



## Yale Law School

ALLARD K. LOWENSTEIN INTERNATIONAL HUMAN RIGHTS CLINIC

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November 15, 2017

By Email: [elver@law.ucla.edu](mailto:elver@law.ucla.edu)

Hilal Elver  
United Nations Special Rapporteur on the Right to Food  
UCLA School of Law  
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Los Angeles, CA, 90095

Dear Special Rapporteur Elver:

We are writing to you on behalf of and as part of our cooperation with the Haitian Platform for Alternative Development Advocacy (PAPDA), a group of civil society organizations, movements, and collectives advocating for just development in Haiti. As the attached paper describes, the Haitian government has encouraged and supported large-scale, private investment that proceeds without consulting local residents and that frequently displaces them. This development-induced displacement exacerbates the food insecurity of Haitians and restricts their ability to secure food.

Many of these local Haitians are peasants who share a special relationship with their land, not only as a source of food, but also as a central aspect of their cultural identity and way of life. To be deprived of their land for large-scale, private-investment projects without their participation or consultation violates a host of interrelated human rights, such as the right to adequate housing and the right to sovereignty over natural resources. The situation of these local Haitians is best analyzed through the holistic peasants' rights framework, which is currently being developed into a formal U.N. declaration of rights.

Based on these considerations and the importance of immediate action, we urge you to send a letter of allegation to the Government of Haiti regarding the impact of agribusiness megaprojects and large-scale, private investment on Haitian peasants. We also believe that a joint letter, with other U.N. special-procedure mandate holders who have expertise in and responsibility for relevant human rights, would have a valuable protective effect. Also, we urge you to request a country visit to Haiti to learn firsthand about the direct effect of these investments on Haitian peasants and to speak with the government about best practices to protect, respect, and fulfill the peasants' right to food.

If you have any questions or interest in further information, please do not hesitate to contact us at 203-432-1729. Thank you for your time and attention.

Sincerely,



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Allard K. Lowenstein International Human Rights Clinic  
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How Agribusiness Threatens  
Haitian Peasants' Human Right to Food

Allard K. Lowenstein International Human Rights Clinic  
Yale Law School

for the

Haitian Platform for Alternative Development Advocacy  
(PAPDA)

November 2017

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## TABLE OF CONTENTS

|   |           |
|---|-----------|
| <b>Summary</b> .....  | <b>1</b>  |
| <b>I. Facts</b> .....   | <b>5</b>  |
| <b>A. Haiti’s Ongoing Economic, Political and Social Challenges</b> .....                   | <b>5</b>  |
| 1. The Predatory State and the Road to a Peasant Society .....                              | 7         |
| 2. Land Tenure, Rural Underdevelopment, and Chronic Food Insecurity .....                   | 10        |
| 3. Contemporary Politics, Post-Earthquake Reconstruction, and the Food Crisis in Haiti..... | 15        |
| <b>B. The Rise of Megaprojects in Haiti’s Development</b> .....                             | <b>20</b> |
| 1. Tourism .....  | 21        |
| 2. Mining .....   | 23        |
| 3. Free Trade Zones.....  | 24        |
| 4. Agribusiness .....   | 25        |
| <b>II. Peasants’ Right to Food in Haiti</b> .....   | <b>28</b> |
| <b>A. The Right to Food and Haiti’s Obligations to Respect, Protect, and Fulfill</b> .....  | <b>29</b> |
| 1. Haiti’s Obligations to <i>Respect</i> the Right to Food .....                            | 32        |
| 2. Haiti’s Obligations to <i>Protect</i> the Right to Food.....                             | 34        |
| 3. Haiti’s Obligations to <i>Fulfill</i> the Right to Food.....                             | 36        |
| <b>B. A Peasants’ Rights Approach to the Right to Food in Haiti</b> .....                   | <b>38</b> |
| 1. Special Relationship to Land.....  | 38        |
| 2. Security of Land Tenure .....  | 40        |
| 3. Right to Sovereignty over Natural Resources .....  | 41        |
| 4. Right to Housing .....   | 42        |
| 5. Rights to Participation and Freedom of Expression .....                                  | 43        |
| 6. Access to Justice.....   | 44        |
| <b>III. Recommendations</b> .....   | <b>45</b> |
| <b>IV. Conclusion</b> .....   | <b>46</b> |

## SUMMARY

Haiti has been described as a “classic” peasant nation.<sup>1</sup> Agriculture employs more than half of the country’s population.<sup>2</sup> Most farming continues to take place on subsistence plots that are less than one hectare in size.<sup>3</sup> Even though the majority of the population depends on agriculture for their living, Haiti produces less than 40 percent of the food it consumes and relies on imports to meet its basic food needs.<sup>4</sup> Because most Haitians live in extreme poverty, they rely on heavily subsidized imports for their survival.<sup>5</sup> Meanwhile, the government has failed to invest in improving local agricultural production, and it allocated less than 4 percent of its 2015 annual budget to agricultural development.<sup>6</sup> Food insecurity in Haiti is thus related not only to chronic poverty, but also to gross underinvestment in agricultural development and critical infrastructure, severe environmental degradation, trade liberalization, political turmoil, and corruption.<sup>7</sup> If the Haitian government continues to underinvest in rural development and local agricultural production, chronic food insecurity stands to worsen with climate change.

Largely in response to the 2010 earthquake, the Haitian government formulated the *Strategic Plan for Development through 2030*, a long-term development framework designed to rebuild the country and make Haiti an emerging economy by 2030. The Haitian government’s economic reform program is premised on strong growth and aims to promote “farming, manufacturing, and tourism potential, the creation of businesses, and foreign direct investment.”<sup>8</sup> Although the *Strategic Plan* states that projects in these areas should “target job creation and improvements in productivity and employability,”<sup>9</sup> the major plans that the government has started to implement threaten to displace and marginalize the Haitian peasantry. The four sectors within the Haitian government’s megaproject development plan that are likely to have the greatest effect on the peasantry are: tourism, mining, free trade zones, and agribusiness.

The Agritrans banana plantation is a prime example of Haiti’s investment in agribusiness. The plantation, owned by Jovenel Moïse, now Haiti’s President, entails 1,000 hectares, but investors have reportedly expressed interest in an eventual

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<sup>1</sup> See MATS LUNDAHL, POVERTY IN HAITI: ESSAYS ON UNDERDEVELOPMENT AND POST DISASTER PROSPECTS 19 (2011); see also George Eaton Smith, *Haitian Peasant Economy*, 25 J. NEGRO HIST. 498, 499 (1940) (“With few exceptions the various phases of the economic life of Haitian peasants contribute to the maintenance of the country’s social structure, and in fact, to its total social-cultural configuration.”) (citation omitted).

<sup>2</sup> Church World Service, Submission to U.N. Human Rights Council, Haiti Universal Periodic Review (UPR), Working Group on the UPR, 26th Sess., Oct. 31-Nov. 11, 2016, Climate Change and the Right to Food 5 (2016) [hereinafter Church World Service UPR Submission], <http://cwsglobal.org/wp-content/uploads/2016/03/CLIMATE-CHANGE-AND-THE-RIGHT-TO-FOOD-.pdf>.

<sup>3</sup> See *Rural Poverty in Haiti*, IFAD RURAL POVERTY PORTAL (last visited, June 24, 2016), <http://www.ruralpovertyportal.org/country/home/tags/haiti>.

<sup>4</sup> Church World Service UPR Submission, note 2 above, at 4, 5.

<sup>5</sup> *Ibid.* at 4.

<sup>6</sup> *Ibid.* at 4, 5.

<sup>7</sup> *Ibid.* at 4.

<sup>8</sup> INTERNATIONAL MONETARY FUND (IMF), IMF COUNTRY REPORT NO. 14/154, HAITI: POVERTY REDUCTION STRATEGY PAPER 6 (2014), <https://sustainabledevelopment.un.org/content/documents/1451haiti.pdf>.

<sup>9</sup> *Ibid.* at 7.

plantation of 3,000 hectares; since 2016, however, banana cultivation on the plantation has reportedly been discontinued.<sup>10</sup> To create this agricultural free trade zone, Agritrans expelled as many as 800 peasant households from their land in August 2013.<sup>11</sup> For these displaced peasants, the consequences extend beyond the loss of their physical shelter; the land conversion has “sociologically changed the habit of the farmers.”<sup>12</sup> Peasants have lost household income and future earning potential, have experienced a decline in dietary diversity, and have been unable to disseminate the traditional agricultural knowledge upon which they have relied for generations.<sup>13</sup> Local residents have reported that most Agritrans employees are not people who previously farmed the land; indeed, former farmers have generally been unable to find wage labor on the plantation.<sup>14</sup> Yet, despite the profound effect of the plantation on local peasants, Agritrans and the Haitian government have failed to provide an adequate alternative for those displaced. The Agritrans experience demonstrates how agribusiness megaprojects, if undertaken without local participation, preclude Haitian peasants from effectively exercising a range of interconnected civil, political, economic, social, and cultural rights.

All individuals have a human right to food; that is, to secure, through their own means and resources, access to adequate food, either through their own production or by purchase. In turn, states must foster an environment in which individuals who produce their own food have sufficient access to land, seeds, water, and other necessary resources. When individuals do not have the capacity to procure adequate food through either production or purchase (for example, due to a natural disaster or armed conflict), the state has a legal obligation to provide food directly. The rights-based approach to hunger guarantees that all people have a right to adequate, available, accessible food and requires that the state’s responsibility for assuring this right must not be relegated to a charitable concept of a right to be fed.<sup>15</sup>

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<sup>10</sup> Greet Schaumans, *Bio-bananas from Haiti*, COORDINATION EUROPE HAITI (Jan. 22, 2016), <http://coeh.eu/francais-des-bananes-biologiques-venant-dhaiti/>. At the time of publication of this paper, there were reports that there had been no production or export of bananas since mid-2016. *Banane: Agritrans Cherche un Nouveau Souffle*, LE NOUVELLISTE HAITI (Mar. 21, 2017), <http://www.lenouvelliste.com/video/show/oiE3bhQ-PMs/banane-agritrans-cherche-un-nouveau-souffle>. Although coverage of this halt in production has been limited, available accounts state that production will resume after a change in the species of banana and modifications in production technology. *Détruire les Anciens Plants de Banane Est un “Sacrifice Rentable”, Selon le Président d’Agritrans*, LE NOUVELLISTE HAITI (Mar. 22, 2017), <http://lenouvelliste.com/article/169451/detruire-les-anciens-plants-de-banane-est-un-sacrifice-rentable-selon-le-president-dagritrans>.

<sup>11</sup> Joshua Steckley & Beverly Bell, *Jovenel Moise Seizes Land from Haiti Peasants*, HAITIAN TIMES (Jan. 28, 2016), <http://haitiantimes.com/2016/01/28/jovenel-moise-seizes-land-from-haiti-peasants/>.

<sup>12</sup> Jennifer Vansteenkiste & Mark Schuller, *Behind the “Banana Man” – Haiti’s Only Presidential Candidate*, HUFFINGTON POST (Jan. 22, 2016), [http://www.huffingtonpost.com/mark-schuller/behind-the-banana-man-hai\\_b\\_9040712.html](http://www.huffingtonpost.com/mark-schuller/behind-the-banana-man-hai_b_9040712.html).

<sup>13</sup> *Ibid.*

<sup>14</sup> Steckley & Bell, note 11 above.

<sup>15</sup> U.N. OFFICE OF THE HIGH COMM’R FOR HUMAN RIGHTS [OHCHR] AND FOOD & AGRICULTURAL ORGANIZATION OF THE UNITED NATIONS [FAO], FACT SHEET NO. 34, THE RIGHT TO ADEQUATE FOOD 3 [hereinafter OHCHR Fact Sheet on the Right to Adequate Food], <http://www.ohchr.org/Documents/Publications/FactSheet34en.pdf>.

States must respect, protect, and fulfill the right to food. The obligation to respect “requires States parties not to take any measures that result in preventing such access.”<sup>16</sup> It compels states to refrain from interfering with individuals’ or groups’ use of their own means and resources to secure adequate food. States must examine their legislation, policies, and programs to ensure that they are not depriving people of their existing access to sources of adequate food. The obligation to protect “requires measures by the State to ensure that enterprises or individuals do not deprive individuals of their access to adequate food.”<sup>17</sup> States must regulate non-state actors, including corporations, to prevent them from interfering with people’s enjoyment of the right to food. The obligation to fulfill requires states to take affirmative steps to facilitate the capacity of its people to feed themselves, identifying, in particular, its most vulnerable populations to ensure their access to food, and supply food directly when individuals or groups are unable, for reasons beyond their control, to secure adequate food through their own means and resources.

This paper highlights the right to food, but the effects of agribusiness projects on Haiti’s rural population are multidimensional and, therefore, can be more comprehensively understood from the perspective of peasants’ rights. The peasants’ rights movement, led by small-scale producers and workers, seeks for international law to recognize the intersectionality of certain human rights that are particularly relevant to communities that rely on natural resources for subsistence.<sup>18</sup> Protection of peasants’ rights requires a similarly holistic approach that recognizes land as an essential provider of their cultural and physical resources. The effects of development-induced displacement<sup>19</sup> resulting from projects like Agritrans cannot be adequately measured

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<sup>16</sup> U.N. Econ. & Soc. Council, Comm. on Econ., Soc., & Cultural Rights, *General Comment No. 12: The Right to Adequate Food (Art. 11)*, 20th Sess., 1999, ¶ 6, U.N. Doc. E/C.12/1999/5 (May 12, 1999) [hereinafter *General Comment No. 12*].

<sup>17</sup> *Ibid.*

<sup>18</sup> See, e.g., U.N. Human Rights Council, Open-ended Intergovernmental Working Group on the Rights of Peasants and Other People Working in Rural Areas, Draft Declaration on the Rights of Peasants and Other People Working in Rural Areas Presented by the Chair-Rapporteur of the Working Group, U.N. Doc A/HRC/WG.15/3/2 (Mar. 8, 2016) [hereinafter Draft U.N. Declaration on the Rights of Peasants]; U.N. Human Rights Council, Final Study of the Human Rights Council Advisory Committee on the Advancement of the Rights of Peasants and Other People Working in Rural Areas, U.N. Doc. A/HRC/19/75 (Feb. 24, 2012) [hereinafter U.N. HRC Study]; Christophe Golay, *Negotiation of a United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas* (Geneva Acad., In-Brief No. 5, 2015) [hereinafter Geneva Academy Briefing Paper], [http://www.geneva-academy.ch/docs/publications/Briefings%20and%20In%20briefs/InBrief5\\_rights\\_of\\_peasants.pdf](http://www.geneva-academy.ch/docs/publications/Briefings%20and%20In%20briefs/InBrief5_rights_of_peasants.pdf); Christophe Golay, Background Paper Submitted to the Working Group on the Rights of Peasants and Other People Working in Rural Areas, 1st Sess., July 15-19, 2013, Legal Reflections on the Rights of Peasants and Other People Working in Rural Areas (2013) [hereinafter Golay Background Paper], <http://www.ohchr.org/Documents/HRBodies/HRCouncil/WGPLeasants/Golay.pdf>; Patricia Claeys, *From Food Sovereignty to Peasants’ Rights: An Overview of La Via Campesina’s Rights-Based Claims over the Last 20 Years* (Food Sovereignty: A Critical Dialogue, Int’l Conference, Yale University, Sept. 14-15, 2013, Conference Paper No. 24, 2013), [https://www.tni.org/files/download/24\\_claeys\\_2013-1.pdf](https://www.tni.org/files/download/24_claeys_2013-1.pdf); Marc Edelman & Carwil James, *Peasants’ Rights and the UN System: Quixotic Struggle? Or Emancipatory Idea Whose Time Has Come?*, 38 J. PEASANT STUD. 81 (2011); CHRISTOPHE GOLAY, CETIM, CRITICAL REPORT NO. 5, THE RIGHTS OF PEASANTS (2009) [hereinafter GOLAY, CRITICAL REPORT NO. 5], [http://www.cetim.ch/legacy/en/documents/report\\_5.pdf](http://www.cetim.ch/legacy/en/documents/report_5.pdf).

<sup>19</sup> See, e.g., W. COURTLAND ROBINSON, BROOKINGS INSTITUTION-SAIS PROJECT ON INTERNAL DISPLACEMENT, RISKS AND RIGHTS: THE CAUSES, CONSEQUENCES, AND CHALLENGES OF

solely by the acreage of land lost. As subsistence rural workers, Haitians lose more than their source of income when the state claims their land for an export-oriented banana plantation. Their displacement disrupts their self-sufficiency, ability to control how they feed themselves, housing stability, and community networks and customs, as well as their exercise of rights to participation, expression, and access to justice.<sup>20</sup>

Four key policy recommendations derive from the peasants' rights analysis of agribusiness in Haiti. First, the government of Haiti should adopt and implement more stringent requirements for private investment in large-scale land acquisitions. In particular, economic, social, and environmental impact assessments must be mandatory, not discretionary, for every project, in order for local communities to have a significant voice in the planning stages. Second, the government of Haiti should take further steps to ensure security of tenure, including community ownership. Third, the government of Haiti should focus on supporting small-scale farmers and facilitating the livelihoods of people who live in rural areas and, particularly, initiatives that boost local production for local consumption. Finally, all states and other international actors should support the U.N. Draft Declaration on Peasants' Rights.

The peasants' rights framework, advocated by rural workers' groups from around the world, is built around the concept that certain individuals who live on the land have a special relationship with the land that permeates all aspects of their lives. The framework is a comprehensive, robust, and pertinent way to understand the effects of agribusiness on peasants' humanity. It situates peasants' food insecurity that is severely exacerbated by development-induced displacement within an entire web of human rights that are diminished when governments and private investors disregard peasants' special relationship to land.

For Haiti to meet its human rights obligations, the government must proceed cautiously. Given its fragile political, social, and environmental circumstances, every development decision it makes affects peasants profoundly. The damaging effects of climate change heighten the risks to Haitian peasants' food security; as a result, sound environmental policies and practices and a commitment to rural development and local agricultural production become all the more urgent. The government needs to reevaluate its *Strategic Plan for Development* to better protect, respect, and fulfill the right to food as one critical aspect of safe, sustainable, and participatory development. This is a critical moment for efforts to protect Haitian's access to food, as a new president with strong connections to agribusiness took office on February 7.

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DEVELOPMENT-INDUCED DISPLACEMENT (2003), <https://www.ciaonet.org/attachments/2844/uploads>.

<sup>20</sup> Smita Narula, *The Global Land Rush: Markets, Rights, and the Politics of Food*, 49 STAN. J. INT'L. L. 101, 117-18 (2013).

## I. FACTS

This section puts the Haitian government's *Strategic Plan for Development Through 2030* in its historic and political context and analyzes the risk that large-scale development projects, specifically in the agricultural sector, pose for peasants' right to food. This study begins with an account of how the political economy and distribution of land in Haiti created a country of smallholder peasants, a reality that remains one of the defining characteristics of contemporary Haitian society. This section describes the conditions that have contributed to the underdevelopment of the island and, in particular, the countryside. First, this section provides a brief historical overview, starting with the colonial period and ending with the 2010 earthquake, subsequent reconstruction efforts, severe drought, Hurricane Matthew, and an ongoing food crisis. Second, the section describes megaprojects contemplated in Haiti's *Strategic Plan for Development Through 2030* and concludes by discussing existing and proposed agribusiness ventures and their effects on the livelihoods of peasants. This discussion emphasizes the dynamics that have contributed to food insecurity in Haiti and provides the basis for understanding how the government's current development agenda threatens peasants' access to food in the future.

### A. HAITI'S ONGOING ECONOMIC, POLITICAL AND SOCIAL CHALLENGES

Haiti is the most impoverished nation in the Western hemisphere and the second most densely populated.<sup>21</sup> The nation's defining features since independence are poverty, chronic food insecurity, rapid population growth, lack of governance, a fragile ecology, natural disasters, foreign intervention, and enormous gaps between the urban elite and the rest of the population.<sup>22</sup> According to the 2016 World Development Indicators, 53.9 percent of Haitians live on less than US\$ 1.90 per day and 71 percent live on less than US\$ 3.10 per day.<sup>23</sup> Historically, powerful elites have resided in the cities and the mass of impoverished peasants in the countryside.<sup>24</sup> Disparities between urban and rural areas remain entrenched. Although the percentage of the population living in poverty declined from 77 percent in 2001 to 58.5 percent in 2012, the poverty rate in rural areas

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<sup>21</sup> *Rural Poverty in Haiti*, IFAD RURAL POVERTY PORTAL, note 3 above.

<sup>22</sup> Rural people have a per capita income that is about one third of the income of urban dwellers. Moreover, "[t]here is a dramatically large gap between rich and poor, and inequality is likely to increase as the income gap widens even further. The poorest 40 per cent of the population have access to less than 6 per cent of the country's income, and the richest 2 per cent of Haiti's people control 26 per cent of the national wealth." *Ibid.*

<sup>23</sup> WORLD BANK GROUP, 2016 WORLD DEVELOPMENT INDICATORS 57 (2016), <https://openknowledge.worldbank.org/bitstream/handle/10986/23969/9781464806834.pdf>. The data is based on the new international poverty lines set at US\$ 1.90 and US\$ 3.10, based on 2011 prices, converted to the local currency using purchasing power conversion factors. *Ibid.* at 60. The World Bank updated its statistics on Haiti using country data collected in 2012. *Ibid.* at 57.

