



INPUT FOR OHCHR REPORT ON THE CHALLENGES FACED AND BEST  
PRACTICES APPLIED BY STATES IN INTEGRATING HUMAN RIGHTS  
INTO THEIR NATIONAL STRATEGIES AND POLICIES TO FIGHT AGAINST  
CORRUPTION

*The case of Haiti*

***CARDH***

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## About the organizations



**Centre d'analyse et de recherche en droits de l'homme (CARDH)** [*Center of Analysis and Research in Human Rights*]. CARDH is a Haitian human rights organization based in Port-au-Prince, with consultative status to the Economic and Social Council of the United Nations (ECOSOC). It was created in 2008 and, has for mission to *contribute to the respect and promotion of human rights and the principles of the United Nations Universal Declaration of Human Rights (UDHR), as a condition to achieve democracy, the rule of law, good governance, the eradication of poverty and the Sustainable Development Goals (SDGs)*.

In order to reach its objectives, CARDH grounds its actions on four essential pillars: (i) research; (ii) capacity building and partnership; (iii) advocacy and; (iv) monitoring and defense.

CARDH works with other platforms of human rights organizations and, is a founding member of *Ensemble contre la corruption* (ECC) [*Together Against Corruption*] a group of seven human rights and civil society organizations fighting against corruption in Haiti.



**Réseau international des droits humains (RIDH)** [*International Network of Human Rights*]. RIDH is a non-governmental organization based in Geneva, Switzerland, with the consultative status to ESCOSOC. RIDH works to empower civil society actors working for the promotion and protection of human rights in developing countries. The organization liaises between local advocates, United Nations experts and State representatives in Switzerland, using well-established international mechanisms to help protect the human rights of the most vulnerable.

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## List of acronyms

**BAFE\***: Bureau de affaires financières et économiques [*Office of Financial and Economic Affairs*]

**CARDH\***: Centre d'analyse et de recherche en droits de l'homme [*Center of Analysis and Research in Human Rights*]

**CIDP\***: Comité Interministériel des Droits de la Personne [*Inter-ministerial Committee for Human Rights*]

**CNMP\***: Commission nationale des marchés publics [*National Commission for Public Procurement*]

**CPI**: Corruption Perception Index

**CSCCA\***: Cour supérieure des comptes et du contentieux administratif [*Superior Court of Accounts and Administrative Litigation*]

**CSPJ\***: Conseil supérieur du pouvoir judiciaire [*High Council of the Judiciary*]

**DGI\***: Direction générale des impôts [*General Direction of Taxes*]

**ECC\***: Ensemble Contre la Corruption [*Together Against Corruption*]

**HRC**: Human Rights Council

**IACAC**: Inter-American Convention against Corruption

**ICCPR**: International Covenant on Civil and Political Rights

**ICESCR**: International Covenant on Economic, Social and Cultural Rights

**IGF\***: Inspection générale des finances [*General Inspectorate of Finance*]

**OHCHR**: Office of the High-Commissionner for Human Rights

**OPC\***: Office de la protection du citoyen [*Office of the Protection of the Citizen*]

**RIDH\***: Réseau international des droits humains [*International Network of Human Rights*]

**UCREF\***: Unité Centrale de Renseignements Financiers [*Central Financial Information Unit*]

**ULCC\***: Unité de lutte contre la corruption [*The Anti-Corruption Unit*]

**UPR**: Universal Periodic Review

\* French acronyms in text

## I. International context of the call for inputs

1. The fight against corruption is a global concern today. Around the world, there are multiple and multifaceted efforts to combat it, as people are becoming increasingly aware of its negative impacts on their economic development and living conditions. On allegations or on account of corruption, presidents and heads of governments are being dismissed, others have been tried and sentenced, others are being indicted.
2. Corruption directly affects the exercise and enjoyment of human rights. For the Office of the High Commissioner for Human Rights (OHCHR), depending on its level, scale and form, corruption has devastating effects on the availability, quality and accessibility of goods and services associated with the fulfilment of human rights, especially for the most vulnerable groups within society<sup>1</sup>. It becomes indisputable that human rights shall be at the center of national anti-corruption strategies and policies.
3. Haiti is not immune to this scourge of corruption which significantly affects its economic development and the fundamental rights of its citizens. The results of a survey conducted by the Anti-Corruption Unit under the title “Governance and Corruption in Haiti: Results of the Diagnostic Survey on Governance – Final Report<sup>2</sup>”, dated of January 2007, highlight that corruption represents a serious challenge in Haiti, which is a major obstacle to the strengthening of governance, access to quality services and economic growth.
4. In its resolution 41/9, on the negative effects of corruption on the enjoyment of human rights, adopted at its forty-first session, on 11 July 2019, the Human Rights Council, whose mission is to strengthen the promotion and protection of human rights worldwide<sup>3</sup>, mandated OHCHR to submit a report “on the challenges faced and best practices applied by States in integrating human rights into their national strategies and policies to fight against corruption, including those addressing non-State actors, such as the private sector, and to submit the report to the Human

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<sup>1</sup> Office of the High Commissioner for Human Rights (OHCHR), Corruption and Human Rights, available at: <https://www.ohchr.org/EN/Issues/CorruptionAndHR/Pages/CorruptionAndHRIndex.aspx> (last accessed 16/10/2019)

<sup>2</sup> ULCC (2007), *Gouvernance et Corruption en Haïti*, Port-au-Prince, available at: <http://ulcc.gouv.ht/wp-content/uploads/2014/02/Enquete-corruption-et-gouvernance-2005.pdf> (last accessed 16/10/2019)

<sup>3</sup> Created by the United Nations General Assembly, on 15 March 2006 by Resolution [60/251](#), the Human Rights Council, since its first session, held between 19 and 30 June 2006, is in charge of strengthening the promotion and protection of human rights worldwide.

