

# STARVED FOR JUSTICE: INTERNATIONAL COMPLICITY IN SYSTEMATIC VIOLATIONS OF THE RIGHT TO FOOD IN HAITI

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## ABSTRACT

A series of international economic assistance programs in Haiti has led to a protracted and worsening food crisis in the country, amplifying the country's vulnerability to starvation and malnutrition, as well as natural disasters, like earthquakes and pandemics. These economic programs, which dealt a crushing blow to the country's domestic agriculture and left the erstwhile self-sustaining nation vulnerable to chronic food insecurity, have ultimately impeded the ability of Haitian people, and their future generations, to enjoy their right to food, health, education, work, and other fundamental human rights. The lack of responsibility taken by those who imposed these policies—among them, international financial institutions like the World Bank—reveals the need for foreign actor compliance with human rights obligations and remediation. This paper proposes that the food insecurity Haitians face today constitutes a violation of the right to food—a territorial and extraterritorial obligation that foreign actors have pledged themselves, both under the United Nations Charter and other human rights instruments, to promote and respect. As such, this paper outlines the emerging recognition of extraterritorial obligations (“ETOs”) around the globe; suggests available mechanisms at the domestic, regional, and international level for adjudication of cases arising from ETOs; and proposes ETOs’ application to traditional policies and remedies meant to protect individuals from harm and compensate them for harm caused.

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## INTRODUCTION

On August 14, 2021, a 7.2 magnitude earthquake struck the southern peninsula of Haiti, followed shortly by punishing rains from Hurricane Grace. Once again, images of mass suffering and devastation in Haiti were broadcast around the world, painting the same anonymous picture of destruction and torment so often associated with Haiti by the international community.<sup>1</sup> In her famous analysis of the effects of this kind of problematic broadcasting, writer and activist Susan Sontag argued that the act of perceiving the pain of others who die in wars or disasters in far-away places, or suffer other fates, produces a false understanding of the humanitarian situation in those places—a false understanding that can quickly lead to cynicism and apathy.<sup>2</sup> In the case of Haiti, the predictable media parade of human misery stories, combined with head shaking over its long history of humanitarian disasters, is emblematic of this lack of meaningful understanding.<sup>3</sup> The massive human tragedy unfolding before people’s eyes hides a larger structural injustice—the systemic violation of Haitians’ economic, social, and cultural rights through failed foreign policies and a profound lack of accountability from the international community implementing them.

Understanding the dynamics driving the systemic violation of Haitians’ human rights requires shifting our gaze to the international community. To be sure, the Haitian government bears a heavy responsibility for the structural violence and food insecurity Haitians face daily.<sup>4</sup> But so too does the international community. Specifically,

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1. Sensationalized quotes and graphic images of death and destruction defined international coverage of Haiti after the earthquake, with news outlets making constant references to previous quakes. *See, e.g., Strong Earthquake Rocks Haiti, Killing Hundreds*, N.Y. TIMES (Aug. 14, 2021), <https://www.nytimes.com/live/2021/08/14/world/haiti-earthquake#haiti-quake-scenes> [<https://perma.cc/GBL9-96XS>] (“[T]he streets are filled with screaming.”).

2. SUSAN SONTAG, REGARDING THE PAIN OF OTHERS 111 (2004).

3. Tim Wallace et al., *How Haiti Was Devastated by Two Natural Disasters in Three Days*, N.Y. TIMES (Aug. 18, 2021), <https://www.nytimes.com/interactive/2021/08/18/world/americas/haiti-earthquake-grace.html> [<https://perma.cc/A67Z-YFKP>]; *see also Haiti Earthquake: Devastation and More Than 2,000 Dead*, BBC NEWS (Aug. 19, 2021), <https://www.bbc.com/news/world-latin-america-58187979> [<https://perma.cc/ZLJ3-22GR>] (highlighting devastation and death following Haiti’s August 2021 earthquake).

4. PAUL FARMER, PATHOLOGIES OF POWER: HEALTH, HUMAN RIGHTS, AND THE NEW WAR ON THE POOR 86–90 (U.C Press 2004).

countries like France<sup>5</sup> and the United States,<sup>6</sup> and global institutions like the International Monetary Fund (“IMF”) and World Bank Group (“World Bank” or “WBG”).<sup>7</sup> Shackled with debt since independence by these entities,<sup>8</sup> Haiti has been subject to waves of austerity, adjustment, and conditioned aid<sup>9</sup> that has profoundly undermined the Haitian people’s effective enjoyment of fundamental rights. Specifically, their right to health, education, and, most relevantly here, food.

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5. See Marlene Daut, *When France Extorted Haiti—The Greatest Heist in History*, CONVERSATION (July 9, 2021), <https://theconversation.com/when-france-extorted-haiti-the-greatest-heist-in-history-137949> [<https://perma.cc/6JNC-H2NG>] (discussing France’s “colonial theft” in Haiti).

6. See generally HANS SCHMIDT, *THE UNITED STATES OCCUPATION OF HAITI, 1915–1934* (1971) (exploring the economic and diplomatic relations between the United States and Haiti); see also Jacqueline Charles, *Did the U.S Steal an Island Covered in Bird Poop from Haiti? A Fortune Is in Dispute*, MIAMI HERALD (Nov. 26, 2020), <https://www.miamiherald.com/article247325844.html> (on file with *HRLR Online*) (discussing the United States’ theft of La Navase, an island owned by Haiti, through the Guano Islands Act of 1856).

7. Both the World Bank and the International Monetary Fund implemented a series of loans, starting in the 1980s, that arguably resulted in widespread human rights violations. See WBG, *ECONOMIC RECOVERY IN HAITI: PERFORMANCE, ISSUES AND PROSPECTS* 30 (Dec. 23, 1988), <http://documents1.worldbank.org/curated/en/863891468034508907/pdf/multi0page.pdf> [<https://perma.cc/4DV5-B7BS>] (discussing outcomes of adjustment and recovery programs implemented in Haiti over 1986–88); INT’L BANK FOR RECONSTRUCTION & DEV.: CONSULTATIVE GRP. FOR HAITI, *CHAIRMAN’S REPORT ON PROCEEDINGS 90–91* (May 3, 1995), <https://documents1.worldbank.org/curated/en/548201468273711115/text/819750BR0A9RD80Box0379855B00PUBLIC0.txt> [<https://perma.cc/JKH7-3R9C>] (discussing the Emergency Economic Recovery Program, which it implemented in Haiti in 1996).

8. LAURENT DUBOIS, *HAITI: THE AFTERSHOCKS OF HISTORY* 102 (2012) (explaining the “double debt” incurred at the time of Haiti’s independence, meaning the debt to France compounded by interest and fees); see also Dan Sperling, *In 1825, Haiti Paid France \$21 Billion To Preserve Its Independence—Time For France To Pay It Back*, FORBES (Dec. 6, 2017), <https://www.forbes.com/sites/realspin/2017/12/06/in-1825-haiti-gained-independence-from-france-for-21-billion-its-time-for-france-to-pay-it-back/> [<https://perma.cc/4238-PN85>] (noting that Haiti was forced to pay a \$21 billion “independence debt” to France).

9. Vincent Joos, *Haiti’s Deadly Riots Fueled by Anger over Decades of Austerity and Foreign Interference*, CONVERSATION (July 26, 2018), <https://theconversation.com/haitis-deadly-riots-fueled-by-anger-over-decades-of-austerity-and-foreign-interference-100209> [<https://perma.cc/XJ4C-XNV8>]. Haiti has been subject to cycles of foreign debt cancellation followed by further indebtedness. See also Jim Lobe, *Haiti: U.S. Lawmakers Call for Debt Cancellation*, INST. FOR POL’Y STUD. (Feb. 12, 2010), [https://ips-dc.org/haiti\\_us\\_lawmakers\\_ngos\\_call\\_for\\_debt\\_cancellation/](https://ips-dc.org/haiti_us_lawmakers_ngos_call_for_debt_cancellation/) [<https://perma.cc/AAQ5-CKTC>] (explaining how decades of loans have resulted in crippling debt for Haiti).

Today, Haiti has one of the highest levels of food insecurity in the world<sup>10</sup>—in 2020, around 4.6 million people in Haiti (over 40% of the population) required emergency food assistance.<sup>11</sup> Recent predictions from the United Nations World Food Programme estimate that the number of Haitian people living in severe food insecurity could rise from 700,000 to 1.6 million following the COVID-19 outbreak.<sup>12</sup> One million nine hundred thousand of those food secure in Haiti are children, with 86,000 children under the age of five facing acute malnutrition in 2021—more than double the number in 2020.<sup>13</sup> Meanwhile, approximately 50% of the population is undernourished.<sup>14</sup>

Despite recent international awareness of Haiti's current food crisis,<sup>15</sup> this is but one moment in a devastating pattern of worsening food insecurity driven by "assistance" from foreign actors. Specifically, the assistance conditions the international community has imposed on Haiti that have resulted in a transition from subsistence production to dependence on the global marketplace.<sup>16</sup> In this article, I argue that the international aid regime that pushed to liberalize Haiti's economy and facilitate international trade has undercut the country's domestic

10. U.N. WORLD FOOD PROGRAMME, WFP HAITI: COUNTRY BRIEF 1 (Dec. 2020), <https://docs.wfp.org/api/documents/WFP-0000123441/download/> [<https://perma.cc/K8EH-564P>].

11. *Haiti: Food Insecurity Expected to Rise Next Year*, UN Humanitarian Agency Reports, UN NEWS (Dec. 27, 2019), <https://news.un.org/en/story/2019/12/1054441> [<https://perma.cc/L74J-NL9E>].

12. *COVID-19: Millions at Risk of Severe Food Insecurity in Latin America and Caribbean*, U.N. WORLD FOOD PROGRAMME (May 27, 2020), <https://www.wfp.org/news/covid-19-millions-risk-severe-food-insecurity-latin-america-and-caribbean> [<https://perma.cc/2RVK-MP8G>].

13. Joe McCarthy, *1.9 Million Children Face Growing Hunger Crisis in Haiti*, GLOB. CITIZEN (June 1, 2021), <https://www.globalcitizen.org/en/content/haiti-hunger-crisis-unicef/> [<https://perma.cc/94X5-J37B>].

14. *Haiti A Closer Look at Hunger and Undernutrition*, GLOB. HUNGER INDEX (Oct. 2019), <https://www.globalhungerindex.org/case-studies/2019-haiti.html> [<https://perma.cc/EK7X-5L9Y>].

15. See, e.g., Jamie Lutz, *Haitian Migration: Food Insecurity, Fragility, and a Better Way Forward*, CTR. STRATEGIC & INT'L STUD. (Nov. 22, 2021), <https://www.csis.org/analysis/haitian-migration-food-insecurity-fragility-and-better-way-forward> (discussing Haiti's food insecurity and its prominence in international news).

16. For example, lending agreements with international financial institutions like the World Bank and the International Monetary Fund that required Haiti to implement wide-ranging economic reforms. ECONOMIC RECOVERY IN HAITI, *supra* note 7, at 30; Press Release, IMF Approves Stand-by Credit for Haiti, IMF (Mar. 8, 1995), <https://www.imf.org/en/News/Articles/2015/09/14/01/49/pr9514> (on file with *HRLR Online*).

production and fostered an overreliance on food imports. Ultimately, I conclude that the resulting food insecurity and agricultural sector collapse has led to dire consequences for the rights of current and future generations of Haitians, and that it is the responsibility of foreign actors, along with the Haitian government, to provide redress.

This article proceeds in three parts. Part I begins by providing a brief background on foreign involvement in Haiti's food and economic systems, and then highlights the impact of their involvement on Haitian's right to food. Next, Part II outlines the relevant legal duties and obligations owed to Haitians by the foreign actors who promoted the aid regime, and discusses the temporal and territorial extension of these obligations. Finally, Part III concludes by considering the accessibility and adequacy of legal and policy accountability measures available for current and future generations to assert.

### I. Socio-Historical Context: Setting the Stage for Violations of the Right to Food

Haiti's status as one of the world's most food-insecure countries has its roots in a series of foreign-imposed policies that forced Haiti to make sweeping economic reforms.<sup>17</sup> As a result of these reforms, American food imports flooded the Haitian market,<sup>18</sup> while the local agriculture sector was eroded.<sup>19</sup> The consequent over-reliance on imported food led to severe food insecurity, as domestic production stagnated and Haitians became unable to afford expensive imports.<sup>20</sup> In addition to undermining the fundamental right to food, food insecurity has severe consequences for both current and future generations.

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17. *Id.*

18. Maura R. O'Connor, *Subsidizing Starvation*, FOREIGN POLICY (Jan. 11, 2013), <https://foreignpolicy.com/2013/01/11/subsidizing-starvation/> [<https://perma.cc/N8DA-W678>].

19. *Bill Clinton's Trade Policies Destroyed Haitian Rice Farming, Now Haiti Faces Post-Hurricane Famine*, DEMOCRACY NOW! (Oct. 11, 2016), [https://www.democracynow.org/2016/10/11/bill\\_clinton\\_s\\_trade\\_policies\\_destroyed](https://www.democracynow.org/2016/10/11/bill_clinton_s_trade_policies_destroyed) [<https://perma.cc/U3B5-G4UM>].

20. Rory Carroll, *Haiti: Mud Cakes Become Staple Diet as Cost of Food Soars Beyond a Family's Reach*, THE GUARDIAN (July 28, 2008), <https://www.theguardian.com/world/2008/jul/29/food.internationalaidanddevelopment> (on file with *HRLR Online*).

### A. Blow to Haiti's Agricultural Self-Sufficiency

Prior to the introduction of a series of foreign-imposed trade liberalization policies (discussed further below), Haiti was largely self-sufficient in rice production.<sup>21</sup> For instance, in 1985, Haiti produced 163,296 tons of rice and less than 5%—7,337 tons—of all rice consumed was imported from the United States.<sup>22</sup> But in the last decade alone, Haiti's rice imports have increased by nearly 150 million metric tons.<sup>23</sup> In 2020, Haiti imported almost \$245 million worth of United States produced rice, making the country the third largest market for North American rice after Japan and Mexico.<sup>24</sup> Total imports of crops and livestock have similarly increased, jumping from just under \$145,000 in 1975 to \$3.4 million in 2016, with a gradual increase beginning in the 1980s and continuing into the 1990s, following the implementation of externally imposed economic reforms.<sup>25</sup>

First implemented in the mid-1980s, these economic reforms, through the influence of foreign actors, shifted the Haitian diet to become predominantly reliant upon American imports. Notably, over

21. Jean-Germain Gros, *Indigestible Recipe: Rice, Chicken Wings, and International Financial Institutions: Or Hunger Politics in Haiti*, 40 J. BLACK STUD. 974, 980 (2010).

