debt that also willed itself to be national.” (citations omitted)).

<sup>49</sup> DUPUY, *RETHINKING*, *supra* note 32, at 91 (quoting the French ordinance of 1825 stipulating France’s conditions for the recognition of Haiti’s independence).

the Haitian government capitulated to the demands of Charles X of France and used the enormity of the debt as a justification for forcing the rural population to work on the plantations.<sup>50</sup> In effect, the Haitian elites bought the external recognition of their new nation—winning sovereignty in exchange for the continuing subjugation of their countrymen, who effectively lost their human rights again.

The Haitian Code Civil applied to city-dwellers, high-ranking military officers, major business owners, and significant landowners, while the Code Rural governed the activities of the mass majority of the population.<sup>51</sup> In what Casimir calls an “apartheid” system, the elites were protected by the Code Civil, while farmworkers were constrained by the Code Rural and punished through the Code Pénal if they refused to work within the system built by the elites.<sup>52</sup> In doing so, post-independence Haitian law drew sharp distinctions between farmworkers and landowners, creating “two classes of citizens”;<sup>53</sup> the *moun andeyò* lived in one legal system, the elite in another. This system has never managed to truly encompass the lives of what Jean Casimir calls the “sovereign people,” who had created family structures, local markets, and community practices that eluded the control of the state.<sup>54</sup> Casimir includes “[i]ndivisible family property, the Kreyòl language, the forms of spirituality encapsulated in Vodou,” as well as cultural practices like music, dance, and leisure activities, as “dimensions of national life” outside the capacity of the state to regulate.<sup>55</sup> What Casimir sees as a testament to the power of the rural people’s institutions and customs has often been seen as a failure of the civil state to extend its power to the whole nation. Louis Naud Pierre, for example, speaks of the failure of Haitian authorities to install a “space of legality” where private and public actors could “design the modalities of their coexistence, under pain of sanction.”<sup>56</sup> For Casimir, this failure is a sign of the people’s resistance, if not empowerment.<sup>57</sup>

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<sup>50</sup> See generally *id.* at 91–133 (describing Haitian president Jean-Pierre Boyer’s acceptance of the indemnity and the tactics used by the government to keep laborers working on farms).

<sup>51</sup> CASIMIR, *supra* note 3, at 171.

<sup>52</sup> *Id.* at 170–72.

<sup>53</sup> DUBOIS, AFTERSHOCKS, *supra* note 2, at 105.

<sup>54</sup> CASIMIR, *supra* note 3, at 304.

<sup>55</sup> *Id.*

<sup>56</sup> Pierre, *supra* note 5, at 124–25 (authors’ translation).

<sup>57</sup> CASIMIR, *supra* note 3, at 304–05.

C. *Pa Konnen Pa al Lajistis*<sup>58</sup>: *The Law as a “Pact of Domination”*

Having constructed a legal system to divide its society by class, the Haitian state retained its focus on paying its indemnity debt,<sup>59</sup> through export commodities, from sugar to coffee to bananas.<sup>60</sup> In doing so, it largely disregarded the majority of the Haitian population, seeing them almost solely through their role as farmworkers through most of Haiti’s first two centuries as a sovereign nation.<sup>61</sup> During this time, Haiti’s dominant economic and political classes forged a “pact of domination”<sup>62</sup> over the *moun andeyò* while fighting amongst themselves.<sup>63</sup> All of this occurred under the watchful eye and sometimes the meddling hands of France and Germany—states to whom Haiti owed significant debts—and the United States, which sought to expand its influence through financial control and direct intervention in Haiti.<sup>64</sup>

In 1915, the United States sent Marines to occupy Haiti, restore order, and ensure that Haiti serviced its external debt. It did so in part by seizing Haiti’s financial institutions and reserves and controlling its customs houses.<sup>65</sup> As Alexis has explained, although the United States and Haiti entered into a treaty purportedly aimed at establishing cooperation between the two nations, the treaty’s provisions “rendered Haiti an imperial entity and granted the United States far-reaching fiscal and political rights.”<sup>66</sup> The U.S. forces—“white, male,

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<sup>58</sup> Literally translated as, “Those who don’t know, don’t go to court,” meaning “those who are not formally educated do not utilize the legal system” (authors’ translation). This proverb is rooted in the realities of the Haitian legal system, in which not only is illiteracy a barrier to full participation, but illiteracy in French is also a barrier, since both written texts and oral proceedings are in French.

<sup>59</sup> See, e.g., Various, *Trial About the Consolidation of Debt*, in THE HAITI READER: HISTORY, CULTURE, POLITICS 138, 138 (Laurent Dubois et al. eds., 2020) [hereinafter THE HAITI READER] (“Throughout the nineteenth and early twentieth centuries, the Haitian government was burdened by the weight of its foreign debt, which it consistently paid, to the detriment of other national expenditures.”).

<sup>60</sup> FEQUIERE VILSAINT & MICHAEL R. HALL, HISTORICAL DICTIONARY OF HAITI 81 (2d ed. 2021).

<sup>61</sup> As one recent historical summary concluded, “[f]reedom from slavery did not significantly improve the quality of life for most [B]lack Haitians.” *Id.* at 5.

<sup>62</sup> DUPUY, THE PROPHET, *supra* note 41, at 36, 50 (describing the inherent conflict within any “pact of domination,” as well as the capture and consolidation of power by the Black bourgeoisie and middle class during the Duvalier dictatorships). See *infra* notes 86–90 for a discussion of the Duvalier era.

<sup>63</sup> See *id.* at 50.

<sup>64</sup> See VILSAINT & HALL, *supra* note 60, at 5; Michael Deibert, *Istwa (History)*, in HAITI WILL NOT PERISH: A RECENT HISTORY 11, 11–44 (2017).

<sup>65</sup> See YVELINE ALEXIS, HAITI FIGHTS BACK: THE LIFE AND LEGACY OF CHARLEMAGNE PÉRALTE 35–53 (2021).

<sup>66</sup> *Id.* at 47.

and predominately Southern,”<sup>67</sup> some steeped in racism and a sense of superiority<sup>68</sup>—went on to acquire agricultural export companies, establish the Gendarmerie d’Haïti (Haitian National Guard), and impose a United States-written constitution that perpetuated forced labor and allowed foreigners to own land for the first time since the Haitian revolution.<sup>69</sup> During the U.S. occupation, the law was used as a tool of imperialism and forced labor.<sup>70</sup> U.S. authorities tried to justify their use of forced labor by referring to—and using the eighteenth-century legal term, derived from the Code Rural—*corvée*.<sup>71</sup> Those conscripted built roads, hospitals, and schools, and slept in “*corvée* camps,” in what the United States defended as an effort to modernize the nation.<sup>72</sup> Although there was initial elite support for the occupation, many other Haitians fervently opposed the occupation from its outset—especially the unpaid labor of the *corvée* that accompanied it.<sup>73</sup>

From 1915 to 1922, the armed resistance to the U.S. occupation, known as *cacos*, waged a guerrilla effort to resist the occupation by force.<sup>74</sup> The height of this resistance came in 1918, when some 40,000 Haitians rose up against the invasion under the leadership of Charlemagne Peralte.<sup>75</sup> An estimated 3,000–11,500 Haitians were killed during this period; not only were fighters killed in battle, but U.S. Marines also systematically burned neighborhoods seen as sup-

<sup>67</sup> *Id.* at 35.

<sup>68</sup> See, e.g., HANS SCHMIDT, THE UNITED STATES OCCUPATION OF HAITI, 1915-1934, at 69 (1995) (quoting U.S. officials using racist terms and white supremacist frameworks to interpret the Haitian situation).

<sup>69</sup> See ALEXIS, *supra* note 65, at 35–53; VILSAINT & HALL, *supra* note 60, at 5–6. See generally MARY A. RENDA, TAKING HAITI: MILITARY OCCUPATION AND THE CULTURE OF U.S. IMPERIALISM, 1915–1940 (2001).

<sup>70</sup> The U.S. occupation of Haiti lasted from 1915–34. See RENDA, *supra* note 69, at 10.

<sup>71</sup> See, e.g., ALEXIS, *supra* note 65, at 35–53. The U.S. forces, searching for a justification for the use of unpaid labor, called this practice *corvée* after the practice included in the Code Rural in which cultivators were required to do road work without being paid; this practice was at the time regarded as tantamount to a return to slavery. See JONATHAN M. KATZ, GANGSTERS OF CAPITALISM: SMEDLEY BUTLER, THE MARINES, AND THE MAKING AND BREAKING OF AMERICA’S EMPIRE 244–45 (2021).

<sup>72</sup> ALEXIS, *supra* note 65, at 50–51.

<sup>73</sup> RENDA, *supra* note 69, at 86–91. See, e.g., RICHARD A. BEST, JR., CONG. RSCH. SERV., OC 94-459 F, THE U.S. OCCUPATION OF HAITI, 1915-1934 1 (1994), [https://www.everycrsreport.com/files/19940526\\_94-459\\_944aec5979ade3ff37b1abb7f44ed2aab96d4383.pdf](https://www.everycrsreport.com/files/19940526_94-459_944aec5979ade3ff37b1abb7f44ed2aab96d4383.pdf) [<https://perma.cc/7FD5-8SVC>].