<sup>24</sup> LUNDAHL, note 1 above, at 23.

decreased only negligibly during the same period, from 77 to 74.9 percent.<sup>25</sup> This apparently insurmountable “social gap is deep, and above all, it is economic.”<sup>26</sup>

Another defining characteristic is that most Haitians today are peasants. Haiti has been described as a “classic” peasant nation.<sup>27</sup> Indeed, by the 1990s, two thirds of Haiti’s people were smallholder peasants who had to eke out an existence on less than one hectare of land.<sup>28</sup> Today, agriculture employs more than half of Haiti’s workforce and accounts for more than a quarter of the national income.<sup>29</sup> Most farming continues to take place on subsistence plots that are less than one hectare in size.<sup>30</sup> Even though the majority of the population is devoted to agriculture, Haiti produces less than 40 percent of the food it consumes; to meet the country’s basic food needs, it relies on imports, for which it imposes very low tariffs, which the government drastically reduced in 1995 under U.S. pressure.<sup>31</sup> The government has spent enormous sums to import food, the production of which is subsidized by the governments of producing countries, particularly the United States.<sup>32</sup> Meanwhile, the government has not invested in improving local production outputs and spends less than 4 percent of its annual budget on agricultural development.<sup>33</sup> The centralization of political, economic, and social power in Port au Prince perpetuates the severely inequitable distribution of resources in Haiti, including, in particular, the government’s lack of investment in rural areas.<sup>34</sup> As a result, most Haitians find themselves in a precarious position, since government measures that negatively affect smallholder peasants do so across large swaths of the population.

Two critical factors have made Haiti the impoverished peasant society that it is today: the predatory state – that is, a state apparatus that extracts surplus value through taxation and kleptocracy – and the agrarian land ownership structure that emerged after independence. Both originate from the 1809 land reform the Haitian state adopted

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<sup>25</sup> FELIX BAQUEDANO, FAO, SPECIAL REPORT: FAO/GIEWS FOOD AVAILABILITY AND MARKET ASSESSMENT MISSION TO HAITI 9 (May 23, 2016) [hereinafter FAO/GIEWS FOOD AVAILABILITY ASSESSMENT], <http://www.fao.org/3/a-i5614e.pdf>.

<sup>26</sup> LUNDAHL, note 1 above, at 24. Lundahl has explained: “The peasants have nothing to do with the elite. They belong to what the French economist Gérard Barthélemy calls ‘*Le pay en dehor*’ – the outside society. The Haitian elite often pretend that the peasants do not exist. They do not identify with poor black devils who attempt to make a living on infinitely small land plots. The gap between the upper and the lower classes often appears to be insurmountable . . .” *Ibid.* at 19; see also Robert Fatton Jr., *Haiti in the Aftermath of the Earthquake: The Politics of Catastrophe*, 42 J. BLACK STUD. 158, 163 (2011) (observing that most Haitian rulers viewed peasants as inferior human beings who had no moral claim on state resources); Smith, note 1 above, at 499 (describing the “illimitable social distance” between the elite and the masses).

<sup>27</sup> See LUNDAHL, note 1 above, at 19; see also Smith, note 1 above, at 499.

<sup>28</sup> LUNDAHL, note 1 above, at xi. Because inheritance laws have conferred equal rights of ownership to all children, farm sizes have grown smaller with each subsequent generation. By the mid-1990s, the average farm size reached the exceedingly small 0.75 hectares or less. *Ibid.* at 7 (citing U.N. Development Program, *Unité de Coordination et de Suivi de L’Environnement (ECMU)*, at 10 (1994)).

<sup>29</sup> Church World Service UPR Submission, note 2 above, at 5.

<sup>30</sup> See *Rural Poverty in Haiti*, IFAD RURAL POVERTY PORTAL, note 3 above.

<sup>31</sup> Church World Service UPR Submission, note 2 above, at 4-5, 9.

<sup>32</sup> See *Ibid.* at 4.

<sup>33</sup> *Ibid.* at 4, 5.

<sup>34</sup> *Decentralization: Haiti’s Answer for Six Months and Six Years*, HAITI ADVOCACY WORKING GROUP. [http://www.ijdh.org/wp-content/uploads/2010/07/HAWG\\_Decentralization\\_FINAL-2.pdf](http://www.ijdh.org/wp-content/uploads/2010/07/HAWG_Decentralization_FINAL-2.pdf).

following the collapse of the plantation economy.<sup>35</sup> To show how these dynamics have contributed to rural underdevelopment and chronic food insecurity in Haiti, the following section proceeds by describing (1) colonial legacies, lack of governance, and the creation of a large smallholder peasant class; (2) the effects of land-tenure arrangements and the predatory state on rural underdevelopment and food insecurity in Haiti; and (3) contemporary politics and the prospects for reconstruction and growth following the earthquake in 2010, the severe drought that has afflicted Haiti since 2014, and Hurricane Matthew in 2016.

## 1. The Predatory State and the Road to a Peasant Society

Before independence, Saint Domingue (now Haiti) was France's most profitable colony.<sup>36</sup> St. Domingue's wealth came from the success of large sugar plantations and, to a lesser extent, relatively smaller coffee plantations.<sup>37</sup> Since sugar is a particularly labor-intensive crop, France imported large numbers of slaves from Africa to sustain the plantation export economy. On the eve of the war of independence in 1791, St. Domingue had approximately 450,000 slaves.<sup>38</sup>

Colonial society had rigidly fixed hierarchies<sup>39</sup> that mapped onto the social stratification that has come to define post-colonial Haiti. Following the wars of independence, waged between 1791 and 1803, the leaders of the slave revolt expelled white colonizers and liberated the slaves. Jean-Jacques Dessalines, Haiti's first ruler, nationalized all of the land owned by whites and most of the land owned by the *affranchis* (manumitted mulatto ex-slaves who were the children of French colonizers) and leased it back to the new Haitian elite.<sup>40</sup> To ensure the continued productivity of the plantation economy, Dessalines forced the recently liberated slaves back to work on the plantations under military supervision.<sup>41</sup> In the process, Dessalines effectively divided society into two classes: soldiers and agricultural workers.<sup>42</sup>

The remnants of the plantation system and Dessalines' forced labor program folded shortly after independence. In 1809, Dessalines' successor in Northern Haiti, Alexandre Pétion, implemented the first land reform in the history of Latin America and

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<sup>35</sup> See LUNDAHL, note 1 above, at 28.

<sup>36</sup> And perhaps even the most profitable colony in the world. See LUNDAHL, note 1 above, at 4.

<sup>37</sup> *Ibid.* at 28; see also GROUPE DE RECHERCHE ET APPUI AU MILIEU RURAL (GRAMIR) & RIGHTS & DEMOCRACY, THE HUMAN RIGHT TO FOOD IN HAITI: REPORT OF AN INTERNATIONAL FACT-FINDING MISSION 21 (2008) [hereinafter GRAMIR Report].

<sup>38</sup> See LUNDAHL, note 1 above, at 4, 20.

<sup>39</sup> In Saint Domingue, the *grands blancs* (large plantation owners) were at the top of the social pyramid, followed by the *petits blancs* (shopkeepers, small planters, artisans, etc.), the *affranchis* (manumitted mulatto ex-slaves who were the children of French colonists), the unfree *gens de couleur*, and, at the bottom, the black slaves. *Ibid.* at 28.

<sup>40</sup> *Ibid.* at 7.

<sup>41</sup> *Ibid.*; see also Fatton, note 26 above, at 161-62.

<sup>42</sup> Haiti's founding fathers had no choice but to embrace militarization to defend the country from colonial powers that threatened the newly independent state. See Fatton, note 26 above, at 160. However, the militarization of society had profoundly harmful consequences and "contributed to the development of a predatory system in which those not born into wealth and lacking weapons were systemically repressed into marginalization." *Ibid.* at 160-61.

divided the large estates among the people.<sup>43</sup> This decision sealed Haiti's political and economic fate for the next two centuries as a peasant nation saddled with a predatory elite class that controlled the state apparatus for personal gain. First, the agrarian structure and system of property rights that prevails in Haiti today emerged directly from the initial distribution of land.<sup>44</sup> In the process, Haiti became a country of smallholding peasants. Second, the Haitian predatory state developed as the principal means for the elite to extract the surplus value generated by the liberated peasant majority. Since smallholding peasants had free access to land, elites could no longer directly exploit the fruits of their labor through rents or other means. Instead, they had to capture revenue indirectly through taxation and kleptocracy.<sup>45</sup>

Ever since, the fight to secure Haiti's presidency has been a perpetual struggle to control government revenue for private gain.<sup>46</sup> Indeed, up until the first U.S. occupation of Haiti in 1915, the country experienced more than one hundred revolutions, coups, or attempts to topple the government.<sup>47</sup> Invariably, the cliques that captured the presidency used what short time they had in office to extract as much profit as possible.<sup>48</sup> Accordingly, over the course of the nineteenth and early twentieth centuries, the Haitian state acquired a heavy sovereign debt burden that enriched the elite at the expense of future generations.

The debt accrued by these kleptocratic regimes only added to the exorbitant "independence debt" that France extorted from Haiti in exchange for its freedom.<sup>49</sup> In 1825, following the war of independence, Haiti had little choice but to meet this demand. The international community had boycotted Haitian exports, and payment was effectively a precondition for diplomatic recognition and access to global markets.<sup>50</sup> France demanded and eventually obtained the equivalent of US\$20 billion in today's

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<sup>43</sup> LUNDAHL, note 1 above, at 7. Pétion could not have done otherwise. "The plantation system buckled under its own weight. It simply became too costly to maintain export production with the aid of troops." *Ibid.*

<sup>44</sup> The military leaders of the revolution took the "lion's share" of the land. Military chiefs each acquired title to eight to nine hundred acres (and sometimes even more). Soldiers acquired title to fifteen acres. Over time, peasants were able to appropriate less desirable land that was left over or not properly tended to. *See* Smith, note 1 above, at 504.

<sup>45</sup> LUNDAHL, note 1 above, at 8, 22, 50; *see also* Michel-Rolph Trouillot, *Rural Localities, National Reality: Issues in Haitian Development*, HAITI PAPERS, no. 3, 1996, at 2 (unpaginated) ("[The] state became a milking mechanism tapping on peasant resources. It siphoned off peasant surplus via an unjust and regressive taxation system and firm control of the customhouses.").

<sup>46</sup> LUNDAHL, note 1 above, at 22 ("Haiti has been governed by a never-ending chain of kleptocrats, all the way up to the present time"); Fatton, note 26 above, at 162 ("Controlling the state has turned into a zero-sum game, a fight to the death to monopolize the sinecure of political power. Not surprisingly, Haitians call their rulers *grands mangeurs*, big eaters – a rapacious species of office holders who devour public resources for their exclusive private gain.").

<sup>47</sup> LUNDAHL, note 1 above, at 21. Haiti has had twenty-four constitutions since 1804. U.S. LIBRARY OF CONG., FED. RESEARCH DIV., DOMINICAN REPUBLIC & HAITI: COURSE STUDIES at xx (2001).

<sup>48</sup> *See* Fatton, note 26 above, at 162 ("Historically, the presidential monarch has used state power to extract from the popular masses the resources required to nourish a kleptocratic political class.").

<sup>49</sup> *Restitution of Haiti's Independence Debt from France*, INSTITUTE FOR JUSTICE & DEMOCRACY IN HAITI, <http://www.ijdh.org/2010/03/topics/economy/restitution-of-haitis-independence-debt/>.

<sup>50</sup> Haiti agreed to pay France 150-million francs in exchange for diplomatic recognition, an "indemnity" that was effectively a precondition for opening itself up to foreign commerce. *See* DOMINICAN REPUBLIC & HAITI: COURSE STUDIES, note 47 above, at 275. Shortly after France recognized Haiti, Britain recognized Haiti as well. *Ibid.*

dollars, a sum that advocates have described as “the principle historic cause of Haiti’s underdevelopment, and [that] is directly responsible for today’s grinding poverty.”<sup>51</sup>

Since then, many of Haiti’s leaders have continued to take on debt recklessly “for a variety of shady purposes which all had in common that they provided the cliques that governed Haiti with private incomes at a high cost for the state.”<sup>52</sup> This “disastrous loan policy was directly responsible” for the U.S. occupation of Haiti between 1915 and 1934.<sup>53</sup> The United States occupied Haiti first and foremost to guarantee repayment of its sovereign debt, which U.S. bondholders had underwritten a few years earlier.<sup>54</sup> Little came from the U.S. occupation other than imposed austerity and the creation of a constabulary under U.S. Marine supervision – the *Gendarmerie d’Haïti* – that would eventually develop into the regular Haitian army in the late 1930s.<sup>55</sup>

Following U.S. withdrawal from Haiti, the army, known as the *Forces Armées d’Haïti*, monopolized police duties and called the political shots until 1957, when the people elected François Duvalier (“Papa Doc”).<sup>56</sup> Papa Doc remained in office until 1971 by consolidating and centralizing power, cultivating allegiances, and ruthlessly eradicating any political opposition.<sup>57</sup> During his tenure, he took full advantage of the predatory state, embezzling approximately US\$ 150 million.<sup>58</sup> His son, Jean-Claude (“Baby Doc”) succeeded his father and remained in office until 1986. Unlike his father, Jean-Claude oriented his regime around technocrats plucked from the Haitian elite and made use of extensive government monopolies that brought state plunder to new heights.<sup>59</sup> His family pocketed approximately US\$ 1.6 billion before his ouster in 1986.<sup>60</sup> The United States provided the Duvalier regimes with substantial financial assistance, much of which the Duvaliers misappropriated.<sup>61</sup>

After a period of political turmoil following the end of the Duvalier regime, Haiti elected Jean-Bertrand Aristide in 1990. His time in office, however, was cut short by a military coup in 1991. Following Aristide’s ouster, there was a period of repression and

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<sup>51</sup> *Restitution of Haiti’s Independence Debt from France*, note 49 above.

<sup>52</sup> LUNDAHL, note 1 above, at 38 (noting that these loans were always taken out at a high premium to the state, including the last of these loans, in 1910, floated at a 38 percent discount).

<sup>53</sup> *Ibid.* at 38, 41.

<sup>54</sup> *Ibid.*

<sup>55</sup> *Ibid.* at 10.

<sup>56</sup> *See ibid.* at 10, 11.

<sup>57</sup> Unlike his predecessors, Papa Doc, to ensure he would not face ouster, immediately removed the army top brass, replacing them with loyal followers who owed their promotion to him. Papa Doc also brought every domestic body and organization under his complete control, creating a cadre of loyal *Duvaliéristes* in the business community, the judiciary, the parliament, the media, and the administration. He also built the support system necessary to extend control throughout rural Haiti, using the dreaded *tonton macoutes* (i.e., the *Milice Volontaires de la Sécurité Nationale*, a paramilitary force founded in 1958 to defend the Duvalier regime), the voodoo clergy, and the *chefs de section* (local sheriffs). *See ibid.* at 11-13.

<sup>58</sup> *See ibid.* at 13.

<sup>59</sup> *Ibid.*

<sup>60</sup> *Ibid.*

<sup>61</sup> *See* Randal C. Archibold, *Jean-Claude Duvalier Dies at 63; Ruled Haiti in Father’s Brutal Fashion*, N.Y. TIMES (Oct. 4, 2014), <https://www.nytimes.com/2014/10/05/world/americas/jean-claude-duvalier-haitis-baby-doc-dies-at-63.html>; *The Death and Legacy of Papa Doc Duvalier*, TIME (Jan. 17, 2011), <http://content.time.com/time/magazine/article/0,9171,876967-1,00.html>.

economic embargo until the United States reinstated him in 1994.<sup>62</sup> Ever since, Haiti has experienced two decades of political upheavals and international intervention,<sup>63</sup> most recently during the 2008 food riots, which saw Prime Minister Jacques Edouard Alexis forced to resign;<sup>64</sup> the earthquake that devastated Haiti in 2010; and Hurricane Matthew, which ravaged the Haitian countryside in October 2016.

In sum, the history of Haiti since independence is marked by dictatorship, corruption, institutional failure, foreign intervention, and development strategies that have favored urban growth and enriched the elite at the expense of urban and rural poor. The 21st century hardly seems more promising. The next section describes how corruption and kleptocracy have contributed to rural underdevelopment and food insecurity for a large share of the Haitian population.

## **2. Land Tenure, Rural Underdevelopment, and Chronic Food Insecurity**

In Haiti, the plight of peasant communities is closely related to chronic food insecurity and hunger.<sup>65</sup> The World Food Programme and the Haitian government estimate that 3.8 million Haitians (more than one third of the Haitian population) do not have access to adequate food.<sup>66</sup> A 2015 report prepared by the United Nations Food and Agriculture Organization (FAO), the International Fund for Agricultural Development (IFAD), and the World Food Programme concluded that 53.4 percent of the Haitian population is undernourished.<sup>67</sup> Based on similar findings, the International Food Policy Research Institute, a non-governmental organization that provides research-based policy solutions to sustainably reduce poverty and end malnutrition in developing countries, categorized Haiti as having an “alarming” hunger level and ranked Haiti among the ten

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<sup>62</sup> GRAMIR report, note 37 above, at 22.

<sup>63</sup> Because the Haitian constitution limits presidential mandates to one consecutive term, Aristide stepped down in 1995. That year, René Préval was elected president. GRAMIR report, note 37 above, at 22. Shortly thereafter, internal factions within the governing coalition paralyzed political action until the 2000 elections that saw Aristide return to power. *Ibid.* However, the opposition had boycotted the elections and international observers contested the results as fraudulent. *Ibid.* During Aristide’s second term, Haiti experienced political repression and a surge in armed militias financed by the government. *Ibid.* The situation deteriorated until 2004, when an armed rebellion, combined with internal and international political pressure, succeeded in removing Aristide from power. *Ibid.* That year, the United Nations sent a mission to Haiti, MINUSTAH, to oversee the transition period. See Paul Collier, *Haiti: From Natural Catastrophe to Economic Security, A Report for the Secretary-General of the United Nations* 1 (2009). The transitional government ended with the election of René Préval again in 2006. GRAMIR report, note 37 above, at 22. His second term in office was marked by the 2008 food riots, the Senate’s removal of Prime Minister Jean Jacques Edouard Alexis in April of that year, and the 2010 earthquake.

<sup>64</sup> Joseph Guyler Delva & Jim Loney, *Haiti’s Government Falls After Food Riots*, REUTERS (Apr. 12, 2008), <http://www.reuters.com/article/us-haiti-idUSN1228245020080413>.

<sup>65</sup> *Rural Poverty in Haiti*, IFAD RURAL POVERTY PORTAL, note 3 above.

<sup>66</sup> Church World Service UPR Submission, note 2 above, at 3.

<sup>67</sup> The number of undernourished people in Haiti between 2014 and 2016 represents 53.4 percent of the population, an increase since the previous reporting period. FAO, INTERNATIONAL FUND FOR AGRICULTURAL DEVELOPMENT [IFAD], & WORLD FOOD PROGRAMME [WFP], THE STATE OF FOOD INSECURITY IN THE WORLD, MEETING THE 2015 INTERNATIONAL HUNGER TARGETS: TAKING STOCK OF UNEVEN PROGRESS (2015), Annex 1 at 47, <http://www.fao.org/3/a-i4646e.pdf>.

countries in the world most affected by hunger.<sup>68</sup> In part, this is because Haiti is a food-deficit country; that is, it imports more than half of its food, even though more than half of its population works in agriculture.<sup>69</sup> The country depends on outside sources for basic staples, which makes Haiti more vulnerable to global food price fluctuations and food shortages.<sup>70</sup> Hurricane Matthew highlighted the chronic food insecurity of Haiti's peasants. In places affected by the hurricane, "livelihood activities related to agriculture, livestock and fishing have been almost completely destroyed," including between 70 and 100 percent of crops; Hurricane Matthew has left more than 800,000 people in urgent need of food assistance.<sup>71</sup>

Since the 1809 land reform, a combination of mismanagement, overpopulation, subdivision, soil erosion, underinvestment, trade liberalization, and natural disasters have led to rural underdevelopment and poverty in Haiti that have interfered with the country's ability to feed itself. The initial land distribution resulted in the vast majority of Haitians becoming smallholding peasants who continue to rely on their land as their primary means of subsistence.<sup>72</sup> Because of early patterns of land reform and dispersion, "landholdings in Haiti today are significantly more egalitarian than elsewhere in Latin America."<sup>73</sup> However, indicators reveal that rural poverty is more severe than poverty in urban areas.<sup>74</sup> Consequently, "[t]he majority of rural households are highly vulnerable to food shortages,"<sup>75</sup> and close to three quarters of the rural population lives in abject poverty.<sup>76</sup> There is also immense pressure on the land as an agricultural resource,

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<sup>68</sup> *Global Hunger Index 2015 Fact Sheet*, INT'L FOOD POLICY RESEARCH INST. (Oct. 12, 2015), <http://www.ifpri.org/news-release/global-hunger-index-2015-fact-sheet>.