22. Eugene Matos De Lara & Amelia Baxter, *Agricultural Liberalization, a Breach of Sovereignty*, DIPLOMAT MAG. (June 7, 2015), <https://diplomatmagazine.eu/2015/06/07/agricultural-liberalization-a-breach-of-sovereignty/> [<https://perma.cc/SQ87-7HXE>].

23. Haiti's rice production has not improved significantly since 2008, remaining between 50,000 and 80,000 metric tons a year, which is largely the same as production levels in the 1990s. Meanwhile, imports have continued to exponentially grow, rising from roughly from 350 million metric tons in 2008 to nearly 500 metric tons in 2020. ECON. RSCH. SERV.: U.S. DEP'T OF AGRIC., HAITI'S U.S. RICE IMPORTS 6 (2016), [https://www.ers.usda.gov/webdocs/outlooks/39144/56601\\_rcs-16a-01.pdf?v=8202](https://www.ers.usda.gov/webdocs/outlooks/39144/56601_rcs-16a-01.pdf?v=8202) [<https://perma.cc/3EJ7-UYZC>].

24. Int'l Ctr. for Trade & Sustainable Dev. (ICTSD), Composite Index of Market Access for the Export of Rice from the United States 7 (2011), [https://www.files.ethz.ch/isn/138448/us\\_cima\\_rice.pdf](https://www.files.ethz.ch/isn/138448/us_cima_rice.pdf) [<https://perma.cc/4LQD-FST4>]; see also *Global Agriculture Trade System (GATS) Online*, United States Department of Agriculture Foreign Agricultural Service, <https://apps.fas.usda.gov/gats/default.aspx> (last visited Mar. 22, 2022) (search "Reports" for "all partners," "rice," and "dollars").

25. *The Food and Agriculture Organization Corporate Statistical Database (FAOSTAT)*, FOOD & AGRIC. ORG. OF THE U.N., <http://www.fao.org/faostat/en/#compare> (last visited Mar. 22, 2022) (select "Trade" under Groups, "Crops and Livestock Products" under Domains, "Haiti" under Country/Region, "Import Value" under Element, and "Total Merchandise Trade" under Item).

the course of a decade, international financial institutions (“IFIs”),<sup>26</sup> like the World Bank (“WBG”) and the International Monetary Fund (“IMF”), established lending agreements with Haiti, requiring it to implement a vast array of structural adjustment policies in exchange for capital.<sup>27</sup> For example, in 1986, the WBG, the IMF, and the United States Agency for International Development (“USAID”) jointly funded a three-year economic program in Haiti.<sup>28</sup> The program involved a \$40 million Economic Recovery Credit (“ERC”) from the WBG’s International Development Association (“IDA”), a \$36 million Structural Adjustment Facility (“SAF”) from the IMF, and a \$77 million Economic Support Fund (“ESF”) from the USAID.<sup>29</sup> Then in 1994, the IMF gave Haiti a 12-month stand-by credit to fund the government’s adoption of a new economic program.<sup>30</sup> Pursuant to these agreements, Haiti made a series of sweeping reforms: It lowered tariff levels on key agricultural products, such as lowering tariffs on rice from 50% to 3%;<sup>31</sup> implemented a free-floating exchange rate regime;<sup>32</sup>

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26. IFIs, which include the International Monetary Fund and the World Bank, are financial institutions established by multiple countries, with Member States as shareholders. As international institutions, they play a major role in providing financial and technical assistance for developing countries. *The ABCs of the IFIs*, CTR. FOR GLOB. DEV., <https://www.cgdev.org/page/abcs-ifis> [<https://perma.cc/3RSC-V5Z4>].

27. ECONOMIC RECOVERY IN HAITI, *supra* note 7, at 30; Stand-by Credit for Haiti, *supra* note 16.

28. *Id.*

29. *Id.*

30. Stand-by Credit for Haiti, *supra* note 16. “The Standby Credit Facility (SCF) provides financial assistance to low-income countries (LICs) with short-term balance of payments needs.” IMF, *Standby Credit Facility*, <https://www.imf.org/en/About/Factsheets/Sheets/2016/08/02/21/10/Standby-Credit-Facility> (on file with *HRLR Online*).

31. In 1995, “Haiti lowered its tariff rate to just 3%, and rice imports immediately increased by more than 60,000 metric tons to 207,000 metric tons, with the United States remaining the largest supplier.” HAITI’S U.S. RICE IMPORTS, *supra* note 23, at 3. Haiti’s tariff levels for rice remains 3% today. *Haiti—Import Tariffs*, PRIVACY SHIELD, <https://www.privacyshield.gov/article?id=Haiti-Import-Tariffs> [<https://perma.cc/YN4P-LAZQ>]. Other notable tariff reductions include chicken (40% to 5%) and corn (50% to 3%). CLARE MCGUIGAN, CHRISTIAN AID, AGRICULTURAL LIBERALISATION IN HAITI 22 (Mar. 2006), <https://www.christianaid.org.uk/sites/default/files/2017-08/agricultural-liberalisation-haiti-january2006.pdf> [<https://perma.cc/YM72-ESMV>]; *see also* Eric Icart & Jannes N. Trapp, *Agricultural and Food Price Policy in Haiti*, 48 SOC. & ECON. STUD. 153, 165–66 (Sept. 1999) (discussing the effects of the reduction of rice and corn import tariffs on the agricultural sector).

32. Gros, *supra* note 21, at 979–80 (“Among the first policy reforms that Haitian officials were “urged” to implement was currency reform . . . the World



and eliminated import quotas.<sup>33</sup> Under pressure from these IFIs and donor countries<sup>34</sup> that continue to wield enormous power in the

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Bank and IMF counseled then-finance minister Leslie Delatour to allow the gourde to free-float”).

33. HAITI'S U.S. RICE IMPORTS, *supra* note 23, at 3 (“Haiti first eliminated quantity restrictions on rice imports in 1986, but replaced a specific import tariff of \$70 per ton with a 50% ad valorem tariff. Imports increased from just 7,000 metric tons in 1985 to 25,000 metric tons in 1986, with the United States the sole supplier.”). Miami rice started flooding into Haitian markets after the elimination of the quantity restrictions in 1986, oftentimes illegally to avoid the 50% tariff. See Margot Hornblower, *‘Miami Rice’ Sparks Lawlessness in Rural Haiti: Government Mostly Ignores Unrest Stemming from Widespread Smuggling*, L.A. TIMES (Dec. 21, 1986), <https://www.latimes.com/archives/la-xpm-1986-12-21-mn-4010-story.html> [<https://perma.cc/JS67-Q4MK>] (highlighting protests in Haiti and noting other consequences of U.S. rice imports). Afterwards, the World Bank loan performance audit report stated that “[t]he [Haitian] Government replaced in December 1986 import quotas with licensing without formal ceilings, for seven agricultural products: rice, maize, millet, beans, sugar, chicken parts, and pork meat parts.” WBG, PROGRAM PERFORMANCE AUDIT REPORT ON HAITI (Nov. 1991), <http://documents1.worldbank.org/curated/pt/277911468915006862/text/multi0page.txt> [<https://perma.cc/D3XZ-F2WZ>]. While these products were still subject to relatively high tariffs even without the quotas in the 80s, the tariffs were eventually lowered from 35% to 3% in 1995. Celine Charveriat & Penny Fowler, *Rice Dumping in Haiti and the Development Box Proposal*, OXFAM INT’L (2002), [https://www.iatp.org/sites/default/files/Rice\\_Dumping\\_in\\_Haiti\\_and\\_the\\_Development\\_Box\\_.htm](https://www.iatp.org/sites/default/files/Rice_Dumping_in_Haiti_and_the_Development_Box_.htm) [<https://perma.cc/GZ34-65WN>].

34. Marc J. Cohen, *Diri Nasyon ou Diri Miami? Food, Agriculture and US-Haiti Relations*, 5 FOOD SEC. 597, 601 (2013), <https://link.springer.com/article/10.1007/s12571-013-0283-7?shared-article-renderer> [<https://perma.cc/3YGH-V4L4>] (“During the late 1980s and early 1990s, the Haitian government faced enormous pressure from the international financial institutions and donors to reform its economy in keeping with the prevailing ‘Washington Consensus’—a package of policies including trade liberalization.”). These policies were later implemented as a “quid pro quo” in exchange for U.S. troops “paving the way for Aristide’s restoration to office” in 1994. *Id.* A report jointly prepared by Haiti’s Ministry of Agriculture, Natural Resources and Rural Development and the World Bank also acknowledged that “[i]n 1986, and then in 1994, Haiti, on the advice of the donor community—including the World Bank—implemented profound trade liberalization reforms but without the implementation of complementary interventions such as the gradual introduction of reforms and the supply of commensurate increases of support to farmers during the transition phase.” WBG, DIAGNOSTIC AND PROPOSALS FOR AGRICULTURE AND RURAL DEVELOPMENT POLICIES AND STRATEGIES 16 (Oct. 2005) (emphasis added), <http://documents1.worldbank.org/curated/en/626201468257346558/pdf/367850ENGLISH0150Synthesis01PUBLIC1.pdf> [<https://perma.cc/RQZ3-VK8L>].

country,<sup>35</sup> Haiti, to date, has maintained these adjustments as a means of ensuring continued aid.<sup>36</sup>

These IFI-imposed trade reforms had devastating consequences on Haiti's agricultural self-sufficiency. Soon after the reforms were implemented, subsidized rice and poultry from the United States began flooding into Haiti at a rapidly increasing rate.<sup>37</sup> This is largely due to the elimination of quantity restrictions on imports in 1986 and the lowering of tariffs a year later.<sup>38</sup> For instance, while American rice exports to Haiti totaled 7,300 metric tons in 1980, that number steadily grew to 100,000 in 1990, 200,000 in 2000, and nearly 260,000 in 2005.<sup>39</sup> These American imports dramatically undercut local prices, as the United States had subsidized domestic

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35. Wesly Mondésir, *Haiti: The Crisis of State Sovereignty in the Light of Humanitarianism*, ALTERPRESSE (Jan. 11, 2020), <https://www.alterpresse.org/spip.php?article26559> [<https://perma.cc/39MA-A9XH>].

36. See Monique Clesca, *Haiti's Fight for Democracy*, FOREIGN AFFAIRS (Feb. 1, 2022), <https://www.foreignaffairs.com/articles/haiti/2022-02-01/haitis-fight-democracy> [<https://perma.cc/QW5S-SQJH>] (noting that fiscal reform, including raising the price on import duties, are essential to Haiti's economy). Haiti's reliance on foreign aid puts it at a clear disadvantage when it comes to accepting or rejecting structural adjustment policies included in loan terms. Miguel A Savastano & Michael Mussa, *The IMF Approach to Economic Stabilization* (IMF Working Paper No. 99/104 1999), <https://www.nber.org/system/files/chapters/c11046/c11046.pdf> [<https://perma.cc/9B99-TH7S>]. While it is unclear whether subsequent lending agreements specifically required the aforementioned structural adjustment policies, IMF has positively evaluated Haiti's maintenance of a free-floating exchange rate regime in staff reports. See, e.g., *Haiti: Staff Report for the 2000 Article IV Consultation and for a Staff-Monitored Program (SMP) for FY 2000/01*, IMF STAFF COUNTRY REPORTS 20 (Jan. 5, 2001), <https://www.imf.org/en/Publications/CR/Issues/2016/12/30/Haiti-Staff-Report-for-the-2000-Article-IV-Consultation-and-for-a-Staff-Monitored-Program-SMP-3873> [<https://perma.cc/6TZ7-JBBW>]. Further, IMF and WBG documents confirm that they continue to view trade liberalization as an effective strategy for economic growth for both developing and developed countries. See, e.g., Press Release, IMF Executive Board Cancels Haiti's Debt and Approves New Three-Year Program to Support Reconstruction and Economic Growth (July 21, 2010), <https://www.imf.org/en/News/Articles/2015/09/14/01/49/pr10299> (on file with *HRLR Online*) ("Monetary and exchange rate policies will be upgraded to facilitate the absorption of aid inflows, while avoiding large swings in the exchange rate and keeping inflation under control."); see also WBG, THE ROLE OF TRADE IN ENDING POVERTY 9 (2015), <http://documents1.worldbank.org/curated/en/726971467989468997/pdf/97607-REPLACEMENT-The-Role-of-Trade-in-Ending-Poverty.pdf> [<https://perma.cc/E288-EQQJ>] ("Policies that focus on lowering tariffs and non-tariff barriers between countries are essential elements [of fighting poverty through trade].").

37. Gros, *supra* note 21, at 981.

38. *Id.* at 980–81.

39. *Id.* at 981–83.

production prices.<sup>40</sup> Meanwhile, as part of the economic reforms, the Haitian government removed the little assistance it had provided local farmers, leaving them unable to compete with American imports.<sup>41</sup> Prior to these policy implementations, the country was able to locally produce enough rice and poultry to meet most, if not all, domestic demand.<sup>42</sup> After the reforms, however, the influx of cheap American rice and poultry into the market increased Haitian consumption of these products, solidifying them as a critical part of the people's everyday diet<sup>43</sup> as opposed to the luxury goods they once were.<sup>44</sup> All the while, local production of traditional staples, like rice and maize, dwindled.<sup>45</sup> As former United States president Bill Clinton would later

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40. "Arkansas farmers received more than \$2 billion in direct payments from the federal government between 1995 and 2011, half of which was for rice production. Riceland Foods and Producers Rice Mill, the first- and second-largest recipients of federal subsidies in the state, received over \$868 million in subsidies during the same period . . . [f]or years, organizations . . . have harshly criticized American rice subsidies for enabling the United States to dump its product in developing countries at depressed prices." O'Connor, *supra* note 18.

41. See Gros, *supra* note 21, at 981–83 ("Meanwhile, the Haitian government was counseled to remove the little assistance it had given Haitian farmers in the forms of seeds and fertilizers.").

42. See O'Connor, *supra* note 18 ("The country was self-sufficient when it came to rice production in part because Haitians only ate rice two or three times a week as part of a diverse diet that included corn and sorghum."); MCGUIGAN, *supra* note 31, at 3 ("While in the past Haiti was self-sufficient in supplying its people with food, it now uses around 80 per cent of its export earnings just to pay for food imports.").