Rights Council at its forty-fourth session.” This report is thus to be presented at the second annual session of the HRC in June 2020.

5. In the 2018 global report on the Corruption Perception Index (CPI)<sup>4</sup>, published on 29 January 2019 by Transparency International, Haiti has been regressing. It ranked 161<sup>st</sup> out of 180 countries, with a score of 20 out of 100. In 2017 its score was of 22 out of 100 against 20 out of 100 in 2016 and, 17 out of 100 in 2015. Haiti has seen its worst score in the last three years.

#### *CARDH's motivation to participate in this call with the support of RIDH*

6. Haitian citizens have been aware of the extent of the phenomenon of corruption in the current global context where the struggle for its eradication takes various forms. This has given rise to citizen movements, such as the PetroCaribe Challenge<sup>5</sup>, and the emergence of other civil society organizations explicitly emphasizing the fight against corruption in their mission statements, in view to strengthening the rule of law and democracy in Haiti. In this sense, CARDH, in its strategy to contribute to the respect of the principles of good governance and the rule of law, together with six other national human rights and civil society organizations, has created the coalition Together Against Corruption (ECC)<sup>6</sup>.
7. As emphasized by the Human Rights Council, good governance, democracy and the rule of law, as well as the promotion and protection of human rights and fundamental freedoms – including the right to seek, receive and disseminate information, the right to participate in public affairs and the right to a fair trial before a competent, independent and impartial court established by law – are essential to national efforts to prevent and combat corruption<sup>7</sup>.
8. It is therefore important for CARDH to participate in this call for inputs around the challenges faced by states in implementing human rights-based policies and anti-corruption strategies, presenting the Haitian context as case study.

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<sup>4</sup> Transparency International (2018), *Corruption Perception Index 2018*, Berlin, available at: <https://www.transparency.org/cpi2018> (last accessed 16/10/2019)

<sup>5</sup> The PetroCaribe Challenge campaign is a social movement composed of young Haitian people, including university students and artists, which was launched in August 2019. The movement took the Haitian streets to demand that those responsible for the dilapidation of the PetroCaribe development funds, granted to Haiti by Venezuela in 2008, be held accountable.

<sup>6</sup> French acronym for “*Ensemble contre la corruption*”.

Members of the ECC: CARDH; Conseil National des Acteurs Non Étatiques (CONHANE); Réseau National de Défense des Droits Humains (RNDDH); Commission Episcopale Nationale Justice et Paix (CE-JILAP); Centre de recherche et de formation économique et sociale pour le développement (CRESFED); Centre œcuménique des droits humains (CEDH); Sant Karl Leveque (SKL).

9. CARDH is submitting this contribution with the support of RIDH, based in Geneva and specialized in the United Nations human rights system, which is also deeply concerned with the deterioration of the human rights situation in Haiti due to corruption.

## **II. Legal and institutional framework for the fight against corruption in Haiti**

10. Haiti has a legal and institutional framework for the fight against corruption. As a founding member of the United Nations and the Organization of American States, it has signed and ratified international treaties on the fight against corruption, which requires Haiti to adopt laws at the national level and to put a series of institutions in place in order to respect its commitments.

### ***1. International instruments against corruption signed and ratified by Haiti***

#### *1.1. The Inter-American Convention against Corruption (IACAC)*

11. Coming into force on 26 March 1996, the Inter-American Convention against Corruption was signed by Haiti on 17 October 1997 and ratified on 19 December 2000. The purposes of this Convention are: “(1) To promote and strengthen the development by each of the States Parties of the mechanisms needed to prevent, detect, punish and eradicate corruption; and (2) To promote, facilitate and regulate cooperation among the States Parties to ensure the effectiveness of measures and actions to prevent, detect, punish and eradicate corruption in the performance of public functions and acts of corruption specifically related to such performance<sup>8</sup>.”

12. As a State Party, Haiti is required to adopt “measures as may be necessary to establish its jurisdiction over the offenses it has established in accordance with this Convention when the offense in question is committed in its territory.”

#### *1.2. United Nations Convention against Corruption*

13. The United Nations Convention against Corruption entered into force on 14 December 2005, and in accordance with article 68 (1),

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<sup>8</sup> Organization of American States, *The Inter-American Convention against Corruption (IACAC) (B-58)*, adopted 29/10/1996, available at: [http://www.oas.org/en/sla/dil/inter\\_american\\_treaties\\_B-58\\_against\\_Corruption.asp](http://www.oas.org/en/sla/dil/inter_american_treaties_B-58_against_Corruption.asp) (last accessed 16/10/2019)



Haiti signed and ratified it on 10 December 2003 and 14 September 2009, respectively<sup>9</sup>.