<sup>74</sup> See, e.g., ALEXIS, *supra* note 65, at 54–79 (providing a historical overview and interpretation of the *cacos* as a nationalist force); see also KATZ, *supra* note 71, at 202–24 (describing Smedley Butler’s mission to defeat the *cacos* resistance).

<sup>75</sup> VILSAINT & HALL, *supra* note 60, at 63, 254.

porting the *cacos*.<sup>76</sup> On October 31, 1919, U.S. Marines shot and killed Péralte.<sup>77</sup>

In the later years of the occupation, the U.S. government's efforts to change Haiti took on a more "humanitarian" face, downplaying military missions and stressing education and the transformation of Haitian agricultural techniques.<sup>78</sup> This brand of occupation was built on the idea that Haitian peasants were "unscientific" and needed to be taught new methods for farming with "the aim of bolstering agriculture for export that would employ wage laborers."<sup>79</sup>

Alexis emphasizes that the roots of the *caco* resistance lie in the revolution, explaining that this guerrilla force was not so much a particular militant group, but rather a "specifically Haitian cultural tradition" in which "fighters appear[ed] and reappear[ed] when needed, and then blend[ed] back into the state as ordinary citizens."<sup>80</sup> Far from being lawless, Alexis argues, the *cacos* were fighting against imperialism—using the discourse of law and even implementing a new constitution—"to create a governmental structure to protect and enhance their way of life and wellbeing."<sup>81</sup> This way of life was threatened not only by foreign occupation, but also by widespread expropriation of peasant lands in favor of American multinational agricultural companies.<sup>82</sup>

Indeed, while many scholarly works treat the rural majority as essentially victimized by a predatory state during most of Haitian history, this is only part of the story. As Jean Casimir has written, Haitian cultivators built, enjoyed, and protected a system of collective solidarity outside the state, developing their own language, culture, collective economy,<sup>83</sup> and customary law. Cultivators mostly lived below the gaze of the state, following customs concerning child-rearing and family life that they had forged through generations following their

<sup>76</sup> RENDA, *supra* note 69, at 10, 143–46.

<sup>77</sup> KATZ, *supra* note 71, at 249.

<sup>78</sup> Jennifer Greenburg, *The One Who Bears the Scars Remembers': Haiti and the Historical Geography of U.S. Militarized Development*, 51 J. HIST. GEOGRAPHY 52, 58 (2016).

<sup>79</sup> *Id.*

<sup>80</sup> ALEXIS, *supra* note 65, at 58.

<sup>81</sup> *Id.* at 55.

<sup>82</sup> See Pierre, *supra* note 5, at 137 ("De vastes campagnes d'expropriation des petits paysans au profit des multinationales agro-industrielles américaines sont menées. Celles-ci, tirant notamment parti de l'occupation américaine entre 1915 et 1934, s'octroient de vastes domaines consacrés à la culture des denrées d'exportation." (Vast campaigns were conducted to expropriate small farmers for the profit of American multinational agribusinesses. Those campaigns, taking advantage of the 1915–34 American occupation, granted themselves vast lands dedicated to cultivating commodities for export.) (editors' translation)).

<sup>83</sup> CASIMIR, *supra* note 3, at 303–05.

enslavement (the “*lakou* [communal household system], *plaçage* [common law marriage], the relationship between husband and wife, gender relations, godparent relations”), embracing customary rules (about “inheritance rights, collective individual property, the *konbit* [cooperative farm labor system], the *sols* [informal collective lending societies]”), as well as “so many other institutions of so-called customary law” that remained below the attention of the Haitian government.<sup>84</sup> This invisibility has been a blessing and a curse. It allowed the cultural flourishing of Haiti’s rural communities, but it also left these communities without access to the basic services of water and sanitation, healthcare, decent housing, and quality education.<sup>85</sup>

During the decades following the U.S. occupation, Haiti’s elites and military leaders fought for control of the state. “Papa” and “Baby Doc” were father and son dictators who ruled, in total, from 1957 to 1986. Papa Doc was a medical doctor who challenged the mulatto elite’s exclusive grasp on power, instrumentally embracing Vodou and using its cultural referents to inspire fear and exert control through torture and extrajudicial execution. Papa Doc’s vehement anti-communist rhetoric won him U.S. economic support, which he pocketed while the Haitian populace starved.<sup>86</sup> Perverting the Afrocentric, pro-peasantry cultural agenda of Indigenist ideology, Duvalier crafted a political platform that combined racial mystification and authoritarianism into a discourse of *noirisme* (Noirism). This doctrine of essentialist Black power valorized Haiti’s African roots exclusively and posited absolute racial purity as the foundation for an authentic national identity in which Haiti’s “[B]lack” citizens would be empowered. Duvalier’s color-based fracturing of the nation quickly revealed itself to be little more than a means by which wealthy urban insiders could exploit Haiti’s majority population.<sup>87</sup> Duvalier’s son, Baby Doc, took control when his father died, continuing his brutality and corruption until an outflow of exiles seeking safety from his grave abuses

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<sup>84</sup> *Id.* at 391 (authors’ translation).

<sup>85</sup> *See id.* at 304 (“The local family, community, and internal markets, along with other stable institutions and arrangements that developed across the nation, successfully escaped the public authorities and their legal system both before 1804 and after. . . . The public administration was incapable of regulating, planning, or obstructing this cadence.”). Rural Haitian communities still lack access to basic infrastructure like potable water and improved sanitation, as well as access to healthcare and quality education. *See Country Data for Haiti, Human Development Reports*, UNITED NATIONS DEV. PROGRAMME (Dec. 15, 2020), <https://hdr.undp.org/data-center/specific-country-data#/countries/HTI> [<https://perma.cc/X69P-X2WF>].

<sup>86</sup> VILSAINT & HALL, *supra* note 60, at 7, 112–13.

<sup>87</sup> THE HAITI READER, *supra* note 59, at 307.

prompted the United States to pressure the dictator to flee the country.<sup>88</sup>

The Duvaliers “arrested, tortured, killed, exiled, or drove underground” those who opposed them—or who they imagined opposed them—along with their children, spouses, and colleagues.<sup>89</sup> The law was used as a tool of control; the country’s parliament was under dictatorial control; and rule was by decree.<sup>90</sup> During this period, Haiti’s citizens lived in an authoritarian society.

Finally, in 1986, after the United States and the Catholic Church signaled their displeasure with Baby Doc, and amid intense political protest and outcry, the ruling family fled Haiti.<sup>91</sup> What followed was several years of upheaval and activism. Popular organizations and priests committed to liberation theology demanded an uprooting of the Duvaliers’ system of terror, while “a cadre of international aid organizations and financial regulatory institutions . . . doubled down on their neoliberal economic policies of free market trade, which increased the role of private sector investment and decreased the role of the state.”<sup>92</sup> As Mark Schuller explains, the new government implemented a series of neoliberal reforms sought by the international community.<sup>93</sup> When the government floated the Haitian currency, its value plummeted and wages dropped. When agricultural tariffs were lifted, Haiti’s smallholder farmers could not compete with cheap foreign goods and lost their footing. A process of privatization of Haiti’s state-owned companies began, placing key industries in foreign hands.<sup>94</sup> These economic forces were only some of the factors that made the period following Baby Doc’s flight into exile one of profound uncertainty. However, it was also a time of popular participation and movement organizing.<sup>95</sup> As discussed in Part II, a popular movement emerged, setting its sights on a transition to democracy.

<sup>88</sup> DUPUY, *THE PROPHET*, *supra* note 41, at 59–61.

<sup>89</sup> *Id.* at 45, 47.

<sup>90</sup> *Id.*

<sup>91</sup> VILSAINT & HALL, *supra* note 60, at 7. The Catholic Church had joined with liberation theologians who were demanding change in the years leading up to the flight of the Duvaliers. Calling attention to “the division, the injustice, the excessive inequality, the degradation of the quality of life, misery, hunger, widespread fear . . . peasants unable to live from the earth, of people overcrowding, without work, in cities, of dispersed families, of victims of various frustrations,” Pope John Paul II in 1983 gave his blessing to Haitian priests and parishioners working against these conditions. *THE HAITI READER*, *supra* note 59, at 397.

<sup>92</sup> *THE HAITI READER*, *supra* note 59, at 389–90.

<sup>93</sup> MARK SCHULLER, *KILLING WITH KINDNESS: HAITI, INTERNATIONAL AID, AND NGOs* 21 (2012).

<sup>94</sup> *Id.*

<sup>95</sup> See *THE HAITI READER*, *supra* note 59, at 391–92 (discussing the varied classes, groups, and sectors that emerged following the end of the Duvalier regime).