43. In 1980, Haiti's rice consumption was slightly over 60,000 metric tons, but in 2010, it was nearly 400,000 metric tons. U.S. DEPT OF AGRIC. (USDA) FOREIGN AGRIC. SERV., GAIN REPORT, RICE PRODUCTION AND TRADE UPDATE, at Figure 2 (2010), [https://apps.fas.usda.gov/newgainapi/api/report/downloadreportbyfilename?filename=Rice%20Production%20and%20Trade%20Update\\_Santo%20Domingo\\_Haiti\\_11-9-2010.pdf](https://apps.fas.usda.gov/newgainapi/api/report/downloadreportbyfilename?filename=Rice%20Production%20and%20Trade%20Update_Santo%20Domingo_Haiti_11-9-2010.pdf) [<https://perma.cc/L69S-B27V>].

44. See Carol J. Williams, *Haiti's Food Crisis Rooted in Rice*, SEATTLE TIMES (May 15, 2008), <https://www.seattletimes.com/nation-world/haitis-food-crisis-rooted-in-rice/> [<https://perma.cc/J89A-ZZ3T>] ("Rice used to be a luxury, not the national dish, recalls Cantave Jean-Baptiste, country director for the World Neighbors rural development agency."); see also MCGUIGAN, *supra* note 31, at 21 ("[T]raditional creole chicken used to be considered a luxury product, consumed by the population on Sundays or on special occasions, such as baptisms or when a guest came to stay.").

45. HAITI'S U.S. RICE IMPORTS, *supra* note 23, at 6. Haiti's domestic production of rice has declined compared to the 1980s, with production levels from the 1990s onwards ranging from "91,000 tons to 142,000 tons, with an average of 114,400 tons," which is about "10,000 tons below the 1980/81-1989/90 average." *Id.* Likewise, chicken production has been negatively impacted, with scholars noting that the "widespread importation of American poultry [in the 90s] destroyed the

acknowledge, although the reform efforts were implemented to relieve low income countries of producing their own food, the policies were misguided and ultimately had deleterious effects on Haiti.<sup>46</sup>

### B. The Effects of Over-Reliance on Food Insecurity

While initially communities appeared to benefit from the reforms because they could buy rice at lower prices,<sup>47</sup> trade liberalization and the subsidy of exports to Haiti made the country highly dependent on food imports in the long-term.<sup>48</sup> American food imports became more accessible to Haitians than local products, both in terms of quantity and affordability, thus creating a reliance on these imported goods.<sup>49</sup> This reliance steadily increased as the population's

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traditional Haitian poultry industry, in which chickens were raised on a free-range basis rather than fattened through hormone injection and round-the-clock feeding.” Gros, *supra* note 21, at 983; *see also* Jamie McGee, *Haiti Poultry Industry Still Feels Pain of US Imports*, TENNESSEAN (May 21, 2016), <https://www.tennessean.com/story/money/2016/05/21/haiti-poultry-industry-still-feels-pain-us-imports/84504782/> [<https://perma.cc/AA9Z-VQ22>] (noting damage to Haiti's poultry industry following the reduction of import tariffs).

46. “*We Made a Devil’s Bargain*”: *Fmr. President Clinton Apologizes for Trade Policies that Destroyed Haitian Rice Farming*, DEMOCRACY NOW! (Apr. 1, 2010), [https://www.democracynow.org/2010/4/1/clinton\\_rice](https://www.democracynow.org/2010/4/1/clinton_rice) [<https://perma.cc/Q8NM-L96M>].

47. *See* Gros, *supra* note 21, at 981–83.

48. O’Connor, *supra* note 18.

49. HAITI’S U.S. RICE IMPORTS, *supra* note 23, at 1. Today, Haiti imports 80% of its rice from abroad, over 90% of which originates from the US. *Id.*; *see also* FRITZNER CLEDO & ELIZABETH AUTRY, U.S. DEP’T OF AGRIC. (USDA) FOREIGN AGRIC. SERV., REP. NO. HA2020-0001, HAITI: GRAIN AND FEED ANNUAL (Apr. 2020), [https://apps.fas.usda.gov/newgainapi/api/Report/DownloadReportByFileName?fileName=Grain%20and%20Feed%20Annual\\_Port-au-Prince\\_Haiti\\_04-15-2020](https://apps.fas.usda.gov/newgainapi/api/Report/DownloadReportByFileName?fileName=Grain%20and%20Feed%20Annual_Port-au-Prince_Haiti_04-15-2020) [<https://perma.cc/6X9W-8GA7>] (“During MY 2019/20, Haiti is expected to import 420,000 metric tons (MT) of wheat and wheat products. Rice continues to be a staple food for Haitians. Production of milled rice for MY 2020/21 (July 2020/June 2021) is forecast at 75,000 MT, with imports increasing to 495,000 MT. More than 90 percent of imported rice comes from the United States.”). Similarly, over the last decade, over 95% of Haiti’s chicken consumption has been from imports, despite recent increases in production. FRITZNER CLEDO & ELIZABETH AUTRY, U.S. DEP’T OF AGRIC. (USDA) FOREIGN AGRIC. SERV., GAIN REPORT NO. HA1804, HAITI POULTRY PRODUCTION TRIPLES IN LAST FIVE YEARS 4 (Nov. 2018), [https://apps.fas.usda.gov/newgainapi/api/report/downloadreportbyfilename?filename=Haiti%20poultry%20production%20triples%20in%20last%20five%20years\\_Santo%20Domingo\\_Haiti\\_11-9-2018.pdf](https://apps.fas.usda.gov/newgainapi/api/report/downloadreportbyfilename?filename=Haiti%20poultry%20production%20triples%20in%20last%20five%20years_Santo%20Domingo_Haiti_11-9-2018.pdf) [<https://perma.cc/CG4T-4QLT>].

diet became saturated with American imports, which now constitute over 50% of basic Haitian food staples.<sup>50</sup>

This over-reliance on imports proved to be detrimental for three reasons: (1) the instability of global food prices; (2) the volatility of the gourde; and (3) the loss of income for those in the agricultural sector.<sup>51</sup> Over time, these factors came together to make imported foods prohibitively expensive for the average Haitian, chronically threatening food accessibility and sustainability.<sup>52</sup> First, Haitians live with the ever-present fear of being priced out of basic food staples, as experienced in 2008 and again in 2020 due to COVID-19.<sup>53</sup> In 2008, for example, while floods from tropical storms destroyed 60% of Haiti's local harvest, global prices of basic foodstuffs, such as rice, oil, and chicken, soared.<sup>54</sup> The majority of people could not afford daily food and, as a result, widely protested in the streets.<sup>55</sup> Although food became relatively more accessible after the price shocks subsided, the food crisis continued, and more than half of Haiti's total population is chronically food insecure today.<sup>56</sup> This rate is especially concerning as "global prices for key staples are expected to rise by 120–180% by 2030,

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50. "The most current government needs assessment—based on numbers from 2005—is that 51 percent of the food consumed in the country is imported, including 80 percent of all rice eaten." *With Cheap Food Imports, Haiti Can't Feed Itself*, NBC NEWS (Mar. 21, 2010), <https://www.nbcnews.com/id/wbna35967561> [<https://perma.cc/U449-6T29>]; see also *Haiti*, WORLD FOOD PROGRAMME, <https://www.wfp.org/countries/haiti> [<https://perma.cc/A974-X8RT>] ("Among other factors, one of the drivers of food insecurity is the poor performance of the agriculture sector and the heavy dependence on food imports, which account for more than half of the food and 83% of the rice consumed.").

51. See Gros, *supra* note 21, at 977–83. Note that in addition to these consequences, prior to the externally imposed structural adjustment policies, Haiti had greater control over its economy and the regulation of foreign trade and was better able to deal with global economy fluctuations. *Id.* at 977–78.

52. *Id.* at 982–83.

53. *Crisis in Haiti Intensifies Amid Pandemic [ETR 2020 Report]*, VISION OF HUMANITY, <https://www.visionofhumanity.org/etr-2020-the-pandemics-toll-on-food-insecurity-and-overnourishment-in-haiti/> [<https://perma.cc/E2TG-JLN9>].

54. Rory Carroll, 'We Are Going to Disappear One Day,' THE GUARDIAN (Nov. 7, 2008), <https://www.theguardian.com/world/2008/nov/08/haiti-hurricanes> [<https://perma.cc/EGZ8-TNW7>].

55. See, e.g., Joseph Guyler Delva & Jim Loney, *Haiti's Government Falls After Food Riots*, REUTERS (Apr. 12, 2008), <https://www.reuters.com/article/us-haiti/haitis-government-falls-after-food-riots-idUSN1228245020080413> [<https://perma.cc/J4RW-2EZU>] (describing protests in Haiti in response to unaffordable food prices).

56. WORLD FOOD PROGRAMME, *supra* note 50.

due in part to the effects of climate change.”<sup>57</sup> Over the next decade, many more Haitians can expect to find food increasingly inaccessible. However, global food prices have already begun rising at alarmingly rapidly rates due to COVID-19.<sup>58</sup> Thus, food insecurity may soon plague all Haitians.<sup>59</sup>

Next, the consistent depreciation of the Haitian gourde since the required implementation of a free-floating exchange rate regime has also contributed to food insecurity.<sup>60</sup> The gourde, which had enjoyed a fixed exchange regime of five gourdes to one American dollar since 1919, immediately depreciated after the imposition of the free-floating exchange regime.<sup>61</sup> By 2010, the gourde had reached an exchange rate of 38:1.<sup>62</sup> Haitians have seen a decline in their purchasing power as a result of this devaluation, making food staples steadily more unaffordable and malnutrition more imminent, particularly as many Haitians were unable to meet their caloric needs.<sup>63</sup> For example, prior to the imposition of the policy changes that

57. BHAWAN SINGH & MARC J. COHEN, OXFAM, CLIMATE CHANGE RESILIENCE THE CASE OF HAITI 16 (Mar. 2014).

58. See Samuel Louis, *Food Prices Increased By 4% in March 2020 in Haiti*, HAITIAN TIMES (Apr. 24, 2020), <https://haitiantimes.com/2020/04/24/food-prices-increased-by-4-in-march-2020-in-haiti/> [<https://perma.cc/V77E-FL3T>] (“The National Food Security Coordination (CNSA) says it has seen—in its bulletin entitled ‘food basket and food security conditions’ in April—a 4% increase in the price of basic products: rice – beans – wheat flour – corn – sugar – vegetable oil during in March.”).

59. Chandler Thornton & Etant Dupain, *Haiti Faces Hunger as Covid-19 Looms*, CNN (May 8, 2020), <https://www.cnn.com/2020/05/08/americas/haiti-famine-coronavirus-intl/index.html> [<https://perma.cc/MP5E-357G>] (“Close to four million Haitians were already facing hunger before the Covid-19 crisis. With the continued depreciation of the gourde [Haitian currency], the steady rise in food prices, and new restrictions on movements and disruptions of economic activities, the most vulnerable Haitians will be pushed deeper into poverty[.]”).

60. *US Dollar to Haiti Gourde Spot Exchange Rates for 2020*, EXCH. RATES UK, <https://www.exchangerates.org.uk/USD-HTG-spot-exchange-rates-history-2020.html> [<https://perma.cc/4LJV-ALB7>]. In 2010, approximately 30–40 gourdes were equivalent to one U.S. dollar, but in 2020, over a hundred gourdes are equivalent to a dollar. *Id.*

61. A free-floating exchange regime allows currency value to move based on the global market. *Freely Floating Exchange Rate System*, NASDAQ, <https://www.nasdaq.com/glossary/f/freely-floating-exchange-rate-system>.

62. Gros, *supra* note 21, at 979. In 1987, the gourde stood at 7:1, and by 1989 it had reached 12:1.

63. Jaqueline Charles, *Haitians Feel Squeeze as Domestic Currency Weakens Against Dollar*, MIAMI HERALD (Jul. 27, 2015), <https://www.miamiherald.com/news/nation-world/world/americas/haiti/article28980235.html> (on file with HRLR Online).

led to this new exchange regime, the population consumed roughly 1,950 calories per day until 1985.<sup>64</sup> In 1989, after the implementation of the policies, the calorie consumption declined to an all-time low of 1,696 calories per day, well below the recommended amount.<sup>65</sup> Although this number has steadily rebounded, reports today show that approximately 40% of Haitians are malnourished.<sup>66</sup> Thus, nutritional problems have persisted, pointing to the lasting consequences of the trade liberalization policies.

Finally, following the weakening of Haiti's agricultural industry, which employed 66% of the country's labor force in the 80s,<sup>67</sup> many rural, low-income Haitians became even more food insecure due to the loss of income and employment.<sup>68</sup> This is particularly true for farmers, who, once having relied on income derived from the agricultural industry, have found themselves unable to afford basic food staples, especially as food prices rise.<sup>69</sup> For the current generation

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64. *The Food and Agriculture Organization Corporate Statistical Database (FAOSTAT)*, FOOD & AGRIC. ORG. OF THE U.N., <http://www.fao.org/faostat/en/#compare> (last visited Mar. 22, 2022) (input "Food Balance" under Groups, "New Food Balances" under Domains, "Haiti" under Country/Region, "Food Supply kcal/capita/day" under Element, and "Grand Total" under Item).

65. *Id.* While there has been a decrease in daily calorie consumption from about 1981 to 2008, the daily average calorie consumption has rebounded in more recent years. *Id.*

66. *How Malnutrition Affects Haiti*, BORGEN PROJECT (June 4, 2019), <https://borgenproject.org/how-malnutrition-affects-haiti/> [<https://perma.cc/XXG2-JVDD>].

67. "By the late 1980s the [Haitian agriculture] sector employed 66% of the labor force, accounted for 35% of GDP and provided 24% of exports." By 2012, however, the "agricultural sector contributions [were only] estimated at 38% of employment and 26% of GDP. *The Haiti Pilot Soil Survey Training Project*, U.S. DEPT OF AGRIC.: NAT. RES. CONSERVATION SERV. (Feb. 2014), <https://www.nrcs.usda.gov/wps/portal/nrcs/detail/national/programs/alphabetical/international/?cid=stelprdb1246491> [<https://perma.cc/7ZLN-NXZ5>].

68. Gros, *supra* note 21, at 981–83.

69. WBG, INVESTING IN PEOPLE TO FIGHT POVERTY IN HAITI 4 (2012), [https://www.worldbank.org/content/dam/Worldbank/document/Poverty%20documents/Haiti\\_PA\\_overview\\_web\\_EN.pdf](https://www.worldbank.org/content/dam/Worldbank/document/Poverty%20documents/Haiti_PA_overview_web_EN.pdf) [<https://perma.cc/58E6-TW9L>]. On top of declining employment in the agricultural sector, the disparity in poverty rates between rural and urban areas over recent years is further evidence that rural, low-income Haitians are among the hardest-hit. *Id.* While from 2000 to 2012 poverty rates fell by 9% in urban areas and 15% in metropolitan areas, rural areas saw no reduction in poverty rates, which remained at 38%. *Id.* at 7–8. The 2012 WBG report also found that Haiti's rural areas are "home to over half of the population," including 80% of Haitians living in extreme poverty. *Id.* Furthermore, a 2014 WBG study found that Haitian "households that depend on agriculture are poorer than households that depend on nonfarm activities." WBG, RURAL DEVELOPMENT IN

of Haitian farmers, the economic decline of the industry due to the flood of U.S. imports and its impact on the right to food, as well as other human rights, has been especially sudden and long-lasting.

