

Proposed topics for discussion at the Fourth Forum on Human Rights, Democracy and the Rule of Law

The Institute for Justice and Democracy in Haiti (IJDH) is a U.S.-based human rights non-profit organization that advances recognition of and accountability for human rights in Haiti in partnership with its Haiti-based sister organization, *Bureau des Avocats Internationaux* (BAI). IJDH and BAI bring together litigation, advocacy, training, and grassroots solidarity to tackle injustice and its root causes.

In response to the Office of the High Commissioner on Human Rights (OHCHR) call for input on the topics to be discussed during the fourth session of the Forum on Human Rights, Democracy and the Rule of Law with the theme of “Strengthening democracies to build back better: challenges and opportunities,”¹ IJDH recommends the following topics:

1. Challenging the narrow focus on holding elections as the primary – and sometimes exclusive – focus of democratization efforts and instead centering the principle of the democratic social compact: that the government ultimately belongs and is answerable to the governed;
2. Identifying best practices for ensuring that local voices are at the center of strengthening democracy and are not marginalized by either local elites or international actors; and
3. Acknowledging and centering international laws and norms that define and constrain the obligations and responsibilities of the international community when engaging in strengthening democracies, including especially the right to self-determination.

Discussion

IJDH has for many years observed policy-making and participated in advocacy relating to democracy-building and human rights in Haiti. We derive our recommendations from our experience with the policies and practices that have left Haiti facing one of its worst crises to date.² Specifically, conduct by the international community, even where well-meaning, has been a cause and a driver of what is at this moment a near-total collapse of government in Haiti.³ This includes pressure to hold elections, no matter how flawed;⁴ interference in their outcomes;⁵ installation of leaders like Haiti’s current de facto Prime Minister;⁶ and broader policies that resulted in undermining local government,⁷ creating cycles of debt and dependence,⁸ and compromising local economic and social rights.⁹

We explain each of our resulting recommendations for topics of discussion below.

1. Develop frameworks for strengthening democracy beyond elections

Although elections are an important instrument for ensuring that a government reflects the will of the people, they are not the actual substance of democracy. Instead, if elections are held in conditions that fundamentally divorce the act of voting from the goal of a participatory, safe, and equitable process for selecting leaders favored by the people, they are counterproductive to social stability. In Haiti, the international community has at various times sought to insist on elections in circumstances where a credible contest could not take place.¹⁰ At best, such insistence fails to address the structural drivers of democratic instability; at worst, it deepens and exacerbates them. In Haiti, for example, this approach has resulted in a widespread perception that international actors, rather than Haitians, select Haiti's government;¹¹ a succession of regimes lacking popular legitimacy that over the past decades have hollowed out Haiti's democratic institutions to the point where there is no constitutional governance;¹² and a consequent progressive dissolution of the social compact, including as reflected in precipitously reduced voter turnout.¹³ **IJDH therefore recommends as a topic of discussion the development of explicit frameworks for strengthening democracy that adhere to the core democratic principle of a government owned by the people, rather than the narrower process of elections.**

2. Identify and disseminate best practices for participatory local engagement in strengthening democracy

It is generally accepted that strengthening democracy requires local leadership and participation. Yet, we have observed in Haiti that local voices are often sidelined in efforts to strengthen democracy, especially where those voices come from marginalized communities. Instead, international actors and local political or economic elites – encouraged and insulated by foreign support – dominate the agenda, process, and substance of related efforts.¹⁴ **Accordingly, IJDH recommends as a topic of discussion identifying best practices for ensuring local participation and engagement, especially where there are barriers to such participation for marginalized groups by virtue of geography, literacy, language skills, education, or other factors.** IJDH notes without endorsement the existence of frameworks like Beyond Consultations, “a tool to promote more meaningful engagement of women in fragile and conflict-affected states,”¹⁵ which offers some concrete approaches for ensuring that marginalized voices are not merely consulted, but actually reflected in policy-making. These are the types of approaches that should be systematically evaluated, adopted, and incorporated into any efforts to strengthen democracy.

3. Center rights-based legal and normative framework for international engagement in strengthening democracy

Even well-meaning engagement by the international community can have deep negative consequences for the long-term stability and legitimacy of democracy if it is not undertaken within a rights-based framework that respects both local rights and international obligations. In 2010, for

example, when the Haitian government wanted to postpone elections in the wake of a devastating earthquake that killed at least 200,000 and left more than 1.5 million Haitian homeless, international donors, by threatening to withdraw desperately needed aid, forced through a deeply flawed contest that international actors further manipulated at the runoffs stage.¹⁶ This was the starting point of a decade of rule by illegitimate governments that hollowed out Haiti's democratic institutions.¹⁷ And it took place against a long history of extractive, neocolonialist interference by international actors that violated Haitian rights.¹⁸ By disregarding Haitian rights to self-determination and corresponding international obligations to respect the human rights and dignity of the population in delivering assistance,¹⁹ the international community not only betrayed its own values and legal obligations, but also gravely undermined Haiti's democracy even as it purported to bolster it.