## II

DEMOCRATIC TRANSITION, NEOLIBERAL REFORM, AND  
NATIONAL CRISESA. *Tout Moun se Moun*<sup>96</sup>: *Haiti's Constitution of 1987  
and Equal Birth*

With the flight of the Duvaliers came the potential for a new relationship between the state and the majority population of Haiti, and thus also for a new role of law in Haitian life:

Opportunities emerge[d]. A moment of dreams and challenges coincide[d] with legitimate demands to redefine the relationship between the state and the people, the dominant and the dominated, the rich and the impoverished, the rights-holders and those left behind. A new model of society capable of responding to these demands seemed necessary and opportune, since the era of elites guiding the State was outdated.<sup>97</sup>

A true debate was underway, encompassing a popular movement, made up of peasants' organizations, trade unions, radical Catholic priests, local organizations based in poor urban areas, intellectuals, and democracy activists.<sup>98</sup> As Alex Dupuy has explained, although this was an extremely heterogeneous group, "the aggregated demands advanced by the popular movement amounted to nothing short of a call for a radical democratic reconstruction of Haitian society."<sup>99</sup>

A key initiative of this movement was the drive for a new constitution to establish the ground rules for a more democratic Haiti. A constituent assembly (*assemblée constituante*, "Assemblée") was created, charged with considering, debating, and adopting a new constitutional text. Although less than seven percent of the Haitian population voted in the balloting to establish the *Assemblée*, broad swaths of Haitian society participated in the debate about the constitution's content.<sup>100</sup> Following these debates, the draft constitution proposed a semi-presidential political system<sup>101</sup> and boldly prohibited

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<sup>96</sup> "All People Are People." (authors' translation).

<sup>97</sup> Rochambeau Lainy & Jean Fritzner Etienne, *La constitution de 1987: sa gloire et ses travers*, LE NOUVELLISTE (May 24, 2021), <https://lenouvelliste.com/article/229169/la-constitution-de-1987-sa-gloire-et-ses-travers> [<https://perma.cc/7DHG-YQXE>] (authors' translation).

<sup>98</sup> DUPUY, THE PROPHET, *supra* note 41, at 64.

<sup>99</sup> *Id.* at 65.

<sup>100</sup> Michele Zebich-Knos, *The New Haiti: The More Things Change, the More They Stay the Same*, 9 J. THIRD WORLD STUD. 339, 341 (1992).

<sup>101</sup> VILSAINT & HALL, *supra* note 60, at 8.



Duvalierists from holding office.<sup>102</sup> The draft constitution protected the right to property and also embraced international human rights, setting out core civil and political rights, including the right to life and liberty. In large part due to organizing by peasant organizers and community-based groups, key rights long withheld from the rural majority were also included, including recognition of Kreyòl as one of two official languages of Haiti, the eradication of discrimination against Vodou, and the right to equality before the law.<sup>103</sup> The draft constitution also recognized important economic and social rights, including the rights to housing, education, food, and social security.<sup>104</sup> More than fifty percent of the electorate turned out for the constitutional referendum, and ninety-nine percent of the ballots cast were in favor of its adoption.<sup>105</sup>

While this transition unfolded, the post-Duvalier leaders implemented a series of neoliberal reforms, including liberalizing Haitian markets. As discussed above, the open-market approach led to local markets filled with low-cost imported staple goods; this left peasants unable to compete and accelerated the decline of living standards for those engaged in subsistence farming.<sup>106</sup>

Haiti held its first democratic election in 1990, making a young activist priest, Jean-Bertrand Aristide, Haiti's new president.<sup>107</sup> At the time, Aristide was a charismatic priest in the tradition of liberation theology. He promised to “reverse nearly two hundred years of despotic government, repression, exploitation, and injustice by the country's tiny wealthy economic and political ruling classes and to create a more just, egalitarian, and democratic society.”<sup>108</sup> Given the opposing interests of Haiti's entrenched elites, bureaucratic cadres, and well-armed military, as well as the neoliberal demands from inter-

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<sup>102</sup> CONSTITUTION DE LA RÉPUBLIQUE D'HAÏTI DE 1987 art. 133 (vesting the executive power in the President of the Republic and Prime Minister); *id.* art. 291 (barring those involved with the “dictatorship” from holding office).

<sup>103</sup> *Id.* art. 5 (Kreyòl as one of two official languages); *id.* art. 18 (equality before the law), art. 30 (freedom of religion); *id.* art. 297 (repealing, *inter alia*, laws outlawing “superstitious beliefs”; this provision was abrogated by the Constitutional Law of 9 May 2011 / 19 June 2012 (using Haitian date format), though art. 30's protections remain). For a discussion of the role of peasant organizing, see Sarah Hopsort, *Au cœur des Caraïbes, à Haïti: un mouvement paysan engagé pour le changement social*, AGTER (Mar. 2017), [https://www.agter.org/bdf/fr/corpus\\_chemin/fiche-chemin-669.html](https://www.agter.org/bdf/fr/corpus_chemin/fiche-chemin-669.html) [<https://perma.cc/N5PB-ERMZ>].

<sup>104</sup> CONSTITUTION DE LA RÉPUBLIQUE D'HAÏTI DE 1987 art. 22.

<sup>105</sup> Zebich-Knos, *supra* note 100, at 339, 341.

<sup>106</sup> See, e.g., Josiane Georges, *Trade and the Disappearance of Haitian Rice*, THE MANDALA PROJECTS (Jun. 2004), <https://mandalaprojects.com/giant-project/haitirice.htm> [<https://perma.cc/4P4X-F4J8>].

<sup>107</sup> VILSAINT & HALL, *supra* note 60, at 8.

<sup>108</sup> DUPUY, THE PROPHET, *supra* note 41, at 17.

national financial actors and powerful states, Aristide's mandate to upend the established power of the elite was doomed from the start. Seven months after he was inaugurated, President Aristide was sent into exile by a military coup.<sup>109</sup> The de facto regime then conducted a violent crackdown on Aristide supporters, killing, detaining, and torturing thousands during its three-year rule.<sup>110</sup> Large numbers of peasant organizers were among the victims, and many fled to the Dominican Republic or—following the long tradition of peasant *mawonaj*—went into hiding in Haiti's mountainsides.<sup>111</sup> In 1994, under threat of U.S. military intervention, the de facto regime agreed to step down. Aristide was returned to Haiti to serve the remaining months of his term in office, having agreed to implement the neoliberal economic policies the international financial institutions and powerful states were demanding as a condition for their support.<sup>112</sup> The end to the de facto regime brought an end to the wanton abuse of human rights, and Aristide managed to disband the military and replace it with a civilian police force.<sup>113</sup>

Aristide made another crucial change in the legal framework in the last months of his presidency, passing a decree abolishing the stigmatizing “peasant” birth certificate and guaranteeing all Haitians access to equal civil status.<sup>114</sup> Before this decree, Haitian birth certificates had announced across the top, in capital letters, the newborn's

<sup>109</sup> VILSAINT & HALL, *supra* note 60, at 8.

<sup>110</sup> COMMISSION NATIONALE DE VÉRITÉ ET DE JUSTICE & UNIV. OF KAN. INST. OF HAITIAN STUD., *SI M PA RELE* 1 (1998) (Bryant C. Freeman, ed.).

<sup>111</sup> Hopsort, *supra* note 103. As Robert Fatton explains, “*mawonaj* [i]s . . . ‘resistance through elusiveness.’ When threatened, leaders and groups blended into the woodwork until it was safe to re-emerge. This practice would serve them well, not just during their early days of organization, but in the future. Using *mawonaj*, Haiti's evolving grassroots movement survived Duvalier and the . . . military regimes” that followed. Robert Fatton Jr., *Citizenship and Democratization in Haiti*, in *THE FUTURE OF LIBERAL DEMOCRACY: THOMAS JEFFERSON AND THE CONTEMPORARY WORLD* 203, 219 n.10 (R.K. Ramazani & Robert Fatton Jr., eds., 2004) (quoting Robert Maguire, *Bootstrap Politics: Elections and Haiti's New Public Officials*, in *THE HOPKINS-GEORGETOWN HAITI PROJECT, THE HAITI PAPERS* 3 (1996)).

<sup>112</sup> Alex Dupuy, *Jean-Bertrand Aristide's Return: Homecoming or Comeback?*, *THE GUARDIAN* (Mar. 18, 2011), <https://www.theguardian.com/commentisfree/cifamerica/2011/mar/18/haiti-jean-bertrand-aristide> [<https://perma.cc/LT69-EERS>].

<sup>113</sup> VILSAINT & HALL, *supra* note 60, at 25.