### C. Undermining the Right to Food

The right to food is codified in Haiti's domestic law through a provision of the Constitution of 1987. It recognizes that Haitian citizens have a right to food and social security.<sup>70</sup> The Constitution also imposes an obligation on the state to guarantee Haitians the right to life and health—which encompass the right to food<sup>71</sup>—in accordance with the Universal Declaration of Human Rights (“UDHR”),<sup>72</sup> which Haiti has approved.<sup>73</sup>

The Convention on Economic, Social and Cultural Rights (“ICESCR”), ratified by Haiti in October 2013,<sup>74</sup> also guarantees the right to food.<sup>75</sup> Under interpretations by the U.N. Committee on Economic, Social and Cultural Rights—the treaty body charged with monitoring implementation of the ICESCR<sup>76</sup>—the right to food in international law encompasses four elements: availability, accessibility, adequacy, and sustainability.<sup>77</sup>

HAITI: CHALLENGES AND OPPORTUNITIES 15 (Sept. 2014), <http://documents1.worldbank.org/curated/en/976171468032682306/pdf/955400WP0Box390portunities00PUBLIC0.pdf> [<https://perma.cc/NG4N-RBVJ>].

70. Constitution of the Republic of Haiti Mar.10, 1987, art. 22 (Haiti) [hereinafter *Haiti Constitution*].

71. OFF. U.N. HIGH COMM’R FOR HUM. RTS., *THE RIGHT TO ADEQUATE FOOD* 7 (Apr. 2010), <https://www.ohchr.org/sites/default/files/Documents/Publications/FactSheet34en.pdf> (on file with *HRLR Online*).

72. Universal Declaration of Human Rights (UDHR), G.A. Res. 217 A (III), U.N. Doc. A/RES/217(III) (Dec. 10, 1948) [hereinafter *UDHR*].

73. *Chapter 1: Legal Framework*, INTER-AM. COMM’N ON HUM. RTS., <http://www.cidh.org/countryrep/haiti79eng/chap.1.htm> (last visited Apr. 4, 2022).

74. International Covenant on Economic, Social and Cultural Rights, *opened for signature* Dec. 16, 1966, 993 U.N.T.S. 171 (entered into force Jan. 3, 1973) [hereinafter *ICESCR*].

75. ICESCR, *supra* note 74, art. 11.

76. The Committee on Economic, Social and Cultural Rights was established in 1985 pursuant to ECOSOC Resolution 1985/17 and is composed of 18 independent experts. *Committee on Economic, Social and Cultural Rights*, OFF. U.N. HIGH COMM’R FOR HUM. RTS., <https://www.ohchr.org/en/hrbodies/cescr/pages/cescrindex.aspx> [<https://perma.cc/HK3R-XU86>].

77. *OHCHR and the Right to Food*, OFF. U.N. HIGH COMM’R FOR HUM. RTS., <https://www.ohchr.org/EN/Issues/ESCR/Pages/Food.aspx#:~:text=%2D%20Adequacy%3A%20Food%20must%20satisfy%20dietary,should%20also%20be%20culturally%20acceptable> [<https://perma.cc/S6YT-UN6D>].



The forced implementation of trade liberalization policies—and the population’s consequent over-reliance on American food imports—has undermined the population’s guaranteed right to food. The sum total of these economic policies has especially hindered access to food for low-income Haitians, farmers living in rural regions,<sup>78</sup> and residents of metropolitan slums.<sup>79</sup> Among the affected population, women and children have been particularly hard-hit; U.N. Office for Coordination of Humanitarian Affairs (“U.N. OCHA”) reported that of the 4.6 million Haitians who required humanitarian assistance in 2020 due to extreme food insecurity, over 57% were women and girls, and 45.5% were children.<sup>80</sup> Similarly, UNICEF reported that about 168,000 children in Haiti are experiencing acute malnutrition.<sup>81</sup> Furthermore, food insecurity within low-income households has led to a host of collateral consequences, including the deterioration of health due to malnutrition,<sup>82</sup> increased rates of diabetes,<sup>83</sup> lower enrollment in education,<sup>84</sup> and exploitation in manufacturing industries, where

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78. See Paisley Dodds, *Food Imports Hurt Struggling Haitian Farmers*, NBC NEWS (Feb. 26, 2010), [www.nbcnews.com/id/35608836/ns/world\\_news-americas/t/food-imports-hurt-struggling-haitian-farmers](http://www.nbcnews.com/id/35608836/ns/world_news-americas/t/food-imports-hurt-struggling-haitian-farmers) [https://perma.cc/ZNM9-9JMR] (quoting a 38-year-old rice farmer as stating “I can’t make any money off my rice with all the foreign rice there is now”).

79. See Ariana Cubillos, *Haiti’s Poor Resort to Eating Mud as Prices Rise*, NBC NEWS (Jan. 29, 2008), [http://www.nbcnews.com/id/22902512/ns/world\\_news-americas/t/haitis-poor-resort-eating-mud-prices-rise/](http://www.nbcnews.com/id/22902512/ns/world_news-americas/t/haitis-poor-resort-eating-mud-prices-rise/) [https://perma.cc/UEB5-2TY5] (“With food prices rising, Haiti’s poorest can’t afford even a daily plate of rice”).

80. See U.S. AGENCY FOR INT’L DEV. (USAID), HAITI GENDER ASSESSMENT 39 (2016), <https://banyanglobal.com/wp-content/uploads/2017/07/USAID-Haiti-Gender-Assessment.pdf> [https://perma.cc/9SQJ-8QVJ] (“[W]omen and children are especially and disproportionately affected by food and economic insecurity, and . . . gender considerations must be taken into account to improve their welfare and that of their families.”).

81. UNICEF, HUMANITARIAN ACTION FOR CHILDREN: HAITI (2021), <https://www.unicef.org/media/87006/file/2021-HAC-Haiti.pdf> [https://perma.cc/88HY-WRPE].

82. OXFAM, KICKING DOWN THE DOOR: HOW UPCOMING WTO TALKS THREATEN FARMERS IN POOR COUNTRIES 27 (Apr. 2005) (“[Since the tariff reduction,] rice-growing areas now have some of the highest concentrations of malnutrition and poverty . . . [and] [r]ice farmers have responded to the lower prices by cutting down on their household costs, such as health and education, and the women among them have taken on additional work as rural labourers.”).

83. *Diabetes Country Profiles: Haiti*, WHO (2016), [https://cdn.who.int/media/docs/default-source/countryprofiles/diabetes/hti\\_en.pdf?sfvrsn=6aff0c22\\_39&download=true](https://cdn.who.int/media/docs/default-source/countryprofiles/diabetes/hti_en.pdf?sfvrsn=6aff0c22_39&download=true) [https://perma.cc/4MZ7-MTWU].

84. School enrollment has long been lower in rural areas hard-hit by agricultural liberalization policies. Henriette Lunde, HAITI YOUTH PROJECT,

many of those who lost their livelihoods from agriculture sought employment.<sup>85</sup> Thus, the undermining of the right to food has, in turn, jeopardized for many Haitians their right to health, work, and education.<sup>86</sup>

## D. Beyond Just Hunger: The Effects of Food Insecurity

### 1. Malnutrition and Starvation

Living in chronic food insecurity, Haitians will not be able to enjoy their right to the highest attainable standard of physical and mental health due to the negative impacts of malnutrition and starvation.<sup>87</sup> Along with the resulting lack of food accessibility, the shift in the population's food habits means that it will not get the nutrition it needs, in part due to the reduction in dietary diversity.<sup>88</sup>

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YOUTH AND EDUCATION IN HAITI: DISINCENTIVES, VULNERABILITIES AND CONSTRAINTS 5 (2008) (“While three of four children in urban areas start in primary school, only around half of the children in the rural areas are given this opportunity.”). Educational attainment for rural children is closely linked to income, and researchers have found that “even when the farmers are able to sell their crops before the start of the school year, the surplus is often not enough to set aside money for school fee” because “other expenses must be covered first, like paying workers who have assisted during the harvest and buying fertilizer.” *Id.* at 28. Overall, “there is good reason to believe that the high increase in costs of fertilizing, in combination with the increase in prices of food and fuel, have forced rural children out of school in Haiti, or prevented them from starting.” *Id.*

85. *Bill Clinton's Heavy Hand on Haiti's Vulnerable Agricultural Economy: The American Rice Scandal*, COUNCIL ON HEMISPHERIC AFFS. (Apr. 13, 2010), <https://www.coha.org/haiti-research-file-neoliberalism%E2%80%99s-heavy-hand-on-haiti%E2%80%99s-vulnerable-agricultural-economy-the-american-rice-scandal/> [<https://perma.cc/F5S4-KFQY>] (“The collapse of the Haitian agricultural sector, beginning in the late 1980's, has perpetuated an exodus from rural areas to more crowded urban centers. However, few prospects, in terms of jobs, were available at the time these migrants moved to the cities.”).

86. *Id.* As a byproduct of economic liberalization, “some foreign investment managed to trickle into Haiti, [including] American clothing companies [that] set up sweatshops in trade zones in Haiti where workers were paid an average wage of \$.30 per hour.” *Id.* (“[In January 2004,] a 110-pound sack of American rice sold for \$22.50, which would require 75 hours of labor, yet by May 2004, the price went up to \$45, meaning that a Haitian sweatshop worker would have to work 150 hours just to acquire one sack of rice”).

87. See ICESCR, *supra* note 74, art. 12 (outlining the right to the enjoyment of physical and mental health).

88. Malnutrition results from eating both an insufficient quantity of food and an insufficiently varied diet that does not provide adequate energy and nutrients. Vinicius J.B. Martins et al., *Long-lasting Effects of Undernutrition*, 8 INT'L J. ENV'T. RES. & PUB. HEALTH 1817, 1817 (2011); see also Levenson Badio, DEPT OF FOOD SEC. & AGRIC. DEV., KYUNGPOOK NAT'L UNIV., *Effect of Trade Liberalization on*

The impact of malnutrition is especially harmful in children; the effects of malnutrition during the first two years of development are largely irreversible.<sup>89</sup> Effects of continuing food insecurity on newborns include increased vulnerability to disease, developmental delays, stunted growth, and even blindness.<sup>90</sup> In one study covering food insecurity in the United States, the likelihood of fair to poor health among children in food insecure households was 2.14 times higher than among children in food-secure households.<sup>91</sup>

Moreover, undernutrition in children has been linked to poor mental development and school achievement, as well as behavioral abnormalities.<sup>92</sup> Delayed effects of malnutrition may also present later in life, such as an increased risk for obesity and diet-related non-communicable diseases (“NCD”), including cardiovascular diseases, various cancers, and diabetes.<sup>93</sup> By adulthood, food-insecure individuals have 2.4 times higher risk of diabetes and hypertension compared to non-food insecure individuals.<sup>94</sup> Since the mid-1980s, when the country’s diet was “Americanized,” diabetes among Haitians has almost doubled.<sup>95</sup>

Finally, baseline food insecurity has only exacerbated the country’s extreme vulnerability to man-made and natural disasters,

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*Food Basket Supply in HAITI* (Oct. 2017) (“Food import has a consequence of reducing the dietary diversity scale as it is in the case of Haiti, the excessive rice import makes its price relatively lower comparing to the choice of combining different foods for a better diet and its easiness to be cooked gives it a predilection place in the food diet of the Haitians.”).

89. *Malnutrition, UNICEF*, <https://www.unicef.ca/en/malnutrition#:~:text=Malnutrition%20in%20children%20is%20especially,result%20in%20future%20income%20reduction> [https://perma.cc/YKH9-KA2R].

90. *Id.*

91. John T. Cook et al., *Child Food Insecurity Increases Risks Posed by Household Food Insecurity to Young Children’s Health*, 136 J. NUTR. 1073, 1073–76 (2006).

92. Martins et al., *supra* note 88, at 1817.

93. *Fact Sheet: Malnutrition*, WHO (June 9, 2021), <https://www.who.int/news-room/fact-sheets/detail/malnutrition> (on file with *HRLR Online*).

94. Hillary K. Seligman et al., *Food Insecurity Is Associated with Diabetes Mellitus: Results from the National Health Examination and Nutritional Examination Survey (NHANES) 1999–2002*, 22 J. GEN. INTERNAL MED. 1018, 1018–23 (2007).

95. *Diabetes Country Profiles: Haiti*, *supra* note 83.

including the COVID-19 pandemic<sup>96</sup> and the 2021 7.2 earthquake.<sup>97</sup> When the COVID-19 pandemic hit, the 4.4 million Haitians who were already food insecure found themselves at a distinct disadvantage as interruptions to the global economy made basic foods even more expensive and difficult to find.<sup>98</sup> Moreover, the effects of the August 2021 earthquake, which dealt a huge blow to Haiti's agricultural sector and further impacted the availability of food, were felt particularly acutely by those already suffering from food insecurity.<sup>99</sup>

## 2. Socioeconomic Consequences of Food Insecurity

Beyond malnutrition and vulnerability to natural disasters, there is a real risk that the population's right to work under just and favorable conditions<sup>100</sup> will be violated, as food insecurity has and will continue to force low-income people to endure low wage, unsustainable jobs in the manufacturing industry due to the decline of the

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96. Nelly Mitja, *Hunger in Haiti: Addressing Food Insecurity Challenges*, ACTION AGAINST HUNGER (Dec. 18, 2020), <https://www.actionagainsthunger.org/story/hunger-haiti-addressing-food-insecurity-challenges> [<https://perma.cc/2NQG-D3EA>].

97. Frank Giustra, *Without Long-Term Investment, Food Aid for Haiti Risks Being a Band-Aid*, PHILANTHROPY NEWS DIGEST (Sept. 9, 2021), <https://philanthropynewsdigest.org/commentary-and-opinion/without-long-term-investment-food-aid-for-haiti-risks-being-a-band-aid> [<https://perma.cc/6YF3-LDZQ>]; see also UNICEF, EARTHQUAKE HAITI: HUMANITARIAN SITUATION REPORT (Aug. 24, 2021), <https://www.unicef.org/media/105751/file/%20Haiti-Humanitarian-EarthquakeV1-SitRep-No3-24-August-2021.pdf> [<https://perma.cc/7RKT-3CG7>] (discussing effects of the 2021 earthquake on nutrition).

