

Thank you for inviting me to participate and to speak at today's UPR pre-session.

As the managing attorney of the *Bureau des Avocats Internationaux* (BAI), which has been seeking justice and accountability on behalf of Haitians, educating marginalized communities – which are most often the victims of grave human rights violations – about their rights, and helping those communities to organize to vindicate those rights, I have been directly observing and engaging with Haiti's justice system for almost three decades. BAI, with our U.S.-based partner organization the Institute for Justice & Democracy in Haiti has made submissions on significant human rights issues in Haiti for every UPR cycle in Haiti to date, including two submissions this year – [one on gender-based violence against women and girls in Haiti](#), which remains pervasive and poorly addressed; and [one on the subject I was asked to present on today: impunity and access to justice in Haiti](#).

Impunity has deepened and the ability of Haitians to access justice has deteriorated since the last UPR cycle. As all of you are aware from the previous presentations and your engagement in Haiti, insecurity and violence are pervasive even as the state has been unable or unwilling to curtail them. There is no constitutionally defined path out of the current political crisis, which was exacerbated but by no means caused by the assassination of former dictator Jovenel Moïse. All of these realities can be directly linked to the deliberate hollowing-out of Haiti's justice sector and the persistent lack of political will and resources dedicated to addressing impunity and to making justice accessible for Haiti's people.

First, there is near-total impunity in Haiti for grave violations of human rights as well as ordinary crimes, especially when they are politically motivated. The government has displayed no political will to ensure accountability. No progress has been made even in cases that have received international attention, let alone ones where the victims lack even that support. No progress on prosecuting Duvalier-era crimes, although they have been formally adjudicated as unprescribable. No justice for victims of the 2018 La Saline massacre, nor the at least 17 other civilian massacres that also took place in the last three years and several of which were found to amount to crimes against humanity in a report co-authored by Haiti's Observatory on Crimes against Humanity and Harvard Law's human rights clinic. No accountability in the PetroCarribe corruption scandal, which implicated Haiti's top government officials, including recently assassinated dictator Moïse, in spite of popular calls for accountability that brought the country to a stand-still in 2018. No investigative progress in the assassination of Port-au-Prince Bar Association president Maître Monferrier Dorval, believed to have been assassinated for ideas that were different from those in power (i.e. Moïse) over a year ago. This chronic impunity is directly linked to the continued unrepressed attacks on civilians and resulting insecurity: a simple and direct illustration is that Jimmy Chérizier was never apprehended in spite of a warrant issued for his role in the La Saline massacre and is the leader of a gang federation terrorizing the population today. Even the powerful are no longer immune: Moïse was assassinated in the presidential residence, just blocks from where Maître Dorval had been assassinated without recourse a year earlier. Now the investigation of his assassination is likewise virtually stalled,

impeded by, among other things, stolen evidence and other indications of interference in the process.

Second Haiti's judiciary has remained dysfunctional and, in my view, the last two administrations are primarily responsible for its deterioration in its ability to deliver justice to the Haitian people. For example, political interference that often leads to the persecution of judges or to impeding them from working in a timely and professional manner, has led to a loss of judicial independence. A particularly egregious example was Moïse's unconstitutional removal and attempted replacement of three justices from the *Cour de Cassation* (Haiti's highest court) in a move the OHCHR described as "attacks against judicial independence" that erode the separation of powers. The Haitian judiciary more generally lacks mechanisms for safeguarding its independence, which has caused great harm to society. For example, cases involving individuals close to political power or coming from Haiti's dominant classes are generally politicized, with the judicial outcomes for these cases, regardless of the ethical and moral stakes involved, dependent on political connections. In addition, threats, violence, and harassment have been directed at judicial actors and witnesses with impunity, further interfering with delivery of justice. The government benefits from this dysfunction and sometimes even removes "protections" offered to judges and investigators on sensitive cases. In fact, the judge investigating Maître Dorval's assassination was forced to quit in September, citing, among other things, general dysfunction of Haiti's judiciary.

In addition to such political impediments to justice in Haiti, its judiciary also suffers from a lack of security challenges, infrastructure, and resources. Haiti's courts have remained virtually closed for much of the last several years due to insecure conditions that the government failed to cure. There are also other forms of insecurity specifically targeting certain judges who work on sensitive cases. For example, some judges are victims of intimidation, harassment, assassination attempts, and burglary of their offices and safes containing their files. Sometimes, evidence is stolen from court registries. The infrastructure of several courts is falling into ruin. A series of strikes related to unpaid or insufficient salaries further aggravates this devastating situation. Corruption flows out of such resource gaps and further exacerbates them. There is also a lack of adequate forensic and investigative skills. Today, the *Institut Médico-Légal* (Haiti's forensic institute) is closed.

Finally, and perhaps most importantly, Haiti's judicial system is fundamentally not designed to offer access to justice for Haiti's most marginalized. Haiti's laws largely date back to France's colonial jurisprudence and thus fail to address Haiti's modern needs. Protections for women and girls from violence are just one, particularly egregious, example. For example, rape within marriage is not considered a crime under the present code and rape was criminalized only in 2005 by presidential decree. Envisioned revisions to the penal code through an executive action under Moïse are deeply unconstitutional and threaten to import further instability into Haiti's justice system. Convoluted requirements implicating high fees, for which little legal aid exists, further exclude marginalized Haitians. In addition, laws, legal documents, and judicial

proceedings largely take place in French, which most Haitians cannot speak. Lack of access to remote areas of the country precludes most ordinary Haitians from accessing justice. Moreover, few services, and almost none provided by the state, exist for victims of violence. Judicial actors further frequently fail to take adequate care with the safety of those who come forward to report, for example, releasing those accused of rape and other violence back into their community without any protections for their accusers.

And last, even as Haitians face tremendous barriers in seeking accountability for harms they experience, the system abuses and even kills those accused without due process of law. According to RNDDH, which collaborated with BAI and IJDH in writing our submission on the justice sector, the percentage of individuals detained prior to trial in Haiti's prisons has been increasing in recent years and is now over 82 percent. With the judiciary's dysfunction, they languish in prison, in violation of corresponding legal protections for speedy initial hearings. Police often round up individuals without adequate investigation and process, especially in the current climate, further exacerbating the injustice of extended (and illegal) pretrial detention. Further, conditions in Haiti's prisons are among the worst in the world, with overcrowding, poor security, lack of food and healthcare leading to illnesses and even death among prisoners. Women and children often suffer the most, including from sexual assault. Such conditions are not permissible under accepted human rights standards for anyone, let alone a large number of persons who have not been convicted of any crime.

In concluding, I want to emphasize that Haiti can and must do better. For example, BAI was a key participant in the Raboteau massacre trial that took place in 2000 and delivered justice for victims and due process for the accused alike, all while strengthening judicial capacity and competence and investing in the ability of marginalized Haitians to access their justice system (for example, by enabling community participation and holding proceedings in Creole). Thus, what I have described is not a lamentation but a call to action. What Haiti needs is a legitimate government with the political will to confront chronic impunity, deliver justice to Haitians, and reform the justice system so that it is designed to and capable of serving all Haitians without distinction. Thank you.