Effective democracy-strengthening instead requires respecting the human rights of the affected population, including especially the rights to self-determination and sovereignty, as well as basic civil, political, economic, social, and cultural rights of the local population.²⁰ The laudable motivation to assist does not remove from the international community legal and normative obligations to do so within a rights-based framework. To the extent the international community violates its obligations or infringes on the human rights of the local population, it must further adhere to the legal requirement for accountability and restitution.²¹ It is thus also important to consider how to engage in strengthening human rights, democracy, and the rule of law in a manner that incorporates clear complaint mechanisms that are accessible, easily used, and capable of offering concrete compensation where appropriate. Based on these observations, **IJDH recommends as a topic of discussion identifying, endorsing, and centering the legal and normative obligations of international actors when engaging in strengthening democracy.**

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We thank you for your consideration of these recommendations. IJDH is available to provide further information and input upon request and to participate in any discussions.

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¹ *Call for input on the topics to be discussed during the fourth session of the Forum on Human Rights, Democracy and the Rule of Law*, UN Human Rights Office of the High Commissioner, <https://www.ohchr.org/en/calls-for-input/calls-input/call-input-topics-be-discussed-during-fourth-session-forum-human-rights>.

² See, e.g., Monique Clesca, *Haiti's Fight for Democracy, Why the Country Must Rebuild Before It Votes*, Foreign Affairs (Feb. 1, 2022), <https://www.foreignaffairs.com/articles/haiti/2022-02->

[01/haitis-fight-democracy](#); see also IJDH, Human Rights and Rule of Law in Haiti: Key Recent Developments June through November 2021 (2021), <http://www.ijdh.org/wp-content/uploads/2022/06/IJDH-Human-Rights-Update-June-2022.pdf>.

³ See, e.g., Catherine Porter et al., *The Ransom, The Root of Haiti's Misery: Reparations to Enslavers*, NY Times (May 20, 2022), <https://www.nytimes.com/2022/05/20/world/americas/haiti-history-colonized-france.html>; see also Sandra C. Wisner, *Starved for Justice: International Complicity in Systematic Violations of the Right to Food in Haiti* (2022), <https://blogs.law.columbia.edu/hrlr/files/2022/05/Wisner-Ready-to-Publish-.pdf>; Kristina Fried, *New promises from Washington for Haiti as the term for its assassinated president ends Monday*, Miami Herald (Feb. 6, 2022), <https://www.miamiherald.com/opinion/article258104658.html>.

⁴ See, e.g., Pierre Espérance, *Wrong US Call - Haiti Needs a Credible Transitional Government*, Just Security (July 22, 2021), <https://www.justsecurity.org/77552/wrong-us-call-haiti-needs-a-credible-transitional-government/>; Brian Concannon, *Instill integrity in Haiti's election*, Miami Herald (Oct. 5, 2015), <https://www.miamiherald.com/opinion/op-ed/article37895091.html>; IJDH, *Haiti's November 28 Elections: Trying to Legitimize the Illegitimate* (Nov. 2010).

⁵ See, e.g., Ben Gutman, *A Brutal History of Foreign Meddling in Haiti is Responsible for its Ongoing Crisis*, International Affairs Review (Aug. 24, 2021), <https://www.iar-gwu.org/blog/iar-web/a-brutal-history>; Kevin Moran & Azadeh Shahshahani, *Haiti: US interference wins elections*, The Hill (Oct. 13, 2015), <https://thehill.com/blogs/congress-blog/foreign-policy/256679-haiti-us-interference-wins-elections/>.

⁶ See Communiqué du Core Group, *Bureau Intégré des Nations Unies en Haïti* (BINUH) (July 17, 2021), <https://binuh.unmissions.org/fr/communiqu%C3%A9-du-core-group-4>; Fried, *supra* note 3.

⁷ See, e.g., Jake Johnston, *Who decides who runs Haiti?*, Le Monde Diplomatique (Feb 2022), <https://mondediplo.com/2022/02/06haiti> (describing Haiti as an “aid state” created through foreign interference and irresponsible humanitarian assistance that systematically bypassed the local government and thereby deteriorated lines of accountability and authority necessary for legitimate democratic governance).

⁸ See, e.g., Wisner, *supra* note 3; Porter et al., *supra* note 3.

⁹ See, e.g., Wisner, *supra* note 3; Sara Jean, Evens Mary & Thin Lei Win, *Can Haiti rebuild a food system broken by disaster, historical injustice, and neglect?*, New Humanitarian (Feb. 2, 2022), <https://www.thenewhumanitarian.org/2022/02/02/can-haiti-rebuild-food-system-broken-disaster-historical-injustice-and-neglect>.