<sup>69</sup> *Haiti*, FOOD SECURITY PORTAL, <http://www.foodsecurityportal.org/haiti/resources> (last visited, July 31, 2017); see also *Haiti*, WORLD FOOD PROGRAM USA, <https://www.wfpusa.org/countries/haiti/> (last visited July 31, 2017) ("Agriculture provides 50 percent of jobs in the country and accounts for 25 percent of the GDP, but Haiti fails to produce enough food for its population's needs."); Anne-Sophie Gerald, *From Field to Table: Follow the Food in Haitian Home-Grown School Meals in 10 Steps*, WORLD FOOD PROGRAM USA (Feb. 23, 2016), <https://www.wfpusa.org/articles/field-table-follow-food-haitian-home-grown-school-meals-10-steps/> ("In Haiti, national production accounts for about 50 percent of food needs, with the difference covered by imports."). According to IFAD, Haiti has to import as much as 60 percent of the food it needs. *Rural Poverty in Haiti*, IFAD RURAL POVERTY PORTAL, note 3 above.

<sup>70</sup> See *Haiti*, WORLD FOOD PROGRAM USA, note 69 above (noting that Haiti imports more than 80 percent of its main staple, rice, and "[a]ny price hikes in international markets or interruption in government fuel subsidies would increase the cost of living and put pressure on Haitians' pockets." (citing FAO, IFAD, & WFP, *THE STATE OF FOOD INSECURITY IN THE WORLD: STRENGTHENING THE ENABLING ENVIRONMENT FOR FOOD SECURITY* (2014), <http://www.fao.org/3/a-i4030e.pdf>).

<sup>71</sup> UN OFFICE OF THE COORDINATION OF HUMANITARIAN AFFAIRS (OCHA), *HAITI: HURRICANE MATTHEW*, SITUATION REPORT NO. 16 at 1, 2, 5 (Oct. 26, 2016), <http://reliefweb.int/sites/reliefweb.int/files/resources/SITREP%2016%20-%20HAITI%20%2826%20OCT%202016%29%20-%20ENG.pdf>.

<sup>72</sup> See LAND ALLIANCE, *HAITI LAND TENURE AND PROPERTY RIGHTS: BASIC INFORMATION ON LAND TENURE INSECURITY AND LAND ADMINISTRATION IN HAITI 1* [hereinafter *LAND ALLIANCE REPORT*], <http://www.usaidlandtenure.net/sites/default/files/Land%20Tenure%20and%20Property%20Rights%20in%20Haiti.pdf>; see also text accompanying notes 27-30 above.

<sup>73</sup> DOMINICAN REPUBLIC & HAITI: COURSE STUDIES, note 47 above, at 389.

<sup>74</sup> See text accompanying note 25 above.

<sup>75</sup> DOMINICAN REPUBLIC & HAITI: COURSE STUDIES, note 47 above, at 332.

<sup>76</sup> See FAO/GIEWS *FOOD AVAILABILITY ASSESSMENT*, note 25 above, at 9; see also text accompanying note 25 above.

especially because population growth has far outpaced production<sup>77</sup> and the amount of arable land has grown smaller (in absolute terms)<sup>78</sup> due to erosion, population growth,<sup>79</sup> and urbanization.<sup>80</sup> A series of inter-related factors – namely stagnant production techniques and soil erosion, the chronic result of converting forests to cultivated land to meet the food needs of the rising population – have increasingly raised the rates of poverty and food insecurity.<sup>81</sup>

The Haitian inheritance system has also contributed to the decreasing size of arable land tracts. The *Code Napoléon* provides children with equal inheritance rights, which has inevitably resulted in successive cycles of subdivision and fragmentation over generations.<sup>82</sup> Accordingly, the size of inherited plots has decreased over time, “with farm size growing smaller and smaller for each generation until reaching today’s exceedingly tiny 0.75 hectares or less.”<sup>83</sup> Smaller plots and diminished soil quality, due to erosion and stagnant production techniques, mean that rural households must increasingly rely on purchased food to meet their needs, as a shrinking share of household food consumption can be satisfied by on-farm production.<sup>84</sup> Declining land quality and output, accelerated by recent natural disasters, has exacerbated the rural population’s poverty and food insecurity, as households must spend a larger share of their expenditures on food purchases.<sup>85</sup>

The alarming reduction in yields, arable land, and average farm size has taken place with little or no government oversight of agriculture and land management.<sup>86</sup>

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<sup>77</sup> GRAMIR report, note 37 above, at 20.

<sup>78</sup> DOMINICAN REPUBLIC & HAITI: COURSE STUDIES, note 47 above, at 390; *see also* LUNDAHL, note 1 above, at 32. As of 2012, there were approximately 736,000 hectares of usable agricultural land in Haiti (about 36.3 percent of the land area), sixty percent of which was located in just four of Haiti’s ten departments: Artibonite, Centre, Ouest, and Nord. FAO/GIEWS FOOD AVAILABILITY ASSESSMENT, note 25 above, at 14; *see also* Haiti: Statistics, IFAD RURAL POVERTY PORTAL (last visited, June 24, 2016), <http://www.ruralpovertyportal.org/country/statistics/tags/haiti>. The distribution of usable agricultural land correlates with the distribution of people, with 70 percent of the Haitian population residing in those same four departments. FAO/GIEWS FOOD AVAILABILITY ASSESSMENT, note 25 above, at 14.

<sup>79</sup> In Haiti, “[m]ore important than the demand for energy, however, is the demand for food, [since] this tends to grow *pari passu* with the population. As the latter increases, so does the man-land ratio, which in turn makes production increasingly labor-intensive in rural areas. This means that over time, a given land area will undergo a transformation from forest to pasture to land-intensive crops. With each step in the sequence, the risk of erosion increases, since the soil becomes increasingly exposed to rains and wind as the permanent cover is removed and fallow periods are shortened.” LUNDAHL, note 1 above, at 60.

<sup>80</sup> LAND ALLIANCE REPORT, note 72 above, at 1. Urban growth is also fueled by the lack of opportunities and the hardships associated with the agricultural sector, which has driven many Haitian producers to abandon their land and move to urban areas or abroad to find employment. GRAMIR report, note 37 above, at 20; *Rural Poverty in Haiti*, IFAD RURAL POVERTY PORTAL, note 3 above.

<sup>81</sup> *See* Trouillot, note 45 above, at 3; LUNDAHL, note 1 above, at 141-42; *see also* note 79 above.

<sup>82</sup> LUNDAHL, note 1 above, at 7.

<sup>83</sup> *Ibid.*

<sup>84</sup> *See ibid.* at 139.

<sup>85</sup> In Haiti’s most recent food crises, food purchases represented close to two thirds of household expenditures. FAO/GIEWS FOOD AVAILABILITY ASSESSMENT, note 25 above, at 9.

<sup>86</sup> Production per capita dropped by 33 percent between 1980 and 2000, a period that coincided with acute land scarcity and a significantly decapitalized agricultural sector due to limited public investment in rural infrastructure. Glenn R. Smucker et al., *Land Tenure and the Adoption of*

Indeed, the state has failed to manage crucial agricultural resources and has left them underdeveloped.<sup>87</sup> Mismanagement and underinvestment have made Haitian peasants more susceptible to food shortages and have contributed to hunger and malnourishment throughout Haiti.<sup>88</sup> Although agricultural production represented close to 90 percent of Haiti's exports during the first half of the 20th century, urban elites in control of the government largely ignored rural Haiti, unless it was to impose taxes.<sup>89</sup> "For most of Haiti's history, the Haitian peasantry has been notably isolated from national institutions, excluded from a voice in government, and subject to unfair taxation and urban domination."<sup>90</sup> High taxation of basic goods consumed by the rural poor and levies on imported and exported (mostly agricultural) goods at customhouses, have enabled elites to capture most of the profits of peasant production.<sup>91</sup> Ultimately, rather than manage rural development in a sustainable fashion, successive kleptocratic regimes have extracted surplus revenues from agricultural production without reinvesting in rural development. Moreover, peasants have been unable to make up for the lack of state-sponsored strategic investment in agriculture, because predatory taxation schemes have left them with nothing to reinvest in their land or in improving agricultural techniques.

Another obstacle to rural development in Haiti is that many peasants lack formal title to their property, even though land is the most valuable rural commodity, and peasant families will go to great lengths to retain and increase their holdings.<sup>92</sup> Because access to land is the primary source of peasants' livelihood, the largely private, informal, and undocumented nature of property ownership, reinforced by peasants' distrust of the state, creates uncertainty and increases peasants' susceptibility to land grabbing and other forms of dispossession without fair compensation. As a result, title insecurity contributes to food insecurity, and large-scale development projects that displace peasants increase that insecurity. The magnitude of the problem is significant. "Most [land ownership] rights are not fully registered, nor [sic] backed by any legal documentation, or only partially. A study by FAO and INARA that was carried out in 1997 estimated that 95 percent of land sales in rural Haiti avoided legal formalities."<sup>93</sup> The high costs and inefficiencies associated with formalizing and enforcing legal title ultimately deter peasants from securing ownership rights.<sup>94</sup> Due to these difficulties that

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*Agricultural Technology in Haiti* 7 (Int'l Food Pol'y Research Inst., CAPRI Working Paper No. 6, 2000).

<sup>87</sup> See Trouillot, note 45 above, at 2. ("For more than a century, custom duties on coffee, Haiti's most important export crop, led the list of government receipts, accounting at times for more than 80 per cent of state revenues. Impoverished peasants increasingly turned to food production[,], where an open and competitive market allowed them higher returns. In the absence of capital, food production, carried out with rudimentary techniques, increasingly strained the natural resources. Population increase on a shrinking natural base further contributed to a pattern of increased poverty. Meanwhile, the Haitian state never returned, directly or indirectly, the surplus extracted from the peasants farmers [sic]. Successive Haitian governments distributed resources to the major towns, with Port-au-Prince, the capital city enjoying an increasingly larger share.")

<sup>88</sup> See text accompanying note 111 below.

<sup>89</sup> See Smith, note 1 above, at 507, 517.

<sup>90</sup> DOMINICAN REPUBLIC & HAITI: COURSE STUDIES, note 47 above, at 335.

<sup>91</sup> Trouillot, note 45 above, at 2.

<sup>92</sup> DOMINICAN REPUBLIC & HAITI: COURSE STUDIES, note 47 above, at 332.

<sup>93</sup> LAND ALLIANCE REPORT, note 72 above, at 2.

<sup>94</sup> See *ibid.*

peasants encounter in securing formal land titles, a formal property regime coexists with customary or informal tenure arrangements in rural Haiti.<sup>95</sup>

Peasants also favor customary ownership arrangements because of the cultural significance that communal land and labor relations have acquired in rural communities over time. In a legal system in which corruption and lack of administrative capacity make formal title difficult to enforce, peasants rely on traditional forms of tenure because they allow more fluid access to land, labor, and capital resources and, thus, provide smallholder communities with greater livelihood security.<sup>96</sup> In the customary system,

people make land available in response to family obligations, special ties to fictive kin (godparent[s]), and various forms of [client relationships] (e.g., labor relations, personal loans, banking favors). [Under customary norms], kinship groups have an obligation to make land available to all family members.<sup>97</sup>

Moreover, because peasants are cash poor, labor has been, and continues to be, the primary exchange good.<sup>98</sup> As a result, the cultural significance of the *coumbite* – a system of communal labor relations centered on reciprocal labor debts that attach to the holders of land tracts in particular communes – remains a defining feature of Haitian peasant society. The *coumbite* is a cooperative enterprise whereby a farmer asks his relatives and friends to help him with a particularly labor-intensive task. In return, the farmer commits to helping out when he is called upon; if he cannot help, he must send substitute labor.<sup>99</sup> These communal labor obligations can be traced back for generations and reflect the social capital and farming customs of particular peasant communities. The *coumbite* has been disappearing in rural Haiti for a variety of reasons, including the trend – to which large-scale development projects have contributed – of peasants being increasingly forced off their lands.<sup>100</sup> These displacements threaten the existence of a cultural practice that links generations of Haitian peasants to their land and to one another.

A series of food-import and trade-liberalization policies that international financial institutions and foreign governments have pressured Haiti to adopt since the 1970s have also had devastating effects on agricultural production. The push for trade liberalization acquired renewed vigor in the 1980s, coinciding with the U.S. plan to capitalize on the country's cheap labor and transform Haiti's rural economy into the "Taiwan of the Caribbean."<sup>101</sup> Accordingly, in 1986, the U.S.-backed military regime that succeeded Jean-Claude Duvalier adopted the country's first structural adjustment program (SAP), a policy that diminished protection for national production by slashing import tariffs and eliminating export tariffs and import permits.<sup>102</sup> This policy allowed

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<sup>95</sup> Smucker et al., note 86 above, at 10.

<sup>96</sup> *Ibid.* at 4-5.

<sup>97</sup> *Ibid.* at 11.

<sup>98</sup> *See ibid.* at 2.

<sup>99</sup> Smith, note 1 above, at 501-02.

<sup>100</sup> *See* MATS LUNDAHL, PEASANTS AND POVERTY: A STUDY OF HAITI 117 (2015).

<sup>101</sup> *See Inside Haiti's Food Riots: Haitians Warn that Violence Could Erupt Again if Prices Do Not Fall*, ALJAZEERA (Apr. 16, 2008), <http://www.aljazeera.com/news/americas/2008/04/200861517053857583.html>. Jean-Claude Duvalier also experimented with a destructive food-import policy during his tenure, before the country implemented its first structural adjustment programs in the late 1980s. *See* Trouillot, note 45 above, at 4-5.

<sup>102</sup> GRAMIR report, note 37 above, at 27.

“rice and other cheap imports from the US and the Dominican Republic to flood Haitian marketplaces.”<sup>103</sup> Despite additional SAPs concluded in 1994 and 1996,<sup>104</sup> plans to industrialize Haiti never bore fruit. “Instead, 20 years later, Haiti has little industry besides a handful of assembly plants where minimum wage is less than two dollars a day, and the country’s agricultural production is mainly subsistence.”<sup>105</sup> Moreover, the trade policy crippled local agrarian production by reducing average import tariffs from 35 to 3 percent, a move that overwhelmed the market with cheap foreign food imports.<sup>106</sup> In the “absence of an adaptation period or programs aimed at helping them transition, local producers were unable to compete. Many were forced to abandon their land after their incomes plummeted and lifestyles were destroyed.”<sup>107</sup> As a result of these trade policies, Haiti is the most liberalized economy in the Caribbean<sup>108</sup> and imports more than half of its food from foreign sources.<sup>109</sup> Meanwhile, successive governments have stubbornly failed to invest in agricultural development.<sup>110</sup> In this context, chronic reliance on food imports remains a significant barrier for people to secure adequate food in Haiti.

Food insecurity in Haiti is, thus, related to chronic poverty, gross underinvestment in agricultural development and critical infrastructure, severe environmental degradation, trade liberalization, political turmoil, and corruption.<sup>111</sup> If the Haitian government does not prioritize rural development and local agricultural production, chronic food insecurity only stands to worsen with climate change, as the recent devastation caused by Hurricane Matthew exemplifies.<sup>112</sup>

### **3. Contemporary Politics, Post-Earthquake Reconstruction, and the Food Crisis in Haiti**

On January 12, 2010, a catastrophic earthquake devastated Haiti, killing an estimated 222,570 people, injuring 300,000, displacing half a million, and forcing more than 1.3 million to live in makeshift encampments without proper shelter and sanitation.<sup>113</sup> The earthquake also caused significant material damage, destroying 80

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<sup>103</sup> *Ibid.*

<sup>104</sup> *Ibid.* Adherence to SAPs is generally a condition to receiving international aid. *Ibid.* (citing CLAIRE MCGUIGAN, CHRISTIAN AID, AGRICULTURAL LIBERALIZATION IN HAITI 11 (2006), <http://www.christianaid.org.uk/images/ca-agricultural-liberalisation.pdf>).

<sup>105</sup> *Ibid.*

<sup>106</sup> *See ibid.* For example, while Haiti was 80 percent self-sufficient in rice (its main staple in the 1980s), today it produces less than 40 percent of the rice it consumes. Church World Service UPR Submission, note 2 above, at 4. *See also Inside Haiti’s Food Riots*, note 101 above.

<sup>107</sup> GRAMIR report, note 37 above, at 28.

<sup>108</sup> *Ibid.* at 27. For a developing country, Haiti imposes a relatively low tariff on agricultural imports. Today, Haiti imposes an 8.2 percent tariff on imported agricultural goods even though the World Trade Organization allows Haiti to impose a tariff of up to 21.4 percent. *Country Profile: Haiti*, WORLD TRADE ORGANIZATION (Oct. 2007), [http://stat.wto.org/CountryProfiles/HT\\_e.htm](http://stat.wto.org/CountryProfiles/HT_e.htm).

<sup>109</sup> Today, most of Haiti’s imported food commodities come from the United States and the Dominican Republic. FAO/GIEWS FOOD AVAILABILITY ASSESSMENT, note 25 above, at 10.

<sup>110</sup> *See text accompanying notes 31-33 above.*

<sup>111</sup> Church World Service UPR Submission, note 2, at 3.

<sup>112</sup> *See text accompanying notes 152-156 below.*

<sup>113</sup> Fatton, note 26, at 164.

percent of the buildings in Port au Prince, including the presidential palace.<sup>114</sup> The *Post Disaster Needs Assessment*, a report prepared by the government of Haiti after the earthquake, assessed the total value of losses at just under US\$ 8 billion.<sup>115</sup> Adding to the humanitarian crisis, in October 2010, the lack of proper sanitation at a camp for U.N. peacekeepers introduced cholera-contaminated sewage into a tributary that flows into the Artibonite, the largest river in Haiti.<sup>116</sup> The ensuing cholera outbreak has infected almost 8 percent of the population since 2010, and the disease is now endemic in Haiti.<sup>117</sup>

Politics during this period has also left much to be desired. In April 2010, the Haitian Parliament passed a state-of-emergency law before it was dissolved due to ending terms and unscheduled elections, law gave the Interim Haiti Recovery Commission, a civilian supranational body, complete authority to determine the country's future during the following eighteen months.<sup>118</sup> The Commission's mandate encompassed planning and coordinating reconstruction efforts using resources from bilateral and multilateral donors and non-governmental organizations, as well as assessing and implementing development plans and investment priorities.<sup>119</sup> At this time, the country started the process of rebuilding itself under what was effectively a system of *de facto* trusteeship, with the Commission and the international community acting as effective trustees.<sup>120</sup> Like many of the political arrangements that preceded it, the Commission became "an urban, elite, and foreign phenomenon pretending to speak for the countryside and the poor."<sup>121</sup> Predictably, the Commission's reconstruction work was plagued by chaos and delays.<sup>122</sup>

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<sup>114</sup> *Ibid.*

<sup>115</sup> HAITI EARTHQUAKE PDNA: ASSESSMENT OF DAMAGE, LOSSES, GENERAL AND SECTORAL NEEDS 7 (2010), [http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2012/06/19/000333038\\_20120619012320/Rendered/PDF/701020ESWOP1190RoHaitioPDNA020100EN.pdf](http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2012/06/19/000333038_20120619012320/Rendered/PDF/701020ESWOP1190RoHaitioPDNA020100EN.pdf).

<sup>116</sup> *Why the U.N. Is Being Sued Over Haiti's Cholera Epidemic*, NPR (Mar. 21, 2016), <http://www.npr.org/sections/goatsandsoda/2016/03/21/471256913/why-the-u-n-is-being-sued-over-haitis-cholera-epidemic>.

<sup>117</sup> *Ibid.* According to the UN Office of the Coordination of Humanitarian Affairs (OCHA), between January and July 2016, health authorities reported an increase of 32 percent in the number of new cholera deaths in Haiti (227) and a 22 percent increase in the number of suspected new cases (24,505) compared to the same period in 2015. *Haiti: Cholera Figures*, OCHA (July 2016), [http://reliefweb.int/sites/reliefweb.int/files/resources/hti\\_cholera\\_figures\\_july\\_2016\\_en\\_\\_0.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/hti_cholera_figures_july_2016_en__0.pdf).

<sup>118</sup> Fatton, note 26 above, at 165.

<sup>119</sup> *Ibid.*

<sup>120</sup> *Ibid.* Fatton argues that the Commission was, at best, problematic and, at worst, unconstitutional, undemocratic, and a portent of future political challenges in Haiti. First, the Commission was not accountable to any Haitian democratic institutions. A government with limited popular support elected members of the Commission by means that were constitutionally dubious. Second, the Commission did not include either a displaced person's or a peasant's representative on its board, despite a rhetorical commitment by the Commission and the international community to develop rural areas and improve conditions for homeless and displaced persons. *Ibid.* at 166.

<sup>121</sup> *Ibid.* at 166.