14. According to Article 5 of the UN Convention “(1) Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability; (2) Each State Party shall endeavor to establish and promote effective practices aimed at the prevention of corruption<sup>10</sup>.”
15. One of the obligations of these conventions to States Parties is for them to adopt domestic legislative measures for internal implementation, in accordance with the Vienna Convention on the Law of Treaties. It should be emphasized that these two conventions do not give a concrete legal definition of the concept of corruption. It will therefore be necessary to determine its meaning at the national level in order to facilitate their implementation domestically.

## ***2. Domestic laws on the fight against corruption in Haiti***

### ***2.1. Act to Prevent and Punish Corruption***

16. The law on prevention and repression of corruption was passed in Parliament on 13 May 2013 and published in the official newspaper *Le Moniteur*<sup>11</sup>, on 9 May 2014. One of the particularities of this law is that it defines 14 offenses that constitute corruption:
17. 1) bribery; 2) illicit enrichment; 3) laundering proceeds of crime; 4) misappropriation of public funds; 5) abuse of functions; 6) payment of bribes; 7) payment of unlawful commissions; 8) overcharging; 9) influence peddling; 10) favoritism; 11) insider trading; 12) illegal public procurement; 13) illegal acquisition of interests; 14) Misuse of company assets. (*See Annex 1 for detailed definitions.*)

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<sup>9</sup> United Nations Treaty Collection, (17/10/2019), *Status of Ratification of the UN Convention against Corruption*, available at: [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtmsg\\_no=XVIII-14&chapter=18&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtmsg_no=XVIII-14&chapter=18&lang=en) (last accessed 16/10/2019)

<sup>10</sup> United Nations, *United Nations Convention against Corruption*, adopted 31/10/2003, available at: [https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026\\_E.pdf](https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf) (last accessed 16/10/2019)

<sup>11</sup> *Le Moniteur* is an official national newspaper where laws, decrees etc. are published for the general public

## *2.2. Act of 21 February 2001 on the laundering of assets derived from the illicit trafficking of drugs and other serious offenses*

18. Article 1.1 defines the laundering of assets as: (a) the conversion or transfer of assets, with the aim of concealing or disguising the unlawful origin of such assets, or of assisting anyone involved in the commission of the offense to escape the legal consequences of his actions; (b) the concealment or disguise of the actual nature, origin, location, disposition, movement or ownership of public goods; (c) the acquisition, possession or use of goods by a person who knows or ought to know that the good is a product of crime within the meaning of this Act. This law has also created a Central Financial Information Unit (UCREF).<sup>12</sup>

## *2.3. Penal Code*

19. Several corruption-related offenses are provided for and punished by the Haitian Penal Code: diversion and other illicit uses of goods by certain categories of public officials (Articles 130 to 134).

20. In addition to these existing laws, there is a series of institutions that are in charge of fighting corruption.

## **3. Institutions in charge of fighting corruption**

21. In Haiti, there are institutions that are in charge of fighting corruption. Each institution has a distinct mission, determined by its sphere of activity. They, however, complement each other.

22. **The Anti-Corruption Unit (ULCC)**<sup>13</sup>. According to Article 2 of the Decree of 8 September 2004, the ULCC, under the Ministry of Economy and Finance, has the task of “working to fight corruption and all forms of its application within the public administration to: (i) protect public and collective goods; (ii) ensure the effectiveness of measures and actions to prevent, detect, punish and eliminate acts of corruption and related offenses; (iii) promote transparency in the management of public affairs; (iv) establish a climate of trust to promote private investment; (v) moralize public administration and public life in general.”

23. **National Commission for Public Procurement (CNMP)**<sup>14</sup>. Created by the Decree of 3 December 2004 setting the regulation of public procurement of services, supplies and works, the CNMP, relieved by

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<sup>12</sup> French acronym for “Unité Centrale de Renseignements Financiers”

<sup>13</sup> French acronym for “Unité de lutte contre la corruption”

<sup>14</sup> French acronym for “Commission nationale des marchés publics”

the Prime Minister, aims “to ensure the regulation and control of the procurement system, public contracts and public service concession agreements.”