¹⁰ See, e.g., Espérance, *supra* note 4; Georges A. Fauriol, *Haiti's Fractured Political Dynamics*, Center for Strategic & International Studies (Mar. 17, 2022), <https://www.csis.org/analysis/haitis-fractured-political-dynamics>; National Lawyers Guild (NLG) & International Association of Democratic Lawyers (IADL), *Haiti's Unrepresentative Democracy: Exclusion and Discouragement in the November 20, 2016, Elections* (Feb. 2017), <http://www.ijdh.org/wp-content/uploads/2017/02/Haitis-Unrepresentative-Democracy.pdf>; Ricardo Seitenfus, *Democracy Discouraged: International Observers and Haiti's 2015 Elections* (Sep. 2016), <http://www.ijdh.org/wp-content/uploads/2013/05/Democracy-Discouraged-NLG-Report-091916.pdf>; Brian Concannon, *The show must not go on*, The Hill (Dec. 8, 2015), <https://thehill.com/blogs/congress-blog/foreign-policy/262397-the-show-must-not-go-on/>; Concannon, *Instill integrity in Haiti's election*, *supra* note 4; IJDH, *Ensuring Fair Elections in Haiti: Legal Analysis of Recent Developments* (Jan. 9, 2015), <http://www.ijdh.org/wp->

[content/uploads/2015/01/IJDH-Haiti-Elections-Briefing-Paper-Jan.-2015.pdf](https://www.ciel.org/wp-content/uploads/2015/01/IJDH-Haiti-Elections-Briefing-Paper-Jan.-2015.pdf); Brian Concannon, Jr. & Jeena Shah, *U.S. will pay for Haitian vote fraud*, Boston Globe (Dec. 15, 2010), http://archive.boston.com/bostonglobe/editorial_opinion/oped/articles/2010/12/15/us_will_pay_f_or_haitian_vote_fraud/; IJDH, Haiti's November 28 Elections: Trying to Legitimize the Illegitimate, *supra* note 4; Brian Concannon, Jr. & Ira Kurzban, *Don't honor tainted election*, Haitian Truth (Jan. 2, 2010), <http://www.haitian-truth.org/dont-honor-tainted-election/>.

¹¹ See, e.g., Maria Abi-Habib & Natalie Kitroeff, *Haiti Opposition Group Calls on U.S. to End Support for Current Government*, NY Times (Feb. 6, 2022), <https://www.nytimes.com/2022/02/06/world/americas/haiti-opposition-group-montana-accord.html>; Johnston, *supra* note 7.

¹² See, e.g., Brian Concannon, *Biden must stop propping up the old guard in Haiti*, Responsible Statecraft (Nov. 12, 2021), <https://responsiblestatecraft.org/2021/11/12/how-biden-can-support-democracy-in-haiti/>; *US Hands Off Haiti's Democracy*, Haiti Response Coalition (Apr. 2022) <https://www.haitiresponse.org/hands-off> (publishing consensus advocacy talking points); see also IJDH, Human Rights and Rule of Law in Haiti, *supra* note 2.

¹³ See, e.g., NLG & IADL, *supra* note 10.

¹⁴ Espérance, *supra* note 4; *US Hands Off Haiti's Democracy*, *supra* note 12; Monique Clesca, *My Group Can Save Haiti, Biden Is Standing in Our Way*, NY Times (Dec. 1, 2021), <https://www.nytimes.com/2021/12/01/opinion/haiti-commission-government.html>; Fried, *supra* note 3.

¹⁵ Beyond Consultations, <https://beyondconsultations.org/>.

¹⁶ Johnston, *supra* note 7.

¹⁷ *US Hands Off Haiti's Democracy*, *supra* note 12.

¹⁸ See, e.g., Wisner, *supra* note 3; Porter et al., *supra* note 3.

¹⁹ Charter of the Organization of American States Arts. 1, 15, and 16, 119 U.N.T.S. 3, Apr. 30, 1948 (emphasizing state sovereignty and the obligation to refrain from interfering in the affairs of another State).

²⁰ One emerging legal framework for understanding these principles is the concept of extraterritorial obligations - duties states owe to respect, protect, and fulfill human rights obligations they have undertaken when their acts or omissions affect the enjoyment of human rights outside of their own borders. *Maastricht Principles on Extraterritorial Obligations of States*, Center for International Environmental Law, https://www.ciel.org/wp-content/uploads/2015/05/Maastricht_ETO_Principles_21Oct11.pdf. In the context of Haiti, this framework is especially relevant for assessing foreign state action – including as part of international lending institutions like the World Bank and International Monetary Fund – that severely impacts economic, social and cultural rights. See Wisner, *supra* note 3.

²¹ See, e.g., UN General Assembly, Report of the Special Rapporteur on extreme poverty and human rights, UN Doc. A/71/367 (Aug. 26, 2016), https://ap.ohchr.org/documents/dpage_e.aspx?si=A/71/367 (emphasizing that international human rights standards, including the right to recourse and accountability, are binding on international actors, including the UN and its peacekeepers); see also, e.g., Wisner, *supra* note 3; Paisley Dodds, *Haitian court orders UN peacekeeper to pay child support in landmark case*, New Humanitarian (Mar. 12, 2021), <https://www.thenewhumanitarian.org/news/2021/3/12/UN-peacekeeper-ordered-to-pay-child-support-to-Haitian-mother>.