<sup>122</sup> *Ibid.* As of early, 2016, 66,000 people remained in displacement camps in appalling conditions. Chiara Liguori, *Problems Rampant as Haiti Cannot Elect a New President*, ALJAZEERA (Feb. 5, 2016), <http://www.aljazeera.com/indepth/opinion/2016/02/problems-rampant-haiti-elect-president-160203134702656.html>.

In late 2010, Haiti held presidential elections as Préval's term was set to end in 2011. Opposition candidates contested the results of the first-round election, in which Préval's hand-picked candidate, Jude Célestine, won, by a narrow margin over Michel Martelly, a place in the runoff. The first-round election was viewed by many as having been tainted by fraud. As a result, the Organization of American States (OAS) investigated the election. Based on the OAS investigation and report, the United States and the international community compelled then-president Préval to replace Célestine with Martelly in the runoff election; Martelly eventually won the presidency in 2011.<sup>123</sup> Martelly's five-year term in office was marked by allegations of corruption and political repression.<sup>124</sup> After his term, Haiti remained at an impasse for more than a year. During the October 2015 elections, Jovenel Moïse, the owner of the Agritrans banana plantation (whose nickname is "Neg Banann," or "Banana Man" in English), who was backed by Martelly, placed first, followed closely by Célestine, the man the OAS had pushed out of the runoff election in 2011.<sup>125</sup> Amid violent street protests and credible allegations of election fraud, the Temporary Electoral Council under Martelly canceled the runoff vote slated for January 2016. He was forced to step down in February, and the parliament appointed Jocelerme Privert interim president until April 24, when a new runoff election was scheduled.<sup>126</sup> However, Haiti once again missed the presidential runoff deadline, sparking more protests and uncertainty.<sup>127</sup> The electoral council decided to hold a rerun of the first-round vote on October 9, 2016, but Hurricane Matthew struck Haiti on October 4,<sup>128</sup> pushing the election back to November 20. On November 29, the electoral council announced that Jovenel Moïse won the election with 55.67 percent of the vote.<sup>129</sup> Voters responded to the result with street protests, and several losing candidates, including second-place finisher Jude Célestine, declared that they would challenge the

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<sup>123</sup> See Bradley Klapper & Jonathan M. Katz, *Clinton Meets with Haiti Candidates, Pushes for Withdrawal of President's Preferred Successor*, CHICAGO TRIBUNE (Jan. 31, 2011), <http://www.chicagotribune.com/news/nationworld/sns-ap-us-haiti-story.html>. The Center for Economic and Policy Research analyzed the OAS Expert Verification Mission's Final Report and found the results of the report so flawed that there was no sound basis for the OAS to conclude that Martelly should replace Célestine in the run-off election (rather than re-run the first-round election). *CEPR Examines OAS Report on Haiti's Election, Finds It "Inconclusive Statistically Flawed, and Indefensible,"* CTR. FOR ECON. & POLICY RESEARCH (Jan. 11, 2011), <http://cepr.net/blogs/haiti-relief-and-reconstruction-watch/cepr-examines-oas-report-on-haitis-election-finds-it-qinconclusive-statistically-flawed-and-indefensibleq-summary>.

<sup>124</sup> Jon Lee Anderson, *Haiti Has a President*, NEW YORKER (Feb. 17, 2016), <http://www.newyorker.com/news/news-desk/haiti-has-a-president>.

<sup>125</sup> *Ibid.*

<sup>126</sup> *Ibid.*

<sup>127</sup> See Joseph Guyler Delva, *Haiti Will Miss Election Deadline, No Date for New President*, REUTERS (April 15, 2016), <http://www.reuters.com/article/us-haiti-election-idUSKCN0XCoD4>; Jacqueline Charles, *New Haiti Commission Has 30 Days to Verify Election Results*, MIAMI HERALD (April 28, 2016), <http://www.miamiherald.com/news/nation-world/world/americas/haiti/article74574432.html>.

<sup>128</sup> Jacqueline Charles, *In Haiti, Presidential Rerun Draws At Least 24 Candidates*, MIAMI HERALD (June 22, 2016), <http://www.miamiherald.com/news/nation-world/world/americas/haiti/article85390022.html>; Jacqueline Charles, *In Presidential Vote, Haiti's Most Important Figure May Be Elections Chief*, MIAMI HERALD (June 24, 2016), <http://www.miamiherald.com/news/nation-world/world/americas/haiti/article85862377.html>; Jacqueline Charles, *Haiti's Current Delayed-Elections Now Set for Nov. 20*, MIAMI HERALD (October 14, 2016), <http://www.miamiherald.com/news/nation-world/world/americas/haiti/article108252197.html>.

<sup>129</sup> Reuters, *Haiti: Violent Protests Erupt over the Presidential Election Result*, THE GUARDIAN (Nov. 29, 2016), <https://www.theguardian.com/world/2016/nov/29/haiti-presidential-election-result-protest-jovenel-moise>.

outcome.<sup>130</sup> On January 3, 2017, Haiti's electoral council declared Moïse the winner of the November election.<sup>131</sup> On February 7, 2017, Jovenel Moïse was sworn in as Haiti's new president.<sup>132</sup>

Making matters worse, Haiti is currently in the midst of an unrelenting food crisis. A serious drought attributed to El Niño has led to widespread crop failure, devastating the Haitian peasantry. In 2015, Haitian farmers lost up to 80 percent of their produce and large numbers of livestock.<sup>133</sup> With food output declining sharply since the drought started in 2014, Haiti, to avert shortages, has significantly drawn down its food reserves and continued to rely on importing even more of the basic foods it consumes.<sup>134</sup> Compounding the effects of the drought, rising food prices since 2008<sup>135</sup> have cut off access to adequate food for many Haitian households and decreased their purchasing power.<sup>136</sup> The FAO has warned that “[t]he weak macro-economic environment, including a strong depreciation of the Haitian gourde, high rates of inflation and higher-than-anticipated budget deficits could make it more difficult to sustain current levels of imports in 2016.”<sup>137</sup> A recent market-access study found that food staples on offer in Haitian markets originated largely from the United States and the Dominican Republic.<sup>138</sup> As a result, depreciation of the Haitian currency, the gourde has been a key factor driving up prices,<sup>139</sup> and Haiti's poor are faced with near-record prices of staples such as maize meal and beans.<sup>140</sup> High prices have also “adversely affected food access by households most affected by the drought, with food purchases representing two-thirds of household expenditure.”<sup>141</sup>

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<sup>130</sup> *Ibid.*

<sup>131</sup> Jacqueline Charles, *In Haiti, a Re-run Election Finally Produces a New President*, MIAMI HERALD (Jan. 3, 2017), <http://www.miamiherald.com/news/nation-world/world/americas/haiti/article124380494.html>.

<sup>132</sup> *Jovenel Moise Sworn in as Haiti's New President*, ALJAZEERA (February 7, 2017), <http://www.aljazeera.com/news/2017/02/jovenel-moise-sworn-haiti-president-170207161155899.html>.

<sup>133</sup> Jasmine Huggins, *International Women's Day: Haitian Women Carry a Disproportionate Burden*, CHURCH WORLD SERVICE (Mar. 8, 2016), <http://cwsglobal.org/haitian-women/>; see also Church World Service UPR Submission, note 2 above, at 4 (observing that, according to a survey conducted by the Haitian National Coordination for Food Security and the World Food Programme in December 2015, of those affected by the drought, 72 percent reported having lost more than 80 percent of their production). The FAO recently reported that the drought has further reduced 2015 outputs of cereals, pulses (a category of legumes), and starchy roots by 28, 18, and 16 percent, respectively, from the previous year's already-drought-reduced level. FAO/GIEWS FOOD AVAILABILITY ASSESSMENT, note 25 above, at 7.

<sup>134</sup> See *ibid.*

<sup>135</sup> Rising global food prices – the result of record oil prices, rising demand for food in Asia, the use of farmland and crops for biofuels, and market speculation – led to violent food riots in Haiti, which, in turn, led to the ouster of the Prime Minister. Delva & Loney, note 64 above. That year, in addition to global price fluctuations, “climatic disasters caused losses and damage worth US\$ 200 million to the agricultural sector and resulted in food insecurity that affects an estimated 3 million people, one third of the population. In the wake of the disasters, both urban and rural poverty rates have risen.” *Rural Poverty in Haiti*, IFAD RURAL POVERTY PORTAL, note 3 above.

<sup>136</sup> See *Haiti*, FOOD SECURITY PORTAL, note 69 above.

<sup>137</sup> FAO/GIEWS FOOD AVAILABILITY ASSESSMENT, note 25 above, at 7.

<sup>138</sup> *Ibid.* at 22, 29.

<sup>139</sup> *Ibid.* at 22.

<sup>140</sup> *Ibid.*

<sup>141</sup> *Ibid.*

The food crisis has had a significant effect on the Haitian economy. Despite GDP growth after the earthquake – stemming from reconstruction investments in infrastructure and capital investments financed through the Petrocaribe joint venture agreement with Venezuela – GDP growth slowed in 2014 and 2015 due to the weak performance of the agricultural sector.<sup>142</sup> The gourde started to depreciate rapidly in July 2015 against the currencies of its main food trading partners, the United States and the Dominican Republic, and has continued to lose value in 2016.<sup>143</sup> Coinciding with the sharp depreciation of the gourde, Haiti has experienced severe inflation.<sup>144</sup> In January 2016, the annualized inflation rate reached 13.3 percent, double the rate in 2015.<sup>145</sup> More than half of this inflation can be attributed to the increase in food prices each month since July 2015, although prices of non-food items have soared as well.<sup>146</sup>

The FAO concluded in May 2016 that, as a result of the drought and rising food prices, of the 3.8 million Haitians who were food insecure, 1.5 million people were “severely food insecure,”<sup>147</sup> while at least 200,000 were in an extreme food emergency situation.<sup>148</sup> To mitigate the effects of drought and food insecurity, the FAO has recommended that the Haitian government take measures to sustain the purchasing power of households at average historical levels and support agricultural activities that maintain output.<sup>149</sup> Specifically, the FAO recommended that Haiti should not limit its investment to the areas most adversely affected by drought and other climate-related events and urged Haiti, instead, to invest in relatively more productive areas, “where assistance should focus on strengthening and rebuilding agricultural capacity.”<sup>150</sup>

On October 4, 2016, Hurricane Matthew devastated Haiti, killing more than 500 people, displacing more than 140,000, and leaving more than 800,000 in need of urgent food assistance.<sup>151</sup> Hurricane Matthew particularly harmed the Haitian peasantry. It caused massive destruction in Haiti’s southwest rural areas, including the Grande-Anse department, the “bread basket” of Haiti that produced more than 60 percent of Haiti’s locally grown food.<sup>152</sup> Assessments conducted by the FAO and National Commission of Food Security (CNSA) indicate that Hurricane Matthew wiped out between 70 and 100 percent of crops in affected areas, eliminating sources of food for many Haitian

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<sup>142</sup> See *ibid.* at 9. Agricultural GDP growth contracted from 4.5 percent in 2013 to -1.5 percent in 2014 and -3.5 percent in 2015. *Ibid.* at 10.

<sup>143</sup> *Ibid.* In 2014, the Haitian gourde depreciated by 4 and 7 percent against the U.S. dollar and the Dominican peso, respectively. In 2015, the rate of depreciation accelerated to 19.7 percent against the U.S. dollar and 17.5 percent against the Dominican peso. From January to March 2016, the gourde depreciated an additional 6 percent against the dollar and the peso. *Ibid.*

<sup>144</sup> *Ibid.* at 13.

<sup>145</sup> *Ibid.*

<sup>146</sup> *Ibid.*

<sup>147</sup> *Ibid.* at 7; see also Church World Service UPR Submission, note 2 above, at 3.

<sup>148</sup> *Ongoing Conflicts and Droughts Exacerbate Food Needs*, FAO (June 2, 2016), <http://www.fao.org/news/story/en/item/417108/icode/>.

<sup>149</sup> FAO/GIEWS FOOD AVAILABILITY ASSESSMENT, note 25 above, at 7.

<sup>150</sup> See *ibid.* at 8.

<sup>151</sup> USAID, *Caribbean Hurricane Matthew – Fact Sheet #12* (Nov. 16, 2-16), [https://www.usaid.gov/sites/default/files/documents/1866/111516\\_matthew\\_fs12r.pdf](https://www.usaid.gov/sites/default/files/documents/1866/111516_matthew_fs12r.pdf).

<sup>152</sup> *Ibid.*; Church World Service, “Seven Years After Earthquake: Haiti in Unprecedented Humanitarian, Food, and Climate Crisis,” (Jan. 17, 2017), <http://cwsglobal.org/seven-years-after-the-earthquake-haiti-in-an-unprecedented-humanitarian-food-and-climate-crisis/>.

peasants.<sup>153</sup> These devastating effects continued into 2017. In January 2017, the U.N. Office of the Coordination of Humanitarian Affairs expressed concern that, “due to the widespread losses of crops (up to 100 percent in some areas of Grande-Anse), livestock and seeds, the next harvest expected in early 2017 could be seriously affected, exacerbating and prolonging food insecurity [in Haiti] well into this year.”<sup>154</sup> A year after Hurricane Matthew, at the time of this paper’s publication, the Haitian peasantry continues to contend with the effects of the storm. The Haitian government has failed to allocate adequate funds to address the needs of communities most affected, conditions prevented many of these communities from replanting their crops, and, as of mid-2017, “the storm’s impact continues to drive elevated levels of food insecurity in the worst-affected communities.”<sup>155</sup>

Haiti’s recent troubles serve as a warning of what awaits the country if the government does not take actions to secure the long-term viability of domestic agricultural production for local consumption. The ongoing drought and the hurricane represent the kinds of extreme weather events that experts predict will become worse with climate change. As things stand, of all the world’s countries, Haiti is the third most affected by extreme weather events,<sup>156</sup> and experts rank Haiti among the most at-risk countries in the world for climate change.<sup>157</sup> This crisis also shows that Haiti cannot import its way out of food shortages. In this situation, export-oriented agribusiness ventures are not a viable solution to the food crisis in Haiti and stand to make matters worse for the rural populations displaced in the process.

## **B. THE RISE OF MEGAPROJECTS IN HAITI’S DEVELOPMENT**

Megaprojects, broadly defined, are large-scale development projects that have great political, economic, and environmental impact.<sup>158</sup> They tend to be technologically complex and require high levels of financial investment. The rise of these projects is a

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<sup>153</sup> U.N. OFFICE OF THE COORDINATION OF HUMANITARIAN AFFAIRS (OCHA), HAITI: HURRICANE MATTHEW, SITUATION REPORT NO. 16, see above note 71 at 5.

<sup>154</sup> OCHA, HAITI: HURRICANE MATTHEW, SITUATION REPORT NO. 32 at 4 (Jan. 17, 2017), <http://reliefweb.int/sites/reliefweb.int/files/resources/OCHA%20Situation%20Report%20%2332%20Hurricane%20Matthew%20Haiti%2017%20Jan%202017.pdf>.

<sup>155</sup> USAID, FOOD ASSISTANCE FACT SHEET: HAITI (Aug. 7, 2017), [http://reliefweb.int/sites/reliefweb.int/files/resources/08.07.17%20Haiti%20FFP%20Factsheet\\_FINAL.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/08.07.17%20Haiti%20FFP%20Factsheet_FINAL.pdf); see also ALICE THOMAS, TWO STEPS BACK: HAITI STILL REELING FROM HURRICANE MATTHEW 9-10, Refugees International (Apr. 2017), <https://static1.squarespace.com/static/506c8ea1e4b01d9450dd53f5/t/58e56896414fb5affd68e857/1491429534724/2017.4.6+Haiti.pdf>.

<sup>156</sup> SÖNKE KREFT ET AL., GERMANWATCH, GLOBAL CLIMATE RISK INDEX 2016 5-6 (2015), <https://germanwatch.org/en/download/13503.pdf>. In the last two decades, Haiti has suffered, in addition to the devastating earthquake in January 2010, severe storms, flooding, landslides, and droughts.

<sup>157</sup> The annual 2017 climate change vulnerability index ranked Haiti third most at risk for climate change in the world. VERISK MAPLECROFT, CLIMATE CHANGE VULNERABILITY INDEX 2017 (2016), <http://reliefweb.int/sites/reliefweb.int/files/resources/verisk%20index.pdf>. Climate change will increase Haiti’s vulnerability to rising sea levels, higher sea temperatures, flooding, soil and beach erosion, invasion by non-native species, and the salinization of aquifers and fresh water estuaries. See Church World Service UPR Submission, note 2 above, at 4.

<sup>158</sup> Cathy Macharis & Peter Nijkamp, *Multi-Actor and Multi-Criteria Analysis in Evaluating Mega-Projects*, in INTERNATIONAL HANDBOOK ON MEGAPROJECTS 242 (2013).

global phenomenon, as countries worldwide have increasingly tapped their private sectors to make multi-million (or billion) dollar investments in critical infrastructure projects like dams, pipelines, bridges, water and electricity systems, and roads.<sup>159</sup> The projects' massive size makes displacement of people inevitable. The projects drastically transform the physical landscape and directly affect the communities within implementation zones.<sup>160</sup>

In Haiti, the government's plan for megaproject development is likely to be particularly harmful to the Haitian peasantry. The government hopes to construct many large projects in areas where peasants live and grow food. As the projects require large areas of land, their construction threatens to displace peasants from their lands and sources of livelihood, including their access to adequate food. Furthermore, the government has failed to involve the peasantry in meaningful consultative processes in the planning and implementation phases of these projects. Once the projects are underway, large land acquisitions for development will affect peasants' exercise of their human rights, including rights to food, water, land, housing, habitat, and sustainable development.

Largely in response to the 2010 earthquake, the Haitian government formulated the *Strategic Plan for Development Through 2030*, a long-term development framework designed to rebuild the country and make Haiti an emerging economy by 2030. The Haitian government's economic reform program relies on strong growth, including the realization of "farming, manufacturing, and tourism potential, the creation of businesses, and foreign direct investment."<sup>161</sup> Although the *Strategic Plan* states that projects in these areas should aim to "target job creation and improvements in productivity and employability,"<sup>162</sup> the major plans that the government has started to implement threaten to displace and marginalize the Haitian peasantry. This section discusses the current state of Haiti's megaproject development within the four sectors that are likely to have the greatest effect on the peasantry: tourism, mining, free trade zones, and agribusiness. This paper focuses mainly on agribusiness, highlighting how large-scale plantations and agricultural free trade zones affect Haitian peasants' human rights.

## 1. Tourism

To combat Haiti's image of poverty after the 2010 earthquake, President Martelly launched the "Haiti Is Open for Business" campaign to attract foreign investment through, in part, tourism.<sup>163</sup> In 2012, Haiti's Ministry of Tourism updated the National Tourism Master Plan to promote regionally based tourism in three main geographic areas: the North Coast, the Arcadins Coast, and the Caribbean Coast.<sup>164</sup> The Master Plan

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<sup>159</sup> Nancy Alexander, *The Age of Megaprojects*, PROJECT SYNDICATE (July 10, 2015), <https://www.project-syndicate.org/commentary/g20-infrastructure-investment-by-nancy-alexander-2015-07>.

<sup>160</sup> See Paul K. Gellert & Barbara D. Lynch, *Mega-Projects as Displacements*, 55 INT'L SCIENCE J. 15, 17 (2003), <http://www.sas.upenn.edu/~dludden/MegaProjectDISPLACEMENT.pdf>.

<sup>161</sup> IMF, IMF COUNTRY REPORT NO. 14/154, HAITI: POVERTY REDUCTION STRATEGY PAPER, note 8 above, at 6.

<sup>162</sup> *Ibid.* at 7.

<sup>163</sup> Mark Schuller, *Ile à Vache Haiti "Open for Business,"* COUNTERPUNCH (June 6, 2014), <http://www.counterpunch.org/2014/06/06/ile-a-vache-haiti-open-for-business/>.

<sup>164</sup> Local Enterprise and Value Chain Enhancement Project (LEVE), *Tourism in Haiti*,

sets out strategies to develop seaside tourism; establish an ecotourism, “ethnotourism,” and adventure tourism network; and bolster the boating and cruise sector.<sup>165</sup> To expand tourism, major international partners have agreed to help finance megaprojects in the three identified regions. The Inter-American Development Bank granted US\$36 million to Haiti to develop its tourism sector on the Caribbean Coast.<sup>166</sup> The World Bank granted US\$45 million “to increase the attractiveness of the cultural heritage sites in North of Haiti for tourists; [and] improve the living environment for the residents living in North of Haiti.”<sup>167</sup> Although the Haitian government has hailed tourism as an essential part of its economic plan, the projects will require large-scale land acquisitions that threaten to displace many Haitian peasants.