98. Antoine Vallas, *Haiti: Coronavirus, High Food Prices and How Beans Became a Luxury*, WORLD FOOD PROGRAMME (Apr. 14, 2021), <https://www.wfp.org/stories/haiti-coronavirus-high-food-prices-and-how-beans-became-luxury> [<https://perma.cc/7ZGB-X6H7>]; see also CRISIS IN HAITI, *supra* note 53 (discussing the effects of the COVID019 pandemic on food security in Haiti).

99. Giustra, *supra* note 97; see also *Hunger Spikes in Haiti Following Deadly Earthquake*, UN NEWS (Sept. 9, 2021), <https://news.un.org/en/story/2021/09/1099492> [<https://perma.cc/BEQ3-4E6R>] (“Last month’s earthquake destroyed markets, roads, storage and processing facilities, dairies, and irrigation systems. Tropical Storm Grace, which hit days after the seismic event, caused additional damage. FAO Representative in the country, Jose Luis Fernandez, said that ‘on top of a succession of disasters and crises, this latest double whammy has left people’s ability to produce and to access food for their families and communities, in tatters.’”).

100. See, e.g., ICESCR, *supra* note 74, art. 6 (ensuring the right to work); S. Exec. Doc. D, 95-2 (1978) (same).

agricultural sector.<sup>101</sup> Many people who previously relied on the agriculture industry for their livelihoods now work in factories, enduring sweatshop-like conditions for less than \$8 a day—approximately half the amount needed for an adequate standard of living.<sup>102</sup> Moreover, because free public education is limited in Haiti, families impacted by the decline of Haiti’s agricultural industry will be much less likely to be able to pay for private education, which accounts for 80% of Haiti’s education system.<sup>103</sup> Therefore, given their low wages and the rising price of food, low-income Haitian families will likely be unable to provide their children with an education, further perpetuating the cycle of poverty.<sup>104</sup>

### 3. Rights of Future Generations

The deleterious effects to health and the lack of opportunity for long-term educational success and economic opportunity for the current population will perpetuate conditions of food insecurity for future generations.<sup>105</sup> Even with aggressive intervention, the current prevalence of malnutrition will negatively affect the health of future generations.<sup>106</sup> Evidence shows that malnutrition can have lifelong and intergenerational consequences when it occurs during critical phases of life, such as infancy, early childhood and adolescence, or pregnancy

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101. Rashmee Roshan Lall, *Haiti’s Employment Push Turns to Textiles as Farming Tradition Uprooted*, THE GUARDIAN (Aug. 21, 2013), <https://www.theguardian.com/global-development/poverty-matters/2013/aug/21/haiti-employment-textiles-farming> (on file with HRLR Online).

102. See Brian Ellsworth, *Haiti Hikes Minimum Wage By Up to 54% Following Worker Protests*, REUTERS (Feb. 21, 2022), <https://www.reuters.com/world/americas/haiti-hikes-minimum-wage-by-up-54-following-worker-protests-2022-02-21/> (on file with HRLR Online). (“Employees in the clothing manufacturing sector, which export finished products to U.S. retailers, received a 37% increase. That takes their wages to just under \$7.50 per day, compared with the \$15 per day that union leaders had demanded.”).

103. Becky Sullivan, *The Haiti Earthquake’s Latest Victim May Be the New School Year*, NAT’L PUB. RADIO (Sept. 5, 2021), <https://www.npr.org/2021/09/05/1033598525/the-haiti-earthquakes-latest-victim-may-be-the-new-school-year> [https://perma.cc/YT37-57QE].

104. See, e.g., Convention on the Rights of the Child (CRC) art. 28. Nov. 20, 1989, 1577 U.N.T.S. 3 (guaranteeing the right to education).

105. Madeline Bishop, *The Cycle of Food Insecurity*, PUB. HEALTH POST (May 8, 2017), <https://www.publichealthpost.org/research/cycle-food-insecurity/> [https://perma.cc/DVL4-CD7M].

106. *Id.*

and lactation.<sup>107</sup> The increase in diabetes also has implications for future generations—exposure to diabetes *in utero* predisposes the offspring to obesity and diabetes later in life.<sup>108</sup> This year, the World Bank attempted to measure how current health and education conditions will shape the knowledge, skills, and experience of existing and future generations.<sup>109</sup> Its report noted how poor health and restriction to education negatively impact future generations, including those not yet born<sup>110</sup>—the project found that children born in poor countries, lacking adequate access to health, education, and food, are only 30% as productive as they could be.<sup>111</sup> Moreover, the report highlighted the negative health, educational, and employment impacts of famine on a country’s population across decades and generations.<sup>112</sup>

Ultimately, the need for relief is urgent. As an Oxfam policy proposal notes, monumental efforts and investments that consider the extent of Haiti’s agricultural dependence are needed in order to revitalize Haiti’s agricultural industry.<sup>113</sup> And even if agricultural revitalization efforts are pursued aggressively, environmental and technological challenges make it impossible to guarantee results.<sup>114</sup>

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107. FOOD & AGRIC. ORG. OF THE U.N. ET AL., THE STATE OF FOOD SECURITY AND NUTRITION IN THE WORLD 142 (2020), <https://www.fao.org/3/ca9692en/ca9692en.pdf> [<https://perma.cc/4HT7-QZ5P>]; see also Jonathan C. Wells et al., *The Double Burden of Malnutrition: Aetiological Pathways and Consequences for Health*, 395 THE LANCET 75, 75–88 (2020) (“Long-lasting effects of malnutrition in early life can be attributed to interconnected biological pathways, involving imbalance of the gut microbiome, inflammation, metabolic dysregulation, and impaired insulin signalling. Life-course exposure to early undernutrition followed by later overweight increases the risk of non-communicable disease, by imposing a high metabolic load on a depleted capacity for homeostasis, and in women increases the risk of childbirth complications.”).

108. Dana Dabelea, *The Predisposition to Obesity and Diabetes in Offspring of Diabetic Mothers*, 30 DIABETES CARE S169, S169–73 (2007).

109. WBG & Int’l Bank for Reconstruction & Dev., *The Human Capital Index 2020 Update: Human Capital in the Time of COVID-19* (2020), <https://reliefweb.int/sites/reliefweb.int/files/resources/152967.pdf> [<https://perma.cc/DT4Y-D68R>].

110. *Id.* at 21.

111. *Id.* at 6, 65.

112. *Id.* at 2.

113. CARLOS FURCHE, OXFAM, *THE RICE VALUE CHAIN IN HAITI: POLICY PROPOSAL* 7, 64 (2013), <https://s3.amazonaws.com/oxfam-us/www/static/media/files/haiti-rice-policy-background.pdf> [<https://perma.cc/V26R-5E27>].

114. Unsustainable agricultural practices that have led to land degradation, effects of climate change and natural disasters, and lack of technology for more sustainable practices are challenges toward revitalizing the Haitian rice industry. See, e.g., SINGH, *supra* note 57 (discussing challenges to agricultural revitalization in Haiti, including climate change, natural disasters, poor soil quality due to deforestation, and governance challenges).

Therefore, Haitians are likely to remain food insecure unless, amongst other things, IFIs take urgent measures to reform their investment policies. The dire consequences of food insecurity, and its effects on other human rights, underscore the need to recognize and enforce accountability measures against the international actors that fostered reliance in Haiti and deprioritized its self-sufficiency.

## II. National and Extra-Territorial Obligations and the Right to Food

Under international law, states have human rights obligations within their own territories and jurisdictions, and towards their own citizens.<sup>115</sup> As described above, Haiti is bound by the ICESCR as well as its own constitution to guarantee Haitians the right to food.<sup>116</sup> In addition, states have extraterritorial obligations (“ETOs”) related to the enjoyment of human rights beyond their borders.<sup>117</sup> Thus, the Haitian government and Member States (also called Member Countries)<sup>118</sup> of IFIs—including the United States, which has a long history of independent interference in Haiti<sup>119</sup>—have obligations under international law that could provide avenues for redress to the people of Haiti.

### A. Haiti’s Obligations

Although this article aims to focus specifically on the obligations of external actors, it is worth noting that the Haitian government, too, has a duty to ensure that their citizen’s most basic rights are safeguarded. The Haitian government has human rights obligations under multiple instruments, including the Convention on

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115. A number of international treaties lay out the obligations of States Parties regarding human rights within their borders and toward their citizens. *See, e.g.*, ICESCR, *supra* note 74 (laying out states’ economic, social, and cultural obligations).

116. Haiti Constitution, *supra* note 70, art. 22; *See, e.g.*, ICESCR, *supra* note 74.

117. ETOs stem from the need to regulate globalization as it affects universal human rights protection. *Maastricht Principles on Extra-Territorial Obligations of States*, CTR. FOR INT’L ENV’T L. (CIEL), [https://www.ciel.org/wp-content/uploads/2015/05/Maastricht\\_ETO\\_Principles\\_21Oct11.pdf](https://www.ciel.org/wp-content/uploads/2015/05/Maastricht_ETO_Principles_21Oct11.pdf) [<https://perma.cc/ZK6K-BMGU>]

118. Most countries in the world are Member States of IFIs. For example, the International Monetary Fund notes that its membership includes 190 countries. *List of Members*, IMF, <https://www.imf.org/external/np/sec/memdir/memdate.htm> (on file with *HRLR Online*).

119. SCHMIDT, *supra* note 6.

the Rights of the Child (“CRC”), the Universal Declaration of Human Rights (“UDHR”), and the International Covenant for Economic, Social, and Cultural Rights (“ICESCR”).<sup>120</sup> Moreover, its own Constitution requires that the state respect, protect, and fulfill human rights, which include the right to food,<sup>121</sup> right to health,<sup>122</sup> right to work under favorable conditions,<sup>123</sup> and right to education.<sup>124</sup> Pursuant to ICESCR Article 2 and CRC Article 4, the government must take all appropriate measures to progressively implement the rights guaranteed by their respective treaties and to do so to the maximum extent of its available resources.<sup>125</sup> This obligation also entails refraining from taking retrogressive measures that are harmful to the enjoyment of human rights found in the instruments unless absolutely necessary.<sup>126</sup>

Externally imposed trade liberalization policies and loan conditions have impeded the Haitian government’s ability to comply with their human rights obligations. Ultimately, this has negatively impacted their citizen’s enjoyment of numerous fundamental rights. Haiti is required to fulfill, protect, and respect its citizens’ right to food, but trade liberalization policies, as discussed above, forced the government to implement reforms that undercut Haiti’s agricultural sector. Moreover, these same policies have inhibited the government from investing in programs and services that would help to alleviate the consequent effects of food insecurity.<sup>127</sup>

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120. Haiti has ratified the U.N. Charter, CRC and the ICESCR. UN Treaty Body Database—*Haiti*, UN OHCHR, [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=74&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=74&Lang=EN) [https://perma.cc/QZW6-ZSEU]; *Charter of the United Nations and Statute of the International Court of Justice*, U.N. TREATY COLLECTION, [https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg\\_no=I-1&chapter=1&clang=\\_en](https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=I-1&chapter=1&clang=_en) [https://perma.cc/XF3G-97M5].

121. CRC, *supra* note 104; UDHR, *supra* note 72.

122. CRC, *supra* note 104, art. 24; ICESCR, *supra* note 74, art. 12.

123. Haiti Constitution, *supra* note 70, art. 35; UDHR, *supra* note 72, art. 23; ICESCR, *supra* note 74, arts. 6, 7.

124. CRC, *supra* note 104, art. 28; UDHR, *supra* note 72, art. 26; ICESCR, *supra* note 74, art. 13.

125. CRC, *supra* note 104, art. 4; ICESCR, *supra* note 74, art. 2.

126. See, e.g., Committee on Economic, Social, and Cultural Rights (ESCR Committee), *The Right To The Highest Attainable Standard Of Health: CESCR General Comment No. 14*, ¶ 32 (2000) (“As with all other rights in the Covenant, there is a strong presumption that retrogressive measures taken in relation to the right to health are not permissible”).

127. NGOs such as Oxfam, the World Food Programme, and Action Against Hunger have proposed a number of programs and investment into services that would help alleviate hunger. See, e.g., Borgen Project, *supra* note 66 (noting



### B. Extraterritorial Obligations: The United States and Other Member States of IFIs

The Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights (“Maastricht Principles”) were adopted in 2011 by a group of experts in international and human rights, including several U.N. rapporteurs, independent experts, and committee members.<sup>128</sup> They are a restatement of existing human rights law on ETOs.<sup>129</sup> According to the Maastricht Principles, states have an obligation to avoid “acts and omissions that create a real risk of nullifying or impairing the enjoyment of economic, social and cultural rights extraterritorially” where such nullification or impairment is a foreseeable result of their conduct.<sup>130</sup> ETOs of states are also triggered in situations where they exercise effective authority or control over people or territories,<sup>131</sup> or where they find themselves “in a position to exercise decisive influence or to take measures to realize economic, social and cultural rights extraterritorially.”<sup>132</sup> The “Decisive Influence” doctrine applies nearly parallel to Member States of IFIs, as these states often play a critical

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programs available); WORLD FOOD PROGRAMME, *supra* note 50 (outlining programs to feed schoolchildren, support local agriculture, and build resilience); Mitja, *supra* note 96 (proposing that the Haitian government undertake infrastructure improvement; technical training for small-scale farmers; access to education, including agroeducation; and investment into local agriculture, for example through the provision of food vouchers for local products).

128. ETO Consortium, Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights 14 (2013), [https://www.etoconsortium.org/nc/en/main-navigation/library/maastricht-principles/?tx\\_drblob\\_pi1%5BdownloadUid%5D=23](https://www.etoconsortium.org/nc/en/main-navigation/library/maastricht-principles/?tx_drblob_pi1%5BdownloadUid%5D=23) [<https://perma.cc/3NNG-VR5C>].

129. *Id.*

130. *Id.* at 7.

131. *Id.* at 9; *see also* *Extra-territorial Jurisdiction of States Parties to the European Convention on Human Rights*, EUR. CT. H.R. (2018), [https://www.echr.coe.int/documents/fs\\_extra-territorial\\_jurisdiction\\_eng.pdf](https://www.echr.coe.int/documents/fs_extra-territorial_jurisdiction_eng.pdf) [<https://perma.cc/M469-3EA6>] (providing a summary of cases where the European Court of Human Rights has recognized ETOs in the context of effective control and authority); *see also* Human Rights Committee, General Comment No. 31: Nature of the General Legal Obligation Imposed on States Parties to the Covenant, U.N. GAOR, Hum. Rts. Comm., 18<sup>th</sup> Sess., ¶ 10, U.N. Doc. CCPR/C/21/Rev.1/Add. 13 (Mar. 29, 2014) (“[State Parties] must respect and ensure the rights laid down in the Covenant to anyone within the power or effective control of that State Party, even if not situated within the territory of the State Party.”).