24. **General Inspectorate of Finance (IGF)**<sup>15</sup>. In accordance with Decree No. 2006-1213 of 4 October 2006, which establishes the General Inspectorate of Finance, the IGF has a “general mission to control, audit, study, advise and evaluate administrative, economic and financial matters on behalf of the Minister for the Economy and Budget.”
25. Its mission covers three main areas: (i) auditing; (ii) evaluation and advice and; (iii) assistance to administrations, commissions and working groups or qualified persons, but also to international organizations such as the International Monetary Fund (IMF) or the World Bank.
26. **Central Financial Intelligence Unit (UCREF)**<sup>16</sup>. Created by the Law of 21 February 2001 on the laundering of assets emerging from the illicit trafficking of drugs and other serious offenses, the UCREF is responsible for receiving, requesting, analyzing and processing the declarations that are required by natural or legal persons who, in the course of their profession, carry out, control, or advise transactions involving deposits, investments, exchanges or any other movement of capital suspected of having come from an unlawful or prohibited activity.
27. **Superior Court of Accounts and Administrative Litigation (CSCCA)**<sup>17</sup>. According to Article 3 of the Decree of 23 November 2005, the CSCCA assesses the accounts of public accountants and of those it has declared to be de facto accountants. It does not have jurisdiction over ministers, except those it has declared to be de facto accountants, or any other person under its control, neither over the employment accounts of organizations calling on public generosity. Nevertheless, the Superior Court of Accounts and Administrative Litigation, under the conditions laid down by regulation, controls the bodies receiving financial assistance from the State or any other person under its supervision, as well as the employment accounts of the organizations appealing to public generosity.

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<sup>15</sup> French acronym for “*Inspection générale des finances*”

<sup>16</sup> French acronym for “*Unité centrale de renseignements financiers*”

<sup>17</sup> French acronym for “*Cour supérieure des comptes et du contentieux administratif*”

28. **Office of Financial and Economic Affairs (BAFE)**<sup>18</sup>. Reporting directly to the Central Directorate of Judicial Police, BAFE is responsible for the repression of financial crimes.
29. **Senate**: The Ethics and Anti-Corruption Commission was not expressly provided for in the Constitution nor in the Senate's regulations<sup>19</sup>. However, according to Article 118 of the Constitution, "each House has the right to investigate the issues before it". Rule 206 of the rules of procedure states that: "any other Commission is *ex officio* at the request of the Assembly". Due to the persistent rumors of corruption that shook the country in 2015, the Senate created an Ethics and Anti-Corruption Commission. Two reports were subsequently produced by said commission and submitted to the Assembly. In view of the interest in the subject, the rules of procedure have thus been amended. The Ethics and Anti-Corruption Commission has now become a permanent body.

### III. Corruption in Haiti

#### 1. Definition and typology of corruption

30. For the World Bank, corruption is defined as "the abuse of public or corporate office for private gain."<sup>20</sup>
31. Two (2) types of corruptions are identified: (i) **active corruption** and; (ii) **passive corruption**.
32. The first is the offering or seeking of money, a guarantee or a benefit for services rendered. The second is when a public servant or public official receives gifts, money, guarantees or benefits for which he agrees to abuse of his or her responsibility, in order to benefit the person who is at the origin of the bargain.
33. **Grand corruption**. Grand corruption occurs when decision-makers or high-level senior government officials use their power to enrich themselves or retain power illegally.
34. **Petty corruption**. Petty corruption concerns lower-level public officials, taking advantage of their position to accept bribes, extract money from the state or divert small amounts of money.

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<sup>18</sup> French acronym for "Bureau de affaires financières et économiques"

<sup>19</sup> According to articles 169 and 172 of the Senate's rules of procedure, 7 permanent commissions and a special commission are foreseen.

<sup>20</sup> V. Bhargava (2005), *The Cancer of Corruption*, World Bank Global Issues Seminar Series, available at: <http://siteresources.worldbank.org/EXTABOUTUS/Resources/Corruption.pdf> last accessed (16/10/2019)

## 2. Actors perpetrating corruption

35. **Public administration.** Corruption exists at all levels of government. According to the ULCC household survey, the proportion of corruption in the different sectors are as follow:
36. Justice 81%; General Administration of Customs 78%; General Direction of taxes 73%; Ministry of Justice 68%; Territorial Communities 70%; Public Works 68%; Haiti National Police 64%<sup>21</sup>.
37. **Non-state actors.** The phenomenon of corruption also affects non-state actors. The results of the ULCC survey highlight that 87% of business leaders mention corruption as a problem affecting the public, as well as the private sectors.

## IV. Consequences of corruption on human rights

38. Haiti is a founding member of the United Nations and a State Party of key international human rights instruments, including the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic Social and Cultural Rights (ICESCR). The Haitian State is therefore bound to respect, promote and implement them. Article 2 of ICESCR states that:
39. "Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures."
40. However, corruption in Haiti significantly affects the enjoyment of human rights, including those economic, social and cultural, due to a lack of access to basic services such as education, health care, work, etc. Today, Haiti is ranked as the poorest country in the southern hemisphere and it can confidently be said that corruption is one of the factors that explains it.
41. By way of example, the 2017-2018 budget allocated fourteen billion and one hundred and seventy-nine million Gourdes (HTG 14.179 billion) to public debt services, which represents almost 10% of the total budget; while the 2016-2017 budget devoted ten billion and three hundred and fifty-two million Gourdes (HTG 10.352 billion). This represents an increase of 27%. A significant portion of these

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<sup>21</sup>ULCC (2007), *Gouvernance et Corruption en Haïti*, Port-au-Prince, p.21

fourteen billion will be dedicated to the repayment of the PertoCaribe's debt.