One tourism megaproject on the small Haitian island of Île-à-Vache (ILV) has already resulted in the government expropriating land from many Haitian peasant families and could ultimately lead to land confiscation from far more.<sup>168</sup> The US\$260 million tourist resort plan includes a new US\$13 million airport, luxury hotels, and an 18-hole golf course.<sup>169</sup> To jumpstart the project in 2013, President Martelly issued a presidential *arête* declaring all of ILV within the public domain and annulling all former land titles.<sup>170</sup> This decree precluded sales of the land or potential compensation claims by affected landowners, completely marginalizing the local peasantry. KOPI (*Konbit Peyizan Ilavach* – Organization of Île-à-Vache Farmers), the local organization leading the movement to resist the project, stated that construction for the airport has already displaced hundreds of Haitian peasants, causing them to lose their lands and their sources of living.<sup>171</sup> As of December 2014, dozens of affected residents reported that they had not received compensation.<sup>172</sup> Although the megaproject in ILV is still in its early stages, there is no indication that the Haitian government has revised its plan or intends to include the peasantry in a meaningful consultative process about the project.

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<http://haitileveproject.org/wp-content/uploads/2015/06/Haiti-Tourism-Brief.pdf>.

<sup>165</sup> IMF, IMF COUNTRY REPORT NO. 14/154, HAITI: POVERTY REDUCTION STRATEGY PAPER, note 8 above, at 59.

<sup>166</sup> INTER-AMERICAN DEV. BANK, SUSTAINABILITY REPORT 2014 at 27 (2015), <https://publications.iadb.org/bitstream/handle/11319/6848/Inter-American-Development-Bank-Sustainability-Report-2014.pdf>.

<sup>167</sup> *Haiti – Cultural Heritage Preservation and Tourism Sector Support Project*, WORLD BANK (May 19, 2014), <http://www.worldbank.org/en/news/loans-credits/2014/05/19/haiti-cultural-heritage-preservation-and-tourism-sector-support-project>.

<sup>168</sup> Jacob Kushner, *Paradise Is Overbooked*, FOREIGN POL’Y (Apr. 15, 2015), <http://foreignpolicy.com/2015/04/15/paradise-overbooked-haiti-land-earthquake-tourism/>; see also Kim Wall & Caterina Clerici, *Is this Tiny Island the Key to Restoring Haitian Tourism?*, SLATE (Apr. 23, 2016), [http://www.slate.com/articles/news\\_and\\_politics/roads/2016/04/will\\_haiti\\_make\\_one\\_of\\_its\\_last\\_unspoiled\\_islands\\_a\\_tourist\\_hot\\_spot.html](http://www.slate.com/articles/news_and_politics/roads/2016/04/will_haiti_make_one_of_its_last_unspoiled_islands_a_tourist_hot_spot.html).

<sup>169</sup> Kushner, note 1698 above.

<sup>170</sup> Dady Chery, *The Fight for Haiti’s Ile a Vache: An Exclusive Interview with Abaka Bay’s Robert Dietrich*, NEWS JUNKIE POST (Mar. 18, 2014), <http://newsjunkiepost.com/2014/03/18/the-fight-for-haitis-ile-a-vache-an-exclusive-interview-with-abaka-bays-robert-dietrich/#sthash.B5hCk3BM.dpuf>.

<sup>171</sup> Kushner, note 1698 above.

<sup>172</sup> *Ibid.*

## 2. Mining

The government of Haiti has named the country's mining sector as an economic priority. From 2005 to 2013, the Haitian government pursued a strategy to develop its gold mining through foreign investment.<sup>173</sup> During that time, two Canadian companies and two U.S. companies invested more than US\$30 million for mineral exploration.<sup>174</sup> The government approved prospecting and extraction permits for these companies and their Haitian partners that covered more than 3,000 square kilometers, which constituted nearly 11 percent of Haiti's land.<sup>175</sup> Despite this initial foreign investment, metal mining in Haiti is currently stalled, and no mines are in operation to date.<sup>176</sup>

In 2013, the Haitian Senate – concerned about a lack of public discussion on the role of mining, “irregularities in the granting of mining permits,” and a history of foreign exploitation of Haitian resources – passed a resolution that called for a national moratorium on mining.<sup>177</sup> Although this resolution was adopted only by the Senate and did not become law, it likely had a chilling effect on foreign investment in Haiti's mining sector.<sup>178</sup> In response to the moratorium, the Haitian executive branch enlisted the World Bank to help draft a new national mining law.<sup>179</sup> However, the proposed law may not sufficiently protect the Haitian people, including the rural peasantry, from severe environmental degradation and land expropriation. The proposed law, by failing to address water management or protect fragile ecosystems, places the burden of environmental regulation on future generations; many Haitians question whether mining is appropriate for Haiti and whether any national law could protect Haitian communities from the negative effects of mining. Haitians are concerned that the government's history of corruption, insufficient capacity, and lack of rule of law will persist and seriously limit the government's ability to regulate mining fairly and effectively.<sup>180</sup>

The Global Justice Clinic at the NYU School of Law released a report in 2015 on the proposed mining law and the detrimental effects of mining on the Haitian peasantry.<sup>181</sup> The Global Justice Clinic has stated that by exploiting large amounts of

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<sup>173</sup> Peterson Derolus, Nixon Boumba, & Caitlin Daniel, *World Bank Support for Haitian Mining: Far from a Gold Standard*, BRETTON WOODS PROJECT (Sept. 28, 2015), <http://www.brettonwoodsproject.org/2015/09/world-bank-support-for-haitian-mining-far-from-a-gold-standard/>.

<sup>174</sup> GLOBAL JUSTICE CLINIC & HAITI JUSTICE INITIATIVE, BYEN KONTE, MAL KALKILE? HUMAN RIGHTS AND ENVIRONMENTAL RISKS OF GOLD MINING IN HAITI 23 (2015), [http://chrgj.org/wp-content/uploads/2015/12/haiti\\_1.pdf](http://chrgj.org/wp-content/uploads/2015/12/haiti_1.pdf).

<sup>175</sup> *Ibid.*

<sup>176</sup> *Ibid.* at 28.

<sup>177</sup> *Ibid.* at 23; Jane Regan, Haitian Senate Calls for Halt to Mining Activities, INTER PRESS SERVICE (Feb. 24, 2013) <http://www.ipsnews.net/2013/02/haitian-senate-calls-for-halt-to-mining-activities/>. Other factors have contributed to the lack of recent foreign investment in Haiti's mining sector, including declining gold prices, overall concern about political stability in Haiti, and the fact that the proposed national law on mining has yet to be passed. GLOBAL JUSTICE CLINIC & HAITI JUSTICE INITIATIVE, note 174 above, at 23.

<sup>178</sup> GLOBAL JUSTICE CLINIC & HAITI JUSTICE INITIATIVE, note 174 above, at 23.

<sup>179</sup> Derolus et al., note 173 above.

<sup>180</sup> *Ibid.*

<sup>181</sup> The Global Justice Clinic and the Justice in Mining Collective recently submitted a report to the U.N. Human Rights Council for Haiti's most recent Universal Periodic Review. Global Justice Clinic et al., Submissions to U.N. Human Rights Council, Haiti Universal Periodic Review (UPR),

land, new mining projects in Haiti could “exacerbate existing food crises,” cutting off Haitian peasants’ access to land and adequate food.<sup>182</sup>

### 3. Free Trade Zones

Haiti’s development of industrial and agricultural free trade zones in rural areas has led to the expropriation of land from peasants. Although the zones have led to job creation and increased exports, many workers in these zones make less than a living wage, subsisting on only several dollars a day.

The first industrial zone, CODEVI, was established in 2003. President Aristide spearheaded CODEVI, located in the northern town of Ouanaminthe on the border with the Dominican Republic and spanning 780 square kilometers. The Haitian government wanted Grupo-M, the largest private-sector employer in the Dominican Republic, to hire thousands of Haitian workers for garment factory jobs. The International Finance Corporation (IFC) considers CODEVI one of its flagship projects in Haiti, as it financed the initial construction in 2003 and provided US\$10 million in 2015 for expansion.<sup>183</sup>

More recently, the government displaced hundreds of local Haitians to construct the under-performing Caracol Industrial Park, the post-earthquake manufacturing project spearheaded by the Clinton Foundation and funded, in part, by USAID and the Inter-American Development Bank.<sup>184</sup> Agribusiness free trade zones are discussed below.

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Working Group of the UPR, 26th Sess., Nov. 7-9, 2016, Human Rights Impacts of Gold Mining in Haiti (2016) [hereinafter Global Justice Clinic & Justice in Mining Collective UPR Submission], <http://chrgj.org/wp-content/uploads/2016/03/Human-Rights-Impacts-of-Gold-Mining-in-Haiti.pdf>. Their report for Haiti’s Universal Periodic Review builds on their recent report, BYEN KONTE, MAL KALKILE? HUMAN RIGHTS AND ENVIRONMENTAL RISKS OF GOLD MINING IN HAITI, note 175 above; for more discussion on Haiti’s mining sector and its effects on the Haitian peasantry, see generally The Global Justice Clinic & the Haiti Mining Collective, Request for Inspection to the Inspection Panel, World Bank (Jan. 5, 2017), [http://www.accountabilitycounsel.org/wp-content/uploads/2014/07/ENG-Complaint\\_FINAL.pdf](http://www.accountabilitycounsel.org/wp-content/uploads/2014/07/ENG-Complaint_FINAL.pdf); The Global Justice Clinic et. al, *Access to Information in Haiti: Obstacles to the Enjoyment of the Right of Access to Information in the Context of the Development of the Mining and Tourism Industries and the Practice of Journalism*, Executive Summary of Submission to the Inter-American Commission on Human Rights (Mar. 17, 2015) [http://chrgj.org/wp-content/uploads/2015/03/150316\\_Executive-Summary\\_English\\_Final.pdf](http://chrgj.org/wp-content/uploads/2015/03/150316_Executive-Summary_English_Final.pdf).

<sup>182</sup> Global Justice Clinic & Justice in Mining Collective UPR Submission, note 181 above, at 2, para. 7.

<sup>183</sup> *Codevi*, INTERNATIONAL FINANCE CORPORATION (Apr. 2016), [http://www.ifc.org/wps/wcm/connect/news\\_ext\\_content/ifc\\_external\\_corporate\\_site/news+and+events/codevi](http://www.ifc.org/wps/wcm/connect/news_ext_content/ifc_external_corporate_site/news+and+events/codevi).

<sup>184</sup> *Haiti to Expand Business Facilities at Caracol Industrial Park with Support from IDB*, INTER-AMERICAN DEV. BANK (Dec. 12, 2014), <http://www.iadb.org/en/news/news-releases/2014-12-12/caracol-industrial-park-and-haiti,11020.html>; Jonathan M. Katz, *The King and Queen of Haiti*, POLITICO (May 4, 2014), [http://www.politico.com/magazine/story/2015/05/clinton-foundation-haiti-117368\\_Page5.html#.VtxDXJMrLBJ](http://www.politico.com/magazine/story/2015/05/clinton-foundation-haiti-117368_Page5.html#.VtxDXJMrLBJ); GENDER ACTION, CARACOL INDUSTRIAL PARK: SOCIAL AND GENDER IMPACTS OF YEAR ONE OF HAITI’S NEWEST IFI-FUNDED INDUSTRIAL PARK 6 (2013), <http://www.genderaction.org/publications/caracol.pdf>.

#### 4. Agribusiness

In its *Strategic Plan for Development Through 2030*, the Haitian government emphasizes the possibilities that agribusiness presents for “modernizing and revitalizing” the country’s agricultural sector.<sup>185</sup> The government’s Center for Facilitation of Investments (CFI), in conjunction with the Ministry of Agriculture’s Unit for the Promotion of Investment in the Agricultural Sector (UPISA), solicits proposals for industrial agriculture activities and coordinates these activities.<sup>186</sup> CFI has identified six priority crops for development through agribusiness – cocoa, coffee, mangoes, essential oils, sisal, and bananas – all of which are export-oriented and none of which are among the crops that are Haiti’s biggest agricultural imports.<sup>187</sup> To attract foreign investors, CFI has offered a set of fiscal incentives that includes tax breaks and customs exemptions.<sup>188</sup>

The Haitian government is not alone in its aggressive pursuit of agribusiness.<sup>189</sup> National governments and private (often foreign) investors around the world have rushed to facilitate large-scale land acquisitions in developing countries for industrial agriculture purposes.<sup>190</sup> The benefits and beneficiaries of these transactions have generated substantial controversy,<sup>191</sup> and it is “clear that fundamental human rights are at stake.”<sup>192</sup> These large-scale land acquisitions typically consolidate land plots that are tilled largely by small-scale or subsistence farmers.<sup>193</sup> When these acquisitions occur (i) in violation of human rights, particularly the equal rights of women; (ii) without the free, prior, and informed consent of affected land users; (iii) without a thorough

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<sup>185</sup> HAITI MINISTRY OF PLANNING AND EXTERNAL COOPERATION, STRATEGIC PLAN FOR DEVELOPMENT THROUGH 2030 27 (2012), [http://www.lessonsfromhaiti.org/download/Report\\_Center/psdhtomea.pdf](http://www.lessonsfromhaiti.org/download/Report_Center/psdhtomea.pdf) [hereinafter STRATEGIC PLAN FOR DEVELOPMENT THROUGH 2030].

<sup>186</sup> HAITI CTR. FOR FACILITATION OF INVESTMENTS, INVEST IN HAITI’S AGRIBUSINESS SECTOR (2015), [http://cfihaiti.com/images/pdf/Agribusiness/BROCHURE\\_INVEST\\_HAITI\\_AGRIBUSINESS\\_SECTOR\\_EN.PDF](http://cfihaiti.com/images/pdf/Agribusiness/BROCHURE_INVEST_HAITI_AGRIBUSINESS_SECTOR_EN.PDF).

<sup>187</sup> See *ibid.*; HAITI CTR. FOR FACILITATION OF INVESTMENTS, INVESTMENT GUIDE 28 (2015), [http://cfihaiti.com/images/pdf/INVESTMENT\\_GUIDE\\_EN.pdf](http://cfihaiti.com/images/pdf/INVESTMENT_GUIDE_EN.pdf) [hereinafter INVESTMENT GUIDE].

<sup>188</sup> *Ibid.* at 64.

<sup>189</sup> STRATEGIC PLAN FOR DEVELOPMENT THROUGH 2030, note 185 above, at 27.

<sup>190</sup> U.N. Special Rapporteur on the Right to Food, *Rep. of the Special Rapporteur on the Right to Food: Large-scale Land Acquisitions and Leases: A Set of Core Principles and Measures to Address the Human Rights Challenge*, Human Rights Council, U.N. Doc. A/HRC/13/33/Add.2 (Dec. 28, 2009) (by Olivier De Schutter) [hereinafter U.N. Special Rapporteur Report on Large-scale Land Acquisitions and Leases].

<sup>191</sup> See, e.g., Lorenzo Cotula, *The International Political Economy of the Global Land Rush*, 1 J. PEASANT STUD. 1 (2012); TRANSNATIONAL INST., THE GLOBAL LAND GRAB: A PRIMER (2013); KARIN GREGOW ET AL., FORUM SYD, THE RACE FOR LAND (2012); SHEPARD DANIEL & ANURADHA MITTAL, OAKLAND INST., THE GREAT LAND GRAB: RUSH FOR WORLD’S FARMLAND THREATENS FOOD SECURITY FOR THE POOR (2009); “*Our Land, Our Lives*”: *Time out on the global land rush*, OXFAM BRIEFING NOTE (2012); *GRAIN Releases Data Set With Over 400 Land Grabs*, GRAIN (Feb. 23, 2012), <https://www.grain.org/article/entries/4479-grain-releases-data-set-with-over-400-global-land-grabs>.

<sup>192</sup> European Parliament, Directorate-General for External Policies, Policy Dept., Addressing the Human Rights Impacts of “Land Grabbing,” EUR. PARL. DOC. PE 534.984 (2014), [http://www.europarl.europa.eu/RegData/etudes/STUD/2014/534984/EXPO\\_STU\(2014\)534984\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2014/534984/EXPO_STU(2014)534984_EN.pdf).

<sup>193</sup> *Hungry for Land: Small Farmers Feed the World With Less Than a Quarter of all Farmland*, GRAIN (May 28, 2014), <https://www.grain.org/article/entries/4929-hungry-for-land-small-farmers-feed-the-world-with-less-than-a-quarter-of-all-farmland>.

assessment of or in disregard of social, economic, and environmental impacts; (iv) without transparent contracts that specify clear and binding commitments about activities, employment, and benefits sharing, or; (v) without effective democratic planning and meaningful participation, they become “land grabs.”<sup>194</sup> International investors, both public and private, have been particularly enthusiastic about these economic development projects.<sup>195</sup>

Two recent agribusiness megaprojects in Haiti satisfy several of the criteria specified in the Tirana Declaration for identifying an acquisition as a land grab. The Tirana Declaration was adopted in 2011 by the International Land Coalition, “a global alliance of civil society and intergovernmental organisations working together to put people at the centre of land governance,”<sup>196</sup> with a goal of “securing land access for the poor in times of intensified natural resources competition.”<sup>197</sup> These two enterprises in Haiti, the Agrotechnique mango and Agritrans banana plantations, are dedicated exclusively to crops intended for export. Agrotechnique, a 160-acre plantation located in the Artibonite Valley, operates two of Haiti’s five commercial mango orchards. Complicated land-tenancy agreements, along with allegations of local corruption, created a hostile relationship between local peasants and the Agrotechnique subsidiary that began absorbing land into its orchards in 2002.<sup>198</sup> Agrotechnique’s growth has stalled as locals continue to resist the company’s presence and its large-scale, industrial model of mango production.<sup>199</sup>

Agritrans, S.A., a more recent agribusiness megaproject, was launched in 2013 under the Martelly administration’s “Open for Business” campaign.<sup>200</sup> Through Agritrans, Haiti’s first agricultural free trade zone (named “Project Nourribio”), located in Trou du Nord, producers receive tax-exempt status for 15 years in exchange for committing to export 70 percent of their production yield.<sup>201</sup> As a private-public partnership, Agritrans has garnered more than US\$27 million in grants and investments, including US\$6 million from the Haitian government’s Industrial Development Fund and US\$10.2 million from various shareholders.<sup>202</sup> Jovenel Moïse, the current Haitian president was, as the Agritrans project’s initial CEO, principally responsible for its

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<sup>194</sup> International Land Coalition [ILC], Tirana Declaration ¶ 4 (May 27, 2011).

<sup>195</sup> See, e.g., Collier, note 63 above.

<sup>196</sup> *Our Strategy 2016-21*, ILC (2015), <http://www.landcoalition.org/en/regions/global-including-europe/our-strategy-2016-21>.

<sup>197</sup> Tirana Declaration, note 194 above.

<sup>198</sup> Marylynn E. Steckley, *Agrarian Change and Peasant Prospects in Haiti* (May 2015) (Ph.D. thesis, University of Western Ontario) (available at the Electronic Thesis and Dissertation Repository, University of Western Ontario), <http://ir.lib.uwo.ca/cgi/viewcontent.cgi?article=4339&context=etd>.

<sup>199</sup> *Ibid.*

<sup>200</sup> *Foreign Investors Flock to Haiti to Explore New Business Opportunities*, INTER-AMERICAN DEV. BANK (Oct. 1, 2009), <http://www.iadb.org/en/news/news-releases/2009-10-01/foreign-investors-flock-to-haiti-to-explore-new-business-opportunities,%205701.html>.

<sup>201</sup> *Creation of the First Haitian Agriculture Free Zone*, HAITI MINISTRY OF COMMERCE & INDUSTRY, [http://www.mci.gouv.ht/index.php?option=com\\_content&view=article&id=230%252525253Acreation-de-la-1ere-zone-frcreation-de-la-1ere-zone-franche-agricole-haitienneanche-agricole-haitienne&lang=fr](http://www.mci.gouv.ht/index.php?option=com_content&view=article&id=230%252525253Acreation-de-la-1ere-zone-frcreation-de-la-1ere-zone-franche-agricole-haitienneanche-agricole-haitienne&lang=fr) (last visited Jun. 21, 2016).

<sup>202</sup> Vansteenkiste & Schuller, note 12 above.

development.<sup>203</sup> Moïse did not distance himself from the business during the elections; in fact, he campaigned under the slogan “Banana Man.”<sup>204</sup>

The Agritrans banana plantation comprises 1,000 hectares, and investors have indicated interest in expanding it to as many as 3,000 hectares.<sup>205</sup> Since launching the plantation, Agritrans has cleared a field, built a greenhouse, and constructed an artificial lake (with a capacity of seven million gallons) to water the plantation.<sup>206</sup> Of the 3,000 promised jobs, only 600 have materialized.<sup>207</sup> This figure includes positions like security guards, surveyors, agronomists, engineers, epidemiologists, and construction workers – the vast majority of whom are foreign.<sup>208</sup> For day-laborer jobs, workers were offered only 15-day shifts and received a wage of only 200 gourdes (US\$3.53) and a plate of food per day.<sup>209</sup>

To create this agricultural free trade zone, however, Agritrans expelled as many as 800 peasant households from their land in August 2013.<sup>210</sup> Although Moïse described the land as “abandoned” and the government claimed it had long been state land,<sup>211</sup> the displaced peasants had lived on it since the late 1970s and had been granted legal access to it in 1996 by the Haitian National Institute of Agrarian Reform (INARA).<sup>212</sup> Peasants raised such crops as cassava, corn, beans, and sweet potatoes on their land; they also used commons areas for grazing cattle and sold the milk to NGOs and small-scale milk and yogurt producers.<sup>213</sup> Local residents also used the land to collect wild food to supplement their crops and wood to produce charcoal.<sup>214</sup>

Peasants living collectively on the land opposed the plantation.<sup>215</sup> They had little or no advance notice of their evictions.<sup>216</sup> Agritrans razed their homes, fields, and common areas,<sup>217</sup> and some peasants also lost their cattle.<sup>218</sup> After local peasant collectives organized protests against the destruction of their homes, Agritrans gave 17 households with destroyed homes US\$40-700 as compensation.<sup>219</sup> These peasants, however, remained homeless as of early spring 2016.<sup>220</sup>

For these peasants, the consequences of displacement extend beyond the loss of their physical shelter; the land conversion has “sociologically changed the habit of the

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<sup>203</sup> *Ibid.*

<sup>204</sup> See text accompanying note 125 above.