<sup>114</sup> Jobnel Pierre, *La question des actes de naissance*, *LE NOUVELLISTE* (Apr. 27, 2005), <https://lenouvelliste.com/article/17445/la-question-des-actes-de-naissance> [<https://perma.cc/C9TE-NJ4B>] (“Le décret du 16 mai 1995 interdit formellement d’inscrire en tête des actes de naissance de citoyens et de citoyennes vivant en milieu rural la mention paysan. Dans ce décret, l’acte de naissance est exonéré de toutes taxes et de tous droits.” (The May 16, 1995 decree formally prohibits birth certificates from mentioning peasant status for citizens in rural areas. This decree exempts birth certificates from all taxes and duties.) (editors’ translation)).

status—whether they were a “citizen” or a “peasant.” The mark of being a peasant, which Franklin Midy has characterized as a sign of being sub-human, a mark of not being “civilized,” and of falling below the regard of the state, demonstrated the enduring “quasi-apartheid” of the Haitian legal system.<sup>115</sup> The recognition of citizens by their state is a basic requirement for individuals to enjoy the protection of the law, to vote, and to access essential services, such as registering for school, obtaining a passport, or opening a bank account.<sup>116</sup> Using the “peasant” birth certificate for all of these activities opened the mass majority of Haitians to overt and covert forms of discrimination. Many eligible for the “peasant” designation lacked a birth certificate altogether, since the civil servants charged with preparing these documents often demanded unaffordable and illegal payments for the basic right of being legally recognized by the state.<sup>117</sup> While things did not change overnight—reports suggest that for millions of Haitians, birth registration remains a real obstacle<sup>118</sup>—the eradication of a legally-sanctioned social branding was a major development in moving Haiti toward a legal system based on rights instead of privileges.

### B. *The Long Durée of the Democratic Crisis and Neoliberal “Reform”*

The quarter of a century since Haiti’s first peaceful democratic transition—from one elected president (Artistide) to another (Préval) in 1996 and including a second Aristide presidency and coup in 2004—has been marked by repeated crises including: a horrific earthquake in 2010, a devastating hurricane in 2016 (Hurricane Matthew), and the ongoing implementation of neoliberal restructuring. In brief, Aristide’s former Prime Minister, René Préval, became president following the 1995 elections and began to implement the promised neoliberal changes, including the privatization of state-owned enterprises.<sup>119</sup> Aristide formed a new political party in response and won a

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<sup>115</sup> Midy, *supra* note 6.

<sup>116</sup> Saint-Pierre Beaubrun, *État civil en Haïti: Normes, procédures et pratiques; Contribution à la modernisation du système national d’enregistrement des faits de l’état civil* 47–48 (Oct. 2021) (unpublished manuscript) (on file with authors).

<sup>117</sup> Ricardo Lambert & Valéry Daudier, *L’État haïtien peine toujours à enregistrer les naissances*, LE NOUVELLISTE (May 25, 2021), <https://lenouvelliste.com/article/229199/letat-haitien-peine-toujours-a-enregistrer-les-naissances> [<https://perma.cc/GAN3-2DNY>]. Although it is now prohibited to include the label “peasant” on birth certificates, studies have shown that the practice continues. See Beaubrun, *supra* note 116, at 117 n.2; Pierre, *supra* note 114.

<sup>118</sup> Beaubrun, *supra* note 116, at 13.

<sup>119</sup> See PETER HALLWARD, DAMMING THE FLOOD: HAITI, ARISTIDE, AND THE POLITICS OF CONTAINMENT 39, 63 (2007).

disputed reelection in 2000. He was driven out of power in 2004 following mass demonstrations and an armed insurgency made up of former members of the armed forces and anti-government gangs.<sup>120</sup>

The interim government that followed Aristide's second exit requested UN peacekeeping forces; the Security Council-authorized Mission des Nations Unies pour la Stabilisation en Haïti (MINUSTAH) swelled to 7,000 forces and stayed for thirteen years.<sup>121</sup> In 2006, Préval was again elected president. As the 2010 election approached, a massive earthquake flattened significant portions of Port-au-Prince and killed an enormous number of Haitians.<sup>122</sup> Voter turnout was very low for the rescheduled elections some months later; a runoff election for the top two candidates was required since no candidate gathered the needed majority to win outright.<sup>123</sup> Amid cries of fraud, the electoral council disqualified the candidate who had received the largest number of votes, Jude Celestin, Préval's preferred candidate, replacing him with the well-known Haitian singer Michel Martelly, who had been in third place.<sup>124</sup> Martelly won the runoff and was sworn in as president in May 2011.<sup>125</sup> Just prior to this, in October 2010, a cholera outbreak occurred; it killed more than 10,000 Haitians before being controlled.<sup>126</sup> In-depth investigations found that MINUSTAH forces had introduced cholera into the country when a poorly constructed sewage system spilled sewage into the Artibonite River, which many Haitians depend on for bathing, cooking, and drinking.<sup>127</sup>

During his time in office, Martelly declared that Haiti was "open for business" and courted foreign investment, bragging of investments in the textile sector, the building of a new Marriott hotel, and the promise of gold mining.<sup>128</sup> Martelly failed to organize general elec-

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<sup>120</sup> See VILSAINT & HALL, *supra* note 60, at 8.

<sup>121</sup> The Security Council authorized MINUSTAH under Chapter VII of the UN Charter. S.C. Res 1542, ¶¶ 1–4 (Apr. 30, 2004); it was closed through Security Council Resolution in October 2017. S.C. Res. 2350, ¶ 2 (Apr. 13, 2017). See VILSAINT & HALL, *supra* note 60, at 8.

<sup>122</sup> VILSAINT & HALL, *supra* note 60, at 8.

<sup>123</sup> *Id.*

<sup>124</sup> *Id.* The role of the United States in this replacement has been written about extensively. See Jake Johnston, *Clinton E-Mails Point to US Intervention in 2010 Haiti Elections*, CTR. FOR ECON. & POL'Y RSCH. BLOG (Sept. 7, 2016), <https://cepr.net/clinton-e-mails-point-to-us-intervention-in-2010-haiti-elections> [<https://perma.cc/9K5T-2GUQ>].

<sup>125</sup> VILSAINT & HALL, *supra* note 60, at 70.

<sup>126</sup> *Id.* at 74–75.

<sup>127</sup> *Id.* at 75; ALEJANDRO CRAVIOTO, CLAUDIO F. LANATA, DANIELE S. LANTAGNE & G. BALAKRISH NAIR, FINAL REPORT OF THE INDEPENDENT PANEL OF EXPERTS ON THE CHOLERA OUTBREAK IN HAITI 4, 29 (2011).

<sup>128</sup> Paul Cullen, *Attracting Trade Now Focus for Haiti's President: The Post-Earthquake Devastation Remains but President Martelly Says "Things Are Moving,"* IRISH TIMES (Jan.

tions within the constitutionally mandated time, and he ruled by decree for the final portion of his presidency.<sup>129</sup> Jovenel Moïse, a businessman and Martelly's chosen successor, controversially took office as president in 2016 following intense protests over the cancellation of a runoff election.<sup>130</sup> During his presidency, a social movement against government corruption emerged, focused on the diversion of enormous amounts of money provided to the Haitian government through the PetroCaribe program. PetroCaribe was a program in which the government of Venezuela sold oil to Haiti with payments deferred for up to twenty-five years.<sup>131</sup> The short-term cash savings were meant to be used by the Haitian government to pay for social programs; unfortunately, about two billion U.S. dollars disappeared, while development projects floundered.<sup>132</sup> Haitian taxpayers still owe Venezuela several billion dollars in deferred payments.<sup>133</sup>

The PetroCaribe program “[was] at the center of the 600-page report—and protesters’ anger—in Haiti, with allegations that politicians ha[d] embezzled government funds earmarked for badly needed social programs. . . . Haitians [took] to the streets to demand the resignation of President Jovenel Moïse amid those allegations.”<sup>134</sup> Moïse was credibly linked to corrupt PetroCaribe funds<sup>135</sup> and a protest movement grew, calling for his resignation. Instead, Moïse consolidated power, made alliances with gangs, failed to organize elections,

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30, 2012), <https://www.irishtimes.com/news/attracting-trade-now-focus-for-haiti-s-president-1.454048> [<https://perma.cc/GE2F-TEYM>] (“Despite its grinding poverty and chaotic history, [Haiti] is beginning to attract big business. A Korean conglomerate plans to create 20,000 clothing jobs in the north of the country. Heineken has taken over the local brewery. Digicel is building a hotel in Port-au-Prince with Marriott.”); Lois Romano, *Michel Martelly, Haiti's New President, Gets Mixed Reviews*, DAILY BEAST (Sept. 21, 2011), <https://www.thedailybeast.com/michel-martelly-haitis-new-president-gets-mixed-reviews> [<https://perma.cc/2VB6-586M>]; GLOB. JUST. CLINIC, N.Y. UNIV. SCH. OF L. & HAITI JUST. INITIATIVE, HASTINGS COLL. OF L., BYEN KONTE, MAL KALKILE? HUMAN RIGHTS AND ENVIRONMENTAL RISKS OF GOLD MINING IN HAITI 29 (2015) [hereinafter BYEN KONTE] (providing an in-depth discussion of the Martelly administration's efforts to advance gold mining in Haiti).

<sup>129</sup> VILSAINT & HALL, *supra* note 60, at 9.

<sup>130</sup> *Id.* at 10, 222.

<sup>131</sup> *Id.* at 255–56.

<sup>132</sup> *Id.* at 256.