42. However, the PertoCaribe fund, intended to carry out sustainable projects to improve the living conditions of the population, was squandered by leaders known to everyone. The CSCCA concluded in its report, published in January 2019, that the management of the fund was catastrophic.
43. What appears to be even more serious is the price the population will have to pay, especially the most vulnerable groups (such as peasants and low-income earners), who, for the most part, will have to reimburse the debt by means of taxes and custom duties. For instance, the costs for delivering a driving license have increased from 1000 HTG to 2'500 HTG.
44. Every year, the country loses more than 990 million US dollars, due to exemptions, the subsidy of petroleum products. Annually, smuggling leads to a shortfall for the Treasury estimated at 500 million US dollars.
45. Today the inflation rate has reached a worrying level, at 19.5% in August 2019, against 15.4% at the closing of the 2017-fiscal year, and 12.5% in 2016<sup>22</sup>. This explains why the purchasing power of the people, most of whom live in poverty, is decreasing exponentially.

## **V. Challenges faced by the Haitian State**

46. Despite the existence of all these institutions, the challenges facing the Haitian state in the fight against corruption are numerous. However, some have been clearly identified.

### ***1. Lack of vision, consequently absence of public policy focused on human rights***

47. One of the major difficulties is the absence of a global vision defined by the State in the field of human rights. In other words, there is no macro framework that defines the State's orientation in this area. This is because human rights are not embedded in the leaders' political agenda. There are no effective and efficient public policies that take into account human rights, including the most basic rights.

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<sup>22</sup> Ministry of Economy and Finance: Haitian Institute of Statistics and Data Processing, *The economic accounts of 2017*, available at: [http://www.ihsi.ht/pdf/compte\\_economique/C\\_E\\_2017.pdf](http://www.ihsi.ht/pdf/compte_economique/C_E_2017.pdf) (last accessed 16/10/2019)

48. For example, once invested with his presidential functions, Mr. Jovenel Moïse wrote to the United Nations, opposing the renewal of the mandate of the UN Independent Expert on the situation of human rights in Haiti, Mr. Gustavo Gallón. However, through the periodic missions of this expert, the Human Rights Council was informed of the developments of the human rights situation in the country and could thus, make recommendations to the State. This mechanism acted as a preventive measure.
49. The Inter-ministerial Committee for Human Rights (CIDP)<sup>23</sup>, created by decree on 26 April 2013, which was given the mission to coordinate and harmonize public policies on human rights has no budget, and cannot, among other things, bring together the ministers concerned.

## **2. Willingness of the Executive to dilute other institutions**

50. One of the major challenges in the process of building the rule of law is the Executive's willingness to control or weaken other institutions, especially those in charge of the fights against corruption, a phenomenon which is not new.
51. For example, on 19 April 2017, two months after being invested as President, Mr. Jovenel Moïse replaced the Director General of the Central Financial Intelligence Unit (UCREF)<sup>24</sup>, Mr. Sonel JEAN FRANCOIS, without reason, before his term was over. According to article 13 of the Act to Prevent and Punish Corruption, the director general of UCREF is appointed for a renewable four (4) year mandate. It may be terminated before term should the director general show serious misconduct when carrying his duties. Serious misconduct is defined as any act that is fraudulent, illegal or opposes the fundamental purpose, powers and internal regulations of UCREF.
52. On 4 and 8 May 2017, less than a month later, the Chamber of Deputies and the Senate of the Republic, controlled by the presidential majority, passed a law amending that of 2001, which was published on 25 May 2017 in the official journal *Le Moniteur*, on the organization and functioning of the UCREF. According to article 13 of the new law, the director general of UCREF shall be appointed by the President on the recommendation of the Minister of Justice and Public Security. The deputy director is, for his part, chosen by the said Ministry.

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<sup>23</sup> French acronym for "Comité Interministériel des Droits de la Personne"

<sup>24</sup> French acronym for "Unité centrale de renseignements financiers"

53. Whereas according to the 2001 law, the director general of UCREF and his deputy were chosen in a transparent manner and according to their competences and their aptitude to hold these positions, following an open call for applications, to which anyone could respond. Instead of strengthening the transparency mechanism set by the 2001 law, the Executive, using its majority in parliament, put UCREF under its supervision.
54. Government Commissioners who are not beholden to the Executive are dismissed or made redundant. For instance, the Commissioner of the Government of the Court of First Instance, appointed on 18 Decembre 2018 had to resign from his post on 26 Septembre 2019, because he did not want, as requested by the Executive, to repress citizens demonstrating against corruption and demanding the departure of the President. He also refused to protect from prosecution relatives of the President involved in criminal acts (for example, the Senator Jean-Marie Ralph Fethière caught shooting at citizens opposed to power)<sup>25</sup>.
55. These concrete examples, among many others, enable to understand how difficult it is for the institutions to fight against corruption, because they are under the grip of the Executive, often in collusion with Parliament.