<sup>205</sup> Schaumans, note 10 above.

<sup>206</sup> *Haiti is Betting on Bananas with Agritrans*, LE NOUVELLISTE (Mar. 5, 2015), <http://lenouvelliste.com/lenouvelliste/article/142078/Haiti-is-betting-on-bananas-with-Agritrans>.

<sup>207</sup> Steckley & Bell, note 11 above.

<sup>208</sup> *Ibid.*; *Haiti is Betting on Bananas with Agritrans*, note 206 above.

<sup>209</sup> Steckley & Bell, note 11 above.

<sup>210</sup> *Ibid.*

<sup>211</sup> *Ibid.*; Vansteenkiste & Schuller, note 12 above.

<sup>212</sup> Vansteenkiste & Schuller, note 12 above.

<sup>213</sup> Steckley & Bell, note 11 above.

<sup>214</sup> Vansteenkiste & Schuller, note 12 above.

<sup>215</sup> *Ibid.*

<sup>216</sup> Steckley & Bell, note 11 above; Vansteenkiste & Schuller, note 12 above.

<sup>217</sup> Steckley & Bell, note 11 above.

<sup>218</sup> Vansteenkiste & Schuller, note 12 above.

<sup>219</sup> Steckley & Bell, note 11 above; Vansteenkiste & Schuller, note 12 above.

<sup>220</sup> Steckley & Bell, note 11 above.

farmers.”<sup>221</sup> Peasants have lost household income and future earning potential, experienced a decline in dietary diversity, and been unable to disseminate the traditional agricultural knowledge upon which they have relied for generations.<sup>222</sup> Local residents have said that most Agritrans employees have not been people who previously farmed the land; conversely, former farmers have generally been unable to find wage labor on the plantation.<sup>223</sup> Yet, despite the profound effect of the plantation on local peasants, Agritrans and the Haitian government have failed to provide an adequate alternative for those displaced. In fact, the government has reportedly ignored requests by local peasant organizations to discuss the land changes.<sup>224</sup> The peasant organizations dispute the legitimacy of Agritrans’ claims that peasant organizations comprise 20 percent of the enterprise’s shareholders, with some residents noting that the groups that Agritrans claims are shareholders have not been active peasant associations since the 1990s.<sup>225</sup>

The Agritrans experience demonstrates how agribusiness megaprojects, if undertaken without local participation, preclude Haitian peasants from effectively exercising a range of interconnected civil, political, economic, social, and cultural rights. The peasants’ right to food is foremost among the rights threatened by agribusiness megaprojects. The election of President Moïse, who owns Agritrans, heightens these concerns. The next section will address the effects of such large-scale land acquisitions on peasants’ right to food.

## II. PEASANTS’ RIGHT TO FOOD IN HAITI

The consequences of the Haitian government’s policies and practices related to food issues since Jean-Claude Duvalier’s regime have forced the government to import large quantities of heavily subsidized staples while investing very little to improve agricultural production.<sup>226</sup> At the same time, by imposing regressive, predatory tax schemes and liberalizing trade, corrupt political elites have devastated local peasant production. These policies have resulted in growing food insecurity, hunger, and poverty in Haiti. As the most recent food crisis shows, Haiti cannot import its way out of the problem. Indeed, dependency on imports to satisfy the demand for basic staples increases the country’s vulnerability to food shortages that drive up prices. The risk of food shortages will grow as global warming increases the intensity, frequency, and duration of extreme weather events like hurricanes and droughts. If Haiti’s government does not take measures to mitigate the adverse effects of global warming and reverse declining agricultural yields, Haiti will become even more food insecure, which will thwart the country’s long-term prospects for growth and stability. Large-scale agribusiness projects that focus on producing cash crops for export will not improve food security in Haiti and will contribute to environmental degradation. Instead, to protect its already vulnerable population, the Haitian government must take steps to shore up local peasant production of staple foods in a sustainable and environmentally conscious manner.

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<sup>221</sup> Vansteenkiste & Schuller, note 12 above.

<sup>222</sup> *Ibid.*

<sup>223</sup> Steckley & Bell, note 11 above.

<sup>224</sup> Vansteenkiste & Schuller, note 12 above.

<sup>225</sup> Steckley & Bell, note 11 above.

<sup>226</sup> Church World Service UPR Submission, note 2 above, at 4.

Under international law, Haiti has a duty to ensure that its citizens have access to adequate food and nourishment. Haiti's history since independence demonstrates that development strategies that bypass rural smallholder communities are destined to fail and, overall, make the country more food insecure.<sup>227</sup> Today, large-scale development projects that threaten to displace peasants and, in the process, disrupt their access to food, contribute not only to food insecurity among dispossessed peasants, but also to the country's already precarious food situation. It also places the culture of peasant communities at risk by disrupting their unique and long-standing relationship to the land and to one another. As a result, Haiti must undertake rural development initiatives from a peasants' rights perspective, placing the livelihoods of rural communities at the center of its development agenda. Doing so will improve food security in Haiti and will ensure that the government is discharging its duty to respect, protect, and fulfill the Haitian people's right to food.

#### **A. THE RIGHT TO FOOD AND HAITI'S OBLIGATIONS TO RESPECT, PROTECT, AND FULFILL**

The right to food is firmly established under international law. The Universal Declaration of Human Rights of 1948 was the first international legal instrument to articulate the right to food as a human right. Article 25 of the Declaration includes the right to food as a distinct part of the right to an adequate standard of living: "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food . . ." <sup>228</sup> The International Covenant on Economic, Social, and Cultural Rights (ICESCR) of 1966, which Haiti has ratified,<sup>229</sup> also enshrines the right to food as an essential part of the right to an adequate standard of living. The Covenant legally binds all states that have ratified it. Furthermore, Haiti's constitution, in Article 276-2, provides, "Once international treaties or agreements are approved and ratified in the manner stipulated by the Constitution, they become part of the legislation of the country and abrogate any laws in conflict with them."<sup>230</sup> Article 11 of the ICESCR provides:

The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.<sup>231</sup>

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<sup>227</sup> See Trouillot, note 45 above.

<sup>228</sup> Universal Declaration of Human Rights art. 25, G.A. Res. 217 (III) A, U.N. Doc. A/Res/217(III) (Dec. 10, 1948) [hereinafter Universal Declaration of Human Rights].

<sup>229</sup> *Haiti: U.N. Welcomes Ratification of Pact on Economic and Social Rights*, U.N. NEWS CTR. (Feb. 2, 2012), <http://www.un.org/apps/news/story.asp?NewsID=41123#.V6n8i5MrJ-U>; OHCHR, Status of Ratification, <http://indicators.ohchr.org>.

<sup>230</sup> LA CONSTITUTION DE LA REPUBLIQUE D'HAÏTI, art. 276-2 [hereinafter HAITI CONST. 1987].

<sup>231</sup> International Covenant on Economic, Social and Cultural Rights art. 11(1), Dec. 16, 1966, S. Treaty Doc. No. 95-19, 6 I.L.M. 360 (1967), 993 U.N.T.S. 3 [hereinafter ICESCR]. ICESCR, art. 11(2) enshrines "the fundamental right to be free from hunger," which is a subset of the broader right to adequate food:

Since the ICESCR was adopted, many international and regional instruments, as well as national constitutions, have incorporated the right to food.<sup>232</sup> The Haitian Constitution, in Article 22, explicitly guarantees the right to food: “The State recognizes the right of every citizen to decent housing, education, food and social security.”<sup>233</sup>

The United Nations Committee on Economic, Social, and Cultural Rights (CESCR), established by the ICESCR to monitor states’ compliance with the treaty’s provisions, has clarified the definition of the right to food. Its General Comment No. 12 states, “The right to adequate food is realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement.”<sup>234</sup> In other words, all individuals have a human right to secure, through their own means and resources, access to adequate food, either through their own production or by purchase. In turn, states must foster an environment in which individuals who produce their own food have sufficient access to land, seeds, water, and other necessary resources.<sup>235</sup> When individuals do not have the capacity to procure adequate food through either production or purchase (for example, due to a natural disaster or armed conflict), the state has a legal obligation to provide food directly.<sup>236</sup>

At its most fundamental level, the human right to food guarantees to all people the capacity to feed themselves with dignity and to live free from hunger.<sup>237</sup> The right is not limited to a diet with enough calories or nutrients for one’s survival; it is the right to have access to food that is sufficient in quantity and quality to satisfy one’s dietary needs, free from adverse substances, and culturally acceptable.<sup>238</sup> Thus, the rights-based approach to hunger guarantees that all people have a right to adequate, available, accessible food and requires that the state’s responsibility for assuring this right must not be relegated to a charitable concept of a right to be fed.

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2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:

(a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources. . . .

<sup>232</sup> For example, the following international documents address the right to food for specific groups: Convention on the Rights of the Child arts. 24, 27, *opened for signature* Nov. 20, 1989, 1577 U.N.T.S. 3 (entered into force Sept. 2, 1990); Convention on the Elimination of All Forms of Discrimination Against Women arts. 12, 14, Dec. 18, 1979, 1249 U.N.T.S. 13; and Convention on the Rights of Persons with Disabilities arts. 25, 28, Dec. 13, 2006, 2515 U.N.T.S. 3.

<sup>233</sup> HAITI CONST. 1987, note 230 above, at art. 22.

<sup>234</sup> *General Comment No. 12*, note 16 above, at ¶ 6.

<sup>235</sup> OHCHR Fact Sheet on the Right to Adequate Food, note 15 above, at 3.

<sup>236</sup> *Ibid.* at 4.

<sup>237</sup> JEAN ZIEGLER ET AL., *THE FIGHT FOR THE RIGHT TO FOOD* 15 (2011).

<sup>238</sup> *General Comment No. 12*, note 16 above, at ¶ 8; *see also* FAO, VOLUNTARY GUIDELINES TO SUPPORT THE PROGRESSIVE REALIZATION OF THE RIGHT TO ADEQUATE FOOD IN THE CONTEXT OF FOOD SECURITY 6, para. 16 (2005), <http://www.fao.org/3/a-y7937e.pdf> [hereinafter FAO VOLUNTARY GUIDELINES].

All states, including Haiti, have binding obligations under international law to ensure the right to food. By ratifying the ICESCR, state parties have undertaken a duty to ensure for everyone the right, set out in Article 11, to an adequate standard of living, including adequate food. States also have an immediate duty not to discriminate in ensuring access to food on the basis of “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. . . .”<sup>239</sup> Under Article 2(1) of the ICESCR, each state party is obligated to “take steps . . . to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant.”<sup>240</sup> Haiti, as a party to the ICESCR, is bound under international law to implement measures that use the maximum resources at its disposal to ensure that the right to food is realized progressively and non-discriminatorily.<sup>241</sup>

The CESCR’s General Comment No. 12 clarified states’ obligations arising from the right to food under the ICESCR.<sup>242</sup> The CESCR issued the Comment in response to the 1996 World Food Summit, where participants emphasized that states are critical actors in shaping how the right to food is realized.<sup>243</sup> The CESCR defined states’ obligations to implement the right to food at the national level as three binding duties: to respect, protect, and fulfill the right.<sup>244</sup> General Comment No. 12 states:

[T]he right to adequate food, like any other human right, imposes three types or levels of obligations on State parties: the obligations to respect, protect, and fulfil. In turn, the obligation to fulfil incorporates both an obligation to facilitate and an obligation to provide. The obligation to respect existing access to adequate food requires States parties not to take any measures that result in preventing such access. The obligation to protect requires measures by the State to ensure that enterprises or individuals do not deprive individuals of their access to adequate food. The obligation to fulfil (facilitate) means the State must proactively engage in activities intended to strengthen people’s access to and utilization of resources and means to ensure their livelihood, including food security. Finally, when an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, States have the obligation to fulfil (provide) that right directly.<sup>245</sup>

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<sup>239</sup> *General Comment No. 12*, note 16 above, at ¶ 18.

<sup>240</sup> ICESCR, note 231 above, art. 2(1).

<sup>241</sup> U.N. Econ. & Soc. Council, Comm. on Econ., Soc., & Cultural Rights, *General Comment No. 3: The Nature of States Parties’ Obligations (Art. 2, Para. 1, of the Covenant)*, 5th Sess., 1990, ¶ 10, U.N. Doc. E/1991/23 (Dec. 14, 1990).

<sup>242</sup> Although the Committee’s General Comments are not legally binding, they provide authoritative interpretations of the human rights set out in the ICESCR.

<sup>243</sup> Nadia C.S. Lambek, *International Economic Law and the Right to Food*, in *RETHINKING FOOD SYSTEMS: STRUCTURAL CHALLENGES, NEW STRATEGIES, AND THE LAW* 101 (Nadia C.S. Lambek et al. eds., 2014).

<sup>244</sup> See Asbjorn Eide, *The Right to Adequate Food and To Be Free from Hunger, Updated Study on the Right to Food*, Sub-Comm’n on Prevention of Discrimination and Protection of Minorities, U.N. Comm. on Human Rights, 51st Sess., U.N. Doc. E/CN.4/Sub.2/1999/12 (June 28, 1999).

<sup>245</sup> *General Comment No. 12*, note 16 above, at ¶ 15.

This tripartite typology of the state's obligation to respect, protect, and fulfill is now widely used as a framework for analyzing the right to food,<sup>246</sup> as well as states' obligations for economic, social, and cultural rights generally.<sup>247</sup>

In 2002, the United Nations Food and Agricultural Organization (FAO) established an Intergovernmental Working Group to produce the *Voluntary Guidelines on the Realization of the Right to Adequate Food*. The *Voluntary Guidelines* also emphasize the central role of the state. These guidelines, adopted by all member states of the FAO, including Haiti, were designed to provide "practical guidance to States in their implementation of the progressive realization of the right to food in the context of national food security."<sup>248</sup> The *Voluntary Guidelines* define the right to adequate food to align with the CESCR definition and adhere to the tripartite state obligations framework of respect, protect, and fulfill.

### 1. Haiti's Obligations to *Respect* the Right to Food

The obligation to respect the right to food "requires States parties not to take any measures that result in preventing such access."<sup>249</sup> It compels states to refrain from interfering with individuals' or groups' use of their own means and resources to secure adequate food. States must abstain from directly interfering in a person's enjoyment of the right to food but also must not withdraw existing programs that enable the realization of this right.<sup>250</sup> Thus, the obligation to respect requires states to examine their legislation, policies, and programs to ensure that they are not depriving people of their existing access to sources of adequate food. Although the right to food is to be realized progressively, states have an immediate obligation not to take regressive measures that would diminish people's access to food.<sup>251</sup>

To respect the right to food, states must ensure that development projects do not prevent an individual or group from securing adequate food. In the agribusiness context, a major challenge to states' obligations to respect the right to food is the export-oriented nature of large agricultural developments. First, these large-scale, export-driven projects often reduce or interfere with people's existing access to their sources of food. When transnational agribusiness corporations persuade smallholding farmers to cultivate products for export only, farmers lose their ability to grow food for themselves and to supply food for local consumption. In other situations, large-scale agricultural developments convert agricultural lands from smallholder farmers' production of food for local use to large-scale cash-crop or biofuel production for export.<sup>252</sup> These projects

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<sup>246</sup> While the primary obligation to ensure the right to food remains with the national government, other states with sufficient resources also have extraterritorial obligations, including the obligation to support states that lack the same resources to ensure the right to food. Therefore, in order to comply with the right to food under international law, states must respect, protect, and support the fulfillment of the right to food for people living in other states. For an overview on states' extraterritorial obligations, see ZIEGLER ET AL., note 234 above, at 80.

<sup>247</sup> Lambek, note 243 above, at 107.

<sup>248</sup> FAO VOLUNTARY GUIDELINES, note 238 above, at 2, para. 6.

<sup>249</sup> *General Comment No. 12*, note 16 above, at ¶ 15.

<sup>250</sup> GRAMIR report, note 37 above, at 41.

<sup>251</sup> *General Comment No. 12*, note 16 above, at ¶¶ 6, 14 & 16.

<sup>252</sup> Carmen G. Gonzalez, *International Economic Law and the Right to Food*, in RETHINKING FOOD SYSTEMS: STRUCTURAL CHALLENGES, NEW STRATEGIES, AND THE LAW, note 243 above, at 170.

involve large landholders, such as transnational corporations, that can cultivate large tracts of land to grow substantial volumes of export products, displacing smallholder farmers to smaller, less desirable plots.<sup>253</sup>

In addition, the export-oriented nature of large agricultural developments can make small-scale agriculture unviable. Smallholder farmers who choose not to produce food for export and, instead, try to sell their crops on the local market may be unable to compete with the increase in cheap, imported food. Trade liberalization policies like free trade zones bring locally sold produce into direct competition with food imports. If the import prices are artificially low (for example, due to subsidies), the smallholder farmers cannot compete with the imports. These policies also expose the country's entire population to the volatility of global food prices. This exposure to the world market can diminish people's existing ability to purchase adequate food on the local market. For instance, many countries, like Haiti,<sup>254</sup> that are net importers of food were disproportionately harmed by the 2008 food price surges because the price of imported staples, like rice, rose significantly higher than the products that these countries export, like coffee and cocoa.<sup>255</sup> Due to rising food prices, people in many parts of the world were unable to purchase the imported staple foods on which they had come to rely for their daily meals. To avoid this result, states must ensure that the export-oriented nature of large agricultural projects does not interfere with people's use of their own means to grow adequate food or purchase it in local markets.

The state obligation to respect the right to food applies particularly to the most vulnerable populations, such as the peasantry. The former U.N. Special Rapporteur on the Right to Food, Olivier de Schutter, articulated that the obligation to respect may require states to recognize customary land rights of indigenous groups or peasants where they do not hold formal title to their land.<sup>256</sup> For example, a state may be violating its obligation to respect if it grants concessions to agribusiness companies for land traditionally inhabited or used by indigenous groups or peasants. Furthermore, a state might violate its obligation by pursuing development projects that would threaten the ecology of land on which people depend for their food and livelihoods. Therefore, before a state can pursue such projects, it must fulfill certain conditions, such as securing the free, prior, and informed consent from the people affected and providing them with adequate compensation and alternative means of subsistence.

As Haiti imports more than half of its food and is thus a food-deficit country, the Haitian state is particularly susceptible to violating its obligation to respect the right to food. To respect the right to food, the Haitian government must examine its current agricultural policies and economic development plans to ensure that it is not implementing regressive measures that prevent the Haitian people's access to food. The Haitian government must ensure that new agribusiness developments like Agritrans are not regressively stripping Haitian peasants of their access to adequate food. Before undertaking large-scale agricultural projects, the government must secure free, prior, and informed consent from the peasants affected. And, of course, even if the state

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<sup>253</sup> *Ibid.* at 171.

<sup>254</sup> See notes 64, 101, 106 and accompanying text above.

<sup>255</sup> Gonzalez, note 252 above, at 171.

<sup>256</sup> Asbjørn Eide, *State Obligations for Human Rights: The Case of The Right to Food*, in GOVERNING FOOD SECURITY: LAW, POLITICS, AND THE RIGHT TO FOOD 115 (Otto Hospes & Irene Hadiprayitno eds., 2010).

secures such consent, it has an obligation to ensure that the affected peasants have access to alternative sources of adequate food.

In addition, the Haitian government must examine its national trade policies to ensure that its export-oriented growth does not diminish the Haitian population's ability to meet its food needs. Access to adequate food has been a tremendous struggle for Haiti over the past several decades. Since the 1990s, Haiti's trade liberalization policies have promoted export-led agribusiness development and have largely undermined its population's ability to produce its own food.<sup>257</sup> For example, in 1995, the Haitian government greatly reduced its tariff on agricultural imports after being pressured by the United States, causing U.S. products to flood the local Haitian markets.<sup>258</sup> Smallholder farmers could not compete with the cheap, imported food. Many farmers left their land and moved to urban areas, particularly Port-au-Prince, because they could not feed themselves and their families.<sup>259</sup> Today, the Haitian people produce only 42 percent of their food, relying heavily on imported staple foods;<sup>260</sup> for example, Haiti is now the world's second largest importer of rice.<sup>261</sup> This dependence on external markets exposes the Haitian population to global food prices, making the Haitian people vulnerable to food shocks like the 2008 crisis. The Haitian government must take steps to ensure that its trade policies result in more, not fewer, Haitians having access to adequate food, through either production or purchase on the local market.