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

<sup>135</sup> Edwidge Danticat, *The Assassination of Haiti's President*, NEW YORKER (July 14, 2021), <https://www.newyorker.com/news/news-desk/the-assassination-of-haitis-president> [<https://perma.cc/2KPY-9D9S>] (“Agritans, Moïse’s banana company, had received millions of dollars from Martelly’s government—funds which, according to Haiti’s Superior Court of Auditors and Administrative Disputes, were among those embezzled from Petrocaribe.”).

and ruled by decree.<sup>136</sup> In 2021 he refused to step down, despite near-consensus that his term in office had expired the year before.<sup>137</sup> In the following months, he took numerous steps to consolidate power in the presidency, dismissing Supreme Court justices, seizing the Supreme Court and the judicial academy, and calling for major changes in the constitution to be agreed upon by referendum—something explicitly forbidden by the constitution itself.<sup>138</sup> As a coalition of human rights clinics explained at the time:

The crisis over the last week follows years of credible allegations of grave, state-sanctioned human rights abuses in Haiti. Haitian human rights organizations, the United Nations and the Haitian Judicial Police have documented the involvement of state actors—including senior officials in the Moïse administration and the Haitian National Police—in a series of massacres against communities active in the opposition movement. In December 2020, the U.S. Treasury Department sanctioned two former senior officials in President Moïse’s administration and notorious gang leader Jimmy Cherizier, who also has ties to the government, for carrying out a brutal massacre in La Saline in 2018 during which at least 71 people were killed.<sup>139</sup>

President Moïse was assassinated on July 7, 2021,<sup>140</sup> initiating a new crisis in Haiti. The people of Haiti have since endured a wave of kidnappings and executions, fuel and food shortages, and the breakdown of the medical, educational, and transport systems.<sup>141</sup> As Millery Polyné queries, concerning an earlier period of crisis in Haiti:

The daily experience of domestic and international forces such as neoliberal capitalism, Western militarism, urbanization, and ecological blight impels one to examine how the person, the individual, the citizen is affected. In what ways have a people’s humanity—those

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<sup>136</sup> See Mamyrah Dougé-Prosper & Mark Schuller, *After Moïse Assassination, Popular Sectors Must Lead the Way*, NACLA (July 8, 2021), <https://nacla.org/haiti-jovenel-moise-assassination-social-movements> [<https://perma.cc/L769-9TJL>]; Int’l Hum. Rts. Clinic, Harv. L. Sch., Lowenstein Int’l Hum. Rts. Clinic, Yale L. Sch. & Glob. Just. Clinic, N.Y. Univ. Sch. of L., *Joint Statement from U.S. Human Rights Clinics on Haiti’s Constitutional Referendum* (June 8, 2021) [hereinafter *Joint Statement*], [https://chrgj.org/wp-content/uploads/2021/06/210608\\_Referendum-Statement\\_Law-School-Clinics.pdf](https://chrgj.org/wp-content/uploads/2021/06/210608_Referendum-Statement_Law-School-Clinics.pdf) [<https://perma.cc/4GL8-CQPC>].

<sup>137</sup> *Joint Statement*, *supra* note 136.

<sup>138</sup> *Id.*

<sup>139</sup> *Id.* (Note: one of the authors directs the Global Justice Clinic at New York University School of Law).

<sup>140</sup> Catherine Porter, Michael Crowley & Constant Mehuet, *Haiti’s President Assassinated in Nighttime Raid, Shaking a Fragile Nation*, N.Y. TIMES (July 7, 2021), <https://www.nytimes.com/2021/07/07/world/americas/haiti-president-assassinated-killed.html> [<https://perma.cc/RK4Z-SMYX>].

<sup>141</sup> *Id.*

who struggle to live, to work, to laugh, to love within these impacted spaces—been affirmed, questioned, or negated? Where does one locate their humanity at moments of conflict or despair?<sup>142</sup>

### III

#### LEGAL EMPOWERMENT AND MECHANISMS FOR CHANGE

##### A. *Konstitisyon se Papye, Bayonet se Fe*<sup>143</sup>: *Rights in the Predatory State*

In this context of ongoing crisis, what role could critical legal empowerment play?<sup>144</sup> Alongside the predatory state, there is a long tradition of legalized human rights struggles in Haiti. These efforts, led by brave human rights lawyers and defenders, have demanded core civil and political rights, including an end to the most severe abuses meted out by the state, such as extrajudicial murders, torture, unjust imprisonment, and rape. While progress has been halting, slow, and subject to reversal, there are now avenues for seeking the protection of the state against such abuses.

The 1987 constitution protects core civil and political rights, and strong Haitian human rights organizations, feminist organizations, and law firms have played a key role in fighting these abuses. Haitian organizations have used traditional human rights methods such as documentation and investigation, litigation, and engagement with regional and international human rights mechanisms to advance the rights of Haitians under law. These organizations, including the Réseau National des Droits Humains (RNDDH), the Bureau des Avocats Internationaux (BAI) and its U.S. partner organization the Institute for Justice and Democracy in Haiti, the Bureau des Droits Humains Haitien (BDHH), Solidarité Fanm Ayisyen (Haitian Women's Solidarity, SOFA), and the Groupe d'Appui aux Rapatriés et Réfugiés (GARR), have been crucial in identifying violations, analyzing them as rights issues, and advancing rights-based solutions. Even when their work places them in danger, Haitian human rights organizations have worked to advance the idea that all Haitians have

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<sup>142</sup> Millery Polyné, *To Make Visible the Invisible Epistemological Order: Haiti, Singularity, and Newness*, in *THE IDEA OF HAITI: RETHINKING CRISIS AND DEVELOPMENT*, at xi, xiv (Millery Polyné ed., 2013).

<sup>143</sup> “[T]he constitution is paper, the bayonet is steel.” (authors’ translation).

<sup>144</sup> We note here that this critical form of legal empowerment differs from traditional conceptions of legal empowerment. While both center on a bottom-up approach where marginalized communities utilize legal mechanisms to shape laws and legal systems, CLE goes further than merely requiring access, reconstructing those legal systems to write out oppression and exclusion and write in structures of accountability for those holding power. See *infra* Section III.C.

the right to security of the person and equality before the law. In a recent example, the RNDDH has investigated a series of massacres in poor and marginalized communities in Port-au-Prince, specifically identifying links between the government and the gangs who carried out the massacres.<sup>145</sup> RNDDH's Executive Director, Pierre Espérance, and BAI's Director, Mario Joseph, continue their work despite repeated death threats and several execution attempts.<sup>146</sup> The Haitian feminist movement—which has its roots fighting against the U.S. occupation and is now represented by groups such as SOFA, Nègès Mawon, and Kay Fanm—has also withstood threats, bravely working to combat sexual and gender-based violence.<sup>147</sup> And in recent years, the Haitian *Kominote M*—Haiti's LGBTQ+ community, which has birthed organizations like KOURAJ and FACSDIS—has claimed space in the public sphere, often facing opprobrium and violence in opposing intense discrimination, violence, and stigma, including through voter education efforts.<sup>148</sup>

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<sup>145</sup> See INT'L HUM. RTS. CLINIC, HARV. L. SCH., *KILLING WITH IMPUNITY: STATE-SANCTIONED MASSACRES IN HAITI* 8, 41 n.90 (2021), [https://hrp.law.harvard.edu/wp-content/uploads/2021/04/Killing\\_With\\_Impunity-1.pdf](https://hrp.law.harvard.edu/wp-content/uploads/2021/04/Killing_With_Impunity-1.pdf) [<https://perma.cc/FE4W-K8Q5>].

<sup>146</sup> Concerning Espérance, see, for example, Amnesty Int'l, *Haiti: Human Rights Defender Fears for Safety*, AI Index AMR 36/0343/2019 (May 16, 2019), <https://www.amnesty.org/en/documents/amr36/0343/2019/en> [<https://perma.cc/WHY9-QLW6>] (death threats and harassment against Espérance in 2019); Amnesty Int'l, *Haiti: Fear for Safety of Human Rights Defender: Pierre Espérance*, AI Index AMR 36/009/2014 (Apr. 15, 2014), <https://www.amnesty.org/en/documents/amr36/009/2014/en> [<https://perma.cc/TXC5-CDXK>] (death threats against Espérance in 2014); Amnesty Int'l, *Fear for Safety: Haiti: Pierre Espérance, Human Rights Defender*, AI Index AMR 36/01/99 (Mar. 10, 1999), <https://www.amnesty.org/en/wp-content/uploads/2021/06/amr360011999en.pdf> [<https://perma.cc/S9LQ-7KQU>] (assassination attempt against Espérance in 1999); Andrew Anderson, *Haiti: Armed Attack Against the Office of Human Rights Organisation Réseau National de Défense des Droits de l'Homme*, FRONTLINE DEF. (May 14, 2020), [https://www.frontlinedefenders.org/sites/default/files/ua\\_haiti\\_rnddh\\_140520\\_eng.pdf](https://www.frontlinedefenders.org/sites/default/files/ua_haiti_rnddh_140520_eng.pdf) [<https://perma.cc/32UW-TF8E>] (attack against the RNDDH office). Concerning Joseph, see, for example, *Haiti Joint Letter for Mario Joseph, Newton St-Juste and André Michel*, LAWS FOR LAWS. (Nov. 7, 2012), <https://lawyersforlawyers.org/en/haiti-joint-letter-for-mario-joseph-newton-st-juste-and-andre-michel> [<https://perma.cc/3BLU-P5TQ>] (concerning death threats against Joseph in 2012); Amnesty Int'l, *Haiti: Further Information on: Fear for Safety/Death Threats*, AI Index AMR 36/057/2004 (Oct. 20, 2004), <https://www.amnesty.org/en/wp-content/uploads/2021/06/amr360572004en.pdf> [<https://perma.cc/5ZM5-HUYX>] (death threats against Joseph in 2004).