### **3. Government Commissioners report to the Ministry of Justice and lack a mandate**

56. The law of 13 November 2007 created the Superior Council of the Judiciary as an organ of administration, control, discipline and deliberation of the judiciary. However, the Government Commissioners still report to the Ministry of Justice, a branch of the executive. Moreover, the Government Commissioners have no mandate. In other words, they can be revoked at any time. In fact, it is common practice that the Government Commissioners who do their work according to the law are dismissed.
57. However, it is the body responsible for judicial prosecution. Investigations by other bodies on corruption are forwarded to Commissioners for judicial follow-up. These investigations from which the Government Commissioners must initiate the

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<sup>25</sup> The day after his resignation, he stated for the newspaper *Le Nouvelliste*, that there was a “deep disagreement” with the Executive. He went on to say: “We are genuinely interested in watching the streets. I just wanted to make a balance. If we attack Ti Joel (*ed. Gang leader*), we must put public action in motion against everyone. This is not their position. A. Roberson, (01/10/2019), *Paul Eronce Villard refuses to systematically repress the streets*, in *Le Nouvelliste*, available at: <https://lenouvelliste.com/article/207375/paul-eronce-villard-a-refuse-de-mater-la-rue>. (last accessed 16/10/2019)



prosecution, concern senior leaders of power. For example, in the report of the Superior Court of Accounts and Administrative Litigation (CSCCA) two firms headed by Mr. Jovenel Moïse, before he was President, have been indexed.

#### **4. Absence of financial centers (prosecutor's office and courts)**

58. The Haitian justice does not have financial centers, that is to say a structure of specialized judges, experts in the fight against corruption, with territorial jurisdiction and appropriate means.

#### **5. Absence of career in the judiciary: judges and investigative judges**

59. According to Article 8 of the decree of 22 August 1995 on the organization of the judiciary, judges of courts of first instance are appointed for seven years from the day of their swearing in. However, their mandates are not automatically renewed based on defined objective criteria. It is the President who renews them on the advice of the High Council of the Judiciary (CSPJ)<sup>26</sup>. In reality, the judges who do their work in full independence do not see their mandate renewed, despite a favorable report from the CSPJ.

#### **6. Population's lack of education.**

60. The Haitian population's lack of education on corruption is an important factor to consider. Beyond corruption at the top of the state, corruption is part of the functioning of citizens, although this can also be explained by the limited accessibility of public services. As an example, to make a tax ID at the General Direction of Taxes (DGI<sup>27</sup>) worth 50 Gourdes, a citizen would give 250 Gourdes to someone at the DGI, either to get it quicker, or to avoid spending hours queuing. Another example would be of a lawyer who gives money to a clerk in court to get a paper faster or for other reasons.

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<sup>26</sup> French acronym for "*Conseil supérieur du pouvoir judiciaire*"

<sup>27</sup> French acronym for "*Direction générale des impôts*"

## VI. Conclusion

61. Despite the existence of national laws on the fight against corruption, as well as the international instruments to which the Haitian State is a party, corruption remains a phenomenon gnawing at Haitian society, and significantly affecting the rights of citizens, including their living conditions. It appears that despite the domestication of international norms and standards, as well as the establishment of institutions in charge of tackling corruption and the growing interest of local civil society to join forces in the battle, the unwillingness of the Haitian government to efficiently implement those norms and standards results in widespread corruption at all level.

62. Indeed, the last three reports by Transparency International confirm how vulnerable the country is to corruption. This could be explained, firstly by the weakness and lack of coordination of the institutions in charge of combating the phenomenon, triggered by efforts of those in power to dilute those institutions for their personal gain. The lack of citizens' awareness of the negative effects of corruption on the fulfillment of their human rights, affecting their already poor living conditions, is also a factor that impedes the eradication of corruption in the country.

## VII. Recommendations

63. CARDH and RIDH, in order to contribute to the OHCHR's report on *the challenges faced and best practices applied by States in integrating human rights into their national strategies and policies to fight against corruption*, formulate the following recommendations based on the Haitian case, both nationally and internationally. CARDH and RIDH wish to emphasize that the Haitian context, within which corruption is omnipresent, offers a concrete example of the challenges faced by the State in integrating human rights into their anti-corruption policies and strategies, as illustrated in this document. CARDH and RIDH encourage the OHCHR to consider the applicability of the recommendations at the national level to similar contexts.

### *Justice*

64. Strengthening the justice system to guarantee its independence and efficiency through:

65. A financial center and regulations on court fees. A financial center dedicated to offenses linked to corruption must be created with: 1) technical, financial and other means necessary to ensure the fulfillment of its duties; 2) territorial jurisdiction and an independent supervisory system. Additionally, control over court fees payments must be established, so they would be deposited to the General Direction of Taxes (DGI), or through a banking institution, but not within courthouses (such as through court registry).
66. A reform of the High Council of the Judiciary (CSPJ). The CSPJ's jurisdiction should be extended to all judicial staff (government commissioners, judges, clerks and bailiffs) with respect to its nomination and mandate's renewal. An adequate part of the budget should be dedicated to the CSPJ for it to effectively carry its duties.
67. Automatic renewal of judges' mandates and strengthening of courts' supervision. Judges' mandates should be automatically renewed, following the approval of the CSPJ, given by means of evaluation reports. Reasonable resources should be allocated to safeguard justice in accordance with the principles of the rule of law and; a robust system of supervision, at all level of courts and tribunals' staff through periodic appraisals and evaluations needs to be established.