## **2. Haiti's Obligations to *Protect* the Right to Food**

The obligation to protect the right to food "requires measures by the State to ensure that enterprises or individuals do not deprive individuals of their access to adequate food."<sup>262</sup> States must regulate non-state actors, including corporations, to prevent them from interfering with people's enjoyment of the right to food. The CESCR's General Comment 12 elaborates on the state obligation to protect: "As part of their obligation to protect people's resource base for food, States parties should take appropriate steps to ensure that activities of the private business sector and civil society sector are in conformity with the right to food."<sup>263</sup> For example, states have an obligation to prevent non-state actors from polluting land or water supplies important to people's food production. Jean Ziegler, also a former U.N. Special Rapporteur on the Right to Food, has described the state obligation to protect as a way for states to prevent economically powerful third parties from depriving the population of access to land and food production: "If the Government does not intervene when powerful individuals evict

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<sup>257</sup> CTR. FOR HUMAN RIGHTS & GLOBAL JUSTICE ET AL., SAK VID PA KANPE: THE IMPACT OF U.S. FOOD AID ON HUMAN RIGHTS AND HAITI 3 (2012), <http://chrgj.org/wp-content/uploads/2012/07/sakvidpakanpe.pdf>.

<sup>258</sup> Global Justice Clinic & Justice in Mining Collective UPR Submission, note 181 above, at ¶ 18.

<sup>259</sup> *Ibid.*

<sup>260</sup> *Ibid.* at ¶ 19.

<sup>261</sup> Before 1986, Haitians consumed a relatively small amount of rice. Today, rice is a critical part of the Haitian diet and accounts for 23 percent of the calories consumed by Haitians daily. NANCY COCHRANE ET AL., U.S. DEP'T OF AGRICULTURE, HAITI'S U.S. RICE IMPORTS 1 (2016), <http://www.ers.usda.gov/media/2000883/rcs-16a-01.pdf>.

<sup>262</sup> *General Comment No. 12*, note 16 above, at ¶ 15.

<sup>263</sup> *Ibid.* at ¶ 27.

people from their land, then the Government violates the obligation to protect the right to food.”<sup>264</sup>

States have a duty to prevent transnational companies engaged in agribusiness from depriving individuals or groups of their existing access to adequate food. Large-scale agricultural projects, along with other projects involving the commercial exploitation of natural resources, like mining, often dispossess the peasantry from their lands without their prior and informed consent.<sup>265</sup> This displacement of peasants without adequate notice, consultation, and consent can seriously threaten their access to food. In instances where the state grants land concessions to transnational agricultural corporations for megaproject developments, the state must protect the peasants’ right to food by obtaining their free, prior, and informed consent before permitting the projects to go forward.

Under the obligation to protect, state governments must also enact regulatory and legal frameworks that sufficiently protect people’s right to food. Such frameworks must include regulation of non-state actors, like transnational agricultural organizations, to prevent them from violating people’s right to food. Regulations must cover “food hygiene, labeling standards, labor conditions, and land tenure.”<sup>266</sup> They must also include an adequate minimum wage for agricultural workers so that they can afford to purchase food, and the state must effectively monitor compliance.<sup>267</sup> Article 7(a)(ii) of the ICESCR requires states to “recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular[,] . . . [a] decent living for themselves and their families.”<sup>268</sup> As discussed above, agricultural projects can cause peasants who previously produced their own food to convert their land to export-oriented crops; therefore, an adequate wage is imperative for people who stop producing their own food and then need to purchase it in the markets.

Under its state obligation to protect the right to food, Haiti, first, must protect its people from interference with their access to food by private actors, including transnational corporations. In large part due to Haiti’s complex land tenure system, the Haitian peasantry remains vulnerable to transnational companies’ activity that constrains both their access to land and their exercise of the right to food. Megaprojects like Agritrans have resulted in the displacement of thousands of Haitian peasants, and the Haitian government has neither fairly compensated nor ensured that Agritrans has fairly compensated those affected. This constitutes a failure to protect.

Second, Haiti has failed to enforce an adequate minimum wage for its agricultural workers, although Article 35.1 of the Haitian Constitution guarantees a “fair wage.”<sup>269</sup> In May 2016, interim President Privert issued a presidential decree to raise minimum wages by sector, fixing the agricultural wages at 260 gourdes per day for eight

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<sup>264</sup> Nadia C.S. Lambek, *Respecting and Protecting the Right to Food: When States Must Get Out of the Kitchen*, in *RETHINKING FOOD SYSTEMS: STRUCTURAL CHALLENGES, NEW STRATEGIES, AND THE LAW*, note 243 above, at 109.

<sup>265</sup> JEAN ZIEGLER ET AL., note 237 above, at 54.

<sup>266</sup> FAO, *THE RIGHT TO FOOD FACTSHEET 1* (unpaginated), <http://www.fao.org/worldfoodsummit/english/fsheets/food.pdf>.

<sup>267</sup> U.N. Special Rapporteur on the Right to Food, *Rep. of the Special Rapporteur on the Right to Food: Agribusiness and the Right to Food*, Human Rights Council, ¶ 15, U.N. Doc. A/HRC/13/33 (Dec. 22, 2009) (by Olivier De Schutter).

<sup>268</sup> ICESCR, note 231 above, art. 7(a)(ii).

<sup>269</sup> HAITI CONST. 1987, note 230 above, at art. 35-1.

hours of work, or approximately US\$ 3.68; this still falls short of the minimum daily wage of 500 gourdes that Haitian workers have demanded.<sup>270</sup> For those peasants forced to give up their land and work on plantations, the Haitian government must ensure adequate pay for them to meet their food needs.

As many as 70 percent of Haitians depend on agriculture directly or indirectly for their livelihood.<sup>271</sup> The Haitian government must take steps to ensure that all peasants can either subsist on their own produce or afford to purchase adequate food.

### **3. Haiti's Obligations to *Fulfill* the Right to Food**

States' obligations to fulfill the right to food encompass two different requirements: the obligation to facilitate and the obligation to provide.

Under the obligation to facilitate, states "must pro-actively engage in activities intended to strengthen people's access to and utilization of resources and means to ensure their livelihood, including food security."<sup>272</sup> Thus, a state must take affirmative steps to facilitate the capacity of its people to feed themselves, identifying its most vulnerable populations to ensure their access to food. To satisfy the duty to facilitate, the FAO Voluntary Guidelines recommend that states, "to the extent that resources permit, establish and maintain safety nets or other assistance to protect those who are unable to provide for themselves."<sup>273</sup>

The state's obligation to facilitate also includes a duty to inform its population about human rights and ensure that people and communities, including the most vulnerable populations, like the peasantry, are included in decision-making about development that affects them.<sup>274</sup> State programs to increase people's access to food must be transparent, accountable, and non-discriminatory.<sup>275</sup> Through inclusive decision-making approaches, states afford individuals the opportunity to shape legislation, seek and receive information, and express their views on policies that affect their right to food. The FAO Voluntary Guidelines state that this kind of dynamic exchange fosters an approach in which "people hold their governments accountable and are participants in the process of human development, rather than being passive recipients."<sup>276</sup> In particular, states should identify vulnerable populations like the peasantry that are often excluded from these processes and should actively ensure that these groups are participants in relevant decision-making.

The second requirement, to provide, requires that states supply food directly when individuals or groups are unable, for reasons beyond their control, to secure

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<sup>270</sup> "Haiti – FLASH: Full Details on the New Minimum Wage," HAITI LIBRE (May 5, 2016), <http://www.haitilibre.com/en/news-17541-haiti-flash-full-details-on-the-new-minimum-wage.html>.

<sup>271</sup> Global Justice Clinic & Justice in Mining Collective UPR Submission, note 181 above, at ¶ 17.

<sup>272</sup> *General Comment No. 12*, note 16 above, at ¶ 15.

<sup>273</sup> FAO VOLUNTARY GUIDELINES, note 238 above, at 6, para. 17.

<sup>274</sup> Smita Narula, *Reclaiming the Right to Food as a Normative Response to the Global Food Crisis*, 13 YALE HUM. RTS. & DEV. L. J. 507, 513 (2001).

<sup>275</sup> *Ibid.*

<sup>276</sup> FAO VOLUNTARY GUIDELINES, note 238 above, at 7, para. 19.

adequate food through their own means and resources.<sup>277</sup> If the state lacks the capacity to provide, then it must call upon other states and international organizations for assistance.<sup>278</sup>

Haiti's complex land tenure system and persistent governmental corruption has rendered many peasants unable to produce or have access to adequate food. If Haitians cannot enjoy their right to food using their own resources, then the state must provide for them. Land grabs from agribusiness have diminished the peasants' ability to produce food on their own, and it is the Haitian government's duty to provide, in particular, for people who have their land expropriated and their resources taken.

The state obligation to provide applies even in emergency situations like natural disasters.<sup>279</sup> A major obstacle to fulfilling the obligation to provide is climate change, which is likely to disproportionately affect developing countries, due to their geographic location and the way people secure food and earn their livelihoods.<sup>280</sup> Haiti is extremely susceptible to climate-change effects such as storms, including hurricanes, and droughts.<sup>281</sup> Moreover, poor natural-resource management by the national government has resulted in massive deforestation and soil erosion, and Haiti's peasants face a serious threat to their access to food and livelihoods.<sup>282</sup> Haiti's obligation to provide requires it to supply food directly to these vulnerable populations in the aftermath of any natural disasters that prevent them from securing adequate food; this includes a duty to request international assistance if Haiti's own resources do not suffice.

In the past decade, the Haitian government has attempted to fulfill the right to food through various national policies and programs that have not achieved overall increased agricultural productivity or access to adequate food.<sup>283</sup> In June 2012, President Martelly committed Haiti to a national strategic framework to combat hunger and malnutrition called the *Aba Grangou* ("Alliance Against Hunger") program.<sup>284</sup> The main goals of *Aba Grangou* were to: (1) halve the number of people in Haiti suffering from hunger by 2016; and (2) eradicate hunger and malnutrition in Haiti by 2020.<sup>285</sup> Nevertheless, more than 50 percent of Haiti's population remain undernourished.<sup>286</sup> To satisfy its obligation to fulfill, the government must improve its national programs to increase people's access to food.

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<sup>277</sup> *General Comment No. 12*, note 16 above, at ¶ 15.

<sup>278</sup> *Ibid.*; see also JEAN ZIEGLER ET AL., note 237 above, at 20.

<sup>279</sup> *General Comment No. 12*, note 16 above, at ¶ 15.

<sup>280</sup> U.N. Special Rapporteur on the Right to Food, *Interim Report of the Special Rapporteur on the Right to Food: Right to Food*, General Assembly, ¶ 29, U.N. Doc. A/70/287 (Aug. 5, 2015) (by Hilal Elver).

<sup>281</sup> Church World Service UPR Submission, note 2 above, at 2.

<sup>282</sup> *Ibid.* at 4.

<sup>283</sup> *Ibid.* at 9.

<sup>284</sup> TONNY JOSEPH, 2 *PLANTING NOW: REVITALIZING AGRICULTURE FOR RECONSTRUCTION AND DEVELOPMENT IN HAITI* 7 (2012).

<sup>285</sup> *Ibid.*

<sup>286</sup> FAO, *STATE OF FOOD INSECURITY IN THE CARICOM CARIBBEAN* at x (2015), <http://www.fao.org/3/a-i5131e.pdf>.

## B. A PEASANTS' RIGHTS APPROACH TO THE RIGHT TO FOOD IN HAITI

This paper highlights the right to food, but the effects of agribusiness projects on Haiti's rural population are multidimensional and, therefore, can be more comprehensively understood from the perspective of peasants' rights. The peasants' rights movement, led by small-scale producers and workers, seeks to have international law recognize the intersectionality of certain human rights that are particularly relevant to communities that rely on natural resources for subsistence.<sup>287</sup> If the Haitian government is to effectively respect, protect, and fulfill the right to food, it must also ensure that peasants can exercise related civil, political, economic, social, and cultural rights. This holistic framework takes the importance of maintaining peasant communities' cultural identity and autonomy to be a fundamental principle in the decision-making process for development projects that affect them.

### 1. Special Relationship to Land

At its core, the peasants' rights framework rests on the special relationship that peasants have with the land on which they work and live. The term "peasants," as defined in the UN Draft Declaration on the Rights of Peasants, encompasses anyone "engaged in artisanal or small-scale agriculture, livestock raising, pastoralism, fishing, forestry, hunting and gathering, and handicrafts related to agriculture or a related occupation in a rural area," along with "salaried workers, regardless of their legal status, on plantations and large farms and in agro-industrial enterprises."<sup>288</sup> Common threads among these types of workers in rural areas "include their *special relationship with land and nature*, the way they work and produce (mainly traditionally, in the family, anchored in the local community), and their specific situation, combining economic vulnerability and a desire for autonomy."<sup>289</sup>

Large-scale agribusiness projects like Agritrans, however, threaten this special relationship by commoditizing and consolidating their land. The U.N. Human Rights Council Advisory Committee on the Advancement of the Rights of Peasants and Other People Working in Rural Areas noted in 2012, "Every year, thousands of peasant farmers are the victims of expropriation of land, forced evictions and displacements – a situation that is reaching an unprecedented level owing to the new phenomenon of the global 'land grab.'"<sup>290</sup> These land grabs "reduce land to its productive elements [and] treat it like a commodity, when it means social status and a lifeline for the poorest rural

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<sup>287</sup> See, e.g., Draft U.N. Declaration on the Rights of Peasants, note 18 above; U.N. HRC Study, note 18 above; Geneva Academy Briefing Paper, note 18 above; Golay Background Paper, note 18 above; Claeys, note 18 above; Edelman & James, note 18 above; GOLAY, CRITICAL REPORT NO. 5, note 18 above. In March 2017, an international "Global Peasants' Rights" congress was held and attended by peasants, small-scale farmers, and other rural workers from across the world. The main goals of the congress were to raise awareness about the situation of the peasantry and support the U.N. Working Group on the Draft U.N. Declaration on the Rights of Peasants. "Global Peasants' Rights," INT'L CONGRESS GLOBAL PEASANTS' RIGHTS, <http://www.global-peasants-rights.com/index.php/en/>.

<sup>288</sup> Draft U.N. Declaration on the Rights of Peasants, note 18 above, art. 1.

<sup>289</sup> Geneva Academy Briefing Paper, note 18 above, at 37 (parenthetical original).

<sup>290</sup> U.N. HRC Study, note 18 above, at ¶ 73.

households.”<sup>291</sup> Every land grab for a development megaproject prevents local peasants from exercising a host of rights, including the rights to food, water, housing, work, health, information, participation, and expression.

The concept of a special relationship to land, one that has gained particular recognition in international law, is not new. Indigenous peoples have previously advanced the theory that their cultural identities are inextricably linked to their lands and territories, such that their livelihoods, customs, and spiritual traditions all depend on access to their customary lands.<sup>292</sup> Human rights instruments and decisions affirm this principle, beginning with ILO Convention No. 169, which required that states “respect the special importance for the cultures and spiritual values of [indigenous peoples’] relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship.”<sup>293</sup> Most recently, the 2007 U.N. Declaration on the Rights of Indigenous Peoples recognizes “the urgent need to respect and promote the inherent rights of indigenous peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources.”<sup>294</sup> The Inter-American Court of Human Rights has held that

the close ties of indigenous people with the land must be recognized and understood as the fundamental basis of their cultures, their spiritual life, their integrity, and their economic survival . . . . [Their] relations to the land are not merely a matter of possession and production but a material and spiritual element which they must fully enjoy, even to preserve their culture legacy and transmit it to future generations.<sup>295</sup>

Use of this “connection doctrine” has influenced how institutions and tribunals have recognized collective rights, including land “tenure where uses are not intensive or exploitive, and for giving indigenous communities a voice in development decision making.”<sup>296</sup>

Protection of peasants’ rights requires a similarly holistic approach that recognizes land as an essential provider of their cultural and physical resources. The effects of development-induced displacement<sup>297</sup> from projects like Agritrans cannot be adequately measured solely by the acreage of land lost. As subsistence rural workers, Haitians lose more than their source of income when the state claims their land for an export-oriented banana plantation. Their displacement disrupts their self-sufficiency,

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<sup>291</sup> Olivier de Schutter, *How Not to Think of Land-grabbing: Three Critiques of Large-scale Investments in Farmland*, 38 J. PEASANT STUD. 249, 274 (2011).

<sup>292</sup> James Anaya & Robert A. Williams, *The Protection of Indigenous Peoples’ Rights over Lands and Natural Resources under the Inter-American Human Rights System*, 14 HARV. HUM. RTS. J. 33, 86 (2001).

<sup>293</sup> Convention Concerning Indigenous and Tribal Peoples in Independent Countries arts. 13, 14, June 27, 1989, 28 I.L.M. 1382 (entered into force Sept. 5, 1991).

<sup>294</sup> Declaration on the Rights of Indigenous Peoples Preamble, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007).

<sup>295</sup> *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, 2001 Inter-Am. Ct. H.R. (ser. C) No. 79, ¶ 149 (Aug. 31, 2001).

<sup>296</sup> Eric Dannenmaier, *Beyond Indigenous Property Rights: Exploring the Emergence of A Distinctive Connection Doctrine*, 86 WASH. U.L. REV. 53, 102 (2008).

<sup>297</sup> See, e.g., ROBINSON, BROOKINGS INSTITUTION-SAIS PROJECT ON INTERNAL DISPLACEMENT, RISKS AND RIGHTS, note 19 above.

ability to control how they feed themselves, and housing stability, as well as community networks and customs.<sup>298</sup>

## 2. Security of Land Tenure

Arbitrarily dispossessing peasants of their land for agribusiness megaprojects like Agritrans threatens to further destabilize the food sovereignty of peasants in Haiti. Access to land and security of tenure are, as former U.N. Special Rapporteur Olivier de Schutter has stated, “essential to ensure not only the right to food, but also other human rights, including the right to work (for landless peasants) and the right to housing.”<sup>299</sup> Existing problems with Haiti’s notoriously complex land tenure system<sup>300</sup> were compounded by the 2010 earthquake and the country’s ensuing struggles<sup>301</sup> and have rendered peasants increasingly vulnerable to food insecurity.

Of the various factors that might affect the livelihoods of smallholder farmers, “unequal access to land and insecure land tenure have the most profound effect.”<sup>302</sup> Insecurity of land tenure bears on food sovereignty in two primary ways. It (1) deprives peasants of their means of subsistence<sup>303</sup> and (2) reduces the ability of and incentive for peasants to fully invest in cultivation of their land.<sup>304</sup> Land concentration by large-scale investors, in particular, challenges states’ ability both to fulfil the right to food and to strengthen peasants’ access to resources to ensure food sovereignty.<sup>305</sup> For smallholder farmers and peasants, “security of tenure ultimately should be understood as the right to live decently from farming.”<sup>306</sup> When rural poor have access to land, they can more easily and cheaply secure food, ensure against malnutrition, and insulate themselves from external economic shocks.<sup>307</sup> The suggestion that local peasants could “work on industrial, plantation-style farms effectively implies the forcing of subsistence farmers

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<sup>298</sup> Narula, note 20 above, at 117-18.

<sup>299</sup> U.N. Secretary General, *The Right to Food*, ¶ 4, U.N. Doc. A/65/281 (2010) [hereinafter Secretary General Note on Right to Food]. See also MINORITY RIGHTS GROUP INT’L, MOVING TOWARDS A RIGHT TO LAND 7 (2015); MELIK OZDEN, CETIM, THE RIGHT TO LAND (2014).

<sup>300</sup> See, e.g., *Haiti: Land Tenure and Property Rights Profile*, USAID (2010), [http://www.usaidlandtenure.net/sites/default/files/country-profiles/full-reports/USAID\\_Land\\_Tenure\\_Haiti\\_Profile.pdf](http://www.usaidlandtenure.net/sites/default/files/country-profiles/full-reports/USAID_Land_Tenure_Haiti_Profile.pdf).

<sup>301</sup> See, e.g., Simon Levine et al., *Avoiding reality: Land, Institutions and Humanitarian Action in Post-earthquake Haiti* (Humanitarian Policy Group Working Paper, 2012), <http://www.urd.org/IMG/pdf/7930.pdf>; *Planting Now: Agricultural Challenges and Opportunities for Haiti’s Reconstruction* (Oxfam Briefing Paper No. 140, 2010), [https://www.oxfam.org/sites/www.oxfam.org/files/bp140-planting-now-agriculture-haiti-051010-en\\_o.pdf](https://www.oxfam.org/sites/www.oxfam.org/files/bp140-planting-now-agriculture-haiti-051010-en_o.pdf).

<sup>302</sup> Econ. Comm’n for Afr. [ECA], *Land Tenure Systems and their Impacts on Food Security and Sustainable Development in Africa*, at 6, ECA Doc. ECA/SDD/05/09 (2004).