132. ETO CONSORTIUM, *supra* note 128, at 7.

part<sup>133</sup> in IFIs' activities abroad.<sup>134</sup> Although the Maastricht Principles themselves are not binding, ETOs have been increasingly recognized by national<sup>135</sup> and international courts,<sup>136</sup> and have been widely incorporated into concluding observations and general

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133. Human Rights Council, Scope of the Legally Binding Instrument to Address Human Rights Violations Related to Business Activities, U.N. Doc. A/HRC/WG.16/1/NGO/3 (July 2, 2015) (“Home-States often provide financial, political, and other forms of support for TNC activities in other countries . . . in the form of negotiation and ratification of IIAs, financing or other services by export credit agencies, diplomatic efforts, or political influence in international financial institutions.”).

134. *Id.* (“Home-States also negotiate international investment treaties which define and influence the international legal framework in which TNCs are able to operate. In light of these factors, home-States arguably exert significant control and ‘decisive influence’ over their corporate nationals.”).

135. *See, e.g.,* *Sosa v. Alvarez-Machain*, 542 U.S. 692, 734–35 (2004) (“[T]he Covenant does bind the United States as a matter of international law.”); *Rechtbank Den Haag 1 mei 2019 (Kiobel/Shell)* (Neth.); Gareth Rees & Annabel Gillham, *UK Companies Responsible for Business and Human Rights Violations Overseas*, MORRISON & FOERSTER LLP (June 8, 2020), <https://www.mofo.com/resources/insights/200608-uk-human-rights-violations.html> [<https://perma.cc/Y5TV-BHPZ>] (summarizing cases where UK courts have found violations of ETOs by businesses); *Nevsun Resources Ltd. v. Araya*, [2020] S.C.R. 108 (Can.) (finding that Eritreans who were subjected to human rights abuses while working at a mine in Eritrea owned by Canadian company Nevsun Resources Ltd. had a valid claim against Nevsun Resources Ltd. in Canadian courts); Kimberly A.F. Cura & Jacob R. W. Damstra, *Canadian Corporations May Be Held Liable for Breaches of Public International Law*, LERNX (Mar. 3, 2020), <https://www.lerners.ca/lernx/nevsun-resources-ltd-v-araya/> [<https://perma.cc/V2WY-GPU7>] (discussing *Nevsun*).

136. *See, e.g.,* *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territories*, Advisory Opinion, 2004 I.C.J. Rep. 136, 180 (July 9, 2004) (“[I]n the current circumstances, the provisions of the [International] Covenant [on Civil and Political Rights] apply to the benefit of the population of the Occupied Territories . . . for all conduct by the State party’s authorities or agents in those territories affecting the enjoyment of rights enshrined in the Covenant.”); *Case Concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, 2005 I.C.J. Rep.168, 233 (Dec. 19, 2005) (finding Uganda liable for failing to protect individuals on the territory of the Democratic Republic of the Congo from abuses by non-state actors not under Uganda’s formal authority); *Ibrahim Gueye et al. v. France*, Human Rights Comm., Comm. No. 196/1985, U.N. Doc. CCPR/C/35/D/196/1985, ¶¶ 9.3–9.5 (1989) (finding Senegalese petitioners within France’s jurisdiction when they relied on French legislation for their pension rights); *Al-Saadoon v. United Kingdom*, App. No. 61498/08, ¶ 123 (Eur. Ct. H.R. Apr. 10, 2010) (finding potential liability when individuals are transferred between States where “[S]ubstantial grounds have been shown for believing that the person concerned, if deported, faces a real risk of being subjected to [ill-treatment.]”).

recommendations of treaty-monitoring bodies.<sup>137</sup> For example, in *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territories*, the International Court of Justice (“ICJ”) highlighted Israel’s ETOs under the ICESCR and CRC, like the right to self-determination, to the individuals, and their human rights, in the Occupied Palestinian Territories. Specifically, the ICJ noted that because Israel exercised effective, albeit extraterritorial, jurisdiction in the Territories and the wall at issue was in violation of certain ETOs, Israel was to cease construction.<sup>138</sup>

The Maastricht Principles also clarify that ETOs include global obligations.<sup>139</sup> These global obligations, set out in the United Nations Charter<sup>140</sup> and in human rights instruments,<sup>141</sup> obligate states to take “joint and separate” action to promote and respect human rights.<sup>142</sup> Under the U.N. Charter, all Member States of IFIs have the general

137. See Elena Pribytkova, *Extraterritorial Obligations in the United Nations System: U.N. Treaty Bodies*, in ROUTLEDGE HANDBOOK ON EXTRATERRITORIAL HUMAN RIGHTS OBLIGATIONS (Mark Gibney et al. eds., 2001) (discussing the treatment of ETOs in international law); Oona A. Hathaway et al., *Human Rights Abroad: When Do Human Rights Treaty Obligations Apply Extraterritorially?*, 43 ARIZ. ST. L.J. 389 (2011) (discussing the treatment of ETOs by the Committee Against Torture in its recent Concluding Observations).

138. Legal Consequences, *supra* note 136, ¶¶ 104–14.

139. ETO CONSORTIUM, *supra* note 128, at 6–7. A state has obligations “to respect, protect and fulfil economic, social and cultural rights” in three instances: a) situations over which it exercises authority or effective control, whether or not such control is exercised in accordance with international law; b) situations over which State acts or omissions bring about foreseeable effects on the enjoyment of economic, social and cultural rights, whether within or outside its territory; c) situations in which the State, acting separately or jointly, whether through its executive, legislative or judicial branches, is in a position to exercise decisive influence or to take measures to realize economic, social, and cultural rights extraterritorially, in accordance with international law. For relevant cases regarding control and authority, see *Extra-territorial Jurisdiction of States*, *supra* note 131; The Environment and Human Rights (State Obligations in Relation to the Environment in the Context of the Protection and Guarantee of the Rights to Life and to Personal Integrity: Interpretation and Scope of Articles 4(1) and 5(1) in Relation to Articles 1(1) and 2 of the American Convention on Human Rights), Advisory Opinion OC-23/17, Inter-Am. Ct. H.R., 72–82 (Nov. 15, 2017), <https://elaw.org/system/files/attachments/publicresource/English%20version%20of%20AdvOp%20OC-23.pdf> [<https://perma.cc/5CT5-8CHL>] (“[T]he obligation to ensure rights, means that States must take all appropriate steps to protect and preserve the rights to life and to integrity[.]”).

140. U.N. Charter arts. 55, 56.

141. ICESCR, *supra* note 74, art. 2(1).

142. ETO CONSORTIUM, *supra* note 128, at 5.

obligation to take “joint and separate action”<sup>143</sup> to promote human rights, which include the right to food, health, work, and education.<sup>144</sup> Additionally, most Member States have ratified the CRC and the ICESCR, thus, they have broad obligations to promote, through international assistance and cooperation, the human rights set out in those treaties—both of which include the right to food.<sup>145</sup> Although these obligations are somewhat ill-defined under international law, the obligation to do no harm through international activities has become increasingly well-established, particularly within treaty-monitoring bodies.<sup>146</sup>

Furthermore, the Committee on Economic, Social and Cultural Rights has noted that pursuant to Article 12 (recognizing the right to health, which includes the right to food), “States parties have an obligation to ensure that their actions as members of international organizations take due account of the right to health.”<sup>147</sup> As such, it is not unreasonable to hold states accountable for impairing or failing to promote human rights when they play key roles in the decision-making of IFIs.<sup>148</sup>

In the case of Haiti, Member States that did not initially veto conditioning trade liberalization policies to Haiti’s lending

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143. U.N. Charter art. 56.

144. *Id.*

145. ICESCR, *supra* note 74, arts. 2, 4; CRC, *supra* note 104, art. 4.

146. See ETO CONSORTIUM, *supra* note 128 (“States must desist from acts and omissions that create a real risk of nullifying or impairing the enjoyment of economic, social and cultural rights extraterritorially. The responsibility of States is engaged where such nullification or impairment is a foreseeable result of their conduct. Uncertainty about potential impacts does not constitute justification for such conduct.”); see also *Right to the Highest Attainable Standard of Health*, *supra* note 126 (“The obligation to respect requires States to refrain from interfering directly or indirectly with the enjoyment of the right to health. The obligation to protect requires States to take measures that prevent third parties from interfering with article 12 guarantees.”); OHCHR, GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS: IMPLEMENTING THE UNITED NATIONS “PROTECT, RESPECT, AND REMEDY” FRAMEWORK 9–19 (2011), [https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf) [<https://perma.cc/BWA5-P8LD>].

147. Olivier De Schutter et al., *Commentary to the Maastricht Principles*, 34 HUM. RTS. Q. 1084, 1119 (2012) (citing *Right to the Highest Attainable Standard of Health*, *supra* note 126).

148. See also *Maastricht Guidelines on Violations of Economic, Social and Cultural Rights*, 20 HUM. RTS. Q. 691, 698 (1998) (specifying that states are responsible for violations caused by the programs and policies of the organizations of which they are a part).

agreements<sup>149</sup> acted with negligence, as there was a foreseeable risk that these policies would impair Haitians' economic, social, and cultural rights. While entry into the global market—which trade liberalization schemes are intended to facilitate—can be an important part of economic development,<sup>150</sup> in Haiti, the ill-crafted policies did not facilitate that entry because the Member States failed to consider the country's production capacities and constraints. The flooding of Haitian markets with imported goods,<sup>151</sup> and the subsequent crash of Haiti's agricultural sector,<sup>152</sup> were entirely foreseeable consequences of IFIs' decisions to impose trade liberalization. For instance, given that Haiti was already producing rice at self-sufficient rates, Member States should have expected that trade liberalization would not open new markets as promised but instead create “greater dependency on foreign imports and . . . [transfer] of wealth from Haitian farmers to the subsidized farmers in the developed world.”<sup>153</sup> In failing to consider these consequences and object to liberalization policies, Member States directly contributed to the ensuing food insecurity that would plague Haiti for decades.

Moreover, Member States that possess the capacity to exercise decisive influence over the IFIs' decisions should bear additional responsibility.<sup>154</sup> The United States, for example, is in a relatively

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149. IFIs themselves are also bound to comply with human rights obligations “under general rules of international law, under their constitutions or under international agreements to which they are parties.” Interpretation of the Agreement of 25 March 1951 Between the WHO and Egypt, Advisory Opinion, 1980 I.C.J., ¶ 37 (Dec. 20). Among these are obligations under the UDHR. Furthermore, as a specialized agency of the UN, the IMF is bound to act in accordance with the principles of the Charter of the United Nations, which refers to the realization of human rights and fundamental freedoms as one of its purposes. *Id.*

150. *Trade Liberalization Can Perpetuate Historical Disparities: World Bank*, SDG KNOWLEDGE HUB (June 16, 2021), <https://sdg.iisd.org/news/trade-liberalization-can-perpetuate-historical-disparities-world-bank/> [<https://perma.cc/L7XK-CVY3>].

151. Gros, *supra* note 21, at 981.

152. *Id.* at 981–83.

153. Patrick Scheld, *Who Really Controls Haiti's Destiny? An examination of Haiti's Historical Underdevelopment, Endless Poverty, and the Role played by Non-Governmental Organizations (NGOs)* 28 (2018) (M.S. thesis, University of Vermont) (on file with *HRLR Online*).

154. This is consistent with the Inter-American Court's reasoning in its Advisory opinion, where it notes that, in the case of transboundary environmental harm, a person will be deemed to be subject to the “jurisdiction” of the state in which the harm originates if there is a “causal relationship” between the polluting activities in the state's territory and the cross-border impact on rights. *THE ENVIRONMENT AND HUMAN RIGHTS*, *supra* note 139, at ¶ 101.

unique position to exercise decisive influence over measures affecting economic, social, and cultural rights, particularly given its status as a primary donor and its membership in alliance groups that wield significant power.<sup>155</sup> Although it has not ratified the CRC or ICESCR, the United States is nevertheless bound by certain obligations as a signatory state, specifically, the obligation to refrain from acts that would defeat the object and purpose of those conventions.<sup>156</sup> That obligation, as explained above, extends extraterritorially to encompass acts that have a deleterious effect on the enjoyment of economic, social and cultural rights beyond its jurisdiction.<sup>157</sup> However, the United States also bears additional general responsibility under the U.N. Charter to take “joint and separate action . . .”<sup>158</sup> to promote “universal respect for, and observance of, human rights and fundamental freedoms.”<sup>159</sup> This obligation, based in the U.N. Charter and interpreted in the Maastricht Principles, is of a global nature and activates in situations where there is no causal link between a state’s act, omission, or obligation and a human rights violation.<sup>160</sup>

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155. The United States is one of the six most influential Member States of the World Bank and IMF, along with the United Kingdom, France, Germany, Japan, and Saudi Arabia. *IMF Executive Directors and Voting Power*, IMF (Mar. 23, 2022), <https://www.imf.org/external/np/sec/memdir/eds.aspx> (on file with *HRLR Online*); see also Arthur Foch, *Explaining the G7 and G10’s Influence on World Bank Decisions: The Role of Formal and Informal Rules of Governance* (May 22, 2013), <https://halshs.archives-ouvertes.fr/halshs-00824678/document> [<https://perma.cc/TKN2-F4Z3>] (discussing the US and other G7 and G10 countries’ influence over WB decisions); Dan Beeton, *What the World Bank and IDB Owe Haiti*, GLOB. POL’Y F. (July 25, 2006), <https://archive.globalpolicy.org/opinion/2006/0724beeton.htm> [<https://perma.cc/D7S8-7M5C>] (discussing U.S. involvement in the IDB’s and WB’s 2001 decision to suspend grants to Haiti).

156. Vienna Convention on the Law of Treaties art. 18, May 23, 1969, 1155 U.N.T.S. 331, [https://legal.un.org/ilc/texts/instruments/english/conventions/1\\_1\\_1969.pdf](https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf) [<https://perma.cc/J7R5-GURH>].