### ***Parliament***

68. Abolishment of parliamentary immunity in cases of corruption. Given that Parliament is one of the most corrupt bodies in Haiti, parliamentary immunity shall be revoked in cases of crimes linked to corruption, to prevent those who enjoy immunity from accepting bribes influencing their vote and, from engaging in financial crimes.

### ***Executive***

69. Holding the President accountable. While allowing him a minimum of protection due to his function, the possibility to summon the President of the Republic must be available in cases of corruption, to avoid the common behavior of Haitian presidents to abuse of their status to squander public funds through third-parties, and thus violating the basic human rights of the people.
70. Eliminating tacit protection of public servants. Public servants to the State, including general directors, must be held accountable

when involved in crimes of corruption, without the illegitimate protection of the President of the Republic.

### ***Independent institutions***

71. Strengthening coordination between institutions. Institutions in charge of tackling corruption must work together efficiently, in a coordinated manner, to maximize their efforts to fight corruption and promote human rights transversally.
72. Enhancing the participation of the NHRI. The Office of the Protection of the Citizen (OPC<sup>28</sup>), as National Human Rights Institution (NHRI), must actively participate in the promotion of the inclusion of human rights principles in the elaboration and adoption of public policies tackling corruption, based upon UN recommendations especially.
73. Allocating necessary resources to CSCCA. Additional funds must be made available to The Superior Court of Accounts and Administrative Litigation (CSCCA)<sup>29</sup> to allow for better financial and technical resources in order for the institution to effectively audit and evaluate all public institutions and all authorizing officers at all levels (executive, judiciary, legislative, independent institutions).

### ***Private sector and civil society***

74. Creating a coordination mechanism between private sector and civil society. Mechanisms such as a national intersectoral monitoring committee, composed of actors from both the private sector and civil society, could be initiated to enhance cooperation in promoting and protecting human rights in a common strategy to fight against corruption.
75. The Elaboration of a NAP on business and human rights. In line with the United Nations Guiding Principles on Business and Human Rights, a National Action Plan should be elaborated and implemented without due, in order to ensure the respect of human rights by private enterprises, free from corruption.

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<sup>28</sup> French acronym for “*Office de la protection du citoyen*”

<sup>29</sup> French acronym for “*Cour supérieure des comptes et du contentieux administratif*”

## ***Government, civil society and the citizens***

76. Leading awareness campaigns and citizen education. With the aim of tackling the culture and mentality of corruption embedded in Haitian society, rights-based awareness campaigns and educational programs must be implemented at 2 levels: (i) for the population as a whole (schools, universities, grassroots community organizations, OSC); (ii) for public servants often involved in corruption. Additionally, an educational public policy, respectful of the principle of good governance, should be introduced to include the education of the youth, spearhead of the movement against corruption, on the negative effects of corruption on the fulfillment of human rights.
77. Enhancing the participation of the media. As informative channels to the general public, through the investigation and public divulcation of acts of corruption, the media is strongly encouraged to take active participation in showcasing human rights violations linked to corruption, thus participating in public awareness and, in holding accountable those responsible of such violations.
78. Establishing a system of whistleblowers. A system of anonymous citizen whistleblowers could be established to investigate acts of corruption within public administration and consequently send alerts to concerned bodies, especially when human rights are being violated.

## ***International***

79. Strengthening International cooperation. Corruption being an international scourge, it is encouraged that countries cooperate in their actions to fight against corruption, adopting an optic prioritizing the protection of human rights through, for instance, a peer-review mechanism, complementing the Universal Periodic Review (UPR), or technical support in line with item 10 of the agenda of the HRC – technical assistance and capacity building – when grand corruption is evident.
80. Promoting access to remedy. While respecting national sovereignty, jurisdiction, institutions and judicial systems, the international community, in case of clear evidence of grand corruption having direct negative effects of the enjoyment of human rights nationwide, must report such acts of corruption in order to promote efficient ways of remedy and end impunity.

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## **ANNEX 1. Law on Prevention and Repression of Corruption (2014)**

### ***14 offenses of corruption***

Article 5.1.- **Bribery.** All civil servants, all public officers, any public agent of the national public administration, all collectors of the rights, taxes, money, public or communal revenues, who are guilty of the crime of bribery, by ordering to collect or by demanding or receiving what they knew not to be due for rights, taxes, money or income, or for wages or salaries, are punishable by imprisonment. The guilty parties are, moreover, sentenced to the restitution of the illegally collected values and to a triple fine of the amount of the restitutions, without prejudice to damages. The same penalties shall be imposed by the same persons to grant, in any form whatsoever and for any reason whatsoever, an exemption or exemption from public duties, taxes or levies, in whole or in part, in violation of regulations. Attempts of the offenses provided for in this article shall be punished by the same penalties as the actual execution of the said offenses. The provisions of this article repeal those of Article 135 of the Penal Code.

Article 5.2.- **Illicit enrichment.** Any political figure, public official, civil servant, magistrate or member of the public force who cannot reasonably justify a disproportionate increase in his wealth in relation to his legitimate income is guilty of unlawful enrichment. This fact is punishable by imprisonment and a fine representing twice the value of this disproportion without prejudice to the pecuniary sanctions provided for in fiscal matters. Anyone found guilty of unlawful enrichment concealment or the proceeds of illicit enrichment shall be sentenced to the same penalties as the author.