<sup>303</sup> ACTUAR, VOLUNTARY GUIDELINES ON THE RESPONSIBLE GOVERNANCE OF TENURE OF LAND, FISHERIES AND FORESTS IN THE CONTEXT OF NATIONAL FOOD SECURITY: INTERCONNECTIONS AND RECIPROCITY BETWEEN THE RIGHT TO FOOD AND LAND TENURE RIGHTS (2012); Narula, note 20 above, at 118.

<sup>304</sup> INT’L FUND FOR AGRICULTURAL DEV., RURAL POVERTY REPORT 2011 87 (2011).

<sup>305</sup> Narula, note 20 above, at 129.

<sup>306</sup> See Olivier de Schutter, *The Role of Property Rights in the Debate on Large-Scale Land Acquisitions*, in LARGE-SCALE LAND ACQUISITIONS: FOCUS ON SOUTH-EAST ASIA (Int’l Development Policy series No. 6, 2015).

<sup>307</sup> Secretary-General Note on Right to Food, note 299 above, at ¶ 30.

off their land to make room for large-scale farms producing food for other countries.”<sup>308</sup> Given that Haiti is a net importer of staple foods like rice and wheat,<sup>309</sup> converting land use from production primarily for local consumption to production predominantly for export undeniably weakens food sovereignty for local peasants.<sup>310</sup> Furthermore, without small-scale farming, peasants are often shunted to less profitable, less stable, and less local employment as seasonal or migrant workers.<sup>311</sup>

Land tenure in Haiti is notoriously complex, with recognition of customary land rights co-existing in tension with incomplete and inconsistent attempts at formal land titles.<sup>312</sup> The Haitian government’s failure to attempt to determine land ownership before dispossessing peasants of their land is, thus, a clear failure on its part to protect peasants’ right to food and right to land. If the Haitian government maintains its practice of claiming land for the state without regard for preexisting formal or customary land title, such that peasants cannot rely on security of land tenure, the government will continue to infringe peasants’ right to land and exacerbate their food insecurity.

### 3. Right to Sovereignty over Natural Resources

For peasants, losing access to land is not simply a matter of losing their plots of arable earth. Land tenure entails access to a host of related natural resources, including water and common areas for grazing. Although large-scale land acquisitions do not always harm the environment, scholars and practitioners have begun to recognize “water grabbing” and resource exploitation as accompanying phenomena of land grabs.<sup>313</sup> Furthermore, fishers, pastoralists, herders, and other landless peasants depend on community-managed natural resources for their livelihoods.<sup>314</sup> Where national governments and investors fail to structure agreements to purchase or lease land in a way that takes into account sustainable resource management and equitable access to natural resources, local communities are prevented from exercising their right to sovereignty over natural resources.<sup>315</sup> Both the deprivation of peasant access to and control over local natural resources and the redirection of natural resources to large-scale monoculture through agribusiness projects like Agritrans are likely to exacerbate the fragility of Haiti’s ecosystem.

Furthermore, agribusiness megaprojects like Agritrans have the potential to accelerate environmental degradation in Haiti. Haiti has suffered from decades of poor

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<sup>308</sup> DANIEL & MITTAL, note 191 above, at 32.

<sup>309</sup> See, e.g., *Haiti*, OBSERVATORY OF ECONOMIC COMPLEXITY, <http://atlas.media.mit.edu/en/profile/country/hti/#Imports> (last visited Jun. 22, 2016).

<sup>310</sup> Cf. Maria C. Rulli & Paolo D’Odorico, *Food Appropriation Through Large Scale Land Acquisitions*, 9 ENVIRON. RES. LETT., June 26, 2014, at 1.

<sup>311</sup> See de Schutter, note 291 above, at 256-57.

<sup>312</sup> See, e.g., Smucker et al., note 86 above.

<sup>313</sup> See, e.g., Thomas Breu et al., *Large-Scale Land Acquisition and Its Effects on the Water Balance in Investor and Host Countries*, 11 PLOS ONE, March 4, 2016, at 1, 14; TOM QUICK & PHIL WOODHOUSE, EVIDENCE ON DEMAND, THE IMPACT OF LARGE SCALE LAND ACQUISITIONS ON WATER RESOURCES – A BACKGROUND NOTE (2014); TRANSNATIONAL INS., THE GLOBAL WATER GRAB: A PRIMER (2014); Maria Cristina Rulli et al., *Global Land and Water Grabbing*, 110 NAT’L ACAD. OF SCI. 892 (2012).

<sup>314</sup> See, e.g., Secretary-General Note on Right to Food, note 299 above, ¶ 25-26.

<sup>315</sup> Cf. SOFIA MONSALVE SUAREZ, FIAN, THE RIGHT TO LAND AND OTHER NATURAL RESOURCES (2015).

natural resource management compounded by natural disasters.<sup>316</sup> Haiti is already noted for its extreme deforestation,<sup>317</sup> such that it loses an estimated 37 million tons of topsoil (the equivalent of 12,000 hectares of arable land) each year.<sup>318</sup> Haiti was, for some time in the early 2000s, ranked lowest in the world in the Water Poverty Index.<sup>319</sup> Without carefully designed sustainable agricultural practices that incorporate small-scale producers, large-scale monoculture can exacerbate Haiti's environmental fragility and threaten the long-term food sovereignty of Haiti's peasants.<sup>320</sup>

#### 4. Right to Housing

The Haitian government has forcibly evicted peasants from their land for agribusiness projects without providing compensation or appropriate forms of legal or other protection. Yet, as former U.N. Special Rapporteur on the Right to Adequate Housing Miloon Kothari has stressed, "land is a critical element of the human right to housing."<sup>321</sup> Forcible evictions are not only "prima facie incompatible with the requirements" of the right to an adequate standard of living under Article 11 of the ICESCR,<sup>322</sup> but also disrupt peasants' local communities.

In nearly all of the recent examples of state-initiated megaprojects in Haiti, the Haitian government has forcibly evicted local residents from their homes, with little or no advance notice that their land would be taken and their homes razed. Yet when displacing these local peasants, the Haitian government has generally failed to compensate them for their land or their homes. The rare instances when peasants have received compensation have been the result of their own collective action to put pressure on the government, and even then, the compensation has been markedly inadequate.<sup>323</sup>

However, the right to housing encompasses more than the physical shelter to which an individual has access. Rather, it "should be seen as the right to live somewhere

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<sup>316</sup> See, e.g., Lucile Gingembre, *Haiti: Lessons Learned and Way Forward in Natural Resource Management Projects*, in ASSESSING AND RESTORING NATURAL RESOURCES IN POST-CONFLICT PEACEBUILDING (David Jensen & Stephen Lonergan eds., 2013); *Planting Now*, note 284 above.

<sup>317</sup> Christopher E. Churches et al., *Evaluation of Forest Cover Estimates for Haiti Using Supervised Classification of Landsat Data*, 30 INT'L J. APPLIED EARTH OBS. & GEOINFORMATION 203 (2014).

<sup>318</sup> *Food Policy Disaster Bites Hands that Feed: Haiti's Hunger Games* (Haiti Support Group Haiti Briefing No. 72, 2012), <http://haitisupportgroup.org/food-policy-disaster-bites-hands-that-feed-haitis-hunger-games/>.

<sup>319</sup> See, e.g., PETER LAWRENCE ET AL., KEELE ECONOMICS RESEARCH PAPERS 2002/19, THE WATER POVERTY INDEX: AN INTERNATIONAL COMPARISON (2002).

<sup>320</sup> Cf. U.N. CONFERENCE ON TRADE AND DEVELOPMENT, TRADE AND ENVIRONMENT REVIEW 2013: WAKE UP BEFORE IT'S TOO LATE (2013), [http://unctad.org/en/PublicationsLibrary/ditcted2012d3\\_en.pdf](http://unctad.org/en/PublicationsLibrary/ditcted2012d3_en.pdf).

<sup>321</sup> U.N. Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, *Implementation of General Assembly Resolution 60/251 of 15 March 2006, Entitled "Human Rights Council": Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living*, Human Rights Council, ¶ 25-29, U.N. Doc. A/HRC/4/18 (2007) (by Miloon Kothari).

<sup>322</sup> U.N. Econ. & Soc. Council, Comm. on Econ., Soc., & Cultural Rights, *General Comment No. 7: The Right to Adequate Housing (Art. 11(1) of the Covenant): Forced Evictions*, 16th Sess., 1997, U.N. Doc. E/1998/22, Annex IV at 113 (May 20, 1997).

<sup>323</sup> Steckley & Bell, note 11 above; Vansteekiste & Schuller, note 12 above.

in security, peace and dignity.”<sup>324</sup> This, in turn, includes the right to freedom of residence, the right to participate in public decision-making on issues affecting them, and the right not to be subjected to arbitrary or unlawful interference with one’s privacy and home.<sup>325</sup> The Haitian government’s practices currently leave peasants with few, if any, ways to exercise their right to housing. Peasants have no ability to provide input on development plans that require their eviction; furthermore, without advance notice, they are unable to plan for alternatives, and they do not receive any governmental assistance to do so.<sup>326</sup>

## 5. Rights to Participation and Freedom of Expression

Peasants who will be affected by development megaprojects have the right to have access to information about the plans, participate in the development of such plans, and express themselves in the form of collective action.<sup>327</sup> Despite the significant impact of agribusiness megaprojects like Agritrans on local residents, however, the Haitian government has excluded and continues to exclude peasants from the development planning and implementation processes.

The Haitian government has consistently failed to apprise local residents of, consult with them on, or otherwise involve them in the development megaprojects it has recently undertaken. Furthermore, the Haitian government and police have harassed, intimidated, and arrested peasants who have peacefully mobilized in opposition to development plans in sectors outside of agribusiness.<sup>328</sup> This behavior mirrors abusive government practices in Southeast Asia and sub-Saharan Africa, two regions with a high incidence of large-scale land acquisitions.<sup>329</sup> In fact, human rights defenders working on

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<sup>324</sup> U.N. Econ. & Soc. Council, Comm. on Econ., Soc., & Cultural Rights, *General Comment No. 4: The Right to Adequate Housing (Art. 11(1) of the Covenant)*, 6th Sess., 1991, ¶ 7, U.N. Doc. E/1992/23, Annex III at 91 (Dec. 13, 1991).

<sup>325</sup> *Ibid.* at ¶ 9.

<sup>326</sup> Steckley & Bell, note 11 above; Vansteekiste & Schuller, note 12 above.

<sup>327</sup> International Covenant on Civil and Political Rights arts. 19, 25, Dec. 16, 1966, S. Treaty Doc. No. 95-20, 6 I.L.M. 368 (1967), 999 U.N.T.S. 171 [hereinafter ICCPR]; ICESCR, note 228 above, art. 1; Organization of American States, American Convention on Human Rights arts. 4, 6, 13, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123; Declaration on the Right to Development art. 2, G.A. Res. 41/128, U.N. Doc. A/RES/41/128 (Dec. 4, 1986); *see also* Draft U.N. Declaration on the Rights of Peasants, note 18 above, at art. 12.

<sup>328</sup> *See, e.g.*, Dady Chery, *Widespread Abuse and Police Brutality in Haiti’s Ile a Vache*, COUNTERPUNCH (Jul. 24, 2014), <http://www.counterpunch.org/2014/07/24/widespread-abuse-and-police-brutality-in-haitis-ile-a-vache/>.

<sup>329</sup> *See, e.g.*, Christophe Gironde & Christophe Golay, *Large-Scale Land Acquisitions, Livelihoods and Human Rights in South-East Asia*, in *LARGE-SCALE LAND ACQUISITIONS: FOCUS ON SOUTH-EAST ASIA* (Int’l Development Policy Series No. 6, 2015); *AGRIBUSINESS, LARGE-SCALE LAND ACQUISITIONS, AND HUMAN RIGHTS IN SOUTHEAST ASIA: UPDATES FROM INDONESIA, THAILAND, PHILIPPINES, MALAYSIA, CAMBODIA, TIMOR-LESTE, AND BURMA*, FOREST PEOPLES PROGRAMME (Sophie Chao ed., 2013), <http://www.forestpeoples.org/topics/agribusiness/publication/2013/agribusiness-large-scale-land-acquisitions-and-human-rights-sou>; DANIEL Z. GURARA & DAWIT BIRHANU, *AFRICAN DEV. BANK, LARGE-SCALE LAND ACQUISITIONS IN AFRICA* (2012), [http://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/AEB%20VOL%203%20Issue%205%20Mai%202012\\_FINAL.pdf](http://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/AEB%20VOL%203%20Issue%205%20Mai%202012_FINAL.pdf).

land, natural resources, and environmental issues have been among the most vulnerable of human rights defenders throughout the world.<sup>330</sup>

Haitian peasants do not oppose economic development in all forms.<sup>331</sup> However, when megaprojects threaten their access to land and, consequently, their entire way of life, they must be afforded an opportunity to participate meaningfully in shaping what development will look like. As the former U.N. Special Rapporteur on the Right to Food has stated, “it is vital that farmers are not forced to join the agro-export networks, and that they are sufficiently supported if they opt, instead, for the production of food crops of local consumption.”<sup>332</sup> Yet the Haitian government has repeatedly failed to inform local residents about how megaprojects will affect them.<sup>333</sup> The government’s lack of transparency with these megaprojects and the difficulty that peasants face in obtaining reliable information about project plans,<sup>334</sup> along with the government’s failure to obtain free, prior, and informed consent from the potentially affected communities before implementing these large-scale development plans,<sup>335</sup> all violate peasants’ rights to participation and information.

## 6. Access to Justice

Compounding the dangers of agribusiness megaprojects to Haitian peasants is their lack of recourse to any effective domestic remedy for rights violations. Several international human rights treaties and U.N. bodies have affirmed that individuals and communities have the right to prompt, just, and fair procedures for remedies for violations of their rights.<sup>336</sup> Not only does the Haitian government have a duty to provide its people an effective domestic judicial or administrative remedy for violations of their

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<sup>330</sup> See, e.g., U.N. Special Rapporteur on the Situation of Human Rights Defenders, *Rep. of the Special Rapporteur on the Situation of Human Rights Defenders*, Human Rights Council, U.N. Doc. A/HRC/19/55 (Dec. 21, 2011) (by Margaret Sekaggya); U.N. Special Representative of the Secretary-General on Human Rights Defenders, *Implementation of General Assembly Resolution 60/251 of 15 March 2006 Entitled “Human Rights Council”: Report Submitted by the Special Representative of the Secretary-General on Human Rights Defenders: Mission to Brazil*, Human Rights Council, ¶¶ 38-47, U.N. Doc. A/HRC/4/37/Add.2 (Dec. 19, 2006) (by Hina Jilani); Olivier de Schutter & S. James Anaya, *Agrofuel: U.N. Rights Experts Raise Alarm on Land Development Mega-Projects* (May 23, 2012), <http://www.srfod.org/en/south-east-asia-agrofuel-un-rights-experts-raise-alarm-on-land-development-mega-projects>.

<sup>331</sup> See, e.g., *Haiti’s Farmers Call for a Break With Neoliberalism*, GRAIN (Jul. 13, 2010), <https://www.grain.org/article/entries/4056-haiti-s-farmers-call-for-a-break-with-neoliberalism>.

<sup>332</sup> U.N. Special Rapporteur Report on Large-scale Land Acquisitions and Leases, note 190 above, at ¶ 29.

<sup>333</sup> See, e.g., Steckley & Bell, note 11 above; Vansteekiste & Schuller, note 12; Memorandum from the Allard K. Lowenstein International Human Rights Law Clinic to American Jewish World Services & KOPI (Sept. 28, 2015) (on file with the Clinic).

<sup>334</sup> See, e.g., Global Justice Clinic & Justice in Mining Collective UPR Submission, note 181 above.

<sup>335</sup> See, e.g., Steckley & Bell, note 11 above; Vansteekiste & Schuller, note 12 above; Memorandum from the Lowenstein Clinic, note 333 above.

<sup>336</sup> ICCPR, note 327 above, at art. 2.3; Universal Declaration of Human Rights, note 228 above, art. 8; see also Draft U.N. Declaration on the Rights of Peasants, note 18 above, at art. 14.

rights, but agribusinesses have a responsibility to establish processes to remediate any adverse human rights impacts they cause or contribute to.<sup>337</sup>

Just as peasants in other countries have faced obstacles to gaining access to justice for violations of their human rights,<sup>338</sup> Haitians displaced by megaprojects have no recourse to formal administrative or judicial mechanisms to obtain information before project implementation or to obtain compensation and accommodations after the fact. Haitian peasants are discouraged from pursuing remedies for their grievances and, if they do, they encounter a dysfunctional justice system.<sup>339</sup>

### III. RECOMMENDATIONS

Five key recommendations, for the government of Haiti and international actors, derive from the analysis of agribusiness in Haiti from a peasants' rights perspective.

First, the government of Haiti should adopt and implement more stringent requirements for private investment in large-scale land acquisitions. In particular, economic, social, and environmental impact assessments must be mandatory for every project, not discretionary, to give local communities a significant voice in the planning stages. These local communities must be afforded a meaningful opportunity to evaluate proposed transactions before they take place and participate in the planning of any development proposals that affect them and their rights. Where development, even with their consent, will displace people, the government must provide adequate, reasonable compensation or accommodation.

Second, the government of Haiti should take further steps to ensure a secure and fair tenure system, including community ownership. Security of tenure need not be created through individual property rights and formal land titling, which can often become exclusionary. Rather, a mixed system that respects community ownership rights and customary land tenure, in addition to existing individual titles, would establish a secure tenure model more reflective of Haitian tradition and culture.

Third, the government of Haiti should focus on supporting small-scale farmers and facilitating the livelihoods of people who live in rural areas. Much of the government's attention has been directed toward foreign private investment for export-

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<sup>337</sup> See U.N. OFF. OF THE HIGH COMMISSIONER ON HUMAN RIGHTS, GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS: IMPLEMENTING THE UNITED NATIONS "PROTECT, RESPECT AND REMEDY" FRAMEWORK, at 13, U.N. Doc. HR/PUB/11/04 (2011).

<sup>338</sup> Cf. U.N. Chairperson-Rapporteur Angélica C. Navarro Llanos, *Report of the Open-Ended Intergovernmental Working Group on a Draft United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas*, § 20, U.N. Doc. A/HRC/26/48 (Mar. 11, 2014) (noting that panelists in the first session of the Working Group "agreed that justice and the rule of law were often inaccessible for peasants and other people working in rural areas.").

<sup>339</sup> Jessica Carew Kraft, *Establishing the Rule of Law in a Country Where Justice Hardly Exists*, THE ATLANTIC (Apr. 22, 2015), <http://www.theatlantic.com/education/archive/2015/04/establishing-the-rule-of-law-in-a-country-where-justice-hardly-exists/391113/>. See generally, INSTITUTE FOR JUSTICE & DEMOCRACY IN HAITI ET. AL, ACCESS TO JUDICIAL REMEDIES IN HAITI, Submission for the 112th Session of the United Nations Human Rights Committee, October 8 & 9, 2014 (Sept. 12, 2014), [http://www.ijdh.org/wp-content/uploads/2014/09/HRC\\_Access-to-judicial-remedies\\_Sept-12.pdf](http://www.ijdh.org/wp-content/uploads/2014/09/HRC_Access-to-judicial-remedies_Sept-12.pdf)

oriented activities, to the detriment of local peasants who struggle to be self-sufficient. By pursuing a more balanced economic growth strategy, the government could better contribute to the domestic economy. Establishing farmers' cooperatives, for example, or investing in equipment, seeds, and irrigation for small-scale farmers, could ensure the viability of local production and make Haiti less dependent on foreign food imports, thereby stabilizing the livelihoods and food security of hundreds of peasants.

Fourth, international financial institutions, donor governments and international development organizations should ensure that their assistance and investments in Haiti's agriculture sector do not displace peasants from their land and exacerbate their food insecurity. Furthermore, they should insist on peasant participation in decisions about agricultural development. These institutions should also direct their project funding to support local farmers producing for local consumption. Simply increasing agricultural productivity, particularly if it is focused on producing food for export, will not improve the well-being and future prospects of Haiti's peasants. Investment in agriculture must be sustainable and environmentally sound and must respect and enable peasants to retain their land and produce food for their communities.

Finally, all states and other international actors should support the U.N. Draft Declaration on Peasants' Rights. Adoption of the Draft Declaration would raise awareness about this holistic perspective that can be used to analyze and make decisions about future megaprojects in Haiti, the Caribbean, Latin America, and other regions and countries that are targeted for large-scale land acquisitions.

#### **IV. CONCLUSION**

The peasants' rights framework, built around the concept that people who live on the land have a special relationship with the land that permeates all aspects of their lives, is a comprehensive, robust, and pertinent way to understand the effect of agribusiness on peasants' humanity. It situates the food insecurity created by development-induced displacement within an entire web of human rights that are diminished when governments and private investors disregard peasants' special relationship to land.

For Haiti to meet its human rights obligations, the government must proceed cautiously. Given its fragile political, social, and environmental circumstances, every development decision it makes affects peasants profoundly. The government needs to reevaluate its *Strategic Plan for Development* to better protect, respect, and fulfill the right to food as one critical aspect of safe, sustainable, and participatory development.