157. ETO CONSORTIUM, *supra* note 128, at 6–7.

158. U.N. Charter art. 56.

159. U.N. Charter art. 55.

160. “Remedial extraterritorial obligations [such as those based on foreseeable impact and decisive influence] and global obligations are simultaneous obligations that frequently overlap. The simultaneity of these obligations means that they cannot be mutually discharged.” Elena Pribytkova, *What Global Human Rights Obligations Do We Have?*, 20 CHI. J. INT’L L. 384, 425–27 (2020). “Compensation for harm caused does not relieve actors of their global obligations to realize basic socio-economic rights universally. In the same vein, implementing global obligations (for example, assisting the poor or undertaking human rights impact assessments (HRIAs)) does not exempt actors from their remedial responsibility for the extraterritorial human rights violations they have caused.” *Id.*

The United States' imposition of trade liberalization policies through IFI and USAID loan conditions in Haiti ultimately resulted in widespread food insecurity, thus undermining the right to food for many Haitians. Specifically, the United States' decision to subsidize food production within its own jurisdiction, and then subsequently flood Haitian markets with those goods, put Haitian farmers out of business and encouraged dependence on United States produce,<sup>161</sup> leading to starvation and malnutrition—two consequences that were entirely foreseeable. Moreover, the collateral consequences of these policies, including the depreciation of the Haitian gourde and restrictions on social spending, left the Haitian government, unsurprisingly, unable to respond appropriately. Thus, violations to the right to food became extensive and continuous, with spillover effects into education, work, and health. By maintaining subsidization within its own jurisdiction while sustaining trade liberalization in Haiti, the United States violated its global obligation to protect freedoms and promote one of the most fundamental human rights—food. Finally, the United States' refusal to provide appropriate redress upon acknowledging the failure of these policies only added insult to injury, constituting a further violation of its human rights obligations.

### III. Remedy and Representation

Injustice requires remedies as opposed to pity or lamentation. Understanding food insecurity as a matter of justice, as opposed to humanitarianism or commerce, requires meaningful representation by and voices of the Haitian people whose lives and well-being are actually being affected. Despite public protests and grassroots advocacy,<sup>162</sup> it appears that there have not been any formal human rights actions to date that have demanded remedies for violations of the right to food. For example, in 2010, former United States President Bill Clinton apologized for his administration's role in flooding the Haitian markets with cheap rice, admitting that while the policy was a win for American

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161. Gros, *supra* note 21, at 981; O'Connor, *supra* note 18.

162. Voices within Haitian society are calling for reform on trade liberalization policies. For example, an agronomist wrote an op-ed calling for tariff-raising and protectionist policies for the poultry industry, which is facing severe financial challenges due to fluctuating exchange rates, the rise in global grain prices, and competition from imports. Manassé Samedy, *Production de Poulets de Chair Face à la Hausse du Dollar: Entre Défis et Opportunités*, LE NOUVELLISTE (Aug. 20, 2020) <https://lenouvelliste.com/article/219991/production-de-poulets-de-chair-face-a-la-hausse-du-dollar-entre-defis-et-opportunités> [<https://perma.cc/3A4B-E7XA>].

farmers, it “was a mistake” that resulted in “the lost capacity [of Haitian farmers] to produce a rice crop in Haiti.”<sup>163</sup> His admission implicated US responsibility for the rights violations that occurred as a result of the policies, but no actual remedies followed. This Part suggest avenues for redress, including solutions that incorporate ETOs through judicial action at the domestic, regional, and international levels. It also outlines policy measures, including reforms to IFI lending policies and monitoring mechanisms, that would hold IFIs and Member States accountable. The solutions would not only provide Haitians the redress they’ve long awaited, but also ensure that, moving forward, international actors are held accountable for their actions and denied the complicity they’ve long enjoyed.

### A. Judicial Remedies

IFIs have their own internal complaints mechanisms, which may be used by individuals whose rights have been harmed by IFI activities.<sup>164</sup> However, these mechanisms are limited in their ability to compel appropriate and effective accountability—perhaps because they are based in a set of principles created by the very organizations perpetrating the alleged violations and therefore lack genuine impartiality. For example, in 2015 a group of Haitian communities submitted a complaint to the World Bank’s Inspection Panel, alleging that, by assisting with the development of a new mining law, the World Bank had: (1) violated the Haitian Constitution and its own social and environmental safeguard policies; (2) failed to protect Haitians’ environmental and human rights; and (3) impeded the Haitian government’s ability to meet its international human rights obligations.<sup>165</sup> Upon a brief review, the Inspection Panel found that the World Bank has “discretion to avoid applying its social and environmental safeguards based on its own funding decisions,” and concluded that there was no basis for the panel to inspect the complaint

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163. *We Made a Devil’s Bargain*, *supra* note 46.

164. *See, e.g.*, WBG, BANK PROCEDURE: GRIEVANCE REVIEW SERVICE (Mar. 1, 2017), <https://ppfdocuments.azureedge.net/4929ca56-1362-449e-87c0-4d75585648d4.pdf> [<https://perma.cc/3XD9-EGX8>] (explaining the procedure for the WB’s Grievance Redress Service); INSPECTION PANEL, <https://www.inspectionpanel.org/> [<https://perma.cc/6BMC-GXCX>] (“The Inspection Panel is an independent complaints mechanism for people and communities who believe that they have been, or are likely to be, adversely affected by a World Bank-funded project.”).

165. *Haiti: Mining Laws*, ACCOUNTABILITY COUNSEL, <https://www.accountabilitycounsel.org/client-case/haiti-mining-laws/#case-story> [<https://perma.cc/7WT2-VC4E>].



allegations because the World Bank had structured funding for the mining project in such a way that exempted it from the safeguard policies.<sup>166</sup>

With IFI internal mechanisms being so limited, the availability of adjudication in national and international courts is crucial. The broad and ill-defined nature of ETOs within the current framework of international law makes their recognition and enforcement difficult. Nevertheless, recent decisions in some domestic courts indicate an increasing willingness to recognize ETOs in the context of corporate activity. For example, in *Nevsun Resources Ltd. v. Araya*, a Canadian court found that plaintiffs could file suit in Canadian courts for violations of their human rights by a Canadian corporation abroad.<sup>167</sup> Other courts have touched on the subject of ETOs in the context of IFIs, without addressing it directly. For example, in *Jam v. International Finance Corp.* the U.S. Supreme Court held that IFIs—like the World Bank, the Inter-American Development Bank, and the International Finance Corporation—are not *per se* immune from suits in U.S. federal courts under the U.S. International Organizations Immunities Act for alleged tortious activity that occurs abroad.<sup>168</sup> Although the court did not directly address ETOs, the decision indicates that U.S. courts may be amenable to lawsuits grounded in ETOs.<sup>169</sup> Transnational cases like

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166. *Id.*

167. *Nevsun*, *supra* note 135; *see also Rechtbank Den Haag*, *supra* note 135 (finding that Dutch courts had jurisdiction to hear a case brought by plaintiffs against Royal Dutch Shell Petroleum for its complicity in the killings of nine activists in Nigeria); *Vedanta Resources PLC and another v. Lungowe and others* [2019] UKSC (finding that plaintiffs may bring a claim in English courts against a Zambian mining company and its UK parent company for negligence that took place in Africa).

168. *Jam v. International Finance Corp.*, 139 S. Ct. 759, 773 (2019).

169. *See* Desiree LeClercq, *A Rules-Based Approach to Jam's Restrictive Immunity: Implications for International Organizations*, 58 HOUS. L. REV. 55, 58 (2020) (“*Jam* is a landmark decision. It introduces the possibility that U.S. courts may hold international organizations accountable to national rules. It also introduces a potential avenue for extraterritorial lawsuits . . . to land in those courts.”). Still, it is important to note that *Jam* presents certain barriers to litigating ETOs. First, plaintiffs must show that the activity that caused the harm occurred primarily in the United States, which is often difficult because the actual development operations generally take place in the country where the harm occurred. *Jam, v. International Finance Corp.*, 42 F. Supp. 3d 162, 172 (D.C. Cir. 2021) (concluding that mere approval of financing and disbursement of funds, which occurred in the United States, were insufficient to establish that the development activity occurred primarily in the U.S.); *see also* Sachintha Dias, *Jam v IFC before the D.C. District Court: Forget the Floodgates, There Won't Even Be a Trickle*, EUR. J. INT'L L. BLOG (Apr. 1, 2020), <https://www.ejiltalk.org/jam-v-ifc->

this can have a global impact because, by not confining accountability to state borders, they create avenues for redress for victims who otherwise have none. Furthermore, in allowing entire communities to band together as plaintiffs, cases like these are a potential way to assert jurisdiction. Still, given the significant cost and barriers of pursuing litigation, looking to domestic courts as a viable avenue for relief will ultimately depend on whether plaintiffs have sufficient resources to proffer these claims.

Meanwhile, regional and international mechanisms remain a valuable tool for establishing state, as opposed to IFI, responsibility. Several regional and international complaint mechanisms exist that could, in theory, be utilized to vindicate ETOs in the area of human rights. For instance, the Committee on Economic, Social, and Cultural Rights allows individuals to bring complaints against states for undermining local markets when providing food aid.<sup>170</sup> Thus, the ICESCR could provide a venue for Haitians to assert their right to food against major Member States. Even so, however, the Committee only has jurisdiction to receive complaints against states that have ratified the Optional Protocol to the ICESCR. To date, of the twenty-nine states that have ratified the Protocol, only France is a major IFI donor country.<sup>171</sup> Therefore, the ICESCR, Member States, non-governmental

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before-the-d-c-district-court-forget-the-floodgates-there-wont-even-be-a-trickle/  
[https://perma.cc/F6A3-SHC2] (“[T]he District Court held that the plaintiff had not proved that the action was ‘based on’ conduct ‘carried on’ or ‘performed in’ the US, as required by the commercial activities exception under the FSIA.”). Second, the Supreme Court’s 2019 limitation of IFI immunity was based on the so-called “commercial activity” exception—meaning that IFIs may only be sued for harms arising from “commercial” activities. *EM Ltd. v. Republic of Argentina*, 473 F.3d 463, 483 (2d Cir. 2007). Although the relevant definition of “commercial activities” is broad, the court in *Jam* noted that activities of certain IFIs—such as the IMF—are categorically not commercial because their “borrowing program is part of a larger regulatory enterprise intended to preserve stability in the international monetary system and foster orderly economic growth.” *Id.*; see also *Jam v. International Finance Corp.*, 139 S. Ct. 759, 772 (2019) (“As the Government suggested at oral argument, the lending activity of at least some development banks, such as those that make conditional loans to governments, may not qualify as “commercial” under the FSIA.”).

170. Fons Coomans, *The Extraterritorial Scope of the International Covenant on Economic, Social and Cultural Rights in the Work of the United Nations Committee on Economic, Social and Cultural Rights*, 11 HUM. RTS. L. REV. 1, 20 (2011) (citing ESCR Committee, *supra* note 126, at ¶¶ 36–41).

171. The U.S., the U.K., Germany, Japan, and Saudi Arabia have not ratified the Optional Protocol. For a full list of countries that have ratified, see *Optional Protocol to the International Covenant on Economic, Social and Cultural Rights*,

organizations, and Haitian allies should urge the United States and other major donor states to ratify the Protocol to promote greater accountability and enforcement of ETOs.

Additionally, ETOs have been recognized by regional and international complaint mechanisms, including the United Nations Human Rights Committee<sup>172</sup> and the European Court of Human Rights.<sup>173</sup> However, these cases, while directly addressing the content and reach of ETOs, have tended to focus on either military conduct or questions of jurisdiction.<sup>174</sup> Therefore, although these mechanisms may present a viable tool, it remains to be seen how they will approach the applicability and justiciability of ETOs in the context of economic, social, and cultural rights.

Finally, the International Court of Justice, the principle judicial body of the UN,<sup>175</sup> is an international mechanism that has often been used to establish state extraterritorial responsibility.<sup>176</sup> Still, in the case of Haiti, the ICJ is an imperfect avenue for redress as it only accepts complaints from states, not persons.<sup>177</sup> Thus, Haitians would need to rely on the Haitian government to bring an economic, social, and cultural rights complaint on their behalf, a prospect not likely to be politically expedient for Haiti.

Ultimately, even if these judicial remedies become viable avenues for redress, the ability for Haitian citizens to bring a challenge and assert their human rights will depend on access to resources. The mere existence of judicial remedies is meaningless if they are not accessible. Thus, the first step to accessibility is for international organizations to prioritize assistance to Haitians and work with them to pursue judicial action in venues where individual and community complaints are feasible.

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U.N. TREATY COLLECTION, [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-3-a&chapter=4](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3-a&chapter=4) [<https://perma.cc/4XMC-SSSD>].

172. See e.g., *Ibrahim Gueye et al. v. France*, Comm'n No. 196/1985, ¶¶ 9.3–9.5 (Hum. Rts. Comm. Nov. 5, 1987), U.N. Doc. CCPR/C/35/D/196/1985 (1989).

173. *Al-Saadoon v. United Kingdom*, App. No. 61498/08, ¶ 123 (Eur. Ct. H.R. Apr. 10, 2010).

174. Ralph Wilde, *Human Rights Beyond Borders at the World Court*, 12 CHINESE J. INT'L L. 639, 661 (2013).

175. Legal Consequences, *supra* note 136.

176. *The Court*, ICJ, <https://www.icj-cij.org/en/court> [<https://perma.cc/ZX3Q-ACW8>].

177. *How the Court Works*, ICJ, <https://www.icj-cij.org/en/how-the-court-works> [<https://perma.cc/FCF9-8EL2>].

## B. Policy Measures

Long-term investments into agriculture are needed to achieve sustainable food security for Haitians. Still, trade liberalization continues to be favored over investments and government policies that would reestablish Haiti's domestic production capacity and restore its self-sufficiency.<sup>178</sup> Moreover, despite domestic unpopularity of these liberalization policies,<sup>179</sup> the Haitian government continues to be in a disadvantaged position to re-negotiate the IFI conditions that require the implementation of the policies.<sup>180</sup> Moreover, with much of Haiti's national budget devoted to foreign debt repayment,<sup>181</sup> the country is unable to properly invest in agricultural development on its own. For example, in 2009, Haiti spent more on servicing its debt than on agriculture.<sup>182</sup> Oxfam senior researcher Marc Cohen noted that between 2000 and 2005, "aid to agriculture and rural development accounted for just 2.5% of all official development assistance to Haiti . . . [Furthermore,] the Haitian government devoted just 4% of its budgetary expenditures to agriculture, even though the sector employs more than half the workforce and accounts for a quarter of national income."<sup>183</sup> Similarly situated countries with high levels of

178. Jomo Kwame Sundaram & Anis Chowdhury, *Agricultural Trade Liberalization Undermined Food Security*, INTER PRESS SERV. (May 21, 2018), <http://www.ipsnews.net/2018/05/agricultural-trade-liberalization-undermined-food-security/> [<https://perma.cc/D5GC-LYRG>]; Kaitlyn Vitez, *American Food Aid: Disruption and Development in Haiti* 98 (Apr. 2015) (B.A. thesis, Univ. of Vt. Honors College), <https://scholarworks.uvm.edu/cgi/viewcontent.cgi?article=1094&context=hcoltheses> [<https://perma.cc/4ZVN-K32K>] ("Although it flies in the face of recent liberalizing adjustments, raising the rice tariff to match that of other Caribbean nations will give the state much-needed income to fund its own expansion and development projects.").