<sup>147</sup> See Chantalle F. Verna & Paulette Poujol Oriol, *The Ligue Feminine d'Action Sociale: An Interview with Paulette Poujol Oriol*, 17 J. HAITIAN STUD. 246 (2011) (discussing history of Haitian feminist movement); Fania Noel, *Unrelenting: Haitian Feminism on the Front Lines*, NEW SCH.: GENDER & SEXUALITY STUD. INST., <https://tns-gssi.newschoool.org/2021/02/22/unrelenting-haitian-feminism-on-the-front-lines> [<https://perma.cc/RF9U-8N5E>] (discussing SOFA, Kay Fanm, and Nègès Mawon).

<sup>148</sup> See, e.g., Josué Azor & Hetera Estimphil, *The Rights to Live Creatively*, 53 NACLA REP. ON AMS. 94, 94–97 (2021) (discussing the Haitian LGBTQ+ movement's efforts to research voter registration in the LGBTQ+ community and educate voters).



These groups have not shied away from calling out international organizations when they have harmed Haitians. In a groundbreaking example, the BAI and its U.S. partner organization, the Institute for Justice and Democracy in Haiti (IJDH) filed suit against the United Nations—first with the UN itself, and then, when the UN rejected the claim on a legal technicality, in U.S. federal court—seeking remedies for the victims of cholera.<sup>149</sup> GARR has also been bold in critiquing U.S. deportations of Haitians, including calling out systemic U.S. anti-Black racism.<sup>150</sup>

*B. Remounization<sup>151</sup>: Spaces for Critical Legal Empowerment in Haiti*

The human rights community has not, as a general matter, used legal empowerment techniques like the accompaniment of community paralegals<sup>152</sup> or the filing of large numbers of administrative claims. There is space for these kinds of actions in Haiti, since the gap between rights protections set out in law and those guaranteed in practice is huge. For example, despite the right to birth registration guaranteed under Haitian law, many poor rural Haitians do not seek birth certificates. This is often because they know they will be asked to pay for registration or because the officials charged with fulfilling these duties are not paid or do not have the needed supplies (or, sometimes, for all of these reasons).<sup>153</sup> In one community, an NGO has agreed to accompany individuals who are pursuing their birth certificates.<sup>154</sup> This example of accompaniment could be expanded throughout the country.

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<sup>149</sup> See *Cholera Litigation*, INST. FOR JUST. & DEMOCRACY IN HAITI, <https://www.ijdh.org/our-work/accountability/cholera-accountability/cholera-litigation> [<https://perma.cc/9FQU-DWAQ>] (discussing chronology of the cholera litigation).

<sup>150</sup> See, e.g., Amnesty Int'l, Ctr. for Gender & Refugee Stud., Glob. Just. Clinic, N.Y. Univ. Sch. of L., Groupe d'Appui aux Rapatriés et Réfugiés (GARR), Haitian Bridge All., Refugees Int'l, Rezo Fwotalye Jano Siksè & Service Jésuite aux Migrants Haiti, *Stop US Deportations and Abuse Against Haitians on the Move: An Urgent Step Towards Creating Just Policies for Haitians*, AI Index AMR 36/5101/2021 (Dec. 15, 2021), <https://reliefweb.int/sites/reliefweb.int/files/resources/AMR3651012021ENGLISH.pdf> [<https://perma.cc/73ML-GQBG>].

<sup>151</sup> Patrick Sylvain describes “demounization” as the dehumanization of the poor Black population. We suggest here that CLE should be seen as part of a process of “remounization,” the rehumanization of those same citizens. See Patrick Sylvain, *The Violence of Executive Silence, in THE IDEA OF HAITI: RETHINKING CRISIS AND DEVELOPMENT*, *supra* note 142, at 87, 96–97.

<sup>152</sup> Community paralegals are also known as “barefoot lawyers,” advocates “who demystify law and empower people to advocate for themselves.” VIVEK MARU & VARUN GAURI, *COMMUNITY PARALEGALS AND THE PURSUIT OF JUSTICE*, at iii–iv (2018).

<sup>153</sup> Beaubrun, *supra* note 116, at 27; see Pierre, *supra* note 114.

<sup>154</sup> Lambert & Daudier, *supra* note 117.

Such efforts are unlikely to be successful unless they emerge from and are linked to organizing by groups most affected by these rights violations. Without a broader strategy, mass filings would put pressure on low-level state officials, who may not have the power or tools to make changes on their own.<sup>155</sup> However, if filed by community paralegals, who could act as both advocates and witnesses, this process could be one of critical conscientization.<sup>156</sup> Indeed, Haiti has a significant tradition of community health workers, often called *akompanatè* (accompaniers, or people who provide accompaniment). Like paralegals, these workers accompany individuals through the difficult process of seeking healthcare, obtaining medicines, and following up with treatment plans. Zanmi Lasante has found such *akompanatè* to be extremely effective in the health field.<sup>157</sup> Lawyers with the Bureau des Avocats Internationaux join forces with “grassroots coordinators,” who “organize rights trainings for grassroots groups and facilitate their advocacy efforts, such as engagement with the media, demonstrations, and meeting with government officials.”<sup>158</sup> If the legal role were democratized even more, these grassroots coordinators could be trained as community paralegals prepared to act as non-lawyer justice workers. This could help immensely with the enormous task of bringing unregistered people out of legal precarity.<sup>159</sup> Much like their success in the public health field, community paralegals in other countries are proving to be successful in responding to systemic injustice<sup>160</sup>—including, specifically, when seeking birth recognition for excluded communities.<sup>161</sup>

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<sup>155</sup> *Id.*

<sup>156</sup> The term “conscientization” “is a neologism, coming from the Spanish word *concientización*. It conveys the idea of developing, strengthening, and changing consciousness. It was created in the field of education, specifically of adult education, in the early 1960s, producing at the same time a new conception of consciousness.” Maritza Montero, *Conscientization*, in *ENCYCLOPEDIA OF CRITICAL PSYCHOLOGY* 296, 296 (Thomas Teo ed., 2014).

<sup>157</sup> See, e.g., *PIH Model for Accompaniment Informs Global Response to Shortage of Health Workers*, PARTNERS IN HEALTH (Apr. 1, 2007), <https://www.pih.org/article/pih-model-for-accompaniment-informs-global-response-to-shortage-of-hea> [<https://perma.cc/G4PE-6EN9>].

<sup>158</sup> Meena Jagannath, Nicole Phillips & Jeena Shah, *A Right-Based Approach to Lawyering: Legal Empowerment as an Alternative to Legal Aid in Post-Disaster Haiti*, 10 *Nw. J. INT’L HUM. RTS.* 7, 10 (2011).

<sup>159</sup> An estimated three million Haitians are without birth certificates, and an unknown number still have the now-banned “peasant” certificate. Beaubrun, *supra* note 116, at 25, 117 n.2.

<sup>160</sup> See MARU & GAURI, *supra* note 152, at iii–iv.

<sup>161</sup> See, e.g., OPEN SOC’Y JUST. INITIATIVE & NAMATI, *DOCUMENTING CITIZENSHIP AND OTHER FORMS OF LEGAL IDENTITY: A COMMUNITY-BASED PRACTITIONER’S GUIDE* (2018) (providing case studies from around the world of paralegal efforts to empower communities with birth registration); *Citizenship Paralegals*, NUBIAN RTS. F., <https://>

In the fight for basic economic and social rights for the rural masses and urban poor—such as the right to water and sanitation, the right to food, the right to health, and the rights of workers—little has changed.<sup>162</sup> Although some human rights organizations embrace these rights in their advocacy, concrete work to make them real requires a frank confrontation with the economic system and the global forces keeping the majority of Haitian people in poverty. A number of movements for social justice in Haiti have demanded economic and social rights in the face of national and global forces that impact those rights. Combining popular education (including through the use of movies and Haitian popular culture, such as songs and dramatic radio stories), citizen mobilization, and the use of international legal mechanisms, these movements make legally inflected claims demanding that the Haitian state and powerful international actors take cognizance of their demands as rights-holders. For example, Samuel Nesner and Ellie Happel explain how the *Kolektif Jistis Min* (Mining Justice Collective, or KJM) has worked to organize “farmers’ unions, workers’ rights groups, Voudou priests, the Catholic church, local schools and hospitals, [and] women’s rights groups” in a community where a mining company holds permission to construct a gold mine.<sup>163</sup> This diverse group jointly analyzed the fact that the Haitian government had given an American company the right to mine on community lands with neither the government nor the company notifying those who had lived and worked the land for many generations. Moved to write an open letter to government officials, the collective denounced this non-consensual presence, “delivered the letter to local authorities and worked with KJM to deliver the letter to government officials in the capital, an eight-hour bus ride away.”<sup>164</sup> Rejecting mining, the community asked the government “for agricultural reform, for roads to transport our products, for schools, for reforestation, [and] for potable water.”<sup>165</sup> In addition to these specific demands, the commu-

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[www.nubianrightsforum.org/citizenship-paralegals](http://www.nubianrightsforum.org/citizenship-paralegals) [https://perma.cc/V5PR-FGK4] (discussing the role of community paralegals in helping community members acquire identity documents in Kenya’s Nubian community).