Article 5.3.- **Laundering proceeds of crime.** Any natural person or legal person who has been guilty of laundering proceeds of crime by facilitating, by any means, the false justification of the origin of the property or income of the perpetrator of an act of corruption which has given rise to the latter, whether directly or indirectly, or by assisting in the placement or concealment or conversion of the proceeds of such act, shall be punishable by the penalties provided for by the Money-Laundering Act. Any natural person or legal person found guilty of complicity or concealment in an act of laundering proceeds of crime shall be punished in accordance with the provisions of that Law. The attempt to launder proceeds of crime is punishable by the same penalties as the offense.

Article 5.4.- **Misappropriation of public funds.** Any person who has diverted for purposes other than their assignment, for his personal use or for that of a third party, any good belonging to the State, to a territorial collectivity, to an independent institution or to an independent body,



which has received them on deposit, in management or for any other reason because of its function, is sentenced to imprisonment, the return of the property thus diverted and a fine equal to three times the value of the diverted good.

Article 5.5.- **Abuse of functions.** Abuse of functions is the act of a public official to abuse his office or position, that is, to perform, in the performance of his duties, an act in violation of the laws in order to obtain an undue advantage for himself, another person or entity. The public official guilty of abuse of functions is sentenced to imprisonment and to a fine of two hundred thousand Gourdes.

Article 5.6.- **Payment of bribes.** Any public servant, public official, or representative of the State who, in the performance of his duties, solicits or accepts a bribe, that is to say a value or any other good offered to grant an unlawful or undue advantage is punishable by imprisonment for one to five years and to a fine of three times the value received, in addition to the confiscation by the State of the amount or value of the bribe. The author of the bribe, the instigators or possible accomplices are punished with the same penalties as the beneficiary.

Article 5.7.- **Payment of unlawful commissions.** Any public servant, public official or representative of the State who, in the exercise of his functions, agrees or accepts the payment of a commission on a transaction for which he was instructed to order the payment, to negotiate or liquidate the terms shall be punishable by imprisonment and a fine equal to three times the value received in addition to the confiscation by the State of the amount or value of the unlawful commission. The author of the payment of the illegal commission, the possible accomplices are punished with the same penalties as the beneficiary.

Article 5.8.- **Overcharging.** Any public servant, public official or representative of the State who makes or charges for an amount greater than the actual cost of a good or service to be acquired on behalf of the State or an entity of the national public administration, an autonomous body or a local authority is guilty of the crime of overcharging and is punishable by imprisonment and a fine of one hundred and fifty thousand to two hundred and fifty thousand gourds without prejudice to the penalties provided for by the regulations on public procurement. In addition, the amount or value of the overbilling or resulting product will be forfeited to the State. Any instigator, any accomplice of overcharging is punished with the same penalties as the author.

Article 5.9.- **Influence peddling.** Any person soliciting or approving offers, donations or promises to abuse real or alleged influence for the purpose of obtaining from an authority or public administration, distinctions, jobs, contracts or any other favorable decision for a third party is punishable by

imprisonment from one to three years and a fine of one hundred and fifty thousand to two hundred and fifty Gourdes and the confiscation of donations received. The instigator, the accomplice of the offer, the gifts or the promise is sentenced to the same penalties and fine as the author.

Article 5.10.- **Favoritism.** Any public servant, public official or magistrate who uses his position, credit or influence to gain an undue advantage or a public job, in violation of the established recruitment rules, is guilty of favoritism and is punished with imprisonment from one to three years and the prohibition to hold a position in the national public administration for a period of five years.

Article 5.11.- **Insider trading.** Anyone who has used for his own benefit or for that of a third party, any reserved or privileged information he has obtained in the exercise of his functions and relating to the awarding of public contracts or the prospects for the evolution of a market regulated, is guilty of insider trading and is punishable by one year to five years in prison and a fine of five hundred thousand, without prejudice to any damages and interest.

Article 5.12.- **Illegal public procurement.** Anyone who deliberately awards, approves, concludes or executes public procurement in violation of public procurement regulations is liable to imprisonment without prejudice to the penalties provided for in Articles 91 to 94 of the Law on General Procurement Rules and public service concession agreements.

Article 5.13.- **Illegal acquisition of interests.** By any person who is a public servant, or by a person holding a public office, to take, receive or retain, directly or indirectly, any interest in an undertaking or in an operation of which he has, at the time of the act, in whole or in part, the charge of supervising, administering, liquidating or paying, shall be punished by imprisonment and to a fine of one hundred fifty to two hundred and fifty thousand Gourdes.

Article 5. 14.- **Misuse of company assets.** Any director of a commercial corporation or a private enterprise in which the State has any shareholdings, or any leader of a non-governmental organization (NGO), foundation or cooperative benefiting from donations or grants customs, which makes property of the said company, enterprise, NGO, foundation or cooperative, a use contrary to the interest of the latter, for personal purposes or to favor a third party directly or indirectly, is guilty of 'misuse of corporate assets.