179. James Darbouze, *Les États-Unis d'Amérique, l'illusion Démocratique et Nous en Haïti*, ALTERPRESSE (Nov. 17, 2020), <https://www.alterpresse.org/spip.php?article26406#.X7aDYmhKg2x> [<https://perma.cc/4YWY-5UXJ>].

180. The severe underdevelopment and corruption that resulted from Haiti's need to prioritize debt repayments in the 19th and 20th centuries meant the government had to seek assistance from IFIs. Alex von Tunzelman, *Haiti: The Land Where Children Eat Mud*, TIMES (May 17, 2009), <https://www.thetimes.co.uk/article/haiti-the-land-where-children-eat-mud-rscvbz7t8ms>.

181. As of 2021, government debt amounted to 24.9% of Haiti's GDP. Press Release, *Haiti: At a Glance*, IMF, <https://www.imf.org/en/Countries/HTI#countrydata> (on file with *HRLR Online*).

182. CRANE, DOBBINS ET AL., *BUILDING A MORE RESILIENT HAITIAN STATE*, 73–84 (2010), [https://www.rand.org/content/dam/rand/pubs/monographs/2010/RAND\\_MG1039.pdf](https://www.rand.org/content/dam/rand/pubs/monographs/2010/RAND_MG1039.pdf) [<https://perma.cc/Y7UD-H8GX>].

183. Cohen, *supra* note 34, at 589–90 (2013).

food insecurity spent up to nearly four times as much.<sup>184</sup> Ultimately, without assistance, Haiti's budget will remain inadequate to fund re-investment into its agricultural infrastructure, particularly in light of recent reductions in external funding.<sup>185</sup>

Furthermore, intense advocacy will be required if external agricultural aid is sought. Although more recently the Haitian government and IFIs have signaled that agriculture will be prioritized,<sup>186</sup> efforts toward industry revitalization have been unfruitful and unlikely to drastically improve in the future. Notably, Haiti's rice production has stagnated and continues to be insufficient to meet demand,<sup>187</sup> despite a U.S. \$50 million project funded by the WB to "strengthen Haiti's agricultural sector and increase farmers' accesses to agricultural extension services"<sup>188</sup> and USAID's pledge for

184. During 2012–2016, Malawi (16.4%), Bhutan (13.0%) and Uzbekistan (11.9%), on average, had the highest shares of agriculture in central government expenditures. FOOD & AGRIC. ORG. OF THE U.N., GOVERNMENT EXPENDITURE ON AGRICULTURE 5 (Feb. 1, 2019), <https://www.fao.org/3/cb8314en/cb8314en.pdf>.

185. Church World Service & Christian Aid, Submission for the United Nations Universal Periodic Review, Republic of Haiti: Climate Change and the Right to Food 5 (2016), <http://cwsglobal.org/wp-content/uploads/2016/03/CLIMATE-CHANGE-AND-THE-RIGHT-TO-FOOD-.pdf> [<https://perma.cc/5WJX-KRLK>].

186. Both Haiti's former President, Michel Martelly, and current President, Jovenel Moïse, have made statements on the importance of prioritizing agricultural development in the country. *Haiti - Agriculture: The Agricultural Recovery, Priority 2013*, HAITILIBRE (Dec. 29, 2012), <https://www.haitilibre.com/en/news-7516-haiti-agriculture-the-agricultural-recovery-priority-2013.html> [<https://perma.cc/6Q4N-GNX4>]; Aida Alami, *In Haiti, Golden Hopes in a Yellow Grain*, U.S. NEWS (Apr. 9, 2018), <https://www.usnews.com/news/best-countries/articles/2018-04-09/efforts-in-haiti-to-boost-rice-production-face-many-obstacles> (on file with *HRLR Online*) ("Jovenel Moïse, who became Haiti's president in February 2017, has an agricultural background and pledged to relaunch the industry by fixing irrigation canals, financing infrastructure projects and other initiatives").

187. "The Copenhagen Consensus Center, a U.S.-based think tank focused on economic issues, noted in a 2017 analysis that Haiti's imposition of a tariff on imported rice would likely mean higher costs for consumers, while Haitian farmers wouldn't necessarily be able to increase their yield to meet the demand." Anne Myriam Bolivar, *Haiti's Rice Farmers, With Government Help, Hope They Can Feed Their Nation*, GLOB. PRESS J. (May 13, 2018), <https://globalpressjournal.com/americas/haiti/haitis-rice-farmers-government-plans-help-hope-can-feed-nation/> [<https://perma.cc/Y2AG-NKXJ>]; FURCHE, *supra* note 113 ("Total rice consumption in Haiti reaches a little less than 458,000 tons annually, with 83 percent imported, and just 17 percent produced domestically.").

188. U.S. COM. SERV., DOING BUSINESS IN HAITI: 2018 COUNTRY COMMERCIAL GUIDE 37 (June 2018), [https://ht.usembassy.gov/wp-content/uploads/sites/100/Haiti\\_Country-Commercial-Guide.pdf](https://ht.usembassy.gov/wp-content/uploads/sites/100/Haiti_Country-Commercial-Guide.pdf) [<https://perma.cc/Y2AG-NKXJ>].

“nearly \$120 million for post-disaster agricultural development” in 2010.<sup>189</sup> A 2013 policy proposal from Oxfam found that “the depth and extent of [Haiti’s agricultural] problems require the formulation of policies, adoption of policy tools, and resource allocation for the medium- and long-term,” including investment into major infrastructure, technology, and subsidies. Moreover, the proposal noted that these policies will require “[a]dequate technical and financial assistance from donors.”<sup>190</sup> Without an aid scheme that captures all of the complexities of the current crisis, Haitians will surely remain food insecure for the foreseeable future.

Next, reforming IFI lending policies to account for necessary assessment of human rights impact is critical to remedy and prevent further devastation wrought by the conditioning of loans on the adoption of austerity measures. Member States should require IFIs to assess and reassess efficacy of loans to ensure they safeguard the rights of present and future generations and their environment. These assessments should then be utilized to reform policies and loan structures that impact rights of present and future generations, allowing IFIs to move away from policies that displace the Haitian state, and instead towards those that reinforce self-determination and the state’s capacity to confer and protect basic rights. This strategy has proved successful in other countries.<sup>191</sup> For example, in Greece the IMF reformed its lending policies to allow the country to increase public spending after austerity measures that led to high food prices and joblessness—and subsequent poverty and food insecurity—proved disastrous.<sup>192</sup> In 2015, Portugal, despite objections from its creditors,

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189. Cohen, *supra* note 34, at 598.

190. FURCHE, *supra* note 113, at 7, 64.

191. For example, Greece and Portugal. See, e.g., Marco Stojanovik, *Human Rights and Austerity: The IMF as a Handmaiden of Neoliberalism*, SEVEN PILLARS INST. FOR GLOB. FIN. & ETHICS (June 19, 2020), <https://sevenpillarsinstitute.org/human-rights-and-austerity-the-imf-as-a-handmaiden-of-neoliberalism/> (on file with *HRLR Online*) (discussing the human rights situation in Greece following implementation of austerity measures attached to loans from IFIs); Joao Gomes, *Portugal’s Economic Recovery: How Much Came from Ditching Austerity?*, KNOWLEDGE AT WHARTON (Aug. 1, 2018), <https://knowledge.wharton.upenn.edu/article/portugals-economic-recovery-how-much-came-from-ditching-austerity/> [<https://perma.cc/KNH3-2QDB>] (discussing Portugal’s recovery from austerity measures).

192. See *Austerity Violated Greeks’ Right to Food, New Report Concludes*, EKATHIMERINI.COM (Nov. 20, 2018), <https://www.ekathimerini.com/news/234862/austerity-violated-greeks-right-to-food-new-report-concludes/> [<https://perma.cc/X64S-UZUD>] (“Creditor-imposed austerity led to increased rural poverty and food insecurity in Greece and violated people’s right to food, the

including the IMF,<sup>193</sup> reversed harsh austerity measures imposed as loan conditions.<sup>194</sup> The reversal brought wages up and unemployment sharply down, and resulted in a steady 2% increase in gross domestic product (“GDP”) growth.<sup>195</sup>

Finally, to ensure and encourage compliance of ETOs by IFIs and their Member States from the global north, treaty bodies should work to develop an ETOs legal framework. This would not only better define states’ obligations, but also give meaningful teeth to legal remedies. For example, treaty bodies could utilize existing general comments interpreting the scope of ETOs to, in turn, clarify their application to IFIs and their Member States.<sup>196</sup> Similarly, treaty bodies could incorporate ETOs into reporting mechanisms as a method of enforcement and accountability. Generally, every U.N. member state is required to participate in a periodic review before the Human Rights

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Transnational Institute (TNI), an international research and advocacy body based in Amsterdam, has concluded, 10 years after the country signed its first bailout deal.”); Stojanovik, *supra* note 191. Experts have suggested similar measures in Ecuador, which suffered greatly as a result of austerity measures. Allison Corkery et al., *Austerity Is Killing Ecuador. The IMF Must Help End This Disaster*, THE GUARDIAN (Aug. 29, 2020), <https://www.theguardian.com/commentisfree/2020/aug/29/ecuador-austerity-imf-disaster> [https://perma.cc/7LX6-6BA4] (“Despite its failure in every country where it has been applied, the IMF continues to promote austerity as a solution to sovereign debt concerns. In Ecuador, the effects of these policies have been particularly disastrous, . . . leading to systematic violations of the economic and social rights that the Ecuadorian constitution and international law protect.”).

193. Gomes, *supra* note 191.

194. See Liz Alderman, *Portugal Dared to Cast Aside Austerity. It’s Having a Major Revival*, N.Y. TIMES (July 22, 2018), <https://www.nytimes.com/2018/07/22/business/portugal-economy-austerity.html> [https://perma.cc/JZX6-ND4R] (“But as the misery deepened, Portugal took a daring stand: In 2015, it cast aside the harshest austerity measures its European creditors had imposed, igniting a virtuous cycle that put its economy back on a path to growth. The country reversed cuts to wages, pensions and social security, and offered incentives to businesses.”).

195. Phillip Inman, *Ten Years On, How Countries that Crashed Are Faring*, THE GUARDIAN (June 16, 2018), <https://www.theguardian.com/business/2018/jun/16/ireland-portugal-greece-spain-ten-years-after-crash-austerity> (on file with HRLR Online).

196. General comments are a treaty body’s interpretation of treaty provisions. General comment No. 24 (2017) on state obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities addresses states’ ETOs to a certain extent, but fails to clarify their obligations in the context of IFI membership. Committee on Economic, Social and Cultural Rights, *General comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities*, Aug. 10, 2017, U.N. Doc. E/C.12/GC/24.

Council to report and evaluate its compliance with its human rights obligations.<sup>197</sup> Currently, these reviews focus on the rights of individuals within the reporting state<sup>198</sup> and on high-level, broad issues, as opposed to individual actor accountability.<sup>199</sup> Reviews and reporting mechanisms could be reformed to include an evaluation of the impact of the state's extraterritorial conduct outside the state. Expanding reporting mechanisms to address the impact of state extraterritorial conduct in countries and on individuals would not only better reflect the inter-relatedness of states in the modern world, but also bring international attention to the importance of ETOs. Finally, enhanced monitoring of ETOs by treaty bodies, by way of reviews and recommendations formulated as obligations, would consequently ensure that ETOs are taken more seriously and considered in the first instance, at the time of policy development and implementation.<sup>200</sup>

### CONCLUSION

States have extraterritorial legal obligations to respect and protect human rights, including the fundamental right to food, beyond their borders. These obligations extend to IFI Member States in their capacity to vote, promote, and impose lending decisions that affect the enjoyment of fundamental human rights extraterritorially. The imposition of deleterious aid schemes by foreign actors in Haiti created a deeply-entrenched and complex food crisis that subsequently plagued the people of Haiti with collateral health, employment, and educational consequences. These foreign-imposed policies—and the lack of redress following the failure of these policies—is but one instance in a pattern of international actors failing to take responsibility for the human rights violations they have so perpetrated in Haiti.<sup>201</sup> These violations have not only amplified the country's vulnerability to humanitarian disasters in the past, but will inevitably compound the devastation

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197. *Basic Facts About the UPR*, OHCHR, <https://www.ohchr.org/en/hr-bodies/upr/basic-facts> [<https://perma.cc/877M-6U4X>].

198. Coomans, *supra* note 170, at 4.

199. Pribytkova, *supra* note 137, at 12.

200. Malcolm Langford & Jeff A. King, *Committee on Economic, Social and Cultural Rights: Past, Present and Future*, in *SOCIAL RIGHTS JURISPRUDENCE: EMERGING TRENDS IN INTERNATIONAL AND COMPARATIVE LAW* 503 (2009).

201. *See, e.g.*, Institute for Justice and Democracy in Haiti & Bureaux des Avocats Internationaux, *Cholera: 9 Years On* (2020), <http://www.ijdh.org/wp-content/uploads/2020/06/A4-IDJH-report-EN.pdf> [<https://perma.cc/QQH9-LKXA>] (over ten years after UN peacekeepers introduced cholera to Haiti, killing nearly 10,000 Haitians and infecting almost one million, the UN still has not accepted legal responsibility or provided much-needed reparations).



Haiti feels in the aftermath of COVID-19. Ultimately, foreign actor compliance with human rights obligations is necessary and urgent in order to restore Haiti's agricultural landscape and provide redress to the people of Haiti.

Looking ahead, it is critical that transformative judicial accountability efforts are pursued and policy measures are instituted to adhere to and enforce extraterritorial legal obligations. If interventions are not made soon, it is foreseeable that generation after generation of Haitians will suffer food insecurity, resulting in ever-greater underdevelopment and poverty.<sup>202</sup> The international community has failed Haiti for far too long. It is time to take responsibility and move past what has otherwise been a false understanding of the food crisis that they had a hand in creating.

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202. This paper does not consider the possibility that the harm to future generations (implied by current policies) may be worse than the harm to present generations.