<sup>162</sup> See generally FRAN QUIGLEY, *HOW HUMAN RIGHTS CAN BUILD HAITI: ACTIVISTS, LAWYERS, AND THE GRASSROOTS CAMPAIGN* 137–98 (2014) (describing the absence of rule of law in Haiti and the limited success of rule of law investments given their tendency to focus on top-down efforts, despite evidence showing that social change in Haiti has tended to follow a bottom-up approach).

<sup>163</sup> Samuel Nesner & Ellie Happel, *In Haiti, Legal Empowerment Is Resistance Against Exploitation*, OPEN GLOB. RTS. (Aug. 27, 2018), <https://www.openglobalrights.org/in-haiti-legal-empowerment-is-resistance-against-exploitation> [https://perma.cc/FE33-X4HK].

<sup>164</sup> *Id.*

<sup>165</sup> Rasanbleman agrikiltè Morinwa et al., *Open Letter from Haitian Organizations in Morne Pele*, CTR. FOR HUM. RTS. & GLOB. JUST., <https://chrgj.org/wp-content/uploads/>

nity asked for “national and international solidarity, with people who believe that life is more meaningful than making money.”<sup>166</sup>

In this vein, while local communities joined together to demand action by the Haitian government, KJM worked with the Global Justice Clinic at the New York University School of Law to pursue international solidarity and use international human rights mechanisms to bring pressure on international actors. KJM organizer Samuel Nesner traveled with GJC Haiti Project Co-Director Ellie Happel and a student team to Ghana to meet with communities impacted by gold mining carried out by the Newmont Corporation, which held permits in Nesner’s home region of Haiti. KJM representatives Nixon Boumba and Roosevelt Jean Felix testified before the Inter-American Commission on Human Rights alongside GJC student Etienne Chenier-Laflèche, decrying the lack of access to information for mining-affected communities in Haiti.<sup>167</sup> And the GJC, together with Accountability Counsel, KJM, and communities directly impacted by efforts to revise Haiti’s mining law, brought a complaint against the World Bank before the World Bank Inspection Panel. The complaint argued that Haitian people had been excluded from efforts aimed at revising the country’s legal framework to make mining more attractive for foreign investment, in contravention of the Bank’s social and environmental safeguard policies.<sup>168</sup> The draft law, which had been prepared with the help of a Washington, D.C.-based law firm, had not been made public in its original French, had not been translated into Kreyòl, and had not been discussed with mining-affected communities.<sup>169</sup> The complaint was rejected on a technicality “in a decision that revealed the Bank’s failure to apply any environmental or human rights standards to its work rewriting Haiti’s mining laws.”<sup>170</sup>

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2018/05/1-Open-Letter-from-Haitian-Organizations-in-Morne-Pele.pdf [https://perma.cc/Q7Y5-UCDD].

<sup>166</sup> *Id.*

<sup>167</sup> Glob. Just. Clinic, N.Y. Univ. Sch. of L., *Haitian Advocates Demand Information as Government Pushes Mining and Tourism*, CTR. FOR HUM. RTS. & GLOB. JUST. (Mar. 17, 2015), [https://chrj.org/wp-content/uploads/2018/02/150316-IACHR-Press-Release\\_FOR-IMM-REL.pdf](https://chrj.org/wp-content/uploads/2018/02/150316-IACHR-Press-Release_FOR-IMM-REL.pdf) [https://perma.cc/7A5V-9F68].

<sup>168</sup> Glob. Just. Clinic, N.Y. Univ. Sch. of L., *Haitian Communities File Complaint about World Bank-Supported Mining Law*, CTR. FOR HUM. RTS. & GLOB. JUST. (Jan. 7, 2015), <https://chrj.org/2015/01/07/haitian-communities-file-complaint-about-world-bank-supported-mining-law-2> [https://perma.cc/MN55-UP3V].

<sup>169</sup> Complaint to the World Bank Inspection Panel, Kolektif Jistis Min (Jan. 7, 2015), [hereinafter Complaint to the World Bank Inspection Panel] [https://www.accountabilitycounsel.org/wp-content/uploads/2017/08/ENG-Complaint\\_FINAL.pdf](https://www.accountabilitycounsel.org/wp-content/uploads/2017/08/ENG-Complaint_FINAL.pdf) [https://perma.cc/6BRT-WEUS].

<sup>170</sup> *Haiti: Mining Laws*, ACCOUNTABILITY COUNS., <https://www.accountabilitycounsel.org/client-case/haiti-mining-laws> [https://perma.cc/DR8D-64HW].

These legally inflected advocacy efforts were aimed at advancing fundamental rights that community members knew they had irrespective of the constitution or international treaties. Organizers, law students, and lawyers working in solidarity strove to amplify the demands of those communities by referring to relevant domestic and international law.<sup>171</sup> However, the history of Haiti suggests that these efforts might have inadvertently retained the rigidity of more traditional efforts aimed at law reform.

C. *Ravet Ka Gen Rezon Devan Poul*<sup>172</sup>: *Confronting Power, Transforming the Law*

If legal empowerment entails knowing, using, and shaping the law, a critical form of legal empowerment requires the transformation of legal systems that oppress or exclude. As demonstrated above, the Haitian legal system has, since soon after independence, been used to systematically disadvantage the majority of the Haitian populace. In Haiti, therefore, critical legal empowerment of the *moun andeyò* necessarily will include making claims of the official legal system that are based on the rural masses' customary law. In this context, knowing the law entails knowledge of national and international law, and “also—most importantly, and as an antecedent to knowledge of these exogenous systems of law—knowing and affirming the customary law of the community itself. . . . ‘Knowing’ customary law involves honouring forms of law that may have been hidden, silenced, and even violently repressed by colonial systems.”<sup>173</sup> Here, critical legal empowerment—building from the demands of the *moun andeyò* for dignity and freedom from the daily struggle to survive—could engage with both the Haitian state and the global power systems that currently keep

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<sup>171</sup> Complaint to the World Bank Inspection Panel, *supra* note 169; Executive Summary of Submission to the Inter-American Commission on Human Rights, Glob. Just. Clinic, N.Y. Univ. Sch. of L., Lafontaine Orville, Kolektif Jistis Min & Observatoire Mega-Project, Access to Information in Haiti: Obstacles to the Enjoyment of the Right of Access to Information in the Context of the Development of the Mining and Tourism Industries and the Practice of Journalism (Mar. 17, 2015), [https://chrj.org/wp-content/uploads/2018/02/150316\\_Executive-Summary\\_English\\_Final.pdf](https://chrj.org/wp-content/uploads/2018/02/150316_Executive-Summary_English_Final.pdf) [<https://perma.cc/KDV5-AYJS>]; BYEN KONTE, *supra* note 128.

<sup>172</sup> The traditional proverb is: “ravet pa janm gen rezon douvan poul,” meaning, literally, “a cockroach is never right in front of a chicken,” and figuratively that the powerful always wins (authors’ translation). “Ravet ka gen rezon devan poul” reverses the proverb and literally means “a cockroach can be right in front of a chicken,” meaning that it is possible to win even against the powerful (authors’ translation).

<sup>173</sup> Margaret Satterthwaite, *Critical Legal Empowerment for Human Rights*, in LEGAL MOBILIZATION FOR HUMAN RIGHTS 89, 111–12 (Gráinne de Búrca ed., 2022).

that state from becoming accountable to the Haitian people.<sup>174</sup> It is in these “impacted spaces”<sup>175</sup> that a critical legal empowerment in Haiti could best reside. Perhaps most crucially, such efforts could begin specifically with the legal claims peasant movements have been making for generations. As Franklin Midy explains, subsistence farmers have developed autonomous institutions to represent their collective interests: “It remains for the country’s political authorities to support their self-organization efforts and their economic self-development initiatives through solidarity-based social economy enterprises (production and processing cooperatives, popular savings and credit funds, mutual solidarity).”<sup>176</sup> Specifically, Midy underscores a legal demand: the “securitization of property rights for the small plots of land held by families who are threatened with dispossession” because they may not be able to prove legal title in a country without a functioning land registry system.<sup>177</sup> Midy argues that securitization for peasant landholders is possible under current law, which recognizes specific forms of adverse possession.<sup>178</sup> Such recognition could help stave off forced dispossession, also known as “land grabs,” which have reportedly been on the rise,<sup>179</sup> occurring during recent political crises.<sup>180</sup>

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<sup>174</sup> In one recent example, the Plateforme haïtienne de plaidoyer pour un développement alternatif (PAPDA) undertook a ten-year process of consultation with peasant organizations across Haiti, collecting their analyses, demands, and recommendations for change. This process was also a space for consciousness-raising about peasants’ rights, the role of international actors in Haiti, and the importance of transnational solidarity. See PAPDA, *LES REVENDICATIONS PAYSANNES HAÏTIENNES: C’EST AUSSI NOS OIGNONS !* (2018).

<sup>175</sup> Polyné, *supra* note 142, at xiv.

<sup>176</sup> Midy, *supra* note 6 (authors’ translation).

<sup>177</sup> *Id.* (authors’ translation). For information on Haiti’s failed land rights infrastructure, see ORG. OF AM. STATES & HAITI MINISTRY OF PUB. WORKS, TRANSP., & COMM’NS, FONCIER HAÏTI: MODERNIZATION OF CADASTRE AND LAND RIGHTS INFRASTRUCTURE IN HAITI 14–19 (2010), <http://portal.oas.org/LinkClick.aspx?fileticket=RZYU3Dgj9dI%3d&tabid=1821> [<https://perma.cc/7WST-SH4M>] (discussing the weakened capacity of the Office Nationale du Cadastre (ONACA) with its low operating budget, few technological resources, delayed times for land property rights dispute resolution, and other administrative limitations).

<sup>178</sup> *Id.* (“Le mouvement paysan a constamment demandé la sécurisation des titres de propriété des lopins de terre des familles paysannes menacées de dépossession. Celles-ci les ont acquises en vertu de la loi haïtienne qui prévoit qu’une terre cultivée pendant 20 ans d’affilée sans réclamation devient la propriété de celui qui la cultive. Mais sans enregistrement légal, certains en profitent pour les en déposséder.” (The peasant movement has consistently demanded the securitization of property rights to the land of peasant families threatened with dispossession. They acquired these rights under Haitian law, which provides that land cultivated for 20 years in a row without claim becomes the property of the person who cultivates it. But without legal registration, some take advantage to dispossess them.) (editors’ translation)).

<sup>179</sup> See Widlore Mérancourt, *Vaste opération de vol de terrain dans le Nord-Est*, AYIBOPOST (Dec. 25, 2021), <https://ayibopost.com/vaste-operation-de-vol-de-terrain-dans-le-nord-est> [<https://perma.cc/L5A4-22NT>].

Beyond this, CLE should embrace legal reform based on what Jean Casimir emphasizes is customary law practiced among peasant communities. These customs, which many see as a sign that the rule of law has failed,<sup>181</sup> are for Casimir a sign that the people have succeeded.<sup>182</sup> Perhaps CLE could begin with this customary law, asking for its recognition by the state. Perhaps—as desired by community leaders—the Haitian state could recognize a space of autonomy for rural farmers by supporting small-scale agriculture, with the goal of food sovereignty and sustainability in the face of the climate crisis.<sup>183</sup>

Efforts to resist industrial mining, end land grabs, and promote sustainable farming are united by the credo, “Yes to life! No to exploitation!” This and similar refrains are galvanizing the struggles of subsistence farmers, local communities, and indigenous peoples throughout Latin America and some parts of North America, particularly in the efforts led by the Indigenous people of Amazonian regions and in the United States and Canada.<sup>184</sup> In Haiti, KJM is fighting to stop mining, and one of its strongest slogans is the affirmative credo “Wi ak Lavi” (Yes to Life). Indeed, its public arguments have focused on protecting life, the environment, and common and collective goods such as water, health, and land, using ancestral traditions and guaranteeing the people’s right to self-determination. While KJM has not

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<sup>180</sup> See *Press Release: Haiti Land Grab Violates Women’s Rights and Deepens Climate Crisis, Say Rights Groups*, CTR. FOR HUM. RTS. & GLOB. JUST. (Apr. 5, 2022), <https://chrj.org/2022/04/05/press-release-haiti-land-grab-violates-womens-rights-and-deepens-climate-crisis-say-rights-groups> [<https://perma.cc/3F9F-ZHCU>] (describing a land grab effectuated through a presidential decree and violent expropriation); *Haitian Movements Denounce Land Grabs*, GRASSROOTS INT’L (Dec. 1, 2020), <https://grassrootsonline.org/press-releases/haitian-movements-denounce-land-grabs> [<https://perma.cc/VL5S-D7S4>] (decrying land grabs); *Land Grabbing in Haiti: The Caracol Industrial Park*, ACTIONAID USA, <https://www.actionaidusa.org/work/land-grabbing-in-haiti-the-caracol-industrial-park> [<https://perma.cc/NDM4-A47B>] (denouncing land grabbing following the 2010 earthquake).

<sup>181</sup> See Pierre, *supra* note 5, at 132–33.

<sup>182</sup> See CASIMIR, *supra* note 3, at 218–20, 261, 391.

<sup>183</sup> See Midy, *supra* note 6 (“Haiti must now import some 60% of the food products necessary for its subsistence, while artisanal agriculture is dying and the peasants suffer more and more from hunger. The main current demand of the Haitian peasant movement is food sovereignty, focusing first on national agricultural production to feed the Haitian people.” (authors’ translation)). Indeed, international support for artisanal, organic farming could be viewed as a form of reparation.

<sup>184</sup> See, e.g., *Who We Are*, YES TO LIFE, NO TO MINING, <https://yestolifenotomining.org/who-we-are> [<https://perma.cc/WN9N-3W3M>] (“Yes to Life, No to Mining is a global solidarity network of and for communities, organisations and networks who are standing up for their Right to Say No to mining and advancing life-sustaining, post-extractive alternatives.”); Magdalena Rojo, “Yes” to Life, “No” to Mine, FAIR PLANET (Apr. 14, 2020), <https://www.fairplanet.org/editors-pick/yes-to-life-no-to-mine> [<https://perma.cc/78Y6-QXN7>] (“The Zapotec community [in Mexico] managed to say ‘yes’ to life and ‘no’ to mining, as it is a motto of activists in Oaxaca who protect their territories.”).

used the terminology of CLE, similar principles have guided KJM's strategic use of human rights mechanisms at the international and national levels: embracing the protective power of the law to defend communities and collective rights against both state agencies and international actors while demystifying the abusive use of law to impose extractive agendas.

CONCLUSION: POT AN BWA KAPAB GOU MEN AK POT AN FER<sup>185</sup>

From the founding of the Republic of Haiti in 1804, this Black-led nation faced a dilemma: Should it continue down the path it had forged by recognizing and lifting up the worth of its African traditions, or should it seek entry to the modern (white supremacist) world by proving that the nation was “civilized”?<sup>186</sup> The elites chose the second path, while the rural subsistence farmers chose the first. Peaceful coexistence was impossible, however, since the elite was out to prove that it could transform its compatriots into “civilized” citizens through use of the law as a disciplinary force.

This paper identifies some of the major ways the legal system in Haiti was used as a tool of exclusion and domination before turning to the crucial rupture that came with the emergence of popular movements in the late twentieth century. These movements understood the law's potential as a democratizing force and sought equal protection for all. Pushing further, peasant movements demanded dignity, recognition, and accountability from the state as well as other powerful actors who reach into their autonomous spaces through land grabs and extractive projects. While these movements have not used the terminology of CLE, efforts like those led by KJM have been insistent that the wooden pot *can* fight the iron pot. By insisting on recognition of their humanity before the law, retaining the dignity of their cultural practices, and demanding a place at the table, these movements

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<sup>185</sup> This is an altered version of the Haitian proverb meaning “the wooden pot cannot fight the iron pot.” Here, the saying is made affirmative: “The wooden pot can fight the iron pot.” (authors' translation).

<sup>186</sup> This is a version of the question Haitian sociologist Laënnec Hurbon poses in his book *LE BARBARE IMAGINAIRE* (1988): “Haïti a été pris dans ce singulier dilemme: vivre, pour soi, se replier sur soi sans complexe, c'est-à-dire reprendre, reconstituer librement ses traditions africaines en opérant son propre tri dans les valeurs occidentales, ou tout simplement administrer au monde entier la preuve qu'elle est une nation ‘civilisée.’” (Haiti has been caught in this singular dilemma: to live, for itself, to answer to itself shamelessly, that is to say to take back, to reconstitute freely its African traditions by operating its own sorting out of Western values, or quite simply to administer to the whole world the proof that it is a “civilized” nation. (authors' translation)). *Id.* at 53.



engage in empowering practices that have the capacity to change the legal system from the bottom up.